

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

**Application of FCW SEFC LLC on behalf of
General Services Administration**

ANC 6D

**FINAL STATEMENT OF THE APPLICANT
SOUTHEAST FEDERAL CENTER OVERLAY REVIEW
WATERFRONT PARK – PHASE II**

I. Nature of Relief Sought

This is an application of FCW SEFC LLC on behalf of the General Services Administration (the “Applicant”) for Zoning Commission design review of Phase II of its proposed waterfront park along the Anacostia River in the Southeast Federal Center, pursuant to Section 1805.11 of the Zoning Regulations. Phase I of the proposed waterfront park was approved by the Zoning Commission in Order No. 08-04, and the Applicant requests that the record in that case be incorporated into the record of this matter. As authorized by Section 1809.1 of the Regulations, the Applicant also seeks special exception approval for the following:

- Section 925: multiple retail and service uses in the Development Area of the SEFC/W-0 Zone District;
- Section 1805.6: uses permitted in the Open Space Area of the SEFC/W-0 Zone District; and
- Section 411: roof structure setback relief.

The Applicant also requests variance relief from the parking requirements of the Regulations.¹

Finally, the Applicant requests variances from the height requirement of Section 930 and the waterfront setback requirement of Section 938 of the Regulations for its proposed visual marker, an artistic design element planned for the terminus of the park’s promenade.

¹ In the initial application, the Applicant requested special exception relief from the parking requirements for an addition to an historic structure. The design has been modified to remove the building connection, and the Applicant therefore amends the application to request variance relief from the parking requirements. The Applicant no longer requests relief from the lot of record requirements of the Regulations.

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District of Columbia
CASE NO. 08-04A
EXHIBIT NO. 14A

II. Description of the Property and the Project

A. Property and Zoning

The property that is the subject of this application is a portion of the 42-acre site known as the Southeast Federal Center. It is bounded by the DC Water and Sewer Authority facility to the west, the Washington Navy Yard to the east, and the Anacostia River to the south (the “Property”), and is known as Square 771, Lots 801 and 802.²

Pursuant to Z.C. Order No. 03-06, as modified by Order No. 07-11, the Zoning Commission mapped the entire Southeast Federal Center with the Southeast Federal Center Overlay District (the “SEFC Overlay”). As a part of the proceeding, the Commission also designated the underlying zoning for the entire site, and mapped a portion of the Southeast Federal Center in the W-0 Zone District (the “SEFC/W-0 Zone District”). Broadly, the SEFC Overlay calls for the development of a publicly-accessible park along the Anacostia River with uses as permitted in the W-0 District. 11 DCMR § 1802.8. The stated purposes of the SEFC/W-0 Zone District are to (a) encourage open space; (b) provide a lively, interactive waterfront environment; (c) discourage parking; (d) provide a Development Area for retail and cultural uses; (e) provide an Open Space Area, intended to be the site of open space recreation use as well as limited uses that are directly waterfront dependent; and (f) allow for a continuous publicly-accessible pedestrian and bicycle trail along and adjacent to the waterfront as part of the Anacostia Waterfront Trail system. 11 DCMR § 1805.1.

To accomplish the development of a vibrant, active park, the Commission divided the SEFC/W-0 zoned-portion of the Overlay into two subareas: the Open Space Area and the Development Area. In May 2008, the Applicant presented the Commission with the overall

² The site has been owned by the federal government and historically had no lot and square assignment. On June 19, 2008, after consultation with the Office of the Surveyor, the Office of Tax and Revenue assigned the following numbers to the site: Square 771, Lots 801 (area north of bulkhead) & 802 (area south of bulkhead).

design and layout of the park, which the Commission approved in Order No. 08-04 (“**Phase I**”). Here, the Applicant primarily requests the approval of buildings and uses within the Development Area of the SEFC/W-0 Zone District (“**Phase II**”). The Applicant also requests the approval of the uses to be located in the waterfront park kiosks, which are located in the Open Space Area. Finally, the Applicant requests approval of the design of the proposed visual marker, which is planned as a sculptural art feature that will be located in the Open Space Area.

The W-0 Zone District permits a maximum height of 40 feet, FAR of 0.5, and lot occupancy of 25%. Only limited recreational uses are permitted as a matter of right; other uses are permitted as a special exception. When mapped with the SEFC Overlay, the SEFC/W-0 Zone District has additional requirements detailed in Section 1805. Specifically, the SEFC/W-0 Zone District requires a minimum floor-to-ceiling height of 14 feet. It permits the allocation of density within the SEFC/W-0 Zone District from the Open Space Area to the Development Area. It also specifically excludes the gross floor area of the existing historic landmark Lumbershed Building from any FAR computation. The SEFC/W-0 Zone District permits only limited uses in the Open Space Area, but allows a broader series of uses within the Development Area. Finally, the SEFC/W-0 Zone District permits the construction of multiple buildings on a single record lot.

B. The Project

Pursuant to the purposes and goals of the SEFC Overlay and the SEFC/W-0 Zone District, the Applicant proposes a series of improvements that will bring retail and service uses to the waterfront park and further encourage the development of a lively, active waterfront park along the Anacostia River (the “**Project**”). In Phase I, the Commission approved the construction of the open space features in both the Open Space Area and Development Area of the waterfront park. Here, in Phase II, the Applicant seeks review and approval of renovated and

new structures contemplated for the Development Area as well as the uses that will be located within those structures. In addition, the Applicant seeks the Commission's approval of the uses of the waterfront park kiosks located in the Open Space Area. (Construction of these kiosks was approved in Phase I. Z.C. Order No. 08-04.) Finally, the Applicant seeks the Commission's design approval of the visual marker that will be located in the Open Space Area at the terminus of the Promenade.

The proposed park has been intentionally designed to provide opportunities for passive and active experiences, in order to keep park visitors returning time and time again to enjoy new and different compelling experiences at the park. In particular, the park has been designed to feature three active elements that are intended to serve as integral and useful elements of the park itself. These include (1) the bridge (which was approved in Phase I); (2) an artistic sculptural element on the water; and (3) the restaurants and other retail in the pavilions. The design of these elements build on the industrial heritage of the site as well as the natural beauty of the river, and come together to express key themes of utility, simplicity, and dynamism. Through the bridge, marker, and retail buildings, the Applicant hopes to succeed in creating eclectic experiences and return visits and facilitate a sense of community affinity for the park.

Phase II of the Park consists of the renovation and improvement of the existing two-story Lumbershed Building, a structure that is a contributing building in the Washington Navy Yard Historic District Expansion, construction of two new two-story retail pavilions, and construction of the visual marker along the waterfront (the "Project"). The Project is depicted in further detail on the plans attached as Exhibit A.

1. The Lumbershed and Retail Buildings

The Lumbershed Building was originally built as an open-air structure and used for drying lumber. While the industrial usage of the building is from a bygone era, the building now has an opportunity to take on a new life and become part of a thriving retail and restaurant community in the setting of the new waterfront park. The Lumbershed Building will be enclosed in order to protect its structure and adapt the building for its retail use, but the transparency of the enclosure will preserve the open-air feel of the original building.

The two new retail pavilions have been carefully designed to respond to the immediate context and provide a transition between the urban mixed-use development to the north and the park to the south. They take their design cues from the simplicity of the Lumbershed Building, and their scale and use of materials demonstrate a sensitivity to the lumbershed itself. At the same time, they provide an urban street edge to Water Street that enhances the corridor with a number of retail and dining options. The retail spaces in the Lumbershed Building and new pavilions will be devoted to the uses listed in Section 925 of the Regulations, which are permitted in the W-0 Zone District as a special exception.

All three buildings work together to frame a more intimate public plaza within the park, facing the Anacostia River. The previously-approved hardscape and landscape improvements that surround the buildings will create this plaza, which will include park benches and other public spaces overlooking the waterfront as well as outdoor seating for future restaurant and café uses located within the structures. In conjunction with the approval of the new buildings and their retail uses, the Applicant also seeks approval for similar uses in the waterfront kiosks. These kiosks are located under the “Overlook” which was approved by the Zoning Commission

in Phase I, and will contain the uses permitted in the Open Space Area of the SEFC/W-0 Zone District under 1805.6 of the Regulations.

As detailed to the Commission in Phase I, the Project will provide multiple points for pedestrian ingress and egress, including from the street grid to the north as well as through future connections to the west and east along the Anacostia waterfront. Designing for the urban pedestrian experience is paramount because most of the arriving visitors and patrons will be on foot. The walkways around the three buildings serve as entrances to the plaza and the park, allowing the buildings to respond on all sides to the other elements of the park. The Project will also provide for bicycle circulation to and around the waterfront park. Given the pedestrian- and transit-friendly location and availability of other parking options in the nearby area, the Project does not include any vehicular parking.

2. The Visual Marker

The Yards offers a unique opportunity to reconnect the urban fabric of southeast Washington to the Anacostia River, and central to this connection is the proposed visual marker, a sculptural element that is intended to draw people throughout the District down to the reclaimed Anacostia waterfront. The visual marker has been designed by James Carpenter Design Associates, who was commissioned to design the marker based on their extensive experience in creating architectural and sculptural works that combine the artistic potential of light and materials to enhance public spaces and places.

During the day, the marker will serve as a subtly shimmering figure within the park that visually connects the upper level of the park to the activity of the boardwalk. At night, the top portion of the marker will be internally illuminated, recalling some of the historic light house and

channel markers of the waterfront. The visual marker has been designed to reflect the location's historic origins as a shipyard and industrial site, and has been sited on a north-south axis with the Lumbershed Building and Building 160 to reinforce the historic perpendicularity of the buildings to the Anacostia River. Detailed descriptions and illustrations of the visual marker are included in the plans attached as Exhibit A.

3. Summary

In total, the Project will feature approximately 59,598 square feet of retail and other approved uses. Per Section 1805.9 of the Regulations, the gross floor area of the Lumbershed Building does not count towards the total FAR of the Project, and the Project therefore contains 25,475 square feet of gross floor area attributable to FAR in the pavilions, for a FAR of less than 0.1. The Lumberyard Building will have a maximum building height of approximately 36.5 feet and the retail pavilions will have a maximum building height of approximately 34 feet; together, the three buildings will occupy approximately 14.2% of the underlying lot. The proposed visual marker will measure 60 feet in height.³ The Project will contain no parking.

III. Jurisdiction of the Zoning Commission

The Zoning Commission has jurisdiction to review the design of “all proposed structures” in the SEFC/W-0 Zone District pursuant to Section 1805.11 of the Zoning Regulations. The Commission is required to apply the standards and procedures of Sections 927-928 and 1808-1809 of the Regulations. Section 1809.1 of the SEFC Overlay Regulations provides that the Commission may hear and decide any additional requests for special exception or variance relief needed for the property.

³ As measured from Water Street, the tower will be 51 feet in height, due to the slope of the park towards the water.

IV. Design Review and Related Special Exception Relief

The Applicant seeks Zoning Commission approval of the design of the proposed Project and is also seeking special exception approval as follows:

- Section 925: approval of multiple retail and service uses in the Development Area of the SEFC/W-0 Zone District. The Applicant further requests flexibility to locate any use permitted under Section 925 within the proposed structures.
- Section 1805.6: approval of uses in the Open Space Area of the SEFC/W-0 Zone District. The Applicant seeks to locate these uses within the waterfront kiosks.
- Section 411: roof structure setback relief. The proposed roof structures are not set back at a 1:1 ratio from the exterior wall.

In order to obtain relief, the special exceptions must be in accordance with the general Section 3104.1 of the Regulations as well as specific criteria applicable to each standard. As demonstrated below, the Applicant fully complies with the requirements of the W-0 Zone and the SEFC Overlay, as well as the specific criteria for roof structure relief. Furthermore, the proposed waterfront park is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

A. W-0 Zone Special Exception Criteria

Pursuant to Section 925 of the Regulations, the Applicant seeks special exception approval of multiple retail and service uses in the Development Area of the SEFC/W-0 Zone District, and further requests flexibility to locate any use permitted under Section 925 within these structures. The Applicant also seeks approval of uses for the waterfront kiosks in the Open Space area of the project. The Project meets the specific special exception review criteria applicable to this special exception request, which are set forth in Section 927 of the W-0 Zone Regulations, as detailed below.

- 927.1(a): The proposed buildings and uses will enhance the visual and public recreational opportunities offered along the waterfront by providing active pedestrian-oriented uses that will attract visitors to the waterfront and supplement the recreational opportunities provided by the park uses.
- 927.1(b): The proposed buildings and uses are located so as to minimize adverse impacts on the river and riverbank areas. The Development Area uses are located away from the river, fronting Water Street, so that they will serve as a transition from the development to the north to the park uses along the waterfront.
- 927.1(e): The buildings and uses are located so as not likely to become objectionable to surrounding property because of noise, traffic or parking. As designed, the park does not include any parking, which is consistent with the goals and policies of the W-0 Zone as well as the SEFC Overlay. Furthermore, as designed and shown on the circulation plans previously approved by the Commission in Case No. 08-04, the waterfront park will promote public access to the waterfront through multiple points of entry for both pedestrians and cyclists.
- 927.1(f): The Commission previously approved a stormwater concept plan that has been designed to minimize potential for direct stormwater runoff into the river.

For all of the above reasons, the Phase II improvements are consistent with the standards for evaluation set forth in the W-0 Zone District.

B. SEFC Overlay Special Exception Criteria

The Phase II improvements to the park also meet the Zoning Commission review standards set forth in Section 1808 of the SEFC Overlay. First, the proposed uses and structures will help achieve the objectives of the SEFC Overlay District as set forth in Section 1802 as follows:

- 1802.2: Provides a mixture of retail and service uses in a suitable height, bulk, and design that is consistent with the Comprehensive Plan and other District planning documents.
- 1802.4: Provides a variety of support and visitor related uses, including retail and service uses.
- 1802.5: Provides reduced height and bulk along the riverfront in order to ensure views over and around waterfront buildings, and enhances the continuous publicly-accessible open space along the waterfront that was approved in Phase I.

- 1802.6: Provides suitable ground-floor retail and service use in the SEFC/W-0 District.
- 1802.7: Encourages the design and development of properties in a manner sensitive to the historically significant Lumbershed Building.
- 1802.8: Provides the retail and service uses that are called for in the SEFC/W-0 District's Development Area by Section 1805 of the Zoning Regulations. Similarly, the proposed kiosk uses are consistent with the uses called for in the SEFC/W-0 Zone's Open Space Area by subsections 1805.5 and 1805.6 of the Regulations.

Second, the proposed improvements have been designed with heights, bulk, and sitings that provide for openness of view and vistas to and from the waterfront. Third, no parking is proposed, consistent with the requirement of the SEFC Overlay that limits on or above-grade parking adjacent to or visible from the street and, more particularly, discourages parking in the SEFC/W-0 Zone District.

The proposed uses and improvements also satisfy other standards for evaluation in Section 1808 as follows:

- 1808.2(a): The proposed new construction is compatible with the existing Lumbershed building and Phase I of the park through their overall massing, siting, and details.
- 1808.2(c): The façade of the building is designed to eliminate unarticulated blank walls from public spaces, including both the proposed new streets and the waterfront park.
- 1808.2(e): While not specifically required, the proposed uses include many of the preferred uses contemplated in Section 1807 of the SEFC Overlay.
- 1808.2(g): The uses and improvements are consistent with the following goals of the SEFC /W-0 Zone District: (a) the kiosk uses will supplement and further the active and passive recreational uses in the waterfront park; and (b) the proposed uses open to, overlook, and benefit the waterfront park.

For all of the above reasons, the Phase II improvements are consistent with the standards for evaluation set forth in the SEFC Overlay.

C. Roof Structure Special Exception Criteria

The Applicant seeks special exception relief, pursuant to 11 DCMR § 411.11, from Section 930.3 of the Regulations, which requires all mechanical equipment or stairway or elevator penthouses to be set back from all exterior walls a distance at least equal to their height above the roof. Section 411.11 provides that “[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the . . . location, design, number, and all other aspects of such structure . . . even if such structures do not meet the normal setback requirements . . . ; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR § 411.11.

Here, the buildings’ design makes it difficult to set back the rooftop structures by the required amount. Further, they are a minor projection above the top of the second floor of the pavilions, and will not block views of the water or waterfront park. The proposed design remains consistent with the intent of the Zoning Regulations and Zoning Map. The requested relief does not compromise the character of the SEFC/W-0 Zone District or the proposed waterfront park. To the contrary, the requested relief will improve the functionality of the buildings as well as their aesthetic appeal and its design. In addition, the encroachment into the standard setback will not adversely affect the use of neighboring property. The buildings are located in the heart of the Southeast Federal Center and the only properties affected by this are future developments by the Applicant, all of which will be significantly taller buildings. Therefore, the lack of setback will not have an adverse effect on neighboring properties.

D. General Special Exception Requirements

The special exceptions are in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and tend not to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps.

1. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the zoning regulations and zoning maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR § 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and of land values. 11 DCMR § 101.2. The proposed Phase II improvements to the Waterfront Park, including the related areas of relief, are in harmony with the general purpose and intent of the Regulations. The proposed structures and uses are suitable for the site and will supplement and enhance the variety of active and passive recreational uses that are called for by in Zoning Regulations.

2. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The proposed Phase II improvements will not adversely affect the use of neighboring property. Rather, they will support and enliven the uses proposed for the rest of the Southeast Federal Center. Furthermore, it will positively impact surrounding properties on both sides of the Anacostia River, and in particular the nearby properties being developed around the new baseball stadium, by providing lively retail and entertainment options at an attractive and inviting location. Indeed, the proposed waterfront park will serve as an attractive destination that benefits the District as a whole.

V. VARIANCE RELIEF

The Applicant requests certain areas of variance relief that are required in order to accommodate the unique park setting of the proposed retail buildings and visual marker. First, assuming that the retail uses trigger a parking requirement within the SEFC/W-0 Zone District, the Applicant requests variance relief from the parking requirements, since the Project will provide no vehicular parking. (Arguably, the general requirement for retail parking is superseded by the more specific provisions of the SEFC/W-0 Zone that discourage parking.) Second, the Applicant requests variance relief from the height and waterfront setback requirements of the W-0 Zone District for the visual marker. The relief is required in order to ensure that the Project is consistent with the clear directives of the W-0 Zone District, the SEFC Overlay, and the Master Plan for the Southeast Federal Center.

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As set forth below, the application meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that “. . . property generally includes the permanent structures existing on the land [footnote omitted].” Id. at 293-94. The Court held that the exceptional situation standard of the

variance test may be met where the required hardship is inherent in the improvements on the land (i.e. the building or structure) and not just the land itself.

The Property meets the “exceptional conditions” element of the variance test. The Property is located on land that was historically under the control of the federal government, but was authorized for private development by an Act of Congress in 2000. See Southeast Federal Center Public-Private Development Act of 2000, Pub. Law. 106-407 (2000) (the “Act”). Forest City Washington prepared a Development Plan for the entire Southeast Federal Center, which included Urban Design Guidelines and Minimum Design Standards (together, the “Master Plan”), and under the authority of the Act, the General Services Administration selected Forest City Washington as the master developer for the site.

The Master Plan was presented by GSA and FCW to the Zoning Commission for review and approval, and the Commission approved the SEFC Overlay in order to ensure that future development of the Southeast Federal Center would proceed according to the Development Plan as well as the Urban Design Guidelines and Minimum Design Standards. GSA and FCW also entered into memoranda of understanding with the National Capital Planning Commission and the U.S. Commission of Fine Arts regarding the development of the Southeast Federal Center. These MOUs reinforced the Development Plan, Urban Design Guidelines, and Minimum Design Standards as the baseline for future development of the property, and set forth a process for continuing review and comment by these federal agencies on the development of the site.

Therefore, development of the Southeast Federal Center must not be inconsistent with the Master Plan, which requires an active waterfront park and then sets forth a series of specific design guidelines for the waterfront area. Specific guidelines include the promotion of land uses that activate the waterfront, such as waterfront-oriented retail and service uses; the siting of

structures that interpret the historically important maritime context of the site; and the establishment of the waterfront park as a local, citywide, and regional destination. The guidelines promote buildings and land uses in the park that “reinforce the active nature of this key public destination.”

The regulatory and contractual obligations to establish an active waterfront park with retail and service uses that will serve as a citywide destination establishes the “exceptional conditions” for the Property. The location of the retail uses within a park setting presents unique considerations that make the location of vehicular parking on site impractical and inconsistent with the park use and background. Similarly for the proposed visual marker, the exceptional condition is created by the District’s goal to have an enlivened recreational area on the Anacostia and the need to draw people to this resources, as well as the nature of the marker itself, which is intended to serve as a vertical element that responds to the layout and context for the park.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

The requested variances are area variances, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning

Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992).

Thus, to demonstrate practical difficulty, the applicant must show that strict compliance with the Regulations is burdensome, not impossible. The Applicant meets this standard. Here, the practical difficulty is that strict compliance with the requirement for the buildings to have parking and for the marker to meet the height and setback requirements would result in a design that is inconsistent with the purpose and goals for the waterfront park. The practical difficulty in providing on-site parking is created by the location of these retail uses in a park. Again, parking is impractical and inconsistent with the park use and background. With regard to the visual marker's height and setback elements, the difficulty is created by the design intent and purpose of the marker itself. Its location at the end of the promenade and its proposed height have been chosen for specific design and aesthetic reasons. A different location would frustrate the intended interpretive potential of the visual marker, and a lesser height would seem out of scale with the surrounding buildings, smokestacks, ships' masts, and other structures along the waterfront.

C. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

Variances from the parking requirement, and the height and setback requirements can all be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. There will be no adverse impact from the variances.

The parking variance will have no negative impact. Here, the proposed buildings are located approximately 1/3 of a mile from the Navy Yard Metrorail Station, which is well within walking distance. Further, given the quantity of existing surface parking available and future parking that will be available on other parcels following the buildout of those sites, there will be sufficient parking to accommodate the proposed uses. Finally, while the Zoning Regulations ostensibly include a general requirement for parking for “retail uses,” this general requirement is superseded by the more specific provisions of the SEFC Overlay that specifically prohibit parking in the SEFC/W-0 Zone District. The SEFC Overlay is clear that when there are conflicts between it and the underlying zoning, the provisions of the SEFC Overlay govern. See 11 DCMR § 1800.2. Surface parking lots are specifically prohibited in the W-0 Zone, and the SEFC/W-0 Zone District denotes one of its purposes is to “discourage parking” in that zone. See 11 DCMR §§ 902.1(l); 1805.1(c).

The proposed visual marker will similarly not impact the public good nor impair the purposes and intent of the Regulations. The requested relief is minor and will allow for the creation of a public art feature that will substantially benefit the public. As shown on the attached photographs and site section, the height of the marker is appropriate given the height of surrounding and nearby structures, and the location will not adversely impact the waterfront. For all of the above reasons, variance relief from the parking requirements for the buildings as well as the height and setback requirements for the visual marker is appropriate and should be granted.

VI. EXHIBITS

In support of this application, the following exhibits are attached to this document:

- Exhibit A Architectural plans and photographs of the existing site;
- Exhibit B Outlines of Witness Testimony
- Exhibit C Resumes of Expert Witnesses
- Exhibit D National Capital Planning Commission Recommendation

VII. WITNESSES

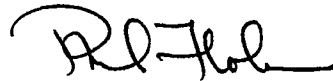
In support of this application, the Applicant intends to call the following witnesses at the public hearing:

- Alex Nyhan, Development Manager, Forest City Washington
- Rick Parisi, Principal, M. Paul Friedberg and Partners
- Jordan Goldstein, Principal, Gensler
- James Carpenter, James Carpenter Design Associates

VIII. CONCLUSION

For all of the above reasons, the Applicant asks that the Zoning Commission approve the design of the proposed Phase II improvements to the waterfront park and related areas of relief.

PILLSBURY WINTHROP SHAW PITTMAN LLP



Phil Feola



David Avitabile

Date: February 9, 2009