

**BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

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

ANC 6D

**APPLICATION FOR ZONING COMMISSION REVIEW
SOUTHEAST FEDERAL CENTER
WATERFRONT PARK – PHASE II**

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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.
- Section 411: roof structure setback relief
- Section 2120.6: relief from the parking requirement for additions to an historic structure.

The Applicant also requests variance relief from the lot requirement of Section 3202.3 of the Regulations, in order to construct the improvements on a lot other than a lot of record. 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 “Public Art Tower”, which will be located at the terminus of the Promenade at the center of the Park’s waterfront frontage.

**ZONING COMMISSION
District of Columbia**

CASE NO. 08-04A
EXHIBIT NO. 4

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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**”), as depicted on the plat attached as Exhibit B, and is known as Square 771, Lots 801 and 802.¹

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

¹ 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).

Development Area. In May 2008, the Applicant presented the Commission with the overall 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 a public 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 Lumberyard 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.

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**”). The Project is depicted in further detail on the plans attached as Exhibit A. 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. Finally, the Applicant seeks the Commission's design approval of the "Public Art Tower" that will be located in the Open Space Area at the terminus of the Promenade.²

As shown on the attached plans, the Project will provide active pedestrian-oriented uses in the Development Area of the park that will supplement and enhance the mix of active and passive recreational uses created by the improvements in the Open Space Area of the waterfront park. The Project consists of the renovation and improvement of the existing two-story historic Lumberyard Building and the construction of two new two-story retail pavilions, which will be connected to the historic building by a second-story walkway. While the Applicant has not yet identified the specific tenants that will occupy the spaces, the renovated and new space 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. Surrounding the Lumberyard and retail pavilions are a series of hardscape and landscape improvements that were approved by the Commission in Phase I (Order No. 08-04). These improvements create a plaza and public spaces that will include park benches 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 uses in the Development Area, the Applicant also seeks special exception approval of the proposed uses for the waterfront kiosks. These kiosks

² The actual design of the Public Art Tower has been commissioned and will be included in a supplemental submission.

will be located under the “Overlook” which was approved by the Zoning Commission in Phase I. The specific uses that will occupy the kiosks will be detailed in a supplemental submission prior to the hearing; these uses will include 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. The Project will also provide for bicycle circulation to and around the waterfront park. The Project does not include any vehicular parking. Generally, the Regulations require parking for retail uses in the W Zone Districts. However, 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). Therefore, 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.

Assuming *arguendo* that the retail uses nevertheless trigger a parking requirement, the Applicant requests formal relief from this requirement in order to ensure that the project is consistent with the clear directives of both the W-0 Zone District and SEFC Overlay that discourage parking. Here, the existing Lumberyard Building is a contributing structure in the Washington Navy Yard Historic District. Under Section 2120 of the Zoning Regulations, no additional parking is required for a change in use of a historic resource. Parking is required,

however, for an addition to a historic resource that increases the gross floor area of the resource by at least 50% and requires at least 4 spaces; here, the addition triggers a requirement for 27 spaces.³ Section 2120 permits relief from the parking requirement as a special exception if that parking will adversely affect the historic integrity and appearance of the historic resource. As set forth below, the Applicant meets the criteria for relief.

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 Lumberyard Building does not count towards the total FAR of the Project, and the Project therefore contains 23,279 square feet of gross floor area attributable to FAR in the pavilions, for a FAR of less than 0.1. The Project will have a maximum building height of less than 40 feet and occupy approximately 14.2% of the underlying lot. (The proposed public art tower, however, will exceed a height of 40 feet.) 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 The addition increases the gross floor area of the structure by approximately 63%.

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 structure is not set back at a 1:1 ratio from the exterior wall.
- Section 2120.6: relief from the parking requirement for an addition to a historic structure. The Project proposes no parking.

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 and parking 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 Lumberyard 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 Lumberyard building and Phase I of the park through their overall massing, siting, details and landscaping.
- 1808.2(b): The proposed improvements will use high standards of environmental design. These standards will be fleshed out more fully prior to the public hearing.
- 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(d): Landscaping which complements the building (provided in Phase I)
- 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 for the roof structure, 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 building’s design makes it difficult to set back the rooftop structure by the required amount. Further, it is a minor projection above the top of the second floor of only one 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 building as well as its aesthetic appeal and its design. In addition, the encroachment into the

standard setback will not adversely affect the use of neighboring property. The building is located in the heart of the Southeast Federal Center and the only properties that would be affected by this are future developments by the Applicant, all of which will be significantly taller buildings. This diminishes the possibility that the lack of setback will have an adverse effect on neighboring properties.

D. Parking Special Exception Criteria

The Applicant seeks special exception relief pursuant to Section 2120.6, which provides that the Board of Zoning Adjustment may grant relief from parking requirements if the owner of the property demonstrates that as a result of the nature or location of the historic resource, providing the parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource. Additionally, Section 2120.6 provides four factors to consider in determining whether the requested relief can be granted without adversely affecting the use of the neighboring property owners:

- Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time
- Amount of traffic congestion existing and/or that the redevelopment of the historic resource can reasonably be expected to add to the neighborhood
- Quantity of the existing public, commercial or private parking, other than curb parking, on the property or in the neighborhood that can reasonably be expected to be available when the redevelopment is complete
- Proximity to public transportation, particularly Metrorail stations, and availability of either public transportation service in the area, or a ride sharing program approved by the District of Columbia Department of Transportation.

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, as noted above, the SEFC/W-0 Zone District specifically denotes one of its purposes is to discourage parking in that zone. See 11 DCMR § 1805.1(c). The general parking requirement is therefore superseded by the more specific provisions of the SEFC Overlay that specifically discourage parking in the SEFC/W-0 Zone District. For these reasons, relief from the parking requirements should be granted.

E. 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 variance relief from Section 3202.3 of the Regulations, in order to allow for the construction of the proposed additions to the Lumberyard Building on a lot that is not a lot of record. Furthermore, the Applicant requests variance relief from the height and waterfront setback requirements of the W-0 Zone District for the Public Art Tower feature. 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 more detailed summary of the Applicant's satisfaction of the burden of proof for the height and setback variances will accompany the supplemental submission containing the design of the feature.

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 has historically been under the control of the federal government and therefore not subject to local subdivision requirements. Furthermore, many of the paper streets located within the Southeast Federal Center were closed by Acts of Congress in 1907 and 1916, and there are no streets adjacent to the proposed lot. Therefore, unlike the vast majority of property in the District of Columbia, there are no existing subdivisions or streets that allow for the creation of a new record lot. As discussed in further detail below, the Commission recognized the exceptional situation faced by lots in the W-0 Zone when it carved out an exemption to the record lot requirement for marinas, boathouses, and yacht clubs within that zone. With regard to the proposed public art feature, the exceptional condition is created by the shape of the lot and the nature of the art tower itself, which is intended to serve as a vertical element that responds to the layout and context for the park itself.

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

The requested relief is for an area variance, 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 in complying with the requirement for each addition to a principal structure to be located on a separate lot of record results from the unique and exceptional circumstances related to the location of the proposed structure and the history of the land surrounding it. Since there are no historic square and lot designations applicable to the Property, the Applicant would need to create a new lot of record. However, the subdivision regulations require that a proposed record lot front on a public street. See 10 DCMR § 2716. Again, because of the history surrounding the site, there is no public street adjacent to the lot, and therefore no way to create a lot of record. The Commission recognized this practical difficulty when it created the record lot exemption for marines, boathouses, and yacht clubs within the W-0 Zone District. With regard

to the height and setback elements, the difficulty is created by the nature of the tower itself. Its location at the end of the promenade and its proposed height have been chosen for specific design and aesthetic reasons.

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 lot of record requirement as well as the height and setback requirements can 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 lot of record variance is a practical necessity; without it, the Applicant will not be able to secure a building permit. In fact, the Zoning Commission recognized the exceptional conditions and practical difficulties inherent in constructing structures in the W-0 Zone District when it created the W-0 Zone.. At that time, it amended Section 3202.3 to allow for a permit to be issued for a boathouse, yacht club, or marina that was not on a lot of record, provided that the lot fronts on a body of water, is otherwise surrounded by public park land, and is zoned W-0. Here, the proposed lot also fronts on a body of water, is surrounded by land that will become a public park, and is zoned W-0. Accordingly, the variance is consistent with the circumstances in which the Commission explicitly permits construction without a separate lot of record, and will not impair the integrity of the Regulations nor adversely impact the public good. The proposed art tower will similarly not impact the public good nor impair the purposes and intent of the Regulations, since the requested relief is minor and will allow for the creation of a public art feature that will substantially benefit the public.

VI. EXHIBITS

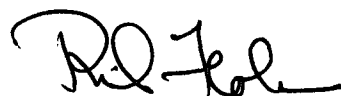
In support of this application, the following exhibits are attached to this document:

- Exhibit A Architectural plans and photographs of the existing site;
- Exhibit B Metes and Bounds description and plat illustrating the Property ; sketch depicting creation of new A&T lots; and Metes and Bounds description and plat illustrating the Development Area;
- Exhibit C Map depicting the zoning of the Property;
- Exhibit D Property owners list; and
- Exhibit E Additional drawing of kiosk doors requested by the Zoning Commission at the May 29, 2007 public hearing on Phase I.

VII. 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: July 7, 2008