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**Application on Behalf of West Half 1 LLC, West Half 2, LLC
and West Half 3, LLC for Review of Buildings and Structures
on M and Half Streets, SE**

Capitol Gateway Overlay District Review for Half Street, SE

ZONING COMMISSION
District of Columbia

CASE NO. 08-30
EXHIBIT NO. 3

I. Introduction

This application is submitted on behalf of West Half 1 LLC, West Half 2 LLC and West Half 3 LLC (jointly the “**Applicant**”) for Zoning Commission review and approval of a new structure and new uses on M and Half Streets, SE in the Capitol Gateway Overlay District (“**CG Overlay**”). The property that is the subject of this application is located on Lots 33, 802, 840, 841, 850, 857, 864, 865, 868, 871, and 872 in Square 700 and is commonly referred to as Half Street, SE (the “**Property**”). The Property is comprised of approximately 87,989 square feet of land area and is located in the CG/CR Zone District.

The Applicant submits this application pursuant to Section 1610 of the District of Columbia Zoning Regulations, which requires Zoning Commission review of properties abutting M Street, SE or properties located in Square 700. The Applicant also seeks special exception relief with regard to its rooftop structures; and variance relief from the loading requirements of Section 2201.1, the step-back requirements of Section 1607.2, and the ground floor retail requirements of Section 1607.3.

Half Street has a unique position within the District of Columbia. It has the opportunity to become an authentic entertainment district. The Applicant seeks to create an environment that stands on its own as a genuine pedestrian mixed-use environment that will serve large crowds that attend baseball games, yet also serves the immediate neighborhood by providing additional residents and neighborhood serving retail amenities. This application will convert an underutilized site to a vibrant and active use that highlights and enhances the epicenter of this immediate area, the Washington Nationals Ballpark (“**Ballpark**”).

The Applicant is proposing a mixed-use project consisting of residential, retail and commercial office uses along two prominent streets in the CG Overlay: M and Half Streets. The development provides dynamic and active retail and restaurant uses along these streets to enhance the pedestrian experience and to activate the streetscape. The mix of uses, design, height, and density of the project are consistent with, and help further the goals of the CG Overlay.

The Applicant has gathered a team of design professionals to develop a project that will help ensure the Capitol Gateway as a unique residential, commercial and retail area in the District of Columbia. The Applicant has retained StreetSense to create the street level experience, HOK is the architect for the office component of the development and Esocoff & Associates, Inc. is the architect for the residential portion of the project.

II. Jurisdiction of the Zoning Commission

The Zoning Commission has jurisdiction to grant approval of the proposed development, and the requested special exception and variance relief pursuant to Sections 1610, 1607, 639, 2201, 3103, and 3104 of the Zoning Regulations.

III. Capitol Gateway Overlay

The Capitol Gateway Overlay was established in order to promote nine primary goals:

- a. Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area;
- b. Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
- c. Allow for continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for redevelopment;
- d. Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points;
- e. Require suitable ground-level retail and service uses and adequate sidewalk width along M Street, SE, near the Navy Yard Metrorail station;
- f. Provide for the development of Square 702-706 and Reservation 247 as a ballpark for major league sport and entertainment and associated uses;
- g. Provide for the establishment of South Capitol Street as monumental civic boulevard;
- h. Provide for the development of Half Street, SE as an active pedestrian oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale; and
- i. Provide for the development of First Street, SE as an active pedestrian oriented street with active ground floor uses, connecting M Street, the Metro Station, and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront.

11 DCMR 1600.2

IV. Description of Property

The Property is located east of South Capitol Street in Southeast Washington. It is bound by Van Street, SE to the west, Half Street, SE to the east, N Street, SE to the south, and M Street, SE to the north. It is located one block north of the Washington Nationals' Ballpark and west of Monument Realty's development in Square 701 (which was approved by the Zoning Commission in ZC Case Nos. 06-46 and 06-46A). An entrance to the Navy Yard Metrorail Station is located just to the east of the Property, across Half Street. Pictures of the Property and the surrounding area are included in Exhibit A.

V. Description of Project

The Applicant proposes to develop the Property with a mixed-use development that includes approximately 260-300 residential units, approximately 360,000 square feet of office space, and approximately 57,000 square feet of retail uses located predominantly on the ground floor (the “**Project**”). Retail and restaurant uses are proposed for all of the ground floor space in the Project (other than lobbies for the residential and office components and service uses) with retail possible on the second or concourse levels of the Project in select locations should it be desired by retail tenants.

The Project will introduce an east-west 30 foot wide pedestrian oriented street or via (“**Via**”) that bisects the Property into two appropriately sized development parcels. The Via allows for a natural break in the development pattern of the Property and aligns with the private street (Monument Place) on the east side of Half Street to create a central retail and pedestrian node on Half Street (the location of Monument Place was approved in ZC Order Nos. 06-46 and 06-46A).

The residential component of the Project will be located at the southern end of the Property, closest to the Ballpark on the corner of Half Street and N Street SE. The office component will be located along M Street and will also include a portion of the structure that is located south of the Via. The office components will be connected across the Via by two enclosed corridors at the third and sixth levels and outdoor terraces on the fourth and seventh levels. The residential, retail and office components of the Project are described in greater detail below.

A. Retail Component

One of the primary goals of this Project is to create a highly animated and diverse retail environment with high-quality, authentic materials. The ground plane will incorporate only the highest quality materials with timeless sidewalk and plaza design. The ground floor retail spaces will have ceiling heights ranging from 14 feet to 20 feet, making them marketable to a wide range of urban retailers. Individual retailers will be encouraged to make their own mark on the streetscape with inboard and outboard tables, chairs, benches, and planters that both reflect and complement their storefronts. The retail strategy for the Project envisions three distinct retail areas: Half Street; the Via; and Van Street.

Half Street will become the next great retail, dining and entertainment district in Washington, DC, with the flexibility to function as a plaza on game days while still accommodating vehicular traffic for the majority of the time. The Half Street retail component will take advantage of the Project’s prominence and visibility along M Street by incorporating visible cues to the retail district such as building form, transit, signage, lighting and streetscape. Half Street will become an animated “mini Main Street” that will include restaurants (which could be entertainment driven, themed, casual, fine dining, quick bite), specialty stores, sports related stores or neighborhood service stores. The Applicant intends to pursue legislation with the District of Columbia City Council to create special electronic signage legislation to help

make this Project, and Half Street in particular, a completely unique destination in the District of Columbia.

The pedestrian Via has been introduced to the Project to align with Monument Place to create a “four corners” zone of activity. The Via has been designed to be an internal pedestrian street that will provide opportunities for local tenants and shop owners. The character of this street will be marked by high ceilings, elegant and animated store fronts, and smaller store footprints. In addition, the Applicant anticipates open-air produce, flower, or beverage markets to be an integral component of the experience along the Via.

Van Street has been specifically designed to create a more neighborhood feel. The façade treatment will include a more raw, industrial aesthetic. The expected tenants for these ground floor spaces are local restaurants, pubs, and clubs, as well as smaller local tenants that fulfill a more neighborhood retail/service need.

B Residential Component

The residential component, located immediately outside the north gate of the Ballpark, displays a strong architectural quality which is unique in Washington yet derives its power from local building crafts and urban planning traditions. Dramatic forms and striking materials and colors create an iconic image and contribute to the definition of a recognizable place and vibrant new community in Southeast Washington.

The upper reaches of the residential component will provide a compelling sculptural, and memorable crown, an iconic emblem that will say “that’s Washington” to stadium patrons and TV viewers, just as other iconic views at other stadiums do with their respective urban backdrops. It will also act as a place marker, a beacon, from many directions as one approaches this festive enclave from the Frederick Douglass Bridge, M Street or eastward along N Street. The unexpectedly bold crown will contrast with the impression of Washington held by many visitors - that of being overly conservative, too reserved, timid and lacking in confidence. It will speak to a generation of newcomers who may be here for career reasons but don’t yet think of DC as hip and artsy. The building will be an architectural landmark.

The residential component of the Project is configured in two wings flanking an interior courtyard garden at the second floor. The courtyard opens to the south to catch natural light and provide a warm glow through the use of color and gentle undulations. Windows in the courtyard are angled and recessed to allow good views as well as privacy for residents. A second floor lounge and club room will be provided adjacent to the garden terrace.

The residential units are carefully designed to be livable, furnishable, and commodious, essential features which will contribute to the long-term vitality of the greater development and the surrounding emerging neighborhood. Most units are shaped to capture views toward the Ballpark as well as other urban and monumental views. Large and dramatic units at the south end of the building have uninterrupted direct views into the playing field, and are provided with large expanses of glass to accentuate these views.

A flexible ground floor plan has been created to accommodate a variety of retail uses, while providing a gracious residential entrance. The building entrance, as well as exterior wall and window systems, will be carefully detailed to address acoustics and other concerns generated by the anticipated dramatic street life so that this activity constitutes an amenity and not a nuisance to the residents of the Project.

The roof features a lap pool, several well-defined outdoor rooms of varying sizes for hosting dinner parties, and four private terraces directly accessed by penthouse units. The gracious crown shells form emphatic tower elements that elegantly define the generous, but well scaled outdoor rooms. The shells have large openings that provide well-proportioned frames for urban views looking east and west. This framing strategy helps temper the sometimes unfocused and therefore unexceptional panoramas that are so typical of the windswept, overexposed and placeless rooftops too often seen in the city.

C. Office Component

The design intent of the office component is three-fold:

- To create a beacon or visual marker at the neighborhood level for the entire Half Street retail and entertainment zone. The tall mesh screen element at the corner of M and Half Streets “claims” this important corner, creating an identity and excitement. This identity is critical to making Half Street a memorable place and a success.
- To create an exciting visual and three-dimensional response to the M Street Metro Station entrance, Monument Realty’s project across Half Street, and the Ballpark. The forms and massing of the Project are highly articulated and include strong geometric forms and angles as a response to the unique features of this block and the surrounding structures.
- To create and contribute to a sense of richness and urbanity at the pedestrian level. Local materials like ashlar cut stone, brick, and copper are drawn from those historically used in Washington, but are used in a crisp and modern way. These materials help to create an identity and a memorable place. Additionally, the scale of the materials is traditional and human which is important when creating a new neighborhood where little context currently exists.

The expression of the office exterior skin is seen as a background with a series of “events”. The background is an elegant, modern version of the classic industrial brick warehouse. Tall glass windows punctuate a horizontally expressed brick, with either masonry or metal spandrel panels. The brick color is either a terra-cotta or soft beige depending on location. The “events” consist of several large scale geometric shifts in the massing. The largest of these is the angled aged copper clad box that seems to skewer the larger office piece – it forms the middle of the façade on M Street to mark the office entry and then pokes through on Half Street, greeting Metro riders on their way to the Ballpark. It terminates at the Via, cantilevering out

over the sidewalk, with a multi-story framed view toward the Ballpark. This copper box is topped by a covered roof terrace which extends the form above the roof.

The southern office component has a similar, smaller copper piece. The corner of M and Half Streets is identified by a sleek glass and metal wall, with a stainless steel mesh screen element reaching above the building roof, marking the entry to the Half Street retail and entertainment neighborhood. Van Street is treated in a quieter manner, as bay projections are used to punctuate and add articulation and relief to the façade and offer views up and down Van Street.

D. Zoning Parameters of the Project

The Project will have a floor area ratio (“FAR”) of 7.9¹, a maximum building height of 110 feet, and will provide approximately 616-666 parking spaces (it will also include approximately 247 bicycle parking spaces). The Project will consist of a single building for zoning purposes. More detailed Zoning tabulations are included in Exhibit A.

VI. The Applicant Satisfies the Burden of Proof for Zoning Commission Review of Buildings, Structures, and Uses and for Special Exception and Variance Relief

Pursuant to Section 1610.3 of the Zoning Regulations, the Applicant must demonstrate that the application satisfies the requirements of Section 3104 as well as the specifically delineated requirements of the CG Overlay (Section 1604 for buildings that have frontage on M Street, and Section 1607 for buildings on Half Street south of M Street). The Applicant satisfies this standard as follows.

A. The Applicant Satisfies the Special Exception Standard with Regard to Zoning Commission Review Under the CG Overlay Regulations

1. The Proposed Design Is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

There is a two pronged test to justify the request for special exception relief. An applicant must demonstrate that the project is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and that it will not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The CG Overlay outlines a number of considerations that should be weighed in determining if an application is in harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

a. The proposed building will achieve the objectives of the CG Overlay District as set forth in Section 1600.2. (Section 1610.3(a))

¹ The Applicant will enter into a combined lot development (“CLD”) agreement, pursuant to Sections 1602.1(a) and (e) of the Zoning Regulations, to achieve this FAR.

The Project will achieve the objectives of the CG Overlay District that are set forth above. The Applicant is proposing a mixed-use development that will include a significant residential component, commercial office space, and a variety of preferred retail uses. The height and density of the building are within the parameters for the CG/CR Zone District and are consistent with its high density residential and high density commercial designation under the Comprehensive Plan.

Most importantly, the Project is designed to highlight Half Street as an active, pedestrian-oriented street. The Applicant is proposing a mix of retail uses that will support and sustain the revitalization of Half Street. The retail will serve both the residents of the community as well as attract individuals who are discovering the neighborhood for the first time while attending a game at the Ballpark. As noted above, the Applicant intends to pursue legislation with the District of Columbia City Council to create special electronic signage legislation to help make this Project a completely unique destination in the District of Columbia.

- b. The proposed building will help achieve the desired mix of uses in the CG Overlay District as set forth Sections 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail, or service uses. (Section 1610.3(b))

This development will incorporate residential, retail, and service uses, which is consistent with Sections 1600.2 (a) and (b). Nearly half of the development will be dedicated to these preferred uses. The 260-300 residential units will include a mix of unit types (studios, one-bedroom, two bedrooms, two bedroom with den) that will attract a diverse resident base while the retail will be designed to accommodate entertainment and retail uses.

- c. The proposed building will be in context with the surrounding neighborhood and street patterns. (Section 1610.3(c))

The Project is consistent with the higher density development encouraged around the Navy Yard Metro Station. The Property is surrounded by existing and proposed office, hotel and residential buildings, making the Project's mixed use program complementary to adjacent land uses. The development will encourage pedestrian activity along Half Street through the inclusion of ground floor retail, a curbless streetscape environment, and by prohibiting curb cuts along all surrounding streets except Van Street. The development will serve effectively as the gateway between the Navy Yard Metro Station and the Ballpark.

The design of the Project is intended to be different, yet entirely complementary to the surrounding neighborhood. The contemporary design of the office component of the Project, with the numerous projections and recesses along the building's façade, is contrasted with the relatively flat façade of the buildings on the east side of Half Street. This contrast will add interest and liveliness to the streetscape experience along Half Street as pedestrians enter and exit the Ballpark. The proposed building design respects the existing street grid and is in context with the surrounding neighborhood and street patterns. As noted above, the Project introduces the Via directly across from Monument Place in order to create the "four corners" of retail activity.

- d. The proposed building will minimize conflict between vehicles and pedestrians. (Section 1610.3(d))

The proposed design promotes a safe and efficient pedestrian experience, especially along Half Street and M Street which are two primary pedestrian corridors within the CG Overlay. Per the CG Overlay regulations, no new curb cuts will be established along Half or M Streets. The proposed building will eliminate seven existing curb cuts along Half and M Streets. Access to parking and loading for the entire development will be from Van Street. Eliminating curb cuts along the main pedestrian corridors will reduce the possibility of vehicular and pedestrian conflicts.

- e. The proposed building will minimize unarticulated blank walls adjacent to public spaces through façade articulation. (Section 1610.3(e))

The elevations attached as Exhibit A depict the proposed building facades. The proposed building facades are highly articulated and defined on each elevation, thus minimizing unarticulated blank walls adjacent to public spaces. The façade articulation is accomplished through use of bays, building materials, and display windows along the ground floor. The projections proposed in this Project truly maximize what is special about this area, the Ballpark. The proposed projections of the office component provide direct views into the stadium for multiple office tenants.

- f. The proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. (Section 1610.3(f))

The building has been designed to meet LEED certification standards for new construction. Some of the key “green” features include green roofs, water saving fixtures, recycled building materials and LED lighting. In addition, the environmentally sustainable residential development creates a livable transit-oriented community adjacent to the Navy Yard Metro Station, with a significant amount of bicycle parking. The residential component’s configuration results in shallow dwelling units which rely on natural ventilation and take advantage of natural lighting and views to promote a healthy and energy efficient lifestyle.

- g. The building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space. (Section 1610.5(a))

The proposed building design encourages pedestrian activity along its Half Street, Via and M Street facades and provides safe and active streetscapes. This is achieved through building articulation, as demonstrated by the plans attached as Exhibit A; thoughtfully landscaped spaces; the provision of ground floor retail; variable height retail expressions along Half Street, the Via, M Street and N Streets; variable depth retail bay projections; and electronic signage. In keeping with the pedestrian activity along those facades, the Applicant provides

access to its garage and its loading area from Van Street in order to minimize vehicular and pedestrian conflicts.

- h. The building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia Riverfront. (Section 1610.5(b))

The primary pedestrian pathway will be along Half Street which is an important link between the Navy Yard Metrorail Station and the Ballpark. The ground floor retail provided along Half Street, as well as the significant electronic signage, will make for an interactive and exciting pedestrian experience for those attending a ballgame as well as those who are simply seeking a shopping experience. Additionally, the landscaping, lighting, the transparent display glass of the ground floor retail, and overall increased activity will enhance the pedestrian safety. Just as the development of Half Street encourages pedestrian activity to reach the Ballpark, it also provides safe and convenient access to the Anacostia Riverfront.

- i. The application shall include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront. (Section 1610.5(c))

As depicted in Exhibit A, the Project will not detract from area views, but will enhance them. Importantly, the Project does not block the view of the Capitol, other federal monumental buildings, the waterfront, or the Ballpark. Rather, the superior design of the Project will provide a favorable view for tenants and residents of neighboring buildings, and visitors to the Ballpark.

2. The Proposed Building Will Not Affect Adversely the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Map

The property to the east of the proposed building has been approved for a mixed-use development of a similar density and height. It will include residential, retail, office, and hotel uses. The property to the north of the site is an office building with ground floor retail. The Project is in keeping with the scale of density and height of the surrounding buildings and fits appropriately into that context. The building has been designed to respect and in the case of the Ballpark, serve, the surrounding buildings. It will not affect adversely these neighboring properties, but will work in concert with them to create a more dynamic community surrounding the Ballpark.

The property to the west of the proposed building is zoned for a mixed-use development of increased height and density. The proposed Via will provide and promote pedestrian access from this property to Half Street. The Van Street facade will include retail storefronts and articulated facades that will enhance the views and experience from the neighboring property.

B. The Applicant Satisfies the Special Exception Standard with Regard to its Request for Relief for its Roof Structures

The Applicant is seeking special exception relief pursuant to Sections 3104 and 639 from 11 DCMR Sections 411.3, and 411.5 for multiple roof top structures on the roof of the proposed building, some of which are of varying heights. In order to obtain relief, the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and must not tend 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. *Id.* at § 101.2. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether a special exception should be granted.

In this case, the Applicant seeks relief pursuant to Section 639 from Sections 411.3 and 411.5. Section 411.3 requires that, “all penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material and color.” Section 411.5 requires penthouse walls from roof level to be of equal height, and to rise vertically to a roof.

Section 411.11 of the Zoning Regulations provides, however, 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.

a. Multiple Enclosures

The building will have more than the three permitted rooftop structures.² In addition to the elevator overruns, there will also be rooftop structures for stairways required under the Building Code (“Code”). Pursuant to the Code, the Applicant must provide stairways as a means of egress for residents because of building’s size and the proposed residential use. The Applicant is also required under the Code to provide stairways in order to serve the anticipated occupant load of the roof, which will be used as amenity space. The availability of the stairways will allow for easy access to both the roof and building exits in the event of an emergency.

² Pursuant to Section 411.4, three enclosures would be permitted for the three elevator overruns.

The stairways and the elevator overruns cannot be located in a single enclosure because the Building Code requirements necessitate that the stairways be located in specific locations, which do not coincide with the location of the elevator core. To create a single penthouse for both the elevators and stairways would result in unnecessarily large penthouses and would greatly reduce the amenity space on the roof.

b. Penthouse with Varying Heights

The penthouses will vary in height in light of the different purposes each of them serve. The penthouses for the elevator overruns will be 18 feet, 6 inches in height, while those housing mechanical equipment or stairways will be shorter. The Applicant is making an effort to diminish the impact of the penthouses by decreasing their height where possible. The penthouses would be unnecessarily large otherwise.

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

The additional penthouses and their varying height will not adversely affect the use of neighboring property. To the contrary, the Applicant is reducing the possibility of adversely affecting neighboring property owners by providing separate penthouse structures and a structure of varying heights rather than creating a single, overly large structure. It is also important to note that the properties immediately adjacent to the building are predominantly commercial uses of a similar density and height, thus minimizing the possibility of affecting residential units with the proposed rooftop structures.

B. The Applicant Satisfies the Variance Standard for the Requested Loading Relief and CG Overlay Relief

The Applicant seeks variance relief pursuant to (1) Section 2201.1 of the Zoning Regulations from the loading requirements, (2) Section 1607.3 from the ground floor retail requirements, and (3) Section 1607.2 from the step-back requirements. Section 2201.1 requires the Applicant to provide 4 loading berths at 30 feet deep and 2 loading berths at 55 feet deep as well as 3 loading and delivery spaces; Section 1607.3 requires the proposed building to devote at least 75% of the gross floor area of the ground floor to retail, service, entertainment or arts uses; and Section 1607.2 requires that the building step-back twenty feet along Half Street above a building height of 65 feet. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three part test:

- (1) the property must be subject to an extraordinary or exceptional situation or condition;
- (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and

- (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

See Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990). As detailed below, the Applicant meets this test.

1. An Extraordinary Or Exceptional Situation Or Condition Is Inherent To The Property

The D.C. Court of Appeals held in Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 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 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land).

There are a number of unique conditions affecting the Property. The Property is extraordinarily large in size at almost 90,000 square feet. The Property is also very deep (or wide), with an east/west dimension of approximately 150 feet. The Property is also located in the CG Overlay, which requires a mixture of uses and dictates a number of design features with which the Applicant must comply. The regulatory burdens on the site have driven the design of the building. Given the building’s location on Half Street, M Street and in Square 700, there are numerous design requirements that the Applicant has incorporated into its proposal. The Applicant is also proposing to include three different types of land uses on the Property, which is encouraged by the CG Overlay regulations. Finally, the Property is located directly north of the Ballpark which requires a building design that is cognizant of the building’s context and respectful of the District of Columbia’s objectives for development in and around the Ballpark.

2. A Practical Difficulty Exists in Satisfying The Strict Application Of The Requirements Of The Zoning Regulations

The DC Court of Appeals defined “practical difficulty” in Palmer v. D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) as the following: “[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 Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (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’”. Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 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, as demonstrated below, meets this standard.

a. Loading

The Zoning Regulations require the Project to provide a total of six loading berths and three service and delivery spaces. The office use generates a need for 3 loading berths at 30 feet deep, the retail component generates a need for two loading berths – one at 30 feet deep and the other at 55 feet deep, and the residential component generates a requirement for one loading berth at 55 feet deep. The Applicant is proposing a total of seven berths at 30 feet and one service and delivery space at 20 feet. Though the Applicant is providing a sufficient number of berths, it is not providing any berths at 55 feet deep and it is only providing one service and delivery space instead of the requisite three.

This is a unique project where there are three distinct uses, each of which generate a loading requirement. The Applicant is providing a sufficient number of loading berths, but it is providing only one service and delivery space. The residential, retail, and office components each require a separate service and delivery space under the Zoning Regulations for a total of three spaces. The residential, retail and office uses, however, will not generate a need for three spaces. In fact, the loading needs for each use can be satisfied by the one space since loading for these uses occurs at different times. The adequacy of just one space is supported by the Zoning Regulations - if the entire building were dedicated to either office use, retail use or residential use, rather than a mixture of the three, only one loading space would be required. Moreover, if the Applicant were to provide the additional spaces, it would require more ground floor space in order to accommodate them which would reduce the square footage of preferred retail uses in the Project.

Each of the loading berths the Applicant will provide will be 30 feet deep even though this project generates a need for two berths at 55 feet deep. Providing a 55 foot deep berth, however, is impractical since all loading is required to be accessed from Van Street. Van Street is only 50 feet wide. It would be extremely difficult, if not impossible, for a truck of the size that would utilize a 55 foot loading berth to access a 55 foot loading berth from Van Street.

The Applicant has retained Gorove/Slade Associates to prepare a traffic impact study. This study will address the sufficiency of the loading facilities that are provided in the Project. A preliminary Traffic Impact Assessment is attached as Exhibit B.

b. Ground Floor Retail

Section 1607.3 requires that each new building devote at least 75% of the gross floor area to retail service, entertainment or art uses. The Applicant is dedicating approximately 69% of the ground floor to preferred uses. Specifically, the Project will include local restaurants, pubs, clubs, as well as smaller local tenants that meet neighborhood retail and service needs. The Applicant is precluded from achieving the full 75% because a portion of the ground floor must also serve as the lobby for the office use and a separate lobby for the residential use. To require the full 75% would necessitate elimination of either the office lobby or the residential lobby, which would detract from the appeal of the building.

c. Step-Back

Section 1607.2 requires a building to step back a minimum of 20 feet along Half Street above a height of 65 feet. It is unnecessarily burdensome for the Applicant to satisfy this design requirement and still provide building articulation as required by Section 1610.5. Instead of providing a uniform step-back at 65 feet, the Project proposes a series of projections and recesses to allow the building articulation to be experienced at the pedestrian level instead of at the rooftop level. Due to the significant recesses into the Property, the Project does not create significant additional gross floor area by not satisfying this requirement. The severity of the variance relief that is requested is not great, and as the attached view analyses shows, the Project does not diminish views of surrounding landmarks. It also will not have a negative affect on the light and air for neighboring uses. The granting of this area variance relief allows the Applicant to create a building that is complementary to the surrounding area and is a significant architectural statement for the immediate area and the District of Columbia.

3. No Harm To The Public Good Or To The Zoning Plan Will Occur As A Result Of The Approval Of The Variance Application

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan. The proposed design is in keeping with the intent of the CG Overlay regulations and it furthers the objectives of the CG Overlay.

The reduction in service and delivery spaces and the depth of the loading berths will not burden the neighboring road network. There simply is not a demand for three service and delivery spaces; one space is sufficient to satisfy the needs of the building. Thus, there will be no adverse impact on neighboring properties from a back-up of trucks or from trucks loading from the streets. Similarly, there will be no adverse impact from not providing two berths at 55 feet deep. Given the limitations of Van Street with regard to accessing loading, vendors will be forced to use smaller trucks. Because vendors will use smaller trucks, berths with a 55 foot depth will not be necessary.

The Applicant's request for relief from the ground floor retail requirements won't be substantially detrimental to the public good or impair the intent, purpose and integrity of the Zone Plan. The Applicant is providing as much retail on the ground floor as possible. Sixty-nine percent, or approximately 57,000 square feet of retail uses will be provided. This affords plenty of flexibility in securing tenants for the building and provides a significant amount of ground floor retail and restaurant space. The community will still have the benefit of retail uses lining Half and M Streets, as well as the new Via (which provides an additional 300 linear feet of retail storefront), which is consistent with the CG Overlay.

Finally, the relief the Applicant is seeking from the step-back requirements will not be detrimental to the public good. Attached as a part of Exhibit A are view analyses confirming that the proposed building will not affect views of federal buildings or public spaces. The instant proposal allows for an elegant building design that doesn't sacrifice the views for neighboring properties.

VII. Exhibits

The following exhibits are attached to this submission:

Exhibit A: Architectural Plans/Sections/Elevations and Photographs of the Property/View Analyses

Exhibit B: Preliminary Traffic Impact Assessment

Exhibit C: Application Form

Exhibit D: Property Owner List

Exhibit E: Office of the Surveyor Plat

Exhibit F: Agent Authorization Letter

VIII. Conclusion

For the foregoing reasons, the Applicant asks that the Commission approve this development per the CG Overlay requirements. It also asks that the Commission approve its request for special exception relief for the rooftop structures and its request for variance relief from the loading requirements, step-back requirements and the ground floor retail requirements. We look forward to presenting this application to the Commission at the public hearing on this matter.

Respectfully,


Paul A. Tummonds


Christine A. Roddy