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March 24, 2016

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BY ELECTRONIC AND HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

Re: Zoning Commission Application No. 08-30B
West Half Residential II, L.L.C., West Half Residential III, L.L.C. – Square 700
Applicant's Proposed Findings of Fact and Conclusions of Law, Decision

Dear Members of the Zoning Commission:

Pursuant to 11 DCMR § 3026, West Half Residential II, L.L.C. and West Half Residential III, L.L.C. (collectively, the "Applicant") submit the enclosed proposed findings of fact, conclusions of law and decision in the above-referenced application, scheduled for Final Action consideration on April 11, 2016.

Thank you for your consideration of these materials.

Respectfully submitted,
HOLLAND & KNIGHT LLP


Dennis R. Hughes *DMH, J.*

Enclosure
cc: Advisory Neighborhood Commission 6D

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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-30B**

Z.C. Case No. 08-30B

**West Half Residential II, L.L.C. and West Half Residential III, L.L.C.
(Capitol Gateway Overlay District Review @ Square 700, Lots 33, 802, 840, 841, 850, 864,
865, 868, 871, 872, 873, 874)**

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on February 25, 2016, to consider an application filed by West Half Residential II, L.L.C. and West Half Residential III, L.L.C. (collectively, the "Applicant") for review and approval of a modification to previously approved plans for Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 873, 874, and 875 in Square 700 ("Property"), pursuant to §§ 1604, 1607 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR" or "Zoning Regulations"), which apply to new construction that (1) abuts M Street, SE; (2) is located within Square 700; or (3) is the recipient of density through combined lot development. The modification application also includes a request for special exception approval to provide penthouse enclosing walls of unequal height (§411.9) and for the following area variances: from the percentage of lot occupancy requirements (§ 634.1), setback requirement for buildings along Half Street, SE (§ 1607.2), compact parking space location requirements (§ 2115.4), and loading (§ 2201.1).

FINDINGS OF FACT

1. On December 11, 2015, the Applicant filed an application for review and approval of a modification to previously approved plans pursuant to 11 DCMR §§ 1604, 1607 and 1610, which apply to new construction that (1) abuts M Street, SE; (2) is located within Square 700; or (3) is the recipient of density through combined lot development. The modification application also includes a request for special exception and variance approvals pursuant to § 1610.7.
2. The Applicant filed a prehearing submission in support of the application on February 5, 2016 ("Prehearing Submission"). (Exhibit ("Ex.") 21). The Prehearing Submission included a statement summarizing the application's compliance with the applicable provisions of the Capitol Gateway ("CG") Overlay regulations, and justification for the requested areas of variance relief. The Prehearing Submission also included updated architectural drawings ("Final Architectural Drawings"), a Transportation Impact Study, conducted by Gorove/Slade, and resumes of expert witnesses that might testify in support of the application at the public hearing.
3. The Commission held a public hearing on the application on February 25, 2016. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.

4. Witnesses appearing at the hearing on behalf of the Applicant included Bryan Moll of JBG, Eran Chen of ODA Architects, Sam Lawrence of HM White, and Shane Dettman of Holland & Knight LLP. Mr. Dettman was qualified by the Zoning Commission as an expert in the area of land use planning.
5. At the conclusion of the public hearing, the Commission indicated support for the overall design and materials of the modified project, but requested that the Applicant provide certain additional information, including (i) drawings confirming the penthouse setback from the Via is not visible from the pedestrian level; (ii) additional dimensioned plans and sections for the penthouse level; (iii) drawings and information confirming the mezzanine provided does not exceed 1/3 of the area of the floor immediately below; (iv) drawing confirming that the project design complies with the court dimensional requirements and that relief is not required; (v) drawing identifying the location where flexibility is requested by the Applicant to replace retail use with residential or other non-residential use; (vi) additional study of penthouse setback along court; (vii) additional drawings showing relationship of ground floor retail to streetscape; (viii) study whether the building can increase sustainability measures/LEED rating; and (ix) further study of affordable housing provided in terms of affordability level.
6. The record was closed at the conclusion of the hearing, except to receive the requested additional submissions from the Applicant and responses thereto from the parties. The Commission also requested proposed findings of fact and conclusions of law from the Applicant.
7. On March 17, 2016, the Applicant submitted its post-hearing submission, addressing the Commission's recommendations and requests for additional information (Ex. 34) and submitted proposed findings of fact and conclusions of law, pursuant to 11 DCMR § 3026 on March 24, 2016. (Ex. 35).
8. At its April 11, 2016, public meeting, the Commission took final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District and that the Applicant had met its burden of proof regarding the requested special exception and variance relief.

Background

9. An application for Zoning Commission review was submitted by predecessor owners of the Property in 2008, pursuant to §§ 1604, 1607 and 1610 of the Zoning Regulations. That application was approved in 2009 by the Zoning Commission in Order No. 08-30, and in 2011, the design of the approved project was modified pursuant to Order No. 08-30A.
10. Through Orders No. 08-30 and 08-30A, the Zoning Commission approved redevelopment of the Property with a mixed-use building measuring 110 feet in height and containing

approximately 288,242 square feet of residential use, approximately 369,292 square feet of office use and approximately 51,624 square feet of retail use (“Approved Building”).

11. The footprint of the Approved Building occupies the entirety of the eastern half of Square 700 and is bounded on all sides by public streets: M Street to the north, Half Street to the east, N Street to the south, and Van Street to the west. The Approved Building consists of two primary sections: a northern section consisting of office and ground floor retail uses fronting on M Street and a southern section consisting of residential use as well as office and ground and second floor retail uses. A dedicated 30-foot wide pedestrian right of way running in an east-west orientation (“Via”) separates the two sections of the Approved Building, with building connections provided through two footbridges above.

Modified Building Proposal

12. The Applicant has acquired all of the lots comprising the Property with the exception of the northernmost lot, Lot 873 (the Property, excepting Lot 873, herein the “Applicant’s Property”). The Applicant’s Property consists of the land on which the southern portion of the Approved Building and the Via would be located. The Applicant proposes to modify only that portion of the Approved Building located on the Applicant’s Property (the “Southern Portion”).
13. The present modification application does not propose any changes to the design and uses for that portion of the Approved Building located north of the Via other than the location of the building connection (“Northern Portion”). The Applicant understands that a modification application for the Northern Portion of the Approved Building has recently been filed by the owner of that portion of the Property (Application No. 08-30C).
14. The modification application proposes a 110 foot, 11-story residential tower on the Southern Portion with an occupiable penthouse, as well as a full ground floor and partial second floor of retail.
15. Retail is proposed to occupy all of the Half, N and Via façades of the ground floor, and a significant percentage of Van Street as well. Two residential lobbies and parking and loading would be accessed from Van Street. Retail would occupy much of the second floor along Half and N Streets, and residential units would face the Via and Van Street on that floor. The second story retail would be double height and occupy volume in the third floor as well. The Applicant requested flexibility to replace certain retail uses on the second floor with residential and/or office uses.
16. Above the third floor is proposed to be entirely residential, with rental units to the north and for-sale units to the south. A central courtyard would provide light and air to units facing the interior of the tower.
17. As modified, the residential use will increase to approximately 390,000 square feet of

gross floor area (including penthouse habitable space) and the retail use will increase to approximately 67,265 square feet of gross floor area, all with a corresponding reduction in overall office use from the Approved Building. Overall density for the Approved Building would decrease from 8.06 to 7.72 FAR. Maximum building height would remain 110 feet from a measuring point taken midpoint along Van Street. While the uses, overall density and height of the Approved Building would remain largely unchanged by the proposed modification, the configuration and architectural vocabulary of the building have been significantly refined.

18. The Applicant has modified the design of the Southern Portion of the Approved Building to provide a dramatically sculptured presence at this central location within the Capitol Gateway overlay. In footprint, the tower proposed for the Southern Portion takes the form of an inverted C-shape, with court opening onto Van Street. Along Half Street and N Street, the tower undulates through the use of terracing and stepbacks, such that it effectively disappears from view from a northern vantage of the Property from M Street, thereby opening up views to the centerfield entrance to Nationals Park. This terracing effect is carried through to the interior of the tower in the form of cantilevering above the landscaped courtyard. Masonry and precast materials utilized in the earlier approval will be replaced with a palette of glass, metal panels, and extensive plantings.
19. The tower on the Southern Portion is proposed to include a mixture of residential uses and retail uses, with three levels of below-grade parking. The Applicant also proposes to include a small number of units in the penthouse level, some of which will contain mezzanines. These units will generate an inclusionary zoning requirement, which the Applicant will satisfy within the project.
20. The Applicant anticipates that a portion of the residential uses within the project would be for-sale condominium units and a portion would serve as rental units. Each of these components would have a separate entrance along Van Street, where the parking and loading operations also would occur in keeping with the restrictions of the CG Overlay.
21. Retail spaces would be provided throughout the ground and second levels with various entrances to be located directly along each street frontage as well as the Via. Given the proposed replacement of the office use with residential use south of the Via, the sky bridges connecting the portions of the Approved Building are no longer feasible. To replace these bridges, the Applicant and the owner of the Northern Portion of the Property have collaborated on a sculptural element consisting of aluminum spandrels to connect the retail elements of the building, which will serve as a point of interest to draw pedestrians into and through the Via to Van Street.
22. The modified building is planned have a total of 423 residential units, 10 of which, totaling 24,779 square feet, would be located in penthouse habitable space in the Southern Portion. This amount of habitable space would generate an affordable housing requirement under the Inclusionary Zoning (“IZ”) provisions of Chapter 26 of the Zoning Regulations in the

amount of approximately 1,982 square feet, utilizing the 8 percent requirement established in § 2603, all of which will be restricted to low-income households, defined in the Zoning Regulations as households not exceeding 50% of the annual median income for the Metropolitan Washington, DC, statistical area according to the US Department of Housing and Urban Development (HUD) (“Metro AMI”). It is anticipated that this set aside will result in approximately 3 units of affordable housing, all of which would be provided within the building.

23. In addition to the IZ square footage generated by the penthouse habitable space, the Applicant will provide an additional significant amount of affordable housing, relating directly to the increase in overall residential use provided within the project as part of the modification. The Approved Building contained 288,242 square feet of residential uses, none of which was subject to the IZ set aside as it was approved prior to the implementation of the IZ program. As modified, the project contains approximately 362,855 square feet of residential use, not including the approximately 24,779 square feet of penthouse habitable space, representing an increase of approximately 74,613 square feet of residential. The Applicant has committed to subject this increased amount of residential use to the IZ set aside requirements of 11 DCMR §§ 2603.2 and 2603.4, namely, 8 percent of the gross floor area of residential use provided within the building, which would result in approximately 5,970 square feet, or roughly 7 to 8 units of additional dedicated affordable housing within the building, all of which to be set aside for eligible moderate-income households not exceeding 80 percent Metro AMI.
24. The Applicant is collaborating with adjacent landowners along both sides of Half Street and the Department of Transportation (“DDOT”) to develop an inviting streetscape experience and also will work with retail tenants to maximize an active street presence, through tenant mix and building signage. To that end, the Applicant has identified locations where it requests flexibility from the Commission to locate signage, including electronic signage as permitted by applicable code.

Description of the Surrounding Area and Zoning Classification

25. The Property is located in the eastern portion of Square 700, with frontage on M Street, N Street, Half Street, and Van Street. Nationals Ballpark is located immediately south of the Property across N Street, SE.
26. The Property is included in a CR Zone District and is located in the Capitol Gateway (CG) Overlay District. The current use of the Property is as temporary seasonal entertainment on Washington Nationals baseball game days.
27. The Navy Yard metro station west entrance is immediately east of the Property at the corner of M and Half Streets

Capitol Gateway Overlay District Design Requirements

The Project Meets the Requirements of 11 DCMR § 1604

28. The project is subject to the requirements of 11 DCMR § 1604 because the building will have frontage along M Street, SE, within the CG Overlay.
29. The building complies with the requirement that no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building. (11 DCMR § 1604.2.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
30. The building complies with the requirement that the streetwall of each new building shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street, SE. (11 DCMR § 1604.3.) The Zoning Commission previously granted variance relief for the design of the Approved Building relating to this restriction. The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
31. The building complies with the requirement that each new building shall devote not less than 35 percent of the ground floor gross floor area to retail, service, entertainment and arts uses. Such preferred uses shall occupy 100 percent of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control. (11 DCMR § 1604.4.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
32. The building complies with the requirement that not less than 50 percent of the surface area of the street wall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass...and to entrances to commercial uses of the building. (11 DCMR § 1604.6.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
33. The building complies with the requirement that the minimum floor-to-ceiling clear height for portions of the ground level devoted to preferred uses shall be 14 feet. (11 DCMR § 1604.7.) The modification does not include any revisions to the Northern Portion of the Approved Building, which is the portion that fronts M Street, SE.
34. The building complies with the requirement that, where preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply (11 DCMR § 1604.9.) Preferred retail and service uses are required for new construction on the Property.

The Project Meets the Requirements of 11 DCMR § 1607

35. Section 1607 of the Zoning Regulations sets forth a number of specific requirements that apply to all new buildings, structures, and uses with frontage on Half Street, SE, south of M Street, SE, within the CG Overlay.
36. The building does not comply with the requirement that any portion of a building or structure that exceeds sixty-five (65) feet in height shall provide a minimum setback of twenty (20) feet in depth from the building line along Half Street, SE. The Zoning Commission previously granted variance relief for the design of the Approved Building relating to this restriction. While the building design along Half Street has been extensively revised, the Applicant is confronted with the same difficulties given the mixed-use nature of the building and multiple design and use requirements applicable to the Property. As before, the building presents as highly articulated along Half Street, with terracing and a mixture of projections and setbacks along this elevation. The result is that this elevation complies with, and exceeds, the setback requirement in places but is noncompliant in others. Grant of variance relief will not be detrimental to the public good. The project as modified will not diminish views of surrounding landmarks or neighboring buildings, but rather increase and enhance those views as compared to the design of the Approved Building.
37. The building complies with the requirement of § 1607.3 that each new building shall devote not less than seventy-five percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations. The Zoning Commission's approval in Order No. 08-30 included grant of variance relief from this requirement, as the Approved Building provided approximately 69 percent of the ground floor to preferred uses. As proposed to be modified, the ground floor retail provided in the Southern Portion of the Approved Building is increased by approximately 15,000 square feet. The building as modified complies with this requirement.
38. The building complies with the requirement of § 1607.4 that preferred uses shall occupy 100% of the building's street frontage along Half Street, SE, except for space devoted to building entrances or required to be devoted to fire control. As modified, the building's design will continue to comply with this restriction.
39. The building complies with the requirement of § 1607.5 that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet. As modified, the building's design will continue to comply with this restriction.
40. Pursuant to § 1607.6, for good cause shown, the Zoning Commission may authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses. The Applicant is not requesting authorization for interim

occupancy as part of this application.

41. The building complies with the requirement of § 1607.7 that no private driveway may be constructed or used from Half Street, SE, to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. As modified, the building's design will continue to comply with this restriction.
42. The building complies with the requirement of § 1607.8 that, where preferred use retail space is required under the CG Overlay provisions and is provided, the provisions of § 633 shall not apply.

The Project Meets the Requirements of 11 DCMR § 1610

43. Section 1610.2 of the Zoning Regulations provides that all proposed uses, buildings, and structures on a lot abutting South Capitol Street, M Street, or within Square 700 shall be subject to review and approval by the Zoning Commission. Section 1610.3 further provides that the proposed use, building, or structure must meet the standards set forth in 11 DCMR § 3104, and the applicant must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will comply with the specific requirements set forth in 11 DCMR § 1610.3(a)-(f).
44. The Commission finds that the building as modified meets the requirements of § 1610 and is consistent with all of the applicable purposes of the CG Overlay.
45. The height, bulk, and design of the project as modified are consistent with the requirements of the Zoning Regulations and with the property's designation on the Future Land Use Map. The building's height and density are allowed at this location, and the proposed use is consistent with the Property's designation on the Future Land Use Map. The residential, office and retail/preferred uses contemplated for the project will help foster an appropriate mix of uses within the square and the surrounding area. (11 DCMR § 1600.2(a)).
46. The project as modified will continue to provide retail/preferred uses in furtherance of the objectives of the CG Overlay. (11 DCMR § 1600.2(b)).
47. The building's design complies with this requirement and includes ground-level retail and service uses along M Street, SE. (11 DCMR § 1600.2(e)).
48. The project as modified is designed to provide an engaging and pedestrian-oriented Half Street frontage. The Applicant is coordinating with neighboring property owners along Half Street to provide an enhanced streetscape plan. Multiple retail entrances are proposed to be located along this frontage. The building as modified contains extensive terracing back from the street façade to ensure adequate access to light and air as well as provide a suitable scale and public engagement. (11 DCMR § 1600.2(h)).

49. The building will further the objectives set forth in § 1600.2. The modified building will provide approximately 390,000 square feet of residential use (including penthouse habitable space), in a mixture of condominium and rental units, and approximately 314,000 square feet of commercial uses, including approximately 15,000 square feet more retail/service uses than was included in the Approved Building. The pedestrian Via will be retained in the modified design, and the vibrant new design of the Southern Portion will further activate Half Street and provide appropriate scale and setbacks through its extensive and innovative use of terracing. (11 DCMR § 1610.3(a)).
50. The project as modified provides a much desired mixed use building in the neighborhood and will include multi-family residential, in a variety of configurations, sizes, and ownership types, and significant space devoted to preferred retail uses on the ground floor, precisely the types of uses encouraged by section 1600.2(b). (11 DCMR § 1610.3 (b)).
51. The project as modified is contextual to the surrounding neighborhood and street patterns, especially along its Half Street and N Street frontages, where a mixture of stacking and terracing of volumes allows for the building to mark this important corner at the centerfield entrance to the Nationals Ballpark while drawing visual interest from multiple vantage points. The Via remains an important component of the project in facilitating and encouraging pedestrian circulation in an east-west direction, including residents of the building, while vehicular ingress/egress for parking and loading operations remains provided from Van Street. Landscaping and sidewalk treatment along Half Street is proposed to be provided in coordination with adjacent property owners. (11 DCMR § 1610.3 (c)).
52. The loading and parking operations for the building occur on the least trafficked of the street frontages, along Van Street. Pursuant to §§ 1604.2 and 1607.7 of the Zoning Regulations, no driveway may be constructed or used from M Street, SE, or from Half Street, SE. Where the loading and parking operations occur along Van Street, the pedestrian will have an uninterrupted sidewalk with similar paving patterns to the typical Van Street sidewalks and public space. (11 DCMR § 1610.3(d)).
53. The building as modified will continue to offer extensive façade articulation for all street elevations as well as the Via elevation. The proposed modifications to the Southern Portion include extensive modulation of building volume along the Half Street and N Street elevations, and to a somewhat lesser extent the Van Street elevation, where the C-shaped orientation of the residential portion is expressed. In addition to shifts of building volume, the building is articulated through use of balconies, extensive landscaping incorporated into the elevations, and innovative materials. (11 DCMR § 1610.3(e)).
54. The building as modified has been designed and will be constructed and operated with a goal toward sustainability and minimizing negative impact upon the environment. To that end, the residential construction on the Southern Portion will qualify for a minimum of LEED NC 2009 Silver certification with 56 or more points. (11 DCMR § 1610.3(f)).

55. Section 1610.5 of the Zoning Regulations sets forth a number of specific requirements that apply to a building or structure with frontage on Half Street, SE, south of M Street, SE, or Front Street, SE, south of M Street, SE.
56. The building as modified satisfies the criterion of § 1610.5(a) of the Zoning Regulations as a result of the innovative building articulation and use of materials, extensive landscaping and streetscape, which is being coordinated with other property owners fronting Half Street, and extensive pedestrian-focused retail with appropriate signage, including potential electronic signage as permitted by code.
57. The Commission has previously determined that the Approved Building satisfies Section 1610.5(b) of the Zoning Regulations. The building as modified will continue to provide safe and convenient movement to and through the site. Half Street remains the primary pedestrian pathway, linking the Navy Yard Metrorail Station and the Nationals Ballpark. The 30-foot wide pedestrian Via remains an important design element of the project. Retail entrances will be located primarily along Half Street, with residential entrances and parking and loading operations along Van Street.
58. The Applicant has provided a view analysis and contextual images as part of its submissions to the hearing record as required by § 1610.5(c). As shown therein, the building will have no detrimental impact on views and vistas of the identified monumental properties and focus areas.

Area Variance and Special Exception Relief

59. Section 1610.7 of the Zoning Regulations states that the Zoning Commission may hear and decide any additional requests for special exception or variance relief needed for a project and that such requests shall be advertised, heard, and decided together with the application for review and approval for compliance with the CG Overlay provisions.
60. Pursuant to that authority, the modification application also includes requests for the following area variances: from the percentage of lot occupancy requirements (§ 634.1), setback requirement for buildings along Half Street, SE (§ 1607.2), compact parking space percentage requirements (§ 2115.4), and loading (§ 2201.1). Subsequent to submitting the modification application, the Applicant determined that, as a result of the inclusion of mezzanine habitable space imbedded with mechanical equipment in the penthouse, special exception approval is needed to allow enclosing walls of the penthouse to be of unequal height pursuant to the recently revised penthouse regulations (§§ 411.11 and 630.4(a)).
61. The Applicant withdrew its earlier requests for area variance from the court dimensional requirements (§ 638.2) and percentage of compact parking spaces (§ 2115.2).
62. The Zoning Commission previously determined in Order No. 08-30 that the Property and

the Approved Building satisfy the test for variances set forth in the Zoning Regulations and approved variance relief for the Approved Building relating to percentage of lot occupancy, setback from Half Street, and loading, percentage of ground floor retail, and special exception for penthouse.

63. The test for variance relief is three-part: (1) demonstration that a particular property is affected by some exceptional situation or condition; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Commission finds that variance relief is appropriate in this application.
64. With regard to the exceptional condition of the Property, the Zoning Commission recognized a number of unique conditions affecting the Property in Order No. 08-30. Therein, the Zoning Commission found that “the Property is extraordinarily large in size at almost 90,000 square feet and is also very deep (or wide), with an east/west dimension of approximately 150 feet. The project site is located at a very prominent location in the CG Overlay (the intersection of Half and M Streets), which requires a mixture of uses and dictates design features with which the Applicant must comply simply as a result of its presence on both M Street and Half Street (such as a prohibition on curb cuts on two sides of the project, elevated ground floor ceiling heights, and the requirement to provide a “pedestrian scale” building on relatively narrow streets). The Applicant is also proposing to include three different types of land uses on the Property, which is encouraged by the CG Overlay regulations- but raises construction feasibility considerations. 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.” Order No. 08-30, Finding of Fact No. 47. The Commission finds that the same exceptional conditions stated in Order No. 08-30 still apply to the Property.

Area Variance-Lot Occupancy

65. The Commission previously approved, and the Applicant continues to request, area variance relief from the requirement of § 634 that limits maximum lot occupancy for the Property at 75 percent. As modified, the building's maximum lot occupancy will total approximately 93 percent. As the Commission previously recognized and continues to recognize, the strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant in that it would unnecessarily restrict the development envelope for the office portion of the building and detrimentally affect the design of the residential portion, given the portions are connected and considered a single building for zoning purposes.
66. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. As the project is considered one building

for zoning purposes, the 75 percent lot occupancy restriction applies to the entire building (starting at the second floor—the horizontal plane where residential uses begin). The Commission finds that the residential portion of the building provides ample access to natural light through provision of open and closed courts and extensive use of terraces and balconies. Furthermore, given the dramatic terracing of the building, the building's footprint decreases dramatically above the lowest levels.

Area Variance-Stepback Along Half Street, SE

67. The Commission earlier approved, and the Applicant continues to request, area variance relief from the requirement of § 1607.2, which requires that any portion of a building or structure that exceeds sixty-five (65) feet in height shall provide a minimum step-back of twenty (20) feet in depth from the building line along Half Street SE.
68. As the Commission previously recognized and continues to recognize, the strict application of the Zoning Regulations in this case will result in a practical difficulty upon the Applicant. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The extensively-terraced design provides compliance with the spirit of the regulation and technical compliance along a portion of the Half Street elevation. The design as modified will not compromise the pedestrian experience nor have a negative effect on light and air for neighboring uses. The Applicant's Property is surrounded by a well-connected pedestrian network and most roadways within a quarter mile radius provide sidewalks and acceptable crosswalks and curb ramps, particularly along the primary walking routes. The proposed modification will add or widen sidewalks adjacent to the Property such that they meet or exceed DDOT requirements and provide an improved pedestrian environment, as demonstrated in the conceptual streetscape plans for Half Street.
69. There will be no detrimental impact on views and vistas of the identified monumental properties and focus areas. Rather, the dynamic design of the proposed modification will enhance views from points north and from the Ballpark.

Area Variance-Compact Parking Space

70. The Applicant requests variance relief to allow compact spaces not to be provided in groups of five or more spaces as required pursuant to § 2115.4. As a result of the structural column spacing for the building resulting from the size of the project and multiple design requirements of the CG Overlay, there are areas within the parking levels that are not large enough to accommodate standard-sized parking spaces but can accommodate compact-sized spaces. The grant of this area of relief will have no detrimental impact upon the public good as shown in the Applicant's transportation impact study. (Ex. 21C).

Area Variance-Loading

71. The Commission previously approved loading relief for the Approved Building, and the Applicant continues to require loading relief for the modification to the Southern Portion. No change is proposed for the loading operations of the Northern portion of the Approved Building as part of this application.
72. The Applicant cannot satisfy the requirement to provide 55-foot loading berths given the narrow dimension of Van Street, which is the street frontage where loading operations are required to be provided pursuant to the various prohibitions of the CG overlay. As the Commission previously recognized, relief can be provided without substantial detriment to the public good. The Applicant has consulted with DDOT on this issue, arriving at a multi-point loading management plan, which is addressed as part of its transportation impact study.

Special Exception-Penthouse Walls of Unequal height

73. Under § 411.11 of the Regulations, the Board of Zoning Adjustment may approve the location, design, number, or any other aspect of a penthouse even if it does not comply with the requirements of § 630.4, upon a showing of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would make full compliance unduly restrictive, prohibitively costly or unreasonable. The Board, and by extension the Zoning Commission pursuant to § 1610.7, may approve a penthouse under § 411.11, provided that the intent and purpose of the Zoning Regulations are not materially impaired by the structure, and the light and air of adjacent buildings are not affected adversely.
74. The Applicant's roof level plan is in keeping with the purpose and intent of the Zoning Regulations. The Applicant proposes to provide penthouse walls of unequal height to satisfy the required setback ratio as well as to minimize the scale of the penthouse structure to the overall design. Pursuant to § 411.9, enclosing walls of a penthouse shall be of equal, uniform height as measured from roof level, with certain limited exceptions. One exception provides that enclosing walls of penthouse habitable space may be of a single different height than walls enclosing penthouse mechanical space (§ 411.9(a)). The Commission finds that the Applicant's design complies with that exception but for the small amount of habitable mezzanine space embedded with the mechanical space.
75. The Commission finds that the extensive terracing of the building, a product in part of the Half Street step back requirements of the CG overlay, make full compliance unduly restrictive as full compliance would result in a penthouse measuring 20 feet in height and not meeting the required setbacks or would compromise the terraced nature of the design. The intent and purpose of the regulations will not be materially impaired nor will light and air of adjacent buildings be affected adversely.

76. The Commission also finds that the Applicant has undertaken additional study, per the

Commission's request, and has removed the trellis feature along the roof line in the courtyard and has undertaken redesign of the court-facing elevation so as to allow a compliant setback of the penthouse from the edge of the building in that location. Further, the Commission recognizes that the Applicant has further modified the penthouse of the Southern Portion along the Via so as to increase the setback to a full 1:1 ratio.

Office of Planning Report

77. By report dated February 16, 2016, OP recommended approval of the application. (Ex. 25). In its report, OP noted that the application meets the CG Overlay goals for providing a preferred use, and meets the requirements for building form and massing. OP also noted that the application successfully addresses most of the evaluation criteria of the CG Overlay and recommended approval of the project and requested that the Applicant provide certain additional information regarding: (i) descriptions, details and sample of the materials proposed for the exterior of the building; (ii) ways to potentially achieve the equivalent of a higher LEED rating for the building and (iii) a more detailed rendering of the ground floor retail environment. OP noted that it strongly supports the project and also supports the relief requested.
78. The Applicant provided the requested materials at the public hearing and as part of its post-hearing submission.

DDOT Report

79. By report dated February 16, 2016, DDOT stated that it has no objection to the application subject to the Transportation Demand Management ("TDM") plan being amended to include the following:
- The TDM Leader (for planning, construction and operations will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors;
 - The building management agrees to provided updated contact information for the TDM Leader and report of TDM efforts and amenities to goDCgo staff once per year;
 - Provide a SmarTrip card preloaded with \$100 to all new residents (owners and lessees) each year for a total of five years;
 - Provide a free annual Capital Bikeshare membership to all residents (owners and lessees) each year for a total of five years;
 - The Applicant will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures; and
 - The public transit information screen shall be located in each of the two residential lobbies.

80. The report also stated that given the complexity and size of the action, the Applicant is expected to continue to work with DDOT outside of the Zoning Commission process on the following matters:

- Public Space, including curb gutter, street trees and landscaping, street lights, sidewalks, and other features within the public rights of way, are expected to be designed and built to DDOT standards. Careful attention should be paid to pedestrian and bicycle connections along the site's perimeter;
- A unified streetscape design for the entirety of Half Street between M and N Streets as design details are coordinated between DDOT, Office of Planning, and all property owners who front on Half Street. A design must be finalized by the time the site is ready for occupancy as a temporary streetscape is not acceptable;
- Reduction in special paving along N Street, which is currently shown at 6 feet;
- Required short-term bicycle parking spaces to be located at main building entrances; and
- Recommended provision of one 240-volt electric car charging stations on the first level of the parking garage.

81. At the public hearing, the Applicant submitted to the record a revised TDM plan agreeing to the items raised in the DDOT report with the exception of DDOT's requests that the Applicant provide a SmarTrip card preloaded with \$100 to all new residents (owners and lessees) each year for a total of five years and provide a free annual Capital Bikeshare membership to all residents (owners and lessees) each year for a total of five years. The Applicant instead agreed to provide a one-time, annual Capital Bikeshare membership, annual carshare membership, or SmarTrip card preloaded with \$100 for each dwelling unit at initial occupancy. DDOT agreed to the Applicant's revised TDM plan.

ANC Reports

82. By report dated January 21, 2016, ANC 6D reported that at its duly noticed meeting with a quorum present, a quorum being four Commissioners, ANC 6D voted 7-0-0 to support the requested modification. The ANC's report noted that it was not opposed to the Applicant's request for variances from the lot occupancy, setback, compact parking and loading requirements. The ANC acknowledged that the Approved Building included commitment to qualify for LEED Silver certification for the residential portion however noted that the ANC would prefer a higher commitment. The report also asserted the ANC's preference to see more residential units within the building designated as affordable to households with a lower income than only the affordable units required to be provided as part of the penthouse affordable space.

83. As part of its post-hearing submission, the Applicant provided a revised LEED scorecard increasing its commitment from a total of 51 affirmative points to a total of 56 affirmative

points and also provided extensive documentation relating to the building design and residential construction as to the difficulty of further increasing its LEED commitment. Also, the Applicant provided additional detail regarding dedicated affordable housing to be provided within the building, which will include several IZ units relating to both the penthouse habitable space and the approximately 75,000 more feet of residential being provided as part of the modification to the Southern Portion.

CONCLUSIONS OF LAW

1. The Applicant filed an application for review and approval of for review and approval of a modification to previously approved plans pursuant to 11 DCMR §§ 1604, 1607 and 1610. The Commission concludes that the Applicant has met its burden of proof.
2. The Commission provided proper and timely notice of the public hearing on the application by publication in the D.C. Register and by mail to ANC 6D, OP, and owners of property within 200 feet of the Property.
3. Pursuant to 11 DCMR §§ 1604.1, 1607.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1605.2 through 1605.5, 11 DCMR §§ 1607.2 through 1607.8 and 11 DCMR §§ 1610.2 through 1610.7.
4. Pursuant to 11 DCMR § 1610.7, the Commission also required the Applicant to meet the requirements for variance relief set forth in 11 DCMR §§ 3103, 634.1, 1607.2, 2115.4 and 2201.1. The Commission concludes that the Applicant has met its burden.
5. The proposed development is within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.
6. The Commission concludes that the proposed project will further the objectives of the CG Overlay District as set forth in 11 DCMR § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the CG Overlay and meets the specific design requirements of 11 DCMR §§ 1604, 1607 and 1610.
7. No person or parties appeared at the public hearing in opposition to the application.
8. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1- 309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. The affected ANC in this case is ANC 6D. The Commission carefully considered ANC 6D's recommendation for approval and concurs in its recommendation in support of the application, and considered the issues and concerns stated in its report.

9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission carefully considered the OP report and, as explained in this decision, finds its recommendation to grant the application persuasive.
10. Based upon the record before the Commission, including witness testimony, the reports submitted by the Office of Planning, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604, 1607 and 1610 of the Zoning Regulations and for special exception relief pursuant to 11 DCMR §§ 3103 and 3104.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia ORDERS APPROVAL of the application consistent with this Order. The term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under the order; however, that party remains liable for any violation of any condition that occurred while an owner. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 33, 802, 840, 841, 850, 864, 865, 868, 871, 872, 873, 874 in Square 700.
2. The project shall be built in accordance with the Final Architectural Drawings, dated February 5, 2016, as modified by replacement and supplemental drawings and materials dated March 17, 2016, and the guidelines, conditions, and standards below. (Ex. 21B and 34A).
3. The overall density on the Property shall not exceed 9.5 FAR as permitted pursuant to 11 DCMR § 1602, and pursuant to the Zoning Commission's approval of this application.
4. The Applicant shall implement the following loading management plan for the life of the project:
 - a. Deliveries will be permitted between 7:00 AM and 4:00 PM, seven days a week, except for when events occur at Nationals Park. Deliveries cannot be scheduled for the period between two (2) hours when an event begins and one (1) hour after an event is completed (including during the event itself).
 - b. A representative of Building Management will supervise all deliveries to the loading dock, for 30-foot trucks (this does not apply to delivery vans). Building

management will not schedule deliveries during Nationals Park events as defined above when there could be heavier than typical pedestrian traffic on Van Street.

- c. All residential and retail deliveries must be scheduled with Building Management to ensure that the dock capacity is not exceeded. Building management will not schedule deliveries during Nationals Park events as defined above when there could be heavier than typical pedestrian traffic on Van Street.
- d. A flagger will be present when a vehicle is entering the loading dock to ensure pedestrian, bicycle, and vehicle safety with truck back-in maneuvers.
- e. Building management will post a sign in a highly visible location within the loading area that states that all loading activities must be scheduled through building management.
- f. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System.

5. The Applicant shall implement the following TDM measures for the life of the project:

- a. The Applicant will comply with Zoning requirements to provide bicycle parking/storage facilities. This includes secure parking located in the garage for residents.
- b. The Applicant will provide a bicycle maintenance facility within the building.
- c. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase.
- d. The Applicant will identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with goDCgo staff to create free customized marketing materials and a TDM outreach plan for residents and retail employees, including developing a site-specific transportation guide for residents and visitors.
- e. The building management will provide updated contact information for the TDM Leader and report TDM efforts and amenities to goDCgo staff once per year.
- f. The building management will stock Metrorail, Metrobus, DC Circulator, Capital Bikeshare, Guaranteed Ride Home, DC Commuter Benefits Law, and other brochures.

- g. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase.
 - h. The Applicant will dedicate two spaces in the residential garage for car sharing services to use with right of first refusal. These spaces will be convenient to the garage entrance, available to members of the car sharing 24 hours a day, seven days a week, without restrictions (the garage may be gated – members of the service would have access to the spaces via a key pad combinations to a pass code system or other similar device).
 - i. The Applicant will place electronic message boards in the building lobby that provide real-time information on nearby transit services.
 - j. The Applicant will provide a one-time, annual Capital Bikeshare membership, annual carshare membership, or SmarTrip card preloaded with \$100 for each dwelling unit at initial occupancy.
6. The residential/Southern Portion shall be certified at the LEED Silver level with a minimum of 56 affirmative points.
7. The Applicant shall have flexibility with the design of the project in the following areas:
- a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;
 - b. To vary the final selection of exterior materials within the color ranges provided (maintaining or exceeding the same general level of quality) as proposed, based on availability at the time of construction;
 - c. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals;
 - d. To substitute residential and/or permitted non-residential uses on the second and third floors in replacement of the approximately 10,550 square feet of retail uses, as shown on Sheet A302 of the Final Architectural Drawings (Ex. 34A);
 - e. To vary the number of residential units provided so long as the total amount of residential units provided not diminished or increased by more than 10%;

- f. To provide signage, including digital signage as authorized by applicable code; and
 - g. To vary the number of parking spaces provided so long as that number equals or exceeds the minimum number of spaces required under the Zoning Regulations.
8. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identification, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action.

On April 11, 2016, upon the motion of _____, as seconded by _____, the Zoning Commission APPROVED the application and ADOPTED this Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register, that is on _____.