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August 12, 2013

VIA HAND DELIVERY

Anthony Hood, Chairman
D.C. Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

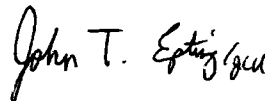
**Re: Zoning Commission Case No. 12-05A – Zoning Commission Design Review
and Special Exception and Variance Relief for Square 701, Lot 170 (the
“Property”) – Proposed Modification of Capitol Gateway (“CG”) Overlay
District Review – Draft Order Filing**

Dear Chairman Hood and Members of the Zoning Commission:

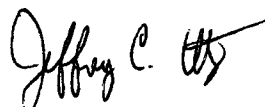
On behalf of Ballpark Square LLC (the “**Applicant**”), the applicant in Zoning Commission Case No. 12-05A and co-developer of the Property, we hereby submit the attached Draft Zoning Commission Order for the above-captioned case.

The Applicant appreciates the opportunity to submit the attached Draft Order into the record. Thank you for your attention to this application.

Sincerely yours,



John T. Epting



Jeffrey C. Utz

**ZONING COMMISSION
District of Columbia**

CASE NO. 12-05

EXHIBIT NO. 18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and enclosures were hand-delivered to the following on August 12, 2013.

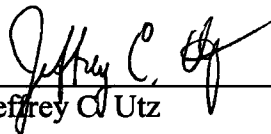
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Jeffrey C. Utz

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission

RECEIVED
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2013 AUG 12 PM 3: 00

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 12-05A

Z.C. Case No. 12-05A

Ballpark Square, LLC

(Capitol Gateway Overlay Review)

September 9, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia ("**Commission**") held a public hearing on July 15, 2013, to consider an application for property owned by Ballpark Square, LLC ("**Applicant**")¹, co-applicant in Zoning Commission Case Nos. 12-05 and co-developer of the Property, for Zoning Commission review and approval of modification to the project on First, M, and N Streets, SE approved by Zoning Commission Order No. 12-05 ("**Order**") in the Capitol Gateway Overlay District ("**CG Overlay**") as set forth in Title 11, Chapter 16 of the District of Columbia Municipal Regulations ("**Zoning Regulations**"). The property that is the subject of this application consists of Lots 169 and 170 in Square 701 (the "**Property**")². The Property is comprised of approximately 77,123 square feet of land area and is located in the CG Overlay/CR Zone District. The Property is comprised of two parcels - a north parcel of 73,505 square feet of lot area ("**Main Parcel**") and a south parcel of 3,618 square feet of lot area ("**South Parcel**").

The Order approved an approximately 653,159 square foot mixed-use development, containing separate components for office, hotel, and residential uses tied together through a ground floor retail pedestal and an approximately 7,630 square foot retail building on the corner of 1st and N Streets, NE (the "**Project**").

On May 9, 2013, the Applicant requested a modification to the Project approved by the Order to allow for the reorientation of the residential component, which results in changes to the residential building's appearance on First Street and a modest increase in the number of units and gross rentable area, among other small changes. The hotel (except for the flexibility request described below) and office components, along with the ground retail elements of those structures, and the two story retail structure on Lot 169³ remain unchanged in this modification.

¹ In the original case at the Zoning Commission, Z.C. Case No. 12-05, the Applicant was the contract purchaser of the Property. Since that time, the Applicant and SCD Acquisitions, LLC (through Ballpark Square 701, LLC) have taken ownership of the Property. Since this modification does not affect the portion of the project on A&T Lot 869, SCD Acquisitions, LLC and its affiliate (and current owner of A&T Lot 869) Ballpark Square 701, LLC, are not parties to this modification application.

² The original application and Order dealt with Lots 33-41, 48-61, 131-136, 155-160, 816-817, 822-823, 828-830, 832-834, and 854-856 in Square 701. Those lots have been combined through subdivision into Lots 169 and 170. All modifications proposed by this application affect Assessment and Taxation Lot 868 in Square 701, owned by the Applicant.

³ Lots 155 and 156 in Square 701 were subdivided into one Record Lot, Lot 169 in Square 701 after the Order was issued.

The Applicant submits this application pursuant to §§ 1602.1(e) and 1610 of the District of Columbia Zoning Regulations, which require Zoning Commission review of properties abutting M Street, SE, properties located in Square 701, or properties that are the recipient of certain amounts of density through combined lot development rights (“CLDs”), as the result of the modification to the residential component of the Project. The Applicant also maintains its prior request and approval for special exception relief with regard to its parking requirement of §§ 2101.1 and 2116.2; and variance relief from the loading requirements of § 2201.1, and the rear yard requirement of § 636. The only element of such relief relevant to the modified residential component is the rear yard relief, the extent of which is not changing as the result of this modification.

The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. A public hearing was conducted in accordance with the provisions of § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On May 9, 2013, the Applicant submitted an application to the Commission for a modification to the design review and variance relief for the Property. The Applicant requested a modification to the approved review under Zoning Regulations §§ 1602.1 and 1610, which require Commission review of properties abutting M Street, S.E., properties located in Square 701, or properties that are the recipient of certain amounts of density through combined lot development rights (“CLDs”). In addition to the CG/CR Overlay District Review, the Applicant maintained the request for the following relief which was approved under the Order:
 - Special exception relief with regard to the parking requirements of §§ 2116.2 and 2101.1 for the retail use on the South Parcel;
 - Variance relief from the loading requirements of § 2201.1 for the office use on the Main Parcel and the retail use on the South Parcel; and
 - Variance relief from the rear yard requirement of § 636 for the residential and hotel structures on the Main Parcel.
2. The purposes and objectives of the CG/CR Overlay District, as enumerated in § 1600.2, that are relevant to the proposed modification to the approved Project include:
 - Assuring 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;
 - Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;
 - Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station; and
 - Providing for the development of First Street, S.E., 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.

3. After proper notice was provided, the Zoning Commission held a hearing on the application on July 15, 2013. Parties to the case included the Applicant and Advisory Neighborhood Commission (“ANC”) 6D, the ANC within which the Property is located.
4. The witness appearing on behalf of the Applicant at the hearing was Don Capobres of Ballpark Square, LLC; the expert witnesses appearing on behalf of the Applicant at the hearing were Devon Perkins of Hickok Cole Architects and Dan Van Pelt of Gorove/Slade Associates, Inc.
5. ANC 6D submitted a letter in support of the requested modification to the project noting that at the ANC’s “regularly called, properly noticed meeting on June 10, 2013, with a quorum present, Advisory Neighborhood Commission (ANC) 6D voted 7-0 to support the above-referenced request.” (Exhibit [“Ex.”] 9.) At the hearing, the Commission noted that the ANC letter had been received and would be given great weight.
6. The Office of Planning (“OP”) filed a report in support of the modification request on July 3, 2013. (Ex 12.) At the hearing, OP stood on the record after reiterating that they “strongly support the project”. The District Department of Transportation (“DDOT”) submitted a report into the record on July 3, 2013 stating that it had no objection to the requested modification. (Ex. 11.) DDOT did not appear at the hearing on July 15, 2013 and the Commission read its report into the record.
7. At the conclusion of the hearing, the Commission requested that the Applicant file a post hearing submission containing information regarding the following: additional residential façade details; additional information relating to the balconies and bays on the residential façade; and studies and information relating to the outdoor rooftop television viewing area and related operational rules and regulations. The Applicant submitted these materials to the Zoning Commission in its post-hearing submission dated August 5, 2013. (Ex. 17.)
8. On September 9, 2013, the Commission voted to approve the application subject to the conditions enumerated in this Order.

DESCRIPTION OF PROPERTY AND SURROUNDING AREA

9. The Property is located on the southwest corner of the intersection of First and M Streets, S.E., in Southeast Washington. It is bound by M Street, S.E. to the north, First Street, S.E. to the east, N Street, S.E. to the south, and Cushing Place to the west. One block south of the Property is the Washington Nationals’ Ballpark (“**Ballpark**”). Entrances to the Navy Yard Metrorail Station are located along M Street less than one block to the east of the Property and one block to the west of the Property. A property owned by Capital Riverfront Hotel, LLC (with a 130 foot hotel project approved by the Zoning Commission as Z.C. Case No. 12-19) splits the Property into the Main Parcel and the South Parcel and is not part of this Order. Immediately east of the Property is the mixed-

use project which was approved by the Commission in Z.C. Case Nos. 06-46 and 06-46A.

PROJECT OVERVIEW

10. The Applicant requests a modification to the Order to revise the residential portion of the Project with a new configuration, a reconsidered façade, an increased unit count, and a reconfiguration of retail space within the residential component. The Applicant does not propose to modify the hotel (except for the flexibility request described herein) or office portions of the Project, and the Applicant does not propose to modify those retail portions of the Project that are not associated with the residential component. (Ex. 5 and Applicant's presentation at the July 15, 2013 hearing ("**Applicant's Presentation**").)
11. The residential component will be enlarged from approximately 260,000 square feet (approximately 292 units) to 304,000 square feet (approximately 326 units) of residential use while the retail use within the residential component will be reduced from approximately 28,000 square feet to 26,500 square feet. The total retail use provided by the Project will therefore be modified from approximately 46,500 square feet to approximately 45,000 square feet. The Project will still contain approximately 126,000 square feet of hotel use (approximately 170 units), and 224,000 square feet of office use, and provide approximately 370-380 parking spaces. As a result of the enlargement of the residential component, the total square footage of approximately 653,000 square feet (8.89 FAR) approved under the Order will be increased to approximately 695,600 square feet (9.46 FAR). (Ex. 5 and Applicant's Presentation.)
12. Consistent with §§ 1604 and 1606 of the Zoning Regulations, retail and restaurant uses are still proposed for all of the ground-floor space in the Project (other than lobbies for the residential, hotel, and office components and related parking and service areas). The Project still has a proposed building height of approximately 130 feet, occupies 79% (up from 74%) of the lot area above the first floor, and still provides approximately 370-390 automobile parking spaces. The residential and hotel component has a total of approximately 130 bicycle spaces, located on the P1 level. The number of bicycle parking spaces in the office component and on public space adjacent to the Property will not change as a result of this modification. (Ex. 5 and Applicant's Presentation.)
13. On the Main Parcel, as with the previously approved design, the Project will still break the massing of the building into three distinct forms with the office, hotel and residential structures appearing and functioning as their own independent components. The structures will be tied together through building connections on the ground floor. Parking will still take place in the two below-grade garages and all loading will still be accessed via Cushing Place. The South Parcel, located at the corner of First and N Streets, will consist entirely of retail use and is not being modified as the result of this modification request. (Ex. 5 and Applicant's Presentation.)
14. The residential portion of the Project will include approximately 304,000 square feet (approximately 326 units) on the Main Parcel. Instead of its court configuration opening to the south towards the Ballpark, the modified residential component's primary court

now opens as a “U” west towards the Cushing Place. This reconfiguration allows the Project to react to the party wall proposed at the southern edge of the Property under Zoning Commission Case No. 12-19. Rather than opening its main courtyard onto this party wall, the redesigned residential component will now have at-risk windows along such party wall and retain the views and air from its primary court opening regardless of the development on the adjacent parcel. The building will also include a substantial courtyard facing east towards First Street. In addition, the redesigned residential component will allow for a more continuous streetwall along First Street. The rooftop, complete with a pool and pool terrace, as well as a roof terrace facing the Ballpark (which includes an outdoor television viewing area), will provide a common leisure and social space for the Project’s residents. The inner core of the residential component will face a heavily landscaped courtyard, thereby providing a private living option. A significant number of units will be placed onto First Street and thereby have monumental views. (Ex. 5 and Applicant’s Presentation.)

15. Due to the reorientation of the building, the First Street façade has changed significantly. The façade of the building has several projecting bays along First Street that have horizontal and vertical gaps between them. These elements break down the scale of the façade and give the building a unique and interesting residential expression, very uncommon for a mid-block building. The railings of the balconies will be a combination of glass and metal mesh railings. These are arranged in a diagonal pattern on the façade create a sense of movement on the façade. The entry will now be at the southern end of the building, whereas it had previously been in the middle of the building. In association with the relocation of the entry are modest changes to the cornice and canopy above the doors. Very minor changes to the spacing of the street trees will be necessary to accommodate the change in the location of the entryway. The Cushing Place elevation has also been reconsidered, although the design of such façade is very similar to that previously approved by the Zoning Commission. (Ex. 5 and Applicant’s Presentation.)
16. The residential building will incorporate materials of the highest quality as well as a color palette marking the building as a location in a burgeoning neighborhood of the Ballpark district. Similar to the previously approved residential structure, the primary materials used will be brick (of three different hues of grey), grey metal panels, painted aluminum, metal mesh and glass. (Ex. 5, Ex. 17, Ex. 17A, and Applicant’s Presentation.)
17. The retail portion of the Project will be comprised of 45,000 square feet total (not counting the above-grade parking provided on the Main Parcel), spread across the entire Property. Approximately 37,400 square feet of retail use (not counting the above-grade parking provided on the Main Parcel) will be provided on the Main Parcel and approximately 7,600 square feet of retail use will be provided on the South Parcel. As previously approved, the ground-floor retail will be demarcated from the uses above by metal banding. Each retailer will also be allowed to customize its space and hang its own signage within the general design parameters of the Project. The retail spaces will have ceiling heights of a minimum of 14 feet as required by the CG Overlay, making them marketable to a wide range of urban retailers. As in the original case, 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

and invite the public into the stores. The Applicant envisions First Street including a restaurant, café, coffee shop, and other retailers that can serve the variety of users that frequent the area, such as tourists and businesspeople staying in the hotel, residents living in the building and nearby, and visitors on their way to the Ballpark. (Ex. 5, Ex. 5A, and Applicant's Presentation.)

18. The Project's office portion will include approximately 224,000 square feet on the Main Parcel. Such portion of the project was not altered as the result of this modification. (Ex. 5.)
19. The Project will also include approximately 126,000 square feet of hotel use (approximately 170-180 units) on the Main Parcel. Such portion of the project was not altered as the result of this modification, however, in its June 25, 2013 filing, the Applicant requested additional flexibility to increase the width of the hotel component by up to one (1) foot (from approximately 59 feet to approximately 60 feet of width) for the depth of the structure, if necessary due to user requirements. This flexibility request for an increase to the width of the hotel component by one (1) foot would be reflected in the following zoning measurements for the Project:
 - Gross Floor Area – The hotel gross floor area would increase by approximately 1,200 gross square feet to approximately 127,200 gross square feet (up from the currently approved approximately 126,000 square feet of the hotel component). This would increase the total Project gross floor area to approximately 696,800 gross square feet (up from the approximately 695,600 gross square feet proposed by the modification application).
 - FAR – The FAR for the entirety of the Project would increase from 9.46 to 9.48 (and therefore, the Applicant requests approval to utilize 0.98 FAR beyond 8.5 FAR under Section 1602.1(e)).
 - Court – Irregular Open Court C would be slightly decreased to 35'-9" at its widest point (instead of 36'-9") and would have an area of 3,614 square feet (instead of 3,720 square feet). Such width and area measurements would still comply with the court requirements.
 - As part of the slight reconfiguration of the hotel component, the Applicant also requests flexibility to slightly vary the sizes of certain hotel windows. These windows will vary from 4'-0 to 4'-8" wide.

(Ex. 10 and Applicant's Presentation.)

20. As previously approved, construction of the Project will be permitted to proceed in a phased fashion such that the construction of one or more of the primary components of the Project (e. g., the residential, hotel, or office) may be constructed and/or completed before the other components are started, constructed, and/or completed. The building connections between the building's use components and retail areas will not necessarily be complete until construction has finished in its entirety. (Ex. 5.)
21. The Applicant submitted the updated Technical Memorandum from Gorove/Slade, dated June 25, 2013, on June 25, 2013 as Exhibit 10B of the Record. This Memorandum

concludes that the modification request will have no detrimental impact to the surrounding transportation network. It also confirms that the modified Project's access plan, with its primary use of Cushing Place, will be suitable. (Ex. 10B.)

REQUESTED AREAS OF ZONING COMMISSION REVIEW AND RELIEF

Satisfaction of CG Overlay

22. Under CG Overlay District Review, the Applicant must prove that the Project satisfies the requirements of §§ 1604, 1606, 1610.3, and 1610.5, in addition to § 3104, because the Property has frontage along M Street and First Street, S.E. The following paragraphs address the Applicant's satisfaction of these standards. (Ex. 5 and Applicant's Presentation.)
23. Under § 1602.1(e), the Commission may approve the use of CLDs to achieve an additional transfer of density of up to 1.0 FAR to Square 701 provided that the applicant satisfies the objectives and guidelines of §§ 1601 and 1604-1607, as applicable. Previously, the Commission approved the use of 0.39 FAR beyond 8.5 FAR with the use of CLDs. Under the modification, the Project proposes a CLD transfer of approximately 0.96 FAR (or 0.98 FAR if the hotel enlargement described herein is elected) of CLD density beyond 8.5 FAR under § 1602.1(e). The proposed Project as modified complies fully with § 1601. Sections 1605 and 1607 are not applicable to the Property because those two Sections regulate projects fronting on South Capitol Street and Half Street, respectively. (Ex. 5 and Applicant's Presentation.)
24. §§ 1604 and 1606 govern projects fronting on M Street, S.E., and First Street, S.E., and apply to this Project. The Project conforms to the requirements of those two Subsections and furthers the Subsections' objectives. As a whole, the Project achieves those Subsections' objectives because the Project delivers an even greater amount of preferred uses than are required. Further, the design of the Project's facades will foster an interactive pedestrian experience that capitalizes on its location adjacent to the Navy Yard Metro Station and the emerging Ballpark District. The analysis regarding § 1604, which affects M Street, S.E., has not changed from that under the Order since the office element of the Project has not changed as a result of the modification. (Ex. 5, Ex. 5A, and Applicant's Presentation.)
25. Under §§ 1606.2 and 1606.3, each new building fronting along First Street must devote a minimum percentage of the gross floor area of the ground floor to certain preferred uses including retail, entertainment, and service uses. Such preferred uses will occupy 100% of the Project's street frontage along both First Street except for the space devoted to the office building lobby entrance and fire control and approximately 77.5% of the ground-floor area for the Project in total. This Project will not include any of the uses prohibited under these Subsections. Similar to the project approved under the Order, the modifications to the Project conforms to the requirements of Section 1606 and further the objectives of such Subsection. (Ex. 5 and Applicant's Presentation.)

26. Pursuant to § 1610.3(a), the Applicant is required to prove that the Project will help achieve the objectives of the CG Overlay District. This Project, as modified, including its building uses, siting, architecture, landscaping, sidewalk treatment, urban design, and operation will still achieve several of the objectives of § 1600.2. The Applicant is proposing to modify the residential component of a mixed-use development that will also include a significant commercial office space, a hotel component, and a variety of preferred retail uses. The modification specifically will enlarge the residential component to deliver more residents at this important site – to help catalyze the Capitol Gateway neighborhood and satisfy CG Overlay objectives. Consistent with § 1600.2(a), the height and density of the Project are still suitable for the CG/CR Overlay District because the Project is within the limits of the Overlay District's height and density parameters. Moreover, the Project is still consistent with the area's high density residential and high density commercial designation under the Comprehensive Plan. Subsection 1600.2(b) encourages support and visitor-related uses such as retail and hotel uses, both of which are still included in the Project. Similarly, the ceiling heights of the retail space will still have at least 14 feet of clearance, which is in accordance with § 1606.4. Finally, consistent with § 1600.2(i), the modified Project will still help to create an active pedestrian zone along First Street, between M Street, the Metrorail station, and the Ballpark by adding new retail and service uses, full-time residents, office workers, and visitors who will occupy the Project's hotel rooms. (Ex. 5 and Applicant's Presentation.)
27. In accordance with § 1610.3(b), the proposed building will help achieve the desired mix of uses in the CG Overlay District as set forth in § 1600.2 (a) and (b). As described more specifically above, the Project will still include residential, hotel, entertainment, retail, and service uses. The approximately 326 (up from 292) residential units will include a mix of unit types (studios, one-bedroom, two-bedrooms, and two-bedroom with den) that will attract a diverse resident base. The retail will likely accommodate entertainment and other preferred uses. The hotel use will still bring visitors - both personal and business travelers - to the Ballpark district to patronize local establishments and add a consistent flow of new energy to the area. (Ex. 5 and Applicant's Presentation.)
28. Pursuant to § 1610.3(c), the proposed building will still be consistent with the context of the surrounding neighborhood and street patterns. The Project is still consistent with the high 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 still encourage pedestrian activity along First and M Streets through the inclusion of ground-floor retail, an enhanced streetscape environment, and by prohibiting curb cuts along the surrounding streets. The Project will utilize the alley for all parking and loading access. The development will serve as a pedestrian and visitor gateway between the Navy Yard Metro Station, particularly the eastern entrance thereof, and the Ballpark. Moreover, the design of the Project will be different, yet complementary to the surrounding neighborhood. Similarly, the Project's components will still be uniquely designed such that each of the three "tower" structures appears as a separate use and design approach. As mentioned above, each of such "towers" will be unified by the retail floor that runs the entirety of the lot frontage for the record lot, interrupted only by

entrances accessing the upper floors of the towers themselves. The proposed building design as modified respects the existing street grid and is in context with the surrounding neighborhood and street patterns. (Ex. 5 and Applicant's Presentation.)

29. Also pursuant to § 1610.3(c), the Project is sympathetic to the context created by its immediate neighbors. The property to the west, southwest, and south of the Project has been approved for a mixed-use development of varying, but similar, densities and heights. When finished, that neighboring development will include residential, retail, office, and hotel uses. To date, only the office portion of such building has been constructed (55 M Street, S.E.). The properties to the north of the site are office buildings with ground-floor retail. To the west of the Project, across First Street, sits a seven-story Federal mapping agency building and a large surrounding parking lot. The proposed modified residential component of the Project and the resulting envelope of the entire Project is in keeping with the scale of density and height of the surrounding buildings and fits appropriately into that context. The modified structure 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 destination and community surrounding the Ballpark. (Ex. 5 and Applicant's Presentation.)
30. Satisfaction of § 1610.3(d) requires that the proposed building minimize conflict between vehicles and pedestrians. The proposed design as modified still promotes a safe and efficient pedestrian experience, especially along First and M Streets which are two primary pedestrian corridors within the CG Overlay. Per the CG Overlay District Review regulations, no new curb cuts may be established along First or M Streets. The proposed building will still eliminate four existing curb cuts along First and M Streets. Access to parking and loading for the entire development will still be from Cushing Place, the alley at the west of the Property. Eliminating curb cuts along the main pedestrian corridors will still reduce the possibility of vehicular and pedestrian conflicts. In addition, the Applicant's traffic consultant, Gorove/Slade Associates, Inc., determined that the alley would still function acceptably, even if 55-foot trucks arrived in such alley. (Ex. 5, Ex. 10B, and Applicant's Presentation.)
31. In accordance with § 1610.3(e), the proposed building as modified minimizes unarticulated blank walls adjacent to public spaces through facade articulation. Primarily, the articulation will be achieved by the use of building materials and display windows along the ground floor. However, the residential component also will include projections through a series of unique horizontal balconies and bays. These proposed projections will provide excellent sweeping views for many residents of the Project. The office component will still be permitted to apply for projections as well, as described in the Order. Special attention has been given to the facades facing the Project's alley, and as much detail has been added to such alley-facing facades as has been added to those facades facing the more prominent right of ways. (Ex. 5, Ex. 17A, and Applicant's Presentation.)
32. Subsection 1610.3(f) requires that the proposed building minimize the impact on the environment, as demonstrated through the provision of an evaluation of the proposal

against LEED certification standards. The residential component of the building will still meet LEED Silver certification standards for new construction. The other components of the Project that were not altered through this modification will meet the LEED certification level stipulated under the Order. 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 and changing facilities. 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. (Ex. 5 and Applicant's Presentation.)

33. Under § 1610.5(a), a new building along First Street, S.E., must 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. The proposed building design still encourages pedestrian activity along its First and M Street frontages and provides safe and active streetscapes. This is achieved through building articulation, thoughtfully landscaped and hardscaped spaces in the adjacent public space, the provision of ground-floor retail, variable depth retail areas, and electronic signage. To further facilitate the pedestrian activity along those frontages and to minimize vehicular and pedestrian conflicts, the Applicant still provides vehicular access to its garage and its loading areas via Cushing Place. (Ex. 5, Ex. 10B, and Applicant's Presentation.)
34. Pursuant to § 1610.5(b), new buildings must provide for safe and convenient movement through the site and to public transit, the Ballpark, and the Anacostia Riverfront. This Project as modified still achieves these circulation objectives. The Project's primary pedestrian pathway will be along First Street, which is currently an often forgotten or ignored link between the Navy Yard Metrorail Station and the Ballpark. While Half Street is the main access way to the Ballpark for pedestrians, the Project aims to create another exciting option for Ballpark visitors along with a unique place to live for its residents. The Project's ground-floor retail along First and M Streets will still make for an interactive and exciting pedestrian experience for those attending a ballgame as well as for those 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 First Street encourages pedestrian activity to reach the Ballpark, it also provides safe and convenient access to the Anacostia Riverfront. In addition, the Project fosters a developing community that will invite even more people to utilize the Ballpark-area Metro stations before, during, and after games and even in the off-season. Moreover, the Project's emphasis of retail along First Street will encourage use of the eastern Navy Yard Station entrance, which is rarely used for games. (Ex. 5 and Applicant's Presentation.)
35. Finally, consistent with § 1610.5(c), applications for development under CG Overlay District Review must include a view analysis that assesses the openness of views towards and vistas around, the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront. The Project as modified will not block or detract from the view of the Capitol, other federal monumental buildings, the waterfront, or the Ballpark. Rather, the

superior design of the residential component will provide a favorable view for tenants and residents of neighboring buildings, and visitors to the Ballpark. (Ex. 5 and Applicant's Presentation.)

Variance Relief from the Rear Yard Requirement

36. In order to receive 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.
37. As to the first prong of the test, as found by the Commission in the Order, a number of exceptional conditions still affect the Property, and the Property still meets the "exceptional conditions" element of the variance test. The exceptional condition at the Property arises from a confluence of factors rather than a single situation or condition. In addition, the exceptional conditions at the Property are not related to general conditions in the neighborhood. These exceptional conditions include:
- The Property is large (at nearly 80,000 square feet) and deep (the east/west dimension is nearly 160 feet);
 - The Project is unique in that it includes the Main Parcel, with a three-tower component, and the South Parcel, approximately 58 feet to the south;
 - The Project is located at the intersection of two important streets, M Street and First Street, each with a separate set of requirements, in the CG/CR Overlay District, 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 such streets. The Property has an atypical amount of high profile street frontage and public access. Such a site creates complications to construct structures that are fully compliant with the Zoning Regulations because a large number of driveways and service-related areas would stifle the street life. The Zoning Regulations applicable for this Property include a prohibition on curb cuts on two sides of the Project, substantial percentages of ground-floor retail with elevated ceiling heights, and the requirement to provide a "pedestrian scale" building with large setbacks from the curb;
 - The Applicant also proposes to include four different types of uses on the Property, which is encouraged by the Zoning Regulations but introduces considerations regarding construction feasibility; and
 - Finally, the Property is located directly north of the Ballpark, which requires a building design that is cognizant of the building's singular context and respectful of the District of Columbia's objectives for development in and around the Ballpark. (Ex. 5 and Applicant's Presentation.)
38. The Applicant is maintaining its request for variance relief from §§636 from the rear yard requirements for the residential building (and hotel building) of the Main Parcel and requests the approval of the modified design in relation to the rear yard relief previously granted. § 636 requires the proposed residential building provides a rear yard of three (3)

inches per foot of height for each residential structure. Due to the building's façade's height of 130 feet, a 32 foot, six (6) inch rear yard would be required. However, the Project will not provide a rear yard. Instead, the Project will provide several courts in lieu of a rear yard, of 30 feet, 30 feet, and 66 feet in width. (Ex. 5 and Applicant's Presentation.)

39. The strict application of the Zoning Regulations' requirements with respect to the rear yard of the residential component on the Main Parcel would create a practical difficulty. Strict compliance with the Zoning Regulations is burdensome for the following reasons:
- The Project contains a unique mix of four distinct uses, three of which include a "tower" element to meet the density objectives of the CG/CR Overlay District. The inclusion of such tower elements renders impracticable furnishing the required rear yards for the residential and hotel components. To require the full rear yard of 32 foot, six (6) inch would necessitate eliminating a significant portion of the residential building (and the hotel building), which would detract from the appeal of the buildings, and the viability of the Project;
 - Providing a compliant rear yard would also push the uses closer together, whereas the Project has been designed to maximize the space between the use components through courts; and
 - The Project provides a 15-foot setback from M Street in order to give more room for pedestrian activity in the public realm, an objective of the CG/CR Overlay District. In meeting the objectives of activating the public realm, the Zoning Regulations create a burden in also meeting the rear yard requirements. (Ex. 5 and Applicant's Presentation.)
40. Under the third part of the variance test described in Paragraph __, the Applicant's request for relief from the rear yard requirement will not be detrimental to the public good or impair the intent, purpose and integrity of the zone plan. The Applicant is providing as much of the preferred use mixture on the Main Parcel as possible. The resulting three "towers" created by this proposal and the interwoven courtyard systems furnish a more open view-inducing configuration than the provision of a compliant rear yard would have achieved. Such varied structures creating three different vertical elements are consistent with the design guidelines and objectives of the CG/CR Overlay District. No neighbor will be adversely impacted by the provision of these courts rather than a compliant rear yard. Similarly, no views of monuments, the Ballpark or the Anacostia will be impeded by the provision of courts in lieu of a compliant rear yard. Further, the provision of dead rear yard space so close to the Ballpark would be inconsistent with the desired urban design of the Ballpark district. (Ex. 5 and Applicant's Presentation.)

Special Exception Relief for Parking and Variance Relief for Loading

41. The Applicant is maintaining its special exception relief pursuant to Sections 3104 and 2116.5 from 11 DCMR Sections 2101.1 since the four (4) parking spaces required for the retail use of the South Parcel are provided on the Main Parcel. Similarly, the Applicant is maintaining its variance relief from 11 DCMR Section 2201.1 relating to the loading

requirements for the South Parcel retail and the residential and retail uses on the Main Parcel. The modification described herein does not alter these elements of relief approved by the Zoning Commission. (Ex. 5 and Applicant's Presentation.)

GOVERNMENT REPORTS

42. OP noted in its July 3, 2013 report ("**OP Report**") recommended approval of the proposed design review modification. OP noted that the modification to the Project "addresses the criteria of the Capitol Gateway Overlay" and that "OP also continues to recommend approval of the previously approved rear yard variance, and supports the requested flexibility for the width of the hotel structure." The OP Report also noted that the building approved by Zoning Commission Case No. 12-19, which created a 130 foot party wall on the Property's south boundary, caused the Applicant to reorient the residential component so that the court faced west instead of south. OP stated that "[t]he proposed modification ... is generally consistent with most aspects of the zoning regulations, specifically height, FAR and use. As such, the proposal is generally consistent with the Comprehensive Plan and, as detailed in the OP report for case #12-05, would further several Guiding Principles of the Plan. The application is also consistent with major policies from various elements of the Comprehensive Plan including the Land Use, Transportation and Economic Development Citywide Elements, and the Lower Anacostia Waterfront / Near Southwest Area Element." OP's analysis of the modification to the Project compared to the design review criteria of §§ 1600.2, 1606, and 1610 consistently supported the Project, and OP did not oppose granting the Project an additional 1.0 FAR of CLD density. Likewise, OP did not object to any of the requested variance or special exception relief. (Ex. 12.) At the July 15, 2013 Zoning Commission hearing, OP voiced "strong support" for the modification to the Project.
43. The District Department of Transportation ("**DDOT**") submitted a report into the record on July 3, 2013. DDOT concluded that "the proposed modification does not alter the findings in our September 12, 2012 Zoning Commission report, which concluded that the previously approved project would not adversely impact the surrounding transportation network." DDOT continued that "DDOT has no objection to the application, provided the previous transportation related conditions identified in our previous report attached here and memorialized in Zoning Commission Order No. 12-05 are included in the new Zoning Order." (Ex. 11.) DDOT did not appear at the hearing on July 15, 2013 and the Commission read its report into the record.

ADVISORY NEIGHBORHOOD COMMISSION REPORT

44. The ANC voted 7-0 on June 10, 2013 to support the Project. As noted above, the ANC voted with a quorum present at a regularly called, properly noticed meeting to support the Project. (Ex. 9.)

PARTIES IN SUPPORT OR OPPOSITION

45. No other parties appeared at the hearing to support or oppose the Project.

POST-HEARING SUBMISSION

46. As requested by the Commission, on August 5, 2013, the Applicant submitted the following information in its post-hearing submission:

- Additional design information, including plans, relating to the residential component of the Project. The Applicant submitted more detailed elevations of the west, south and east-facing facades of the residential component. These, combined with the renderings included in the May 9, 2013 application packet, depict the nautical theme of the apartment building, which draws inspiration from the project's location near the Anacostia River.
- Greater information about the specific materials being utilized in the modified building and where those materials will be incorporated into the facades. These materials shown corresponded to the material samples that the Applicant team brought to the July 15, 2013 hearing.
- Additional information regarding how the balconies will appear and operate, including renderings focusing on the balconies' appearance and specifications showing the various types of railings and detailing the horizontal bays defining the 1st Street façade.
- Additional information relating to the proposed television viewing area on the residential component's rooftop, including studies of the viewing area's impact on adjacent properties and guidelines relating to the operation of such area mitigating adverse impacts of such area.

(Ex. 17, Ex. 17A, and Ex. 17B.)

CONCLUSIONS OF LAW

1. The Commission finds that, pursuant to § 1610.3 of the Zoning Regulations, the Applicant must satisfy the burden of proving the elements necessary to receive design review approval of the modification of the Project under §§ 1604, 1606, 1610.5, and 3104. In addition, the Applicant must also carry its burden to modify its variance relief from the rear yard requirements of § 636. The Applicant is not modifying its previously granted special exception relief pursuant to § 2115.6 for parking on the South Parcel or variance relief from the loading requirements of § 2201.1, and such relief remains intact.
2. The Zoning Commission set forth its authority and standards for review of special exception and variance relief in the Order. Those Conclusions of Law are incorporated herein by reference. The applicant has carried its burden to demonstrate each of the three relevant factors for the modification of the previously-approved rear yard variance.
3. The Commission provided proper and timely notice of the public hearing on this application by publication in the D.C. Register and by mail to the ANC, OP, and to owners of property within 200 feet of the site.
4. The proposed Project as modified is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density of the residential component will not cause a significant adverse effect on any nearby properties. The Commission notes that the Applicant will enter into CLD covenants pursuant to Chapter

16 and § 1602.1(a) and (e), to achieve this density and mix of uses. The Commission approves the additional density in excess of 8.5 FAR as the Applicant has provided sufficient evidence that the Project satisfies the objectives and guidelines of §§ 1601, 1604, and 1606. The residential, office, hotel, and retail uses as modified are appropriate for the site. The proposed development as modified has been appropriately designed to complement existing and proposed buildings adjacent to the site, with respect to height and mass.

5. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
6. 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. As is reflected in the Findings of Fact, at its duly noticed meeting held on June 10, 2013, ANC 6D, the ANC within which the Property is located, voted 7-0 in support of the application the modification to the prior CG Overlay District review approval. The Commission found this advice to be persuasive.
7. 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) to give great weight to the recommendations of the Office of Planning in all zoning cases. The Commission has considered OP’s recommendation for approval of the application and found its advice to be persuasive.
8. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the reports and testimony OP and DDOT provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under §§ 1610 and 3104, and the burden for the variance requested. The Commission finds that the Project as modified fully satisfies the goals and objectives of the CG Overlay District Review. The Commission finds that the Property is subject to exceptional conditions as outlined in the Applicant’s application and pre-hearing statement and as presented at the public hearing. The Commission agrees that the Applicant faces practical difficulties satisfying the strict application of the Zoning Regulations with regard to the rear yard requirements of § 636. The Commission agrees with the Applicant’s written statements and testimony at the public hearing that it would be unnecessarily burdensome for the Applicant to satisfy the requirement. The Commission also finds that granting this variance relief will not cause substantial detriment to the public good and the variance can be modified without impairing the intent, purpose, and integrity of the Zone Plan.
9. The Commission finds that granting the modified variance relief will create a building of significant architectural quality that will further the goals of the CG Overlay District and will create a new entertainment, retail, office, and residential destination in the District of Columbia.

10. The application for CG Overlay District Review will promote the orderly development of the site in conformity within the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and the Map of the District of Columbia.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL**, consistent with this Order, of the application for CG Overlay District Review, special exception, and variance relief. This approval is subject to the following guidelines, conditions, and standards:

1. The residential component of the Project shall be built in accordance with the architectural plans, elevations, and materials submitted in the record of Z.C. Case No. 12-05A as Exhibit 5A, Exhibit 10A, and Exhibit 17A, as modified by the guidelines, conditions, and standards below.
2. The overall maximum permitted density shall be approximately 9.46 FAR, although 9.48 FAR shall be permitted if the enlargement to the hotel component is deemed necessary by the Applicant. In order to achieve the maximum permitted density, the Applicant shall comply with the process set forth under §§ 1602.1(a) and 1602.1(e) of the Zoning Regulations.
3. The maximum permitted height of the building shall be 130 feet. The Project in its entirety shall include approximately 304,000 square feet of residential use (approximately 326 units), 224,000 square feet of office use, approximately 126,000 square feet of hotel use (approximately 170 units), and approximately 45,000 square feet of retail use. The Project shall include between 370 and 390 parking spaces.
4. A minimum of 77.5% of gross floor area on the ground floor shall be devoted to preferred uses as defined in §§ 1604 and 1606.
5. With respect to the design of the Project, the Applicant shall have flexibility to incorporate the elements of Condition 9 of Zoning Commission Order No. 12-05. The Applicant shall also have the flexibility to increase the width of the hotel by up to one (1) foot (from 59 feet to 60 feet), and shall have flexibility to vary the sizes of certain windows of the hotel component from 4'-0 to 4'-8" wide.
6. The Applicant shall incorporate the operational rules and regulations for the design and usage of the outdoor television rooftop viewing area as attached to the Applicant's Post-Hearing Submission Tab B (Exhibit 17B).
7. This Order shall be valid for a period of three years from its effective date. Within such time, an application must be filed for a building permit for the construction of the office, hotel, or residential component of the Project. The filing of this or any subsequent building permit application will vest the Order as to that component provided that the subsequent application is filed within five years of the issuance of the final certificate of occupancy for the first component of the Project. Any request for an extension of time shall be filed and decided pursuant to 11 DCMR § 2408.10 through 2408.11.

8. Subject to the timing requirements set forth in Paragraph 20 of the Findings of Fact in this Order, the Project may proceed in a phased fashion. The ground-floor connection between the residential, hotel, and office uses need only be completed once the entirety of the building is constructed. If the hotel and residential component of the Project proceeds prior to the office component of the Project, the hotel and residential component may use M Street as the measuring point for height until the remainder of the Project is constructed without any temporary structure(s) or building connection(s) being constructed on the office component.
9. Conditions Numbered Five, Six, Seven, Eight, and Ten of Zoning Commission Order No. 12-05 are incorporated herein.

For this reason stated above, the Commission concludes that the Applicant has met its burden, and it is hereby **ORDERED** that the application be **GRANTED**.

On September 9, 2013, upon the motion of Commissioner Turnbull, as seconded by Vice Chairperson Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of ____-____-____ (Anthony J. Hood, Marcie I. Cohen, Peter G. May, Michael G. Turnbull, and Robert M. Miller to _____).

In accordance with the provisions of § 3028 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register* on _____.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING