

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



ZONING COMMISSION ORDER NO. 06-46A

Z.C. Case No. 06-46A

Modification to Capitol Gateway Overlay Design Review Approval

**MR BP Residential #1A, LLC, MR BP Residential #1B, LLC, MR BP Office #1, LLC, and
MR/LB BP Hotel #1, LLC**

January 28, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on January 28, 2008. At the meeting, the Commission approved an application from MR BP Residential #1A, LLC, MR BP Residential #1B, LLC, MR BP Office #1, LLC, and MR/LB BP Hotel #1, LLC (the "Applicants") for a modification to a project approved pursuant to the Capitol Gateway Overlay District design review provisions (the "CG Overlay provisions") set forth in § 1604 of the District of Columbia Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). Because the requested modification was deemed to be minor in nature, a public hearing was not required. The Commission determined that the modification request was properly before it under § 3030 of the Zoning Regulations.

FINDINGS OF FACT

By Z.C. Order No. 06-46, the Commission approved a new development for the property now designated as Lot 168 (formerly Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 and a portion of a closed public alley) in Square 701 pursuant to the CG Overlay provisions. The Commission also approved a number of related variances and special exceptions for the project pursuant to § 1604.9 of the Zoning Regulations. The original application was filed by MR N Street Southeast LLC and MR Ballpark 5 LLC, the Applicants' predecessors-in-interest.

As originally approved, the project would contain approximately 762,680 square feet of gross floor area and would have an overall density of 7.44 FAR. The project was to consist of two buildings on a single record lot. The north office building (the "North Building") would be located above the entrance to the Navy Yard Metrorail station and would contain office space with preferred retail uses on the ground floor. The south residential building (the "South Building") would include two wings of residential use, a hotel, and ground-floor retail space. The proposed project was to include approximately 277,600 square feet of gross floor area devoted to office use; 105,560 square feet of gross floor area devoted to hotel use; 320,100 square feet of gross floor area devoted to residential use; and 51,010 square feet of gross floor area devoted to preferred retail uses. The Commission approved the proposed project on February 12, 2007, and Z.C. Order No. 06-46 became final upon publication in the *D.C. Register* on November 23, 2007, pursuant to 11 DCMR § 3028.9.

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ZONING COMMISSION
District of Columbia
CASE NO. order-44
EXHIBIT NO. 1J

By letter dated November 28, 2007, counsel for the Applicants requested a modification to the approved project pursuant to § 3030 of the Zoning Regulations. The original design modifications were illustrated on the Architectural Plans and Elevations dated November 28, 2007 and marked as Exhibit 1B.

Based on comments from the Office of Planning ("OP"), the Applicants submitted a revised set of Architectural Plans and Elevations and a narrative discussing the proposed modifications on January 8, 2008 to replace the original submission on November 28, 2007. The plans and narrative are marked as Exhibits 6 and 7. The requested modifications would result in the following changes to the gross floor area of the approved project:

- a. The office space in the proposed project will be reduced from 277,600 square feet of gross floor area to 267,162 square feet of gross floor area;
- b. The hotel space in the proposed project will be increased from 105,560 square feet of gross floor area to 106,269 square feet of gross floor area;
- c. The retail space in the proposed project will be increased from 51,010 square feet of gross floor area to 51,022 square feet of gross floor area;
- d. The residential space in the proposed project will be increased from 320,100 square feet of gross floor area to 320,511 square feet of gross floor area; and
- e. The total gross floor area of the project will be reduced from 762,680 square feet (7.44 FAR) to 753,466 square feet (7.35 FAR).

The proposed modifications also include a number of minor design changes that were described in detail in the narrative submitted by the Applicants on January 8, 2008.

Pursuant to 11 DCMR § 3030.11, the Director of the Office of Zoning placed the request for a modification on the Commission's consent calendar for its public meeting on January 14, 2008. At its public meeting on January 14, 2008, the Commission requested the Applicants to provide additional materials to more clearly illustrate the proposed modifications to the approved plans. The Applicants filed supplemental materials with the Office of Zoning on January 22, 2008 providing clarification of the modifications as requested by the Commission. Those materials are marked as Exhibit 11A.

On January 28, 2008, the Commission held a special public meeting to consider the modification. At the meeting, the Commission voted to approve the application for a modification to Z.C. Order No. 06-46.

There was no opposition to the modification request. Advisory Neighborhood Commission ("ANC") 6D was served by the Applicant with the requested modification, but the ANC did not submit a written report. OP submitted a report, dated January 10, 2008, recommending approval of the proposed modification.

CONCLUSIONS OF LAW

Upon consideration of the record in this case, the Commission concludes that the proposed modification is of little or no importance or consequence and is consistent with the intent of the Commission in approving the original project in Zoning Commission Case No. 06-46. In addition, the proposed modification will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

The approval of this modification is not inconsistent with the Comprehensive Plan. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of this application for a modification of the project approved in Z.C. Order No. 06-46. The conditions of Z.C. Order No. 06-46 are hereby revised as follows:

1. The approval of the proposed development shall apply to Lots ~~3, 98-118, 144-147, 161, 162, 167, 815, and 824~~ **168** in Square 701 ~~and portions of the public alley in Square 701 closed on an emergency basis pursuant to Emergency Alley Closing Legislation.~~
2. The project shall be built in accordance with the Architectural Plans and Elevations, marked "Exhibit A" in the post-hearing filing, dated January 25, 2007, and marked Exhibit 33 in the record of Zoning Commission Case No. 06-46 ~~the case (the "Original Approved Plans")~~, **as modified by the Architectural Plans and Elevations, marked as Exhibit 7 of the record in this case and attached as Exhibit B to the letter submitted by the Applicants to the Office of Zoning on January 8, 2008 (the "Revised Plans"), and as further** modified by the guidelines, conditions, and standards below.
3. The project in its entirety shall include a maximum of ~~277,600~~ **267,162** square feet of gross floor area of office space, a maximum of ~~105,560~~ **106,269** square feet of gross floor area of hotel space, a maximum of ~~51,040~~ **51,022** square feet of gross floor area of retail space, and ~~320,100~~ **320,511** square feet of gross floor area of residential space. The distribution of uses and densities shall be as shown on Sheet D1 of the Revised Plans Architectural Plans and Elevations.


4. The overall maximum permitted density shall be ~~7.44~~ **7.35** FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from **other lots within the CG Overlay District** ~~Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700~~ **and shall transfer residential density to those same lots** by the process set forth in **and in accordance with the limitations of § 1602.1** ~~and these same lots shall receive a like amount of residential density.~~
5. Except for roof structures, the maximum permitted heights of the North and South Buildings shall be 110 feet. Roof structures shall be as shown on Sheet **A7 of the Original Approved Plans** ~~A7 of the Architectural Plans and Elevations.~~
6. The project shall include a minimum of 264 off-street parking spaces for residential use and 279 off-street parking spaces for hotel, office, and retail uses including vault spaces.
7. The landscape treatment shall be as shown on Sheet L1 of the **Original Approved Plans** ~~Architectural Plans and Elevations~~, subject to DDOT approval.
8. The interim plan for Half Street shall be implemented in accordance with Sheets L2 – L4 of the **Original Approved Plans** ~~Architectural Plans and Elevations~~. **The Applicants shall maintain a construction fence on the east side of the right-of-way that will provide up to a sixty foot clear path for pedestrians on game days. The Applicants shall also provide pedestrians with overhead protection at the Metro entrance and shall direct pedestrians to the west side of the street when the stadium is not being used for games. The Applicant shall provide temporary paving of Half Street during the interim conditions period.**
9. In accordance with proposed § 1607.2, a 12-foot step back shall be provided above a height of 80 feet along Half Street, as shown on Sheets A5 **of the Revised Plans** and **on Sheet A7 of the Original Approved Plans** ~~Architectural Plans and Elevations~~.
10. A minimum floor-to-ceiling clear height of 14 feet shall be provided in those areas designated for ground floor preferred uses, except for:
 - a. Retail 7, which shall provide a minimum floor-to-ceiling clear height of 13 feet for ground floor preferred uses;
 - b. Retail 5A, which shall provide a minimum floor-to-ceiling height of 11 feet, 6 inches for ground floor preferred uses; and
 - c. A minimum floor-to-ceiling clear height of 11 feet shall be provided for back of house space.

11. One 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery spaces shall be provided for the proposed development.
12. A minimum of 56.3%, or 51,022 ~~51,010~~ square feet, of gross floor area of the ground floor shall be devoted to preferred uses.
13. The new 30-foot-wide east-west connection, labeled "Monument Place" on Sheet A1 of the Revised Plans ~~Architectural Plans and Elevations~~, shall consist of a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive lane, an 8-foot vehicular lay-by lane for the hotel use, and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones shall be demarcated with a line of bollards.
14. The vehicular circulation program for the new 30-foot-wide east-west connection shall be one-way east bound, from Half Street, S.E. to Cushing Place, S.E.
15. The Applicants shall provide sustainable building design features as set forth in "Exhibit B" of the Applicants' post-hearing filing, dated January 25, 2007 (Exhibit 33 of the record in Z.C. Case No. 06-46). At least 30% of the roof areas for the proposed development shall be green roofs.
16. The elevator from the parking garage to street level shall be located on Monument Place, as shown on Sheet A1 of the Revised Plans ~~Architectural Plans and Elevations~~.
17. The main area of the hotel lobby shall be located on the second floor of the South building with ground floor entry provided as shown on Sheet A4 of the Revised Plans ~~Architectural Plans and Elevations~~.
18. The Applicants shall rough in the plumbing for shower facilities, leaving the decision to build out the facilities to the office tenant.
19. Signage located on ~~the roof of~~ the South Building shall be consistent with the illustrations on Sheets A9 of the Revised Plans and on Sheet A9a of the Original Approved Plans ~~Architectural Plans and Elevations~~.
20. The Applicants shall contribute up to 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E.
21. The Owner is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with 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 identity or expression, 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 prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Vote of the Zoning Commission taken at the public meeting on January 28, 2008: **5-0-0** (Anthony J. Hood, Gregory N. Jeffries, Curtis L. Etherly, Jr., Michael G. Turnbull, and Peter G. May to approve).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the *D.C. Register*; that is on DEC 12 2008.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-46A

As Secretary to the Commission, I hereby certify that on DEC 9 2008 copies of this Z.C. Order No. 06-46a were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. <i>D.C. Register</i> | 6. Councilmember Mary Cheh |
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ATTESTED BY:



Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning