

Exhibit A

Appendix

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION OF THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 06-46
Z.C. Case No. 06-46
Capitol Gateway Overlay Review
WMATA, MR N Street S.E, LLC, and MR Ballpark 5 LLC

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on January 11, 2007 to consider an application for property owned by the Washington Metropolitan Area Transit Authority ("WMATA"), MR N Street Southeast LLC, and MR Ballpark 5 LLC for review and approval of a new development pursuant to the Capitol Gateway Overlay District provisions ("CG Overlay District Review") set forth in § 1604 of the D.C. Zoning Regulations (the "Zoning Regulations"), Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The property that is the subject of this application consists of Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 in Square 701 and portions of the public alley in Square 701 closed on an emergency basis pursuant to Closing of Portions of a Public Alley System on the West Side of Square 701, S.O. 06-3392, Emergency Act of 2006, effective December 28, 2006 (D.C. Act 16-657) (the "Emergency Alley Closing Legislation"). MR N Street Southeast LLC and MR Ballpark 5 LLC, affiliates of Monument Realty LLC, are collectively referred to as the "Applicants."

In addition, the Applicants sought approval, pursuant to § 1604.9, for: (1) a special exception from the setback requirements for roof structures in the CR District; (2) a variance from the private residential recreation space requirements of the CR District; and (3) a variance from the loading requirements of the CR District. On November 10, 2006, the Commission issued its Notice of Proposed Rulemaking in Z.C. Case No. 05-10 for text and map amendments to the provisions for the Capitol Gateway Overlay District. In response to the Commission's Notice of Proposed Rulemaking in Z.C. Case No. 05-10, the Applicants, pursuant to § 1604.9, also requested: (1) a variance from the step back requirements of proposed § 1607.2; (2) a variance from the ground floor preferred uses requirements of proposed § 1607.3; (3) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S.E.; and (4) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Commission considered the application pursuant to Chapter 30 of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

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ZONING COMMISSION
District of Columbia
CASE NO.06-46
EXHIBIT NO.40

FINDINGS OF FACT

Application, Parties, and Hearing

1. On November 2, 2006, the Applicants filed an application for review and approval of new development pursuant to the CG Overlay District Review for property located in the Southeast quadrant of Washington, D.C. and generally bounded by M Street on the north, Half Street on the west, N Street on the south, and Cushing Place on the east. Consisting of approximately 102,494 square feet of land, the site includes Lots 3, 98-118, 144-147, 161, 162, 167, 815 and 824 in Square 701 and portions of the public alley in Square 701 closed pursuant to the Emergency Alley Closing Legislation (the "Subject Property"). The site is presently zoned CG/CR. Pursuant to § 1604 of the Zoning Regulations, the Applicants are seeking review and approval of the proposed development under the CG Overlay District Review, a special exception from the setback requirements for roof structures in the CR District, and variances from the private residential recreation space, loading, proposed step back, proposed ground floor preferred uses, proposed street frontage along Half Street, and proposed minimum floor-to-ceiling clear height provisions of the Zoning Regulations.
2. The purposes of the CG Overlay District that are relevant to the proposed development include:
 - a. 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;
 - b. Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural, and hotel or inn uses;
 - c. Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail Station; and
 - d. Providing for the development of Half Street, S.E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air and a pedestrian scale.
3. After proper notice, the Commission held a hearing on the application on January 11, 2007. Parties to the case included the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located.
4. At its duly noticed meeting held on January 8, 2007, ANC 6D voted 4-0-2 in support of the application for CG Overlay District Review. In its January 9, 2007 report, the ANC

found that the project meets the architectural criteria set forth in the CG Overlay with respect to height, mass, and setbacks and is consistent with the objective of creating a lively and welcoming stadium district.

5. Expert witnesses appearing on behalf of the Applicants included: Robert Sponseller of Shalom Baranes Associates, Jordan Goldstein of Gensler, John Fitch of Landscape Architecture Bureau, Steven Sher of Holland & Knight, and Daniel Van Pelt of Wells and Associates.
6. Uwe Brandes of the Anacostia Waterfront Commission (“AWC”) appeared before the Commission as a person in support of the application. Mr. Brandes expressed AWC’s strong and enthusiastic support for the application. Mr. Brandes noted that there are several new buildings along M Street and within the Capitol Gateway (CG) Overlay, but none have the attention to detail that the Applicants present in their application. Mr. Brandes pointed out that the building design celebrates pedestrian movement along Half Street. Mr. Brandes also stated that the D.C. Sports and Entertainment Commission is responsible for designing a circulation plan for baseball game days.
7. At the conclusion of the hearing, the Commission directed the Applicants to submit the following: (1) revised articulation of how the Applicants meet their burden of proof for special exception and variance relief; (2) an interim plan for Half Street prior to construction of the ultimate streetscape plan and a description of the traffic plan for game days; (3) an explanation of the design and operation of Monument Place and the intersection of Half Street and Monument Place; (4) an evaluation of the roof structure located on the hotel roof; (5) a description and study of the location of the elevator for the parking garage to street level; (6) a confirmation as to whether the Applicants will provide showers for the office tenants in response the District Department of Transportation (“DDOT”) Report; (7) a description of sustainable building design features based on LEED certification categories likely to be incorporated in to the proposed development; (8) the likelihood of moving the hotel lobby to the first floor; (9) status report regarding DDOT approval of proposed street lighting; and (10) an explanation of signage at the northeastern corner of the site and on the roof of the South Building. By submission dated January 25, 2007, the Applicants addressed the areas identified by the Commission as requiring supplemental information.
8. At its public meeting on February 12, 2007, the Commission took proposed and final action, by a vote of 5-0-0, to approve the plans submitted into the record and all but one of the relief requests. The Commission denied that portion of the request for relief from the requirements of proposed § 1607.2 to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street.

Project Overview

9. The Applicants propose to develop the Subject Property with a 762,680-square-foot mixed-use development consisting of residential, office, hotel, and retail uses. The proposed development includes two buildings on a single record lot: (1) the north office building with ground floor retail (the "North Building") and (2) the south residential building containing two wings of residential use, a hotel and ground floor retail (the "South Building"). The two buildings will be separated by a private driveway. For floor area ratio ("FAR") purposes, the proposed development will consist of approximately 105,560 square feet of hotel use, 51,010 square feet of retail use, 320,100 square feet of residential use, and 277,600 square feet of office use.
10. Pursuant to § 1602.1 of the Zoning Regulations, the Applicants will transfer approximately 49,680 square feet of floor area from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 to the Subject Property in order to achieve density of approximately 7.44 floor area ratio ("FAR") and a building height of 110 feet. The Applicants have also devoted street frontage at the ground floor, exclusive of the entrance to the Navy Yard Metro Station and building entrances, to preferred retail use along M Street and Half Street.
11. The proposed development will provide 264 parking spaces for the residential use and 279 parking spaces for the hotel, retail, and office uses. The proposed development will also provide one 55-foot loading berth, six 30-foot loading berths, and two 20-foot service/delivery loading spaces.

Description of the Surrounding Area

12. The proposed development is surrounded by a variety of uses. Immediately across N Street to the south will be one of the two parking garages serving the baseball stadium, which is currently under construction. To the north of the site, across M Street, a new office building is nearing completion. To the northeast, a proposed development consisting of a new twelve-story office building with ground floor retail has been approved by the Commission under the CG Overlay District Review. A development consisting of a mixed-use office and residential building with ground floor retail is being considered for the eastern portion of Square 701. The WMATA bus garage is west of the Subject Property across Half Street.

Renovation and Expansion of the Navy Yard Metrorail Station

13. One of the major components of the proposed development is the renovation and expansion of the Navy Yard Metrorail Station located at the northwestern corner of the site. The Navy Yard Metrorail Station will be updated with a more welcoming entrance that includes additional gates and fare-card machines at street level. The Applicants

testified that the renovation and expansion of the Navy Yard Metrorail Station must be complete by April 2008, in order to accommodate Opening Day for the Washington Nationals at the baseball stadium. The renovation of the Navy Yard Metrorail Station will enhance the pedestrian experience around the baseball stadium and within the proposed development. The renovation and expansion also provide an alternative means of transportation for baseball patrons and District residents. As the Applicants stated in their written materials and testimony at the public hearing, the Navy Yard Metrorail Station limits the amount of gross floor area the Applicants can devote to preferred uses at the ground floor level, which also affects the amount of street frontage for preferred uses along Half and M Streets.

Ground Floor Preferred Uses

14. In complying with the provisions of the CG Overlay District, the Applicants have incorporated preferred uses at the ground floor level throughout the proposed development. The Applicants have devoted 56.3%, or 51,010 square feet, of the gross floor area at the ground floor to retail and preferred uses. The Applicant's allocation of preferred uses at the ground floor is limited by the renovation and expansion of the Navy Yard Metrorail Station and the building entrances that access uses that begin at the second floor. The Navy Yard Metrorail Station and the extension from Cushing Place to N Street, required as part of the alley closings that unified the site, account for 11,400 square feet of the gross floor area at the ground floor.
15. The Applicants have provided minimum floor-to-ceiling clear heights for all of the ground floor preferred uses except in the spaces labeled as Retail 7, Retail 5a, and back of house spaces on Sheet A13 of the Architectural Plans and Elevations, dated January 25, 2007 (the "Architectural Plans and Elevations"), which are identified as "Exhibit A" of the Applicants' post-hearing filing. The Applicants will provide a minimum floor-to-ceiling height in Retail 7 of 13 feet, to accommodate the slope in the site that occurs at Retail 7. The Applicants will provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches at the ground floor for Retail 5a, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct in Retail 5a an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. The location of the hotel lobby and bar above Retail 5a requires that the hotel lobby and bar have clear ceiling heights taller than the typical clear ceiling height of 9 feet, 8 inches which are found on the second floor of the South Building. The Applicants also will provide a minimum floor-to-ceiling clear height of 11 feet for back of house space that contains large mechanical equipment (such as kitchen exhausts and other equipment associated with restaurant use) and for back of house space located below residential space.

Requested Areas of Relief: Special Exceptions

Setback Requirements for Roof Structures in the CR District

16. The Applicants requested special exception relief pursuant to § 411 of the Zoning Regulations to permit roof structures facing the interior courts of the building that do not meet the setback requirements for roof structures in the CR District. The Applicants will locate three mechanical penthouses on the roof of the residential building. All setback requirements from Half, M, and N Streets, S.E. will be met.
17. The Applicant's land use expert, Steven Sher, testified that Applicants' compliance with the roof structure regulations is impractical because of the size of the building lot, the "J" shaped footprint of the South Building, the required setbacks and step backs along Half Street, and the need for three separate cores to accommodate the hotel use and the residential uses located on two separate wings of the South Building. Mr. Sher explained that, if the Applicants were to meet all the setback requirements of the roof structure regulations, the Applicants would not have sufficient room to accommodate all necessary rooftop functions, such as housing mechanical equipment, nor would the Applicants meet the step back requirements of the proposed CG Overlay provisions relating to Half Street, S.E.
18. Mr. Sher stated that the proposed roof structures will not impair the intent and purpose of § 400.7 of the Zoning Regulations and will not adversely affect the light and air of adjacent buildings. The deviations from the Zoning Regulations will now only be located along the walls of the interior court of the South. The interior court will be surrounded by the proposed development and, thus, not providing a setback for exterior walls facing the interior courts will not adversely affect the light and air of the adjacent buildings.

Step Back Requirements on Half Street, S.E.

19. As of the date of this Order, there are no specified standards for review for a special exception for step backs that deviate from the step back requirements of proposed § 1607.2, other than compliance with § 3104. The Applicants, pursuant to proposed § 1607.2, requested special exception relief from the step back requirements to permit a 12-foot step back above a height of 80 feet along Half Street. Mr. Sher testified that the requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps. The 12-foot step back will provide reasonable apartment depths on the 8th, 9th, and 10th floors, which will be lost if the Applicants are required to comply with proposed § 1607.2's minimum step back of 20 feet at a height of 65 feet. The 4-foot setback is an architectural marker that will provide compositional relief to an otherwise flat façade. The requested special

exception from the step back requirements on Half Street will not adversely affect the use of neighboring property.

Requested Areas of Relief: Variances

20. The Applicants, pursuant to § 1604.9, requested: (1) a variance from the private residential recreation space requirements of the CR District; (2) a variance from the loading requirements of the CR District; (3) a variance from the step back requirements of proposed § 1607.2; (4) a variance from the ground floor preferred uses requirements of proposed § 1607.3; (5) a variance from the requirements of proposed § 1607.4 for street frontage along Half Street, S.E.; and (6) a variance from the minimum floor-to-ceiling clear height requirements of § 1607.5. The Applicants withdrew their request for a variance from the percentage of lot occupancy requirements.

Uniqueness of the Property

21. The Applicants explained, in their pre-hearing and post-hearing filings, as well as in their testimony before the Commission, that the Subject Property is unique due to its large size, the entrance to the Navy Yard Metrorail Station located on site, and the need to comply with the provisions of both the CG Overlay District and the CR District. The Subject Property is a large site that fronts on both M Street and Half Street. It is required to comply with both the CG Overlay provisions for buildings, structures, and uses on M Street and the CG Overlay provisions for buildings, structures, and uses on Half Street. The presence of the Navy Yard Metrorail Station limits the design and allocation of uses within the proposed development. Thus, the Applicants have met their burden of showing that the property is unique.

Private Residential Recreation Space Requirements of § 635

22. The private residential recreation space provisions of the Zoning Regulations require that the Applicants devote an area equal to 15% of the residential gross floor area (or 48,000 square feet) to private residential recreation space. The proposed development devotes approximately 4,500 square feet (or 1.5% of the residential gross floor area) to private residential recreation space. Compliance with the private residential recreation space requirement would require the Applicants to devote 43,500 square feet of gross floor area designated to residential units or preferred retail uses to private residential recreation space. A change in the allocation of gross floor area devoted to residential units will require that the Applicants reduce the size and number of residential units and substantially alter their provision of retail, residential, and hotel uses in order to provide the required amount of private residential recreation space.

23. On January 7, 2007, the Commission took final action to repeal the residential recreation space requirements of the Zoning Regulations. Thus, the Applicants will not be required to comply with § 635 of the Zoning Regulations.

Loading Requirements of § 2201

24. The loading provisions of the Zoning Regulations require that the Applicants provide two 55-foot loading berths, five 30-foot loading berths, and four 20-foot service/delivery spaces. The proposed development provides one 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery space for the residential building and three 30-foot loading berths for the office building. Compliance with the loading requirements would force the Applicants to eliminate a portion of the ground floor area devoted to preferred uses and to alter their provision of proposed uses.
25. In their pre-hearing filing, the Applicants submitted a traffic impact study. That traffic impact study found that the number of loading berths required by the Zoning Regulations does not correspond with the demand in a mixed-use development nor do the regulations reflect consideration of how and when loading berths may be shared among the various uses. The traffic impact study concluded that the Applicants' proposed provision of loading berths and service/delivery spaces should adequately meet the needs of the proposed uses. The Applicants also stated that DDOT had no objection to this area of relief. Thus, a variance from the loading requirements will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

Step Back Requirements of Proposed § 1607.2

26. The proposed step back provisions of the CG Overlay require that any portion of a building or structure that exceeds 65 feet in height must provide a minimum step back of 20 feet in depth from the building line along Half Street, S.E. The Applicants requested a variance from the step back requirements to permit a 4-foot setback for 17 linear feet at the northern end of the hotel facing Half Street. The 4-foot setback will serve as an architectural marker that provides compositional relief to the building façade.
27. The Applicants explained that strict application of the step back provisions of the CG Overlay would require the Applicants to develop alternative means for creating compositional relief for an abnormally long building façade, but this explanation is insufficient to meet the variance test.

Ground Floor Preferred Uses of Proposed § 1607.3

28. The Applicants requested a variance from proposed § 1607.3, which requires that each new building shall devote not less than 75% of the gross floor area of the ground floor to retail service, entertainment, or arts uses. The Applicants testified that compliance with proposed § 1607.3 would require the Applicants to eliminate access to residential, hotel, and office uses and the extension of Cushing Place to N Street.
29. The proposed development will provide 56.3%, or 51,010 square feet, of gross floor area of the ground floor to preferred uses. A portion of the gross floor area of the ground floor will be devoted to lobby space for residential, hotel, and office uses, which start at the second floor. Of the difference between the required 75% and the provided 56.3% of gross floor area of the ground floor to preferred uses, 11,400 square feet will be devoted to the Navy Yard Metrorail Station entrance and the extension of Cushing Place to N Street.

Street Frontage along Half Street Requirements of Proposed § 1607.4

30. Pursuant to proposed § 1607.4, preferred uses must occupy 100% of the building's street frontage along Half Street, S.E., except for space devoted to building entrances or required to be devoted to fire control. Compliance with proposed § 1607.4 would create a practical difficulty for the Applicants, because the Applicants have no control over the amount of space devoted to the Metrorail Station entrance, which occupies 17% of the street frontage along Half Street.

Minimum Floor-to-Ceiling Clear Height Requirements of Proposed § 1607.5

31. The Applicants have requested relief from the minimum floor-to-ceiling clear heights for ground floor preferred uses requirement of proposed § 1607.5 to provide floor-to-ceiling clear heights of 13 feet in the retail space labeled "Retail 7" on the Architectural Plans and Elevations, 11 feet, 6 inches in the retail space labeled "Retail 5a" on the Architectural Plans and Elevations, and 11 feet in back of house space located below residential space. Retail 7 and Retail 5a can be found on Sheet A1 of the Architectural Plans and Elevations. The Applicants testified that compliance with proposed § 1607.5 would result in the loss of one floor due to the maximum building height of 110 feet and would require the Applicants to change their mixed-use program.
32. Proposed § 1607.5 requires that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses be 14 feet. A floor-to-ceiling clear height of 13 feet is provided in Retail 7, because the site slopes along N Street. The retail areas to the west and east of Retail 7 will have floor-to-ceiling clear heights in excess of 14 feet.

33. Retail 5a will have a floor-to-ceiling height of 11 feet, 6 inches at the ground floor, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct an exterior, covered stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. Because the hotel lobby and bar are intended to be lively, attractive places, the ceiling heights for the hotel lobby and bar are taller than the typical ceiling height of 9 feet, 8 inches found on the rest of the South building's second floor. The additional ceiling height has been transferred from the ground floor area below the hotel to the hotel lobby and bar on the second floor.
34. A floor-to-ceiling height of approximately 11 feet is provided for back of house space located below residential space and back of house space that stores large air handling equipment and kitchen exhausts. Storage facilities, kitchens, administrative offices, and other service areas associated with preferred uses are considered "back of house space." The Applicants have provided a section showing back of house space on Sheet A19 of the Architectural Plans and Elevations.
35. The proposed development requires a floor-to-ceiling clear height of approximately 11 feet for back of house space for two reasons. First, residential space requires a significant amount of mechanical equipment, which must be located below the residential space. Thus, a portion of the ceiling height for ground floor preferred uses must be devoted to equipment that serves the residential uses. Second, a portion of the ground floor preferred uses will require additional space for larger mechanical equipment, such as kitchen exhausts and other equipment associated with restaurant use. The size of mechanical equipment varies depending on the type of use and type of mechanical equipment selected.

Applicant's Responses to Areas Identified as Requiring Additional Information

Design and Operation of Monument Place

36. In response to the Commission's request for additional information, the Applicants, in their post-hearing filing dated January 25, 2007, have provided more information on the design and operation of Monument Place, a new 30-foot wide east-west connection, located between the office and residential buildings. Monument Place provides for vehicular and pedestrian circulation between Half Street and Cushing Place.
37. The 30-foot width of the connection includes a 4-foot pedestrian zone adjacent to the North Building, a 12-foot drive line, an 8-foot vehicular lay-by lane for the hotel and a 6-foot pedestrian zone adjacent to the South Building. The pedestrian zones are demarcated with a line of bollards that serve as a protective barrier for pedestrians and the buildings. Pedestrians will use Monument Place to access the retail elevators and the hotel entrance.

38. The vehicular circulation program is designed to be one-way east bound, from Half Street to Cushing Place. The one-way vehicular circulation program provides a number of benefits to the proposed development. It enhances pedestrian safety by providing unobstructed views of pedestrians from Half Street. The width of Monument Place is minimized in order to maximize the retail frontage and the amount of natural light to the hotel and office uses. The lay-by zone as designed minimizes the traffic impact on Half Street and Cushing Place.

LEED Certification Standards

39. The Applicants in their post-hearing filing have submitted a summary of the sustainable design features based on LEED certification categories that are likely to be incorporated into the proposed development. The Applicants also stated that at least 30 percent of the roof areas for the proposed development will be green roofs. Those green roofs will include a sorghum green roof system located on the penthouse roofs and a green roof over at least half of the central courtyard located at the second floor.

Proposed Streetscape & Interim Plan for Half Street

40. The Commission asked the Applicants to meet with DDOT regarding its approval of the proposed streetscape plan and to develop an interim plan for Half Street, S.E. As stated in their post-hearing filing, the Applicants and their design team met with representatives of DDOT to review the proposed streetscape improvements included in this submission. DDOT was represented by members of its Ward 6 Transportation Planning team, Anacostia Waterfront Initiative (“AWI”) team, and Traffic and Safety Division.
41. At that meeting, the Applicants presented their vision for Half Street, which included a discussion of grading, paving, street furniture, lighting, and pedestrian and vehicular circulation. The Applicants also explained key design elements such as the materials to be used, the elimination of curbs in the street section, the proposal of a raised section at the intersection of N and Half Streets, drainage, and planted storm water retention beds.
42. Representatives from DDOT noted that the proposed materials and street furniture deviated from AWI standards and that DDOT's position is that the Applicants would be responsible for the maintenance of those non-standard elements. In response to DDOT's position, the Applicants have identified standard DDOT pavers that will be incorporated into the current design.
43. The Applicants, in their post-hearing filing, provided an interim plan for Half Street on Sheets L2 through L4 of the Architectural Plans and Elevations. As of Opening Day

for the Nationals, April 2008, construction of the Metrorail station expansion will be complete. However, the Applicants' office building above the Metrorail station and the residential buildings at the southern end of Half Street will remain under construction during the first season of play at the new stadium. The Applicants intend to provide a covered walkway in the eastern curb lane of Half Street between M and N Streets during this first season. The Applicants anticipate that, by April 2009, construction of the buildings will be complete and the street paving will be in place for the eastern pedestrian zone and street area from east trench drain to west trench drain.

Traffic Plan for Game Days

44. At the public hearing, the Commission asked the Applicants to provide information concerning the traffic plan for game days. The Applicants, in their post-hearing submission, stated that they have been in contact with DDOT, the Sports and Entertainment Commission ("SEC"), and Gorove/Slade Associates, the traffic consultant developing the new Ballpark Traffic Operations Control Plan ("Ballpark TOCP"), to acquire information regarding the new Ballpark TOCP. The Applicants reported that, based on communication with DDOT and Gorove/Slade Associates, a draft Ballpark TOCP is not expected until April 2007. The Applicants stated that they will continue to coordinate with DDOT and the SEC as the Ballpark TOCP is developed.

Description and Study of the Retail Elevator

45. The Commission requested that the Applicants provide a description of the elevator from the parking garage to street level and study the location of that elevator. In their post-hearing submission, the Applicants describe the elevator as a way to transport guests from the parking garage directly to preferred uses located at the ground floor. The Applicants also have completed a study of the location of the elevator and have relocated the elevator from its original location along Half Street to Monument Place. The Applicants explained in their post-hearing submission that the placement of the elevator along Monument Place will provide additional street frontage for preferred uses along Half Street.

Location of the Hotel Lobby

46. The Commission asked the Applicants to provide information regarding the likelihood of relocating the hotel lobby to the first floor. In their post-hearing submission, the Applicants stated that the hotel lobby will remain at the second floor. The Applicants have proposed to construct an open, interior stair connecting the ground floor to the second floor in order to create a lively, attractive atmosphere for hotel guests and other patrons. The open, interior stair will also enhance the pedestrian experience as well as the streetscape.

Showers for Office Tenants

47. In response to the DDOT report requesting that the proposed development provide shower facilities for the employees of and visitors to the commercial component, the Commission requested that the Applicants confirm whether or not they would provide shower facilities for the office building. In their post-hearing submission, the Applicants stated that they will rough in the plumbing for shower facilities and leave to the office tenants the decision as to whether the shower facilities should be built out.

Restudy of Roof Structure Located on the Hotel Roof

48. The Commission asked the Applicants to restudy the roof structure located on the hotel roof. The Applicants have redesigned the penthouse structure located on the low roof of the hotel to minimize the visual impact of the penthouse structure. The penthouse structure has been reduced in height from 15 feet to 6 feet. The larger mechanical equipment has been relocated to locations within the South Building. The penthouse structure is set back a distance greater than 6 feet from all exterior walls and, therefore, complies with the zoning provisions concerning setbacks.

Signage at the Northeastern Corner of the Site and on the Roof of the South Building

49. The Commission requested an explanation of signage at the northeastern corner of the site and on the roof of the South Building. In their post-hearing submission, the Applicants replaced the banner sign located at the northeastern corner of the site, above the Metrorail station entrance in the previous submission, with a vertical architectural element related to the truss. The vertical element has been incorporated to emphasize the importance of the location at the corner of Half and M Streets and to assist in identifying the Metrorail station entrance.
50. For the signage located on the roof of the South Building, the Applicants provided two alternatives for the hotel sign located on the roof of the South Building, one with the embellishments and one without. The two alternatives to the hotel sign are illustrated in Sheets A9 and A9a in the Architectural Plans and Elevations.

Office of Planning Report

51. Through testimony presented at the public hearing, the Office of Planning (“OP”) recommended approval of the proposed development subject to the receipt of additional information outlined in their January 3, 2007 report. OP concluded that the review of the proposed development under the provisions of the CG Overlay District is appropriate and no planned unit development or rezoning approval is required. OP found that the proposed development is consistent with and furthers the goals of the Comprehensive Plan and the planning principles of the AWI.

52. OP had no objection to granting the requested variances from the private residential recreation space requirements of § 635, the loading requirements of § 2201, the requirements of § 1607.2 for ground floor preferred uses, the minimum floor-to-ceiling clear height requirements of § 1607.5, the step back requirements of § 1607.2, and the requirements of § 1607.4 for street frontage along Half Street, S.E. OP also had no objection to the special exceptions for roof structures under § 639 and for the step back requirements of § 1607.2.
53. In its January 3, 2007 report, OP stated that it believes the proposed development will provide an attractive gateway to the baseball stadium, provide for pedestrian movement to and from the Navy Yard Metrorail Station, and help achieve an active, mixed-use neighborhood, all while keeping with the objectives of the CG Overlay. However, OP requested additional information regarding architecture and streetscape in order to complete their evaluation of the proposed development.
54. The Applicants provided additional information regarding architecture and streetscape in their presentation at the January 11, 2007 public hearing on the matter and in their post-hearing filing dated January 25, 2007.

Other Governmental Agency Reports

55. By report dated January 5, 2007, DDOT recommended approval of the application subject to the following conditions: (1) design and installation by Applicants of a traffic signal at Half and M Streets, S.E.; (2) right-in/right-out control at Cushing Place and M Street, S.E. during peak hours; (3) truck delivery restrictions during peak hours; (4) negotiation of acceptable uses and operation of on-site parking spaces; (5) agreement and adherence to Transportation Demand Management measures to promote alternative modes of travel; (6) continued coordination with DDOT regarding ballpark operations; (7) continued coordination with WMATA regarding Navy Yard Metrorail Station improvements; and (8) DDOT approval of the conceptual designs for Half Street between M and N Streets, S.E. At the public hearing, the Applicants testified that they would pay 40% of the costs for the installation of the traffic signal at Half and M Streets, S.E., agreed to DDOT's request for right-in/right-out control at Cushing Place and M Street, S.E., and agreed to provide car share spaces for the commercial portion of the proposed development. The Applicants also agreed to provide transportation management information online, to provide bicycle storage facilities, and to continue coordination with District agencies regarding ballpark operations and Navy Yard Metrorail Station improvements.

CONCLUSIONS OF LAW

1. The application was submitted, pursuant to 11 DCMR § 1604.1 and proposed § 1610, for review and approval by the Commission. The application, pursuant to 11 DCMR § 1604.9, requested special exception and variance relief for the proposed development.
2. 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 ANC 6D, OP, and to owners of property within 200 feet of the site.
3. Pursuant to 11 DCMR § 1604, the Commission required the Applicants to satisfy the burden of proving the elements that are necessary to approve the overall project under § 1604; establish the case for special exception relief from the roof structure requirements of §§ 639.1 and 411.11; establish the case for special exception relief from the step back requirements of § 1607.2; satisfy the requirements for variance relief from the private residential recreation space provisions of § 635; meet the elements for variance relief from the loading provisions of § 2201; satisfy the elements for variance relief from the step back provisions of proposed § 1607.2; meet the requirements for variance relief from the ground floor preferred uses provisions of proposed § 1607.3; satisfy the requirements for variance relief from the provisions of § 1607.4 for street frontage along Half Street, S.E.; and meet the requirements for variance relief from the minimum floor-to-ceiling clear height provisions of § 1607.5.
4. The proposed development is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. The residential, office, hotel, and retail uses are appropriate for the site, which is located in the CG/CR District. The impact of the project on the surrounding area is not unacceptable. The proposed development has been appropriately designed to complement existing and proposed buildings adjacent to the site, with respect to height and mass.
5. No person or parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Commission to grant this application would not be adverse to any party.
6. Approval of the proposed development is not inconsistent with the Comprehensive Plan.
7. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A)(2001) to give “great weight” to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, at its duly notice meeting held on January 8, 2007, ANC 6D, the ANC within which the Subject Property is located, voted 4-0-2 in support of the application for CG Overlay District Review.

8. Based upon the record before the Commission, having given great weight to the views of the ANC, having considered the testimony of AWC, and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicants have met the burden of satisfying the applicable standards under 11 DCMR § 1604 and proposed § 1610, the independent burden for each special exception, and all but one of the variances requested.
9. The Commission concludes that the Applicants failed to meet the burden of satisfying the applicable standards for variance relief from proposed § 1607.2 in order to permit a four-foot setback, instead of the required 20-foot setback, from the building line along Half Street. The three-part variance test requires the Applicants to show an extraordinary or exceptional situation or condition resulting in practical difficulties to the Applicants in complying with the Zoning Regulations, and relief can only be granted where there will be no substantial detriment to the public good or substantial impairment of the zone plan. (11 DCMR § 3103.2.)

The Commission concludes that the property exhibits the extraordinary or exceptional conditions necessary to meet the first part of the variance test (*See*, Finding of Fact No. 21), but fails to see how, in the context of this particular variance request, the second part of the test is met. There is no evidence that meeting the 20-foot setback requirement results in any particular practical difficulties for the Applicants. As stated in Finding of Fact No. 27, the Applicants explained that, without this variance, it would need to “develop alternative means for creating compositional relief” for the building façade. The Applicants’ statement belies the fact that other alternatives are available, and its evidence did not show that such alternatives, perhaps not requiring zoning relief, had been attempted, but somehow failed, thereby leaving the Applicant with the need to request this variance relief. Because the second part of the test is not met, the Commission does not need to reach a determination of the third part of the test.

10. The application for CG Overlay District Review will promote the orderly development of the site in conformity with 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 above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the application for CG Overlay District Review. This approval is subject to the following guidelines, conditions, and standards:

1. The approval of the proposed development shall apply to Lots 3, 98-118, 144-147, 161, 162, 167, 815, and 824 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 the case, as modified by the guidelines, conditions, and standards below.
3. The project in its entirety shall include a maximum of 277,600 square feet of gross floor area of office space, a maximum of 105,560 square feet of gross floor area of hotel space, a maximum of 51,010 square feet of gross floor area of retail space, and 320,100 square feet of gross floor area of residential space. The distribution of uses and densities shall be as shown on Sheet D1 of the Architectural Plans and Elevations.
4. The overall maximum permitted density shall be 7.44 FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700 by the process set forth in § 1602.1 and those 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 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 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 Architectural Plans and Elevations.
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 and A7 of the 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;

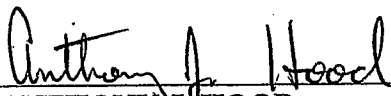
- b. Retail 5a, which shall provide a minimum floor-to-ceiling clear height of 11 feet, 6 inches for ground floor preferred uses; and
 - c. A minimum floor-to-ceiling clear height of 11 feet shall be provided for back of house space.
- 11. One 55-foot loading berth, three 30-foot loading berths, and two 20-foot service/delivery spaces shall be provided for the proposed development.
- 12. A minimum of 56.3%, or 51,010 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 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). 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 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 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 and A9a of the 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 Applicants are 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

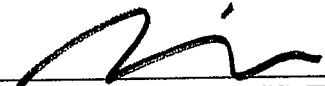
with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, 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. The failure or refusal of the Applicants to comply with the Act shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On February 12, 2007, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

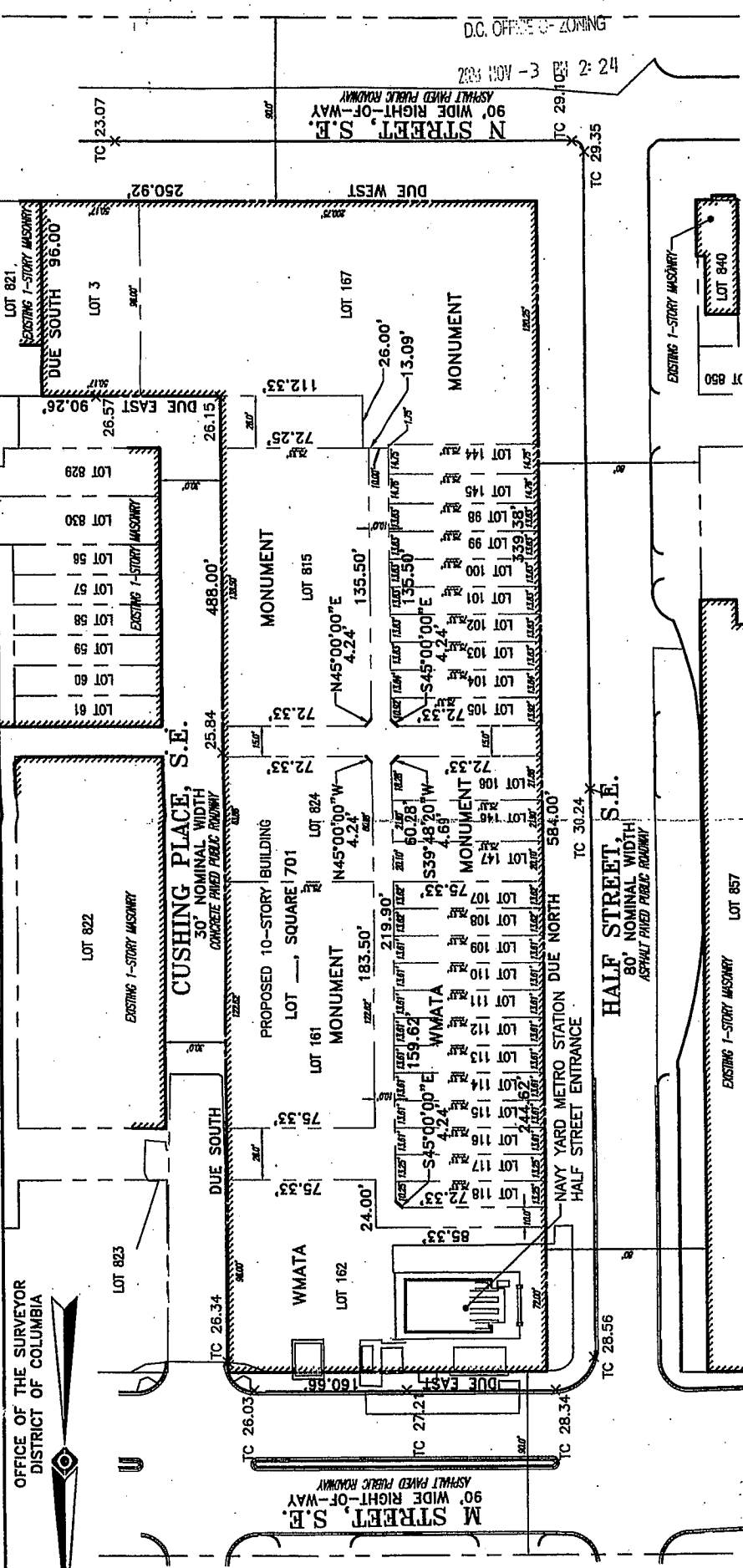
This Order was **ADOPTED** by the Zoning Commission at its public meeting on February 12, 2007 by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to adopt).

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 NOV 23 2007.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

OFFICE OF THE SURVEYOR
DISTRICT OF COLUMBIA



SURVEYORS CERTIFICATE

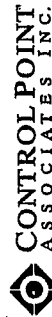
I HEREBY CERTIFY THAT THE PROPERTY LINES AND BEARINGS AND DISTANCES HEREON ARE BASED UPON SURVEYED INFORMATION BASED UPON A BOUNDARY SURVEY PERFORMED BY CONTROL POINT ASSOCIATES, INC. AND VIKI INCORPORATED IN 2005 AND 2006. THE PROPOSED IMPROVEMENTS ARE CORRECTLY DRAWN FROM THE PROPERTY. THIS EXHIBIT WAS PREPARED FOR THE PURPOSES OF THE ZONING SUBMITTAL FOR THE PROPERTY DESCRIBED HEREON.

Gregory S. Gale
DISTRICT OF COLUMBIA SURVEYOR #900573
DATE 10/10/06

EXHIBIT PLAT

LOT TO BE RECORDED
SQUARE 701
DISTRICT OF COLUMBIA

SCALE: 1" = 50' OCTOBER, 2006



CONTROL POINT ASSOCIATES, INC.
20530 DAVIS DRIVE, SUITE 200
STERLING, VIRGINIA 20164
908.666.0099 FAX 908.666.9595

5062029218

Z.C. Case No. 06-46

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 06-46

As Secretary to the Commission, I hereby certify that on NOV 19 2007 copies of this Z.C. Order No. 06-46 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|---|
| 1. <i>D.C. Register</i> | 6. Councilmember Tommy Wells |
| 2. Norman Glasgow, Jr., Esq.
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006 | 7. Office of Planning (Harriet Tregoning) |
| 3. Robert Moffatt, Chair
ANC 6D
25 M Street, SW
Washington, DC 20024 | 8. DDOT (Ken Laden) |
| 4. Commissioner Robert Siegel
ANC/SMD 6D07
919 5 th Street, SE
Washington, DC 20003 | 9. Zoning Administrator (Matt LeGrant) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Jill Stern, Esq.
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 11. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

Sharon S. Schellin

Sharon S. Schellin

Secretary to the Zoning Commission
Office of Zoning

A

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.

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 ~~267,162~~ **277,600** square feet of gross floor area of office space, a maximum of ~~106,269~~ **105,560** square feet of gross floor area of hotel space, a maximum of ~~51,022~~ **51,040** square feet of gross floor area of retail space, and ~~320,511~~ **320,100** 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.~~

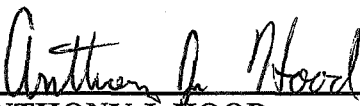
4. The overall maximum permitted density shall be ~~7.44~~ **7.35** FAR. In order to achieve the maximum permitted density, the Applicants shall transfer non-residential density from **other lots within the CG Overlay District** ~~Lots 33, 37-39, 43, 45, 46, 802, 803, 841, 850, and 868 in Square 700~~ **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 those 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. D.C. Register | 6. Councilmember Mary Cheh |
| 2. Norman Glasgow, Jr.
Holland & Knight LLP
2099 Pennsylvania Ave., N.W.
Washington, DC 20006-6801 | 7. DDOT (Karina Ricks) |
| 3. Elizabeth Sandza, Chair.
ANC 3D
P.O. Box 40846
Washington, DC 20016 | 8. Zoning Administrator (Matthew LeGrant) |
| 4. Commissioner Ann Heuer
ANC/SMD 3D06
4705 Foxhall Crescents NW
Washington, DC 20007 | 9. General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "S. S. Schellin", is written over a horizontal line.

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

B

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-46B
Z.C. Case No. 06-46B
Half Street Residential PJV, LLC
(Capitol Gateway Overlay Review @ Square 701, Lot 168)
June 29, 2015**

Pursuant to notice, the Zoning Commission of the District of Columbia ("Commission") held a public hearing on May 28, 2015, to consider an application filed by Half Street Residential PJV, LLC ("Applicant") for review and approval of modifications to previously approved plans for a new mixed-use building consisting of residential and retail and service uses, with the potential for a hotel, pursuant to §§ 1607 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"), which apply to new construction within the Capitol Gateway Overlay with frontage along Half Street, S.E., south of M Street, S.E., and to properties within Square 701. The initial application also included a request for special exception approval to allow multiple roof structures without a single enclosure, pursuant to §§ 630.4(a) and 411.3. The public hearing was conducted in accordance with the provisions of § 3022. At the public hearing, the Applicant requested additional variances from the residential lot occupancy requirement for the second floor of the building, pursuant to § 634, and from the Half Street building setback requirement of § 1607.2. These additional areas of relief did not result from changes made to the plans submitted to the Commission, but rather, the request was of a technical nature that the Applicant sought out of an abundance of caution to ensure all potential areas of relief were obtained prior to pursuing permits for the project. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On February 26, 2015, the Applicant filed an application for review and approval of modifications to previously approved plans for a new mixed-use building consisting of residential, retail, and service uses, with the potential for a hotel, pursuant to §§ 1607 and 1610 of the Zoning Regulations, which apply to developments on any lot within the Capitol Gateway ("CG") Overlay District with frontage along Half Street, S.E., south of M Street, S E, as well as properties within Squares 700 and 701 north of the Ballpark site.
2. The subject property is located in Square 701 and encompasses the southern portion of Record Lot 168 ("Property"), and is considered a theoretical building site for purposes of zoning.

3. The Applicant filed a pre-hearing submission in support of the application on May 8, 2015 ("Pre-hearing Submission"). (Exhibits ["Ex."] 7, 7A, 7B1, 7B2, 7C, 7D).
4. The Commission held a hearing on the application on May 28, 2015. The Applicant was the only party to the case to appear at the public hearing. Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located, did not participate in the hearing. Proper notice of the hearing was provided by the Office of Zoning pursuant to 11 DCMR § 3015.
5. By letter dated March 22, 2015, the ANC reported that at its duly noticed meeting on March 9, 2015, ANC 6D voted 4-0-2 to recommend that the Commission approve the proposed modifications to previously approved plans and the requested special exception from the single roof structure enclosure requirement of § 411.3. (Ex. 5.) The letter indicated that the ANC would like to see increased architectural differentiation between the condominium and rental sections of the property. The letter further stated that although the ANC was informed that the project was not subject to the Inclusionary Zoning regulations, the ANC was nevertheless disappointed that the project was 100% market rate.
6. Witnesses appearing at the hearing on behalf of the Applicant included Jair Lynch of JAIR LYNCH Development Partners, Chris Harvey and Chris Schein of HORD|COPLAN|MACHT, Chris Kabatt of Wells+Associates, and Shane Dettman of Holland & Knight, LLP.
7. Messrs. Harvey and Schein were qualified as experts in architecture and landscape architecture, respectively. Mr. Kabatt was qualified as an expert in transportation planning, and Mr. Dettman was qualified as an expert in land use planning.
8. At the public hearing the Applicant requested additional variances from the residential lot occupancy requirement for the second floor of the building (§ 634), and from the Half Street building setback requirement of § 1607.2.
9. At the conclusion of the public hearing on May 28, 2015, the Commission requested additional detail regarding the design of Monument Place and Cushing Place; a revised streetscape plan for Half Street that responds to comments made by the District Department of Transportation ("DDOT") and the District of Columbia Office of Planning ("OP"); information regarding the Applicant's coordination with adjacent property owners regarding the design of Half Street; additional detail regarding the proposed roof plan; and responses to outstanding questions contained in the report submitted by OP (Ex. 9), and to submit these revised materials to the record.

10. On June 15, 2015, the Applicant submitted the information requested by the Commission ("Post-hearing Submission") consisting of a revised set of plans, including a revised roof plan showing greater detail and enlarged interior penthouse accessory recreation space and revised plans for Half Street and Monument Place ("Final Plans"), responses to outstanding comments received from DDOT and DCOP, and responses to the Commission's questions and requests raised at the public hearing. (Ex. 21, 22.) The Final Plans supplanted the plans submitted to the record on May 8, 2015 as part of the Pre-hearing Submission. Pursuant to the Commission's request, the Applicant submitted proposed findings of fact and conclusions of law, pursuant to § 3026 on June 15, 2015. (Ex. 20.)
11. At its June 29, 2015, 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 the application satisfies the burden of proof for the special exception requested for relief from the single roof structure enclosure requirement, and variances from the residential lot occupancy requirement for the second floor of the building and from the Half Street building setback requirement.

Overview of Previously Approved Plans

12. On February 12, 2007, the Commission voted to approve Z.C. Case No 06-46 for the property now designated as Record Lot 168 ("Previous Plans").
13. The Previous Plans depicted a 762,800-square -foot, mixed-use development consisting of two buildings ("North Building" and "South Building") comprising office, residential, hotel, and retail uses. The North Building was approved for office and retail use while the South Building was approved for hotel, residential, and retail use. The Previous Plans were approved for 277,600 square feet of office space, 105,560 square feet of hotel space, 51,010 square feet of retail, and 320,100 square feet of residential. The Previous Plans showed a maximum height of 110 feet, not including roof structures, and a maximum density of 7.44 floor area ratio ("FAR")
14. To achieve the maximum permitted building height and density, the Previous Plans included the transfer of residential density from Square 700 through combined lot development that also involved the ballpark site to the south.
15. In addition to approving the Previous Plans pursuant to the provisions of the CG Overlay District, the Commission also granted the following areas of zoning relief: a variance from the loading requirements of § 2201.1, a variance from the ground-floor preferred use percentage requirement of § 1604.3, a variance from the Half Street preferred use frontage requirement of § 1607.4, a variance from the ground-floor minimum floor-to-ceiling height requirement of § 1607.5, a special exception from the Half Street setback

requirement of § 1607.2, and a special exception from the roof structure setback requirement of § 630.4(b).

16. On January 28, 2008, the Commission voted to approve minor modifications to the Previous Plans (Z.C. Case No. 06-46A). The modifications included a number of design changes and several changes to gross floor area; including: a reduction in office space from 277,600 square feet to 267,162 square feet, an increase in hotel space from 105,560 square feet to 106,269 square feet, an increase in retail space from 51,010 square feet to 51,022 square feet, an increase in residential space from 320,100 square feet to 320,511 square feet, and a reduction in the overall density from 7.44 FAR to 7.35 FAR.

Overview of Final Plans

17. The Property is “L” shaped in configuration and contains approximately 67,835 square feet of land area in the southwestern portion of Square 701 at the intersection of Half Street, S.E. and N Street, S.E. Square 701 is bounded by M Street on the north, N Street on the south, First Street on the east, and Half Street on the west. Nationals Park ballpark is located immediately south of the Property, across N Street, S.E. The Property is currently vacant.
18. The Applicant intends to construct a mixed-use apartment building with ground- and second-floor retail and service uses and the potential for a hotel on the Property. As shown in the Final Plans, the proposed building will have a height of 110 feet and will contain approximately 460,900-462,900 square feet of gross floor area and an overall FAR between 6.79-6.83, as permitted pursuant to §§ 1602.1(a) of the Zoning Regulations.
19. The proposed building has been designed to actively engage its two street frontages. Along Half and N Streets, the building will be constructed to the building lines and a range of materials will be applied in ways that will differentiate the uses, and reinforce the mixed-use character of the Half Street gateway and surrounding neighborhood. The Half Street façade comprises regularly spaced bays and shallow courts above two levels of retail. The retail levels are primarily composed of a masonry frame with a high percentage of transparent glass. At the second level, a projecting glass bay along Half Street gives the second-story retail added presence, and wraps around to Monument Place to unite these two façades of the building. The residential bays above are simple masonry frames with two-story windows. Balconies accent and further enliven the residential building. The N Street frontage also has a two-story retail expression above which the residential use has a regular pattern of punched windows and balconies. The façades of the courtyards facing Cushing Place continue the pattern of materials expressed on the Half and N Street façades.

20. With regard to parking and loading, the Final Plans include three levels of below grade parking, in full satisfaction of the onsite parking requirements of Chapter 21 of the Zoning Regulations. The required amount of bicycle parking will be provided in two separate storage rooms located adjacent to the loading facilities on the first level. The building will be consistent with the loading relief that was previously granted by the Commission, and will provide one 55-foot-deep loading berth, three 30-foot loading berths, and two 20-foot service delivery spaces. The loading and underground parking facilities will be accessible from Cushing Place, along the east side of the Property.
21. As shown in the Final Plans, the proposed building still requires the roof structure setback relief that was previously granted by the Commission; however, the extent of relief has been substantially reduced. The area in which the Final Plans require roof structure setback relief is located along the south interior courtyard wall.
22. The building will incorporate a number of elements to enhance its sustainability. As part of the Pre-hearing Statement, the Applicant submitted a draft LEED for Homes Mid-rise Simplified checklist which indicates the building will qualify as LEED-Silver. (Ex. 7C.) Furthermore, at the public hearing, the Applicant committed to pursuing LEED-Silver for New Homes certification.

Description of the Surrounding Area and Zoning Classification

23. The Property is located in Square 701 (the "Square") which is bounded by M Street on the north, N Street on the south, First Street on the east, and Half Street on the west.
24. The Property is located in the southwest corner of the Square and has approximately 365 feet of frontage on Half Street, S.E., and approximately 250 feet of frontage on N Street, S.E. Cushing Place, a currently unimproved 30' wide public alley, runs along the east boundary of the Property and will be constructed as part of this project.
25. The Property, treated as a theoretical building site for purposes of zoning pursuant § 2517, encompasses the southern portion of Record Lot 168 and consists of approximately 67,835 square feet of land area. The northern portion of Record Lot 168 is developed with an office building located at 55 M Street, S.E., which resides on a separate theoretical building site. The Property includes Lots 857, 858, and 859, which are three separate assessment and taxation (A&T) lots according to the records of the District of Columbia Office of the Surveyor. Nationals Park is located to the immediate south of the Property, across N Street, S.E.
26. The Property is zoned CG/CR, as are the rest of the properties within the Square as well as those across Half Street in Square 700. The properties to the east of 1st Street, S.E. are

zoned SEFC/CR (Southeast Federal Center Overlay/Commercial Residential), and properties north of M Street, S.E. are zoned C-3-C or CG/C-3-C.

27. Section 1602 of the CG Overlay provides that two or more lots within the CG Overlay may be combined for the purpose of allocating residential and nonresidential uses regardless of the normal limitation on floor area by uses on each lot. This allocation is accomplished by a combined lot development covenant approved by the District of Columbia and recorded in the land records of the Recorder of Deeds of the District of Columbia. The Property is part of a combined lot development covenant that was duly recorded on August 22, 2008.
28. Section 1602 further provides that residential and nonresidential floor area on each individual parcel within the CR Zone District shall not exceed a maximum building density of 8.0 FAR on parcels for which a height of 110 feet is permitted by the 1910 Height of Buildings Act, pursuant to § 1602.1(a). As a result of the Property's frontage on N Street, a 90-foot-wide street, a building height of 110 feet is permitted under the Act.

Capitol Gateway Overlay District Design Requirements

29. The proposed project is subject to the requirements of § 1607 of the Zoning Regulations because the proposed building will be located along Half Street, S.E., south of M Street, S.E., within the CG Overlay.
30. Subsection 1607.2 requires any portion of a building or structure exceeding 65 feet to be set back from the building line along Half Street, S.E. a minimum of 20 feet. Pursuant to its authority under § 1610.7, the Commission's approval of the Previous Plans included a special exception from this requirement to allow a setback of 12 feet above a height of 80 feet. As shown in the Final Plans, 11 balconies that project into the previously approved 12-foot setback are proposed. As a technical matter, the Applicant requested variance relief from § 1607.2 at the public hearing to allow the balconies to project into the previously approved setback.
31. Subsection 1607.3 requires each new building to devote not less than 75% of the ground-floor to preferred uses. The Commission's approval of the Previous Plans included a variance from this requirement. As shown in the Final Plans, under Scenario 1, 75.9% of the ground floor will be devoted to preferred uses. Under Scenario 2, as a result of the hotel lobby and associated drop off, the percentage of the ground floor devoted to preferred uses will be reduced to 71.6%.
32. Subsection 1607.4 requires 100% of a building's street frontage along Half Street, S.E., except for space devoted to building entrances or required to be devoted to fire control, to

be occupied by preferred uses. As shown in the Final Plans, with the exception of a residential entrance and an entrance lobby to second-level retail, the Final Plans devote 100% of the frontage along Half Street to preferred uses.

33. Subsection 1607.5 requires portions of the ground floor devoted to preferred uses to have a minimum floor-to-ceiling height of 14 feet. The Commission had previously granted a variance from this requirement. As shown in the Final Plans, the proposed building complies with this requirement by providing a clear floor-to-ceiling height in excess of 14 feet on the ground floor. Therefore, the previously granted variance is no longer necessary.
34. Subsection 1607.7 prohibits the construction or use of any driveway accessing parking or loading along Half Street. As shown in the Final Plans, the proposed building does not include any driveways along Half Street.

The Project Meets the Requirements of § 1610

35. The Final Plans are subject to Commission review and approval pursuant to § 1610 of the CG Overlay. Subsection 1610.3 provides that in addition to demonstrating that the proposed building meets the standards set forth in § 3104 of the Zoning Regulations, an applicant requesting approval under the CG Overlay provisions must also prove that the proposed building meets the requirements of §§ 1610.3(a) through 1610.3(f). Subsection 3104.1 of the Zoning Regulations provides that special exceptions should be granted when "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." (§ 3104.1.)
36. Subsection 1610.3 further provides that the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation of the proposed building must comply with the specific requirements set forth in that section, and must help achieve the objectives of the CG Overlay District as set forth in § 1600.2 of the Zoning Regulations. The proposed building meets the requirements of § 1610 and is consistent with all applicable purposes of the CG Overlay.
37. The proposed building's height and density are allowed at this location, and the proposed use is consistent with the Property's mixed-use (high-density commercial/high-density residential) designation on the Comprehensive Plan Future Land Use Map. The residential and retail/service uses contemplated by the project will help foster an appropriate mix of uses within Square 701 and the surrounding area. (§ 1600.2(a).)

38. The proposed building is planned to include significant space devoted to preferred retail or service uses on the ground and second floors, including a clear floor-to-ceiling height on the ground floor in excess of 14 feet, and approximately 14 feet on the second floor where the Zoning Regulations have no minimum required height. This space will accommodate precisely the types of retail, service, and entertainment uses encouraged by the CG Overlay. (§ 1600.2(b).)
39. The CG Overlay provides for development of Half Street, S.E., as an active pedestrian-oriented street with active ground-floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale. As shown in the Final Plans, the design of the building, including the setbacks, façade treatment and articulation, and materials, all work together to advance the CG Overlay goals for Half Street, S.E. (§1600.2(g).)
40. The proposed project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the neighboring property in accordance with the Zoning Regulations and Zoning Map. The project assures development of the area with a mixture of uses and a suitable height, bulk, and design. (§1610.3(a).)
41. The proposed building will help achieve the desired mix of uses in the CG Overlay as set forth in §§ 1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel, and retail, or service uses. The ground- and second-level retail/service uses contemplated for the building along its Half and N Street frontages, with floor to ceiling heights and façade treatments that are intended to emphasize the preferred uses at a comfortable pedestrian scale, will substantially advance the achievement of the desired mix of uses in the CG Overlay. (§1610.3 (b).)
42. The height, bulk, and architectural design of the proposed building, as shown in the Final Plans, will be in harmony with the context of the surrounding neighborhood and will have no effect on the existing street grid. The proposed building will be constructed to the building lines along Half and N Streets, which will strengthen the street wall along both of these streets and maintain views. (§1610.3 (c).)
43. The proposed building has been sited to minimize conflicts between vehicles and pedestrians. Access to the building's loading and parking facilities along Cushing Place will help minimize potential conflicts between vehicles and pedestrians. In addition, Monument Place will be a pedestrian-only thoroughfare rather than a vehicular street, thereby removing the curb cut along Half Street that was previously approved. The Applicant's traffic impact study confirms that any impacts to traffic caused by the project can be mitigated through the Applicant's transportation demand management (TDM) plan, which includes all mitigation measures proposed by DDOT and through recommended signal timing adjustments. (§ 1610.3 (d).)

44. The proposed building's façades have been designed to minimize unarticulated walls adjacent to public spaces through façade articulation and the use of courts, upper-level setbacks, and balconies. (§.1610.3 (e).)
45. The proposed building will be designed, constructed, and operated in a manner that minimizes impact on the environment, and the Applicant has committed to seeking LEED-Silver certification. (§ 1610.3(f).)

Requested Areas of Relief: Special Exception

46. The Applicant requested special exception relief pursuant to § 411 of the Zoning Regulations to permit multiple roof structures not meeting the single enclosure requirement of § 411.3. As shown in the Final Plans, a total of four roof structures will be located on the roof level.
47. Subsection 411.3 requires all penthouses and mechanical equipment to be located in one enclosure, and to be in harmony with the main structure in architectural character, material, and color. However, pursuant to § 411.4, when separate elevator cores are required, each one is permitted to have a separate enclosure.
48. As shown in the Final Plans, the proposed building will have three separate elevator cores which have separate enclosures of similar height, materials, and architectural style. In addition, one standalone stair tower will be located at the east end of the southern wing of the building. The stair tower will not be enclosed within one of the elevator core enclosures; therefore, a special exception is required.
49. Compliance with the roof structure regulations is impractical as it would add substantially to the overall mass and perceived height of the southern roof structure of the proposed building. The separate egress stair is a function of the stairway below and the building code which requires separation of means of egress.
50. As a result of the "L" shaped lot, the south wing of the proposed building is relatively narrow, which results in the south elevator core failing to meet the required setback from the south wall of the open court facing Cushing Place. Placing the elevator core and standalone egress stair in a single enclosure would unnecessarily increase the mass and visibility of the building's southern roof structure, and substantially increase the extent of the nonconforming roof structure setback, which would likely have a negative impact on the light and air into the proposed open court.
51. The requested special exception can be granted without impairing the intent and purpose of the Zoning Regulation and will not adversely affect the light and air of adjacent buildings. The intent of the provisions of § 411 is to exercise a reasonable degree of

control over the design and placement of roof structures. Allowing the standalone egress stair will result in less roof structure mass and increase light and air into the building's south courtyard. The proposed egress stair will continue to have architectural uniformity with the other three elevator cores through the use of similar materials and height. Finally, in accordance with § 630.4(b), the egress stair will be set back from all exterior walls a distance equal to its height above the roof level.

Requested Areas of Relief: Variances

52. At the public hearing, the Applicant requested additional variances from the residential lot occupancy requirement for the second floor of the building, pursuant to § 634, and from the Half Street building setback requirement of § 1607.2.

Property Is Affected by Several Exceptional Situations or Conditions

53. The Property is affected by an exceptional condition that arises out of a confluence of factors. First, the Property is "L" shaped with the portion of the Property paralleling N Street being exceptionally narrow. Second, the extension of Cushing Place, a 30-foot public alley, across the Property to N Street through a dedicated easement is a condition that is unique to the Property, and is required pursuant to a recorded easement resulting from a prior alley closing proceeding. Finally, the mixed-use nature of the building design and the varying footprint requirements these uses have contributes to the Property's exceptional situation.

Strict Application of the Zoning Regulations Would Result in Practical Difficulty Upon the Applicant

Residential Lot Occupancy Requirement (§ 634)

54. Within the CR Zone District, non-residential uses are allowed 100% lot occupancy, while residential uses are assigned a maximum lot occupancy of 75%.
55. As shown in the Final Plans, the second level of the southern portion of the building may contain residential uses. Should this area of the building contain dwelling units, a variance would be required from the 75% lot occupancy limit on residential uses.
56. The strict application of the Zoning Regulations would require the Applicant to reduce the second-floor building area by approximately 3,400 square feet which would be practically difficult for the Applicant as it would substantially disrupt building circulation and result in a loss of dwelling units on several floors. Reducing the second floor building area above the Cushing Place easement would eliminate a number of dwelling units and impact the circulation corridor on this level, cutting off the portion of the building east of

Cushing Place. Furthermore, narrowing the northern or southern wings of the building would result in a significant loss and/or reconfiguration of dwelling units and an inefficient single-loaded corridor.

Half Street Building Setback Requirement (§ 1607.2)

57. Subsection 1607.2 of the CG Overlay requires buildings along Half Street, S.E., south of M Street, S.E., to be set back a minimum of 20 feet above a height of 65 feet. Pursuant to § 1607.2, the Commission previously granted a special exception from this requirement to allow a setback of 12 feet above a height of 80 feet.
58. The Final Plans are consistent with the previously granted relief with the exception of 11 balconies that project less than six feet into the previously approved 12-foot setback.
59. The strict application of the Zoning Regulations would result in a practical difficulty as it would require the Applicant to narrow the width of the building by approximately six feet such that the balconies are behind the previously approved 12-foot setback. Due to the depth of the open courtyards facing Cushing Place, the Half Street façade of the building is already fairly narrow. Further narrowing the building to accommodate the balconies within the previously approved 12-foot setback would create inefficient floorplans and cause a substantial loss and/or reconfiguration of dwelling units.

Relief Can be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

60. The requested variances can be granted without causing substantial detriment to the public good or substantial impairment to the Zone Plan. Relief from the residential lot occupancy requirement is limited to the second level of the building and will not result in a substantial increase in the overall density of the development. Furthermore, the variance will not result in substantial impairment to the Zone Plan as the intent of the residential lot occupancy requirement will still be achieved through the light, air, and openness provided by N Street and the proposed southern courtyard facing Cushing Place.
61. The variance from the Half Street building setback will not cause substantial impairment to the Zone Plan. The intent of the setback requirement is to permit adequate light and air to the street level along Half Street, which will still occur given the relatively small number and shallow depth of the balconies. Furthermore, a large percentage of the Half Street façade, starting at the street level and extending to the top of the building, is set back from the building line which will contribute to the amount of light and air reaching the street level.

Office of Planning Report

62. By report dated May 18, 2015, OP stated that it was very supportive of the overall design of the proposal, although clarification and further details should be submitted. (Ex. 9.)
63. In its report, OP stated that the application successfully addresses many of the criteria of the CG Overlay. Specifically, OP noted that the project should help achieve the goals of the CG Overlay to create an active, cohesive pedestrian and transit-oriented environment, and a vibrant entertainment district, especially north of the ballpark. OP specifically noted that the ground-floor retail, the open-air retail on the upper levels at Half and N Streets, and the many residential balconies would help activate the area.
64. With regard to zoning relief, OP supported the requested relief from the requirement that roof structures be located in a single enclosure to allow a standalone stair tower on the southern wing of the building, noting that the stair and closest other penthouse could be put inside one enclosing wall but the result would be an overly large rooftop structure that is more visible than the multiple proposed roof structures. OP also expressed support for lot occupancy relief for the second level of the building should relief be necessary or requested by the Applicant.
65. OP made several recommendations and requests for additional detail; including: (a) relocate the second-floor retail lobby entrance proposed at the corner of Half Street and Monument Place to the south or east; (b) clarify the number of guests room for the potential hotel; (c) clarify how the potential hotel use will affect the amount of the ground floor devoted to preferred uses; (d) clarify how residents will access bike parking; and (e) provide additional detail regarding the design of Monument Place and Cushing Place, including materials and renderings. On June 9, 2015, the Applicant met with OP to discuss these items. The Applicant's responses to each of these items are included below.
66. The Commission finds the Applicant has addressed all of the recommendations and requests made by OP.

DDOT Report

67. By report dated May 18, 2015, DDOT provided its analysis regarding the parking, loading, trip generation, and vehicle turning impacts of the project on the District's transportation network, and provided comments on streetscape and public space design. (Ex. 8.) Regarding public transportation, DDOT found the site to be well served by Metrorail, Metrobus, DC Circulator, and bicycle facilities. With regard to roadway capacity and operations, DDOT found that the project may potentially impact four intersections significantly but that the Applicant's proposed TDM Plan and additional measures will adequately mitigate any impacts.

68. DDOT stated no objection to the application, with the condition that the Applicant adopt the proposed loading management plan and amend the proposed TDM Plan included in the Comprehensive Transportation Review (April 2015) included as Exhibits 7B1 & 7B2 of the record in this case, to include all additional TDM measures proposed by the Applicant on May 13, 2015, which are included on pages 14 and 15 of the DDOT report, and to prohibit deliveries within three hours of a scheduled ballpark event. The Applicant committed to these conditions.
69. Although not conditions, DDOT also made several comments/recommendations in its report, including: (a) providing required long-term bicycle parking in the garage or on the ground floor inside the building; (b) installing at least one 240-volt electric car charging station in the residential garage and in the retail garage; and (c) continuing to work with DDOT on public space issues, including the design of the streetscape along Half Street. As shown in the Final Plans, the Applicant is providing two bicycle storage rooms that meet the bicycle parking requirements of the Zoning Regulations and D.C. Official Code § 50-1641.01-.09. With regard to installation of an electric car charging station, the Applicant has committed to installing one charging station in the residential garage, but is unable to provide one in the retail garage as the Applicant does not own that building despite having access to a limited amount of parking in the adjacent garage by way of a reciprocal parking easement agreement. Finally, the Applicant is committed to continuing to work closely with DDOT and other property owners along Half Street on a streetscape design for Half Street.
70. The Commission finds that with the TDM Plan proposed by the Applicant, as amended to include the additional mitigation measures proposed to DDOT by the Applicant on May 13, 2015, and with the Applicant's commitment to restrict deliveries to the proposed building within three hours of a ballpark event, the project will not have a substantial negative impact on the surrounding transportation network.

Applicant's Responses to Areas Identified at the Public Hearing as Requiring Additional Information

Scope of the Potential Hotel Use

71. At the public hearing, OP requested clarification on the potential hotel use noting the Pre-hearing Statement indicated the potential for 80 guest rooms while the transportation impact study indicated a higher number. As part of the Post-hearing Statement, the Applicant clarified that the potential hotel use will have approximately 80 guest rooms and reiterated its pre-hearing request for permission to adjust the number of guest rooms no more than $\pm 10\%$.

Access to Bike Parking from Residential Lobby

72. At the public hearing, OP and DDOT requested the Applicant to provide clarification on how residents will access the required bike storage areas. As shown on the Final Plans, two bike storage areas are shown adjacent to the building's loading facility. For the residential use located along Half Street, residents will access the north bike storage area from the north elevator core located just outside the storage room. From this area, direct access to Cushing Place and the courtesy lobby along Monument Place will be provided. For the residential use along N Street, residents will access the south bike storage area directly from the lobby. This area will also have direct access to Cushing Place. Access to the bike storage areas will be controlled and available only to residents of the building.

Relocation of Second-Level Retail Lobby at Half Street and Monument Place

73. In its report, OP recommended that the second-level retail lobby entrance proposed at the corner of Half Street and Monument Place be moved to the east along Monument Place, or south along Half Street, to allow a more active use to enliven the corner and complement the retail space across Monument Place to the north.
74. Subsequent to the public hearing, the Applicant studied alternatives to the proposed location of the entrance lobby and submitted additional information in support of the proposed location as part of the Post-Hearing Statement.
75. According to the Applicant's Post-Hearing Statement, the relocation of the entrance further south along Half Street would more negatively impact Half Street as an active, pedestrian-oriented street as required by the provisions of the CG Overlay as it would disrupt the consistent active retail frontage that would otherwise occur south of the lobby should its location remain at the corner of Half Street and Monument Place. In contrast, the proposed location of the entrance lobby will blend with the natural break in the street wall created by Monument Place. In addition, the retail on the north side of Monument Place, and the pedestrian activity along Monument Place generated from outdoor seating and programming, users of the proposed courtesy lobby, and the potential hotel use will serve to activate this corner.
76. The Applicant also submitted information related to programmatic challenges that would arise from the relocation of the proposed second-level retail entrance lobby, including impacts to a future tenant's ability to efficiently layout the retail space, uncertainty with regard to tenant preferences related to location of building entrance and street frontage, and potential tenant requirement for connection to the courtesy lobby leading to underground retail parking.

77. The Applicant will design the proposed entrance lobby with the same design quality as the rest of the ground floor and building, and will not include unarticulated walls or opaque spandrel glass in the design of the lobby frontage.
78. The Commission is persuaded by the Applicant's response to OP's recommendation and finds the proposed location of the second-level retail entrance lobby, as shown in the Final Plans, to be acceptable, and can be designed in a manner that will contribute to the activity along Half Street.

Design of Monument Place and Cushing Place

79. At the public hearing, the Commission and OP requested additional information regarding the design of Monument Place and Cushing Place, including perspective renderings of both, and information regarding materials for Monument Place. The Applicant included the requested information in the Final Plans submitted as part of the Post-hearing Submission.
80. The Commission finds the additional information provided by the Applicant useful to understanding the design of Monument Place and its relationship to Half Street. The design of Monument Place will provide an amenity to residents and works in the area, and offer an opportunity for outdoor seating and programming to support the retail and services uses along Half Street. The design of Cushing Place utilizes the same materials used on the building's street frontages despite this technically being the back side of the building.

Roof Plan

81. At the public hearing, the Commission noted that under the existing Zoning Regulations, the Applicant could, if desired, provide an amount of interior roof top accessory recreation space that, by current interpretation, does not exceed 20% of the total area devoted to roof top accessory recreation space.
82. As part of the Post-Hearing Submission, the Applicant submitted a revised roof plan that includes interior accessory recreation space that does not exceed 20% of total roof area devoted to exterior accessory recreation space.
83. The revised roof plan includes four separate roof structures, having equal height, with three of the roof structures consisting of accessory recreation space, mechanical equipment, and/or elevator cores, and one standalone egress stairway for which the Applicant has requested special exception relief for as part of its application.

84. As a result of the modifications made to the roof plan to include the interior accessory recreation space, the footprint of the proposed roof structures increased in size. Despite this increase, the extent of noncompliant roof structure setback is consistent with what was presented at the public hearing, and remains limited to the small portion of the south elevator core that is not set back from the wall of the open court facing Cushing Place.
85. In addition to the four roof structures, the revised roof plan includes a pool that is less than four feet above the roof level, a trellis structure to provide shade, and glass guard rails. All of these structures meet the 1:1 setback requirement from the edge of the roof upon which they are located.

Streetscape Design for Half Street

86. In response to comments made at the public hearing by the Commission and DDOT, the Applicant submitted a revised streetscape design concept for Half Street which is included in the Final Plans. Specifically, in response to comments made by DDOT, the design no longer includes bollards and catenary lighting spanning the width of Half Street. In addition, the street tree spacing has been adjusted to be consistent with DDOT standards.
87. As shown in the Final Plans, the revised streetscape design concept shows a curbless Half Street, which DDOT expressed general support for at the public hearing, and in subsequent conversations with the Applicant. However, DDOT noted that further coordination is required on the design of Half Street, and the public space adjacent to the project, and that final plans are subject to review and approval by DDOT, which may result in changes to what is depicted in the conceptual public space designs included in the Final Plans.
88. While the Applicant is only responsible for reconstructing the public space adjacent to the Property, according the Post-Hearing Submission, the Applicant continues to coordinate with adjacent property owners on the long-term, permanent streetscape design for Half Street.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to §§ 1607 and 1610 for review and approval by the Commission. The application, as amended at the public hearing, pursuant to § 1610.7, included requests for special exception and variance relief for the Final Plans.
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, the Office of Planning, and owners of property within 200 feet of the site.

3. Pursuant to §§ 1607.1 and 1610.1, the Commission required the Applicant to satisfy the burden of proving the elements that are necessary to approve the Final Plans pursuant to the provisions of the CG Overlay; establish the case for special exception relief from the roof structure requirement of § 411.3; and establish the case for variances from the residential lot occupancy requirement of § 634.1 and the Half Street building setback requirement of § 1607.2.
4. The Commission concludes that the Final Plans are consistent with the areas of relief previously granted in this case, noting that some areas of relief are either no longer necessary or substantially reduced in extent, and that the Applicant has met its burden under the provisions of the CG Overlay.
5. Pursuant to § 1610.7, the Commission concludes that the Applicant has met its burden under §§ 3104.1, 639.1, and 411.11 for a special exception from the requirement of § 411.3 that all penthouses and mechanical equipment be placed in one enclosure.
6. Pursuant to § 1610.7, the Commission concludes that the Applicant has met its burden under § 3103.2 for variances from the lot occupancy requirement of § 634.1, and from the Half Street building setback requirement of § 1607.2.
7. The Final Plans are within the applicable height, bulk, and density standards for the CG/CR (Capitol Gateway Overlay/Commercial Residential) 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.
8. The Final Plans are not inconsistent with the Comprehensive Plan.
9. The Commission concludes that the Final Plans will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein. The design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the purpose and intent of the design requirements of § 1607 of the Zoning Regulations.
10. No person or parties appeared at the public hearing in opposition to the application.
11. 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, which in this case is ANC 6D. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances.

12. As noted, ANC 6D voted 4-0-2 in support of the application. In its letter, the ANC expressed its preference that there be greater architectural differentiation between the condominium and rental portions of the building and expressed its disappointment that no affordable housing would be provided. As to the former issue, the Applicant modified the N Street façade such that the primary material was masonry, as opposed to the Half Street façade where glass remained the primary material. With respect to affordable housing, the Applicant offered testimony that the provision of affordable housing was considered, but in view of the difficult task of reinvigorating this project, the inclusion of such housing was not economically viable. The Commission found this position to be reasonable.
13. The ANC did not appear at the public hearing. On June 15, 2015, the Applicant served the ANC with a copy of the Post-hearing Submission which included the Final Plans, responses to DDOT, OP, and the Commission's comments and requests, and an explanation of the two additional variances that were requested at the public hearing. No additional correspondence was received from the ANC in response to the Post-hearing Submission.
14. 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 concludes that the project is generally consistent with the recommendations made by OP except for its recommendation that the second-level retail lobby entrance proposed at the corner of Half Street and Monument Place be moved to the east along Monument Place, or south along Half Street. For the reasons stated in Findings of Fact 74 through 78, the Commission did not find this recommendation to be persuasive.
15. Based upon the record before the Commission, including witness testimony, the reports submitted by the OP, 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 §§ 1607 and 1610, the independent burden for one additional special exception, and the independent burden for two additional variances.

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. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to the theoretical building site encompassing the southern portion of Record Lot 168 in Square 701, and extending from

the southern façade of the existing office building located on the northern portion of Record Lot 168.

2. The project shall be built in accordance with the Final Plans, dated June 15, 2015 and the guidelines, conditions, and standards below. (Ex. 22.)
3. The project shall be consistent with the development scenarios described in the Final Plans and include residential gross floor area ranging from approximately 318,400-402,800 square feet, retail gross floor area ranging from approximately 55,100-69,200 square feet, and hotel gross floor area ranging from zero to approximately 78,300 square feet.
4. The overall density on the Property shall not exceed 6.83 FAR.
5. The Applicant shall implement the transportation demand management and loading management measures set forth in the Comprehensive Transportation Review provided as part of the Applicant's Pre-hearing Statement, and the additional measures and mitigation strategies requested/recommended in the DDOT report, and as agreed to by the Applicant.
6. The Applicant shall have flexibility with the design of the project in the following areas:
 - To adjust the development scenarios included in the Final Plans, including adjustments to the number of dwelling units and hotel sleeping rooms not to exceed $\pm 10\%$, and corresponding adjustments to required parking which shall not be reduced below the minimum onsite parking required by the Zoning Regulations;
 - 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 design and configuration of the building;
 - To vary the final selection of the exterior materials within the color ranges and material types (maintaining the same general level of quality) as proposed, based on availability at the time of construction;
 - To make refinements to exterior materials, details, and dimensions, including beltcourses, 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;

- To vary the exterior design and materials of the ground-floor retail/service space based on the requirements of the individual tenant/occupant provided these changes do not modify the building footprint, or reduce the quality of the materials used on the exterior of the ground floor of the project, as shown in the Final Plans;
 - To vary the exterior design, orientation, materials, and general location of the second-level retail entrance proposed at the corner of Half Street and Monument Place based on the requirements of the individual tenant/occupant provided these changes do not modify the building footprint, or reduce the quality of the materials used on the exterior of the ground floor of the project, as shown in the Final Plans. The Applicant will ensure that the design for this space is consistent with the rest of the ground-floor retail spaces with regard to exterior design, materials, and degree of transparency; and
 - To vary the exterior building signage for the first and second levels of the proposed building with regard to placement, extent, and design based on the requirements of the individual tenant/occupant. The Applicant and all individual tenants/occupants shall erect, hang, place, paint, construct, display, and maintain all temporary and permanent building signage, both on the Property and in public space, in a manner that complies fully with all applicable signage regulations in effect at the time of permitting.
7. 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 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 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 June 29, 2015, upon the motion of Commissioner Miller, as seconded by Vice Chairperson Cohen, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order application by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

Z.C. ORDER NO. 06-46B
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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 July 31, 2015.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 06-46C
Z.C. Case No. 06-46C
Half Street Residential PJV, LLC
(Minor Modification to Capitol Gateway Overlay Design Review Approval @ Square 701)
June 13, 2016

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public meeting on June 13, 2016. At the meeting, the Commission approved an application from Half Street Residential PJV, LLC (the "Applicant") for a minor modification to a project approved pursuant to the Capitol Gateway Overlay District design review provisions ("CG Overlay provisions") set forth in § 1604 of the 1958 Zoning Regulations of the District of Columbia (the "1958 Zoning Regulations"),¹ 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 the provisions of 11 DCMR §§ 411.24 and 3030 of the 1958 Zoning Regulations.

FINDINGS OF FACT

1. By Z.C. Order No. 06-46 (*dated* February 12, 2007, *effective* November 23, 2007), the Commission approved a new development for the property now designated as Record Lot 168 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 11 DCMR § 1604.9 of the 1958 Zoning Regulations (the "Original Plans").
2. The Original Plans depicted a 762,800 square foot, mixed-use development consisting of two buildings on a single lot of record ("North Building" and "South Building") comprising office, residential, hotel, and retail uses. The North Building was approved for office and retail use while the South Building was approved for hotel, residential, and retail use. The Original Plans were approved for 277,600 square feet of office space, 105,560 square feet of hotel space, 51,010 square feet of retail, and 320,100 square feet of residential. The Original Plans showed a maximum height of 110 feet, not including roof structures, and a maximum density of 7.44 floor area ratio ("FAR"). To achieve the maximum permitted building height and FAR, the Original Plans included the transfer of

¹The 1958 Zoning Regulations were in effect on the date the application was decided by the Commission, but were repealed as of September 6, 2016 and replaced by new text. The repeal and adoption of the replacement text has no effect on the validity of the Commission's decision or the validity of this Order.

residential density from Square 700 through a combined lot development that involved the ballpark site to the south.

3. By Z.C. Order No. 06-46A (*dated* January 28, 2008, *effective* December 12, 2008), the Commission approved minor modifications to the Original Plans (Z.C. Case No. 06-46A). The minor modifications included a number of design changes and several changes to gross floor area (“GFA”), including a reduction in office space, and increases in hotel, retail, and residential space. The minor modifications resulted in a reduction in the overall FAR from 7.44 to 7.35.
4. Following the Commission’s approval of the Original Plans, and subsequent minor modification, the North Building was constructed. However, the South Building was never constructed and ownership of the southern portion of Record Lot 168 transferred to the Applicant in the fall of 2014. The portion of Record Lot 168 that transferred to the Applicant is generally defined by the southern façade of the North Building on the north, N Street, S.E. on the south, Half Street, S.E. on the west, and Cushing Place, S.E., a 30-foot public alley, on the east.
5. By Z.C. Order No. 06-46B (*dated* June 29, 2015, *effective* July 31, 2015), the Commission approved modifications to the previously approved plans for the South Building. The Commission also approved related variances and special exceptions pursuant to 11 DCMR § 1604.9 of the 1958 Zoning Regulations (the “South Building Modified Plans”). The South Building Modified Plans are included as Exhibit [“Ex”] 22 of the record for Z.C. Case No. 06-46B.
6. According to Z.C. Order No. 06-46B, the South Building was approved for residential gross floor area (“GFA”) ranging from approximately 318,400-402,800 square feet, retail GFA ranging from approximately 55,100-69,200 square feet, and hotel GFA ranging between zero to approximately 78,300 square feet. In addition, the South Building was approved with a maximum density of 6.83 FAR (*see* Z.C. Order No. 06-46B, Conditions 3-4 at p. 19).
7. By letter dated May 12, 2016, the Applicant requested modifications to the South Building Modified Plans to revise the penthouse design and use, and to make modifications to the rooftop amenity space, green roof areas, and location of mechanical equipment. (Ex. 1.) The architectural drawings showing the proposed modification are included in the case record (“South Building Modified Penthouse Plans”). (Ex. 2B.)
8. Minor Modifications to the Penthouse Design and Use. As shown in the South Building Modified Penthouse Plans, the Applicant requested approval to modify the design and use of the South Building’s penthouse to include additional penthouse habitable space. Overall, the revised penthouse will contain approximately 9,369 GFA of penthouse habitable space, of which approximately 3,360 GFA will be devoted to communal recreation/amenity space. (Ex. 2B, Sheet A3.) In addition, the revised penthouse will contain approximately 2,199 GFA of penthouse mechanical space, and approximately 3,044 GFA of unenclosed screened mechanical equipment. With respect to penthouse

height, the modified penthouse will include a single enclosure with three separate heights. The penthouse habitable space, both communal and non-communal, will have a maximum height of 16'-0" above the roof, and the areas proposed to contain unenclosed screened mechanical equipment will have a maximum height of 17'-0" above the roof. The proposed penthouse mechanical space will have a maximum height of 18'-6." (Ex. 2B, Sheet A4.) The revised penthouse will meet all required setbacks with the exception of a portion of the main elevator core located at the southern end of the building, which the Commission previously granted relief from as part of its approval of the Original Plans.

9. Minor Modifications to Outdoor Rooftop Amenity Space and Landscape Plan. To accommodate the revised penthouse design, the Applicant revised the outdoor rooftop amenity space and landscape plan. The pool continues to be located on the central east-west wing of the building, and the height of the pool platform remains less than four feet above the adjacent roof. Similar to the South Building Modified Plans, the main outdoor amenity spaces remain located at the south end of the building near the intersection of Half and N Streets. The outdoor amenity spaces will primarily consist of temporary furnishings, planters, a grilling area, and a trellis structure. The landscaped areas of the roof extending along Half and N Streets are now devoted to a collection of private roof terraces and additional landscaped/green roof areas. According to Sheet L2 of the South Building Modified Penthouse Plans, the revised landscape plan increases the total amount of green roof by approximately 1,538 square feet.
10. Minor Modifications to Penthouse Facades. The materials proposed for the revised penthouse design are consistent with the materials that were previously approved for the main portion of the building, and consist of glass storefront windows, darker color fiber cement panels, and differentiated metal panel cladding. (Ex. 2B, Sheet A7.)
11. On April 1, 2016, the Applicant informed Advisory Neighborhood Commission ("ANC") 6D member Stacy Cloyd, Single Member District 6D02, of its intent to file the minor modification request and offered to formally present the request at a regularly scheduled meeting of the ANC. Commissioner Cloyd informed the Applicant that a formal presentation would not be necessary. Rather, at the ANC's regularly scheduled and duly noticed meeting held on April 11, 2016, Commissioner Cloyd informed the full ANC of the Applicant's minor modification request. No objections were raised by the ANC or the public. On May 12, 2016, the Applicant provided the ANC with a copy of the minor modification application that was submitted to the Commission. The ANC did not submit a written report on the minor modification application.
12. The Office of Planning ("OP") reviewed the South Building Modified Penthouse Plans, and by report dated June 6, 2016, OP recommended approval of the minor modification. (Ex. 4.)
13. On June 13, 2016, the Commission held a public meeting to consider the minor modification shown in the South Building Modified Penthouse Plans. At the meeting, the Commission voted to approve the application for a minor modification to the plans approved in Z.C. Order No. 06-46B.

14. The Commission finds that the requested modification as depicted in the South Building Modified Penthouse Plans are minor, and further finds that approval of the modification is appropriate and not inconsistent with the plans approved in Z.C. Order No. 06-46B.

CONCLUSIONS OF LAW

1. Upon consideration of the record in this application, the Commission finds that the proposed modification is consistent with the intent of the Commission's previous approval in Z.C. Order No. 06-46B, and is not inconsistent with the Comprehensive Plan.
2. The Commission concludes that approving the modification is appropriate and not inconsistent with the intent of 11 DCMR § 3030 of the 1958 Zoning Regulations. Moreover, the Commission finds that this application meets the filing requirements of 11 DCMR §§ 411.24 and 411.25 of the 1958 Zoning Regulations to permit Consent Calendar consideration of an application for penthouse habitable space to be added to a building approved by the Commission through the design review requirements of the CG Overlay provisions prior to January 8, 2016.
3. The Commission concludes that its decision is in the best interest of the District of Columbia, and is consistent with the intent and purpose of the 1958 Zoning Regulations and Zoning Act.
4. Finally, the Commission finds that the modification does not affect the essential elements of the Modified Plans, as approved pursuant to Z.C. Order No. 06-46B, including use, height, bulk, parking, or lot occupancy. The modification is minor such that consideration as a Consent Calendar item without public hearing is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for minor modification to the plans approved pursuant to Z.C. Order No. 06-46B, the Modified Plans, subject to the architectural plans and elevations submitted at Exhibit 2B of this case, the South Building Modified Penthouse Plans.

At its public meeting on June 13, 2016, upon the motion of Vice Chairperson Cohen, as seconded by Commissioner Turnbull, 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-Z DCMR § 604.9, this Order shall become final and effective upon publication in the D.C. Register; that is on October 7, 2016.

A handwritten signature in blue ink, reading "Anthony J. Hood", written over a horizontal line.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

A handwritten signature in blue ink, reading "Sara A. Bardin", written over a horizontal line.

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-46D
Z.C. Case No. 06-46D
Half Street Residential PJV, LLC
(Modification of Consequence to Capitol Gateway Overlay
Design Review Approval @ Square 701)
May 18, 2017

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on May 18, 2017. At that meeting, the Commission approved the application of Half Street Residential PJV, LLC (“Applicant”) for a modification of consequence to a project approved pursuant to the Capitol Gateway Overlay District design review provisions (“CG Overlay provisions”) set forth in § 1604 of the 1958 Zoning Regulations of the District of Columbia (“1958 Zoning Regulations”)¹, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The property that is the subject of this application consists of the southern portion of Record Lot 168 in Square 701, as more specifically known as Assessment and Taxation Lots 857, 858, and 859 (“Property”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

BACKGROUND INFORMATION

1. By Z.C. Order No. 06-46 (dated February 12, 2007, effective November 23, 2007), the Commission approved a new development for the property now designated as Record Lot 168 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 11 DCMR § 1604.9 (1958) (“Original Plans”).
2. The Original Plans depicted a mixed-use development consisting of two buildings on a single lot of record (“North Building” and “South Building”) consisting of 762,800 square

¹ The project that is the subject of this modification of consequence was originally approved when the 1958 Zoning Regulations of the District of Columbia (“ZR58”) were in effect (Z.C. Order No. 06-46). The Commission also approved three subsequent minor modifications to the project following the original approval which also occurred under ZR58 (Z.C. Order Nos. 06-46A, 06-46B, and 06-46C). On September 6, 2016, the provisions of ZR58 were repealed and replaced by the 2016 Zoning Regulations of the District of Columbia (“ZR16”). The repeal of ZR58 and replacement with ZR16 has no effect on the validity of the Commission’s prior decisions and orders regarding the project.

foot of gross floor area (“GFA”) of office, residential, hotel, and retail uses. The North Building was approved for office and retail use while the South Building was approved for hotel, residential, and retail use. The Original Plans were approved for 277,600 square feet of GFA of office use, 105,560 square feet of GFA of hotel use, 51,010 square feet of GFA of retail use, and 320,100 square feet of GFA of residential use. The Original Plans showed a maximum height of 110 feet, not including roof structures, and a maximum density of 7.44 floor area ratio (“FAR”). To achieve the maximum permitted building height and FAR, the Original Plans included the transfer of residential density from Square 700 through combined lot development that also involved the ballpark site to the south.

3. By Z.C. Order No. 06-46A (dated January 28, 2008, effective December 12, 2008), the Commission approved minor modifications to the Original Plans. (See Z.C. Case No. 06-46A.) The minor modifications included a number of design changes and several changes to GFA, including a reduction in office use, and increases in hotel, retail, and residential uses. The minor modifications resulted in a reduction in the overall FAR from 7.44 to 7.35.
4. Following the Commission’s approval of the Original Plans, and subsequent minor modification, the North Building was constructed. However, the South Building was never constructed and ownership of the Property transferred to the Applicant in the fall of 2014.
5. By Z.C. Order No. 06-46B (dated June 29, 2015, effective July 31, 2015), the Commission approved modifications to the previously approved plans for the South Building. The Commission also approved related variances and special exceptions pursuant to 11 DCMR § 1604.9 (1958) (“South Building Plans”). The South Building Plans are included as Exhibit [“Ex”] 22 of the record for Z.C. Case No. 06-46B.
6. According to Z.C. Order No. 06-46B, the South Building was approved for residential GFA ranging from approximately 318,400-402,800 square feet, retail GFA ranging from approximately 55,100-69,200 square feet, and hotel GFA ranging between zero to approximately 78,300 square feet. In addition, the South Building was approved with a maximum density of 6.83 FAR. (See Z.C. Order No. 06-46B, Conditions 3-4 at page 19.)
7. By Z.C. Order No. 06-46C (dated June 13, 2016, effective October 7, 2016), the Commission approved a minor modification to the South Building to permit the addition of penthouse habitable space, including related design modifications to the penthouse. The approved minor modification added approximately 9,369 square feet of GFA of penthouse habitable space to the South Building, of which approximately 3,360 square feet of GFA is devoted to communal recreation/amenity space. In addition, the South Building modified penthouse includes approximately 2,199 square feet of GFA of penthouse mechanical space, and approximately 3,044 square feet of GFA of unenclosed screened mechanical equipment. The approved minor modification also included changes to the South Building penthouse façades and materials, and changes to the outdoor rooftop amenity space and landscape plan.

CURRENT APPLICATION

8. By letter dated March 3, 2017, and pursuant to 11-Z DCMR § 703, the Applicant submitted a request for a modification of consequence to: (i) permit a bowling alley as part of an eating and drinking establishment use, (ii) make refinements to select building façades, and (iii) make refinements to the design of Monument Place, the pedestrian thoroughfare located along the north side of the South Building between Half Street, S.E. and Cushing Place, S.E. (Ex. 1-2F.) In addition, pursuant to the criteria of 11-U DCMR § 518.1(c)(1) and (2), the Applicant requested a special exception to permit a bowling alley use in the CG-4 zone. In accordance with 11-X DCMR § 603.3, the Commission has the authority to grant the requested special exception simultaneously with the Applicant's modification of consequence request.
9. In satisfaction of 11-Z DCMR § 703.13, the Applicant provided a Certificate of Service which noted that Advisory Neighborhood Commission ("ANC") 6D, the only party in the original proceeding, was served with the application. (Ex. 2F.)
10. By letter dated March 17, 2017, the Applicant submitted a request to amend its modification of consequence request to include refinements to the configuration of the South Building loading area, and to supplement the record with information regarding the South Building's mezzanine level and consistency with the previously approved GFA ranges and overall density. (Ex. 7-7B.) The Applicant served a copy of its request to amend the application on ANC 6D.
11. On March 16, 2017, the Office of Planning ("OP") submitted a report into the record recommending that the Commission approve the application. (Ex. 5.) In its report, OP finds that the application is appropriately considered as a modification of consequence, and that the proposed changes are consistent with the Commission's original approval and the intent of the CG-4 zone.
12. The Commission, at its March 27, 2017, public meeting, determined that the application was properly a modification of consequence within the meaning of 11-Z DCMR §§ 703.3 and 703.4, and that no public hearing was necessary pursuant to Subtitle Z § 703.1. The Commission was therefore required by Subtitle Z § 1703.17(c)(2) to establish a timeframe for ANC 6D to file a response in opposition to, or in support of the request, and for the Applicant to respond thereto; and schedule the request for deliberations. During its deliberations, the Commission requested additional information from the Applicant regarding the digital signage along the retail level of the South Building at the corner of Half and N Street, S.E., as depicted on Sheet A7 of Ex. 7A. The Commission requested that this additional information be submitted by April 17, 2017. The Commission allowed ANC 6D until April 13, 2017, to file its report on the application, and scheduled the application for deliberation on April 24, 2017.
13. ANC 6D did not submit a report on the application by the April 13, 2017, deadline established by the Commission.

14. On April 17, 2017, the Applicant submitted the additional information regarding the digital signage on the South Building at the corner of Half and N Street, S.E. (Ex. 8-8B). The Applicant described the digital signage as consisting of two digital LED signs that each measure approximately 8-10 feet high by approximately 18-20 feet wide. The Applicant stated that the digital signage is consistent with, and would be operated in accordance with the recently enacted “Nationals Park and Ballpark District Designated Entertainment Area Signage Regulations Amendment Act of 2016” (the “Act”), which was passed by the D.C. Council on December 20, 2016, and went into effect on April 7, 2017.
15. At its April 24, 2017, public meeting, the Commission decided to withhold deliberation on the application to provide ANC 6D another opportunity to submit a report. The Commission rescheduled its deliberation on the application for May 8, 2017.
16. ANC 6D did not submit a report on the application by the May 8, 2017, public meeting.
17. At its May 8, 2017, public meeting, the Commission again decided to withhold deliberation on the application to provide ANC 6D another opportunity to submit a report. Noting the typical responsiveness of this ANC, the Commission stated that it remained interested in receiving a report from the ANC, particularly in regards to the digital signage along the retail level of the South Building at the corner of Half and N Streets, S.E. The Commission rescheduled its deliberation on the application for May 18, 2017.
18. On May 16, 2017, ANC 6D submitted a report into the record (the “ANC Report”). (Ex. 9.) In its report, the ANC expresses support for the addition of a bowling alley to the project, as well as the proposed building elevation and material changes. In addition, the ANC expressed support for the design refinements to Monument Place. With respect to the digital signage on the corner of the South Building at Half and N Streets, S.E., while acknowledging the Applicant’s statement regarding the Act, the ANC stated that it objected to the signage on the basis that it believed the signage was “inconsistent with the principles of good design” and that it “significantly detracted from experience and engagement by the patrons on [the South Building second floor terrace] from fully integrating with [the] lively environment on the corner below overlooking the entrance to the Ballpark.”
19. On May 18, 2017, the Applicant submitted a response to the ANC Report. (Ex. 10.)
20. On May 18, 2017, the Commission deliberated on the application. With respect to the Applicant’s request for special exception relief to add a bowling alley as part of an eating and drinking establishment use in the CG-4 zone, and its requests to refine the design and materials of select façades refine the design of Monument Place, and reconfigure the loading area of the South Building, the Commission found these modifications to be consistent with the Commission’s original approval of the South Building and the purposes of the CG-4 zone and thus voted to approve these requested modifications.

With respect to the digital signage along the retail level of the South Building at the corner of Half and N Streets, S.E., the Commission was persuaded by the comments provided by ANC 6D, and decided not to include the digital signage in its vote to approve the application.

21. As a prerequisite to issuance of the final order for the application, the Commission required the Applicant to submit revised drawings without the digital signage shown on the corner of the South Building at Half and N Streets, S.E. as depicted on Sheet A7 of Ex. 7A. On June 13, 2017, the Applicant submitted the revised drawings. (Ex. 12.)

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11-Z DCMR § 703.3.) Examples of modifications of consequence “include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (11-Z DCMR § 703.4). The Commission concludes that the modifications depicted in Exhibit 12 of the case record, and as described in detail in the statements submitted by the Applicant (Ex. 2-2F, 7-7B), are modifications of consequence; and therefore, can be and granted without a public hearing.

One example of a modification of significance is “additional relief ... from the zoning regulations not previously approved.” (11-Z DCMR § 703.6.) Here, the Applicant is seeking a special exception that was not previously requested or granted. This request would therefore appear to a modification of significance, for which a hearing is required. However, as the Commission previously noted, “the Commission considers these standards to be flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing.” (Z.C. Case No. 04-13A, Metropolitan Baptist Church (2017), request to change public benefit from church room to residential use not a modification of significance because relief was “straightforward”). The special exception requested here is similarly straightforward, and presented no factual issues that required a public hearing to resolve. Therefore, it was appropriate to consider the request for a special exception to add a bowling alley use to be a modification of consequence.

The Commission concludes that the proposed modifications of consequence related to design are entirely consistent with the Commission’s previous design review approval of the South Building and with the purposes of the CG-4 zone. These modifications do not diminish or detract from the Commission’s original approval.

As to the special exception, the CG-4 zone is subject to the use permissions applicable to MU Use Group G. (See 11-K DCMR § 507.2.) Those use permissions allow a bowling alley as a special exception subject to the general special exception provision stated at 11- DCMR X § 901.2 and subject to the following specific conditions:

- (1) Bowling alley use shall not be within twenty-five feet (25 ft.) of a residential zone unless separated from such district by a street or alley; and
- (2) Soundproofing to the extent deemed necessary for the protection of adjoining and nearby property shall be required;

(11-G DCMR § 518.1 (c).)

Based upon the submissions of the Applicant and the OP report, the Commission finds that the bowling alley use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map; and will not tend to affect adversely, the use of neighboring property. The Commission further finds that the use will not be within 25 feet of a residential zone and that no soundproofing is necessary.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl) to give “great weight” to the issues and concerns contained in the written report of an affected ANC. As is reflected in the Finding of Fact No. 11, ANC 6D submitted a report expressing concerns over the digital signage on the corner of the South Building at Half and N Streets, S.E. The Commission found ANC 6D’s concerns over the digital signage to be persuasive and required the Applicant to remove the signage from its plans.

The Commission is also required to give great weight to the recommendation of OP. (See D.C. Official Code § 6-623.04 (2012 Repl).) The Commission concurs with OP’s recommendation to approve this modification of consequence application

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for a modification of consequence to the plans approved pursuant to Z.C. Order No. 06-46B, as modified by Z.C. Order No. 06-46C, subject to the plans and elevations submitted at Exhibit 12 of this case.

On May 18, 2017, upon the motion of Vice Chairman Miller as seconded by Commissioner Turnbull, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Michael G. Turnbull, and Peter G. May to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 11, 2017.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

 for

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-46E
Z.C. Case No. 06-46E
1250 Half Street Residential PJV, LLC
(Modification of Consequence of Design Review
@ 1250 Half Street, S.E. [Lots 857, 858, and 859 in Square 701])
September 23, 2019

Pursuant to notice, at its September 23, 2019 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 1250 Half Street Residential PJV, LLC (the “Applicant”) for a Modification of Consequence to the conditions and approved plans of a design review project originally approved by Z.C. Order No. 06-46 (the “Original Order”), as modified by Z.C. Order Nos. 06-46A through 06-46D, for Lots 857-859 in Square 702, with a street address of 1250 Half Street, S.E. (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. Pursuant to the Original Order, the Commission granted the Applicant overlay review approval for Lots 857, 858, and 859 in Square 701 (the “Approved Project”). The Approved Project authorized the construction of a mixed-use development of two buildings: the north building (“North Building”) containing office and retail uses and the south building (“South Building”) containing hotel, retail and residential uses.
2. In Z.C. Order No. 06-46A the Commission approved a modification of the Approved Project to permit:
 - a. Design changes to the plans for the Approved Project;
 - b. Reallocation of the total gross floor area (“GFA”) between the various use categories; and
 - c. Modification of Conditions Nos. 1-5, 7-9, 12-13, 15-17, and 19 of the Original Order.

3. In Z.C. Order No. 06-46B, the Commission approved further modifications to the South Building, including modifications to the approved plans, as well as additional and changed conditions. The Commission also approved related variances and special exceptions.
4. In Z.C. Order No. 06-46C, the Commission approved a Minor Modification to the South Building to permit the addition of penthouse habitable space and related design modifications.
5. In Z.C. Order No. 06-46D, the Commission approved a Modification of Consequence to the South Building to:
 - a. Permit a bowling alley as part of an eating and drinking establishment use;
 - b. Permit modifications to the building façades and materials; and
 - c. Make modifications to the design of Monument Place (a pedestrian thoroughfare located between the mixed-use building and the office building to the north).
6. In Z.C. Order No. 06-46D, the Commission also approved further modifications to the South Building façade and signage plans previously modified by Z.C. Order No. 06-46B. The initial plans submitted in Z.C. Case No. 06-46D included digital signage. (Z.C. Case No. 06-46D, Exhibit [“Ex”] 2C). In response to Advisory Neighborhood Commission (“ANC”) 6D’s report in that case expressing concerns with the proposed digital signage, the Commission requested that the Applicant remove the digital signage from the final plans, to which the Applicant agreed. (Z.C. Case No. 06-46D, Ex. 12, 14.)

Parties

7. The only party to the Z.C Case No. 06-46E, other than the Applicant was ANC 6D, the “affected” ANC pursuant to Subtitle Z § 101.8.

The Application

8. On August 29, 2019, the Applicant filed the Application requesting a Modification of Consequence to authorize modifications to the plans approved by Z.C. Order No. 06-46D to add one (1) static illuminated sign and two digital signs on the South Building at the corner of Half Street and N Street S.E. (Ex. 1 and 1A.)
9. The Applicant provided evidence that on August 29, 2019 it served the Application on ANC 6D and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application. (Ex. 1.)
10. OP submitted a report dated September 13, 2019 stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the “OP Report,” Ex. 5). The OP Report noted that the proposed signs would be consistent with the Original Order, the intent of CG-4 Zone, and the Nationals Park and Ballpark District Designated Entertainment Area Signage Regulations Amendment Act of 2016 (the “Signage Act”).

11. ANC 6D submitted a written report stating that at its duly noticed public meeting of July 15, 2019, at which a quorum was present, ANC 6D voted not to oppose the Application (the “ANC Report”). (Ex. 4.) The ANC Report noted the ANC’s general opposition to the Signage Act and raised concerns about the aesthetic and safety impacts of the proposed digital signage.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance”.
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of Modifications of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and architectural elements approved by the Original Order, as modified by Z.C. Order Nos. 06-46A through 06-46D, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 6D, the only party other than the Applicant to the Approved PUD, had filed a response to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its September 23, 2019 public meeting.
7. The Commission finds that the Application is consistent with the Approved Project, as authorized by the Original Order as modified by Z.C. Order Nos. 06-46A through 06-46D because the modification is minimal and does not change the Approved Project’s compliance with the design review criteria. Further the Commission concludes that the proposed signs are consistent with the intent of the Capitol Gateway Zone in which the Property is located and with the intent and requirements of the Signage Act.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report.

9. The Commission notes OP's lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

10. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z §406.2 require the Commission to give "great weight" to the issues and concerns contained in the written report of an affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).
11. Commissioner May noted that the ANC was opposed to the underlying Signage Act and that the ANC did raise a number of valid concerns regarding the impact of illuminated and digital signage on residents of the area. However, Commissioner May also noted that these concerns with the Signage Act were ultimately beyond the scope of the Commission's review.
12. The Commission concluded that, while the ANC did raise legitimate concerns regarding signage generally, it had ultimately voted not to oppose the Application. The Commission found this lack of opposition persuasive and concurs in that judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** its request for a Modification of Consequence to revise the plans approved by Z.C. Order Nos. 06-46 through 06-46D and Condition No. 2 therein in accordance with the plans in the case record of Z.C. Case No. 06-46E at Ex. 1A.

The conditions in Z.C. Order Nos. 06-46 through 06-46D now in effect, remain unchanged, except that Condition No. 2 as stated or incorporated in these orders, is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions shown in **bold** and underlined text):


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, at ~~and marked~~ Exhibit 33 in ~~the record of the case~~ **Z.C. Case No. 06-46** as modified by:
- **the Architectural Plans and Elevations dated January 7, 2008, at Exhibit 7 in Z.C. Case 06-46A;**
 - **the Architectural Plans and Elevations dated June 15, 2015, at Exhibit 22 in Z.C. Case 06-46B;**
 - **the Architectural Plans and Elevations dated May 11, 2016, at Exhibit 2B in Z.C. Case 06-46C;**


- the Architectural Plans and Elevations dated June 12, 2017, at Exhibit 12 in Z.C. Case 06-46D;
- the Architectural Plans and Elevations dated August 29, 2019, at Exhibit 1A in Z.C. Case 06-46E; and
- the guidelines, conditions, and standards below.

VOTE September 23, 2019:

5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 06-46E shall become final and effective upon publication in the *DC Register*; that is, on October 25, 2019.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (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 WHICH 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.