GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-30
Z.C. Case No. 08-30
West Half 1 LLC, West Half 2 LLC, and West Half 3 LLC
(Capitol Gateway Overlay Review)
February 23, 2009

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on January 29, 2009, to consider an application for property owned by West Half 1 LLC, West Half 2 LLC, and West Half 3 LLC (collectively, the "Applicant") for review and approval of a new development pursuant to the Capitol Gateway (CG) Overlay District provisions ("CG Overlay District Review") set forth in §1610 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 33, 802, 840, 841, 850, 857, 864, 865, 868, 871, and 872 in Square 700.

In addition to the special exception relief requested pursuant to § 1610, the Applicant also requested the following relief: special exception relief from §§ 639 and 411 regarding the rooftop structures; variance relief from the loading requirements of § 2201.1; variance relief from the step-back requirements of § 1607.2; variance relief from the ground floor retail requirements of § 1607.3; variance relief from the M Street setback requirements of §1604.3; and variance relief from the lot occupancy requirements of § 634.1.

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.

FINDINGS OF FACT

PROCEDURAL HISTORY

1. On November 12, 2008, the Applicant submitted an application for Zoning Commission design review and special exception and variance relief for property located on Lots 33, 802, 840, 841, 850, 857, 864, 865, 868, 871, and 872 in Square 700 (the "Property"). The Property is comprised of approximately 87,989 square feet of land area and is located in the CG/CR Zone District. In addition to the CG Overlay District special exception review pursuant to § 1610 of the Zoning Regulations, the Applicant requested; special exception relief from §§ 639 and 411 regarding the rooftop structures, variance relief from the loading requirements of § 2201.1, variance relief from the step-back

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requirements of §1607.2, variance relief from the ground floor retail requirements of § 1607.3, variance relief from the M Street setback requirements of § 1604.3, and variance relief from the lot occupancy requirements of § 634.1.

2. The purposes and objectives of the CG Overlay District, as enumerated in §1600.2, that are relevant to the proposed development include:
   - Assuring development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area;
   - Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
   - Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, SE, near the Navy Yard Metrorail station; and
   - Provide for the development of Half Street, SE as an active pedestrian oriented street with active ground floor uses and appropriate setbacks from the street façade to ensure adequate light and air, and a pedestrian scale.

3. After proper notice was provided, the Commission held a hearing on the application on January 29, 2009. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located.

4. Expert witnesses appearing on behalf of the Applicant included: Jon Eisen of Street Sense, William Hellmuth of HOK, Phil Esocoff of Esocoff & Associates, and Erwin Andres of Gorove/Slade Associates, Inc.

5. The Deputy Mayor for Planning and Economic Development ("DMPED") submitted a letter in support of the project noting that the proposed design of the project, "appears to successfully accomplish the goals of the Capitol Gateway Overlay District in creating an active, pedestrian-oriented Half Street with vibrant ground floor uses." (Exhibit 16.) The Capitol Riverfront Business Improvement District ("BID") also submitted a letter in support of the project. The BID supported the vision and design aesthetic that the Applicant and its architects have pursued and noted that the project's plans for a vibrant pedestrian environment with retailers planned on all sides of the project will be a welcome addition to the neighborhood and will act as an exciting gateway to Nationals Park while serving basic retail needs. (Exhibit 17.)

6. At the conclusion of the hearing, the Commission requested that the Applicant submit the following: (i) a roof section with all roof structures clearly dimensioned; and (ii) a copy of an updated rendering of the Half and M Street facades of the project that was presented at the January 29, 2009 public hearing. The Applicant submitted these materials to the Commission on February 9, 2009. (Exhibit 31.)

7. At the public meeting on February 23, 2009, the Commission took final action to approve the plans submitted into the record and the requests for area variance relief. When it took final action, the Commission expressed concern that the plans depicted a roof structure that could possibly violate An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 601.01 to 601.09) ("Height Act") depending on how the statute is interpreted. The Commission noted that it was up to the Zoning Administrator, not the Commission, to interpret the Height Act. While the Commission would be reluctant to approve plans that clearly violated the Height Act, no such clear cut infraction was present. Rather, the question of whether the roof structure is ineligible for a waiver is best left to the judgment of the Zoning Administrator. Nevertheless, the Zoning Administrator should not view the Commission's approval of this application as obviating the need for a careful review of these plans for compliance with the Height Act and the Zoning Regulations. The Commission further requested that the Office of Zoning write to the Zoning Administrator to highlight this issue, and request that he report his conclusion back to the Commission. The Commission wishes to stress that its approval of this application does not extend to any portion of the structure that is depicted on the plans as exceeding the maximum height permitted under the Zoning Regulations and therefore establishes no precedent in that regard.

DESCRIPTION OF PROPERTY AND SURROUNDING AREA

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

PROJECT OVERVIEW

9. The Applicant proposes to develop the Property with a mixed-use development that includes approximately 260-300 market-rate residential units, approximately 370,019 square feet of office space, and approximately 53,840 square feet of retail uses located predominantly on the ground floor (the "Project"). The Project will have a density of approximately 8.01 floor area ratio ("FAR") (3.2 residential, 4.2 office and 0.6 retail) and a maximum building height of 110 feet. Retail and restaurant uses are proposed for all of the ground floor space in the Project (other than lobbies for the residential and office components and service uses) with retail possible on the second or concourse (P1) levels of the Project in select locations. The Project will include 567-607 parking spaces and 157 bicycle parking spaces. The parking spaces for the residential units will be provided at a ratio of .75 spaces per residential unit. The Project will provide approximately 304

parking spaces for the office use and approximately 90 parking spaces for the retail uses. The Applicant requested the flexibility to replace up to 40 parking spaces on the first parking level with retail uses. The Project will include six shared loading docks. Access to the loading docks and the parking garages will occur solely from Van Street. (Exhibit 11, pp. 4-5; Exhibit 13, p. Z2.)

10. The Project will introduce an east-west 30-foot-wide pedestrian oriented street or via ("Via") that bisects the Property into two appropriately sized development parcels. The Via allows for a natural break in the development pattern of the Property and aligns with the private street (Monument Place) on the east side of Half Street to create a central retail and pedestrian node on Half Street (the location of Monument Place was approved in Z.C. Order Nos. 06-46 and 06-46A). The Via has been designed to be a dedicated pedestrian street that will provide retail opportunities for local tenants and shop owners. (Exhibit 11, pp. 4, 6.)

11. The residential component of the Project will be located at the southern end of the Property, closest to the Ballpark on the corner of Half Street and N Street. The office component will be located along M Street and will also include a portion of the structure that is located south of the Via. The office components will be connected across the Via by two enclosed corridors at the third and sixth levels and outdoor terraces on the fourth and seventh levels. (Exhibit 11, pp. 4-5, Exhibit 21.)

12. The ground floor retail spaces will have ceiling heights ranging from 14 feet to 18 feet (clear height to structure of up to 20 feet), making them marketable to a wide range of urban retailers. Mr. Eisen, the architect for the retail portion of the Project, testified that individual retailers will be encouraged to make their own mark on the streetscape with inboard and outboard tables, chairs, benches, and planters that both reflect and complement their storefronts. The Applicant requested that the Commission grant flexibility to, "vary the exterior design and materials of the ground floor retail space based on the preferences of the individual retailer." The Applicant proposed that Half Street will become the next great retail, dining and entertainment district in Washington, D.C., with the flexibility to function as a plaza on game days while still accommodating vehicular traffic for the majority of the time. Half Street will become an animated "Main Street" that will include restaurants (which could be entertainment driven, themed, casual, fine dining, quick bite), specialty stores, sports related stores or neighborhood service stores. The retail character of the Via will be marked by high ceilings, elegant and animated store fronts, and smaller store footprints. The Applicant anticipates open-air produce, flower, or beverage markets to be an integral component of the experience along the Via. (Exhibit 11, pp. 5-6; Exhibit 13, Exhibit 21.)

13. The residential component of the Project is configured in two wings flanking an interior courtyard garden at the second floor. The courtyard opens to the south to catch natural light and the windows in the courtyard are angled and recessed to allow good views as

well as privacy for residents. A second floor lounge and club room will be provided adjacent to the garden terrace. The residential units are shaped to capture and frame sweeping views of the Ballpark and other urban and monumental views. Large and dramatic units at the south end of the building have uninterrupted views into the playing field and are provided with large expanses of glass to accentuate these views. The roof features a lap pool, several well-defined outdoor gathering spaces and three private terraces directly accessed from residential units below. The proposed building materials include glazed ceramics, metal screens, brick, spandrel glass and stone. Mr. Esocoff, the architect for the residential portion of the Project, testified that the use of dramatic forms and striking materials is intended to create an iconic image and create a true architectural landmark at the Property. (Exhibit 11, pp. 7-9; Exhibit 13, Exhibit 21.)

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

- To create a beacon or visual marker at the neighborhood level for the entire Half Street retail and entertainment zone;
- To create an exciting visual and three-dimensional response to the M Street Metro Station entrance, Monument Realty's project across Half Street, and the Ballpark; and
- To create and contribute to a sense of richness and urbanity at the pedestrian level.

In the written statement, and through the testimony of Mr. Hellmuth (the architect for the office component of the Project), the Applicant noted that the expression of the office exterior skin is seen as a background with a series of "events". The background is an elegant, modern version of the classic industrial brick warehouse. Tall glass windows punctuate a horizontally expressed brick, with either masonry or metal spandrel panels. The brick color is either a terra-cotta or soft red depending on location. The "events" consist of several large scale geometric shifts in the massing. The largest of these is the angled aged patina green metal clad box that seems to skewer the larger office piece – it forms the middle of the façade on M Street to mark the office entry and then pokes through on Half Street, greeting Metro riders on their way to the Ballpark. It terminates at the Via, cantilevering out over the sidewalk, with a multi-story framed view toward the Ballpark. This patina green metal box is topped by a covered roof terrace which extends the form above the roof. The southern office component has a similar, smaller patina green metal piece. The corner of M and Half Streets is identified by a sleek glass and metal wall, with a stainless steel lighted mesh screen element reaching above the building roof, marking the entry to the Half Street retail and entertainment neighborhood. Van Street is treated in a quieter manner, as bay projections are used to punctuate and add articulation and relief to the façade and offer views up and down Van Street. (Exhibit 11, pp. 9-10; Exhibit 13, Exhibit 21.)

15. The Applicant noted that it intends to pursue legislation with the District of Columbia City Council to create special electronic signage legislation to help make this Project, and Half Street in particular, a completely unique destination in the District of Columbia. The Applicant provided plans with examples of the signage the Applicant envisions for this Project and possible locations for such signage, while acknowledging to the Commission that such signage is not presently permitted in the District of Columbia. The electronic signage will provide advertising and live broadcast opportunities throughout Half Street and the Via, adding to the liveliness of the pedestrian experience. (Exhibit 11, pp. 9-10; Exhibit 13, Exhibit 21.)

REQUESTED AREAS OF RELIEF

Special Exception Relief - Satisfaction of CH Overlay

16. The Applicant is required to prove that the Project is consistent with the requirements of § 1610, § 1604 (since the Property has frontage along M Street), and § 1607 (since the Property has frontage along Half Street, south of M Street). The following paragraphs address the Applicant's satisfaction of these special exception standards.

17. Pursuant to § 1610.3(a), the Applicant is required to prove that the Project will achieve the objectives of the CG Overlay District as set forth in § 1600.2. The Applicant, in its written statement and testimony at the public hearing, noted that the Project will achieve the objectives of the CG Overlay District as it is a mixed-use development that will include a significant residential component, commercial office space, and a variety of preferred retail uses. The height and density of the building are within the parameters for the CG/CR Zone District and are consistent with its high-density residential and high-density commercial designation under the Comprehensive Plan. The Project is designed to highlight Half Street as an active, pedestrian-oriented street with a mix of retail uses that will support and sustain the revitalization of Half Street. The retail will serve both the residents of the community as well as attract individuals who are discovering the neighborhood for the first time while attending a game at the Ballpark. The Applicant proposes brick sidewalks along Half Street and Belgian Block pavers for the street. The retail uses at the ground plane will include projections of up to four feet into the public space to add variety and texture to the retail uses. (Exhibit 11, p.12; Exhibit 13.)

18. In accordance with § 1610.3(b), the proposed building will help achieve the desired mix of uses in the CG Overlay District as set forth §§ 1600.2(a) and (b). The Project will incorporate residential, retail, and service uses. The 260-300 residential units will include a mix of unit types that will attract a diverse resident base, while the retail base will be designed to accommodate entertainment and retail uses. (Exhibit 11, p.13.)

19. Pursuant to § 1610.3(c), the proposed building must be in context with the surrounding neighborhood and street patterns. The Applicant noted that the Project is consistent with the higher density development encouraged around the Navy Yard Metro Station. The

Property is surrounded by existing and proposed office, hotel and residential buildings, making the Project's mixed use program complementary to adjacent land uses. The Applicant's representative testified that the proposed development will encourage pedestrian activity along Half Street through the inclusion of ground floor retail, a curbless streetscape environment, and by prohibiting curb cuts along all surrounding streets except Van Street. In testimony at the public hearing, Mr. Hellmuth, noted that the design of the Project is intended to be different, yet entirely complementary to the surrounding neighborhood. The contemporary design of the office component of the Project, with the numerous projections and recesses along the building's façade, is contrasted with the relatively flat façade of the buildings on the east side of Half Street. This contrast will add interest and liveliness to the streetscape experience along Half Street as pedestrians enter and exit the Ballpark. The proposed building design respects the existing street grid and is in context with the surrounding neighborhood and street patterns. (Exhibit 11, p.13, Exhibit 21.)

20. Satisfaction of § 1610.3(d) requires that the proposed building minimize conflict between vehicles and pedestrians. The Applicant and its representatives stated that the proposed design promotes a safe and efficient pedestrian experience, especially along Half Street and M Street which are two primary pedestrian corridors within the CG Overlay. Per the CG Overlay regulations, no new curb cuts will be established along Half or M Streets. The proposed building will eliminate seven existing curb cuts along Half and M Streets. Access to parking and loading for the entire development will be from Van Street. Eliminating curb cuts along the main pedestrian corridors will reduce the possibility of vehicular and pedestrian conflicts. (Exhibit 11, p.14.)

21. In accordance with § 1610.3(e), the proposed building needs to minimize unarticulated blank walls adjacent to public spaces through façade articulation. In their testimony at the public hearing, all three of the Project's architects noted that all of the building facades are highly articulated and defined on each elevation, thus minimizing unarticulated blank walls adjacent to public spaces. The façade articulation is accomplished through use of bays, building materials, and display windows along the ground floor. The projections proposed in this Project truly maximize what is special about this area, the Ballpark. The proposed projections of the office component provide direct views into the stadium for multiple office tenants. (Exhibit 11, p.14; Exhibit 13, Exhibit 21.)

22. Section 1610.3(f) requires that the proposed building will minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. The Project has been designed to qualify for at least LEED Silver certification for both the residential and office building components of the Project. The Applicant submitted preliminary LEED checklists for both the office and residential components of the Project. (Exhibit 11, Exhibit D; Exhibit 22.)

23. In accordance with § 1610.5(a), the building or structure shall provide for safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses including retail, entertainment, cultural, and pedestrian concourse space. The proposed building design encourages pedestrian activity along its Half Street, Via and M Street façades and provides safe and active streetscapes. The Project architects testified that this is achieved through building articulation; thoughtfully landscaped spaces; the provision of ground floor retail; variable height retail expressions along Half Street, the Via, M Street and N Streets; and variable depth retail bay projections. In keeping with the pedestrian activity along those facades, the Applicant provides access to its garage and its loading area from Van Street in order to minimize vehicular and pedestrian conflicts. (Exhibit 11, p.15; Exhibit 13, Exhibit 21.)

24. Pursuant to § 1610.5(b), the building or structure shall provide for safe and convenient movement to and through the site, including to public transit, the Ballpark, and to the Anacostia Riverfront. The primary pedestrian pathway will be along Half Street which is an important link between the Navy Yard Metrorail Station and the Ballpark. The ground floor retail provided along Half Street will make for an interactive and exciting pedestrian experience. Additionally, the landscaping, lighting, the transparent display glass of the ground floor retail, and overall increased activity will enhance pedestrian safety. (Exhibit 11, pp.15-16; Exhibit 13, Exhibit 21.)

25. Section 1610.5(c) requires that the application include a view analysis that assesses openness of views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark, and the waterfront. The Applicant provided numerous view analyses which showed that the Project will not detract from area views, but will enhance them. Importantly, the Project does not block the view of the Capitol, other federal monumental buildings, the waterfront, or the Ballpark. Rather, the superior design of the Project will provide a favorable view for tenants and residents of neighboring buildings, and visitors to the Ballpark. (Exhibit 11, p.16; Exhibit 13, Exhibit 21.)

26. The Applicant is required to show that the Project complies with the design review standards for new developments that have frontage along M Street, pursuant to § 1604. One of those requirements is that no driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building (§ 1604.2). The Project satisfies this requirement as it does not include any curb cuts along M Street. All of the parking and loading for the project will be accessed from Van Street. (Exhibit 11, p.16; Exhibit 13.)

27. In accordance with § 1604.3, the streetwall of each new building shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street, S.E. The streetwall of the office building is set back 15 feet for the entirety of the first floor. The Applicant requested variance relief to allow the

portion of the façade that continues up from the M Street office lobby entrance, to extend into the 15-foot setback above the second floor. The proposed design punctuates the streetscape along M Street and varies the uniformity of the streetwall with calculated articulation. The proposed lighted metal mesh embellishment at the corner of M and Half Streets also extends into this required setback area, above the second floor. The Applicant and Mr. Hellmuth, in the written statement and testimony at the public hearing, stated that this element is important as it claims this important corner, creating an identity and excitement that is critical to making Half Street a memorable place and a success. (Exhibit 11, pp. 9, 16; Exhibit 13.)

28. Section 1604.4 requires that each new building shall devote not less than 35% of the gross floor area of the ground floor to retail, service, entertainment, or arts uses ("preferred uses")…such preferred uses shall occupy 100% of the building's street frontage along M Street, except for space devoted to building entrances or required to be devoted to fire control. Sixty-nine percent of the gross floor area of the ground floor is dedicated to preferred uses. The preferred uses occupy 100% of the building's street frontage along M Street with the exception of the space devoted to the office building lobby. (Exhibit 11, p.17, Exhibit 13.)

29. Section 1604.5 allows the Commission, for good cause shown, to authorize interim occupancy of the preferred use space required by § 1604.4 by non-preferred uses for up to a five-year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses. This section is not applicable, as the Applicant is not seeking relief to place a non-preferred use in the space dedicated to preferred uses. (Exhibit 11, p.17.)

30. In accordance with § 1604.6, not less than 50% of the surface area of the streetwall of any new building along M Street shall be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses of the building. At least 50% of the streetwall along M Street will be devoted to display windows having clear or low emissivity glass. (Exhibit 11, p. 17.)

31. Pursuant to § 1604.7, the minimum floor to ceiling clear height for portions of the ground floor level devoted to preferred uses shall be 14 feet. Throughout the Project, the ceiling height of the ground floor space dedicated to preferred uses varies between 14 feet and 18 feet, but in no instance is it below 14 feet. (Exhibit 11, p. 17; Exhibit 13.)

32. Section 1604.5 allows a building that qualifies as a Capitol South Receiving Zone site under § 1709.18 and for which a building permit has been applied for prior to August 31, 2001, shall not be subject to the requirements of this section. This section is not applicable to the Project. (Exhibit 11, pp. 17-18.)

33. Pursuant to § 1604.9, where a preferred use retail space is required under this section and provided, the requirement of 11 DCMR § 633 to provide public space at ground level shall not apply. The Applicant is providing the requisite amount of preferred use retail space; thus, the public space requirement does not otherwise apply to this project. (Exhibit 11, p. 18.)

34. The Applicant is required to show that the Project complies with the design review standards for new developments that have frontage along Half Street, south of M Street, pursuant to § 1607. In accordance with § 1607.2, any portion of a building or structure that exceeds 65 feet in height shall provide a minimum step-back at 20 feet in depth from the building line along Half Street S.E. Pursuant to § 3104, the Zoning Commission may grant relief from this requirement, to a maximum of 15 feet in height and eight feet in depth, for the provision of reasonable development footprints. The Applicant sought variance relief from this section. (Exhibit 11, p. 18.)

35. Pursuant to § 1607.3, 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 ("preferred uses"). The Applicant requested variance relief from this section as it is dedicating 69% of the gross floor area of the ground floor to preferred uses, excluding the loading and service space dedicated to retail uses. The remainder of the floor is dedicated to office and residential lobby space, making it impractical to provide additional retail space. (Exhibit 11, p. 19, Exhibit 13.)

36. In accordance with § 1607.4, preferred uses shall 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. The Applicant and the architect of the retail portion of the Project noted that preferred uses occupy 100% of the buildings street frontage along Half Street with the exception of the space dedicated to the office and residential lobbies as well as the fire control rooms. (Exhibit 11, p. 19, Exhibit 13.)

37. Pursuant to §1607.5, the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be 14 feet. Throughout the Project, the ceiling height of the ground floor space dedicated to preferred uses varies between 14 feet and 18 feet, but in no instance is it below 14 feet. (Exhibit 11, p. 19; Exhibit 13.)

38. Section 1607.6 allows the Commission, for good cause shown, to authorize interim occupancy of the preferred use space required by § 1607.2 by non-preferred uses for up to a five-year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses. This section is not applicable, as the Applicant is not seeking relief to place a non-preferred use in the space dedicated to preferred uses. (Exhibit 11, p.19.)

39. In accordance with § 1607.7, no private driveway may be constructed or used from Half Street S.E. to any parking or loading berth areas in or adjacent to a building or structure constructed after February 16, 2007. The Applicant is proposing only one curb cut along Half Street and that is to create the Via. The Via is a pedestrian walkway and will not be used to access parking or loading; thus, it is consistent with this section. (Exhibit 11, pp.19-20; Exhibit 13, Exhibit 21.)

40. Pursuant to § 1607.8**,** where preferred use retail space is required under this section and provided, the provisions of DCMR 11 § 633 shall not apply. The Applicant notes that it is maximizing the amount of preferred use retail space it can provide; thus, the public space requirement does not otherwise apply to this project. (Exhibit 11, p. 20.)

41. The Applicant is also required to show that the proposed development will not affect adversely the use of neighboring property. The property to the east of the proposed building has been approved for a mixed-use development of a similar density and height. It will include residential, retail, office, and hotel uses. The property to the north of the site is an office building with ground floor retail. The Applicant's architects testified that the Project is in keeping with the scale of density and height of the surrounding buildings and fits appropriately into that context. The building has been designed to respect and in the case of the Ballpark, serve, the surrounding buildings. The Project will not affect adversely these neighboring properties, but will work in concert with them to create a more dynamic community surrounding the Ballpark. The property to the west of the proposed building is zoned for a mixed-use development of increased height and density. The proposed Via will provide and promote pedestrian access from the adjacent property to Half Street. The Van Street façade will include retail storefronts and articulated façades that will enhance the views and experience from the neighboring property. (Exhibit 11, p. 20; Exhibit 13, Exhibit 21.)

Special Exception Relief – Roof Structures

42. The Applicant is seeking special exception relief pursuant to §§ 3104 and 639 from 11 DCMR §§ 411.3, and 411.5 for multiple roof top structures on the roof of the proposed building, some of which are of varying heights[1]. Section 411.3 requires that, "all penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material and color." Section 411.5 requires penthouse walls from roof level to be of equal height, and to rise vertically to a roof. Section 411.11 of the Zoning Regulations provides, however, that "[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment

[1] The Applicant submitted revised roof plans in a post-hearing submission that removed the need for roof structure set-back relief.

shall be empowered to approve, as a special exception under § 3104, the … location, design, number, and all other aspects of such structure; . . . provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." (Exhibit 11, pp. 21-22.)

43. The Project will provide five rooftop structures: two for stair enclosures and three for elevator overruns. The rooftop enclosures provided for the elevator overruns are permitted pursuant to § 411.4 of the Zoning Regulations; however, the stair enclosures are in excess of those permitted by the Zoning Regulations. The stair enclosures, however, are required by the Building Code. As noted in the written statement and in the testimony of Mr. Esocoff, the stairways are located on each arm of the residential building to provide a means of egress in the event of an emergency. Further, the stairways are required under the Code to provide access for the individuals using the rooftop amenities. The stairways and the elevator overruns cannot be located in a single enclosure because the Building Code requirements necessitate that the stairways be located in specific locations, which do not coincide with the location of the elevator core. To create a single penthouse for both the elevators and stairways would result in unnecessarily large penthouses and would greatly reduce the amenity space on the roof. It would also reduce the quality of the amenity space provided because it would provide an imposing view for the residents using the rooftop space, as well as the second floor courtyard. (Exhibit 11, p. 23.)

44. Mr. Esocoff testified that the penthouses will vary in height because they serve different purposes. The penthouses for the elevator overruns will be 18 feet, 6 inches in height, while those housing mechanical equipment or stairways will be 12 feet, 6 inches tall. Mr. Esocoff noted that the design goal was to diminish the impact of the penthouses by decreasing their height where possible. (Exhibit 11, pp. 23-24, Exhibit 13, Exhibit 21, Exhibit 31).

45. The project architects testified that the additional penthouses and their varying height will not adversely affect the use of neighboring property. To the contrary, the Applicant is reducing the possibility of adversely affecting neighboring property owners by providing separate penthouse structures and a structure of varying heights rather than creating a single, overly large structure. The Applicant also noted that the properties immediately adjacent to the building are predominantly commercial uses of a similar density and height, thus minimizing the possibility of affecting residential units with the proposed rooftop structures. (Exhibit 11, p. 24.)

Variance Relief

46. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three-part test: (1) the property must be subject to an extraordinary or exceptional

situation or condition; (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and (3) no harm to the public or to the zone plan will occur as a result of the approval of the variance application.

47. The Applicant noted that there are a number of unique conditions affecting the Property. The Property is extraordinarily large in size at almost 90,000 square feet and is also very deep (or wide), with an east/west dimension of approximately 150 feet. The project site is located at a very prominent location in the CG Overlay (the intersection of Half and M Streets), which requires a mixture of uses and dictates design features with which the Applicant must comply simply as a result of its presence on both M Street and Half Street (such as a prohibition on curb cuts on two sides of the project, elevated ground floor ceiling heights, and the requirement to provide a "pedestrian scale" building on relatively narrow streets). The Applicant is also proposing to include three different types of land uses on the Property, which is encouraged by the CG Overlay regulations but raises construction feasibility considerations. Finally, the Property is located directly north of the Ballpark which requires a building design that is cognizant of the building's context and respectful of the District of Columbia's objectives for development in and around the Ballpark. (Exhibit 11, pp. 25-26.)

Variance Relief – Loading

48. The Zoning Regulations require the Project to provide a total of six loading berths and three service and delivery spaces. The office use generates a need for three loading berths at 30 feet deep, the retail component generates a need for two loading berths – one at 30 feet deep and the other at 55 feet deep, and the residential component generates a requirement for one loading berth at 55 feet deep. The Applicant is proposing a total of six berths at 30 feet and one service and delivery space at 20 feet. Though the Applicant is providing a sufficient number of berths, it is not providing any berths at 55 feet deep and it is only providing one service and delivery space instead of the requisite three. (Exhibit 11, p. 27.)

49. In its written statement and as testified to by its expert witnesses, the Applicant stated that it was unnecessarily burdensome for the Applicant to satisfy the strict application of the Zoning Regulations' loading requirements for the Project. The Applicant noted that this is a unique project where there are three distinct uses, each of which generates a loading requirement. The residential, retail, and office components each require a separate service and delivery space under the Zoning Regulations for a total of three spaces. Each of the loading berths the Applicant will provide will be 30 feet deep even though this project generates a need for two berths at 55 feet deep. Providing a 55-foot deep berth, however, is impractical since all loading is required to be accessed from Van Street, which is only 50 feet wide. It would be extremely difficult, if not impossible, for a truck that would require a 55-foot loading berth to access a loading berth from the narrow Van Street. (Exhibit 11, p. 28, Exhibit 13, Exhibit 21.)

50. The Applicant's traffic engineering expert prepared a traffic impact assessment that addressed the sufficiency of the loading spaces provided in the project. The traffic engineering expert opined that the loading facilities proposed can accommodate the projected amount of truck activity and that the amount of truck activity is not significant enough to negatively impact through traffic on Van Street. The reduction in service and delivery spaces and the depth of the loading berths will not burden the neighboring road network. The Applicant and its traffic engineering concluded that there will be no adverse impact on neighboring properties from a back-up of trucks or from trucks loading from the streets. Similarly, there will be no adverse impact from not providing two berths at 55 feet deep. Given the limitations of Van Street with regard to accessing loading, vendors will be forced to use smaller trucks. Because vendors will use smaller trucks, berths with a 55-foot depth will not be necessary. (Exhibit 11, pp. 27-28, Exhibit 11 - Exhibit A.)

Variance Relief – Ground Floor Retail

51. Section 1607.3 requires that each new building devote at least 75% of the gross floor area of the ground floor to retail service, entertainment or art uses. The Applicant provided testimony at the public hearing and presented arguments in its written statement that it is unnecessarily burdensome to satisfy the strict application of the Zoning Regulations' ground floor retail requirements on the Project. The Applicant is dedicating approximately 69% of the ground floor to preferred uses. The Applicant stated that it is precluded from achieving the full 75%, because a portion of the ground floor must also serve as lobbies for the office use and a separate lobby for the residential use. To require the full 75% would necessitate elimination of either the office lobby or the residential lobby, which would detract from the appeal of the building. The Applicant also noted that the severity of the variance requested (6%) is minimal and does not adversely impact the planning goals for the area, as the Project still provides a great variety of retail uses that animate Half Street, and the introduction of the Via provides for an additional 300 linear feet of retail storefront within the project. (Exhibit 11, pp. 28-29, Exhibit 13.)

52. The Applicant's request for relief from the ground floor retail requirements will not be substantially detrimental to the public good or impair the intent, purpose, and integrity of the Zone Plan. The Applicant is providing as much retail on the ground floor as possible. Sixty-nine percent, or approximately 53,800 square feet of retail uses will be provided. This affords plenty of flexibility in securing tenants for the building and provides a significant amount of ground floor retail and restaurant space. In testimony at the public hearing, the Applicant and its architects noted that the community will still have the benefit of retail uses lining Half, M, Van, and N Streets, as well as the new Via (which provides an additional 300 linear feet of retail storefront), which is consistent with the CG Overlay. (Exhibit 11, pp. 31-32, Exhibit 13.)

Variance Relief – Step-Backs on Half Street

53. Section 1607.2 requires a building to step-back a minimum of 20 feet along Half Street above a height of 65 feet. The Applicant's architects noted that the purpose of this step-back requirement is to encourage buildings with articulated facades rather than a uniform streetwall and to help ensure a pedestrian scale environment. The Applicant presented significant testimony, in writing and at the public hearing, that it would be unnecessarily burdensome to satisfy the strict application of the step-back requirements along Half Street. Both Mr. Hellmuth and Mr. Esocoff noted that the Project creates an articulated façade that respects the intent of this section, as the façade is set back at varying heights and steps out at varying heights. The result is a building with a highly articulated façade that creates an interesting aesthetic for Half Street. The Project's design includes projections and recessions throughout the building wall, starting at ground level to enhance the pedestrian experience and to create interesting focal points along Half Street. These focal points accentuate the retail plane and have the effect of visually shortening the block. The Applicant also presented substantial evidence that is not garnering additional square footage with its design compared to a project that would satisfy the strict application of § 1706.2. The Applicant also noted that the severity of the variance relief that is requested is not significant. (Exhibit 11, pp. 29-30; Exhibit 13, Exhibit 21.)

54. The relief the Applicant is seeking from the step-back requirements along Half Street will not be detrimental to the public good. The information included in the Applicant's written statement and plans confirms that the proposed design does not secure a windfall of additional density for the Applicant. The projections will not diminish views of surrounding landmarks and will not have a negative affect on the light and air for neighboring uses. View analyses submitted to the Commission also confirm that the building will not affect views of federal buildings or public spaces. Instead, the building will create a more exciting and interactive experience for pedestrians along Half and M Streets. The proposed design engages pedestrians and emphasizes the retail experience. The instant proposal allows for an elegant building design that doesn't sacrifice the views for neighboring properties. (Exhibit 11, p. 32; Exhibit 13, Exhibit 21.)

Variance Relief – Setback Along M Street

55. Section 1604.3 requires the streetwall of each new building shall be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street. The Applicant is proposing a 15-foot setback for the first floor of the building along M Street, but it is proposing projections into the required set back above the ground floor for the portion of the façade above the office lobby entrance and for the architectural embellishment at the corner of M and Half Streets. Mr. Hellmuth testified that the building is intended to act as a marker and a placemaker, announcing to pedestrians that it is the entrance to Half Street, the retail and entertainment destination in the neighborhood. Mr. Hellmuth also noted that requiring a

uniform 15-foot setback for the entire height of the building along M Street would be burdensome in that it would undermine the Applicant's efforts to create an iconic building providing a sense of place in a developing neighborhood of the District. Similar to its proposal for Half Street, the projection the Applicant is proposing for M Street will create a dynamic façade that will help activate the streetscape. (Exhibit 11, pp. 30-31, Exhibit 13, Exhibit 21.)

56. The requested relief from the set back requirements along M Street will not have an adverse impact on the streetscape. The required set back is provided at the ground floor to allow for wide sidewalks to promote the pedestrian experience. Pedestrians will be able to patronize the retail spaces with ease but will also be able to experience the punctuations the proposed projection creates along the streetscape. In response to a question from the Commission, a representative of the Office of Planning ("OP") noted that the purpose of this section of the CG overlay regulations was to provide an appropriate amount of ground floor space for pedestrian movement along M Street. The projection occurs above twenty feet and helps create the dynamic streetscape that the CG Overlay regulations intended to create. (Exhibit 11, pp. 32-33, Exhibit 13, Exhibit 21.)

Variance Relief – Lot Occupancy

57. Section 634.1 limits the lot occupancy of the residential portion of the building to 75%. The Applicant, through its written statement and testimony at the public hearing, argued that the strict application of the lot occupancy requirements will result in a practical difficulty for the Applicant in that it will unnecessarily restrict the development envelope for the office building and it will detrimentally affect the design of the residential building. Because this building is considered one building for zoning purposes, the 75% lot occupancy restriction applies to the entire building (starting at the second floor -- the horizontal plane where residential uses begin). However, the Applicant also noted that if the building were considered two separate buildings – one residential and one commercial – the office portion would be permitted a 100% lot occupancy and the residential portion would be limited to a 75% lot occupancy. The Applicant noted that providing a uniform 75% lot occupancy across the Project would reduce the square footage of the office portion by nearly 93,000 square feet. Whereas a lesser lot occupancy is required for residential use to protect the light and air of the building's residents, the same concerns do not apply to the office portion. The office portion would be required to reduce its footprint simply by virtue of its connection to the residential portion. Thus, the significant reduction in the size of the office building would serve absolutely no purpose. (Exhibit 13, Exhibit 21.)

58. Mr. Esocoff, in testimony at the public hearing, noted that the residential portion of the building has a lot occupancy of 79.8%, which exceeds the permitted 75% lot occupancy. The excess lot occupancy is created in part by the larger balconies the Applicant is proposing. Eliminating the balconies, however, would reduce the attractiveness and

functionality of the residential units. Mr. Esocoff noted that the residential building is designed around a courtyard that is meant to serve the residents and to provide an oasis amid the hustle of Half Street and the nearby ballpark. The balconies maximize the effect of the courtyard and are a means to provide residents a private, outdoor recreation space with plenty of access to light and air. The Applicant testified that eliminating the balconies will undermine the effectiveness of the courtyard as well as reduce the attractiveness of the building as a place to live. (Exhibit 13.)

59. The flexibility the Applicant is seeking is for the lot occupancy variance, with regard to the residential portion of the building is within five percent of the matter-of-right standards. The Applicant argued that the requested relief is minimal given the size of the structure. The Applicant testified that the Project satisfies the zoning requirements for courtyard size, thus the courtyard provides adequate light and air to the interior building units. In addition to the courtyard, the building takes advantage of its extensive street frontage on N, Half, and Van Streets – all of which contribute to the light and air available to the exterior residential units. The Applicant argued that in light of these conditions, it is clear the residential units are not adversely affected by the increased lot occupancy. (Exhibit 13, Exhibit 21.)

GOVERNMENT REPORTS

60. In its January 16, 2009, report, OP noted that it generally supported the application and felt that it would provide an attractive gateway to the baseball stadium, provide for pedestrian movement to and from the Navy Yard Metro station and help achieve an active, mixed use neighborhood, all in keeping with the objectives of the CG Overlay. However, OP noted that more information was required from the Applicant about the architecture and building operations in order for OP to complete its evaluation of the project. (Exhibit 14.)

61. In testimony at the January 29, 2009 public hearing, representatives of OP testified that OP had concluded that the materials included in the Applicant's January 15, 2009 submission had addressed all of the concerns raised in the initial OP report and that OP fully supported the applications for special exception and variance relief.

62. At the request of the Commission, OP filed a supplemental report on February 13, 2009, that addressed the issues that were unresolved at the time of the hearing. OP's supplemental report concluded that all the issues were resolved.

63. The District Department of Transportation ("DDOT") submitted a report into the record of this case on January 22, 2009. DDOT supported the Applicant's request for variance and special exception relief if the Applicant agreed to provide the following steps for increased multi-modal transportation uses:
    - reduction in vehicle parking spaces by 100 parking spaces;

- a total of 6 carsharing spaces in the underground parking facility;
- provision of SmartTrip memberships and SmartBike memberships; and
- a delivery management coordinator for the entire premises.

DDOT requested that the Commission put a special focus on deliveries to the Project and stressed that the Applicant must develop and enforce a tenant truck delivery management program to ensure that deliveries occur during off peak hours, to minimize disruption to the surrounding roadways. DDOT requested that the Commission require that the Applicant prepare an annual report on actual vehicular traffic generation, truck deliveries and transit and bicycle use, and submit the report to DDOT, Transportation Policy Planning Administration and ANC 6D. (Exhibit 15, pp. 4-5.)

64. DDOT noted that the Project provides 210 parking spaces for the residential units, 304 parking spaces for the office uses and 90 parking spaces for the proposed retail uses. DDOT believed that the Applicant is providing too much parking in the Project given the proximity and frequency of both Metrorail and Metrobus transit service. DDOT suggested that the Applicant lessen the parking supply for the site as a way to create a more integrated transportation system and noted that "if the Applicants [sic.] lessen the parking quantity, it will send a clear message to visitors that driving personal vehicles will not be rewarded." DDOT also requested that the Applicant: (i) provide SmartTrip cards, with $60 fare media, to all residents and business owners upon move-in to the new property; (ii) pay for the initial car sharing application fee ($25) and annual fee ($50) for one year for all residents, proprietors and office staff in the Project; and provide SmartBike memberships for one year ($40) for residents and proprietors upon move-in. (Exhibit 15, pp. 3-4.)

65. At the January 29, 2009 public hearing, the Applicant noted that it had agreed to DDOT's recommendations that the number of parking spaces in the Project reserved for carsharing services be increased from three to six. The Applicant also noted that it agreed to create the position of a delivery management coordinator to address the operation of the shared loading docks. The Applicant noted that it did not agree with DDOT's recommendations regarding the large financial commitment to fund Carsharing memberships and Bikesharing memberships for residents, tenants and employees of the Project. The Applicant noted that it believed such a condition is outside the scope of this special exception and variance relief application and that such a condition is more appropriate in a planned unit development application.

66. At the January 29, 2009 public hearing, the representative of the Applicant and the Applicant's traffic engineer provided testimony that the amount of parking spaces proposed was appropriate for this type of mixed-use project that will ultimately draw people from the entire DC Metropolitan region. The Applicant also noted that given the existing state of development in the surrounding area, it was necessary to provide this amount of parking spaces to attract high-quality retailers and office tenants.

ADVISORY NEIGHBORHOOD COMMISSION REPORT

67. On January 12, 2009, ANC 6D voted 6-0-1 to support the modification application. The ANC noted that the design of the project will include neighborhood oriented retail and will provide a lively and amenable destination for local residents as well as visitors to the area. The ANC expressed concern about the height of the architectural embellishment, noting that it, "will tower over the entire area, including the ballpark directly to its south." The ANC requested that the Community Benefits Agreement that it negotiated with the Applicant become a condition of the Commission's approval of this case. The ANC noted that the implementation of the Community Benefits Agreement will make the Applicant a full partner in the ANC 6D community, particularly in the critical area of workforce development and employment. (Exhibit 18.)

PERSONS IN OPPOSITION

68. Ms. Brenda Sayles, on behalf of the D.C. Combined Vendors Association, testified at the public hearing and noted her concern about the Project's impact on street vendors.

69. A letter in opposition from Mr. Martin Greenbaum was received in the record of the case. Mr. Greenbaum stated that the project does not appear to address the concerns of sidewalk vendors. Mr. Greenbaum requested that further review of the application be conducted before a decision is made. (Exhibit 19.)

CONCLUSIONS OF LAW

1. The Commission finds that, pursuant to 11 DCMR § 1610.3, the Applicant is required to satisfy the burden of proving the elements that are necessary to approve the overall project under § 3104, as well as the specifically delineated requirements of the CG Overlay (§ 1604 for buildings that have frontage on M Street and § 1607 for buildings that have frontage on Half Street south of M Street). In addition, the Applicant must establish the case for special exception relief from the roof structure requirements of §§ 639.1 and 411.11; and must establish the case for variance relief from: (i) the loading requirements of § 2201.1; (ii) the step-back requirements of § 1607.2; (iii) the ground floor retail requirements of § 1607.3; (iv) the M Street setback requirements of § 1604.3; and (v) the lot occupancy requirements of § 634.1.

2. The Commission is authorized to grant area variance relief pursuant to § 1610.7. In order to satisfy the standards for area variance relief, the Applicant must satisfy a three-part test: (1) the property must be subject to an extraordinary or exceptional situation or condition; (2) a practical difficulty will result if the applicant is required to satisfy the strict application of the Zoning Regulations; and (3) no harm to the public or to the zone

plan will occur as a result of the approval of the variance application. (*See* Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990).)

The D.C. Court of Appeals held in Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property", not just the "land"; and that "….property generally includes the permanent structures existing on the land [footnote omitted]." *Id*. at 293-294. The Court held that the exceptional situation standard of the variance test may be met where the required hardship inheres in the land, or the property (i.e., the building on the land).

The DC Court of Appeals defined "practical difficulty" in Palmer v. D.C. Bd. of Zoning Adjustment, 287 A. 2d 535, 542 (D.C. 1972) as the following: "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1365 (D.C. 1992), citing Gilmartin v. D.C. Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider "… a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' ….". Gilmartin, 579 A.2d at 1171, citing Barbour v. D.C. Bd. of Zoning Adjustment, 358 A. 2d 326, 327 (D.C. 1976). See also, Tyler v. D.C. Bd. of Zoning Adjustment, 606 A.2d 1362, 1367 (D.C. 1992). The Gilmartin case also notes three factors that can be used to determine whether the unnecessarily burdensome/ practical difficulty standard has been satisfied. These include: (i) the weight of noncompliance; (ii) the severity of the variance requested; and (iii) the effect the proposed variances would have on the overall zone plan. Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

3. The Commission provided proper and timely notice of the public hearing on this application, by publication in the *D.C. Register*, and by mail to ANC 6D, OP, and to owners of property within 200 feet of the site.

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 Commission notes that the Applicant will enter into a combined lot development agreement, pursuant to § 1602.1(a) and (e), to achieve this density and mix of uses. The Commission approves the additional density in excess of 8.0 FAR as the Applicant has provided sufficient evidence that the project satisfies the objectives and guidelines of § 1601 and §§ 1604 and 1607. The residential, office and retail uses are appropriate for the site, which is located in the CG/CR Zone 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 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. Official Code § 1-309.10(d) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. As is reflected in the Findings of Fact, at its duly noticed meeting held on January 12, 2009, ANC 6D, the ANC within which the Subject Property is located, voted 6-0-1 in support of the application for CG Overlay District Review. The ANC noted its concern with the height of the lit architectural embellishment at the corner of M and Half Streets, S.E. The Commission believes that the Applicant has provided sufficient evidence in the record of this case to determine that the proposed height and bulk of the architectural embellishment is appropriate and will not adversely impact neighboring properties. The Commission also finds that the proposed lighting of the architectural embellishment will not adversely impact neighboring properties. At the public hearing, the Applicant provided testimony that the proposed architectural embellishment is not the tallest structure in the area, noting that the lights at the Ballpark are taller. Acting upon the advice of the Office of the Attorney General, the Commission did not include the condition requested by the ANC requiring the Applicant to comply with the Community Benefits Agreement. The Commission did so because its review of the application is limited to the standards established in § 1610 of the Zoning Regulations, which do not include consideration of the benefits and amenities provided by the Applicant to the community. The Commission believed that conditioning the approval of the application on such benefits and amenities was therefore inappropriate.

8. Based upon the record before the Commission, having given great weight to the views of the ANC and having considered the report and testimony OP provided in this case, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1610 and 3104, the independent burden for each special exception, and all of the variances requested. The Commission finds that the Project fully satisfies the goals and objectives of the CG Overlay District. The Commission finds that the Property is subject to an exceptional situation or condition as outlined in the Applicant's pre-hearing statement and as presented at the public hearing. The Commission agrees that the Applicant is faced with practical difficulties with satisfying the strict application of the Zoning Regulations with regard to: the loading requirements of § 2201.1; the Half Street step-back requirements of § 1607.2; the ground floor retail requirements of § 1607.3; the M Street setback requirements of § 1604.3; and the lot

occupancy requirements of § 634.1. The Commission agrees with the Applicant's written statement and testimony at the public hearing that it would be unnecessarily burdensome for the Applicant to satisfy these requirements. The Commission also finds that granting this variance relief will not cause substantial detriment to the public good and the variances can be granted without impairing the intent, purpose, and integrity of the Zone Plan. The Commission finds that granting the requested special exception and variance relief will create a building of significant architectural quality that will further the goals of the CG Overlay District and will create a new entertainment, retail, office and residential destination in the District of Columbia.

9. The Commission notes that the Applicant agreed with two of DDOT's conditions; the provision of six parking spaces for a carsharing service in the Project and the creation of a delivery management coordinator position. The Commission agrees that it is proper to include these recommendations as conditions of approval of this case. However, the Commission does not believe that it is necessary for the Applicant to prepare an annual report on actual vehicular traffic generation, truck deliveries, and transit and bicycle use and to submit that report to DDOT and ANC 6D. The Commission believes that the establishment of the delivery management coordinator position is sufficient to help assure that deliveries to the uses in the Project, and the use of the loading docks on Van Street, will not create adverse impacts on the neighboring properties or on the residents and tenants of the Project. The Commission finds that the additional reporting requirements proposed by DDOT are not necessary to address issues related to the use and operation of the loading docks and are outside the scope of this special exception and variance relief application.

10. The Commission agrees with the testimony of the Applicant and its traffic engineering expert that the number of proposed parking spaces is appropriate. The Commission finds that DDOT's report did not include any evidence to support the need for the reduction of 100 parking spaces, other than a general goal to "send a clear message to visitors that driving personal vehicles will not be rewarded". Therefore, the Commission approves the amount of parking spaces proposed by the Applicant. In addition, the Commission agrees with the Applicant that DDOT's recommendation that the Applicant provide SmartTrip memberships and SmartBike memberships to tenants, residents, and employees in the Project is not appropriate for a special exception and variance relief application. The Commission concludes that the requests for financial contributions for Carsharing and BikeSharing memberships are outside the scope of this case and more suitable for a planned unit development application.

11. The Commission also notes the testimony of Ms. Sayles and the letters in the record from street vendors regarding the potential impact that the Project would have on their businesses. The Commission recognizes that it, along with the Applicant, does not have any control over the use of public space, and that street vendor operations and licenses are administered by other agencies of the District government.

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

DECISION

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

1. The project shall be built in accordance with the architectural plans, elevations and materials submitted in the record of Zoning Commission Case No. 08-30 as Exhibits 13, 21, and 31, as modified by the guidelines, conditions, and standards below.

2. The overall maximum permitted density shall be 8.01 FAR. In order to achieve the maximum permitted density, the Applicant shall transfer non-residential density from other lots within the CG Overlay District and shall transfer residential density to those same lots by the process set forth in accordance with the limitations of §§ 1602.1(a) and 1602.1(e).

3. Except for the roof structures and architectural embellishments for which a waiver has been granted under the Height Act, the maximum permitted height of the building shall be 110 feet. The project in its entirety shall include approximately 280,952 square feet of residential use (260-300 market-rate residential units), 370,019 square feet of office use and 53,840 square feet or retail use.

4. A minimum of 69% of gross floor area of the ground floor shall be devoted to preferred uses.

5. The Applicant shall dedicate at least 52% of the building roof to a vegetated roof, as depicted in the plans. The Applicant shall provide sustainable building design features such that both the residential and office components of the project will qualify for certification for at least a LEED Silver building.

6. The Applicant shall have flexibility with the design of the project in the following areas:

    - To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways and mechanical rooms, provided that the variations do not materially change the exterior configuration of the buildings;

- 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 belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
- To vary the exterior design and materials of the ground floor retail space based on the preferences of the individual retailer. The Applicant will not permit the individual retailer to modify the building footprint, except for bay projections not to exceed four feet from the property line, or reduce the quality of the materials used on the exterior of the ground floor of the Project, as shown in the plans submitted with this application. The Applicant and all tenants of the project will comply with the requirements of Chapter 16, except as otherwise approved by this Order.

7. The Zoning Administrator shall have the flexibility to make minor modifications to the final plans as approved by the Commission. These modifications shall be limited to the following:

   - A change not to exceed two percent (2%) in the percentage of lot occupancy or gross floor area of the building; and
   - A change not to exceed two percent (2%) in the number of residential units or gross floor area to be used for commercial uses.

8. The project shall include a maximum of 607 parking spaces. The Applicant shall have the flexibility to reduce the number of parking spaces per market conditions and demand for parking spaces. The lower limit of this reduction is 367 parking spaces, the matter of right requirement for the project.

9. The Applicant shall reserve six parking spaces in the below-grade garage for a local car-sharing vehicle service.

10. The Applicant shall designate a delivery management coordinator to coordinate loading for the residential, office, and retail uses on the Property.

11. The project shall be valid for a period of three (3) years from the effective date of Zoning Commission Order No. 08-30. Within such time, an application must be filed for a building permit for the construction of either the office or residential component of the project; the filing of such a building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the project must be filed within five (5) years of the issuance of the final certificate of occupancy for the first component of the project.

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

On February 23, 2009, upon the motion Chairman Hood, as seconded by Vice Chairman Jeffries, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Gregory N. Jeffries, William W. Keating, III, Peter G. May, 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* on APR 10 2009.

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 08-30

As Secretary to the Commission, I hereby certify that on APR 14 2009 copies of this Z.C. Order No.08-30 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

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ATTESTED BY: S. S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-30E
SCD 25 M, LLC
(Two-Year Design Review Time Extension for Property Located @ Square 700)
December 19, 2024

Pursuant to notice, at its public meeting on December 19, 2024, the Zoning Commission for the District of Columbia (the "Commission") considered the application ("Application") of SCD 25 M, LLC (the "Applicant") for a two-year extension of the time period to file a building permit application for the approved Design Review in Square 700, Lot 879[1] (the "Property") pursuant to Z.C. Order No. 08-30 (the "Order").

The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

THE PROPERTY

1. The Property is located in the Ballpark neighborhood at the southwest corner of M and Half Streets, S.E., one block north of Nationals Park. The Property constitutes the northern portion of Record Lot 49, which encompasses the entire eastern half of Square 700 occupying the block bounded by M Street, S.E. to the north, Half Street, S.E., to the east, N Street, S.E. to the south, and Van Street, S.E., to the west.

PRIOR APPROVAL

2. Pursuant to the Order, effective April 10, 2009, the Commission approved a Design Review for development of Record Lot 49 as a single building divided into two main phases. The first phase was to consist of a mixed-use development with residential and retail, and the second phase was to consist of a mixed-use development with office and retail uses (the "Project"). The Order provided that the approval would remain valid for a period of five years following issuance of the final Certificate of Occupancy for the first phase of the Project, within which time a building permit application must be filed for the second phase of the Project. A final Certificate of Occupancy was issued for the first phase of the Project

[1] When Z.C. Order No. 08-30 was approved, the Property was designated as Lot 857 in Square 700; the Property is now designated as Lot 879 in Square 700.

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on December 3, 2019 (See Exhibit ["Ex."] 2C). Thus, the Order remains valid until December 3, 2024.

3. In Z.C. Order Nos. 08-30A, 08-30B, 08-30C, and 08-30D, the Commission approved modifications to design elements of the Project (Ex. 2).

PARTIES AND NOTICE

4. The parties to the original application were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC in which the Property was located at the time of the original approval. The Property is now located within the boundaries of ANC 8F; therefore, only ANC 8F is an "affected" ANC and an automatic party to this Application (*See* Subtitle Z §§ 101.8, 403.5(b)).

5. On October 30, 2024, the Applicant served the Application on ANC 8F, the Office of Planning ("OP"), and the District Department of Transportation ("DDOT"), as attested by the Certificate of Service submitted with the Application (Ex. 2 at 7).

II. THE APPLICATION

6. On October 30, 2024, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Order, such that if approved the Applicant would be required to file a building permit application for phase two of the Project no later than December 3, 2026 (Ex. 1-2C).

7. The Application asserted that it met the requirements under Subtitle Z § 705.2, for the proposed two-year time extension because:
   - The Applicant served the extension request on all parties to the application and all parties were allowed 30 days to respond;
   - There was no substantial change in any of the material facts upon which the Commission based its original approval in the Order; and
   - Good cause justified the Commission in granting the time extension because the Applicant has faced the continued challenges predominating the market for new office space and the overall office market, including severe difficulties in securing financing for new office construction, high interest rates, and elevated construction costs. Despite these challenges, the Applicant remains committed to completing the Project, as evidenced by its expenditure of $1,699,000 in development related costs toward the Project, moving a gas line into the adjacent right of way, establishing an agreement with the Washington Metropolitan Area Transit Authority regarding future development, and advertising and marketing the site to further support development, among other efforts (Ex. 2).

III. RESPONSES TO THE APPLICATION

8. OP submitted a report dated November 27, 2024 ("OP Report") which recommended approval of the Application (Ex. 5). The OP Report concluded that the requested two-year

extension meets the requirements of Subtitle Z § 705.2; and the Applicant demonstrated with substantial evidence its inability to obtain sufficient financing, following its good faith efforts, because of changes in economic and market conditions beyond its reasonable control, including low office space demand as a lingering effect of Covid-19 and telework. OP further noted that the 2021 changes to the Comprehensive Plan remain supportive of the transit oriented, mixed-use, and walkable development the Project will facilitate.

9. ANC 8F did not submit a response to the case record.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.4, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant satisfied Subtitle Z § 705.2(a) by demonstrating that it served all parties, in this case ANC 8F, on October 30, 2024, and that the ANC was given 30 days to respond from the date of service.

4. Subtitle Z § 705.2(b) requires that the Commission finds that no substantial change has occurred to any of the material facts upon which the Commission based its original approval of the application that would undermine the Commission's justification for approving the original application.

5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its original approval that would undermine the Commission's justification for that approval.

6. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

    1. *An inability to obtain sufficient project financing for the development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;*
    2. *An inability to secure all required governmental agency approvals for a development by the expiration date of the order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or*

3. *The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the order*.

7. The Commission concludes, based on the Application and the OP Report, that the Application meets the standards of Subtitle Z §§ 705.2(c)(1) because the Project suffered significant challenges due to impacts to the real estate market associated with the aftermath of the Covid-19 pandemic, including high interest rates, elevated construction costs, and low demand for new office space, all of which resulted in the Applicant being unable to secure financing for phase two of the Project. Thus, the Commission concludes that, because of economic and market conditions beyond the Applicant's reasonable control, the Applicant was unable to comply with the time limits of the Order and needs additional time to move forward with phase two of the Project.

"GREAT WEIGHT" TO THE RECOMMENDATION OF OP

8. The Commission is required to give "great weight" to the recommendations of OP pursuant to § 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 (2018 Repl.)) and Subtitle Z § 405.9 (*Metropole Condo. Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).

9. The Commission finds OP's recommendation to approve the Application persuasive and concurs in that judgment.

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

10. The Commission must give "great weight" to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 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) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances (*Metropole*, 141 A.3d 1087). 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 Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted)).

11. As previously noted, ANC 8F did not submit a response to the case record.

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** the Applicant's request for a two-year extension of the deadline to file a building permit application for phase two of the Project, with the requirement that the Applicant:

- File a building permit application no later than **December 3, 2026**.

VOTE (December 19, 2024): 4-0-1 (Anthony J. Hood, Robert E. Miller, Tammy Stidham, and Gwen Marcus Wright to approve; Joseph Imamura, not present, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 08-30E shall become final and effective upon publication in the District of Columbia Register; that is, on March 7, 2025.

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

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.