

**BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION**

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**Pre-Hearing Statement for Z.C. Case No. 06-46**

**Review of Buildings and Structures on M Street, SE  
Capitol Gateway Overlay District For  
55 M Street, SE  
Lots 3, 98 – 118, 144 – 147, 161, 162, 167, 815 and 824  
in Square 701**

**HEARING DATE: January 11, 2007**

**I.  
Introduction**

This statement is submitted for Zoning Commission Review of Buildings, Structures and Uses, pursuant to section 1610 of the Zoning Regulations of the District of Columbia (the “Zoning Regulations”), on behalf of MR N Street Southeast LLC, MR Ballpark 5 LLC and the Washington Metropolitan Area Transit Authority<sup>1</sup> (“WMATA”) (collectively, the “Applicants”), the owners of Lots 3, 98 -118, 144 -147, 161, 162, 167, 815 and 824 in Square 701.<sup>2</sup> The Applicants propose to develop Lots 3, 98 – 118, 144 – 147, 161, 162, 815 and 824 in Square 701 and portions of the public alley to be closed<sup>3</sup> (collectively, the “site” or the “Subject Property”) with an approximate 762,680 square foot mixed-use development consisting of residential, office, hotel and retail uses.

The site is located in the western portion of Square 701 and consists of approximately 102,494 square feet of land area. Square 701 is bounded by M Street on the north, 1<sup>st</sup> Street on the east, N Street on the south and Half Street on the west.

<sup>1</sup> MR Ballpark 5 LLC purchased Lots 107 – 118 and 162 in Square 701 from WMATA on December 21, 2006.

<sup>2</sup> Text Amendment – Capitol Gateway (CG) Overlay District, Z.C. Case No. 05-10, Notice of Proposed Rulemaking published November 10, 2006. The Applicants submit that it will demonstrate compliance with both the existing and proposed CG Overlay District regulations.

<sup>3</sup> Emergency alley closing legislation (B16-1046) was adopted by the D.C. Council on December 19, 2006, along with the Second Reading of the permanent legislation (B16-879).

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The site is zoned CR and is located in the Capitol Gateway (CG) Overlay District.

Pursuant to section 1610 of the Zoning Regulations, the Applicants request the Zoning Commission's review and approval of the proposed development. The Applicants also request the following relief from the Zoning Regulations for the CR District: (1) a special exception for roof structures with regard to setbacks; (2) a variance from the residential recreation space requirements of section 635; (3) a variance from the step back requirements of section 1607.2; and (4) a variance from the loading requirements of section 2201.1. The Applicants comply with the percentage of lot occupancy requirement under section 634, and, thus, no longer require a variance from the percentage of lot occupancy requirements of section 634.

## **II.**

### **Jurisdiction of the Zoning Commission**

The Zoning Commission has jurisdiction to grant the approval of the proposed development, the requested special exception relief and the requested variance relief pursuant to sections 1610, 634, 635, 639, 2201, 3103 and 3104 of the Zoning Regulations. 11 DCMR §§1610, 3103 and 3104.

## **III.**

### **Purposes of the Capitol Gateway Overlay Provisions**

With Zoning Commission Order No. 971, dated November 18, 2002, effective January 7, 2005, the Zoning Commission set forth the purposes of the CG Overlay District. Those purposes were amended with Notice of Proposed Rulemaking in Z.C. Case No. 05-10, published November 10, 2006 in the *D.C. Register*. As amended, the purposes of the CG Overlay District are to:

- (a) Assure 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) Encourage a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;
- (c) Allow for the continuation of existing industrial uses, which are important economic assets to the city, during the extended period projected for development;
- (d) Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, and provide for continuous public open space along the waterfront with frequent public access points;
- (e) Require suitable ground level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Ward Metrorail station;
- (f) (not provided in the Zoning Regulations);
- (g) Provide for the establishment of South Capitol Street as a monumental civic boulevard;
- (h) Provide 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; and
- (i) Provide for the development of First Street, S.E. as an active pedestrian oriented street with active ground floor uses, connecting M Street, the Metro Station and existing residential neighborhoods to the Ballpark site and the Anacostia Waterfront. 11 DCMR §1600.2.<sup>4</sup>

The Applicants' proposed development has been designed to comply with the above-stated purposes of the CG Overlay District. Specifically, the proposed development provides a mixture of residential uses and commercial uses of suitable height, bulk and design, which include a variety of support and visitor-related uses. The proposed development also offers suitable ground level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail station, and provides an active pedestrian-oriented streetscape along Half Street, S.E. with active ground floor uses and appropriate setbacks, with the exception

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<sup>4</sup> Text Amendment – Capitol Gateway Overlay District, Z.C. Case No. 05-10, Notice of Proposed Rulemaking published November 10, 2006. The Notice of Proposed Rulemaking, published November 10, 2006, does not identify a subsection (f) and instead identifies subsections (g) through (i).

of a narrow architectural marker at the northern end of the hotel portion of the site. The proposed development includes the renovation of the Navy Yard Metro Station, which will facilitate the flow of pedestrian traffic and will offer alternative transportation options to ballpark patrons, District residents and visitors to our nation's capitol.

#### IV.

#### **Description of the Site Area and Project**

##### **A. Description of Site Area**

The site for the proposed development is located in the western portion of Square 701 and consists of approximately 102,494 square feet of land area. Square 701 is bounded by M Street on the north, 1<sup>st</sup> Street on the east, N Street on the south and Half Street on the west. The site area includes Lots 3, 98 – 118, 144 – 147, 161, 162, 167, 815 and 824 in Square 701 and portions of the public alley to be closed. The site area is bounded by M Street on the north, Cushing Place to the east, N Street on the south and Half Street on the west and includes entrance to the Navy Yard Metro Station. The site is currently improved with the Navy Yard Metrorail Station, a parking facility for WMATA employees and several vacant structures and lots.

##### **B. Zoning Description of the Project**

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) a nine-story office building with ground floor retail; and (2) a residential building which includes hotel use and ground floor retail. The two buildings will be separated by a private driveway. The proposed development will consist of approximately 108,000 square feet of hotel use, 48,570 square feet of retail use, 320,100 square feet of residential use and 277,600 square feet of office use. Pursuant to section

1602.1 of the Zoning Regulations, if this project is approved, the Applicants will transfer density 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 a floor area ratio of approximately 7.44 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 and building entrances, to preferred retail use along M Street and Half Street. The proposed development will also provide 414 parking spaces (551 total spaces if those spaces in the vaults are included), one 55 foot loading berth, six 30 foot loading berths and two 20 foot service/delivery loading spaces.

**C. Architectural Description of the Project**

**1. Design Principles**

The redevelopment of Square 701 is guided by the idea that Half Street can become a vibrant, destination retail street in the heart of Washington’s new Baseball District. The design of the public space and buildings reinforces this concept from the level of urban design down to the detailing of the sidewalks and retail storefronts. The various uses on the square are expressed and differentiated architecturally to add vitality to the square and to integrate well with future development. Anchored by the Metro entrance on its northern edge and the baseball stadium’s main entry to the south, Half Street will become a unique Washington destination.

**2. Urban Design**

With its unusual 80’ right of way, Half Street has the potential to become an intimate retail street similar to other great retail streets such as those in central Philadelphia or the SOHO district in New York. The building setbacks along the Half Street frontage add a formality to the square that reinforces Half Street’s role as the ‘front door’ to the stadium district. While the proposed buildings maintain the existing street pattern on the square, a new east-west connection located approximately mid-block, named *Monument Place* on the plans, will allow for additional

connections to neighboring districts and reduce the overall urban scale of the square. The intersection of Monument Place and Half Street provides vital additional corner locations for retail on either side of the street, and is expressed in both the buildings and the streetscape. The façade of the hotel building has been recessed from the streetwall to allow for additional public space at this location.

The urban plan of the buildings reinforces three major intersections along Half Street: the north corner at M Street above the Metro entrance, the mid-block connection at Monument Place, and the N Street corner adjacent to the baseball stadium main entrance. The buildings have been designed to strengthen these important corners of the site and emphasize the retail at these locations. Between these corners, the ground and second level architectural treatment continues the emphasis on the street level pedestrian and retail experience. All service and parking access occurs off of Cushing Place alley, providing uninterrupted retail storefronts on Half, M and N Streets.

### **3. Architecture: Design Concept and Materials**

The developing Baseball District, with its stylistically modern stadium well underway, presents a rare opportunity for contemporary architecture on a significant scale in Washington D.C. The proposed design for Square 701 uses a contemporary language and material palette to create a vibrant architectural streetscape. While both buildings employ similar materials, different architectural languages and color selections have been used to differentiate the buildings by use, reinforcing an organic mixed-use quality on the square. This approach will allow future development considerable architectural latitude, particularly on the western side of Half Street, by avoiding a homogeneous architectural approach.

The office building, located at the corner of M and half Streets, celebrates the engineering feat of spanning the refurbished Navy Yard Metro entry. The design is accentuated by a two-

story truss on its façade, which becomes the signature architectural element on the building and announces entry to the Half Street district. Layered behind the truss, a glass enclosed Metro entryway anchors the building corner at the ground level, and will become an illuminated architectural feature in the evenings. The remaining architectural exterior of the office building is composed of two skin types. The first of these consists of an illuminated shadow box system that will be lit with using LED technology. This is located above the Metro entry and reinforces the Half Street and M Street corner. The second skin consists of a terra –cotta rainscreen cladding system. This contemporary wall reinforces the fresh architectural approach taken on the square and is used in portions of the residential building as well.

The hotel and residential building forms the major portion of the Half Street frontage. Varied architectural treatments reinforce the different uses. The hotel’s narrow façade anchors the building’s northern edge. A projecting corner bay window element serves as a vertical marker in the middle of the square, providing compositional relief along Half Street. The façade consists of a simple frame expression composed of aluminum trim and wood panel inlays. Monument Place provides access to the hotel drop-off, located adjacent to Cushing Place Alley.

The residential portion of the building consists of a condominium building entered off of Half Street and an apartment building that fronts on, and is entered from, N Street. The Half Street façade employs a composition of irregularly spaced vertical piers and residential balconies to provide visual interest and reinforce the street level retail elements. The Half Street façade is anchored on its southern corner by an architectural pavilion, composed primarily of glass, that contains on its rooftop the building’s outdoor amenity space that overlooks the stadium and field. The first two levels of the pavilion are recessed from the property line to create a two-story retail expression and provide additional public outdoor space along the sidewalk. The N Street

frontage, in contrast, has a more regular pattern of punched windows and balconies. The top two stories of the façade are recessed slightly and composed of white metal panels to provide an architectural ‘cornice’ line to the façade. Separated by a strong vertical element adjacent to the corner pavilion, both residential facades use a terra-cotta rainscreen wall system in different colors as their primary exterior material. The courtyard facades continue the pattern of materials expressed on the main facades, in a vocabulary of grouped window openings for scale.

V.

**The Applicants Meet the Burden of Proof for Zoning Commission  
Review of Buildings, Structures and Uses**

For the following reasons, the Applicants meet the burden of proof for Zoning Commission Review of Buildings, Structures and Uses pursuant to section 1610 of the Zoning Regulations, Buildings and Structures on M Street, S.E. pursuant to section 1604 of the Zoning Regulations, and Buildings and Structures on Half Street, S.E., South of M Street, S.E., pursuant to section 1607 of the Zoning Regulations.

A. **Zoning Commission Review of Buildings, Structures and Uses (§1610.1(c))**

1. **Section 1610.2: All proposed uses, buildings, and structures, or any proposed exterior renovation to any existing buildings or structures that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with §§1610.3 through 1610.9.**

The Applicants have submitted their application and this pre-hearing statement in compliance with section 1610.2.

2. **Section 1610.3: In addition to proving that the proposed use, building or structures meets the standards set forth in §3104, an applicant requesting approval under this section must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:**
  - a. **Section 1610.3(a): Help achieve the objectives of the CG Overlay District as set forth in §1600.2.**



The proposed development will help achieve the objectives of the CG Overlay District. The proposed development offers a mixture of residential and commercial uses, which include office, retail and hotel uses. The proposed development is within the maximum height established by the 1910 Height Act and, as will be testified to by the Applicants' witnesses, is of suitable height. Additionally, the proposed development has been designed to complement the new ballpark to the south and development projects to the north. Thus, the proposed development will help achieve the objectives of the CG Overlay District as set forth in §1600.2 of the Zoning Regulations.

- b. **Section 1610.3(b): Help achieve the desired mixture of uses in the CG Overlay District as set forth in §§1600.2(a) and (b), with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses. 11 DCMR §1610.3(b).**

The proposed development will help to achieve the desired mixture of uses in the CG Overlay District as set forth in §§1600.2(a) and (b). The Applicants propose to construct a development that will devote approximately 320,100 square feet to residential use, 48,570 square feet to retail uses, 277,600 square feet to office use and 108,000 square feet to hotel use. The Applicants have devoted a total of 62% of the gross floor area of the ground floor of both buildings to retail and other preferred uses. Thus, the proposed development will offer the desired mixture of uses specified in the CG Overlay regulations.

- c. **Section 1610.3(c): Be in context with the surrounding neighborhood and street patterns.**

The Applicants have designed the development to be in context with the surrounding neighborhood and street patterns. To the south of the development is the new ballpark of the Washington Nationals. The development will naturally serve as one of the gateways to the new ballpark by virtue of its location which incorporates the entrance to the Navy Yard Metro Station. The proposed ground-floor retail will also enhance the pedestrian experience around the

new ballpark site. The traffic patterns utilize existing streets and alleys to facilitate the flow of vehicular traffic and provide safe passages for pedestrians. The proposed development is in context with the surrounding neighborhood and street patterns.

**d. Section 1610.3(d): Minimize conflict between vehicles and pedestrians.**

The proposed development will minimize the conflict between vehicles and pedestrians. The Applicants have designed the development to enhance the pedestrian experience within the CG Overlay, specifically near the new ballpark. The proposed development incorporates wider sidewalk space, off-street parking with entrances along Cushing Place and active streetscapes in and around the proposed development. The proposed development has been designed to minimize the conflict between vehicles and pedestrians.

**e. Section 1610.3(e): Minimize unarticulated blank walls adjacent to public spaces through façade articulation. 11 DCMR §1610.3(e).**

The Applicants have designed the development so that façade articulations will minimize unarticulated blank walls adjacent to public space. The Applicants will devote not less than 50% of the surface area of the streetwall of the new office building along M Street, exclusive of the entrance to the Navy Yard Metro Station, to display windows having clear or low-emissivity glass except for decorative accent and the entrances to office uses of the building. Additionally, the proposed development will devote a total of 62% of the gross floor area of the ground floor of both buildings to retail and other preferred uses. Thus, the Applicants will minimize the unarticulated blank walls adjacent to public spaces.

**f. Section 1610.3(f): Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. 11 DCMR §1610.3(f).**

The proposed development has been designed to meet LEED certification standards for new construction. Thus, the proposed development will minimize its impact on the environment.

A description and evaluation of the sustainable elements of the building will be submitted for the record.

3. **Section 1610.5: With respect to a building or structure which has frontage on Half Street, S.E., south of M Street, S.E., or Front Street, S.E., south of M Street S.E.:**

- a. **Section 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 Applicants have designed the proposed to provide safe and active streetscapes through building articulation, landscaping and the provision of active ground level uses, primarily retail and pedestrian concourse space. The proposed development will devote a total of 62% of the ground floor of both buildings to retail and service uses, creating active ground level uses. Thus, the building will provide for safe and active streetscapes through its architectural design and the provision of active ground level uses.

- b. **Section 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 River.**

The west entrance to the Navy Yard Metro Station has been incorporated into the design of the proposed development to provide safe and convenient movement to and through the site. The proposed development includes improvements to and expansion of the portions of the Navy Yard Metro Station located within the site area. The proposed development provides active streetscapes along Half Street, M Street and N Street which will also facilitate safe and convenient movement to and through the site, including movement to public transit, the Ballpark and the Anacostia River.

- c. **Section 1610.5(c): The application shall include view analysis that assesses openness of the views and vistas around, including views toward the Capitol Dome, other federal monumental buildings, the Ballpark and the waterfront. 11 DCMR §1610.5(c).**

The Applicants supplemented their application, on December 5, 2006, with the filing of the view analysis that assesses the openness of the views and vistas toward the Capitol Dome and the new ballpark. A view analysis is also included in the architectural plans and elevations, attached at Exhibit A.

- d. **Section 1610.7: The Commission may hear and decide any additional requests for special exception or variance relief needed for the subject property. Such requests shall be advertised, heard, and decided together with the application for Zoning Commission review and approval.**

The Applicants have requested variance relief from the residential recreation space, loading and setback requirements of the Zoning Regulations. The Applicants have also requested a special exception from the roof structure requirements of the Zoning Regulations with regard to setbacks. Those requests have been discussed in the Applicants' application statement and are further discussed in this submission beginning at page 18.

- e. **Section 1610.8: At the time of filing an application with the Commission, the applicant shall pay the filing fee specified in §3180.1(b)(16), plus such fees as apply to any additional zoning relief requested. The provisions of §3181 relating to the administration of fees shall apply, except that the applicant may appeal any decision of the Director regarding the fee schedule to the Commission, which shall decide the appeal as a preliminary matter to hearing the application.**

The Applicants satisfied this provision with their November 2, 2006 filing of the application.

- f. **Section 1610.9: A building that qualifies as a Capitol South Receiving Zone site under §1709.8 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. 11 DCMR §1610.9.**

This provision is not applicable because the proposed development does not qualify as a Capitol South Receiving Zone site under section 1709.8 of the Zoning Regulations.

**B. Buildings and Structures on M Street, S.E. (§1604)**

- 1. Section 1604.2: No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building.**

The Applicants have designed the proposed development so that access to required parking spaces and loading berths will be provided from Cushing Place, as shown in the attached Architectural Plans and Elevations at Exhibit A. No driveway will be constructed or used from M Street to required parking spaces or loading berths in or adjacent to the new building.

- 2. Section 1604.3: The streetwall of each new building shall be set back for its entire height and frontage along M Street not less than fifteen (15) feet measured from the face of the adjacent curb along M Street, S.E.**

The streetwall of the new office building which fronts on M Street, S.E. is setback fifteen feet measured from the face of the adjacent curb along M Street, as illustrated in the Architectural Plans and Elevations at Exhibit A.

- 3. Section 1604.4: Each new building shall devote not less than thirty-five percent (35%) of the gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses") as permitted in §§ 701.1 through 701.5 and §§721.1 through 721.6 of the Zoning Regulations; provided that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any use, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building). 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.**

The new office building will devote at least thirty-five percent of its gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses"), as indicated on Sheet D1 of the attached plans. The preferred uses will occupy 100% of the building's street frontage along M Street, exclusive of building entrances and the entrance to the Navy Yard Metro Station, as shown in the attached plans.

- 4. Section 1604.5: For good cause shown, the Commission may authorize interim occupancy of preferred use space required by section 1604.4 by non-**

**preferred uses for up to a five (5) year period; provided, that the ground floor space is suitably designed for future occupancy by the preferred uses.**

The Applicants are not requesting interim occupancy of non-preferred uses at this time.

- 5. Section 1604.6: Not less than fifty percent (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 or the building.**

The Applicants will devote not less than fifty percent of the surface area of the streetwall, exclusive of the entrance to the Navy Yard Metro Station, of the new building along M Street to display windows having clear or low-emissivity glass except for decorative accent and to entrances to commercial uses of the building, as illustrated in the attached plans on Sheet R2.

- 6. Section 1604.7: The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.**

The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses, exclusive of preferred uses located in the back of house space, is 14 feet. Preferred uses not located in the back of house space comply with the requirement of a minimum floor-to-ceiling clear height of fourteen feet. However, the Applicants request relief from this requirement for preferred uses located in the back of house space. Storage facilities, kitchens, administrative offices and other service areas associated with preferred uses would be considered as back of house space. The floor-to-ceiling clear height in the back of house space is 11 feet. Requiring the Applicants to comply with the minimum floor-to-ceiling clear height of 14 feet for storage facilities and other service areas associated with preferred uses located in the back of house space would be impracticable and would be prohibitively costly.

7. **Section 1604.8: 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 provision does not apply because the proposed development does not qualify as a Capitol South Receiving Zone site.

8. **Section 1604.9: Where preferred use retail space is required under §1604 and provided, the requirement of 11 DCMR §633 to provide public space at ground level shall not apply.**

The Applicants have provided the required preferred use retail space. Thus, the requirement under section 633 of the Zoning Regulations to provide public space at the ground level is not applicable.

C. **Buildings, Structures, and Uses on Half Street, S.E., South of M Street, S.E. (§1607)**

- a. **Section 1607.2: Any portion of a building or structure that exceeds 65 feet in height shall provide a minimum step back of 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 8 feet in depth, for the provision of reasonable development footprints.**

The Applicants have requested relief from this requirement to a maximum of 15 feet in height and 8 feet in depth, for the provision of reasonable development footprints.<sup>5</sup> The proposed development provides a step back of 12 feet in depth at a height of 80 feet, in order to be able to provide reasonable apartment depths on the 8th, 9th and 10th floors as well as to have a courtyard of sufficient size between the apartment wing and the hotel wing.

The Applicants also request relief from this requirement to permit a 6 foot setback for the entire height of the building, along the northern end of the hotel portion of the site. The 6 foot setback is a narrow architectural marker, which measures approximately 15 feet in length. This

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<sup>5</sup> A complete discussion of the requested variance from the step back requirements of section 1607.2 is provided on page 25 of this statement.

narrow architectural marker enhances the building articulation by providing compositional relief to the building façade along Half Street.

- b. **Section 1607.3: Each new building shall devoted not less than seventy percent (75%) of the gross floor area of the ground floor to retail, service, entertainment, or arts uses (“preferred uses”) as permitted in §§701.1 through 701.5 and §§721.1. through 721.6 of the Zoning Regulations; provided, that the following uses shall not be permitted: automobile, laundry, drive-through accessory to any uses, gasoline service stations, and office uses (other than those accessory to the administration, maintenance, or leasing of the building).**

The proposed development will devote a total of 62% of the gross floor area of the ground floor of both buildings to retail and service uses. The Applicants are not able to devote 75% of the gross floor area of the ground floor to preferred uses due to the gross floor area devoted to the entrance to the Navy Yard Metro Station, the separate building entrances associated with the residential, office and hotel uses, and the Applicants' required provision of parking spaces and loading berths. The portion of the gross floor area of the ground floor devoted to the entrance to the Navy Yard Metro Station, the building entrances associated with non-preferred uses, and the Applicants' provision of parking spaces and loading berths is greater than 25%. Thus, the Applicants request relief from this requirement to allow the Applicants to devote 62% of the total gross floor area of the ground floor of both buildings to retail and service uses. There are no office uses or other non-preferred uses on the ground floor.

- c. **Section 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.**

Preferred uses will occupy 100% of the building's street frontage along Half Street, exclusive of building entrances and the entrance to the Navy Yard Metro Station, as shown in the Architectural Plans and Elevations attached at Exhibit A.



- d. **Section 1607.5: The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be fourteen (14) feet.**

The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses, exclusive of preferred uses located in the back of house space, is 14 feet. Preferred uses not located in the back of house space comply with the requirement of a minimum floor-to-ceiling clear height of fourteen feet. However, the Applicants request relief from this requirement for preferred uses located in the back of house space. Storage facilities, kitchens, administrative offices and other service areas associated with preferred uses would be considered as back of house space. The floor-to-ceiling clear height in the back of house space is 11 feet. Requiring the Applicants to comply with the minimum floor-to-ceiling clear height of 14 feet for storage facilities and other service areas associated with preferred uses located in the back of house space would be impracticable and would be prohibitively costly.

- e. **Section 1607.6: For good cause shown, the Commission may authorize interim occupancy of the preferred use space required by §1607.2 by non-preferred uses for up to a five (5) year period; provided that the ground floor space is suitably designed for future occupancy by the preferred uses.**

The Applicants are not requesting interim occupancy of non-preferred uses at this time.

- f. **Section 1607.7: No private driveway may be constructed or used from Half Street, S.E. to any parking or loading berth area in or adjacent to a building or structure constructed after *{effective date of this section}*.**

The Applicants have designed the proposed development so that access to required parking spaces and loading berths will be provided from Cushing Place, as shown in the attached Architectural Plans and Elevations at Exhibit A. No driveway will be constructed or used from Half Street to required parking spaces or loading berths in or adjacent to the new building.

- g. **Section 1607.8: Where preferred use retail space is required under this section and provided, the provisions of 11 DCMR §633 shall not apply.**

The Applicants have provided the required preferred use retail space. Thus, the requirement under section 633 of the Zoning Regulations to provide public space at the ground level is not applicable.

**VI.**  
**The Applicants Meet the Requirements for Special Exception Relief**  
**Under the Zoning Regulations**

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board [of Zoning Adjustment’s] discretion...is limited to a determination of whether the exception sought meets the requirements of the regulations.” *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board of Zoning Adjustment (the “BZA” or the “Board”) must ordinarily grant the application. *Id.* In this particular instance, the Zoning Commission, pursuant to section 1610.7 of the Zoning Regulations, may hear and decide any additional requests for special exception or variance relief needed when the application for the subject property is being heard and decided for Zoning Commission review and approval. 11 DCMR §1610.7. Thus, in reviewing a request for special exception relief when that request is part of an application for Zoning Commission Review of Buildings, Structures and Uses, the Zoning Commission’s discretion is limited to a determination of whether the exception sought meets the requirements of the regulations.

**A. Standards of Review for Roof Structure Special Exceptions**

Pursuant to section 639.1 of the Zoning Regulations, the provisions of section 411 shall apply to roof structures in the CR Districts. 11 DCMR §639.1. Section 411.11 of the Zoning Regulations states that the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is “impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area” and would be “unduly restrictive, prohibitively costly, or unreasonable.” 11 DCMR §411.11. Additionally, the Board may approve deviations from the roof structure requirements provided the intent and purpose of Chapter 400 and the Zoning Regulations are not “materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR §411.11.

As previously stated, the Zoning Commission, pursuant to section 1610.7 of the Zoning Regulations, may hear and decide requests for special exception relief when that request is part of an application for Zoning Commission Review of Buildings, Structures and Uses. 11 DCMR §1610.7. Thus, the standards of review for roof structure special exceptions for the Zoning Commission are the same as those standards for the Board which are articulated in section 411.11 of the Zoning Regulations.

**B. Special Exception Relief from Setback Requirements for Roof Structures**

The Applicants request special exception relief pursuant to section 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. As shown on page A7 of the Architectural Plans and Elevations, attached at Exhibit A, the Applicants intend to locate three mechanical penthouses on the roof of the residential building. With the exception of meeting the

setback requirements for roof structures in the CR District, all setback requirements from Half, M and N Streets, S.E. are met.

- a. **Compliance with the roof structure regulations is impractical 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.**

Compliance with the roof structure regulations is impractical because of the required minimum step back in the CG Overlay. The step back requirements of the CG Overlay District, combined with the setback requirements of the CR District and the provision of an open court at the second level of the residential building, make full compliance with the Zoning Regulations unduly restrictive and unreasonable.

The step back requirements of the CG Overlay District state 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. 11 DCMR §1607.2. However, pursuant to section 3104, the Applicants have requested and the Zoning Commission may grant relief from the setback requirement to a maximum of 15 feet in height and 8 feet in depth, for the provision of reasonable development footprints. 11 DCMR §1607.2. The 12 foot step back reduces the amount of roof space available along Half Street, which, when combined with the setback requirements of the CR District and the provision of an open court at the second level of the residential building, significantly impact the amount of roof space available for housing mechanical equipment.

The amount of roof space available for housing mechanical equipment is also reduced by the provision of an open court at the second level of the residential building. The open court has been provided to add green elements to the structure's design and to meet the percentage of lot occupancy requirement for residential buildings within the CR District.

The setback requirements of the CR District require that housing for mechanical equipment be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. 11 DCMR §630.4. This setback requirement applies to exterior walls facing interior courts and further reduces the amount of roof space which can be used for structures housing mechanical equipment. In this particular instance, the interior court is surrounded by the proposed development and, thus, not providing a setback for exterior walls facing the interior courts does not adversely affect the light and air of the adjacent buildings.

The step back requirements of the CG Overlay District, combined with the setback requirements of the CR District and provision of an open court at the second level of the residential building, make compliance with the Zoning Regulations impractical and unreasonable.

- b. The intent and purpose of section 400.7 of the Zoning Regulations are not materially impaired and the light and air of adjacent buildings are not adversely affected.**

The proposed roof structures will not impair the intent and purpose of section 400.7 of the Zoning Regulations and will not adversely affect the light and air of adjacent buildings. The requested special exception will permit roof structures facing the interior court that do not meet the setback and stepback requirements of the CG/CR District. The light and air of the adjacent buildings will not be adversely affected because the roof structures are located within the interior of the residential building.

## VII.

### **The Applicants Meet the Requirements for Variance Relief from the Private Residential Recreation Space, Loading and Step Back Provisions of the Zoning Regulations**

#### **A. Standard of Review**

Under D.C. Code §6-641.07(g)(3) and section 3103.2 of the Zoning Regulations, the Board is authorized to grant an area variance where it finds that three conditions exist:

(1) the property is unique because, *inter alia*, of its size, shape, or topography; (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

*French v. District of Columbia Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). The Zoning Commission, pursuant to section 1610.7, may hear and decide any additional requests for special exception or variance relief needed when the application for the subject property is being heard and decided for Zoning Commission review and approval. 11 DCMR §1610.7. Thus, in reviewing a request for variance relief when that request is part of an application for Zoning Commission Review of Buildings, Structures and Uses, the Zoning Commission is authorized to grant an area variance where the Zoning Commission finds that the above-stated three conditions exist.

#### **B. The Property Is Unique Because, *Inter Alia*, of Its Size, Shape or Topography**

The site area for the proposed development is large in size, containing more than 102,000 square feet, and will consist of five different uses, which include residential, office, hotel, retail and Metrorail uses. The site area includes the entrance to the Navy Yard Metro Station, which will be improved and expanded as part of this development. The improvements and expansion

of the Navy Yard Metro Station create an exceptional situation and condition which affects the size and shape of the proposed development.

Additionally, the location of the Subject Property in the CG/CR District requires that the design and mixture of the proposed uses respect the purposes of the CG Overlay District while simultaneously complying with the requirements of the CR District. Because the proposed development fronts on both M and Half Streets, the Applicants are required to comply with both the CG Overlay provisions for buildings, structures and uses on M Street as well as the CG Overlay provisions for buildings, structures and uses on Half Street. Compliance with the requirements of the CR District, 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 also create an exceptional situation for the Subject Property.

**C. The Owner Would Encounter Practical Difficulties If the Zoning Regulations Were Strictly Applied**

**1. Private Residential Recreation Space (§635)**

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. 11 DCMR §635. The proposed development devotes approximately 4,500 square feet (or 1.5% of the residential gross floor area) to private residential recreation space.

Unlike most structures in the CR Zone devoted to residential use, the proposed development incorporates the mixture of desired uses specified in the CG Overlay regulations. The CG Overlay provisions require that the proposed development devote 100% of the street frontage along Half Street to retail and other preferred uses and that the proposed development devote not less than 75% of the gross floor area of the ground floor to preferred uses. 11 DCMR

§1607.4 and 1607.4. In addition to the CG Overlay requirements, the CR District requires that a building devoted to residential use only occupy 75% of the lot at the level where residential use begins. 11 DCMR §§1607.4 and 634. Thus, the amount of space which can be devoted private residential recreation space is limited by the requirements of the CR District.

The proposed development does, however, provide a number of recreational options to its residents, including an open court at the second floor and rooftop terraces which will serve as residential recreation space. Furthermore, the Subject Property is immediately north of the new ballpark and is in close proximity to the Anacostia Waterfront and the proposed Canal Blocks Park.

Strict application of the Zoning Regulations would require the Applicants to reduce the number of residential units or substantially alter its provision of retail, residential and hotel uses in order to provide the required amount of private residential recreation space.

Lastly, the Applicants note that, on December 1, 2006, the Zoning Commission took preliminary action to repeal the residential recreation space requirements in the Zoning Regulations.

**2. Loading (§2201)**

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. 11 DCMR 2201.1. The Applicants are required to provide four 30 foot loading berths and one service/delivery space for the office building with ground floor retail use. 11 DCMR §2201.1. The Applicants are also required to provide one 55 loading berth, two 30 foot loading berths and two 20 foot service/delivery spaces for the hotel and retail uses in the residential building. 11 DCMR §2201.1. 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. For the office



building, the proposed development provides three 30 foot loading berths. If required to meet the requirements of the loading provisions of the Zoning Regulations, the Applicants would encounter practical difficulties due to the mixture of uses included in the proposed development.

The CG Overlay District requires that new developments help achieve the desired mixture of uses in the CG Overlay District as set forth in sections 1600.2(a) and (b) of the Zoning Regulations and devote 75% of the ground floor to retail and other preferred uses. 11 DCMR §§1610.3(b) and 1607.3. In compliance with the regulations of the CG Overlay District, the Applicants have designed a development that incorporates the mixture of uses identified in sections 1600.2(a) and (b) of the CG Overlay regulations and devotes all available space at the ground floor to preferred retail and service uses. In order to meet the loading requirements stated in the Zoning Regulations, the Applicants would be required to reduce its provision of residential, retail, office and hotel uses as well as the amount of active streetscape provided by the proposed development.

The Traffic Impact Study, prepared by Wells and Associates and attached at Exhibit B, found that the number of loading berths required by the Zoning Regulations do not correspond with the demand in a mixed-use development nor do the regulations consider how and when loading berths may be shared among the various uses. For those reasons, 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.

Strict application of the loading requirements of the Zoning Regulations would create practical difficulties for the Applicants, which would force the Applicants to reduce their proposed provision of uses and the amount of active streetscape provided by the proposed development.

**3. Step Back Requirements (§1607.2)**

The 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. However, pursuant to section 3104, the Applicants request and the Zoning Commission may grant relief from the step back requirement to a maximum of 15 feet in height and 8 feet in depth, for the provision of reasonable development footprints. 11 DCMR §1607.2.

Strict application of the step back provisions of the CG overlay would drastically reduce the development footprint at the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors of the residential building and require the Applicants to change its provision of residential units and courtyard spaces. Applying the minimum step back of 20 feet in depth at a height of 65 feet does not provide reasonable apartment depths on the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors of the residential building. Additionally, application of the minimum step back requirement of 20 feet in depth does not permit placement of a courtyard of sufficient size between the apartment and hotel wings of the building.

The Applicants have designed the residential building with the permitted 12 foot step back in mind. With the permitted 12 foot step back, the Applicants can provide a viable development footprint at the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors which accommodates reasonable apartment depths and placement of a courtyard of sufficient size between the apartment and hotel wings of the building. Without the permitted 12 foot step back, the Applicants would be required to change its provision of residential units and courtyard spaces.

The Applicants also requests a variance from the step back requirements to permit a 6 foot setback for the height of the building at the northern end of the hotel facing Half Street. The 6 foot setback is a narrow architectural marker and measures approximately 15 feet in length. This narrow architectural marker enhances the building articulation by providing compositional

relief to the building façade along Half Street. Without this architectural marker, the building articulation along Half Street would not provide the pedestrian-friendly, active streetscape that the regulations of the CG Overlay District envision along Half Street.

**D. The Variance Would Not Cause Substantial Detriment to the Public Good and Would Not Substantially Impair the Intent, Purpose and Integrity of the Zoning Plan**

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. As part of the CG Overlay District, the proposed development would provide a mixture of uses, preferred uses at the ground floor and active streetscapes in and around the proposed development as specified in the CG Overlay provisions.

**1. Private Residential Recreation Space (§635)**

Relief from the private residential recreation space requirements of the Zoning Regulations will not create a substantial detriment to the public good nor will it substantially impair the zone plan. The proposed development offers a variety of recreational options to its residents, including convenient access to preferred uses at the ground floor level and an open court at the second floor which will serve as residential recreation space. The Subject Property is also in close proximity to the new ballpark, the Anacostia Waterfront and the new Canal Block Park. A variance from the private residential recreation space requirements will allow Applicants to maintain the proposed allocation of uses, without compromising other recreational options available to its residents.

**2. Loading (§2201)**

A variance from the loading requirements of the Zoning Regulations will not create a substantial detriment to the public good nor will it substantially impair the zone plan. As discussed in the Transportation Impact Study, attached at Exhibit B, and the Loading Analysis, attached at Exhibit C, the loading berths provided will meet the loading demand for the proposed

development. The Transportation Impact Study found that the loading requirements do not well-suit this type of mixed-use development nor do the regulations consider that loading berths may be shared among the various uses. The attached Loading Analysis shows that the office building dock will have a surplus of dock hours per day of 9.7, while the dock located at the residential building will have a surplus of dock hours per day of 17.0.

Because the proposed development consists of four uses that require loading, the required provision of loading results in an excessive amount of loading which takes away the amount of ground floor retail provided. The requested variance will allow the Applicants to provide safe and active streetscapes in and around the proposed development. The requested relief will also allow the Applicants to keep the proposed provision of uses, which is in harmony with the stated purposes of the CG Overlay District.

### **3. Step Back Requirements (§1607.2)**

Relief from the step back requirements of the Zoning Regulations will not create a substantial detriment to the public good nor will it substantially impair the zone plan. The requested variance would provide the Applicants with a viable development footprint that would allow reasonable apartment depths at the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> floors as well as a courtyard of sufficient size between the apartment and hotel wings. The requested relief would also enhance the building articulation along Half Street, creating the pedestrian-friendly, active streetscape that the regulations of the CG Overlay District envision.

Thus, the requested variances can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

**VIII.**  
**Witnesses**

The witnesses scheduled to testify on behalf of the Applicants at the January 11, 2006 public hearing before the Zoning Commission include:

- Amy Phillips, the developer representing the Applicants;
- Robert Sponseller, the architect for the proposed development;
- John Fitch, the landscape architect for the proposed development;
- Dan Van Pelt, the traffic consultant for the proposed development; and
- Steven Sher, the Land Use, Planning and Zoning expert for the proposed development.

**IX.**  
**Exhibits Submitted in Support of the Application**

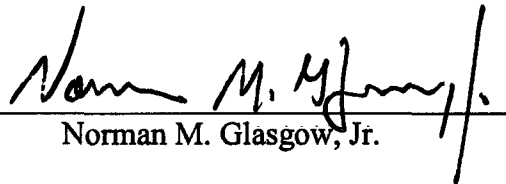
- Exhibit A:** Architectural Plans and Elevations
- Exhibit B:** Transportation Impact Study
- Exhibit C:** Loading Analysis
- Exhibit D:** Outline of Testimony for Amy Phillips of MR N Street Southeast LLC and MR Ballpark 5 LLC
- Exhibit E:** Outline of Testimony for Robert Sponseller of Shalom Baranes Architects
- Exhibit F:** Resume of Robert Sponseller, AIA
- Exhibit G:** Outline of Testimony for John Fitch of Landscape Architecture Bureau
- Exhibit H:** Outline of Testimony for Daniel Van Pelt, Traffic Consultant
- Exhibit I:** Resume of Daniel Van Pelt, P.E.

**X.**  
**Conclusion**

For the reasons stated above, the proposed development meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicants therefore request that the Zoning Commission grant the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Norman M. Glasgow, Jr.