

January 25, 2007

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VIA HAND DELIVERY

D.C. Zoning Commission
441 4th Street, N.W., Suite 210
Washington, D.C. 20001

Re: Zoning Commission Review of Buildings, Structures and Uses
Z.C. Case No. 06-46
55 M Street, S.E. (Square 701, Lots 3, 98 – 118, 144 – 147, 161, 162,
167, 815 and 824)

Dear Members of the Commission:

On behalf of MR N Street Southeast LLC, MR Ballpark 5 LLC and the Washington Metropolitan Area Transit Authority (collectively, the "Applicants"), we are filing herewith an original and twenty copies of the post-hearing statement for the review and approval of new construction along M Street, S.E. pursuant to the Capitol Gateway Overlay District provisions. The post-hearing statement provides the additional information the Zoning Commission requested at its January 11, 2007 hearing on this matter.

The following materials are enclosed:

- One original and twenty copies of the post-hearing statement with exhibits in support of the application; and
- One original and twenty copies of the Architectural Plans and Elevations.

Thank you for your attention to this matter.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

HOLLAND & KNIGHT LLP

Norman M. Glasgow, Jr.
Norman M. Glasgow, Jr.

Enclosures

cc: Jennifer Steingasser, Office of Planning
Andy Litsky, Chairman, Advisory Neighborhood Commission 6D07
Robert Siegel, Advisory Neighborhood Commission 6D07

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ZONING COMMISSION
District of Columbia

CASE NO. 06-46

EXHIBIT NO. 33

ZONING COMMISSION
District of Columbia
CASE NO. 06-46
EXHIBIT NO. 33

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**POST-HEARING SUBMISSION OF
MR N STREET SOUTHEAST, LLC AND MR BALLPARK 5, LLC
IN SUPPORT OF AN APPLICATION
FOR ZONING DESIGN REVIEW OF BUILDINGS,
STRUCTURES AND USES ON M STREET, S.E.**

55 M STREET, S.E.

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ZONING COMMISSION
District of Columbia

CASE NO. 06-46
EXHIBIT NO. 33

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Exhibit A	Revised Architectural Plans and Elevations
Exhibit B	Summary of LEED Certification Standards

At its public hearing on Zoning Commission Case No. 06-46, the Zoning Commission requested that the Applicants provide additional information in response to its discussion of the 55 M Street, S.E. project. This post-hearing submission provides the additional information the Zoning Commission requested.

I. 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

Concerning this area of relief, the Zoning Commission requested that the Applicants review its request relating to the hotel roof structure nearest Cushing Place. As will be discussed elsewhere in this submission, that roof structure has been redesigned to meet the requirements of the Zoning Regulations and, therefore, relief will not be necessary for that roof structure.

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 from the "interior" court walls in the CR District, all setback requirements from Half, M and N Streets, S.E. are met.

- 1. 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 size of the building lot, the "J" shaped footprint of the South building, the required setbacks and step backs along Half Street, and the need for three separate cores to accommodate the hotel use and the residential uses located on two separate wings of the South building. If the Applicants met all the setback requirements of the roof structure regulations, the Applicants would not have sufficient room to accommodate all necessary rooftop functions, which include housing mechanical equipment or meet the step back requirements of the proposed CG Overlay provisions relating to Half Street, S.E.

The building lot is large and the Applicants have designed the proposed development to fully utilize the building lot. The proposed development consists of four uses, which have different mechanical equipment needs. The North building includes office and retail uses, while the South building includes hotel, retail and residential uses. The South building requires three separate cores to accommodate the hotel use and the residential uses located on the two separate

wings of the building. The three separate cores of the South building require a significant amount of roof space for housing mechanical equipment.

The South building has a “J” shaped footprint in order to meet the percentage of lot occupancy requirement for residential buildings within the CR District. The “J” shaped footprint incorporates a large open court at the second level. The provision of an open court at the second level reduces the amount of roof space available for housing mechanical equipment.

The amount of roof space available for housing mechanical equipment is further reduced by the step back requirements of proposed section 1607.2 and the setback requirements of the CR District. Pursuant to proposed section 1607.2, 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 have requested 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. The 12 foot step back reduces the amount of roof space available along Half Street.

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 also applies to exterior walls facing interior courts and further reduces the amount of roof space which can be used for structures housing mechanical equipment.

The size of the lot, the “J” shaped footprint of the South building, the required setbacks and step backs along Half Street, and the need for three separate cores to accommodate the hotel use and the residential uses located on two separate wings of the South building make full

compliance with the roof structure regulations unreasonable, unduly restrictive and prohibitively costly. If the proposed development complied with the roof structure regulations, there would not be sufficient space to accommodate all necessary rooftop functions, such as housing mechanical equipment for hotel and residential uses. The lack of sufficient space would require that the Applicants sacrifice necessary rooftop functions and reduce its proposed programming to comply with the roof structure regulations.

2. 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 proposed development meets all setbacks from street frontages. The deviations from the Zoning Regulations are now only located along the walls of the interior court of the South building and now, as previously stated, no longer along Cushing Place, the alley located on the eastern side of the development. 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 North building does not require relief from the roof structure regulations. Additionally, the overall height of the proposed development is lower than the permitted matter-of-right height on the sites to the east of the proposed development and does not adversely affect the light and air of adjacent buildings. Thus, the standards for special exception relief from the roof structure regulations are met.

C. Standards of Review for Special Exception for Step Backs on Half Street, S.E.

There are no specified standards for review for a special exception for step backs which deviate from the step back requirements of proposed section 1607.2, other than compliance with section 3104. Pursuant to section 3104, the Board of Zoning Adjustment is authorized “under §8

of the Zoning Act...to grant special exceptions,... where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.”

D. Special Exception Relief from the Step Back Requirements on Half Street, S.E.

The Applicants request special exception relief pursuant to section 3104 of the Zoning Regulations to permit a minimum step back of 12 feet in depth above a height of 80 feet and a setback and step back of 4 feet for 17 of the 584 linear feet which front on Half Street. As shown on Sheet A7 of the Architectural Plans and Elevations, the proposed development will have a step back of 12 feet in depth above a height of 80 feet for 567 of the 584 linear feet which front on Half Street. The remaining 17 linear feet which front on Half Street will have 4 foot setback in order to provide compositional relief along Half Street.

1. The Requested Special Exception Is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The requested special exception from the proposed step back requirements on Half Street, S.E. is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps. The proposed development is located in the CG/CR District. The Notice of Proposed Rulemaking in Zoning Commission Case No. 05-10, dated November 10, 2006, sets forth proposed text amendments for the CG Overlay District, which include proposed section 1607.2. Proposed section 1607.2 states 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. Proposed section 1607.2 also states that Zoning Commission, pursuant to section 3104, may grant relief from the requirement of proposed section 1607.2 to a maximum of 15 feet in height and 8 feet in depth for the provision of reasonable development footprints.

The Applicants pursuant to proposed section 1607.2 request special exception relief from the step back requirements to permit a 12 foot step back above 80 feet and a 4 foot setback for 17 linear feet at the northern end of the hotel facing Half Street. The 12 foot step back would provide reasonable apartment depths on the 8th, 9th and 10th floors, which would be lost if the Applicants were required to comply with proposed section 1607.2's minimum step back of 20 feet at a height of 65 feet. With the permitted 12 foot step back, the Applicants can also provide a courtyard of sufficient size between the apartment and hotel wings of the building.

The 4 foot setback at the northern end of the hotel facing Half Street serves as an architecture marker that is consistent with proposed section 1610 and enhances the building articulation by providing compositional relief to the building façade along Half Street. Without 4 foot setback at the northern end of the hotel, the building articulation along Half Street would not provide the pedestrian-friendly, active streetscape that proposed section 1610 of the CG Overlay regulations envision on Half Street.

Both the 12 foot step back above 80 feet and the 4 foot setback at the northern end of the hotel accommodate the provision of reasonable development footprints. Thus, the requested special exception is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Maps.

2. **Special Exception Will Not Tend to Affect Adversely the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Maps**

The requested special exception in accordance with the Zoning Regulations and Zoning Maps will not adversely affect the use of neighboring property. As the drawings on Sheet V-1 of the Architectural Plans and Elevations illustrate, the impact of the requested relief is minimal. The 12 foot setback at a height of 80 feet proposed development will have no impact on any other property. The 12 foot setback will have the effect of placing the mechanical penthouses

out of plain view, which, in accordance with the Zoning Regulations and Zoning Maps, will not adversely affect the use of neighboring property.

II. The Applicants Meet the Requirements for Variance Relief from the Private Residential Recreation Space, Loading, Proposed Step Back, Proposed Ground Floor Preferred Uses, Proposed Street Frontage Along Half Street, S.E., and Proposed Minimum Floor-to Ceiling Clear Height 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. Compliance with the private residential recreation space requirement would require that the Applicants reduce the amount of gross floor area devoted to residential units and, consequently, reduce the size and number of residential units.

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

residential recreation space requirement would require the Applicants to transfer 43,500 square feet of gross floor area devoted to residential units to private residential recreation space. A change in the allocation of gross floor area devoted to residential units will require that the Applicants reduce the size and number of residential units and substantially alter its provision of retail, residential and hotel uses in order to provide the required amount of private residential recreation space. Thus, compliance with the private residential recreation space requirements would result in practical difficulties to the Applicants.

Lastly, the Applicants note that, on January 7, 2007, the Zoning Commission took final 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. If required to meet the requirements of the loading provisions of the Zoning Regulations, the Applicants would be unable to achieve its proposed program and would have to eliminate a portion of the proposed ground floor retail.

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.

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 reasonably available space at the ground floor to preferred retail and service uses. However, compliance with the loading requirements would force the Applicants to eliminate a portion of the ground floor area devoted to preferred uses and to alter its provision of proposed uses.

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. Furthermore, DDOT had no objection to this area of relief in its report.

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 (Proposed §1607.2)

The proposed step back provisions of the CG Overlay require that any portion of a building or structure that exceeds 65 feet in height must provide a minimum step back of 20 feet in depth from the building line along Half Street, S.E. Strict application of the step back provisions of the CG overlay would drastically reduce the development footprint at the 8th, 9th

and 10th floors of the residential component, altering the core and mechanical systems, and would 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 8th, 9th and 10th 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 8th, 9th and 10th 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 and most likely reduce its provision of residential units, courtyard spaces and other uses.

The Applicants also request a variance from the step back requirements to permit a 4 foot setback for the height of the building at the northern end of the hotel facing Half Street. The 4 foot setback is a narrow architectural marker and measures approximately 17 feet in length. This narrow architectural marker enhances the building articulation by providing compositional relief to the building façade along Half Street. The compositional relief creates a pedestrian-friendly, active streetscape that is vital to the success of the proposed development which has been designed with the pedestrian experience in mind. 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. Compliance with the

proposed step back provisions would require the Applicants to develop alternative means for creating compositional relief for an abnormally long building façade.

4. Ground Floor Preferred Uses (Proposed §1607.3)

Proposed section 1607.3 requires that each new building shall devote not less than 75% of the gross floor area of the ground floor to retail service, entertainment or arts uses.

Compliance with proposed section 1607.3 would require the Applicants to eliminate access to residential, hotel and office uses and the extension of Cushing Place to N Street.

The proposed development is required to provide 75%, or 67,923 square feet, of gross floor area of the ground floor to preferred uses. The proposed development provides 56.3%, or 51,010 square feet, of gross floor area of the ground floor to preferred uses. A portion of the gross floor area of the ground floor is devoted to lobby space for residential, hotel and office uses which start at the second floor. Of the remaining 18.7%, or 16,913 square feet, of gross floor area of the ground floor, 11,400 square feet is devoted to the Metrorail Station entrance and the extension of Cushing Place to N Street.

Compliance with proposed section 1607.3 would create a practical difficulty for the Applicants by requiring the Applicants to either eliminate lobby space for residential, hotel and office uses or eliminate the extension of Cushing Place to N Street.

5. Street Frontage along Half Street, S.E. (Proposed §1607.4)

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

Preferred uses occupy 79% of the proposed development's street frontage along Half Street. Entrances to the residential use along Half Street and the Metrorail Station account for the remaining 21% of the proposed development's street frontage along Half Street. The entrance to the residential use along Half Street provides safe and convenient access to residential use located on the western portion of the South building. The Metrorail Station is a permanent fixture in the street frontage along Half Street. The proposed development includes the renovation of the Navy Yard Metrorail Station, which will facilitate the flow of pedestrian traffic and offer alternative transportation options to ballpark patrons, District residents and visitor's to our nation's capitol. The Applicants cannot reduce the amount of street frontage occupied by the Metrorail Station. However, the renovation of the Metrorail Station has been designed to complement and support preferred uses along Half Street.

In order to meet the requirements of proposed section 1607.4, the Applicants would be required to eliminate the Metrorail Station entrance located at the northern end of the site and eliminate safe and convenient access to residential use located on the western portion of the South building. Elimination of the Metrorail Station entrance is impossible and the Applicants must, for public safety reasons, provide access to the residential use located along Half Street. Thus, compliance with proposed section 1607.4 would create a practical difficulty for the Applicants.

6. Minimum Floor-to-Ceiling Clear Height (Proposed §1607.5)

Proposed section 1607.5 requires that the minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses be 14 feet. Compliance with proposed section 1607.5 would result in the loss of one floor due to the maximum building height of 110 feet and would require the Applicants to change its mixed-use program.

The Applicants have requested relief from the minimum floor-to-ceiling clear heights for ground floor preferred uses requirement of proposed section 1604.7 to provide floor-to-ceiling clear heights of 13 feet in the retail space labeled “Retail 7” on the Architectural Plans and Elevations, 11 feet 6 inches in the retail space labeled “Retail 5a”, and 11 feet in back of house space located below residential space. Retail 7 and Retail 5a can be found on Sheet A1 of the Architectural Plans and Elevations.

A floor-to-ceiling clear height of 13 feet is required in Retail 7 because the site slopes along N Street. The retail areas to the west and east of Retail 7 will have floor-to-ceiling clear heights in excess of 14 feet, as shown on Sheet A14 of the attached Architectural Plans and Elevations. If the Applicant were required to provide a floor-to-ceiling clear height of 14 feet in Retail 7, the Applicant would be forced to lose at least one foot of ceiling height

Retail 5a will have a floor-to-ceiling height of 11 feet 6 inches at the ground floor, in order to accommodate the placement of the main hotel lobby and bar on the second floor. The Applicants propose to construct an open, interior stair connecting the second floor directly to the street in order to create a lively, attractive atmosphere for hotel guests and other patrons. Because the hotel lobby and bar are intended to be lively, attractive places, the ceiling heights for the hotel lobby and bar are taller than the typical ceiling height of 9 feet 8 inches found on the rest of the South building’s second floor. The additional ceiling height has been transferred from the ground floor area below the hotel to the hotel lobby and bar on the second floor.

A floor-to-ceiling height of approximately 11 feet is provided for back of house space located below residential space and back of house space which stores large air handling equipment and kitchen exhausts. Storage facilities, kitchens, administrative offices and other

service areas associated with preferred uses are considered “back of house space;” Sheet A19 of the Architectural Plans provides a section showing back of house space.

There are two reasons the Applicants require a floor-to-ceiling height of approximately 11 feet for back of house space. First, residential space requires a significant amount of mechanical equipment, which must be located below the residential space. Thus, a portion of the ceiling height below the residential space must be allocated to residential use. Second, a portion of the ground floor preferred uses will require additional space for larger mechanical equipment, such as kitchen exhausts and other equipment associated with restaurant use. The size of mechanical equipment varies depending on the type of use and type of mechanical equipment selected.

If the Applicants were required to comply with proposed section 1607.5, the Applicants would have to eliminate one floor because preferred uses at the ground floor would require floor heights greater than 14 feet and the building height limits the Applicants ability to recapture the excess height devoted to preferred uses elsewhere in the project. Thus, the Applicants request a variance from proposed section 1607.5 to permit floor-to-ceiling clear heights of 13 feet in Retail 7, 11 feet 6 inches in the Retail 5a, and 11 feet in back of house space located below residential space, in order to preserve the proposed number of floors and the proposed program.

D. The Requested Variances 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 will 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. Additionally, on January 7, 2007, the Zoning Commission took final action to repeal the residential recreation space requirements of the Zoning Regulations. Thus, the requested relief from the private residential recreation space requirements of the Zoning Regulations does not create a substantial detriment to the public good nor will it substantially impair the zone plan.

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 (Proposed §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 8th, 9th and 10th 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.

4. Ground Floor Preferred Uses (Proposed §1607.3)

The requested relief from the proposed requirements for ground floor preferred uses will not create a substantial detriment to the public good nor will it substantially impair the zone plan. The proposed development does not meet the proposed requirements for ground floor preferred uses due to the amount of gross floor area devoted to the Metrorail Station entrance and the extension of Cushing Place to N Street. The renovation of the Metrorail Station and the extension of Cushing Place to N Street benefit the public good by providing newer transportation facilities to an area which will experience higher pedestrian and vehicular traffic as a result of the new ballpark stadium. The renovation of the Metrorail Station will encourage District residents and visitors to the ballpark development to use mass transit to travel to the proposed

development and the new ballpark stadium. A variance from the ground floor preferred uses requirement will not impair the zone plan nor will it create a substantial detriment to the public good.

5. Street Frontage along Half Street, S.E. (Proposed §1607.4)

Similarly, the requested variance from the proposed requirements for street frontage along Half Street will not create a substantial detriment to the public good nor will it substantially impair the zone plan. The proposed development does not meet the proposed requirements for street frontage along Half Street due to the existence of the Navy Yard Metro Station which fronts on Half Street and an entrance to residential use along Half Street. The Metrorail Station, as previously described, will encourage the use of mass transit. The entrance to residential use along Half Street is required to provide safe and convenient access to the residential use located on the western portion of the South building. A variance from the proposed requirements for street frontage along Half Street will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

6. Minimum Floor-to-Ceiling Clear Height (Proposed §1607.5)

A variance from the proposed minimum floor-to-ceiling clear height requirements in certain select areas of the site will not create a substantial detriment to the public good nor will it impair the zone plan. The proposed floor-to-ceiling clear heights of 13 feet and 11 feet for back of house space provide adequate space for preferred uses. Thus, the public good is not affected by the requested relief from the minimum floor-to-ceiling clear height requirements nor is the zone plan impaired by the requested variance.

III. Monument Place: Design and Operation

The proposed development includes a new 30 foot wide east-west connection, labeled “Monument Place” in the attached Architectural Plans and Elevations. Monument Place is located between the North and South buildings. Monument Place provides for vehicular and pedestrian circulation between Half Street and Cushing Place. The vehicular circulation program is designed to be one-way east bound, from Half Street to Cushing Place.

The 30 foot width of the connection includes a 4 foot pedestrian zone adjacent to the North building, a 12 foot drive line, an 8 foot vehicular lay-by lane for the hotel and a 6 foot pedestrian zone adjacent to the South building. The pedestrian zones are demarcated with a line of bollards which serve as a protective barrier for pedestrians and the buildings. Pedestrians will use Monument Place to access the retail elevators and the hotel entrance.

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

IV. LEED Certification Standards

As stated in our pre-hearing submission, the proposed development has been designed to meet certain of the LEED certification standards for new construction. The Applicants hired EMSI, a national consulting firm which specializes in LEED certification, to assist and coordinate the sustainability goals for the proposed development. With this post-hearing submission, the Applicants have included a summary of the LEED certification standards which will be incorporated into the design of the proposed development, attached at Exhibit B. The Applicants have decided that at least thirty percent of the roof areas for the proposed

development will be green roofs. Those green roofs will include a sorghum greenroof system located on the penthouse roofs and a heavily planted green roof over at least half of the central courtyard located at the second floor.

V. Proposed Streetscape & Interim Plan for Half Street

On Friday, January 19, 2007, the Applicants and its design team met with representatives of District's Department of Transportation ("DDOT") to review the proposed streetscape improvements included in this submission. DDOT was represented by members of its Ward 6 Transportation Planning team, Anacostia Waterfront Initiative ("AWI") team, and Traffic and Safety Division. Representatives from the Office of Planning and the Office of the Deputy Mayor for Planning and Economic Development also attended the meeting.

At the January 19th meeting, the Applicants presented its vision for Half Street, which included a discussion of grading, paving, street furniture, lighting and pedestrian and vehicular circulation. The Applicants also explained key design elements such as the materials to be used, the elimination of curbs in the street section, the proposal of a raised section at the intersection of N and Half Streets, drainage and planted storm water retention beds.

Representatives from DDOT requested more information on the drainage system and salt tolerance of plant material in the street level retention beds. Representatives from DDOT also noted that the proposed materials and street furniture deviated from AWI standards and that DDOT's position is that the Applicants would be responsible for the maintenance of these non-standard elements. The Applicants' landscape architect has identified a standard DDOT paver that will work with the current design.

The street condition and traffic circulation during baseball games were also discussed as they relate to the timing of the Applicants' project. As of Opening Day, April 2008, construction

of the Metrorail Station expansion will be complete. However, the Applicants' office building above the Metrorail Station and the residential buildings at the southern end of Half Street will remain under construction during the first season of play at the new stadium. As explained to DDOT representatives, the Applicants intend to provide a covered walkway in the eastern curb lane of Half Street between M and N Streets during this first season. The Applicants anticipate that, by April 2009, construction of the buildings will be complete and the street paving will be in place for the eastern pedestrian zone and street area from east trench drain to west trench drain. The Applicants provided an interim plan for Half Street on Sheets L2 through L4 of the attached Architectural Plans and Elevations.

VI. Traffic Plan for Game Days

Throughout the development of the traffic study for the 55 M Street, S.E. project, the Applicants' traffic consultant, Wells & Associates, has been in contact with DDOT to acquire information regarding the new Ballpark Traffic Operations Control Plan ("Ballpark TOCP"). The Applicants have also been in contact with Gorove/Slade Associates, the traffic consultant developing the new Ballpark TOCP for the Sports and Entertainment Commission ("SEC"). Based on communication with DDOT and Gorove/Slade Associates, a draft Ballpark TOCP is not expected until April 2007. The Applicants will continue to coordinate with DDOT and the SEC as the Ballpark TOCP is developed.

VII. Description and Study of Retail Elevator

The design of the proposed development includes a retail elevator, which transports guests from the parking garage directly to preferred uses located at the ground floor. The idea of a retail elevator was incorporated to showcase preferred uses located at the ground floor. The

Architectural Plans and Elevations, dated January 11, 2007, show the retail elevator along Half Street on Sheet A1. The location of the retail elevator has been moved to Monument Place, as illustrated on Sheet A1 of the Architectural Plans and Elevations attached at Exhibit A. The placement of the retail elevator along Monument Place will provide additional street frontage for preferred uses along Half Street.

VIII. Location of the Hotel Lobby

The hotel lobby will remain at the second floor. The Applicants propose to construct an open, interior stair connecting the ground floor to the second floor in order to create a lively, attractive atmosphere for hotel guests and other patrons.

IX. Showers for Office Tenants

The Applicants propose to rough in the plumbing for shower facilities and leave to the office tenant the decision as to whether the shower facilities should be built out.

X. Restudy of Roof Structure Located on the Hotel Roof

The Applicant has redesigned the penthouse structure located on the low roof of the hotel to minimize the visual impact of the penthouse structure. The penthouse structure has been reduced in height from 15 feet to 6 feet. The larger mechanical equipment has been relocated to locations within the South building. The penthouse structure is setback a distance greater than 6 feet from all exterior walls and therefore complies with the zoning provisions concerning setbacks.

XI. Signage

The Applicants have replaced the banner sign located at the northeastern corner of the site, above the Metrorail entrance in the previous submission, with a vertical architectural element related to the truss. The vertical element has been incorporated to emphasize the importance of the location at the corner of Half and M Streets and to assist in identifying the Metrorail entrance. The element extends beyond the last column support and faces of the building, supporting a vertical truss element reminiscent of the foul post line used in baseball.

The Applicants have provided two alternatives to the embellishments on the hotel sign located on the roof of the South building, one with the embellishments and one without. The two alternatives to the hotel sign are illustrated in Sheets A9 and A9a in the Architectural Plans and Elevations.