

BEFORE THE DISTRICT OF COLUMBIA ZONING COMMISSION

Application of Monument Realty
55 M Street, SE
Square 701
Lots 3, 98 - 118, 144 - 147, 161, 162, 167, 815 and 824

REVIEW OF BUILDINGS AND STRUCTURES ON M STREET, SE
CAPITOL GATEWAY OVERLAY DISTRICT

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I. Background

The Subject Property consists of Lots 3, 144, 145, 98 - 118, 144 - 147, 161, 162, 167, 815 and 824 in Square 701. Square 701 is bounded by M Street on the north, 1st Street on the east, N Street on the south and Half Street on the west. The Subject property comprises the western side of the square, is zoned CR and is located in the Capitol Gateway (CG) Overlay District.

The Applicants, MR N Street Southeast LLC, MR Ballpark 5 LLC and the Washington Metropolitan Area Transit Authority (collectively, the Applicants), propose to develop the Subject Property with a 748,600 square foot mixed-use development consisting of residential, office, hotel and retail uses. The CG Overlay District regulations which became effective on January 7, 2005, require review and approval by the Zoning Commission of any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E. This application is submitted pursuant to those approved regulations, set forth in Section 1604 of the Zoning Regulations adopted by Order No. 971. This statement also addresses the project's compliance with the amendments to the CG Overlay proposed in Zoning Commission Case No. 05-10, upon which proposed action was taken in May, 2006. This application, pursuant to adopted §1604.9 and proposed §1610.7, also includes requests for variance relief from the percentage of lot occupancy, residential recreation space and loading requirements and a request for a special exception from the roof structure requirements with regard to setbacks.

Following herein is a statement indicating how the Applicants meet the burden of proof.

II. Burden of Proof

A. Capitol Gateway Overlay District as Adopted (Section 1604)

Section 1604.2 of the Zoning Regulations states that an applicant requesting approval under the CG Overlay District review provisions must prove that the proposed building's architectural design, site plan, landscaping and sidewalk treatment are of a superior quality, pursuant to several design and use requirements.

The project addresses the specific design and use requirements of the CG Overlay District review provisions as follows:

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EXHIBIT NO. 6
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EXHIBIT NO. 6

1. 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, SE. §1604.3.

The streetwall of the new building which fronts on M Street, SE will be set back fifteen feet measured from the face of the adjacent curb along M Street, as illustrated in the attached plans on Sheet A3.

2. 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"). 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. §1604.4.

The new 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 entrances to the Navy Yard Metro Station. See attached Architectural Plans and Elevations, Sheet L1.

3. The Commission may authorize interim occupancy of the preferred use space by non-preferred uses for up to a five-year period. §1604.5.

At this time, the Applicants are not requesting interim occupancy by non-preferred uses.

4. 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 of the building. §1604.6.

The Applicants will devote not less than fifty percent of the surface area of the streetwall, exclusive of entrances 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.

5. No driveway may be constructed or used from M Street to required parking spaces or loading berths in or adjacent to a new building. §1604.7.

No driveway will be constructed or used from M Street to required parking spaces or loading berths in or adjacent to the new building. Access to the required parking spaces and loading berths will be provided from Cushing Place. See attached Architectural Plans and Elevations, Sheet L1.

Pursuant to §1604.9, which allows the Zoning Commission to hear and decide additional requests for special exception or variance relief, the Applicants also request variance relief from the percentage of lot occupancy, residential recreation space and loading requirements and a request for a special exception from the roof structure requirements with regard to setbacks. This relief is addressed in Sections C and D, below.

B. Capitol Gateway Overlay District as Proposed

The project also addresses the specific design and use requirements which the Zoning Commission has proposed to adopt in Zoning Commission Case No. 05-10.

1. For buildings, structures and uses on M Street, S.E., the amended regulations include only one new standard.

The proposed project complies as follows:

1. The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be 14 feet. Proposed §1604.8.

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. 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.

2. The text amendments proposed in Zoning Commission Case No. 05-10 contain standards for buildings, structures and uses on Half Street, SE.

The proposed project complies as follows:

1. 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 SE. 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. Proposed §1607.2.

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.

2. Each new building shall devote not less than 75% of the gross floor area of the ground floor to retail, service, entertainment or arts uses ("preferred uses"). Proposed §1607.3.

The new building will devote 68% of the gross floor area of the ground floor 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 entrances to the Navy Yard Metro Station and the separate building entrances associated with the residential, office and hotel uses. The portion of the gross floor area of the ground floor devoted to entrances to the Navy Yard Metro Station and building entrances associated with non-preferred uses is greater than 25%. Thus, the Applicants request relief from this requirement to allow the Applicants to devote 68% of the gross floor area of

the ground floor to retail and service uses. There are no office uses or other non-preferred uses on the ground floor.

3. Preferred uses shall occupy 100% of the building's street frontage along Half Street SE, except space devoted to building entrances or required to be devoted to fire control. Proposed §1607.4.

Preferred uses will occupy 100% of the building's street frontage along Half Street, exclusive of building entrances and entrances to the Navy Yard Metro Station. See attached Architectural Plans and Elevations, Sheets D1 and L1.

4. The minimum floor-to-ceiling clear height for portions of the ground floor level devoted to preferred uses shall be 14 feet. Proposed §1607.5.

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. 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.

5. The Commission may authorize interim occupancy of the preferred use space by non-preferred uses for up to a 5 year period. Proposed §1607.6.

At this time, the Applicants are not requesting interim occupancy by non-preferred uses.

6. No private driveway may be constructed or used from Half Street SE to any parking or loading berth areas in or adjacent to a building or structure constructed after the adoption of this section. Proposed §1607.7.

No driveway will be constructed or used from Half Street to required parking spaces or loading spaces in or adjacent to the new building. Access to the required parking spaces and loading berths will be provided from Cushing Place.

3. **The provisions of §1610 of the proposed text amendments in Zoning Commission Case No. 05-10, specify that all proposed uses, buildings, and structures within Squares 700 and 701 shall be subject to review and approval by the Zoning Commission.**

The proposed project addresses those requirements as follows:

1. In addition to proving that the proposed use, building, or structure meets the standards set forth in §3104, an applicant requesting approval under §1610 must prove that the proposed building or structure, including the siting, architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

- a. Help achieve the objectives of the CG Overlay District as set forth in §1600.2. Proposed §1610.3(a).

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 contains appropriate setbacks; thus the development 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.

- 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. Proposed §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 320,000 square feet to residential use, 53,600 square feet to retail uses, 275,000 square feet to office use and 100,000 square feet to hotel use. The Applicants have devoted 68% of the gross floor area of the ground floor to retail and other preferred uses. Thus, the proposed development will offer the desired mixture of uses specified in the CG Overlay regulations.

- c. Be in context with the surrounding neighborhood and street patterns. Proposed §1610.3(c).

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 entrances 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. Minimize conflict between vehicles and pedestrians. Proposed §1610.3(d).

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. Minimize unarticulated blank walls adjacent to public spaces through façade articulations. Proposed §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 any new building along M Street, exclusive of entrances to the Navy Yard Metro Station, to display windows having clear or low-emissivity glass except for decorative accent and to entrances to commercial uses of the building. Additionally, the proposed development will devote 68% of the gross floor area of the ground floor to retail and other preferred uses. Thus, the Applicants will minimize the unarticulated blank walls adjacent to public spaces.

- f. Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards. Proposed §1610.3(f).

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

- 2. With respect to a building or structure which has frontage on Half Street SE south of M Street SE:

- 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. Proposed §1610.5(a).

The Applicants have designed the building to provide safe and active streetscapes through building articulation, landscaping and the provision of active ground level uses, primarily retail and pedestrian concourse space. Preferred uses will occupy 100% of the development's street frontage along Half Street, exclusive of building entrances and entrances to the Navy Yard Metro Station. The proposed development will devote 68% to retail and service uses, creating active ground level uses. Additionally, not less than 50% of the surface area of the streetwall of any new building along M Street, exclusive of entrances to the Navy Yard Metro Station, will be devoted to display windows having clear or low-emissivity glass, creating an active streetscape along M Street. Thus, the building will provide for safe and active streetscapes through its architectural design and the provision of active ground level uses.

- b. The building or structure shall provide safe and convenient movement to and through the site, including to public transit, the Ballpark and to the Anacostia River. Proposed §1610.5(b).

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

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

Prior to the hearing, the Applicants will supplement this application with a view analysis which assesses the openness of views and vistas around the Capitol Dome, federal buildings, the Ballpark and the waterfront.

C. Special Exception for Roof Structures

In order to receive special exception relief from the strict requirements for a roof structure, the Applicants must show that full compliance is impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surround area and would be unduly restrictive, prohibitively costly or unreasonable. Additionally, the deviations from the roof structure requirements sought must not impair the intent and purpose of the Zoning Regulations and the light and air of adjacent buildings must not be affected adversely.

The Applicants request special exception relief to permit roof structures facing the interior court of the building that do not meet the setback requirements for roof structures in the CR District. The CG Overlay requires that any portion of a building or structure that exceeds 65 feet in height must provide a step back of 20 feet in depth from the building line along Half Street SE. As proposed by the Zoning Commission, an applicant may request the Zoning Commission to grant relief from the aforementioned requirement to a maximum of 15 feet in height and 8 feet in depth. The proposed development provides a step back of 12 feet in depth. The proposed stepback of 12 feet limits the amount of roof space that can be devoted to a roof structure.

In addition to the CG Overlay requirement, the CR District requires that housing for mechanical equipment or a stairway or elevator penthouse must be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. The proposed development includes a large open court which begins on the second floor and which separates the apartment wing and the hotel wing of the building. The open court reduces the amount of space between exterior walls, thus reducing the amount of roof space that can be devoted to a roof structure.

The combination of the proposed stepback required by the CG Overlay provisions and the roof structure setback required by the CR provisions make it impracticable for the Applicants to house mechanical equipment within a roof structure. The inability of the Applicants to house mechanical equipment within a roof structure creates operating difficulties for the Applicants, making compliance with the roof structure provisions of the CG Overlay District and the CR District unduly restrictive, prohibitively costly and unreasonable.

The proposed deviations from the roof structure requirements will not impair the intent and purpose of the Zoning Regulations. The light and air of adjacent buildings will not be adversely affected because the requested relief only concerns the setback from the exterior walls facing the interior courts of the building.

D. Variance Relief from the Percentage of Lot Occupancy, Residential Recreation Space and Loading Requirements

In order to receive variance relief, the Applicants must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

1. Property Is Affected by Several Exceptional Situations or Conditions

The development parcel is large in size, containing more than 102,000 square feet, and is being used for four different uses. By their nature, these uses have different footprint characteristics and requirements which affect lot occupancy for the single building on the lot, even though there is substantial open space around the building at various levels. The existing Metro improvements on the site, which must be expanded as part of this development, also create an exceptional situation or condition.

Furthermore, the Subject Property is located in the CR zone within the CG Overlay District. Due to its location in the CG Overlay District, the design and mixture of proposed uses must respect the purposes of the CG Overlay District, while simultaneously complying with the requirements of the CR District. In addition, the proposed development fronts on both M and Half Streets, requiring the Applicants to comply with both the CG Overlay for buildings, structures, and uses on M Street as well as the CG Overlay 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 create an exceptional situation for the Subject Property.

2. Strict Application of the Zoning Regulations Would Result in Practical Difficulty Upon the Property Owner

a. Percentage of Lot Occupancy (§634)

Strict application of the Zoning Regulations would require that the structure occupy a maximum percentage of lot occupancy of 75%. The Subject Property is located in the CR zone within the CG Overlay District. The Applicants propose to construct a mixed-use development consisting of residential, office, retail and hotel uses.

The percentage of lot occupancy requirement applies to structures in the CR zone devoted to residential use. A portion of the proposed development is devoted to residential use. The ground floor occupies 100% of the lot with ground floor retail, entrances to the Navy Yard Metro Station and entrances to the residential, office and hotel uses. The proposed development's residential use begins at the second floor. The residential use consists of approximately 320,000 square feet of gross floor area. The office and hotel uses also begin at the second floor. The office use accounts for

approximately 275,000 square feet of gross floor area, while the hotel use consists of approximately 100,000 square feet of gross floor area. The percentage of lot occupancy at the second floor, where residential use begins, is approximately 80%.

In order to meet the percentage of lot occupancy requirement, the Applicants would be required to reduce the amount of retail, residential, hotel and office space. Two of the stated purposes of the CG Overlay District are: (1) to assure development of the area with a mixture of residential and commercial uses; and (2) to encourage a variety of support and visitor-related uses such as retail, service and hotel or inn uses. A reduction in the amount of retail, residential, hotel and office use will prevent the Applicants from meeting at least two of the stated purposes of the CG Overlay District.

b. Private Residential Recreation Space (§635)

Strict application of the Zoning Regulations would require the Applicants to devote an area equal to 15% of the residential gross floor area (or 48,000 square feet) as private residential recreation space. Approximately 4,500 square feet (or 1.5% of the residential gross floor area) is devoted to private residential recreation space. The Subject Property is required to devote 100% of the street frontage along M Half Streets to retail, service, entertainment, or arts uses.

The Applicants propose to construct a development that will devote 320,000 square feet to residential use, 53,600 square feet to retail uses, 275,000 square feet to office use and 100,000 square feet to hotel use. The Applicants have devoted 100% of the ground floor to retail and other preferred uses, exclusive of entrances to the Navy Yard Metro Station and office, residential and hotel uses and parking and loading access. 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 proposed development offers recreational options to its residents, including an open court at the second floor 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 along 2nd Street. Strict application of the Zoning Regulations would require the Applicants to reduce the number of residential units or substantially alter its provision of retail, hotel and office uses and parking in order to provide the required amount of private residential recreation space.

c. Loading (§2201.1)

Strict application of the Zoning Regulations would require the Applicants to provide two 55 foot loading berths, five 30 foot loading berths and four 20 foot service/delivery loading spaces. The proposed development provides one 55 foot loading berth, five 30 foot loading berths and two 20 foot service/delivery loading spaces.

The Subject Property is located in the CG Overlay District. The proposed development consists of 320,000 square feet devoted to residential use, 53,600 square feet devoted to retail uses, 275,000 square feet devoted to office use and 100,000 square feet devoted to hotel use.

The CG Overlay District requires that proposed developments help achieve the desired mixture of uses in the CG Overlay District as set forth in §§1600.2(a) and (b) and devote 75% of the ground floor to retail and other preferred uses. The proposed development incorporates the desired mixture of uses identified in the CG Overlay regulations and devotes all available space on the ground floor to preferred retail and service uses. The Zoning Regulations require the Applicants to provide one 55 foot loading berth, one 30 foot loading berth and one 20 foot service/delivery loading space for the Applicants' retail uses. The Applicants are required to provide one 55 foot loading berth, five 30 foot loading berths and three 20 foot service/delivery loading spaces for its residential, hotel and office uses. The proposed development provides one 55 foot loading berth, five 30 foot loading berths and two 20 foot service/delivery loading spaces.

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 and the amount of active streetscape provided by the proposed development. The Applicants' traffic expert will establish that the cumulative number of loading berths required by the Regulations is not needed for the project and that the amount of loading provided is sufficient to meet the needs of the project.

3. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone 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 the desired 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.

Relief from the percentage of lot occupancy requirement 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 is subject to the maximum percentage of lot occupancy requirement of 75% because a portion of the development is devoted to residential use. The percentage of lot occupancy at the second floor, where residential use begins, is approximately 80% for the total project. The requested variance relief will allow the Applicants to provide a mixture of uses in harmony with the desired mixture of uses identified in the CG Overlay regulations. The requested relief will also allow the Applicants to meet the stated purposes of the CG Overlay District and provide safe and active streetscapes in and around the proposed development. On the portion of the site devoted to residential use, there are setbacks to create courts on the east side of the building.

Variance relief from the private residential recreation space requirement 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 many 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 requested relief will allow the Applicants to maintain the proposed allocation of uses, without compromising other recreational options available to its residents. Furthermore, the subject site is in close proximity to the ballpark, the Anacostia Waterfront and the new Canal Blocks Park along 2nd Street.

Relief from the loading requirement 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 relief 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.

For the above stated reasons, the requested variance relief will not create a substantial detriment to the public good nor will it substantially impair the zone plan.

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