



**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA**



FORM 150 – MOTION FORM

**THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

Motion of:

- Applicant
 Petitioner
 Appellant
 Party
 Intervenor
 Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Points and Authorities:

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- Yes, consent was obtained by all parties
 Consent was obtained by some, but not all parties
 No attempt was made
 Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this

D	D
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 day of Month,

Y	Y	Y	Y
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I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:
 Mailed letter
 Hand delivery
 E-Mail
 Other _____

Signature:

Print Name:

Address:

Phone No.:

E-Mail:

ZONING COMMISSION
 District of Columbia
 CASE NO. 22-08
 EXHIBIT NO. 155

Motion of the Capitol Square Homeowners Association (CSHOA) for Reconsideration of Decision

Capitol Square Homeowners Association (CSHOA) moves that the Zoning Commission reconsider its decision approving the application in Zoning Case 22-06 concerning 899 Maine Ave. SW.

Title 11, Subtitle Z § 201.2 authorizes any party to file a motion for reconsideration within ten days of the issuance of a final order. CSHOA was approved as party to Zoning Case 22-06 by the Commission at the public hearing on October 6, 2022.

THE MOTION IS TIMELY

The Zoning Commission Order (Ex. 133) in this case was published in the DC Register on June 9, 2023. The tenth calendar day after issuance was June 19, 2023. Because that day was a District/federal holiday, the last day of the period computed as provided in Title 11, Subtitle Z § 204.2 is June 20, 2023, which is today. The motion is therefore timely submitted.

RESPECTS, GROUNDS, AND RELIEF SOUGHT

“A motion for reconsideration, rehearing, or re-argument shall state specifically the respects in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought” (Title 11, Subtitle Z, § 700.6). The Commission’s decision in the Final Order is erroneous in the following ten respects and grounds, with relief sought indicated.

1. CUT THROUGH IMPACTS ON NEIGHBORING COMMUNITY NOT MITIGATED – The Commission erroneously deemed the Applicant’s \$100,000 proffer towards mitigating the increase in cut-through traffic mitigation in the Capitol Square at the Waterfront community sufficient and failed to account for the evidence in the case file to the contrary (Exs. 113, 122, 130). CSHOA provided evidence (Ex. 130) that costs of gates installation, without any required maintenance included, significantly exceeds the Applicant’s proffer, and also noted how the Applicant’s gates estimate (Ex.127C) is fatally flawed and needs to be disregarded because it requires CSHOA to perform impermissible and illegal actions that violate the HOA’s rules and policies. The Commission also references the issue as an “existing problem” which we have consistently indicated is currently sufficiently mitigated relative to the cost and hassle of gating our entrances. The gates are required ONLY because the new development will add a net increase of 692 more cars over the current activity. Because the Commission never required the Applicant to measure existing cut through traffic in our roads, the Commission must rely on our own testimony – even if half of the nearly 700 more cars generated from current use used our streets, we estimated that would double the current traffic of legitimate Capitol Square trips plus the moderate amount of cut through (Ex. 122). This testimony was erroneously left out of the Zoning Order (Ex. 133).

Furthermore, If the Commission still does not consider the *associated* costs to gating the community (provided and rationalized in Ex. 130), such as speed tables to calm traffic let in by the entrance we cannot gate, we still posit that \$100,000 is insufficient even for gates alone. We provide as *more* illustration an *additional* quote for \$150,331.00 from DMV Gates as Appendix 1.¹ This quote differs from the one submitted by the Applicant (Ex. 127C), which was created without CSHOA input and made incorrect assumptions (namely about how to draw power, and the legality/safety of gating our 7th Street

¹ This gate quote was in still preparation at the time the Zoning Case closed, which was out of the control of the CSHOA, and *could not reasonably be introduced into the file* before now.

entrance) which enabled the Applicant to claim a low-ball estimate that is not implementable in reality. We will be falling for the Applicant's shell game and hurting the *only* residential community within 200 feet of the development if the Commission does not remove the Applicant's bogus estimate from the case file. The CSHOA maintains that failure to provide sufficient funds towards not only gates, but also the costs we only have *because of 899 Maine* - maintenance, asphalt, speed tables, signage and marking - burdens our members (who are DC residents and/or taxpayers) with the remaining cost of mitigation in respect to cut-through traffic. A payment of at least \$363,442.17 (Ex. 130) for all mitigation efforts plus a reasonable contribution towards maintenance (until the HOA budget and dues can be adjusted to support thousands of dollars per year in maintenance and added reserves) should have been considered appropriate and fair by the Zoning Commission given this explanation.

Relief sought: Stay the order, reopen the case, strike Ex. 127C and references to such in other exhibits, fully and carefully review the CSHOA submissions of limitations of mitigations (gates), budgets, and justification for costs beyond gates. If the Applicant is still not willing to provide adequate funding to make the CSHOA whole, deny the order.

2. MORE APPROPRIATE ZONES NOT CONSIDERED – The Commission erred in not questioning the Applicant on their rationale for (originally) MU-10 and (now) MU-9A as “compatible with the surrounding context” (Ex. 133, p.31 #79) when the proximity to the waterfront should also have been considered part of the context. This is indicated by the current FLUM designation of MU-12 “...intended to permit moderate-density mixed-use development *generally in the vicinity of the waterfront*” (Subtitle G, § 500.3). If the Commission finds the benefits outweigh the exception to the Comprehensive Plan/FLUM enough to allow a high-density mixed-use development in an area the FLUM designates as moderate density, the more appropriate zone for this parcel given the context is the *corresponding* high density mixed-use waterfront zone MU-14 (Subtitle G, § 500.5). In the Zoning Order, this is further backed up by the Office of Planning's response to cross-examining “OP stated that the GPM's Neighborhood Conservation Area does not preclude development but only requires that it respect the context in which it is being developed or redeveloped” (Ex. 133, p. 38 #87). If the Commission does not require Applicants to propose waterfront-vicinity projects in the zoning categories *specifically* created to serve for waterfront-vicinity parcels, why do such waterfront zones exist?

Relief sought: Stay the order, reopen the case, fully and carefully read Subtitle G and consider what the true “context” of the site is in relation to the waterfront and the Neighborhood Conservation Area, reflect such in the case file. If the Applicant does not change request to MU-14 as is appropriate and the Commission agrees it's the more appropriate high density, deny the application.

3. SHADOW IMPACTS ON NEIGHBORING COMMUNITY NOT ACCURATELY CONSIDERED – The CSHOA provided multiple reports and testimony (Exs. 81, 81A, 114) and showing significant shadow impact on Jefferson Field and the Capitol Square townhomes that was not evident in the Applicant's version. However, the Commission erred in finding these acceptable. Furthermore, the Zoning Order referenced the Applicant's inaccurate statement “compatible with the overall neighborhood by focusing height and density toward the south and The Wharf and reducing shadows onto Jefferson Field as well as the Capitol Square townhomes...” (Ex. 133, p. 14, fourth bullet). The shift in massing from the original MU 10 to MU 9A with the “step down” actually increased the degree to which the shadows impact Jefferson Field and the Capitol Square Townhomes.

Relief sought: Stay the order, reopen the case, fully and carefully review the CSHOA submissions, indicate in the record which shadow study is being considered by the Commission, correct the record to correctly state the higher southern portion of the building under MU-9A will increase the shadows much more than matter of right, MU-10, or alternately as indicated above, MU-14. If the applicant is still not willing to reduce the height on the southern part of the building to reduce the impacts of the shadows on Jefferson Field and the Capitol Square townhomes on G Street, deny the order.

4. ANC NOT GIVEN “GREAT WEIGHT” – The Commission was erroneous in the Order in that they did not respond to *all* concerns in *all* reports and written testimony provided by ANC 6D with “particularity and precision” (Ex. 133, p. 62, #48). In the Zoning Order the Commission focused on only three concerns (Violations of the SW Plan, Traffic Issues, and Lack of Meaningful Community Benefit) whereas the reports and written testimony included other concerns such as *but not limited to* that in the table below. The Zoning Order did not address these issues in confirming that it gave “great weight” to the ANC’s position.

Table 1: ANC Concerns Not Addressed in Zoning Order 22-06 (Ex. 133)

Exhibit	Page	Issue Not Addressed
86	1	Challenging site does not support a "very large building"
86	4	"The Applicant’s traffic studies are insufficient...They fail to account for the traffic flows at the intersection and on G Street when there are events at The Wharf or game days at the Nats and Audi stadiums. And they ignore the inadequacy of the stop signs that control current traffic, let alone the additional traffic that will flow from a bigger, higher, and larger mixed-use building."
116	2	"In addition, should this dramatic increase in height and density be permitted, it would put other parcels at risk for redevelopment, particularly those built before 1975 and now under rent control that provide affordable housing in low and moderate density complexes."
116	2	"The Applicant offers no justification other than to argue that a further decrease in height and density would be “economically infeasible” and produce fewer affordable units than the number they have proffered. We remind the Zoning Commission that this parcel was purchased for redevelopment of an extremely challenging site and with current limits attached, with the expectation that these limits would be overcome by exception. That the Applicant’s ability to develop the parcel at all is dependent on that exception amounts to a coercion inappropriate to a consideration before the Zoning Commission."
116	2	"The proffer of 15% affordable units is not better than the IZ set-aside and is below the 18% required for a map amendment to support the increase in density in a matter-of-right development."
116	3	"The Applicant has now agreed to move the curb cut on G Street further west. This will still not prevent all cars from cutting through the Capitol Square private streets."
116	4	"The green space will be diminished not increased, and the treasured value of racial, social, and economic integration memorialized in the SW Small Area Plan and adopted by the Council will be challenged."

Relief sought: Stay the order, reopen the case, fully and carefully consider ALL ANC opposition issues and give great weight to all of them, document the Commission’s response in the case file. If the Applicant will not address these issues sufficiently to satisfy the ANC, deny the order.

5. CONSIDERATION OF PUBLIC BENEFITS IS FLAWED – The Commission erroneously accepted the Applicant’s postulation of various activities as public benefits when in fact, many activities/items would likely still be results if the Applicant built under matter-of-right. Other items proffered and seemingly erroneously weighed as benefits by the Commission are actually mitigation of potential adverse impacts of the PUD, contrary to Title 11, Subtitle X § 305.9.

Table 2: List of Proposed Proffers and Benefits/Amenities in Zoning Order (Ex. 133) with Issues

Public Benefits/Amenities Proffered	Reference in Exhibit 133	Issue
LEED Platinum Certification	P. 66, B.1.; and mentioned again in P. 68, D.1	This proposed “benefit” fails the “matter-of-right” provisions (Title 11, Subtitle X, § 305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and could still take place under current zoning.
Signal Warrant Study	P. 66, Item B.2.	These actions are designed to mitigate adverse effects of the new development on 9 th Street and G Street which will generate <i>additional</i> traffic in the intersection, and therefore are not public benefits, per Title 11, Subtitle X, § 305.9. Furthermore, a study and its findings do not provide include commitment from the applicant to take any action to mitigate adverse impacts.
\$100K to Capitol Square for cut through traffic mitigation	P. 66, Item B.4.	This action is required to mitigate potential adverse effects of the new development’s generation of <i>additional</i> traffic and should not be weighed as a benefit. Furthermore, CSHOA noted that the amount provided is insufficient. CS HOA indicated in Exhibit 130 how the logistics supposed in the Applicant’s quote were impossible, and therefore the amount not enough. CSHOA provided a new estimate based on the factual context in which the HOA can install and operate gates.
Bike and scooter corrals along perimeter of the property	P. 67, Item B.5.	These actions are required to mitigate potential adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, § 305.9. Furthermore, these actions would still be required under matter-of-right.
LEED Platinum Certification Green Roofs EV charging stations	P. 67, Item D.1 P. 67, Item D.2 P. 67, Item D.3	As noted above, these proposed “benefits” fail the “matter-of-right” provisions (§ 305.1) of the public benefit requirement. LEED Platinum construction standards, green roofs, and other environmental/ sustainable design features are agnostic of PUD zoning and can still take place under current zoning.

9 th St SW reconfiguration and redesign	P. 68, Item D.6	The community, in concurrence with the Zoning Commission, has noted on record existing traffic concerns and issues with 9 th ST SW and how they would be WORSENERD by this project. These actions are <i>required</i> to mitigate adverse effects of the new development and are not public benefits, per Title 11, Subtitle X, § 305.9.
Public Art Proffer of \$75K to a minority-owned, woman-owned, certified business entity based in Washington, DC	P. 68, Item D.8.a	Fails the “matter-of-right” provisions (Subtitle X, § 305.1) of the public benefit requirement; provision of public art is not significant and could take place under current zoning.
Workforce Housing	P. 69, Item 9	Stated not to be considered as public benefit per Exhibit 133 (p. 18, #54, first bullet) but at least one Commissioner made statements as if it was a benefit (see Transcript of February 9, 2023 Public Meeting – p. 20, lines 11-13).
Jefferson Middle School PTO proffer of \$150K over 3 years for field experiences and curricula	P. 69, Item 10	Fails the “matter-of-right” provisions (§ 305.1) of the public benefit requirement
3,000 sq. ft. for a grocer; market; bodega; corner store; or prepared food shop use; and space for a bank branch.	P. 68, E.2.a	A grocery is considered a public benefit when “larger than fifteen thousand square feet (15,000 sq. ft.) in areas where a grocery store does not exist within a three-mile (3 mi.) radius...” (Subtitle X, § 305.5(j)). The square footage of the original proposed grocery (subsequently reduced to 3000 sq. ft for something lesser-than a grocery) was never large enough to qualify as a benefit and certainly does not now. A bank was never requested by the community (most “Letter in Support” referencing such parroted language written by the Applicant and were accepted erroneously per Subtitle Z § 206.5(d)) and the Applicant never proved how such would serve the surrounding area. Furthermore, the Applicant has yet to provide an MOU for <u>any</u> retail or commercial use of the space, as required by Subtitle Z § 401.2 in order to be considered a proffer/public benefit.

Relief sought: Stay the order, reopen the case, fully and carefully consider if a “benefit” posited by the Applicant can truly be considered such per Subtitle X. If the Applicant does not increase benefits or provide additional information, deny the order.

6. UPZONING IS NOT BALANCED BY AFFORDABLE HOUSING PROFFER – With so few true public benefits (see above) and none “exceptional”, all that is left to actually balance the inconsistencies with the Comprehensive Plan as well as the flexibility request/loss of more than 50% of the side yard required by MU-9A is the proffer for inclusionary zoning (IZ). The Commission made many comments and references to the number of units, but failed to apply an appropriate methodology for determining if this truly was an *exceptional* amount. The Office of the Attorney General (OAG) succinctly described this in their testimony and presentations (Exs. 93, 93A, 111). The error the Commission is continuing to make is not

using an unbiased formula, such as OAG describes, tied to a specific PUD, where the IZ percentages are “proportional to the height and density being gained”. The Commission offers no alternate unbiased method that can be consistently and fairly applied to this and future cases, but instead Commissioners generalized in ways such as “the most amount of affordable housing of any non-subsidized² project I think that we may have seen recently” (Transcript of Public Meeting February 9, 2023, p. 20, lines 5-7). This PUD is requesting an *exceptional* allowance with the height of the southern part of the building – it will be the maximum height allowed for a building in the District, be the tallest in Southwest, and visibly be taller than the Wharf. The side yard is exceptionally reduced to less than half required by the MU-9A zoning. But still the Commission seems reluctant to require the Applicant to provide a similarly *exceptional* amount of IZ housing far over the commonly proffered 15%. Much has been made about how the District would lose out on a portion of the proposed affordable housing units if the Applicant was prompted to reduce their southern height to MU-10 or the more-appropriate MU-14. However, by not holding the Applicant to a the 22% commensurate with the extra floors gained via requested MU-9A upzoning, the Commission’s error causes District residents to lose out on “approximately 30 additional units” of IZ housing” (Ex. 93A, slide 11) and possibly even *more* units as future Applicants use this case as precedent and propose the minimum they expect the Commission will let them get away with.

Relief sought: Stay the order, reopen the case, adopt the OAG’s position on IZ being calculated proportional to the height/density/flexibility being gained. If the Applicant refuses to add additional IZ as recommended, or alternately propose a more appropriate MU-14, the Commission should deny the application.

7. IMPROPER USE OF WORD “TRANSITION” TO ACCEPT PROPOSED BUILDING HEIGHT – The Zoning Order makes (or repeats from the Applicant’s submissions) numerous erroneous references to a “transition” from the nearby Wharf to the proposed southern height of 899 Maine within the Neighborhood Conservation Area, to the northern height of 899 Maine, ending at the low-rise townhomes at the north. The use of this word is erroneous given the additional proposed height of 899 Maine would actually tower over the Wharf given the gradient moving north from Maine Avenue along the parcel and the building’s measurement based on the elevation of the tiny G Street boundary. A transition does not start at one level, go up, then go down. The Southwest Small Area Plan does include the wording cited by the Applicant “Ensure that Maine Avenue provides an attractive transition from the Southwest neighborhood to The Wharf development” (p. 8, Executive Summary) but that wording also implies a true slope from the neighborhood to the Wharf, *not* from the neighborhood to something *taller* than the Wharf.

Relief sought: Stay the order, reopen the case, update the case file to strike references to a “transition” and require the Applicant the lower building’s height on Maine Ave. to create a true transition, such as by applying for MU-14 instead. If the Applicant refuses to lower the building height and/or change the requested zoning category, deny the application.

8. APPLICANT’S FINANCIAL POSITION INADVERTENTLY CONSIDERED IN COMMISSION’S DECISION -

In requesting a modification to MU-9A and the flexibility on the side yard footage, the Applicant

² The *subsidized* projects the Commissioner was referring to may have included Zoning Case 21-18 “Dance Loft” where the OAG also provided testimony relating to its application of IZ percentages, but as this letter was in support of the project (which provided 66% affordable, most at deeper rates), the Commission did not challenge the OAG’s position or methodology then (Zoning Case 21-18, Ex. 761).

dubiously claimed upzoning above MU-10 is “solely” requested to “shift massing and height” of the original MU-10 building at 110 ft., from the north end near the low-rise townhomes to the southern end at Maine Ave. (Ex. 133, p. 42). The Applicant further claimed that to require them to propose a smaller/shorter building (with a greater side yard) would “...render the Applicant’s proposal economically infeasible, particularly given the current economic climate.” (Ex. 112, p. 3). In that admission the Applicant shows that their shift in massing was not to create a “transition” zone but instead to recoup the market rate units they would lose by keeping the proposed zoning MU-10 and reducing the northern portion to a more appropriate 60-70 ft. The Zoning Commission was erroneously “persuaded” by this massing-shift rationale in the Order (Ex. 133, p. 52, #12) and inadvertently made the Applicant’s lack of effective risk assessment and poor budgeting on the project prior to purchasing the parcel a factor in the Commission’s approval. A building with MU-10 or MU-14 height/density would *still* upzone from matter of right, and still provide a large amount of affordable housing in a parcel where there is currently no housing at all, without the extreme precedent of a height taller than the Wharf.

Relief sought: Stay the order, reopen the case, fully and carefully consider in writing the other reasons the Applicant shifted the building’s mass, include such in the case file. If the Applicant does not propose a more appropriate zoning of MU-14, deny the application.

9. CONSIDERATION OF UNACCEPTABLE LETTERS IN SUPPORT – The Commission accepted 30 letters in support of the project (Exs. 64-80, 83, 91, 94-96, 100-107) submitted by means other than the Commission’s written procedures for submitting comments or filing documents electronically or by e-mail directly to zcsubmissions@dc.gov (Title 11, Subtitle Z, § 206.5(d)), thereby including such in their consideration of approval or disapproval of the application. These letters were solicited by the Applicant via a misleading website (Screenshot in Ex. 88A, and an alert to the Commission was provided prior to the Public Hearing in Exs. 88 and 92) sent to targeted buildings vs. the general Southwest public, and the website forwarded the form on to the Commission. None were sent directly from the person intending (or not intending) to file it to zcsubmissions@dc.gov as evidenced by the phrasing “Sent via form submission from 899 Maine Avenue” and return email address of “comment@899maine.com”. It should not matter that this method has been used in other cases (such as assumed by the Applicant’s counsel – Transcript of October 6, 2022 Public Hearing, p. 101, lines 14-18.). If the Commission intends this forwarding service to be an acceptable way to provide comment to a case, they should amend their procedures. Without an individual sending from their *own* email address, or their *own* IZIS account associated with their email address, inclusion of falsified or fake letters of support or opposition could be erroneously entered into the case file (as is the situation here, see Ex. 83).

Relief sought: Stay the order, reopen the case, strike all of the improperly submitted letters (Exs. 64-80, 83, 91, 94-96, 100-107), reconsider the case under the accurate representation of community involvement/support with only the remaining 8 letters of support compared to 28 properly submitted letters of opposition, 200+ individuals in a petition, and the ANC in opposition, and deny the application.

10. INCONSISTENT TREATMENT – With all due respect, and not without reservation to raise this issue, we find that the Commission acted erroneously in their approval of Zoning Case 22-06 when compared to their comments and analysis of a similar case concurrently proposed by a different Applicant also on the 800 block of Maine Ave. SW in Zoning Case 22-11 (807 Maine Ave. SW). The similar aspects of the cases are below.

Table 3: Comparison of DC Zoning Cases 22-11 and 22-06

	<u>ZC 22-11</u>	<u>ZC 22-06</u>
Location*	807 Maine Ave, SW	899 Maine Ave, SW
Type*	PUD and zoning map amendment from MU-12 to MU-10 zone	PUD and zoning map amendment from MU-12 to MU-9A zone
Size*	204,457 sq ft	454,442 sq ft
# of units*	207	498
IZ*	15%	15%
FAR*	8.64	7.92
Height*	110 ft	120 ft
Date of first Public Hearing**	September 15, 2022	October 6, 2022
Letters/Testimony in Support in Case File***	3 (22-06, Exs. 30, 40, 46)	8 (22-11, Exs. 24, 35, 42, 46-48, 82, 85)****
Letters/Testimony in Opposition in Case File***	18 (22-06 Exs. 29, 32-34, 39, 41-45, 47-50, 54-57) plus petition in opposition with 200+ signatures (22-06 Ex. 36)	28 (22-11 Exs. 23, 26-28, 30-32, 34, 40-43, 49-50, 53, 55-62, 86-89, 97, 98) plus petition in opposition with 200+ signatures (22-11 Ex. 51)

*Information based on initial application to the Zoning Commission: ZC 22-11 (Ex. 2); ZC 22-06 (Ex. 2)

**From analysis of Case Files in IZIS

***On the date/time of the first Public Hearing

****Number and list of Exhibits does not include auto-generated emails erroneously included in the case file (in violation of Subtitle Z, § 206.5(d))

The lens in which the Commissioners viewed 22-11 in that case’s first public hearing on September 15, 2022 was remarkably different from how the majority of Commissioners viewed 22-06 in that case’s first public hearing less than a month later on October 6, 2022, in subsequent meetings, and in how their opinions are reflected in the Zoning Order (Ex. 133). On September 15, the Commissioners found many negative things to say about aspects of 22-11’s case file, such as noting the ANC’s opposition to things such as traffic and building height and the “great weight” it should be given, the number of letters in opposition, the affordable housing offered at only 15%, the building’s height and appearance vis a vis the Comprehensive and Small Area Plans, relevance of references to the Wharf given that 807 Maine Ave. would be on the north side of Maine Ave. in the Neighborhood Conservation Area, the “tunnel effect” view along Maine Ave. that a 110 ft. 807 Maine Ave. would cause, and if approval of the 22-11 PUD would encourage others to propose similar projects due to precedence (citations and excerpts from

the recording transcribed below in Appendix 2. Such were the negative impressions of the Commissioners on September 15, that they sent 22-11 back to the Applicant requiring them to work more with the ANC and community and refused to let the Public Hearing continue on that evening (it was rescheduled and proceeded two months later on November 14, 2022). This action did prompt the Applicant of 22-11 to return to the ANC, Town Square Towers, and others and adjusted their plans from there. We should also point out that 22-06 was and still is requesting a GREATER upzoning (MU-9A) compared to 22-11 (MU-10) and that the case file had significantly more letters and testimony in opposition at the first public hearing. The subsequent approval of 22-06 despite it containing elements the Commissioners challenged in the course of 22-11 is erroneous because Title 11, Subtitle Z, § 105(b, d, and f) requires the Commission to not give preferential treatment, lose impartiality, or act in a manner affecting adversely the confidence of the public in the integrity of the government.

Relief sought: Stay the order, reopen the case, fully and carefully apply the precedence set by the Commissioner's comments on similar case 22-11 in the Public Hearing on September 15, 2022, including but not limited to stated Commissioner concerns relating to 1) ANC opposition points and "great weight", 2) legitimate concerns of potential party to the case, 3) 15% affordable housing rate not being enough to balance proposed flexibility, 4) zoning type and related height and appearance inconsistency with Small Area Plan and respect for what the community wants, 5) racial equity and unit mix, 6) lack of collaboration with community, 7) the number of valid letters of opposition in the record compared to valid letters of support, 8) relevance of any reference to the Wharf given these sites are on the north side of Maine Ave in the Neighborhood Conservation Area, 9) creation of a tunnel effect view along Maine Ave, 10) setting a precedence for other projects to propose PUDs at similarly incongruous zoning categories to the CP/FLUM. Document such in the case file. If the Applicant cannot adequately address the points with changes, deny the application.

CONCLUSION

Each error listed above alone is a reason to give the Commission pause and to reconsider their hasty decision to approve Zoning Case 22-06 and at the very least, require relief such as reopening the case and having the Applicant to return with additional information prior to reconsideration. However, taken as a whole, the 10 well-grounded points above show the Commission's overwhelming error to have approved the application with so many critical issues unaddressed, inaccuracies and falsehoods in the case file, and improper adherence to procedures.

Due to this, CSHOA respectfully moves that the Commission reconsider its order; vacate that order; and issue a new order denying the application.

Respectfully submitted,

/s/ Erin Berg, President

Capitol Square Homeowners Association Inc.

Appendix 1: Estimate and Renderings of Two Traffic Gates including full electrical costs (does not include other mitigations and maintenance that would be subsequently required due to the installation of gates)



DMV Gates & Security Solutions

Business Number 888-958-5815
202-505-4445
office@dmvgates.com

ESTIMATE
EST2729

DATE
Mar 8, 2023

TOTAL
USD \$150,331.00

TO

Erin Berg

[Redacted Address]

DESCRIPTION	RATE	QTY	AMOUNT
<p>Complete Traffic Gate System at – Capitol Square at the Waterfront HOA Entry & Exit Barrier Arm Gates (G Street)- Automated Barrier Arm Systems Two (2) LiftMaster MATDCBB3 BGO Mega Arm Tower w/850LM HEAVY-DUTY DC MOTOR PERFORMS IN THE MOST DEMANDING APPLICATIONS. BATTERY BACKUP SAFEGUARDS PROVIDING 900 CYCLES WHEN THE POWER IS DOWN. SMOOTH START/STOP OPERATION EXTENDS LIFE OF OPERATOR. MAGNETIC LIMIT SENSORS ARE DESIGNED FOR HIGH-CYCLE APPLICATIONS. SURGE SUPPRESSION PROVIDES INDUSTRIAL SURGE AND LIGHTNING PROTECTION. WARRANTY OF 10 YEARS FOR ALUMINUM FRAME AND 2 YEARS FOR PARTS. FIRE-DEPARTMENT COMPLIANCE ALLOWS GATE TO AUTO-OPEN UPON LOSS OF AC POWER OR BATTERY DEPLETION. BREAKAWAY ARM CAN BE EASILY REINSTALLED IF ARM IS HIT. ANTI-TAILGATE QUICKLY SECURES PROPERTY, PREVENTING UNAUTHORIZED ACCESS. SECURITY+ 2.0 ® SAFEGUARDS ACCESS WITH AN ENCRYPTED TRI-BAND SIGNAL TO VIRTUALLY ELIMINATE INTERFERENCE AND OFFER EXTENDED RANGE. Include: Include 300 remote controls/RFID transmitters. Labor & Installation</p>	\$141,821.70	1	\$141,821.70

DESCRIPTION	RATE	QTY	AMOUNT
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Two (2) MA024RDOT Round Aluminum Arm R/W 10' -12'
 DOT Standards
 include:
 Labor & Installation

Complete Free Exit Looping System
 for One Barrier Arm Gate include:
 One (1) Arming Loops
 One (1) Shadow Loops
 One (1) Vehicle Presence Loop (obstruction/Reversing)
 one (1) Automatic Exit/Free Exit Loops
 Asphalt Cut down by 1.5"
 Seal/patch Asphalt pavement
 Running & Connecting Wires to the new operators.
 Labor and Installation

Four (4) LOOPDETLM plug-in loop detector
 Key Features
 Item: Loop Detector
 For Use With: CSL24V DC, CSW24V DC, LA5001PKGDC, LA500DC,
 LA500DCS
 Height: 1 1/8 in
 Width: 2 3/4 in
 Color: Black
 Type: Plug In
 Operation: Commercial and Industrial Grade
 Length: 8 in

One (1) CAP2D Smart Access 2-Door Controller
 Cloud-Based Credentialed Access Control.
 myQ® Community Smart Access Control Software.
 Each Device Controls Up To 2 Gates/Doors/Elevators/Commercial Door
 Operators.
 Easily Expandable When Networked Through myQ Community.

Customized System Control with myQ® Community Web Platform

myQ Community web platform streamlines tenant information
 management, enhancing property manager productivity and resident
 experience through an integration partnership with RealPage, Yardi,
 Entrata, and more.

****Monthly fees Apply****

Accessory Warranty: 2 years

One (1) SOS Silent - Operator Sensor

Open gates silently

Vehicle mounted RFID Tags

No keys, codes or frequencies to lose or track

No delay in waiting for gates to open

For emergency vehicles. With an adjustable range of up to 600 feet, gates will always be

open when the emergency vehicle arrives at the gate

RFID Transmits on Secure Format

Technical Specifications

Voltage: DC 9 to 30 volts or AC 9 to 16 volts

Amp draw: 0.1 mA (milliamp) when listening and when activated has a 25 mA draw during the trigger

Wire gauge: 18-22 AWG (not included)

2 Cable Glands: One for antenna wire, 2nd for operator and power wires

Temperature: The SOS remains functional in temperatures ranging from -30 to 120 degrees Fahrenheit.

Weigand Output: 26 bit

Labor & Installation

The Fabrication & Installation of four (4) Protective Bollards:

4" Schedule 40 Steel Pipe.

120" long pipe, with 84" above grade and 36" below grade in footing.

Concrete 3500 psi and fills pipe and footing.

Concrete Footing has an 18" diameter and goes 36" deep.

At grade, a 24" x 24" square is cut out of asphalt or concrete to allow installation.

Four (4) Reflective Bollard Sleeve - Yellow with Red Tape

RATED FOR OUTDOOR USE

Maintenance-free protection with a clean, finished look.

Two red reflective stripes for high visibility day or night.

High-density polyethylene is UV resistant.

Trim to the desired height.

Installation kit included.

Made in the USA.

Include

Labor & installation.

DESCRIPTION	RATE	QTY	AMOUNT
-------------	------	-----	--------

Electrical work up to 250'
 Power draw power from the nearest street-lamp
 Including:
 Miss utility Service Call
 One (1) Transformer
 1/2" PVC Pipe
 12/2 Type Electrical Wire
 Labor & Installation

Exit Barrier Arm Gates (9th Street)-
 Automated Barrier Arm Systems
 One (1) LiftMaster MATDCBB3
 BGO Mega Arm Tower w/850LM
 HEAVY-DUTY DC MOTOR PERFORMS IN THE MOST DEMANDING APPLICATIONS.
 BATTERY BACKUP SAFEGUARDS PROVIDING 900 CYCLES WHEN THE POWER IS DOWN.
 SMOOTH START/STOP OPERATION EXTENDS LIFE OF OPERATOR.
 MAGNETIC LIMIT SENSORS ARE DESIGNED FOR HIGH-CYCLE APPLICATIONS.
 SURGE SUPPRESSION PROVIDES INDUSTRIAL SURGE AND LIGHTNING PROTECTION.
 WARRANTY OF 10 YEARS FOR ALUMINUM FRAME AND 2 YEARS FOR PARTS.
 FIRE-DEPARTMENT COMPLIANCE ALLOWS GATE TO AUTO-OPEN UPON LOSS OF AC POWER OR BATTERY DEPLETION.
 BREAKAWAY ARM CAN BE EASILY REINSTALLED IF ARM IS HIT.
 ANTI-TAILGATE QUICKLY SECURES PROPERTY, PREVENTING UNAUTHORIZED ACCESS.
 SECURITY+ 2.0 ® SAFEGUARDS ACCESS WITH AN ENCRYPTED TRI-BAND SIGNAL TO VIRTUALLY ELIMINATE INTERFERENCE AND OFFER EXTENDED RANGE.
 Include
 Labor & Installation

Two (2) MA024RDOT Round Aluminum Arm R/W 17'
 DOT Standards
 include:
 Labor & Installation

Complete Free Exit Looping System
 for One Barrier Arm Gate include:

DESCRIPTION	RATE	QTY	AMOUNT
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One (1) Arming Loops
 One (1) Shadow Loops
 One (1) Vehicle Presence Loop (obstruction/Reversing)
 one (1) Automatic Exit/Free Exit Loops
 Asphalt Cut down by 1.5"
 Seal/patch Asphalt pavement
 Running & Connecting Wires to the new operators.
 Labor and Installation

Four (4) LOOPDETLM plug-in loop detector
 Key Features
 Item: Loop Detector
 For Use With: CSL24V DC, CSW24V DC, LA5001PKGDC, LA500DC,
 LA500DCS
 Height: 1 1/8 in
 Width: 2 3/4 in
 Color: Black
 Type: Plug In
 Operation: Commercial and Industrial Grade
 Length: 8 in

Electrical work up to 250'
 Power draw power from the nearest
 street-lamp.
 Including:
 Miss utility Service Call
 One (1) Transformer
 1/2" PVC Pipe
 12/2 Type Electrical Wire
 Labor & Installation

The Fabrication & Installation of two (2) Protective Bollards:
 4" Schedule 40 Steel Pipe.
 120" long pipe, with 84" above grade and 36" below grade in footing.
 Concrete 3500 psi and fills pipe and footing.
 Concrete Footing has an 18" diameter and goes 36" deep.
 At grade, a 24" x 24" square is cut out of asphalt or concrete to allow
 installation.

Two (2) Reflective Bollard Sleeve - Yellow with Red Tape
 RATED FOR OUTDOOR USE
 Maintenance-free protection with a clean, finished look.
 Two red reflective stripes for high visibility day or night.
 High-density polyethylene is UV resistant.
 Trim to the desired height.

DESCRIPTION	RATE	QTY	AMOUNT
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Installation kit included.
 Made in the USA.
 Include Labor & installation.

Two (2) Traffic Concrete Pads 24"x24"x6" w/ Yellow Paint (Curb Change) on the outside curve lines.
 3500psi Heavy Duty Grade Concrete
 Labor & Installation

Notes:

1. As for the gate on 7th Street, we DO NOT recommend installing a vehicle gate due to lack of stopping room (the entry/exit apron is not deep enough for a vehicle to stop safely), as well as a left turn signal, public sidewalk, and pedestrian signal liabilities.

2. Anticipated maintenance costs:

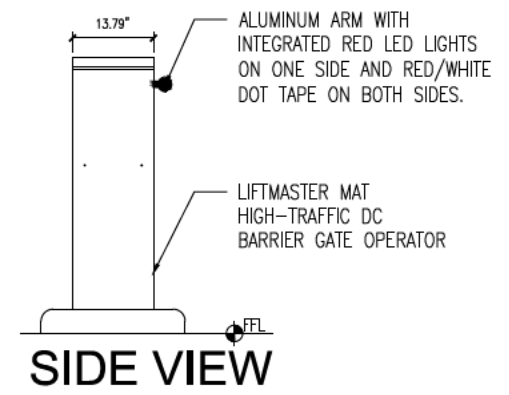
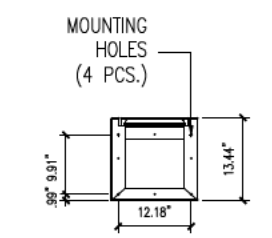
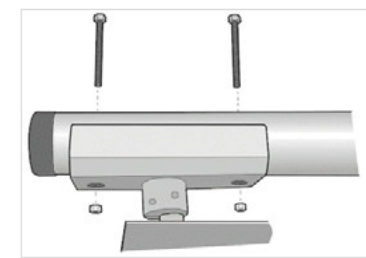
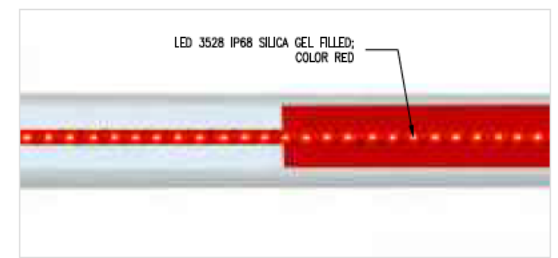
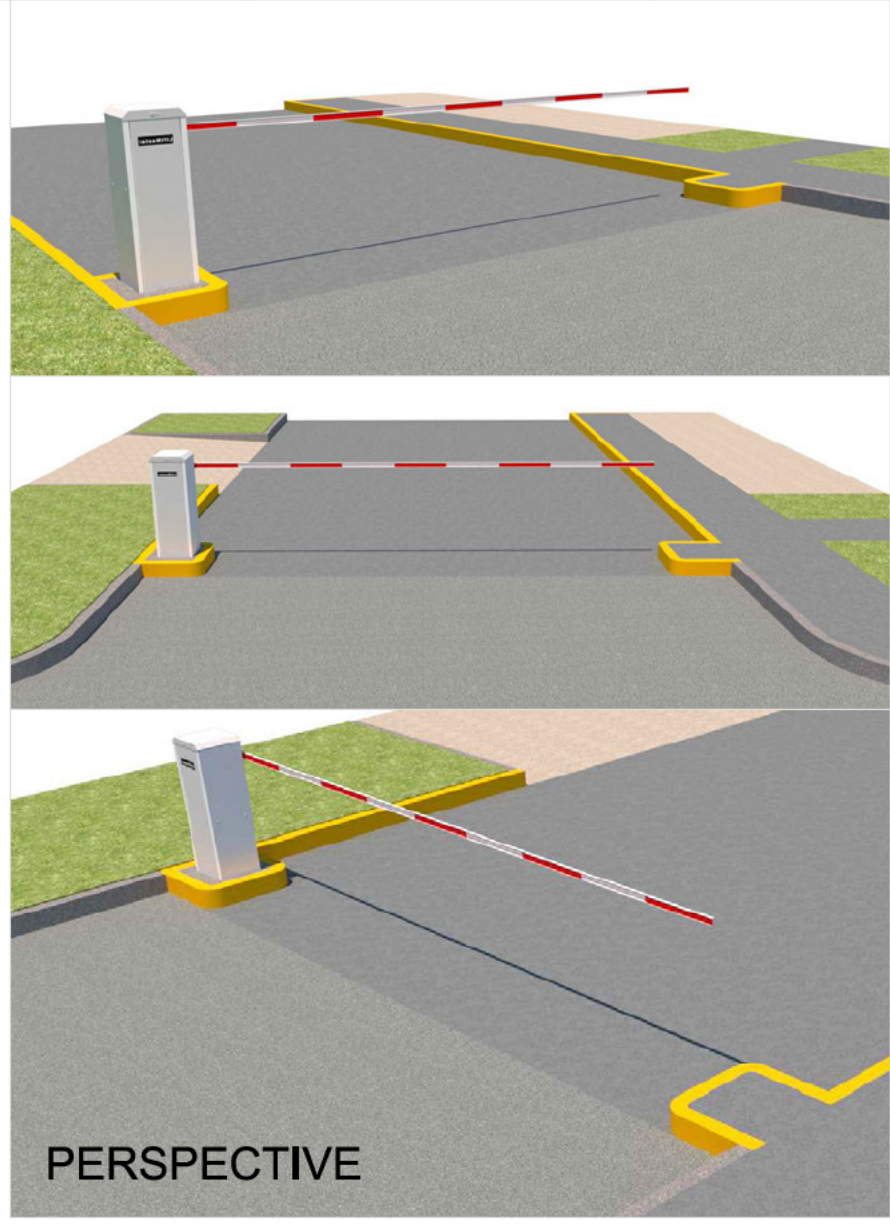
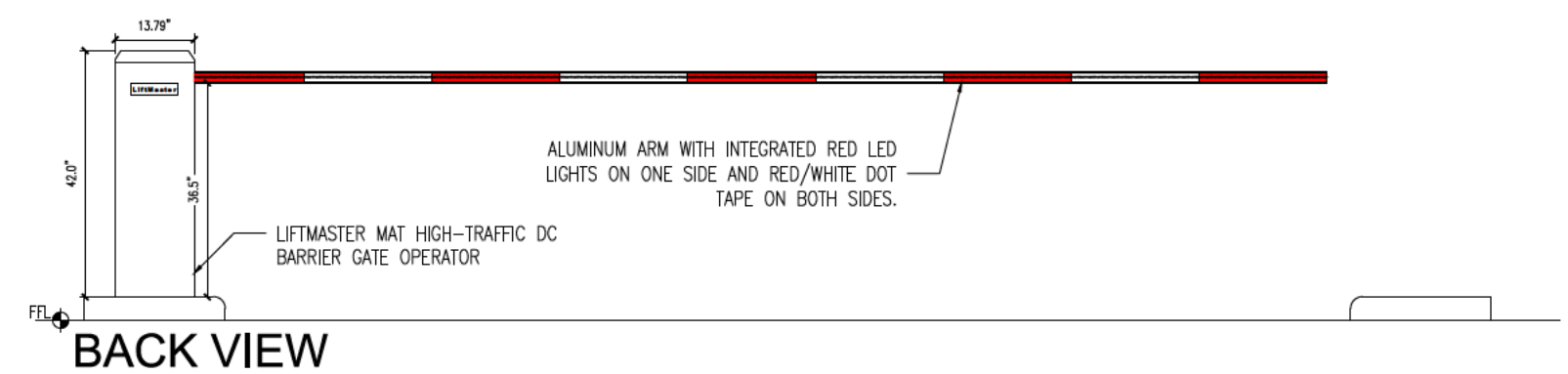
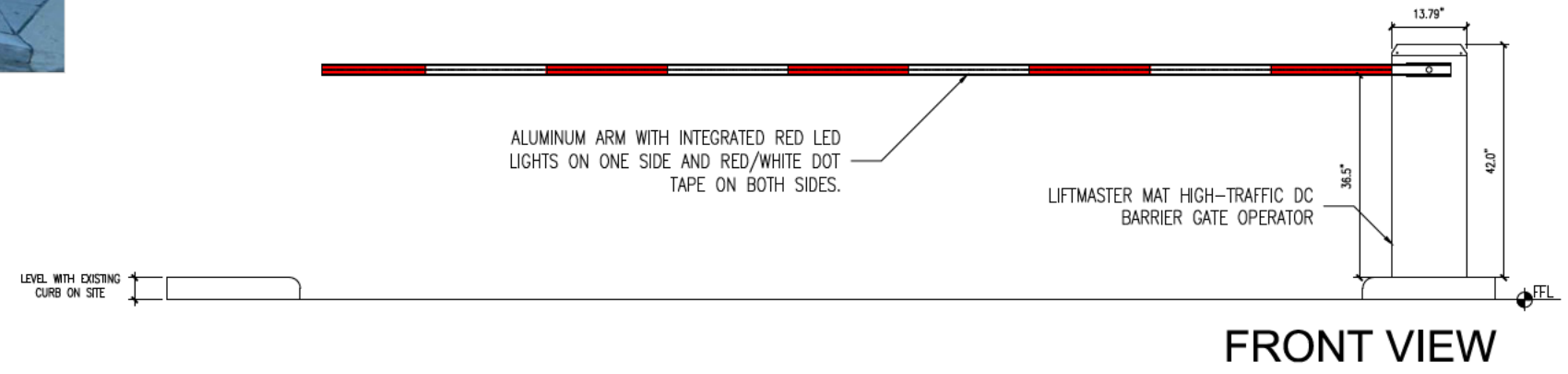
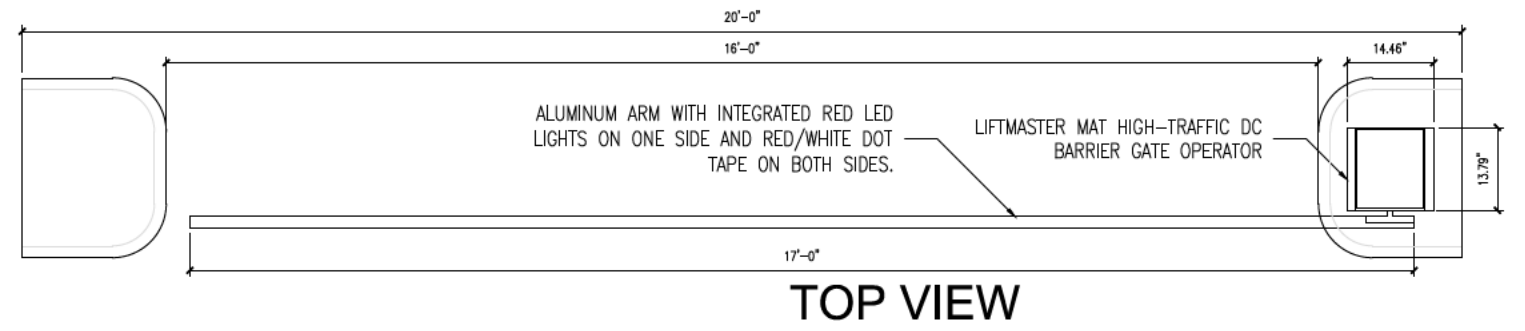
We advise a semi-yearly plan to maintain the gates and their functionality including up to two (2) replacement arms per visit at the cost of 1750\$ per visit (\$3500/ year)

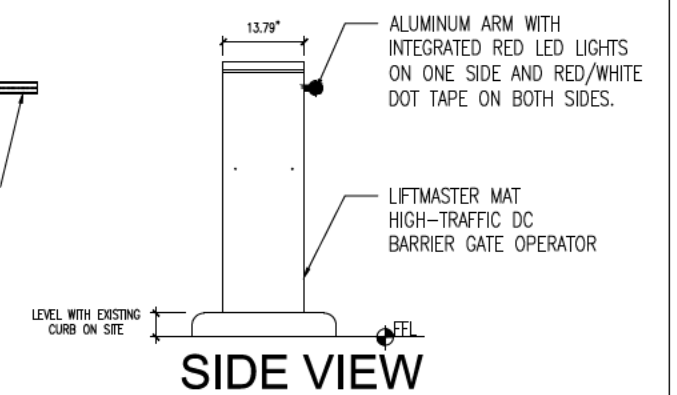
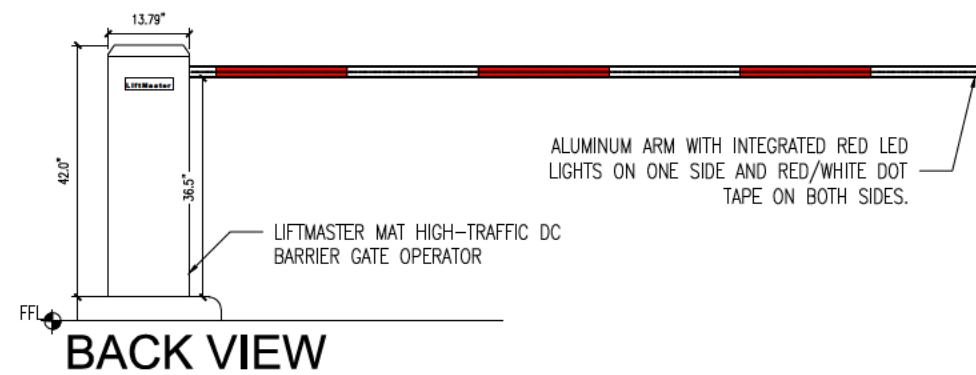
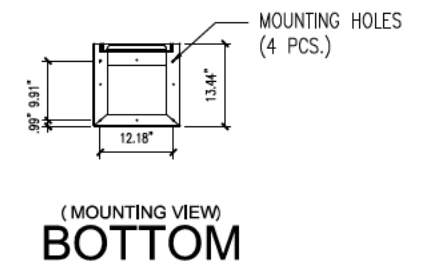
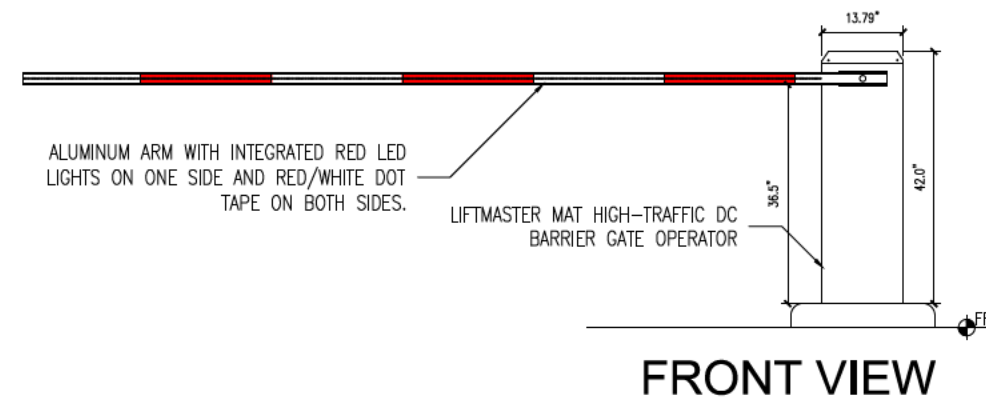
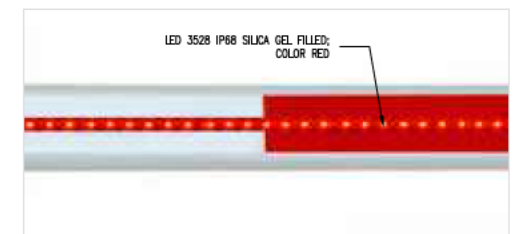
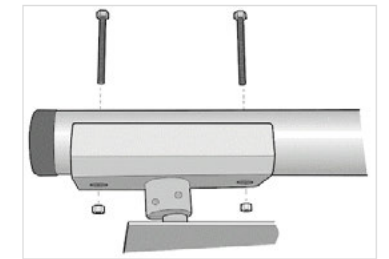
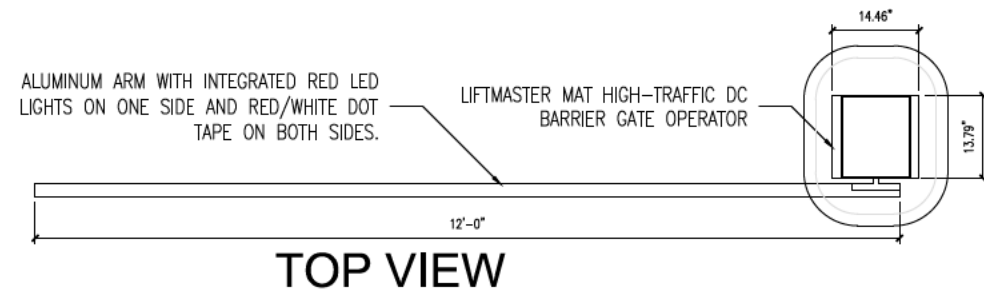
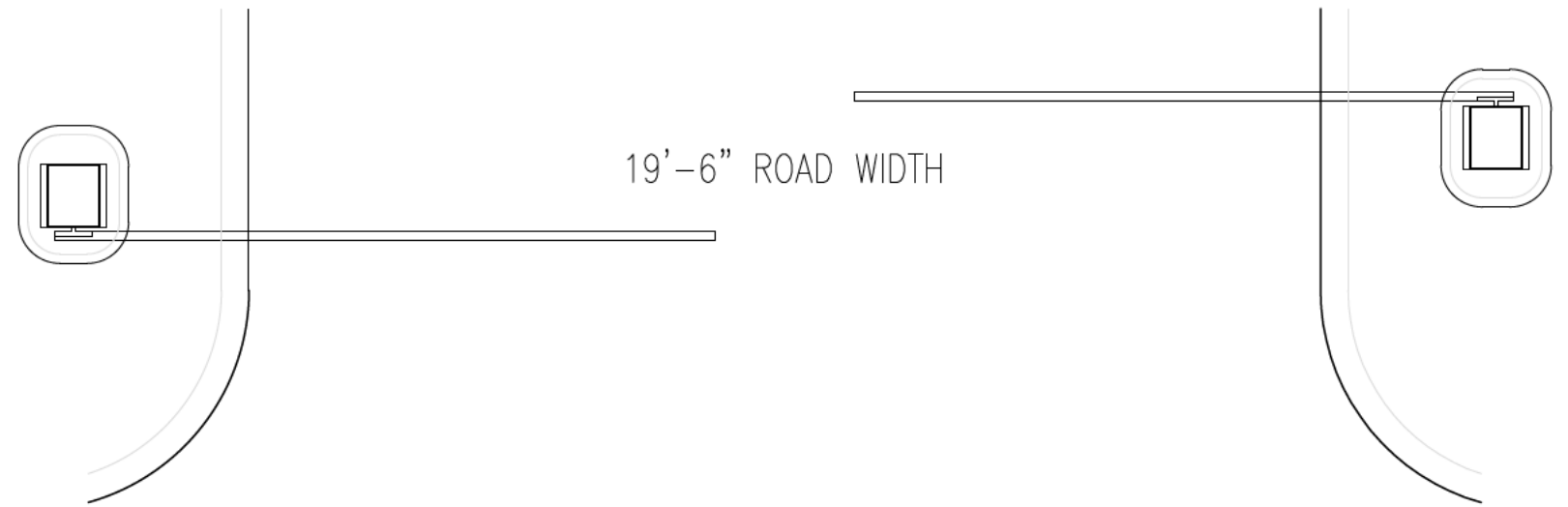
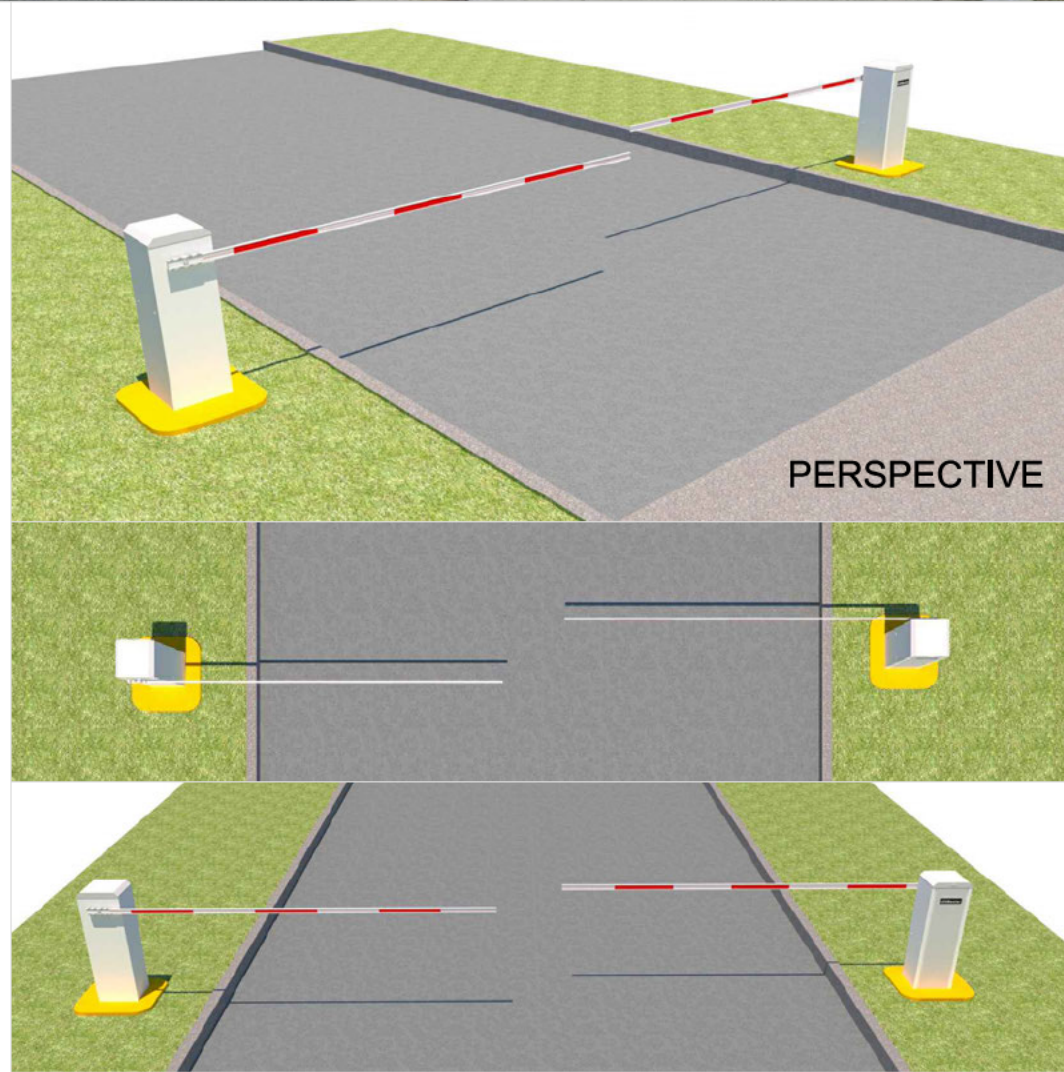
SUBTOTAL	\$141,821.70
TAX (6%)	\$8,509.30
TOTAL	USD \$150,331.00

Thank You for Reviewing our Estimate.
 Your Security is Our Priority!

This price is VALID for 30 days only.

**** We offer finance plans for projects above 10K. Feel Free to ask us about more detail and information.





Appendix 2: Excerpts from Public Hearing September 15, 2022 on ZC 22-11 (807 Maine Ave SW)

Oral remarks by ZC Commissioners during September 15, 2022 meeting to discuss ZC 22-11 (807 Maine Ave. SW) (<https://www.youtube.com/watch?v=J8UGsldKWN0>):

Commissioner Peter May (National Park Service Designee):

“Not having ANC on board on this from the very beginning is problematic given this ANC and their ability to work with developers” (28:19)

“The concerns that were raised by the party that requested party status I think are legitimate concerns and certainly the ANC has very serious concerns about this, and they are troubling” (28:51)

“I would just add that, I think we should probably be specific about what the concerns are, I mean, I think when we first set it down the proposal was 15% affordable housing, that didn’t change at all, I mean there were some tweaks but it didn’t change, the percentage didn’t go up, and I was arguing for more given that this was a huge increase in the density of the site and **that if we look at IZ plus (...) we would expect something around 20% (...) Right now the biggest concern that I have is the consistency with the Small Area Plan and issues like the footprint of the building and the height of the building** and I feel like there is a certain window of availability to expand the FAR and the footprint of a project like this that comes with an upzoning and with a PUD **and in this case they took everything to the absolute max, but I don’t feel that in doing so they have been appropriately respectful of what the community has generally wanted in that SW Small Area Plan. I think the building is taller and the footprint is larger than the Small Area Plan probably contemplated, so that is kind of my biggest issue on it from what I know so far** but again we haven’t heard the whole case, but this is my problem going in and I would like to see **greater collaboration with the neighborhood** in order to get this to the point where the ANC and the neighbors who care so much about it to support it” (30:05)

Chairman Anthony J. Hood:

“I’m ready to pull the plug on this and send it back, I don’t feel like wasting the public’s time, I don’t feel like wasting anybody’s time, from the numbers I read, from the data I read, unless I miscalculated, they are so far apart, **I think it is a disservice, not only to us, but to the residents of the city, to go forward with something like this, that I think it is a slap in the face to what the council has mandated for us to do, especially when it comes to racial equity, and that’s just where I am,** I don’t know, do I need to put a motion on the table that we do not go forward and we send them back and work with the community, I don’t know, let’s have that discussion first, cause here’s the thing, we are going to go through all this and we are going to waste time, and I don’t have time, none of us has time to waste here. So let me hear from Commissioner May or whoever wants to talk”. (29:21)

“For something like this that is so far apart, **and not just the neighbors have a problem, I have a problem, I look at the unit mix and I look at what’s being proposed, I have a serious problem, so I can’t get over that to concentrate on the rest of the stuff that is going on,** I mean to me, I’m human like anybody else, and for me, I think that the reality of it is we need to have a better collaboration with the community, **look at this affordable housing, look at this racial equity lens, which I think they just blew it out the water (...)** I’m not inclined to go forward, I’ve already been given a date of November 14, and between now and November 14, I would expect to see, I hope, as my colleague Commissioner May and others have mentioned, some of the things, I want see you closer together, I want to figure out what’s going on with this unit mix, I can hear tonight, you can buffalo me tonight, but I don’t feel like going through that, **what I want is more substantive plan for this community, which is going through a whole lot over the years, we put a lot on them and the ask this time, the ask I think is just overwhelming, it’s overwhelming for us to ask, I’m not going to shove anything down any community, down anybody in this city [unclear],** that’s what I would be doing, I would feel like that’s what I would be doing if I proceed with this tonight and I’m not going to do that, so count me out on this one tonight, let them go back and work more together, loosen up some of these loose ends and you all can enjoy the rest of your evening, that’s where I am. (37:49)

Commissioner Joseph S. Imamura (Architect of the Capitol Designee):

"I think Commissioner May summarized many of the issues, I counted at least 20 letters in opposition here, and I think to your point Mr. Chairman about the [good] neighbor policy, these things take a while to get off the ground so it is going to be incredibly painful for the applicant to move forward with this project, the amount of time it is going to take without the public support, without the community support, so to Commissioner May's point and actually with what's in the record, **I think there are some issues with the Small Area Plan for sure, certainly I think they are feeling that they are affiliated or more closely related with what's been done at The Wharf there, on the periphery of that I don't think that's what the Small Area Plan had intended, so there's some serious concerns with the project, with this case,** I certainly would be in favor of supporting your plan Mr. Chairman" (32:35)

Vice-Chairman Robert Miller:

"I agree with Commissioner May's comments about the Small Area Plan and the ANC's concerns about the inconsistency with the Small Area Plan even though the Future Land Use Map of the Comprehensive Plan, which takes more precedence than the Small Area Plan, or is to be read in conjunction with the Small Area Plan, did change this site I believe from a lower density I think commercial zoning (...) to medium-density mixed-use residential and commercial so it is not inconsistent, the proposal is not inconsistent, but the ANC's strong opposition in this case raises a number of valid issues which are just overwhelming in a way (...) **I agree with the Chairman's frustration that there hasn't been more progress in working with this area responsible ANC on resolving these issues, which is, this is on the north side of Maine Ave SW, I don't want to extend The Wharf wall to the north side, there's a reason why The Wharf was The Wharf, and it doesn't look like the wall from the riverside as much as it does from the Maine Ave SW side, I don't want to create a wall, a tunnel along Maine Ave SW, it might lead to other projects doing this.**" (34:28)