

**BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA**

**Application of  
MR 608 T Contract LLC,  
MR 610 T Contract LLC,  
MR 612-614 T Contract LLC, and  
MR 618 T Contract LLC  
Square 441, Lots 32, 33, 35, and 852 (“Property”)**

**BZA Application No. 19217  
ANC 6E02  
Hearing Date March 15, 2016**

**PREHEARING STATEMENT OF THE APPLICANT**

This Prehearing Statement is submitted by MR 608 T Contract LLC, MR 610 T Contract LLC, MR 612-614 T Contract LLC, and MR 618 T Contract LLC, contract purchasers of the Property (hereinafter jointly referred to as the “**Applicant**”) seeking Board of Zoning Adjustment (“**BZA**” or “**Board**”) approval, pursuant to 11 DCMR §3103.2, for an area variance from the loading provisions under §2201 to construct a seven-story mixed-use project in the ARTS/C-2-B District at 608, 610, 614, and 618 T Street, NW (Square 441, Lots 32, 33, 35, and 852) (“**Property**”). The Applicant no longer needs an area variance from the height requirements under §2604.2 and is therefore withdrawing this request from the Application.

Since the submission of the Application on December 11, 2015, the Applicant has: A) received input from several District of Columbia agencies including: 1) a determination letter from the D.C. Zoning Administrator confirming the matter-of-right density for the Project, 2) received Public Space Committee approval for a curb cut to allow for a driveway, 3) met with the Department of Transportation (“**DDOT**”) and submitted a traffic study, 4) met with the Office of Planning (“**OP**”) to discuss the revised plans and, as a result, withdraws the request for a variance from height; B) revised plans; C) created shadow studies to show the existing shadows on neighborhood buildings and the shadows that will result from the Project; and D)

concluded the negotiation of the Development Agreement with ANC 6E. This is in addition to the unanimous vote of support for the Project by ANC 6E. These efforts and documents are described in more detail below.

## **I. THE PROPERTY AND ITS VICINITY**

The Property is located in the Cardozo/Shaw neighborhood at 608, 610, 614, and 618 T Street, NW and is zoned C-2-B and in the ARTS Overlay (not within a historic district). The C-2-B District is designated to serve high-density residential and mixed uses.

The Property consists of four lots improved with four buildings (one on each lot). These buildings are a mix of two-story commercial and residential uses. Although the Property is not a Historic Landmark or located in a Historic District, the Applicant is voluntarily preserving a portion of two of the four buildings (610 T Street and 618 T Street), which will be incorporated into the Project.

<b>Lot # (From East to West along T Street/Florida Avenue)</b>	<b>Address</b>	<b>Existing Use</b>	<b>Proposed Use</b>
Lot 35	608 T Street	Zenebech Restaurant	To be demolished
Lot 852	610 T Street	Residential	T Street Façade to be incorporated into the Project
Lot 33	614 Street	Smada Market	To be demolished
Lot 32	618 T Street	Flava Restaurant	T Street Façade to be incorporated into the Project

The surrounding area is a mix of residential, commercial, and municipal uses. The surrounding corridor along Florida Avenue consists of medium to high density mixed-use projects. The Property is a corner property, bounded by the intersection of T Street and Florida Avenue to the north, Wiltberger Street (30 foot wide) to the west, a 15 foot wide public alley to

the east and a 15 foot wide public alley to the south. The Property fronts on T Street, Florida Avenue and the Ellington Plaza and contains approximately 12,023 square feet of land.

Wiltberger Street bisects Square 441 on a north-south axis. The Howard Theater, renovated in 2012, is to the west of the Property (across Wiltberger Street). A large two-story warehouse (the former Holtzbeierlein Bakery) is located to the south of the Property (across the 15 foot public alley) and used for commercial storage. To the east (across from the 15 foot public alley) along 6th Street, the neighborhood is characterized by flats and row dwellings within the existing two and three story row structures.

Further to the west (still within the subject square along 7<sup>th</sup> Street) is “Progression Place”, a mixed-use nine-story Planned Unit Development completed in 2013. Further south along Wiltberger Street is the former Dorsch Bakery (“Wonderbread”), which was renovated in 2013 for office use. The Property is located approximately 2 blocks from the Shaw/Howard University Metro Station (which services the Green and Yellow lines).

## **II. UPDATE SINCE SUBMISSION OF APPLICATION**

### **A. DC AGENCY OUTREACH**

**1. DC Zoning Administrator:** The Applicant previously submitted into the case record the Zoning Administrator’s (“**ZA**”) determination letter, dated August 17, 2015, regarding the maximum floor area ratio (“**FAR**”) and height generally permitted under ARTS/C-2-B and Inclusionary Zoning for a mixed-use project (ground floor retail and residential units). (*See Case Exhibit Log: Exhibit 9, Tab E*). Since that time the Applicant furnished the ZA with specific details of the Project. As a result, the ZA issued a letter, dated February 16, 2016 (“**2016 ZA Letter**”), confirming the Applicant’s calculations for the maximum permitted density as a matter-of-right (maximum FAR of 5.922), excluding any additional penthouse FAR/density permitted under the new Penthouse Regulations. See attached 2016 ZA Letter, Exhibit A. Since the

issuance of the 2016 ZA Letter, the Applicant reduced the Arts Use from 7,495 sf to 7,420 sf.<sup>1</sup>

When combined with the additional available bonus density this results in a maximum matter-of-right density of 5.911 FAR, instead of 5.922 FAR. This reduction is reflected in the chart below:

DENSITY PERMITTED ARTS/C-2-B	FAR	GROSS FLOOR AREA
C-2-B (§772.2) [Lot Area 12,023 sf]	3.50	42,080.5
ARTS (§1904.2) 7,420 sf Preferred §1907, 1908 Retail (1 to 1.5 bonus) (maximum 4.5 FAR)	0.926  (4.426)	11,130  (53,210.5)
ARTS (§1904.3) 3.0 FAR Residential	0.50	6,011.50
Subtotal Matter-of-Right FAR For calculating extra 20% IZ Bonus	4.926	59,222.00
20% IZ Bonus	0.985	11,844.4
<b>Total Permitted FAR:</b>	<b>5.911</b>	<b>71,066.4</b>

**2. DDOT Public Space Committee:** On December 17, 2015 the Applicant received approval from the Public Space Committee (Application # 117438) for a curb cut to install a new driveway off of Wiltberger Street to access the below-grade parking garage. The ANC requested the location of the driveway at this location.

**3. DDOT:** The Applicant met with DDOT and submitted a transportation statement on February 24, 2016 (“**Traffic Study**”). See attached Traffic Study, Exhibit B. The Traffic Study concluded the following:

---

<sup>1</sup> In general, the Applicant is still refining its plans for the Project. These changes may alter the area of the retail and residential components, the unit count, and the parking arrangement, but the Applicant does not anticipate such changes will result in the need for additional relief.

- The site is surrounded by an extensive regional and local transportation system that offers multi-modal accessibility to and from the site;
- Due to the size and location of the development, the site is not expected to generate substantial vehicular peak hour trips, and based on the vehicular capacity analysis results, the development is not expected to have detrimental impacts on the surrounding transportation network;
- The site provides adequate circulation with conveniently located access points for all modes of transportation; and
- Bicycle and pedestrian facilities will be supplied on site, including long-term bicycle parking within the development’s garage and pedestrian facilities along the perimeter of the site.

In addition, the Applicant proposes the following Transportation Demand Management

(“TDM”) Plan:

- The Applicant will provide bicycle parking/storage facilities that meet or exceed Zoning requirements. This includes secure parking located in the garage for residents.
- The Applicant will unbundle the cost of residential parking from the cost of lease or purchase for the majority of the units.
- The Applicant will identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents in the building to distribute and market various transportation alternatives and options.

**4. Office of Planning:** The Applicant has had ongoing discussions with the Office of Planning and most recently met with OP on February 29, 2016 to discuss the requested height relief and the revised plans (“**Revised Plans**” or “**Plans**”). See attached Revised Plans, Exhibit C. As a result of the OP meeting and OP’s consultations with the ZA, the Applicant has revised its plans to setback the 2 foot high parapet wall (retaining the green roof) two feet from the building wall. The 1 to 1 setback of the parapet wall now complies with the applicable height restriction and the originally requested height variance is no longer required. See attached Revised Plans, Exhibit C, Sheet A-22). As part of this revision, the Applicant has incorporated a 1 foot high

“cornice” at the building wall. The cornice (with bracing) is an architectural embellishment forming a critical design feature to transition from the seventh floor to the penthouse, not a parapet. A similar 1 foot cornice has also been added to the penthouse level.

**B. DESCRIPTION OF REVISIONS TO THE PROPOSED PROJECT**

The Applicant proposes to redevelop the Property by incorporating two T Street facades (at 610 and 618 T Street) of the four existing buildings (“**Existing Buildings**”) into a new seven-story mixed-use building with ground floor preferred retail, service and arts uses (approximately 7,420 square feet) (*formerly 7,495*) and approximately 59-79 dwelling units (*formerly 59-69*)<sup>2</sup> (approximately 4,114 square feet (*formerly 4,074*)) of gross floor area will be designated as Inclusionary Zoning Units) and two levels of below-grade parking consisting of 26 - 43 residential and retail parking spaces. The Project will have a height of 70 feet and a proposed FAR of approximately 5.72 - 5.911 (*formerly 5.40 to 5.922*).

**Revised Zoning Tabulation:** Changes made since the submission of the Application appear in red in the Zoning Tabulation chart below.

**Site Area:** 12,023 sf (per Survey)

Requirement	C-2-B Zone Matter of Right Guidelines/ARTS Overlay	Proposed Project Design	Relief Needed
FAR C-2-B (§771.2)	3.5 FAR (a maximum of 1.5 for non-residential use)	<b>5.72 - 5.911 FAR</b>	NONE REQUIRED
<b>Bonus Density:</b> ARTS Overlay (§1904.2 and §1904.3)	<b>BONUS DENSITY:</b> <b>0.926</b> (Preferred Uses in ARTS Overlay) .5 (Providing at least 3.0 Residential)		
IZ (§2604.1)	0.985 Inclusionary Zoning <b>Total = 5.911 FAR</b>		

<sup>2</sup> The Applicant is still refining the unit count, and particularly the treatment of occupiable penthouse space.

<p><b>Building Height</b> (§1909.1(b)(iii))</p> <p><b>Bonus Density:</b> IZ (§2604.2)</p>	<p>65 ft./no limit to number of stories</p> <p>The vertical distance measured from the level of the curb, opposite the middle of the front of the building to the highest point of the roof or parapet.</p> <p><b>BONUS DENSITY:</b> 70 ft. per Inclusionary Zoning</p>	<p>70 ft.</p>	<p>NONE REQUIRED</p>
<p><b>Roof Structures (“Penthouse”)</b> (§771.1) (§411) (§770.6)</p>	<p>Permits a habitable penthouse of 12 ft in height (1 story) Permits a mechanical penthouse of 18 ft. 6 in. in height (could be in a second story)</p>	<p>Habitable = ≤ 12' - 0" Mechanical = 8' - 6"</p>	<p>NONE REQUIRED</p>
<p><b>Lot Occupancy</b> (§772.1)</p>	<p>80% max Residential (80% of 12,023 = 9,618.4 sq. ft.)</p> <p>100% max Commercial (100% = 12,023 sq. ft.)</p>	<p>Residential = 74% (8,953 sq. ft.)</p> <p>Commercial = 62% (7,420 sq. ft.)</p>	<p>NONE REQUIRED</p>
<p><b>Rear Yard</b> (§774.1) (§774.11)</p>	<p>15 feet minimum measured pursuant to §774.11</p>	<p>15 feet</p>	<p>NONE REQUIRED</p>
<p><b>Side Yard</b> (§775.5)</p>	<p>Not required, but if provided, shall be at least 3 inches per foot of height, but not less than 6 feet wide.</p>	<p>None Provided</p>	<p>NONE REQUIRED</p>
<p><b>Court</b> (§776.5)</p>	<p>Not required, but if provided: <b>If Building is devoted to both residential and nonresidential uses:</b></p> <p>1) If Res and Non Res are located on <u>different</u> floors of the Building measure width and area for each use (See §776)</p> <p>2) If Res and Non Res are located on the <u>same</u> floor of the Building:</p> <p><u>Width:</u> the width shall be a minimum of 4 inches per foot of height, but not less than 15 feet.</p> <p><u>Area:</u> the minimum area shall be at least twice the square of the width of the court based on the height of the court but not less than 350 sq.ft.</p>	<p>Width = Approx. 18' – 0" Area = Approx. 1,000 – 1,700 sf</p>	<p>NONE REQUIRED</p>
<p><b>Inclusionary Zoning</b> (§2603)</p>	<p>Greater of 8% of the gross floor area being devoted to residential use or 50% of the bonus density being utilized for inclusionary units.</p>	<p>Approximately 4,114 sf devoted to Inclusionary Zoning Units.</p> <p>378 sf penthouse</p>	<p>NONE REQUIRED</p>

<p><b>Parking</b> (§2101.1)</p>	<p><u>Apartment House or Multiple Dwelling:</u> 1 for each 3 dwellings</p> <p>59 - 79 units = 20-26 residential spaces required</p> <p><u>Retail:</u> in Excess of 3,000 sq ft, 1 for each additional 750 sq ft of gfa.</p> <p>7,420 sf of retail = 6 retail spaces required</p> <p><b>TOTAL: 26 - 32 parking spaces required</b></p>	<p>26 – 37</p>	<p>NONE REQUIRED</p>
<p><b>Bicycle</b> (DDOT 18 DCMR §1214.4)  (§2119.2)</p>	<p><u>Residential:</u> All new residential bldgs. with 8 or more units shall provide 1 bike space for every 3 residential units.</p> <p>59 - 79 units = 20 - 26 bike spaces required</p> <p><u>Retail:</u> Number of bicycle spaces shall be at least equal to 5% of the number of auto parking spaces required for commercial use</p> <p>5% of 6 = 1 space</p> <p><b>TOTAL: 21-27 bike spaces required</b></p>	<p>21 – 27</p>	<p>NONE REQUIRED</p>
<p><b>Loading</b> (§2201.1)</p>	<p><u>Apartment House or Multiple Dwelling with more than 50 Units:</u> Min loading berth: 1 @ 55 ft. deep Min platform: 1 @ 200 square feet Min service/delivery space: 1 @ 20 ft. deep</p> <p><u>Retail with 5,000 to 20,000 sq. ft of gfa:</u> Min loading berth: N/A per §2201.2 Min platform: 1 @ 100 square ft. Min service/delivery space: None</p>	<p><u>Residential:</u> Loading berth: 1 @ 30 ft. deep Platform: 1 @ 200 square feet Service/delivery space: 1 @ 20 ft. deep</p> <p><u>Retail:</u> Min platform: 1 @ 100 square ft.</p>	<p><b>RELIEF REQUESTED from the loading berth: 1 @ 55 ft. deep<sup>3</sup></b></p>
<p><b>Green Area Ratio</b> (§3400)</p>	<p>0.3</p>	<p>0.3</p>	<p>NONE REQUIRED</p>

While the zoning relief requested by the Applicant for the roof height has been withdrawn, the Applicant still requests a variance from the size of the loading berth.

<sup>3</sup> Z.C. Case 08-06A (the Zoning Rewrite “ZRR”), though not yet in effect under the ZRR loading relief would not be required for this Project.



**C. JUSTIFICATION FOR LOADING AREA VARIANCE**

For an apartment house with fifty or more units, zoning requires a residential loading berth extending to a depth of 55 feet. Due to ground floor area and circulation constraints and the narrowness of the alley network, the Applicant is only able to provide a loading berth that is 30 feet deep and therefore requests an area variance from the full loading berth requirement. Significantly, under the new ZRR this zoning request would not be required.

The BZA 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; and (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 Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). See, also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). Applicants for an area variance need to demonstrate that they will encounter "practical difficulties" in the development of the property if the variance is not granted. See *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 540-41 (D.C. 1972) (noting that "area variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden"). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be "unnecessarily burdensome." See *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990).

The subject Application meets this legal test, as discussed below.

**1. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of a Specific Piece of Property**

The Property is affected by several unique conditions. The Property is small for development purposes with limited ground floor space to accommodate a 55 foot interior loading berth in addition to the other required loading facilities. All the required loading facilities would consume almost ten percent (10%) of the ground floor area. The site is uniquely located surrounded by a large public plaza with no curb cut or vehicular access, narrow and one-way public streets and narrow public alleys limiting access for parking and loading and vehicular traffic. The site fronts on Ellington Plaza at the intersection of T Street and Florida Avenue. This portion of T Street is one way (west to east) exiting on to Florida Avenue. Wiltberger Street is only 30 feet wide and one-way running north to south. The public alleys on the south and east side of the Property are two-way, but only 15 feet wide. Taken together, parking and loading access points are limited and the number and size of delivery vehicles that can be reasonably accommodated are restricted.

**2. Undue Hardship to the Owner**

Given the small size of the project, limited ground floor footprint and lack of exterior open space, an interior 55 foot loading berth is unnecessary and can only be provided at the expense of substantially diminishing the space available for preferred retail and service uses and the lobby and entrance core needed for the residential use. The Applicant cannot achieve the necessary density and functionality of the preferred retail and service space and desired residential space and important design objectives unless zoning relief is granted from the loading requirements.

Given the limited vehicular circulation pattern and narrow street and alley widths and resulting difficult turning movements, providing a loading berth to accommodate a 55 foot truck

would unnecessarily block and restrict use of the public street and alley system by other delivery vehicles, businesses, and existing and new residents. Further, a 55 loading berth is unnecessary for a building of this size and number of residential units and commercial users and space.

**3. No Substantial Harm to the Public Good and No Substantial Impairment of the Zone Plan**

The requested relief is extremely minor and can be granted without harm to the public good and without threat to the integrity of the zone plan and will provide a significant contribution to the community and the stated goals of the ARTS Overlay. The transportation needs of the building's tenants and residents will be well served. The size of the loading berth is anticipated to sufficiently support the limited demand of the building. The surrounding community has expressed support for limiting the loading accommodations so as not to encourage use of the alley by large trucks.

**D. SHADOW STUDIES**

The Applicant studied shadows for currently existing conditions and the proposed project for both January and July. In general, a building will cast the most shadows in the winter when the sun is lowest in the sky. However, in the case of this project, the building casts no additional shadows on its residential neighbors to the east during January. Indeed, it is only at the height of the summer that the building casts shadows on its residential neighbors, and that only occurs for a couple of hours in the late afternoon. See attached Shadow Studies, Exhibit D.

**E. DEVELOPMENT AGREEMENT WITH THE ANC**

The Applicant and ANC 6E negotiated a Development Agreement for this Project which sets forth the preservation of the two T Street facades, signage, construction hours, residential parking permit restrictions, alley access and traffic provisions, construction management, private maintenance of the T Street public plaza, and dispute resolution and enforcement. On the basis of

the draft Development Agreement, ANC 6E voted unanimously (6-0) to support the Project on October 6, 2015. (See Case Exhibit Log: Exhibit 28). Since that time the Applicant and ANC 6E have concluded the negotiation of the Development Agreement. See attached executed Development Agreement, Exhibit E.

### **III. REQUESTED FLEXIBILITY**

The Applicant requests the flexibility to modify the approved plans or final design of the interior layout of the Project, including the number and configuration of the dwelling units (including IZ units) and number and location of parking spaces, within the limits set forth in this Application and the applicable zoning regulations.

### **IV. WITNESSES EXPECTED TO TESTIFY**

**Joshua Olsen**, Senior Vice President, Applicant's Representative

**Tina Boyd**, Owner of 618 T Street, NW (a portion of this building to be incorporated into the Project)

**Jeff Goins**, AIA, Partner at PGN Architects, Pllc  
(Mr. Goins will be proffered as an expert in the field of Architecture)

**Daniel B. VanPelt**, P.E., PTOE, Principal, Gorove/Slade Associates, Inc.  
(Mr. VanPelt will be proffered as an expert in the field of Traffic Engineering)

### **V. EXHIBITS**

- Exhibit A: February 16, 2016 DC Zoning Administrator's Determination Letter
- Exhibit B: Transportation Study
- Exhibit C: Revised Plans
- Exhibit D: Shadow Studies
- Exhibit E: Development Agreement
- Exhibit F: Outlines of Witness Testimony
- Exhibit G: Resumes of Expert Witnesses

For the reasons set forth above, the Applicant respectfully requests approval by the Board of Zoning Adjustment, pursuant to 11 DCMR § 3103.2, for a variance from the loading requirements under §2201 to construct the proposed Project.

Respectfully submitted,  
GREENSTEIN DELORME & LUCHS, P.C.



By: \_\_\_\_\_  
John Patrick Brown, Jr.



By: \_\_\_\_\_  
Kate M. Olson  
1620 L Street, N.W., Suite 900  
Washington, D.C. 20036  
Telephone: (202) 452-1400

Attorneys for Applicant