

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by FP Perseus 53-713, LLC, (the "Applicant"), the owner of the parcel located at 1005 1st Street, NE, more particularly described as Lot 53 in Square 713 (the "Property"). The Applicant seeks relief from Sections 770.6 (roof structure), 2201.1 (loading), 776.2 and 776.3 (closed court) of the Zoning Regulations in order to redevelop the Property with a mixed-use project that consists of office, residential and retail.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the Board no fewer than 14 days prior to the public hearing date. In that statement and at the public hearing, the Applicant will provide testimony and additional evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background Information Regarding the Property.

The Property consists of approximately 71,217 square feet and is located at the southeast corner of the intersection of First Street and L Street, NE. It is currently improved with the former Greyhound bus terminal, which was relocated to a new site within Union Station. The Metrorail tracks run along the eastern boundary of the Property. The parcel to the south is slated to be redeveloped with a residential project. The site to the north is improved with a surface parking lot but will be redeveloped with a mixed use project with office, residential and retail uses. Across First Street to the west, at the southwest corner of First and L Streets, 290,000 square feet of office is under construction; and at the northwest corner of First and L Streets is an office building consisting of 350,000 square feet. The Property is in the heart of the area of the city known as NoMA and is zoned C-3-C. The C-3-C Districts are intended to permit medium-

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high density development, including office, retail, housing and mixed-use development; they shall be compact in area. 11 DCMR § 740.8.

II. Description of Proposal and Zoning Relief

The Applicant proposes to redevelop the Property with approximately 342,267 square feet of office; approximately 65,075 square feet of retail; and approximately 264,351 square feet of residential, generating approximately 300 dwelling units. The office tower will occupy the east side of the project and have 11 floors; the office tower lobby entrance will be on L Street. The residential tower will have 13 floors and occupy the west side of the project. The lobby to the residential tower will be on 1st Street; the residential amenities, such as a fitness center, business center and other common function and meeting room spaces will be on the second floor of the residential tower. The project will be supported by four levels of below-grade parking sufficient to comply with the parking requirements. The retail uses will front on both 1st Street and L Street and will be situated on the concourse, ground floor and, prospectively, on the second level. The maximum building height for the project will be 130 feet and the FAR will be approximately 9.65.

The following areas of relief must be granted by the Board in order to facilitate the proposed redevelopment of the Property:

A. Roof Structures. The Applicant seeks special exception approval, pursuant to Section 3104.1, to permit a roof structure that does not meet the required 1:1 setback set forth in Section 770.6(b) of the Zoning Regulations. Section 770.6(b) of the Zoning Regulations states that if housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be set back from all exterior walls at a distance at least equal to its height above the roof upon which it is located. In this case, the mechanical

penthouse for the residential tower has a height of 18'-6" and is not set back from the court walls of the open court identified on the plans as "Court A".

B. Number of Loading Facilities. The Applicant seeks a variance from Section 2201.1 of the Zoning Regulations in order to have fewer loading facilities than required. Specifically, the Applicant proposes to have two 12 x 30 berths, two 12 x 55 berths and four 10 x 20 delivery spaces where five 12 x 30 berths, three 12 x 55 berths and four 10 x 20 delivery spaces are required.

C. Courts. The Applicant seeks a variance of the width and area requirements of Section 776.2 and 776.3 of the Zoning Regulations for the closed court identified as "Court B" on the enclosed plans. The court has a width of 15' and an area of 1,588 square feet where a width of 37'-8" and an area of 2,838 square feet are required.

III. Standards for Approving Special Exception Relief for Roof Structures

A. Section 3104.1. The Board is authorized to grant special exceptions where, in its judgment, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104.1.

B. Section 411.11. Section 411.11 of the Zoning Regulations states that where impracticable because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable, the Board shall be empowered to approve, as a special exception, the location, design, number and all other applicable aspects of the roof structures

provided that the intent and purpose of the Zoning Regulations shall not be materially impaired by the structure, and the light and air of adjacent building shall not be affected adversely.

IV. Project Meets Standards for Special Exception Approval

The proposed project meets the foregoing standards for special exception approval of the mechanical penthouse that does not meet the 1:1 setback requirement.

The Property is in the shape of a very large trapezoid, and is extremely deep, which affects the Applicant's ability of the site to be use for residential purposes and be in compliance with the roof structure setback requirements. Given the narrow configuration of the residential tower and the layout of the roof plan, it is impracticable to install the mechanical penthouse in a manner that meets the required 1:1 setback on all sides and also comply with the Building Code requirements. Unlike the office tower, the footprint of the residential tower is narrow yet still provides a double-loaded corridor. As the residential bar is L-shaped and fronts the court opening onto L Street, it is impossible to meet the roof structures setback requirement. Additionally, a significant portion of the roof for the residential tower will serve as a green roof and there is also space set aside for a roof terrace and pool deck, which will serve as amenities for the residents in the project. Further, should the roof structure relief be granted, the intent and purpose of the Zoning Regulations will not be materially impaired, nor will the light and air of adjacent buildings be adversely affected because the reduced setback is limited to the court that is significantly setback from L Street. The penthouse meets the required setback along 1st and L Streets.

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V. Burden of Proof for Area Variances

The Project requires a variance from the zoning and court requirements. Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

1. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
2. The owner would encounter practical difficulties if the zoning regulations were strictly applied or exceptional and undue hardship; 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 zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). As discussed below, and as will be further explained in the prehearing statement at the public hearing, all three prongs of the area variance test are met in this application.

A. The Property Affected by an Exceptional Situation or Condition. The phrase "exceptional situation or condition" in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the Property has an irregular, trapezoid shape and is bounded by the Metrorail tracks along the eastern property line. The irregular shape dictates the configuration of

the building footprint, including the location, configuration and access to the loading area as well as the location and configuration of the closed court.

B. Strict Application Would Result in an Exceptional and Undue Hardship to the Property Owner. The Applicant would encounter practical difficulties if required to comply with the loading and court requirements. As it relates to the loading, under the Zoning Regulations, the berths required for a mixed-use project is the sum of the requirements for the various individual uses computed separately in accordance with §2201, which are as follows:

1. the office use requires three 12 x 30 berths and one 10 x 20 delivery space;
2. the retail use requires one 12 x 30 berth, one 12 x 55 berth and one 10 x 20 delivery space;
3. the grocery use requires one 12 x 30 berth, one 12 x 55 berth and one 10 x 20 delivery space; and
4. the residential use requires one 12 x 55 berth and one 10 x 20 delivery space.

11 DCMR 2205.3. This means that a total of five 12 x 30 berths, three 12 x 55 berths and four 10 x 20 service spaces would be required for the project, which is far more than can be physically accommodated on the site given its configuration and far more than what is necessary to properly service the project. In providing below-grade loading, the physical utility of the space is affected by the column grid of the building above.

The Applicant would also encounter practical difficulties if required to comply with closed court requirements set forth in Sections 776.2 and 776.3 of the Zoning Regulations. As shown on Sheet 6 of the architectural drawings, in order to comply with the width and area requirements, Court B needs to be extended approximately 23 feet north. This would significantly affect the footprint of both the residential and officer towers in a manner that adversely impacts their financial feasibility. This shift would also significantly impact the configuration of Court A, the open court that fronts onto L Street, which is a critical feature to

the retail proposed for the project. Finally, Court B is intentionally designed to serve as an elongated courtyard between the residential and office towers that maximizes the light and air available to each. Please note that Court B is not required; the Applicant could build to the south lot line as a matter of right.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan. There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the Zone Plan if the Board grants the requested variances for loading and courts. The proposed loading is sufficient to manage all of the uses within the project. Further, the Applicant will have a loading management plan for the project that specifies the times for deliveries and trash pick-up and has personnel assigned for monitoring the loading areas. As it relates to the court, the current configuration allows ample light and air to the proposed residential and office towers. It is also situated to function as an extension of the court designed for the residential project slated for the adjacent property to the south.

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