**Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof**

The Applicant is seeking the following relief from the Board of Zoning Adjustment: a special exception from the roof structure requirements (Sections 411.5 and 770.6(b)); a variance from the residential recreation space requirement (Section 773.3); and a variance from the maximum permitted height of roof structures in the Arts Overlay District (Section 1902.1(a)). The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as at the public hearing, that the subject application meets the burden of proof for the granting of the requested special exceptions and variances. A preliminary summary of how the application meets the required burden of proof is as follows:

## I. Special Exceptions from Roof Structure Requirements of Sections 411.5 and 770.6(b)

In order to meet the criteria for approval of the requested special exceptions, the Applicant will be required to show the following: (1) compliance is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable and (2) the intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

### A. Special Exception: Walls of Unequal Height for Roof Structures (Section 411.5)

*The Applicant proposes a penthouse with walls of unequal height on the P Street property in an effort to reduce the mass of the penthouse and to lessen its visual impact. The penthouse has a height of thirteen feet, nine inches, with the exception of the space above the elevator core, at which point the walls must be eighteen feet, six inches in order to provide sufficient space for the required elevator equipment. Although the penthouse could be of equal height (i.e., the entire penthouse structure having a height of eighteen feet, six inches) and still meet the required setbacks, the lowered height, supported by the community, is intended to minimize any impacts. Accordingly, the intent and purpose of Chapter 400 and the Zoning Regulations and the light and air of adjacent buildings will not be adversely affected because the special exception relief requested will result in less roof structure than would otherwise occur.*

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B. Special Exception: Roof Structure Setback Requirement (Section 770.6(b))

*The Applicant requests a deviation from the roof structure setback requirement for certain locations on the roof of the Church Street property. The roof line and the façade of this portion of the project incorporate a saw-tooth pattern, as approved by the Historic Preservation Review Board, and the height of the penthouse is nine feet. The saw-tooth treatment results in a situation where the roof structure complies with the setback requirements for the significant majority of the penthouse; however, the roof includes "pinch points" at which the setback from the exterior wall is not greater than nine feet. The penthouse, however, is setback more than twenty feet from the face of the building at these points. Therefore, the intent and purpose of Chapter 400 and the Zoning Regulations and the light and air of adjacent buildings will not be adversely affected.*

## II. Variances from the Residential Recreation Space Requirement (Section 773.3) and the Maximum Permitted Height of Roof Structures in the Arts Overlay District (Section 1902.1(a))

In order to obtain approval of the requested variances, the Applicant must show that: 1) the subject property suffers from an extraordinary or exceptional condition; 2) strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty to the Applicant; and 3) relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Applicant intends to meet its burden as follows:

A. Variances from the Residential Recreation Space Requirement (Section 773.3)

1. Extraordinary or Exceptional Condition

*The Applicant will provide evidence of the irregular shape of the property, adverse subsurface soil conditions, and the limits on the amount of residential recreation space that can be provided based on the configuration of the property and the design of the project. Specifically, the property is a through lot, created by two off-set rectangles which are connected within a common area bisected by an alley easement. This alley easement prevents residential recreation space in this outdoor area on the ground floor. Furthermore, the rectangle fronting Church Street property is located in a historic district and, due to setbacks approved by the Historic Preservation Review Board, has less roof area available for residential recreation space*

*than would otherwise occur. Therefore, exceptional conditions exist for this site.*

2. Strict Application Would Result in a Practical Difficulty to the Owner

*The Applicant will show that the irregular shape of the property, the adverse soil conditions, and the limited opportunity for residential recreation space make it unreasonably burdensome for the Applicant to comply with this provision of the Zoning Regulations. Specifically, the design of the Church Street property approved by the Historic Preservation Review Board prohibits the inclusion of any outdoor recreation space on the roof. Furthermore, the ground level on P Street includes retail spaces, significantly limiting potential locations for additional residential recreation space. Finally, additional residential recreation space would likely reduce the number of apartment units, contrary to the intent of the Regulations, which encourage more housing.*

3. No Detriment to the Public Good Nor Impairment to the Intent, Purpose and Integrity of the Zone Plan

*The Applicant also will show that the reduction in the required amount of residential recreation space will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan. The amount of residential recreation space provided is appropriate for this location. The site is located near numerous recreational opportunities, including all that is available in Dupont Circle. Furthermore, numerous apartments include private outdoor terraces, which are not included within this calculation.*

B. Variance from the Maximum Permitted Height of Roof Structures in the Arts Overlay District (Section 1902.1(a))

1. Extraordinary or Exceptional Condition

*The Applicant will provide evidence that the property suffers from an exceptional condition. Typically, elevator equipment requires eighteen feet, six inches in order to provide access to the top floor of the project. For this project, the elevator ascends to the roof in order to provide full access for all residents to the roof deck. Therefore, the elevator equipment requires the additional eighteen feet, six inches from the roof, resulting in the height of the penthouse exceeding a total height of eighty-three and one-half feet above the measuring point used for the building.*

2. Strict Application Would Result in a Practical Difficulty to the Owner

*The Applicant will show that it would be practically difficult for the Applicant to comply with this provision because it would not be possible to achieve the full permitted residential density and provide full access to the roof without the additional height. Furthermore, the inability to provide access to the roof would result in a decrease in the amount of residential recreation space provided.*

3. No Detriment to the Public Good Nor Impairment to the Intent, Purpose and Integrity of the Zone Plan

*The Applicant also will show that the increased height of the penthouse will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan. Due to the setback of the roof structure, the penthouse's visual impact is significantly reduced and will not adversely impact the light and air of adjacent buildings.*