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

The Applicant is seeking the following special exception relief from the Board of Zoning Adjustment: a special exception for a zone boundary district line crossing a lot (Section 2514.2); a special exception from the roof structure requirements (Section 411); and variance relief as described below. 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 exception and variance relief. A preliminary summary of how the application meets the required burden of proof follows.

I. Special Exception for a Zone Boundary District Line Crossing a Lot

Section 2514.2 of the Zoning Regulations provides that if approved by the Board of Zoning Adjustment, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive zone provided that certain criteria are satisfied. In the present case, the vast majority of the site is zoned C-3-A; however, the eastern-most eighteen feet of the property is zoned R-4. That portion of the site will be devoted to an alley easement and will not include any portion of the proposed building. The Applicant requests this special exception to allow vehicular use of the alley easement to access the project located in the C-3-A zone.

The criteria are satisfied as follows:

(a) The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet.

The proposed extension is eighteen feet.

(b) In authorizing the extension, the Board shall require compliance with § 2514.1(d), which states that for computation purposes, any portion of the lot located in an R-4 District shall be deemed to be limited to a floor area ratio of 0.9 FAR.

No portion of the building will be located within the area zoned R-4.

(c) The extension shall have no adverse effect upon the present character and future development of the neighborhood.

2003 FEB -5 PM 3:54
RECEIVED
D.C. OFFICE OF ZONING

BZA
Case No. 17001
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17001
EXHIBIT NO. 5

The extension of the C-3-A zone into the small portion of the R-4 zone will have no adverse impact on the present character and future development of the neighborhood. The adjacent development to the east is a residential development and would benefit from the additional light and air provided by the easement.

(d) The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirement it deems necessary to protect adjacent or nearby properties.

Because there will be no portion of the building located within the R-4 area, there will be no adverse impact on adjacent or nearby properties.

Finally, this special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring properties.

II. Special Exception from Roof Structure Requirements of Section 411

In order to meet the criteria for approval of the requested special exception, 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.

Section 770.6(b) requires that a roof structure be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located. The proposed roof structure is sixteen feet and meets the setback on all sides with the exception of the northwest corner. At this point, the setback is approximately one foot, six inches. The insufficient setback results from the requirements of the International Building Code ("IBC") proposed to be adopted in the District in Spring, 2003. The IBC requires that all residential elevator lobbies be separated by doors from the corridor system. Due to the relatively small floor plate of this project, this separate elevator lobby may only be located in the location proposed, resulting in an insufficient roof structure setback on the northwestern corner.

However, the location of the roof structure will not adversely impact the light and air of adjacent buildings. The building abuts two streets and two proposed alley easements. Therefore, based on the building's placement on the site, the roof structure is at least twenty-one feet from the adjacent development being developed by Donatelli & Klein. The roof structure is approximately ninety-four feet from the

Irving Station Condominiums and 101 feet from the apartment on Kenyon Street. Thus, there will be no adverse impact on the light and air of adjacent buildings.

III. Variance Relief Needed from the Zoning Regulations

Due to the size and configuration of the site and the project, the Applicant proposes to access its below-grade parking garage from the below-grade parking garage of the proposed adjacent development currently being developed by Donatelli & Klein (the "Adjacent Development"). In addition, although the project will include the required service/delivery space, the required loading berth and platform will be shared with the Adjacent Development as permitted by Section 2203.4. However, due to the timing of the two developments, it is possible that the project will be completed and ready for occupancy prior to the completion of the Adjacent Development, thus rendering the parking garage and loading inaccessible for a temporary period of time. Therefore, the Applicant requests relief during such time until the Adjacent Development is constructed. The following is a summary of three alternatives for the relief requested by the Applicant:

Alternative #1: Variance from Parking and Loading Requirements

The Applicant requests a variance from the parking requirements set forth in Section 2101 and the loading requirements set forth in Section 2201. 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.

Due to the size, shape and topography of the site, the Applicant cannot provide the required parking in an accessible, below-grade parking garage. As a result, the project includes no parking, and therefore, the Applicant requests variance relief from the thirteen required parking spaces. The relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan due to the project's proximity to the Columbia Heights Metrorail Station. Furthermore, because the project is an elderly housing development, it will have a substantially reduced need for parking as compared to market rate, residential developments.

In addition, the Applicant requests a variance from the loading provisions of the Zoning Regulations. The project includes a service/delivery space for use by the residents for move-in and move-out purposes. However, the project does not include

a fifty-five foot loading berth or a loading platform. Although the project could include a loading berth and platform adjacent to the service/delivery space, it would be exceptionally difficult, if not impossible, for a fifty-five foot truck to access the berth via the existing or proposed alley system. However, the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan because the service/delivery space will adequately satisfy all loading needs for the project, given that it is a residential use devoted to the elderly. Furthermore, to the extent that additional space is needed for a rare delivery by a fifty-five foot truck, the truck can access the project via the circular drive off Irving Street.

Alternative #2: Temporary Variances from Parking Requirements (Section 2101.1 or Section 2217.4) and Loading Requirements (Section 2201.1)

In the alternative, the Applicant requests temporary variances from Section 2101.1 or Section 2217.4 for the parking requirements and a variance from Section 2201.1 from the loading requirements because the required parking spaces and loading berth will not be accessible until the Adjacent Development is completed.

Section 2101.1 requires that the project include thirteen parking spaces, or one space per six dwelling units for publicly assisted housing reserved for the elderly. Section 2117.4 requires that each parking space be accessible at all times. Nineteen parking spaces will be provided in a below-grade parking garage at such time as the Adjacent Development is completed. The property's size and the project's inclusion of outdoor residential recreation space result in the Applicant being unable to provide access to the below-grade parking garage on its property for a temporary period of time. Due to the fact that the project may be completed and occupied prior to completion of the Adjacent Development, the Applicant cannot provide access to the below-grade parking garage, resulting in a project with no accessible parking. The requested variance relief will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan. Access will be provided to the nineteen parking spaces via the below-grade parking garage of the Adjacent Development at such time as construction of the Adjacent Development is completed. Furthermore, the project is adjacent to the entrance to the Columbia Heights Metrorail entrance, which will provide significant opportunities for use of mass transit during the period of time in which access is restricted to the parking area.

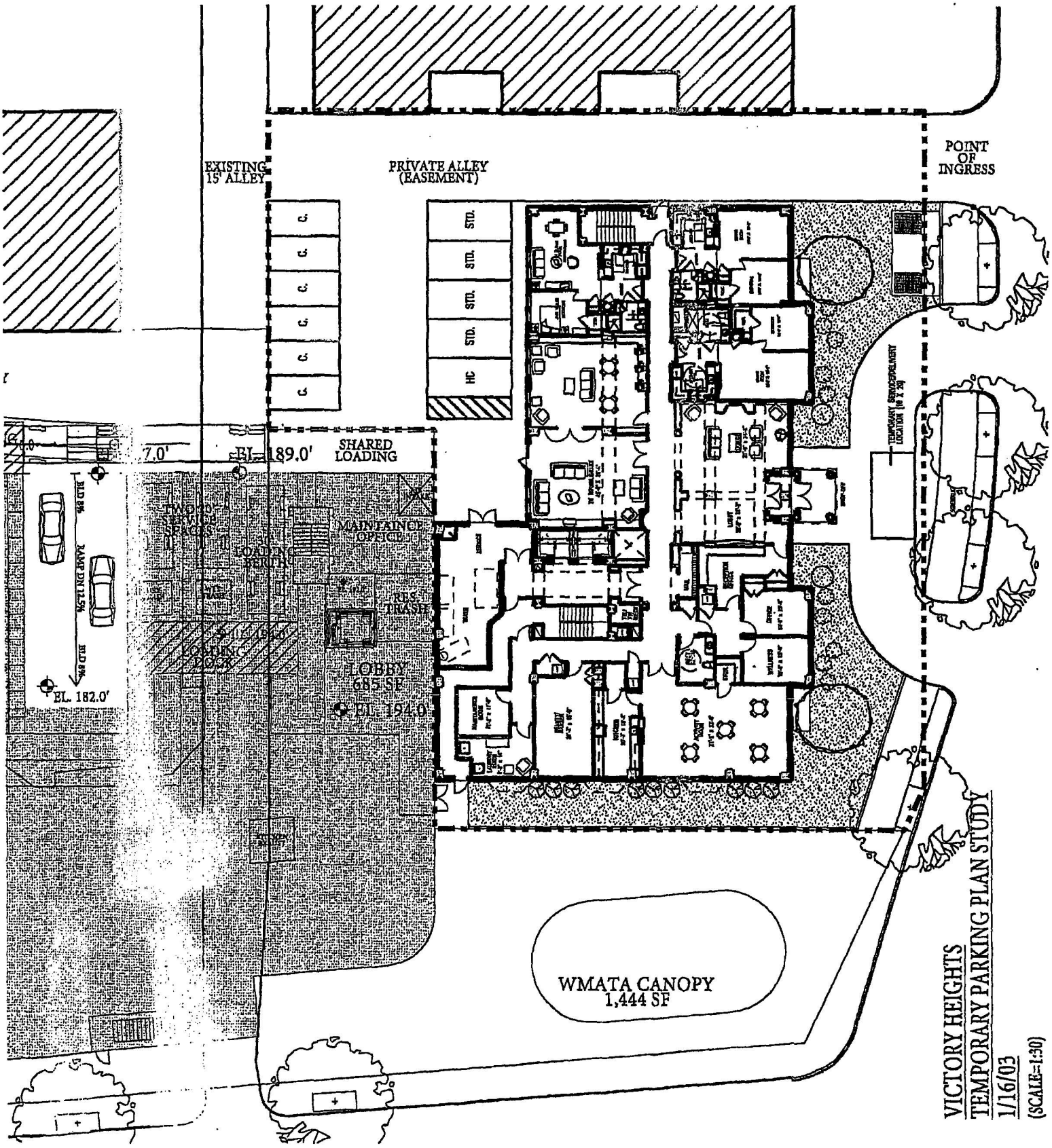
In addition, the Applicant requests a temporary variance from the loading requirements of Section 2201. Section 2203.4 provides that loading berths may be provided in facilities designed to serve jointly two or more adjoining buildings or structures on lots separated only by an alley within a single square provided that the number of berths in the joint facilities is not less than that required for the total

combined floor areas of the buildings or structures in Section 2101 and that a binding covenant is entered into. The Applicant will provide its required loading berth and platform in accordance with this provision. However, due to the possible difference in timing, the loading berth will not be constructed until the Adjacent Development is completed. There will be no detrimental impact, however, because the project will include a service delivery space which will be more than adequate to serve the needs of the elderly residents and the loading berth and platform will be provided at such time as the Adjacent Development is constructed.

Alternative #3: Temporary Variances from Residential Recreation Space Requirements (Section 773), Parking Requirements (Sections 2101 and 2115) and Loading Requirements (Section 2201)

In the alternative, the Applicant will temporarily include eleven surface parking spaces in place of the outdoor residential recreation space for the period of time between the completion of construction of the project and the Adjacent Development. A sketch of this alternative is attached to this preliminary statement. As a result of the inclusion of temporary parking, the Applicant would require temporary variances from the residential recreation space requirements (Sections 773.3 and 773.8), temporary variances from the parking requirements, including the number of parking spaces provided (Section 2101) and the provision of compact car spaces (Section 2115), and from the loading requirements, for both the shared loading berth and platform as well as the service/delivery space (Section 2201). These temporary variances would expire at such time as the Adjacent Development is constructed, but in no event would the temporary variances extend more than two years from the effective date of the Board of Zoning Adjustment order. Furthermore, the temporary variances would be approved subject to a condition requiring the residential recreation space, along with the service/delivery space, to be constructed as indicated on the approved plans within a specified amount of time.

ALTERNATIVE #3



VICTORY HEIGHTS
TEMPORARY PARKING PLAN STUDY
1/16/03
(SCALE=1:30)