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Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof (Parcel 15)

The Applicant is seeking the following special exception and variance relief from the Board of Zoning Adjustment: a variance from the height requirement (Section 770); a variance from the side yard requirement (Section 775); variance from the loading requirement (Section 2201); a special exception for a parking reduction (Section 2108); and a special exception from the roof structure requirements (Section 411). 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 variance and special exception relief. A preliminary summary of how the application meets the required burden of proof follows.

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I. Variance Relief from the Zoning Regulations

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. Variance from Permitted Height (Section 770)

Due to the location of Metro facilities below- and above-grade, the Applicant must request a variance from the permitted height. The below-grade Metro facilities create additional costs for the below-grade construction, and the above-grade Metro facilities dictate certain setbacks and open spaces. As a result, the Applicant faces a practical difficulty because it is unable to use the permitted gross floor area on the site without the request for additional height. Even with the requested height, the maximum gross floor area for the site is not achieved. The requested variance relief, however, will not be detrimental to the public good and will not substantially impair the intent, purpose or integrity of the zone plan. The proposed height of the project is compatible with surrounding structures and the project is consistent with the goals of the Comprehensive Plan.

BZA
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Exhibit No. 5

Board of Zoning Adjustment
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B. Variance from the Side Yard Requirements (Section 775)

Due to the relatively recent expansion of the cartway of 14th Street in this area, the public space (the area between the curb of the street and the Applicant's property line) is extremely small, measuring only seven feet, six inches at the widest point and measuring approximately two feet, six inches at the narrowest point. In an effort to enlarge the pedestrian walkway and public space, the Applicant has set the building back from the property line, essentially creating a sidewalk of approximately thirteen feet. Therefore, the project provides a minimum side yard of five feet, six inches. Section 775.5 of the Zoning Regulations requires the side yard for this project to be at least fourteen feet, two inches. Due to the required setbacks and plaza areas for the Metro facility, the Applicant cannot comply with the side yard requirement or the project will lose additional floor area that is needed to make this project viable. Thus, the Applicant faces a practical difficulty in enlarging the public space. Specifically, if the Applicant builds the project to its property line, it creates an adverse condition for the residents of the area; however, enlarging the space creates a practical difficulty with complying with the regulations. However, 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, as the public area will be enlarged and a sufficient public walkway will be created.

C. Variance from the Loading Requirements (Section 2201)

Section 2201 of the Zoning Regulations requires that an apartment house provide one fifty-five foot loading berth, one 200 square foot loading platform, and one twenty foot service delivery space. The project proposes three thirty foot loading berths, one 200 square foot loading platform, and two twenty foot service delivery spaces. The Applicant faces a practical difficulty in providing a fifty-five foot loading berth due to the anticipated lack of use of such a loading berth and the infrequency of deliveries by trucks needing a fifty-five foot loading berth. Although a fifty-foot loading berth could be included at the rear of the building, there is no need for such a berth. Accordingly, 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.

II. Special Exception for a Reduction of Parking Spaces (Section 2108)

Section 2108.1 of the Zoning Regulations permits the Board to reduce the amount of parking spaces required for non-residential uses under Section 2101.1 in accordance with Section 3104 of the Zoning Regulations. For this project, the Applicant provides more parking than the total required for all uses at the site (*Total Required*: 134 spaces; *Total Provided*: 161 spaces). However, because the

anticipated use of the retail will be by local residents and patrons arriving from the adjacent Metrorail station, the Applicant requests a special exception to reduce the required retail parking by twenty-five percent.

The criteria are satisfied as follows:

(1) *The amount of required parking spaces shall not be reduced by more than twenty-five percent.*

The retail component includes 20,850 square feet, which requires sixty parking spaces (*one space for each additional 300 square feet, over 3,000 square feet of retail*). The Applicant proposes to devote forty-five parking spaces to the retail use, which is a reduction of twenty-five percent.

(2) *The Board shall give consideration to the following*:

(a) *Nature and Location of the structure*

The project is located on 14th Street, in an emerging area, and adjacent to the Columbia Heights Metrorail station. The proposed retail will be neighborhood-serving and will be accessed primarily by residents of the area and patrons arriving from the adjacent Metrorail station.

(b) *Maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structures at one time*

The proposed retail will primarily be neighborhood-serving, to be accessed by pedestrians who reside in the area and patrons arriving from the adjacent Metrorail station. The Applicant's traffic consultant will establish at the hearing that the proposed number of parking spaces, combined with the availability of other parking facilities in the area, will be sufficient for the retail use.

(c) *Amount of traffic congestion existing or that the building or structure can reasonably be expected to create in the neighborhood*

The Applicant will present expert testimony to establish that the amount of traffic generated can be adequately accommodated.

(d) *Quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use*

This retail will primarily be accessed by neighborhood residents and commuters from the adjacent Metrorail station. In addition to the parking provided on-site, patrons of the retail facilities can park in the parking garage proposed as part of the new Grid project, directly across 14th Street from the site.

(e) *Proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area*

The project is situated on top of the Columbia Heights Metrorail Station, with the entrance to the station being on the Applicant's property. In addition, numerous Metrobus routes run along 14th Street adjacent to the site.

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.

III. 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 structures all comply with this provision with the exception of the roof structure that contains the elevator which accesses the roof deck. This penthouse enclosure is eighteen feet, six inches in height, and satisfies the setback requirement on each side with the exception of the northeast corner. Specifically, because the north open court cuts into the building, the setback is reduced to six feet, six inches. This roof structure, however, will not adversely impact the light and air of adjacent buildings. Specifically, the roof structure complies with the setback requirement on all street faces and does not comply only along the north open court, which is a significant distance from any adjacent building. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings shall not be adversely affected.

Furthermore, Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. The project includes four penthouse enclosures. A single enclosure cannot be provided because it would eliminate the

majority of the roof terrace. In addition, it would create a significant mass which would not comply with the setback requirements due to the layout of the building on the site. Furthermore, multiple enclosures are required in order to provide two means of ingress and egress as required for the roof deck. The multiple enclosures, however, will not adversely impact the light and air of adjacent buildings. The placement of the penthouse enclosures on the roof minimizes the visibility and reduces the mass of the roof structures. Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired and the light and air of adjacent buildings shall not be adversely affected.