Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof (Parcel 26)

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 residential recreation space requirement (Section 773); a special exception for a parking reduction (Section 2108); a special exception where a zone boundary line crosses a lot line (Section 2514); 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.

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.

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B. Variance from the Residential Recreation Space Requirements (Section 773)

Based on the 247,647 square feet of residential gross floor area proposed, the project must include 37,147 square feet of residential recreation space (or 15%). The project proposes a total of 27,770 square feet (or 11.2%) devoted to residential recreation space as follows: ground level esplanade (7,268 square feet), ground level garden (2,375 square feet), main lobby and mezzanine (3,766 square feet), library/computer center (630 square feet), community room (1,975 square feet), fitness center (1,756 square feet) and roof garden (10,000 square feet). Due to the amount and location of residential recreation space provided, there is no additional available interior or exterior space to be devoted to residential recreation space, which creates a practical difficulty for the Applicant. 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 project incorporates every reasonable type of residential recreation space for an apartment house of this size. Furthermore, when this area's many recreational and entertainment activities available are considered along with the site's provided recreation space, the recreation space available to residents is more than sufficient.

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 significantly more parking than the total required for all uses at the site (*Total Required*: 176 spaces; *Total Provided*: 278 spaces). However, because the anticipated use of the retail will be by local residents arriving on foot 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 20,394 square feet, which requires fifty-eight parking spaces (*one space for each additional 300 square feet, over 3,000 square feet of retail*). The Applicant proposes to devote forty-four 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 area residents 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 located directly to the north across Irving Street.

(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 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, a small portion of the southern edge of the site is zoned R-5-B. The Applicant requests a special exception to extend the project into the R-5-B portion of the site.

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 thirty-five 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 site is zoned R-4.

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

The extension of the C-3-A zone into the R-5-B zone will have no adverse impact on the present character and future development of the neighborhood. The extension will become part of the larger project and will be compatible with the nearby developments. It will also not adversely impact the light and air of adjacent developments. Overall, the project constitutes an important mixed-use development in an emerging area.

(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.*

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.

IV. 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 Metro cooling tower, which is located on the northeast portion of the roof. The cooling tower is currently located on the ground level in the Metro plaza area. The Applicant has agreed to relocate the cooling tower to the roof of the building. However, due to the width of the roof of the building adjacent to the Metro plaza, the cooling tower cannot be setback from the edge of the roof a distance equal to its height. Specifically, the base of the cooling tower is twenty-nine feet square, with a height of fifteen feet. At this location, the building is only forty-five feet in width, which makes it impossible to achieve a fifteen foot setback on each side. However, in order to disguise the cooling tower, it has been enclosed in a tower-like architectural embellishment, which has become an important design feature of the 14th Street façade. Accordingly, the roof structure will not adversely impact the light and air of adjacent buildings and the intent and purposes of the Zoning Regulations will not be materially impaired.

Furthermore, Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. In addition to the cooling tower, the project includes four penthouse enclosures which all meet the setback requirements. A single enclosure cannot be provided because it would eliminate the majority of the roof terrace and create a significant mass, which is not in keeping with the intent of Section 411. Furthermore, multiple enclosures are required in order to provide two means of ingress and egress as required for roof deck. However, the multiple roof structures 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.