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

The Applicant is seeking the following special exception and variance relief from the Board of Zoning Adjustment: a special exception from the roof structure requirements (Section 411) and a variance from the residential recreation space twenty-five foot dimension requirement (Section 773). 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. 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 do not comply with this requirement due to the configuration of the building. In order to preserve the historic facades, create a courtyard for the required residential recreation space and create a workable interior layout, the primary penthouse must be located toward the northwest corner of the roof. As a result, the penthouse is flush with the western edge of the building and set back only fifteen feet from the edge of the roof adjacent to the internal courtyard. The primary penthouse is set back a sufficient distance from both the north, east, and south edges of the roof.

The stair enclosures, each with a height of ten feet, also cannot comply with the setback requirements. The western stair is set back four feet from the west edge of the roof while the eastern stair is set back approximately five and one-half feet from the east edge of the roof. These stair enclosures are required in order to provide two means of ingress and egress from the roof deck while at the same time conforming with the interior layout of the structure, including the central courtyard.

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In addition, Section 411.3 requires that all penthouses and mechanical equipment be placed in one enclosure. The project include three penthouses, including the primary penthouse, containing the elevator override equipment, and the two stair enclosures. 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.

This special exception relief, however, will not cause any adverse impact. The multiple roof structures and the location of the same will not adversely impact the light and air of adjacent buildings. Furthermore, 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.

II. Variance from the Residential Recreation Space Dimension Requirement

Section 773.7 of the Zoning Regulations requires that if any portion of a roof structure is to be used for residential recreation space, the roof structure shall have no dimension less than twenty-five feet. The project includes a roof deck with approximately 5,460 square feet. Due to the configuration of the roof, including the internal courtyard, the historic preservation of the façades and the required placement of the primary penthouse, the roof deck includes areas that cannot comply with the twenty-five foot minimum dimension requirement. 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 residential recreation space in compliance with the Zoning Regulations and the roof deck is meaningful recreation space, despite the reduced dimensions.