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BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of TC MidAtlantic Development Inc. on Behalf of Avalon Bay Communities, Inc. and Ruby Restaurant, Inc.
777 6th Street, NW

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background:

The Subject Property, Lots 10, 11, 12, 13, 36, 804, 805, 806, 807, and 808 in Square 486, is unimproved, with the exception of a single row building, and is utilized as a surface parking lot. The Applicant wishes to construct a 10-story office building with ground floor retail uses on the Subject Property, with premises address of 777 6th Street, NW. The Subject Property is zoned DD/C-2-C.

The Subject Property is rectangular in shape, measuring approximately 225 feet by 85 feet. The Subject Property is located in the northwest corner of Square 486, and the southeast corner of the intersection of 6th and H Streets, NW. Bounding the Subject Property are 6th Street, NW, to the west, a 30-foot wide public alley to the south, a 16.75-foot wide public alley to the east, and H Street, NW to the north.

In order to accomplish its proposed project, the Applicant seeks special exception approval pursuant to §§770.6 and 411 of the Zoning Regulations, establishing roof structure requirements in the commercial zoning districts. Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested special exception. Following herein, as required by the Board's application process, is a summary statement indicating how the Applicant will meet said burden of proof.

II. Compliance with Burden of Proof:

§770.6:

Section 770.6 of the Zoning Regulations provides that, if housing for mechanical equipment or a stairway or elevator penthouse is provided on a building's roof, it must be erected or enlarged in compliance with the provisions of §770.6, as follows:

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(a) It shall meet the requirements of §411.
(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located;
(c) [Applicable only to C-5 zoned properties]; and
(d) It shall not exceed more than18 feet 6 inches in height above the roof on which it is located, nor shall mechanical equipment extend above the permitted 18 feet 6 inch height of the housing.

The penthouse structure for the proposed building measures 18 feet 6 inches in height and thus complies with §770.6(d). Because the penthouse structure does not set back from all exterior walls a sufficient distance, it does not comply with the provisions of §770.6(a) (by reference to §411.2) or with §770.6(b), and thus requires special exception approval by the Board pursuant to §411.11.

§411:

Section 411 establishes numerous criteria for roof structures in all districts. Section 411.11 provides the Board authority to approve as a special exception the location, design, and other aspects of roof structures, including setbacks. In order to obtain such special exception approval, an applicant must demonstrate that: (1) compliance with the roof structure regulations 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.

In this case, special exception approval is required because the proposed roof structure does not meet the normal setback requirements of the Regulations. Roof structures are permitted up to a maximum height of 18 feet, 6 inches above the roof upon which they are located, provided that they are set back from all exterior walls one foot for each foot of height above the roof. The roof structure is 18 feet, 6 inches in height, and meets the 1:1 setback requirement on the north and west (H Street and 6th Streets, respectively) sides of the building, and on the south side (facing the 30-foot wide public alley). However, it does not meet the setback requirement on the east side of the building, running flush with the exterior wall along that side of the building, which fronts the 16.75-foot wide public alley.

(1) Compliance with the roof structure regulations 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.

The placement of the roof structure is the direct result of the small depth of the building lot, measuring only 85 feet. The roof structure has a depth of 30 feet. Were the roof structure able to be located at the center of the roof, special exception would not be necessary and the required setbacks would be provided in all directions. However, in this case, such a placement of the structure could not readily be accommodated within the column grid anticipated for the building without negatively impacting the functionality of the structure. Further, a central location of the roof structure would force the relocation of the elevator and facilities core to the center of the building footprint, significantly compromising the layout of the various floors for multi-tenant use. As the Applicant will demonstrate at the hearing and through its prehearing submission, the relocation of the core to the center of the building would render office layout of the floors unduly restrictive and unreasonably narrow.

(2) The intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired and the light and air of adjacent buildings are not adversely affected.

With the exception of the setback, the roof structure is fully compliant with the Zoning Regulations and harmonizes with the main structure in architectural character, material, and color. Likewise, any impact of the roof structure on light and air to adjacent buildings would be comparatively minimal. The roof structure would be setback from the edges of the building fronting along 6th and H Streets, thus insuring no visual impact on the skyline of vistas of those streets. Given the comparatively significant heights of the proposed building and the neighboring Red Roof Inn to the immediate east, any impact of the roof structure placement on the light and air to the hotel will be negligible. The Applicant notes that the Red Roof Inn appears to have chosen a similar approach for its roof structure, with at least a portion of the structure sited flush with that building's west wall, nearest to the Subject Property.

For all these reasons, special exception approval from the Board is appropriate.