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

The Applicant is seeking the following relief from the Board of Zoning Adjustment:

- A special exception from the roof structure requirements (§411);
- Approval by the Board of Zoning Adjustment to increase the proposed building's height to fifty feet pursuant to §1402.1;
- A variance from the lot occupancy requirements (§772.1);
- A variance from the residential recreational space requirements (§773.7);
- A variance from the side yard requirements (§775.5 and 2001.3); and
- A variance from the parking aisle width requirements (§2117.5).

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 relief. A preliminary summary of how the application meets the required burden of proof follows.

I.

Background

The subject property is located at 1701 Kalorama Road, N.W., also known as Lot 90 of Square 2566. The site is bounded by a public alley to the north, 17th Street, N.W. to the east, Kalorama Road, N.W. to the south, and a public alley and lots ("Lot Nos. 839 and 841) to the west.

The subject property is located in the RC/C-2-B District, which is a moderate density residential land use zone and is generally characterized by multiple-unit housing and mid-rise apartment buildings, and also includes commercial office and retail use as a matter-of-right. The property was previously used as a nonconforming three-story warehouse. The proposed development will convert the existing warehouse into a four-story apartment house with 49 dwelling units.

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II.
Special Exception for Roof Structures

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

Special exception approval is required because there will be multiple roof structures (§411.3), one of the roof structures will not be setback from all exterior walls a distance equal to its height above the roof (§411.2 and 770.6), each of the roof structures has walls of varying height, and the roof structures are not all of the same height (§411.5).

The Applicant proposes to provide two roof structures. One roof structure, located near the center of the roof, will measure 14 feet high overall, and will enclose a stairwell, elevator and lobby area. This enclosure meets the set back requirements, however, its walls are not all of an equal height. The second roof structure will measure ten feet high overall and is located on the north wall of the building. This structure provides required access under the Building Code to the roof area where the residential recreation space is located.

The Applicant requests relief from the Zoning Requirements with respect to the roof structures since compliance would require the Applicant to have one much larger enclosure which serves numerous functions. This is impractical and will result in operating difficulties because of the internal configuration of the building, and the design requirements for placing the mechanical equipment in the appropriate internal locations. Further, the Applicant proposes more than one enclosure to break up the overall massing, which will provide a more attractive view of the roof and help ensure that the light and air of adjacent buildings are not adversely affected. Moreover, the Building Code provides that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom floor of the building must also be located on the roof. Thus, the roof structure located on the north wall of the roof is required, but cannot feasibly be designed to meet the set-back requirements. Finally, in proceeding with the rehabilitation of the existing warehouse, the Applicant is constrained by the warehouse's existing conditions and forcing compliance with the roof structure regulations will result in internal configurations that are impractical and render the project prohibitively costly and impose restrictions which are unreasonable.

III.
Approval to Increase Building Height

The subject property is located at 1701 Kalorama Road, N.W., in Lot 90 of Square 2566, which is in the Reed Cooke Overly District. Section 1402.1 of the Zoning Regulations provides that the maximum height permitted in the Reed Cooke Overlay is forty feet (40 ft.), but the Board may approve a maximum height of fifty feet (50 ft.) subject to a determination by the Board that the project will provide for the on-site construction of affordable housing units having a total gross floor area equal to fifty percent (50%) of the additional gross floor area made possible by the special exception. Extending the building height from 40 ft. to 50 ft. creates an additional 16,589 square feet of gross floor area. Of this increase, 8,295 including a core factor of 15% (7050.75 net of core factor) will be used to create seven affordable housing units. Accordingly, the Applicant meets the standard set-forth in Section 1402.1 and respectfully requests approval to build to a maximum height of 50 ft. This is being requested even though the project is below the 3.5 FAR permitted as a matter of right.

IV.
Variances

In order to obtain approval of the requested variances, the Applicant must show that: 1) the subject property is unique and/or suffers from extraordinary or exceptional situations or conditions; 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.

A.
Lot Occupancy

The Applicant requests a variance from the lot occupancy percentage requirements set forth in Section 772.1, which provides that residential buildings in the C-2-C District cannot occupy more than eighty percent of the lot upon which it its located. The Applicant seeks relief from this requirement since the existing nonconforming structure on the subject property that is to be converted into an apartment house already occupies 95.6% of the lot area.

Unlike many development projects, the Applicant is not constructing a new building on an unimproved square, but is rather planning to convert an existing warehouse into a new, apartment house use. However, strict application of the Zoning Regulations would cause a practical difficulty to the Applicant since it would require the Applicant to demolish all or a portion of the existing warehouse when

the proposed development does not even meet the 3.5 FAR permitted and hence expend considerable additional time and resources, which would ultimately render the project unfeasible. Moreover, allowing the Applicant to design its apartment house within the existing structure would significant benefit the public good since the Applicant would be converting an under-utilized site into much-needed housing including the provision of affordable dwelling units. Accordingly, the Applicant requests a variance from Section 772.1 to permit the conversion of the existing warehouse into an apartment house.

B.
Residential Recreation Space

Section 773.7 of the Zoning Regulations provides that residential recreation space located on a roof cannot have any dimensions less than twenty-five feet (25 ft.). The Applicant proposes to locate 9,455 square feet of residential recreation space on the roof, which meets the gross floor area percentage requirements of Section 773.3. However, there are various portions of the space that will have dimensions of less than 25 ft. Accordingly, the Applicant seeks relief from this requirement.

The subject property is uniquely shaped and creates many angles that otherwise would not exist on a typical building. The Applicant has designed its project to make maximum use of the existing site, and intends to locate its 9,455 square feet of residential recreation space on the roof to provide the building's residents with outside leisure area. However, the total surface area of the roof is only 18,018 square feet, which leaves little space to include the required 9,455 square feet recreation area without having dimensions of less than 25 ft. Further, designing the recreation space to comply with the requirements of Section 773.7 would result in exceptional practical difficulty to the Applicant since the proposed roof structures cannot be relocated and provide required access to the roof and be practically located in their relation to the elevator core. Finally, relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan since the Applicant is providing ample recreational space in a safe environment, which actually benefits the public good.

C.
Side Yard

The Applicant requests a variance from the side yard requirements set forth in Section 775.5, which provides that although side yards are not required in this zoning District, when they are provided, the side yards must be at least two inches (2 in.) wide for each foot of the building's height, but not less that six feet (6 ft.).

The existing building includes a side yard that measures approximately 4'8". Pursuant to Section 775.5, and based upon the proposed building height of 50 ft., the Applicant is required to provide a side yard measuring 25 inches wide. However, due to the existing building's footprint, and the 15 foot public alley to the east of the side yard, the Applicant cannot provide a compliant side yard. However, the Applicant does propose to provide a rear yard, measuring over 15 feet. Requiring the Applicant to comply with Section 775.5, however, will result in practical difficulty to the Applicant since it would necessitate the demolition of a portion of the existing structure which the Applicant intends to utilize in the design and construction of its apartment house. Further, although a complying side yard cannot be provided, the existing 15 foot public alley and the side yard provided will provide a buffer between the Applicant's building and the adjacent lot, which will benefit the public good and is consistent with the intent, purpose and integrity of the zone plan.

D.

Parking Drive Aisle Width

Section 2117.5 of the Zoning Regulations provides that parking aisle widths must measure at least twenty feet (20 ft.) for ninety degree (90°) angle parking, and at least seventeen feet (17 ft.) for angle parking that is sixty degrees (60°) or less as measured from the center line of the aisle. The Applicant proposes to provide approximately 16 required parking spaces but an overall total of 40 spaces. However, due to the existence of concrete structural support columns located at various points throughout the lower level of the existing building, two of the parking drive aisles measure less than 20 ft. Accordingly, the Applicant requests relief from Section 2117.5 to allow for the construction of the building and parking area as designed.

The Applicant plans to provide both parking and housing units on the first level of the proposed apartment house in order to maximize usage of its permitted FAR. However, since this level is the lowest grade of the existing warehouse, the Applicant has been required to design this entire level around numerous existing concrete building support columns. The Applicant has been successful at designing around the columns, but there are pinch points between certain columns that results in drive aisles measuring slightly less than the required distance. These concrete columns cannot be removed to increase the drive aisle width without causing significant demolition or structural modification to the existing building. Further, the existence of the two minor pinch points does not significantly hinder ingress or egress from the parking areas, and hence the purpose of Section 2117.5 is not impaired by granting the requested relief.