DETAILS OF VARIANCES AND SPECIAL EXCEPTIONS SOUGHT ALONG WITH AN EXPLANATION OF HOW THE APPLICATION SATISFIES THE RELEVANT CRITERIA FOR EACH TO BE CONSIDERED AND GRANTED

As set forth in the proposed Notice for the Public Hearing, this application is filed under 11 DCMR §§3103.2 and 3104.1 for –

(a) a variance to reduce the requirements to provide residential recreation space
(b) a special exception to reduce the requirement to dedicate at least 50 percent of the ground floor to service or retail uses the Arts overlay requires and allows for the potential of more than 25 % of the retail frontage along Fourteenth Street to be eating or drinking establishments.

The Applicant recommends strongly that the above relief be granted in full **(Option 1).**

Should the full relief for residential recreation space not be forthcoming, however, this application also the seeks additional relief **(Option 2)** that would be needed if the rooftop would have to be served by an elevator so as to make its "roof deck" fully accessible and contribute to some degree to the residential recreation space provided on the premises –

(c) a special exception to allow a roof structure whose walls would not be of equal height or have all walls removed from the edge of the building at a distance at least as great as the height of that roof structure and
(d) a variance to allow the elevator shaft to exceed the height limit of roof structures in the Arts/C-3-A zone district.

Plans presented for roof structures as Option 1 (Roof/Penthouse Plans ASK 7 and 8, and Elevations ASK 11-14 ***omitting the protruding portion of the penthouse,*** are those strongly recommended. Plans presented for roof structures as Option 2 (Roof/Penthouse Plans ASK 9 and 10 and elevations ASK 11-14 ***including the protruding portion of the penthouse,*** are those associated with Option 2, should a need for that arise. Option 1 is recommended; Option 2 is prepared as a contingency only. (Option 2 adds to the relief sought but does not supplant Option 1; Option 2 is necessary if only all of the relief sought in Option 1 relating to residential recreation space is not forthcoming.)

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A. Residential Recreation Space Variance

For a project in the Arts/C-3-A zone district, the requirements of section 773.3 apply. Specifically that section requires that residential recreation space, which is more fully described in section 773.1, be provided for all buildings in the C-3-A zone district as a specified percentage of the building's gross floor area use in residential use, here that specification being 15.0 %.

As set forth on the accompanying architectural plans, the total residential gross floor area equals the total building gross floor area, here 43,204 (to be reduced to 42,660 or less when pre-hearing statements are filed) less the proposed retail and service area, here 2,366 (an amount itself less than required, but discussed separately below). Accordingly, the total amount of residential recreation space could be as much as the product of 40,838 and 0.15, or 6,125.7 square feet. The rules further provide that not less than 50 percent of this area

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"shall be outdoors" (§773.8). All such area is to be located within the limits of the property; no space that is functionally equivalent but located outside the property, even in adjacent public space such as "the parking" may be included.

The plans for the project include residential recreation space, but at not as much in total or outdoors as specified in the regulations, requiring the following degrees of relief.

Residential Recreation Space	Existing Conditions	Minimum Required	Maximum Allowed	Provided by Proposed Construction	Variance (Deviation /Percent)
Total	n/a	6,125.7 (15.0 %)	n/a	2,526.0 (6.2 %)	3,699.7 (59.4 %)
"Outdoors"	n/a	3,062.9 (7.5 %)	n/a	1,276.0 (3.1 %)	1,836.9 (58.3 %)

The granting of a variance requires that three tests be met, as more fully set forth in the Zoning Regulations at §3103.2, a section that of the regulations that is included within BZA Form 121 along with a practical interpretation as follows:

Subsection 3103.2:

As set forth in D.C. Code Ann §5-424(g)(3) (1981), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the 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."

This provision has three main tests that must be proved by the applicant.

☐ 1.) The physical characteristics of the property:

a) makes it difficult for the owner to use the property in compliance with the Zoning Regulatior (area variance) – i.e. shape and size of the property, unusual topography or slope, soil problems, etc.

b) creates financial hardship for the owner in using the property consistent with the Zoning Regulations (use variance)

☐ 2.) Granting the application will not be of substantial detriment to the public good – i.e. traffic, noise, lighting, etc.

☐ 3.) Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.

The following facts and interpretations establish that the variance requested may be granted:

Physical Characteristics of the Property:

The site's depth from Q Street is 79 feet, a distance that is barely sufficient to accommodate residential uses at the density encouraged, an FAR of 4.5 (including some ground floor retail) along with the necessary fire stairs, elevator cores, and other vertical shafts and pipe chases, many of these being elements of the overall building that must be removed from the edges of the roof.

Moreover, the Applicant proposes to utilize individual heating and air-conditioning units in "split systems" one portion of which would be individual condenser units located on the main roof, each of which occupies a given area and must be separate from others by a distance of three feet to provide adequate air flow.

The same roof top must also accommodate larger heating and cooling units for retail areas, for hallways, for interior residential recreation space along with exhaust systems for bathrooms, kitchens, and unit laundry and drying appliances.

Accordingly, much of the area of the roof must be dedicated to these units (none of which will have a mounted height that exceeds 4' 0" above the roof on which they sit), which substantially reduces the available roof area that could otherwise be dedicated to residential recreation space even if it were fully accessible to persons with mobility restrictions (a separate issue, discussed elsewhere). While applicant proposes a deck on the roof at its best corner, the space remaining, some 875 square feet, would not itself be sufficient to cure either the overall or outdoor deviation from the respective residential recreation space requirements.

Moreover, the area available for that rooftop, while exceeding 25 feet along one axis, is well under it in the other, again due to lack of total area and the functional central massing of the building core to meet other requirements of zoning and the building and fire codes.

Finally, the total area of the roof is less than originally sought in that the Historic Preservation Review Board determined that its conceptual approval would require, as these plans provide, that the northern part of the building's upper floor be removed from the northern lot line, that offset being six feet (6 ft.).

No Detriment to the Public Good:

The proposed building's location is along a burgeoning, vital Arts corridor whose central purpose is to create a lively urban environment. In other words, the entire area of the overlay, though mostly falling outside the boundaries of the subject property, is quintessentially a place of recreation.

The property also provides substantial recreation area to some of its residents, those with access to individual balconies (1,117 square feet) and/or terraces (2,906 square feet). Thus,

within the building, there is over 4,023 square feet of similar space, serving 17 of the 27 units. Additional balcony areas that were part of earlier plans filed with HPRB resulted in their being removed, an action that eliminated another 652 square feet associated with four apartments that now have no such terrace or balcony whatsoever.

The entrance to the project is separated from the public sidewalk by a rectangular area of open space known as "the parking." Applicant proposes to landscape this area, which totals 2,047 square feet, with benches and other appropriate "furniture" and plantings consistent with the purposes of residential recreation space but located "just beyond" where it can be included in the specified regulatory calculations. That is, the space already provided (2,526 square feet), when associated with the other areas provided within the building to over half the units (4,023 square feet) totals to 6,549 square feet, which exceeds the area of residential recreations space required (6,125.7).

Accordingly, the residents will have a combination of private space (for some) and common space (for all) and abutting public space ("the parking") a total that fully satisfies the requirements, and vastly over half of this is "outdoors." Stepping past "the parking," they enter the large Arts overlay district, which itself provides a recreational experience.

Not Inconsistent with the General Intent of the Zoning Regulations and Map:

As discussed above, the objective and metrics of the residential recreation space requirements are met within or immediately adjacent to the proposed project.

B. Area Requirements of the Arts Overlay for Retail and Service Uses and Street Frontages

The Arts overlay's requirements include two from which Applicant seeks relief. The first relates to dedicating at least 50 percent of the ground floor area to the various retail and service uses the Arts overlay requires along specific streets, of which the segment of Fourteenth Street abutting the Applicant's site is one. The other is a limitation on the percentage of linear frontage along Fourteenth Street that can be used, within the overall roster of uses allowed by the Arts overlay in the first place, for "eating and drinking establishments." As with certain other overlay district rules, the Zoning Regulations allow deviations from certain of the overlay's requirements under a Special Exception process, here as specified in §1906.

The relief sought is summarized thusly:

ARTS OVERLAY REQUIREMENT	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE (Deviation / Percent)
Service and Retail Use (square feet)	n/a	3,196 (50.0 %)	n/a	2,366 (74.0 %)	830 (26.0 %)
Percent of Frontage Use by Eating and Drinking Establishments (linear feet)	n/a	n/a	19.75 (25.0 %)	79.0 (100.0 %)	59.25 (300.0 %)

There is an open question of interpretation on the second standard, specifically whether the linear frontage relates to just the lot in question or the overall length of Fourteenth Street in the Arts overlay's area. For the purpose of this application, we assume the more restrictive. Should the Board determine that the requirement relates to the entire length of Fourteenth Street in the Arts overlay area, that would, quite likely, remove the question. However, Applicant is not aware of any source of data on utilization of the Fourteenth Street frontage in the Arts overlay that distinguishes "eating and drinking establishments" from other uses.

Assuming the Board takes the narrow road of "just this lot," the following table sets out the tests for and basis of granting this requested relief:

GOVERNING SPECIFIC SPECIAL EXCEPTION STANDARDS	AREA FOR ARTS RETAIL AND SERVICE USES	FRONTAGE ALLOWED TO BE EATING OR DRINKING ESTABLISHMENTS
(a) The uses, buildings, or features at the size, intensity, and locations proposed, will substantially advance the purposes of the ARTS Overlay District and will not adversely affect neighboring property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area	• The reduction provides an additional apartment unit within the first floor located where retail and services uses would be marginal, at best • Greater area would lead to greater retail/service use along the "residential" Q Street frontage, which abuts a Residence zone.	• Applicant would not want a restaurant use with apartments immediately above, but could enhance the area with a coffee shop or similar use depending on market in the future; does not wish to be restricted • Overall Fourteenth Street frontage is narrow and has two planes, responding to the slight grade, resulting in two entrances on two planes, either or both of which could be a viable location for some form of food service establishment

GOVERNING SPECIFIC SPECIAL EXCEPTION STANDARDS	AREA FOR ARTS RETAIL AND SERVICE USES	FRONTAGE ALLOWED TO BE EATING OR DRINKING ESTABLISHMENTS
(b) Exceptional circumstances affecting the property make compliance with the requirements of this chapter difficult or impossible, or the development provides alternative public benefits in lieu of the excepted uses or features that are of comparable value to the public in achieving the purposes of this chapter and of the Comprehensive Plan;	• There is no other location allowed under the Regulations or specific plan.	• At the very least, with only two functional areas, at least one should be allowed and that, alone, would approach 50% of the frontage in question..
(c) The architectural design concept of the project will enhance the urban design features of the immediate vicinity in which it is located; provided, if a historic district or historic landmark is involved, the Board shall refer the application to the State Historic Preservation Officer for review and report;	• There usage planned is appropriate in scale to the area in which it will be located • The plan will be referred to the State Historic Preservation Officer for review and report	• Certain types of food service establishments, such as a coffee shop, are entirely consistent with the purposes of the Arts overlay and would add "life" to Fourteenth Street, as intended..
(d) Vehicular access and egress are located and designed so as to minimize conflict with principal pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic conditions; and	• Does not apply	• Does not apply
(e) The Board may impose requirements pertaining to design, appearance, signs, size, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the ARTS Overlay District.	• To be determined by the Board	• To be determined by the Board

It is Counsel for the Applicant's belief that the above requirements fully encompass the general provisions regarding standards for the granting of Special Exceptions found at §3104.1 and, as such, does not make additional declarations as to the relief sought as set forth above.

As noted earlier, the Applicant strongly recommends the Board grant the relief for onsite residential recreation space as described above. However, should the Board, in its wisdom, determine that that roof deck must be fully accessible to persons with mobility restrictions and be a part of the total area of residential recreation space required. **Applicant recommends full relief of the issues discussed above (Option 1); however, Applicant sets forth and discusses additional areas of relief in the initial application as a contingency only (Option 2).**

Should inadequate relief be forthcoming under the zoning issues discussed above (Option 1), the effect on the building's zoning is as follows:

- One elevator will have to reach the upper roof level
- That elevator will no longer stop at the sixth floor with its override area enclosed in the portion of the shaft above that but below the level of the main roof.
- This will add approximately 70 gross square feet to the building's gross square footage.
- The elevator core must extend beyond the height of the majority of the roof structure, all the rest of which is ten feet (10.0 ft.) above the roof's surface for an additional seven feet (7.0 ft.), creating walls of the roof structure that rise unequally in contravention of the requirements of §411.5. The overall height reached also requires a separate area variance, discussed under heading "D", below.
- In addition, the roof structure will, where this elevator core rises through the level of the main roof, not have any setback whatsoever from the edge of the building, this in contravention of the requirements of §770.6(b).

C. Relief from Elements of the Requirements for Roof Structures

The Board is authorized to consider relief from roof structure requirements as a special exception as provided in §411 through the further specification of §777.

The table below summarizes the relief sought if one elevator core must rise as described:

Roof Structure Requirement	Existing Conditions	Minimum Required	Maximum Allowed	Provided by Proposed Construction	Variance (Deviation / Percent)
Walls must be of equal height	n/a	n/a	n/a	10.0 ft height of main roof structure, with 17.0 ft. elevator override	7 ft. (70.0 %)
Walls must be setback at least as much as they are high	n/a	n/a	10.0 ft. (from the height of the main roof structure)	0.0 ft. in one location (all others being at least 10.0 feet)	10.0 ft. (100.0 %)

The table below sets forth the applicable standards for these special exceptions and establishes how and why the requirements are met:

GOVERNING SPECIFIC SPECIAL EXCEPTION STANDARDS	WALLS OF ROOF STRUCTURES MUST BE OF EQUAL HEIGHT	WALLS OF ROOF STRUCTURE MUST BE REMOVED 1:1 FROM ADJACENT BUILDING WALLS
Where impracticable 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 Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.	• To raise the overall roof structure of the height limit the elevator override requires creates a massive structure serving no purpose that would dominate the skyline • Additional height is restricted to the minimum area where it would be required but be constructed from the same materials and in the same manner and design as the main roof structure • Relief needed only if the roof deck area must be fully accessible to persons with mobility limitations and be counted within the area of residential recreation space supplied.	• Elevator core cannot be relocated within overall building • Area where the setback is reduced is in the northwest corner of the roof structure, where the proposed building's courtyard ends, a location at the greatest possible distance from either Fourteenth Street or Q Street. • Relief needed only if the roof deck area must be fully accessible to persons with mobility limitations and be counted within the area of residential recreation space supplied

D. Relief from the Height Limit for Roof Structures in Arts/C-3-A Districts

Section 1902.1(a) establishes the limit of 83' 6" for the uppermost point to which a roof structure may rise above the roof on which it sits in the Arts/C-3-A zones, effectively the plane of the typical limit of 18' 6" above the 65' height limit for buildings in C-3-A zones absent the overlay's bonus of 10 feet for the building itself.

The Applicant's plan proposes that the roof deck be accessed by the residents through a stairwell, an amenity but not an area that makes any allowable contribution to residential recreation space. Should the Board determine that the space this deck represents must be among the residential recreation space required, then it must be fully accessible and at least one elevator must reach the level of the roof. Providing this not only sets off the two roof structure issues discussed in section "C" but also pushes the height of this elevator's portion of the roof structure past the established height limit. In contrast to the relief sought as a special exception in section "C" of this justification, this specific height limit has been interpreted as a requirement requiring variance relief notwithstanding the seemingly broad language in section 1906 relating broadly to "the requirements of the Arts district..."

The following table sets out the relief needed in this instance:

Roof Structure Requirement	Existing Conditions	Minimum Required	Maximum Allowed	Provided by Proposed Construction	Variance (Deviation / Percent)
Must not exceed a point 83' 6" above the measurement point for height of building	n/a	n/a	83' 6"	With elevator's override, 16.0 ft. from level of roof (at 72.0 feet, the building of 71.0 feet plus 1.0 more to curb), a total of 88.0 feet	4.5 ft. (5.4 %)

The justification for this variance, if needed, follows:

Physical Characteristics of the Property

In addition to the characteristics identified in Section A" above, the building is designed to have its main cornice line be in close, but not exact, alignment with that of the Berret School, a contributing building facing the project on the south side of Q Street. Thus, compressing the height of all floors below the top of the elevator shaft simply to adhere to the zone's 83' 6" height limit for such roof structures would fundamentally compromise a key element of the approved conceptual design.

No Detriment to the Public Good:

The penetration of the upper limit is limited to a structure of under 100 square feet and its total volume of space is under 500 cubic feet. While the single higher element of this elevator shaft would be discernable from some vantage points, in the main it would not be seen or be a detriment to the community in which it would exist.

Not Inconsistent with the General Intent of the Zoning Regulations and Map:

The Zoning Regulations are designed to provide adequate light and air. This minor protrusion in terms of overall bulk is miniscule in the setting in which it would exist and is located at the point furthest possible from either street frontage. Its materials and design would blend with the balance of the building.

Conclusion

The Board should approve all of the requested variance in residential recreation space and the special exceptions relating to retail and service uses in the Arts overlay (Option 1). Additional relief should be allowed only if needed (Option 2).

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