BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Montrose, LLC
1819 Belmont Road, N.W., Washington, D.C.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

A. Introduction

Montrose, LLC (the "Applicant" or "Montrose") seeks special exception relief from the penthouse setback requirements of section 400.7(b) of the Zoning Regulations for the property located at Lot 45 in Square 2551 (the "Subject Property"). That section provides that "if housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, 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…."

By Building Permit No. B449218, the D.C. Department of Consumer and Regulatory Affairs authorized construction of additional floors and a penthouse to a rowhouse located on the Subject Property. In approving the permit, the Zoning Administrator determined that the penthouse did not need to be set back a distance equal to its height at the east and west walls because those walls were party walls. The Applicant proceeded with construction accordingly.

In BZA Appeal No. 17109, the Kalorama Citizens Association ("KCA") appealed the issuance of the building permit on the grounds that, among other things, the building did not meet the setback requirements of section 400.7(b). By oral vote taken June 22, 2004, the Board of Zoning Adjustment granted the appeal on this basis. On July 15, 2004, Montrose filed a Motion for Reconsideration of the Board's oral vote. The Board is expected to consider the motion at its August 3, 2004, meeting.

By filing this special exception application, Montrose reserves all rights to its Motion for Reconsideration and in no way concedes the legal conclusions reached by the Board in its June 22 vote.[1] Montrose seeks to protect all its rights and interests by pursuing every legal avenue available to resolve this matter as expeditiously as possible. Accordingly, Montrose respectfully requests the Board to schedule this special exception application for hearing at its earliest available date.

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[1] Montrose also reserves all rights to its arguments of laches and estoppel as set forth in BZA Appeal No. 17109.

BZA
Case No. 17221
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17221
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B. The Property

Located in the R-5-D District, the Subject Property is improved with a five-story condominium building that is nearing completion. The penthouse in question is already constructed pursuant to validly issued building permits. The height of the penthouse is 11 feet, $7^{1/2}$ inches, above the top of the roof. At the front and rear walls of the building, the penthouse is set back a distance greater than its height. However, along the west wall of the building the penthouse is set back approximately 6 feet. There is no set back along the east wall. Consequently, according to the Board's oral vote of June 22, 2004, the Applicant seeks special exception relief from the requirements of section 700.4(b), as permitted under section 411, to allow a penthouse that is set back less than 11 feet, $7^{1/2}$ inches.

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:

A. Section 411

Section 400.7 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 as follows:

(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) 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 less than 18 feet 6 inches in height and thus complies with §400.7(c). Because the penthouse structure does not set back from the east and west walls a sufficient distance, the Board has determined that it does not comply with the provisions of §400.7(b), and thus requires special exception approval by the Board pursuant to §411.11.

B. Section 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. Here, according to the Board's recent ruling, the penthouse must be set back 11'-7.5" from the east and west walls. Instead, the penthouse is set back only six feet along the west party wall and is not set back at all along the east party wall.

(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 approval received from the Zoning Administrator well over a year ago in Building Permit No. B449218 on March 11, 2003. The building lot is narrow for an apartment building, measuring only 16.67 feet wide. At 11.6 feet in height, the penthouse is well below the permitted maximum height of 18.5 feet. However, in order to comply with the setback provisions, the building would have to be well over 23 feet wide just to accommodate the setbacks. Additional width would be required to provide a penthouse structure of any size. Only if the height of the penthouse were substantially reduce could the Applicant meet the setback requirements. Such a reduction, however, would negatively impact the functionality of the structure and significantly compromise the layout of the various floors for multi-tenant use. As the Applicant will demonstrate at the hearing and through its prehearing submission, the reconfiguration of the penthouse height and size would be 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 Belmont Road, thus insuring no visual impact on the skyline of vistas of those streets as contemplated under the 1910 Height Act. Moreover, the light and air of adjacent buildings will not be unduly affected. Because the buildings to the east and west of the Subject property are row structures, they do not have any window in the side elevations. Thus, no light or air of the adjacent properties will be affected. For all these reasons, special exception approval from the Board is appropriate.

Property Owners within 200 Feet of Sq 2551 Lot 45
1819 Belmont Street, NW
Washington, D.C.

Square / Suffix / Lot	Premise Address	Owner Name and Mailing Address
2551 0003	1809 Belmont Rd NW	D G Walde c/o Borger Mgt Inc 1111 14th St NW Ste 200 Washington, DC 20005-5622
2551 0007	1831 Belmont Rd NW	Alejandro & Helga Orfila Borger Management 1111 14th St NW Ste 200 Washington, DC 20005-5622
2551 0033 2551 0034 2551 0035	2410 18th St NW 2408 18th St NW 2406 18th St NW	Arpad Sheldon Business One Inc 2401 Research Blvd Ste 115 Rockville, MD 20850-3215
2551 0043	1815 Belmont Rd NW	H B Grimes Po Box 37520 Louisville, KY 40233-7520
2551 0044	1817 Belmont Rd NW	Richard B Becker 1817 Belmont Rd NW Washington, DC 20009-5164
2551 0045	1819 Belmont Rd NW	Montrose LLC 2311 15th St NW Unit 1 Washington, DC 20009-4005
2551 0046	2440 18th St NW	Barbara Shapiro 4220 Olley Ln Fairfax, VA 22032-1819
2551 0056 2551 0084 2551 0820	2418 18th St NW 2420 - 2424 18th St NW 2414 - 2416 18th St NW	VAlira LLC 1201 Penn Ave NW Washington, DC 20004-2401
2551 0061	1852 Columbia Rd NW	Netherlands Owners Inc c/o Tilton Berstein 1827 14th St NW Washington, DC 20009-4425
2551 0062	2412 18th St NW	Pauline M Stuart Po Box 21114 Washington, DC 20009-0614