BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of JPI Apartment Development, L.P.
Pennsylvania and Potomac Avenues, SE

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

The Subject Property includes Lots 132, 133, 134, 135, 136, 137, 834, 835, 838, and 839 in Square 1045 and is occupied by four vacant buildings that were previously proposed to be used as foster homes by Girls and Boys Town and two two-story row houses. Square 1045 is bounded by Pennsylvania Avenue, SE on the north, Potomac Avenue, SE on the south, and 13th Street, SE on the west. The Subject Property occupies the southeast portion of Square 1045 – bounded on the west by a public alley – and is included in a C-2-B zone district.

The Applicant, JPI Apartment Development, L.P., proposes to redevelop the Subject Property with a five-story mixed-use residential project that will include a ground level 48,000 square foot grocery store, 256 multi-family residential units, and approximately 5,000 square feet of additional retail. The project will also include two levels of underground parking. In order to proceed with the development, the Applicant seeks approval by the Board of Zoning Adjustment (hereinafter "Board") of variance relief from lot occupancy requirements applicable to residential uses (§772) and residential recreation space requirements (§773).

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 variance relief. 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. Burden of Proof

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

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Exhibit No. 5

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(A) Exceptional Condition or Situation:

The Applicant will demonstrate that the Subject Property is irregularly shaped, a condition that creates severe restrictions on potential lot and building configurations. The proposed land uses also pose challenges to the development of the Subject Property. The proposed development includes a 48,000 square foot grocery store – a use highly desired by the surrounding community – on the ground floor, in addition to other retail uses. Due to the high demand for parking for the grocery store, retail, and residential uses, there is parking located at grade on the ground level in addition to the parking located in the underground garage. Substantial loading requirements consume additional space on the ground level of the proposed development. The redevelopment of this prominent site with a high quality mixed-use development is supported by the larger community and will significantly enhance the surrounding neighborhoods.

(B) Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

1. Section 772

The Applicant believes that variance relief for lot occupancy may not be needed as all residential dwelling units in the main portion of the building are located on the floors above ground level and those floors comply with the lot occupancy provisions. Residential uses on the ground level of the main portion of the building include residential recreation space and the residential lobby. The C-2-B zone district limits the building or portion of a building devoted to residential uses to a maximum lot occupancy of eighty percent. The portion of the ground floor of the building devoted to the row houses complies with the eighty percent lot occupancy limitation. While the lot coverage of the floors above ground level is only seventy-two percent due to the internal courtyard, the ground level has a total lot occupancy of ninety-six percent due largely to the 48,000 square foot grocery store and additional retail uses. For this reason, the Applicant requests variance relief from the lot occupancy requirements if the Board determines such relief is necessary.

2. Section 773

Strict adherence to the Zoning Regulations would require that fifteen percent of the gross floor area dedicated to residential use be provided as recreation space. As the proposed development includes 267,538 square feet of residential space, 40,131 square feet of recreation space would be required.

The Applicant proposes to provide 22,550 square feet of recreation space, seventy-nine percent of which is outdoors.

Due to the Subject Property's irregular shape, ground floor land uses and the need for each residential unit to have an external view, the outer ring of units will face the surrounding streets and alley while the internal ring of units will face a large center courtyard. Given this configuration, an unreasonable number of residential units would need to be sacrificed in order to locate additional residential recreation space on the floors with residential units.

(C) No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. With respect to the public good, the proposed development is supported and desired by the surrounding community. The redevelopment of the Subject Property with a vibrant, mixed-use project will serve to enhance the community while providing needed residential and retail uses.

The zone plan will not be compromised, as the development adheres to all other components of the Zoning Regulations including those that will foster compatibility with surrounding development.

1. Section 772

As noted above, the Applicant requests variance relief from the lot occupancy requirements only if deemed necessary by the Board. The lot occupancy of the floors that include new residential dwelling units is in compliance with the maximum permitted lot occupancy for the C-2-B zone district. The ground floor, which includes two existing row houses and in addition to the residential lobby and residential recreation space, has a lot occupancy of ninety-six percent. The lot occupancy of the proposed development can and should be viewed comprehensively given the significantly lower lot occupancy of the residential floors above ground level. Although the ground floor lot occupancy is sixteen percent above the maximum for residential uses in the C-2-B zone district, the upper levels are each eight percent less than the maximum. The overall lot occupancy of the proposed development therefore complies with the spirit and intent of the zoning regulations.

2. Section 773

The Applicant is providing 22,550 square feet of recreations space, seventy-nine percent of which is located outdoors. The proposed recreation space is both meaningful and accessible, including a ground level clubhouse, a large central courtyard, and a terrace on the fourth floor. There will also be a café on the ground floor of the proposed building that will serve as additional recreation space for building residents. Other recreational opportunities also exist in the vicinity, including the 1200 acre Anacostia Park, which includes Kenilworth Park and Aquatic Gardens and Kenilworth Marsh in addition to ballfields, picnic areas, basketball and tennis courts, the Langston Golf Course, marinas and the Anacostia Park Pavilion.