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May 3, 2005

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VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Suite 210
441 4th Street, N.W.
Washington, DC 20001

Re: Application No. 17322 for Special Exception and Variance Relief
2501 Pennsylvania Avenue, N.W. (Square 14, Lot 73)

Honorable Members of the Board:

On behalf of the applicant in the above-referenced case, enclosed please find an original and twenty copies of the applicant's prehearing submission in support of the application for special exception and variance relief. Thank you for your attention to this application.

Sincerely,

Christopher H. Collins

Enclosure

cc: John Mason (w/enclosure - via UPS)
Ed Gosselin (w/enclosure - via UPS)
Nick Giordano (w/enclosure - via UPS)
David Delcher (w/enclosure – via UPS)
Karen Thomas, Office of Planning (w/enclosure – via Hand Delivery)
Advisory Neighborhood Commission 2A (w/enclosure – via UPS)

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BZA
Case No. 17322
Exhibit No 37

Board of Zoning Adjustment
District of Columbia
CASE NO. 17322
EXHIBIT NO. 37A1

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF
INTREPID 2501 ACQUISITION LLC

BZA APPLICATION NO. 17322

HEARING DATE: MAY 17, 2005
ANC 2A

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STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of Intrepid 2501 Acquisition LLC, (the "Applicant"), the owner of property located at 2501 Pennsylvania Avenue, N.W., Lot 73 in Square 14 (the "Site") in support of the application to the Board of Zoning Adjustment (the "Board"), pursuant to 11 DCMR §3104.1, for a special exception under Section 2514.2 to allow the use, height and bulk regulations applicable to that portion of the lot to be located in a less restrictive use district to be extended up to 35 feet into that portion of the lot in a more restrictive use district, and a special exception from the roof structure set-back requirements of Section 411.11, and pursuant to 11 DCMR §3103.2, for a variance from the floor area ratio requirements under Section 771, a variance from the lot occupancy requirements under Section 772, a variance from the residential recreation space requirements under Section 773, a variance from the rear yard requirements under Section 774, and a variance from the court width requirements under Section 776. The relief is

requested in order to permit the construction of a mixed-use residential/retail building at the Site.

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance and special exception relief requested herein pursuant to Sections 3103 and 3104 of the Zoning Regulations. 11 DCMR §§ 3103 and 3104.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Exhibit A:	Portion of the Sanborn Atlas showing the Site;
Exhibit B:	Surveyor's Plat of the Site;
Exhibit C:	Portion of the Zoning Map showing the Site;
Exhibit D:	Previous Board Decisions in Application No. 15461;
Exhibit E:	Historic Preservation Review Board Staff Reports and Recommendations, October 28, 2004, December 16, 2004 and February 24, 2005;
Exhibit F:	Architectural Plans and Drawings;
Exhibit G:	Architectural Exhibits
Exhibit H:	Advisory Neighborhood Commission 2A Letter In Support of Project;
Exhibit I:	Letter from Councilmember Jack Evans;
Exhibit J:	Outline of Testimony of John Mason, Developer;
Exhibit K:	Outline of Testimony of Domenic Giordano, Architect; and
Exhibit L:	Revised page 2 of Self-Certification Form.

IV.
BACKGROUND

A. Description of the Site and Surrounding Area

The Site is located at the northwest corner of Pennsylvania Avenue and 25th Street, N.W. See Sanborn Atlas Plat, attached hereto as Exhibit A, and Surveyor's Plat, attached hereto as Exhibit B. The small, irregularly-shaped, split-zoned, historic landmark corner site has a land area of 10,187 square feet. More than 92% of the property is zoned C-2-C (90 foot maximum height; 6.0 maximum FAR), with the northern-most 20 feet of the property (784.4 square feet) zoned R-5-B. *See* Zoning Map, attached hereto as Exhibit C. All properties along both sides of Pennsylvania Avenue from Washington Circle on the east, to Rock Creek Park on the west, are in zones which permit 90 feet in height and 6.0 FAR. To the north of the Site, along the west side of 25th Street, extending to M Street, is the R-5-B zone, in which is located a series of five-story rowhouse-type condominium apartments. This R-5-B zone is surrounded on all sides by 90 foot, 6.0 FAR zones, which also extend from north of M Street to south of K Street.

The Site is currently occupied by a five-story building, known as the Luzon Building, which is an individually-designated historic landmark. By Order dated September 1, 1999, the Mayor's Agent for Historic Preservation approved the partial demolition of the north and west walls and interior structural elements of the building, with the retention of the south and east walls, facing Pennsylvania Avenue and 25th Street, N.W.

B. Previous Board Action at the Site

The proposed development of the Site first came before the Board in Application No. 15461 filed by Chatham Lake Associates in 1991. The project included the incorporation of the existing five-story Luzon Building (which was declared a historic landmark in 1990), with construction of a seven-story addition on the vacant portion of the Site. The proposed building height was 77 feet, 9-3/4 inches, with a 14 foot tall penthouse. The plan included a total of 60,710 sq. ft. of gross floor area (5.96 FAR), of which approximately half was residential, and the other half was office and ground floor retail. The office and residential uses were separated vertically on the upper floors of the building.

The Historic Preservation Review Board (HPRB) approved the project in concept in April of 1991. The project required the following zoning relief:

- Special exception under Section 2514.2 to extend the use, height and bulk regulations of the C-2-C zone into the R-5-B zone.
- Special exception under Section 411.11 for roof structure setback.
- Variance from the percentage of lot occupancy requirements (Section 772).
- Variance from the FAR limitation (Section 771).
- Variance from the rear yard requirements (Section 774).
- Variance from the residential recreation space requirements (Section 773).

Based upon the evidence and testimony, the Board voted 5-0 on September 4, 1991 to approve the plan, as amended, and to grant the requested special exception and variance relief, with conditions. *See* Order No. 15461, dated August 13, 1993 (Exhibit D-1), at pages 1-17, 22-25.

Subsequent to the Board's 1991 unanimous approval, litigation was instituted challenging a number of aspects of the approved project. In an effort to settle that litigation, Chatham Lake returned to the HPRB and the Board with revised plans for a six-story building. The height of the building was reduced to 70 feet, the roof structure height was reduced to 8 feet, and the FAR was reduced to 5.26, 4.07 of which was for commercial use. The plan revision resulted in residential use only on the top floor and on portions of three floors, accessed from 25th Street. The revision eliminated the need for the variances for residential recreation space and FAR, as well as the roof structure setback special exception. The HPRB approved the revised plans in concept in July of 1993. On June 9, 1993, by a vote of 3-0, the Board approved the revised application. *See* Order No. 15461, dated August 13, 1993 (Exhibit D-1), at pages 17-21 and 26-29.

By Order dated March 7, 1994, the Board approved a request by Chatham Lake for a modification of plans to make the approved plans consistent with the Board's condition in the earlier Order regarding windows and balconies. *See* Order No.15461, dated March 7, 1994 (Exhibit D-2).

Chatham Lake sold the property to Castleton Holdings in 1996. Castleton revised the plans and resubmitted them to the Board. By Order dated February 3,

1997, the Board approved a modification of the interior plans for a further revision to the mix of uses, to allow the entire sixth floor of the building to be converted from residential to commercial, and to convert the portion of the third floor that is located within the R-5-B portion of the site, from commercial to residential. The net result was a conversion of an additional 3,862 square feet of the building from residential to commercial. The total FAR remained the same, but the commercial FAR increased to 4.71 and the residential FAR decreased to 0.55. The Board also noted in that Order that the plans included removal of the west and north walls of the existing building, and noted that this is not a zoning issue. The Board voted 3-0 on November 6, 1996 to approve the modification. *See* Order No. 15461, dated February 3, 1997 (Exhibit D-3).

By Order dated March 31, 1998, the Board approved a further modification request by Castleton, to reinstate windows on the western wall of the building and to eliminate an interior wall in the ground floor retail space. As part of that modification request, the Board also considered a Motion for Reconsideration of its earlier modification request. On September 3 and October 1, 1997, the Board denied the Motion for Reconsideration by a vote of 3-0, and approved the modification of plans by a vote of 3-1. *See* Order No. 15461, dated March 31, 1998. (Exhibit D-4).

In June of 1998, Castleton sold the property to Capital City Suites, Inc. In August of that year, Capital City requested a modification of plans to convert the previously-approved project from a predominantly commercial office building, with

ground floor retail and approximately 5,600 square feet of residential use, to a residential timeshare condominium with ground floor retail and 68 to 72 residential units. In order to accommodate the required light and ventilation on each floor, an open court was included in the rear northwest corner of the building, thereby reducing the FAR of the building from 5.26 to 5.16. The height of the building, and the height of the roof structure, were unchanged. On September 6, 1998, by a vote of 3-0, the Board approved the modification. *See* Order No. 15461, dated December 4, 1998 (Exhibit D-5).

C. Current Project Description

The current owner, Intrepid 2501 Acquisition LLC, has taken a fresh approach to the development of the Site. The proposal includes ground floor retail, with 16 large condominium apartment units, and two efficiency units accessed from 25th Street.

The HPRB has reviewed the design of the Project three times, and approved the current version of the Project in February of this year. See HPRB Staff Reports and Recommendations, October 28, 2004; December 16, 2004; and February 24, 2005, attached hereto as Exhibit E. Specifically, the HPRB mandated that the mass of the new construction above the level of the Luzon Building be pushed as far to the north as possible, and also required that the new construction not encroach on the "footprint" of the Luzon Building, and remain as low as possible. As a result, the design constraints imposed by the HPRB have presented numerous challenges, and have resulted in the need for a number of areas of zoning relief.

The plan ultimately approved by the HPRB includes a seven-story residential building (with ground floor retail/service use), with setbacks from the footprint of the existing five-story Luzon Building at the sixth and seventh floor levels, as well as a partial eighth floor at the roof structure level, at the northernmost portion of the site. *See* Architectural Plans and Drawings, attached hereto as Exhibit F. The partial eighth floor has no elevator access, and contains the bedrooms of the unit on the 7th floor below. The top floors on both the Pennsylvania Avenue and 25th Street sides of the project are set back four to six feet from the edge of the floor below.

The Project will be constructed to a maximum height of 90 feet to the roof of the partial eighth story (80 feet to the top of the seventh floor roof), and 5.99 FAR (61,066 square feet of gfa), of which 0.48 FAR (4,913 square feet of gfa) will be devoted to retail use. An eight-foot tall roof structure, measuring 1,522 square feet of gfa (0.15 FAR) will be located on the seventh floor roof, adjacent to and lower than the partial eighth story. There will be two levels of below-grade parking, with 26 parking spaces. The roof of the roof structure will be 88 feet above the measuring point. The roof of the partial eighth floor will be 90 feet above the measuring point, with no roof structure above that roof level. There will be 16 residential units in the upper floors of the building, and two efficiencies accessible from 25th Street

V.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

Relief granted through a special exception is presumed appropriate, reasonable and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (*quoting Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

A. Section 2514.2 - Boundary Line Crossing A Lot

Section 2514.2 of the Zoning Regulations permits the regulations applicable to that portion of a lot located in a lesser restrictive use zone district (C-2-C) that control the use, height, and bulk of structures and the use of land, to be extended to that portion of the lot in the more restrictive use zone district (R-5-B), by special exception. The requirements of Section 2514.2 are as follows:

1. The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding 35 feet. In this instance, the extension into the R-5-B zone is only 20 feet, and only includes the height and bulk regulations. The use regulations are not necessary to be extended into the R-5-B zone.

2. In authorizing an extension, the Board shall require compliance with Section 2514.1(d). That provision assigns FAR limitations for the R-1 through R-4 zone districts, and therefore does not apply to the instant case.

3. The extension shall have no adverse effect upon the present character and future development of the neighborhood. As shown on Sheets 1.1 and 1.2 of Exhibit G, less than 8% of the Site is located in the R-5-B zone, and the encroachment into the R-5-B zone is very small. The R-5-B portion of the Site is adjacent to a five-story condominium apartment building along 25th Street. All of the apartment buildings in the R-5–B zone along the west side of 25th Street exceed the permitted 1.8 FAR in the R-5-B zone.

The R-5-B zone is only located on the west side of the 1100 block of 25th Street in the vicinity of the Site. The east side of 25th Street, between K Street on the south, and M Street on the north, is zoned C-2-C. The R-5-B zone along 25th Street is surrounded on all sides by zoning districts that allow 6.0 FAR and 90 feet in height. The R-5-B portion of the Site will be devoted solely to residential use, with no commercial use, consistent with the R-5-B Zoning Regulations.

The extension of the C-2-C height and bulk is into a 20-foot section of the vacant portion of the Site, and the building will abut the side wall of the adjacent five-story condominium apartment building to the north. From an urban design and land planning standpoint, there will be no substantial difference in the present character and future development of the neighborhood if the dividing line between the R-5-B and C-2-C zones is located either at the property line, or 20 feet south of

the property line. *See* Exhibit G, Sheets 1.1 and 1.2. The 20-foot extension of the height and bulk regulations will have no adverse effect upon the present character and future development of the neighborhood.

4. The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property. The portion of the building in the northernmost portion of the site is specifically designed to be compatible with its neighbors to the north. At the street level, the northern-most portion of the 25th Street portion of the property will contain two apartment units with access at the street level, with front gardens similar in nature to the neighbors to the north. The upper floors of the building will also contain residential use, and are designed to be compatible with the character, rhythm and scale of the adjacent five-story structures to the north. The 25th Street facade of the new construction provides a substantial cornice and termination of the bays at the top of the sixth floor level, (approximately 68 feet in height), with simpler detailing and a substantial setback from the street at the top of the seventh floor level (approximately 80 feet in height), to minimize the apparent height of the building. The footprint of the subject building is only 40 feet deep at that point (as measured from 25th Street), which is far less than the depth of the adjacent buildings to the north. There are no windows on the northern-most wall of the subject building facing northward toward the R-5-B zone. As such, no additional requirements are necessary to be imposed by the Board.

The Board has previously granted this special exception relief in Application No. 15461.

B. Section 411.11 - Roof Structure Setback

Under Section 411.11, the Board may grant special exception relief from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" that would make full compliance "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11. The Board may approve deviations from the roof structure requirements provided the intent and purpose of the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id.*

The Applicant requests relief from the requirement that the roof structure be set back from the building's exterior walls a distance at least equal to its height above the roof on which it is located. The roof structure is set back from the north and west walls of the seventh floor one foot, and two feet from the east wall, rather than eight feet as required. *See* Exhibit G, Sheet 2.1. Because of the size of the building lot, the existence of the historic landmark building on the property, and the resulting design configuration mandated by the HPRB, full compliance with the roof structure setback requirement would be unduly restrictive, prohibitively costly and unreasonable.

Specifically, the HPRB has required that the roof structure be as low and small as possible, and to be moved as far north and west as possible on the building. In addition, the sixth, seventh and eighth floors are required to be set back from 25th Street in a manner which replicates the footprint of the existing landmark building. As a result, as shown on the Roof Plan attached hereto as Sheet 2.1 of Exhibit G, there is very little flexibility in locating the rooftop machinery. The seventh floor roof, on which the roof structure sits, is very narrow at this point. The roof structure, which measures only 1,522 square feet in size, is consequently within the roof structure setback area from the north, east and west walls of the seventh floor of the building, although it far exceeds the setback requirement from the south. The elevator core and the fire stair to the eighth floor are both within the setback area and cannot be relocated.

To the extent that the north, east and west walls of the seventh floor are considered "exterior walls" under a recent ruling from this Board, then the Applicant respectfully requests special exception relief to allow a roof structure which does not meet the setback requirement of Section 770.6(b) of the Zoning Regulations. The roof structure is only 8 feet in height above the level of the roof, and is designed to be as small as possible. The roof of the roof structure is 88 feet above the measuring point, and is lower than the roof of the abutting partial eighth floor. There is substantial machinery which will be taller than 4 feet above the height of the seventh floor parapet, and which therefore must be enclosed within the roof structure.

Placement of the roof structure as proposed will not materially impair the intent and purpose of the Zoning Regulations, nor will it adversely affect the light and air of adjacent buildings. Although not meeting the setback requirements from the exterior walls of the seventh floor roof, the roof structure is far removed from the lot lines to the north, south and east, and is lower than the matter-of-right height of a building in this zone. The size of the roof structure (0.15 FAR) is less than half of the permitted size of a roof structure in the zoning regulations (0.37 FAR). Moreover, as demonstrated on the Sight Line drawings attached hereto as Sheets 2.2 and 2.3 of Exhibit G, the roof structure cannot be seen from the sidewalk. The Board previously granted roof structure setback relief in Order No. 15461.

In sum, the granting of these two special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to adversely affect the use of neighboring property.

VI.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. Standards for Granting Area Variances

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

(a) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;

(b) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and

(c) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Board of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also*, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The D.C. Court of Appeals has held that the existence of an historic landmark on a site, and the special considerations for the addition imposed thereby, constitute an exceptional situation or condition warranting relief. *United Unions v. D.C. BZA*, 554 A.2d 313 (D.C. 1989). The Court has also determined that, to satisfy the practical difficulty element of the area variance test, an applicant must demonstrate that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property". *Gilmartin v. District of Columbia Board of Zoning Adjustment,* 579 A.2d at 1170 (D.C. 1990). In that case, the Court noted that "the severity of the variance(s) requested;" "the weight of the burden of strict compliance;" "the effect the proposed variance(s) would have on the overall zone plan;" and the "increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.* at 1171.

As discussed below, and as will be further explained at the public hearing, all three prongs of the area variance test are met in this Application.

B. Exceptional Situation or Condition

The Site is affected by a number of exceptional situations or conditions. The relatively small and irregularly-shaped, split-zoned corner site is occupied by an individually-designated historic landmark with a unique design and configuration. In order to respect the historic landmark facades that will be retained, and consistent with HPRB's approval as shown in the building plans, the Applicant is retaining and restoring the existing south and east facades of the five-story building, is keeping the majority of the building design lower than the matter-of-right height, and is providing significant setbacks at the sixth, seventh and partial eighth floors of the residential building, to make the project appear as three separate structures.

The regularly-shaped "rectangular" façade, on an irregularly-shaped angular corner lot, coupled with the HPRB's requirements that the two street walls be retained, that the new building not encroach on the "footprint" of the existing landmark building, that it be as low as possible, and that it appear as two separate and distinct buildings from the landmark building, create inefficiencies in the layout of the structure and the new construction on the Site. A typical residential building on a regularly shaped site has a core factor of approximately 12-14%. The core factor in this project is 19%, which is approximately 27-37% more than the standard.

Because of the location of the existing facades to remain, approximately five percent (5%) of the Site, at the southeast corner, is unusable. In addition, the

existence of the facades to be retained, the particular design of the landmark building, and the extensive involvement by the HPRB and its staff to produce a design for new construction which is acceptable for historic preservation purposes, all create design constraints which limit any new development of the Site in terms of architecture, site planning, and mass and bulk placement of the building.

The presence of rock conditions close to the surface, compounded by the need to preserve the facades of the historic landmark, creates a further exceptional condition. Soil borings indicate the presence of rock near the surface of the Site, which will require some blasting. This in turn will require additional stabilization of the historic facades. Excavation deeper than the second level below grade, in order to provide additional usable space within the building, would threaten the integrity of the building facades to be retained and may also affect the abutting buildings.

The retention of the five-story building facades during demolition and construction will require exceptional additional costs when compared to construction of a new building on vacant land. The 5-story historic landmark structure to the west of the Site, and the 5-story condominium apartment building to the north of the Site, must be stabilized as well.

The Board has previously determined in Application No. 15461 that the Site is affected by an exceptional situation or condition.

C. Practical Difficulty

1. Rear Yard

The strict application of the rear yard regulations will result in a practical difficulty. The location of the point of measurement for building height is 25th Street, and therefore 25th Street is considered as the "front" for purposes of determining the location of the rear yard. Thus the rear yard is located in the C-2-C District along the west lot line, and a 15 foot rear yard is required. However, no rear yard is provided in this proposal.

The strict application of the Zoning Regulations would require a 15-foot wide gap along the street frontage on Pennsylvania Avenue, running for the full 100 foot depth of the lot, adjacent to the blank five story wall of the building to the west. The provision of the rear yard would result in a practical difficulty since the Applicant, consistent with community wishes and sound urban design principles, has designed the project to provide a continuous urban streetscape along Pennsylvania Avenue and to promote a continuous presence along that portion of the avenue. Moreover, the continuous streetscape along Pennsylvania Avenue helps to enhance street life and vitality, maximize safety, as well as respect the Luzon's façade. The provision of an unutilized, open gap would leave a broken span between the project and the adjacent lot to the west, which is inconsistent with sound urban design principles and be contrary to the project's goals.

The height of substantially all of the building (77.4%) (all of the Site except for eighth floor residential footprint) is less than that permitted as a matter-

of-right in the C-2-C zone, and there is a substantial setback of the building from the historic landmark portion of the project at the sixth through eighth floors. In addition, due to the configuration of the historic facades in relation to the property line at the corner of Pennsylvania and 25th, there is a substantial amount of open area in front of the building. Thus, the building bulk that would normally be placed in the front, on the sixth, seventh and eighth floors, and on top of the existing building, has instead been shifted to the rear yard, thus creating a "front yard" in lieu of a rear yard. Moreover, as shown on Sheets 3.1 through 3.4 of Exhibit G, the provision of the rear yard setback along Pennsylvania Avenue would result in the loss of 8,330 square feet of residential area in the building, reducing the residential FAR of the project to 4.69. These figures are below the level of economic viability of the project.

The Board has previously determined in Application No. 15461 that the strict application of the rear yard regulations would result in a practical difficulty.

2. Lot Occupancy

The strict application of the lot occupancy regulations will result in a practical difficulty. The permitted lot occupancy for a building in the C-2-C zone which includes residential use is eighty percent (80%). The permitted lot occupancy for the R-5-B District is 60%. The combined lot occupancy limitation for this Site, given the 60% limitation in the small R-5-B portion, and the 80% limit for the C-2-C portion, is 78.4%.

The regulations governing lot occupancy presume a regularly shaped building on a regularly shaped lot, with a similar footprint from the ground up. The proposed project has a 95% lot occupancy at the ground floor level and 89.7% on the second through fifth floor levels. The lot occupancy of the residential uses on the sixth through eighth floors is 63.6%, 59.8% and 22.6% respectively. *See* Exhibit G, Sheets 4.1 through 4.4. Because of the historic preservation constraints of the property, which cause the building design to be reduced in height, with setbacks at the upper levels, the volume of the building that would otherwise be placed on the top of the building is spread out over the Site, thereby increasing the lot occupancy. The current plan includes lot occupancies of between 22.6% and 63.6% of the lot area on the three floor levels above the landmark facades, and a height which is at least one floor less than matter-of-right for the vast majority of the Site. *See* Exhibit G, Sheets 4.1 through 4.4. The average lot occupancy for all eight floors in the project is 75%, as compared to the 80% allowed for mixed-use projects in the C-2-C District, and the overall combined lot occupancy limitation for the Site of 78.4%.

There is no practical way to develop the Site in accordance with the lot occupancy requirements, while providing proper setbacks to the landmark and ensuring an occupiable building. If the project was required to meet the 80% lot occupancy limitation on the ground floor, with setbacks according to the preservation requirements of the HPRB, this would require elimination of 1,528 sq. ft. on the ground floor, with corresponding reductions on all of the upper floors,

resulting in a theoretical overall combined lot occupancy of the project of 59.9%. This would make the project infeasible, and would result in a practical difficulty.

The Board has previously concluded in Application No. 15461 that compliance with the lot occupancy limitation would result in a practical difficulty.

3. Residential Recreation Space

The strict application of the recreation space regulations will result in a practical difficulty. The Zoning Regulations require that residential recreation space be provided that is equal to 15% of the residential gross floor area of the portion of the project that is located within the C-2-C District, or 7,528.1 square feet. Due to the many physical and design constraints of the Site, the project does not provide any on-site qualifying residential recreation space on the residential levels, or in the garage levels, or on the roof. Because of the configuration of the existing landmark facades, the small size of the Site, and the need to accommodate parking, loading, retail and core on the ground floor level, there is only 100 square feet of qualifying residential recreation space in the lobby. Because of the presence of rock below the second garage level, and the inherent difficulties with blasting on the Site of the retained historic facades, it is not practical to excavate lower to achieve recreation space in the parking garage levels. Moreover, due to the mandate that the roof structure height be no greater than 8 feet, there is no elevator access to the seventh floor roof, nor is there elevator or stair access to the eighth floor roof. Because of the extremely small size of the roof structure, the

seventh and eighth floor roofs will be occupied by individual HVAC units of less than four feet in height above the parapet.

The building plan does include a total of 2,679 square feet of outdoor balcony and terrace areas that are accessible by some, but not all, of the units, and thereby do not count in residential recreation space. In addition, there is approximately 1,450 square feet of garden area in the public space, between the sidewalk and the building face along 25th Street, that is available for passive recreation by the residents. *See* Exhibit G, Sheets 5.2 and 5.3. Because this space is technically not on the lot, it also does not count in the residential recreation space calculation. If the building lobby, the terraces, balconies and public space were included in that calculation, the total amount of available residential recreation space would be 8.4%.

The Board has previously concluded in Application No. 15461 that the strict compliance with the residential recreation space requirement would impose a practical difficulty.

4. Floor Area Ratio

The maximum permitted FAR in the C-2-C is 6.0, and 1.8 in the R-5-B zone. As further set forth above, the Applicant is also seeking special exception approval to extend the height and bulk regulations of the C-2-C zone 20 feet into the R-5-B zone, which would allow the maximum permitted 6.0 FAR and maximum permitted 90 feet in height to be applied across the entire site.

The overall FAR of the building will be 5.99, which is within the maximum permitted FAR in the C-2-C zone. During the historic preservation review process, the HPRB required the Applicant to shift the bulk of the upper floors of the building away from Pennsylvania Avenue. As a result, the bulk has been shifted to the northern-most portion of the property. Consequently, the FAR of the portion of the building that is located on the R-5-B portion of the property is 7.6. FAR is not normally calculated in this way, on only a portion of a development site, but rather is calculated across an entire site. However, to the extent that the Board believes that an FAR variance is necessary, the Applicant respectfully requests a variance to allow the density of the R-5-B portion of the building on the R-5-B portion of the lot to be greater than the 6.0 FAR permitted as a matter-of-right in the C-2-C zone. *See*, Exhibit G, Sheet 6.1

The strict application of the FAR regulations in this manner will result in a practical difficulty. The building design and configuration are the result of an extended period of discussion and negotiation with the HPRB staff, and three hearings before the HPRB. The building design that is before the Board is the result of a collaborative effort of the project architects, the HPRB staff, and two architect members of the HPRB. Both the HPRB members and the staff required that the bulk of the upper floors be moved northward, away from Pennsylvania Avenue, and off of the "footprint" of the Luzon Building. As a result, the building is lower along the Pennsylvania Avenue frontage, and higher at the northern-most portion of the Site.

If the northern-most 20 feet was limited to 6.0 FAR, this would result in the need to relocate 1,255 square feet of gross floor area of that portion of the building south into the C-2-C zone. As a practical matter, this space (which is the upper level of the seventh floor unit in the northernmost portion of the building, and which contains the bedrooms for that unit) cannot be moved southward because of the location of the roof structure, which is dictated by the location of the building core. Assuming that the roof structure could theoretically be relocated southward on the seventh floor roof, this would directly contravene the HPRB approval, which required that the building elements of the upper floors be extensively set back from the Pennsylvania Avenue façade.

If this building mass could not be relocated southward, then the only other option would be to eliminate 1,255 square feet of gross floor area from the partial eighth floor. However, as a practical matter, it would result in the elimination of the entire eighth floor, because it would not be economically feasible to build an eighth floor consisting of only one bathroom and one bedroom. The result of this is that the currently designed two-story 5,000 square foot unit would become instead a small one bedroom unit on the seventh floor, which would make the project economically infeasible and impractical.

5. Court Width

The strict application of the court width regulations will result in a practical difficulty. Although not required for zoning purposes, there is an open court at the northwest corner of the building. The court width measures 18 feet.

The required width of the court, based upon the court height, is 24' 3". In order to comply with the court width regulations, the court would need to be set back an additional 6' 3" feet at the seventh and eighth floor levels. The court width has been increased as much as possible to meet the spirit of the regulations, while at the same time providing a reasonable interior configuration for the units on the seventh and partial eighth floors. Strict compliance with the court setback requirement, while it would cause the elimination of 250 square feet of the building, would result in a significant number of design changes to the seventh and eighth floors that would result in practical difficulties. For example, as shown on the Courtyard drawings attached hereto as Sheets 7.1 and 7.2 of Exhibit G, the stairs connecting the two floors of this unit would need to be moved eastward or relocated to another portion of this unit. This would cause a shift in the location of the fire stairs throughout the building, and would as a practical matter cause a redesign of this unit, resulting in the loss of significant usable space, and likely the loss of one room on each of the two floor levels. Due to the configuration of the project and the HPRB mandates, this space cannot be relocated elsewhere in the building. This would result in a practical difficulty.

D. No Substantial Detriment to the Public Good

1. Rear Yard

There will be no substantial detriment to the public good if this building is constructed without a rear yard. This corner lot actually has no "rear." The C-2-C District makes no provision for alternatives to providing a rear yard for

corner lots, such as the Site. In the C-3-B District, which allows a lower maximum FAR and height, and has a more stringent rear yard requirement than the C-2-C District, a court in lieu of rear yard is allowed. The proposed project configuration, with setbacks above the footprint of the historic structure, and an open court at the northwest corner, provides court areas which would far exceed the volume of a court in lieu of rear yard in the C-3-B zone regulations.

As demonstrated in the drawings, sufficient light and ventilation to the units within the subject building can be achieved without the provision of a rear yard. Moreover, the absence of a rear yard does not adversely affect the privacy of either of the adjacent buildings. The proposed building will abut the side lot lines and the party walls of both buildings.

The proposed project, without a rear yard, will continue the streetscape rhythm along Pennsylvania Avenue, and will be consistent with sound urban planning principles. Provision of the rear yard along Pennsylvania Avenue would interrupt the continuity of the streetscape, would eliminate the retail space on the west side of the building, and would eliminate the building manager's office and the loading area on the ground floor. It would also result in a loss of 8,330 square feet of residential space in the building. The provision of an unutilized, open gap between the project and the blank wall of the adjacent five-story structure to the west would not provide any benefit to either the subject building, or to the adjacent building to the west, which includes a party wall at the common lot line.

The Board has previously granted rear yard variance relief in Application No. 15461.

2. Lot Occupancy

There will be no substantial detriment to the public good if this building does not meet the strict requirements of the lot occupancy regulations. The Zoning Regulations permit 100% lot occupancy for commercial buildings, or portions of buildings, in the C-2-C zone. The 80% lot occupancy limitation applies when there are residential uses in the building. The average maximum permitted lot occupancy for the project, measured on each level, including both the R-5-B and C-2-C portions of the property, is 78.4%. The average lot occupancy of floors one through eight of the subject building, measured on each level, is 75%. Therefore, the building will meet the spirit, if not the letter, of the regulations. Further, the proposed building abuts only the side lot lines of the adjacent properties, which are both built to the property line without side yards, and the proposed lot occupancy would not adversely affect these properties.

The Board has previously granted lot occupancy variance relief in Application No. 15461.

3. Residential Recreation Space

There will be no substantial detriment to the public good from the inclusion of only 100 square feet of qualifying on-site residential recreation space in the residential lobby. The plans indicate 1,450 square feet of outdoor space, adjacent to the building on 25th Street, plus 2,679 square feet of private balconies

for the individual units in the building. In addition, each of the units on floors two through eight provides ample space for individual interior passive recreation by the residents of those units. Further, as shown on the Recreation Map attached hereto as Sheet 5.1 of Exhibit G, the Site is surrounded by a number of active and passive recreation opportunities. For example, Rock Creek Park is one block to the west, and the C & O Canal is a few short blocks away, providing almost limitless outdoor active and passive recreational opportunities. Other active and passive recreational opportunities are also in close proximity. The Rose Park Recreation Center is located at 26th and O Streets, N.W., and the Francis tennis courts and swimming pool are located at 24th and N Streets, N.W. and 2500 N Street, N.W. respectively. The Health Club at The Fairmont, which is located at 2401 M Street, N.W., and The Sports Club/LA, which is located in the Ritz Carlton at the intersection of 22nd and M Streets, N.W., both are full-service health clubs which are available to the general public. The West End Neighborhood Library is located at 24th and L Streets, N.W.

4. Floor Area Ratio

To the extent that the Board determines that it should be calculated in such a manner, there will be no substantial detriment to the public good from the shifting of FAR greater than 6.0 into the 20 foot portion of the R-5-B district on the subject Site. The building as a whole will be within the maximum permitted C-2-C height and FAR limits. The additional density, above 6.0, in the R-5-B portion of the building on the R-5-B portion of the site, will not be perceptible to the abutting

property to the north nor to the surrounding area. Moreover, this will not result in a project which exceeds the overall FAR limitation for the Site, utilizing the requested special exception relief outlined above. Rather, it is simply being used to accommodate a building design which has been dictated by the requirements of historic preservation.

5. Court Width

There will be no substantial detriment to the public good by approving the project with the court width as shown. The court as shown abuts a public alley to the north and an open area on the adjacent property to the west, behind the neighboring historic landmark building. Moreover, the deficiency of only 6' 3" in the court width involves only the top two floors of the building. The court at this level is above the heights of the abutting buildings to the north and west. This will provide ample open space, above the abutting buildings, to satisfy the purpose of the requirements that are otherwise imposed in the court width requirements.

VII.
COMMUNITY SUPPORT

The Applicant has worked with the community and obtained extensive support for the Project. The Applicant met with Advisory Neighborhood Commission ("ANC") 2A, the ANC in which the Project is located, on four occasions to present its project. ANC2A voted unanimously to "specifically and overwhelmingly" support the application at its meeting of April 20, 2005. *See* Exhibit H. Ward 2 Councilmember Jack Evans, the Foggy Bottom Association and

a number of property owners near the project have also submitted letters in support of the Project. *See* Exhibit I.

VIII.
WITNESSES

A. John Mason, Intrepid 2501 Acquisition LLC.

B. Domenic Giordano, BBGM Architects.

IX.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for special exception and area variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests that the Board grant the application.

Respectfully submitted,

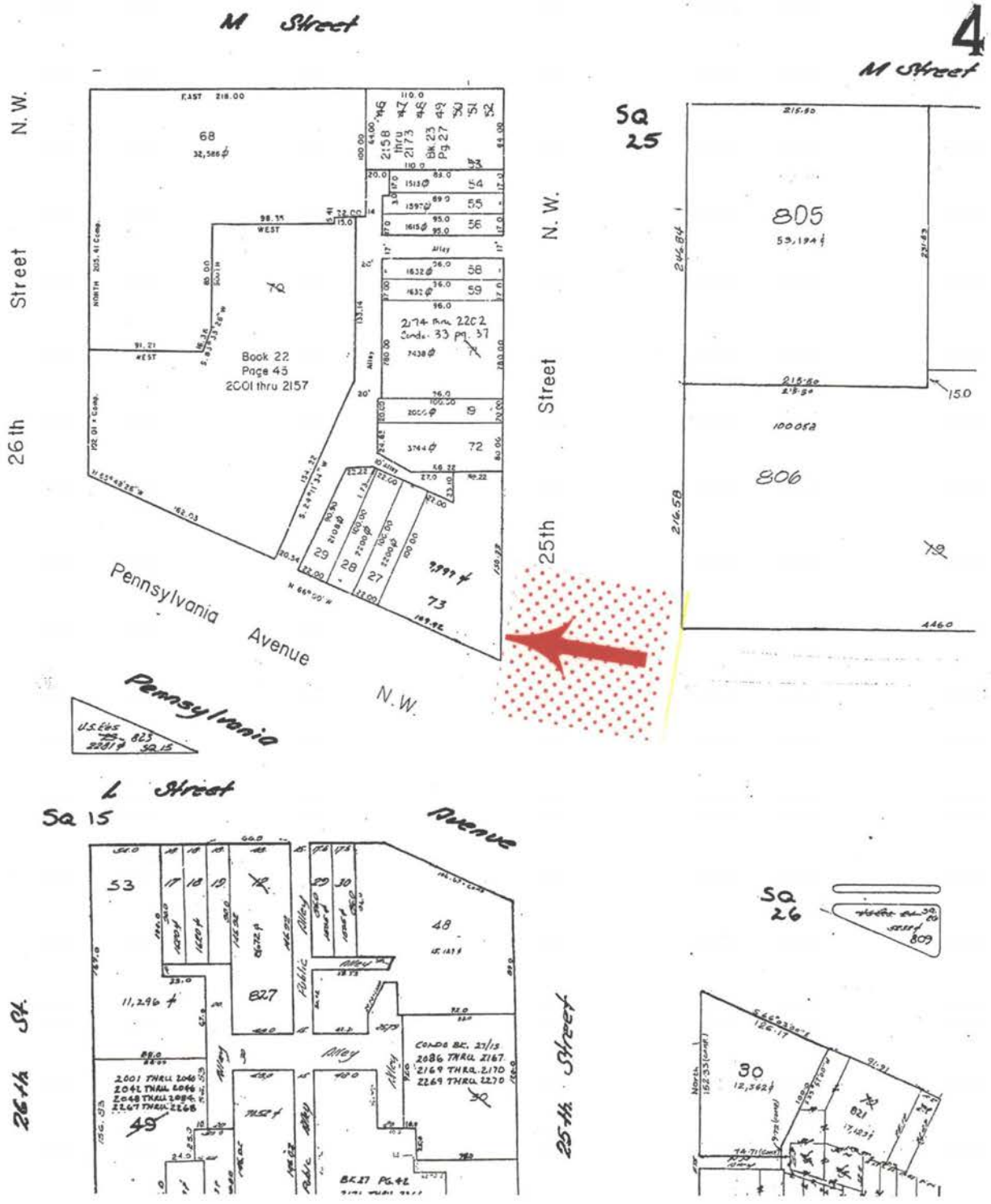
HOLLAND & KNIGHT, LLP

By: _____
Christopher H. Collins, Esq.

By: _____
Kyrus L. Freeman, Esq.
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

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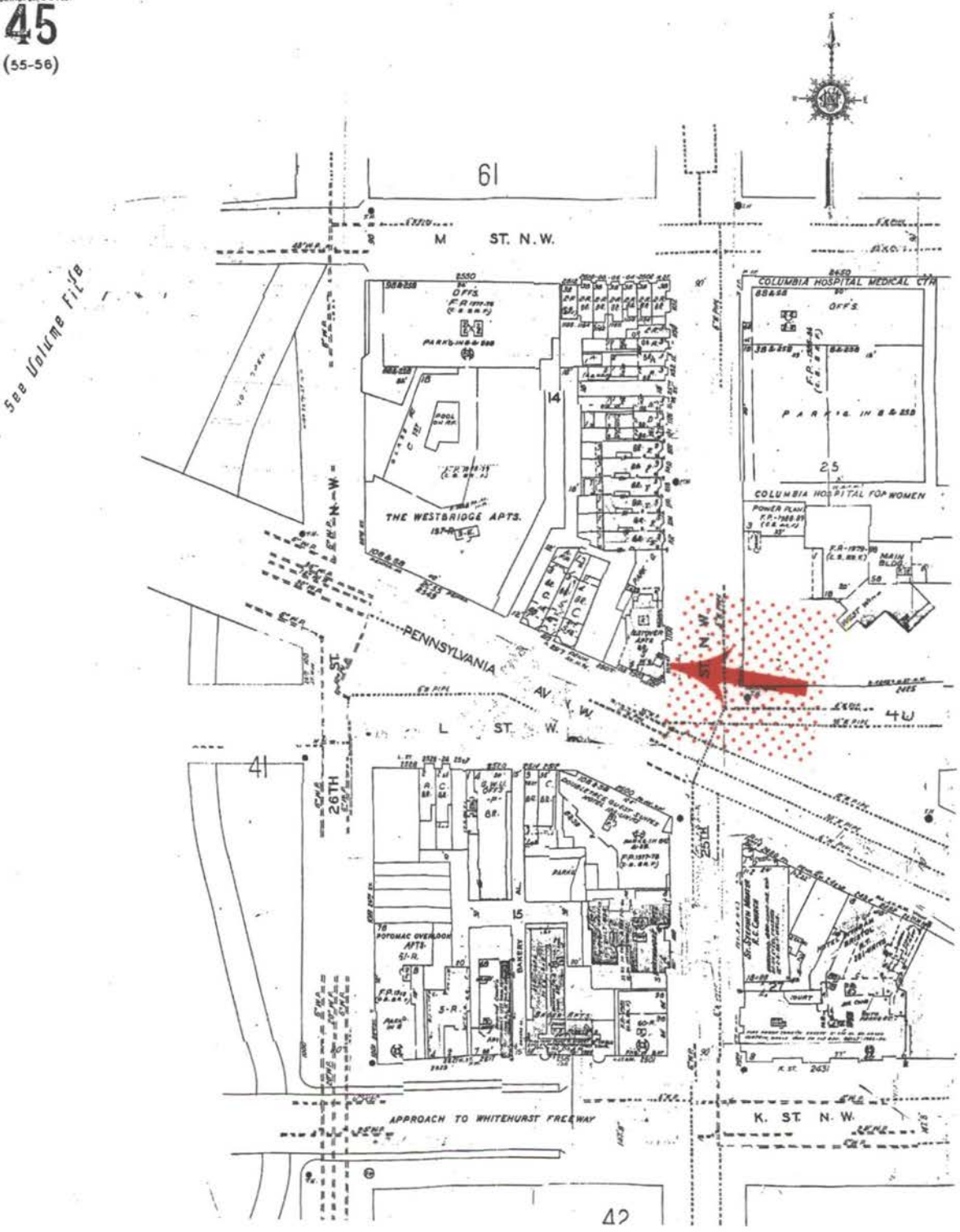
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Sq 15
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Sq 26
26th St.
25th Street
Book 22
Page 45
2001 thru 2157
2174 thru 2202
Condo. 33 pg. 37
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CONDO BK. 21/13
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WASHINGTON DC VOL I

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B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., SEPTEMBER 1, 2004

Plat for Building Permit of: SQUARE 14 LOT 73

Scale: 1 inch = 20 feet Recorded in Book 185 Page 21

Receipt No. 14036

Furnished to: HOLLAND AND KNIGHT

Surveyor, D.C.

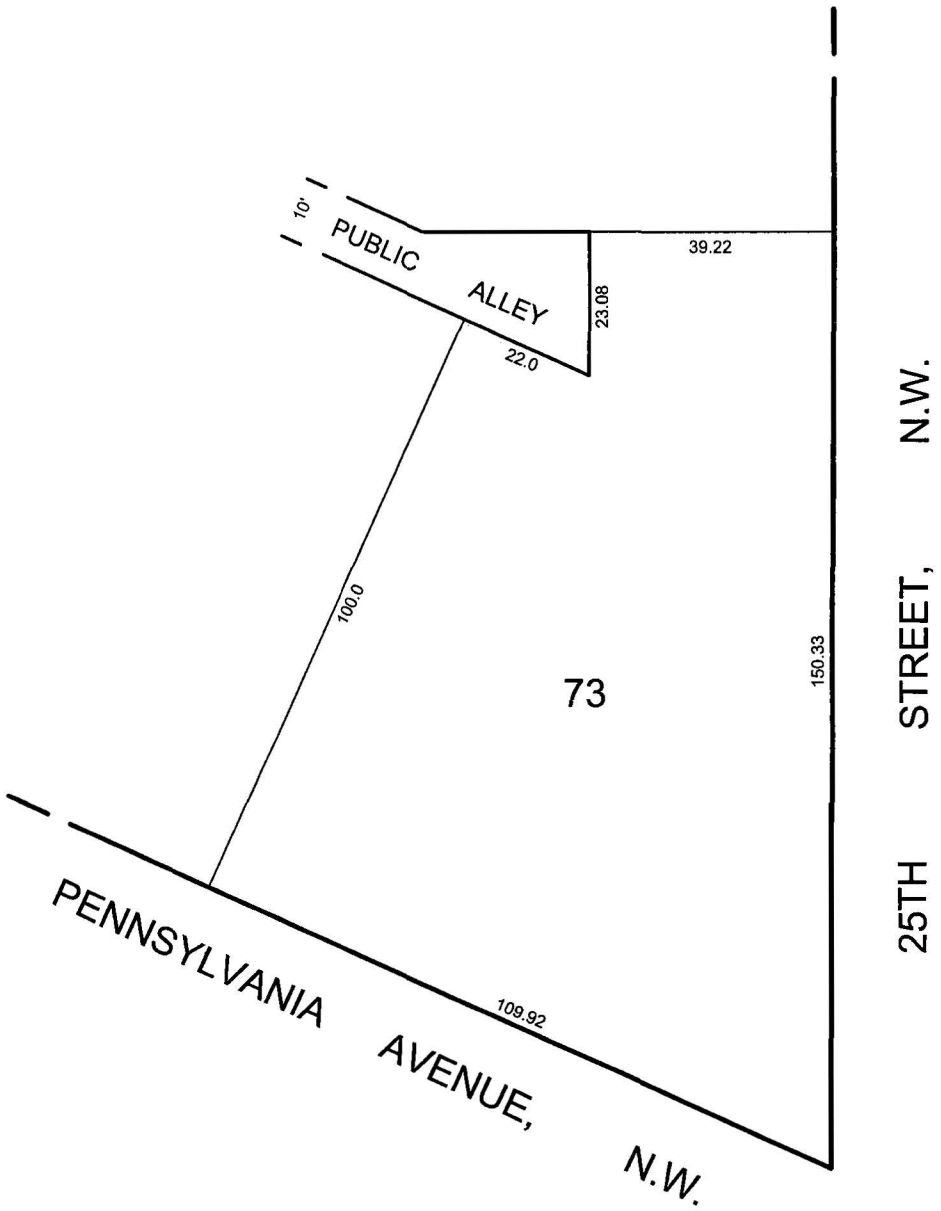
By: B.D.M.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



SO-14036(2004)

C

14W
R-5-B
R-5-B
R-5-B
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R-5-D
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D

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the percentage of lot occupancy requirements (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: February 27, 1991, April 24, 1991, May 24, 1991 and June 9, 1993

DECISION DATES: September 4, 1991 and June 9, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

Background

1. The application was the subject of hearings in 1991 and 1993. The plans which were reviewed by the Board in 1991 (hereinafter the "1991 plans") depicted a building of 5.96 floor area ratio (FAR), with a height of 77 feet 9 3/4 inches, and a 14-foot tall penthouse. The plans required four variances and two special exceptions, which were granted by the Board by a vote of 5-0 on September 4, 1991. Pursuant to a Settlement Agreement entered into the record, the applicant filed a revised set of plans which were the subject of a further public hearing on June 9, 1993 (hereinafter the "1993 plans"). The 1993 plans depict a building of 5.26 FAR, with a height of 70 feet, and an eight-foot tall penthouse. The 1993 plans require three variances and one special exception. The evidence of record for each of the two proposed developments is set forth below.

The 1991 Hearings

Procedural Matters

2. At the February 27, 1991 hearing, at the request of counsel for the applicant, and in response to the motion to dismiss filed by counsel for several parties in opposition, the Board rescheduled the hearing for April 24, 1991, so that the case could

be properly advertised to indicate that the northernmost portion of the site is zoned R-5-B. A revised zoning memorandum was filed on March 4, 1991 reflecting the necessary relief because of the split zoning of the subject property. Subsequently, to reflect changes to the project as presented to the Historic Preservation Review Board (HPRB), the applicant revised the plans to:

A. Reduce the total gross floor area of the project from 66,785 square feet to 60,710 square feet;

B. Reduce the building height from 84 feet 9 inches to 77 feet 10 inches;

C. Reduce the number of parking spaces in the project from 52 to 49; and

D. Reduce the number of loading berths from two to one.

A supplemental zoning memorandum, dated April 23, 1991, was submitted to the record reflecting these changes.

3. Prior to the April 24, 1991 public hearing, counsel for the opposition filed another objection indicating that the case had not been properly advertised. He stated that Section 2514.2 does not apply to the 1991 plans because the property has not been subdivided into one record lot, and that the split zoning would necessitate a use variance.

The Application

4. The subject property measures 10,187 square feet in land area, and is situated at the northwest corner of 25th Street and Pennsylvania Avenue, N.W. The subject property is primarily zoned C-2-C, with the northernmost 20 feet of the property (784.4 square feet) zoned R-5-B. The subject site is bounded on the north along 25th Street by a series of five-story rowhouse-type condominium apartments which are zoned R-5-B. To the west along Pennsylvania Avenue, the property is bounded by three five-story townhouse structures at 2517-2525 Pennsylvania Avenue, N.W. which are zoned C-2-C. These structures have been designated as historic landmarks. The entire western portion of the square is developed with the Westbridge office, retail and residential complex, which is built to a 90-foot height and 6.0 FAR. The Westbridge property is zoned CR, with 157 apartment units and 218,330 square feet of commercial space.

5. The subject property is currently occupied at the corner of Pennsylvania Avenue and 25th Street by a five-story building, known as the Luzon Building. The building was designed by Nicholas Haller, and was designated as a historic landmark by the D.C. Historic Preservation Review Board (HPRB) by decision dated

September 19, 1990. The subject property also included a two-story building (originally built as two structures), to the west of the Luzon building along Pennsylvania Avenue, which was demolished after completion of the 1991 BZA hearings. Because of the presence of the landmark Luzon Building, the project is subject to review by the Historic Preservation Review Board (HPRB).

6. The applicant proposes to retain the landmark Luzon Building at the corner as part of a mixed-use project to include residential, retail, and office uses with below grade parking for 49 cars on two (2) levels. The proposed project, as presented at the 1991 public hearing, and as shown in the 1991 plans, included a total of 60,710 square feet of gross floor area, of which 31,617 square feet of gross floor area (3.1 FAR) would be for residential use, 24,401 square feet (2.4 FAR) would be for office use, and 4,692 square feet (.46 FAR) would be for ground floor retail use. The height of the project would be 77 feet, 9 3/4 inches.

7. The Board accepted the applicant's witnesses in the 1991 hearings as experts in the fields of architecture, urban planning, historic preservation, real estate appraisal and real estate economics.

8. In the 1991 hearings, the applicant sought area variance relief from the lot occupancy, rear yard, floor area ratio (FAR) and residential recreation space requirements, and special exception relief for the roof structure and to allow the zoning limitations of the C-2-C district to be applied to the R-5-B portion of the lot, in order to construct the project.

9. The applicant's expert architect witnesses testified that the subject site includes the existing landmark Luzon Building, which was designated by the HPRB as a historic landmark. As part of the extensive discussions and negotiations with the community, the D.C. Preservation League (DCPL), and the Historic Preservation Division of DCRA between 1989 and 1991 and in order to meet the applicable tests under the District's historic preservation law, the applicant proposed in the 1991 plans to save the entire facade and interior structural elements of the Luzon at significant expense, with an addition which mandates a lower height than matter of right, plus substantial setbacks from the Luzon Building in order to respect its architectural and historic integrity.

10. The architect testified that the landmark structure is a regularly shaped rectangular building on an irregularly shaped angular corner lot, creating inefficiencies in the layout of any structure on or addition to the site.

11. The architect stated that the Luzon occupies a significant portion of the subject site, which is a corner lot,

thus leaving limited areas for development. Because the Luzon is not built to the lot line on the corner, approximately five percent of the site at the corner is unusable. The existence of the landmark structure with its particular design and layout creates design constraints which represent an exceptional condition, limiting any new development of the site in terms of architecture, site planning and development.

12. The architect stated that the exceptional condition relates to the presence of the rock conditions so close to the surface compounded by the need to preserve the historic landmark. Studies conducted prior to the 1991 BZA hearings indicated the presence of rock at the bottom of the second basement level. In order to excavate deeper than the second level, blasting would be required. In order to accomplish the necessary excavation of two levels, the Luzon will be stabilized and suspended in air above the excavation area on three sides, and underpinned on the fourth side. This procedure will require exceptional additional costs when compared to construction of a new building on vacant land. The landmark structures to the west and the rowhouse-type condominium apartments to the north of the site must be stabilized as well. The witnesses testified that, regardless of cost, blasting the rock to excavate deeper than two levels for additional below grade space is not practical since it would jeopardize the existence of the historic Luzon Building, and could also affect the abutting buildings.

13. The architect further stated that the particular and exceptional design of the landmark Luzon Building requires special treatment in the design of the proposed addition, particularly the need to keep the building addition lower than matter of right zoning would allow, the need to set back the addition from the landmark building to make the Luzon appear as a separate structure, and the construction of the addition on an irregularly shaped portion of the lot to be compatible with the Luzon.

14. The expert real estate economic consultant for the applicant performed an economic analysis of the subject site focused on the impact of preserving the historic landmark, coupled with the presence of rock conditions at this location. The economic consultant concluded that the additional costs to preserve the landmark, coupled with the rock conditions, constituted an exceptional situation or condition affecting the property.

15. The architect testified that the rear yard of the project on this site would be located entirely in the C-2-C portion of the site. The Zoning Regulations require a 15-foot rear yard in the C-2-C District; none is provided. The provision of a rear yard on the site would result in a 15-foot wide strip running the full depth of the site (100 feet) adjacent to the five-story landmark townhouse to the west of the site. The applicant's witnesses

testified as to the extensive discussions over many months by the applicant with the neighborhood, the DCPL and the Historic Preservation Division staff between 1989 and 1991, which resulted in the 1991 plan. The expert architect witness testified that to accommodate the preservation of the Luzon Building and incorporate the design solution achieved through these discussions requires that the addition be substantially set back above the height of the Luzon Building, creating in effect a "front yard" totalling 2,475 square feet (over 1.5 times the requirement of the rear yard) in the 1991 plan. The witness testified that in order to respect the historic landmark in a manner consistent with the historic preservation law, the building addition that would normally be placed at the front corner of the site (the location of the historic structure) has been shifted into the rear yard.

16. The height of the addition as shown in the 1991 plan was 77 feet 9 3/4 inches; the C-2-C zone permits 90 feet. The expert architect witness testified that the additional building mass that would be located on the eighth floor under a matter-of-right development without the landmark has been spread over the site and into the area of the rear yard in the 1991 plan. To provide the rear yard and include an eighth floor would result in practical difficulties, as it would be inconsistent with the historic preservation goals of the project.

17. The architect testified that the provision of the rear yard would also result in a practical difficulty since the applicant, consistent with community wishes and sound urban architecture principles, has designed the 1991 plan to provide a continuous urban streetscape along Pennsylvania Avenue and to promote a continuous retail presence along that portion of the avenue. The witness stated that providing the 15-foot rear yard would leave a broken span between the building and the adjacent five-story townhouses to the west, which is inappropriate in terms of urban design.

18. The architect testified that the percentage of lot occupancy requirements of the C-2-C zone vary with use. Commercial buildings are permitted to occupy 100 percent of the site. Mixed use buildings which contain residential uses in the C-2-C District are limited to an 80 percent lot occupancy. The lot occupancy for the R-5-B District is 60 percent. The combined lot occupancy limitation given the 60 percent limit in the small R-5-B portion, and the 80 percent limit for the remainder, is 78.4 percent. The project as shown in the 1991 plan had a 97 percent lot occupancy at the ground level.

19. The expert architect witness testified, that to effectively develop the site, strict application of the lot occupancy limitation would require that the additional building mass in the 1991 plan (which was spread throughout the lot) be

placed over the top of the Luzon Building, to a height of 90 feet throughout the vast majority of the site. The volume of building that would otherwise be placed over the top of the Luzon Building in the 1991 plan (including the additional story permitted by zoning that was not included due to the peculiar and exceptional situation imposed by the landmark) was spread out over the site, thereby increasing the lot occupancy. In essence, the important preservation need to set back away from the historic structure and to keep the project low in scale, forced the applicant to occupy more of the site.

20. The expert architect witness testified, that the regulations governing percentage of lot occupancy presume a regularly shaped building on a regularly shaped lot, with a similar footprint from the ground up. Instead, the 1991 plan, because of preservation concerns, had setbacks of 24 - 33 percent of the lot area in the floors above the landmark structure, and a height which was one floor less than matter of right for the vast majority of the site. The architect testified that the average lot occupancy for all seven floors in the 1991 plan yielded 78 percent, as compared to the 80 percent allowed for mixed use projects in the C-2-C District, and the overall combined lot occupancy limitation for the site of 78.4 percent.

21. The expert architect witness testified that alternative development options were explored and there is no practical way to develop the site in accordance with the lot occupancy requirements, while providing proper setbacks to the landmark and ensuring an occupiable building. If the 1991 plan was required to meet the 78 percent combined lot occupancy regulations (C-2-C and R-5-B) on the ground floor level, with a set back in accordance with the preservation objectives and no eighth floor, the top two floors would have dropped to 57 percent and 48 percent lot occupancy, with an average lot occupancy of 61 percent. Such setbacks would have made the upper two floors of residential use impractical and infeasible given the amount of space required for the building core.

22. The expert architect witness testified, that complying with the floor area ratio (FAR) requirements results in practical difficulties. The Zoning Regulations for the C-2-C District allow a maximum of 6.0 FAR, of which not more than 2.0 FAR is permitted for nonresidential uses. The FAR for the R-5-B portion of the site is 1.8 FAR for residential uses. The overall FAR (matter of right) for the site (combined C-2-C and R-5-B) is 5.68, of which 1.85 FAR may be for nonresidential uses. The 1991 plan, as presented at the 1991 public hearings, had 5.96 FAR, with 2.86 FAR for nonresidential uses.

23. The expert architect witness testified that the landmark structure and the small irregular site resulted in an inefficient

layout in the 1991 plan where the core occupied about 1/3 more percentage of the floor space than in an ideal condition. This core averaged over 17 percent of the gross floor area, whereas an allocation for a core of this size would be expected to be less than 13 percent of the gross floor area. This inefficiency resulted in approximately 2,300 square feet of the gross floor area (0.23 FAR) being unnecessarily used for the core in the 1991 plan because of site conditions.

24. The architect testified that rock conditions on the site severely limit the ability to excavate an additional level below grade, for office/retail "back of the house" space. Such space is a typical feature of many mixed-use projects (2311 M Street and 2401 Pennsylvania Avenue are two recent examples in the West End identified by the expert architect witness). The 1991 plan included two garage levels to accommodate parking projections. The evidence of record indicates that the demand for on-site parking in this area is such that the project would not be viable without it.

25. The expert architect witness testified that studies indicate rock at the bottom of the second basement level. To excavate, the adjacent historic townhouse to the west and the southernmost 25th Street rowhouse-type condominium apartment building must be stabilized and the Luzon Building must be suspended on piles and needle beams. He stated that because of fragile conditions on the site, the blasting of additional levels below grade poses a risk too great to undertake, regardless of cost.

26. The expert architect witness testified that the inability to provide one floor below grade for office or retail "back of the house" use equates to an area of approximately 10,000 square feet (approximately 1.0 FAR equivalent). He stated that with 6.0 FAR above grade and one floor of usable area below grade, the matter of right gross construction for residential and commercial uses would total 71,745 square feet, or 11,035 square feet more than proposed in the 1991 plan, but for the rock condition beneath the landmark. Thus, if the rock condition were not present and the landmark structure did not have to be protected from blasting, an additional cellar level could have been included in the 1991 plan and no increase in nonresidential FAR would have been necessary.

27. The Zoning Regulations require that residential recreation space be provided for 15 percent of the residential gross floor area of the project situated within the C-2-C District, or 3,895 square feet. The architect testified that the 1991 plan provides nine percent residential recreation space (2,382 square feet). Because of rock conditions, substantial below grade space could not be allocated to residential recreational space as would be expected in such a project. In addition, with the footprint

that was developed in the 1991 plan, which maximized retail, and included the necessary residential and office lobbies, core, parking and loading areas, and held the building away from the landmark to the greatest extent possible, there was no space at grade for on-site recreation.

28. In order to maximize efficiency and minimize excess bulk in the 1991 plan, the architect testified that the residential recreational space could not be placed in the above grade space. In addition, the main roof level was not feasible for residential recreation use. This roof is not accessible to the handicapped due to the low 14-foot penthouse in the 1991 plan which was the result of negotiations with the community, DCPL and the staff of the Historic Preservation Review Board. This low penthouse height precluded elevator access to this roof. In addition, the location of the rooftop machinery on this main roof made the location of residential recreation space here infeasible.

29. The expert architect witness testified that, in the 1991 plan, the roof of the Luzon Building was devoted to residential recreation space on site, and that there was also a residential common space room in the P.2 level for on-site recreation space. He also testified that although not counting toward the residential recreation space requirement, the 1991 plan included a landscaped passive recreation area (1,533 square feet) in the public space on 25th Street adjacent to the property, between the sidewalk and the building. If this area did count toward the calculation, the residential recreation space requirement would have been met.

30. In reviewing the impacts of the rear yard variance, the architect testified that the rear yard of the proposed building in the 1991 plans abutted the wall of the neighboring five-story commercial property to the west (Lot 27). That property is built with a party wall to its side lot line. The expert architect witness testified that the proposed building in the 1991 plan would have no light and air impacts on the adjacent building to the west or the Westbridge, particularly when compared to the matter of right situation which would include a 90-foot high, 6.0 FAR building with a penthouse of 18 feet 6 inches on the C-2-C portion of the subject site.

31. The expert architect witness stated that in practical terms, this corner lot actually has no "rear". From a technical standpoint, the C-2-C District makes no provision for alternatives to providing a rear yard for corner lots, such as the subject property. In the C-3-B District (which allows less FAR and height, and has a more stringent rear yard requirement than the C-2-C District), a court in lieu of a rear yard is allowed. The proposed project configuration in the 1991 plan and mandated setbacks above the historic structure provided courts which would meet the court in lieu of rear yard provisions.

32. The architect stated that the proposed project in the 1991 plan, without the rear yard, would continue the streetscape rhythm along Pennsylvania Avenue, N.W. Provision of the rear yard in the 1991 plan would make the continuity of the streetscape and the continuity of the retail space along Pennsylvania Avenue impracticable. The architect testified that the applicant designed the 1991 plans, consistent with community concerns, to enhance street life and vitality, maximize safety and retail presence, as well as to respect the landmark. The provision of an unutilized, open gap between the project and the adjacent townhouse to the west would provide none of the above. The architect further noted, in assessing any technical impact from not providing a rear yard, that the Luzon Building is presently nonconforming as to rear yard, as well as lot occupancy and residential recreation space.

33. The expert architect testified that in terms of lot occupancy, a matter of right commercial building in the subject C-2-C District is permitted a 100 percent lot occupancy. The 80 percent limitation is the maximum lot occupancy when residential uses are provided in a building in the C-2-C District. The lot occupancy for the R-5-B District is 60 percent. He testified that the 1991 plan included a mixed use project with retail, office and residential uses, on a relatively small, irregularly shaped site, with a landmark building. An analysis of the 1991 plans indicated that the commercial and residential floors of the building (one through five) were less than 100 percent lot occupancy. The pure residential floors in the 1991 plan (six and seven) were substantially less than 80 percent lot occupancy. In terms of the impact of the increase in lot occupancy in the 1991 plan, the architect noted that the shadow studies indicated no adverse light and air impacts upon adjacent properties. Further, the building in the 1991 plan abutted only side yards of adjacent properties, which are built to the property line. No side yard is required in either the C-2-C or the R-5-B zone.

34. The architect testified that, in terms of visual impacts of the 1991 plan, even though the FAR of the project as presented at the 1991 hearing exceeded the 5.68 FAR requirement by 0.28 FAR, the building height was substantially less than matter of right (77 feet 9 3/4 inches versus 90 feet). The architect stated that by limiting the FAR to 6.0 in a zone permitting 90 feet in height, the Zoning Regulations anticipated significant sculpting and modeling of facades. The proposed project's bulk in the 1991 plan would be effectively reduced by such sculpting on the street facades: (1) the setback above the Luzon Building; (2) the seventh floor setbacks on Pennsylvania Avenue and 25th Street; and (3) the lack of an eighth floor which the Zoning Regulations would otherwise permit.

35. In terms of the increase in commercial FAR in the 1991 plan, the architect stated that the building was designed to look "residential". The office uses would be situated along Pennsylvania Avenue, with the residential uses along 25th Street in character with existing conditions. If non-FAR below grade office and retail "back of the house" space could be included in the project (assuming no limiting rock condition below the landmark), the building would actually have had more square footage, and therefore more occupants, than under the 1991 plan.

36. The architect stated that the shadow studies for the 1991 plan did not indicate any adverse impacts from the increase in FAR upon adjacent or nearby properties, as compared to a matter of right project.

37. The architect stated, that there would be no adverse impacts from the reduction in on-site residential recreation space. The 1991 plans indicated 1,858 square feet of recreation space on the roof, plus 524 square feet residential recreation space on Level P-2 and an additional 1,533 square feet in the gardens on 25th Street (in public space) for a total of 3,915 square feet, which would exceed the residential recreation space requirement for the 1991 plan. The garden space on 25th Street technically does not count because it is not within the property lines. In addition, many of the residential units in the 1991 plan had their own balcony. Further, Rock Creek Park abuts Square 14 on the west, and the C & O Canal is also within two blocks, providing almost limitless outdoor recreational opportunities.

38. Special exception relief is required for the 1991 plan related to the zoning boundary line crossing a lot and the penthouse setback requirements.

39. Subsection 2514.2 of the Zoning Regulations provides that the Board may permit the regulations applicable to that portion of a lot located in a lesser restrictive district that control the use, height, and bulk of structures and the use of land to be extended to that portion of the lot in a more restrictive district as long as certain requirements are met. In terms of the specified requirements, such extension to that portion of the lot in the more restrictive district shall not exceed thirty-five feet (35 feet). The applicant's witness testified that the R-5-B portion of the site is 20 feet in width.

40. The architect testified, that the extension will have no adverse effect upon the present character and future development of the neighborhood. Only approximately eight percent of the site is located in the R-5-B zone. The R-5-B portion of the site is adjacent to the nonconforming rowhouse-type condominium apartments along 25th Street. The architect testified at the 1991 hearing that the Zoning Regulations would allow the R-5-B portion of the