BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Intrepid 2501 Acquisition, LLC
2501 Pennsylvania Avenue, N.W.

Preliminary Statement of Compliance With Burden of Proof

Overview

The site is occupied by a historic landmark building. The design constraints mandated by the HPRB have presented numerous challenges, and have resulted in the need for a number of areas of zoning relief. The Applicant is seeking the following relief from the Board:

1. Special exceptions under Section 2514.2, to extend the use, height and bulk regulations of the C-2-C District 20 feet into the R-5-B zone, and under Section 411.11 to allow a roof structure which does not meet the strict setback requirements; and
2. Variances from the rear yard, lot occupancy, FAR, court width and residential recreation space requirements.

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The irregularly shaped property measures 10,187 square feet of land area, and is located at the northwest corner of 25th Street and Pennsylvania Avenue, N.W. Over 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. All properties along both sides of Pennsylvania Avenue from Washington Circle on the east, to Rock Creek Park on the west, are permitted 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. This R-5-B zone is surrounded by 90 foot, 6.0 FAR zones on all sides.

BZA
Case No. 17322
Exhibit No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17322
EXHIBIT NO. 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, which is an individually-designated historic landmark. By Order dated September 1, 1999, the Mayor's Agent 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.

The plan 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/penthouse level. The footprint of the partial eighth floor measures 2,295 square feet. The top floors on both the Pennsylvania Avenue and 25th Street sides of the project are set back five to eight feet from the edge of the floor below.

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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 6.0 FAR (61,204 square feet of gfa), of which 0.42 FAR (4,287 square feet of gfa) will be devoted to non-residential use. An eight-foot tall roof structure, measuring 1,494 square feet of gfa (0.14 FAR) will be located on the seventh floor roof, adjacent to the partial eighth story. There will be two levels of below-grade parking, with 26 parking spaces. The top 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 18 residential units in the building.

Special Exception Relief

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.

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. Less than 8% of the site is located in the R-5-B zone. 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.

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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 subject property will be devoted 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 subject site, and the building will abut the side wall of the adjacent five-story condominium apartment building to the north. There is no difference from an urban design and

land planning standpoint in locating the dividing line between the R-5-B and C-2-C zones in this instance either at the property line, or 20 feet south of the property line. The 20-foot extension will have no adverse effect upon the present character or 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. At the street level, the northern-most 20 feet of the 25th Street portion of the property will contain two apartment units with access at the street level. 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), and a substantial setback from the street at the eighth floor level (approximately 80 feet in height). The footprint of the subject building is only 33 feet deep at that point, 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.

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Section 411.11 – Roof Structure

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 Historic Preservation Review Board, full compliance with the roof structure setback requirement would be unduly restrictive, prohibitively costly and unreasonable.

Specifically, the roof structure has been required by the Historic Preservation Review Board to be as low as possible, and to be moved as far north and west as possible on the building.

Additionally, 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, the seventh floor roof, on which the roof structure sits, is very narrow at this point, and the roof structure, which measures only 1,494 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. To the extent that these walls 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 roof structure regulations, nor it will adversely affect the light and air of adjacent buildings.

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

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Variance Relief

Exceptional Situation or Condition

The relatively small and irregularly-shaped split-zoned site is occupied by an individually-designated historic landmark with a unique design and configuration. In order to respect the historic landmark facades, 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 mandate that the new building not encroach on the "footprint" of the existing landmark building, creates inefficiencies in the layout of the structure and the new construction on the site. 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 a vacant

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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.

Practical Difficulty

Rear Yard

As a corner lot, either Pennsylvania Avenue or 25th Street may be considered as the "front" for purposes of determining the location of the rear yard. The Zoning Regulations require a 15-foot rear yard in the C-2-C District. In the R-5-B District, a 28 foot rear yard would be required for the subject building. 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, or a 28 foot wide gap along the street frontage of 25th Street, running for the full depth of the lot. Such a gap along either of these street frontages of the project is inconsistent with sound urban design principles.

The height of substantially all of the building (77%) (all of 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.

The provision of the rear yard setback along 25th Street would result in the loss of 8,736 square feet of residential use, reducing the residential FAR of the project to 4.73. Inclusion of the rear yard along Pennsylvania Avenue would result in the loss of 8,181 square feet of

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residential use, reducing the residential FAR of the project to 4.78. These figures are below the level of economic viability of the project.

Lot Occupancy

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 remainder, is 78.4%.

The proposed project has a 95% lot occupancy at the ground floor level. 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 64% and 22% 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. The average lot occupancy for all eight floors in the project is 76.8%, 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%.

Residential Recreation Space

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 7,763 square feet. Due to the many design constraints of the site, the project does not provide any on-site qualifying residential recreation space on the residential levels. 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

450 square feet of 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 possible to excavate lower to achieve recreation space in the parking garage levels. Moreover, because the size of the roof structure relative to the size of the seventh floor roof, there is no complying area on that roof available for residential recreation space. There is no elevator or stair access to the eighth floor roof.

The building plan does include a total of 2,404 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. Because this space is technically not on the lot, it also does not count in the residential recreation space calculation. If the terraces, balconies and public space were included in that calculation, the total amount of available residential recreation space would be 8.3%.

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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 use, height and bulk regulations of the C-2-C 20 feet into the R-5-B zone.

The overall FAR of the building will be 6.0, which is permitted in the C-2-C zone. During the historic preservation review process, the HPRB requested 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 density of the

portion of the building on the R-5-B portion of the property is 7.6, which is greater than the 6.0 FAR permitted as a matter-of-right in the C-2-C zone.

The building design and configuration were devised after an extended period of discussion and negotiation with the HPRB staff, and three hearings before the HPRB. In each instance, both the HPRB and its staff requested that the bulk of the upper floors be moved northward, away from Pennsylvania Avenue. 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 elimination of 1,255 square feet of gross floor area of the building. 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 seventh floor unit at the northern-most portion of the site would also lose its kitchen/family room and its dining room; this unit would need to be reconfigured as a small one-bedroom unit. The reconfiguration of this 5,000 square foot three bedroom unit on the top floor to a small one bedroom unit would make the project economically infeasible.

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Court Width

Although not required for zoning purposes, there is an open court at the northwest corner of the building. The court width measures 17'10". The required width of the court, based upon the court height, is 28'10". In order to comply with the court width regulations, the court would need to be setback an additional 11 feet at the sixth through eighth floor levels. The court width has been increased as much as possible to meet the spirit of the regulation, while at the same time providing a reasonable interior configuration for the units on the sixth, seventh and partial eighth floors. Strict compliance with the court setback requirement would result in a significant

number of design changes to the building that would jeopardize the feasibility of the project. For example, the Applicant would be required to eliminate an additional 934 square feet, on the sixth, seventh and eighth floors. This would reduce the size of the kitchen/family room on the sixth floor, and would compromise the ability to provide an adequate interior stair between the seventh and eighth floors, and an egress corridor from those levels to the fire stairs, as planned.

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No Adverse Impact

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 subject property. 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 meet the court in lieu of rear yard dimension of the C-3-B zone.

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 both Pennsylvania Avenue and 25th Street, and will be consistent with sound urban planning principles. Provision of the rear yard along Pennsylvania Avenue would interrupt the continuity of the streetscape, and would shift the residential lobby to the east, thereby cutting the amount of retail frontage along Pennsylvania Avenue approximately in half. It would also result in a loss of

8,181 square feet of residential space in the building. Inclusion of the rear yard along 25th Street would result in the appearance of a vacant lot along 25th Street, with views into the rear of the Pennsylvania Avenue buildings, and a loss of 8,736 square feet of residential space. The provision of an unutilized, open gap between the project and the adjacent five-story structures to the west or north, would not provide any benefit to either the subject building, or to those adjacent buildings, both of which include party walls at the common lot line.

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Lot Occupancy

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 permitted lot occupancy for the project, 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 is 76.8%. 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.

Residential Recreation Space

There will be no adverse impact from the inclusion of only 450 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 2,404 square feet of private balconies for the individual units in the building. Each of the units on floors two through eight provides ample space for individual interior passive recreation. Further, Rock Creek Park abuts Square 14 on the west, and the C & O Canal is also within two blocks, providing almost limitless outdoor active and passive recreational opportunities.

FAR

There will be no adverse impact 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 will be within the maximum permitted C-2-C height limit. The additional density, above 6.0, 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 special exception provision outlined further below. Rather, it is simply being used to accommodate a building design which has been dictated by the necessities of historic preservation. The overall FAR on the site will be 6.0, which would be permitted with special exception relief.

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Court Width

There will be no substantial detriment to the public good by approving the project with the court width as shown. Moreover, the proposed court width will not substantially impair the intent, purpose or integrity of the zone plan. The court as shown abuts a public alley to the north and an open area on the adjacent property to the west, behind a historic landmark building. Moreover, the deficiency in the court width involves only the top three 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.