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**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**Application of 601-645 H Street Ventures, LLC
601-645 H Street, N.E.**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

The Subject Property consists of Lot 177 in Square 859 and is currently occupied by District of Columbia government offices. Square 859 is bounded by H Street on the north, 7th Street on the east, G Street on the south, and 6th Street on the west. The Subject Property is located in the northern portion of the Square, with frontage along H Street, 6th Street, and 7th Street and consists of approximately 109,351 square feet of land area. It is included in the C-2-C and C-2-A zone districts and in the H Street Northeast Neighborhood Commercial Overlay District.

The Applicant, 601-645 H Street Ventures, LLC, proposes to develop the Subject Property with a mixed use residential and commercial development. The project is designed as a nine-story mixed-used tower on H Street, and steps down to a five-story residential tower at the south side of the Subject Property, adjacent to existing row houses. It is conveniently located just a few blocks away from Union Station providing excellent access to the Metro and Amtrak. The US Capitol building is just a ten minute walk away, providing great access to the nation's law-makers and the people and businesses that serve them.

The nine-story condominium will include over 312,000 square feet of gross area and 234 residential units. Three levels of parking below grade will provide approximately 500 parking spaces for office, retail and condominium units. Nearly 8,700 square feet of first floor retail space provides opportunities for retail businesses to have direct access to the busy pedestrian activity on H Street. The project will include approximately 3,800 square feet of amenity space on the first floor, in addition to a roof top swimming pool for the residents.

Because the Subject Property is within the H Street Northeast Neighborhood Commercial Overlay District ("HS Overlay District") and in excess of 6,000 square feet, special exception approval is required in accordance with Sections 1320.4 and 1325 of the Zoning Regulations. In addition the Applicant seeks variance relief from the lot occupancy requirements of Section 772 of the Zoning Regulations.

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested variance and special exception relief.

Following herein, as required by the Board's application process, is a statement indicating how the Applicant will meet said burden of proof.

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II. Burden of Proof for HS Overlay District Special Exception

The HS Overlay District requires special exception approval by the Board of Zoning Adjustment ("Board") for new construction on lots that are in excess of 6,000 square feet, in accordance with the following provisions:

- A. *The project is consistent with the design intent of the design requirements of Section 1324 and the design guidelines of the H Street N.E. Strategic Development Plan.*

The Project is located in the Western Gateway portion of the H Street N.E. Strategic Development Plan and is consistent with its recommendations and design guidelines. The Subject Property is designated for infill development, ground floor retail uses, and/or a large-scale housing development. The Plan states that the additional residential population would complement the proposed development of the Murry's site and provide additional customers for the proposed Central Retail District.

The Project adheres to the design intent and design requirements of Section 1324 of the Zoning Regulations as follows:

1. *Buildings shall be designed and built so that not less than 75 percent of the streetwall(s) to a height of not less than 25 feet shall be constructed to the property line abutting the street right-of-way.*

New construction in addition to existing construction is designed so that 74.3% of street walls to a height of 25 feet are constructed to the property line on H Street. Pulling back the facade of the building slightly from the build-to line largely preserves the street wall while providing a more clearly defined entry for the residential and heightens visibility and presence for the retail frontage.

2. *New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses.*

This provision is not applicable.

3. *In C-2 Districts within the HS Overlay District, a 70 percent residential lot occupancy shall be permitted.*

The residential lot occupancy exceeds 70 percent on portions of the Subject Property. Variance relief is requested in conjunction with this application.

4. *For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.*

Percentage of lot occupancy has been calculated on a horizontal plane located at the third floor level where residential uses begin on the C-2-C zoning side of the property and at first floor level on the C-2-A zoning side.

5. *For the purposes of Section 1324.5, "residential uses" include single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities.*
6. *Parking structures with frontage on H Street, N.E. shall provide not less than 65 percent of the ground level frontage as commercial space.*

This provision is not applicable.

7. *Each new building on a lot that fronts H Street, N.E. shall devote not less than 50 percent of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for the decorative or architectural accent, and to entrances to commercial uses or to the building.*

More than 50 percent of the of the surface area of street walls at the ground level have display windows with clear or clear/low-emissivity glass on H street.

8. *Security grilles shall have no less than 70 percent transparency.*

Security grilles will have no less than 70 percent transparency.

9. *Each commercial use with frontage on H Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one primary entrance on H Street directly accessible from the sidewalk.*

Retail areas with frontage on H Street have individual public entrances directly accessible from the public sidewalk.

10. *Buildings shall be designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.*

New construction is also designed so as not to preclude an entrance every 40 feet on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to the ground floor uses and main lobby.

11. *The ground floor level of each building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet.*

The ground floor level of the new construction will have a uniform minimum clear floor-to-ceiling height of twelve feet, six inches as it will connect to existing structures on either side. Relief from this provision is hereby requested.

12. *Buildings subject to Section 1324.12 shall be permitted an additional five feet of building height over that permitted in the underlying zone.*

The Applicant is not requesting additional building height at this time.

13. *Projection signs shall have a minimum clearance of eight feet above a sidewalk and fourteen feet above a driveway, project no more than three feet, six inches from the face of the building, and end a minimum of one foot behind the curbline or extension of the curbline.*

All signage will conform to these provisions.

14. *Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than 12 inches from the face of the building.*

All signage will conform to these provisions.

15. *Roof signs are prohibited.*

The proposed development includes no roof signs.

- B. *The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board.*

The project is designed in a modern style providing consistency to the developing architectural character of the revitalized H street corridor. The primary north façade of the building has two segments, one parallel to H Street and the other at an inclined angle. Both “collide” into each other announcing the main entrance with a transparent curtain wall system. The angled wall returns at the penthouse creating an interesting profile at the parapet. The intent of the design was to create a transparent and edgy look that appeals to the target condominium buyers in this area. The retail façade at first floor is intended to promote sidewalk activity and increase pedestrian movement along H Street corridor. Coupled with Union Station and the U.S Capitol complex, this mixed use development provides for transportation, employment and entertainment in close proximity to its residents.

The Subject Property is not located in a historic district, nor does it include a historic landmark.

- C. *Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions.*

Vehicular access and egress are located and designed to encourage safe and efficient movement. Proposed retail stores along H Street have individual entrances accessible directly from the adjacent sidewalk. Vehicular access to the parking garage is provided from H Street, located so to minimize any objectionable traffic conditions from either 6th or 7th Street. The loading dock is accessed by the alley that runs behind the Subject Property.

- D. *Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.*

The project will include an approximate total of 500 parking spaces that will serve the existing and proposed development. The parking and traffic conditions associated with this project will not significantly affect adjacent or nearby residences.

- E. *Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences.*

Noise associated with the project will be minimal and will not significantly affect adjacent or nearby residences.

- F. *The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent with the design guidelines of the H Street N.E. Strategic Development Plan.*

The signage of the proposed development will be compatible with the surrounding corridor and consistent with the design guidelines of the H Street N.E. Strategic Development Plan.

III. Burden of Proof for Variance Relief – Lot Occupancy

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

A. **Exceptional Condition or Situation:**

The Subject Property is irregularly shaped, as exhibited on the attached architectural plans and plat. Its primary frontage is on H Street, but it also has frontage on both 6th and 7th Streets. As the Subject Property is located in the HS Overlay Housing Sub-District, efforts have been made to maximize the amount of residential floor area, while including a mixed-use component and adequate amenity space. These features slightly constrain the Subject Property's ability to conform to the required percentage of lot occupancy.

B. **Resulting Practical Difficulty:**

The strict application of the Zoning Regulations will result in a practical difficulty upon the Applicant. Strict adherence to the Zoning Regulations would require that the proposed development maintain a lot occupancy of eighty percent for the C-2-C portion and sixty percent for the C-2-A portion. The proposed development has a lot occupancy of seventy-eight percent in the C-2-C portion and 60.2 percent in the C-2-A portion – the C-2-A portion presenting a very minor deviation from the required percentage. Maintaining the required maximum lot occupancy would constrain the program area of the proposed development.

C. **No Harm to Public Good or Zone Plan:**

The requested relief can be granted without substantial detriment to the public good and without substantially impairing the zone plan. The requested lot occupancy relief is the minimum necessary to accomplish the proposed development. It will not present a visible or significant difference to the project from the required percentage.