

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

**APPLICATION OF
K STREET DEVELOPMENT COMPANY, LLC,
MIDDLEBROOK, INC., and
10009 FIELD ROAD, INC.**

BZA Application No. 19215

PRE-HEARING STATEMENT OF THE APPLICANT

This is the pre-hearing statement of K Street Development Company, LLC, Middlebrook, Inc., and 10009 Field Road, Inc. (collectively, the “**Applicant**”), for special exception relief under Title 11, Section 411.11 of the District of Columbia Municipal Regulations (DCMR) (“**Zoning Regulations**”) related to 470-476 K Street, NW (Square 516, Lot 65) (“**Property**”), within the Mount Vernon Triangle Historic District. The Applicant is amending its request for relief based on the new penthouse regulations which were effective upon publication in the *DC Register* on January 8, 2016. Under the new penthouse regulations, the Applicant is requesting relief from the requirements of 11 DCMR Section 411.10 requiring penthouse walls to have a slope of no greater than 20% from vertical and Section 411.18 requiring a penthouse to be setback from certain edges of the roof upon which it sits.

As discussed in the initial filing, the Applicant is restoring the existing historic commercial building (“**Existing Structure**”), reconstructing the contributing buildings on the lot, and adding a mechanical penthouse on top of the existing and reconstructed building. This project has been reviewed by the District of Columbia Historic Preservation Office (“**HPO**”). As the Property is historic and design accommodations were requested by HPO, the Applicant is attempting to minimize the visibility of the penthouses. As such, one portion of the penthouse encloses a stairwell and is intended to be constructed only to the contour of the space necessary for such stairwell, and therefore has a slope exceeding 20% from vertical. Thus, the Applicant is

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requesting approval of a penthouse that does not comply with Section 411.10. Additionally, in order to minimize the view of the penthouse from public space, the penthouse is located in the corner of the building farthest away from its two street frontages and is not set back from the two side walls of the building (adjacent to contributing buildings in a historic district). Therefore, the Applicant is requesting approval of a roof structure that does not conform to the requirements for setbacks under 11 DCMR Section 411.18. The Project will conform to the Zoning Regulations in all other ways.

I.

Nature of Amended Relief Sought

Under Section 411.10 of the Zoning Regulations, the enclosing walls of a penthouse must rise into a roof with a slope that does not exceed 20% from vertical. The Applicant requests special exception relief under Section 411.11 of the Zoning Regulations to construct a roof structure with a slope of 51% from vertical – and therefore not in compliance with Section 411.10 – in order to minimize the roof structure’s appearance by keeping the maximum amount of the roof structure lower in height and only increasing the slope as necessary to enclose the headroom of a stairwell.

Additionally, under Section 411.18(c)(4), a penthouse must be set back on a one-to-one basis from a side wall of the building adjacent to a property improved with a contributing structure to a historic district that is constructed to a lower height (regardless of permitted matter-of-right height). The mechanical penthouse is located in the back corner of the building, as shown in Tab 4, which minimizes its visibility from the Property’s street frontages. Therefore, the mechanical penthouse is not set back from the side walls of the building – and therefore not

in compliance with Section 411.18(c)(4). The Applicant's satisfaction of the standards for granting special exception relief is discussed in detail in Section II of this statement.

II.

The Amended Application Meets the Requirements for Special Exception Relief under Sections 3104.1 and 411.11 of the Zoning Regulations

Under Section 411.11 of the Zoning Regulations, the Board of Zoning Adjustment is authorized to grant the Property relief from strict compliance with the Zoning Regulations that require certain design characteristics for penthouses. Section 411.11 of the Zoning Regulations states:

The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and ~~411.18~~¹ upon a showing that: (a) Operating difficulties, such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable; (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and (c) The light and air of adjacent buildings will not be affected adversely.

As will be discussed below, the Applicant meets the standards set forth in Section 411.11 of the Zoning Regulations.

A. Full compliance with the slope and setback requirements for penthouses would be unduly restrictive and unreasonable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area

The Property and its surrounding area are affected by several factors that make strict compliance with the roof structure requirements unduly restrictive. The primary factor that creates impracticality for strict compliance with Sections 411.10 and 411.18 is the existence of a

¹ Note that the new regulations erroneously reference Section 400.18 in this Section.

building that contributes to the Historic District on the Property, along with the Property's inclusion in the Mount Vernon Triangle Historic District itself. From a historic preservation standpoint, since a roof structure is required to accommodate the elevators, stairwells, and mechanical systems necessary for the renovation of a commercial building, the primary concern is to minimize the roof structure's visual impact on the Existing Structure and the Historic District. In fact, during the course of HPO review, HPO requested that the Applicant design the roof structure in the location proposed by the Project rather than elsewhere on the Property and ultimately incorporate stepped down heights, as proposed. Visibility on the opposite side of the 5th and K Streets intersection was particularly minimized – for the benefit of the Historic District.

A related but separate issue is the small size of the Property – at approximately 4,683 square feet of lot area – and the even smaller roof plane that it produces which disallows an ability to place the penthouse structure at a roof location that is sufficiently removed from street frontages while complying with required side yard setbacks. Similarly, the small roof plane disallows the ability to locate the stairwell closest to 5th Street in a way that would both allow it to be uniform (or 20% from vertical) height and still be visually minimized from public space. The Property has a depth of 56 feet from K Street and a depth of 83 feet, eight (8) inches from 5th Street, NW, which amounts to a lot that is approximately 0.107 of an acre.

Similarly the lower height of the historic resource – at approximately 37 feet, two (2) inches – further constrains the ability to locate the penthouse structure at a location that is not viewable from public space and adjacent properties. The penthouse is pushed as far away as possible from the street-facing facades of the building to minimize visibility, in part due to this lower height.

Given the above, strict compliance with the penthouse setback and slope requirements is unduly restrictive. The remainder of the Project will conform in all other manners to the Zoning Regulations and the proposed roof structure is well below the maximum permitted penthouse height.

Even if strict compliance with Sections 411.10 and 411.18 were achievable under the historic preservation approach to the site, requiring strict compliance would nonetheless be unreasonable. Moving the penthouse to a more central location on the Property or requiring a roof structure over the stairwell to be of uniform height would run counter to the design approach to the roof structure itself – to minimize the appearance of roof structure height. The Applicant has taken care to minimize the height and area of the penthouse as much as possible, constructing only the minimum roof structure required for operation of the building, and locating the roof structures as far away from the street frontages as possible. However, moving or redesigning the penthouse would have aesthetic impacts on the 5th and K Streets intersection, give the appearance of a much larger roof structure than needed, and run counter to historic preservation principles and HPO's requested design for this element.

Similarly, requiring strict compliance to locate the penthouse in a central location on the site would create operational difficulties within the building itself. As shown on Tab 5, the roof structure relocation would require that the building core be located at the middle of the proposed building. While the relocated roof structure location on the roof would significantly reduce the usability of the roof deck space itself, it would have a far greater adverse effect inside the building. As shown on Tab 5, the elevator override, main portion of the building's mechanical equipment and stairwell would be located at the middle of the building, which would require that components for such building elements be continued vertically through the building. Most

disruptive, the elevator would be located in the only area that is open and able to be rented or utilized by a commercial tenant or owner. Although the elevator override would already comprise a large component of the Property's floor plate, the deleterious effect on the usable space is even greater as several feet must be maintained as open in front of the elevator doors. In moving the elevator to the middle of the building, usable space would not be opened in the elevator's currently proposed location on each floor. Rather, such open space would be tucked away at the back of the building, stranded among internal stairways and back of house space.

Similar to the elevator override, moving the stairwells within the roof structure to the middle of the site would have significant, negative consequences on the usable floor area of the building. As shown in Tab 5, the stairway would be pushed away from the building's party wall and toward the interior of the site. As above, it would be necessary to continue the stairwell vertically down through the building on each floor. This would require a wholesale reconfiguration of the floors and likely generate accessibility and life safety compliance challenges that might not be solvable.

B. The intent and purpose of this chapter and this title shall not be materially impaired by the structure

This application represents the occasional conflict between the historic preservation process and the Zoning Regulations in part. The Zoning Regulations allow a much taller roof structure, but require it to be setback and with minimal slope. In contrast, historic preservation process typically (as here) seeks to minimize roof structure appearance if it can be accomplished. The Applicant developed the proposed roof structure in order to balance between the two considerations at the Property. Ultimately, the roof structure's proposed design solution will allow for the roof structure to be minimized and harmonized with the Historic District.

The requested relief would have no negative impact on the intent and purpose of the Zoning Regulations. In fact, the intent of the Zoning Regulation would be furthered by allowing a roof structure not in strict compliance with the setback and slope requirements, as it would lower the building profile. Additionally, the Property is located in the Principal Intersection Area (“PIA”) of the DD Overlay in Mount Vernon Triangle. The provisions related to the PIA encourage development away from street frontages – specifically street frontages of corner lots. To illustrate this, 11 DCMR § 1724 limits a building’s maximum height to fifty (50) feet for lots that front on both 5th and K Streets (such as the instant property), while allowing no more than 50% of buildings located on lots fronting on either K Street or 5th Street (but not both) to be above fifty (50) feet in height. This requirement illustrates the Zoning Regulations intent to minimize building mass and visibility at the 5th and K Streets intersection, including at the Property. Allowing for the requested penthouse elements allows for such minimized building mass and visibility to be achieved at this site.

Further to such point, as a result of having the reduced-profile roof structure allowed by the requested relief, the proposed building is compatible with heights of neighboring buildings and the Historic District itself. As a result, the project’s roof structure is in accordance with HPO design guidelines for additions that emphasize that additions should be compatible with the height of an existing building and its neighbors.

The Applicant’s building permit has been pending with D.C.R.A since June 2015. If the permit for a roof structure at the proposed location had been issued prior to January 8, 2016, the instant relief would not have been required. The Applicant believes that this fact contributes to the proposed project being in alignment with the intent and purpose of the Zoning Regulations.

C. The light and air of adjacent buildings shall not be affected adversely

The proposed roof structure allows for minimized impacts on light and air versus what would be allowed as a matter of right. As such, the Applicant is reducing the already minimal impact of the roof structure on neighboring properties and the streetscape. Specifically, the penthouse is being constructed to a height lower than is allowed matter of right, and it is located on interior lot lines of the project. The Applicant's work to lower the perceived height of the roof structure, and therefore, the perceived height of the project, certainly serves to meet the spirit of the Zoning Regulations. The roof structure's enclosed stairwell with a roof greater than 20% from vertical allows the roof structure to be removed from the public view to the maximum extent possible since by lowering such roof structure component's height profile. Such reduced height profile allows such portion of the roof structure to have an even smaller impact on light and air adjacent to the Property.

Further, we note that the recess for the Project's third floor allows for an enhanced level of light and air to reach the Property's neighbor at 468 K Street, NW. However, if the roof structure is pushed farther into the Property (towards K Street) from its proposed location, the exterior wall of the roof plane created by the façade recess on the third level would not satisfy the one-to-one setback. Therefore, the project's third floor terrace would need to be filled in and the 468 K Street neighbor would be negatively affected. Further, HPO would not likely support the addition of massing into such setback area.

Finally, 931 5th Street, NW, the neighboring property on 5th Street, will likely be constructed to a higher height than the project, given that it is currently a vacant site (with the exception of a one-story façade) and farther away from the PIA at the 5th and K Street intersection (and therefore farther away from the height limitations of the MVT Overlay). It is a larger site than the Property and contains only the façade along 5th Street. If 931 5th Street were

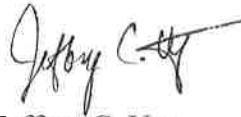
to be constructed a height even equivalent to the 37 foot, two (2) inch height of the project, the setback from the adjacent site would not be required. The Applicant should not be penalized for upgrading the Property or modernizing the structure earlier than its neighbor.

III.

Conclusion

For all of the above reasons, the Applicant respectfully request approval of the amended subject application.

Respectfully submitted,



Jeffrey C. Utz



Meghan Hottel-Cox

March 1, 2016