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January 8, 2014

VIA HAND DELIVERY

Lloyd Jordan, Chairperson
D C Board of Zoning Adjustment
441 4th Street, N W
Second Floor
Washington, D C 20001

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18289

EXHIBIT NO. 44

**Re: Board of Zoning Adjustment Order No. 18289 (the "Order")
approving variance and special exception relief for 455 I Street, NW
(Square 516, Lot 36¹), Washington, DC (the "Property") – Request to
Extend the Order for a Period of Two Years**

Dear Chairman Jordan and Members of the Board

On behalf of EQR-EYE Street LLC ("Applicant"), the owner of the Property and the applicant in BZA Case No 18289, we are hereby submitting a request for a two (2) year extension to BZA Order No 18289, granting an extension to approval for variance and special exception relief. This request for an extension is made pursuant to 11 DCMR Section 3130 et seq for the good cause shown herein

¹ At the time of the proceeding before the Board, the Property was comprised of Lots 812-825, and 876. Such lots have been combined into one record lot, Lot 36.

Board of Zoning Adjustment

In BZA Case No 18289, the Applicant sought variance and special exception relief in order to restore the three (3) historic buildings on the Property (“**Buildings**”) and construct a 110 foot addition to create an approximately 164,912 square foot residential and retail building with below grade parking (the “**Project**”). Other than the combination into one record lot, Lot 36, the Property and the plans for the project have not changed since the approval under the Order

Enclosed please find the following

- Plats depicting Property, outlined in red (Exhibit A)
- Portion of the Zoning Map depicting Property, outlined in red (Exhibit B)
- BZA Order No 18289 (Exhibit C)
- An Affidavit from Applicant Regarding the Circumstances and Good Faith Efforts Allowing for the Extension of the Order (Exhibit D)
- Map of Nearby Residential Projects (Exhibit E)
- Pictures of Adjacent Construction (Exhibit F)
- Authorization Letter Authorizing this Application (Exhibit G)
- BZA Form 126, Fee Calculator (Exhibit H)
- The requisite filing fee for this request of \$1,487.20 (26% of the initial filing fee of \$5,720 pursuant to Section 3180.1(f)) in a check made payable to the D C Treasurer

I OVERVIEW OF THE PROJECT

A The Property

The Property has approximately 144.58 feet of frontage on I Street, NW, as depicted on the plat attached as Exhibit A. The total area of the Property is approximately 20,614 square feet. The Property is located in the Mount Vernon Triangle Historic District. The Project has already been reviewed by the Historic Preservation Review Board (“**HPRB**”) and staff at the Historic Preservation Office (“**HPO**”).

The Property is located in the Downtown Development District (“**DD**”)/Mount Vernon Triangle (“**MVT**”) Overlay/C-2-C Zone District, as depicted on the portion of the Zoning Map attached as Exhibit B. Since the Property is located in the DD/MVT

Overlay/C-2-C Zone District, a maximum floor area ratio (“**FAR**”) of 8.0 is typically permitted, however, a minimum of 4.5 FAR of residential use is required. This required residential use may be accounted for off-site in a Combined Lot Development (“**CLD**”). The maximum permitted FAR in the DD/MVT/C-2-C Zone District may be increased to 8.5 when preferred retail uses are provided on site or Transferable Development Rights (“**TDRs**”) are utilized. The FAR can also be increased above 8.5 FAR if additional residential density is constructed or pursuant to the CLD program.

Further, the maximum permitted building height in the DD/MVT/C-2-C Zone District is based on the Act to Regulate the Height of Buildings in the District of Columbia (“**Height Act**”). Under the Height Act, the maximum allowable building height on the Property is 110 feet. A maximum lot occupancy of 80% is allowed if a building provides residential use.

B Project Approval

In order to implement the Project, the Applicant required approval for (i) special exception relief pursuant to 11 DCMR § 3104.1 from 11 DCMR §§ 771.1 and 411.11 relating to penthouse uniform height requirements, and (ii) variance relief pursuant to 11 DCMR § 3103.2 from 11 DCMR § 772.1 relating to lot occupancy requirements, from 11 DCMR § 776.4 relating to closed court area requirements, and from 11 DCMR § 1707.4 relating to FAR limitations on historic lots.

On January 10, 2012, the Board of Zoning Adjustment (“**BZA**” or “**Board**”) voted to approve the proposed project at the Property with the above-described relief. BZA Order No. 18289 was made final on January 20, 2012. A copy of BZA Order No. 18289 is attached as Exhibit C.

II JURISDICTION AND STANDARD OF DECISION OF THE BZA

The BZA is permitted to extend its Orders under Section 3130 et seq. of the Zoning Regulations. Section 3130 et seq. permits the BZA to extend its Orders for a maximum period of two (2) years. Given the Applicant's ongoing efforts to move this Project forward, the climate for similar residential product types in the vicinity of this Property, and other factors, we believe that an additional two (2) year extension to the Order is appropriate.

In order to extend a BZA Order under 11 DCMR Section 3130.6, the BZA must determine that (a) the extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond, (b) there is no substantial change in any of the material facts upon which the Board based its original approval of the Order that would undermine the BZA's justification for approving the original Order, and (c) the applicant demonstrates that there is good cause for such extension.

III. RATIONALE FOR EXTENSION OF BZA ORDER NO 18289

A Extension request served on all parties to the application

This extension request is being served simultaneously on the only party to the application for BZA Case No. 18289, the relevant Advisory Neighborhood Commission ("ANC") – ANC 6E². The ANC is allowed thirty (30) days to respond to this request. The extension request is also being sent to the public agencies that reviewed the original application. Further, the approval of the Owner's request will not prejudice the rights of

² Note that the District's ANCs were reconfigured in early 2013 and the Property was switched from ANC 6C to ANC 6E.

any party and is not otherwise prohibited by law. Just as the initial relief of BZA Order No. 18289 did not prejudice the rights of any party, the extension of the Order will not prejudice any party. There are no residential neighbors or structures that would be adversely affected as the result of the relief under BZA Order No. 18289. The project has the potential to greatly improve the aesthetics of a prominent parcel at a location with positive overall impacts on the neighborhood. Therefore, the first criterion for an extension to BZA Order No. 18289 has been satisfied.

B. No Substantial Change to Any of the Material Facts

The factors satisfying the variance standards and allowing for the special exception relief remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case.

Regarding the variance relief, the exceptional, unique conditions of the Property remain, such as the existence of the historic, atypically-shaped Buildings. Retention of those historic buildings, which is desirable from a design, sustainability, and cultural point of view, means that the Applicant is inheriting a set of physical constraints that cannot be altered. Similarly, the practical difficulty on the Applicant of the strict application of the Zoning Regulations remains. The Buildings still exceed the matter of right lot occupancy of 80% for the Property. The Buildings also create the physical constraints and historic review that created non-conforming courts. The Applicant would still face a physically challenging and financially infeasible reconstruction and restoration of the Buildings if the Zoning Regulations were strictly enforced. The Zone Plan would still not be harmed through the approval of the requested relief since the Project and related relief would enact policies desired by the Zoning Regulations and Comprehensive

Plan The Project would improve the area and allow a more efficient use of the Property. Further, the design has been approved by the HPRB and found to be consistent with the historic elements on the Property, the very factor that creates the exceptional conditions and practical difficulties that warrant the variance relief.

Regarding the special exception relief, the penthouse uniform height requirement relief is still in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104.1. In compliance with standards set forth in § 411.11, the Property is affected by several factors relating to the historic structures contained thereon that make the full compliance with the roof structure requirements impracticable. Specifically, it is more aesthetically desirable to have the visual impact of the roof structure lessened when possible, through the varying heights of such structure. Further, the approved relief would have no negative impact on the intent and purpose of the Zoning Regulations or the light and air of adjacent buildings. There has been no change to the Property's treatment by the D.C. Comprehensive Plan since the Order was issued.

Therefore, the second factor for an extension to BZA Order No. 18289 has been satisfied.

C. Good Cause for Delay and Actions Subsequent to Issuance of BZA Order No. 18289

Under the third prong of Section 3130.6, in order to determine whether a BZA Order should be extended, the Board must determine whether there is "good cause shown" for the requested extension. Under Section 3130.6, good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria:

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control, (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control, or (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control

A variety of factors contribute to the good cause for an extension to the validity of the Order. These factors are detailed below. An affidavit from the Applicant certifying to the elements described below is attached hereto as Exhibit D.

1 Current Oversupply of the Residential Market (Rental)

The District is currently undergoing a construction boom, particularly for residential, multi-family projects. Specifically, the immediate vicinity of the Property is experiencing a large multi-family construction surge, particularly in the Mount Vernon Triangle and NoMA areas. Property owners must be strategic about phasing their developments. Just a few years ago, this was not a foreseeable situation, but there are simply "too many cranes." For example, across the alley and to the northeast of the Property there is a total of approximately 467 residential units currently under construction and coming to market within the next year. In addition to the immediate multi-family construction mentioned above, an additional 783 units on L Street were either recently completed or are currently under construction. In total, approximately 1,250 multi-family units were either already delivered or will be delivered in the next 20 months. A map of the projects newly completed, currently under construction and planned in the vicinity of the Property is attached as Exhibit E. As you can see on

Exhibit E, the Property is surrounded by a large supply of residential units delivered and being delivered within a small window of time. In addition, there are several other newly-constructed or under-construction rental residential projects in the near vicinity of the Property, which will add to the supply, such as CityCenter DC's approximately 458 rental units.

The result of such excess market supply is that residential rents are flat or declining. According to Equity Residential's³ most recent earnings call:

New supply in Washington, D C is beginning to impact our numbers
2014 same-store revenue coming from the Washington, D C market,
which we expect to produce slightly negative revenue growth next year.

Per Equity's 3rd quarter earnings, occupancy in the Washington DC submarket decreased by 0.5% from 2012 to 2013. As a result, the Project would not be able to be constructed and operated as underwritten.

Equity is a high quality builder that is also a long term holder of its properties. Therefore, the Applicant is focused on building a long term successful project at the Property rather than bringing more supply to the market in the short term. While still committed to the Property and the Project, the Applicant believes that the better strategy for the Mount Vernon Triangle area is to allow for, at a minimum, partial absorption of the units already in the pipeline before bringing this project online.

³ The Applicant is a subsidiary of Equity Residential ("Equity"), one of the world's largest real estate investment trusts.

2 Financing

Although the Applicant is “self-funded” from its larger organization, the parent company’s investment committee acts as a de facto lender. Each project must be separately approved on its own merits by Equity’s investment committee. This process is analogous to applying to a bank or other lender for funds for construction. The above-described market pressures and supply dictates against an approval of construction funding from Equity’s investment committee at the current point in time.

In granting past extensions, the Board has determined that adverse market conditions and/or an applicant’s efforts to finance a project approved by a BZA Order, constitute good cause under the first type of good cause criteria described in Section 3130.6. We believe such standard can be met when a project is to be financed by a parent company and therefore subject to an internal financing review and such project financing is withheld. Pursuant to the affidavit attached hereto as Exhibit D, this was the financing situation confronted by the Applicant.

3 Corporate Realignment

Since the issuance of the Order, Equity, the parent company of Applicant, purchased 60% of Archstone, Inc. (with AvalonBay, Inc. purchasing the other 40% of such entity). This transaction closed in the first quarter of 2013. As a result, Equity now owns a significantly larger number of residential multi-family units in the Washington, DC area. The purchase of Archstone swelled Equity’s number of Washington-area units from roughly 12,000 to roughly 19,000.

As a result, Equity is still filtering through the properties it has obtained and reconfiguring its holdings in the Washington, DC area. Equity has a fiduciary duty to its

investors to implement its projects and reconfigure its properties with an eye towards considering the current state of the local market. In light of this, the Applicant is unable to proceed with the Project in the short term.

4 Physical Constraints on the Site

In addition to the above serious obstacles, the property to the immediate north of the Property, 450 K Street, NW, is currently under construction. The developer of such property has a crane, large amounts of construction equipment, vehicles, personnel and materials in a small area, including the alley behind the Property. In fact, the developer of such property has a license agreement with the Applicant to rent and utilize the Property for staging and storage of construction equipment and materials due to such tight configuration. Pictures depicting the current alley configuration behind the Property and the proximity of the Property to the adjacent construction are attached as Exhibit F.

It would be very difficult to introduce another construction project into such areas simultaneous to the current construction activities for 450 K Street, NW. The constant conflict of equipment, including the construction cranes necessary for construction, would provide for significant coordination challenges and delay each project's construction schedules considerably. Furthermore, it would generate extreme traffic difficulties for the construction of both projects to proceed simultaneously. Clearly, this is another reason to phase the Project.

5 5th and I Street NW Request for Proposals

The District is currently soliciting offers of redevelopment for the publicly-owned parcel immediately to the west of the Property, Lot 59 in Square 516 (aka the "5th and I" parcel or 463 I Street, NW). The District has not yet selected the Developer and the

Applicant does not yet know what the proposed project might be. The Applicant would like to explore potential synergies and further understand potential redevelopment options of the 5th and I parcel prior to proceeding under its building permits on the Property. The Applicant expects the details regarding the developer and development plan for the “5th and I” parcel to be selected during the extended term of the Order requested by the instant application.

6 Good Faith Efforts

Even in the face of the circumstances and conditions described above, the Applicant has acted diligently, prudently, and in good faith to proceed towards the implementation of BZA Order No. 18289. The Applicant has spent considerable funds on plans and construction drawings necessary to apply for a building permit from the District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) for the Project. **A list of third party work solicited and funded by the Applicant along with other costs paid by the Applicant to proceed with the Project since the issuance of the Order totaling approximately \$2.5 million is described on Exhibit D**

Applicant has applied for its raze permit for the relevant structure on the Property and two (2) public space permits. The Applicant notes that it must also perform archeological work within the Property prior to obtaining a building permit for the Project. Such work introduces an element of indefinite delay that does not commonly impact projects in the District of Columbia.

In addition, Applicant obtained the public space permits necessary for the project – from the DDOT Public Space Committee – in May 2013, incurring the associated application and consultant fees that were required during such process.

Despite the above, Applicant continues to price the construction costs of the Project with general contractors

7 Summary of Good Faith

Given the above, developing the Project to date has not been viable. However, the Applicant believes that once the factors described above improve or are addressed, the Project will have the potential to proceed. Therefore, the third standard for an extension to a BZA Order has been satisfied in the instant case.

Any further information regarding the Applicant's satisfaction of this third prong of the BZA Order extension test can be provided by Applicant upon request.

IV CONFORMANCE TO THE COMPREHENSIVE PLAN AND THE ZONING REGULATIONS

This request for an extension of time within which to complete the Project is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 31 of the Zoning Regulations, and the District of Columbia Comprehensive Plan ("Plan") for the National Capital. The Land Use Map of the Plan designates the site for High Density Commercial and High Density Residential use. The Plan's land use designation of the Property has not changed since the Order was approved. Further, the Plan's policies and goals still support the Project, and would support an extension of time for BZA Order No. 18289.

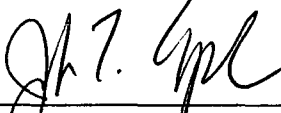
V CONCLUSION

For all of the above reasons constituting good cause, the Applicant requests a two (2) year extension for BZA Order No. 18289.

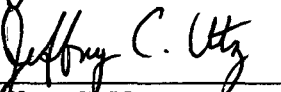
Board of Zoning Adj. nt – 455 I Street, NW
January 8, 2014

Thank you for your attention to this application

Respectfully submitted,



John T Epting

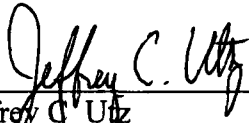


Jeffrey C Utz

cc Ben Stoll

Certificate of Service

I certify that on January 8, 2014, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below



Jeffrey C. Utz

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15-120/540

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DATE 1/8/14

PAY TO THE ORDER OF DC TREASURER \$ 1,487.20

ONE THOUSAND FOUR HUNDRED EIGHTY-SEVEN AND 20/100

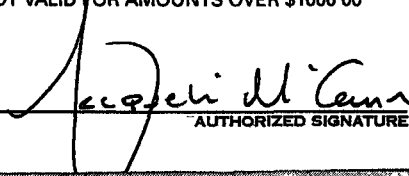
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