

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

**APPLICATION OF  
1600 I STREET CORPORATION  
1600 I STREET, NW**

**BZA APPLICATION NO. 19122  
HEARING DATE: NOVEMBER 10, 2015  
ANC 2B**

**STATEMENT OF THE APPLICANT**

**I.  
NATURE OF RELIEF SOUGHT**

This statement is submitted by 1600 I Street Corporation (the "Applicant"), the owner of the property located at 1600 I Street, NW (Square 186 Lot 39) (the "Subject Property"), in support of its application to the Board of Zoning Adjustment for the following special exception and variance relief from the requirements of the Zoning Regulations pursuant to 11 DCMR §§3104.1 and 3103.2: (i) a special exception to construct an addition to an existing office building as required under Section 508.1; (ii) a variance from the nonconforming structure provisions of Section 2001.3 to enlarge an existing nonconforming aspect of a structure; and a variance from the roof structure requirement of Section 411.1 to allow the conversion of a portion of an existing mechanical penthouse to an accessory community recreation space, to allow the renovation and expansion of the existing office building on the Subject Property in the SP-2 District.

The proposed development is appropriate for the Subject Property, fully compatible with the surrounding area, and not inconsistent with either the Comprehensive Plan or the Zoning Regulations.

**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 District of Columbia Municipal Regulations (“Zoning Regulations”).

**III.**  
**EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION**

|                   |                                                   |
|-------------------|---------------------------------------------------|
| <u>Exhibit A:</u> | Map of Subject Property and surrounding zoning    |
| <u>Exhibit B:</u> | BZA Order No. 9085                                |
| <u>Exhibit C:</u> | Portion of Comprehensive Plan Future Land Use Map |
| <u>Exhibit D:</u> | Updated architectural plans and drawings          |
| <u>Exhibit E:</u> | BZA Order No. 15330                               |
| <u>Exhibit F:</u> | ANC letter of support                             |
| <u>Exhibit G:</u> | Outlines of testimony                             |
| <u>Exhibit H:</u> | Resumes of expert witnesses                       |

**IV.**  
**BACKGROUND**

**A.     Description of the Subject Property**

The Subject Property is located in the northwest quadrant of the District of Columbia within Square 186, which is bounded by I Street to the north, H Street to the south, 16<sup>th</sup> Street to the east, and Connecticut Avenue to the west (the “Square”). The Square contains five separate lots that abut an existing alley system accessed via single curb cuts on 16th Street and I Street. The Subject Property is located at the northeast corner of the Square at the intersection of 16th and I Streets, and is known as Lot 39. The Subject Property is zoned SP-2, as shown on the

map attached hereto as Exhibit A, and consists of approximately 22,308 square feet of land area. It has approximately 172 linear feet of frontage along 16th Street, approximately 137 linear feet of frontage along I Street, and abuts a 15-foot public alley along the south.

The Subject Property is improved with an eight-story office building that was constructed ca. 1968 pursuant to BZA Order No. 9085, attached hereto as Exhibit B, which granted variance relief from the rear yard and roof structure size requirements. The existing building has a height of 90 feet and a floor area ratio (FAR) of 5.5, which at the time of construction were the permitted height and FAR under the SP District for residential and nonresidential buildings.

As to occupancy, the building is owned and primarily-occupied by the Motion Picture Association of America (MPAA), a non-profit trade association founded in 1922, as well as other office tenants. MPAA represents the six major Hollywood movie studios, and, among other things, administers the MPAA film rating system and advocates for protection of creative content, piracy, removal of trade barriers, and copyright infringement. The building is in need of substantial renovation to modernize existing mechanical, electrical, and plumbing (MEP) systems, bring the structure into compliance with modern building codes, including ADA, and improve energy efficiency.

The building is an example of Brutalist architecture and consists of a six-story block composed of a pre-cast concrete structure and deeply recessed windows that create a grid-like façade. The block is supported by a two-story recessed base that is lined with stone-cladded columns at the perimeter that create an arcade at the base. The majority of the building's ground level is set approximately three feet below sidewalk level, creating a sunken courtyard that is partially covered by the building overhang at the third story. The building has two entrances, one on 16th Street and the other on I Street. While the 16th Street entrance is accessible directly from

the sidewalk by means of a paved plaza that bridges across the sunken courtyard, the entrance along I Street sits below the sidewalk and is accessed by a stairway and ramp that lead down to the entrance and sunken courtyard. The courtyard can also be accessed using an obscured stairway that runs parallel to the 16th Street entrance. The building is constructed to the property lines on the north, south, and east. Thus, the aforementioned entrance plaza, stairway, ramp, and the landscaping that surrounds the building are entirely located within the public right-of-way.

Finally, the ramp to the below-grade parking garage is located along the west side of the building and is accessed from a curb cut on I Street. The garage currently contains approximately 151 parking spaces, more than the required minimum. The loading facilities are also located along the west side of the building and are accessible from the 15-foot public alley that runs along the south boundary of the Subject Property and connects to 16th Street.

#### **B. Description of Surrounding Area**

The Subject Property is located within the District's central business district within an area primarily characterized by medium- to high-density commercial uses, many with ground-floor retail, as well as several hotels, private clubs, and institutional uses. Immediately surrounding the Subject Property are several office, institutional, and open space uses including the Hay-Adams Hotel, St. John's Episcopal Church, the U.S. Chamber of Commerce, the AFL-CIO, and the Laborers' International Union of North America (LIUNA). There are several open spaces nearby including Lafayette Square, Farragut Square, and McPherson Square.

With regard to access, the Subject Property is located in an extremely walkable, bike-friendly, and transit-rich neighborhood. Multiple modes of public transportation are available in close proximity, with the Farragut West and Farragut North Metrorail Stations located

approximately 0.2 miles to the west and northwest, respectively. The McPherson Square Metrorail Station is approximately 0.25 miles to the east. The Subject Property is also accessible by several Metrobus routes as well as the DC Circulator, which operates along K Street one block north. Finally, the Subject Property can be easily accessed by bicycle, with the 15<sup>th</sup> Street cycle track located one block to the east, and additional bike lanes to the north. There are also two Capital Bikeshare stations at Farragut and McPherson Squares.

This superior accessibility is reflected on the Walk Score website which identifies the Subject Property as having Walk and Transit Scores of 98 and 100, respectively, earning the Subject Property labels such as a “Walker’s Paradise” and a “Rider’s Paradise.” In addition, the location of the Subject Property is also considered “Very Bikable” with a Bike Score of 79.

**C. Existing Zoning and Comprehensive Plan Land Use Designation**

Zoning in the surrounding area is primarily C-4, with the properties fronting the east and west sides of 16th Street being zoned SP-2. As shown on Exhibit A, the Square is split-zoned in a peculiar manner in which the Subject Property and the property diagonally across the alley to the southwest are zoned SP-2, with the two properties to the west of the Subject Property, and one isolated property to the immediate south, being zoned C-4. The property to the south, which is occupied by the Hay-Adams Hotel, was rezoned from SP-2 to C-4 in February 2008, to permit construction of a permanent 16-foot rooftop addition (*see* Zoning Commission Order No. 08-02).

As stated above, the Subject Property is zoned SP-2, which is one of two special purpose (SP) Districts. The major purposes of the SP District is to stabilize areas adjacent to the C-3-C and C-4 Districts, provide a buffer between adjoining commercial and residential areas, and ensure new development is consistent with the transitional purpose of the SP District relative to use, scale, and design. Generally, the SP-1 District permits medium density development while the SP-2

District permits medium-high density development, with residential development permitted greater density than new office development in both SP Districts, With regard to the SP-2 zoning of the Subject Property, a maximum height of 90 feet is permitted, and the maximum permitted density is 6.0 FAR, of which no more than 3.5 FAR can be devoted to nonresidential uses. The maximum permitted lot occupancy is 80% for residential uses and 100% for nonresidential uses.

For comparison purposes, the surrounding C-4 District permits high-density commercial, residential, and mixed-use developments. The maximum building height allowed in the C-4 District is 110 feet, with 130 feet permitted along streets with 110 foot widths, the maximum FAR is 10.0, and maximum lot occupancy of 100%.

The Future Land Use Map of the Comprehensive Plan (January 2013), adopted as part of the District Elements of the Comprehensive Plan for the National Capital (the “Comprehensive Plan”), designates the Subject Property as High Density Commercial, as shown in attached Exhibit C. The High Density Commercial land use category defines the central employment area of the District and other major office employment centers on the perimeter of downtown. These areas are characterized by office and mixed office/retail buildings greater than eight stories with lower scale buildings (including historic buildings) interspersed. According to the Framework Element of the Comprehensive Plan, The typical zone districts that correspond to the High Density Commercial land use category include C-2-C, C-3-C, C-4, and C-5. The lowest height and density of these zones is 90 feet and 6.0 FAR for C-2-C, which increases to 7.2 FAR with inclusionary zoning.

**D. Project Description**

As shown in Exhibit D, the Applicant is proposing several major improvements to the Subject Property to bring the existing building up to modern building code standards, improve accessibility and energy efficiency, and improve the design aesthetic of the exterior and quality of the surrounding public space. With regard to the building, the Applicant is proposing a complete modernization to include upgrades to the exterior façade, public space improvements to hardscape and landscape, rooftop amenities, and renovation of ground-floor function and amenity space for MPAA use and potentially a retail or service use. The project will also replace all existing MEP systems with systems that have a much better efficiency and much lower overall footprint.

With regard to treatment of the building exterior, the Applicant proposes to cover the existing façade with a new exterior that emphasizes the horizontal character of the building, and improves the overall aesthetic, while respecting the modernist architectural heritage of the building. Specifically, the proposal is to clad the building's existing beige precast structural concrete frame with light-colored horizontal limestone panels and light-color metal vertical panels on floors 3 - 8. The existing deeply recessed windows that significantly limit the amount of daylight that can reach the interior spaces of the building will be replaced with new energy efficient windows. Currently, as shown in Exhibit D, Sheets 7 & 8, the windows are recessed 4'-6" from the face of the building. The proposal will reduce the recess to 18 inches thereby providing better natural daylighting while preserving the building's modernist design and providing passive solar protection. The reduction of the window recess increases the building's total gross floor area (GFA) by approximately 9,708 square feet.

At the podium level, the expansive two-story stone-cladded walls will be replaced with light-colored energy efficient glass storefront to maximize the amount of daylight entering this

portion of the building which, as previously noted, sits partially below sidewalk level and is recessed below the third-floor overhang. In addition, four small additions are proposed consisting of two new entry vestibules along 16th and I Streets, and two small rear additions along the west side of the building to accommodate a modest expansion of the ground-level function space and screening room. The vestibules will be double-height, tucked in below the third-floor overhang, and sit flush with the building face (*see Exhibit D, Sheets 15 & 16*). They will be enclosed with energy efficient, glass-supported storefront systems. The vestibule along 16th Street will serve the main building lobby, while the one along I Street will serve MPAA's function space. These additions will add approximately 1,147 square feet of GFA to the building. Overall, the project will add approximately 10,855 square feet of GFA to the building, and increase FAR from 5.5 to 5.99, still below the overall 6.0 FAR permitted in the SP-2 District. As an existing office building located within the SP-2 District, and which is currently non-conforming as to FAR, the Applicant requires special exception and variance relief pursuant to Sections 508.1 and 2001.3 in order to carry out the improvements described above.

Finally, as part of the project the building's existing MEP systems will be completely replaced with new energy efficient systems, which includes a full renovation of the rooftop mechanical penthouse. Of note, while the mechanical penthouse will be completely renovated, the Applicant is not proposing to increase the footprint of the penthouse, which will remain at approximately 9,300 square feet. However, as a result of an increase in the size of the unenclosed chiller yard, the penthouse FAR will be reduced from approximately 0.41 to 0.36 since, pursuant to Section 411.14, roof structure areas within curtain walls without a roof do not count toward roof structure GFA.

On the exterior, the existing pre-cast penthouse cladding will be replaced with new light-colored metal panels and a horizontal band of light-colored stone panels that match the proposed main building facade. On the interior, as shown in Exhibit D, Sheet 24, currently the penthouse is almost entirely devoted to mechanical equipment. However, the amount of space devoted to mechanical equipment in the proposed penthouse plan, shown in Exhibit D, Sheet 23, is substantially less as a result of the new MEP systems having a substantially smaller footprint, so much so that despite the increase in the size of the chiller yard, and after the allocation of space to other operational aspects such as the elevator core, emergency generator, storage, and building maintenance, there is still approximately 1,500 square feet of unallocated existing penthouse space which the Applicant is requesting to convert to a communal rooftop reception area that is accessory to a new outdoor terrace. The proposed outdoor terrace will utilize lightweight wood pavers and glass railings that are setback from the roof edge at a 2:1 ratio. The main roof level will also have new light-weight modular green roof packs to provide a landscape element to the terrace. In order to construct the proposed rooftop reception area the Applicant must request variance relief since currently, pursuant to Section 411.1, accessory communal space is only permitted within the penthouse of an apartment house.

**V.**  
**THE APPLICANT MEETS THE TEST FOR**  
**SPECIAL EXCEPTION RELIEF**

**A. Description of Special Exception Relief Requested**

The Applicant seeks a special exception for approval to expand the existing office building located on the Subject Property in the SP-2 District as required pursuant to Section 508.1. As described below, the Applicant meets each of the criteria for that special exception.

**B. Standard for Approving 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.*

Section 508.1 permits the "construction of a new office building or construction of an addition to a building for office use, or conversion of an existing building to office use," in an SP District if approved by the Board as a special exception under Section 3104, subject to the conditions enumerated in Sections 508.3 and 508.4. Section 3104.1, authorizes the Board to grant special exceptions where, in the judgement of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property, As discussed below, the Applicant meets the burden of proof for the requested relief.

**C. Standard of Review for Office Use in the SP District Pursuant to §§508.1 & 3104.1**

Section 508.1 provides that construction of a new office building or construction of an addition to a building for office use shall be permitted in the SP District if approved by the Board of Zoning Adjustment. The following should be taken into consideration:

§508.3        The use, height, bulk and design shall be in harmony with existing uses and structures on neighboring property.

With regard to use, other than the Hay-Adams Hotel, most of the buildings surrounding the Subject Property are devoted to office use. The height and bulk of the MPAA building are also compatible with neighboring properties, and in many instances are lower than surrounding properties given their C-4 zoning designation which allows building heights up to 130 feet and a maximum 10.0 FAR. Finally, the proposed building design is compatible with neighboring properties which exhibit a wide range of architectural styles. As described above, the proposed façade will consist of an assembly of glass, metal, and limestone materials that emphasize the horizontal character of the building in a manner that respects the building's modern heritage. The emphasis on the horizontal aspects of the building is a common architectural characteristic that can be observed on several surrounding buildings as well.

§508.4        The use shall not create dangerous or other objectionable traffic conditions.

With regard to impacts on traffic, the Applicant is not proposing any changes to parking and loading access. Access to the parking garage will continue to be from I Street, and access to the loading facilities will continue to be via the public alley along the south side of the building. Therefore, the general circulation patterns of the building will remain the same. Furthermore, no increase in building occupancy is likely to occur considering the increase in building GFA is primarily a result of reducing the existing window recess and addition of the entrance vestibules, as opposed to an increase in additional office space. Nonetheless, should there be a slight increase in building population it is unlikely to create objectionable impacts to street parking as the building currently has more than adequate parking available in the existing below-grade garage, which far exceeds the minimum number of parking spaces required under Section 2001.1 of the Zoning Regulations.

§508.5        The Board may require special treatment in the way of design, screening of building, accessory uses, signs, and other facilities as it deems necessary to protect the value of neighboring properties.

The Board may choose to provide any special treatment necessary to protect the value of the neighboring properties, which again are primarily office buildings. After working closely with the District of Columbia Historic Preservation Office (HPO) staff, on October 29, 2015, the Applicant obtained concept approval from the Historic Preservation Review Board with final approval delegated to HPO staff. The Applicant's proposed improvements to surrounding public space will be subject to review and permit by the District Department of Transportation.

§3104.1       The special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring properties.

For the reasons described above, the Applicant has also met its burden under Section 3104.1. The proposal will not adversely affect the use of neighboring property, and in fact may improve the use through the landscape improvements that are proposed to the public space surrounding the Subject Property. The modest additions proposed at the first- and second-levels will not impact the availability of light and air to neighboring properties. In addition, use of the proposed roof terrace will not adversely affect the Hay-Adams Hotel which has its own rooftop function room addition approximately one level above the roof level of the Applicant's building, and there is approximately 30 feet of separation between the proposed roof terrace and the north windows of the hotel. Finally, the proposal is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. General office is a permitted use in the SP-2 District, with additions to existing offices permitted by special exception. As stated above, the purpose and intent of the SP District is to act as a buffer between adjoining commercial and residential areas, and to ensure the compatibility of new development. The proposal is compatible in use, scale, and

design with surrounding buildings; and furthermore, the Subject Property will continue to fulfill its transitional role between the scale of the adjacent C-4 District and the lower scale established along the 16<sup>th</sup> Street corridor.

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

The Applicant is requesting area variances from the requirements of Section 2001.3 (nonconforming structures devoted to conforming uses) and Section 411.1 (roof structures). As described above, the Applicant is proposing a full interior and exterior renovation of the existing office building on the Subject Property, which is currently nonconforming as to FAR resulting from amendments to the Zoning Regulations that occurred soon after the building was constructed. The Applicant's proposal to renovate and expand the existing building will increase overall GFA by approximately 10,855 square feet, and increase the existing FAR from 5.5 to 5.99. Under the current SP-2 District, the maximum permitted FAR for nonresidential uses is 3.5. Thus, the Applicant requires a variance from Section 2001.3 to increase an existing, nonconforming aspect of the structure.

In addition, the Applicant is requesting an area variance from the roof structure requirement of Section 411.1, to allow a communal rooftop reception area within a portion of the existing mechanical penthouse that is accessory to an outdoor terrace. Currently, accessory communal space is only permitted within the penthouse of an apartment house, and only when not in conflict with the federal 1910 Height of Buildings Act (the "Act"). The proposed rooftop reception area would not conflict with the Act, both as to its location relative to the maximum building height allowed under the Act, and to the proposed use. Therefore, the Applicant is merely seeking the variance to provide an amenity space that would otherwise be permitted in the SP-2 District if the Subject Property was developed with an apartment house use.

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:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
- (3) 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). As discussed below, the Applicant meets the three prongs of the area variance test.

**A. The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition**

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). In this case, the exceptional conditions that affect the Subject Property derive from a confluence of several factors, including: (i) changes made to the provisions of the Special Purpose Zone District soon after construction of the existing building, (ii) the size of the existing penthouse which is a function of the size of mechanical equipment used at the time the building was built but is now much larger than required, (iii) the location and height of the building relative to the surrounding buildings, and (iv) from the uncertainty related to the effective date of the recently proposed penthouse regulations under consideration in Zoning Commission Case No. 14-13 (Case No. 14-13).

First, the Subject Property is affected by the exceptional condition caused by changes made to the provisions of the Special Purpose District (the “SP District”) soon after construction of the existing building. By way of background, the establishment of the SP District first occurred during development of the 1958 Zoning Regulations, which was the first major update of the Zoning Regulations since being adopted in 1920. During the update process, the concept of transition districts was viewed as a useful approach to providing a buffer between commercial or manufacturing and residential areas. While initially the proposal included creation of an SP-1 and SP-2 District, what ultimately was adopted as part of the 1958 Zoning Regulations was a single special purpose district (SP), within which the Subject Property was included. This original SP district permitted a maximum building height of 90 feet, and a 5.0 FAR for apartment houses and 5.5 FAR for any other use, including office uses. The existing office building was constructed in compliance with these height and FAR requirements, and remains the same today.

In 1978, approximately 10 years after the existing office building was constructed, the Zoning Commission approved several changes to the SP District, including splitting the SP District into SP-1 and SP-2, with the Subject Property inheriting the SP-2 zoning designation. While the initial SP District permitted a maximum 5.5 FAR for any use other than an apartment house, the new SP-2 District significantly favored residential uses over non-residential uses by allowing a maximum 6.0 FAR, with non-residential uses limited to only 3.5 FAR. Thus, though the Subject Property was constructed in conformance with the 5.5 FAR permitted under the original SP District, subsequent changes to the SP District led to the exceptional condition of the existing office now being nonconforming as to FAR.

Secondly, the Subject Property is exceptional with regard to the size of the existing penthouse relative to the space needed to accommodate the building’s new MEP systems. The

existing penthouse footprint is approximately 9300 square feet which, as shown in Exhibit D, Sheet 24, is primarily devoted to mechanical equipment and the elevator core, with some mechanical storage space located in the southwest corner of the penthouse. As described above, a portion of the project entails the complete upgrade of the buildings MEP systems with new energy efficient systems, which have a much smaller footprint compared to what currently exists; and therefore, require much less floor space within the penthouse. This results in a substantial amount of leftover space within the existing penthouse that the Applicant does not need for mechanical equipment or any other typical utilitarian penthouse use. The Board has previously acknowledged a surplus of existing penthouse space that had been constructed for a particular use which later became no longer necessary as an exceptional condition (*see* BZA Application No. 15330, final order attached hereto as Exhibit E). In that case, the Board approved a variance from the requirements of Section 411.1 to allow the conversion of an existing roof structure storage area to an accessory exercise/community room, similar to what the Applicant in this case is requesting.

Further, the Subject Property is affected by the exceptional condition created from the uncertainty related to the final text and effective date of the new penthouse regulations which were recently approved by the Zoning Commission on November 9, 2015, and which will go into effect after the District of Columbia Office of Planning and the Office of the Attorney General prepare the final text and publish the new regulations to the DC Register. The exact date of when the new regulations will be published to the DC Register is unknown.

In response to amendments made to the federal 1910 Height Act that eliminated the prohibition on human occupancy in rooftop penthouse structures of buildings, signed into law on May 16, 2014, the Zoning Commission recently approved a comprehensive set of amendments to the existing roof structure regulations. While the text of the final regulations will not be known

until they are published to the DC Register, the final text is likely to be very similar to that which was voted on by the Zoning Commission at its November 9, 2015, meeting, especially with regard to how the new regulations apply to the Subject Property.<sup>1</sup> Under the new penthouse regulations, a rooftop penthouse will now be permitted to contain habitable uses, subject to certain limitations, including penthouses within the SP-2 District. However, the new regulations would prohibit any building within a specified area near the White House from taking advantage of the new penthouse use allowances, including the Subject Property. This absolute restriction was imposed in response to comments provided by the U.S. Secret Service (USSS) regarding the use of penthouses as residences, and concerns regarding the additional visibility into secluded areas of the White House gained as a result of higher penthouse heights. However, the Applicant does not propose to use the existing penthouse as residences (dwelling units), nor does it include an increase in penthouse height. Furthermore, as described below, given the unique situation of the Subject Property, and its substantially lower height relative to the other properties within the Square, the proposed accessory reception area will not have any views of the White House.

As described above, the Square is split-zoned in a peculiar manner in which the Hay-Adams Hotel, located directly south of the Subject Property, is zoned C-4 pursuant to a February 2008 text amendment that rezoned that property from SP-2 in order to facilitate construction of a permanent 16-foot rooftop addition. As shown in Exhibit A, the isolated location of the C-4 zoning established for the Hay-Adams Hotel project uniquely affects the Subject Property as it relates to the visual relationship between the Applicant's building and the White House. Specifically, as a

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<sup>1</sup> On November 9, 2015, the Zoning Commission took final action to approve Z.C. Case No 14-13, Penthouse Regulations. The version of the new penthouse regulations that was voted upon by the Commission is included in the final supplemental report submitted by the District of Columbia Office of Planning, dated November 2, 2015, and included in the case record as Exhibit 141.

result of the text amendment, the now constructed rooftop addition of the Hay-Adams Hotel completely blocks any views the proposed accessory reception area would have to the south.

**B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty to the Owner**

To meet the standard for practical difficulty, “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). In area variances, such as those requested in this case, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1365 (D.C. 1992), citing *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). Finally, it is well settled that the BZA may consider “... a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’....” *Gilmartin*, 579 A.2d at 1171, citing *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976). See also, *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2d 1362, 1367 (D.C. 1992). Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible.

**1. Nonconforming Structures Devoted to Conforming Uses (§2001.3)**

The strict application of the nonconforming structure provisions of Section 2001.3 would make it practically difficult for the Applicant to carry out the modernization project. The provisions of Section 2001 are intended to provide a degree of flexibility to property owners that own nonconforming structures devoted to conforming uses and have a need to make improvements and updates to their properties. Indeed, Section 2001.2 permits, by-right, ordinary repairs, alterations,

and modernizations to a nonconforming structure that contains a conforming use, including structural alterations. Furthermore, the regulations even permit enlargements or additions to nonconforming structures provided: (1) the structure conforms to percentage lot occupancy requirements, and (2) the addition itself conforms to applicable use and structure requirements and does not increase, extend, or create a nonconformity.

As discussed above, the Applicant is endeavoring to modernize an existing office building that is currently nonconforming as to FAR as a result of changes made to the Zoning Regulations following construction of the building. The existing building was constructed in the late-1960s, and is now in need of extensive [and costly] mechanical, functional, and aesthetic upgrades to address several issues, including substantial energy inefficiency, which require minor additions to the podium level of the building and replacement of existing window assemblies. These additions slightly increase the building's nonconforming FAR from 5.5 to 5.99. The strict application of the Zoning Regulations would be substantially burdensome as it would prohibit the Applicant from constructing these important additions, and considerably reduce the Applicant's opportunity to improve the energy efficiency, daylighting, and circulation of the building.

## 2. Roof Structures (§411.1)

With respect to the requested variance from Section 411.1, the strict application of the Zoning Regulations would create a practical difficulty as it would require the Applicant to continue to maintain existing penthouse space that, as a result of completely modernizing the building with new, energy efficient MEP systems that have a much smaller footprint, there is no longer a need to use this space for mechanical equipment, nor does the Applicant need additional storage space.

The proposed penthouse plan locates the accessory communal reception area in the current location of the unenclosed cooling tower yard, with the new cooling tower relocated to the

northwest corner of the penthouse. In order to maintain energy efficiency, the area of the existing cooling tower needs to be insulated either by enclosing the space or adding insulation within the ceiling of the top floor office space. Due to restrictive ceiling heights, adding insulation to the ceiling of the top floor is not feasible. Therefore, the area of the existing cooling tower must be enclosed, and conditioned, or else the heat gain would transfer through the roof slab to the office space below, thereby impacting overall energy efficiency. Thus, the strict application of the Zoning Regulations would result in the unnecessary burden of the Applicant having to continually maintain the space proposed for the accessory reception area with the only permitted use being storage, which the Applicant does not need, and hinder the MPAA, a nonprofit organization, from taking full advantage of the space it has occupied since the building was built to carry out its mission. In BZA Application No. 15330, noted above, the Board agreed that continual maintenance and conditioning of existing, unutilized penthouse space solely to avoid losses in energy efficiency of a building constituted a practical difficulty.

As discussed above, the Applicant is faced with an additional burden arising from the recently approved penthouse regulations which expressly prohibits any habitable use of a penthouse within the area bounded by I Street, NW to the north, Constitution Avenue, NW to the south, 19<sup>th</sup> Street, NW to the west, and 13<sup>th</sup> Street, NW to the east. As noted above, this prohibition is in response to concerns raised by the USSS regarding the use of penthouse space for habitable dwelling units, and the additional views that may be afforded into the White House Complex as a result of higher penthouse height. The Applicant's proposal does not entail any of the aspects that give rise to the USSS' concerns. First the Applicant is not proposing to use the building's existing penthouse for habitable dwelling units. Rather, the Applicant is proposing an accessory communal reception area that would only be used for MPAA sponsored or authorized events. Of note, the

anticipated use of this space would function in a manner consistent with the publically accessible commercial or recreational penthouse uses referred to in the USSS' comments to the Zoning Commission in Case No. 14-13, and seemingly acknowledged as being acceptable uses within a penthouse. Secondly, the Applicant is not proposing to increase the height of the existing penthouse, and as previously noted, views toward the White House from the proposed reception area would be blocked entirely by the Hay-Adams Hotel.

**C. The Requested Relief Will Not Result in a Substantial Detriment to the Public Good Nor a Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan**

The requested variances can be granted without causing substantial detriment to the public good and without substantial impairment to the intent, purpose, or integrity of the Zone Plan. With regard to the Zone Plan, the variance to allow an increase in the building's nonconforming FAR will not compromise the purpose and intent of Section 2001, which is intended to allow nonconforming structures to be expanded, within reason, and without exacerbating the impacts a particular nonconformity may be causing. First, the proposed increase in FAR is a result of relatively small increases in GFA that are distributed throughout the existing building, rather than consolidated in a single area, and will not substantially increase the occupancy load of the building. In addition, the proposed 5.99 FAR is still below the maximum 6.0 FAR that is permitted in the SP-2 District. In addition, the proposed FAR is consistent with the Comprehensive Plan's high density commercial land use designation for the Subject Property.

Also, the large majority of the additional GFA will result from the reduction in the depth of the existing recessed windows, and the additions that are proposed, occur within the existing outer limits of the building façade. Therefore, the project will not cause impacts to light and air to

nearby properties. Finally, the Applicant's proposal is compatible in use, scale, design, and will not cause any objectionable traffic and circulation conditions.

The variance requested from the roof structure requirements can also be granted without causing substantial impairment to the intent, purpose, or integrity of the Zone Plan. The proposed reception area is modest in size and, as noted, under the existing Zoning Regulations the proposed reception area would be permitted if the existing building was converted to an apartment house. The penthouse, which is existing and meets all required setbacks, will be clad in a manner that harmonizes with the main structure in architectural character, material, and color, including the energy efficient storefront system proposed for the reception area. The variance can also be granted without resulting in substantial detriment to the public good. Since the penthouse exceeds the required 1:1 setback, the proposed function room will not be visible from 16th Street or I Street.

Finally, as it relates to the new penthouse regulations recently approved by the Zoning Commission, the Applicant's proposal does not meet any of the specific security concerns raised by the USSS that has led to the proposed restriction on habitable penthouse use. The Applicant is not proposing to use the penthouse for residences, and views from the proposed reception area toward the White House will be completely blocked by the rooftop terrace of the Hay-Adams Hotel. Therefore, even under the proposed penthouse regulations, the requested variance can be granted without causing substantial detriment to the public good.

## **VII.** **COMMUNITY SUPPORT**

The Applicant has worked with the community and has obtained support for the project. On September 9, 2015, at its regularly scheduled, duly noticed meeting, Advisory Neighborhood Commission 2B ("ANC 2B"), with six of the nine commissioners present, voted 6-0 to support the application. A copy of the support letter is attached as Exhibit F

**VIII.**  
**WITNESSES**

- A. Jordan Goldstein, AIA, LEED AP, Principal & Managing Director, Gensler
- B. Shane L. Dettman, AICP, Director of Planning Services, Holland & Knight LLP

**IX.**  
**CONCLUSION**

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

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: \_\_\_\_\_

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