

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

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

1600 I Street, NW (Square 186 Lot 39)

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 an application pursuant to 11 DCMR §§3104.1 and 3103.2 for a special exception under §508.1, and variances from (i) the requirements of §2001.3 to allow an increase of an existing nonconforming aspect of a nonconforming structure devoted to a conforming use, and (ii) the roof structure requirements of §411.1 to allow a portion of an existing roof structure to be devoted to enclosed communal amenity space that is accessory to an outdoor roof terrace, to allow the renovation and expansion of the existing office building on the Subject Property in the SP-2 District.

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its prehearing statement with the District of Columbia Board of Zoning Adjustment (the “Board”) no fewer than 14 days prior to the public hearing date. In that statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested relief.

I. Background: Subject Property, Surrounding Context, and Zoning

Square 186 is located in the northwest quadrant of the District of Columbia and is bounded by I Street to the north, H Street to the south, 16th 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. As shown on the attached plat, 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 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 circa-1968 pursuant to BZA Order No. 9085, which granted variance relief from the rear yard and roof structure FAR 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 requirements under the SP District for residential and nonresidential buildings.

As to occupancy, the building is owned and partially-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 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 supported by stone clad columns and a two-story recessed podium. The building is set within an areaway that is slightly below sidewalk level, creating a sunken courtyard that is partially covered by the building overhang above the second 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, the entrance

along I Street sits below the sidewalk and is accessed via a stairway that leads down to the entrance. The stairway and ramp also provide exterior access to the sunken courtyard in addition to an obscured stairway that runs alongside the 16th Street entrance plaza. The building sits flush with the property lines along 16th and I Streets; therefore, the entrance plaza paving, stairways, ramp, and the landscaping that surrounds the building are located within the public right-of-way.

The ramp to the below-grade parking garage is located along the west side of the building and is accessed via a curb cut along I Street. The garage currently contains approximately 151 parking spaces. 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.

The area surrounding the Subject Property is primarily zoned C-4, with the properties fronting 16th Street zoned SP-2. The C-4 District is considered the District's central business district and permits a variety of commercial, retail, and business uses, as well as high-density residential and mixed-use developments. 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, the Laborers' International Union of North America (LIUNA), the White House, and Lafayette Square. Other notable open spaces in close proximity include McPherson Square, Farragut Square, and Franklin Square. The Subject Property is well-served by public transportation, 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.

As stated above, the Subject Property is zoned SP-2, one of two special purpose (SP) Districts that are intended to stabilize areas that are adjacent to C-3-C and C-4 District. The major purpose of the SP District is to provide a buffer between adjoining commercial and residential areas, and to ensure that new development is consistent with the transitional purpose of the SP District relative to use, scale, and design. Generally, residential development is permitted greater density than new office development in both SP District, with the SP-2 District generally permitting greater density, medium-high, compared to the medium density SP-1 District. The SP-2 District permits a by-right maximum building height of 90 feet and a maximum FAR of 6.0, 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.

II. Proposed Development

The Applicant is planning 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 including upgrades to the exterior façade, core and shell, common areas, ground-floor hardscape, rooftop amenities, and MEP systems. The renovation will also include ground-floor function and amenity space dedicated to MPAA use and potentially space devoted to retail and service uses.

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 frames

with light-colored horizontal limestone panels and light-color metal vertical panels on levels 3 - 8. The existing deeply recessed windows that significantly limit the amount of daylight entering the interior spaces of the building will be replaced with new energy efficient windows. Currently, the windows are recessed 4'-6" from the face of the building. The proposal will reduce the recess to 18 inches thereby providing better daylighting while maintaining passive solar protection. The reduction of the existing window recess increases the building's total gross floor area (GFA) by approximately 9,708 square feet.

At the podium level, the expansive stone clad walls will be replaced with light-colored energy efficient glass storefront to maximize the amount of daylight entering the recessed podium footprint. In addition, four small additions consisting of two new vestibules at the entrances along 16th and I Streets, and two small additions along the west side of the building to accommodate modest expansions of the function space and screening room are proposed. The vestibules will be double-height, tucked in below the upper-level building overhang, and sit flush with the building face. They will be enclosed with energy efficient, glass-supported storefront systems. The vestibule along 16th Street will serve the main building lobby, while the vestibule along I Street will serve the lobby of MPAA's function/screening space. The additions to the first and second levels of the building will add approximately 1,147 GFA. Overall, the project will increase the total building GFA from 122,694 to 133,549 square feet, an increase of 10,855 square feet, and increase the existing 5.5 FAR to 5.99 FAR.

In addition, coordinating hardscape and landscape improvements are proposed within the sunken courtyard to further open up this area as an extension of the newly renovated main building lobby and MPAA function space, and provide a more inviting pedestrian experience along the

sidewalk. The hardscape design also includes two new lifts that provide an accessible path of travel from the sidewalk to the sunken courtyard.

Finally, at the main roof level, new light-colored metal panels will be used to clad the existing penthouse. Approximately 1,490 gross square feet of enclosed penthouse space will be devoted to a new roof terrace reception area that will utilize an energy-efficient storefront system. The reception area will open onto a new outdoor terrace that will utilize lightweight wood pavers and glass railings that are setback from the roof edge at a 1:1 ratio. The main roof level will also have new light-weight modular green roof packs to provide a landscape element to the terrace.

III. The Applicant Meets The Burden of Proof For Special Exception Relief

Pursuant to Sections 3104.1 and 508.1, the Applicant is requesting a special exception to allow renovation and expansion of the existing building on the Subject Property for office uses. Section 508 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 the relief where 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 adversely affect the use of neighboring property, As discussed below, the Applicant meets the burden of proof for the requested relief.

The proposal meets the specific conditions of Sections 508.3 and 508.4 which require the use, height, bulk, and design of the proposed office building expansion to be in harmony with existing uses and structures on neighboring property, and shall not create dangerous or other objectionable traffic conditions. With regard to use, other than the Hay-Adams Hotel, the majority

of 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 emphasizes 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.

With regard to impacts on traffic, the Applicant is not proposing any changes to parking and loading access. The entrance to the parking garage will continue to be off of 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, any impacts caused by an increase in building occupancy resulting from the additional GFA will be negligible, although *no impact* is anticipated given the modesty of the increase in GFA, and the Subject Property's proximity to public transit. In addition, 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. As noted herein, the parking garage currently exceeds the minimum number of spaces required under the Zoning Regulations.

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 16th Street corridor.

IV. The Applicant Meets The Burden of Proof for the Requested Area Variance

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 after the building was constructed. As described above, 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 an enclosed rooftop function room / accessory amenity space within the penthouse level of the office building. Pursuant to Section 411.1, such uses are only permitted within the penthouse of an apartment building, and only when not in conflict with the federal Act to Regulate the Height of Buildings in the District of Columbia (1910), as amended (“the 1910 Height Act” or “the Act”). The proposed rooftop amenity space would not conflict with the 1910 Height 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 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 changes made to the provisions of the Special Purpose Zone District subsequent to the construction of the existing building, and 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 Zone District (the "SP District") subsequent to the 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.

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 ultimately inheriting the SP-2 zoning designation. While the initial SP District permitted a maximum 5.5 FAR, regardless of use, the new SP-2 District permitted a maximum 6.0 FAR, *with non-residential uses limited to 3.5 FAR*. Thus, though the Subject Property was constructed in conformance with the 5.5 FAR permitted under the zoning in effect at the time of construction, subsequent changes to the SP District led to the exceptional condition of the existing office building automatically becoming nonconforming with respect to FAR. Now, due to its age, the building systems must be replaced and the new construction is extensive, costly, and must address the energy inefficiency of the existing building.

Further, the Subject Property is also affected by the exceptional condition created from the uncertainty related to the final text and effective date of the recently proposed penthouse regulations currently under consideration in Case No. 14-13. On June 8, 2015, the Zoning Commission took proposed action on Case No. 14-13, Text Amendment – Penthouse Regulation, and is scheduled to consider final action at its October 19, 2015, meeting. Under the current regulations, a rooftop function room / accessory amenity space similar to what the Applicant is proposing is only permitted within the penthouse of an apartment house, and only when not in conflict with the 1910 Height Act. The existing regulations do not permit accessory enclosed penthouse use in nonresidential buildings; and therefore, the Applicant is requesting variance relief from the Board.

In response to the 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 took proposed action on a comprehensive set of

amendments to the existing roof structure regulations. According to the proposed regulations, published to the DC Register on August 8, 2015, a rooftop penthouse will now be permitted to contain habitable uses, subject to certain limitations, including penthouses within the SP-2 District. However, as currently drafted, the proposed 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 is proposed 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. The Applicant's proposal does not propose to use the existing penthouse as residences (dwelling units); and furthermore, the Subject Property is uniquely situated such that views from the existing 15-foot penthouse, which will not be modified in height, are completely blocked by the Hay-Adams Hotel, which is immediately south of the Subject Property higher than the existing building. Furthermore, while the proposed regulations currently apply this restriction categorically, it is unknown what the provisions of the final penthouse regulations may be.

B. Strict Application Would Result in a Practical Difficulty to the Owner.

1. Nonconforming Structures Devoted to Conforming Uses (§2001)

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 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 in need of substantial mechanical, functional, and aesthetic upgrades which require minor additions to the podium level of the building, and replacement of existing window assemblies to increase energy efficiency and daylighting into the building. 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 entirely prevent the Applicant from constructing these important additions, and considerably reduce the Applicant's opportunity to improve the energy efficiency and circulation of the building.

2. Roof Structures (§411)

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 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. The current Zoning Regulations limit enclosed rooftop amenity space to only apartment building penthouses.

As discussed above, the Applicant is faced with the additional burden arising from the uncertainty of the language of the proposed penthouse regulations.

In addition, the adoption of the restriction as currently proposed would uniquely affect the Applicant when taking into consideration the reasons for which the restriction has been proposed in the first place, and the disposition of the Subject Property relative to surrounding building and the White House. First, as stated above, the proposed restriction is a result of 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.

First the Applicant is not proposing to use the building's existing 15 foot penthouse for habitable dwelling units. Rather, the Applicant is proposing a reception or function space 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.

Second, the Subject Property would also be uniquely affected by the proposed restriction since the views toward the White House from the proposed penthouse amenity space would be blocked entirely by the Hay-Adams Hotel, which is higher than the existing building, a condition that is unique to the Subject Property within the Square.

C. No Substantial Detriment to the Public Good Nor 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 FAR is still below the maximum 6.0 FAR that is permitted in the SP-2 District. In addition, 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. Also, the large majority of the additional GFA will result from the reduction in the depth of the window recess resulting from the replacement of the existing windows with new energy efficient windows that will significantly increase the ability of the building as a whole to conserve energy when taken together with the full package of proposed renovations. The new windows will also provide enormous benefit to the interior of the building with regard to daylighting while not causing any impacts to surrounding buildings. Finally, as has been explained previously, 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. As noted, the proposed rooftop function / reception room 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 function room. 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, relating to the concerns raised by the USSS in Case No. 14-13, the Applicant is not proposing to use the penthouse for residences, and views from the penthouse toward the White House are already completely blocked by the Hay-Adams Hotel.