DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Revised Statement of Nesso Plaza Tenleytown, LLC
4249-4251 Wisconsin Avenue, NW (Square 1785, Lot 20, A&T Lot 801)
BZA Case No. 21532

I. INTRODUCTION.

This Revised Statement is submitted on behalf of Nesso Plaza Tenleytown, LLC (the "**Applicant**"), the owner of the property located at 4249-4251 Wisconsin Avenue, NW (the "**Property**"), in support of its application in BZA Case No. 21532 (the "**Application**"). This Revised Statement supersedes the Applicant's initial statement and describes the revisions the Applicant has made to the project in response to feedback from the Advisory Neighborhood Commissions and neighbors. The Property is improved with an existing two-story commercial building (the "**Building**") most recently used as a bank. The Applicant proposes to adaptively reuse the existing Building for commercial uses, which is permitted as a matter of right, and to construct a habitable penthouse (the "**Penthouse**") on top of the Building.

As originally filed on August 28, 2026, the Application requested two categories of special exception relief.

Updates to Setback Relief:

First, pursuant to Subtitle C § 1506.1, the Applicant requested relief from the setback requirements of Subtitle C § 1504 for (i) the mechanical penthouse enclosing the elevator overrun, and (ii) three rooftop awning structures serving the rooftop deck. As originally designed, the bulk of the Penthouse habitable space was fully set back 1:1 and required no setback relief.

Since filing, the Applicant has met with commissioners of ANC 3E and ANC 3A and has presented the project at their respective September, October, and November public meetings, which were attended by residents of 39th Street. The Applicant also held a meet and greet with neighbors early November. A primary concern was the potential for noise from the rooftop, particularly in the evening, from restaurant seating on the side of the roof facing 39th Street. The Applicant revised the design in response, as shown on the revised plans submitted with this Statement. In summary:

- The enclosed Penthouse space has been shifted to the 39th Street side of the roof, eliminating any open space, patron seating, or patron access along 39th Street.

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- The open rooftop deck is on the opposite side of the roof, facing Wisconsin Avenue and the corner of Warren Street, the Property's primary rights-of-way.
- The rooftop awnings are retractable.

As a result of shifting the enclosed space, the Penthouse habitable space is no longer set back from the building wall on the 39th Street side (the back of the building), nor fully on the Warren Street side (the side of the building). The Applicant is therefore revising the special exception relief, pursuant to Subtitle C § 1506.1, from the side and rear setback requirements of Subtitle C § 1504 for the Penthouse habitable space on those respective sides, in addition to the relief previously requested for the elevator overrun and the awnings. The awnings face Wisconsin Avenue. All of the setback relief is requested under the same provision, Subtitle C § 1506.1. The Penthouse otherwise remains in compliance with the height requirement of the prospective MU-8A/WA zone,[1] and it remains fully set back from the Wisconsin Avenue side and along the most prominent portion of the Warren Street side.

The relief is consistent with the purpose of the penthouse setback requirements, which is to keep a rooftop structure from making a building appear to have an additional story from street view. The Penthouse fully serves that purpose along Wisconsin Avenue and the most prominent portion of Warren Street, the Property's primary rights-of-way. The only side without a setback is the 39th Street side, where the Property has a large yard (63 ft. and 7 in.) and a large portion of the roof is screened from view by the apartment building at 4240 39th Street, NW. Shifting the enclosed space to that side serves the purpose of the regulation at least as well as the original layout, and it resolves the concerns raised by the neighbors.

Updates to Eating and Drinking Est. Special Exception

The second area of relief is pursuant to Subtitle C § 1501.1(d) and Subtitle X § 901.2, where the Applicant requested approval for an eating and drinking establishment within the Penthouse. The Zoning Regulations generally permit any use allowed within the underlying zone to be located within a penthouse as a matter of right. However, an eating and drinking establishment located within penthouse habitable space, or on a rooftop deck on the highest roof

[1] The overall penthouse height is 16 feet and 1 inch, which is below the permitted height of the MU-8A/WA zone (the pending zone) but above the height of the current zone. The Applicant is aware that the MU-8A/WA zone text amendment will need to be in effect by the time of permitting for the height to be permitted.

of the building, is permitted only upon special exception approval by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

The Applicant has not yet identified a specific tenant for the Penthouse but is targeting a neighborhood-serving restaurant. In order to market the space efficiently, and to avoid the need to return to the Board once a tenant is identified, the Applicant seeks special exception approval at this time, pursuant to Subtitle C § 1501.1(d) and Subtitle X § 901.2, to permit an eating and drinking establishment use within the Penthouse. The updates to the setback relief requested are based on the neighbors' feedback regarding potential impacts from a restaurant tenant in the penthouse.

While this approach might be less appropriate for other use categories, it is well suited to a restaurant use. Virtually any restaurant tenant that intends to serve alcohol must obtain a license from the Alcoholic Beverage and Cannabis Administration (ABCA). That process will require the eventual tenant to address, in detail, the types of operational conditions, such as hours of operation, noise, and trash management, that the Board might otherwise consider, and it also affords the surrounding community the opportunity to enter into a settlement agreement with the tenant addressing neighborhood concerns. The ABCA process thus provides an independent regulatory framework, tailored to the specific operator, that will govern the day-to-day operation of the establishment once a tenant is identified. That being said, the Applicant is working with the ANC on potential conditions for the penthouse use.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the requested special exception relief pursuant to Subtitle X § 901.2 and Subtitle C §§ 1501.1(d) and 1506.1.

III. BACKGROUND.

A. Procedural Background.

The Application was filed through IZIS on August 28, 2026. The Application was assigned Case No. 21532 and scheduled for a public hearing on December 16, 2026. The Property is located in ANC 3E and is directly across Wisconsin Avenue from ANC 3A. The Applicant provided the Application materials to both ANCs and has presented the project to both, as described in Part V below.

B. Property Description and Revised Project.

The Property is located at 4249-4251 Wisconsin Avenue, NW, Square 1785, Lot 20, A&T Lot 801, in Ward 3 and ANC 3E05. The Property comprises approximately 6,832 square feet of land area and is currently zoned MU-3A.[2]

The Property is currently improved with the Building, an existing two-story commercial structure, most recently used as a bank, containing 9,318 square feet of gross floor area.[3] The Applicant proposes to construct a new Penthouse on top of the Building. The Penthouse habitable space will have a height of twelve feet (12 ft.) and the elevator overrun will have a height of sixteen feet and one inch (16 ft. 1 in.). The penthouse space will be set back at least 12 feet (1:1) from the front (Wisconsin Avenue) wall although the majority is set back seventeen feet and 1-3/4 inches. It will also be partially set back from the Warren Street side wall. Under the revised design, it is not set back from the wall on the 39th Street side.

The Applicant requests special exception relief, pursuant to Subtitle C § 1506.1, from the side and rear setback requirements of Subtitle C § 1504 for the Penthouse habitable space along the 39th Street side.

In addition to the Penthouse habitable space, the Penthouse includes a mechanical penthouse enclosing the elevator overrun, which extends four feet, one inch (4 ft., 1 in.) above the roof of the Penthouse habitable space (i.e., sixteen feet, one inch (16 ft., 1 in.) above the roof of the Building). Because Subtitle C § 1504.1 requires a rooftop structure to be set back a distance equal to its own height, the elevator overrun is required to be set back sixteen feet, one inch (16 ft., 1 in.). The elevator overrun is instead set back approximately twelve feet (12 ft.), rather than the greater setback required for its own, greater height. Accordingly, the Applicant requests special exception relief, pursuant to Subtitle C § 1506.1, from the setback requirement of Subtitle C § 1504.1 for the elevator overrun.

The revised plans also include awning structures above portions of the rooftop deck. The awnings are retractable, so they are extended only when the deck is in use. There are three awnings

[2]The Applicant notes that the Property is expected to be rezoned to the MU-8A/WA zone pursuant to a pending Zoning Commission text and map amendment, Z.C. Case No. 25-13. An eating and drinking establishment use is permitted as a matter of right at grade, and by special exception in a penthouse, under both the current MU-3A zone and the prospective MU-8A/WA zone. Accordingly, this application does not depend on the outcome of that pending case.
[3]The Building is an existing nonconforming structure with respect to FAR, which is limited to 1.0 in the MU-3A Zone. Subtitle C-202.2 governs alterations to existing nonconforming structures and permits enlargements or additions, provided that it does not increase the nonconformity. The Penthouse addition does not contribute to FAR, as it is less than 0.4 FAR (see C-1505.1(c)).

proposed, each nine feet (8 ft. 6 in.) high and set back approximately 7 ft., 1-3/4 in. from the wall along Wisconsin Avenue, which is approximately 1 ft., 4-1/4 in. less than the 8 ft. 6 in. (1:1) setback required by Subtitle C § 1504.1. The Applicant therefore requests special exception relief, pursuant to Subtitle C § 1506.1, from that requirement. The Applicant notes that making the awnings retractable does not eliminate the need for relief, but it reduces their visual presence when they are not in use.

C. Surrounding Area.

The Property has three street frontages (Wisconsin Avenue to the west, Warren Street to the north, and 39th Street to the east) with its designated "frontage" on Wisconsin Avenue, NW. Wisconsin Avenue is a designated priority corridor and one of the principal mixed-use commercial corridors in upper Northwest Washington, served by Metrobus and within walking distance of Metrorail. The surrounding area is characterized by a mix of commercial, retail, and residential uses typical of the Wisconsin Avenue corridor in this part of Ward 3. The immediately adjacent uses include an apartment building to the east, at 4240 39th Street, NW, and a vacant lot to the south. The other uses in the square include restaurant and retail. On the 39th Street side, the Property has a large rear yard of approximately 63 feet, 7 inches, and the apartment building at 4240 39th Street, NW screens a large portion of the roof on that side from view.

IV. THE APPLICATION SATISFIES THE STANDARDS FOR SPECIAL EXCEPTION APPROVAL.

Pursuant to Subtitle X § 901.2, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. This general standard governs the eating and drinking establishment relief requested under Subtitle C § 1501.1(d), for which there are no additional standards specific to that use. The penthouse setback relief requested under Subtitle C § 1506.1 is subject to this same general standard and, in addition, requires the Applicant to demonstrate that reasonable effort has been made to comply with the applicable setback requirements, and at least one of the specific grounds enumerated in Subtitle C § 1506.1(c). As explained below, the Application satisfies each of these standards.

A. Eating and Drinking Establishment Special Exception.

First, the proposed use is in harmony with the purpose and intent of the Zoning Regulations. A restaurant or other eating and drinking establishment is permitted as a matter of right in the MU-3A zone in the rest of the building (and will remain so under the prospective MU-8A/WA zone), and such a use is accordingly presumed to be compatible with the mix of uses the zone is intended to accommodate. The relief requested here does not introduce a use that is not permitted in the zone; it simply preserves the Applicant's ability to locate that already-permitted use one story higher, within a modest penthouse addition. The Wisconsin Avenue corridor in this area is an active, transit-served mixed-use corridor that already includes a range of retail and restaurant uses, and the proposed use is consistent with that established commercial character.[4]

Second, the proposed use will not adversely affect the use of neighboring property. The Penthouse is a modest addition that complies with the penthouse height requirement of the prospective MU-8A/WA zone and does not expand the Building's existing footprint. In response to neighbors' concerns, the Applicant has revised the design so that there is no open roof deck, patron seating, or patron access along 39th Street, the side nearest the residential uses, and the open deck is on the Wisconsin Avenue side, facing the corner. Because the Applicant has not yet identified an operator, specific operational details such as hours of operation will be established through the ABCA licensing process once an operator is in place. That process provides the ANC and surrounding community a dedicated opportunity to address site-specific considerations, including through a settlement agreement with the eventual tenant. For these reasons, the special exception relief requested by the Applicant is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring property.

B. Penthouse Setback Relief.

Subtitle C § 1506.1 provides that relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment, subject to:

(a) The special exception requirements of Subtitle X, Chapter 9;

[4]Up to eighteen (18) parking spaces are available in the parking lot located across Warren Street from the Property (Lot 809).

(b) The applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and

(c) The applicant's demonstration of at least one (1) of the following:

(1) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;

(2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;

(3) The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; or

(4) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C § 115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.

1. Penthouse habitable space on the 39th Street side. The Applicant has made reasonable efforts to comply with the setback requirements of Subtitle C § 1504, as required by Subtitle C § 1506.1(b). The Penthouse habitable space is fully set back on a 1:1 basis along Wisconsin Avenue and along the most prominent part of Warren Street, the Property's primary rights-of-way. As originally designed, the Applicant also provided the full setback on the 39th Street side and used the resulting area for open roof deck. When neighbors raised concerns about noise from that deck, the Applicant considered the alternatives and concluded that the better approach was to build the enclosed space to the 39th Street-side wall and to eliminate the open deck on that side. The relief requested for the Penthouse habitable space is therefore the direct result of the Applicant's effort to respond to the neighbors' concerns.

The purpose of the penthouse setback requirement is to keep a penthouse from reading as an additional story of the building when viewed from the street. That purpose is fully served on Wisconsin Avenue and the primary viewpoints along Warren. On the 39th Street side, a large portion of the roof is screened from view by the apartment building at 4240 39th Street, NW, and the Property has a large rear yard. Concentrating the enclosed space on that side is a better design than a perimeter setback, because it consolidates the bulk where it is least visible, keeps the front of the Building and the corner uncluttered, and avoids placing outdoor activity next to the

residences. For the same reasons, the result is visually less intrusive than a layout that distributes the Penthouse and open deck around the full perimeter of the roof.

The shape of the Building is slightly irregular, and the large rear yard, and the adjacent apartment building are conditions relating to the building and the surrounding area. In light of those conditions, requiring a full setback on the 39th Street side would put the open roof deck, with its associated activity, on the side of the roof nearest the residences. That is the arrangement the neighbors asked the Applicant to avoid, and full compliance would therefore be unreasonable.

2. Elevator overrun. With respect to the elevator overrun, the elevator shaft must remain vertically aligned with the elevator core serving the floors below, such that further setting back or relocating the overrun would require reconfiguring the Building's vertical circulation core. This satisfies Subtitle C § 1506.1(c)(4), which permits relief where operating difficulties relating to elevator stack location make full compliance unduly restrictive, prohibitively costly, or unreasonable. In addition, because the overrun extends only four feet, one inch (4 ft., 1 in.) above the Penthouse roof, adds no habitable space or floor area, and is sited in the least visible location on the roof, granting the requested relief will result in a structure no more visually intrusive than one that fully complies, consistent with Subtitle C § 1506.1(c)(3).

3. Awnings. The awnings are open, lightweight, retractable canopy features that shelter portions of the rooftop deck rather than solid enclosure walls. The awnings face Wisconsin Avenue and will be minimally visible from the street because they are set back approximately 7 ft., 1-3/4 in. from the wall. That visibility does not defeat the requested relief, because the relevant comparison under Subtitle C § 1506.1(c)(2) and (c)(3) is not to an invisible structure, but to the fully compliant alternative: a solid, enclosed structure built out to the required setback, or the elimination of rooftop deck shelter altogether. A retractable, minimal-profile awning is a better design that does not read as an extension of the building wall, and it is less visually intrusive than the taller, bulkier enclosed construction that strict compliance would otherwise require or induce. Because the awnings retract, they are present only when the deck is in use.

4. No adverse effect on neighboring property. Finally, none of the requested setback relief will adversely affect the use of neighboring property. The Penthouse habitable space is set back fully along Wisconsin Avenue and along the most prominent portion of Warren Street, and on the 39th Street side it is screened by the adjacent apartment building and set back from 39th Street by the Property's large rear yard. Shifting the enclosed space to that side moves the open

deck, and the activity associated with it, away from the nearest residences. The elevator overrun is minor in scale and adds no floor area or habitable space. The awnings are open, lightweight, and retractable, and do not read as additional building bulk. For these reasons, the requested setback relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

V. COMMUNITY OUTREACH.

The Applicant has engaged with both ANCs, neighbors, and District agencies since filing the Application. The Applicant's outreach to date is summarized below, and the Applicant will supplement the record before the public hearing.

1. **ANC 3A notice and presentation.** On August 28, 2026, the Applicant's case manager provided the Application materials to ANC 3A Chair Thaddeus Bradley-Lewis (SMD 3A01) and Commissioner Claire McCafferty (SMD 3A04), because the Property is directly across Wisconsin Avenue from ANC 3A. On September 4, 2026, the Applicant provided the case number, hearing date, and a link to the online case file, and offered to attend an ANC meeting. At the Chair's request, the Applicant's counsel presented an update at the ANC 3A public meeting on October 20, 2026 and provided a written update on October 19, 2026. ANC 3A's vote is expected on November 17, 2026.

2. **ANC 3E commissioner meetings.** Ian Ruel of the ownership team met with ANC 3E Commissioner John Mitchell and other commissioners to explain the project concept. The Applicant's team, including counsel, also met with Commissioners John Mitchell and Tom Quinn before the October ANC 3E public meeting.

3. **ANC 3E public meeting.** The Applicant presented the project at the ANC 3E public meeting in October, including the proposed plans, parking, and trash plans, and identified the relief requested. Residents of 39th Street attended and noted concerns about noise from the roof deck, particularly in the evenings, as well as trash, deliveries and loading, parking and traffic, and the potential number of guests.

4. **Design revisions.** In response to the concerns raised, the Applicant revised the project to (a) eliminate the open roof deck, patron seating, and patron access along 39th Street by shifting the enclosed Penthouse space to that side; (b) locate the open deck on the

Wisconsin Avenue side, facing the corner; and (c) make the rooftop awnings retractable.

5. **Neighborhood point of contact.** The Applicant's principal, Jonathan Askarinam, has agreed to serve as the neighborhood's point of contact for the project and to attend an ANC meeting if concerns arise.

6. **DDOT.** The Applicant has contacted the District Department of Transportation about bike parking and a potential expansion of the curbside loading and delivery zone on Wisconsin Avenue in front of the Property, which will be confirmed at permitting.

7. **Office of Planning.** The Applicant's counsel has contacted the Office of Planning regarding the revised design and the revised setback relief.

8. **Community meet and greet.** The Applicant hosted a neighborhood meet and greet with Tenleytown Main Street, ANC 3E, and nearby residents at the Property in early November. Although the Board's review is focused on the Penthouse, the Building will contain a number of other tenant spaces, and the Applicant wants to hear what the community would like to see in them.

The Applicant looks forward to continuing to work with ANC 3E, ANC 3A, and the surrounding community as the Application progresses.

VI. CONCLUSION.

For the foregoing reasons, the Applicant respectfully requests that the Board grant (i) special exception relief under Subtitle C § 1501.1(d) and Subtitle X § 901.2 to permit an eating and drinking establishment within the Penthouse; and (ii) special exception relief under Subtitle C § 1506.1 from the setback requirements of Subtitle C § 1504 for the Penthouse habitable space along the 39th Street side, the elevator overrun, and the awning structures.

Respectfully Submitted,

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