

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

Application of
2100 M Street Property Owner LLC

BZA Application No:
ANC 2A06

STATEMENT OF THE APPLICANT

This application is made by 2100 M Street Property Owner LLC (the “**Applicant**”) to the Board of Zoning Adjustment (“**Board**”) for special exception and variance relief from the strict requirements of the Zoning Regulations to renovate and expand the existing office building (the “**Project**”) at the property located at 2100 M Street, NW (Square 72, Lot 75) (the “**Property**”). The application requests special exception approval pursuant to Subtitle C § 1504.1 of the Zoning Regulations for relief from penthouse setback requirements, and variance relief from the requirement under Subtitle I § 201.6 to provide a 45-degree setback from the adjacent MU-zoned property to the west of the Property; from the minimum court width and area requirements under Subtitle I § 207.1; and from the minimum vertical clearance required for loading berths under Subtitle C § 905.2. The Project will conform to the Zoning Regulations in all other respects.

I. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X §§ 901.1 and 1000.1 of the Zoning Regulations.

II. DESCRIPTION OF THE PROPERTY, SURROUNDING AREA, AND PROJECT

The Property is located in Downtown, DC and is a corner lot fronting on 21st Street, NW to the east, M Street, NW to the north, and New Hampshire Avenue, NW to the west. Immediately adjacent to the west of the Property is the property located at 1143 New Hampshire Avenue, NW, which is improved with a nine (9)-story hotel currently operated as The Wink. Immediately to the south is a ten (10)-story office building with ground-floor retail located at 2101 L Street, NW. The

surrounding area consists primarily of high-density commercial office, hotel, and residential development consistent with the City's urban core. The Property is located 0.4 miles walking distance from the Farragut West and Dupont Circle Metrorail stations and 0.5 miles walking distance from the Farragut North station.

The Property is an irregularly-shaped lot consisting of approximately 41,196 square feet of land area. The Property is zoned D-5 and is currently improved with a nine (9)-story office building constructed in 1969 with approximately 272,434 square feet of gross floor area (“GFA”) and approximately 271 below-grade parking spaces.¹ As shown in the architectural plans attached as Exhibit G (the “Plans”), the Applicant proposes to renovate and expand the building to provide approximately 375,655 square feet of GFA or approximately 9.12 FAR² across eleven (11) floors, plus a habitable penthouse. As depicted in the Plans, the Project will include a complete redesign and modernization of the building's façade on all frontages and will extend the building envelope into the northern portion of the lot, which is currently unoccupied, creating a tiered system of terraces giving a new, more artful expression to the building's street presence. Perhaps most importantly, the Project is designed from the ground up, intending to activate and engage the building with the surrounding public space. To that end, the Project will reconfigure the building's ground-floor retail space, eliminating the 1960s-vintage arcades along the three public rights-of-way, and will increase the amount of retail space from the existing approximately 11,389 square feet to approximately 19,440 square feet.³ The ground-floor improvements will also include updates to the building's entrances along 21st Street and New Hampshire Avenue and

¹ This total does not include 21 parking spaces that are partially located in the public space vault extending from the below-grade parking garage on Property.

² The Project will utilize density credits/transferable development rights pursuant to Subtitle I § 539.1(c) to exceed the maximum 6.5 FAR permitted as a matter of right in the D-5 zone for non-residential use.

³ The Applicant notes that the retail area may be converted to other types of commercial use, depending on market demand.

improvements to the building's ADA access, as well as improvements to the adjacent public space to facilitate streetscape-enhancing uses with outdoor seating.

In addition, the Project will include new bicycle parking facilities on the first below-grade level with approximately 80 bicycle parking spaces and related bicycle facilities and improvements to the building's loading facilities. The building currently provides two (2) 30-foot loading berths, and the Project will reconfigure the parking entrance to provide one (1) new 30-foot loading berth. As discussed in more detail below, the Applicant is requesting relief from the fourteen (14)-foot minimum vertical clearance requirement under Subtitle C § 905.2 for the existing and new loading berths due to the level of the existing overhead slab and transfer beam above the loading area.

Notably, the Board previously granted zoning relief for the Property in 2007 in BZA Order No. 17696, attached as Exhibit H. BZA Order No. 17696 granted, pursuant to then-applicable provisions under the 1958 Zoning Regulations (“**ZR-58**”), special exception relief from roof structure setback requirements, variance relief from the 45-degree setback required from the adjacent property at 1143 New Hampshire Avenue, and variance relief from loading height requirements, among other things, similar to the relief requested in this application and discussed in more detail below. Several extensions were requested and granted for BZA Order No. 17696 due to the adverse economic conditions for development resulting from the 2008-09 economic crisis, with the most recent extension, BZA Order No. 17686-C, expiring without being vested in December 2014.

As part of its efforts in developing the Project program and design, the Applicant has worked to minimize potential impacts of the Project on adjacent properties. As part of that consideration, the Applicant met with the owner of the adjacent 1143 New Hampshire Avenue property and will continue that dialogue. The adjacent owner expressed support for the Project

and the requested relief and is intending to submit a letter to the Board accordingly. The Applicant also met with the Advisory Neighborhood Commission (“ANC”) 2A Single Member District representative. The Applicant will continue to work with its neighbors, the community, and ANC 2A regarding the Project and will meet with the ANC prior to the Board’s public hearing on this application.

III. THE APPLICATION SATISFIES THE CRITERIA FOR THE REQUESTED RELIEF

The Applicant requests special exception approval pursuant to Subtitle C § 1504.1 of the Zoning Regulations for relief from penthouse setback requirements. The Applicant also requests variance relief from the requirement under Subtitle I § 201.6 to provide a 45-degree setback from the adjacent MU-zoned property to the west of the Property; from the minimum court width and area requirements under Subtitle I § 207.1; and from the minimum vertical clearance required for loading berths under Subtitle C § 905.2. As discussed in detail below, the application satisfies the respective standards for the relief requested.

A. Special Exception Under Subtitle C § 1504.1 for Penthouse Setback Requirements.

The Applicant requests relief from the requirement under Subtitle C § 1502.1 to provide a 1:1 setback for roof structures. Specifically, as depicted in tan on Sheet A-6 of the Plans and tan-hatch on Sheets A-13 and A-16 of the Plans, mechanical equipment and the adjacent mechanical screen wall located in the court on the 11th floor and a portion of the elevator core at the penthouse level will encroach into the required 1:1 roof structure setback area. Under Subtitle X § 901.2, in order to obtain special exception relief, an applicant must show that the requested relief will be in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring properties. Additionally, for special exception relief from the roof

structure requirements pursuant to Subtitle C § 1504.1, the applicant must demonstrate compliance with certain conditions for relief. As discussed below, the Project meets both the general requirements for special exception relief under Subtitle X § 901.2 and the specific conditions for approval under Subtitle C § 1504.1.

1. *The strict application of the requirements of the setback requirement would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes. (C § 1504.1(a))*

The strict application of the 1:1 roof structure setback requirement would be unduly restrictive and unreasonable for the Project. While the Project will include updates to mechanical and HVAC systems for the building, the available space for such equipment and green features is highly limited, due in part to the unusual configuration of the Property and building, which necessitates locating some mechanical equipment in the 11th floor court. Due to the size requirements for this equipment and the need to co-locate other mechanical equipment within this court and equipment within the existing mechanical roof structure, as shown on Sheets A-6 and A-13 of the Plans, a portion of this equipment must be located within the required 1:1 roof structure setback area. This mechanical equipment, as proposed, is also located within the same area of the building footprint as mechanical equipment is currently located, though it is being moved to a higher level. Not only is such equipment currently within the 1:1 roof structure setback area (at a lower height on a lower floor), but it would be unduly restrictive and excessively expensive to require such equipment to be moved outside of the vertical plane within which it currently exists. Locating this equipment at the new higher (uppermost) roof would require significant further infrastructure and systems work that would be financially and physically adverse, while making the equipment far more visible and disruptive to the view from surrounding buildings. Further, in order to minimize the impact of any noise generated by this equipment and limit visibility of the

proposed mechanical equipment, the Applicant proposes to construct a screen wall adjacent to the mechanical equipment, which would also be within the 1:1 roof structure setback area. By including such screen walls, which results in the full enclosure of the mechanical equipment from view, and creating a more accommodating upper story environment for the neighboring properties, the Property will need relief.

In addition, a very small portion of the upper penthouse level will encroach into the 1:1 roof structure setback area, as shown on Sheets A-6 and A-13 of the Plans. Since this portion of the penthouse consists of the building's elevator core and is a vertical extension of the existing elevator core, the Applicant is constrained in its ability to modify the location of the penthouse to avoid the restricted setback area. The Project is not able to move the existing elevator core to another location due to the extreme physical reconfiguration that would be required to the building in order to introduce a new elevator shaft throughout the rest of the structure, including the cellar and garage levels to accommodate a new mechanical component and base. Such reconfiguration would be highly adverse to the structure and would impose an enormous additional expense on the Project. Further, the degree of the elevator override has been minimized to the extent feasible. Only the elevator's cab way to access the roof and the related mechanical systems are located within this component of the roof structure. Accordingly, the strict 1:1 roof structure setback requirement would be unreasonable for the Project.

2. *The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall. (C § 1504.1(b))*

Granting the requested relief will result in a better design and will not appear to extend the building wall. With respect to the mechanical equipment and screen wall located on the 11th floor, the mechanical equipment will be obscured by the proposed screen wall, which will consist of different materials from the main building wall, as shown on Sheet A-15 of the Plans,

distinguishing the screen visually from the building. The proposed mechanical equipment and screen wall will also result in a better overall design for the building by allowing the structure to appear as a more cohesive plane from such perspective, while avoiding the placement of significant infrastructure on the high roof that would be aesthetically disruptive. Further, the proposed screen wall will hide the mechanical equipment visually and mitigate potential noise impacts associated with the related equipment.

With respect to the elevator core at the penthouse level, this portion of the structure, while not meeting the 1:1 penthouse setback requirement, will still provide a substantial setback of 30 feet, eight (8) inches from the western edge of the roof below, ensuring that the proposed elevator core structure is readily recognizable as part of the penthouse rather than an extension of the building wall while ensuring the reduction of its visual intrusion. The proposed elevator core will also result in a better roof structure design, allowing access to the penthouse level to be achieved via an extension of the building's existing elevator core, without the need to create a separate elevator shaft solely for the penthouse level, which would be inefficient and difficult to integrate into the proposed floor plan for both the 11th floor and penthouse. Further, maintaining the elevator core in the existing, centralized location will minimize the penthouse's visibility to the public.

3. *The relief requested would result in a roof structure that is visually less intrusive. (C § 1504.1(c))*

For the same reasons discussed above, the requested roof structure setback relief will allow both the 11th floor mechanical equipment and the penthouse elevator core to be less visually intrusive. The 11th floor mechanical equipment will be screened from view by the proposed screen wall, minimizing visual impact on the adjacent 1143 New Hampshire Avenue property. This screen wall and 11th floor location will also allow the Applicant to keep the equipment off of the

roof plane where it might be more viewable than would be desirable (although, as stated above, it would be expensive and physically challenging to perform such relocation). Likewise, as discussed above, the existing elevator core is centrally located within the building envelope where it is least likely to be visible and, thus, allowing this core location to be maintained for the penthouse level ensures minimal visual intrusion.

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 building lot; or other conditions relating to the building or surrounding area making full compliance unduly restrictive, prohibitively costly or unreasonable. (C § 1504.1(d))*

As outlined above, full compliance with the 1:1 roof structure setback requirement would be unduly restrictive and unreasonable for the Project. Requiring relocation of the proposed mechanical equipment from the 11th floor to the penthouse level would create difficulties in providing all of the necessary mechanical support for the building. Further, prohibiting the mechanical screen wall on the 11th floor would make the equipment more visually intrusive, contrary to the intent and requirements of the regulations. Similarly, requiring the penthouse elevator core to be relocated would be highly inefficient and create great difficulties, unnecessarily creating duplicative core and access space and resulting in complications related to the penthouse and other level floor plans and layouts, particularly given the already modest size of the penthouse at approximately 7,878 square feet (0.19 FAR). Accordingly, strict adherence to the 1:1 roof structure setback requirement is unduly restrictive and unreasonable in this case.

5. *Every effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks. (C § 1504.1(e))*

In developing the design and layout for the Project, the Applicant has endeavored to design the mechanical equipment and penthouse elevator core to comply with the required setbacks. The

challenge for the Project is in providing sufficient mechanical equipment to support the building, given the constraints associated with the irregular shape and configuration of the building and the limited space available to accommodate all of the necessary mechanical support systems. With respect to the penthouse elevator, as discussed above, the proposed elevator core is an extension of the building's existing elevator core and thus requiring compliance with the 1:1 setback would mean providing a separate elevator shaft and access space, which would create substantial difficulties for the floor plan and layout of the 11th floor and penthouse, particularly given the relatively limited envelope of the penthouse and constraints associated with the unusual configuration of the penthouse and building due to the Property's unique shape.

It is also noteworthy that the Applicant has designed the Project to observe as much of the setback required from the 1143 New Hampshire property as possible. As a result, the exterior wall that acts as the point from which a 1:1 setback must be taken is lower than it would typically be, which creates the violation of the setback for the penthouse elevator override.

6. *The intent and purpose of this chapter and this title shall not be materially impaired by the structure and the light and air of adjacent buildings shall not be affected adversely. (C § 1504.1(f))*

The requested relief is consistent with the intent and purpose of the roof structure regulations and will not impair the light and air of the adjacent buildings. The 11th floor mechanical equipment and adjacent screen wall will serve the objective of the regulations to generally minimize the visibility of roof structures and minimize adverse impacts on the neighboring property. Further, the equipment and screen wall will not impair access to light and air for the adjacent 1143 New Hampshire Avenue building given the open space between the two buildings at this location. Moreover, were it not for the need to accommodate additional mechanical equipment for the building, this 11th floor interior court could otherwise be filled in

with enclosed building area in any event and so the proposed screen wall condition does not impair any access to light and air otherwise required or intended by the Zoning Regulations.

With respect to the penthouse elevator core, the portion of the structure encroaching into the 1:1 setback area is exceedingly minimal — approximately 133 square feet of GFA — and the penthouse will continue to meet the objective of the regulations to minimize penthouse visibility. Further, given the limited scope of the encroachment, there will be no material impact on light and air for the adjacent buildings at either 1143 New Hampshire Avenue to the west or 2101 L Street to the south.

7. *The Relief Requested Is in Harmony with the Intent and Purpose of the Zoning Regulations and Zoning Maps and Will Not Adversely Affect Neighboring Properties.*

For the same reasons discussed above, the requested roof structure setback relief is in harmony with the Zoning Regulations and Maps and will not result in any adverse effects to neighboring properties. The 11th floor mechanical equipment and adjacent screen wall will allow the structure to house sufficient mechanical support systems for the building's effective operation and will minimize the visual and noise impacts of the proposed mechanical equipment on neighbors. The proposed penthouse elevator core will result in a limited encroachment into the setback area which is necessary due to the constraints of working with the layout and core systems of the existing building. The proposed penthouse elevator will remain obscured from public view and will have little or no effect on adjacent properties.

For all these reasons, the Project meets the standards for roof structure setback relief under Subtitle C § 1504.1 and Subtitle X § 901.1.

B. Variances from 45-Degree Setback Requirement (I § 201.6), Minimum Court Width and Area Requirement (I § 207.1), and Loading Berth Vertical Clearance Requirement (C § 905.2).

As noted above, the Applicant requests a variance from the requirement under Subtitle I § 201.6 to provide a 45-degree setback from the adjacent MU-zoned property to the west of the Property; from the minimum court width and area requirements under Subtitle I § 207.1; and from the minimum vertical clearance required for loading berths under Subtitle C § 905.2.

Relief for 45-Degree Setback Requirement. Under Subtitle I § 201.6, the Project is required to provide a 45-degree setback from the adjacent MU-zoned property at 1143 New Hampshire Avenue, beginning at the maximum building height permitted in the adjacent MU zone. The 1143 New Hampshire Avenue property is zoned MU-10, which permits a maximum matter-of-right building height of 90 feet and thus the Project is required to provide a 45-degree setback beginning at 90 feet above grade along such shared property line. As depicted in blue on Sheet A-6 and blue-hatch on Sheets A-13 and A-16 of the Plans, the Project would violate the 45-degree setback requirement, and thus the Applicant requests variance relief from this requirement.

Relief for Minimum Court Width and Area Requirements. Under Subtitle I § 207.1, for non-residential structures, any proposed courts must provide a minimum width of 2.5 inches per foot of court height, but no less than six (6) feet for an open court and no less than twelve (12) feet for a closed court. As shown on the floor plans and Sheets A-21 – A-26 of the Plans, the Project includes both a tiered system of open courts along the northern end of the building and a system of closed courts across various levels along the west side of the building. As detailed in Sheets A-21 – A-26 of the Plans, most of these open and closed courts meet and exceed minimum width requirements under Subtitle C § 207.1. However, two (2) courts do not meet the required minimum width based on their respective heights and thus require relief, specifically: the triangular

closed court located along the western property line, labeled “CC-3” on Sheets A-21 and A-22 of the Plans (“**Closed Court 3**”); and the open court located at the northwest end of the building at the 3rd floor, labeled “OC-1” on Sheets A-21 and A-24 of the Plans (“**Open Court 1**”). Specifically, Closed Court 3 has a height of approximately 41 feet along the west wall, resulting in a minimum width requirement of twelve (12) feet, whereas a width of approximately ten (10) feet, six (6) inches is provided.⁴ Further, the area is required to be twice the square of the required width or a minimum of 250 square feet. Closed Court 3 is approximately 168 square feet. Open Court 1 has a height of approximately 62 feet, ten (10) inches, resulting in a minimum width requirement of approximately thirteen (13) feet, one (1) inch, whereas a width of approximately eleven (11) feet, 8.6 inches is provided. Accordingly, the Applicant requests variance relief for these two (2) courts.

Relief for Loading Berth Vertical Clearance Requirements. Under Subtitle C § 905.2, loading berths are required to provide a minimum vertical clearance of fourteen (14) feet. As shown on Sheet A-19 of the Plans, the two (2) existing and new third proposed loading berths provide a minimum clearance of twelve (12) feet, five (5) inches due to the existing level of the overhead slab and a significant transfer beam above the loading area. Thus, the Applicant requests relief from the minimum clearance requirement.

In order to obtain area variance relief, an applicant must demonstrate that: (i) the property is affected by an exceptional or extraordinary situation or condition, (ii) the strict application of the Zoning Regulations will result in a practical difficulty to the applicant, and (iii) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose, or integrity of the Zone Plan. *Palmer v. D.C. Board of Zoning Adjustment*, 287

⁴ Pursuant to Subtitle B § 322.4, for irregular courts such as Closed Court 3 and Open Court 1, the width of the court is measured as the diameter of the largest circle that can be circumscribed within the court.

A.2d 535, 541 (D.C. 1972). Here, the application satisfies all three standards for each area of variance relief being requested.

1. The Property Is Affected by an Exceptional Situation or Condition.

The Court of Appeals held in *Clerics of Saint Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293–94 (D.C. 1974), that the exceptional situation or condition standard goes to the property, not just the land; and that “. . . property generally includes the permanent structures existing on the land.” Further, it is not necessary that the uniqueness arise from a single situation or condition on the Property. Rather, it may arise from a “confluence of factors.” *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). One of the factors the Board may consider in evaluating whether a property is unique is the property’s past zoning history. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097–98 (D.C. 1979).

Here, the Property is affected by a confluence of factors resulting in an exceptional condition. First, the Property has a highly unique and atypical lot configuration. The lot forms a triangular point that extends into the adjacent intersection of 21st and M Streets while also reaching into the Square in an asymmetrical pattern. Such lots are extremely uncommon in the District. In addition, the lot has an atypical amount of street frontage and high-profile public access, fronting on 21st Street, M Street, and New Hampshire Avenue. Lots such as the Property create complications for design and construction, including development of a structure that is fully zoning-compliant.

As a result, the unique lot configuration is reflected in the unusual configuration of the building, which is currently constructed to the lot line in most places, except for the existing open plaza area along M Street. Consequently, the existing building and the proposed Project both exhibit a high degree of unique and atypical angular features that mold the structure to the land

and create a variety of design problems, including those related to the requested relief. Since the Applicant proposes to reuse the existing structure and add floors onto the building, the Applicant will inherit the design complications and compliance issues from the existing structure.

In addition, the existing building contains legacy systems — particularly relevant here, the elevator core and structural systems — that are already in place and not movable. Thus, the Project design must accommodate and adjust for the existing elevator core location and the building’s structural composition, which underlies some of the complications requiring the requested variance relief.

Furthermore, Square 72, in which the Property is located, features a unique zoning arrangement that predates the existing building. The Property is zoned D-5, similar to other properties in the squares and lots along this portion of 21st Street, which are also generally zoned D-5. Square 72, however, is split-zoned D-5 and MU-10⁵ on the lot line between the Property and the 1143 New Hampshire Avenue property. That close proximity of a differing zone district — and in particular where the property line and zone boundary is irregular and jagged as is the case here — creates unusual design complications resulting in non-compliance with the Zoning Regulations.

All of these factors combine to create an exceptional condition affecting the Property, as the Board previously concluded in BZA Order No. 17696 (Exhibit H), in which the Board granted similar relief for the ZR-58 analogs of the 45-degree setback and loading clearance requirements for which relief is requested in this case (along with the roof structure relief requested). As the Board concluded in 2007, the Property is affected by exceptional conditions.

⁵ Note that the 1143 New Hampshire property was the subject of a Zoning Map amendment from RA-5 to MU-10 pursuant to Zoning Commission Order No. 18-08. The RA-5 and MU—10 Zone Districts both have a maximum building height of 90 feet.

2. *Strict Application of the Zoning Regulations Would Result in a Practical Difficulty.*

To satisfy the second element for the area variance standard, the Applicant must demonstrate “practical difficulty.” The D.C. Court of Appeals has held that an applicant must demonstrate that “compliance with the area restriction would be unnecessarily burdensome” and that the practical difficulty is “unique to the particular property.” *Gilmartin*, 579 A.2d at 1170. As the Court of Appeals has explained, 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.” *Id.* at 1171. “Increased expense and inconvenience to applicants for a variance are among the proper factors for [the Board]’s consideration.” *Id.* (citing *Barbour v. D.C. Board of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976)). Other factors to be considered by the Board include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” *Id.*

Thus, to demonstrate practical difficulty, the Applicant must show that strict compliance with the regulations is burdensome, not impossible. The Project meets this standard and faces practical difficulties inherent in providing the required 45-degree angle setback (I § 201.6), minimum court width (I § 207.1), and minimum loading berth vertical clearance (C § 905.2).

With respect to the 45-degree setback requirement from the MU-10 Zone District, the building’s location and layout, as well as its proximity to neighboring buildings make compliance with this requirement unduly burdensome. As shown on Sheets A-12 and A-13 of the Plans, designing the Project to fully comply with the setback requirement would have substantial negative impacts for the proposed 9th, 10th, and 11th floors and penthouse level. The impacted area of these levels includes significant amounts of space devoted to the building’s mechanical support systems on the 9th and 10th levels and the elevator core at the penthouse level, among other things. Even

setting aside the 45-degree setback requirement, the building faces many inherent design challenges stemming from the irregular shape of the Property and resulting building envelope, which the Project has sought to resolve in an artful but still practicable manner. In particular, the uneven course of the Property's west lot line creates irregular and challenging spaces for designing reasonably efficient and functional floor plans. Under the proposed design, some of these spaces pose design problems that require creative solutions but can at least be feasibly resolved with the modest flexibility that the additional envelope of the proposed addition affords. However, imposing strict adherence to the 45-degree setback requirement would further cut into these already difficult spaces and only further limit the ability to create usable layouts for the building on the affected levels.

Specifically, reducing the affected levels to the conforming portion of the floorplates along the northwest property line and the western property line south of the existing mechanical penthouse (i.e., the "jaws" of the building's "wrench-head"-like shape) would result in several unusable floor areas from a configuration and dimensional perspective, significantly diminishing the broader efficiency, usefulness, and overall quality of occupancy, from a tenant perspective, of each new floor. Among other things, the impact to the penthouse level would be devastating, eliminating access to the existing elevator core, as noted above, and inhibiting the size and configuration of the penthouse habitable space to such a degree as to severely undercut its value and utility as an amenity for the building's tenants. For instance, the reduction in footprint needed to achieve the full 45-degree setback would render the penthouse largely unusable for any commercial use – whether it be individual office space, conference space, or event space.

Additionally, the structural design of the new floors relies on the column grid in the existing building below. To achieve the step-back massing required to conform to the setback

requirements, significant additional structural elements would be required on each new floor in order to transfer load as the step-backs occur, in addition to installing a variety of beams in the ceiling of the existing 8th floor to align the new structural bearing points with the existing building column grid and provide reinforcement of the existing building columns. The resulting structural impact alone would drive unsupportable additional costs and dilute the layout quality and tenant suitability of the existing 8th floor, in addition to the previously noted reduction in viability of the tenant spaces on the new floors above.

Further, the architecture of the building consciously bypasses a “max” density approach to the redevelopment. Instead, the Applicant and design architect, Morris Adjmi, have taken painstaking care to design a building that is respectful to the site and surrounding community and enhances this prominent street intersection through a series of terraces and massing elements to break-up the building form, while balancing high-quality architecture, ground plane activation, interior usability and efficiency of the office space and the structural limitations associated with the existing building. As can be seen on Sheet A-13 of the Plans and as detailed above, conforming to the required setbacks to 1143 New Hampshire Avenue would have wide-ranging adverse impacts including significant reductions in the layout, functionality, and quality, and therefore viability, of the resulting office space, unsupportable increased costs for structural accommodations, and degradation of the architectural quality of the building, which will negatively impact every aspect of the project and likely even its viability.

As relates to the minimum court width and area requirements, the practical difficulties associated with complying with such requirements for Closed Court 3 and Open Court 1 also relate largely to the unusual configuration of the Property and building and the need to work within the confines of the legacy systems tied to the existing building. Closed Court 3 is

created as a result of the existing building's structural grid, which does not include the column support necessary to fill in this unusual and especially difficult angular recess in the building mass and Property line. Specifically, there is no existing column at the intersection of the northwest angled property line and the western property line created at the southeast corner of Closed Court 3, though there is a column at the northeast corner of Closed Court 3, which naturally creates the remaining area of Closed Court 3. Accordingly, while closing this void in the building envelope would be preferable from a development maximization and floor plate efficiency standpoint, extending the building envelope to fill this unoccupied corner of the Property would require installing cost-prohibitive structural accommodations, including reinforcement of and modification to existing columns and addition of beams. Similarly, although Closed Court 3 could be covered at its top to eliminate the court, the cover would negatively impact the building design form and such area would become unnecessarily devoid of light and air.

For Open Court 1, which begins at the 3rd floor, the difficulties associated with meeting minimum width requirements also relate to the existing building envelope and the Property's unusual angular corner configuration. With the new building entrance and terrace, the proposed court will deviate from the minimum width requirement by one (1) foot, 4.4 inches (thirteen (13) feet, one (1) inch required compared to eleven (11) feet, 8.6 inches provided). While the Project will improve the building's relationship to the New Hampshire Avenue streetscape, bringing the court into full compliance would require shifting the adjacent building wall back one (1) foot, 4.4 inches, which would have deleterious effects on the streetscape and the Applicant's strategy to activate the public realm by bringing the building wall closer to the street yet providing an area for seating and further programming to integrate with the public space. The alternative

resolution would require raising the base of the court by approximately 6.6 feet in order to reduce the court's height and corresponding required minimum width, which would also create difficulties for the design of the building. Specifically, raising the level of the terrace at the base of Open Court 1 by such a substantial degree would pose special challenges in providing reasonable access to the terrace from the adjacent interior office space and, further, would create a disjointed design as viewed from the public realm because the resulting terrace would not align with the level of the adjacent 3rd floor terrace to the east. Both above design alternatives are unnecessarily burdensome in this case and constitute a practical difficulty under the variance test.

With respect to the relief requested for minimum loading berth vertical clearance requirements, similar to the other requirements discussed, the practical difficulties in complying with the fourteen (14) foot clearance prescribed by Subtitle C § 905.2 also stems from the fact that the Project must work within the confines of the existing structure. Here, the Project will bring the Property closer to full compliance with loading requirements by adding a third loading berth, as required. However, both the existing and proposed loading berths will have a clear height of twelve (12) feet, five (5) inches, which is the maximum height that can be achieved within the space between the grade of the existing loading entrance and existing overhead slab. It is not feasible in this case to increase the height of the loading berth because it is a result of a significant transfer beam that stretches for the span of the loading docks and the garage entrances — a width of approximately 56 feet. Clearly such transfer beam and the associated existing overhead slab cannot be lifted or removed, and thus the Project must work within this constraint. In addition, the Applicant is regrading the existing loading berths from a dangerous and potentially unusable sloped condition to a level horizontal condition that will be conducive to the loading activities for the building. The

Applicant's improvements in this area will make the building more functional (and likely reduce the amount of loading occurring elsewhere). Accordingly, strict adherence to the minimum fourteen (14)-foot clearance requirement is practically difficult.

The satisfaction of the practical difficulty standard of the variance test for the above-described elements of relief is in accordance with the Board's determination in BZA Order No. 17696.

3. *Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose, and Integrity of the Zone Plan.*

Finally, the Applicant must demonstrate that "granting the variance will do no harm to the public good or to the zone plan." *Gilmartin*, 579 A.2d at 1167. Here, the requested variance relief for the 45-degree setback, minimum court width, and loading clearance requirements may be granted without any detriment to the public good or zone plan, in line with the Board's previous similar conclusion in BZA Order No. 17696. The Project and requested relief will allow for the proposed renovation and rehabilitation of the existing building, which was constructed in 1969 and is now a dated structure past its usable life. The Property is zoned for high-density development and holds a highly prominent corner at the adjacent three-way street intersection, but the site is largely underutilized in its current state. The Project would help realize the Property's full potential and renew this highly trafficked intersection and the surrounding area. Further, as noted above, the Applicant has met with the owner of the adjacent property at 1143 New Hampshire Avenue NW and the owner has indicated support for the Project and the requested zoning relief. Accordingly, the Project will not impair the intent, purpose and integrity of the zone plan but, to the contrary, will create positive benefits to the public good.

IV. CONCLUSION

For all of the above reasons, the Project satisfies the standards for the requested special exception and variance relief in this case, and the Applicant requests approval for such relief.

Respectfully submitted,

_____/s/_____
Jeff C. Utz

_____/s/_____
Lawrence Ferris