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VIA IZIS

Board of Zoning Adjustment
of the District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Request for a Two-Year Time Extension
BZA Order Nos. 20291 and 20291A
2100 M Street, NW (Square 72, Lot 75)**

Dear Members of the Board:

This application is submitted on behalf of 2100M STREET NW OWNER LLC (the “Applicant”) for approval of a two-year extension of BZA Order No. 20291A, regarding property located in the D-5 zone at 2100 M Street, NW (Square 72, Lot 75) (the “Property”). Included with this submission is an authorization letter from the Applicant (Exhibit A) and a filing fee in the amount of \$1,216.80, which represents 26% of the original filing fee pursuant to Subtitle Y § 1600.1(e) of the District of Columbia Zoning Regulations (the “Zoning Regulations”).

The Applicant respectfully requests that this application be heard at the Board’s public meeting on October 9, 2024, and reviewed in accordance with Subtitle Y § 705.

I. The Property

The Property is an irregularly-shaped lot located at 2100 M Street, NW in the D-5 zone. The Property is bounded by New Hampshire Avenue, NW and M Street, NW to the north, 21st Street, NW to the east, and private property to the south and west. The Property has approximately 41,196 square feet of land area and is presently improved with an existing office building with ground floor retail.

II. Prior BZA Approvals

Pursuant to Board of Zoning Adjustment (“BZA”) Order No. 20291, dated October 7, 2020, and issued on October 21, 2020 (Exhibit B), the BZA granted the following areas of zoning relief to allow for the renovation and expansion of the existing office building at the Property:

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EXHIBIT NO.2

- Special exception relief under Subtitle C § 1504.1, from the penthouse setback requirements of Subtitle C § 1502.1;¹
- An area variance from the 45-degree setback requirement of Subtitle I § 201.6;
- An area variance from the closed court area requirements of Subtitle I § 207.1, and
- An area variance from the loading berths requirements of Subtitle C § 905.2.

The approved project would have approximately 376,509 square feet of gross floor area (“GFA”) (approximately 9.14 floor area ratio (“FAR”)) and a maximum building height of 130 feet plus a habitable penthouse. Pursuant to BZA Order No. 20291 and Subtitle Y § 702.1, a building permit application for the approved project was required to be filed no later than October 21, 2022.

Pursuant to BZA Order No. 20291A, dated November 30, 2022, and issued on December 6, 2022 (Exhibit C), the BZA granted a two-year time extension of BZA Order No. 20291, such that a building permit application for the approved project is now required to be filed no later than October 21, 2024. **The Applicant requests that the Board extend BZA Order No. 20291A for a period of two years, such that a building permit application would have to be filed no later than October 21, 2026.**

This extension is requested pursuant to Subtitle Y § 705, which allows the Board to extend the time periods set forth in Subtitle Y § 702.1 for good cause shown. As set forth herein, there is good cause shown for this extension request.

III. Compliance with Subtitle Y § 705

Pursuant to Subtitle Y § 705.2, the Board may extend the time periods of Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided that the Board determines the following requirements are met:

- a. The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
- b. There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board’s justification for approving the original application; and
- c. The applicant demonstrates that there is good cause for such extension, with substantial evidence of one (1) or more of the following criteria:
 1. An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control;

¹ At the time of approval, the penthouse setback requirements were codified in Subtitle C § 1502.1 and special exception relief from such requirements was provided pursuant to Subtitle C § 1504.1. Since that time, the penthouse regulations were revised and reorganized in Z.C. Case No. 14-13E, such that penthouse setback requirements are now codified in Subtitle C § 1504.1 and special exception relief is provided pursuant to Subtitle C § 1506.1.

2. An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or
3. The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.

For the reasons set forth below, this application meets the standards of Subtitle Y § 705.1 to extend the time period of BZA Order No. 20291A.

A. Service on All Parties to the Application

The Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 2A, and across M Street, NW from ANC 2B. Thus, both ANCs are "affected" ANCs pursuant to Subtitle B § 100.2. As shown on the Certificate of Service included at the end of this letter, the Applicant served a copy of this application on ANCs 2A and 2B. The Applicant and ANC 2A were the only parties to the original application.

B. No Substantial Change in Any Material Facts

There is no substantial change in any of the material facts upon which the Board based its original approval that would undermine its justification for approving the original application. In BZA Order No. 20291, the Board found that for the special exceptions requested, the Applicant had met the burden of proof under Subtitle X, Chapter 9, that the requested relief could be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, that granting the relief would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map, and that all other specified conditions for special exception relief had been met. The Board also found that for the variances requested, the Applicant had met the burden of proof under Subtitle X, Chapter 10, that there exists an exceptional or extraordinary condition related to the Property that creates a practical difficulty, and that the relief could be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. There is no change in any of the facts upon which the Board based its original approval of the special exceptions and variances approved.

C. Substantial Evidence of Good Cause for the Extension

As described in the affidavit signed by Ryan McCaffrey, the Authorized Person of the Applicant (Exhibit D) (the "Affidavit"), BZA Order Nos. 20291 and 20291A were both filed and processed by 2100 M Street Property Owner, LLC, the prior owner of the Property (the "Prior Owner"). As set forth in the record for BZA Case No. 20291A, despite the Prior Owner's efforts to move development of the approved office project forward, it was ultimately unable to obtain sufficient project financing following its good faith efforts due to changes in economic and market conditions beyond its reasonable control. Following issuance of BZA Order No. 20291 at the end of 2020, impacts to the real estate market associated with Covid-19 were heightened, marked by high construction costs, insufficient labor, and supply chain issues. At the time, there was a

considerable increase in remote and hybrid work models, which had significant and fundamental impacts on the market for new office space. Accordingly, the BZA approved the first two-year extension in BZA Order No. 20291A, due to such unprecedented structural changes in market conditions and the Prior Owner's resultant inability to secure financing for the approved office project despite its concerted and extensive efforts to do so.

Since approval of BZA Order No. 20291A, impacts to the real estate market have in many ways worsened, with development of new office space in the District all but coming to a halt. Inflation has been high throughout the country, leading to tightened credit, increased borrowing costs, heightened market uncertainty, and a weak lending market overall.

On May 10, 2023, the Applicant purchased the Property from the Prior Owner in a short sale, after which the markets got even worse. Following the Applicant's purchase, it evaluated a variety of options for moving forward with site redevelopment and ultimately determined that redevelopment of the Property with office use is impractical at this time due to an inability to obtain sufficient financing for the following reasons:

- Higher interest rates and tighter lending conditions. Recent efforts of the Federal Reserve to reduce inflation through aggressive rate hikes have led to heightened market uncertainty, increased borrowing costs, and tightened credit, collectively putting downward pressure on lending activity. The Lending Momentum Index issued by Coldwell Banker Richard Ellis ("CBRE") demonstrates that overall lending momentum in Q1 2024 was down 32.7% from a year earlier, as high interest rates lowered lending activity. *See* CBRE Figures | U.S. Lending | Q1 2024 (Exhibit A to the Affidavit).
- Challenges to the D.C. office market specifically. The Washington, D.C. office market is struggling with rising foreclosures, plunging values, and its highest vacancy rate ever. *See* "The D.C. Office Market Is in Trouble—No Matter Who Wins the Election," *The Wall Street Journal*, July 23, 2024. Despite the Biden administration's efforts to get more of the federal workforce in D.C. back to the office on a more regular basis, the District's office market "is poised to get worse regardless of the outcome of the election" and the "federal government is likely to shed more space in the years to come partly because of the growing number of employees working remotely." *Id.* While some U.S. cities have shown recent signs of bouncing off a bottom, the slow return of federal workers to the office continues to sour the mood of the District's office owners as follows:
 - The District's office vacancy rate rose to a new high of 22.4% in the second quarter of 2024 from less than 14% in the fourth quarter of 2019;
 - In the first quarter of 2024, approximately 39% of D.C. office loans that were securitized were either in default or at risk of default, which is the seventh highest rate in the country;
 - Creditors foreclosed on 12 District office buildings in the first half of 2024, already exceeding the total for 2023; and
 - The amount of occupied office space declined by more than 500,000 square feet in the second quarter of 2024. *Id.*

See also “Office Vacancies Still On the Rise in D.C.,” The Real Deal Real Estate News, April 12, 2024, stating that in the first quarter of 2024, the office vacancy rate reached an all-time high, and that the District does not appear to be attracting significant tenants to its office space as many tenants are abandoning spaces or downsizing, creating a vast wasteland of empty office space.

Going forward, the District’s office market shows no signs of improving. Remote work and high interest rates have reduced property values by tens of billions of dollars, and loan defaults continue to be common. *See “Abysmal DC Office Market Shows No Signs of Recovery,” The Real Deal Real Estate News, July 23, 2024.* Based on the current market conditions that make it extremely difficult if not impossible to obtain financing for office development, the Applicant has decided to convert the approved office building to residential use and has been working on plans for the conversion and expansion of the existing building in order to do so. Accordingly, the Applicant will be filing a separate application to the BZA for a modification to the approved project, which will require less zoning relief than what was required and approved in BZA Order No. 20291 for the office renovation. The filing of the modification request will not toll the expiration of the underlying order, and the grant of such modification will not extend the validity of the order, and therefore this extension request is properly filed pursuant to Subtitle Y § 705 of the Zoning Regulations.

Despite having a plan forward for site redevelopment, the Applicant still needs time to prepare and submit an application to modify the BZA approval, prepare construction drawings consistent with such approval, and obtain financing for a residential conversion. The Applicant therefore needs the requested extension to confidently move forward with a realistic and marketable residential project. The Applicant has already invested substantial resources in purchasing the Property and hiring a variety of consultants to help move a residential project forward, such that the Applicant has no financial advantage to not move forward with redevelopment of the Property as soon as feasible.

IV. Community Engagement

As noted above, the Property is located within the boundary of ANC 2A and across M Street, NW from ANC 2B. The Applicant has reached out to representatives from ANC 2A and has requested to present this application at the ANC’s September 18, 2024, monthly meeting.

V. Conclusion

For the reasons set forth herein, the Applicant believes there is good cause pursuant to Subtitle Y § 705.2 for the Board to grant a two-year extension of BZA Order No. 20291A, and respectfully requests that the Board do so at its public meeting on October 9, 2024.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Christine Shiker
Christine M. Shiker

By: Jessica Bloomfield
Jessica R. Bloomfield

Attachments

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2024, a copy of the foregoing BZA extension application was served by electronic mail on the following at the addresses stated below.

District of Columbia Office of Planning

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