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August 30, 2024

VIA IZIS

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

**Re: Request for Modification Without Hearing – Office to Residential Conversion
BZA Order No. 20291
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 modification without hearing to convert an existing building from office to residential use 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. The existing building has approximately 272,434 square feet of total gross floor area (“GFA”) (6.6 floor area ratio (“FAR”)) and a maximum height of 90 feet in eight stories, plus a penthouse.

II. Prior BZA Approvals

Pursuant to Board of Zoning Adjustment (“BZA”) Order No. 17696, dated December 18, 2007, and effective as of December 20, 2007 ([Exhibit B](#)) the Board granted special exception relief from the penthouse setback and parking space requirements under the then-applicable 1958 Zoning

Regulations (“ZR58”); and (ii) variances from the loading berth and platform height requirements, the van and compact space parking requirements, and the 45 degree height setback from neighboring property requirements of ZR58, to allow for an expansion of the existing office building.¹

Pursuant to BZA Order No. 20291, dated October 7, 2020, and effective as of October 21, 2020 ([Exhibit C](#)), the BZA approved a new application filed for the Property, which also proposed a renovation and expansion of the existing office building. In doing so, the BZA granted the following areas of zoning relief under the 2016 Zoning Regulations:

- Special exception relief under Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1;²
- An area variance from the court width and area requirements of Subtitle I § 207.1;
- An area variance from the loading berth clearance requirements of Subtitle C § 905.2; and
- An area variance from the 45-degree setback requirement from the MU-10 zone of Subtitle I § 201.6.

The approved project allowed for approximately 376,509 square feet of GFA (approximately 9.14 FAR) devoted to office and ground floor retail uses, approximately 265 below-grade parking spaces, and a maximum building height of 130 feet (11 stories) plus a habitable penthouse (the “Approved Project”).

Pursuant to BZA Order No. 20291A, dated November 30, 2022, and effective as of December 6, 2022 ([Exhibit D](#)), the BZA granted a two-year time extension of BZA Order No. 20291, such that a building permit application for the Approved Project is required to be filed no later than October 21, 2024. The Applicant is simultaneously filing an application with the Board for a two-year extension of BZA Order No. 20291A in order to allow for the processing of the subject modification.

III. Modifications Proposed

As shown on the architectural drawings attached hereto as [Exhibit E](#) (the “Architectural Drawings”), the Applicant proposes to modify the Approved Project by renovating and expanding the existing building for residential use. The proposed building would have approximately 430,318 square feet of total GFA (10.44 FAR), a maximum building height of 130 feet, approximately 400 residential units, and approximately 19,969 square feet of ground floor retail (the “Proposed Project”). As shown on the Architectural Drawings, the Proposed Project will modernize the building’s façade and add four new stories to the existing building (floors 9 through 12), plus a habitable penthouse. The Proposed Project will maintain the existing building’s below-grade parking garage levels but will reduce the proposed number of parking spaces to approximately 178

¹ BZA Order No. 17696 was extended three times in BZA Order Nos. 17696A-C.

² 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 the penthouse setback requirements are now codified in Subtitle C § 1504.1 and special exception relief is provided pursuant to Subtitle C § 1506.1.

spaces. The Proposed Project will also add long-term bicycle parking facilities and will provide zoning-compliant loading facilities in their current location facing 21st Street.

Similar to the Approved Project, the Proposed Project requires an area variance from the 45-degree setback requirement from the MU-10 zone of Subtitle I § 201.6(b). However, as shown on the Architectural Drawings, the extent of the relief is reduced significantly, with approximately 91,658 cubic feet less protruding into the required setback area. In addition, the Proposed Project does not require relief from the penthouse setback requirements, the court width and area requirements, or the loading berth clearance requirements. **Accordingly, three areas of previously-approved zoning relief have been eliminated in the Proposed Project, and the one area of zoning relief that remains is significantly reduced.**³ Accordingly, and for the reasons set forth below, this request can be approved as a modification without hearing.

IV. COMPLIANCE WITH STANDARDS FOR A MODIFICATION WITHOUT HEARING

The procedures of Subtitle Y § 703 allow the Board, in the interest of efficiency, to make, without public hearing, modifications to approved final orders and plans approved by such orders. 11-Y DCMR § 703.2. The Applicant's request for a modification without hearing to the approved order and approved plans complies with the relevant subsections of Subtitle Y § 703 as follows:

- *Subtitle Y § 703.7: For the purposes of this section, “a modification without hearing” is a modification in which the impact may be understood without witness testimony, including, but not limited to a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board. Determination that a modification can be approved without witness testimony is within the Board’s discretion.* [emphasis added]

The subject application is properly evaluated as a modification without hearing because the impact can be understood without witness testimony, and proposes (i) a change to condition in the original order; and (ii) a redesign of architectural elements from the final design approved by the Board, which are both types of

³ New courts will also be introduced in different locations, all of which comply with the minimum court requirements. The Proposed Project, however, maintains one existing L-shaped court at the southwest corner of the building from the 2nd to the 8th floor. The existing court currently complies with the court requirements for a non-residential use; however, once the building is converted to residential use, the existing court will no longer comply because the minimum width requirement for a closed court is larger for residential use than for non-residential use. In a meeting on August 6, 2024, the Zoning Administrator confirmed that the non-compliant residential court would not require zoning relief for its existing width pursuant to Subtitle I § 102.6, which allows for the conversion of existing non-residential GFA to residential use as a matter-of-right, even if the portion of the building to be converted would not comply with a variety of development standards, including courts. The Zoning Administrator also confirmed that for the vertical expansion of floors 9 through 12, the court width and area requirements are based on the height of the court measured above existing floor 8. For floors 9 through 12, the proposed court exceeds those dimensions, and therefore, zoning relief is not required.

modifications that can be considered “modifications without hearing” pursuant to Subtitle Y § 703.7.

- (i) Changes to conditions in the original order: The original order established two conditions: one required the Applicant to implement a transportation demand management (“TDM”) plan for the life of the project, and one required the Applicant to implement a loading management plan (“LMP”) for the life of the project. As noted herein, the Applicant proposes to convert the Approved Project from office to residential use. As a result, the specific commitments established for the TDM and LMPs need to be modified to account for the change in use, which results in less of an impact to the transportation network. *See Memorandum dated August 30, 2024, attached as Exhibit F (“Transportation Memorandum”), prepared by Wells + Associates, the Applicant’s transportation consultant, and which incorporates feedback from DDOT.* The Transportation Memorandum evaluates the traffic impacts associated with the Proposed Project and concludes that the development is expected to have a negligible impact on vehicular traffic and will generate significantly fewer vehicle trips than the existing office building. The revised TDM and LMP conditions are included as an exhibit to the Transportation Memorandum. The Applicant will continue to work with DDOT to refine the modifications to these conditions and will provide an update, if necessary, regarding any additional changes requested by DDOT.
- (ii) A redesign of architectural elements from the final design approved by the Board. In order to accommodate the proposed residential use, the Applicant redesigned a variety of architectural elements from the final design for the office building that was approved by the Board. As shown on the Architectural Drawings and as described above, the revised building design removes three of the four areas of zoning relief that were previously approved by the Board. The only remaining area of zoning relief requested relates to the required building setback in the area abutting the MU-10 zoned property to the west, and the justification for this relief is the same as that which was previously approved by the BZA. Moreover, the volume of space that extends into the required setback area is reduced by approximately 91,658 cubic feet as compared to the Approved Project. A summary of how the Proposed Project complies with the standards for an area variance from Subtitle I § 201.6 is as follows:

(a) The Property Is Affected by an Exceptional Situation or Condition

The Property and the existing building together create a confluence of factors that result in an exceptional situation or condition. The Property has a highly unique configuration that forms a triangular point at the intersection of 21st and M Streets to the north and then extends westward in an asymmetrical jagged pattern in the center of the square, resulting in an extremely uncommon shape for a lot in the District. The Property also has

an unusually high amount of street frontage and public access points, with frontage on three highly utilized streets. Such an uncommon configuration with significant street frontage creates complications for building design and construction, and makes it far more difficult to design a building that is fully zoning compliant.

As a result of the unique lot shape, the existing building has a distinct and unusual design and street orientation. The existing building is constructed to the lot line in most places except for the existing open plaza that extends along all three street frontages at the ground level and the building setback on the upper levels along M Street and New Hampshire Avenue. At the rear (west), the building follows the jagged lot line except for an existing court at the southwest corner of the Property. Thus, the irregularly-shaped lot line results in a building that has a variety of uncommon angular design elements that are used to accommodate the property line and result in a collection of design and construction complications described below. Since the Applicant proposes to maintain the existing structure and construct a building addition on top, the design complications and compliance issues will remain.

In addition, the existing building's structural systems and other building elements are already in place and cannot be moved. Thus, the Applicant must incorporate these existing systems into the Proposed Project, including the elevator core location, stair towers, and the building's structural composition, which create further complications in fully meeting the building setback requirements from the MU-10 zone.

Furthermore, unlike most other surrounding squares, Square 72 is split-zoned. While the Property and other lots along 21st Street are all zoned D-5, the western portion of Square 72 is zoned MU-10 and RA-5, and the zone change from D-5 to MU-10 occurs along the irregular lot line between the Property and the property directly to the west at 1143 New Hampshire Avenue, NW. This close proximity of other zones, including the MU-10 zone abutting the Property along its irregular lot line, further creates an unusual condition that results in a practical difficulty for the Proposed Project to fully comply with the building setback requirement from the MU-10 zone.

Accordingly, as the Board previously concluded in BZA Order Nos. 17696 and 20291, the above-described factors combine to create an exceptional condition affecting the Property.

(b) Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

The confluence of factors described above, including the Property's unique lot line, the building's existing configuration and systems, and the split-

zoning of the square make compliance with the 45-degree setback requirement practically difficult. Designing the Proposed Project to fully comply with this requirement would have substantial negative impacts on the building addition at the 9th through 12th floors and at the penthouse level. The portions of these floors that would have to be eliminated in order to fully comply with the setback requirement include significant space devoted to residential units on the 9th through 12th floors and on the penthouse level, and the elevator core and mechanical systems at the penthouse level, and would result in being unable to extend the elevator to the roof.

Even without the 45 degree setback requirement, the Proposed Project faces variety of design challenges that result from the Property's irregular shape, existing building envelope, and core locations. For example, Property's jagged property line that abuts the MU-10 zone makes it particularly challenging to design a functional and efficient floor plan with reasonable unit layouts. Some of these spaces pose design complications that can only be creatively and reasonably resolved with the requested setback relief. Indeed, strict compliance with the 45-degree setback requirement would cut into these problematic spaces and result in unusable residential layouts and fewer units overall. Indeed, strict compliance with the setback requirement would result in the elimination of 21 total residential units (12 units on the 9th through 12th floors, and nine units at the penthouse level due to lack of elevator access).

As referenced above, the negative impact to the penthouse would also be significant, eliminating access to the existing elevator core and other mechanical systems, which cannot be relocated due to their existing locations within the building and limiting the size and configuration of the penthouse habitable space.

Moreover, the structural components of the new upper floors extend from the column grid from the existing building below. To achieve the massing that would be required to meet the 45 degree setback requirement, significant structural accommodations would be required on each new floor to transfer load as the setbacks 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 result in insurmountable additional costs, significantly degrade the layout on the existing 8th floor and the proposed additional floors above, and reduce the viability of the residential unit layouts on the new floors above, and limit the amount of usable penthouse space.

Accordingly, as the Board previously found in BZA Order Nos. 17696 and 20291, the exceptional conditions described above make it practically difficult for the Proposed Project to meet the 45 degree setback requirement of Subtitle I § 201.6.

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

The requested variance from the 45-degree setback requirement can be granted without any detriment to the public good or zone plan. The Proposed Project will allow for the renovation and conversion of the existing office building to residential use. Doing so is fully consistent with the Mayor’s goal of providing more housing throughout the District and within the downtown area specifically. Indeed, the Project helps to fulfil the objectives of the District’s 2024 *Downtown Action Plan*, which has as one of its “Five Foundational Elements” the goal of “building a residential base” to “improve the ability for housing conversions” in downtown, DC.

Moreover, the existing building was constructed in 1969 and is now a dated structure past its usable life. The Property is located at the prominent intersection of three major streets and is zoned for high-density development, yet the Property is largely underutilized in its current state. The Proposed Project will help to achieve the Property’s full potential, create new housing for District residents, and enhance not only the intersection but the immediately surrounding area.

Furthermore, the construction of penthouse habitable space will result in a contribution to the District’s Housing Production Trust Fund, which will aid in the creation of new affordable housing units for District residents. Accordingly, the Project will not impair the intent, purpose and integrity of the zone plan and will instead create positive benefits to the public good.

For the reasons set forth above, the Board will be able to understand the modification to the project without witness testimony.

- *Subtitle Y § 703.8: Only the applicant in the original case or its successor may request a modification without hearing and shall do so using the form provided by the Director.*

The Applicant is the successor to the Applicant in the original case, and as part of this filing the Applicant is submitting the form provided by the Director.

- *Subtitle Y § 703.9: An applicant requesting a modification without hearing shall submit the following information electronically:*

- a. A completed application form;*

A copy of the completed application form is included as part of this filing.

- b. The nature of, reason(s), and grounds for the modification;*

The nature of, reasons, and grounds for the modification are set forth herein.

- c. *If a final order is to be modified, a copy of that order;*

A copy of the final order to be modified is attached as Exhibit C.

- d. *If plans are to be modified, architectural drawings and a copy of the order approving the plans; and*

Architectural Drawings depicting the Approved Project and Proposed Project are attached at Exhibit E, and the approved BZA Order No. 20291 is attached at Exhibit C.

- e. *Any other information requested on the form.*

All additional information requested is provided herein.

- *Subtitle Y § 703.10: The filing of any modification request under this section shall not act to toll the expiration of the underlying order and the grant of any such modification shall not extend the validity of any such order.*

The Applicant is simultaneously filing an application for a two-year time extension of the underlying order in order to allow for the processing of the subject modification request.

- *Subtitle Y § 703.11: All written requests for a modification without hearing shall be served by the applicant on all parties in the original proceeding and the Office of Planning at the same time that the request is filed at the Office of Zoning. If the affected ANC has changed since the effective date of the final order, only the new affected ANC needs to be served.*

The parties to the original case were the Applicant and Advisory Neighborhood Commission (“ANC”) 2A. As shown on the Certificate of Service included at the end of this letter, the Applicant is serving a copy of this application to ANC 2A and the Office of Planning at the same time that it is filing the application with the Office of Zoning. The Property is located across M Street, NW from ANC 2B, which is therefore also considered an affected ANC pursuant to Subtitle B § 100.2. Accordingly, the Applicant is also serving a copy of this application to ANC 2B.

- *Subtitle Y § 703.15: A request for a modification without hearing shall be filed with the Office of Zoning at least thirty-five (35) days prior to the public meeting at which the request is to be considered.*

The Applicant respectfully requests that this application be heard at the Board’s October 9, 2024, public meeting, which is more than 35 days from the date of this filing.

- *Subtitle Y § 703.18: No application for technical corrections or modifications without hearing shall be processed until the application is complete and all*

required fees are paid in accordance with the applicable fee schedule prescribed in Subtitle Y, Chapter 16.

A filing fee of \$1,216.80 is included in this application filing, which is 26% of the original filing fee pursuant to Subtitle Y § 1600.1(e).

- *Subtitle Y § 703.19: A request for a modification without hearing of plans shall be filed with the Board not later than two (2) years after the date of the final order approving the application, or the circumstances of Subtitle Y § 702.3 apply, two (2) years after the date the decision date of the court's final determination of the appeal.*

This application for a modification without hearing is being filed prior to two years after the date of the final order approving the application, which would be October 21, 2024, based on the previously granted extension in BZA Order No. 20291A.

V. 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.

VI. CONCLUSION

For the foregoing reasons, the Applicant believes that this request can be approved as a modification without hearing, and respectfully requests the Board's consideration of the application at its October 9, 2024, public meeting. Should you have any questions or need additional information, please do not hesitate to have Office of Zoning staff contact us.

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 modification without hearing application was served by electronic mail on the following at the addresses stated below.

District of Columbia Office of Planning

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Joel Lawson
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District Department of Transportation

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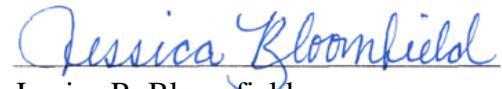
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