

November 13, 2024

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**VIA IZIS**

Honorable Members of the Board  
D.C. Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW, Suite 210S  
Washington, D.C. 20001

**Re: Applicant's Request for a Two-Year Time Extension on BZA Order 18878**

Dear Honorable Members of the Board:

Please accept for filing the enclosed application of Alba 12<sup>th</sup> Street, LLC (the "Applicant"). The Applicant requests a two-year extension pursuant to 11 DCMR § Y-705.2.

**I. Background on Prior BZA Approval**

By Order dated September 9, 2015 (the "Order"), the Board approved the application under BZA Case 18878 pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio (§ 1706); rear yard (§ 774); and parking (§ 2101.1) requirements to allow the construction of an office building in the DD/C-2C District at 1017 12<sup>th</sup> Street NW (Square 316, Lot 821). The Board's decision was subsequently appealed to the Court of Appeals, which tolled the expiration of the Order. The Board issued a Procedural Order On Remand on September 29, 2017. Following requested submissions from the Applicant and opposition party, 1101 K Street NW Acquisition LLC, the Board issued a Decision and Order on Remand dated February 11, 2019 (the "Remand Order").

Pursuant to Subtitle Y § 705.7, the Applicant requested a one-year extension to the Remand Order due to the complications from the COVID-19 pandemic, which was subsequently granted by the Board on February 8, 2021 (the "First Extension Order") and set to expire on February 21, 2022. The Zoning Commission then took emergency action to extend the application of Subtitle Y § 705.7 to orders scheduled to expire through June 30, 2022. *See* Zoning Commission Case No. 20-26B.<sup>1</sup> Before the expiration of the First Extension Order, the Applicant applied for a COVID-19 one-year extension. The extension was granted by the Board on February 27, 2022 (the "COVID Extension Order") and was set to expire on February 21, 2023. On February 10, 2023, the Applicant applied for a two-year extension pursuant to Subtitle Y § 705.2 (the "Second Extension Order"). The extension was granted by the Board on April 11, 2023. The Second

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<sup>1</sup> The emergency rule remained valid until April 15, 2021. As noted during the Zoning Commission's hearing on December 16, 2021, Subtitle Y § 705.7 applies to applicants that have already obtained a prior COVID-19 administrative extension to an order.

Extension Order is set to expire on February 21, 2025. The Applicant now submits this application for a two-year extension pursuant to Subtitle Y § 705.2.

## **II. Compliance with Subtitle Y § 705.2**

Pursuant to Subtitle Y § 705.2, the Board has the authority to grant a two-year extension of an order upon finding that the Applicant demonstrates good cause for the extension, and the Board determines that 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;
- (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;
  - (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.

The Applicant has met the burden pursuant to Subtitle Y § 705.2 to warrant a two-year time extension on the BZA Order as follows.

### **A. Service on All Parties to the Application**

Pursuant to Subtitle Y § 705.2(a), the extension request must be served on all parties to the application, and all parties are allowed thirty days to respond. This extension request is being served simultaneously on Advisory Neighborhood Commission (the "ANC") 2C<sup>2</sup> and the opposition party, 1101 K Street NW Acquisition LLC. The ANC and 1101 K will be allowed thirty days to respond to this request.

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<sup>2</sup> Under the previous Orders, the Property was located in ANC 2F. However, due to the passage of the Advisory Neighborhood Commission Boundaries Act of 2022 passed by the D.C. Council, the Property now lies within the boundaries of ANC 2C. See D.C. Law 24-0148.

**B. No Substantial Change of Any Material Facts**

There has been no substantial change to any of the material facts upon which the Board based its approval that would undermine the Board's justification for approving the application. The Project remains the same as reviewed by the Board, including all the architectural features related to the specific zoning relief requested. The factors satisfying the relief for the Applicant's Property remain the same as well. Thus, there have been no substantial changes to any of the material facts relating to the case or the Project.

**C. Substantial Evidence of a Good Cause for the Extension**

Finally, the Applicant must demonstrate good cause for an extension by meeting one of the three enumerated criteria under Subtitle Y § 705.2.

*(c)(1) There is good cause showing an inability to obtain sufficient project financing due to economic and market conditions beyond the Applicant's reasonable control.*

Like many others within the D.C. office market, the Applicant has faced many challenges posed by the economic market and by the persistent shift to remote work arrangements. Attached at Tab A are a few of the many examples showing media coverage of the economic decline in the industry currently. Even with leasing activity up in the first quarter of 2024, net demand remained negative and vacancy rates continued to climb. One report found office vacancy rates climbed to new a high during Quarter 3 of 2024 at 22.7%. Reports indicate year to date net absorption represents over 825,000 square feet of office space.

Further, the majority of the leasing activity in 2024 stems from long term lease extensions, not from office growth. New leases outpaced lease renewals in Quarter 3 for the first time in 5 quarters. Experts posit companies will continue to downsize office footprints as remote work redefines workforce dynamics.

This shift towards remote work is especially pronounced among the Federal workforce; a Government Accountability Office report estimates 17 of the 24 agencies currently use less than 25% of their headquarters' office capacity. 6 agencies' leases expire between 2024 and 2027, and thereafter, the agencies are expected to reduce their office capacity by approximately 600,000 square feet.

What is more, office stock is increasingly distressed; in the first quarter of 2024, 39% of securitized office loans in the District were either in default or at risk of default. Foreclosures on buildings have already doubled from 2023. Experts project the new presidential administration will have additional impacts on the D.C. market as well.

Given the Project is a 10-story, 15,000+ square foot, built-to-suit office building, financing such a project under current market conditions is unreasonable. The market has acknowledged that due to stagnant return to office dynamics, interest rate uncertainty, and massive negative absorption, lending for new office construction has almost completely dried up.

Due to these well-documented and uncontrollable external market conditions, the Applicant requests additional time to secure financing and pursue the intended and approved development of this Project.

*(c)(3) There is good cause showing the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control.*

The Applicant has faced several burdensome circumstances beyond the Applicant's control that have hindered this Project's progress and that constitute good cause for a two-year extension.

First, the preliminary Order was issued by the Board in 2015. A long, arduous appeals process hampered the Applicant's ability to move forward with the Project. Due to the Appeal delay, an unanticipated result of the appellate process, the Applicant halted project development for two years. However, because of continued delays beyond its control, the Applicant pursued a temporary renovation build out in 2017, which allowed the Applicant to subsequently obtain its Certificate of Occupancy in March of 2018. The build out was completed while the Applicant continued to submit filings and responses to the BZA's Procedural Order on Remand. The Remand Order was issued in 2019 and was set to expire in 2021. During this time, the Applicant continued to pursue the Project with the intent to see the ultimate Project to fruition.

Then, the COVID-19 pandemic led the Board to grant the First Extension Order in 2021. As the pandemic continued and created subsequent economic turmoil, the Board took emergency action to extend the effectiveness of orders set to expire by June 2022. Therefore, the Board granted the Applicant a COVID Extension Order. The Board then granted the Applicant a Second Extension Order due to the deteriorating state of the office space market in the District. Unfortunately, as outlined previously, the deteriorating state of this market, coupled with interest rate uncertainty and a new incoming presidential administration, continues to present challenging external circumstances that have hindered the Applicant's ability to complete the project. Due to the appellate delays and financial challenges of building out a by-right space, the Applicant has shown good cause for the extension. The Applicant has also shown a continued dedication to developing its long term vision for the Property.

Finally, given the build-to-suit nature of this office project, the Applicant has marketed the property for sale. In a recent development, the Applicant is engaging with a potential buyer who is interested in purchasing the site and developing the project pursuant to the BZA Order. For the potential buyer to conduct due diligence pursuant to this deal, the requested extension is necessary; thus providing additional good cause. The Applicant therefore submits the above good cause needed for the additional time to move forward with the intended BZA approved project.

### **III. Conclusion**

The Applicant has met the burden under Subtitle Y § 705.2 for the Board to grant the requested time extension of the BZA Order. Accordingly, the Applicant respectfully requests that the Board do so and extend the validity of the BZA Order for a period of two years. Thank you for your attention to this application.

Honorable Members of the Board  
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Sincerely,

COZEN O'CONNOR

By: Meredith H. Moldenhauer



Meridith H. Moldenhauer

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of November, 2024 a copy of the foregoing Request for Extension was served, via electronic mail, on the following:

District of Columbia Office of Planning  
1100 4<sup>th</sup> Street SW, Suite 650E  
Washington, D.C. 20024  
Planning@dc.gov

Advisory Neighborhood Commission 2C  
c/o Kristin Roe, SMD Commissioner  
2C04@anc.dc.gov

1101 K Street NW Acquisitions LLC  
c/o Cynthia Giordano  
1919 Pennsylvania Avenue NW, Ste. 550  
Washington, D.C. 20006  
Cynthia.giordano@saul.com

  
Meredith H. Moldenhauer