

EXHIBIT C

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

Application of
1650 Harvard St NW Washington DC LLC

BZA Application No:
ANC 1C05

STATEMENT OF THE APPLICANT

This application is made by 1650 Harvard St NW Washington DC LLC (the “**Applicant**”) for special exception approval to allow for the expansion of a roof structure at the property located at 1650 Harvard Street, NW (Square 2589, Lot 847) (the “**Property**”). The Applicant requests approval from the Board of Zoning Adjustment (“**Board**”) pursuant to Subtitle C § 1506.1 (as will be amended by Z.C. Case No. 14-13E*) for relief from penthouse setback requirements of Subtitle C § 1504.1(c)(2)[†] in order to renovate and expand the existing multifamily residential building on the Property (the “**Project**”). The Applicant also respectfully requests that the Board expedite this application pursuant to Subtitle Y § 400.7 due to circumstances that will be described below.

I. NATURE OF RELIEF SOUGHT

In order to develop the Project, the Applicant requires special exception relief from the Board pursuant to Subtitle C § 1506.1. The Project has been designed to be compliant with the Zoning Regulations governing roof structures that were in effect prior to amendment by Z.C. Order No. 14-13E. Specifically, the Project’s roof structure setbacks from exterior walls of one-half-to-one (or more) from Quarry Road and Harvard Street, NW would have complied with the roof structure regulations prior to such amendment. Specifically, the Project’s setbacks are: (a) two (2) feet, eleven (11) inches or more for three (3) foot, six (6) inch railings; (b) six (6) feet or more for

* All references to Subtitle C § 1506 herein will be referencing the section as will be amended by Z.C. Case No. 14-13E. If such section changes prior to the hearing on this application, the Applicant will update the record and the relevant relief requests accordingly.

[†] All references to Subtitle C § 1504 herein will be referencing the section as will be amended by Z.C. Case No. 14-13E. If such section changes prior to the hearing on this application, the Applicant will update the record and the relevant relief requests accordingly.

a twelve (12) foot tall roof structure; and (c) an eleven (11) foot, eleven (11) inch setback for a fifteen (15) foot tall roof structure. However, it does not appear that the Project will be able to obtain its building permit prior to the effectuation of Z.C. Order No. 14-13E and therefore the Project's roof structures will be subject to the amendment's updated design requirements of Subtitle C § 1504.1(c)(2) which will require setbacks of one-to-one from exterior walls along Quarry Street and Harvard Street. This amended setback requirement will equate to required setbacks of: (a) three (3) feet, six (6) inches for three (3) foot, six (6) inch railings; (b) twelve (12) feet for a twelve (12) foot tall roof structure; and (c) fifteen (15) feet for a fifteen (15) foot tall roof structure. In summary, the proposed setbacks, amended setback requirements, and deviations from the amended setback requirements are as follows:

<u>Roof component</u>	<u>Proposed/currently compliant setback</u>	<u>Amended Setback Requirement</u>	<u>Deviation from Amended Setback Requirement</u>
Railings	2 feet, 11 inches	3 feet, 6 inches	7 inches
Habitable penthouse	6 feet (or more)	12 feet	6 feet
Elevator override	11 feet, 11 inches	15 feet	3 feet, 1 inch

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Subtitle X §§ 900.2 and 901.1 of the Zoning Regulations, as well as jurisdiction to expedite applications pursuant to Subtitle Y § 400.7.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is located between the Lanier Heights and Mt. Pleasant neighborhoods in Northwest D.C. It is situated in the RA-2 zone and consists of approximately 38,415 square feet of land area. The Property is bounded by Harvard Street, NW to the north, Quarry Road, NW to

the south, Lanier Place, NW to the east, and multifamily residential buildings to the west and southeast. The surrounding area is also zoned RA-2, with other nearby areas located in the RF-1 zone, as well as the MU-5A zoned Columbia Road commercial corridor located farther south and the RA-4 zone farther to the east along the 16th Street corridor. The Smithsonian National Zoo and Rock Creek Parkway are located to the west of the Property. The area is primarily characterized by multifamily residential buildings and rowhouses. The Property is approximately 0.5 miles from the Columbia Heights Metro Station and close to several Metrobus stops.

The Property is currently improved with a seven (7)-story apartment building with 156 residential units.

IV. PROPOSED PROJECT

The Applicant proposes to renovate the existing seven (7)-story multifamily building and expand its penthouse to include habitable residential space. The final Project will include approximately residential 182 units. Plans showing the Project and the requested relief are attached as Exhibit I to the application package (the “**Plans**”).

The Project is the result of an extensive collaboration between the Applicant and the Harvard Hall Tenants Association (the “**Tenants Association**”), in which the Applicant worked extensively with legacy tenants to create units specific to the unique requirements of each individual returning tenant. Tenants of the Property have been given the option to be temporarily relocated by Applicant and returned to the Property into renovated units at the completion of the Project. The Applicant also incorporated new requirements relating to the updated DC Construction Code, such as sustainability requirements, into its plans.

The Property will continue to have a building height of 60 feet, 8 inches and a Floor Area Ratio (“**FAR**”) of 4.41 and will continue to include 43 parking spaces. The Project will construct

a habitable penthouse. As a result of the habitable space within the penthouse, the Project will provide additional affordable housing through the payment of a contribution to the Affordable Housing Production Trust Fund. The Project will also generally renovate the building and the lot, including the delivery of additional housing units, through the conversion of unused or underutilized space within the existing building envelope, to a part of the District where demand for housing remains elevated. The Applicant seeks special exception approval only for the roof structure setback requirements and the Project will comply with all applicable development standards.

The duration of the coordination and planning for the Project itself created the need to file this application for relief. As mentioned above, the Project has been designed to be compliant with the roof structure regulations that were in effect prior to amendment by Z.C. Order No. 14-13E. The Project has submitted building plans for permit under the Accelerated Review Program with the Department of Consumer and Regulatory Affairs (“**DCRA**”), but the primarily twelve (12)-foot tall roof structure configuration, along with the three (3) foot, six (6) inch railings and one fifteen (15) foot elevator override, in such set is not compliant with the amended roof structure regulations due to the design to satisfy the one-half-to-one setback from exterior walls along Harvard Street and Quarry Road rather than the one-to-one setback along such exterior walls described above. This setback condition is shown on Pages 8, 9, 15, 17, and 18 of the Plans. The area of the Project’s roof structures within the required one-to-one setback area is approximately 1,257 square feet.

V. THE APPLICATION SATISFIES THE CRITERIA FOR THE REQUESTED RELIEF

Under Subtitle C § 1506.1 of the Zoning Regulations, in order for a project to receive special exception relief from the penthouse requirements, the applicant must demonstrate

compliance with certain conditions. As discussed below, the Project meets the specific conditions of Subtitle C § 1506.1.

- a. The requested relief is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect or impact surrounding areas. (Subtitle C § 1506.1(a); Subtitle X, Chapter 9).**

Pursuant to 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. The requested relief from the penthouse setback requirements is in harmony with the intent and purpose of the Zoning Regulations and Zoning Maps and will not adversely affect neighboring properties.

As shown on Pages 19 and 20 of the Plans, the proposed roof structure will not have any adverse visual effects. The proposed roof structure will not obstruct any viewsheds to or from the Property or elsewhere in the neighborhood. The roof structure is designed with a color and materiality to complement the primary masonry building below. This approach will allow the roof structure to read as clearly secondary to the primary building and further recede from visual prominence.

As further evidence of consistency with components of the Zone Plan, the requested relief will allow the rooftop structure to be constructed in a manner that would comply with the roof structure design regulations that immediately pre-dated Z.C. Case No. 14-13E and are in effect at the time of the filing of this application.

The Project is the culmination of a years-long partnership between the Applicant and the Tenants Association, in which long-term residents and community members worked directly on the Project's design to help ensure harmony with the rest of the neighborhood. This close and consistent assessment of the Project by the Property's tenants, added an additional long-time resident perspective for the creation of the Project that enhanced notions of community and context

compatibility. The proposed roof structure being approved in its proposed configuration would also avoid significant logistical, delay and cost obstacles that would threaten the Project and result in decreased residential space that could ultimately harm the surrounding areas.

b. Reasonable effort has been made for the housing of mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks. (Subtitle C § 1506.1(b)).

The Applicant has made reasonable efforts to design the mechanical equipment, stairways and elevator penthouses to be in compliance with the required roof structure setbacks. Nearly all of the penthouse area that occupies the now-required one-to-one setback area is devoted to habitable use, with the exception of the new stairwell at the southwest corner of building along Quarry Road (shown on Page 8 of the Plans, the “**Stairwell**”) and the elevator override (also shown on Page 8 of the Plans, the “**Override**”).

The Stairwell has been proposed in one of the only locations that satisfies egress requirements and while avoiding significant structural modifications to the existing building and the related construction challenges, inferior design, costs, and delays that such modifications would create. The Stairwell needed to be towards the exterior walls of the Building due to the location of existing building core and infrastructure. In addition, the Stairwell is intentionally located within the habitable space that it serves and it is the minimum size required for such egress requirements. Perhaps most importantly, the Stairwell is located in a manner that builds it “within” the primary structural frame of the floor below, as shown in light yellow coloration on Page 8 of the Plans. Therefore, it is not feasible to locate the Stairwell outside of the one-to-one setback area.

Similar to the Stairwell, the locations where the Override could be located were highly constrained. The Project design team reviewed several possible locations for this new elevator shaft. Due to the building's existing structural column and beam layout, existing building spaces

to be preserved, the parking garage location, and below grade foundations, the design team was not able to find an alternative location where a new Code-compliant and accessible elevator could be located in the building. As was the case with the Stairwell, the elevators needed to be located “within” the primary structural frame of the floor below, as shown in light yellow coloration on Page 8 of the Plans. In addition, the existence of the Override is necessary because the reduction from four (4) to three (3) elevators would be unadvisable for a building of this size for operational, efficiency and safety reasons.

As mentioned above, the Applicant has been working on this Project for several years and originally designed the penthouse to comply with the “prior” one-half-to-one setback requirement in previous Subtitle C § 1502.1(d). By the time Z.C. Case No. 14-13E reached its hearings and subsequent approval votes at the Zoning Commission, the design concepts for the Project were already finalized, after having been reworked multiples times to account for evolving construction and related Code requirements and a great deal of tenant and Tenant Association requests. In each of such iterations, the one-half-to-one setback concept remained and, indeed, the space created thereby was instrumental to effectuating a feasible configuration of the roof structure. It was also an intentional decision to locate penthouse habitable space closer to the outwardly facing facades of the Project and to locate mechanical, stairway, and elevator penthouses towards the interior of the building. At this stage, adjusting the roof structure to account for the new one-to-one setback requirement along Harvard Street and Quarry Road, NW, particularly for the Stairwell and the Override, would require the Applicant to reassess feasibility the entire Project.

c. At least one (1) of the following considerations has been met:

- 1. The strict application of the requirements of Chapter 15 of Subtitle C would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes. (Subtitle C § 1506.1(c)(1));**

The strict application of the updated design requirements of Subtitle C § 1504.1(c)(2) would be unduly restrictive, prohibitively costly and unreasonable, and inconsistent with building codes for the Applicant and the Project.

As previously stated, over the past several years, the Applicant has worked with the Tenants Association on multiple iterations of design concepts and has integrated all aspects of a variety of Code considerations. As noted above, the Project plans have been completed and the building permit application has been submitted to DCRA. The Applicant has even had a Preliminary Design Review Meeting (“PDRM”) at DCRA regarding the Project. It is not uncommon for design activities in cases such as this to last for years as the multiple stakeholders, here including a significant number of existing tenants and the Tenants Association, must fully assess a complicated project, and the ownership and financing sources (often an existing lender) must be able to approve and support such project. Such delays were the case here. Unfortunately, at this stage of the Project, the impact of the new Zoning Regulations’ one-to-one setback requirement in Subtitle C § 1504.1(c)(2) alongside the Harvard Street and Quarry Road side lot lines would result in a significant reduction to the footprint of the Project’s penthouse, which would have a concomitant reduction and reconfiguration of the penthouse residential units. It is likely that such reduction and reconfiguration would result in the Project’s termination and the prevention the Project’s benefits from being realized.

The strict application of the updated design requirements of Subtitle C § 1504.1(c)(2) would require that the residential units planned for the penthouse partially within the required setback area shown in orange on Page 8 of the Plans would not be able to locate in such area. However, these units would not be able to slide towards the interior of the site since, since the roof structure corridor and primary structural frame need to align with the corridor and primary

structural frame of the floors below, as shown in yellow on Page 8 of the Plans. As a result the reduction in the size of the roof structure units within the setback area would not be viable residential units due to their size and configuration.

The strict application of the updated design requirements would require the Applicant to relocate the Override specifically, which is fifteen (15) feet tall and currently set back eleven (11) feet, eleven (11) inches from the exterior wall along Harvard Street. As mentioned above, the Applicant previously reviewed other possible locations for the elevator shaft. Due to the building's existing structural column and beam layout, building spaces to be preserved, parking garage location, and below grade foundations, it was not feasible to locate a new Code-compliant and accessible elevator elsewhere in the building. As also mentioned above, reducing the number of elevators below the proposed total of four (4) (three (3) existing elevators and one (1) new elevator) would be unadvisable for a building of this size.

Complying with the new one-to-one setback requirement would specifically require the Applicant to also relocate the Stairwell as well, which was designed specifically to accommodate new Construction Code regulations. Under the new Code, egress stairwells reaching the roof structure must deposit users directly to the exterior of the building along Quarry Road. The stairwell is currently situated in one of the few locations that satisfies this new egress requirement while also minimizing structural modifications and rework to the existing building. Relocating this Stairwell to make room for a larger setback would directly impact several legacy tenant floor layouts and require a complete redesign of at least a quarter of the building's floor layouts. The change would also involve additional protracted design work and a wholesale recustomization for the returning tenants and amendments to all existing arrangements. Such a major change at this

stage in the design process would be unduly costly and unreasonable and would have a particularly undesirable delaying impact on legacy tenants.

2. The relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall. (Subtitle C § 1506.1(c)(2));

The Project, and the requested relief that allows it, results in a better design of the Property. The Project embraces many different layers of new District requirements, such as new green energy requirements, stormwater requirements, and additional engineering upgrades as the result of the new Construction Code. Enhancements include an egress stairway and four (4) elevators that are fully compliant with the new Construction Code. Furthermore, the relief is only needed for portions of the penthouse facing Quarry Road and Harvard Street, NW, as the one-to-one setback requirement is met in the front of the building facing Lanier Place NW, as well as along the rear lot line. The result is that the Project sets back the roof structure from all exterior walls so that the roof structure does not appear to be an extension of the building wall. The relief requested therefore would provide the most practical roof structure location for the Project while still distinguishing the penthouse from the rest of the building and allowing it to deliver a robust set of upgrades and benefits.

3. The relief requested would result in a roof structure that is visually less intrusive. (Subtitle C § 1506.1(c)(3)); or

While the proposed relief would not result in a roof structure that is visually less intrusive, the proposed roof structure will still not be visually intrusive with the relief requested, as discussed above. The current design allows for setbacks all the way around the building's exterior walls and it will be out of sight to most passersby. The Project's roof structure has been pushed towards the Property's interior closed court so that visual impacts are reduced to the maximum degree practicable. As stated above, relief is only needed for two portions of the penthouse along Quarry

Road and Harvard Street. In addition, as mentioned above, the penthouse will be constructed with a durable, composite rainscreen cladding that will be highly complementary to, but not distract from, the composition of the building's primary facades. Furthermore, despite the existing building's height, the addition of the penthouse will be at or below adjacent buildings of similar stature and construction. Where the building abuts lower construction, the penthouse is greatly screened from view by mature trees along Harvard Street NW. Accordingly, the requested relief will allow the Project to minimize the visual impact of the proposed roof structure.

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 make full compliance unduly restrictive, prohibitively costly or unreasonable. (Subtitle C § 1506.1(c)(4)).

As described above, conditions relating to the building make full compliance with the setback requirements along Harvard Street and Quarry Road, NW unduly restrictive and unreasonable, in large part due to the intricate and long-developing arrangement with the Tenant Association and individual tenants. Furthermore, in working with the Tenants Association, the Applicant has entered into a Development Agreement, as well as Memorandums of Understanding (“MOUs”) for each tenant, which specify the tenants' individual unit design, relocation package, and other tenant-specific agreement components. In part due to the long-term nature of many residents' tenancy (a number of which have been in the building for decades), this process understandably took many months to complete, as it required forging trust through a dedicated and highly-communicative process. The recent amendment to the penthouse regulations, combined with the D.C. Construction Code's shifting requirements and the need to commit to legacy tenants, makes the relief requested necessary to fulfill the efficient and practical design of the Project.

As a result, at this stage of the Project, compliance with the setback requirements along Harvard Street and Quarry Road, NW would create logistical inefficiencies, decrease the amount of livable space the Project can provide, and introduce significant delay that would call the viability of the Project into question. Specifically, regarding the decreased to the amount of living space, setting back the roof structure within the area shown in orange on Page 8 of the Plans would result in units that are inefficient, ill-configured and likely unmarketable. Requiring moving the Stairwell and the Override out of the setback areas would require significant and costly reconfiguration of the building amounting to re-arranging the building's core and other essential components of its configuration.

As described above, the Applicant has worked diligently to ensure that the Project complies with evolving requirements in the areas of stormwater retention, green energy, and engineering upgrades. Requiring changes to the roof structure configuration at this stage of design would have a great deal of down-stream adverse consequences on Project redesign.

Changes to the design at this stage would also be highly burdensome to legacy tenants. All legacy tenants have been relocated as the Applicant begins demolition. The legacy tenants expect to be returned to their homes in 21 months. However, delay created by changes to the design in order to comply with all new roof structure setback requirements would add six (6) to twelve (12) months to the already-extended timeline, as systemic redesign and tenant engagement design are both slow iterative processes.

VI. AN EXPEDITED PROCESSING OF THIS APPLICATION IS NECESSARY AND DESIREABLE

Under Subtitle Z § 400.7, the Board has the authority to expedite an application if (a) the Office of Planning (“OP”) provides a recommendation explaining why expediting is necessary

and desirable; and (b) expediting the application will not cause other applications to be removed from the public hearing agenda for that date.

While the Applicant realizes that expediting an application to the BZA is not typical, it believes that the request to expedite would be warranted in this case since the Project has submitted for permit and essentially is caught between the “old” (i.e., current) roof structure setback regulations and the amended roof structure setback regulations. This situation is highly unusual, but it resulted from the Applicant arranging for an equally unusual agreement with the Tenant Association and designing a project that significant upgrades the Property while complying with the array of new Code requirements. To such end, the Applicant had already spent \$1.7MM on predevelopment costs such as engineering, architecture, consulting, and legal fees, environmental remediation, and other similar costs for the Project. In addition, the Applicant has paid even more for tenant relocation costs and related expenses. Additional delay of the Project would result in the Applicant incurring additional costs and introduce additional delay for legacy tenants of the Property. Expedited processing is highly desirable to ensure that additional costs do not risk the Project’s viability and to avoid Harvard Hall tenants facing an avoidable protracted period of uncertainty regarding the future of their building and their homes.

VII. CONCLUSION

For all of the above reasons, the Applicant is entitled to the special exception relief requested in this case.

Respectfully submitted,

/s/ Jeff Utz

/s/ Jennifer Bisgaier