

October 18, 2023

Via IZIS

Frederick L. Hill, Chair
D.C. Board of Zoning Adjustment
441 4th Street, N.W., Second Floor
Washington, D.C. 20001

Re: BZA Order No. 20523(1) – 300 New Jersey Avenue NW and 51 Louisiana Avenue NW (Square 631, Lots 808 and 809) – Request for Two-Year Time Extension

Dear Chair Hill and Members of the Board:

On behalf of AMSQ LP (the “**Applicant**”), the owner of the Property and the applicant in BZA Case No. 20523, we hereby submit this request for a two (2)-year extension of BZA Order No. 20523(1)¹ (“**Order**”), granting special exception relief for the Property located at 300 New Jersey Avenue NW and 51 Louisiana Avenue NW (Square 631, Lots 808 and 809) (“**Property**”). The Order granted relief to allow construction of a penthouse addition that will serve the building’s existing rooftop deck (the “**Project**”). The Applicant requests the extension pursuant to Subtitle Y § 705.1 for the good cause shown herein.

Attached as Exhibit A is an authorization letter for the application. A copy of the Orders for the Project is attached hereto as Exhibit B. A check for the applicable filing fee of \$405.60, which represents 26% of the original filing fee, is being delivered to the Office of Zoning concurrent with this filing pursuant to Subtitle Y § 1600.1(e). The Applicant requests that this application be placed on the Board’s public meeting calendar and reviewed in accordance with Subtitle Y § 705.1.

I. BACKGROUND

The Property is located in the East End neighborhood in Downtown, and the Property is improved with the America’s Square office complex, which consists of a south wing (51 Louisiana Avenue NW), constructed in 1935 and known as the Acacia Building, and a north wing (300 New Jersey Avenue NW), constructed in 2009. The two buildings constitute a single building for zoning purposes; the Project approved by the Board in Case No. 20523 pertains only to the existing penthouse and roof deck on the north wing. The Property is located in the D-3 zone and within the Capitol Security Sub-Area. Order No. 20523(1) approved special exception relief under Subtitle I §§ 605.6 and 607.7 for substantial renovation within the Capitol Security Sub-Area for

¹ Order No. 20523(1) is a corrected Order for the Board’s approval in Case No. 20523.

renovation of the existing mechanical penthouse on the north wing, conversion of approximately 1,000 square feet of mechanical space to habitable space, and construction of a habitable addition, all of which will serve the existing rooftop deck on the building. The habitable penthouse space and roof deck will provide amenity space for the building’s office tenants and guests. By Order No. 20523A, dated July 11, 2023, the Board approved a Modification of Consequence for minor revisions to the plans approved in the original Application, including reducing the penthouse addition by approximately 215 square feet and reducing the footprint of the roof deck.

II. THE APPLICANT MEETS THE REQUIREMENTS FOR APPROVAL OF AN EXTENSION REQUEST UNDER SUBTITLE Y § 705.1.

The Board’s approval will expire on November 1, 2023.² With this letter, we request, pursuant to Subtitle Y § 705.1, that the Board extend the approval by a period of two (2) years until November 1, 2025. Since approval of the application, the Applicant has diligently pursued prospective tenants for the approved space but continues to face challenges in securing a tenant due to the current state of the market for office space in Downtown. The Applicant is confident that a tenant can be secured with additional time but is unable to pursue construction of the approved penthouse renovation and expansion on a speculative basis without a tenant secured.

Subtitle Y § 705.1 sets forth clear standards against which the Board evaluates extension requests. Upon receipt of this written request, the Board may extend the time period of the Order “for good cause shown.” The Board must determine that:

- (a) The extension request is served on all parties to the application;
- (b) There is no substantial change of any of the material facts upon which the Board based its original approval that would undermine the Board’s justification for approving the original application; and
- (c) The applicant demonstrates good cause for the requested extension, with substantial evidence for any one 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.

For reasons set forth more fully below, Applicant meets all of the requirements for the granting of an extension under Subtitle Y § 705.1. Specifically, the Board should find that good

² Order No. 20523(1) was final as of October 22, 2021. The Order states that it becomes effective 10 days after it becomes final and is valid for a period of “two years after it becomes effective”

cause exists to grant this extension request because of market conditions and circumstances beyond the Applicant's reasonable control.

A. The Extension Request Is Served on All Parties to the Application.

This extension request is being served simultaneously on Advisory Neighborhood Commission ("ANC") 6E and ANC 6C. The ANC was the only party to the original application for BZA Case No. 20523 and supported the application and project.³ The ANC will be allowed 30 days to respond to this request.

B. There Is No Substantial Change to Any of the Material Facts Underlying the Board's Approval of the Requested Relief.

The factors satisfying the special exception relief for the Property remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case. The relief is still in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

C. There Is Good Cause for the Extension.

The Applicant has good cause to request an extension due to economic and market conditions beyond the Applicant's reasonable control. Specifically, despite the Applicant's diligent efforts, it has been unable to secure a tenant for the approved space due to the broader challenges facing the market for office space in Downtown D.C. during this time. The Applicant continues to actively pursue prospective tenants and remains confident that it will be able to lease the approved space with the additional time requested. However, until a tenant is secured the Applicant is unable to move forward with the approved project on a speculative basis, particularly given current construction costs, which have risen precipitously and remain at high levels.

Based on the well-documented adverse external market conditions for office space in the District, which are beyond the Applicant's control, the Applicant requests additional time to continue its efforts to lease the approved space in order to move forward with the approved Project.

III. CONCLUSION

For all of the above reasons, the Applicant respectfully requests a two (2)-year extension of BZA Order No. 20523(1) and requests that consideration of the requested extension be scheduled for the Board's public meeting calendar and reviewed pursuant to Subtitle Y § 705.1.

We would be happy to produce any other information or evidence in support of the above letter and greatly appreciate your consideration of this matter.

³ When the original application was approved, the Property was located within ANC 6C. The Property is now located within ANC 6E, and ANC 6C is located across Louisiana Avenue NW from the Property. Accordingly, both ANCs 6E and 6C are parties to this Request for Extension.

Respectfully submitted,

/s/ Allison C. Prince

Allison C. Prince

/s/ Lawrence Ferris

Lawrence Ferris

Certificate of Service

I certify that on October 18, 2023, I delivered a copy of the foregoing document and enclosures via email to the addresses listed below.

Jennifer Steingasser
Joel Lawson
Office of Planning
jennifer.steingasser@dc.gov
joel.lawson@dc.gov

ANC 6E
6E@anc.dc.gov

Chris Hart – ANC 6E01 and ANC 6E Chair
6E01@anc.dc.gov⁴

ANC 6C
6C@anc.dc.gov

Leslie Merkle
6C02@anc.dc.gov

/s/
Allison C. Prince

⁴ The Single Member District seat for ANC 6E08, in which the Property is located, is currently vacant. Accordingly, the Applicant is serving the Application on the current chair for ANC 6E, in addition to the primary ANC 6E email address.

Exhibit A

October 10, 2023

Board of Zoning Adjustment
441 4th Street, N.W.
Room 200
Washington, DC 20001

Re: **300 New Jersey Avenue NW and 51 Louisiana Avenue NW (Square 631, Lots 808 and 809) –
Letter of Authorization for Board of Zoning Adjustment Application**

Honorable Members of the Board:

As the owner of the property located at 300 New Jersey Avenue NW and 51 Louisiana Avenue NW (Square 631, Lots 808 and 809) (the “**Property**”), I hereby authorize the law firm of Goulston & Storrs, PC to file a zoning application for the Property and appear at all proceedings before the Board of Zoning Adjustment and other government body on behalf of the undersigned owner concerning the above-referenced application.

Sincerely,

AMSQ LP

By:



Name: Rameez Munawar

Title: Authorized Signatory

Exhibit B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA Application No. 20523(1)
AMSQ LP

300 New Jersey Avenue, N.W. and 51 Louisiana Avenue, N.W. (Square 631, Lots 808, 809)

HEARING DATE: October 13, 2021

DECISION DATE: October 13, 2021

CORRECTED¹ SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a penthouse addition to an existing, detached, commercial building in the D-3 Zone:

- Special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7 (Pursuant to Subtitle X § 901.2)

The zoning relief requested in this case was self-certified. (Exhibit 3.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "Board") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2021, at which a quorum was present, the ANC voted to support the application. (Exhibit 35.) The ANC's recommendation was conditioned on the Board's order imposing a prohibition against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open. The Board adopted this provision as a condition of this order. Commissioner Mark Eckenwiler testified at the Public Hearing on behalf of the ANC.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 31.)

¹ The order was corrected to remove reference to Subtitle I § 302 in the Relief Requested section. The Applicant's self-certification form listed the requested relief as pursuant to Subtitle I §§ 605.6 and 605.7 to allow the expansion of the penthouse structure.

DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District’s transportation network. (Exhibit 32.)

ARCHITECT OF THE CAPITOL (“AOC”) AND CAPITOL POLICE. The Applicant testified at the Public Hearing they will continue outreach with AOC and Capitol Police regarding the project and have proposed devoting a portion of the penthouse space to be a guard station for Capitol Police and Secret Service.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief and therefore **APPROVES** relief from:

- Special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7 (Pursuant to Subtitle X § 901.2)

Subject to the following **CONDITIONS**:

1. The project shall be constructed in accordance with the plans submitted as Exhibit 29A in the record², as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.


² Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6. In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any such application that would require additional or different zoning relief from what is granted by this Order.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE; Lorna L. John not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 22, 2021

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY

BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 20523-A
AMSQ, LP

300 New Jersey Avenue, NW and 51 Louisiana Avenue, NW (Square 631, Lots 808, 809)

HEARING DATE (20523):	October 13, 2021
DECISION DATE (20523):	October 13, 2021
ORDER ISSUANCE DATE (20523(1)):	October 22, 2021
DECISION DATE (20523-A):	June 28, 2023

**SUMMARY ORDER ON REQUEST FOR
MODIFICATION OF CONSEQUENCE**

Pursuant to notice, at its June 28, 2023, public meeting, the Board of Zoning Adjustment (“**Board**” or “**BZA**”) deliberated on a request for modification of consequence to BZA Order No. 20523(1) construct a penthouse addition to an existing, detached, commercial building in the D-3 Zone. The Board considered the request for modification of consequence under Subtitle Y § 703 of Title 11 of the DCMR (Zoning Regulations of 2016, the “**Zoning Regulations**” to which all references are made unless otherwise specified). For the reasons stated below, the Board **APPROVES** the request for modification.

ORIGINAL APPLICATION. In Application No. 20523, the Board approved the request by AMSQ, LP (the “**Applicant**”) for a special exception under the Capitol Security Sub-Area requirements of Subtitle I §§ 605.6, and 605.7, pursuant to Subtitle X § 901.2. The Board issued Order No. 20523(1) on October 22, 2021. (Exhibit 3A of the record for Case No. 20523-A.) The approval was subject to two conditions:

1. The project shall be constructed in accordance with the plans submitted as Exhibit 29A in the record, as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.

PROPOSED MODIFICATION. On May 2, 2023, the Applicant submitted a request for modification of consequence to Order No. 20523. (Exhibits 1-3C.) The Applicant proposed several design changes and updates to the approved plans, including 1) reduction of the penthouse addition, 2)

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reduced roof deck footprint, 3) additional penthouse equipment, 4) revised setback dimensions for existing mechanical penthouse, and 5) removal of horizontal mullions from penthouse addition. The Applicant submitted revised plans reflecting these modifications. (Exhibit 3C.)

NOTICE OF THE REQUEST FOR MODIFICATION. Pursuant to Subtitle Y §§ 703.8-703.9, the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 3.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6E.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 6, 2023, at which a quorum was present, the ANC voted to support the modification. (Exhibit 5.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the modification. (Exhibit 6).

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record.

CONCLUSIONS

The Board determines that the Applicant's request complies with Subtitle Y § 703.4, which defines a modification of consequence as 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." Based upon the record, the Board concludes that in seeking a modification of consequence, the Applicant has met its burden of proof under Subtitle Y § 703.4.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

DECISION

It is therefore **ORDERED** that this application for a modification of consequence of BZA Order No. 20523(1) is hereby **APPROVED** subject to the following **CONDITIONS**, which shall replace and supersede the conditions of BZA Order No. 20523(1):

1. The project shall be constructed in accordance with the plans submitted as Exhibit 3C in the record for case 20523-A, as required by Subtitle Y §§ 604.9 and 604.10.

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2. The Applicant shall be prohibited against the use of any amplification device on (or to project sound into or onto) the roof terrace, including indoors when the sliding door panels are left standing open.


In all other respects, Order No. 20523(1) remains unchanged.

VOTE: 3-0-2 (Lorna L. John, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE;
Frederick L. Hill not present, not participating; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 11, 2023

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.