

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

**Application for 218 D Street, S.E.
(Square 763, Lot 2)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted on behalf of Capitol Hill Squash Club Associates (the "Applicant"), in support of its application pursuant to 11 DCMR § 3104.1 for special exception relief under § 2003 to permit the change of a nonconforming use on the second floor of a building from an office use to a group instruction (exercise) studio in the CAP/R-4 District at 218 D Street, S.E., Square 763, Lot 2 (the "Site").

Pursuant to Section 3113.8 of the Zoning Regulations, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment ("BZA" or the "Board") no fewer than fourteen days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested special exception relief. The following is a preliminary statement indicating how the Applicant meets the burden of proof.

I. BACKGROUND

The Site consists of Lot 2 in Square 763 and has a total land area of approximately 4,692 square feet. Square 763 is bounded by C Street to the north, 2nd Street to the west, D Street to the south and 3rd Street to the east, all located in the southeast quadrant of the District of Columbia. The Site is located on the north side of D Street with approximately 55 feet of street frontage.

The Site is zoned CAP/R-4 which permits residential and other types of uses as a matter of right. Currently, the Site is improved with an office building with nonprofit office tenants, and an accessory parking garage utilized by the adjacent property to the west. An unrestricted nonprofit office use is first permitted as a matter of right in the C-1 District. The Applicant proposes to convert the second floor of the building on the Site to a group instruction studio to be internally connected with the existing Balance Gym health club located on the first and second floors of the adjacent property to the west at 214 D Street, S.E. A group instruction studio use is also first permitted as a matter of right, without restrictions, in the C-1 District. The accessory parking garage on the first floor, and the third floor office use, will remain unchanged. No exterior alterations are proposed.

The Site is located in the Capitol Hill neighborhood, which is a mixed-use, walkable neighborhood, with excellent public transportation options such as the Capitol South Metro Station and the Eastern Market Metro Station. Directly to the west of the Site on D Street is the Balance Gym, to the east is the American Legion, and to the south is Folger Park. In addition, the Capitol Hill Hotel, which fronts on C Street, is located to the north of the Site. Commercial areas zoned C-2-A are located one and a half blocks to the north of the Site along Pennsylvania Avenue and one and a half blocks to the southwest along 1st Street.

II. SPECIAL EXCEPTION RELIEF

A. Changing Uses Within Structures (§2003) – Compliance with Standards

The Applicant seeks special exception relief under § 2003 to permit the change of a nonconforming use on the second floor of the building. Section 2003 provides that by special exception a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right. In a residential zone, the new use must be either “a dwelling, flat, apartment house, or a neighborhood facility.” 11 DCMR § 2003.5.

Pursuant to D.C. Code §6-641.07(g)(2) and 11 DCMR § 3104.1, the Board is authorized to grant a special exception where it finds that the special exception will be in harmony with the general purpose and intent of the Zone Plan and will not tend to adversely affect the use of neighboring property, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the requested relief are met. In reviewing an application for special exception relief, “[t]he Board’s discretion... is limited to a determination of whether the exception sought meets the requirements of the regulation.” *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 695, 706 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*

Changes to a nonconforming use are permitted as special exceptions if approved by the Board after a public hearing, in accordance with § 3104, provided the criteria of § 2003 are met. The Applicant meets the applicable special exception standards as described below.

1. Changing Uses Within Structures

a. Section 2003.1– Change of Use is Permitted

Pursuant to section 2003.1, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right.

The C-1 District is the most restrictive zoning district in which a group instruction studio and an unrestricted nonprofit office use is permitted as a matter of right.

b. Sections 2003.2 and 2003.3 – No Adverse Impacts

The proposed use shall not adversely affect the present character or future development of the surrounding area. The surrounding area encompasses the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use. In addition, the proposed use shall not create any deleterious effects, including but not limited to noise, traffic, parking, loading considerations, illumination, vibration, odors, and design and

siting effects.

Uses within 300 feet of the Site include the Balance Gym, the American Legion, St. Peter's Catholic Church, the Capitol Hill Hotel, offices, a midrise apartment building, and single family homes. As a result, the proposed group instruction studio on the second floor of the existing building will not adversely affect the present character or future development of the surrounding area since there is already an array of commercial and mixed uses buildings in the vicinity of the Site. The nonconforming use will continue to be confined to the existing building on the Site and will not be expanded. There are also no proposed changes to the exterior of the building.

Changing the use to a group instruction studio will not increase the amount of vehicular traffic near the Site. Vehicular use to the group instruction studio will likely be less than that for the existing office use, since the group instruction studio is a neighborhood facility. The new proposed use will draw customers primarily from the neighborhood, whereas there is no such limitation for the existing office employees and visitors to that space. The group instruction studio on the second floor will be used for fitness training and exercise. The 10 off-street parking spaces on the Site are utilized by the Balance Gym and no parking is provided for the existing office use. The amount of pedestrian and street traffic expected with the change of the nonconforming use is consistent with other uses in the immediate area and the proposal is not expected to exacerbate traffic in the area or increase on-street parking. The proposed group instruction studio will be used in conjunction with the adjacent Balance Gym and the 10 parking spaces on the Site will be made available to the patrons of the proposed use. The Site is also located within 0.2 miles of two Metro Stations. The proposed use will also have no effect on noise, loading considerations, illumination, vibration, odors, or design and siting.

c. Section 2003.4 – More Restrictive Use

When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming or less restrictive use. The building was originally used as a warehouse for a moving and storage company. The building on the Site was converted into a parking garage for the adjacent health service use and then subsequently converted into a three story office building with a parking garage. The proposed group instruction studio is not a less restrictive use.

d. Section 2003.5 – Dwelling, Flat, Apartment House, or Neighborhood Facility

In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or neighborhood facility.

The proposed group instruction studio use of the second floor of the building on the Site is a neighborhood facility. Although not defined in the Zoning Regulations, as stated in BZA Order No. 15208, decided December 6, 1989, final and effective February 25, 1992, the key characteristic of a neighborhood facility is that "the majority of the patrons reside in the immediate neighborhood." The BZA has determined that a coffee/sandwich shop, 7-11, beauty salon, grocery store, and restaurant are all neighborhood facilities pursuant to the aforementioned definition. See BZA Order No. 17100-A, decided June 22, 2004, final and effective November 5,

2004; BZA Order No. 17021, decided October 7, 2003, final and effective February 23, 2004; BZA Order No. 15326, decided September 5, 1990, final and effective April 30, 1992; BZA Order No. 16880, decided January 7, 2003, final and effective, May 12, 2003; and BZA Order No. 16412, decided May 5, 1999, final and effective August 10, 1999, respectively. The Board previously found that the squash club on the adjacent property would “be compatible with the uses in the immediate area and would provide significant neighborhood and community benefits through the provision of a recreational facility which is easily accessible to those living and working in the area.” *See* BZA Order No. 12725, decided December 6, 1978, final and effective January 24, 1979.

The BZA’s prior determination of what is considered a neighborhood facility is consistent with the proposed group instruction studio. The group instruction studio will serve the immediate neighborhood by providing fitness classes and personal training services for Capitol Hill residents and visitors, as part of the Balance Gym on the adjacent property. Accordingly, the proposed group instruction studio is a neighborhood facility.

Based on the foregoing, the Applicant has demonstrated that it meets the test for special exception relief under section 2003 of the Zoning Regulations.