

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

**APPLICATION OF
1612 SEVENTH STREET NW LP**

**APPLICATION NO. 19254
HEARING:SEPTEMBER 27, 2016**

REVISED AND RESTATED PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This Revised and Restated Prehearing Statement is submitted on behalf of 1612 Seventh Street NW LP (the “Applicant”), the owner of the property known as 1612–1616 7th Street NW (Square 420, Lot 38) (the “Property”), in support of its application for special exception relief from the requirements regarding lot occupancy (§ G-404.1); rear yard (§ G-405.2); retail loading (§C-901.1); courts (§G-202.1); and retail parking (§ C-701.5) to allow the rehabilitation of and addition to a contributing structure in the Shaw Historic District. The rehabilitated structure will provide a mixed-use building with retail use in the cellar, the first floor and partial second floor, and eight residential units on the second and third floors (the “Project”). The Applicant requested to continue the hearing previously scheduled for July 19, 2016 to September 27, 2016 in order accomplish substantial design modifications as a result of feedback received from the Historic Preservation Review Board (“HPRB”), as well as to revise the application to proceed under the 2016 Zoning Regulations (“ZR-16”) or (the “Zoning Regulations”).¹ In addition to the Advisory Neighborhood Committee (“ANC”) 6E, the Central Shaw Neighborhood Association and the owner of the adjacent properties at 1610 7th Street NW and 1618 7th Street NW, the Historic Preservation Office (“HPO”) has also provided its support for this Project. See Letter in Support from HPO, attached at **TAB C**.

¹ Pursuant to the revisions under ZR-16, the Applicant submits a revised and restated BZA Self Certification Form at **TAB A** and a Certificate of Proficiency pursuant to §Y-300.5 See **TAB B**.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the special exception relief requested herein pursuant §§X-901.2 and Y-100.3 of ZR-16.

III. ATTACHMENTS

Tab A:	Zoning Self-Certification Form
Tab B:	Certificate of Proficiency
Tab C:	HPO Letter of Support
Tab D:	Revised Architectural Plans

IV. THE PROPERTY, SURROUNDING AREA, AND PROJECT

Under ZR-16, the Property is zoned MU-4 and is located along a commercial strip of 7th Street NW that is primarily devoted to retail uses. As stated in the Applicant’s initial submission and previously submitted prehearing statement, the Property has a total land area of approximately 5,719 square feet, is improved with three adjoining buildings that have approximately 10,654 square feet of floor area across two stories and a cellar, all currently used for offices.

The Property is located in the Shaw Historic District and the buildings are considered contributing. The Applicant has worked diligently with staff at HPO modifying and revising the design. As a result, the Project has been reduced pursuant to HPO and HPRB comments. The revised and updated project will have 10,221 square feet of retail space on the cellar and first two floors, as well as eight residential units spread across the second and third floors and penthouse. See revised architectural plans, at **TAB D**.

The proposed plans complement the surrounding area. The Applicant proposes to renovate and convert the existing buildings at the Property into a mixed-use building with residential and retail space, while retaining the historic structures and adding a new third story and penthouse. The addition and penthouse have been significantly reduced from the initial plan set submitted to

the Board on March 3, 2016. More specifically, the third story will be set back 31 feet from the façade, 9 feet further back than the initial application. The proposed penthouse will meet and far exceed applicable zoning requirements as well as sight line requirements requested by HPO, which result in the penthouse being set back 54 feet from the historic façade. The penthouse originally only showed a 33 feet setback. The substantially reduced third floor and penthouse addition have the support of HPO and HPRB.

The Property sits directly across the street from Asbury Dwellings, a large, four-story affordable senior housing community located in the historic Shaw Junior High School Building. On the west side of Square 420, backing up to the Property, are residential row houses. Aside from Asbury Dwellings, the 1600 block of 7th Street is a commercial strip primarily devoted to retail uses. Approximately two doors north of the Property is a 7-Eleven convenience store sitting along the corner of a busy corridor of Rhode Island Avenue, one of the city's major arterials.

V. THE APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF.

Under ZR-16, The Applicant seeks special exception relief from the requirements regarding lot occupancy (§ G-404.1); rear yard (§ G-405.2); retail loading (§C-901.1); courts (§G-202.1); and retail parking (§ C-701.5).

The Board is authorized to grant a special exception where it finds the special exception:

- (1) will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

(3) subject in specific cases to special conditions specified in the Zoning Regulations. 11 DCMR § X-901.2.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the 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 Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). Thus, the BZA has limited discretion in granting a special exception – once an applicant has made the requisite showing of the requirements under the regulations for the special exception, the Board typically must grant the application. *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

VI. THE PROJECT MEETS THE STANDARD FOR SPECIAL EXCEPTION RELIEF.

The Project is in harmony with the general purpose of the Zoning Regulations and will not adversely affect the use of any neighboring properties. The Project preserves and enhances the contributing structure, maintains commercial uses along a portion of the second story that fronts on 7th Street, and adds residential units to provide a harmonious mixed use development that aligns with the purposes of the MU-4 Zone. *See* 11 DCMR § G-400.3. Additionally, through significant outreach, discussion and consideration, the Applicant has gained significant support for the Project. Letters of support have been filed in this case from ANC 6E (Exhibit 36), the Central Shaw Neighborhood Association (Exhibit 29) and the owner of the adjacent properties (Exhibit 28D).

A. Lot Occupancy (§ G-404.1)

While there is no lot occupancy restriction for retail uses in the MU-4 District, residential uses may not exceed 60% lot occupancy. 11 DCMR § G-404.1. The second and third floors of the Project, which will both include residential units, will have a lot occupancy of 94% and 61%, respectively, thus requiring relief.

1. The Proposed Lot Occupancy Will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Board can balance the benefits of renovations and preserving the historical features of the Property with the request to increase lot occupancy. We respectfully submit that the Proposed Project is in harmony with the purposes and intent of the Zoning Regulations. First, it is important to note the minor degree of relief being requested for lot occupancy. The second floor, which contains both retail and residential uses, exceeds the lot occupancy limitation because of the mixed use nature of the design. The net floor area for the residential use is 3,400 square feet, for a lot occupancy of only 59%, which is below the 60% lot occupancy permitted. Moreover, the relief requested for the third floor is only 61%, just above the required minimum. Pursuant to §304.2 (a), this minor degree of relief on the third floor may be granted administratively.

Preserving commercial uses along a portion of the second story that fronts on 7th Street is one of the Project's major assets because it serves to revitalize the streetscape in a way that suits this commercial corridor. If the Applicant reduced the envelope of the upper floors by removing the retail space along the front façade, the Project would not maintain the same restorative effect on this historic site. Without the retail space along the front façade, the Project would harmonize less with its surroundings and be less effective in activating the streetscape. Alternatively, if the Applicant reduced the residential use on the second floor, that would not be in harmony with the

general purpose and intent to create and support residential development near transit rich areas such as this.

Additionally, attempting to comply with the lot occupancy requirements would create an inefficient layout for the building given the historic preservation constraints. The Applicant is preserving a portion of the existing structure — including the party walls — extending back approximately 35 feet. Thus, if the Applicant were required to reduce lot occupancy on the third floor, it could only be accomplished by either pulling in the exterior side walls that are not historic, or by pushing the rear exterior wall forward. Neither of these options are workable, however. As is clear from the revised architectural plans, pulling the non-historic exterior side walls further in on the upper floors would result in narrow, impractical units. *See **TAB D***. Likewise, moving the rear wall forward on the upper floors would require that structural support be provided underneath, necessitating a load-bearing wall interrupting the floor plan for the retail space on the first floor and cellar levels, which would create additional inefficiencies. Either approach would create cramped, inefficient units, which are limited in the extent to which they can be reconfigured because their plan ultimately follows that of the building core, which must be centrally located in order to serve the building adequately. Therefore, a design that complies with the lot occupancy requirements and HPO setback requirements would unreasonably constrain the units and would require two separate sets of structural support for the rear wall.

For these reasons, special exception relief is appropriate to adequately preserve the historic portions of the existing structures, to restore the commercial uses on the first two floors to activate the streetscape in this commercial corridor, and to provide a mixed-use development in harmony with the general purposes and intent of the Zoning Regulations.

2. *The Proposed Lot Occupancy Will Not Adversely Affect the Use of Neighboring Property.*

As a result of feedback from HPO, the third story of the Project will be set back 31 feet from the façade and the penthouse will be set back 54 feet, far exceeding the applicable zoning requirements. This extreme set back will ensure that the neighboring properties' light and air are not adversely affected. There will be virtually no impact on the use of the neighboring properties. Moreover, the preservation of commercial uses along a portion of the second story is central to the Project, and was favored by the parties who viewed it. With these modifications in place, HPO approved the Project. Having gained the support of HPO and the additional support of the ANC and neighbors, the proposed increase in residential lot occupancy would not tend to affect adversely, the use of neighboring properties.

3. *There are no Special Conditions Specified in the Zoning Regulations.*

As there are no special conditions to lot occupancy relief specified in ZR-16, and having met the other two standards for special exception relief, the Project is compatible with other uses in the MU-4 Zone. Therefore, special exception relief is warranted.

B. Rear Yard (§ G-405.2)

The MU-4 District has a minimum rear yard requirement of 15 feet. The Property currently provides no rear yard and proposes a zero rear yard setback.²

1. *The Proposed Rear Yard Will Be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.*

The Applicant requests relief from the rear yard requirement in order to be in harmony with the Shaw Historic District. Following multiple months of back and forth with HPO, the third floor

² The zoning tabulation initially submitted incorrectly stated that relief was needed for 12 feet of the rear yard requirement; however, the Applicant requests relief for all 15 feet required by § G-405.2. See Revised Zoning Tabulation Sheet at **Tab D**.

needed to be sufficiently set back from the historic façade. The revisions to the Project which include the new third story set back at 31 feet and the penthouse set back at 54 feet serve to enhance and preserve the historic structure while far exceeding the applicable requirements. With these revisions incorporated within the Project, the site is substantially constrained, resulting in the Applicant's request for rear yard relief.

Additionally, if the rear wall of the building were required to be pulled forward 15 feet, the necessary support for this wall would make it infeasible to provide the two parking spaces currently planned, increasing the relief needed for parking. Further, for efficiency, plumbing is always "stacked" within a building's configuration so that it is provided in the same location on every floor. Pushing the rear wall forward would compromise the Applicant's ability to achieve efficiency through stacking. Therefore, the requested rear yard relief is harmonious with the general purposes and intent of the Zoning Regulations in that it would serve to achieve efficiency in design and aid in preserving and enhancing the contributing structures that comprise the development.

2. *Providing No Rear Yard Will Not Adversely Affect the Use of Neighboring Property.*

Although no rear yard will be provided, the Project will not adversely affect the use of the neighboring property owners. The Property abuts a ten-foot alley providing adequate light and air to those dwellings on 8th Street which have ample rear yards.

Currently, there is no set back at the first floor level. The Project will provide a 5-foot set back at the first floor level, which will improve vehicle access for the 8th Street neighboring properties. This new proposed set back was a major point of discussion during the Applicant's outreach with the Central Shaw Neighborhood Association. With their support and the support of

others, it is appropriate to grant rear yard relief as it will not adversely affect the neighboring properties.

3. *There are no Applicable Special Conditions in the Zoning Regulations.*

There are no special conditions to rear yard relief specified in the Zoning Regulations. Since the other two standards for special exception relief discussed above are met, special exception relief is appropriate.

C. Retail Loading Berth (§ C-901.1)

Under section C-901.1, one retail loading berth of 30 feet is required for retail uses in the MU-4 zone. The Property is only sixty feet wide and cannot provide for two parking spaces, interior trash rooms, and loading. It is therefore reasonable and in harmony with the neighborhood to request relief from the loading requirement. In addition, the proposed relief would not adversely affect the neighboring properties, who are supportive that the rear alley will not be used for loading. In order to provide a coherent, mixed use Project as contemplated in the Zoning Regulations with regard to the MU-4 Zone, the Applicant's requested relief is necessary. Finally, there are no applicable special conditions in the Zoning Regulations with regard to the relief from the requirements of loading berth. Thus, special exception relief is appropriate.

D. Courts (§G-202.1)

When provided, courts are required to have a minimum width of 4 feet per height of court or be a minimum of 10 feet wide in the MU-4 Zone. First, the Project provides open courts that are 4 feet wide on the second and third floors towards the rear of the property. The courts are indispensable as they allow for windows in the residential unit bedrooms. An essential component of the Project, the residential units which create a harmonizing mixed-use building, would not be accomplished without the inclusion of the open courts. The provision of mixed uses such as

residential and retail in the MU-4 Zone is in harmony with the purposes and intent of ZR-16. Secondly, and as stated previously, the Property has support and no opposition on record. As such, relief from the court requirements will not adversely affect neighboring properties. Regarding the third factor of the special relief standard, there are no special conditions placed on the special exception relief for courts. Therefore, special exception relief from court requirements is proper.

E. Parking (§ C-701.5)

Under §C-703.2 (j), the Board may grant full or partial reduction in the number of required spaces where “[t]he nature or location of a historic resource precludes the provision of parking spaces; or providing the required parking would result in significant architectural or structural difficulty in maintaining the integrity or appearance of the historic resource.” 11 DCMR §C-703.2(j). Additionally, “[a]ny reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide, and shall be proportionate to the reduction in parking demand demonstrated by the applicant.” 11 DCMR §C-703.3.

Additionally, pursuant to § C-704.2, additions to historic resources shall be required to provide additional parking spaces if (a) the gross floor area of the historic resource is being increased by 50% or more, and (b) the parking requirement attributable to that increase is at least four spaces. In this case, the Property meets these two thresholds and thus relief is necessary.

The Property currently provides zero parking spaces. The Proposed project will increase the gross floor area by more than 50%. Further, the parking requirement attributable to that increase is more than four spaces (6 total required under ZR-16). Therefore, even though the Property is contributing, The Project includes 8 residential units and 10,221 square feet of retail space. The residential parking requirement is one space for every three dwelling units over four units, or one space. 11 DCMR § C-701.5. The Project meets this requirement. The retail

requirement is 1.33 spaces for every 1,000 square feet above 3,000 square feet of gross floor and cellar area. *Id.* Here, the Project will have 10,221 square feet of retail area, thus requiring 10 spaces without calculating the exemption. With the applicable exemption which allows for 50% decrease in required parking if the property is within .5 miles of a Metrorail station, pursuant to §C-702.1, the retail parking space requirement is 5 spaces. As proposed, the Project provides two parking spaces, and the Applicant requests minor relief of a reduction of the parking requirements by only 4 spaces.³ Thus, relief for parking is necessary.

1. The Requested Parking Relief Would be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

Providing the required parking would be architecturally and structurally unworkable due to the age and location of the historic buildings on the Property, as well as the narrowness of the lot. The Applicant cannot provide parking beneath the historic structures because of the challenges of underpinning them, excavating below them, permanently supporting them, and constructing parking beneath. The inability to provide parking beneath the existing buildings drastically reduces the space available for below-grade parking, eliminating 2,120 square feet — or approximately 37% — of the lot's total 5,719 square feet of land area. With limited remaining space available, no level of below grade parking can be provided. Even if below-grade parking were feasible, the double-loaded drive aisle and ramping necessary to build more than one level of underground parking would unnecessarily consume any useable parking area, given the narrowness of the lot. The requested parking relief, therefore, is in harmony with the general purposes and intent of ZR-16, as it is unachievable to meet the parking requirements on this historic site.

³ Note that the two spaces provided will be compact spaces, which is the minimum required for historic resources. 11 DCMR § C-712.5.

2. *Additional Factors Demonstrate No Adverse Impact on the Use and Enjoyment of Neighboring Properties.*

As noted in the Applicant's previous submissions, the Property's proximity to public transportation is exceptional. The Property is located in the multimodal Shaw neighborhood. The Property is ideal for walkers and is surrounded by a number of public transportation facilities and services including Metrorail, Metrobus, Capital Bikeshare, and Zipcars. The Property is approximately 0.2 miles from the Shaw-Howard Metro Station and 0.4 miles from the Mt. Vernon Square/7th Street Convention Center Metro Station, and is close to nine Metrobus routes, as well as bikesharing and carsharing locations. Furthermore, the Property has a walkscore of 93, deemed a "walker's paradise," and a bikescore of 95, a "biker's paradise."

The availability of a variety of transportation options reduces the incentive to own and store a vehicle on the premises and minimizes spillover parking in the neighborhood. The Property and neighborhood will have sufficient parking when the redevelopment is completed. All residents and patrons of the retail establishments will be well accommodated by the combination of the several bus lines in the vicinity, the close proximity of two Metrorail stations, and the walkability of the neighborhood. The amount of traffic congestion existing and generated by the redevelopment of the historic resource will be limited. A large percentage of trips in this transit-oriented location are made by Metrorail, Metrobus, bicycle, or on foot. Car ownership and traffic congestion is particularly low in this area as a result of the broad array of transportation alternatives for residents, visitors, and customers.

3. Parking Relief is Subject to Special Conditions Delineated in §§ C-703.2 and C-704.2 of the Zoning Regulations.

The parking relief requested is subject to §§ C-703.2 and C-704.2, as discussed above. With all three prongs of the special relief standard satisfied herein, special exception relief from the parking requirements is proper.

For all of these reasons, the Applicant has met the requirements for special exception relief from the requirements regarding lot occupancy (§ G-404.1); rear yard (§ G-405.2); retail loading (§C-901.1); courts (§G-202.1); and retail parking (§ C-701.5). Further, the Applicant will provide additional evidence to support its requests for the special exception at the hearing.

VII. COMMUNITY OUTREACH

The Applicant has conducted extensive community outreach regarding the Project. The Applicant presented the Project to the Shaw Civic Association on March 21, 2016, and provided follow-up information for that meeting, including a shadow study. The Applicant also presented the Project to ANC 6E's Development and Zoning Committee on March 29, and presented before the full ANC on May 3, 2016. The ANC voted unanimously to support the application for relief from the lot occupancy, rear yard, and parking requirements. The Applicant intends to conduct a follow-up meeting with the ANC to present the Project's redesign and revisions.

VIII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Richard Grotsky, Applicant
2. Jeff Goins, PGN Architects

IX. CONCLUSION

For the reasons stated above, and for the reasons discussed in the initial submission, the Applicant hereby submits that this application meets the requirements for the relief requested.

We look forward to presenting our case to the Board on September 27, 2016.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

1912 Sunderland Place, N.W.
Washington, D.C. 20036
(202) 429-9000