

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

**APPLICATION OF
1238 WISCONSIN OWNER LLC
SQUARE 1218, LOT 102
ANC 2E**

**BZA APPLICATION NO. 20108
HEARING: SEPTEMBER 18, 2019**

STATEMENT OF THE APPLICANT

**I.
NATURE OF THE APPLICATION**

This prehearing statement is submitted pursuant to Subtitle X § 901.2 and Subtitle G § 409.1 of the Zoning Regulations by 1238 Wisconsin Owner LLC (the "Applicant"), the owner of 1238 Wisconsin Avenue, NW (Lot 102 in Square 1218) (the "Property"), in support of its application for special exception relief from the rear yard requirement of Subtitle G § 405.2, in order to expand and renovate the existing mixed-use building on the Property.

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception requested herein pursuant to Subtitle X § 901.2 and Subtitle G § 409.1 of the Zoning Regulations.

**III.
WITNESSES**

1. Mark McInturff, McInturff Architects
(expert witness, architecture, resume attached as Exhibit B)

2. Shane Dettman, Dir. of Planning Services, Holland & Knight LLP
(expert witness, zoning and land use, resume attached as Exhibit C)

IV.
BACKGROUND AND PROJECT DESCRIPTION

A. Description of the Property and Surrounding Area

The Property consists of Lot 102 in Square 1218 and has a land area of approximately 8,891 square feet. Square 1218 is bounded by N Street to the north, Potomac Street to the west, Prospect Street to the south, and Wisconsin Avenue to the east, all located in the northwest quadrant of the District of Columbia.

The Property is zoned MU-4 and is located within the boundaries of the Georgetown Historic District. Currently, the Property is improved with a mixed-use building that contains approximately 16,778 square feet of non-residential (retail and office) gross floor area (“GFA”) on Floors 1 – 3, and approximately 2,382 square feet of residential GFA on the fourth floor. Retail uses exist to the north, south and east of the Property. To the west of the Property is a 10-foot public alley, and across the alley is a four-story apartment building with ground floor retail uses. As shown on the site plan included in the Plans and Drawings attached as Exhibit A, the Property has frontage on Wisconsin Avenue and Prospect Street but does not extend all the way to the intersection of these two streets. Rather, the Property wraps around the mixed-use building (residential and retail) located at 1234 Wisconsin Avenue (Lot 800), which is not part of this application.

B. Previous Board of Zoning Adjustment Approvals

Pursuant to BZA Order No. 13473 (dated April 22, 1981, effective July 27, 1981) (the “Order”), the Board granted variances from the floor area ratio (“FAR”), residential recreation space, and off-street parking requirements for a previous renovation and expansion of the building on the Property. A copy of the Order is included in the case record as Exhibit 9A. The Order requires that three parking spaces be provided on the Property and three additional parking spaces

be provided off-site within 800 feet of the Property. The Applicant currently leases three parking spaces in an existing parking area at 1080 Wisconsin Avenue, NW, which is approximately 400 feet from the Property.

As part of its initial application the Applicant submitted a determination from the Zoning Administrator (“ZA”) that states the Property is permitted to include a maximum of 17,821.38 square feet of non-residential GFA and an overall maximum of 22,070 square feet of GFA. A copy of the ZA’s determination letter is included in the case record as Exhibit 9B.

B. Project Description

The Applicant proposes to renovate and expand the existing building on the Property, which will comply in all aspects to the Zoning Regulations and the Order except for the rear yard relief requested. As part of the renovation the Applicant will also reconfigure the office, retail, and residential uses within the building. As shown in the Plans and Drawings attached hereto, the proposed addition will be on Floors 2 – 4 of the existing building and will be primarily oriented toward the rear of the Property whereby the addition is unlikely to be visible from Wisconsin Avenue. Overall, the building will have a maximum height of 48’-6” and, consistent with the Order and the ZA’s determination, will contain approximately 22,070 square feet of GFA (2.48 FAR), of which approximately 17,666 square feet (1.99 FAR) will be devoted to nonresidential uses.

As shown in the attached Plans and Drawings, while the ground floor of the building will be reconfigured it will remain devoted to retail uses. For the second floor, the Applicant will open up the portion of this level along Wisconsin Avenue to the retail uses below, which will increase the quality of the ground floor retail space. The remainder of the second level will be devoted to office space, as will the third floor. A large outdoor terrace is also proposed on the third floor at the northern portion of the building overlooking Wisconsin Avenue. Finally, the fourth floor will

continue to be devoted to residential uses, and will also contain an outdoor terrace overlooking Prospect Street.

The proposal was presented to the Old Georgetown Board (“OGB”) at its public meeting on June 6, 2019, at which OGB stated no objection to the proposed design.

V.
BURDEN OF PROOF

The Applicant seeks special exception relief pursuant to Subtitle X § 901.2 and Subtitle G § 409.1 of the Zoning Regulations from the rear yard requirements of Subtitle G § 405.2. Subtitle G § 405.2 states that a minimum rear yard of 15 feet shall be provided in the MU-4 zone. In the MU-4 zone, a horizontal plane may be established at 20 feet above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards. Subtitle G § 405.4. Where a lot abuts an alley: (i) for that portion of the structure below the horizontal plane described above, the rear yard shall be measured from the centerline of the alley; and (ii) for that portion of the structure above the horizontal plane the rear yard shall be measured from the rear lot line. As shown on the Plans and Drawings, a rear yard of 5 feet, measured from the centerline of the alley, is provided at the ground floor which will remain. Above the ground floor, where the rear yard must be measured from the rear lot line, the Applicant is not proposing to provide a rear yard for portions of the second and third floors. As shown in the Plans and Drawings, the portions of the second and third floors that require rear yard relief are located at the southwest corner of the Property along Prospect Street, and are located above a portion of the building that is already constructed to the rear lot line.

Pursuant to D.C. Code §6-641.07(g)(2) and Subtitle X § 901.2, the Board is authorized to grant a special exception where it finds 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.*

Pursuant to Subtitle G § 409.1 of the Zoning Regulations, the Board may waive the rear yard requirements of the MU-4 zone provided that the general special exception standards of Subtitle X § 901 and the zone specific standards of Subtitle G § 1201.1 are met. As demonstrated below, the application meets all such applicable standards.

1. *Subtitle X § 901.2(a) - Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.*

The Applicant’s proposal will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The general purpose and intent of the Zoning Regulations is to promote public health, safety, morals, convenience, order, prosperity, and general welfare in order to provided adequate light and air; prevent undue concentration of population and the overcrowding of land; and provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services. Consistent with these stated purposes, the

requested relief will facilitate the renovation and expansion of a mixed-use building within the historic Georgetown neighborhood and along the Wisconsin Avenue commercial corridor in a manner that promotes the general welfare.

The proposal is also in harmony with the Zoning Map. As stated above, the Property is zoned MU-4, which is described as being intended for moderate-density mixed-use development that provided facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core in low- to moderate-density residential areas with access to main roadways or rapid transit stops.” 11-G DCMR § 400.3. The proposal is consistent with the maximum building height and overall density permitted as a matter-of-right, and is exactly the type of mixed-use development that is contemplated in the MU-4 zone.

2. *Subtitle X § 901.2(b)- Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

The proposed addition and renovation to the Property will not adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps. The Property, and the immediate area surrounding the Property is zoned MU-4, and the proposal is consistent with the mixed-use scale and pattern of surrounding development. The proposed addition has been sensitively designed in a way that is compatible with the historic Georgetown neighborhood. The addition is oriented toward the rear portion of the existing building which minimizes views and protects the scale and pattern of development along Wisconsin Avenue. At the rear of the Property, only a small portion of the proposed addition, near the intersection of Prospect Street and the public alley, is in need of the requested rear yard relief. This portion of the addition is located above a part of the existing building that is already constructed to the rear lot line, and the light and air of the building across the alley will not be adversely impacted as it does not have any windows that face the alley.

3. *Subtitle X § 901.2(c)- Will meet such special conditions as may be specified in this title.*

a. Subtitle G § 1201.1(a)- No apartment window shall be located within forty feet (40 ft.) directly in front of another building;

The Applicant is proposing to expand and renovate the mixed-use building on the Property, which will contain residential uses on the fourth floor. As shown in the attached Plans and Drawings, the apartment windows are greater than 40 feet from another building since they are setback from the west property line and are located above the roof of the adjacent building across the public alley.

b. Subtitle G § 1201.1(b)- No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;

As shown on the Plans and Drawings, the proposed addition includes additional non-residential uses on the second and third floors that are located greater than 30 feet from another office window, and greater than 18 feet from a blank wall. As such, the proposal satisfies this criteria.

c. Subtitle G § 1201.1(c)- In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;

The proposed building will be parallel to the adjacent buildings and thus this provision is inapplicable.

d. Subtitle G § 1201.1(d)- Provisions shall be included for service functions, including parking and loading access and adequate loading areas;

Consistent with the Order, parking is provided in the open court at the rear of the Property and additional off-street parking spaces are provided off-site at 1080 Wisconsin Avenue, NW, approximately 400 feet from the Property. Pursuant to Subtitle C § 704.2, additions to historic resources are required to provide additional

parking only if: (a) the addition results in at least a 50% increase in GFA beyond the gross floor area; and (b) the resulting requirement is at least four parking spaces. Since the addition does increase GFA by 50% or more no additional parking is required.

Similarly, an addition to a historic resource is required to provide additional loading berths, loading platforms, and service/delivery spaces only when the addition results in at 50% increase in GFA. Subtitle C § 901.7. As a result, no loading is required. Notwithstanding, as shown in the attached Plans and Drawings, the building will include an internal trash room that can accommodate the anticipated trash demand.

e. Subtitle G § 1201.1(e)- Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.

As demonstrated in Exhibit 18 of the case record, the application has been referred to the Office of Planning.

VI. COMMUNITY COORDINATION

As required under Subtitle Y § 300.8(l), the Applicant has shared the plans with Commissioner Rick Murphy (ANC 2E03), the Single Member District representative for the Property, and presented the OGB application to ANC 2E at its June 3, 2019, public meeting. The ANC expressed no objection to the OGB application. The Applicant is scheduled to present the subject application for rear yard relief to ANC 2E at its September 3, 2019, public meeting.

Two letters of support have been submitted to the case record. The owner of the abutting property at 1246 Wisconsin Avenue, NW, submitted a letter in support of the application which can be found at Exhibit 30 of the case record. In addition, the owner of the neighboring property to the west across the public alley also submitted a letter in support which can be found at Exhibit 31.

VII. CONCLUSION

For the reasons stated above, the requested special exception meets the applicable standards for approval under the Zoning Regulations. The proposal will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, and in particular will not unduly impact neighboring properties as to the availability of light, air, and privacy of use and enjoyment. Accordingly, the Applicant respectfully requests that the Board grant the requested relief.