

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



**Application No. 20603 of Abdollah Poozesh**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception pursuant to Subtitle G § 609.1 and Subtitle G § 1200 from the rear yard requirements of Subtitle G § 605.2 to allow a rear addition to an existing three-story mixed-use building in the MU-18 zone at 1709 17th Street, N.W. (Square 178, Lot 87).<sup>1</sup>

**HEARING DATE:** February 2, 2022

**DECISION DATE:** February 9, 2022

**DECISION AND ORDER**

This self-certified application was filed on September 16, 2021, by Abdollah Poozesh (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated October 14, 2021, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Consumer and Regulatory Affairs,<sup>2</sup> the Office of the Attorney General, the Office of Advisory Neighborhood Commissions, the District of Columbia Housing Authority, the Historic Preservation Office, and the Councilmember for Ward 2 as well as the Chairman and the three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 2B, the ANC in which the subject property is located, the Single Member District ANC 2B04, and the owners of all property within 200 feet of the subject property. Notice of the public hearing was published in the *District of Columbia Register* on October 22, 2021 (68 DCR 011062).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Marwick Associates LLC, the owner of an abutting property at 1641 and 1637 R Street, N.W. (Exhibit 51).

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<sup>1</sup> This caption has been modified to reflect that the application was amended. The Applicant originally asked for relief from requirements for both rear yard (G § 605.2) and side yard (G § 606.2), but subsequently withdrew the request for side yard relief. (Exhibit 31.)

<sup>2</sup> As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*

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Applicant's Case. The Applicant provided evidence and testimony in support of the application from Aubrey Grant, the project architect, and Rojyar Poozesh, the property owner. The application sought zoning relief needed to permit a one-story plus mezzanine rear addition to an existing mixed-use building, without a rear yard setback.

OP Report. The Office of Planning initially declined to make a recommendation, citing inadequate information, but subsequently submitted a supplemental report dated January 28, 2022, which recommended approval of the application.<sup>3</sup> (Exhibits 55, 63.)

DDOT. By report dated January 21, 2022, the District Department of Transportation stated no objection to approval of the application. (Exhibit 56.)

ANC 2B. By letter dated January 16, 2022, ANC 2B indicated that, at its regularly scheduled and noticed meeting on January 12, 2022, with a quorum present, the ANC voted to adopt a resolution opposing the application. (Exhibit 49.)

Party in Opposition. Marwick Associates LLC objected that the Applicant's rear addition would adversely affect the light, air, and privacy available to its building, especially the residential units, and would create a visual intrusion on the character of the neighborhood, contrary to the purpose and intent of the applicable zoning. (Exhibit 51.)

Persons in Support. The Board received letters and heard testimony from persons in support of the application who indicated no objection to the Applicant's proposal.

Persons in Opposition. The Board received letters and heard testimony from persons in opposition to the application, who generally cited concerns that the Applicant's proposed addition would have an undue negative impact on the light, air, and privacy available to neighboring residential buildings, especially the building immediately to the south. The persons in opposition also contended that the planned use of the addition, commercial storage, would be inappropriate for the neighborhood and would be contrary to the purpose and intent of the neighborhood zoning.

**FINDINGS OF FACT**

1. The property that is the subject of this application is an interior lot on the east side of 17<sup>th</sup> Street, N.W., between R Street and Riggs Place, N.W., with the address of 1709 17th Street, N.W. (Square 178, Lot 87).
2. The subject property is a rectangular lot measuring 17.5 feet wide and 63.17 feet deep. The lot area is approximately 1,105 square feet.

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<sup>3</sup> OP's recommendation and analysis of potential impacts to the adjacent property at 1641 R Street, N.W. were based on the plans approved for an addition to that building in Application No. 20042 (order issued July 10, 2019).

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3. The subject property is improved with an attached building that is 42.5 feet and three stories in height.
4. The first floor of the building is devoted to commercial use (currently the Applicant's business, "Picasso Gallery Custom Framing"). The upper floors are devoted to residential use.
5. The existing lot occupancy of the subject property is approximately 83 percent.
6. The subject property has a rear yard approximately 11.25 feet in depth. The existing rear yard consists of a paved area measuring approximately 250 square feet that is bounded by a fence above a retaining wall on the north side and the buildings on adjoining lots to the east and south.
7. The Applicant proposed to construct a rear addition that will increase the commercial space in the building by approximately 500 square feet. The rear addition will cover the existing paved area at the rear of the building, thereby eliminating the rear yard at the subject property.
8. The rear addition will be 22 feet in height and consist of one story plus a mezzanine.<sup>4</sup>
9. The rear addition will not have any windows. The roof will have a skylight.<sup>5</sup>
10. The rear addition will not increase the height of the Applicant's building, which will remain approximately 42.5 feet, where a maximum building height of 65 feet is permitted. (Subtitle G § 603.1.)
11. The rear addition will increase the non-residential lot occupancy of the subject property to 100 percent, where no maximum lot occupancy is specified for non-residential uses. (Subtitle G § 604.1.)
12. The property abutting the Applicant's lot to the north (1711 17<sup>th</sup> Street, N.W.) is improved with a mixed-use building that is approximately the same size as the Applicant's building and also contains residential use above ground floor retail space. Its rear yard contains a vehicle parking space that is accessible via a public alley immediately to the north that extends east-west from 17<sup>th</sup> Street.

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<sup>4</sup> As shown on the site plan (Exhibit 59A), the subject property exhibits a grade difference such that the adjacent grade at the rear of the building is three feet lower than the adjacent grade at the front of the building, and approximately five feet lower than the grade at the rear of the abutting property to the north. Because of the grade differences, the measuring point of the rear addition will be 18 feet in height from the first floor to the roof. The roof of the addition will not extend higher than the first floor of the existing building.

<sup>5</sup> The Applicant originally proposed an outdoor terrace on the roof of the rear addition that would have been accessible to the residential tenants on the upper stories of the building. The Applicant subsequently revised the plans to delete the deck, thereby eliminating the need for relief from the side yard requirements of Subtitle G § 606.2. (*See* Exhibit 32.)

13. The property abutting the Applicant's lot to the east (1635 R Street, N.W.) contains a multi-family residential building that fronts on R Street to the south. The side of that building abuts the rear lot line of the subject property but does not have any windows facing the Applicant's building.
14. The property abutting the Applicant's lot to the south (1639-1641 R Street, N.W.) contains a four-story mixed-use building owned by the party in opposition. That building, which contains three floors of apartments above commercial space, occupies 100 percent of the lot on the first-floor level.
15. In 2019, the Board approved an application submitted by the party in opposition requesting special exceptions from court and lot occupancy requirements to allow a rear addition on the second through fourth floors of their building. Pursuant to Subtitle Y § 604.10, approval of the zoning relief included approval of the plans submitted with the application (Exhibit 41 of that record), with "flexibility regarding the penthouse as reviewed and approved by the Historic Preservation Review Board process, provided that no new zoning relief is required." (*See* Application No. 20042 of Raycon Inc.; order issued July 10, 2019).
16. As described in the Office of Planning's report (Exhibit 63), the approved plans showed "relatively minor additions to that building within a setback area along a portion of its north wall" where "[a]ny windows ... would be approximately nine feet (8 ft. 11 in.) from the common lot line" shared with the Applicant's lot. However, construction was undertaken inconsistent with the approved plans, creating an addition that was "closer to the common lot line..., reducing the open area from a BZA-approved depth of 8 ft. 11 in. to a depth of about 4 ft. 10 in." and included "substantial balconies for residential units in that building...extending right up to the common lot line." According to OP, based on submissions from the Applicant, "DCRA has...indicated that this work was not approved; that permits have not been issued for the work undertaken, and that a 'hold' has been placed on the permit application, for further review. Construction of the balconies has been halted." (Exhibits 63, 59D, and 83.) At the public hearing, the party in opposition indicated that "[t]hey are correcting errors, and are filing demolition plans" for an error that was "in the process of being corrected." (Transcript of February 2, 2022 at 34.) The party in opposition was expected to undertake a partial demolition to modify a portion of the rear wall of the building so as to "correct any discrepancies" and complete the "project in accordance with [its] BZA approval." (Exhibit 64.)
17. The party in opposition's building has two windows on its second level, which are approximately nine feet from the lot line shared with the Applicant's property. The first level of the abutting building does not have windows or other openings facing the subject property.
18. The subject property does not abut a public alley, and does not provide on-site parking or loading. Trash collection and deliveries are currently handled through the front of the building.

19. The subject property does not provide any egress across the rear of the lot. The Applicant does not have access across the abutting property to the north to reach the public alley.
20. The subject property is located in the Dupont Circle Historic District.
21. The area surrounding the subject property has a mix of residential, commercial, and mixed-use buildings.
22. The subject property is located in a Mixed-Use (MU) zone, MU-18. The MU zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. (Subtitle G § 100.1.) The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. (Subtitle G § 100.2.) In addition to the purpose statements of individual chapters, the purposes of the MU zones are to: (a) Provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) Provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) Reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses; (d) Encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) Ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) Preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) Ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle G § 100.3.) In the MU zones, buildings may be entirely residential, or may be a mixture of non-residential and residential uses. (Subtitle G § 100.4.)
23. The MU-18 zone is intended to permit medium-density, compact mixed-use development with an emphasis on residential development. (Subtitle G § 600.5.)

## **CONCLUSIONS OF LAW AND OPINION**

The Applicant requested a special exception, pursuant to 11 DCMR Subtitle X, Chapter 9 and under Subtitle G §§ 609.1 and 1200, from the minimum rear yard requirements of Subtitle G § 605.2 to allow a one-story plus mezzanine rear addition to an existing three-story mixed-use building in the MU-18 zone at 1709 17th Street, N.W. (Square 178, Lot 87). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.).

Subtitle G § 609.1 specifies that the special exception criteria of Subtitle G, Chapter 12 (Relief from Development Standards in Mixed Use Zones) are applicable in the MU-18 zone. In accordance with Subtitle G § 1200, the Board may grant special exception relief from the development standards subject to applicable requirements stated in Subtitle G as well as the provisions of Subtitle X, Chapter 9 when the Board determines that the relief will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to applicable conditions. (Subtitle G §§ 1200.1, 1200.2, 1200.4.) The special exception criteria applicable to a request for rear yard relief are stated in Subtitle G § 1201 and include that no apartment window may be located within 40 feet directly in front of another building (Subtitle G § 1201.1(a)); no office window may be located within 30 feet directly in front of another office window, nor 18 feet in front of a blank wall (Subtitle G § 1201.1(b)); 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 must be considered in determining distances between windows and appropriate yards (Subtitle G § 1201.1(c)); and provision must be included for service functions, including parking and loading access and adequate loading areas (Subtitle G § 1201.1(d)).

The Applicant proposed to build a rear addition to the existing building at the subject property without providing a rear yard, where a minimum of 15 feet is required. (Subtitle G § 605.2.) Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 2B, the Board concludes that the application has met the requirements for approval of a special exception consistent with Subtitle X § 901.2 and Subtitle G § 1200. The planned addition will be used for storage in connection with the commercial retail use of the ground floor of the building, and will not have any windows other than a skylight. Accordingly, the addition will not create any new apartment or office windows directly in front of any other building or in front of a blank wall.

The Board does not find that the Applicant's planned addition, without a rear yard, will adversely affect the building on the abutting property to the south, considering the angle of sight lines and the distance of penetration of sight lines into habitable rooms from the abutting building. The addition will be visible from the abutting building, but the windows in the abutting building are set back at least nine feet from the lot line shared with the subject property. Because of the relatively low height of the planned addition, its roof will be lower than the windows of nearby dwelling units, and its lack of windows will preclude views into or from the addition.

The rear addition also will not adversely affect service functions at the subject property, which does not provide parking or loading and is not accessible for the provision of services to any nearby property. The planned rear addition will not alter the existing service functions.

Consistent with the requirements of Subtitle X, Chapter 9 as well as Subtitle G §§ 609.1 and 1200, the Board concludes that the planned addition will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. The rear addition will be relatively small and will enclose an area that is now paved and bounded primarily

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by walls on adjoining lots, where the existing buildings limit the available light and air. The Board was not persuaded by the party in opposition that the addition would adversely affect the “airflow, openness, and light” available to their property. The Applicant’s building is located to the north of the party in opposition’s, and, after construction of a rear addition that will extend the Applicant’s building only on the lower levels, the building will continue to meet applicable development standards, including with respect to lot occupancy and building height. The rear addition will be used as part of the existing business on the ground floor of the building, without increasing the intensity of the use of the Applicant’s building. The planned addition also will not adversely affect the privacy available to nearby properties, given its lack of windows or access to the roof of the addition.

Consistent with the requirements of Subtitle X, Chapter 9 as well as Subtitle G §§ 609.1 and 1200, the Board concludes that approval of the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Applicant’s building is consistent with the mixed-use developments permitted in Mixed Use (MU) zones by providing both commercial and residential uses. The rear addition will expand the space available to an existing business, consistent with the purposes of the MU zones to provide facilities for shopping and business needs as well as by providing for the orderly development and use of land and structures in the MU zones, which are characterized by a mixture of land uses; providing for a varied mix of residential, retail, service, and other related uses at an appropriate density and scale; reflecting a building type containing a vertical mix of residential and non-residential uses with an additional development that is compatible with the prevailing development pattern within the zone and surrounding areas; and preserving and enhancing the existing commercial node and surroundings by providing an appropriate scale of development and range of shopping and service opportunities. The planned addition will not affect existing conditions for pedestrian and motor vehicle movement.

Noting that the MU-18 zone is intended to permit medium-density, compact mixed-use development with an emphasis on residential development, the Board was not persuaded by the ANC or the party in opposition that the Applicant’s addition would be out of character with the neighborhood. The Applicant’s addition will be consistent with applicable development standards other than rear yard, on a site where the existing rear yard is relatively small, paved, and bounded by walls that limit access to light and air. The addition will not be visible from the street but will provide usable space for a business use without infringing on the light, air, or privacy available to nearby dwellings.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)). For the reasons discussed above, the Board agrees with OP’s recommendation that, in this case, the application should be approved.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case, ANC 2B adopted a resolution in opposition to the application, stating concerns of the ANC’s land use committee that the Applicant’s proposed rear addition “could adversely affect light and air, as

well as the viability of the adjacent residential units,” and stating concerns about the Applicant’s “inability to work with the owner of the abutting residential property at 1637-1641 R Street NW and earn their support,” before concluding that “ANC 2B prioritizes the provision of viable residential units over supplemental commercial storage” and “ANC 2B finds that the proposal is not in harmony with the general purpose and intent of the zoning regulations and zoning maps.” (Exhibit 49.)

The Board has given the ANC’s issues and concerns the great weight to which they are entitled but did not find the ANC’s lack of support for the application persuasive. For the reasons discussed above, the Board did not agree that the Applicant’s planned addition will adversely affect light, air, privacy, or the viability of adjacent residential units, or that approval of the application will not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Board also did not agree with the ANC that the application improperly prioritized commercial storage over residential units. The subject property is located in the MU-18 zone, where mixed-use buildings are permitted as a matter of right (*see* Subtitle U §§ 500.2, 512) and the Zoning Regulations impose a limit on lot occupancy for residential uses but not for non-residential uses (*see* Subtitle G § 604.1.) The rear addition to the Applicant’s building will not displace potential or existing residential units on the subject property, alter the existing dwelling units in the Applicant’s building, or, for the reasons already discussed, adversely affect residential uses on neighboring properties. The Board did not find a basis to deny the relief requested in the ANC’s allegation that the Applicant was unable “to work with the owner of the abutting residential property,” noting that the ANC did not indicate its relevance to the requirements stated in the Zoning Regulations for approval of the relief requested in the application. The Board is required to give “great weight” only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981).

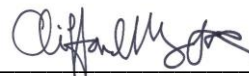
Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception pursuant to Subtitle G § 609.1 and Subtitle G § 1200 from the minimum rear yard requirements of Subtitle G § 605.2 to allow a rear addition to an existing three-story mixed-use building in the MU-18 zone at 1709 17th Street, NW (Square 178, Lot 87). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 59A in the record.

**VOTE: 4-0-1** (Lorna L. John, Carl H. Blake, Chrisaun S. Smith, and Joseph S. Imamura to APPROVE; Frederick L. Hill not present or 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:** July 18, 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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, 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.

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.