

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

**Application of
Marwick Associates, LLC
Square 0178, Lot 0097**

**BZA Application No. 21132
ANC2B, SMD03**

APPLICANT’S SUPPLEMENTAL PRE-HEARING STATEMENT

This supplemental pre-hearing statement is submitted in support of an application (“**Application**”) for Board of Zoning Adjustment (“**BZA**” or “**Board**”) approval by Marwick Associates, LLC (the “**Applicant**”), by the Applicant’s attorneys, Greenstein DeLorme & Luchs, P.C., by John Patrick Brown, Jr., Esq. and Lyle M. Blanchard, Esq.

Pursuant to the District of Columbia’s Zoning Regulations, this Application seeks the Board’s special exception review to maintain a minor rear addition, including interior residential space and recessed rear balconies on the second, third and fourth floors of an existing four-story mixed use commercial and residential building located at 1641 R Street, NW (Square 0178, Lot 0097) (the “**Property**”) in the MU-5A/DC (“MU-18”) zone district. The minor rear addition was completed beyond the scope of the approved plans in BZA Case No. 20042 and permits. It is the Applicant’s sole responsibility to bring the Property into compliance. We are submitting this application for that purpose.

NATURE OF RELIEF SOUGHT

In order to confirm Building Permit B2402318 and maintain the minor rear addition, including interior residential space and recessed balconies at the Property, the Department of Buildings has required the Applicant to seek special exception relief from the BZA pursuant to 11 DCMR Subtitle X, §901 and Subtitle G, §§210.1 and 5200.1 (lot occupancy for expansion of

nonconforming structure) and Subtitle G, §§207.6, 207.14 and §5200.1 (rear yard for expansion of nonconforming structure).

I. BACKGROUND

The Property and the Surrounding Neighborhood

In 1881, the Property was originally constructed as three separate four-story row dwellings on Lots 84, 85 and 86 (1637, 1639 and 1641 R Street, N.W.). The Property is now comprised of Lot 97 on Square 178 in the MU-18 Zone District and contains 3,790.2 square feet of land area. The Property is a rectangular corner lot located in the Dupont Circle neighborhood. The Property is land locked on the north side (1709 17th Street, N.W.) and on the east side (1635 R Street, N.W.) The Property is bounded by 17th Street NW to the west, R Street NW to the south, a four-story mixed use commercial and residential building to the east, and a four-story mixed use commercial and residential building to the north.

The Property is located within the Dupont Circle Historic District and deemed a “contributing structure” according to the DC Historical Building Permits Database.

The immediate surrounding neighborhood contains a mix of retail, service, commercial, and residential uses, primarily featuring multi-story apartment buildings off of 17th Street NW in the RA-8 zone, and multi-story, mixed-use buildings along 17th Street NW in the MU-18 zone.

In 2019, BZA Order No. 20042 approved minor zoning relief and the Applicant began restoration and redevelopment of the Property to its current mixed-use configuration, including two ground floor retail spaces and nine apartments with a penthouse. The retail spaces are completed, leased, permitted and occupied by two local businesses, 350 Bakery

(www.threefifty.com) and Georgetown SunCryo (www.georgetownuncryo.com). The two retail tenants have at least twenty-one (21) employees. The residential units are substantially under construction. The Property has no rear or public alley access and does not provide off-street parking or loading.

BZA Order No. 20603 (2023) of Abdollah Poozesh approved a rear addition to 1709 17th Street, N.W. (Square 0178, Lot 87) that will occupy the entire rear and side yard of that property to a height of about twenty-five feet. This BZA approved structure currently being permitted will result in a solid masonry wall with no windows along the rear property line of 1641 R Street.

EXISTING AND INTENDED USE

The Property is currently improved with a four-story mixed use commercial and residential building. Two ground floor retail spaces are now occupied. One retail space is accessed from a corner entrance and the second retail space is accessed from R Street. The original configuration of the Property called for nine (9) residential units with a penthouse above the ground floor. As the neighbor's approved addition will completely block rear windows on the second floor of the Property, the Applicant has reconfigured the Property to provide only eight (8) residential units and a penthouse. The balcony on the second floor will be eliminated and replaced with a solid brick wall.

The requested zoning relief is intended to maintain the minor rear addition, including interior residential space and the balconies on the third and fourth floors. The rear addition and balconies were constructed in early 2021 (before BZA Application 20603) above the existing structure on the ground or first floor which is approximately 11.5 feet above grade. **Exhibit A**. On each of the second, third and fourth floors, the rear addition, including the balconies is

approximately 8 feet deep and 20.66 feet long and incorporated within the existing building rear line. See Picture of Rear of Building from Public Alley, **Exhibit B**. The rear addition fills in a dead space - an inaccessible window well - between the Property and the abutting property at 1709 17th Street. Filling this dead space eliminated an unsightly and inaccessible trash collection area and prevents potentially dangerous and damaging conditions to both properties. **Exhibit C**. (Photo of Open or Dead Space Before Addition).

II. PROPOSED PLAN REVISIONS AND RESPONSE TO OPPOSITION

In his request for Party status in opposition and other recent communications through counsel, Mr. Poozesh has raised numerous issues, many of which are beyond the reasonable scope of this special exception. There is no reason to relitigate the previous BZA cases and the Applicant is focused on the current situation and the relevant issues without acrimony. The Applicant is responsible for coming into zoning compliance by satisfying the limited special exception burden of proof, but at the same time has gone further to offer Mr. Poozesh significant and thoughtful cooperation to assist him in the completion of his project. ANC 2B, in its support for this Application made it a point to encourage cooperation and communication between the two neighbors. (BZA Exhibit 17).

For the record, the Applicant provides these specific responses to privacy, security, and light and air concerns that Mr. Poozesh raised.

A. **Privacy and Security**. The attached plans show the existing (as-built) and proposed elevations for the rear of 1641 R Street, N.W., **Exhibit D**. Specifically, Marwick proposes to eliminate the existing second floor balcony (columns and railings) and construct a solid brick wall to match the existing building. This brick wall will be flush with the existing building façade

which is set back approximately 10 inches from the property line. The new wall will face the solid mezzanine wall to be constructed by Mr. Poozesh under BZA Case No. 20603. On the existing third and fourth floor balconies, Marwick will install 6-foot-high metal privacy screens. **Exhibit E** (Photograph and Details of Screens). These screens will provide privacy for the occupants of both properties. The privacy screens and the window angles at 1709 17th Street will prevent any direct views into 1709 17th Street. At the same time, the privacy screens will also provide enhanced reciprocal security for both properties, preventing unauthorized access to either property from the other. (Although not shown on the BZA 20603 approved plans, the current permit plans for the addition show a roof deck area surrounded by metal railings accessed by one or two doors that were previously windows.) **Exhibit F**. Of course, these measures do not prevent Mr. Poozesh from taking additional security measures on his own property that he deems necessary for his proposed addition.

B. **Light and Air**. The two 4-story properties have always been in very close proximity. The existing as-built condition is only a minor change from the plan originally approved in BZA Case No. 20042. **Exhibit G** (Building Floor Plans and Sections). The Marwick's as-built extension of the building and balconies partially incorporated a 8' x 20' area within the existing footprint of the building and did not alter the 4 or 5 feet separating the two buildings at the existing closest points. As requested by OP and Mr. Poozesh, a shadow study has been prepared that shows no meaningful change in light and air and shadows comparing the original BZA approved plans and the current as-built condition. **Exhibit H**.

Going beyond the scope of this BZA Application, the Applicant has offered specific types of cooperation to Mr. Poozesh and encouraged him to identify additional areas of desired cooperation.

C. Impediment to 1709 Project. Without explanation Mr. Poozesh claims that the current as-built condition at 1641 R Street is somehow preventing his project from being completed. The addition at the Property pre-dates his BZA Application and did not prevent approval of his project. Building Permit Application No. B2310737 for the addition has been approved by all disciplines, except Zoning which does not involve the as-built condition of the Property. **Exhibit I** (Scout Report for Permit B2310737). The current as-built condition at 1641 R Street, including the pre-existing and approved first-story wall is setback 10 inches from property line creating no lack of access or other impediment to Mr. Poozesh's minor addition project. Conversely, removal of the addition will not facilitate or enhance Mr. Poozesh's project. Any constructability issues faced by Mr. Poozesh are inherent in his property and planned addition.

D. Neighbor Cooperation and Assistance Offered. Marwick has repeatedly offered to cooperate, assist and work together to facilitate both projects. Specifically, an easement has been offered to allow Mr. Poozesh to bridge the 10-inch gap between his property and the as-built façade of 1641 R Street. To date, Mr. Poozesh seems to believe he is entitled to a so-called "gentleman's easement". The granting of an easement to use and occupy property owned by another party has never been an entitlement or properly governed by a "gentleman's" agreement. In order to relinquish one's valuable property rights, a formal legally binding and recorded easement agreement is required. Significantly, Mr. Poozesh has never indicated his desire for that easement. Beyond the narrow scope of the BZA case, there are numerous other potential areas of cooperation

and assistance, including access and constructability issues that can be discussed and agreed upon. The easement and other offers stand if Mr. Poozesh is willing to accept the cooperation rather than relitigate old BZA cases.

III. NATURE OF SPECIAL EXCEPTION RELIEF SOUGHT AND STANDARD

Under D.C. Code §6-641.07(g)(2), 11 DCMR X, §901.2, and Subtitle G, §5200.1, the Board is authorized to grant a special exception where it finds the special exception:

(a) Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps; (b) Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and (c) Is subject in each case to any applicable conditions specified in this chapter.

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)). If the applicant meets its burden, the Board must ordinarily grant the application. *Id.*.

IV. APPLICANT MEETS BURDEN FOR SPECIAL EXCEPTION RELIEF

A. The Relief is Harmonious with the General Purpose and Intent of the Zoning Regulations and Maps

The Project will be in harmony with the purpose and intent of the Zoning Regulations and related maps. The purposes of the MU-15 through MU-22 zones are, among other things, to “enhance the residential character of the area by maintaining existing residential use and controlling the scale, location, and density of commercial and residential development.” Subtitle G, §600.1(b). More specifically, the MU-18 zone is intended to “permit medium-density, compact, mixed-use development with an emphasis on residential development.” Subtitle G, §600.5.

This minor Application aligns with and supports these intentions. The requested relief will allow the Applicant to maintain the existing residential space and balconies, which enhance the associated apartments on the second, third and fourth floors, as part of the underlying redevelopment to create nine new dwelling units in a neighborhood with other similarly-scaled, mixed-use, historic buildings. Further, the Project will advance the important goal of increasing the housing supply in the District by delivering nine new dwelling units.

For these reasons, the relief is harmonious with the general purpose and intent of the MU-18 zone, Zoning Regulations, and maps.

B. The Proposed Relief will not tend to Adversely Affect the Use of Neighboring Property.

The use of neighboring properties includes a mix of retail, service, commercial, and residential uses. These uses will not tend to be adversely affected by the proposed relief. On each of the second, third and fourth floors, the rear addition, including balconies, is approximately 8 feet deep and 20 feet long and recessed from the building façade and will be nominally visible from the public alley. See Building Floor Plans and Sections, **Exhibit G**. The

rear addition and balconies greatly enhance the façade of the historic building, although that enhancement will be substantially obscured by the BZA approved rear addition at 1709 17th Street, N.W. See Elevation of Proposed Addition at 1709 17th Street, **Exhibit D**. As revised, the proposed plans eliminate the balcony on the second floor and install 6-foot-high privacy screens on the third and fourth floor balconies. As discussed previously, the revisions effectively respond directly to the privacy and security concerns that have been raised.

Further, neighboring properties' access to light and air will not be affected by the proposed relief which simply fills in a minor notch in the existing building envelope. Specifically, the before and after shadow studies show little to no impact on 1709 17th Street from the minor rear addition. **Exhibit H**.

The proposed relief will complement the surrounding character of the neighborhood by enhancing an historic structure and provide additional indoor and outdoor living space for the associated apartments. Accordingly, the proposed relief satisfies the requirements of the special exception regulation, and the burden has been met.

C. Satisfaction of Special Conditions:

There are no special conditions associated with the rear yard relief pursuant to Subtitle G, §207.6 or lot occupancy relief pursuant to Subtitle G, §210.1.

Relief from the rear yard requirements of Subtitle G, §207.14 may be permitted if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

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

Not applicable. No apartment window is located in front of another building.

(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;

Not applicable.

(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;

Not applicable. The balconies do not impact the angle of sight lines or allow penetration into any habitable rooms, especially with the addition of the proposed privacy screen.

(d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and

Not applicable. The existing Property has never had parking or loading facilities and is landlocked without public alley access. The requested rear yard relief does not impact parking or loading. Loading will be provided to the retail and residential spaces from the street to the separate entrances for each space.

(e) Upon receiving an application for relief from rear yard requirements of this section, the Board of Zoning Adjustment shall submit the application to the Office of Planning

for coordination, review, report, and impact assessment, along with coordination of reviews in writing from all relevant District of Columbia departments and agencies, including:

- (1) The District Department of Transportation;
- (2) The Department of Housing and Community Development; and
- (3) The Historic Preservation Office if the application involves a historic district or historic landmark.

In addition to the required referrals of this Application by the Office of Zoning, the Applicant provided a copy of the Application to the Office of Planning, District Department of Transportation and Advisory Neighborhood Commission 2B when it was filed with the Board.

V. WITNESSES EXPECTED TO TESTIFY


Applicant: John Sisk, Marwick Associates, LLC
Raymond Saba, Raycon
John K. Edwards, AIA, LEED AP-BD+C, Bonstra/Haresign Architects

VI. EXHIBITS

Exhibit A: Pictures of Existing First Floor
Exhibit B: Picture of Rear of Building from Public Alley
Exhibit C: Photo of Open or Dead Space Before Addition
Exhibit D: Existing and Proposed Rear Elevations
Exhibit E: Photographs and Details of Screens
Exhibit F: Permit Plans for 1709 17th Street, N.W. (Sheets A1101, A2101)
Exhibit G: Building Floor Plans and Sections
Exhibit H: Before and After Shadow Study
Exhibit I: Scout Report for Permit B2310737

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Applicant's Supplemental Pre-Hearing Statement was filed in IZIS on July 10, 2024 and a copy served electronically on the following:

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