

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

**Application for 1238 Wisconsin Avenue, N.W.
(Square 1218, Lot 102)**

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This statement is submitted by 1238 Wisconsin Owner LLC (the “Applicant”), on behalf of the owner of Lot 102 in Square 1218 (the “Property”), in support of its application pursuant to Subtitle X § 901.2 and Subtitle G § 409.1 of the Zoning Regulations for special exception relief from the rear yard requirements of Subtitle G § 405.2 in order to expand and renovate the mixed-use building on the Property. The Property has a street address of 1238 Wisconsin Avenue, N.W. and is located in the MU-4 District.

Pursuant to Subtitle Y § 300.15 of the Zoning Regulations, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment (“BZA” or the “Board”) no fewer than twenty one 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 demonstrating how the Applicant meets the burden of proof.

I. BACKGROUND

A. Description of the Property and Surrounding Area

The property consists of Lot 102 in Square 1218 and has a total 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. The Property is currently improved with a mixed-use building that contains 16,778 of non-residential uses and 2,382 square feet of residential use on the fourth floor. To the south and east of the Property across Prospect Street and Wisconsin Avenue are retail uses. 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. To the north of the Property are also additional retail uses. The Property wraps around the corner of Prospect Street and Wisconsin Avenue and the building located on Lot 800 adjacent to the Property, and not included in the application, is also a mixed-use building with non-residential and residential uses.

B. Previous Board of Zoning Adjustment Approvals

Pursuant to BZA Order No. 13473, dated April 22, 1981, final and effective July 27, 1981 (the “Order”), the Board granted special exception approval to provide accessory parking spaces in an open court and variances from the floor area ratio (“FAR”) requirements for a

previous renovation and expansion of the building on the Property. A copy of the Order is attached as Exhibit A. The Order required that the Applicant's predecessor in interest provide three parking spaces on the Property and three additional parking spaces off-site. As confirmed by the Zoning Administrator the Property is permitted to include a maximum of 17,821.38 square feet of gross floor area of non-residential use and a maximum of 22,070 square feet of gross floor area. A copy of the Zoning Administrator's Determination Letter is attached as Exhibit B.

C. Project Description

The Applicant proposes to expand and renovate 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. The proposed building will have a maximum height of 48, feet, 6 inches and will contain approximately 22,070 square feet of total gross floor area (2.48 FAR) in accordance with the Order and the Zoning Administrator's Determination Letter. In addition, the building will contain 17,666 square feet of gross floor area of non-residential uses (1.99 FAR), also in compliance with the Order and the Zoning Administrator's Determination Letter. Three parking spaces are provided in the open court at the rear of the Property and three additional off-site parking spaces in a parking garage located at 1080 Wisconsin Avenue, N.W. The Applicant presented the design for the proposed building to the Old Georgetown Board ("OGB") on June 6, 2019.

II. SPECIAL EXCEPTION RELIEF-REAR YARD

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 District. Subtitle G § 405.2. In the MU-4 zone a horizontal plane may be established at 25 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 a horizontal plane described above, the rear yard is measured from the center line of the alley to the rear wall of the portion; and (ii) for that portion of the structure above the horizontal plane above, the rear yard is measured from the rear lot line to the rear wall of that portion immediately above the plane. The Applicant is proposing a rear yard of 5 feet below the 25 foot horizontal plane and a rear yard of 0 feet above the 25 foot horizontal plane thus necessitating special exception relief.

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 District provided that the standards of Subtitle G § 1201.1 are met.

1. *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 on Sheets 16 through 18 of the architectural drawings included with this application (the “Plans”), 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.

2. *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 Sheet 16 through 18 of the Plans, the proposed addition to the existing building includes additional non-residential uses on the second and third floors. However, they are located greater than 30 feet from another office window and greater than 18 feet in front of a blank wall since they are located across a 10 foot public alley and as a result of the sloped roof of the adjacent building across the public alley.

3. *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.

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

The Applicant is providing three parking spaces in the open court at the rear of the Property and three additional off-street parking spaces in accordance with the Order. Pursuant to Subtitle C § 704.2, additions to historic resources are required to provide additional parking spaces for an addition only if: (a) the addition results in at least a 50% increase in gross floor area beyond the gross floor area; and (b) the resulting requirement is at least four parking spaces. Since the addition does not result in an increase in at least 50% of the gross floor area, 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 for the addition’s gross floor area and

only when the addition results in at 50% increase in gross floor area. Subtitle C § 901.7. As a result, no loading is required. Even so, as shown on Sheet 8 of the Plans, the building will include an internal trash room that can accommodate the anticipated trash demand.

5. *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.*

The application will be submitted to the Office of Planning, all relevant District of Columbia departments and agencies, and to the State Historic Preservation Office. As a result, the proposal complies with the above requirement.

Accordingly, the proposed restaurant is in harmony with the purpose and intent of the Zoning Regulations and meets the test for special exception relief under Subtitle X § 901.2 and Subtitle G § 1201. 1 of the Zoning Regulations.

III. AFFECTED ANC

As required under Subtitle Y § 300.8(1), 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 Applicant will continue to coordinate with ANC 2E and the Office of Planning, and other interested stakeholders between the time of filing the subject application and the public hearing.