

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Nesso Plaza Tenleytown, LLC
4249 Wisconsin Avenue, NW (Square 1785, Lot 801)

I. INTRODUCTION.

This Statement is submitted on behalf of Nesso Plaza Tenleytown, LLC (the “**Applicant**”), the owner of the property located at 4249 Wisconsin Avenue, NW (the “**Property**”). The Property is improved with an existing two-story commercial building (the “**Building**”) most recently used as a bank. The Applicant proposes to adaptively reuse the existing Building for commercial uses and construct a habitable penthouse (the “**Penthouse**”) on top of the existing Building.

The Zoning Regulations generally permit any use allowed within the underlying zone to be located within a penthouse as a matter of right. However, pursuant to Subtitle C § 1501.1(d), an eating and drinking establishment located within penthouse habitable space, or on a rooftop deck on the highest roof of the building, is permitted only upon special exception approval by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

The Applicant has not yet identified a specific tenant for the Penthouse but is targeting a neighborhood-serving restaurant. In order to market the space efficiently, and to avoid the need to return to the Board once a tenant is identified, the Applicant seeks special exception approval at this time, pursuant to Subtitle C § 1501.1(d) and Subtitle X § 901.2, to permit an eating and drinking establishment use within the Penthouse.

While this approach might be less appropriate for other use categories, it is well suited to a restaurant use. Virtually any restaurant tenant that intends to serve alcohol must obtain a license from the Alcoholic Beverage and Cannabis Administration (ABCA). That process will require the eventual tenant to address, in detail, the types of operational conditions, such as hours of operation, noise, and trash management, that the Board might otherwise consider, and it also affords the surrounding community the opportunity to enter into a settlement agreement with the tenant addressing neighborhood concerns. The ABCA process thus provides an independent regulatory framework, tailored to the specific operator, that will govern the day-to-day operation of the establishment once a tenant is identified.

The Applicant also seeks special exception relief, pursuant to Subtitle C § 1506.1, from the setback requirements of Subtitle C § 1504 for (i) the mechanical penthouse enclosing the elevator overrun, and (ii) three rooftop awning structures serving the rooftop deck, each as further described in Part III.A below. The Penthouse otherwise complies as a matter of right with all other applicable height, setback, and enclosure requirements of Subtitle C, Chapter 15.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the requested special exception relief pursuant to Subtitle X § 901.2 and Subtitle C §§ 1501.1(d) and 1506.1.

III. BACKGROUND.

A. Property Description and Proposed Project.

The Property is located at 4249 Wisconsin Avenue, NW, Square 1785, Lot 801, in Ward 3 and ANC 3E05. The Property comprises approximately 6,832 square feet of land area and is currently zoned MU-3A.¹

The Property is currently improved with the Building, an existing two-story commercial structure, most recently used as a bank, containing 9,318 square feet of gross floor area.² The Applicant proposes to construct a new Penthouse on top of the Building. The Penthouse habitable space will have a height of twelve feet (12 ft.) and be set back 1:1 from the front, rear, and west side wall. The Penthouse is not required to be set back from the east side wall, as it does not abut a yard or public street. Accordingly, the Penthouse habitable space is in compliance with the height and setback requirements of Subtitle C §§ 1502 and 1504, and no relief from those requirements is requested with respect to the Penthouse habitable space. The Penthouse Addition will comprise approximately 2,134 square feet, with 1,685 square feet of that being restaurant tenant space.

In addition to the Penthouse habitable space, the Penthouse includes a mechanical penthouse enclosing the elevator overrun, which extends four feet, one inch (4 ft., 1 in.) above the

¹ The Applicant notes that the Property is expected to be rezoned to the MU-8A/WA zone pursuant to a pending Zoning Commission text and map amendment, Z.C. Case No. 25-13. An eating and drinking establishment use is permitted as a matter of right at grade, and by special exception in a penthouse, under both the current MU-3A zone and the prospective MU-8A/WA zone. Accordingly, this application does not depend on the outcome of that pending case.

² The Building is an existing nonconforming structure with respect to FAR, which is limited to 1.0 in the MU-3A Zone. Subtitle C-202.2 governs alterations to existing nonconforming structures and permits enlargements or additions, provided that it does not increase the nonconformity. The Penthouse addition does not contribute to FAR, as it is less than 0.4 FAR (see C-1505.1(c)).

roof of the Penthouse habitable space (i.e., sixteen feet, one inch (16 ft., 1 in.) above the roof of the Building). Because Subtitle C § 1504.1 requires a rooftop structure to be set back a distance equal to its own height, the elevator overrun is required to be set back sixteen feet, one inch (16 ft., 1 in.). The elevator overrun is instead set back approximately twelve feet (12 ft.), the same setback provided for the compliant Penthouse habitable space below it, rather than the greater setback required for its own, greater height. Accordingly, the Applicant requests special exception relief, pursuant to Subtitle C § 1506.1, from the setback requirement of Subtitle C § 1504.1 for the elevator overrun. The relevant setback is measured from the rear building wall, at the southeast corner of the roof, the least visible portion of the Penthouse from the surrounding streets. The setback is not achievable because the elevator shaft cannot be moved further inward, as its footprint is constrained by both the Penthouse setbacks and the footprint of the existing stairwell. Because the stair serving the Penthouse utilizes the existing stairwell serving the floors below, the stair configuration is likewise fixed. The existing stairwell, the elevator, and the ADA clearances required in front of the elevator cannot be arranged in any other layout without significantly reducing usable tenant space on every floor.

The roof also includes three awning structures above portions of the rooftop deck: one along the front (west, Wisconsin Avenue) wall, one along the rear wall, and one along the side (north, Warren Street-adjacent) wall. Each is nine feet (9 ft.) in height. Subtitle C § 1504.1(a)-(c) requires these structures to be set back a distance equal to their height, i.e., nine feet (9 ft.), from the front, rear, and side building walls. The awning structures are instead set back approximately two feet, two inches (2 ft., 2 in.) from those walls. Accordingly, the Applicant also requests special exception relief, pursuant to Subtitle C § 1506.1, from the setback requirements of Subtitle C § 1504.1(a)-(c) for the awning structures.

The Applicant does not yet have a tenant identified for the Penthouse Addition. Any future restaurant tenant desiring to serve alcohol will be subject to ABCA review. Accordingly, all use-specific operational details, including hours of operation, noise mitigation, trash, etc., will be addressed through the District's separate ABCA licensing process at the time an operator and license application are identified. That process provides its own dedicated forum, including notice to and engagement with the ANC and surrounding community, for resolving those operational specifics.

B. Surrounding Area.

The Property has three street frontages (Wisconsin to the west, Warren to the north, and 39th Street to the east) with its designated “frontage” on Wisconsin Avenue, NW. Wisconsin Avenue is a designated priority corridor and one of the principal mixed-use commercial corridors in upper Northwest Washington, served by Metrobus and within walking distance of Metrorail. The surrounding area is characterized by a mix of commercial, retail, and residential uses typical of the Wisconsin Avenue corridor in this part of Ward 3. The immediately adjacent uses include an apartment building to the east, at 4240 39th Street, NW, and a vacant lot to the south. The other uses in the square include restaurant and retail.

IV. THE APPLICATION SATISFIES THE STANDARDS FOR SPECIAL EXCEPTION APPROVAL.

Pursuant to Subtitle X § 901.2, the Board is authorized to grant special exception relief 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. This general standard governs the eating and drinking establishment relief requested under Subtitle C § 1501.1(d), for which there are no additional standards specific to that use. The penthouse setback relief requested under Subtitle C § 1506.1 is subject to this same general standard and, in addition, requires the Applicant to demonstrate that reasonable effort has been made to comply with the applicable setback requirements, and at least one of the specific grounds enumerated in Subtitle C § 1506.1(c). As explained below, the Application satisfies each of these standards.

A. Eating and Drinking Establishment Special Exception.

First, the proposed use is in harmony with the purpose and intent of the Zoning Regulations. A restaurant or other eating and drinking establishment is permitted as a matter of right in the MU-3A zone in the rest of the building (and will remain so under the prospective MU-8A/WA zone), and such a use is accordingly presumed to be compatible with the mix of uses the zone is intended to accommodate. The relief requested here does not introduce a use that is not permitted in the zone; it simply preserves the Applicant's ability to locate that already-permitted use one story higher, within a modest, code-compliant penthouse addition. The Wisconsin Avenue corridor in

this area is an active, transit-served mixed-use corridor that already includes a range of retail and restaurant uses, and the proposed use is consistent with that established commercial character³.

Second, the proposed use will not adversely affect the use of neighboring property. The Penthouse Addition is a modest addition that complies with the applicable penthouse height and, except as set forth in Part IV.B below, setback requirements of Subtitle C, Chapter 15, and does not expand the Building's existing footprint. The Penthouse space is modest in size and is intended to serve the surrounding neighborhood, including by being available for private events that community members and organizations could rent. Because the Applicant has not yet identified an operator, specific operational details such as hours of operation will be established through the ABCA licensing process once an operator is in place. That process provides the ANC and surrounding community a dedicated opportunity to address site-specific considerations, including through a settlement agreement with the eventual tenant. For these reasons, the special exception relief requested by the Applicant is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not adversely affect the use of neighboring property.

B. Penthouse Setback Relief.

Subtitle C § 1506.1 provides that relief from the requirements of Subtitle C §§ 1503 and 1504 may be granted as a special exception by the Board of Zoning Adjustment, subject to:

- (a) The special exception requirements of Subtitle X, Chapter 9;
- (b) The applicant's demonstration that reasonable effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks; and
- (c) The applicant's demonstration of at least one (1) of the following:
 - (1) The strict application of the requirements of this chapter would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes;
 - (2) The relief requested would result in a better design of the penthouse or rooftop structure without appearing to be an extension of the building wall;
 - (3) The relief requested would result in a penthouse or rooftop structure that is visually less intrusive; or

³ The proposed use is not subject to a minimum vehicle parking requirement; however, eighteen (18) parking spaces are available in the parking lot located across Warren Street from the Property (Lot 809).

- (4) Operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of Subtitle C § 115 building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable.

The Applicant has made reasonable efforts to comply with the setback requirements of Subtitle C § 1504, as required by Subtitle C § 1506.1(b). The Penthouse habitable space itself is fully set back on a 1:1 basis from the front, rear, and side walls, and the relief requested here is limited to two comparatively minor rooftop features, the elevator overrun and the awning structures, that are appurtenant to the compliant Penthouse habitable space below. In designing the Penthouse, the Applicant pulled back the enclosed habitable space to fully comply with the 1:1 setback requirements of Subtitle C § 1504 on the front, rear, and side walls, rather than seeking relief to maximize enclosed area. Having achieved full compliance for the enclosed habitable space, the Applicant sought to provide some minimal weather protection for the resulting rooftop deck areas through the addition of lightweight, open awning structures rather than additional enclosed space, which is the source of the awning relief requested below.

With respect to the elevator overrun, the elevator shaft must align vertically on each floor it serves. Relocating the elevator shaft would impact the utilization of the existing stairwell and greatly reduce usable tenant space.

This satisfies Subtitle C § 1506.1(c)(4), which permits relief where operating difficulties relating to elevator stack location make full compliance unduly restrictive, prohibitively costly, or unreasonable. In addition, the elevator overrun is located along the rear wall, at the southeast corner of the roof, which is the least visible portion of the Penthouse from the surrounding streets. Because the overrun extends only four feet, one inch (4 ft., 1 in.) above the already-compliant Penthouse roof, adds no habitable space or floor area, and is sited in the least visible location on the roof, granting the requested relief will result in a structure no more visually intrusive than one that fully complies, consistent with Subtitle C § 1506.1(c)(3).

Consistent with that design approach, the awning structures are open, lightweight canopy features that shelter portions of the rooftop deck rather than solid enclosure walls. The Property has three street frontages: Wisconsin Avenue to the west, Warren Street to the north, and 39th Street to the east. The front (Wisconsin Avenue) and side (Warren Street) awnings will accordingly

be visible from those streets. That visibility does not defeat the requested relief, however, because the relevant comparison under Subtitle C § 1506.1(c)(2) and (c)(3) is not to an invisible structure, but to the fully compliant alternative: a solid, enclosed structure built out to the required setback, or the elimination of rooftop deck shelter altogether. An open, minimal-profile awning is a better design that does not read as an extension of the building wall, and is less visually intrusive than the taller, bulkier enclosed construction that strict compliance would otherwise require or induce. The relief requested is accordingly consistent with Subtitle C § 1506.1(c)(2) and (c)(3).

Finally, neither the elevator overrun nor the awning structures will adversely affect the use of neighboring property. The elevator overrun is minor in scale, does not add floor area or habitable space, and is sited at the rear wall, southeast corner of the roof, the least visible location on the Penthouse, further minimizing any visual impact. Of the three awning structures, the rear awning will be minimally visible from the surrounding streets, while the awnings along the front (Wisconsin Avenue) and side (Warren Street) walls will be visible. Even so, all three are open, lightweight canopy features rather than solid enclosure walls, and accordingly do not read as additional building bulk or as an extension of the building wall in the way a fully enclosed, code-compliant structure would. For these reasons, the requested setback relief is 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.

V. COMMUNITY OUTREACH.

The Applicant will reach out to the ANC 3E05 Single Member District representative and the full ANC to engage the community regarding this application as soon as possible, and will work with the ANC to present the application at a regular public meeting. The Applicant looks forward to working with the ANC and the surrounding community as this application progresses and will supplement the record regarding community engagement prior to the public hearing.

VI. CONCLUSION.

For the foregoing reasons, the Applicant respectfully requests that the Board grant the special exception relief described above.

Respectfully Submitted,

Alexandra Wilson

Alexandra Wilson
Sullivan & Barros, LLP