

## COVER SHEET

**From:**

Jon-Joseph Russo, Trust (Owner, Resident)  
1101 5<sup>TH</sup> ST NW  
WASHINGTON, DC 20001  
202 737 4997  
• **Sq. 514, Lot 849**  
• **Zone RA-2**

October 28, 2019

**To:**

Board of Zoning Adjustment  
441 4<sup>th</sup> St NW Suite 210 South  
Washington, DC 20001

**Please accept this application for Jon-Joseph Russo (the “Applicant”), owner of 1101 5<sup>th</sup> St NW (the “Property”), for DCRA File Job # B1913362, BZA Case #FY-19-79-Z,**

1. Form 120 –Special Exception/Variance Application
2. Zoning Referral Memo
3. Surveyor’s Plat
4. Plans
5. List of mailing addresses of owners within 200ft
6. Statement of Existing and Intended Use
7. Burden of Proof Statement
8. Statement of Public Outreach
9. Exhibits
10. Color Photos

**Re:**

**BZA APPLICATION FOR RELIEF FOR:**

1. Special Exception pursuant to U-420.1 to allow an art gallery/studio (X-900.2)
2. Area Variance from F-302.1 for the maximum permitted floor area ratio (X-1000.1)
3. Area Variance from F-304.1 for the maximum permitted lot occupancy (X-900.2)

## STATEMENT OF EXISTING AND INTENDED USE

### BACKGROUND

The Property, in Mt Vernon Square Historic District, is an end of row/corner lot bound by 5<sup>th</sup> St to the West, L St. & NY Ave to the South, 1103 5<sup>th</sup> St to the North, and 475 NY Ave to the East. The Applicant purchased and occupied the Property in 2000 before the city-wide building boom when there were vacant lots along NY Ave to the East and directly across L St/NY Ave to the South. Since then the surrounding lots have been developed into a high-rise hotel, condos/apartments with 1<sup>st</sup> floor commercial space, drastically changing the neighborhood by expanding the urban core along NY Ave (see Neighborhood Map Exhibit #1). The Applicant always intended to create an art gallery on the 1<sup>st</sup> floor, even renovating for the use separation to the fire code at the time.

### USE CHANGE (ART GALLERY)

The Property was originally built in 1890 as a walk-up residence, fronting 5<sup>th</sup> St, (as neighboring row #1101-1111, see Exhibit #5). There was physical evidence during applicant's renovation/restoration at purchase in 2000, that the building was reconfigured to **mixed-use commercial** on the 1<sup>st</sup> floor, removing the L St side walk-up residential entrance (see Exhibit #6), thus creating a 1<sup>st</sup> floor combined side entrance. Also the front 5<sup>th</sup> St commercial entrance was moved to the present corner orientation.

Historically the Property was zoned **commercial with 1<sup>st</sup> floor retail** (see C. of O. Exhibit #7). At the time of purchase by Applicant the tax classification was **mixed use** (see Exhibit #8). The Applicant is a self-employed landscape architect/sculptor, residing on the 2<sup>nd</sup> floor, using the 1<sup>st</sup> floor as an art studio. Applicant proposes to create an art gallery as owner-occupied 'maker space' business on 1<sup>st</sup> floor, keeping with the historic and physical configuration of the building.

### OCCUPANCY CHANGE (AREA)

Existing Physical alterations over time include moving the internal stairway to create a mezzanine (as delineated by the 16'ht tin ceiling, which applicant restored and proposes to keep, see Exhibit #9). Additions of large & small bay projections for storefronts and the main 'commercial' entrance was moved to the corner, thus re-orienting the building's larger side façade as frontage to busy, commercial NY Ave. (see Exhibit # 2). The rear attached one story structure built 1928 (**occupied 100% of the lot**). This created an exceptional footprint compared to the neighboring row which all have small, landlocked rear yards (see Exhibit #2.)

Major change affecting 1101 5<sup>th</sup> St, as well as adjacent neighbors #1103, 1105, 1107, occurred when the adjacent empty lot zoning was changed prior to 2014, moving an historic rowhouse to applicant's East property line, allowing an 11-story Homewood Suites Hotel (see Exhibit #2). This newly moved 3-story rowhouse altered the streetscape dramatically by creating an incongruity of scale to the applicant's house, and sandwiching the 1-story structure (garage/studio) between Applicant's 2-story house (see Elevation Exhibit # 3).

### SUMMARY

Applicant proposes a 1 floor/room addition to provide greater living space (2<sup>nd</sup> bedroom to code) needed for teenage daughter, and roof deck for the only practical option for private outdoor space. The addition improves the Property and historic fabric, by creating an appropriate, more substantial, complete façade to commercial NY Ave., (as intended by DC agencies purposely relocating the historic T. Martin townhouse to adjoin the applicant's.) The higher addition roofline enhances the streetscape rhythm, following Historic Preservation's recommendation (see Elevation Exhibit #4). An art gallery use of the 1<sup>st</sup> floor will add a cultural amenity to the neighborhood.

## **STATEMENT OF PUBLIC OUTREACH**

Applicant has contacted Commissioner Rachelle Nigro of ANC 6E and is on the agenda for a public meeting in November, and there has been preliminary support for the gallery and addition. The results of the vote will be presented at the hearing, as well as letters of neighbor support, in conjunction with the architectural review of the addition by ANC. Historic Preservation Office has already preliminarily approved the facade design of the addition (see exhibit #10).

## **STATEMENT OF BURDEN OF PROOF**

In 2014 a four-story townhouse (475 NY Ave) was moved to the rear property line of 1101-1107 5<sup>th</sup> St NW, severely altering views, as well as blocking light. The proposed addition roofline will match the existing roof, which is approximately the same height as the adjacent rowhouses (see Exhibit #11), thus affecting light significantly less compared to 475 NY Ave. The neighboring properties along 5<sup>th</sup> St have very small landlocked rear yards that are rarely used due to their small size (12') and 4 of 5 are rental properties. Historic Preservation has already conferred their recommendations that the addition front elevation should be higher than the original house following an increasing height rhythm eastward, and not mimic the original house roofline.

### **Subtitle U-420 420.1**

#### **SPECIAL EXCEPTION REVIEW STANDARDS**

*The following uses shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to any applicable provisions of each section:*

*(b) Art gallery or museum subject to the following conditions:*

*(1) Art gallery or museum shall be located and operated so that it is not likely to become objectionable to adjoining and nearby property because of objectionable noise, pedestrian and vehicular traffic, hours of operation, or other objectionable conditions;*

An art gallery would be considered a benign use. The impetus to open an art gallery now is to take advantage of existing heavy vehicular traffic along NY Ave and the increased high pedestrian traffic due to the dense development of Mt Vernon Sq. NY Ave/K St corridor. Two doors East is a 160 room hotel, and across L St there is a 24 hour Safeway. There is already higher density pedestrian traffic than a gallery will generate. The hours would be less than typical 8 business hours per day including weekends. The Applicant could regulate foot traffic by posting a 'by appointment' sign in window.

*(2) The Board of Zoning Adjustment shall consider, and regulate, if necessary, the anticipated frequency, number of attendees, and other characteristics of show openings or other group gatherings;*

The total occupant rate per the net 650-860 square footage is 22-29. Applicant anticipates 2-4 persons average, occupying the space at any one time/per hour. The minimal length of an exhibition is 1-2 month duration, thus approximately 6-12 show openings per year. These group gatherings are typically Friday (to coincide with 'First Friday' traditional DC citywide gallery openings. Opening hours are usually limited to 6-9pm. Guests will be invited and open to the public.

- (3) *Adequate off-street parking shall be provided to accommodate occupants, employees, and visitors likely to come to the gallery by automobile.*

Most small galleries do not provide off-street parking. There are two public off-street parking options (surface and Safeway garage- see Exhibit #1) across L St. There is generally open zone and metered parking on adjacent streets during business hours. There is a Red Line Metro stop, Chinatown- 10 minute walk, and Green Line Metro stop- Convention Center- within a 5 minute walk. There is a Metrobus stop at 5<sup>th</sup> & K St, two minute walk. The garage/studio functions as a parking space for the applicant's car. There will regularly be only one employee in the gallery (someone residing at the residence above, so no parking need).

- (4) *The proposed use shall not adversely affect the present character or future development of the surrounding area;*

Mayor Bowser supports arts in neighborhoods with the DC Cultural Plan led by OP. The main plan points are: (sustain the city's cultural core, create new opportunities for creators, support cultural creators, expand and preserve cultural spaces, increase access to cultural opportunities among cultural consumers.)

An art gallery provides a cultural activity, and benefit to the neighborhood. The applicant's proposed mixed use fits the present neighborhood character and corner lots generally support higher density. There is a Homewood Suites hotel two buildings to the East on NY Ave, and across L St on 5<sup>th</sup> St there is a block of multi-story residential with a 24 hour Safeway and commercial on the ground floor. The art gallery main exhibition area proposed is 525 net square feet with ancillary gallery/studio area of 335 net square feet. This would be considered a small gallery, which will show the applicant's and other artist's artwork. The ANC has been contacted and Applicant has received preliminary approval of use of an art gallery, as well as the addition.

- (5) *The Board of Zoning Adjustment may require special treatment in way of design, screening of buildings and parking, signs, exterior and interior lighting, or other requirements it deems necessary to protect adjacent and nearby properties:*

There will be a sign within the guidelines on the exterior wall, and interior signage in the clerestory windows of the bays. The display bays will be lit from the interior.

## **SPECIAL EXCEPTION REVIEW STANDARDS**

- X § 901.2 *The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:*

- (a) *Will be in harmony with the general purpose and intent of 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) *Will meet such special conditions as may be specified in this title.*

Within 200' there are higher density residential and commercial lots. The applicant presented before the Historic Preservation Review Board in 2000 and was approved for, and encouraged the restoration and renovation of 1101 5<sup>th</sup> St NW, which included rebuilding the existing bay storefront windows (see Plans A-1). Attached (see exhibit #12) is a preliminary approval from Historic Preservation for the exterior design character in harmony with the surrounding architecture.

**Subtitle F-302 DENSITY–FLOOR AREA RATIO (FAR)**

*F-302.1 Except as provided in other provisions of this subtitle and in Subtitle C, Chapter 15, the maximum permitted FAR in the RA-1 through RA-5 zone shall be as set forth in the following table: RA-2 maximum FAR – 1.8.*

**VARIANCES GENERAL PROVISIONS**

*1000.1 With respect to variances, the Board of Zoning Adjustment has the power under §8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(formerly codified at D.C. Official Code § 5-424(g)(3) (2012Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."*

**Subtitle X-1001 VARIANCE TYPES**

*1001.2 An area variance is a request to deviate from an area requirement applicable to the zone district in which the property is located.*

*1001.3 Examples of area variances are requests to deviate from:*

- (a) *Requirements that affect the size, location, and placement of buildings and other structures such as height and FAR;*

**Subtitle X-1002 VARIANCE REVIEW STANDARDS**

*1002.1 The standard for granting a variance, as stated in Subtitle X § 1000.1 differs with respect to use and area variances as follows*

- (a) *An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property;*

The property, since 1928 was **pre-existing 100% lot occupancy**, and has exceeded the 1.8 FAR, making it impossible to comply to area requirements standards, thus the necessity for relief. The gross floor area of the house is 2000 sq.ft.. Though the calculated FAR proposed increase of .45 is above the allowable 1.8 FAR, but from the **pre-existing 2.0 FAR** the increase is only .25, to proposed 2.25 FAR. The one-story, one room addition will be a needed second bedroom, per building code, for the applicant's teenage daughter. The mezzanine room is small – net 105 sf, (and not considered a bedroom to the building code). Presently the configured residential gross area is 1000sf and has only one bedroom -not in accordance with a typical DC rowhouse. According to 'Yardi Matrix' 11-28-18, the average DC one bedroom apartment is 721 sf, and average two bedroom apartment is 990 sf. The proposed addition creates a two-bedroom house plan at 2<sup>nd</sup> floor that is more comparable with the DC average. Therefore the proposed, larger 2<sup>nd</sup> floor should contain a much-needed two-bedroom unit to maximize the value and use of the property, while falling within the DC standards for space, and is in accord with the neighboring development.

#### **Subtitle F-304 LOT OCCUPANCY**

*F-304.1 Except as provided in other provisions of this chapter, the maximum permitted lot occupancy shall be established for lots in the RA-1, RA-2, RA-3, RA-4, and RA-5 zones as set forth in the following table: RA-2 maximum lot occupancy percentage - 60%.*

#### **Subtitle X §-900.2**

*The Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the requested special exceptions meets the standards of Subtitle X § 901 and any such special conditions specified in this subtitle.*

The property, since 1928 was **pre-existing 100% lot occupancy**, and has exceeded the 60% lot occupancy, making it impossible to comply to area requirements, necessitating variance relief. I would ask the BZA to consider the same relief given to the Rear Yard requirement for Lot Occupancy as stated as follows:

*F-305.3 In the case of a building existing on or before May 12, 1958, an extension or addition may be made to the building into the required rear yard; provided, that the extension or addition shall be limited to that portion of the rear yard included in the building area on May 12, 1958.*

Since the Rear Yard was built to 100% Lot Occupancy in 1928, then the pre-existing extension was also limited to the same area as the rear yard. Thus the rear yard and the lot occupancy share the exact same area, having the same burden of compliance. Therefore the property should not have the hardship of not being able to utilize the pre-existing structure, thus preventing the applicant to build one room needed at the 2<sup>nd</sup> floor level. Applicant respectfully requests variance relief pursuant of F-305.3 standard, for the property, which does not unduly harm neighbors, does not impair, but aids the intent of the zoning plan for the development of the frontage along the NY Ave corridor.

