

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

**APPLICATION OF
PROPERTY FRAMEWORKS
HEARING DATE: APRIL 11, 2018**

**BZA APPLICATION NO. 19738
SQUARE 1227, LOT 813
ANC 2E**

STATEMENT OF THE APPLICANT

**I.
NATURE OF RELIEF SOUGHT**

This statement is submitted by Property Frameworks (the "Applicant"), on behalf of Washington DC Sole Properties, Inc., the owner of the property located at 1300 35th Street, N.W., Square 1227, Lot 813 (the "Subject Property"), in support of its application pursuant to 11-X DCMR § 900.2 for special exception approval under 11-C DCMR § 204.9 to change a nonconforming use to another nonconforming use in the R-20 zone.

**II.
JURISDICTION OF THE BOARD**

The Board has jurisdiction to grant the special exception requested herein pursuant to 11-X DCMR § 901.2 of the Zoning Regulations.

**III.
WITNESSES**

1. Shane L. Dettman, Director of Planning Services, Holland & Knight, LLP

**IV.
EXHIBITS IN SUPPORT OF THE APPLICATION**

- Exhibit A: Zoning Map
- Exhibit B: Certification of Occupancy B151418 (Ground Floor Office Use)
- Exhibit C: Certification of Occupancy B138409 (2nd and 3rd Floor Apartment Use)

- Exhibit D: BZA Order No. 12848
- Exhibit E: BZA Order No. 13863
- Exhibit F: BZA Order No. 14576
- Exhibit G: Expert Witness Testimony Outline and Resume

V.

BACKGROUND AND PROJECT DESCRIPTION

A. Description of the Subject Property and Surrounding Area

The Subject Property is located in the northwest quadrant of the District of Columbia and consists of Lot 813 in Square 1227, which has a land area of approximately 1,506 square feet. Square 1227 is bounded by O Street to the north, 36th Street to the west, N Street to the south, and 35th Street to the east. The Subject Property is located on the west side of 35th Street, N.W., with approximately 23.43 linear feet of frontage on 35th Street, and approximately 64.28 linear feet of frontage on N Street. To the west of the Subject Property, fronting 36th and N Streets, is the Holy Trinity Church and its associated school, which encompasses a large portion of Square 1227. The remainder of the Square contains residential uses and a building that contains Saxbys Coffee, with a residential use above. A majority of the properties located on the east side of 35th Street are also improved with residential uses above ground floor commercial uses. The block located directly south of the Subject Property, across N Street, contains multiple buildings belonging to Georgetown University including LXR and Nevils Buildings, both dormitories, and the Walsh Building, which houses the Department of Art and Art History. Collectively, the LXR, Nevils, and Walsh Buildings make up Georgetown's University's East Campus.

As shown on the Zoning Map attached as Exhibit A, the Subject Property is zoned R-20, a low-density residential zone that is intended to retain and reinforce Georgetown's unique mix

of housing types including detached, semi-detached and attached dwellings and permit attached row houses on small lots, and includes areas where attached houses are mingled with detached houses and semi-detached houses. Currently, the Subject Property is improved with a semi-detached, three-story building that was constructed circa-1849, and is a contributing structure to the Georgetown National Historic Landmark District. The ground floor of the building is presently a vacant residential unit. The last Certificate of Occupancy issued for the ground floor was for an office use which, as discussed below, was approved by the Board in 1987 (Exhibit B). The second and third floors currently contain a four-unit apartment building (Exhibit C).

B. Previous BZA Approvals

Prior to the establishment of zoning the building was used as an apartment house in the 1940s. See BZA Order No. 12848, dated July 3, 1979, Finding of Fact 6, a copy of which is attached as Exhibit D. The Board has previously granted special exception approval to change the ground floor use from one nonconforming use to another nonconforming use. Pursuant to BZA Order No. 13863, dated December 1, 1982, the Board approved a special exception to allow a tailoring shop to be changed to a retail sales use. A copy of BZA Order No. 13863 is attached as Exhibit E. Approximately five years later, pursuant to BZA Order No. 14576, dated March 25, 1987, the Board approved a special exception to change the nonconforming retail sales use to an office use for Georgetown University visiting professors and staff. A copy of BZA Order No. 14576 is attached as Exhibit F. The Applicant proposes to utilize the ground floor as an additional residential unit. As a result, the building will become a five-unit apartment house. Thus, should the subject application be approved and the existing building be entirely devoted to residential use, the Subject Property will be more consistent with the R-20 zone and the current development pattern within the Square and along the block.

VI.
SPECIAL EXCEPTION APPROVAL

The Applicant seeks special exception approval under 11-C DCMR § 204.9 to permit the change of a nonconforming use on the first floor of the building from one nonconforming use to another nonconforming use. Subtitle C § 204.9 provides that by special exception a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right. In the R, RF, or RA zones, “the proposed use shall be either a single dwelling unit, flat, or a multiple dwelling unit development.” 11-C DCMR § 204.9(b).

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-C DCMR § 900.2, the Board is authorized to grant a special exception where it finds that 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.*

Changes to a nonconforming use are permitted as special exceptions if approved by the Board after a public hearing, in accordance with 11-X DCMR, Chapter 9, provided the criteria of 11-C DCMR § 204.9 *et seq* are met. As described below, the Applicant meets the applicable special exception standards.

1. *11-C DCMR § 204.9(a) - The proposed non-conforming use would be permitted as a matter-of-right in the most restrictive subtitle in which the existing non-conforming use is permitted as a matter of right, in accordance with [the] following order, from most restrictive to least restrictive subtitle:*

As stated above, the last Board order and Certificate of Occupancy issued for the ground floor of the Subject Property was for an office use (Exhibits B and F). The Neighborhood Mixed-Use (“NC”) zones are the most restrictive zoning district in which an office use is permitted as a matter of right. Thus, in accordance with 11-C DCMR §204.9(a), the nonconforming office use may be changed to another use that is permitted as a matter of right in the NC zones. An apartment house is permitted as a matter of right in the NC zones. *See* 11-H DCMR § 1104.1(a) and 11-U DCMR § 401.1(d)(1). Thus, the subject application satisfies this criteria.

2. *11-C DCMR § 204.9(b) – In the R, RF, or RA zones, the proposed use shall be either a single dwelling unit, flat, or a multiple dwelling unit development; except on an alley lot, the proposed use may only be a single dwelling unit;*

The subject application is consistent with this criteria. The Subject Property is zoned R-20, and the subject application seeks to utilize the ground floor of the existing building as a dwelling unit which, together with the four existing dwelling units on the second- and third-floors, will result in the existing building being a five-unit apartment house.

3. *11-C DCMR § 204.9(c) – In the R and RF zones, the corner store provisions of the relevant subtitle shall apply;*

This subsection is not applicable since the Applicant is not proposing a corner store.

4. *11-C DCMR § 204.9(d) – The external impacts of the proposed use will be deemed to be no greater than the existing use;*

The external impacts of the proposed use will be no greater than the existing use. The Subject Property is presently in operation as a four-unit apartment house on the second and third floors, and the Applicant is merely proposing to use the vacant ground floor as one additional dwelling unit, for a total of five dwelling units. The external impacts will be less than the previous office approved on the ground floor since less people are likely to be visiting the Subject Property overall. In addition, the proposed use is consistent with the existing uses on the second and third floors of the building, and with the low density R-20 zone in general.

5. *11-C DCMR § 204.9(e) - The proposed use shall not adversely affect the present character or future development of the surrounding area within at least three hundred feet (300 ft.) of the site;*

The proposed use will not adversely affect the present character or future development of the surrounding area. The uses within 300 feet of the Subject Property consist of several institutional, education, neighborhood serving commercial, dormitory, and residential uses. As stated above, a large portion of Square 1227 is occupied by Holy Trinity Church and School. The other buildings within the Square include residential uses, and a mixed-use building containing ground-floor coffee shop with residential above. To the south of the Subject Property is the Georgetown University East Campus buildings, consisting of two dormitory buildings and an academic building. To the southwest, along the west side of 36th Street, is an area zoned MU-3 containing academic, retail, and eating and drinking establishment uses. Other buildings within 300 feet of the Subject Property are mixed-used buildings that contain ground floor retail and service uses, with residential uses above. For example, the property across 35th Street from the Subject Property is presently improved with a mixed-use building containing Bredice Brothers Shoe Repair on the first floor, with residential use above. As a result, the proposed change in use

will not adversely affect the present character or future development of the surrounding area since it is compatible with the existing apartment house use that has existed on the second and third floors of the Subject Property at least since the 1940s, the proposed use is compatible with other nearby residential uses, and the area surrounding the Subject Property contains several institutional, academic, and small neighborhood serving retail, service, and eating and drinking establishment uses.

6. *11-C DCMR § 204.9(f) - The proposed use shall not create any deleterious external effects, including, but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects;*

The proposed ground-floor dwelling unit will not create any deleterious effects on noise, traffic, parking, loading, illumination, vibration, odors, and design and siting . Compared to the previous office use, use of the ground-floor of the Subject Property as a residential dwelling unit will not increase the amount of traffic (pedestrian or vehicular) in the area surrounding the Subject Property. The building on the Subject Property is a contributing building in the Georgetown National Historic Landmark District; and therefore, no additional parking spaces are required for the proposed change in use. *See* 11-C DCMR 705.3. Notwithstanding, the proposal is not expected to exacerbate traffic in the area or adversely impact on-street parking since only one additional dwelling unit is proposed. The proposed use will also have no impact on existing loading considerations, illumination, vibration, or odors. There is no loading requirement for the Subject Property since there will be less than 50 dwelling units and no expansion is being proposed. *See* 11-C DCMR §§ 901.1 and 901.5. Furthermore, existing trash facilities at the Subject Property, and existing trash service, will be able to accommodate the one additional dwelling unit that is proposed. Finally, there will be no impacts to illumination, vibration, or noise since no alterations are proposed to the exterior of the existing building.

7. *11-C DCMR § 204.9(g) – When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use; and*

The previously approved nonconforming office use has not been changed to a conforming or more restrictive use. The ground floor is currently a vacant residential dwelling unit which the Applicant is seeking special exception relief to occupy. As a result, the nonconforming use of the first floor has never been changed to a conforming or more restrictive use.

8. *11-C DCMR § 204.9(h) - The Board of Zoning Adjustment may require the provision of changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.*

Given the modest scope of the requested special exception, no changes, modifications, or amendments to the subject application are necessary. The use of the ground-floor of the existing building on the Subject Property as a dwelling unit will not have any effect on the value, utilization, or enjoyment of property in the neighborhood.

9. *11-C DCMR § 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;*

The requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations, Zone Map, and the R-20 zone. The overall general purpose of the Zoning Regulations is to establish minimum standards for the promotion of public health, safety, morals, convenience, order, prosperity, and general welfare by: (i) providing adequate light and air, (ii) preventing undue concentration of population and

overcrowding of land, and (iii) distributing population, business and industry, and use of land in a manner that creates favorable conditions. As described above, the R-20 zone is a low-density residential zone that is intended to retain and reinforce Georgetown's unique mix of housing types including detached, semi-detached and attached dwellings and permit attached row houses on small lots, and includes areas where attached houses are mingled with detached houses and semi-detached houses. The subject application will not have any impact on light and air as no expansion or exterior alterations are proposed to the existing historic building on the Subject Property. Further, the subject application will not result in undue concentration of population or overcrowding of land. The Applicant is requesting to add one additional dwelling unit to the Subject Property in the area of the ground floor that was previously approved by the Board for office use. If granted, the number of dwelling units at the Subject Property will only increase from four to five dwelling units. The increase of only one dwelling unit within the envelope of the existing building is likely to be imperceptible. Indeed, the request to change the previously approved nonconforming office use to a residential dwelling unit will bring the Subject Property closer into conformance with the Zoning Regulations since the R-20 zone is a residential zone.

(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

The subject application will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. In contrast, as stated above the request will bring the Subject Property closer into conformance with the Zoning Regulations, as well as surrounding uses. As described above, the Subject

Property is surrounded by several institutional, education, neighborhood serving commercial, dormitory, and residential uses. The request to change the previously approved nonconforming office use on the ground floor of the Subject Property to a residential dwelling unit is compatible with these surrounding uses.

(c) Will meet such special conditions as may be specified in this title.

The special conditions applicable to the subject application are addressed above.

VII.
COORDINATION WITH ADVISORY NEIGHBORHOOD COMMISSION 2E

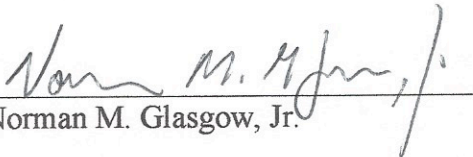
The Subject Property is located within the boundaries of Advisory Neighborhood Commission (“ANC”) 2E. On February 21, 2018, the Applicant discussed the subject application with Commissioner Rick Murphy, Single Member District 2E03, who at the time did not have any questions or raise any concerns. The Applicant will present the subject application to ANC 2E at its April 2, 2018, public meeting.

VIII.
CONCLUSION

For the reasons stated above, the Applicant has demonstrated that it meets the test for special exception approval under 11-C DCMR § 204.9 to change a nonconforming use to another nonconforming use in the R-20 District.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Norman M. Glasgow, Jr.

HOLLAND & KNIGHT, LLP
800 17th Street, N.W.
Suite 1100
Washington, DC 20006
(202) 955-3000

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2018, a copy of this prehearing statement to the Board of Zoning Adjustment was served by electronic mail on the following, with hardcopies sent or delivered to the Office of Planning and the ANC on March 22, 2018.

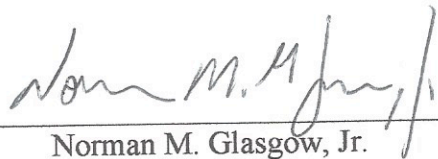
Ms. Jennifer Steingasser
District of Columbia Office of Planning
1100 4th Street, SW, Suite 650E
Washington, DC 20024
jennifer.steingasser@dc.gov

Anna Chamberlin
District Department of Transportation
55 M Street, SE, Suite 400
Washington, DC 20003
anna.chamberlin@dc.gov (via email only)

Advisory Neighborhood Commission 2E
3265 S Street NW
Washington, DC 20007

Commissioner Rick Murphy
Single Member District 2E03
3136 P Street, NW
Washington, DC 20007

DCtuxedo@aol.com
2E02@anc.dc.gov
2E03@anc.dc.gov
2E04@anc.dc.gov
2E05@anc.dc.gov
2E06@anc.dc.gov
2E07@anc.dc.gov
2E08@anc.dc.gov


Norman M. Glasgow, Jr.