

March 24, 2021

*Via IZIS*

Board of Zoning Adjustment  
441 4th Street, N.W.  
Suite 210S  
Washington, DC 20001

**Re: BZA Case No. 20412 - Application of 1515 Wisconsin Avenue, LLC**

Dear Members of the Board:

On behalf of opposition parties Matthew Bottelson, Michael Lechliter, Nicole Vikan, and Tarleton Watkins and Iain Dimond (collectively, the “Opposition Parties”), please consider this response to Applicant’s request for a zoning exception from Subtitle G § 404, Lot Occupancy, from the permitted 60% Occupancy, the current 75% Occupancy, to the proposed 81% Occupancy.

The Board is authorized to grant special exceptions where it determines that the proposed exception:

- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- Subject in specific cases to the special conditions specified in this title.

DCMR Title 11 – Subtitle X Chapter 9.

“The applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.”  
*Id.*

The Applicant has not proven that the requested exception will not tend to adversely affect the use of neighboring property on 32nd Street, including the residential homes of the Opposition Parties. *See, e.g.*, Applicant’s Statement at 4-5 (focusing on the impact of neighboring buildings on Wisconsin Avenue as opposed to residential neighbors on 32nd Street).

Our residential block on 32nd Street does not have an alley, so the proposed large addition, which has a much smaller area open to the back compared to the existing commercial structure, will dwarf the nearby homes and significantly reduce the natural light, air circulation, and privacy of back yards, and cause a host of other adverse impacts, as explained in more detail below.

Reduction of Natural Light. The Applicant has produced a Shadow Study showing that the proposed addition would cause additional shadows on certain of the Opposition Parties' properties in the Fall/Spring Equinox, Winter, and Summer. Although the Applicant asserts that the increased shadowing "does not rise to level of undue," it offers no support for that assertion. In fact, it does result in an undue adverse impact to the small backyards on 32nd Street, where any further reduction in natural light will have a disproportionate impact. The Applicant seeks to minimize this concern by suggesting that it could conceive of a "matter of right" design that would cover only 60% occupancy but be 50 feet high. This argument is a red herring because, as the property in question is a Listed Historic Site in the National Historic Landmark District, a 50-foot high structure would never be approved under the Old Georgetown Act (Public Law 808-81st Congress H.R. 7670 D.C. Code 5-801, 64 Stat. 903).

Reduction in Air Circulation. Expanding the Occupancy of the property from the permitted 60% to 81% (in addition to the massive box-like design that will increase the current rear stories from one to three) will result in a significant impact on air circulation in the center of the Opposition Parties' block. The Applicant has not met its burden to show that there will be no such negative impact.

Reduction in Privacy. The proposed expansion will have an obvious negative impact on the Opposition Parties' privacy. An extension of the Occupancy to the rear will move the structure closer to our fence lines. At the same time, building apartments two stories above that increased occupancy with the proposed rear facing windows directly facing our properties will cause the proposed apartments to have direct visible access into our back bedrooms and living rooms. This reduction in privacy will adversely impact the Opposition Parties.

Parking and Street Traffic. The Opposition Parties are also concerned about impacts on on-street parking. The Applicant's proposed addition may result in a significant increase to on-street parking given that its proposal is for four additional apartments and it is not providing for any on-site parking. Our block on 32nd Street is a small one-way street with limited parking available on only one side of the street. Also given that long-term resident parking is not available on Wisconsin Avenue, our block will likely see a significant increase in traffic and parking activity, and will likely be disproportionately impacted due to further reduction in other available parking given the expanding operations of "streeteries" on Wisconsin Avenue.

Artificial Light and Noise Pollution, and Solid Waste. The proposed structure will very likely create an increase in artificial light on our properties, an increase in noise pollution given the massive rescaling of the property bringing new residents much closer to our homes, and an increase in solid waste that would need to be carefully managed to avoid the introduction of pests. These nuisance pollutants are of particular concern given that many of us have small children with childlike sensitivities to such pollutants.

Concern of Establishing a Precedent. Finally, we wish to raise a concern as to precedent. Approval of the proposed addition at the current scale will create a precedent for other buildings in this special block to follow in future development proposals, which will only compound the impacts mentioned above. This would be the third, and possibly the largest, addition to a commercial structure to date in the immediate area and future developers will use those precedents to justify their further requests for exceptions. In fact, we are already seeing that in practice in this very case -- in particular, the Applicant is relying in part on similar oversized Occupancies to buildings to the north and south of it, and the Office of Planning report even cited those same facts in its recommendation as a basis to support an exception. With that logic, any zoning exceedance quickly abets another to a point where the original plan is all but forgotten. That is not consistent with the purpose of the Zoning Regulations, but it is a grave concern of the Opposition Parties given that we are seeing it applied in practice.

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The Opposition Parties understand that the Applicant has certain rights, and we have been and continue to be willing to work with the Applicant. That said, we also have very real concerns regarding the undue adverse impacts the Applicant's proposed exception would cause. We believe strongly that the Applicant has not satisfied its burden to prove no undue adverse impact in this instance.

Respectfully Submitted,

/s Matthew Bottelson

Matthew Bottelson

/s Michael Lechliter

Michael Lechliter

/s Nicole Vikan

Nicole Vikan

/s Tarleton Watkins and Iain Dimond

Tarleton Watkins and Iain Dimond

**CERTIFICATE OF SERVICE**

BZA Application No. 20412

Pursuant to the requirements of Subtitle Y § 407.3, I certify that a copy of the **Opposition Parties' March 24, 2021 Letter** and all accompanying documents have been served upon:

- (a) **The Applicant via Counsel for the Applicant**
- (b) **The Applicant's Counsel**
- (c) **The affected ANC**

Service was made on March 24, 2021 by email to the following:

1. Mr. Martin Sullivan,  
msullivan@sullivanbarros.com
2. Mr. Rick Murphy,  
2E03@anc.dc.gov
3. ANC 2E Office,  
2E@ANC.DC.Gov

**Signature:** /s Michael Lechliter