

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



Application No. 20412 of 1515 Wisconsin Avenue, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception pursuant to Subtitle G § 1200.1 from the lot occupancy requirements of Subtitle G § 404.1 to construct a two-story addition on the top of the first floor rear portion, and to construct a three-story rear addition, to add 4 residential units to an existing mixed-use building in the MU-4 zone at premises 1515 Wisconsin Avenue, NW (Square 1271, Lot 44).

HEARING DATES: March 17, April 14, and April 28, 2021
DECISION DATE: April 28, 2021

DECISION AND ORDER

This self-certified application was filed on November 10, 2020, on behalf of 1515 Wisconsin Avenue, LLC, the owner of the property that is the subject of the application (“Applicant”). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, by memoranda dated January 5, 2021, the Office of Zoning (“OZ”) provided notice of the application and of the public hearing to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 2 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 2E, the ANC in which the subject property is located, Single Member District ANC 2E03, and the owners of all property within 200 feet of the subject property. (Exhibits 13-24.) The Notice was published in the *District of Columbia Register* on December 25, 2020 (67 DCR 14842) and January 15, 2021 (68 DCR 861). By memoranda dated April 15, 2021, OZ provided notice of the application and of the continued hearing to the Commission of Fine Arts. (Exhibit 53.)

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 2E were automatically parties in this proceeding. On March 17, 2021, the Board granted requests for party status in opposition to the application submitted by Tarleton H. Watkins and Iain Dimond (Exhibit 30), Michael Lechliter (Exhibit 31), Matthew Bottelson (Exhibit 32), and Nicole Vikan (Exhibit 33)

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(collectively, the “Opposition Parties”), who were all residents of the 1500 block of 32nd Street near the subject property.

Applicant’s Case. The Applicant was represented by the law firm of Sullivan & Barros, LLP (Ex. 9) and provided evidence and testimony in support of the application from Eric Gronning, the architect for the proposed project, and Steve Mottaghi, the owner of 1515 Wisconsin Avenue, LLC.

OP Report. By memorandum dated March 3, 2021, OP recommended approval of the application to permit a residential lot occupancy of 81 percent. (Exhibit 34.)

DDOT. By memorandum dated March 5, 2021, DDOT indicated no objection to approval of the application. (Exhibit 36.)

ANC. By letter dated March 16, 2021, ANC 2E reported that, at a regularly scheduled and properly noticed meeting on March 1, 2021, with a quorum present, the ANC adopted a resolution indicating that the ANC did not object to the Board’s approval of the requested special exception. (Exhibit 44.)

Parties in opposition. The Opposition Parties objected to the Applicant’s proposal to enlarge a building beyond the permitted lot occupancy and asserted that approval of the application would adversely affect neighboring residential properties especially with respect to light, noise, and privacy impacts.

Persons in opposition. The Board received several letters or other communications in opposition to the application, and opposition witnesses testified at the public hearing. The persons in opposition asserted that the Applicant’s proposal would be out of scale with the block and would cause adverse impacts on the use of their properties, especially relating to privacy, noise, and shadows.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the east side of Wisconsin Avenue, NW between P and Q Streets, with an address of 1515 Wisconsin Avenue, NW (Square 1271, Lot 44).
2. The subject property is rectangular, approximately 20 feet wide and 130 feet deep. The lot area is 2,601 square feet.
3. The subject property is improved with an attached building that is three stories and 37 feet, two inches in height. The existing building extends approximately 100 feet in depth and provides a rear yard of approximately 30 feet. The subject property has a floor area ratio (“FAR”) of 1.33.

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4. The first floor of the existing building occupies 75 percent of the lot. The existing second floor and third floor/attic space have a lower lot occupancy.
5. The existing building consists of three sections. The western section, which fronts on Wisconsin Avenue, is three stories in height and approximately 35 feet, 7 inches in length. The middle section is two stories and 34 feet, two inches in length. The eastern section is one story and approximately 30 feet, two inches in length.
6. The building on the subject property is currently configured as a retail store on the ground floor and two dwelling units on the upper levels.
7. One dwelling unit occupies the second and third floors of the western section of the building. The second dwelling unit is on the second floor of the middle section. The first floor of all three sections is devoted to commercial space.
8. The Applicant proposed to construct a two-story addition to the building above the existing rear first floor, as well as a three-story rear addition, so as to increase the number of dwelling units in the building to six. The western portion of the ground floor will be commercial space, the two existing dwellings will be reconfigured, and four new dwelling units will be created in the expanded building. As proposed, one unit will be on the first floor at the rear of the expanded building, three units will be on the second and third floors of the existing building, and one unit will be on each of the second and third floors at the rear of the newly expanded building.
9. The new construction will increase lot occupancy to 81 percent where a maximum of 60 percent is permitted for residential use. (Subtitle G § 404.1.)
10. The addition will extend the rear of the existing building by 5 feet, 4.25 inches, resulting in a rear yard of 24 feet, 8.5 inches where the minimum requirement is 15 feet. (Subtitle G § 405.2.)
11. The addition will increase the building's FAR to 1.92 where a maximum of 2.5 is permitted (maximum 1.5 FAR for non-residential use). (Subtitle G § 402.1.)
12. The height of the rear addition will be approximately 26 feet and will not increase the height of the existing building (37 feet, two inches), where a maximum of 50 feet is permitted. (Subtitle G § 403.1.) The addition will be constructed partially below ground, with floor to ceiling heights at eight feet, to minimize its height, which will be 25 feet as measured from the rear grade.
13. The planned addition to the eastern section of the existing building will not be visible from Wisconsin Avenue.

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14. The existing building has windows on its southern and eastern (rear) façades. The addition will also have windows on the southern and eastern façades.
15. Trash collection will continue to occur through the front of the building from Wisconsin Avenue.
16. The rear yard is bounded by a fence installed around the perimeter of the property.
17. The existing and planned lighting in the rear yard is the minimum down lighting consistent with safety purposes.
18. The subject property is located in the Georgetown Historic District. The existing building is part of a group of buildings that are designated historic landmarks known as the Georgetown Commercial Buildings – Wisconsin Avenue, NW. The building on the abutting property to the north (1517 Wisconsin Avenue) was also designated a historic landmark.
19. The Old Georgetown Board had no objection to the Applicant’s revised concept design for a three-story rear addition. (Exhibit 49A.) The Applicant originally proposed a larger addition to accommodate a total of nine apartments but revised the project in response to comments of the Old Georgetown Board. Changes included a reduction in the height of the new construction. (Exhibit 25.)
20. Properties in the immediate vicinity of the Applicant’s property along Wisconsin Avenue are improved with similar commercial or mixed-use buildings, ranging from one to four stories.
21. The Applicant’s building is attached to similar buildings on both abutting properties. The building to the north (1517 Wisconsin Avenue) has three stories and extends six feet, 11 inches beyond the Applicant’s building. The building to the south (1513 Wisconsin Avenue) has two stories and extends three feet, 10 inches past the Applicant’s building. After construction of the planned addition, the Applicant’s building will extend 1.5 feet deeper than the building to the south but will remain less deep than the building to the north.
22. Properties to the rear (east) of the subject property are improved with row dwellings that front on 32nd Street, which extends between P and Q Streets roughly parallel to Wisconsin Avenue.
23. Square 1271 does not contain any public alleys, so the rear yard of the subject property abuts the rear yards of the residential properties to the east.
24. Square 1271 is split zoned. The western portion, encompassing the properties fronting on Wisconsin Avenue, is mapped as a Mixed Use (MU) zone, MU-4. The eastern portion,

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encompassing the properties fronting on 32nd Street, is zoned R-20, a Georgetown Residential House zone.

25. The Mixed Use zones provide for mixed-use developments that permit a broad range of commercial, institutional, and multiple dwelling unit residential development at varying densities. (Subtitle G § 100.1.)
26. The MU zones are designed to provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers. (Subtitle G § 100.2.)
27. The provisions of the MU zones are intended to (a) provide for the orderly development and use of land and structures in the MU zones, characterized by a mixture of land uses; (b) provide for a varied mix of residential, employment, retail, service, and other related uses at appropriate densities and scale throughout the city; (c) reflect a variety of building types, including, but not limited to, shop-front buildings which may include a vertical mixture of residential and non-residential uses, buildings made up entirely of residential uses, and buildings made up entirely of non-residential uses; (d) encourage safe and efficient conditions for pedestrian and motor vehicle movement; (e) ensure that infill development is compatible with the prevailing development pattern within the zone and surrounding areas; (f) preserve and enhance existing commercial nodes and surroundings by providing an appropriate scale of development and range of shopping and service opportunities; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle G § 100.3.)
28. MU-4 zones are intended to (a) permit moderate-density mixed-use development; (b) provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and (c) be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. (Subtitle G § 400.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception, pursuant to Subtitle X § 902.1 and Subtitle G § 1200.1, from the lot occupancy requirements of Subtitle G § 404.1 to construct an addition for residential use at an existing three-story mixed-use building (commercial and residential) in the MU-4 zone. The Board is authorized under Section 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2)(2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions (*See* Subtitle X § 901.2).

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Subtitle G § 1200.1 states that the Board may grant special exception relief from the development standards of Subtitle G subject to any applicable conditions. Subtitle G § 1200.4 provides that relief may be granted as a special exception where, in the judgment of the Board, the special exception (a) will be in harmony with the general purpose and intent of the MU zone, 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) is subject in each case to any applicable conditions specified in Subtitle G, Chapter 12. The requirements for a special exception under Subtitle X § 901.2 are almost identical, therefore, to the requirements for a special exception under Subtitle G § 1200.4.

Based on the findings of fact, the Board concludes that the application satisfies the requirements for a special exception consistent with the requirements of Subtitle G § 1200.4 and Subtitle X § 901.2. Specifically, the Board concludes that the project will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps. The project will comply with the use provisions and the development standards applicable in the MU-4 zone except with respect to lot occupancy. The proposed project will provide four additional dwelling units in an existing mixed-use building that is located on a major thoroughfare with a mix of residential, business and retail uses, consistent with the intention of the MU zones to provide for a varied mix of residential, retail and other uses and the MU-4 zone specifically to provide facilities for housing located in low- and moderate-density residential areas with access to main roadways or rapid transit stops.

The Board also concludes, based on the findings of fact, that the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Applicant's existing building has a lot occupancy that exceeds the maximum permitted for residential use but presently contains only non-residential space (retail) on the ground floor. The planned addition will accommodate dwelling units on all floors of the building, and will increase lot occupancy to 81 percent where a maximum of 60 percent is permitted for residential use as a matter of right.

The Board agrees with the Applicant that the planned addition will not create adverse impacts on the use of nearby properties fronting on Wisconsin Avenue. The building, as enlarged, will remain within matter-of-right limits for height and rear yard, comparable in scale to the buildings on the abutting lots to the north and south.

The Board also concludes that the planned addition will not create adverse impacts on the use of nearby residential properties, including those along 32nd Street. The Applicant's building now contains two dwelling units, and, as proposed, the expanded building will accommodate six dwelling units on three floors in addition to ground-floor retail space. The expanded residential use of the subject property will be consistent with the residential use of the neighboring properties to the east.

The Board was not persuaded by the Opposition Parties that approval of the requested zoning relief will cause adverse impacts on the use of neighboring properties because of the size of the addition

or its impacts on light, air, and privacy. Although there is no public alley separating the Applicant's property from the rowhouse lots to the east, the subject property will continue to have a rear yard that exceeds the minimum requirement in the MU-4 zone. The rear yard will be fenced and illuminated only with the lighting needed for safety purposes. The new construction will be lower than the Applicant's existing building, and in keeping with heights of the neighboring two-story rowhouses. Given the planned height and massing of the new construction, which are within the matter-of-right limits for the MU-4 zone, the Board does not find that the addition will create adverse impacts on the availability of air to neighboring properties. The Board notes the concern expressed by ANC 2E about the potential impact of the addition on neighbors to the east but concludes that the Applicant's shadow studies (Exhibit 40A) demonstrated that the impacts of the planned addition on light available to neighboring properties will not be significant.

The Opposition Parties objected that the planned addition will have windows that they alleged would create an "obvious negative impact" on the privacy of the residents in the abutting properties to the east. The Board does not agree, noting especially the existence of a privacy fence and the distance between the planned addition and neighboring dwellings, despite the absence of an alley between them. The abutting dwellings have rear yards, and the Applicant's property will continue to provide a rear yard of more than 24 feet, in excess of the minimum requirement of 15 feet. Even after construction of the addition, which will increase the length of the Applicant's building by slightly more than five feet, the rear wall of the Applicant's building will not extend significantly closer to the residential properties to the east than do the other nearby buildings along Wisconsin Avenue.

The Board was not persuaded by the Opposition Parties that approval of the addition, by creating four additional dwelling units without off-street parking, will have an adverse impact on parking in the area. The Applicant asserted that the proposal complied with applicable zoning requirements for parking. DDOT concluded that the project will have only "minor" impacts by potentially leading to a minor increase in vehicle, transit, pedestrian and bicycle trips on the localized transportation network, increased pick-up and drop-off activity, and slightly reduced availability of on-street parking within the immediate area. (Exhibit 36.) The Board concludes that the potential impacts on parking and traffic associated with approval of the requested zoning relief – an increase in lot occupancy to allow an addition to an existing building to accommodate four dwelling units, a matter-of-right use – will not adversely affect the use of neighboring properties consistent with the Zoning Regulations and Zoning Map.

Similarly, the Board was not persuaded by the Opposition Parties' unsubstantiated contentions that approval of the application will cause a decrease in their property values as well as increases in noise and objectionable conditions relating to trash storage and collection. The planned addition does not propose balconies or other outdoor living space, and will not alter the Applicant's current trash collection arrangement through the front of the building. The Board concludes that any potential adverse impacts related to lighting or trash collection will be mitigated by the conditions of approval adopted in this order, which allow only safety lighting in the rear yard and require trash collection through the front of the building.

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The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board agrees with OP’s recommendation that, in this case, the application should be approved.

Under Section 13(d) of the Advisory Neighborhood Commission Act of 1975, the Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.)) In this case, ANC 2E adopted a resolution stating no objection to approval of the requested zoning relief, commenting favorably on the creation of additional dwelling units in the project. The resolution also stated that “ANC 2E remains concerned about the impact that the mass of this proposed addition would have on the neighbors to the east of the project” and urged the Board “to require the production of a light study before it makes a decision on the granting of the special exception to make sure that there is no adverse impact on the neighbors from the construction of this project.” (Exhibit 44.) For the reasons discussed above, the Board agrees with the ANC that the application should be approved. Based in part on the shadow study submitted by the Applicant, the Board concluded that approval of the requested zoning relief will not cause adverse impacts, including on the use of nearby residences to the east of the Applicant’s property.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception pursuant to Subtitle G § 1200.1 from the lot occupancy requirements of Subtitle G § 404.1 to construct a two-story addition on the top of the first floor rear portion, and a three-story rear addition, to add residential units on all three floors of an existing mixed-use building in the MU-4 zone at 1515 Wisconsin Avenue, NW (Square 1271, Lot 44). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 40A and subject to the following **CONDITIONS**:


1. Lighting in the rear yard shall be minimal down lighting for safety purposes only.
2. Trash collection shall be from Wisconsin Avenue.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl Blake, Chrishaun S. Smith, and Michael G. Turnbull to **APPROVE**)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 13, 2022

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE

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ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED.
VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.