

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

**Application for 1300 35<sup>th</sup> Street, N.W.  
(Square 1227, Lot 813)**

**PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF**

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This statement is submitted by Property Frameworks, on behalf of Washington DC Sole Properties, Inc., the owner of the property located at 1300 35<sup>th</sup> 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 District.

Pursuant to Subtitle Y § 300.15 of the Zoning Regulations, the Applicant will file its Prehearing Statement with the Board of Zoning Adjustment ("BZA" or the "Board") no fewer than twenty one days prior to the public hearing for the application. In this statement, and at the public hearing, the Applicant will provide testimony and evidence to meet its burden of proof to obtain the Board's approval of the requested special exception. The following is a preliminary statement demonstrating how the Applicant meets the burden of proof.

**I. BACKGROUND**

The Subject Property is located in the northwest quadrant of the District of Columbia and consists of Lot 813 in Square 1227 and has a land area of approximately 1,506 square feet. Square 1227 is bounded by O Street to the north, 36<sup>th</sup> Street to the west, N Street to the south, and 35<sup>th</sup> Street to the east. The Subject Property is located on the west side of 35<sup>th</sup> Street, N.W., with approximately 23.43 linear feet of frontage on 35<sup>th</sup> Street, and approximately 64.28 linear feet of frontage on N Street. To the west of the Subject Property, fronting 36<sup>th</sup> 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 35<sup>th</sup> Street are also improved with residential uses.

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 second and third floors currently contain a four-unit apartment building. Based upon previous Board orders related to the Subject Property, prior to the establishment of zoning the building

was used as an apartment house in the 1940s.<sup>1</sup> 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. 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. 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 current development pattern within the Square and along the block.

## II. SPECIAL EXCEPTION RELIEF

### A. Changing Uses Within Structures (11-C DCMR § 204.9) – Compliance with Standards

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. 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. The Applicant meets the applicable special exception standards as described below.

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<sup>1</sup> See BZA Order No. 12848, Finding of Fact 6

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 following order, from most restrictive to least restrictive subtitle:*

As stated above, the last Board order issued for the Subject Property was for a special exception to permit an office use on the ground floor of the Subject Property. The Neighborhood Mixed-Use (“NC”) zones are the most restrictive zoning district in which an office use is permitted as a matter of right. As a result, 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 improved with a four-unit apartment house 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 will be visiting the Subject Property. In addition, the proposed use is consistent with the existing uses on the second and third floors of the building.

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. A majority of the uses within 300 feet of the Subject Property are residential uses. Some 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 35<sup>th</sup> 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. In addition, the southwest corner of the intersection of 35<sup>th</sup> Street and O Street is presently improved with Saxbys Coffee, with residential use above. Also, to the west of the Subject Property is the Holy Trinity Church. As a result, the proposed change in use will not adversely affect the present character or future development of the surrounding area since a majority of the area surrounding the Subject Property currently contains similar residential uses or small neighborhood serving retail and services uses. The proposed ground floor dwelling unit is also consistent with the use that is presently located on the second- and third-floors of the building on the Subject Property.

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 considerations, illumination, vibration, odors, and design and siting effects. Use of the ground-floor of the Subject Property as a residential dwelling unit will not increase the amount of foot traffic near the Subject Property since there will no longer be an office use located on the Subject Property. Thus, no customers will visit the Subject Property. The only additional traffic will be that associated with one additional dwelling unit in the apartment house. The building on the Subject Property is a contributing building in the Georgetown National Historic Landmark District and as a result no 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 effect on the existing loading considerations, illumination, vibration, or odors.

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.

### **III. AFFECTED ADVISORY NEIGHBORHOOD COMMISSION**

As required under Subtitle Y § 300.8(1), the Applicant has apprised Advisory Neighborhood Commission (“ANC”) 2E of the application. On January 29, 2018, the Applicant sent correspondence to informed Commissioner Joe Gibbons, Chair, ANC 2E02 and Commissioner Rick Murphy, SMD 2E03, to inform them that the application would soon be submitted to the Board, and to begin coordinating a timeframe for formal engagement with the ANC. In addition, as demonstrated in the attached Certificate of Service, the Applicant has served copies of the application and associated documents on the ANC.

The Applicant will continue to coordinate with ANC 2E, the Office of Planning, and other interested stakeholders between the time of filing the subject application and the public hearing. As part of its prehearing statement that will be filed no less than 21 days prior to the public hearing, the Applicant will include a statement describing the efforts made to discuss the application and receive comments from these entities.

Based on the foregoing, the Applicant has demonstrated that it meets the test for special exception approval under 11-C DCMR § 204.9 of the Zoning Regulations.

**CERTIFICATE OF SERVICE**

I hereby certify that on February, 12 2018, a copy of the foregoing application to the Board of Zoning Adjustment was served by electronic mail on the following at the addresses stated below, with hardcopies sent or delivered to the Office of Planning and the ANC on the same day.

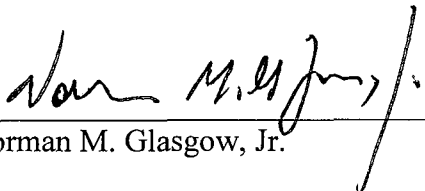
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