

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

**Application for
Harrison Wisconsin Owner, LLC
5151 Wisconsin Avenue, NW
(Square 1666, portions of Lots 806 and 807)**

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

This is an application by Harrison Wisconsin Owner, LLC (“Applicant”) for special exception relief from the strict requirements of the Zoning Regulations to permit the construction of a six-story mixed-use development containing approximately 214 residential dwelling units and approximately 1,500 square feet of ground-level retail use (the “Project”) at 5151 Wisconsin Avenue NW (Square 1666, Portions of 806 and 807) (the “Property”).¹ The Property is split-zoned MU-4 / R-2. The application requests special exception relief pursuant to 11-X DCMR § 901.1 to shift the zone boundary line by 35 feet pursuant to 11-A DCMR § 207.2. The Project will conform to the Zoning Regulations in all other ways.

Attached hereto is a letter from the Applicant authorizing the filing and processing of this application. Upon submission of the application, the Applicant will provide the filing fee for the requested relief.

Pursuant to 11-Y DCMR § 300.15, the Applicant will file its prehearing statement with the Board of Zoning Adjustment (“BZA” or “Board”) no fewer than 21 days prior to the public hearing for the application.

**I.
Jurisdiction of the Board**

The Board has jurisdiction to grant the requested special exception relief pursuant to Subtitle X § 900.1 and Subtitle A § 207.2 of the 2016 Zoning Regulations of the District of Columbia (11 DCMR) .

**II.
List of Exhibits**

- Exhibit A Existing zoning map.
- Exhibit B Latest issued Certificate of Occupancy for entire existing building.
- Exhibit C Photographs of existing conditions on the Property.

¹ As part of the Project, the Applicant will submit a division of lots application to the Office of Tax and Revenue (“OTR”) to create a new, single assessment and taxation (A&T) lot upon which the Project will be located.

- Exhibit D Surveyor’s plat of the Property and proposed building.
- Exhibit E Plans and drawings of proposed building.
- Exhibit F Zoning map showing proposed extension of MU-4 zone boundary line.
- Exhibit G List of maps, plans, or other documents that may be offered as evidence.
- Exhibit H Letter of authorization.
- Exhibit I List of property owners within 200 feet of the Property.
- Exhibit J Outlines of witness testimony and resume of expert witnesses.
- Exhibit K Statement of efforts to apprise ANC of application

III.

Subject Property and Surrounding Context

A. Property

The Property is located in the Friendship Heights neighborhood in the 5100 block of Wisconsin Avenue NW. The Property abuts four streets, including Wisconsin Avenue to the west, Harrison Street to the north, 42nd Street to the east, and Garrison Street to the south. As shown in Exhibit A, the Property, which reflects a new, single A&T lot that will be created for the Project, is split-zoned. The majority of the Property is zoned MU-4, with the eastern portion zoned R-2. In its entirety, the Property contains approximately 61,300 square feet of land area.

The MU-4 zone permits multi-family residential and retail uses as a matter-of-right. The maximum height permitted in the MU-4 zone is 50 feet, not including penthouse. The residential lot occupancy permitted in the MU-4 zone is 75% (with Inclusionary Zoning (“IZ”)). The floor area ratio (“FAR”) permitted in the MU-4 zone is 3.0 FAR (with IZ), of which up to 1.5 FAR may be devoted to non-residential uses. The R-2 zone permits residential use as a matter-of-right. The maximum permitted height in the R-2 zone is 40 feet. The lot occupancy permitted in the R-2 zone is 40%.

The Property is currently improved with a five-story commercial building and a surface parking lot. A copy of the most recent Certificate of Occupancy issued for the entire building is attached as Exhibit B. Photographs of the Property and the existing improvements on the Property are attached as Exhibit C.

B. Surrounding Context

The Property is located along the Wisconsin Avenue corridor in Upper Northwest. Development along the corridor to the north, south and west of the Property is primarily composed of low- and moderate-density mix of commercial uses. To the immediate south of the Property is a commercial building. To the broader north and south and west are other commercial uses and some multi-family residential uses. Lower density residential development is primarily found to the immediate east and west of the Wisconsin Avenue corridor, with some institutional and

moderate-density residential interspersed. Notable locations and developments in proximity to the Property include Fort Reno Park (0.25 miles southeast), Georgetown Day School Campus (0.3 miles south), and the Chevy Chase Pavilion and former Mazza Gallerie developments (0.25 miles north). The Friendship Heights Metrorail station is located approximately 0.1 miles to the north of the Property, and the Tenleytown Metrorail is located approximately 0.6 miles to the south.

IV. Description of the Project

The Applicant plans to redevelop the Property with a new mixed-use building containing approximately 214 residential dwelling units and approximately 1,500 square feet of ground-level commercial use (the “Project”). A Surveyor’s plat showing the proposed building in relation to existing Lots 806 and 807 is attached at Exhibit D, and plans and drawings of the proposed building are attached as Exhibit E (the “Plans”). As shown on the Plans, the building will have a maximum height of 50 feet, not including penthouse, as measured from the level of the curb along the 42nd Street frontage. The Project will have a maximum density of approximately 2.98 FAR (approximately 169,000 square feet of gross floor area (“GFA”)), of which approximately 0.03 FAR (approximately 1,500 GFA) will be devoted to non-residential uses.² In compliance with current IZ regulations, approximately 12% of the Project’s residential GFA will be devoted to affordable housing.³ The Project will contain approximately 86 – 167 vehicle parking spaces on two levels of below-grade parking, and at least 71 long-term and 11 short-term bicycle parking spaces. Vehicular and loading access to the Project will be primarily via a relocated curb cut on Harrison Street. Access will also be possible via an existing curb cut on Garrison Street.

The proposed six-story (plus penthouse) building will feature a double-loaded corridor situated around a closed courtyard in the center of the building, providing windows for the external and internal units. The ground floor will include a café, dwelling units, and residential lobby and amenity spaces. The second floor will primarily contain dwelling units, and, due to the Property’s topography, will also contain access to the parking garage and loading facilities on the east side of the building. Floors 3-6 will contain dwelling units, as will the penthouse.

The Building façade is articulated using a series of projecting bays, balconies, and varied materials. The ground floor is activated by the residential lobby and amenity spaces, and in particular by the commercial use at the corner of Wisconsin Avenue and Harrison Street. Outdoor seating to accommodate commercial patrons will further activate the block. Above the ground floor, the façade pattern has a vertical expression created through differentiations in materials and

² Zoning computations for the Project are based upon the MU-4 zoned portion of the Property, as would be extended by the requested special exception. As shown on the Plans, the extended MU-4 zone would have a land area of approximately 56,800 square feet. This is the land area used for purposes of computing the density, lot occupancy, and IZ requirements for the Project, as well as any other zoning requirement that is based upon land area. The Applicant has also ensured that the density within entire MU-4 zoned portion of Square 1666, which includes the existing office building on Lot 804, will not exceed the maximum 3.0 FAR (1.5 FAR non-residential) permitted as a matter of right in the MU-4 zone. The Applicant has confirmed this with the Zoning Administrator.

³ Based upon preliminary IZ calculations. Final IZ set aside requirement for the Project will be determined during the building permit review process.

bay projections.⁴ Punched windows will provide additional façade articulation, as will balconies along Wisconsin Avenue and Harrison Street. The materials proposed for the Project will be a combination of brick, metal panel, and fiber cement.

V. Areas of Requested Zoning Relief

Pursuant to 11-A DCMR § 207.2, the Board may grant a special exception for a split-zoned property to allow regulations governing the use, height, and bulk of structures, and the use of land, in a less restrictive zoned portion of a property to apply to a more restrictive zoned portion of a property, subject to the general special exception criteria of Subtitle X § 901.2 and the following conditions:

- a) The extension shall be limited to that portion of the lot in the more restrictive use zone but not exceeding thirty-five feet (35 ft.);
- b) In authorizing an extension, the Board of Zoning Adjustment shall require compliance with Subtitle A § 207.1(d);
- c) The extension shall have no adverse effect upon the present character and future development of the neighborhood; and
- d) The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

As described above, the Property is split zoned MU-4/R-2, with the majority of the Property in the MU-4 zone. To facilitate construction of the Project, the Applicant requests a special exception to extend the MU-4 zone boundary line by 35 feet into the R-2 zoned portion of the Property. A map showing the requested zone boundary line extension in relation to the proposed building is attached as Exhibit F.

Pursuant to D.C. Code § 6-641.07(g)(2) and 11-X DCMR § 901.2, the Board is authorized to grant a special exception where it finds 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, subject in each case to the special conditions specified. Relief granted through a special exception is presumed appropriate, reasonable, and compatible

⁴ The single and aggregate widths of the bay projections shown in the Plans along Wisconsin Avenue are consistent with Section 3202.10.3 (Bay Windows) of the D.C. Construction Code Supplement. The widths of the bay projections along Harrison Street, as shown in the Plans, will require code modification and public space permit approval by the DCRA Code Official, DDOT, and/or the Public Space Committee during building permit review. The Applicant requests design flexibility for the Project's bay projections to accommodate changes required by the Code Official, DDOT, and/or Public Space Committee during building permit and public space review. In the event the code modification along Harrison Street is not approved, the Applicant will design the bay projections along Harrison Street in accordance with the aforementioned bay window provisions of the D.C. Construction Code Supplement. Such changes, if necessary, will not affect the overall scale, massing, or exterior envelope of the building, and will not cause or increase any areas of zoning relief.

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.*

VI. SPECIAL EXCEPTION

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;*

The general purpose and intent of the Zoning Regulations is to establish standards for the purpose of regulating the use and development of property in a manner that promotes the public health, safety, morals, convenience, order, prosperity, and general welfare in order to:

- Provide adequate light and air;
- Prevent undue concentration of population and the overcrowding of land; and
- Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

The requested special exception will be in harmony with the above-stated purposes of the Zoning Regulations. The extension of the MU-4 zone boundary line into the R-2 zoned portion of the Property by 35 feet will not have any impact on light and air to adjacent properties. The proposed building will be separated from the closest existing residential uses to the north by Harrison Street, which has a width of 85 - 90 feet (inclusive of recorded 15-foot building restriction lines on either side). The existing residential uses on the east side of 42nd Street will be approximately 220 feet from the proposed building. The properties on the west side of Wisconsin Avenue are improved with commercial uses (retail, service, office, funeral home), and will be separated from the proposed building by Wisconsin Avenue, which is approximately 120 feet wide. The existing office building to the immediate south does not have any north-facing windows as it is constructed face on line with the existing building on the Property. The proposed building will be similarly constructed with face on line with the building to the south. As such, there will be no impact to light and air on the immediately adjacent building.

The requested special exception will not cause undue concentration of population or overcrowding of land. In contrast, the requested relief will allow for a modest amount of additional density on a block, and in an area of the District where additional residential density is supported. The Project exemplifies smart-growth principals given its location in a walkable, transit-rich location that has access to numerous neighborhood-serving amenities. The additional residential density afforded by the requested relief is consistent with several of the District's land use, housing, urban design, and transportation policies set forth in the Comprehensive Plan. For example, the additional density will help the District achieve its housing goal of 36,000 new dwelling units, including 12,000 affordable units by 2025. The Property is located within the Rock Creek West Planning Area of the Comprehensive Plan, which is identified in the District's Housing Equity Report (October 2019) as being the planning area most in need of affordable housing. Specifically, the Housing Equity Report sets an overall housing production goal of 1,260 dwelling units for the Rock Creek West Planning Area, and an affordable housing production goal of 1,990 affordable dwelling units.⁵ Based on these goals, and a preliminary estimate of the number of dwelling units (overall and affordable) in the proposed building, the Project has potential contribute approximately 17% of the overall housing goal, and approximately 1.2% of the affordable housing goal for the Rock Creek West Planning Area.

The requested zone boundary line extension will also better utilize what is currently a very underutilized site considering its location to transit and amenities. Given the District goals for the Rock Creek West Planning Area, the existing commercial building and surface parking are not the highest and best uses of the Property. Rather, the Applicant's proposed residential building is a much more productive use of available land resources that will result in conditions that are favorable to, among other things, transportation, housing, and the supply of public services.

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

The requested special exception will not adversely affect the use of neighboring property in accordance with the Zoning Regulations. As discussed above, the proposed building is separated from most adjacent properties by streets or undeveloped land. The proposed building will be separated from the residential uses to the east by the substantial undeveloped eastern portion of subject block and by 42nd Street, which amounts to approximately 220 feet of separation. The proposed building will be separated from the properties to the west by Wisconsin Avenue, which is approximately 120 feet wide, which would be the same with or without the requested zone boundary line extension.

The proposed building will be separated from the properties to the north by Harrison Street, which has a width of approximately 85 – 90 feet, inclusive of recorded 15-

⁵ The Housing Equity Report notes that for the Rock Creek West Planning Area, the new affordable housing goals are greater than the total housing goals because the affordable housing goals include not only net new production, but also conversion of existing housing into subsidized housing and voucher recipients living in non-restricted housing.

foot building restriction lines on either side. Furthermore, a substantial portion of the proposed building will sit directly across from another 50-foot multi-family residential building on the north side of Harrison Street. Finally, as mentioned previously, the neighboring property to the south is improved with a commercial office building that is built face on line with the existing building on the Property. The replacement of the existing building on the Property with the Applicant's proposed residential building is not expected to have any impacts on the adjacent office building.

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

As demonstrated below, the Applicant fully satisfies the special exception conditions of 11-A DCMR § 207.2(a)-(d).

A-207.2(a) The extension shall be limited to that portion of the lot in the more restrictive use zone but not exceeding thirty-five feet (35 ft.).

The Applicant's request to extend the MU-4 zone boundary into the R-2 zoned portion of the Property is limited to 35 feet.

A-207.2(b) In authorizing an extension, the Board of Zoning Adjustment shall require compliance with Subtitle A § 207.1(d).⁶

This section is not applicable to the application since the less restrictive MU-4 zoned portion of the Property is proposed to be extended over the more restrictive R-2 zoned portion of the Property.⁷

A-207.2(c) The extension shall have no adverse effect upon the present character and future development of the neighborhood.

The zone boundary line extension will not adversely affect the character and future development of the neighborhood. In contrast, the requested relief will facilitate the development of a project that will greatly benefit the neighborhood, and the District. As described above, the character of the neighborhood consists of the Wisconsin Avenue mixed-use corridor on the west and lower-density residential to the east. The proposed building is almost entirely within the portion of the Property that is already zoned MU-4. In fact, of the approximately 169,000 GFA that makes up the proposed building, only approximately 12,500 GFA is located

⁶ Subtitle A § 207.1(d) states “[f]or computation purposes, any portion of the lot located in an R-1 or R-2 zone shall be deemed to be limited to a floor area ratio (FAR) of 0.4, any portion of the lot located in an R-3 zone shall be deemed to be limited to an FAR of 0.6, and any portion of the lot located in an RF-1, RF-2, or RF-3 zone shall be deemed to be limited to an FAR of 0.9”

⁷ The applicability of Subtitle A § 207.1(d) to special exception requests to extend the zone boundary line under Subtitle A § 207.2 was specifically addressed in BZA Case No. 20095. Upon a request from the Office of Planning for clarification on whether this section applies (*See Exhibit 35*), the Applicant submitted a determination from the Zoning Administrator stating that Subtitle A § 207.1(d) does not apply when the less restrictive zone is being extended over the more restrictive zone (*See Exhibit 40*). In its deliberations to approve the case, the Board credited the Zoning Administrator's determination.

within the area of the 35-foot zone boundary line extension. Thus, like the existing building on the Property, the proposed building will be concentrated toward Wisconsin Avenue on the western portion of the block.

The requested relief will also not impact the future development of the neighborhood. In fact, considering the recent amendments to the Comprehensive Plan for upper Wisconsin Avenue, and in particular amendments to the Future Land Use Map, it is likely that future development along upper Wisconsin Avenue will be similar to the Applicant's proposed Project, if not more intensive. With respect to the lower density residential area to the east, the eastern portion of the block will continue to be zoned R-2. Thus, any redevelopment of this portion of the block in accordance with existing zoning will be similar in scale to the immediately adjacent residential uses.

A-207.2(d) The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.

Given the Property's location on the Wisconsin Avenue corridor, the design of the proposed building, and its separation from adjacent residential properties, the Applicant does not believe any other requirements are necessary to protect adjacent and nearby property.

**VII.
Witnesses**

1. Jad Donohoe, Senior Vice President, Harrison Wisconsin Owner, LLC.
2. Sarah Alexander, Principal, Torti Gallas Urban
* *Proffered as an expert in architecture*
3. Shane Dettman, Director of Planning Services, Holland & Knight LLP
* *Proffered as an expert in zoning and land use planning*

**VIII.
Conclusion**

As set forth above, the Applicant has demonstrated that it satisfies the burden of proof for the requested special exception relief. As such, the Applicant respectfully requests the Board to approve the application.