

In the Matter of Little Deli, t/a Chuck's Deli

Applicant.

BZA Application No.:

This statement of Reasons and Authorities is submitted on behalf of the Little Deli Delicatessen, trading as Chuck's Deli, by its counsel, John W. Davis, in support of an application for a special exception to allow the use of a portion of the lobby floor (First floor) of the Cambridge Apartments Building as a prepared food shop.

This is an application brought pursuant to 11 DCMR § 3104 (Subsection 2003.1) for a special exception to again allow a prepared food shop to be placed on the lobby floor at the premises located at 1221 Massachusetts

Avenue, N.W., at Lot 0044 in Square 0282 (hereinafter referred to as “the Cambridge” or “the Property”).

II. JURISDICTION OVER THE APPLICATION

Under its enabling legislation, the Board of Zoning Adjustment is authorized to “make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent.” D.C. Code § 6-641.07(d) (2001). **Fleischman v. Board of Zoning Adjustment, 27 A.3d 554, 558 (2011).** The Board’s Regulations and precedent provide that where a specific land use has already been approved by a prior grant of special exception, and no change in that use and no additional building construction is required, then a use within that same structure is allowed, as a matter of right. 11 DCMR § 3104, Subsection 2003.

A. Prior Use of Space in the Property as a Prepared Food Shop

There have been more than forty (40) Certificates of Occupancy for business use issued since 1960 for tenants of the Property. Most of the businesses were non-profit organizations. Since the year 2000, there have been nine (9) Certificates of Occupancy issued to tenants of the Property, including seven of which were issued to for-profit businesses. Two of the Certificates of Occupancy issued since 2004 were issued to for-profit retail operations: a delicatessen, and a delicatessen/convenience store.

This application is for a new approval for a for-profit prepared food shop , which will occupy space which which was formerly part of the suite occupied by one of the current for-profit tenants of the Property, whose business is both professional and retail. That space was previously zoned as a C-1 district. According to the Board's regulations, the space given up by the commercial tenant may be used for another commercial purpose, as a matter of right. 31 DCMR § 3104, Subsection 2003.1.

**B. The Proposed Use Will Not Adversely Affect the Present
Character or Future Development of the Surrounding Area**

The Property is located one block east of Thomas Circle, on the northeast corner of the intersection of Massachusetts Avenue and 13th Street. The Property is located in a neighborhood comprised predominantly of high density apartment buildings, hotels, and office buildings. The Massachusetts House, an apartment building containing about 275 units, is located directly across Massachusetts Street from the Property. Diagonally across from the Property is a major, block-long office building on the southwest corner of the intersection of 13th Street and Massachusetts Avenue. That building houses several commercial establishments, including a restaurant.

There are at least three major hotels within one block of the Property, including the Comfort Inn (one block north on 13th Street); the Washington

Plaza (one block west on the north side of Thomas Circle); and the Donovan House (one block west on the south side of Thomas Circle). The Property is approximately one-quarter mile from the Convention Center, and is within three blocks of numerous other major hotels

The Cambridge Apartment Building was constructed in 1963, and has a total area of 190,000 square feet. Throughout its history, the Cambridge has been used as an apartment building. It is a ten-story building which houses a total of 231 apartments, most of which are one- and two-bedroom units. The Cambridge Apartments is owned by Cambridge Associates Limited Partnership, and the Property is managed by Borger Management, Inc., whose location is 1111 14th Street, N.W., in the District of Columbia.

The Property is located in a neighborhood zoned R-5-E, and is in Advisory Neighborhood Commission District 2-F. Although the Property is in an R-5 zone, it is also located in the Downtown Development District. Within the past eight years, two separate Certificates of Occupancy have been issued by DCRA for a tenant of the Property to open a delicatessen and a delicatessen/convenience store. Currently, there are four, different for-profit businesses on the lobby floor of the property. There is a professional photography studio, a fitness center specializing in Pilates, a dental group, and an optometrist office and store.

C. Parking Provisions

The Applicant expects that 90% of his business will be walk-in customers who are either tenants of the Property, or who work for businesses in the immediate neighborhood of the Property. As a result, no parking spaces are required to be provided. There are numerous on-street parking spaces which are located immediately adjacent to the Property.

Loading requirements are few, and are needed only infrequently, but, when required, loading is provided on-site in areas adjacent to the side and rear of the Property.

D. Zoning of the Property

The Property is in Square 0282, which is zoned R-5-E. There are squares immediately across Massachusetts Avenue from the Property that are zoned C-2-C. The Property is in the Downtown Development Overlay District, and is in ANC District 2F.

The R-5 zoning classification permits a variety of matter of right uses, including, but not limited to, youth development centers, child/elderly day care centers, hotels, apartment buildings, chanceries, private clubs, lodges, museums, fraternity houses, and dormitories.

The Downtown Development Overlay District encourages retail, hotel, entertainment, arts and cultural uses and development. The DD Overlay is also designed to foster small and minority businesses. The Applicant is a small and minority business.

The Property is surrounded by high-rise apartment buildings, high-rise office buildings, high-rise condominiums, and is located alongside 13th Street, which is a major commercial artery.

III. JUSTIFICATION FOR THE SPECIAL EXCEPTION

Pursuant to 11 DCMR § 3104, the Board is authorized to grant a special exception in a case where the Board has determined that 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 Maps.” 11 DCMR § 3104.1.

The Property is unique due to the existing building originally being constructed as an apartment building, a residential use, with 190,000 square feet of gross floor area. The lobby of the Property (first floor) has been modified to suit the existing long term mixed use of the building as commercial and office space, as a result of the granting of a use variance by

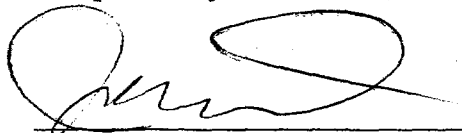
the Board in 1989. The unique situation of the previous approval of the use and the interior modifications of the building as a result of that approval result in an extraordinary or exceptional situation or condition. The Property has functioned with both residential and commercial uses for approximately 22 years. Additionally there has been a specific use granted for a delicatessen and delicatessen/convenience store since the last Use Variance was issued to the Property. The most recent delicatessen/convenience store that existed on the property in 2004 received a Certificate of Occupancy based on the same unit having had a delicatessen in the previous year. It would be an exceptional and undue hardship to not allow the use to continue when both the residential and business tenants in the Cambridge could benefit from the re-opening of a prepared food shop in the building.

1. Can relief be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Regulations and Map?

Upon approval of special exception relief for the property in question, the authorized adjunct will supply tenants of the apartment house with commodities and services supplementary to those in established Commercial Districts. The proximity of Commercial Districts to the adjunct proposed would not be greatly affected. The relief sought by the Applicant can be granted without detriment to the public good and without impairing the

intent, and integrity of the zone because of (a) a low intensity use, (b) the adequacy of on-street and off-street parking. As noted on the list of lease holders of this property a parking garage is listed and is used by tenants. (c) A first floor prepared food shop would provide convenience to the apartment house tenants, especially those that are elderly or have limited transportation or access to commodities and services provided by the Applicant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John W. Davis', written over a horizontal line.

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