

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

Application of
CWC, Inc. t/a Frager's Hardware
1113-1117 Pennsylvania Ave., S.E.
Lot 44, Square 994 and
Mahmoud Abd-alla, Trustee,
1123 Pennsylvania Avenue, S.E.,
Lot 838, Square 994

BZA Application No. _____
ANC 6B, SMD04

RECEIVED
D.C. OFFICE OF ZONING
2012 JAN 27 PM 3:02

**STATEMENT OF (A) EXISTING AND INTENDED
USE AND (B) JUSTIFICATION FOR
USE VARIANCE RELIEF ("STATEMENT")**

I. DESCRIPTION OF APPLICANT; NATURE OF RELIEF SOUGHT

This Application is submitted by CWC, Inc., the owner of Frager's Hardware Store, and Mahmoud Abd-alla, Trustee ("**Applicant**"), by CWC, Inc.'s attorneys, Greenstein DeLorme & Luchs, P.C., by Jacques B. DePuy, Esquire and Kate M. Olson, Esquire.

The Application seeks an use variance to allow a small portion of land that is zoned R-4, and which is located immediately adjacent to a CHC/C-2-A zone district, to be used for the display and sale by Frager's Hardware Store ("**Hardware Store**") of seasonal merchandise, such as outdoor plants, flowers and mulch in the summer and Christmas trees, wreaths and snow shovels in the winter. The property that is included in the Application is located at 1113-1117 Pennsylvania Avenue, S.E. (Lot 44, Square 994) and 1123 Pennsylvania Avenue, S.E. (Lot 838, Square 994) ("**Property**").¹ For the purposes of this Statement, the small portion of the Property that is zoned R-4 shall be referred to as "Rear Portion". See Zoning Map, Exhibit "A".

¹ The Hardware Store also consists of the ground floor of a building located at 1101 Pennsylvania Avenue, S.E. (Lot 827, Square 994) which is owned by an affiliate of CWC, Inc. This property is zoned CHC/C-2-A in its entirety and is not included in the Application.

II. FRAGER'S HARDWARE STORE

The Hardware Store has been in business and has been a Capitol Hill (commercial) institution since 1920. Frager's has used the Rear Portion of the Property for the display, sale and storage of seasonal merchandise since the 1930s.² A more detailed description of the Hardware Store is attached as Exhibit "B".

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property is split-zoned. The majority of the Property, along Pennsylvania Avenue, S.E., is zoned CHC/C-2-A. The Rear Portion, which is small³ and for all intents and purposes is "land-locked", is zoned R-4. See Zoning Map, Exhibit "A". The Property is located within the Capitol Hill Historic District.

The Rear Portion is located behind and to the south of the commercial buildings located on Pennsylvania Avenue, S.E., behind and to east of several R-4 properties on 11th Street, S.E. and behind and to the west of several R-4 properties on 12th Street, S.E. The Rear Portion is accessible by vehicles from 11th Street, S.E. via an approximately ten (10) foot wide private alley.⁴ The private alley is owned, in large part, by CWC, Inc. and is subject to an easement for ingress to, and egress from, the rear of Lots 22⁵, 23, 24, 25 and 44 ("**Easement Properties**").⁶

² Frager's Hardware Store has used the rear portion of adjacent Lot 838 (843 square feet) for approximately eighty (80) years.

³ The Rear Portion is approximately 4,590 square feet in size (area) inclusive of the leased area from the adjacent Lot 838.

⁴ This alley is located between Lot 30 (514 11th Street, S.E.) and Lot 25 (516 11th Street, S.E.).

⁵ Shown as Lot 835 on the Zoning Map, Exhibit "A".

⁶ CWC, Inc owns approximately 8 feet of the width of the private alley. The owner of Lot 25 owns 2 feet of the width of the alley and the owners of Easement Properties own 5 feet of the 10 foot easement in the rear.

RECEIVED
U.C. OFFICE OF ZONING
2012 JAN 27 PM 3:02

IV. PRIOR APPROVAL BY BOARD OF ZONING ADJUSTMENT OF A USE VARIANCE FOR THE PROPERTY

In 1991, Order 15557, the Board of Zoning Adjustment approved a use variance sought by the Applicant CWC, Inc. for the Property. A copy of this Order is attached as Exhibit "C". The use variance allowed a portion of a proposed addition to the building at 1113-1117 Pennsylvania Avenue, S.E. to be located in the R-4 portion of the Property and to be used by Frager's Hardware Store for retail purposes.⁷

V. EXISTING AND INTENDED USE OF REAR PORTION OF PROPERTY

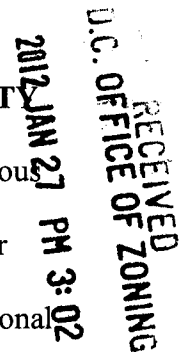
Existing Use. The Rear Portion of the Property is improved with an impervious "blacktop" surface. It is currently used by Frager's Hardware Store for -- and has for approximately eighty (80) years been used for -- the display, storage and sale of seasonal merchandise. In addition, an approximately ten (10) foot wide private alley, which is also paved with a "blacktop" surface, connects the Rear Portion to 11th Street, S.E. and provides ingress to and egress from the Property for motor vehicles (including for trash pickup from the rear of the Easement Properties). See Site Photographs, Exhibit "D".

Intended Use. The Applicant proposes to continue the use of the Rear Portion for the display, storage and sale of seasonal goods. The Applicant also proposes to screen the Rear Portion with landscaping. See site plan of proposed use attached as Exhibit "E."

VI. JUSTIFICATION FOR USE VARIANCE

An Applicant must satisfy three requirements to obtain approval of a use variance: (i) a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (ii) undue hardship to the owner; and (iii) no substantial harm to the public

⁷ The Applicant later decided that construction of the addition was infeasible economically and the above-referenced BZA Order lapsed.



good and no substantial impairment of the zone plan. Monaco v. BZA, 407 A.2d 1091, 1096 (D.C. 1980); National Black Child Development Institute v. BZA, 483 A. 2d 687, 690 (D.C. 1984). The subject Application meets these legal tests, as discussed below.

A. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition of a Specific Piece of Property.

The Rear Portion of the Property is unique in many respects: specifically, it is (A) “landlocked,” (B) cannot be subdivided into a record lot that complies with the Zoning Regulations, (C) has no street frontage (except that ten (10) foot wide portion of the Property which is subject to an easement and functions as a private alley), (D) is accessed from 11th Street only by means of a narrow private alley, (E) has been split-zoned for over fifty (50) years and (F) has been used for retail use for approximately eighty (80) years.

U.C. OFFICE OF ZONING
RECEIVED
2012 JAN 27 PM 3:02

B. Undue Hardship to the Owner.

No residential use of the Rear Portion as a row dwelling can be made because, as stated above, the lot width and street frontage requirements cannot be met. In addition, no other use allowed by the R-4 zone district is feasible, appropriate or reasonable for such a small “landlocked” parcel.

The Rear Portion has for approximately eighty (80) years been used for outdoor storage, display and sale of merchandise by Frager’s Hardware Store without significant adverse impacts on neighboring properties. The continued use of the Rear Portion for its historic use is reasonable and appropriate.

The owner would be deprived of any reasonable use of the Rear Portion if the requested use variance is not granted. Such a deprivation of any reasonable use would constitute a hardship to the owner, including a decline in sales.

C. No Substantial Harm to the Public Good and No Substantial Impairment of the Zone Plan.

The requested use variance can be granted without creating adverse impacts on nearby residential properties. First, such use is screened by seven (7) foot high fences that separate the Rear Portion from all neighboring properties. Second, the use will be screened and buffered by landscaping. Third, the proposed use has been the historic use for approximately eighty (80) years and has generated few complaints by neighbors. Finally, the display, storage and sale of outdoor plant material, small trees, flowers, Christmas trees and similar merchandise will create an attractive “summer garden” or “winter garden” at the rear of the Property.

In BZA Application No. 15557, this Board found as a matter of law that the applicant met the burden of proof for a use variance and that the requested relief “can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map.” Therefore the requested use variance can be granted without harm to the public or the zone plan.

RECEIVED
J.C. OFFICE OF ZONING
2012 JAN 27 PM 3:02

VII. EXHIBITS

- Exhibit A: Zoning Map (with the Property outlined in red).
- Exhibit B: History of Frager’s Hardware Store.
- Exhibit C: BZA Order 15557.
- Exhibit D: Site Photographs.
- Exhibit E: Site Plan.
- Exhibit F: Certificate of Occupancy.
- Exhibit G: List (together with mailing labels) of property owners within 200 feet of the subject property.

VIII. CONCLUSION

For the reasons set forth above, the Applicant is entitled to, and respectfully requests approval of, the grant of a variance to allow the use of the Rear Portion of the Property for the display, sale and storage of outdoor merchandise.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

By: Jacques B. DePuy JR
Jacques B. DePuy

By: Kate M. Olson
Kate M. Olson

1620 L Street, N.W., Suite 900
Washington, D.C. 20036
Telephone: (202) 452-1400

Attorneys for Applicant

RECEIVED
D.C. OFFICE OF ZONING
2012 JAN 27 PM 3:02