

BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT

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Application of Shophouse LLC  
2805 M Street, N.W.

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

Shophouse, LLC ("Applicant") proposes to open a Southeast Asian-inspired "fast casual" restaurant at 2805 M Street, N.W., Washington, D.C. (Square 1212, Lot 802) ("Property"). The restaurant is classified as a fast food establishment under the Zoning Regulations based on its operations. The Property contains approximately 1,905 square feet of land area and is improved with an existing two-story building with approximately 3,181 square feet of gross floor area. Until recently, the building was occupied by Furin's Restaurant. In order to renovate the space for modern food service uses, updated systems and new kitchen equipment while maintaining useable seating space, the Applicant proposes to build a one-story addition at the ground floor that fills in a "dog-leg" court at the side of the building and install a walk-in cooler at the back of the building. The addition and new cooler would increase the size of the ground floor by approximately 166 square feet of gross floor area ("GFA"). The maximum floor area ratio ("FAR") of the building would increase from 1.67 FAR, as authorized under BZA Order No. 18252, to 1.75 FAR. The Property is located in the C-2-A District on north side of M Street, just west of 28th Street, and also falls within the boundaries of the Georgetown Historic District.

II. Relief Requested

A. Variances

1. Standard of Review

Variance relief is required from the floor area ratio limitations of section 771.2, the rear yard requirements of section 774.1, and the restriction on enlargements to nonconforming structures under section 2001.3 to increase the nonconformity of the rear yard depth. Pursuant to D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3013.2, the Board is authorized to grant variances where it finds that three conditions exist:

- (a) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition,

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- (b) the owner would encounter practical difficulties or undue hardship if the zoning regulations were strictly applied; and
- (c) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

As discussed below and as will be further explained at the public hearing and through evidence submitted to the record, all three prongs of the variance test are met in this Application

2 *Unusual, Exceptional or Extraordinary Conditions Inherent in Property*

In BZA Case No 18252, the Board granted a use variance from the floor area ratio limitations for the Property. In doing so, the Board found that the Property's small size and existing FAR per floor, in combination with its long-standing history of commercial use, is an exceptional situation affecting the property's use in accordance with the existing regulations. Those regulations limit commercial uses to 1.5 FAR but the Board granted relief to allow non-residential uses to occupy the entirety of the building, or 1.67 FAR

In addition to its small size, the lot is exceptionally narrow, given its depth, and the lot is already improved with an existing building, which places further constraints on use and layout of the property

3. *Practical Difficulties; Undue Hardship*

As shown on the plans included with the application, the narrowness of the existing lot and building negatively affect the internal design and layout of the proposed food establishment use. The previous deli/restaurant use at the site had been in existence since at least 1985 and had not been updated since that time to meet current standards for kitchen equipment, fire safety and food handling and storage. The new food cooler is necessary component of the critical upgrades to the property and will extend into the existing rear yard, which is 9.3 feet in depth where a minimum depth of 15 feet is required. The rear yard depth will be reduced to approximately one foot.

The applicant will also construct a one-story addition to fill in a court at the east side of the property to accommodate modern kitchen facilities. The addition and the walk-in cooler will increase the gross floor area of the building by approximately 166 square feet, resulting in an overall density of 1.75 FAR. In a normal food establishment, one can anticipate that the ancillary egress, support, kitchen and storage areas comprise up to approximately 40-50% of the overall building footprint. In this particular location, the challenges of the existing lot width and building layout hamper the applicant's ability to provide the necessary support spaces while maintaining the required means of egress, storage and kitchen areas. Without the

proposed additions, 50-60% of the existing first floor would be devoted to "back of house" spaces, jeopardizing the viability of any type of food establishment at this site.

The additional 166 square feet of space to be constructed for a modern kitchen facilities, food storage and walk-in coolers is too small to be used for residential purposes. If the Applicant were forced to use this space only for residential purposes, it would create a great hardship. The Applicant would be unable to make productive use of the *de minimus* additions. It would also force too much of the existing floor space to be devoted to back of house spaces, making the rest of the building economically unproductive for permissible food establishment uses

4. *No Substantial Detriment to Public Good; No Harm to Zone Plan*

There will be no substantial detriment to the public good and no substantial impairment to the intent, purpose and integrity of the zone plan by approving the project as proposed. The proposed development will bring a new, desirable food establishment use to Georgetown and allow for the renovation of a contributing building to the historic district. The building's proposed FAR will be consistent with all-commercial buildings that already line M Street in the historic district and will allow for the continuing viability of the building. With respect to the rear yard relief, the reduced depth will not create any adverse impacts and will actually improve conditions. Presently, the rear of the building is in a dilapidated condition, as shown in the photographs included with the drawings. The walk-in cooler will replace outmoded equipment, which has reached the end of its useful lifespan. It will be enclosed by a new wood fence, creating attractive conditions along the private alley to the rear of the property. Because of the existing alley, the one-story cooler will not block the light and air of adjacent properties

B. **Special Exception**

Section 773.1 of the Zoning Regulations provides that the Board of Zoning Adjustment may grant special exception relief for a fast food establishment in the C-2-A District subject to certain conditions. The Board may modify these conditions, provided that the modification complies with general purposes and intent of this section. See 11 DCMR § 733.12.

**733.2 *No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley.***

The property is not located within twenty-five feet of a residential district. The closest residential district is located more than twenty-five feet away to the north.

**733.3 *If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot.***

The lot lines of the property do not abut an alley containing a zone district boundary line.

**733.4     *Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District.***

The Applicant seeks a modification from this requirement to allow the refuse containers to be housed in the alcove outside the rear door in sealed fiberglass containers. Trash will be removed on a daily basis.

**733.5     *The use shall not include a drive-through.***

Shophouse does not propose and shall not include a drive-through as part of its use of the property.

**733.6     *There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District.***

The only customer entrance will front on M Street, which is commercially zoned

**733.7     *The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions.***

The proposed fast food establishment has been designed and will be operated so as not to become objectionable to neighboring properties. It will be virtually indistinguishable from a restaurant, as defined under the Zoning Regulations, and will not create any excessive noise, sounds, odors, and lights. The planned hours of operation will be 11:00 a.m. to 10:00 p.m. daily. These hours are consistent with those of restaurants along this commercial sector of M Street, and in fact represent earlier closing hours than many other establishments.

**733.8     *The use shall provide sufficient off-street parking, but not less than that required by § 2101.1, to accommodate the needs of patrons and employees.***

The building is not required to and presently does not provide parking spaces. Because the building is a contributing structure to the Georgetown Historic District, and the proposed additions do not increase the gross floor area of the building by more than 50 percent, no additional parking is required.

**733.9     *The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.***

Shophouse will occupy an existing building in the historic district and thus will not be changing existing conditions with respect to traffic conditions.

**733.10    *There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site.***

The private alley at the rear of the property will allow for deliveries to be made and trash to be collected without obstructing public rights-of-way.

**733.11    *The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.***

The proposed fast food establishment will be located in a building that is being renovated in accordance with plans approved by the Old Georgetown Board of the Commission of Fine Arts. The renovations include attractively designed facades and screening elements along the street and an improved circulation plan.

### **III. Conclusion**

Pursuant to section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. Through the Applicant's written statement, and through testimony and evidence presented at the public hearing, the Applicant will demonstrate how it meets its burden of proof to obtain the Board's approval of the special exception.