

**BOARD OF ZONING ADJUSTMENT**  
**SPECIAL EXCEPTION APPLICATION NO. 18546**

**PRE-HEARING STATEMENT**

**1409 H Street, NE (Square 1049, Lot 25) – Fast Food Establishment**  
**Tsurunaki LLC (Applicant/Property Owner)**  
**Manny & Olga's Pizza (Tenant/Operator)**

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**I. Introduction**

This pre-hearing statement is being submitted on behalf of the Applicant (the "Applicant") in BZA Application No 18546 (the "Application"), which seeks special exception approval under 11 DCMR § 733 to operate a fast food establishment in the HS-A/C-3-A zone district, at 1409 H Street, NE (Square 1049, Lot 25) (the "Property"). The Applicant is the owner of the Property. Manny & Olga's is the Property's tenant and the operator of the proposed use.

This Statement describes the nature of the proposed use and the surrounding area, and explains how the Application satisfies the specific special exception requirements under § 3104.2 and § 733. Attached hereto as Exhibit A are photos of the Property and the surrounding area.

**II The Property and Surrounding Neighborhood**

The Property is located on the south side of H Street, NE, near the center of the fourteen-hundred block of H Street. It is a narrow rectangular-shaped property, consisting of approximately 800 square feet of land area. The Property consists of a small, two-story row structure (the "Building") which, from available records, was most recently used as a barber shop; although it has been vacant for several years. The Applicant will use the Building's first floor. The second floor is currently vacant. The Building has a front entrance on H Street, and is also accessible in the Building's rear from an alley that dead ends approximately three feet beyond the Property's eastern boundary.

The Property is located within the HS-A/C-3-A zone district. This section of the H Street corridor consists primarily of low and moderate density commercial uses. While this block of H Street has undergone significant positive change, there are still a few vacant properties, including the Subject Property. The closest Residence zone district property is about four hundred (400)

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feet from the Property, to the south. The Property is separated from these residential properties to the south by a gasoline service station, 160-foot wide Maryland Avenue, and then another commercial block at 14<sup>th</sup> and G Streets, NE.

The rear of the Property is substantially screened from view from Maryland Avenue by a new Shell service station and convenience store, which includes a six-foot high brick wall at the rear of that property (see attached photos) This portion of H Street has metered parking The rear of the Subject Property does not contain a parking space. Access to the rear of the Property is partially obstructed by a utility pole and guy wires

### III The Application Satisfies Special Exception Requirements of Sections 3104 and 733

#### A. Overview

Pursuant to Section 3104.1 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, 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 also, in this case, to the specific requirements for relief under Section 733 of the Zoning Regulations

Uses that are permitted by special exception are deemed compatible with other uses permitted in that particular zoning classification provided certain requirements are met. In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements If the prerequisites are satisfied, the Board ordinarily must grant the application See, e.g., *Nat'l Cathedral Neighborhood Ass'n v D C Board of Zoning Adjustment*, 753 A 2d 984, 986 (D C 2000) This application provides satisfactory evidence that the Applicant has satisfied the relevant zoning requirements of Sections 3104.1 and 733, as described below

#### B. The Special Exception Requirements.

The proposal in this application satisfies the requirements of Sections 733 and 3104.1 of the Zoning Regulations

**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*

No part of the Subject Property is within twenty-five feet of a Residence District. The nearest Residence District is the R-4 zone district over 350 feet away, and the nearest actual property within that Residence District is about 400 feet from the Subject Property.

**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 line of the Subject Property does not abut an alley containing a zone district boundary line for a Residence District. The zone boundary line on the rear alley is for the HS-A/C-2-A zone district. Directly across the alley is a Shell service station and convenience store.

**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 configuration and size of the Property's rear yard, along with the existence of a utility pole and guy wires behind the Property preclude the placement of a dumpster on the Property. The Applicant therefore requests a modification of this condition pursuant to Section 733.12. The Applicant will use either a mini-dumpster or several 95-gallon containers (as it does at its Petworth and Georgetown locations) and will contract for private trash collection five (5) days a week. The rear of the Subject Property sits at the dead end of a small alley and is screened to a great extent by the Shell service station and its brick wall along the rear of that property, so, the Applicant does not anticipate that the trash receptacle(s) will be seen or that trash collection in general will be a problem, especially because of the daily collection schedule. The trash receptacles will be located on the Property and will not be located in the public alley.

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

The use will not include a drive-through

**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*

No side of the Building faces a street or alley containing a zone district boundary line for a Residence District, and the only customer entrance will be at the front of the Building.

**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*

Manny & Olga's successfully operates three locations in the District of Columbia (1841 14<sup>th</sup> Street, NW, 3624 Georgia Avenue, NW, and 1641 Wisconsin Avenue, NW) and 11 other locations in the metropolitan area. Manny & Olga's operates these restaurants without objection, and has not created any objectionable conditions related to noise, sounds, odors, lights, hours of operation, or other conditions

The proposed use here, similar to the three other District locations, is located within a heavily concentrated and active commercial and retail area. This location, however, is much farther away from the nearest Residence district than any of the other three locations, and as such is much less likely to have any objectionable impacts on neighboring properties. The operation of the pizza kitchen and take-out and delivery use does not create any significant noise, sounds, or odors. Manny & Olga's will not have any music. There will not be any seating in the Building, and the operation involves only take-out and delivery, so there is not expected to be any significant noise from patrons. Manny & Olga's does not expect to have any problem with loitering, and would not tolerate any such problem if it arose. Lighting in front of the Subject Property will be minimal, and signage will be modest.

The expected hours of operation are Monday through Thursday 10 a.m. to 4 a.m., Friday and Saturday 10 a.m. to 5 a.m., Sunday 11 a.m. to 4 a.m. These hours of operation are tailored to accommodate the times when demand is highest, based on Manny & Olga's experience in its three other District locations. Based on its experience at these other locations, and also considering the great distance from the Residence district and its location backing up to a

gasoline service station, Manny & Olga's does not expect that its operation will have any objectionable effects, regardless of the hours of operation. The Applicant notes that most competitors' hours of operation are unlimited, and to be limited in the higher-demand times can negatively impact the operation's economic vitality and sustainability.

**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*

Similar to most other properties on the H Street corridor, the Subject Property does not have any off-street parking. Because the Building was built prior to 1958, there is no parking requirement. There is sufficient parking available in the neighborhood for any employee parking, and it is not likely that any such parking will take place in the Residence district 400 feet away from the Property. At any rate, it is expected that most employees will use public transportation. H Street on this block has metered parking, which should be sufficient for use by patrons.

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

The dead-end alley behind the Property will provide a good access point for pizza delivery operations, since temporarily parking in the alley will not block the alley or cause objectionable traffic conditions. Manny & Olga's expects to have two delivery persons. Drivers will temporarily park either in the rear of the Property or on H Street or 14<sup>th</sup> Street, if space is available. The intensity of this use is expected to be limited enough to not create any dangerous or other objectionable 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 dead-end alley behind the Property will provide a good access point for pizza delivery operations and trash collection, since temporarily parking in the alley will not affect any neighboring properties or block anybody's access through the alley. Therefore, deliveries and trash collection will not obstruct parking spaces, aisles, or driveways.

**Section 3104.1** *The Board is authorized under § 8 of the Zoning Act, D C Official Code § 6-641.07(g)(2) (formerly codified at D C Code § 5-424(g)(2) (1994 Repl )), to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions 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, subject in each case to the special conditions specified in this title*

The proposed use is compatible with the character of other uses on H Street, N E. For this reason, and for the reasons discussed above, granting special exception relief in this case will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. Manny & Olga's has undertaken a significant effort to engage the community both about this Application and about the proposed use in general. The Application enjoys the support of the community, including the unanimous support of ANC 6A.

IV. **Conclusion**

For the reasons stated above, and as to be supplemented later, this application meets the requirements for special exception approval by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Martin P. Sullivan', written over a horizontal line.

Martin P. Sullivan

Sullivan & Barros, LLP

**Exhibit A**



Current view of the Subject Property and neighboring properties, from across H Street



The end of the alley; The rear of the Applicant's Property is to the left



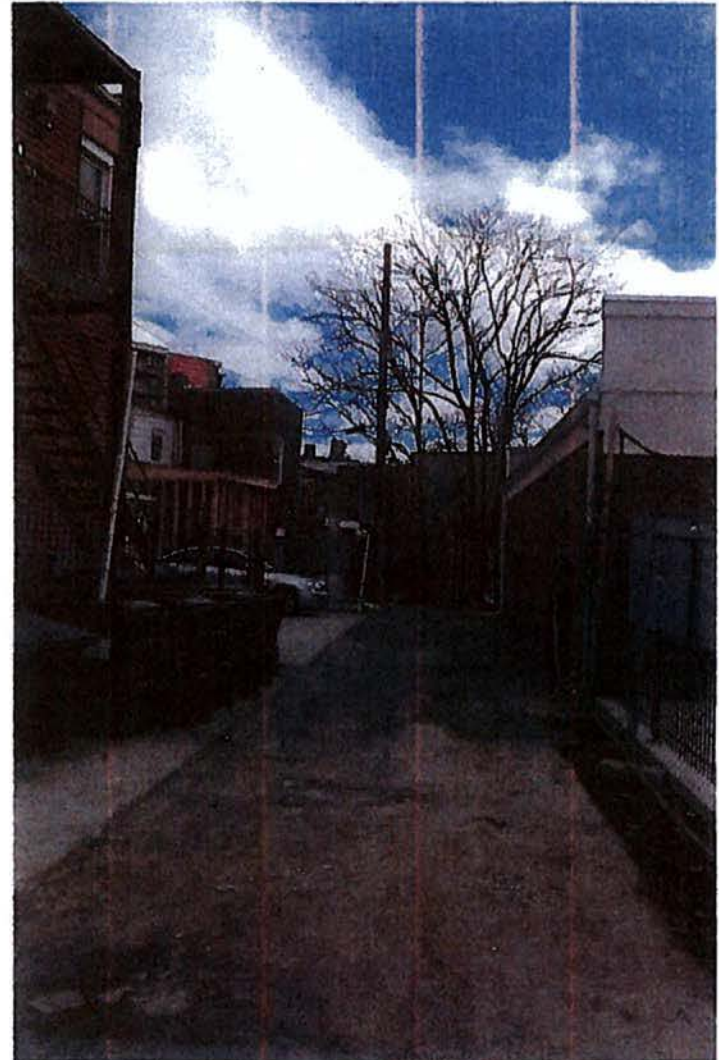
View of the service station, from Maryland Avenue; Applicant's Property is to the right of this convenience store



View of the rear of the Shell service station, from 14<sup>th</sup> Street looking down the dead-end alley



Proposed Storefront Design



View of the Dead End Alley, from 14<sup>th</sup> Street



The rear of the Property