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Real Estate | Zoning | Business Law

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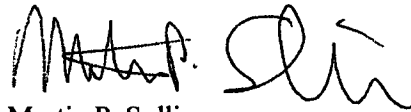
Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Prehearing Statement for BZA Application No. 18701, NW; 1247 E Street, SE

Dear Chairman Jordan and Members of the Board:

Please find the Applicant's prehearing statement enclosed herein. Thank you for your consideration of this Application.

Sincerely,



Martin P. Sullivan

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18701

EXHIBIT NO. 30

Board of Zoning Adjustment
District of Columbia

BOARD OF ZONING ADJUSTMENT APPLICATION # 18701

1247 E Street, SE

PRE-HEARING STATEMENT

I. Description of the Property and Relief Sought.

This Statement is submitted on behalf of 1247 ESE, LLC (the “Applicant”), the owner of the property located at 1247 E Street, S.E. (Square 1019, Lot 43) (the “Property”), in support of variance relief from the R-4 zone use restrictions under 11 DCMR § 330.4.

The Property is an L-shaped record lot located on the southwestern corner of the intersection of 13th and E Streets, S.E.; one block north of Pennsylvania Avenue. The Property is a single lot of record with 3,514 square feet of land area. It is improved with a large two-story plus cellar, brick row-house type structure (the “Building”) built around 1898. The Property, located in the R-4 zone district, is across the street from the Watkins Recreation Center and catty-corner from Peter Bug’s Shoe Repair Academy. The area is otherwise generally characterized by residential row houses. The current Frager’s hardware location is a half block away at 1323 E Street. Pennsylvania Avenue is a block south of the Property. Photographs of the Property and the surrounding area were included with the Application filing.

The Building was originally constructed as a mixed-use building, with a commercial space on the first floor, and residential units on the first and second floors. It has been used continuously in this manner since its original construction. There is one (1) apartment unit located at the rear portion of the first floor and three (3) apartment units on the second floor. The Building is rectangular, and at the rear of the Property to the west of the Building is a large courtyard, which is accessed by vehicles through a pass-through under the Building from 13th Street. This courtyard has

4 parking spaces, which are available for use by the Building's residential tenants. The courtyard will not be used in any material way by the eventual operators of the proposed coffee shop/café.

The front portion of the first floor and the cellar space below it make up the premises which is the subject of this Application (the "Commercial Space"). This space was originally constructed for commercial use, and has always been used for commercial purposes, mostly retail use, other than a short period where the space was used as a private "rugby" club – a permitted use in the R-4 zone.

The most recent use of the Commercial Space was for a non-profit office that operated by virtue of a use variance granted in BZA Order No. 15694 in 1992. A copy of that BZA Order and corresponding OP Report are attached as Exhibit A. Other previous uses in the Commercial Space included the rugby club, a confectionary, and a grocery store. (Historical C of O copies are included in Exhibit C.)

Because the rugby club was a matter-of-right use, that use extinguished the chain of nonconforming uses. This is why the nonprofit office use required a use variance in 1992 and why this proposal also requires use variance relief rather than § 2003.1 special exception relief for a change from one nonconforming use to another.

II. Proposed Use.

The Applicant proposes to use the Commercial Space for a neighborhood coffee shop and café. The Applicant does not currently have a tenant for the space, and believes that it must gain this approval first in order to be able to secure a quality tenant. The official use category for purposes of the Zoning Regulations will be a restaurant, although the specific use will resemble what is commonly understood as a coffee shop/café.

The Applicant has had extensive interaction with the surrounding residents as well as ANC representatives and has secured strong support from at least six (6) neighbors, as well as unanimous support from ANC 6B.

The Applicant is proposing the following operating hours: 7:30 a.m. until 8:00 p.m. on weekdays, and 9:00 a.m. until 8:00 p.m. on weekends. Four (4) trash cans for the existing uses are currently located on the 13th Street side of the Building. The Applicant is expecting that the proposed use will require an additional two trash cans, which will be state-of-the art rodent-resistant trash cans. Several ANC Commissioners have suggested that the trash cans for the commercial use be concealed somehow, so the Applicant has promised to work with the Historic Preservation Office to conceal the trash cans. Trash collection will continue to be privately contracted and will take place at least twice a week and more often as is necessary.

The Applicant does not expect that the proposed use will have any material impact on the parking situation in the neighborhood. The use is intended to be a neighborhood-serving establishment rather than a destination restaurant, attracting mostly walkers and local residents, and visitors to the Watkins Recreation Center, Frager's, or other local establishments. The number of staff is likely to be equal to or less than the five (5) to ten (10) staff that were typically present in the previous office use. This staff is expected to primarily walk or use public transportation.

While the Applicant has not yet secured a tenant, it expects to find a tenant that will provide a menu including coffee and pastries, salads, sandwiches, beverages, and other breakfast, lunch and light dinner fare. In addition to the prepared food and beverages, the proposed use will include an accessory retail component for the sale of specialty food products, coffee beans, and other such items that complement the principal use. The Applicant would like to leave menu items and the overall theme flexible, as the eventual tenant will want to provide the type of food and service that

they think will satisfy and draw the local neighborhood, since this neighborhood will serve as the customer base. The Applicant does not expect this space to be a destination or full-scale restaurant, and in fact the limited hours and lack of an alcohol license ensure that that will not be the case.

Discussions with the neighbors and ANC have focused more on the operating hours than the actual menu or style of the eventual food/beverage service. It is conceivable that the eventual tenant may be one in which customers pay for their food before it is consumed, as in a fast-food establishment or prepared food shop, but this use will not resemble a fast-food establishment in any other way.

It's important to note that the Applicant owns the entire building. He is renovating the four (4) residential units and intends to hold the property and rent the residential units for the foreseeable future. So the Applicant has a very compelling interest in seeing the Commercial Space operated in clean and quiet manner. Any problems associated with the use of the Commercial Space will affect the Applicant's tenants as much or more than any other neighbor.

III. Requested Relief.

The proposed use is not permitted in the R-4 zone. The Commercial Space was originally designed and built for commercial use, and has always been used for commercial use (except for the rugby club). But for the rugby club, the Applicant would be applying for special exception relief for the change from one nonconforming use to another. But the rugby club use, because it was matter-of-right, effectively extinguished the right to continue the previous nonconforming use. The Applicant is therefore requesting use variance relief from the restrictions of 11 DCMR 330.4.

IV. Variance Relief.

Under D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant use variance relief where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or conditions;
- (2) the owner would encounter practical difficulties or undue hardship if the zoning regulations were strictly applied; and
- (3) 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.

See French v. District of Columbia Board of Zoning Adjustment, 628 A.2d 1023, 1035 (D.C. 1995); *see also, Capital Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle. These purposes infuse meaning into the phrase “exceptional and undue hardship.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

It is well established that because of the nature of variances and their effects on the zone plan, the stricter “undue hardship” standard applies to requests for use variances while the “practical difficulty” standard applies to requests for area variances. *Palmer v Board of Zoning Adjustment* 287 A.2d 535 (D.C. 1972). For the Board to grant use variance relief, “it must be shown that the regulations ‘preclude the use of the property in question for any purpose for which it is reasonably

adapted, *i.e.*, can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?” *Palmer v. BZA*, at 542, citing 2 A. Rathkopf, *The Law of Zoning and Planning*, Note 21, at 45-5 (3d ed. 1962).

A. The Property is Unique Because it is Affected by an Exceptional Situation or Condition.

The phrase “other extraordinary or exceptional situation or conditions” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990).

The exceptional conditions affecting this Property include the fact that the Building was originally designed and built, and has been continuously operated as, a mixed use building, with the first floor Commercial Space having never been used for residential purposes. This Commercial Space is improved with large show windows and has an extraordinarily high ceiling height of twelve (12) feet. Also, in contrast to surrounding residential row structures, the first floor of the Building was built at street grade, in order to provide a commercial-retail-grade height to the first floor ceiling, easy access to shoppers, eye level display to pedestrians and also because natural light was not required in the basement which was designed for and used as storage. Because the Property is subject to restrictions of the Capitol Hill Historic District, many of these aspects cannot be altered.

The Property also has an exceptional zoning history. The Building, including the Commercial Space and the apartment units, was originally grandfathered in 1958 as a legally

nonconforming use. As noted above, but for the rugby club's brief occupation of the Commercial Space, the Applicant would be asking for special exception approval to change from one nonconforming use to another.

B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship to the Owner.

An owner is presented with an undue hardship when their "property cannot be put to any zoning-compliant use for which it can be reasonably adapted." *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). In a recent case, the D.C. Court of Appeals upheld this Board's approval of a use variance and noted that economic harm to an owner in converting a portion of their property into a zoning-compliant use, coupled with significant limitations on the utility of a building, constituted undue hardship necessary to satisfy the second prong of the use variance test. *The Oakland Condo v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748 (D.C. 2011).

The Property at 1247 E Street, S.E., is subject to a similar undue hardship as in the Oakland Condo case. Because the historic property's Commercial Space was originally designed and built for a commercial retail use, with large windows, multiple egresses, high ceiling, and a first floor at grade, it would be an undue hardship to the Applicant to have to convert the Commercial Space to residential use. Such a conversion would be prohibitively expensive, and even with an expensive conversion, the Commercial Space would have limited utility as a residential use because of the large windows, lower grade level, and windowless basement – all of which cannot be modified because of historic preservation concerns. These conditions would also make residential use

undesirable due to privacy concerns of a residential tenant, and the inability to use the windowless basement for residential use.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

1. Public Good

The Applicant believes, as do many of the neighbors, that a coffee shop/café use is a good fit for this Building and for this neighborhood. The Applicant has agreed to limit the operating hours, closing by 8:00 p.m. 7 days a week, and to handle trash collection aggressively to avoid rodent problems. As noted above, the Applicant has a significant financial interest in protecting his tenants that will be living within the Building from any potential negative impacts of the proposed use.

The Application has received the support of a number of close-by neighbors, including the neighbor directly across 13th Street, the neighbor that is across the intersection from the Property, Peter Bug Matthews, and several other neighbors. ANC 6B has recommended approval by a vote of 10-0.

2. The Zone Plan.

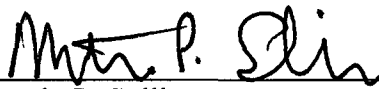
This same space was granted variance relief in 1992, for use as commercial office space. Prior to that, and for most of its existence, it served as a community-serving retail space, including a grocery store and a confectionary. The Board also recently approved, in BZA Order No. 18275, a similar application for 1200 Potomac Avenue, S.E. for a coffee shop on the first floor (denying a pet store on the second floor). A copy of this BZA Order and OP Report are included as Exhibit B hereto. These two cases illustrate that the types of unique conditions and undue hardship present on this Property have been established as sufficient to satisfy the use variance test.

Attached as Exhibit C is a sample of some of the historical documents behind this Property.¹ The Building history shows that the Commercial Space was originally designed as retail space and was used mostly for that purpose through the years The Commercial Space has never been used for residential space, so this proposed use is a continuation of a century of commercial use here. This proposal seeks to restore this Property's neighborhood-serving retail tradition by replacing the old office space with a neighborhood-serving café and coffee shop.

V. **Conclusion.**

For all of the reasons above, the Applicant respectfully requests that the Board grant the requested relief and approve the Application.

Respectfully submitted,



Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

Date: 1/22/14

¹ One interesting story involves a runaway truck crashing into the Building in 1962 and damaging the historic, arched entrance. The Applicant's renovations will include restoring this arch in a way that is consistent with its history.

List of Exhibits

Exhibit A – BZA Order and OP Report for Case No. 15694

Exhibit B – BZA Order and OP Report for Case No. 18275

Exhibit C – Sample of Historical Documents for 1247 E Street, SE

EXHIBIT A

(BZA Order and OP Report for Case No. 15694)

BZA Case No. 18275

March 2012

1200 Potomac Ave. SE

Variance for a Coffee Shop on the First Floor – approved.

Variance for a Pet Store on the Second Floor – denied.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18275 of Potomac Avenue LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for variances from the use provisions of § 350.1 to allow a coffee shop on the first floor and a pet supply store on the second floor of an existing two-story building in the R-5-B District at premises 1200 Potomac Avenue, S.E. (Square 1021, Lot 34).

HEARING DATES: November 15, 2011, December 20, 2011, February 14, 2012,
March 20, 2012

DECISION DATE: March 20, 2012

DECISION AND ORDER

On July 29, 2011, Potomac Avenue, LLC, (“Applicant”) filed an application with the Board of Zoning Adjustment (“Board”) requesting special exception relief under § 2003.1 to allow a coffee shop on the first floor of an existing two-story building, and a use variance for a pet supply store on the second floor of the building. The Board determined that a use variance was required for both uses¹, and ultimately voted to grant the use variance for a coffee shop on the first floor and to deny the use variance for a pet supply store on the second floor. A full discussion of the facts and law supporting these conclusions are found below.

PRELIMINARY MATTERS

Authorization

The Applicant in this case is 1200 Potomac Avenue LLC. Mr. Bruce Bates, a principal in the firm, authorized John Acker, the project architect, as its authorized agent. (Exhibit 7.)

The Application

The application was filed by Mr. Acker on July 29, 2011 seeking two types of relief: a special exception under § 2003.1 to change an existing nonconforming use as a deli to a nonconforming use as a coffee shop on the first floor of the existing building; and a use variance from § 350.1 to permit a new retail pet supply store on the second floor of the existing building. (Exhibit 1.)

¹ The caption was changed to reflect the relief that is required.

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Referral by the Zoning Administrator

The application was referred to the Board by the Zoning Administrator ("ZA") of the District Department of Consumer and Regulatory Affairs. (Exhibit 6.) The relief initially sought was consistent with the relief recommended by the ZA.

Notice of Public Hearing

Notice

Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission ("ANC") 6B, and the District of Columbia Office of Planning ("OP").

Posting

The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.14 through 3113.20. The Applicant also submitted an affidavit to this effect in accordance with 11 DCMR §§ 3113.19 and 3113.20. (Exhibit 24.)

ANC 6B

The subject site is located within the jurisdiction of ANC 6B, which is automatically a party to this application. In this case, the ANC filed two reports. In a report submitted November 9, 2011, ANC 6B indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the application. (Exhibit 27.) The report indicated that the Applicant had not provided any evidence or justification for the relief requested. However, in a second report dated December 19, 2011, the ANC indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC voted to support the application. (Exhibit 28.) The ANC stated further that, after reviewing the Applicant's documentation, it concluded that the project's impact on air, light, and privacy would be negligible.

Requests for Party Status

The Board received no requests for party status.

Persons in Opposition

No persons appeared at the hearing to testify in opposition to the application. However, the Board received a letter in opposition from the adjacent property owner at 1208 Potomac Avenue, S.E., Valerie E. Robinson. (Exhibit 23.) Ms. Robinson objected to having any commercial use next door to her home in a residential neighborhood.

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Persons in Support

No persons appeared at the hearing to testify in support of the application. Nor were any letters received from persons in support of the application.

Government Reports

OP Report

OP reviewed the application and prepared a report recommending support in part, and denial in part. (Exhibit 26.) Regarding the request for a special exception under § 2003.1 to allow a coffee shop on the first floor, OP asserted that § 2003.1 was inapplicable, and that a use variance was required instead. However, OP opined that the use variance test could be met for the coffee shop. Regarding the request for a use variance to allow a pet supply store on the second floor, OP opined that the use variance test had not been met. OP's representative, Steve Mordfin, also testified to this effect at the public hearing.

District of Columbia Department of Transportation ("DDOT")

DDOT submitted a report stating that it had no objection to either the requested special exception or the requested variance. (Exhibit 25.)

FINDINGS OF FACT

The Property

1. The property is located at 1200 Potomac Avenue, S.E., in Square 1021, Lot 34, in the R-5-B zone district, and the Capitol Hill Historic District.
2. It is an unusually shaped corner lot with no alley access.
3. The lot is improved with a two-story building that was constructed in 1900, prior to the adoption of the current version of the Zoning Regulations in 1958, as a mixed-use building with a commercial space on the first floor and a residential apartment on the second floor.

The Surrounding Area

4. The character of the surrounding neighborhood is residential.
5. There are row dwellings, detached dwellings, and semi-detached dwellings adjacent to the property.
6. Across Potomac Avenue is a small public park.
7. Across K Street are three- and five-story public housing apartment buildings.

Use of the Property

8. A certificate of occupancy ("C of O") for the building shows that the first floor was used at one point as a "grocery store". However, the date on the C of O is illegible. (Exhibit 10.)
9. The existing two-story building was abandoned at least eight years ago and is currently vacant. (Hearing Transcript of December 20, 2011, ("Tr."), p. 70.)

The Project

10. The Applicant proposes to renovate the existing vacant building and locate a coffee shop on the first floor of the building and a pet supply store on the second floor of the building.

The Zoning Relief

11. Regarding the first floor coffee shop, the Applicant initially requested a special exception under § 2003.1 of the Zoning Regulations which, under certain circumstances, allows a change from one non-conforming use to another non-conforming use.
12. Regarding the second floor pet supply store use, the Applicant requested a variance from the use provisions of § 350.1 of the Zoning Regulations.
13. During the public hearing on December 20, 2011, the Board found pursuant to 11 DCMR § 2005.1 that the discontinuance of the previous non-conforming grocery store described in Finding of Fact No. 9 established *prima facie* evidence that there was no intention to resume the active operation of the use. Therefore, pursuant to that provision "any subsequent use shall conform to the regulations of the district in which the use is located." The Applicant presented no evidence to rebut this presumption.
14. As there was no existing non-conforming use at the property, § 2003.1 (which allows a switching of existing non-conforming uses) was inapplicable. *See, Application No. 17100-A, Jesus is the Way Church, Order on Reconsideration.* (Board granted special exception relief under § 2003.1 where there was evidence of continuous non-conforming retail uses).
15. Since special exception relief was unavailable for the coffee shop on the first floor, the Board determined that use variances were required for both the first floor coffee shop and the second floor pet supply store.

The First Floor Coffee Shop

The Exceptional Condition

16. The first floor of the building was originally designed as commercial space. (Exhibit 26, OP Report, p. 2, Tr., p. 70.)

17. The entrance to this space faces the corner where 12th Street, K Street, and Potomac Avenue intersect, and the activity associated with an intersection.
18. The first floor is improved with two sets of show windows, one facing 12th Street and the other facing Potomac Avenue. The show windows are at ground level and do not afford any privacy to the occupants of the first floor. Show windows, in general, are designed to encourage pedestrians to look in, and are not conducive to residential use.

Undue Hardship

19. The lack of privacy from the show windows and the exposure of the first floor entrance at the intersection make the first floor space undesirable for residential use.
20. It is not feasible to use the first floor for residential use without eliminating the windows and building entrance and completely renovating the first floor of the building.

Impact of the Coffee Shop Use

21. Commercial use will not adversely impact the privacy of neighboring property owners. The first floor space is designed with its entrance away from the adjacent residential properties, shifting any activity associated with the proposed coffee shop towards the corner.
22. The property is now an eyesore. The coffee shop use will be an improvement to the existing abandoned building.

The Second Floor Pet Supply Store

Lack of Exceptional Condition

23. The second floor was originally designed for residential use.
24. The entrance to the second floor is near the adjacent residential row houses which face the street. It is separate from the first floor entrance and provides direct access to the second floor space.
25. The windows in the second floor space are one flight up and would provide an element of privacy to the occupants on that floor.
26. The Applicant asserted that a mixed use project is not feasible because: (a) the second floor space is too small for the coffee shop owner to live in (Tr., p. 65); and (b) most suitable residential tenants would not enjoy the smell and activity of the coffee shop below and would make complaints. (Tr., p. 62.) However, the Applicant did not provide any statements or testimony from realtors to establish these claims.

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27. At the conclusion of the December 20, 2012 hearing, the Board decided that it lacked evidence regarding any exceptional condition at the second floor which would cause an undue hardship in using the second floor residentially.
28. The Board stated that documentation was required to assess the use variance request for the second floor pet supply store. The Board directed the Applicant to provide evidence showing the difficulty in establishing a residential use on the second floor. The Board explained to the Applicant that he could submit statements or testimony from a realtor regarding the difficulty obtaining residential tenants, and/or financial information showing that residential use on the second floor was not financially feasible and would result in undue hardship to the Applicant. (Tr., p. 75 – 76.)
29. The Board continued the hearing to February 14, 2012 to allow the Applicant time to gather and/or prepare this documentation.
30. Shortly before the February 14, 2012 adjourned date, the Applicant submitted a letter to the Board requesting more time to prepare its case for the second floor use variance. (Exhibit 32.)
31. On February 14, 2012, the Board continued the case again, this time until March 20, 2012.
32. On March 20, 2012, the Applicant appeared but he did not proffer the additional documentation that had been requested by the Board. Nor did the Applicant present any evidence showing that the pet supply store would not adversely impact neighboring property owners.
33. Instead, the Applicant testified that the unusual trapezoidal shape of the building constrained his ability to convert the second floor space to residential use and that “putting [in] a one bedroom [would be] a little tight.” The Applicant also cited the “cost of construction” in converting the second floor to an apartment. (Hearing Transcript of March 20, 2012, p. 177.) However, the Applicant did not submit any evidence establishing what the cost of construction would be.

CONCLUSIONS OF LAW

The threshold question for the Board in this case was the type of relief required to establish a coffee shop use on the first floor. For the reasons stated in Finding of Fact Nos. 9 and 13 through 15, the Board concludes that a use variance is required, and not a special exception.

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.07(g)(3)(2001), to grant variances from the strict application of any Zoning Regulation. In order to grant the use variance relief needed to establish the coffee shop and pet store uses, the Applicant must satisfy the three-prong test set out in the Zoning Act

and re-stated at 11 DCMR § 3103.2, that (1) its property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the applicant will encounter practical difficulties or undue hardship if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan.

Here, the Applicant must meet the stricter “undue hardship” test for a use variance for the coffee shop use on the first floor, as well as for the pet supply store on the second floor. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972) (“A use variance cannot be granted unless a situation arises where reasonable return cannot be made of the property in a manner consistent with the Zoning Regulations.”); *Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816 (D.C. 1977). (“[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may reasonably be used.”)

The First Floor Use Variance for a Coffee Shop

Turning to the first prong of the variance test, the Board finds that the first floor of the property presents an exceptional condition. Although the property is now residentially zoned, the first floor was designed for commercial use and has been lawfully used in the past for commercial purposes. In fact, there is no evidence that the first floor was ever used residentially. In addition, the show windows at ground level and the entrance facing an intersection constitute exceptional conditions.

As to the second prong, the Applicant has established that strict application of the Zoning Regulations in this case will result in undue hardship. As explained, neither the ground level show windows nor first floor entrance are conducive to residential use. Therefore, the entire first floor would have to be demolished to convert the floor to residential use. (Findings of Fact 19 & 20.)

Turning to the third prong of the variance test, the Board concludes that the conversion to a coffee shop use on the first floor will not be a detriment to the public good or to the zone plan. The first floor space is designed with its entrance away from the adjacent residential uses. Therefore any activity associated with the coffee shop will be shifted away from the nearby residential properties.

The Second Floor Use Variance for a Pet Supply Store

The Board finds that the Applicant never established any exceptional condition relating to the second floor of the property; and, therefore, did not satisfy the test for a use variance on the second floor. It is undisputed that the second floor was designed for residential use. Therefore, it was incumbent upon the Applicant to show why the second floor could not be used residentially. *Bernstein, id.* The Applicant suggested that it would be difficult finding a suitable tenant, that the residential construction would be a challenge due to the building’s shape, and that

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the costs of conversion to residential use would be steep. But the Applicant never established any of these facts with any probative evidence.

The Applicant had opportunities to present such evidence on three separate dates: December 20, 2011, February 14, 2012, and March 20, 2012. The Board postponed this case on December 20, and again on February 14, at the Applicant's request, so that the Applicant could compile documentation to bolster his case. Yet the Applicant failed to produce any additional documentation on February 14 or the final March 20 date. The Board was not persuaded by the Applicant's conclusory statements and explained that the Applicant needed to prove that he could not rent the second floor residentially, or that the costs would be financially burdensome to establish residential use. The Board even suggested that the Applicant obtain the statement or testimony from a realtor, who might assist in this regard. But the Applicant failed to provide any documentation substantiating any exceptional condition or undue hardship that would result from using the second floor residentially. Nor did he present any evidence that a pet supply store would not result in adverse impacts upon neighboring property owners. The burden of proof rested with the Applicant. (11 DCMR § 3119.2.) Since the Applicant failed to meet his burden of proof, the Board had no choice but to deny the request for relief.

ANC

Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. Specifically:

The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

As noted, the ANC supported the application, stating that the "project's impact on air, light and privacy will be negligible." This conclusion relates to the third prong of the variance test and would normally buttress an Applicant's claim that the project will not result in substantial detriment to the public good. The Board agrees with the ANC as to the coffee shop use, but did not reach the issue as to the pet shop use because the Applicant failed to prove that the second floor of the property was either an exceptional condition or that the strict application of the Zoning Regulations would result in undue hardship. Since the Board did not go on to discuss the third prong with respect to the pet store use, it is not necessary to respond to the ANC's assertions that relate to that element.

BZA APPLICATION NO. 18275
PAGE NO. 9

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow a use variance for a coffee shop on the first floor of the premises, and **ORDERED** that the application is hereby **DENIED** for a use variance for a pet supply store on the second floor of the premises, **SUBJECT** to the approved plans as shown on Exhibit 30, **AS RELATED TO THE APPROVAL OF THE FIRST FLOOR USE ONLY**.

VOTE: 5-0-0 (Lloyd J. Jordan, Nicole C. Sorg, Rashida Y.V. MacMurray, Jeffery L. Hinkle, and Anthony J. Hood, all voting to APPROVE the first floor use variance, and DENY the second floor use variance.)

Vote taken on March 20, 2012

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 17, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**MEMORANDUM****TO:** District of Columbia Board of Zoning Adjustment

2011 NOV -8 PM 3: 33

FROM: Stephen J. Mordfin, AICP, Case Manager**DATE:** November 8, 2011**SUBJECT:** BZA No 18275 – 1200 Potomac Avenue, S E.**I. OFFICE OF PLANNING RECOMMENDATION**The Office of Planning (OP) recommends **approval** of the following use variance relief:

- § 350.1 (coffee shop proposed on first floor, not permitted in the R-5-B zone).

The Office of Planning recommends **denial** of the following use variance relief:

- § 350.1 (retail pet supply store proposed on second floor, not permitted in the R-5-B zone).

II. LOCATION AND SITE DESCRIPTION

Address	1200 Potomac Avenue, S.E
Legal Description	Square 1021, Lot 34
Ward	6
Lot Characteristics	Unusually shaped corner lot with no alley access
Zoning	R-5-B
Existing Development	Abandoned two-story mixed-use building (retail and residential)
Historic District	Capitol Hill
Adjacent Properties	North, East and West: Row, detached and semi-detached houses South. Across Potomac Avenue, small public park. Across K Street, three and five-story public housing apartment buildings.
Surrounding Neighborhood Character	Residential

The subject property was constructed in 1900, prior to the adoption of the Zoning Regulations in 1958, as a mixed-use building with a commercial space on the first floor and a residential apartment on the second. The applicant informed the Office of Planning that the building was used in this manner until approximately eight years ago, when the property was abandoned.

III. PROPOSAL

The applicant proposes to renovate the existing vacant building and locate a coffee shop on the first floor and a pet supply store on the second. The applicant informed the Office of Planning that the pet supply store

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18275EXHIBIT NO. 26

would not involve the sale of animals. The building is currently vacant and has been abandoned for approximately eight years

Access to the coffee shop would be from the commercial building entrance facing the corner of 12th Street, K Street and Potomac Avenue. The applicant also proposes to expand the show window facing 12th Street into public space. Public Space Committee approval would be required before the applicant could expand the building into public space. As the subject property is located within the Capitol Hill Historic District, this expansion would also require approval from the Historic Preservation Review Board (HPRB). Neither the Public Space Committee nor the HPRB have reviewed this proposal.

IV. OFFICE OF PLANNING ANALYSIS

A. Use Variance (§ 350.1, Coffee Shop in the R-5-B district)

The use variance requirements pursuant to § 3103 to be met are as follows.

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The first floor was originally designed as a commercial space. The entrance to this space faces the corner where 12th Street, K Street and Potomac Avenue intersect, and the activity associated with an intersection. The first floor is also improved with two sets of show windows, one facing 12th Street and the other facing Potomac Avenue. These windows are at ground level, unlike the first floor windows of the adjoining row houses along Potomac Avenue, which are half a flight up and provide privacy to the occupants. Show windows are designed to encourage pedestrians to look in, not conducive to residential use. The combination of the entrance facing an intersection and the windows at ground level exhibit a specific uniqueness resulting in an extraordinary or exceptional situation or condition for use of the first floor for residential use.

- 2. By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or an exceptional and undue hardship upon the owner of the property.**

The uniqueness of the lack of privacy for a residential unit and the exposure of its entrance results in a peculiar and exceptional practical difficulty. The windows cannot be eliminated to ensure privacy without adversely affecting the use of the space for residential use. Therefore, the Office of Planning concludes that it would be an undue hardship upon the owner of the property to be required to use the space as provided by the R-5-B district.

- 3. The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

The first floor space is designed with its entrance away from the adjacent residential uses, shifting any activity associated with the proposed coffee shop towards the corner, and would allow for the use of a space designed for commercial purposes to be used as such. Therefore, the variance would not cause substantial detriment to the public good or impair the intent of the Zoning Regulations.

B. Use Variance (§ 350.1, Pet Supply Store in the R-5-B district.)

1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?

The second floor was originally designed as residential space. The entrance to the apartment faces Potomac Avenue, away from the intersection and nearby to the adjacent residential row houses also facing that street. The windows are located one flight up, providing an element of privacy to the occupants from the activity on the street that continues today. Therefore, the property exhibits no specific uniqueness for use of the second floor of the property for residential use.

2. By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or an exceptional and undue hardship upon the owner of the property.

The Office of Planning does not find that the subject property exhibits a specific uniqueness from which any undue hardship would arise. The entrance to the second floor of the building is oriented toward the residential row houses on Potomac Avenue, and the windows are located on the second floor, providing an element of privacy to the residents of the unit. Therefore, the Office of Planning finds that the use of the second floor for a residence would not result in an undue hardship.

3. The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Office of Planning finds that there is no extraordinary or exceptional situation resulting in undue hardship to the owner. Therefore, the granting of a use variance to permit a pet supply store on the second floor of this building would impair the intent of the zone plan and the Zoning Regulations.

V. **AGENCY COMMENTS**

DDOT, in a memorandum dated October 25, 2011, had no objection to the application.
No other agency comments were received.

VI. **COMMUNITY COMMENTS**

ANC 6B is expected to review the subject application at its regularly scheduled meeting of November 8, 2011.

No other community comments were received.

2011

750 sq. ft.
on floor.
#5 don't
work

Attachment: Location Map

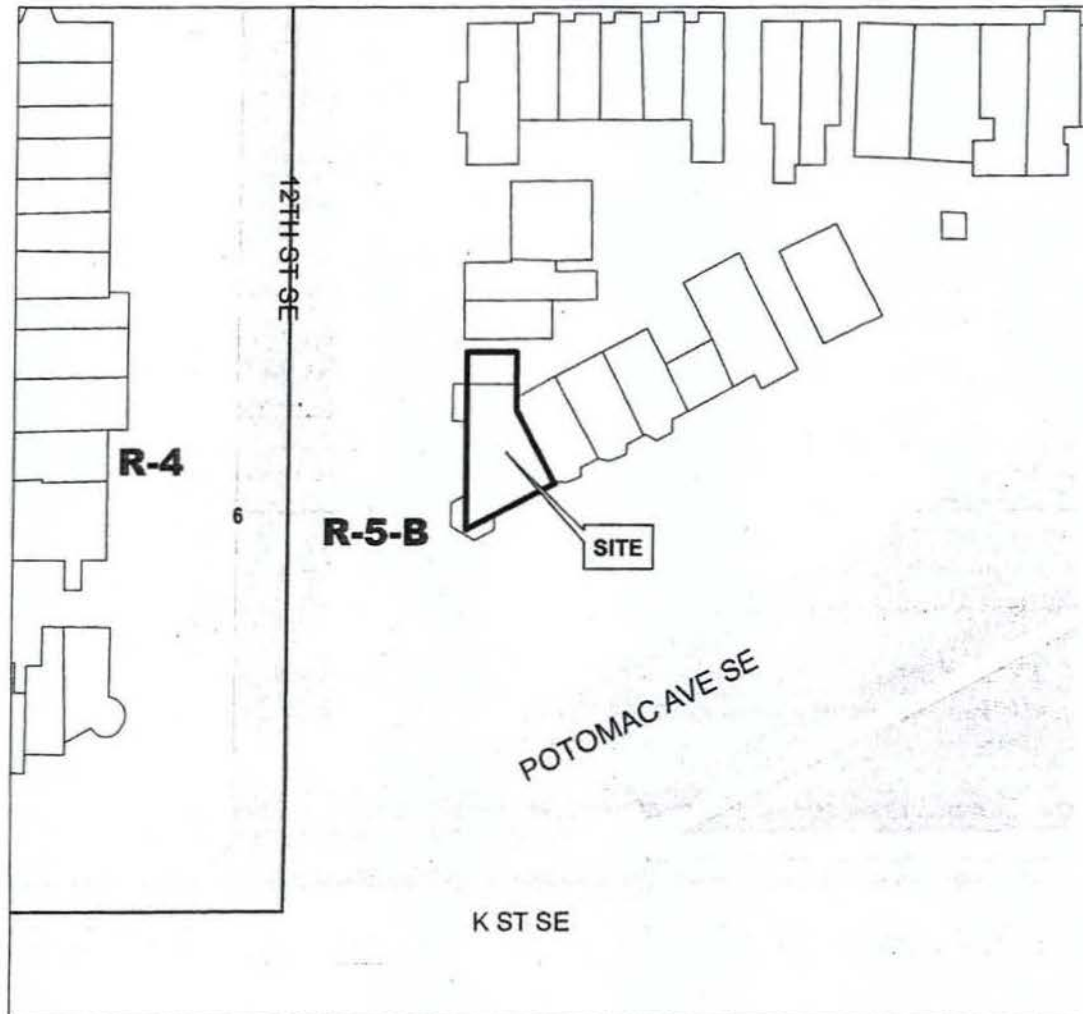


EXHIBIT B

(BZA Order and OP Report for Case No. 18275)

BZA Case No. 15694

1992

1247 E Street, SE

Variance for a Non-profit Office Use – approved.

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



Application No. 15694 of Contrast Holding, Co., Inc., pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 330.5) to allow a nonprofit office use in the basement and the first floor in an R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43).

HEARING DATE: September 9, 1992
DECISION DATE: September 9, 1992 (Bench Decision)

SUMMARY

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 6B and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 6B. ANC 6B, which is automatically a party to the application, filed a written statement of issues and concerns in support of the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 330.5. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS.

1. The first floor and basement of the subject premises shall be used for a nonprofit organization.
2. The hours of operation shall be between 9:00 a.m. and 6:00 p.m., Monday through Friday.
3. The number of staff members shall not exceed seven (7).

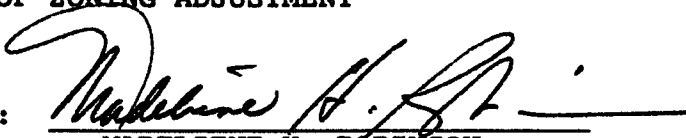
4. No articles of commerce shall be offered for sale at the subject premises.
5. Trash storage associated with the proposed nonprofit office shall be located within the first floor of the subject building and shall be picked-up no less than once per week.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.1 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is not prohibited by law.

VOTE: 5-0 (Angel F. Clarens, Sheri M. Pruitt, Maybelle Taylor Bennett, Paula L. Jewell and Carrie L. Thornhill to grant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

SEP 22 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENMTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord15694/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15694

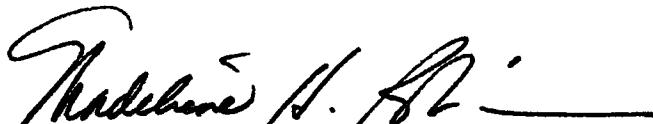
As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 22 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Contrast Holding Co., Inc.
5806 Baltimore Boulevard
Hyattsville, MD 20781

Henry McKinnon
509 13th Street, S.E.
Wash, D.C. 20003

Charles E. Kaufman
1247 E Street, S.E.
Wash, D.C. 20003

Jamie Platt, Chairperson
Advisory Neighborhood Commission 6-B
921 Pennsylvania Avenue, S.E., #108
Washington, D.C. 20003


MADELIENE H. ROBINSON
Acting Director

DATE: SEP 22 1992

Government of the District of Columbia

Office of the
Director



Office of Planning
415 12th Street, N.W.,
Washington, DC 20004

1 SEP 1992

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Albert G. Dobbins, III
Director

Kenneth W. Karkeet
Project Planner

SUBJECT: BZA Application No. 15694

10/1/92
DISTRICT
92 SEP - 2 10:20

APPLICATION

Application of Contrast Holding, Co., Inc., pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5) to allow a nonprofit office use in the basement and the first floor in an R-4 District at premises 1247 E Street, S.E. (Square 1019, Lot 43).

SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends conditional approval of this application.

APPLICANT'S PROPOSAL

The applicant is proposing to operate a nonprofit office in the basement and on the first floor of the subject premises in an R-4 zone district. The proposed nonprofit office would be operated by the Nicaragua Network and would conduct organizational efforts for providing humanitarian aid to the people of Nicaragua as well as providing general information on Nicaragua to U.S. citizens. The proposed hours and days of operation would be from approximately 9:30 a.m. to 6:00 p.m., Monday through Friday, with a staff of five full-time employees and two student interns. The second floor of the building would continue to be used as three separate residential apartments accessed from 13th Street.

BZA

CASE No.

15694

EXHIBIT No

33

[Handwritten signature]
9/2/92

SITE AND AREA DESCRIPTION

The subject L-shaped site is located on the southwestern corner of the intersection of 13th and E streets S.E. and consists of one lot of record containing 3,514 square feet of land area. The site is improved with a large two-story plus basement brick rowhouse-type structure (circa 1932) with entrances on both 13th Street and E Street. The second floor of the structure is used as three residential apartments. The site does not abut a public alley (refer to attached maps).

The area surrounding the site is characterized primarily by residential rowhouse development interspersed with various commercial uses (i.e. - small stores, gasoline stations, shops, restaurants, small office buildings, and small parking lots). The Buchanan Elementary School is located directly across the street from the site on the northeast corner of the intersection of 13th and E streets S.E.

The subject site is located within an R-4 zone district. The R-4 District permits matter-of-right development of residential uses (including detached, semi-detached and row single-family dwellings and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and a maximum height limit of three stories/40 feet. Relative to this application, a nonprofit office is not a permitted use in an R-4 District.

COMPLIANCE WITH THE ZONING REGULATIONS

The applicant is requesting a variance from the use provisions of Sub-section 330.5 of 11 DCMR to allow the operation of a nonprofit office in an R-4 zone district. The granting of such a use variance is predicated on the following tests for zoning relief:

1. An undue hardship, unique to this specific property and inherent in the property itself, would result were this application not granted;
2. The requested variance can be granted without substantial adverse impact; and,
3. The requested variance can be granted without impairing the intent, purpose, and integrity of the Zoning Regulations.

COMMENTS

The subject structure was built in 1932 as a commercial/residential building. The first floor has been continuously used for non-residential purposes since that time, with the second floor used as apartments. The most recent use of

the first floor was a private rugby club which is a permitted use in the R-4 District. Prior to that, a candy store and warehouse occupied the first floor and basement for a number of years.

The applicant (the Nicaragua Network) is proposing to use the first floor and basement for its nonprofit function as an educational organization that organizes efforts to provide humanitarian aid to the people of Nicaragua as well as to provide general information on Nicaragua to U.S. citizens. The second floor of the building would continue to be used as apartments.

The proposed office's hours and days of operation would be from approximately 9:30 a.m. to 6:00 p.m., Monday through Friday, with no weekend activity anticipated.

No articles of commerce would be offered for sale at the proposed office. A staff of five full-time employees and two student interns would be employed at the site. The applicant stated that visitors to the site would not be a routine situation. Although a paved parking area for six vehicles is located at the rear of the site, the applicant maintains that those spaces would only be used by residents of the second floor of the building due to the fact that office employees would not drive to work. Metrobus service is located within one block south of the site at 13th Street and Pennsylvania Avenue S.E. Metrorail service is located within six blocks west of the site at 7th Street and Pennsylvania Avenue, S.E. (Eastern Market Metrorail Station). Trash storage would be located within the subject building and would be picked up twice a week from 13th Street N.W.

As previously stated, the subject structure was built in 1932 as a commercial/residential property. Because of this, the first floor of the building was designed and built for commercial and retail uses (i.e. - large open interior areas and large bay windows). As well, the residential apartments on the second floor are accessed from separate entrances on 13th Street.

The Office of Planning is of the opinion that the proposed nonprofit office use of the first floor and basement of the subject structure would be justified because of the fact that the structure was originally built for first-floor commercial and second-floor residential use before the current Zoning Regulations were enacted in 1958. To require the owner of the property to convert the first floor of the building to residential use would cause an undue hardship because of the existing first-floor interior configuration which, as stated, was originally built for commercial use. Although a nonprofit office use is not permitted in an R-4 District, the proposed use of the first floor and basement of the subject building in this application appears to be of a low intensity that would not cause substantial adverse area impacts in terms of traffic, parking demand, noise, hours of operation, number of employees,

trash generation, or other objectionable conditions. As a result, the Office of Planning believes that the proposed nonprofit office at this location would not severely impair the intent, purpose, and integrity of the R-4 District regulations. In addition, the subject structure has been in place for a lengthy period of time as a commercial/residential building.

AGENCY REFERRALS AND COMMENTS

The Office of Planning referred this application to the following District government agencies for review and comment:

1. Department of Public Works;
2. Fire and Emergency Medical Services
Department;
3. Metropolitan Police Department; and
4. Department of Consumer and Regulatory Affairs.

At this time this report was prepared, the Office of Planning had received a response from the Metropolitan Police Department, which voiced no opposition to this application (refer to attachment).

COMMUNITY COMMENTS

The subject site is located within the jurisdictional boundaries of Advisory Neighborhood Commission (ANC) 6B. At the time this report was prepared, the Office of Planning was unable to determine the ANC's position on this application.

RECOMMENDATION

The Office of Planning is of the opinion that the applicant has met the burden of proof for a variance from the use provisions of Sub-section 330.5 of 11 DCMR to allow the operation of a nonprofit office in an R-4 District. Because the subject structure was originally built for first-floor commercial and second-floor residential uses, a situation inherent in the property, an undue hardship would be placed on the owner of the property if it is mandated that the first floor be converted to R-4 District residential use. The proposed nonprofit office on the first floor and in the basement of the building would not appear to cause substantial adverse area impacts and would not severely impair the intent, purpose, and integrity of the R-4 zone district regulations. Accordingly, the Office of Planning recommends approval of this application subject to the following conditions:

1. The first floor and basement of the subject premises shall be used only for a nonprofit organization.
2. The proposed nonprofit office's hours and days of operation shall be from 9:30 a.m. to 6:00 p.m., Monday through Friday.
3. No articles of commerce shall be offered for sale at the subject premises.
4. The staff of the proposed nonprofit office shall not exceed five employees and two student interns.
5. Visitors to the proposed office shall not be a routine situation.
6. Trash storage associated with the proposed nonprofit office shall be located within the first floor of the subject building and shall be picked up in a timely fashion (i.e. - no less than two times per week).

Attachments

EXHIBIT C

(Sample of Historical Documents for 1247 E Street, SE)

Doc #	Doc ID	Doc Name	Doc Type	Date	Purpose	Type of use
1	Permit #1632	1247ESE-18980519(P#001632)	pdf	05/19/1898	Original building permit; Clearly shows the intent of the developer (Line 2 page 10) of having a store in the corner unit and building permit approved as such; also design of the corner unit (show and Bay windows) highlight commercial intent	
2	Permit Drawing	RG351_Permit1225	jpg	05/19/1898	Original first floor drawing filed with permit #1632; Shows the design of the corner unit as a store, much of the original design of the corner unit remains unchanged;	
3	Office of Planning	1247ESE-OPPPropertyData	pdf	Current	Property Records as available todady at Office of Planning; shows store at corner unit in 1247 E St SE	
4	Permit #9145	1247ESE-19240501(P#009145)	pdf	5/1/1924	Permit to install a 8'x5' sign: "Wilkins Coffee"; shows non-residential use of the property (p2 line 11) under CofO number 8989-F (p2 line 12)	Grocery
5	Permit #9253	1247ESE-19240503(P#009253)	pdf	5/3/1924	Permit to install a 10'x8' sign: "Coca Cola"; shows non-residential use of the property (p2 line 11) under CofO number 8989-F (p2 line 12)	Grocery
6	Permit #1348	1247ESE-19260805(P#001348)	pdf	8/5/1926	Permit to install 1/4 HP meat grinder; Shows use of space as a store (Line 5 page 2) under CofO 8989-F	Grocery
7	Permit #7037	1247ESE-19270309(P#007037)	pdf	3/9/1927	Permit to install a 4'x8' sign: "Son Maid raisin"; shows that business is conducted in 1247 E ST SE (p2 line 11) under CofO number 6443-F (p2 line 12)	Grocery
8	Permit #140455	1247ESE-19310310(P#140455)	pdf	3/10/1931	Permit to install refrigeration system; Shows use of space as a grocery store	Grocery

Doc #	Doc ID	Doc Name	Doc Type	Date	Purpose	Type of use
9	Permit #152313	1247ESE-19320413(P#152313)	pdf	4/13/1932	Permit to install a 2'x15' sign (on building wall): "United Food Stores"; shows non-residential use of 1247 E ST SE under CofO number 8989-F	Grocery
10	Permit #152314	1247ESE-19320413(P#152314)	pdf	4/13/1932	Permit to install a 2'x15' sign (beyond building wall): "United Food Stores"; shows non-residential use of 1247 E ST SE under CofO number 8989-F	Grocery
11	Permit #153105	1247ESE-19320504(P#153105)	pdf	5/4/1932	Permit to install refrigeration system; Shows use of space as a grocery store	Grocery
12	Permit#248085	1247ESE-19411001(P#248085)	pdf	10/1/1941	Permit to install a 2'x13' sign: "candy Cigars/ Drink Coca Cola/ IceCream Fruits"; shows non-residential use of 1247 E ST SE	Confectionary
13	Permit #287213	1247ESE-19460717(P#287213)	pdf	7/17/1946	Permit to repair existing show windows; Shows the mixed use of the building "Store & Apts"	
14	NewsPaper Article	1247ESE-WPost19620116	pdf	1/16/1962	Washington Post article; Shows use of 1247 E ST SE as a confectionary store	Confectionary
15	CofO	1247ESE-CofO(Previous)	pdf	Various	Previous CofOs for the property including B74337 dated 05/15/1970 showing commercial activity	
16	BZA Case	BZA#15694_1019-43 (Order)	pdf	9/22/1992	BZA resolution authorizing the use of the corner unit in 1247 E ST SE as a Not For Profit Organization	Non-Profit
17	WG Bill	1247ESE-WG20130531	pdf	5/31/2013	Washington Gas bill referring to 1247 E ST SE as a STR (Store)	
18	Tax Info	1247ESE-TaxInfo	pdf	1/1/2013	Tax info showing property considered commercial for tax purposes	

Doc #	Doc ID	Doc Name	Doc Type	Date	Purpose	Type of use
19	Tax Bill	1247ESE-RETax201309	pdf	9/1/2013	Tax Bill showing commercial tax rate of 1.65 (instead of 0.85)	

1247 ESE

Government of the District of Columbia
Department of Consumer and Regulatory Affairs

1100 4th Street SW
Washington DC 20024
(202) 442 - 4400
dcra.dc.gov



C_{of}O

CERTIFICATE OF OCCUPANCY

PERMIT NO. **CO1302073**

Issued Date: **05/29/2013**

Address: 505 13TH ST SE		Zone: R-4	Ward: 6	Square: 1019	Suffix:	Lot: 0043
Description of Occupancy: APARTMENT BUILDING, 4 UNITS.						
Permission Is Hereby Granted To: 1247 ESE, LLC	Trading As: 1247 E STREET SE	Floor(s) Occupied 1ST, 2ND	Occupant Load: 4 No. of Seats			
Property Owner: 1247 ESE, LLC	Address: 1616 19TH ST NW, APT 1 WASHINGTON, DC 20009	BZA/PUD Number:	Occupied Sq. Footage: 3500			
Building Permit Number (if applicable)		Type of Application: Ownership Change	Approved Building Code Use: Apartment Houses - R-2: Approved Zoning Code Use: Apartment house			
Conditions/ Restrictions: THIS CERTIFICATE MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS MAIN ENTRANCE, EXCEPT PLACES OF RELIGIOUS ASSEMBLY. Use complies with DCMR Title 11 (Zoning) and Title 12 (Construction). As a condition precedent to the issuance of this Certificate, the owner agrees to conform with all conditions set forth herein, and to maintain the use authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all spaces whose use is authorized by this Certificate and to require any changes which may be necessary to ensure compliance with all the applicable regulations of the District of Columbia.						
Director (Code Official): Nicholas A. Majett <i>Nicholas Majett</i>		Permit Clerk Justin Bellow <i>Justin Bellow</i>	Expiration Date:			
5/29/2013 TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639						



★ ★ ★
BLRA-17
(Rev 12/85)

District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

187730

CERTIFICATE OF OCCUPANCY

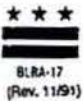
6/13/00

(date)

Permission is hereby granted to ALLIANCE FOR GLOBAL JUSTICE
to use suite(s) _____ on the BASEMENT AND FIRST floor(s)
of the building located on lot(s) 0043 square 1019
known as premises 1247 E ST S E for the following
purpose(s) NON-PROFIT OFFICE-BETWEEN 9:00 A.M.-6:00 P.M. -MON-FRI MAX. 7 STAFF ONLY.
NOT SEXUALLY ORIENTED [su]
BZA# _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONE B-1 FEE \$ 32.00
By [Signature] Director L. JORDAN
Designee [Signature]
91-08027413



District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No.B 164957

CERTIFICATE OF OCCUPANCY

March 9, 1993
(date)

Permission is hereby granted to NICARAGUA NETWORK EDUCATION FUND
to use suite(s) _____ on the BASEMENT & FIRST floor(s)
of the building located on lot(s) 43 square 1019
known as premises 1247 R Street, S.E. for the following
purpose(s) Non-profit Office: Between 9:00 a.m. - 6:00 p.m., M - F
Not sexually oriented Maximum Staff = 7 [su]

BZA #: 15694 EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE R-4 FEE \$ 27.00

Aubrey H. Edwards, Director

By Chris Mack
Designee

OFFICE COPY

Form ED-P-501

CERTIFICATE OF OCCUPANCY

No. **B 99243**

Washington, D.C., **1-3**, 19**63**

Permission is hereby granted to GEORGE WASHINGTON RUGBY FOOTBALL CLUB, INC.
to use the Ground & Basement floor(s) of the building located on Lot 43 Square 1019
known as premises 1247 E STREET, S.E. for the following
purpose(s): Private club

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF ECONOMIC DEVELOPMENT, GOV'T. OF DIST. OF COL.

ZONE **R-4**

FEE \$ **20.00**

By

[Signature]
Chief, Permit Branch

Permit Clerk

OFFICE COPY

5

Form 11-P-601

CERTIFICATE OF OCCUPANCY

No. **B 74337**Washington, D.C., **MAY 15,** 1970

Permission is hereby granted to **AL PADOW**
 to use the **FIRST AND BASEMENT** floor(s) of the building located on Lot **43** Square **1019**
 known as premises **1247 - E STREET S.E.** for the following
 purpose(s): **RETAIL CONFECTIONS AND WHOLESALE OFFICE**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

BUR. XXIV OF BUSINESS & UTILITIES, GOVT. OF DIST. OF COL.
 DEPT. OF ECONOMIC DEVELOPMENT

OFFICE COPY

ZONE **R-4**
 DUPLICATE

FEE \$ **2.00**
1019

Chief, Permit Branch
Katherine W. Franklin
 Permit Clerk

Form LI-7-501

CERTIFICATE OF OCCUPANCY

No. B 36600

Washington, D.C., AUGUST 3RD, 1962Permission is hereby granted to ABRAM PADOWto use the SECOND floor(s) of the building located on Lot 43 Square 1019known as premises 1247 E STREET, S.E. for the followingpurpose(s): APARTMENT HOUSE

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

ZONER-4

FEE \$ 10.00

DEPT. OF LICENSES & INSPECTIONS, GOVT. OF DIST. OF COL.

SEE IMPORTANT NOTICE ON REVERSE SIDE HEREOF

OFFICE COPY

Chief, Permit Branch


 Mary D. Savage
Permit Clerk

FILL OUT IN INK

APPLICATION FOR PERMIT TO INSTALL MOTOR ENGINE, BOILER OR MACHINERY

Washington, D. C. Aug 5 1926

To the INSPECTOR OF BUILDINGS:

The undersigned owner hereby applies for a permit to install Electric Light Wiring and power

1. Owner's name Mrs. Minhoff and Mrs. Berlin
2. House number 1347 Est. S.E. Street Avenue
3. Nearest intersecting street 13th St. S.E.
4. Number of lot 43 square 1019
5. How is building to be occupied? Store
6. Will the building be wired for Electric lighting, heating, or power? Electric Light and power
7. Material of building Brick No. of stories height 2 Width of front 2
8. Contractor's name John Waples
9. What is the estimated cost of the improvement? \$ 75.00

DESCRIPTION OF THE PROPOSED IMPROVEMENTS

Give definite particulars of just what repairs or improvements are contemplated, if electric motors or machinery are to be installed.

1. In what part of building to be located? by basement
2. If motor, what H. P.? 1/2 horsepower
3. What use will be made of motor? meat grinder
4. What use will be made of machinery?
5. Give description of machinery meat grinder

SEE BUILDING
PERMIT DISTRICT
APR 25/26

If a boiler or engine is to be installed, give the following information.

1. Style and H. P. of boiler (for heating or power)
2. Description of boiler house
3. Foundations Height of chimney Size
4. Space above boiler Protection for floor joint
5. Is boiler cast-iron, sectional, tubular or water tube?
6. Style and H. P. of engine
7. Location of engine Foundations

SIGNATURE OF OWNER

Mrs. Minhoff and Mrs. Berlin

APPLICANT

John Waples

ADDRESS

1240 ESE S.E.

Permit No. 7000

FILL OUT IN INK

APPLICATION FOR PERMIT TO ERECT SIGN

Washington, D. C. March 7 192 1

To the INSPECTOR OF BUILDINGS:

The undersigned owner hereby applies for a permit to erect signs on premises

No. 505-13th St SELot 43square 219

1. State how many signs to be erected 1 Size 4x8 ft
2. Will the sign be secured flat against the building line wall? Yes
3. Will sign be attached to show window or other part of building beyond building line? No
If so, at what distance beyond building line?
4. If a hanging sign, what will the projection be beyond the building line? Height above sidewalk?
5. How will sign be secured? Sign books Material of sign wood
6. Will artificial lights be used in connection with the sign? No
a. If electric, how many incandescent lights? What candle power?
c. Will any portion of the sign or lamps be colored?
7. Has the consent of the owner of building been obtained to erect sign? Yes
8. Who is the owner of the building? J. Baker
9. Who is the sign painter? Continental
10. Who is the electrical contractor?
11. Will the sign advertise a business conducted in the building? Yes
12. Has certificate of occupancy been issued? yes 6443-15

The applicant must sketch in the space below an outline view of the sign, and show lettering to go on same.

504
MAID
RAISINS

If lights are to be used, application must be made in duplicate and the approval of the Electrical Engineer must be obtained before this application is submitted to the Inspector of Buildings.

SIGNATURE OF OWNER J. Baker

I hereby certify that the sign has not been erected.

APPLICANT ContinentalADDRESS 121 No 1st St SE

(WEEDS WITH INK)

APPLICATION FOR PERMIT TO ERECT SIGN

FOR CLERK

Name of owner of building Isaac Baker
Premises No. 1247-E. 8th Lot 43 Square 1014
No. to be erected (1) Material See Plan Size 2' X 18'

Use 15th
Height 60
Area C
Date 3-8-32

Applicant is required to show, in space below, the wording, etc., of proposed sign or signs:

**UNITED FOOD STORES
INC.**

(Initials)

Will sign be flat against the building line wall? yes
Will it be erected at an angle to wall? no If so, extent of projection 42" on show window
Will it be erected on any part of building beyond building line? yes
If so, where? on show window Extent of projection 42"
Will it be a repainted sign? no Will it be placed on roof? no
Height of sign above sidewalk 12' How fastened? Sign Hooks + Braces
Will sign advertise a business conducted on premises? yes Occupancy permit No. 989
Will lights be used in connection with the sign? no
Number of lights to be used no Candlepower no
(Use of bulbs "dipped" in coloring matter is prohibited)
Name of electrical contractor none
Name of sign painter Capital Sign Co
Give approximate size of each sign now on building _____
If a dentist's sign, will it comply with the Act of Congress of June 7, 1924, regulating the practice of dentistry? _____

NO SIGN WILL BE PERMITTED TO EXTEND MORE THAN 42 INCHES BEYOND THE BUILDING LINE.

A PERMIT MUST BE OBTAINED FOR EACH SIGN THAT EXCEEDS 144 SQUARE INCHES IN AREA.

IF LIGHTS ARE TO BE USED, APPLICATION MUST BE MADE IN DUPLICATE AND APPROVAL OF THE ELECTRICAL DEPARTMENT MUST BE OBTAINED BEFORE THIS APPLICATION IS SUBMITTED TO THE INSPECTOR OF BUILDINGS.

I hereby certify that proposed sign has not yet been erected.

Signature of owner Isaac Baker

Address of owner 1247-E. 8th

B. C. Rein

Applicant.



By Ellsworth Davis Staff Photographer

In photo at left above, Al Padow looks over the damage done to his confectionary store at 13th and E sts. se, yesterday by a runaway truck. Right panel gives an overall

view of the wrecked store, as Padow talks with police. Scattered stock of chewing gum and candy can be seen strewn over floor in both pictures.

APPLICATION FOR PERMIT TO INSTALL REFRIGERATING SYSTEM

(Applications must be made in duplicate)

Name of owner of building Isaac Baker.
 Premises number 1247 E St. S. E.
 Lot number 43 Square number 1019 Estimated cost, \$ 100.
 Number of motors to be installed 1 Total horsepower 1-5
 Machine used Frigitaire Number of compressors used 1
 Pounds of refrigerant used 6 lbs. Number of evaporators used 1
 Kind of refrigerant used S O F Class E
 System Remote Reinspection Fee 3.00
 Kind of pipe Copper
 Where compressor is located Basement

Purpose for which building is used Grocery
 Kind of business _____
 Material of building Brick Stories 2
 Is any new electrical wiring to be done? Yes
 Name of contractor _____
 Name of contractor J. D. Mackessy. Air Water Gas
 Name of refrigerating machinery contractor Southern Dairies Inc.

CLERK FILLS THIS IN	
Use	<u>1st</u>
Height	<u>60</u>
Area	<u>C</u>
Date	<u>3-9-31</u>
	<u>R</u> (Initials)

The approval of this application does not authorize the operation of any system before final approval has been obtained and certificate issued by the Inspector of Plumbing.

Recommended for permit: [Signature] Signature of owner (or authorized agent) Isaac Baker.
 Address of owner 1247 E St. S. E.
 Name of applicant J. D. Mackessy.
 Address of applicant 1410 Webster St. N. W.

Permit No. 146044
 Issued 3-10-31

Permit No.

FILL OUT IN INK

APPLICATION FOR PERMIT TO ERECT SIGN

Washington, D.C. April 30 1924

To the INSPECTOR OF BUILDINGS:

The undersigned owner hereby applies for a permit to erect signs on premises

No. 1247-E St. S.E.

Lot 43 square 1019

1. State how many signs to be erected. 1 Size 8' x 5'
2. Will the sign be secured flat against the building line wall? Yes
3. Will sign be attached to show window or other part of building beyond building line? No
If so, at what distance beyond building line?
4. If a hanging sign, what will the projection be beyond the building line? Height above sidewalk?
5. How will sign be secured? Hook Bolt Material of sign Wood & Metal
6. Will artificial lights be used in connection with the sign?
a. If electric, how many incandescent lights? b. What candle power?
c. Will any portion of the sign or lamps be colored?
7. Has the consent of the owner of building been obtained to erect sign? Yes
8. Who is the owner of the building? Isaac Baker - owner
9. Who is the sign painter? Thos. Curran Co.
10. Who is the electrical contractor?
11. Will the sign advertise a business conducted in the building? Yes
12. Has certificate of occupancy been issued? Yes 5989-F

The applicant must sketch in the space below an outline view of the sign, and show lettering to go on same.



If lights are to be used, application must be made in duplicate and the approval of the Electrical Engineer must be obtained before this application is submitted to the Inspector of Buildings.

SIGNATURE OF OWNER Isaac Baker

I hereby certify that the sign has not been erected.

Signature of Inspector of Buildings

APPLICANT Thos. Curran Co.

ADDRESS 415 1st St. S.E.

Permit No.

FILL OUT IN INK

APPLICATION FOR PERMIT TO ERECT SIGN

Washington, D.C. April 30 1924

To the INSPECTOR OF BUILDINGS:

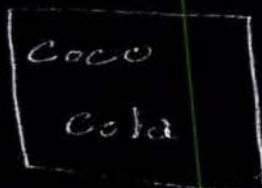
The undersigned owner hereby applies for a permit to erect signs on premises

No. 1247- 6 St SE

Lot 43 square 1019

1. State how many signs to be erected. 1 Size 10' x 8'
2. Will the sign be secured flat against the building line wall? Yes
3. Will sign be attached to show window or other part of building beyond building line? No
If so, at what distance beyond building line? 5'
4. If a hanging sign, what will the projection be beyond the building line? Height above sidewalk? 5'
5. How will sign be secured? Painted Material of sign Paint
6. Will artificial lights be used in connection with the sign?
a. If electric, how many incandescent lights? 1 b. What candle power? 1
c. Will any portion of the sign or lamps be colored? No
7. Has the consent of the owner of building been obtained to erect sign? Yes
8. Who is the owner of the building? Isaac Baker (Owner of Building)
9. Who is the sign painter? Thor Kurash Co.
10. Who is the electrical contractor?
11. Will the sign advertise a business conducted in the building? Yes
12. Has certificate of occupancy been issued? Yes 8989-F

The applicant must sketch in the space below an outline view of the sign, and show lettering to go on same.



If lights are to be used, application must be made in duplicate and the approval of the Electrical Engineer must be obtained before this application is submitted to the Inspector of Buildings.

SIGNATURE OF OWNER Isaac Baker

I hereby certify that the sign has not been erected.

APPLICANT Thor Kurash Co.

ADDRESS 115-D St SE

