

BOARD OF ZONING ADJUSTMENT

APPLICANT'S STATEMENT

2737 SHERMAN AVE NW LLC ("Applicant")

I. Description of the Property and Relief Sought.

This statement is submitted on behalf of 2737 Sherman Ave NW LLC (the "Applicant"), the lessee of the property located at 2737 Sherman Avenue, NW (Square 2885, Lot 100) (the "Property"), in support of variance relief from the R-4 zone use restrictions under 11 DCMR § 330.4.

The Property consists of a small lot located at the southeast corner of Sherman Avenue and Girard Street. The Property is a single lot of record with 935 square feet of land area. It is improved with a small two-story building (the "Building"), which appears to have been originally constructed as a retail use, and which has been used as a grocery store for many years. The Property is located within the R-4 zone district. The Building is currently vacant, and was most currently used as a grocery store on the first floor, with open space on the second floor. The first floor consists of an open floor plan with two bathrooms used for retail purchases as they have no showers. The second floor has no internal walls, and no bathroom or kitchen, and it does not appear to have been used for residential use. The surrounding area is otherwise generally characterized by residential row houses. The previous grocery use was a legally non-conforming use, according to various certificates of occupancy attesting to the legal use over the years. However, because the Building has been vacant for about five (5) years, the nonconforming use was extinguished, and a use variance is required to restore any nonresidential use.

II. Proposed Use.

The Applicant proposes to use both floors of the Building as a restaurant. The proposed restaurant proposed will be cater primarily to the surrounding neighborhood and is expected to provide service during lunch and dinner hours with extended service on Fridays and Saturdays. A proposed floor plan is attached hereto in Section C of the Form 120 application. The Applicant is currently coordinating with its respective ANC on proposing operating hours. It is expected that most restaurant staff will use public transportation, or walk or ride a bike to work.

The Applicant expects that the restaurant will serve as a convenient meet and greet space for the neighborhood, and will be an excellent adaptive re-use of this long-vacant property. The use is intended to be primarily a neighborhood-serving establishment, attracting primarily local residents. The restaurant use here would provide a vibrant use in a location that would benefit greatly from the restoration and use of this Property. The Applicant has already secured approval for an ABC license for the sale of alcohol in conjunction with the restaurant use. ABRA had requested a certificate of occupancy upon BZA approval in order to issue their final ABC license.

III. Requested Relief.

The proposed use is not permitted in the R-4 zone. The Building, or at least its first floor, was originally designed and built for commercial use, and has apparently always been used for commercial retail use. But for the lapse in the nonconforming use of more than three (3) years, the Applicant could have applied for a special exception for a change from one nonconforming use to another, under §2003. But because the Building has been vacant for about five years, the Applicant is 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 – up until five (5) years ago – as a legally nonconforming grocery store. It is not known if the upstairs was ever used for residential use, but when the Applicant first saw the Building, the second floor was an open floor, with no internal walls, and with no kitchen or bathroom.

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).

Because the Building was originally designed and built for a commercial retail use, and has been so used over the years. It would be an undue hardship to the owner of the Property, and the Applicant, to have to convert the Property to a permitted residential use. Such a conversion would be prohibitively expensive.

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 that a restaurant use is a good fit for this Building and for this neighborhood.

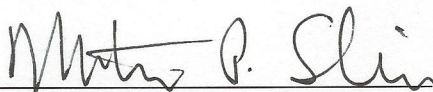
2. The Zone Plan.

This Building has been used for a legally nonconforming use for many years. The Building was originally designed as retail space and was used for that purpose through the years.

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,



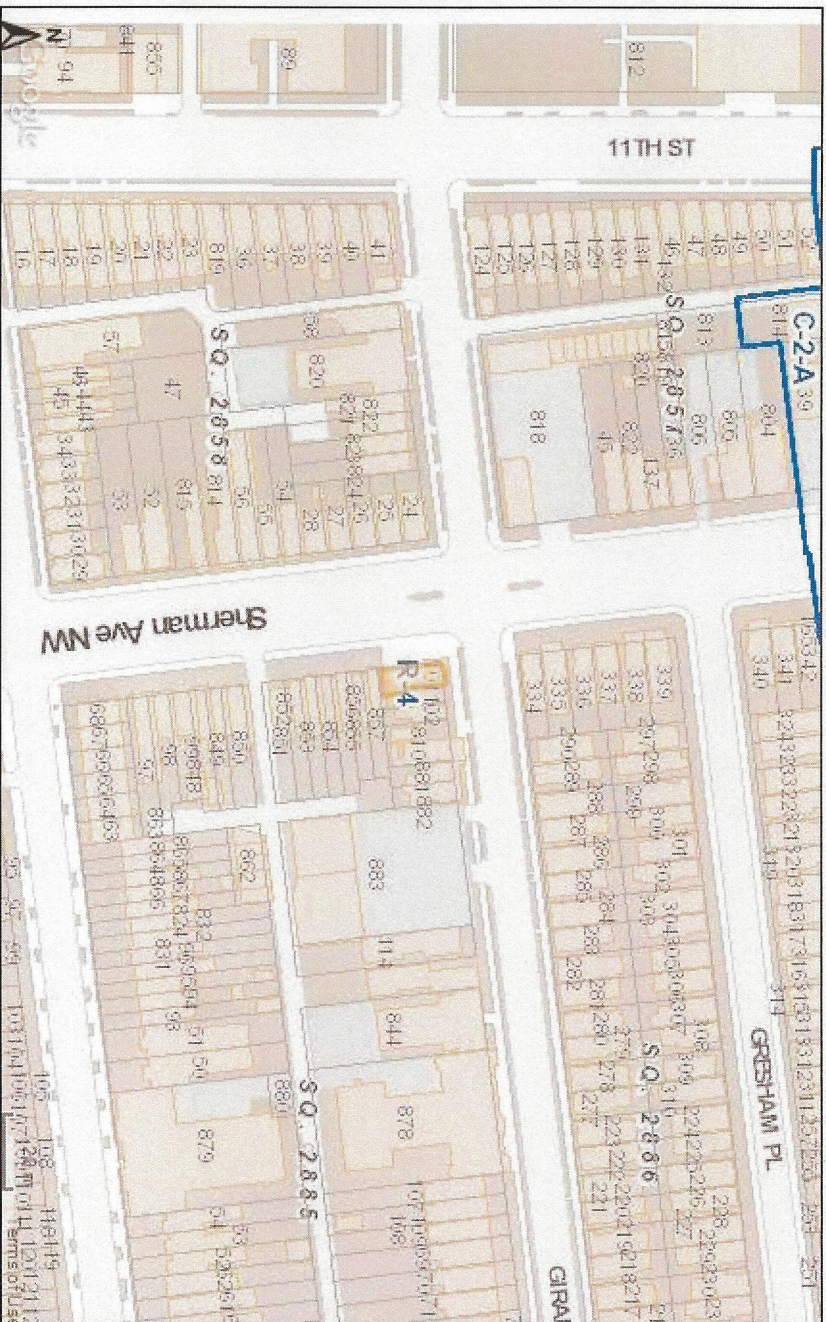
Martin P. Sullivan, Esq.
Sullivan & Barros, LLP

Date: 7/23/14



Zoning Report for Square: 2885 Lot: 0100

May 17, 2014



Zone Districts

Pending Zones

Overlays

Pending Overlays

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Historic Districts

Active PUDs

Pending

TDRs

Campus Plans

CEA

Latitude: NaN Longitude: NaN

While DCOZ is committed to providing accurate and timely zoning information via the zoning map, DCOZ cannot guarantee the quality, content, accuracy or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCOZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause of such error or decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCOZ retains the right to change any content on its zoning map without prior notice.

DC Office of Zoning

www.dcoz.dc.gov

Zoning Data Summary*

Square/Suffix/Lot	2885 / n/a / 0100
Premises Address	2737 SHERMAN AV NW
Zoning District (s)	R-4
Overlay District (s)	
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	1
Council Member	Jim Graham
ANC	1B
ANC Chairperson	undefined
SMD	1B09
Commissioner	James A. Turner

* For a detailed explanation of zoning related terms, please refer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.