

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

Application of Talal (P2) Ventures LLC
for Special Exception and Variance
Relief for a Food Delivery Service Use in the
C-2-A Zone District

ANC: 2E

**STATEMENT OF EXISTING AND INTENDED USE AND PRELIMINARY
STATEMENT OF SATISFACTION OF BURDEN OF PROOF FOR SPECIAL
EXCEPTION AND VARIANCE RELIEF**

**I. STATEMENT OF EXISTING AND INTENDED USE AND ZONING RELIEF
REQUESTED**

This is an application of Talal (P2) Ventures LLC (“**Applicant**”) for special exception and variance approval, pursuant to the requirements of Section 734, in order to establish a food delivery service use in the existing building located at 1815 Wisconsin Avenue, NW (Square 1299, Lot 327, the “**Property**”). The building on the Property was recently constructed as part of the renovation and construction of the new Safeway grocery store located at 1855 Wisconsin Avenue, NW. The building on the Property currently includes two retail/service tenants (Noodles & Company and Jos A. Bank Clothiers) and surface parking spaces. The Applicant proposes to establish a Paisano’s pizza and pasta delivery restaurant in the retail space that was formerly a barber shop (Roosters Men’s Grooming Center).

The Property is split-zoned C-1 and C-2-A, with the proposed food delivery service use and associated parking provided solely on the C-2-A portion of the Property. The C-1 zoned portion of the site is a surface parking lot which provides parking spaces for the uses in the building located on the Property, as well as the retail and service uses located in the building known as 1825 Wisconsin Avenue, NW (Lot 326 in Square 1299), which is adjacent to the Property.

In addition to the special exception relief, the Applicant is also requesting variance relief from Section 734.2 in order to establish this food delivery service use. Section 734.2 requires that “no part of the lot on which the use is located shall be within twenty-five (25) feet of a Residence District unless separated therefrom by a street or alley.” The Jelleff Recreation Center is located immediately to the east of the Property, and is located in the R-1-B Zone District.

As noted above, a Noodles & Company fast food restaurant is located on the Property. The BZA adopted a bench decision to approve that fast food restaurant use in 2012 (see BZA Application No. 18328). In that case the Board granted a modification of Section 733.2 (which has language that is identical to the language in Section 734.2), to allow a fast food restaurant on the Property.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3104.1 and 3103.2 of the Zoning Regulations.

III. DESCRIPTION OF THE PROPERTY AND THE SURROUNDING AREA

The Property is located in the northern portion of the Georgetown neighborhood and is located just south of the entrance to the Safeway grocery store. The Property has no alley access, as all vehicular access to the Property is provided from Wisconsin Avenue, NW. The Jelleff Recreation Center is located immediately to the east of the Property. A retail building housing a Sherwin Williams paint store is located immediately to the south of the Property, with S Street, NW located just beyond a surface parking lot for the Sherwin Williams store. Across Wisconsin Avenue, to the west of the Property, is a commercial strip which includes restaurants, office space, a nail salon, and clothing stores.

IV. DESCRIPTION OF THE PROPOSED USE

Paisano's is a gourmet pizza and pasta delivery restaurant that first opened in Fairfax, VA in 1997. The company currently has 25 locations in Northern Virginia and Maryland. This will be the first Paisano's in the District of Columbia. The Paisano's space will be located in the rear of the building on the Property and will occupy approximately 1,365 square feet of space. Three parking spaces will be provided for this use. No exterior changes to the existing building on the Property, other than signage, will be made in order to accommodate the Paisano's tenant. Only interior modifications will be necessary to allow Paisano's to operate in the existing building.

V. THE APPLICATION SATISFIES THE SPECIAL EXCEPTION STANDARDS OF SECTION 734

The Project is in harmony with the intent and purposes of the Zoning Regulations and is consistent with the requirements of Sections 734 and 3104.1.

A. The Application is in Harmony with the General Purpose and Intent of the Zoning Regulations

As noted in Section 720.2, "The C-2-A District is intended to provide facilities for shopping and business needs, housing and mixed uses for large segments of the District of Columbia outside of the central core". The Property includes a recently constructed commercial and retail building located along a portion of Wisconsin Avenue, NW which has a long history of a variety of commercial uses. This small (1,365 square foot) food delivery service use is consistent with the surrounding commercial uses and the goals and intent for the C-2-A Zone.

B. Satisfaction of the Standards Enumerated in Section 734

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

As noted above, the Applicant is seeking variance relief from this provision.

734.3 If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and

twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot.

This section is not applicable, as the Property does not abut an alley. However, the lot line which separates the Property from the adjacent Jelleff Recreation Center includes an attractive brick wall and a fence that allows access to the Wisconsin Avenue retail stores from the Jelleff Recreation Center.

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

The refuse dumpster that will be utilized by the food delivery service will be housed in a three-sided enclosure that does not face a residence district. This dumpster is shared with the other commercial, retail, and service establishments in the building and the adjacent property. This is the same dumpster that was approved by the Board in BZA Order No. 18328.

734.5 The use shall not include a drive-through.

No drive-through use is proposed for this food delivery service space.

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

The Paisano's is not expected to generate a significant number of visitors coming to the Property as most of their business will be deliveries. The hours of operation will be 10:00 am – 2:00 am, Sunday – Thursday and 10:00 am – 3:00 am on Friday and Saturday. Other than signage, no changes are proposed to the building on the Property as a result of Paisano's occupancy.

Therefore, the Applicant does not believe that the use of space in the building by Paisano's will create any objectionable conditions to neighboring properties.

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

The Paisano's space will occupy approximately 1,365 square feet of space. A food delivery service use in the C-2 Zone is required to provide one parking space for every 500 square feet of gross floor area or cellar floor area. The lease agreement provides three parking spaces on the Property for Paisano's. In total, 22 parking spaces are provided on the Property. This will ensure that there is sufficient off-street parking for Paisano's customers.

734.8 The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions.

Access to the Property will occur from an existing curb cut off of Wisconsin Avenue, NW. The amount of traffic generated from this small food delivery space use is expected to have no perceptible impact on the daily traffic that occurs along Wisconsin Avenue, NW.

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

The Applicant does not believe that it will be necessary for the Board to impose any additional conditions in order to protect adjacent or nearby properties. However, the Applicant will work with the Board, the Office of Planning and the ANC to address any concerns that may arise regarding this proposed use.

VI. THE APPLICATION SATISFIES THE VARIANCE STANDARD

The burden of proof for area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v.

D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, the Applicant demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood

Here, like in Monaco, there are a series of factors that contribute to the uniqueness of the Property. First, the Property does not have any alley access to the rear (east) as is typical up and down the Wisconsin Avenue commercial corridor. Second, the adjacent residential property is a long time, large institutional use (Jelleff Recreation Center) which has a large parking lot which shares a considerable portion of the shared property line with the Property. Finally, the zoning history of the Property, the Board’s recent approval of a fast food restaurant despite the fact that the Property is not separated from a Residence District by a street or alley, is another factor that leads to its uniqueness and satisfaction of the first prong for area variance relief.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171.

Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible. Here, the Applicant meets this standard. The minor relief requested will still allow the Board to use the special exception process to mitigate any adverse impacts that the Paisano’s use could have on adjacent properties. Strict compliance with the Zoning Regulations would prohibit any food delivery use on this Property.

C. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. As discussed above, Paisano's is a small (1,365 square foot) use along the Wisconsin Avenue corridor that includes many different types of commercial uses. The use of the adjacent property in a "Residence District" is by a long-time institutional use (Jelleff Recreation Center) which will not be adversely impacted by the Paisano's use. The Board recently granted very similar relief (in BZA Application No. 18328) and determined that such relief did not impair the intent, purpose or integrity of the Zone plan. The Board should make a similar determination in this case.

VII. DIALOGUE WITH ANC 2E, OFFICE OF PLANNING, AND ADJACENT NEIGHBORS

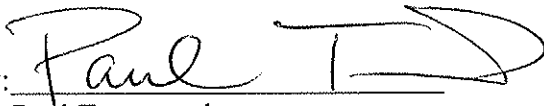
The Applicant will contact appropriate representatives of ANC 2E, the Office of Planning, and adjacent property owners regarding this application prior to the public hearing in this case. The Applicant will work diligently to address any issues that are raised by these organizations or individuals prior to the public hearing in this case.

VIII. CONCLUSION

For all of the above-mentioned reasons, the Applicant has satisfied the legal standards for special exception and variance relief and respectfully requests that the BZA approve this application.

Respectfully submitted,

GOULSTON & STORRS

By: 
Paul Tummonds