



## MEMORANDUM

**TO:** District of Columbia Zoning Commission

**FROM:** Maxine Brown-Roberts, Project Manager  
*JL*  
Joel Lawson, Associate Director Development Review

**DATE:** October 6, 2017

**SUBJECT:** BZA Case #13991A – Modification of Significance to BZA Order 13991 to add Fast food establishment to a retail grocery store/delicatessen establishment at 522 1/2 K Street, NE, in the RF-1 zone.

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### I. APPLICATION AND RECOMMENDATION

Curt Hansen, operator of Old City Market and Oven, (applicant), requests a Modification of Significance under Subtitle Y § 704 to BZA Order 13991 for the business operated at 522 1/2 K Street, NE (See Attachment 1). The modification of significance would include: addition of an accessory fast food establishment to a retail grocery store/delicatessen; expansion of the use into the basement, change to the hours of operation hours and an increase in the number of employees. The Office of Planning (OP) recommends **approval** of the requested modification to:

- A. Add an accessory fast food establishment to the retail grocery store/delicatessen;
- B. Expand the retail grocery to the basement: and
- C. Modify the conditions of approval as follows: (deleted text is shown with ~~strikethrough~~ and new text is shown with **bold and underline**)
  1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
  2. **At least ~~Two~~ garbage cans receptacles** shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris. **Commercial trash pick-up shall be a minimum of two times per week;**
  3. **There shall be a maximum of seven employees;**
  4. **Hours of operation shall be limited to 7:00 am to 9:00 pm Monday to Friday; 9:00 am to 9:00 pm, Saturdays; and 9:00 am to 6:00 pm on Sundays;**
  5. **Deliveries to the market shall be between the hours of 9:00 am and 5:00 pm;**
  6. **Seating is limited to eight on the first floor and ten in the basement;**
  7. **If seating is allowed in the public space, it will be in addition to the seating allowed in Condition 6;**
  8. **There will be no table service provided; and**
  9. **Delivery of food to customers will only be by foot or bicycle.**

These conditions are based on the applicant's proposal and were discussed with the applicant.

## II. BACKGROUND

The Board of Zoning Adjustment (BZA) granted special exception approval in BZA Case 13991<sup>1</sup> to allow a change from a non-conforming use; drug-store and food products on the first floor and storage in the basement to grocery store and delicatessen (sandwiches and hot food) on the first floor and storage in the basement. The applicant, at that time, proposed to limit the operations as summarized below (Exhibit 3, BZA Case 13991, page 2, Item 10):

- Hours of operation to be limited to 8:00 am to 8:00 pm Monday to Saturday and 8:00 am to 6:00 pm on Sundays;
- The number of employees would remain at two;
- Service would be carryout only;
- There would be no tables or chairs for on-site sit down service.

The Board approved the change from a non-conforming use to another non-conforming use, allowing the grocery store and deli use on the site.

Subsequent to its approval in 1983, the ownership of the market changed but the uses continued. The current owner states that the building was renovated and incorporated a small commercial kitchen with a wood/gas fired brick oven pizza, and a coffee bar (based on the BZA Order) and continued the provision of grocery.

## III. PROPOSAL

The applicant requests to continue the sale of hot food for carry out; provide seating for patrons to use while waiting for their food or for informal gathering but; with no service provided; expand the uses to the basement; increase the number of employees; change the hours of operation; and offer food delivery via bicycle or foot within a two-mile radius. The second floor of the building will remain residential.

## IV. ANALYSIS

The applicant has requested a Modification of Significance, Subtitle Z § 704, to BZA Order 13991. Subtitle Z § 704.4 states:

*The scope of a hearing conducted pursuant to this section shall be limited to impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.*

At Exhibit 3, BZA Order 13991, page 3, the Board found that the market met the requirements of the standards at that time (Sub-paragraphs 7106.111 through 7106.116):

- A. *The proposed sale of sandwiches and hot food at the ABC market will have no adverse effect on the present character and future development of the surrounding area within 300 feet. The size, clientele, hours and number of employees will not increase. A service requested by present neighborhood customers will be provided in a setting that does not intrude upon residential neighbors.*

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<sup>1</sup> Approved under ZR-58 rules.

Size and Clientele

The applicant proposes to expand the retail grocery into the basement area, but there would be no changes to the exterior of the building. The current approval prohibits the provision of tables and chairs for seating. The applicant request that seating be allowed but that sit-down service would not be provided. The applicant states that there have been many requests that seating be provided for patrons to use while they wait for their takeout food but could also be used by patrons for longer periods.

Currently, the market has not had an adverse impact on the character and future development of the area within 300 feet. The community is predominantly developed with residential use with a few institutional uses such as the J. Ormond Wilson Elementary School to the east of the market and the former Hayes School which also accommodated the Office of Aging Senior Wellness Center to the west of the market. The market serves the residents as well as workers in the area and has not stopped or affected the residential development in the area. In fact, it enhances the surrounding community as it serves the day to day needs of the community but is not of a size to attract patrons from outside the area. The expansion into the basement is not likely to change this situation.

Hours of Operation

The market was approved to operate 8:00 am to 8:00 pm Monday to Saturday and 8:00 am to 6:00 pm on Sundays. The applicant has requested to change the hours of operation to 7:00 am to 9:00 pm Monday to Friday; 9:00 am to 9:00 pm, Saturdays; and 9:00 am to 6:00 pm on Sundays. The applicant states that the earlier time is based on the many requests from residents on their way to work, teachers at nearby J. Ormond Wilson Elementary School, staff at the nearby senior wellness center, and parents dropping children to school and would like to get coffee. The applicant states that the earlier hours would also give them the flexibility to open later on days when the volume of customers is less. Although the opening time would be 7:00 a.m., deliveries would not be before 9:00 am to minimize activity at the market early in the morning. OP suggests that the hours of operations be made a condition of approval.

Number of Employees

The market was approved for two employees and the applicant states that there are currently three full time employees and a part time employee. One full time employee lives in the apartment above the store, another employee lives three blocks away and walks to work and the third takes public transportation to work. Therefore, the impact on traffic and parking is minimal. The applicant has requested permission to increase the number of employees, mostly part time, to cover high demand periods. The applicant states that he would prefer that there be no limit on the number of employees but does not envision having more than seven employees. OP recommends that the number of employees be limited to seven subject to any other recommendation by the Department of Transportation. (DDOT).

- B. The proposed use will not create any deleterious external effects. Noise, traffic, parking and loading will be limited by the fact that only walk-in traffic from the immediate neighborhood will patronize the store. No newspaper advertising will be done. Deliveries are limited. Vibrations and odor will be limited by the fact that no heavy equipment will be used for cooking or other work, illuminations, design and siting effects, as hereafter conditioned, will be limited so that the premises will retain a quasi-residential appearance.*

The proposal would continue to meet these standards as the use would likely not generate a level of noise to adversely affect the neighborhood as most patrons will continue to be from the immediate surrounding area and most patrons will walk to the market. Vibrations and odor will continue to be limited as no heavy equipment will be used for cooking. Delivery of goods to the site would not be before 9:00 am or after 5:00 pm. To keep the surrounding area clean and free of debris or trash, receptacles would continue to be provided on both side of the market and commercial trash pick would be provided a minimum of two times per week. Traffic to the site would be limited as most persons would walk to the market and most employees would walk or take public transportation thereby limiting the need for parking or affecting traffic movements in the area. There would be no illuminated signs added to the building and the exterior design and siting would not be changed. The applicant states that no newspaper advertising would be done.

The applicant has wishes to provide a delivery service via a bicycle, within a within a two-mile radius of the store to accommodate neighborhood patrons who sometimes are unable to pick up their food. Food delivery service is prohibited in the RF-1 zone. However, the service proposed does not meet the definition of Food Delivery Service in Subtitle B § 100.2:

*Food Delivery Service: A restaurant, prepared food shop, or fast food establishment, in which the principal use is production of prepared food for delivery to customers located off the business premises. Seating and tables for customers may or may not be provided for on-premises consumption, but if present are clearly subordinate to the principal use of preparing food for delivery to off-site customers. Any establishment that derives more than seventy-five percent (75%) of its sales from delivery orders will be considered a food delivery service in all cases. This definition does not include catering establishments.*

The principal use of the property would be retail grocery/deli with an accessory fast-food establishment. The seating would not be to principally to accommodate consumption on-site and would be subordinate to the retail grocery/deli use. The applicant states that the delivery service would be a curtesy to and customers would not be charged.

*C. The nonconforming use has been continuous, and has never been changed to a conforming or more restrictive use.*

The nonconforming use on the property has been continuous since the approval of BZA 13991 and the proposed modification would not change the uses to a conforming or more restrictive use.

*D The proposed use will be a neighborhood facility as is required in a residential zone.*

The retail grocery store/deli with accessory fast food would continue to be a neighborhood facility as it would serve residents who walk or ride to the facility and shoppers are not likely to travel from outside the community to shop.

*E. The Board will impose conditions on this approval concerning signs and trash cans to protect the enjoyment of property in the neighborhood.*

The Board imposed conditions concerning signs and trash cans. OP recommends retaining and modifying these conditions and proposes additional conditions as follows:

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
2. **At least ~~Two~~ garbage cans receptacles shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris. Commercial trash pick-up shall be a minimum of two times per week;**
3. **There shall be a maximum of seven employees;**
4. **Hours of operation shall be limited to 7:00 am to 9:00 pm Monday to Friday; 9:00 am to 9:00 pm, Saturdays; and 9:00 am to 6:00 pm on Sundays;**
5. **Deliveries to the market shall be between the hours of 9:00 am and 5:00 pm;**
6. **Seating is limited to eight on the first floor and ten in the basement;**
7. **If seating is allowed in the public space, it will be in addition to the seating allowed in Condition 6;**
8. **There will be no table service provided; and**
9. **Delivery of food to customers will only be by foot or bicycle.**

## V. SPECIAL EXCEPTION

Special Exception Relief pursuant to Subtitle X § Chapter 9:

- i. **Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?**

The proposed addition of the accessory fast-food establishment, the expansion of the use to the basement, the change in the hours of operation and the increase in employees would be in harmony with the purpose and intent of the Zoning Regulations and map. Although commercial uses in RF-1 zoned areas are limited, the value of neighborhood serving retail is also acknowledged. The use of the property for commercial use serving the neighborhood has existed and recognized a nonconforming use within the residential district. It is the intent of the regulations to allow these uses to provide services to walk-in customers that are already in the area.

- ii. **Would the proposal appear to tend to affect adversely, the use of neighboring property?**

As demonstrated in Section IV of this report, the services, space, additional employees and hours of operation would allow the market to continue to serve the neighborhood without adversely affecting the neighboring properties. The property has historically accommodated the market and the proposed uses and it is not anticipated that the row dwellings to the north and west of the site would have negatively impacted.

## VI. AGENCIES

The Department of Transportation will provide a report under separate cover.

## VII. COMMUNITY COMMENTS

The property is within ANC-6C. OP has been informed that the ANC will recommend postponement of the public hearing to October 18, 2017.

Attachment - Site Location

