Holland + Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

Edward L. Donohue
202 419 2455
ed.donohue@hklaw.com

December 1, 2004

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D.C. OFFICE OF ZONING
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**VIA FAX AND FIRST CLASS MAIL**

Mr. Geoffery Griffis
Chairman, DC Board of Zoning Adjustment
441 4th Street, NW, Suite 210 South
Washington, DC 20001

Re: Pre-Hearing Submission for Teofila Ayala
BZA Application No. 17231/Hearing Date December 14, 2004

Dear Mr. Griffis:

On behalf of the applicant in the reference case, please accept the Pre-Hearing submission of the applicant, which is submitted one day later than required under Section 3113.8 of the Zoning Ordinance. Our understanding is that the packages have not yet been distributed to the members of the Board. Further, in order to accommodate the Advisory Neighborhood Commission 1A, copies of this submission are being delivered by fax as well as mail, as is required.

With regard to the ANC, we have had discussions with the Single Member District representative, Ms. Arguellas. We had hoped that the full ANC would have considered this matter at it's meeting in November, but that did not occur. We have been assured that we will be heard at the next meeting, scheduled to be December 8th. If the ANC votes and has a report for the Board to consider, we will support the request to allow a late-filed report.

Thank you.

Sincerely yours,

HOLLAND & KNIGHT LLP

Edward L. Donohue

Edward L. Donohue

ELD/ls
Enclosures
cc: John Moore, Office of Planning
Jacqueline Arguellas, ANC 1A

**BZA**
**Case No. 17231**
**Exhibit No. 28**

Board of Zoning Adjustment
District of Columbia
CASE NO. 17231
EXHIBIT NO. 28

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

**Re:** **Application of Teofilo Ayala**
**3568 14th Street NW**
**Lot 22 in Square 2688**

**BZA Application No. 17231**
**ANC 1A01**
**Zoned C-2-A**

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## SECOND REVISED STATEMENT OF THE APPLICANT

### I.

### Nature of Relief Sought

This is an application pursuant to Section 3103.2 of the Zoning Regulations for an area variance from the strict application of Section 771.2, the floor area ratio limitation, to permit conversion from a carryout to a restaurant on the first floor and expansion of the restaurant to the second floor of an existing building in the C-2-A zone at premises known as 3568 14th Street, NW the (Subject Property). No other relief is requested.

### II.

### Jurisdiction

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations of the District of Columbia.

### III.

### Background

**A. Project History and Basis for Request.**

The owner acquired the property on November 11, 2000. In the fall of 2001, he contracted plans to renovate the existing building. The building was built in 1912 and was in need of substantial repair and upgrade. Since the second floor dwelling unit had not been occupied for some time, he determined to convert use of the entire building from a carryout on the first floor and a dwelling unit on the second floor into a restaurant specializing in Hispanic cuisine. The immediate neighborhood has a large population of Hispanic citizens and, although there are a number of carryouts and fast-food establishments, there are no family oriented sit down restaurants oriented toward the predominant population.

Because of the shape and size of the existing building, the proposal required utilization of the entire building. Plans were drawn and a permit application was submitted. The application was denied on the basis that the proposal exceeded the allowable floor area ratio for a

nonresidential use in the C-2-A zoning district. The building was in need of immediate repair so the plans were revised to allow renovation and upgrade consistent with the existing authorized uses. A building permit was obtained and construction began.

In February 2003 in the middle of renovation efforts, the roof of the building caved in after a heavy snowfall. The plan for conversion was curtailed as new permits were acquired to respond to the additional issues arising from the roof failure.

The additional cost of construction resulting from the roof cave-in severely limited the economic viability of returning to the previously approved uses. The owner is now before the Board to plead for relief from the area requirements of the C-2-A zoning district to allow full conversion of the existing building into a restaurant. It is anticipated that the renovation and conversion will result in a number of positive effects:

- A safe clean place where neighbors of Hispanic descent can bring their entire family to sit and enjoy a traditional meal without having to leave the immediate neighborhood; and, where others can come to get a taste of traditional Hispanic cuisine in a traditional setting.
- More job opportunities for neighborhood residents;
    - Staffing the restaurant will require a broader scope of employees than a carryout, e.g., cooks, cooks assistants, waiters, busboys, etc.
- Lesser potential for ancillary impact in that the effects of the use are primarily confined to the interior space.
    - A restaurant presupposes limited use of pre-wrapped food products or disposable containers that could result in non-biodegradable trash items strewn throughout the neighborhood;
- Reasonable return on investment for the owner;
    - The existing authorized uses will not provide the level of income necessary to offset the cost of revitalization. It is hoped that a comfortable sit-down restaurant in the existing neighborhood will act as an arbiter of change that will be embraced by neighboring business owners and residents.

## B. Description of Subject Property

The subject property is known as lot 22 in square 2688 and carries the address 3568 14th Street NW. It is a corner lot located at the Southwest corner of the intersection of 14th Street and Perry Place in Northwest Washington, DC. The lot is located within the C-2-A, Community Business Center District.

The lot is improved by a two-story brick and frame structure. It has a partial cellar level used for mechanical equipment, laundry, a small office, and storage. Perry Place intersects 14th Street at an angle. As a result, the building is angular in shape. At the front the building is only fourteen feet (14 ft.) wide and angles along Perry Place to a width of thirty-two feet and 12 tenths of a foot (32.12 ft.) at the rear.

The original building was constructed in 1912[1]. At some point prior to acquisition by the current owner, an addition was constructed on the rear of the building. As a result, the building currently occupies the entire lot.

The principal entrance to the building in on 14th Street, but there is a second entrance from Perry Place. The building is currently vacant.

### C. Description of Surrounding Area

The subject property is located in Ward 1 in the Columbia Heights neighborhood of NW Washington. The area is primarily residential with the exception of the 14th Street commercial corridor. There are a variety of commercial, residential and mixed-use buildings along 14th Street within a few blocks of the subject site. The Twin Oaks Apartment Complex is two blocks north of the site and encompasses the entire west side of the block between Quincy Street and Randolph Street NW. There is another large apartment building two blocks south of the site, also on the west side, that that encompasses nearly the entire block between Oak Street to Otis Place. With the exception of two or three purely residential structures, the remainder of the corridor is populated with commercial and mixed-use structures. A small number of the spaces are vacant or posted for sale. The most notable example is the Washington Urban League building that stretches from 3501 to 3507 14th Street NW.

West of the 14th Street commercial corridor, the zone changes to R-5-B and properties are developed with a combination of one-family, two-family and multifamily structures. East of the corridor the zone becomes R-4 and the land is improved with one and two-family dwellings with some older apartment buildings.

### D. Current Use of the Site

The last authorized use of the property was "Delicatessen/Carryout" on the first floor with a dwelling unit on the second floor. The building is currently vacant.

### E. Description of the Proposal

The applicant proposes to renovate the existing building and convert the entire structure to a restaurant with table seating for 52 patrons. The restaurant will contain a bar area on each floor with seating for 13 patrons. The restaurant will accommodate a maximum of 56 patrons at any one time.

### F. Burden of Proof

The applicant submits that the proposal meets the test for variance as specified in 11DCMR § 3103.2 which states:

"With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "where, by reason of exceptional narrowness, shallowness,

[1] Lusk's 1990 District of Columbia Assessment Directory

or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the 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. " [Emphasis Added]"

1. The Property is Unusually Shaped and Narrow.

   The subject property is angular in shape, and as a result the building narrows to only fourteen feet (14 ft.) at the southwest corner. While the building occupies nearly the entire lot, the shape and width creates an unique and exceptional condition for development of the property. This condition is created by the intersection of Perry Place and 14th Street, as as such is unique to this corner lot.

2. By Reason of the Unique or Exceptional Shape, the Strict Application of the Zoning Regulations Would Result in Peculiar and Exceptional Difficulties.

   Prior to purchase of the property by the applicant, the building was vacant. The second floor, which did contain a dwelling unit at some point, had been vacant for an undetermined number of years. The office of Planning refers to a building permit issued in 2003, but that permit was issued to the applicant for purposes of securing the premises from the elements. As a practical matter, the portion of the second floor that would be left for residential use after the matter of right is established, would be virtually unusable because of size and configuration.

Although restaurant use is allowed in the C-2-A zoning district, the zoning regulations limit the floor area that may be allocated to any non-residential use within a building in this zone. The limitation for this building is 1,980 sq. ft. The first floor of the building is only 1,320 sq. ft. The size and shape of the building would only allow space for five tables for dining on the first floor. This would present an exceptional and undue hardship upon the owner in that the limited number of seats would severely limit the economic viability of the proposal. A dining establishment of such limited size would barely generate operating revenue and, the owner would not be able to recover his investment[2].

[2] The zoning regulations would allow expansion into the lower level without a variance, but this level is not suited for a dining area. Existing gas, electric and water services are located in this area. Relocation of any of these existing services is not possible without further diminishing usable space above grade. The space will be renovated but existing uses will remain. The plan calls for a large walk-in refrigerator/freezer for food storage and the small office will be used to operate the restaurant. The remaining space will be used to store restaurant supplies.

The first floor is 1,320 sq. ft. in area. The regulations allow an additional 660 sq. ft. of the above grade area to be used for nonresidential use, however, expansion to only part of the second floor is not a viable option. The dwelling unit area left would be much less than desirable. Trying to configure residential and commercial use in this unusually small and oddly shaped space is unworkable.

Building code requirements for separation between residential and commercial uses would further limit the usable space. If the existing stairway is designed to serve both uses, residential and commercial, a Class A stairway would be required. The minimum required width of a Class A stairway is 44 in. The existing stair would have to be widened and a 44 in. fire resistant hallway would be required to provide protected access to the individual uses.

The alternative would be to construct a separate interior fire resistant stairway so that each use would have separate protected access. In either case, the already limited space would be further diminished.

In addition, each interior wall between the uses would be required to have a two-hour fire resistance rating. To achieve the required rating, the owner would be required to provide a double layer of fire rated drywall to each side of each wall and to the ceiling of the first floor.

Finally, an inter-connected fire alarm system would be required so that if a fire were to start in one use the occupants of both sections of the building would be alerted. Such required construction would present exceptional practical difficulties that would result an undue hardship upon the owner. The dwelling unit would be extremely small and difficult to rent and the benefit of adding such limited additional space to the restaurant would be offset by the additional cost of meeting minimum fire and life safety requirements.

## IV

## Points in Support of Application

| | |
|---|---|
| Exhibit 1 | Renovation Plan Sheet 1 |
| Exhibit 2 | Renovation Plan Sheet 2 – Seating Layout |
| Exhibit 3 | DC Surveyor's Plat |
| Exhibit 4 | Picture 1 – Front View |
| Exhibit 5 | Picture 2 – Side View |
| Exhibit 6 | Picture 3 – Rear View |
| Exhibit 7 | Property Detail |

## V

## Witnesses

| | |
|---|---|
| Edgar T. Nunley | Former Chief DCRA:Building and Land Regulation Administration:Zoning Division:Zoning Review Branch |
| James N. Shelton | Former Chief DCRA:Building and Land Regulation Administration:Building Inspection Division:Construction Branch |