

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

**Statement in Support
Request for Modification With Hearing to Modify BZA Order No. 19607
Proper Shaw Café, LLC
1545 New Jersey Avenue, NW (Lot 800 in Square 510-E)**

I. INTRODUCTION

This Statement in Support is submitted on behalf of 1535 NJA LLC (the “Owner”), the owner of property located at 1545 New Jersey Avenue, NW and known as Lot 800 in Square 510-E (the “Property”), and by Proper Shaw Café, LLC (the “Applicant”), the owner and operator of Proper Café located at the Property, in support of an application for (i) a Modification With Hearing pursuant to Subtitle Y § 704.1 et seq. for a modification to the plans and conditions approved pursuant to BZA Order No. 19607; and (ii) pursuant to Subtitle X § 1000.1, an extension/expansion of the approved use variance under Subtitle U § 301, to allow the operation of an outdoor seating area on the Property associated with the existing full-service restaurant in the RF-1 zone at the Property.

Consistent with Subtitle Y §§ 300.15 and 300.16, the Applicant will submit additional materials to assist the Board’s review no later than thirty (30) days prior to the public hearing, including updates regarding outreach to Advisory Neighborhood Commission (“ANC”) 5E, ANC 2G, and other neighborhood stakeholders.

II. BACKGROUND

A. Description of the Property and Surrounding Area

The Property is located in the northwest quadrant of the District and is zoned RF-1. The Property is improved with an existing 1-story commercial building that is part of a small commercial strip. The Property fronts on New Jersey Avenue, Q Street and 4th Street. A parking lot and other paved surfaces surround the Property on those three sides between the property line and the abutting public space. The properties to the immediate south of the Applicant’s restaurant are also commercial uses. The surrounding neighborhood is mostly rowhouses with some institutional uses such as schools and churches.

The existing building on the Property includes multiple commercial uses, including Proper Café, which is located in the northern-most portion of the Property and is operating pursuant to its Certificate of Occupancy for an “eating and drinking establishment” issued on July 28, 2026. There is an existing outdoor terrace located between the northern property line and the exterior wall of Proper Café and is accessed from Proper Café. However, relief is needed to use this existing outdoor terrace area for eating and drinking use.

B. Approved Project and Zoning Relief (BZA Order No. 19607)

Pursuant to BZA Order No. 19607, dated December 6, 2017, and the original approved plans, the Board approved a use variance under Subtitle U § 301 to operate a full-service restaurant at the Property. BZA Order No. 19607 included the following conditions:

It is therefore ORDERED that this application is hereby GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 6 AND THE FOLLOWING CONDITIONS:

1. Hours of operation shall not exceed 6:00 AM to 10:00 PM Sundays through Thursdays, and 6:00 AM to 11:00 PM Fridays and Saturdays.
2. Trash shall be collected in dumpsters on the 4th Street side of the building; Dumpsters shall be visually screened, subject to Public Space approval, and shall be emptied a minimum of three times per week.
3. No music shall be permitted outside of the building. Any music on the interior of the building, either recorded or live, shall not be louder than 55 dBA when measured at the exterior building face.

Pursuant to BZA Order No. 19607, a full-service restaurant previously operated in the space now utilized by Proper Café. The Applicant is now seeking BZA approval:

1. To modify the approved plans at Exhibit 6 to allow use of the existing outdoor terrace for the existing restaurant use at the Property:
2. For a use variance to allow the outdoor terrace to be used for eating and drinking for the existing restaurant in the RF-1 zone at the Property; and
3. To extend the hours of operation for the restaurant use by modifying the approved BZA Conditions as follows (changes shown in track-changes):
 1. Hours of operation shall not exceed 6:00 AM to 12:00 AM Sundays through Thursdays, and 6:00 AM to 12:30 AM Fridays and Saturdays.
 2. Trash shall be collected in dumpsters on the 4th Street side of the building; Dumpsters shall be visually screened, subject to Public Space approval, and shall be emptied a minimum of three times per week.
 3. No music shall be permitted outside of the building. Any music on the interior of the building, either recorded or live, shall not be louder than 55 dBA when measured at the exterior building face.

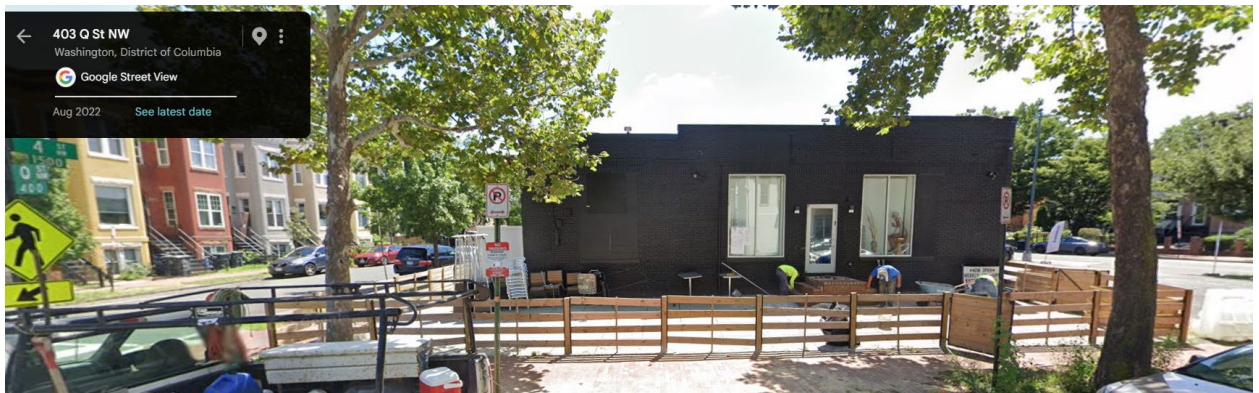
III. REQUEST AND JUSTIFICATIONS FOR MODIFICATIONS

The plans approved pursuant to BZA Order No. 19607 show the interior layout and use of the full-service restaurant in the Property. However, neither the approved plans nor anything in the BZA case record specifically shows or authorizes use of the outside seating area for the restaurant's patrons. Thus, a modification to the approved plans is needed.

Based on the images below, the outside seating area appears to have been initially installed in approximately 2021 and has been used as additional outdoor seating for the prior restaurant uses at the Property. However, neither the Applicant nor DOB have been able to locate any prior approvals legally authorizing use of the outside seating area for the connected restaurant. Accordingly, the Applicant requests that the Board authorize the legal use of the outdoor patio area for eating and drinking use associated with the existing restaurant use within the building.



Google Earth/Streetview October 2021



Google Earth/Streetview August 2022



Google Earth/Streetview August 2025

In addition, the Applicant respectfully requests that the Board approve modification of Condition 1 to extend the approved hours of operation from 6:00 AM to 12:00 AM Sunday through Thursday, and from 6:00 AM to 12:30 AM on Fridays and Saturdays. The extended hours are essential to the financial viability of the restaurant operation. The additional operating hours, particularly during evening service on weekends and weeknights, are needed to generate sufficient revenue to sustain the business, cover operational costs, and support the continued employment of the restaurant's staff. Without these extended hours, the Applicant would face significant economic hardship as the current approved hours do not allow the restaurant to capture the evening dinner and late-night dining demand that is critical to successful full-service restaurant operations in the District. The Applicant commits to operating the restaurant during these extended hours in a responsible, professional manner that is respectful of the surrounding neighborhood.

IV. REQUEST FOR EXTENSION/EXPANSION OF USE VARIANCE RELIEF

A. Relief Requested

As discussed above, the Board previously granted a use variance to allow restaurant use in the RF-1 zone in the existing building on the Property. The Applicant now request an extension/expansion of the approved use variance to extend the use to the outdoor terrace. Importantly, the outdoor terrace is not capable of being used for any purpose other than as part of the existing restaurant operation. The terrace is physically integrated into the restaurant space, and was designed solely for eating and drinking use in connection with the restaurant. The Applicant will operate the outdoor terrace in a good and responsible manner, consistent with the high standards of service and professionalism that characterize the Proper Café operation.

B. Burden of Proof

Under D.C. Code § 6-641.07(g)(3) and 11-X DCMR § 1000.1, the Board is authorized to grant a variance from “the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02” when the following conditions are met:

1. the property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation;

2. the owner would encounter peculiar and exceptional 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. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. D.C. Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); see also *Capitol Hill Restoration Society, Inc. v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The Zoning Regulations distinguish between area variances and use variances. In this case, the Applicant's request is properly evaluated as a use variance because it seeks a use that is not permitted matter of right or special exception in the zone district where the property is located. (11-X DCMR § 1001.4(a)).

Thus, the Applicant must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of Subtitle U § 201 would result in in exceptional and undue hardship upon the Applicant. As discussed below, and as will be further explained at the public hearing, the subject application meets the three-prong variance test.

C. Justification

i. The Property is affected by exceptional size, shape, or topography or other extraordinary or exceptional condition or situation.

The Property is affected by extraordinary and exceptional conditions. The Property is improved with an existing building that was constructed in 1920 as a commercial building, and the building has been used commercially up until the present and presumably for much if not all of its existence.

The Property itself possesses exceptional physical characteristics that distinguish it from typical lots in the RF-1 zone. The outdoor terrace area is located in a narrow, irregular space situated between the northern property line and the exterior wall of Proper Café. This constrained configuration—bounded on one side by the building wall and on the other by the property line—is an exceptional condition of the land itself, not merely a characteristic of the existing improvements. The terrace area's dimensions, orientation, and relationship to the lot boundaries create a unique physical situation that severely limits the range of uses the space can accommodate.

Under the RF-1 zone, matter-of-right uses include residential dwellings, community-based institutional facilities, and limited home occupations. Examining each category of conforming use demonstrates why none could realistically occupy the outdoor terrace area:

Residential Use: The terrace area cannot function as an independent dwelling unit. It lacks the structural enclosure, utility connections, and minimum dimensional requirements necessary for habitable space. The area is too narrow and irregularly

shaped to accommodate even a modest accessory dwelling unit, and its configuration—open to the elements and directly adjacent to an active commercial operation—makes residential conversion physically and practically impossible.

Community-Based Institutional Facility: Uses such as child development centers, community service centers, or religious facilities require certain minimum floor areas, accessibility standards, and operational independence that the outdoor terrace cannot provide. The space is too small, lacks independent ingress and egress, and is physically integrated into the restaurant structure in a manner that precludes separate institutional operation.

Home Occupation: A home occupation by definition must be conducted within a dwelling unit by a resident of that unit. Because the terrace is not part of any dwelling and cannot be converted to residential use, home occupation is categorically inapplicable.

Accessory Uses: Accessory uses must be subordinate to and serve a principal use on the same lot. The only way the outdoor terrace could function as an accessory use is in connection with the existing restaurant—precisely the relief sought here. Any other hypothetical accessory use would require a corresponding principal use that itself is not permitted in the RF-1 zone.

In summary, the exceptional physical characteristics of the Property—specifically the narrow, constrained outdoor terrace area positioned between the building wall and the property line—preclude any realistic conforming use. The hardship arises from the unique configuration of the land itself, not from the Applicant’s business model or the design of the existing improvements. Furthermore, even if another conforming use could theoretically occupy the space, locating such a use in the narrow terrace area would result in an awkward and dysfunctional relationship between that use and the existing permitted restaurant and other commercial uses in the building. The only practical and reasonable use of this space is as an extension of the existing restaurant operation.

ii. The Applicant would encounter peculiar and exceptional practical difficulties or undue hardship if the zoning regulations were strictly applied.

The Applicant would encounter an undue hardship if the Zoning Regulations were strictly applied in this case. The Applicant is not planning to increase or expand the existing outside seating area, and reasonably believed it could utilize the outside seating area for its restaurant given that the terrace had been used for eating and drinking purposes by prior restaurant operators at the Property since approximately 2021. However, the Applicant was informed otherwise during permitting and received the DOB referral included with this application. Importantly, the outside seating area is located entirely within the private property lot line and does not encroach upon any public space. The outside seating area is physically designed and situated for use exclusively in connection with the adjoining restaurant operation and is not suitable for any other use. The terrace is an integrated component of the restaurant space. Given these physical characteristics, the outside

seating area cannot practically be used for any purpose other than as an extension of the restaurant's eating and drinking establishment use.

Approval of this application will allow the outside seating area to be actively utilized in connection with the restaurant operation, contributing to the vitality, activation, and overall success of the Property and surrounding neighborhood. Conversely, disapproval of this application would result in the outside seating area remaining unutilized and would prevent the space from contributing to the economic viability and active use of the Property. Restaurant industry research and experience consistently demonstrate that access to outdoor seating is a critical factor in the success of full-service restaurants, as it allows operators to maximize available space, increase seating capacity, enhance the customer experience, and generate additional revenue necessary to sustain operations. The inability to use the outside seating area would adversely impact the Applicant's revenue and undermine the financial sustainability of the restaurant operation.

Furthermore, disapproval of this application would potentially require the demolition and removal of the existing terrace trellis and fencing structures, which would be unnecessary and counterproductive. These improvements are compatible with and complementary to the surrounding neighborhood, and their removal would serve no practical purpose given that the outdoor terrace area is entirely within the Property's lot lines and does not impact any neighboring properties or public spaces.

iii. 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.

The proposed use of the existing outdoor terrace area for use by the restaurant will not have a significantly different impact on the public than the present use. Because the building envelope would not change, there would be no greater impacts to light and air available to nearby properties beyond the existing condition. The Applicant is committed to operating the outdoor terrace area in a first-class, professional manner that is consistent with good business practices and respectful of the surrounding residential neighborhood. The Applicant will ensure that the outdoor terrace area is managed in a way that minimizes any potential disturbance to neighboring properties, including by maintaining appropriate noise levels, keeping the premises clean and orderly, and ensuring that patrons conduct themselves appropriately.

The proposed use variance should not result in substantial harm to the Zoning Regulations. The Property is relatively rare in that it is part of a small, purpose-built commercial strip, existing for nearly 100 years, that was zoned RF-1 (previously R-4) at some point in the past. The residential neighborhood has existed around it, largely intact, since its construction, and the requested extension/expansion of the approved use variance to extend the eating and drinking use to the outdoor terrace should not negatively impact the continued functioning of the surrounding RF-1 zone.

V. ANC ENGAGEMENT AND COMMUNITY OUTREACH

The Property is located within the boundaries of ANC 5E and Single-Member District (“SMD”) 5E01. ANC 2G is located to the west of the Property, across New Jersey Avenue, N.W. As required by Subtitle Y § 300.8(1), the Applicant has apprised the ANCs of this application. The Applicant anticipates presenting the application at an upcoming regularly scheduled ANC meetings and will continue to coordinate with the ANCs and other stakeholders as this application proceeds.

VI. CONCLUSION

For the reasons set forth above, the Applicant has demonstrated that the requested Modification With Hearing and use variance satisfy the applicable criteria. Accordingly, the Applicant respectfully requests that the Board approve the application.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
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