

Board of Zoning Adjustment Case 19887

March 6, 2019 Hearing

Chairman Hill and Members of the Board,

Please accept this letter of strong opposition to the granting of a variance for a two story restaurant in my RF-1 zoned square. If a variance for either or both floors is approved, it is important to understand the context of this building when considering what conditions must be imposed to protect the residential character of the neighborhood, which the RF-1 zone and Comprehensive Plan purport to do. Consideration should also be given to additional nearby properties which are ripe to request a similar variance, or even a simpler special exception, such as the property that the applicant's current location next door, which could possibly be replaced with another take out as a matter of right.

1724 North Capitol Street, NW

In the year 1900, a permit issued for five (5) dwellings; the real estate ads and the 1904 Sanborn Map all point to the fact that the rowhouses were built and sold as dwellings, identical in design and size. All five dwellings are contributing buildings within the Bloomingdale Historic District. Multiple deeds for the 1724 property contained the covenant: "...nor shall spirituous liquors be sold on said land, nor in any building erected there on", a good indication these building were not planned for commercial use.

It is unclear when the basement area was dug out and the front stoop altered, but it is highly probable the stoop alteration occurred during the widening and tunneling of North Capitol Street. The cinder block and wooden projections with large windows (and the enlarging of the original, typical bay common to these corner rowhouses) were added at a time unknown.

The squares directly to the north, south, east and west are all zoned residential. The closest square of mixed use is to the southeast, across North Capitol Street, in a different neighborhood, a block which currently has many vacancies.



The face of the dwelling at 1724 North Capitol has a building frontage of 17 feet, with an additional 16 feet of side yard that is beyond the building restriction line and is treated as public space. The building's side/southern face along Randolph Place is slightly less than 66.66 feet, with almost 100% lot occupancy, after an addition shown on a 1923 plat, presumably to accommodate the Costello Funeral Home which occupied the ground floor for approximately thirteen (13) years.

To summarize, while this property may have a North Capitol address, the visual impact of the proposed restaurant will be on Randolph Place, along with most of the noise, traffic, parking, litter and any other possible adverse impacts. Additionally, the mere presence of a sidewalk cafe and/or a roof deck above the non-conforming addition, will undoubtedly change the character of a long, block of rowhouses, where, with the exception of a few rowhouses that have front porches a few door down, the houses are bayfront rowhouses with small stoops and small yards with low retaining walls.

Although the property on North Capitol has a history of non-residential use on the ground floor, it has clearly been vacant in recent years since Miss McCoy moved out, prior to her death in 2014, and the blighted designation in 2015.

C § 204.4: Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the zone in which the use is located.

For these reasons, it is clear that conditions are necessary to mitigate the impact of granting a variance for the proposed restaurant at 1724 North Capitol Street, NW.

Proposed conditions

As a neighbor who attended both Single Member District (SMD) meetings, and made edits and suggestions for many of the documents, this has been a learning experience. I have tried to inform myself by looking at other cases in RF-1 areas, and tried to avoid comparing this case to matter of right projects in MU-4 zones.

There are two recent BZA cases in ANC 5E and the genesis of conditions proffered in the OP reports is unclear. I can find no indication of a signed neighborhood agreement. A summary of the cases is included at the end of this statement, and of course, the full documents are available in ISIZ. This case should be subject to similar, if not stronger, conditions.

The differences are important to note - the ten (10) proposed conditions for Case 19623 were for a 100 year old dwelling that had a ground floor corner store that required a special exception to open a coffee shop with an arts focus and no outdoor space.

The other was for a restaurant, Case 19607, a portion of a "strip mall" type building, a purpose built commercial building, that occupies an entire (triangular) square that is zoned RF-1.

The original meeting with the applicants was facilitated by the SMD Commissioner using concerns expressed by neighbors prior to the December 19 hearing. At the second meeting, significant changes to the final list of conditions were agreed to by two of the three neighbors who attended the second SMD meeting. **To date, most of the "conditions" that the applicants have agreed to, noise, parking, trash and rodent control, remained basically the same and are steps that any reasonable restaurant owner would be taking in starting a restaurant in ANY zone.**

However, please note that I am in no way suggesting that these proposed conditions are not warranted as there have been numerous complaints resulting from the applicant's existing take out business next door. Since the case was filed in September, the applicant has had ample opportunity to show good faith in trying to address long standing issues, yet there has been no indication of effort to abate any of the existing concerns. It has been extremely disappointing to see a contractor's truck parked in the no parking area typically occupied by carry-out patrons.

The only condition on the current list that I can see that could truly serve as a safeguard to meet the prongs - No Substantial Detriment to the Public Good and No Substantial Harm to the Zoning Regulations - would be the operating hours, and they were significantly altered from all previous conversations with OP, BZA, ANC and neighbors by adding a full additional day and breakfast hours on all seven days.

Additional proposed conditions

The following conditions represent my ideas, and while some neighbors may agree or disagree with them, they should be considered with at least half of the weight being given to the latest “agreement” since that document only represents the voices of two of the three neighbors who attended the second SMD meeting.

Signage

One condition that was suggested in the survey process, but was not discussed at either SMD meeting was signage. As signage has been an important element in the deliberation of this Board, I think it is important to consider signage as a condition, not only to protect the neighborhood character, but also in case a sign’s location is considered in future zoning issues. The current sign is attached at approximately the midway point of the floor above the ground floor. Future signs should not be located any higher than that point to prevent future loss of the top floor residential unit to commercial use. Note the applicant-supplied photos in Exhibit 5 include one from PropertyQuest from 2004, two years before Taja Construction states that they expanded the salon to the floor above the ground floor in 2006.

Two proposed conditions, the first, mine, and the second supported by the neighbor survey:

No projecting or lighted signage can be installed on the Randolph Place side of the building, at minimum, and preferably forbidden from the North Capitol side as well. Randolph Place signage should be limited to discreet, painted signage near the entrance, similar to the existing painted window sign and obtain the approval of DCRA, DDOT and the Historic Preservation Office.

Any projected or lighted signage should be located on North Capitol Street facing wall and the only signage permitted on the Randolph Place facing wall will be painted on the door and/or window.



Special Events

My recommendation is that special events, or ticketed events, should not be allowed, as the impact of large number of guests arriving and departing at the same time has a greater impact on noise, traffic and parking. If not expressly forbidden, they should be limited in quantity as they are at the closest restaurant in MU-4 (by ABRA order) and at the forthcoming coffee shop in RF-1 (by BZA order).

Sidewalk cafe

While totally inappropriate for a residential zone, if allowed, the closing hours should include the time required for cleaning the patio and securely storing any sidewalk cafe furniture so it will not become an all night haven for loiterers and drug dealers. Any temporary or permanent tenting, pergolas, etc should be expressly forbidden.

While this is considered public space and governed by DDOT, and BZA cannot approve the use, it is perfectly appropriate for the BZA to prohibit the use as part of conditions for granting the variance.

Second floor roof space

This topic was never brought up for discussion as to whether it should be allowed at all - discussion at SMD meetings was limited to hours of operation and noise mitigation. However, in the email survey, 63% of the respondents were opposed to any restaurant use of the proposed outdoor space on the non-conforming addition.

As one can see, both the patio area and the outdoor space above the non-conforming addition are visible and within noise range of many houses down the block.



Trash

Any trash storage should be maintained on the property within the building restriction line, and if visible, there should be screening on the building restriction line. With the existing building projections in public space exceeding what is common in the neighborhood, no additional encroachment into public space should be considered.

The DDOT report states they have worked with the applicant to revise their drawings “so that trash is stored in an internal location”, but that issued is undecided, according to the applicant at the SMD meeting.

Non-transferable variance or limited term variance

I propose that any variance granted be non-transferable to a new owner or lessee, as most of the support for the project is based on the fact that the proposed business currently exists as a take-out business, or as suggested in the OP report for BZA Case 19623, impose a term limit on the BZA approval

“In addition, if the Board determines to permit an *intensity of use*, such as that proposed, *significantly beyond the intent of the zone*, then *the Board may wish to impose a **term limit** on the BZA approval* to allow impacts to be assessed and re-examined at a future date.”

Employees

It was stated that there would be 15 employees, but never presented how many employees might be on site at the same time. How can potential employee parking be addressed? If granted the extra hours, could there be even more employees?

Seats/Capacity

It may be that fire code and/or Department of Health regulations, or a possible ABRA license, may limit the capacity of the proposed restaurant, but it would be important to include limits in the Zoning Order. The number of seats proposed was provided in the original OP staff report and should be noted in the order.

DDOT

While DDOT is responsible for public space issues, it should be noted that in their report, piggybacking off the OP report, they stated that this was a conversion of an existing use, when in fact, the property has had no commercial business in well over three years and was officially designated as blighted in 2015. Elevating from zero use to intense use will undoubtedly impact traffic and parking.

It is somewhat surprising that DDOT finds that there will be no adverse impacts on the travel conditions given this change in use, and should be reconsidered, especially if the originally proposed hours are increased to include morning rush hours. Would an updated DDOT report not be warranted? The impact of the many nearby churches and the Sunday farmers market two blocks away is already a source of complaints about traffic and parking on Sundays. To add a restaurant that opens at 8am on Sunday, the same hour as the only other restaurant that opens at that hour, again, two blocks away, could be a concern. Also, the weekday morning rush hour traffic is already a problem, on Randolph as well as First. Commuters have no regard for neighbors as it is, and the addition of customers attempting to park during that time is worrisome.

Hours

It is important to note that the hours in the latest “agreement” submitted by the SMD Commissioner reflect the agreement of two of the three neighbors in attendance at the February SMD meeting and was not shared with the neighbors before it was submitted to ISIZ. More importantly, the expanded day and hours were not in the proposal supported by the Bloomingdale Civic Association or ANC 5E, nor ever under consideration by neighbors.

As you can see in the chart below, Sunday hours were added despite the OP report and applicant’s statement in Exhibit 47 that the business would not operate on Sunday. The same is true of the newly proposed breakfast hours. The applicant’s request at the second SMD meeting to increase the hours for the proposed sidewalk cafe in the summer resulted in longer hours year round in the “agreement” submitted by the Commissioner.

Since traffic and parking were concerns expressed by all of the neighbors (many conditioned their support on improvements) and with church parking and farmers market parking on Sundays a constant complaint in the neighborhood, this is a significant change that might not be well received. Breakfast hours could adversely affect rush hour traffic. (See comment above under DDOT.)

How can a rowhouse operating as a restaurant 16 plus hours, 7 days a week not impact an all-residential block? And this would be allowed for unknown, future owners, as well, not just the current owners who many neighbors support. In addition, the chances are that another commercial establishment, perhaps even another carry out food business, will replace the current carry-out business next door, would only exacerbate current conditions.

Operating Hours proposals		Mon-Thurs Indoor	Mon-Thurs Outdoor	Friday-Sat Indoor	Friday-Sat Outdoor	Sunday Indoor	Sunday Outdoor
Office Planning Report Exhibit 32 12/7/2018		11am-1am		11am-1am		Closed	Closed
Applicant Statement Exhibit 47 12/18/2018		11am-1am		11am-1am		Closed	Closed
SMD5E07 Meeting 1/19/2019							
Exhibit 55 1/28/2019		Kitchen close 10pm Close by midnight	Close by 9pm	Kitchen close 10pm Close by midnight	Close by 9pm	Closed	Closed
Office Planning Report 1/23/2019		11am-10pm		11am-11pm		Closed	Closed
Neighbor Survey Exhibit 61 2/10/2019	67% 87% 30%	11am - 10pm Close by midnight	Close by 9pm	11am-11pm Close by midnight	Close by 9pm	Closed Closed Closed	Closed Closed Closed
SMD5E07 Meeting 2/16/2019		8am - Midnight Last seating 10pm		8am - Midnight Last seating 10pm		8am - Midnight Last seating 10pm	
	summer		11am-10pm		11am-10pm		11am-10pm
	winter		11am-9pm		11am-9pm		11am-9pm
Exhibit 64 2/25/2019			11am-10pm		11am-11pm		11am-10pm

In conclusion

I am sure there are many issues that we have not even considered. While I never expected the Office of Planning to be supportive of a variance for a sit down restaurant at any level, I was resigned to accepting a ground floor restaurant with reasonable hours. But the level of increased intensity of use being requested by the applicant (two floors of restaurant with much longer hours than a hair salon or the applicant's current carry-out business), and supported by elected officials who assume minor conditions are sufficient, is very concerning, and has left me no choice but to oppose this application.

With all due respect, as this Board considers the proposed conditions as part of any variance granted for this property, please keep in mind that this property is in a residential zoned square, and has been so zoned since zoning regulations were implemented. The applicant, the ANC Commissioner and the Councilmember have made misleading statements that this property was rezoned. Every other bar or restaurant, of which there are 15 within a small area, are all in mixed use zones, again dating back to 1958, and only 3 or 4 occupy two floors. It is inappropriate and prejudicial to repeatedly compare restaurants in MU-4 to the request for conditions to obtain a variance for a restaurant in a residential zone. Currently, there are no bars or restaurants in the RF-1 zones of Bloomingdale.

This application for a use variance is necessitated due to a self-inflicted, self-perceived hardship and the neighboring residents will be the ones to bear the brunt of any hardships. While the applicant has stated that she does not have any interest in having a hair salon, she has never presented any substantive information that the property could not be used for any use allowed by right or by special exception, except to note the large ground floor windows. One only has to look two blocks to the north to see a deli/liquor store that had ground floor retail windows that were replaced by residential windows when it was converted to condos. There has been no true financial analysis, often requested by the Board in other variance cases, other than an unsubstantiated dollar figure offered by the applicant.

Limiting the hours of operation, the denial of the use of the second floor roof of a non-conforming addition to a rowhouse as a dining area, perhaps even the denial of patio seating, are the only true options to minimize altering the character of the residential only zone, and in effect, nullifying the current zoning regulations. Please do not approve this variance without substantial conditions of use.

Thank you for your consideration.

Betsy McDaniel

Two recent (and similar) BZA Cases in ANC5E

BZ Case 19607 Great American Bistro

OP's recommendation is based on the following recommended conditions:

1. Hours of operation shall be from 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.

OP has reviewed these conditions with the applicant, who had no issue with them.

BZA Case 19623 (1822 North Capitol Street, N.W.)

Subject to the following conditions, *which have been **provided** to the applicant:*

1. Hours of operation for the coffee bar shall be 7:00 am to 7:00 pm.
2. Art exhibitions shall end no later than 10:00 pm Monday through Thursday, and 11:00 pm Friday through Sunday.
3. All programs shall be supervised by a minimum of two staff members.
4. A maximum of 30 indoor seats shall be provided.
5. Prepared food deliveries shall not exceed one delivery per day.
6. Coffee bar supplies shall be delivered up to twice per week.
7. All deliveries shall be facilitated through the front door and occur between the hours of 7:00 am to 7:00 pm.
8. All parts of the lot shall be kept free of litter and debris, and commercial trash pick-up shall occur a minimum of twice per week.
9. There shall be no on-site cooking of food or installation of grease traps.
10. There shall be no sale of alcoholic beverages for on-site consumption.

Later in the report, there is this recommendation:

Any approval should include conditions related to **special events**, including number of such events, hours, and intensity of use. In addition, if the Board determines to permit an *intensity of use*, such as that proposed, *significantly beyond the intent of the zone*, then *the Board may wish to impose a **term limit** on the BZA approval* to allow impacts to be assessed and re-examined at a future date.