

**• BZA HEARING
DECEMBER 10, 2018**

**CASE # 19887
VARIANCE REQUEST FOR
1724 NORTH CAPITOL ST, NW**

**TESTIMONY
BERTHA G. HOLLIDAY
COMMISSIONER, ANC 5E07**

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MAJOR TOPICS

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and additions to submitted ANC 5E statement
ANC 5E's submitted statement

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Additional related evidence in support of application

After presentations, the ANC representative is willing to answer any questions posed by BZA members and other parties

ANC 5E 's submitted statement

- Additional related evidence in support of application**

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A. CORRECTIONS & ADDITIONS

- Address on Form 129 is incorrect – should be 1724 North Capitol St., **NW**
- After the ANC 5E form 129 and statement were submitted: 3 Randolph Place residents contacted (2 by email, 1 by phone) the SMD 5E 07 Commissioner and at least 3 others submitted to BZA letters noting their opposition to the application due to concerns related to:
 1. **Trash** – most of which is associated with take-out containers being thrown-away by some Jam Doung clientele;
 2. **Parking** – associated with Jam Doung clientele briefly parking illegally especially at the intersection of North Capitol and Randolph Pl. NW and often resulting in both traffic jams due to motorists inability to turn onto Randolph Pl., and residents' difficulty in being able to park on the unit block of Randolph Pl. NW.

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3. **Additional Traffic** on the very narrow 2-way street of the unit block of Randolph Pl. NW -- occasionally resulting in sidescrapes.
4. **Loitering** associated with some persons gathering in the vicinity if North Capitol and Randolph Pl. while they eat their carryout meals. Police monitoring has significantly reduced this problem. There is concern that loitering will again increase on the proposed sidewalk café.
5. **Absence of Rodent control** -- associated with thrown-away carryout containers and occasionally overflowing garbage dumpsters. Health Department reportedly has been called several times
6. **Noise** – associated with proposed sidewalk café and rooftop garden.

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**A. SUMMARY OF ANC 5E FORM 129
& ITS ATTACHED MEMO
(Submitted via IZIS on 12/ 8/18)**

FORM 129

- **Describes how public notice of ANC 5E Public Meeting of 11/20/18 was provided by postings on various community listserves/blogs, posters at strategic location, and announcement in SMDs with newsletters.**
- **Notes quorum of 6 Commissioners is required to conduct business and take votes, and 9 (of 10) Commissioners were present.**

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- **Notes that BZA case #19887 involves a request for a variance in use of 1724 North Capitol St. NW, as required by DCRA. Since the 2016 zoning changes, that location is zoned RF-1 (rowhouse zone), which does not allow use as a restaurant.**
- **Notes that on 11/19/18, the Bloomingdale Association (BCA) held its scheduled monthly meeting at which one of the owners of 1724 North Capitol, described its proposed restaurant use, responded to questions posed by BCA members, and requested a vote in support of her application for a variance in use. The vote of support was 18-0 and unanimous.**

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- **Notes that: “ANC 5E by a unanimous vote [9 ayes, 0 nays, 0 abstentions] SUPPORTS applicant’s request for a variance in use...and determined a lack of adverse impact on neighborhood, compatibility and appropriateness of proposed use, undue hardship to owner if variance is not acquired, and strong community support of proposed use”.**

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SUMMARY – Con’t.

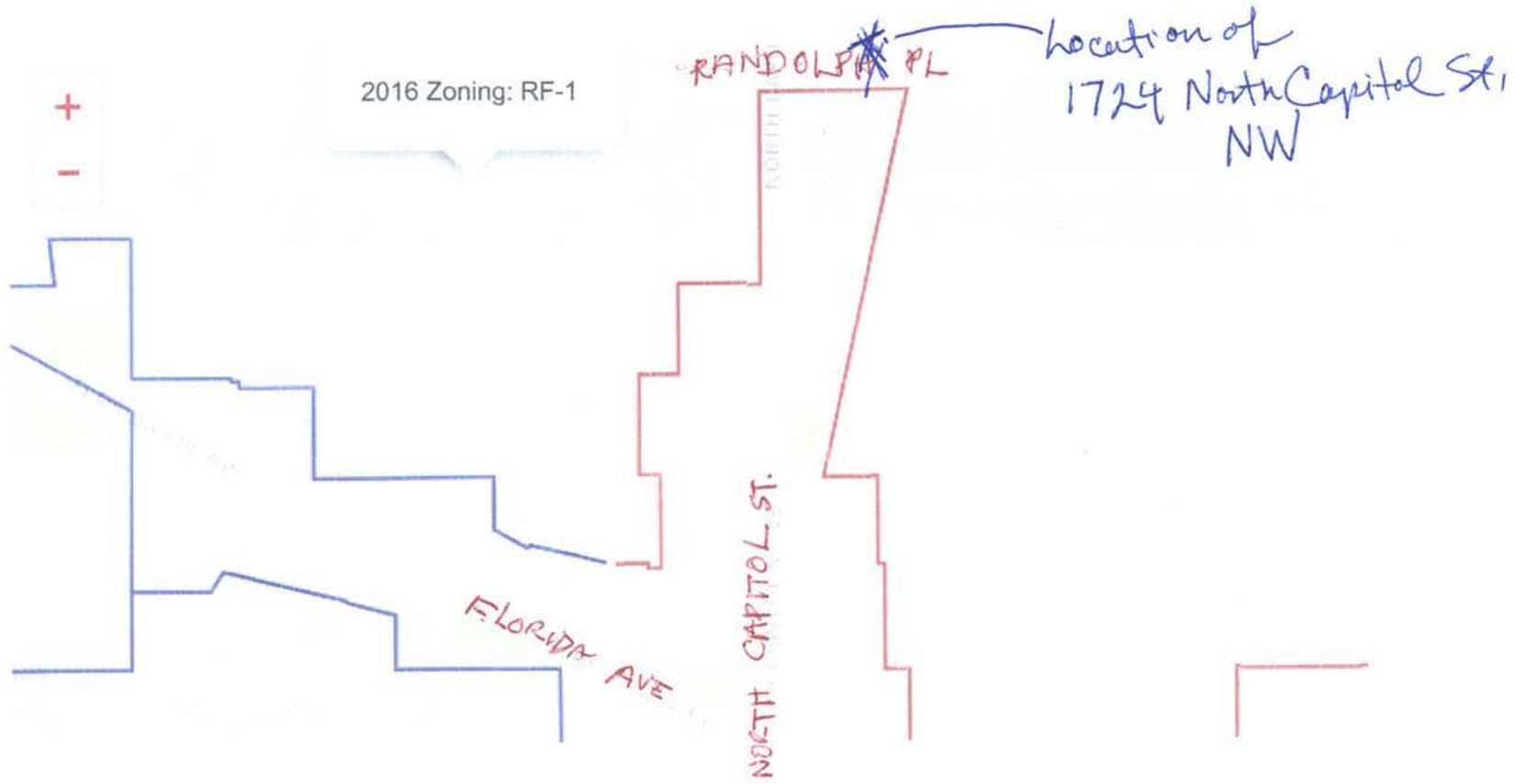
ANC 5E MEMO

This memo is divided into three parts: Background, Rationale for Support of Application for Variance, and Conclusion

Background.

- **The subject property is located in the historical-designated Bloomingdale neighborhood, which 50 years ago had a thriving small business community that was disrupted by the 1968 MLK riots. Since then, small business revitalization/development has been a major concern as advocated by the DC Office of Planning and the city-funded North Capitol Main Street program.**

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2016 Zone Change Viewer

Use this map to see how the Zoning Regulations of 1958 convert into the 2016 regulations. For more information please visit the [Zoning Handbook](#).



- 1958 Zones
- 2016 Zones

- **Previously, the subject property had been zoned RF-4 (also Residential), but noted as having “legally non-conforming [commercial] use” (most recently as The McCoy Sisters Hair Salon). The property has been vacant for several years and was eventually bought by its current owners (past owners of 1726 North Capitol NW and proprietors of Jam Doung carryout).**
- **The 1724 owners would like to use the ground and first floor as a restaurant, and the second floor for residential purposes (including an owner’s apartment) – [i.e. ‘mixed-use’].**
- **Per DC Codes, consideration of use variance applications includes whether: a) adverse impact will result from a change in use; b) there is something unique about the property that makes it compatible or appropriate for the proposed use; c) it is demonstrated that the property cannot be developed for its zoned use; and d) the failure to**

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ANC RATIONALE FOR SUPPORT OF VARIANCE IN USE

- **Re: Adverse neighborhood impacts:**
 - 1. Next door relocation to a renovated 1724 North Capitol NW featuring a sit-down restaurant will be experienced as an ‘upgraded’ use and asset.**
 - 2. Concerns as stated by Randolph neighbors are all relatively “fixable” through civic and owner discussion and participation.**

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- **Re: Property uniqueness that is compatible/appropriate for proposed use**
 1. **1724 is next door to the current Jam Doung location with a well-established clientele and brand, and across the street (both North Capitol & Randolph Pl.) from MU-4 zones.**
 2. **OP's *Mid-City East Small Area Plan* notes: "commercial revitalization opportunities along NC St. should be focused on the area between NY Avenue and Randolph St [sic]", and recommends activation of foot traffic on NC St. --where the main entrance of 1824 will be located.**

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4. The environs of the property are highly compatible with those of nearly all other Bloomingdale restaurants, which have residential use above, next door, behind, and/or across the street from them.

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- **Unique Hardship to Owner if Variance in Use is Not Acquired**

1. Due to high cost of Bloomingdale real estate (especially MU-4's), Jam Doung (a minority-woman owned business) would probably have to relocate outside the Bloomingdale/Eckington neighborhoods.
2. Loss of much of Jam Doung's clientele built through nearly 20 years of effort.
3. Significant financial loss.

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CONCLUSION

- ANC 5E requests the BZA to review application for a variance in use within the application's context, including:
 1. A gentrifying, racially/ethnically/culturally, and social-economically diverse residential neighborhood with a wide range of small business needs;
 2. The unique property characteristics;
 3. The neighborhood assets that would result (e.g., activation of a long vacant, deteriorating building on a major throughfare; and a major sit-down restaurant at a price niche seldom available in the neighborhood);
 4. The seemingly prohibitive costs and difficulty of converting and renovating the subject property for residential use (which may have been built for mixed-use given its absence of a front yard, store-front windows, walk-in entry from street level, etc.) is reflected in its years of vacancy and inability to sell in the 'red hot' Bloomingdale real estate market.
 5. The presence of broad ANC and resident support.

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A. ADDITIONAL RELATED EVIDENCE
IN SUPPORT OF THE APPLICATION

Given that most of Bloomingdale's current restaurants have been established within the past 20 years in buildings with histories of commercial use, it may be instructive relative to the current 1724 North Capitol NW application for variance in use to determine through use of a case study approach, some of the legal decisions and final orders and the rationales related to zoning and substantial changes in business operations made by various DC agencies (e.g., ZC, DCRA, etc.) in the residential Bloomingdale rowhouse neighborhood.

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Case Study Example

The Big Bear Restaurant, located at 1700 First St., NW (1st and R St. NW) was chosen for case study.

Through astute forward planning, Big Bear Café has broadened its vision and increased its capacity from approximately 40 to more than 200 persons.

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Big Bear's Zoning Issues.

Like most Bloomingdale corner stores, Big Bear operated as a commercial enterprise prior to DC's 1958 zoning law. Like 1724 North Capitol, after that date, Big Bear was zoned as "legally non-conforming" in a R-4 zone. As Big Bear continued to grow and evolve, but the current owner found this zoning designation burdensome, as it required a notable amount of bureaucratic effort and time to determine how the rights of that designation was similar (or different from) those of C-2-A.

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In 2010, Big Bear was designated for low density mixed-use on the *Future Land Use Map of the Comprehensive Plan, Amended*.

The owner then sought an amendment to the Land Use map to ensure zoning designation was compatible with the Future Land Use Map.

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**Rationale for granting the zoning change (per Final Order;
1/14/2012).**

- **“The property is proximate to a commercially zoned (C-2-A) area on Florida Avenue
Both ANC and the Bloomingdale Civic Association voted unanimously to support the proposed zoning map amendment**
- **OP acknowledged it made the recommendation to amend the Future Land Use Map and designate property is low-density mixed use (commercial/residential) to “correct a map error and to provide consistency between Future Land Use Map and the existing and historic use of the property as commercial” (p. 3, ZC Order # 10-34, ZC case #10-14)**

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- **City First Bank of DC wrote letter for the record stating: “the current residential zone for the Property makes it much more difficult for the Applicant to qualify a commercial real estate loan than if the Property were commercially zoned”. (p.3mZC Order #10-34, ZC case #10-14)**
- **BZA requested Applicant to engage the ‘Lewis Party’ (protesters) to discuss their issues in hopes of mitigating as many of the adverse impacts as possible and gave Applicant a date to submit a status report, and provided the Lewis Party another later date to respond to that report.**

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1958 Zones
 2016 Zones

- **Commission [ZC] finds proposed rezoning consistent with numerous elements of the Comprehensive Plan, including policies to expand the retail sector, create additional shopping opportunities, promote neighborhood commercial vitality, protecting small and locally owned businesses ([p.4. ZC Order # 10-14, ZC Case #10-14)**
- **“The Commission finds the map amendments ...would place the property in a zone more consistent with the Property’s long history of commercial usage, and would help to reinforce elements of the Mid-City Element of the Comprehensive Plan.”
(p . 4, ZC Order #10-14)**

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Business Growth Strategy

In 2017, Big Bear petitioned ABRA for a substantial change to its Retailer’s Class CR License including, a) addition of a rooftop garden seating 68, and the addition of seating for 65 on the second floor with total occupancy of the second floor of 85 , and total occupancy (including 1st floor and sidewalk café) of more than 200;

In 2018, ABRA approved rooftop seating for 45 with service ending at 10 pm, and with no amplified sound and the installation of soundproofing by the owner in the rooftop seating area and second floor (p. 2 Case # 17-PRO-00036, 084379, Order 3 2018-034).

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ABRA's Conclusions of Law

- Application is appropriate so long as conditions are imposed to address potential noise caused by the proposed rooftop seating area.
- 1. Highly unlikely Big Bear will have negative impact in trash and litter as it has 5 days/week trash pickup and plans to install a trash compactor.
- 2. Will not have a negative impact on residential parking needs and vehicular and pedestrian safety.
- 3. Will not have a negative impact on real property values

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ABRA's Final Order

1. Rooftop will cease operation at 10 pm
2. Rooftop seating with maximum occupancy of 45
3. No amplified sounds shall be generated on rooftop
4. License holder shall install and maintain in the rooftop seating area soundproof walls with soundproofing materials on all sides of the roof directly facing residents
5. License holder shall construct and maintain a hallway on the second floor to mitigate sound

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