BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Hoagie House, LLC
775 Rear Fairmont Street NW

APPLICANT'S HEARING STATEMENT

This Hearing Statement ("Statement") outlines the existing and proposed use of the property and the manner in which the application ("Application") complies with the specific tests and burden of proof for the special exception sought in this application before the Board of Zoning Adjustment (BZA)

NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR Subtitle X, Chapter 9, § 900.2 for a special exception in accordance with Subtitle E, Chapter 51, § 5108.1 for the following development standards of the alley lot provisions of Subtitle E of the same chapter, to wit:

1. The required minimum depth of rear yard setback set forth under E, 5104.1;
2. The minimum side yard setback requirement set forth under E, 5105.1;

And for area variance pursuant to 11 DCMT Subtitle X, § 1000.1 for relief from the provisions of

3. The height limitation set forth under E, 5102.1;
4. The alley centerline setback provision set forth under E, 5106.1, and;
5. The minimum pervious surface provisions set forth under E, 5107.1

PROPERTY LOCATION AND DESCRIPTION

The property is located at the Rear of 775 Fairmont Street NW, on an alley lot in the Columbia Heights Neighborhood.

The subject property is alley lot located in Square 2885, Lot 0862, according the records of the DC Surveyor. Square 2885 is bounded on the North by Girard Street NW; Fairmont Street NW on the South; Sherman Avenue to the West and Georgia Avenue on the East.

Two public alleys each fifteen feet (15 ft.) wide abut the subject property on its North and West property lot lines. The rear property lot lines of five (5) lots with street frontage on Fairmont Street abut the subject property perpendicularly at its southern property boundary lot line.

The subject property is the largest of only three alley lots with its square of location and it is improved by a one-story structure with a history of commercial use, including as a wood fabrication establishment

The applicant proposes to construct a second-story addition to the existing structure and convert for purposes of a one-family dwelling.

As set forth under Subtitle U, Chapter 6, § 600.1 (e) (10 through (3), (B), conversion of and use of subject property for purposes of a one-family dwelling residential property is permitted as a matter of right.

The subject property is located in the RF-1 zone district.

COMPLIANCE WITH SPECIAL EXCEPTION STANDARDS

As set forth under § 901.2, the Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

(a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

Applicant contends that granting of the relief sought will be in harmony with the general purpose and intent of the Zoning Regulations because the proposed use seeks to convert an alley structure which had been devoted to a nonconforming use in the underlying RF-1 zone district, zone district designated primarily as a Residence District, to a conforming residence use, permitted as a matter of right

Further, the use provisions set forth under Subtitle U, Chapter 6, § 600.1 (e) (1) through (3), (B), for alley lots, conversion of and use of subject property for purposes of a one-family dwelling residential property is permitted as a matter of right.

(b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and

The subject property is separated from properties located to the North and West by fifteen feet public alleys and more importantly those properties face Girard Street and Sherman Avenue respectively; hence the rear lot lines of these properties are in the closest proximity.

The rear lot lines of six (6) properties facing Fairmont Street share common lot lines with subject property.

Given the foregoing, except for an accessory structure, none of the abutting properties are allowed to construct a structure within twenty feet (20 ft.) of the proposed structure on the alley lot.

The applicant intends to graphically document the separation distances from all adjoining properties and if possible, to the closest improvements upon those adjoining lots

Hence the use of neighboring properties will not tend to be affected adversely since the light and air of all abutting properties will not be unduly affected.

(c) Will meet such special conditions as may be specified in this title.

There are no specified special conditions set forth in this title other than the standards of the special exception provisions.

The applicant contends that the proposed addition and conversion of the alley building for purposes of a one-family dwelling seeks to eliminate a nonconforming use by establishing use permitted as a matter of right in the RF-1 zone district.

1. The required minimum depth of rear yard setback set forth under E, 5104.1

E, 5104.1 stipulates that a minimum depth of five feet (5 ft.) be provided from any lot line of all abutting non-alley lots.

The subject property abuts five (5) non-alley lots at its Southern property boundary line and one (1) on the East. The existing building on subject property is constructed to both of the two property lot lines; hence no rear yard setback is provided by current condition.

Applicant proposes the construct of a second story addition atop the existing building foot print. The height of the building at the South property lot line will range from twenty-four feet at its highest point below the concrete stairs to fourteen feet eight inches (14 ft. 8 in.) at its lowest West-Easterly.

Applicant contends that setting the second story back five feet (5 ft.) would not result is the requisite rear yard since by definition a required rear yard must be open from grade to the sky.

Further, the subject property abuts the rear property lot lines of the non-alley lots, where it is unlikely that a structure containing habitable space will ever be constructed, except if approved by the Board of Zoning Adjustment (BZA).

2. **The minimum side yard setback requirement set forth under E, 5105.1**

E, 5105.1 stipulates that a minimum depth of five feet (5 ft.) be provided from any line of all abutting non-alley lots.

As aforementioned, the existing occupies the entirety of the lot, except for the concrete slab apron, which served as the driveway entry located on the west alley. Hence the two possible locations opposite the north and the west alleys where the requisite side yard could be provided have been foreclosed from compliance with the provision since the construction of the existing one-story building, prior to May 12, 1958; nonconforming condition protected under the grandfather clause.

As in the rear yard situation, setting back the second story addition does not create

the requisite side at the elevation because the building would have to be partially demolished such the space is open from the grade to the sky.

COMPLIANCE WITH AREA VARIANCE STANDARDS

3. **The height limitation set forth under E, 5102.1**

As aforementioned, applicant seeks to construct a second-story addition atop an existing one-story structure., including conversion of same for the purpose of occupancy as a one-family dwelling.

E, 5102.1 limits maximum height of alley buildings to twenty feet maximum. Applicant contends that since the provisions regulating alley lots is silent on how and where to measure alley building heights from, that is Building Height Measuring Point (BHMP) as that term is defined, the BHMP defers to the general rule of measurement applicable to buildings located on non-alley lots.

Applicant makes reference to Subtitle B, Chapter 3, §§ 308.2 and 308.3, which specify measurement of height at the mid-point of the building façade of the principal building that is closest to a street lot line and the height measurement for buildings with flat roofs respectively.

B, 307.5 permits any front of a building, which abuts more than one street to determine the maximum building height. Although the building is located on an alley lot and not a street, it is not unreasonable to conclude that this method may be applied in the circumstance, since a public alley, like a street is classified as a public right of way.

Applicant contends that the proposed addition is constrained from limiting the building to the maximum height by two factors:

a. The approximate five feet (5 ft.) elevation change at the North alley from West to East;
b. The height of the existing building of fifteen feet (15 ft.) when measured at the middle of the front of the building at the West alley.

The District of Columbia Construction Codes requires a floor-to-ceiling height of seven feet, (7 ft.) for code compliant habitable space. The maximum height limit would therefore have constrained a proposed second floor for height less than code compliant.

Applicant contends that the proposed height around the perimeter of the building, including at its two possible BHMP at the middle of the front of the building at the two abutting alleys, are dictated by the changes in natural topographic elevation.

4. **The alley centerline setback provision set forth under E, 5106.1**

The proposed conversion proposes an indoor garage to be accessed from the North alley through an opening to be created on the existing wall, which abuts the alley.

Applicant contends that this provision is more applicable to a proposed new construction or an addition to an existing structure for which the opportunity exists to set back the prescribed distance.

The entry door is proposed to be a roll-up garage door, therefore eliminating the swing of the door outward into the alley or public space

5. **The minimum pervious surface provisions set forth under E, 5107.1**

The subject property is one hundred percent (100%) impervious in its existing condition. The existing building occupies ninety-two percent (92%) of the total lot area. The concrete apron driveway covers the remaining eight percent.

Applicant contends that the proposed addition is not inconsistent with the pervious surface applicability provisions set forth under Subtitle C, § 501.2 (a) through (d).

The proposed addition, which will occupy the only portion of the lot not containing part of the existing building will increase percentage of lot occupancy by less than ten percent

(10%) and will occupy space already improved by an impervious concrete driveway apron

As set forth under § 901.2, the Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

(d) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;

Applicant contends that granting of the relief sought will be in harmony with the general purpose and intent of the Zoning Regulations because the proposed use seeks to convert an alley structure which had been devoted to a nonconforming use in the underlying RF-1 zone district, zone district designated primarily as a Residence District, to a conforming residence use, permitted as a matter of right

Further, the use provisions set forth under Subtitle U, Chapter 6, § 600.1 (e) (1) through (3), (B), for alley lots, conversion of and use of subject property for purposes of a one-family dwelling residential property is permitted as a matter of right.

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exist exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;

The subject property demonstrates both a unique physical characteristic of size and exceptional situation or condition of property because it the largest alley lot in its Square of location and the existing building occupies near one hundred percent of the land area respectively.
At 1,625 square feet, the lot area id only 175 square feet short of the minimum lot area requirements for a standard non-alley lot in its underlying RF-1 zone district.

2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;

The extraordinary situation or condition of property which is the near 100 percent lot occupancy, imposes peculiar and practical difficulties upon the owner because the strict application of the zoning regulations pertaining to alley centerline setback and pervious surface limitations would require the partial demolition of the existing building in order to comply with the specified provisions.
The applicant contends that by virtue of the applicability provisions set forth under Subtitle C, Chapter 5, §5102 (b), subject property is not subject to the pervious surface requirement since it proposes an addition less than ten percent (10%)

Applicant contends that the proposed addition is constrained from limiting the building to the maximum height by two factors:

c. *The approximate five feet (5 ft.) elevation change at the North alley from West to East;*
d. *The height of the existing building of fifteen feet (15 ft.) when measured at the middle of the front of the building at the West alley.*

The District of Columbia Construction Codes requires a floor-to-ceiling height of seven feet (7 ft.) for code compliant habitable space. The maximum height limit of twenty feet (20 ft.) would therefore constrain a proposed second floor for height less than construction code compliant.

Applicant contends that the proposed height around the perimeter of the building, including at its two possible BHMP at the middle of the front of the building at the two abutting alleys, are dictated by the changes in natural topographic elevation.

3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The applicant contends that the Board is able to grant the area variance relief without substantial detriment to the public good and without substantial impairment of the intent, purpose and integrity of the zone plan because the application seeks to convert for residential use property was previously occupied by commercial use; thereby reducing density and traffic impact on the alley serving other residential uses predominantly.
The proposed addition would not adversely affect the light and air or the privacy of use of adjoining or neighboring properties.

Applicant has set forth above how the application meets the three-prong burden of proof for the granting of the requested special exception

At its regularly scheduled public meeting ANC 1B unanimously voted to support the application and resolve that the Board grant the application

For all the foregoing reasons, the applicant respectfully requests that the requested relief be granted.

Witnesses

1. Patrick Jones
2. Justin Campbell Jr.
3. Hilmar Noble