

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Dinesh Tandon and Nidhi Tandon
2324 North Capitol Street, NW (Square 3124, Lot 143).

I. INTRODUCTION.

This Statement is submitted on behalf of Dinesh Tandon and Nidhi Tandon (collectively, the “**Applicant**”) owners of the property located at 2324 North Capitol Street, NW (Square 3124, Lot 143) (the “**Property**”). The Property is located in the RF-1 zone district and is improved with a two-story + cellar mixed-use building (the “**Building**”) (see Property Photos , **Exhibit A**). The cellar level and first floor of the Building has been continuously used as a retail convenience store since its construction in 1920. The Applicant is proposing to use the Building’s cellar and first floor as a casual fine dining restaurant serving North Indian cuisine. (See attached Restaurant Plans, **Exhibit B**). Accordingly, the Applicant is requesting special exception relief pursuant to C-204.9 to change the existing nonconforming retail use to nonconforming restaurant use. The Applicant is also requesting area variance relief, or alternatively, use variance relief, pursuant to X-1000.1 from C- 204.9(b), which provides that any new nonconforming use must be for residential purposes in the RF zones.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the requested relief pursuant to X-901.2, C-204.9 and X-1002.1(a).

III. BACKGROUND.

A. Description of the Property and Surrounding Area

The Property is a corner lot located in the RF-1 zone with a land area of approximately 1,774 square feet. The Property is improved with a 2-story + cellar mixed-use building. Abutting the Property to the north is Bryant Street, NW. Abutting the Property to the south is an alley.

Abutting the Property to the east is North Capitol Street, NW. Abutting the Property to the west is 2322 North Capitol Street, NW, which consists of a flat. The first and cellar levels of the Building comprise approximately 1,500 square feet of area. The property is located in the Bloomingdale neighborhood and the Bloomingdale Historic District.

B. History of the Building.

According to the attached Property History report prepared by Tracerics Inc. (**Exhibit C**), the building was built in 1920 and the first floor and cellar has been continuously used as for commercial uses, predominately a convenience store use, since 1920. The last convenience store use known as the Sunbeam Market, ceased its operation in the summer of 2022. A series of Certificates of Occupancy for the Property confirm a history of commercial use and also numerous turnovers in ownership and retail store operations (See CofOs in the BZA No, 21151 record , Exhibit 13).

C. Proposed Use.

The Applicant is proposing to operate a fine dining casual restaurant serving Northern Indian cuisine, named Indigo. The Applicant currently operates a popular restaurant in the NOMA area of the District at 243 K Street, NE. This restaurant would be similar in concept, but where Indigo is partly self-service, the proposed restaurant here will be a full-service restaurant.

The restaurant will also include a full-service bar, pursuant to a recently approved spirits license by the Alcohol Beverage and Cannabis Board (“ABCB”) (see attached ABCB Order #2, **Exhibit D**). The outside stairs going down to the basement will be used for pick-up and delivery orders while the main floor will have patrons enjoy their meals without interruption with light music in the background. The public space adjacent to the Building was previously approved for sidewalk café use, with thirty-three (33) seats, when the then-intended use was for a updated

convenience store with coffee shop and a deli. The Applicant wishes to have the same space approved for public café use for this proposed restaurant.

D. Background; Applicant History with Property

The Applicant purchased the Property in 2021 at which was at the time a run-down corner store. Sunbeam market had been around for 20+ years but the owners were struggling and anxious to sell the business. The business appeared to be suffering from a lack of business and the Building suffered from years of deferred maintenance and repair. At the time, the Applicant thought that with a new vision for the store, makeover and renovation, the store could be profitable. The Applicant bought the business as well as the property with the intention of upgrading the store. He changed the name to Hillview Market and applied for permits to renovate the building and include a residential apartment on the second floor. His plan for the store was to add a Class A liquor license to the already existing Class B beer and wine license to enhance and expand the store's alcoholic beverage offerings. He intended that his wife would operate the store as a small grocery, deli, coffee shop, and liquor store. Approximately one-half of the 1,500 square feet commercial space would be reserved for non-alcohol uses, including groceries, coffee and prepared food items and the rest would be devoted to alcohol beverages.

The Applicant was of the belief that liquor sales were critical to the profitability of the store. He applied to ABCB for the spirits license, but the neighborhood was not supportive. They opposed the license citing crime and drug dealing at similar types of stores in the area. (See ABCB #1 Order, **Exhibit E**) They testified at the ABRA hearing that the area suffers from crime, drinking, drug use, loitering, and public urination and that allowing spirits, instead of just beer and wine, will facilitate additional public drunkenness and rowdiness. One close resident testified that he has experienced walking passed stores in the neighborhood and seeing large

numbers of people loiter on Channing Street, N.W. where another convenience store named Capitol Market is located at the corner of North Capitol and Channing Streets NE one block to the north of the Property. (See ABCB #1 Order , **Exhibit E**. The Applicant attended several ANC meetings and tried to persuade the residents that he was seeking a complete overhaul and upgrade of the previous business but the community could not be persuaded The ABRA Board denied the application finding:

“...residents report that the neighborhood currently suffers from large groups of people loitering near the proposed location, and that these people routinely engage in public drinking, rowdiness, and public urination. There is also evidence of alcohol containers littering the neighborhood. Therefore, where the Applicant will be selling alcohol in closed containers, the Board is persuaded that the addition of liquor nearby will exacerbate the present situation, fuel additional anti-social behavior, and otherwise make the neighborhood inhospitable for residents without a drastic change in the situation.” (See ABCB #1 Order, page3, 3-4, **Exhibit E**)

The Applicant was convinced that the market could not be profitable without a major upgrade in the business and that the sales of spirits were integral to profitability. Given proximity of the nearby Capitol Market at the corner of North Capitol and Channing Streets NE and the planned large grocery store with additional large retail component in the nearby McMillan Reservoir site, he determined that there would not be adequate business to support the store without a larger alcohol beverage component..

He did not consider residential use of the first and cellar floors due to the large shop windows the location and the history of commercial use. He was of the belief that a change to a residential use would mean to substantial changes to the Building including a need to add

windows and ventilation to the basement for housing code compliance. The result would be a very awkward residential unit which might not justify the cost of the improvements.

Being an experienced and successful restauranter, he decided to pursue a small restaurant for the Property. Again, however, he was of the belief that sales of spirits in addition to beer and wine would be critical to a successful restaurant venture and he filed a new application with ABCB to serve spirits with a restaurant use at the Site. This time there was support in the neighborhood as well as some continued opposition, but ABCB was convinced that, with conditions, the license could be granted without an adverse impact on the neighborhood. (See ABCB #2 Order, **Exhibit D**).

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IV. THE APPLICATION SATISFIES SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE C-204.9.

A. Special Exception Criteria

i General Special Exception Standards

Pursuant to Subtitle X-901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property.

ii Standard for Review

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant

zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. The Application satisfies the General Special Exception Criteria of Subtitle X- 901.2.

The granting of the special exception will be in harmony with the general purpose and intent of the zoning regulations. "The RF zones are intended to: (a) Recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (b) Allow for limited compatible non-residential uses." The proposed use of the Property will serve as a unique resource to the community and encourage walkability. Accordingly, the granting of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to adversely affect the use of neighboring properties.

C. The Application satisfies the Specific Requirements of C § 204.9.

If approved by the Board of Zoning Adjustment, pursuant to C-204.9, a nonconforming use may be changed to another nonconforming use, subject to the general special exception requirements of X-901.2, and the following conditions:

Section 204.9: (a) The proposed non-conforming use would be permitted as a matter- of-right in the most restrictive subtitle in which the existing non-conforming use is permitted as a matter of right, in accordance with following order, from most restrictive to least restrictive subtitle:

- (1) Subtitle D – Residential House (R) zones;**
- (2) Subtitle E – Residential Flat (RF) zones;**
- (3) Subtitle F – Residential Apartment (RA) zones;**

- (4) Subtitle H – Neighborhood Mixed-Use (NMU) zones;**
- (5) Subtitle G – Mixed-Use (MU) zones;**
- (6) Subtitle I – Downtown zones (D);**
- (7) Subtitle J – Production, Distribution, and Repair (PDR) Zones; and**
- (8) Subtitle K – Special Purpose Zones.**

The proposed nonconforming use is permitted as a matter-of-right in the most restrictive subtitle (Subtitle G – (MU)) in which the existing non-conforming use is permitted as a matter of right. The proposed restaurant use is first permitted as a matter-of-right in the MU-3A zone district.

(b) In the R, RF, or RA zones, the proposed use shall be either a single dwelling unit, flat, or a multiple dwelling unit development; except on an alley lot, the proposed use may only be a single dwelling unit;

The Applicant is requesting an area or use variance from this subsection.

(c) In the R and RF zones, the corner store provisions of the relevant subtitle shall apply;

Not applicable, as the existing Building cannot qualify under the corner store provisions due to the fact that it exceeds the maximum size permitted for corner stores (i.e. 1,200 sf).

(d) The external impacts of the proposed use will be deemed to be no greater than the existing use;

The external impacts of the proposed restaurant use will be no greater than the existing convenience store use. Pursuant to the ABCB #2 Order, based on extensive testimony from nearby residents and inspections of the Property by ABCB staff, ABCB determined that the proposed restaurant use would not have a deleterious impact on the neighborhood. Further, unfortunately, the previous use

presents a low bar – there were complaints about loitering and trash associated with the market. Finally, ABCB imposed the following conditions on the restaurant use:

1. the maximum hours of the interior premises shall be limited to 7:00 a.m. to midnight.
2. the maximum hours of operation for the sidewalk cafe to 10:00 a.m. to 10:00 p.m., Sunday through Thursday, and to 10:00 a.m. to 11:00 p.m. on Friday and Saturday.

(e) The proposed use shall not adversely affect the present character or future development of the surrounding area within at least three hundred feet (300 ft.) of the site;

The proposed restaurant use will not adversely affect the present character or future development of the surrounding area, including within 300 feet of the Property. The Property has been used for commercial purposes since its original construction. As the proposed restaurant, it will continue to be a neighborhood-serving use but one that more appropriately complements the present character of the surrounding area.

(f) The proposed use shall not create any deleterious external effects, including, but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects;

The proposed restaurant use will not create any deleterious external effects. The proposed restaurant is not likely to generate any external noise, illumination, vibration, odor, design, or siting effects and will be a more compatible use than the previous convenience market use which was soundly criticized by nearby residents in ABCB #1 case (see ABCB #1 Order, **Exhibit E**)

(g) When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use; and

Not Applicable.

(h) The Board of Zoning Adjustment may require the provision of changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

V. AREA VARIANCE.

The Applicant is requesting area variance relief from C-204.9(b), which states that in R, RF, or RA zones, the proposed nonconforming use “shall be either a single dwelling unit, flat, or a multiple dwelling unit development.” This request is properly filed as an area variance See X-1001.3(f), which lists “[p]reconditions to the establishment of a special exception use” as one “example” of an area variance.¹ The Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or conditions;
- (2) The owner would encounter an 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. District of Columbia Board of Zoning Adjustment, 628 A.2d 1023, 1035 (D.C.

¹ See also recent BZA Application No. 21026 for 5200 Wisconsin Avenue, NW, which allowed a change from bank use to retail use in the RA-2 zone, pursuant to this same Special Exception and Area Variance path.

1995); see also, *Capitol Hill Restoration Society, Inc. v. District of Columbia Board of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The variance procedure has many purposes. It is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights, and prevent usable land from remaining idle. These purposes infuse meaning into the phrase “exceptional and undue hardship.” *Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (1972).

It is well established that because of the nature of variances and their effects on the zone plan, the stricter “undue hardship” standard applies to requests for use variances while the “practical difficulty” standard applies to requests for area variances. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). For the Board to grant use variance relief, “it must be shown that the regulations ‘preclude the use of the property in question for any purpose for which it is reasonably adapted, i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?’” *Palmer v. BZA*, at 542, citing 2 A. Rathkopf, *The Law of Zoning and Planning*, Note 21, at 45-5 (3d ed. 1962).

A. The Property is Unique Because it is Affected by an Exceptional Situation or Condition.

The phrase “other extraordinary or exceptional situation or conditions” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See *Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2d 1164, 1168 (D.C. 1990).

The Property has been operated as a mixed-use property, with the first floor being a

commercial space since at least 1920 and the cellar being a commercial space since at least 1979.

The Property has been designated as a contributing historic resource in the Bloomingdale Historic District. The first floor, oversized shop windows along both the North Capitol and Bryant Streets N.W. facades remain intact. The Building also features a corner entrance at street grade to allow easy access for patrons, in contrast to the neighboring structures built as residential buildings with elevated front porches. This chamfered entrance is typical of historic corner stores – it allows patrons direct access into the center of the store rather than guiding them into a corner or conflict with show windows. It also maximizes street exposure and allows access from both street frontages.

The Property is also unique as a pre-1958 nonconforming use located in a residential RF zone.

B. The Exceptional Condition Results in a Practical Difficulty to the Owner.

Because of its location in an R or RF zone, the nonconforming use is not able to be used for anything but residential use or the previously existing convenience store or similar retail use. The Traceries report highlights the importance of the Property's historic features and the difficulties associated with modifying the Building's signature storefront features:

The research conducted to prepare this memo definitively supports that 2324 North Capitol Street, NW has been utilized as a commercial space since its construction in 1920, most often under the name "Sunbeam Market." The building was constructed by Dr. Keen Forston in 1920 as a store and apartment as stated on the building permit. Newspaper ads, census sheets, District directories, and Certificates of Occupancy all show that the building was used continuously commercially from 1920 to the present day.

As noted in the *Design Guidelines for Historic Commercial Buildings*, published by the DC Historic Preservation Office (HPO), "[i]n many ways, storefronts are the most dynamic aspect of a commercial building's facade." HPO defines a "storefront" as the ground-floor section of the facade of a commercial building that functions as a business's public interface through the entryway, store display, and sign. Large display windows are the most prominent character-defining

features of any storefront. For corner stores, chamfered corner entrances are also considered a character-defining feature. 13 2324 North Capitol Street retains both its corner entrance and large storefront windows. Therefore, it is likely that the Historic Preservation Office will require that these features be retained as part of any future proposal that contemplates rehabilitating the building.

The necessity of keeping these features in any conversion to residential use creates an awkward and uneconomic residential use considering the cost of all of the Property improvements that will be required to improve the Property for residential use. Further, conversion to residential use is not an optimal historic preservation outcome. The proposed restaurant use would preserve the commercial character of the Building including continued public access at the corner entrance, active show windows and commercial signage. Residential use would not enhance the Property's unique historic features or convey its historic significance for the Bloomingdale Historic District.

C. No Substantial Detriment to Public Good and No Harm to the Zone Plan.

Granting the relief will not result in a substantial detriment to the public good nor to the zone plan. The Property has been used as a commercial space since 1920, so the proposed change of that commercial use will not create a substantial new condition. While a restaurant would tend to have more patrons on-site at one time than a convenience store, it would have fewer overall patrons and presumably less total trips into and out of the location. Again, this issue was thoroughly vetted by the ABCB with respect to the license to sell spirits in the proposed restaurant and found to have no likely deleterious impact.

Finally, the City has an interest in the success of small businesses, including minority business owners, to diversify employment opportunities in the City as opposed to an overreliance on Federal jobs – especially given the current climate. The proposed restaurant use is consistent with that City interest.

VI. USE VARIANCE.

Alternatively, the Applicant meets the burden of proof for a use variance.

The use variance is requested for both the proposed restaurant use and also for the outdoor seating which may be interpreted as an extension of the restaurant use and with respect to which 11- C204.1 states that: "A nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment of this title."

An applicant for a use variance 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 a zoning regulation would result in exceptional and undue hardship upon the owner of the property. Some of the elements of proof for a use variance are the same as an area variance. These include the Property's uniqueness. As stated above, the Property has been operated as a mixed-use property, with the first floor being a commercial space since at least 1920 and the cellar being a commercial space since at least 1979.

The difference between an area variance and a use variance burden of proof resides in the difference between the "practical difficulties" standard for the area variance and the "exceptional and undue hardship" standard of the use variance.

In this case, the strict application of the residential use requirement would clearly result in an undue hardship on the Applicant. Residential use of the property is not suitable for the Property with its large show windows on a busy thoroughfare and awkward at grade corner entrance feature. The property was clearly designed as a corner store with a residential unit on the second floor. As such it was deemed a contributing building in the Bloomingdale Historic district. Given these contributing historic features it is unlikely that a change in these features for residential use would be consistent with the historic district and they may not be approved by the Historic Preservation Review Board. Further, the cost of renovating and converting the Property for residential use of the first and cellar floors would not likely be economic for residential use.

The property is in a bad state of repair and require substantial funds to create a habitable and code complaint residential use.

Alternatively, continued convenience store or similar retail use is not a sustainable economic use of the site. Convenience stores in the District of Columbia, like the nearby Capitol Market, are increasingly unpopular and incompatible with nearby residential uses due to their propensity to rely on cigarettes, alcohol and lottery tickets for profitable sales and their tendency to invite loitering and create trash and litter in the neighborhoods. Some convenience stores feature graffiti and are generally unkempt and unsightly (see attached photos of the Capitol Market within a block of the Property, **Exhibit F**). Convenience stores in general also appear to be facing headwinds due to healthier eating habits, consumer pullbacks on discretionary purchases, consumer pivots to grocery and dollar stores for convenience purchases and high labor costs. (See Attached Upside Report on Convenience Store Industry trends, **Exhibit G**). In fact, the local neighborhood convenience store is becoming a dinosaur of sorts. Once a desirable entry level business venture for immigrant families and minorities, these mom-and-pop labor shops do not appear to hold the same appeal that they once had.

A small-scale convenience store use at the subject location faces additional challenges with respect to the proximity of alternative shopping facilities. The previously discussed Capitol Market is within a 3 minute walk of the Property (see Google Maps, **Exhibit H**). And the McMillan Reservoir project will include a large grocery store as well as over 10,000 square feet of neighborhood serving retail uses along North Capitol Street just 3 blocks to the north of the Property.

Further, as evidenced by the long list of Certificates of Occupancy for the Property, previous owners did not appear to be successful in sustaining a retail use at the Property.

The Site on a busy thoroughfare with limited parking along North Capitol Street lends itself more readily to a destination use, like the proposed restaurant, as opposed to a convenience store use. A small convenience use will not be able to rely on commuters and thru traffic to help sustain convenience store type retail sales because it will not be convenient to stop and shop. On the other hand, the location on North Capitol Street is not a true neighborhood serving retail site. It is not located within a residential neighborhood – it is on the very edge of the adjacent neighborhood to the west. In addition to the heavily traveled commuter thoroughfare to the east, the residential area across North Capitol Street to the east from the Site is dominated by the Glenwood Cemetery which occupies a large swath of land.

VII. CONCLUSION.

For the reasons outlined in this statement which go to the unusual design, historic importance, location and previous degradation of the Property which altogether impede economic use of the Site for residential or small retail uses, the Applicant respectfully requests the Board to grant the special exception and variance relief as detailed above.

Respectfully Submitted,



Cynthia A. Giordano

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2025, an electronic copy of the foregoing Statement of the Applicant regarding Dinesh Tandon and Nidhi Tandon, was served on the following:

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Respectfully Submitted,



Cynthia A. Giordano