

Testimony of People with Party Status

Board of Zoning Adjustment Case 21151 - Hillview
Market
April 23, 2025

Board of Zoning Adjustment
District of Columbia
CASE NO.21151
EXHIBIT NO.147

Summary of Presentation

1. Specific Requirements of C § 204.9 (f) - No Greater External Impacts & Deleterious Effects
2. Specific Requirements of C § 204.9 (e) - Neighborhood Character
3. Area Variance Issues Summary
4. Area Variance - Hardship Standard
5. Lack of Economic Feasibility Study/No Guarantee of Restaurant Success
6. Area Variance: Applicant Does Not Meet Burden of Proof
7. Proposal Not Consistent with Zoning or Comprehensive Plan
8. Commercial vs. Residential Zoning
9. Residential Character of Bryant Street
10. Deleterious Effects
11. Property Values
12. Undue Burdens to Neighbors
13. Concerns about Applicant's Improper and Misleading Submissions in this Process
14. Conclusion

Specific Requirements of C § 204.9 (f): No Greater External Impacts

1. The Application (on page 6 of Exhibit 147) incorrectly asserts “external impacts of the proposed restaurant use will be no greater than the existing convenience store use.”
 - a. Extended hours
 - b. Commercial patio
 - c. On-site kitchen (food waste, exhaust)
 - d. Longer customer stays for a restaurant than for a convenience store
 - e. Introduces meal delivery vehicles
 - f. Shared ride and personal vehicle parking

Specific Requirements of C § 204.9 (f): Deleterious Effects

1. The Application (on page 6 of Exhibit 147) incorrectly asserts “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.”
 - a. This argument is based on the concept that this application proposes changing from one “commercial” use to another “commercial” use, so nothing changes.
 - b. It fails to address how the change in use from store to restaurant changes the character of the neighborhood
 - i. Creates deleterious effects that are specific to a restaurant and do not occur with a corner store
 - ii. A change from a corner store to a restaurant is not a one-to-one change

Specific Requirements of C § 204.9 (e) - Neighborhood Character

1. The Application (on page 6 of Exhibit 147) incorrectly asserts “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.”
 - a. This argument is based on the concept that this application proposes changing from one “commercial” use to another “commercial” use, so nothing changes.
 - b. It fails to address how the change in use from store to restaurant changes the character of the neighborhood
 - i. Patrons interact with a restaurant differently than with a corner store, which creates impacts that change the nature of the neighborhood

Area Variance Issues Summary

- A. Their request does not meet the burden of proof and satisfy the questions:
 - a. What is exceptional or unique about the property (size, shape, topography, other)?
 - b. How is that uniqueness causing practical difficulty or undue hardship if zoning were applied?
 - c. What are the potential adverse impacts on neighbors and the zone plan?
 - d. How does this impair the intent, purpose, and integrity of the zone plan (and map)?
- B. There is nothing about the property that prevents the owner from utilizing it as it is currently zoned. The applicant's initial proposal was consistent with the zoning plan *and* received neighborhood support
- C. The neighbors want a business at the corner! We were on board with the original proposal. However, the proposed restaurant would lead to significant harm related to noise, parking, trash, rodents, security, illumination, and odors.

Area Variance - Hardship Standard (1 of 4)

APPLICANT DID NOT MEET BURDEN OF PROOF WITH HARSHIP MYTHS

Applicant says that he would experience exceptional and undue hardship to adhere to the current zoning restrictions because

1. It is not economically viable to run a store
2. The previous structure as a commercial building makes it unsuitable for being transformed into a residential property
3. He is anxious about competition from McMillan development



Odd Provisions
(within 2 blocks of a Giant store)



Forthcoming
Lost Sock
Market

Area Variance - Hardship Standard (2 of 4)

FACTS DEBUNKING HARSHSHIP MYTHS

1. Economic viability:
 - a. Applicant never did a feasibility or economic study to assess the viability of a store
 - b. Over 100 year history of being run as a store
 - c. There are nearby examples of corner store success
 - i. U First Mart at 1942 First St NW
 - ii. Odd Provisions at 3301 11th St NW
 - iii. LeDroit Market at 1901 4th St. NW
 - iv. Lost Sock is opening an upscale corner shop market & cafe in NoMa this summer. This is a very similar model to the Applicant's original plan, which aligns with current zoning rules and received neighborhood support, and which he claims is not economically viable.



Odd Provisions
(within 2 blocks of a
Giant store)



**Forthcoming
Lost Sock
Market**

Area Variance - Hardship Standard (3 of 4)

FACTS DEBUNKING HARDSHIP MYTHS

2. There are no physical qualities to the structure that prevents it from being used as it is currently zoned or to prevent him from executing a 100% residential design
3. Applicant claims that the angled entrance is suitable for only a store/restaurant. This is NOT unique in Bloomingdale-it is common!
4. McMillan development was long in the works before applicant purchased property



Former store - now residential

Area Variance - Hardship Standard - (4 of 4)

FACTS DEBUNKING HARDSHIP MYTHS

5. There is neighborhood precedent in Bloomingdale of converting commercial property to residential. These properties have qualities that make them attractive for residential purposes. For example, properties converted into residential with large windows were a selling point because they let in more light.

6. The Applicant claims that the properties is in a bad state of repair and would require substantial funds to create a habitable and code complaint residential use. However, he demolished the upstairs apartment without a permit and was forced to rebuild. Those extra costs were his fault.

7. [Greater Greater Washington](#) cites numerous examples across Washington of buildings being converted from commercial to residential use, despite being in historic neighborhoods

8. Furthermore, the question of difficulty to adapt a corner store to a residence is an HPRB concern, and is not related to the BZA.



Neighborhood example of store conversion to residential at 2016 First ST

Lack of Economic Feasibility Study/No Guarantee of Restaurant Success (1 of 2)

1. No economic feasibility study was conducted on the viability of the original plan that had zoning regulation and neighborhood approval.
2. The applicant offers no proof or research supporting the non-viability of this original plan, which is the impetus for the new restaurant plan. We are simply expected to just accept this statement.
3. Applicant has claimed on various ANC5E and BCA meetings be a successful business person. However, we would expect a successful business person to conduct a market analysis of a proposed business before spending over \$1 million on a property
4. Applicant cannot guarantee a successful restaurant
5. WTOP News reported in March that “Half of DC restaurants say business is down, many may close”
6. Restaurant Association Metropolitan Washington predicts that **44% of full service casual dining restaurants in DC will close this year.**

Application Statements are No Guarantee of Restaurant Success (2 of 2)

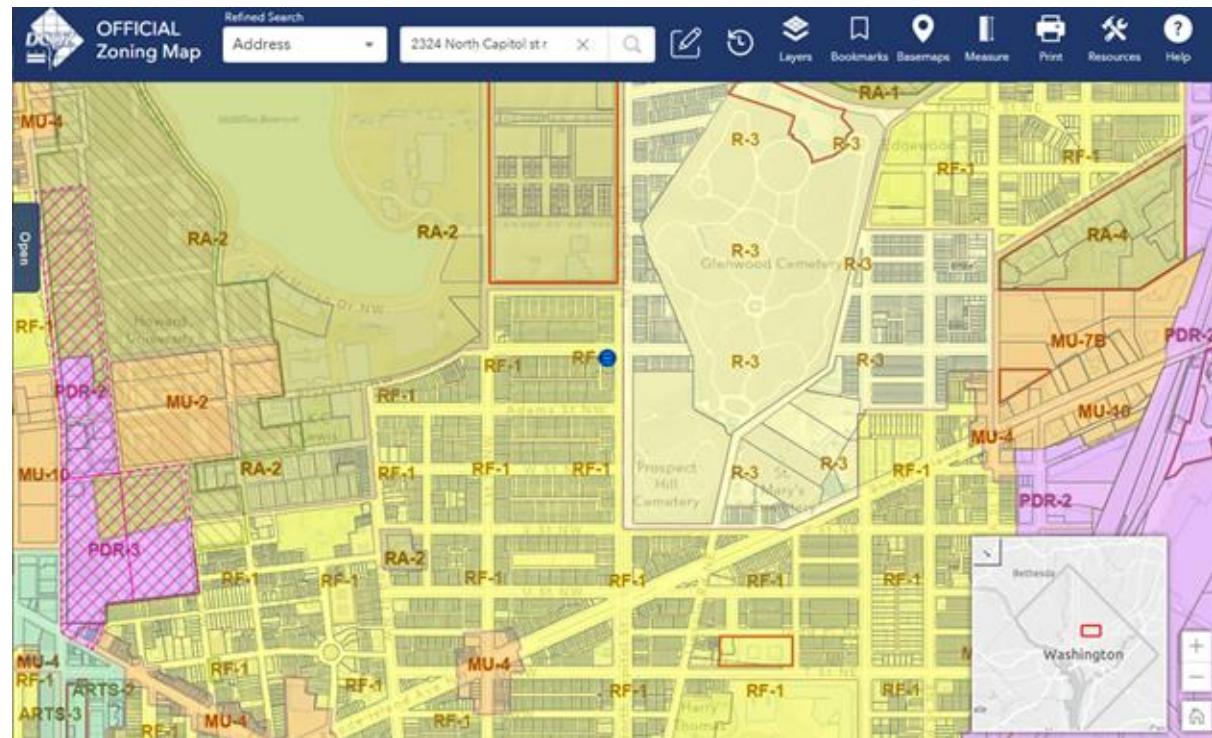
7. Applicant cites K St location as proof that this location will be successful, yet Bryant Street is a very different neighborhood than K Street: Bryant St has no high rise buildings like K Street has.
8. The proposed restaurant is an entirely different business model: the proposed Bryant St location will be full service and have a bar. The K Street location doesn't have a bar and is self service.
9. At the February 2025 ANC5E meeting, the Applicant himself asked three times to wish him luck on the success of his restaurant adding "I certainly need some good wishes because nowadays, establishing and running a business, especially a restaurant, in this time is very difficult"
10. If the Applicant's restaurant fails, the zoning relief remains and what replaces it (and thus impacts the community) is unpredictable.

Area Variance: Applicant Does Not Meet Burden of Proof

1. There are not peculiar and exceptional conditions or features of the property (i.e. a lot is exceptionally narrow, shallow or has other irregular topographical conditions) that prevent the owner from meeting the zoning requirements;
2. Complying with the Zoning Regulations will not result in practical difficulty (in the case of area variances) or undue hardship (in the case of use variances) to the owner; and
3. If the variance is granted, he cannot prevent effects to residents that are detrimental to the public good.
4. He cannot make this change consistent with the zoning plan of the District.
5. The special exception will NOT be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps
6. The special exception WILL affect adversely the use of neighboring property

Proposal Not Consistent with Zoning or Comprehensive Plan

1. Unlike the Red Hen or the Big Bear which are either adjacent to or in MU-4 zoned areas, 2324 North Capitol NW is the blue dot in a sea of RF-1 zoned blocks with the closest MU-4 district 0.4 miles or 5 blocks away.
2. Granting the variance and special exception will also introduce a liquor license on a 100% residential block with no commercial zoning within 5 blocks



Comprehensive Plan

The 2021 Comprehensive Plan calls for Moderate Density Residential which overlaps with the RF-1 zoning. This is second-to-lowest density provided in the residential category.



https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/02_Framework_small.pdf

Commercial Residential

vs



K Street Indigo: MU-5A zoned for facilities for shopping and business needs.
9-story apartment buildings, trash against the sign, brighter lights, meal delivery and shared ride vehicles



Bryant St NW: RF1 zoned 2 and 3 story row houses with front gardens, no commercial parking lot, not close to Metro, no current businesses that provide delivery pick ups

Residential Character of Bryant Street

1. Applicant describes the neighborhood as busy, heavily trafficked, and prone to crime. Our experience of our neighborhood is different. Bryant Street is inherently residential in character with a strong sense of neighborliness and community
 - Whatsapp Group “High T” for daily neighborhood communications
 - Block closed off on Halloween for Trick or Treaters
 - Neighborhood chili competitions
2. Applicant describes the previous store at 2324 as in disrepair and damaged the quality of the neighborhood. Neighbors living within 200 feet remember the store as clean and well stocked, a consistent source of goods, and would frequent the shop often.
3. It is misleading to describe a lack of remodeling with a lack of cleanliness.

Deleterious Effects

Title 11§ 204.9 says a nonconforming use may be changed to another nonconforming use, subject to the general special exception criteria of Subtitle X, Chapter 9 conditions including this one: (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.

MYTH

1. The applicant claims that “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.* This is categorically false and impossible.

*Applicant's statement: Section 204.9: (f)



Indigo patron illegally parked and blocking alley of K street location

A. Noise

The proposed change in use would create adverse external effects because the ambient noise level of the unit block of Bryant will be irrevocably changed by several factors, including new noise from:

- a. music and patrons' voices dining outside on the patio
- b. music and patrons' voices inside, each time the door opens
- c. the many vehicles that will transport patrons
- d. restaurant delivery trucks
- e. food delivery vehicles, especially two-stroke motorcycles with drivers that tend to drive the wrong way down the one way street
- f. daily garbage truck visits that are appropriate for a commercial district, not a quiet residential street.
- g. Continuous dumping of garbage, including loud glass bottles



Video of Indigo patio Sat 3/29/25 9:23 pm

B. Traffic

1. Air pollution and traffic safety incidents are expected to increase because of two-stroke motorcycles picking up food deliveries and idling restaurant delivery trucks
2. Unlike K Street, there is only one lane of traffic for Bryant Street, so double-parked vehicles will cause a back up and honking from impatient people stuck behind them.
3. The delivery vehicles are expected to block and frequent the alley behind the restaurant (as that is where pick up orders will be given). This alley often has children playing and families walking through it. The closest neighbors need to access their vehicles using this alley.
4. Parking spaces on North Capitol are eliminated by morning Rush Hour restrictions. The applicant has not offered a parking plan.



Passenger drop off at Indigo patio Sat 3/29/25 9:25 pm

C. Parking and Loading

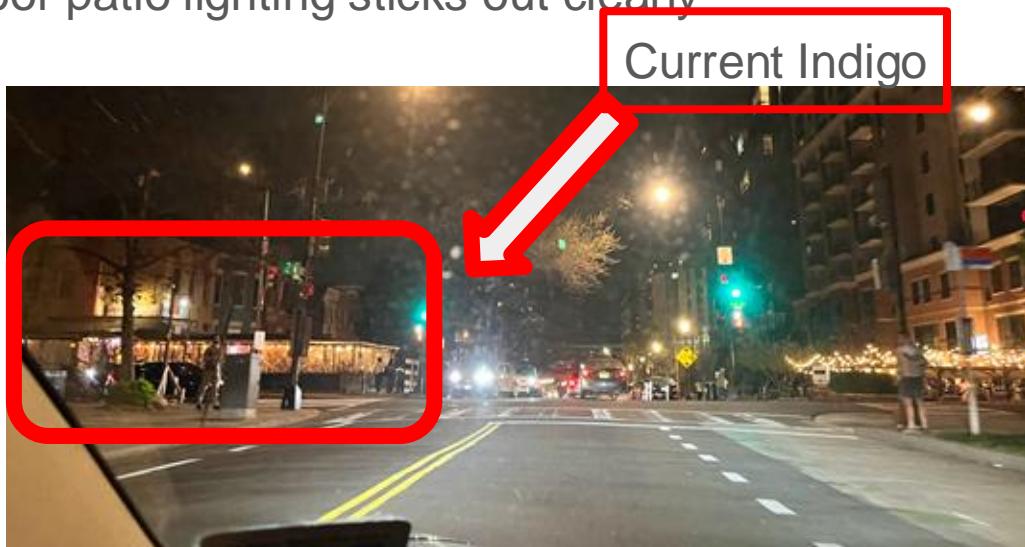
1. There is no parking plan - The current and proposed use includes only two parking spots and is located more than a mile from any Metro station.
2. Parking on North Capitol is prevented during rush hour. This will force drivers to look for parking on Bryant street.
3. There is no loading area for trucks and for shared transport like Lyft and Uber
4. More customers will park here because the restaurant occupancy is high
5. Customers will stay longer in a restaurant than they would in a corner store
6. Many current Indigo customers were observed driving their own cars from different states to the K street location (from MD, VA, and even CT).
7. Current Indigo customers park in the Giant garage - but we have no parking lot of any kind here.
8. Applicant plans to have to-go orders be picked up at the back door off the alley. This will create constant blockages of the alley. Closest neighbors rely on that alley to access their vehicles.
9. Families walk through the alley with their children and dogs and children play in the alley. Increased traffic would be dangerous.



Restaurant patrons leaving Indigo for illegally parked car on Sat 3/29/25 9:25 pm

D. Illumination

Outdoor patio lighting sticks out clearly



Applicant plans to develop new restaurant to be consistent with the K street location. The illumination of their patio would be inconsistent with Bryant St. character

E. Vibration

- Already impacted by vibration from construction on the property. This would continue with the renovations that would be allowed if zoning relief were permitted
- The motorbikes and scooters that are common with food delivery services (i.e. DoorDash, Uber Eats) cause significant vibrations, especially if they are left stalling while the driver picks up orders. We expect this to be a significant disturbance, as to-go orders comprises a large percentage of a restaurant's business

E. Odors and Rats

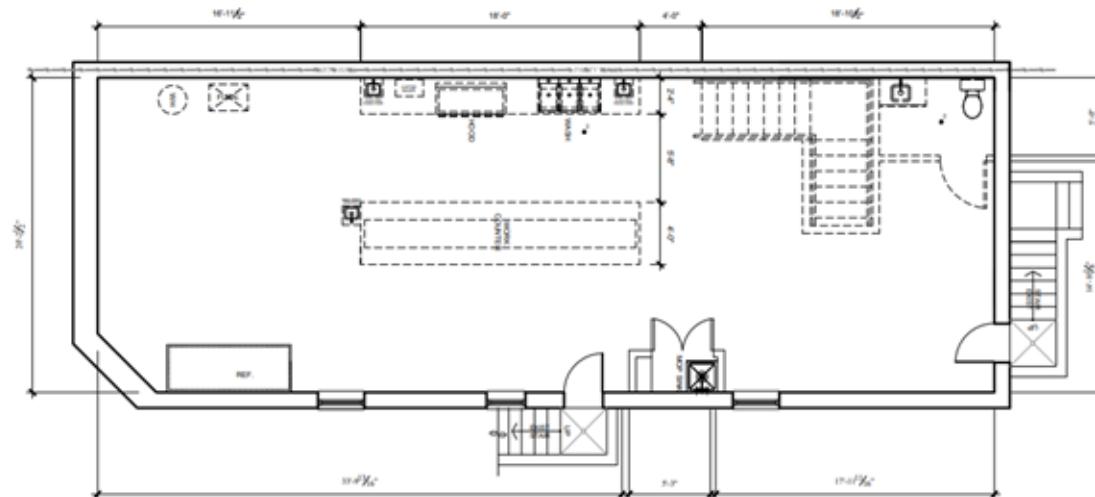
1. Already have a rat problem. Introducing a restaurant will only make it worse
2. Even with daily trash pick ups, restaurant will have wet food sitting in dumpsters overnight, which will attract rats
3. Other pests to consider (i.e. roaches and mice)
4. Regular treatments will not be able to compete with the constant source of food in dumpsters
5. Odors are inherent to a restaurant, even with ventilation systems. This would be a new impact that doesn't currently exist. This would be harmful to closest neighbors with health conditions

F. Design and Siting Problems (1 of 2)

1. Residents will lose all privacy because no fence can be constructed within proximity to an alley and adjacent neighbors will be constantly observed by customers
2. No parking can be provided for customers
3. No loading zone can be provided for deliveries, customer loading, or food delivery vehicles. It is expected that the alley will be frequently blocked.
4. Customers will require vehicle transport by personal vehicles or rideshares because the site is not within one mile of Metro
5. A commercial kitchen in the cellar may require additional zoning relief
 - a. There has never been a kitchen onsite
6. Concerning violations and misstatements
7. Concerning changes in plan from store to coffee house to patio to liquor license

F. Design and Siting Problems (2 of 2): Misleading information on basement

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.



Property Values

1. Many people who buy property on Bryant Street are attracted to the quiet residential neighborhood character. A restaurant would make the block much more commercial, busier, and noisier.
2. Restaurants are more likely to create a nuisance which is a deterrent to prospective home buyers.
3. While we understand many people would like to live in a neighborhood with a restaurant, this is not the attitude of many who live directly next to a restaurant. So while it might not impact people a block away, we anticipate it would reduce the number of potential buyers and potentially impact the offer price and therefore the property value for the nearest houses.

Undue Burden to Neighbors

1. The applicant has described his application to be in line with the commercial use planned for the McMillan site. However, the McMillan development was planned with infrastructure development to support commercial activity there.
2. Bryant street does not have that infrastructure. Allowing a restaurant will force the closest neighbors to pay the cost of supporting a business without this infrastructural support, which puts an undue burden on the neighbors, not the applicant.
3. The applicant decided to buy a corner store near the McMillan development and the potential competition from the Channing Street corner shop. These are not new elements.
4. By saddling the nearby neighbors with the deleterious effects of a new use, he is placing neighbors in a position where we are forced to lose quality of life and peaceful enjoyment in our homes to compensate for the Applicant's uninformed business decisions, lack of due diligence, and divisive activities that erode neighborhood relationships.

Concerns about Applicant's Improper and Misleading Submissions in this Process

- Irrelevance of ABCB Hearing and Misstatements
 - Applicant repeatedly cites ABCB findings as part of their BZA application. ABCB processes are completely independent of BZA procedures and should be considered separate.
 - Applicant falsely claims that “ABCB determined that the proposed restaurant use would not have a deleterious impact on the neighborhood”. This is not true. ABCB cited an OoP report that the property *as it is currently being used* (i.e. unopened business) did not have a deleterious impact on the neighborhood.
 - Applicant cites hours approved by ABCA (7am - midnight), which are longer than the hours of a corner store (7am - 9pm). This is one example of many that demonstrates how a change from a corner shop to a restaurant inherently creates a greater impact on the neighbors.
- Documents and requests by their lawyer have been filed late and claimed to have been sent to Party Status neighbors when they were not (e.g. April 4 late filing of request for use variance)
- While not relevant to questions of zoning, there are numerous letters of support for the restaurant that have been filed multiple times. Specifically, there are at least 10 letters on file that have been submitted 2-3 times, with at least one household submitting 4 letters. This falsely inflates the sense of support for the plan.

In Conclusion

1. It is concerning that the Applicant sends out mass emails before every ANC meeting, Bloomingdale Civic Association meeting, and city agency hearings telling people that it matters if many people, most of whom don't live within 200 ft of the site, testify that they want a restaurant on this block of Bryant St.
2. We hope that this decision will be made based on conditions that are strictly related to zoning, not popularity.
3. What becomes of this property is not a question of popularity, or that there are individuals who think that an additional restaurant would be a "nice to have".
4. We believe this decision has the power to ensure a peaceful residential block can be enjoyed by the next generation living on Bryant St NW.
5. The applicant does not meet the standards required of area or use variance, including proving undue hardships and not creating deleterious effects to the neighbors. The proposed use does not conform with the Comprehensive plan for the District of Columbia.
6. We believe that the Zoning Board would act in the best interests of the city to deny the requested relief, especially when a person has purchased a property with the intent to change the zoning of the whole neighborhood for his financial gain.

Thank You!

We appreciate the time and attention the BZA has paid to this case. We are grateful for their consideration of our concerns regarding how the proposed restaurant would impact our quality of life.