

July 3rd, 2024

Dear members of the Board of Zoning Adjustment of the District of Columbia,

My name is Richard Smith and I own, live, and work at 1 Bryant St NW on the same block as the owner of at 2324 North Capitol (at Bryant St NW) who seeks proposed zoning relief and special exception for non-conforming use and area variance for the non-conforming use requirements.

I testify today to ask the Board NOT to approve any part of the application for the property formerly known as Hillview Market, aka SunBeam, (Board of Zoning Adjustment Case 21151).

The application falsely states that the proposed use shall not create any negative external effects, including noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

The current zoning allows for a corner store. The owner purchased the building and should have determined how the property was zoned before purchase. While a corner store would be convenient, it is not a necessity as there are a number of bodegas within a six block radius. In fact, there is a corner store approximately 150 feet away (North Capitol and Channing NE). Given that the property is zoned for RF1, residential with a non-conforming exception for a corner store, the owner has indicated his desire and intent to obtain a kitchen and ask for variances in order to open a restaurant with a bar with liquor and outside seating. If this has been his intent, then he should not have purchased this property.

His liquor license application includes hours of operation from 6 am to 2 am on weekdays and until 3 am on weekends. He gutted the upper floor of the building to serve as an event space. If this comes to fruition, it will fundamentally and negatively alter the neighborhood which is zoned RF-1.

I understand that he runs a restaurant in NOMA. NOMA is not a neighborhood like ours: Bryant

It is a quaint residential street in a relatively quiet RF-1 historically designated neighborhood.

They seek a special exception for non-conforming use requirements of Subtitle C § 204.1 pursuant to

Subtitle C § 204.9 and Subtitle X § 901.2.

They seek an area variance for The non-conforming use requirements of Subtitle C § 204.1(b) pursuant to

Subtitle X § 1002 and Subtitle C-204.9 (b) (according to Form 135 Zoning Self Certification).

There is the recent development of the McMillan project. That project seems more in line with our community as they have engaged with the neighborhood, and responded with a beautiful park, community center, and plans that address parking. They have planned for our needs, and will not disrupt our quiet RF-1 historic district.

Current RF-1 Zoning and Rules

They are requesting to permit a restaurant use in an existing, detached, two-story with cellar, with

current zoning as RF-1.

The purpose of the current RF-1 zoning is to provide for areas predominantly developed with row

houses on small lots within which no more than two (2) dwelling units are permitted. A corner store

may be permitted in RF-1 subject to these rules (among others):

“There shall be no on-site cooking of food or installation of grease traps; however, food

assembly and reheating is permitted in a corner store.” D.C. Mun. Regs. tit. 11 § U254.8

“There shall be no sale of alcoholic beverages for on-site consumption in a corner store.”

D.C. Mun. Regs. tit. 11 § U254.9

“(b) The use shall not operate between 9:00 p.m. and 7:00 a.m.,” D.C. Mun. Regs. tit. 11 §

U254

Proposed Changes to the Rules for a Corner Store

The Applicant is requesting special exception relief to change the existing nonconforming retail use to nonconforming restaurant use. They propose changes to each of these current rules governing a corner store in an RF-1 zoned neighborhood, including

1. The change from a store that sells food that has been prepared elsewhere to a restaurant with a full kitchen for on-site cooking.
2. The sale and consumption of alcoholic beverages (Dinesh said to me on June 30th a restaurant is not viable without alcohol sales).
3. Their liquor license application would expand the hours of operation to Sunday - Thursday from 6 am to 2 am and Friday and Saturday from 6 am to 3 am.

Request for Relief – Self Imposed Hardship

The Applicant is also requesting area variance relief from a requirement that the new nonconforming use must be for residential purposes in the RF zones. This relief can be granted to owners who feel the strict application of any regulation adopted under DC Official Code would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good.

This is not the case with this request because they caused their own hardship when they bought the property understanding the zoning restrictions. It is not right for the neighborhood be adversely affected because they decided to buy a corner store with RF-1 zoning, and opted not to operate a store.

Authorization Should Not Be Granted due to Adverse Effects

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. In Title 11§ 204.9 it says a nonconforming use may be changed to another nonconforming use, subject to the general special exception criteria of Subtitle X, Chapter 9 conditions, which include this condition:

(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 application falsely states that 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.

How the Proposed Change in Use Creates Adverse External Affects

1. Noise – The proposed changes would create adverse external affects because the ambient noise level of the unit block of Bryant will be irrevocably changed by several factors, including,

- a. noise from music and patrons voices dining outside
- b. noise from the many vehicles that will transport patrons,
- c. noise from restaurant delivery trucks,
- d. noise from food delivery vehicles, especially two-stroke motorcycles with drivers that tend to drive the wrong way down the one way street.
- e. daily garbage truck visits that are appropriate for a commercial district, not a quiet residential street.

2. Odors and Rats – The proposed changes would create adverse external affects because of the addition of a kitchen because:

- a. The onsite kitchen will generate food waste which will attract rats,
- b. Cooking in the new kitchen will subject neighbors to constant smells of food preparation because of the kitchen exhaust system – in fact one resident who testified at the Bloomingdale Civic Association meeting on 6/17 said he lives near their existing restaurant, “Indigo” said he smells the Indian spices at 6 in the morning!

3. Parking and Loading – The proposed changes would create adverse external affects due to

- a. 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.
- b. More people will drive here and stay longer - Though the application makes no mention of the change in number and duration of customers, both changes will have

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a deleterious effect on parking availability for people who live on the adjoining blocks, many of whom bring home their groceries, and transport young children daily. The longer walks carrying household goods will be a hardship for them, not to mention for the elders on the block who may be returning from hospital treatment or who may be otherwise physically disabled. The owner has said with the change from a store with coffeehouse, the proposed restaurant will have the capacity for 33 people on the patio and close to 50 inside – all of whom will stay much longer if they are here for a restaurant meal with alcoholic beverages.

c. Increase in Traffic Congestion and Air pollution and traffic safety incidents are expected to increase because of two-stroke motorcycles picking up food deliveries, idling restaurant delivery trucks, and commercial garbage trucks

d. Loading - There is no loading area for trucks and for shared transport like Lyft and there is only one lane of traffic on this residential street which will cause a back up and honking from impatient people stuck behind the double-parked vehicles.

e. Vibration – The daily commercial garbage trucks and delivery trucks will cause vibrations as they thump their way over two speed humps on Bryant St.

f. Siting effects – Neighbors who are adjacent to the new use of outdoor space will be burdened by constant observations of their comings and goings, especially when strangers can monitor when the house is left unoccupied. We already have too much crime on these blocks.

To recap:

I testify today to ask the Board NOT to approve any part of the application for the property formerly known as Hillview Market (Board of Zoning Adjustment Case 21151) because the proposed use will create deleterious external effects, including,

but not limited to, noise, traffic, parking and loading considerations, vibration, odor, and siting effects. And because the city has just opened a beautiful park and community center, which will be followed by commercial zone with stores, restaurants and designated parking. They will operate in and enhance an environment that was designed for commercial use, not disrupt one that is a quiet RF-1 historic district.

Thank you for listening to me and for your consideration.

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