

BZA Application No. 21333 - 409 East Capitol Street, SE

Regarding the Party Opponent's Response - Summary

- The party opponent now pounces on the use variance, despite being on record as not previously having an issue with it. We note also that the use variance was not opposed by any of the neighbors speaking out against the special exception. The use variance is also supported by both participating ANCs, as well as the Office of Planning.
- The licensing question is 100% irrelevant to the issues before the Board. The BZA is not, and has not, been authorized to enforce licensing or corporate law.
- The number of previous commercial-use C of O's show supports the Applicant's contention that the space has never been used for residential use.
- In response to the supposition from the party opponent that the lapsing of three years requires denial of the use variance, it's a conclusory statement with no logical premise or analysis. The lapsing of the three years is one of the reasons that use variance relief is required (similar to the reason that use variance relief was required in other similar use variance cases with a lapsed nonconforming status, such as BZA No. 18701 for 1247 E Street, SE). Regardless of that precedent, there is no such "pre-condition" to the use variance request.

Board of Zoning Adjustment
District of Columbia
CASE NO. 21333
EXHIBIT NO. 44



Regarding the Party Opponent's Response

- The party opponent's submission completely misses the mark on the previous Zoning Administrator letter. The 1500 Ogden letter is entirely on point regarding the Special Exception Relief being available for a residential building with less than 50% non-residential use. The fact that the 1500 Ogden use was a grocery store and the current case is an office or a dry cleaner is irrelevant. The critical element is that both uses were non-residential uses, not *which* non-residential uses they were.
- The updated plans are in line with the conceptual plans accepted by the Board on a regular basis and are adequate to show and illustrate the criteria related to the BZA special exception.
- Claimed lack of notice for HPRB case is irrelevant.

Regarding the Party Opponent's Response

- We have pointed out the distinguishing factors from Bernstein. We have also pointed out that Bernstein has never been mentioned in any of the cases cited by the Applicant as supportive of the Applicant's position in this case.
- The fact that the office tenant has left is irrelevant and means nothing to the use variance argument. The issue is the condition of the premises due to its original, and historic, nonresidential use.

Request for Bifurcation of The Two Areas of Relief.

- The Applicant requests that the Board to bifurcate their decision and make separate decisions, if necessary, on the special exception request for lot occupancy relief and the use variance request for continued non-residential use of the existing historical non-residential premises within the building.
- The Applicant asks the Board, that if their concern with the use variance approval is one of evidence, that the Applicant be provided the opportunity to buttress their argument with what the Board may now be requiring for evidence (to this point, the Applicant has, with support from two ANCs, the Office of Planning, and no opposition up until the Party Opponent's pivot last week, provided evidence consistent with the standard followed in the Board's approvals of the cited by the Applicant in this case).