

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Della Barba Pizza LLC

1382 East Capitol Street, NE (Square 1025, Lot 0814).

I. INTRODUCTION.

This Applicant's Statement is submitted on behalf of Della Barba Pizza LLC (the "Applicant"), owner of the property located at 1382 East Capitol Street, N.E. (Square 1025, Lot 0814) (the "Subject Property"). The Subject Property is improved with an existing two-story building (the "Building"). The first floor and basement of the Building are currently leased to the Applicant trading as "Della Barba Pizza" ("DBP") fast food establishment.

DBP has operated at the Subject Property since 2019 continuously under a current issued of C of O # CO2202357. On November 19, 2025, during the BZA hearing on the application and after further discussion, the Board has instructed the Applicant to apply for Special Exception relief pursuant to U-254.2 as a corner store. A "corner store" use under Section 11-Subtitle U254.2A is defined as a: "retail...eating and drinking establishment use."

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception approvals as requested pursuant to X § 901.1, to the specific requirements of this classification restrictions governed by:

(a) Special exception from Subtitle U § 254.5 which limits a corner store to one thousand-two hundred square feet since the Applicant's area comprises 1,380 square feet (20' x 69') not including cellar space and ground story by only 180 square feet, which is its current operating size;

(b) Special exception from Subtitle U § 254.8 to permit on-site cooking of food or installation of grease traps, which is its current operating kitchen conditions;

(c) Special exception from Subtitle U § 254.9 to permit sale of alcoholic beverages for on-site consumption in a corner store designated to be operated as a permitted "retail...eating and

drinking establishment”, which has been requested by its patrons. Such licensure will be subject to limited licensing approvals and all regulatory requirements as imposed by the D.C. ABC Administration; and

- (d) Special exception from Subtitle U § 254.10 to permit external storage of trash at approved locations with specified containers for regular pick-up at designated intervals and times, which is its current storage and trash removal arrangements.

As shown herein, the Application complies with all other requirements of Section 11-U254 as follows:

- 1.) Under U254.1 it is a *permitted use in an RF-1 zone* as a matter of right;
- 2.) Under U254.6 it meets all the relevant requirements of: (a) as it “*is located at the intersection of two (2) generally perpendicular streets*”, namely East Capitol and 14th Streets Northeast; (b) it is “[n]ot within five hundred feet (500 ft.) of more than one (1) other lot with a corner store use designed a retail eating and drinking establishment”; and (c) it is “[n]ot within five hundred feet (500 ft.) of more than three (3) other lots with a corner store use defined as retail, general store or arts, design, and creation uses”. All other requirements at U-254.6 (d), (e), (f) and (g) are not applicable in this case.

II. BACKGROUND.

A. Existing Use and History of Uses.

The Building was constructed as a two-story structure with cellar. There is no alley access as the rear is landlocked. The ground floor and cellar have been grandfathered as a retail fast-food pizza for nearly two decades. Prior uses also included a commercial retail store for sales of goods. The second floor is used as a residential unit. The Applicant seeks to change its current operation to accommodate a restaurant use that can accommodate a new outdoor seasonal dining patio. There are no changes proposed to the current limited indoor seating nor any changes to the existing

building structure. The outdoor patio in public space would require approval by the District of Columbia's Public Space Committee within its Department of Transportation (DDOT) and would be subject to any customary regulatory conditions of that approval.

Based upon the DDOT review of the Application, there is no need for any parking relief as outlined in its Report to the Board. (See Exhibit 35.)

B. Description of the Subject Property and Proposed Use.

The Subject Property is located in the RF-1 Zone. It is also located in the Capitol Hill Historic District area. It is a small rectangular corner lot measuring approximately 1,200 square feet of land area. The Applicant is seeking approval to allow DBP to continue operations on the first floor and basement as a Corner Store – Italian pizza and prepared food shop - specializing in specialty hand-made pizzas.

DBP sells various combinations of pizzas, sandwiches, and other food items. All food dishes are prepared onsite and are cooked at this location.

DBP will have a mix of both full-time and part-time employees with varying numbers of employees and managers per shift. The current hours of operation are from 7:30AM to 10:00PM. The DBP staff are provided all required governmental employment benefits.

As part of its commitment to being a good neighbor, DBP implemented processes in order to mitigate issues with potential lines and foot traffic in front of the Building. The kitchen and menu were adjusted to increase the speed of ordering. As there is limited indoor seating area. Patrons have made numerous requests for additional seating in order to provide for more family-accommodated dining; they encouraged DBP to seek this zoning relief in order to expand dining services. It has daily private trash pickups, with trash stored in the cellar until the time of pickup, weekly pest control contracts, and daily deliveries around 6am of products from the main store.

C. Surrounding Area.

The Subject Property is surrounded by a mix of uses. Directly abutting the Subject Property to the north and west are single-family townhome dwellings. Across 14th Street to the east and across East Capitol to the Southeast are additional single-family row dwellings. There are also several multi-family buildings in the surrounding area, a few commercial properties, and a church near Lincoln Park at East Capitol and Thirteenth Street.

III. SPECIAL EXCEPTION

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 adversely affect the use of neighboring property.

The Zoning Regulations, specifically U-254.1 permits a ‘corner store’ in the ‘RF-1’ zone. In addition, the U-254.2 allows the corner store use to be defined as “a retail...eating and drinking establishment”. The Applicant seeks a special exception pursuant to U-254-14 to the following corner store provisions in this instance: (a) U-254.5; (b) U-254.8; (c) U-254.9; and (d) U-254.10. The granting of these special exceptions will be in harmony with the general purpose and intent of the zoning regulations nor adversely affect the use of neighboring property as described below under the criteria for approval and specifically U-254.14(a) and .14(b).

ii. Standard of Review for Special Exceptions

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. Specific Requirements of U-254.14

Pursuant to 254.14, a corner store use that is not permitted as a matter of right shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to

the following conditions:

(a) A corner store use shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, deliveries, or other objectionable conditions;

The proposed corner store use is not likely to become objectionable to neighboring property because of noise, traffic, deliveries, or other objectionable conditions, for the following reasons.

- First and foremost, the operating hours are substantially the same as previously operated for the past 15 years, limited to 7:30 am – 11:00 pm daily, which means that from 11:00 pm every day, until 7:30 am the next day, the use is completely dormant. There have been no complaints filed by District government agencies or by the general public regarding the present operation and the previous hours of operation.
- DBP has the same signs posted to identify its store to patrons; its customers have requested alcoholic beverages to be consumed while dining. (See Exhibit- Letters of Community Support.)
- Trash is collected and stored indoors in trash bins, which are stored inside overnight, and then taken outside each day for daily private pickup.
- DBP's pest control plan will include such frequency of visits as needed – with more frequent visits during the seasonal patio operations as standard practice for restaurants.
- Appropriate measures such as stanchions or furniture, are to be used to keep any lines within the public space area adjacent to DBP on 14th Street for indoor and outdoor seating.
- There is no music or other artificial noise for the outdoor seating area.
- The large majority of patrons are pedestrians, primarily from the neighborhood.
- Any car or parking-related issues will be minor impact as attributable principally to DBP's new restaurant use given the limited seasonal operation that is restricted during inclement wet, heat and cold weather conditions.
- DBP is planning to institute such actions, including extra hires to accommodate its patio program with the expectation of swifter service and shorter wait times.
- The kitchen and menu are also being adjusted to increase the speed of ordering.

(b) The applicant shall demonstrate that the proposed corner store use will not detract from the overall residential character of the area and will enhance the pedestrian experience by providing within the application the following information:

(1) A demonstration of conformity to the provisions of Subtitle U §§ 254.6, 254.7, 254.11 through 254.12;

See below.

(2) A description of proposed uses, activities, goods sold, or services rendered, including:

DBP sells Italian-style pizzas and related sandwiches, along with other side dishes, including desserts and beverages. All food items are prepared on-site in a kitchen, as is currently done for heating and cooking of food items at this location.

(3) Proposed size and location within the principal building;

The floor area of DBP's interior operation is 1,380 total SF, excluding the cellar space and proposed outdoor patio area.

(4) Proposed number of employees at any one (1) time and in total;

DBP has a total of 15-20 employees for this location, with 6-9 employees per shift.

(5) Proposed hours of operation;

DBP's current and proposed hours are from 7:30 am until 11pm, seven (7) days a week.

(6) Proposed signage;

Currently, there are two small signs noting the store's location. The Applicant can reduce the signage to one (1) location should the Board require a reduction from the existing signs on the building exterior.

(7) Any proposed amplified music or other sound outside of the building containing the corner store use;

No amplified music or sound proposed via outdoor speakers is envisioned at this site.

(8) Any outdoor seating associated with the corner store use;

The proposed outdoor seating is subject to governmental approval and regulation by the DC Public Space Committee of DDOT. The proposed plans have been subject to DDOT and OP Departmental reviews and have received approval as a request for use variance. (See Exhibits for these respective reports to the Board.)

(9) Proposed parking number, location, and screening such that any parking shall be fully screened from all adjacent properties, streets and alleys;

No parking as the property is landlocked without alley access.

(10) Proposed location of all storage; and

Cellar storage- in the cellar walk-in, and on storage racks, will continue in the same existing location.

(11) Proposed location of trash storage and method and timing for removal;

Trash will be stored in the cellar and brought to the street level for private collection daily.

(c) Any alterations to the property proposed to accommodate the corner store use, including any grading changes, tree removal; or addition of retaining walls, patios, or pervious surfaces;

No changes to the building structure via removal or additions to existing walls; only patio area to be delineated and approved by Public Space Committee for location of tables, chairs and related dining and landscape furniture.

(d) Any modifications to the building façade, including changes to window and door openings; and

No changes.

(e) The maximum sales area devoted to the sale of alcohol for off-site consumption shall be limited to a maximum of fifteen percent (15%) of the gross floor area of the ground floor of the corner store.

Alcohol sales limited to on-site restaurant consumption with food service and no alcohol sales for off-site consumption.

Regarding conformity to the provisions of Subtitle U §§ 254.5 through 254.12:

254.5 The allowable total area for a corner store shall be one thousand-two hundred square feet (1,200 sq. ft.), not including cellar space, and shall be limited to the ground story and cellar or basement.

The total floor area, excluding the cellar space, is only approximately 1,380 square feet (20' x 69').

This additional 180 square feet exceeds 1,200 square feet by only 15%. This represents no increase in the existing indoor operational space as currently used for the present retail food service.

254.6: A corner store shall only be located as follows:

(a) On a lot that is at the intersection of two (2) generally perpendicular streets;

The Subject property is on the corner of East Capitol Street and 14th Street.

(b) Not within five hundred feet (500 ft.) of more than one (1) other lot with a corner store use defined as an eating and drinking establishment;

The Subject Property is not within five hundred feet (500 ft.) of any other lot with a corner store use defined as an eating and drinking establishment.

(c) Not within five hundred feet (500 ft.) of more than three (3) other lots with a corner store use defined as retail, general service, or arts, design, and creation uses;

The Subject Property is not within five hundred feet (500 ft.) of any other lot with a corner store use defined as retail, general service, or arts, design, and creation uses;

(d) In any of the R-3 zones other than the R-3/GT zone, on an interior or through lot with a building that was built prior to May 12, 1958 for the purpose of a nonresidential use, as established by a certificate of occupancy, permit records or other historical documents accepted by the Zoning Administrator;

Not applicable.

(e) In any of the R-3 zones other than the R-3/GT zone, no nearer than five hundred feet (500 ft.) to a property line of a lot in an MU or NMU zone;

Not applicable.

(f) In the R-3/GT zone, on an interior or through lot with a building that was built prior to May 12, 1958, for the purpose of a nonresidential use, and only if the building was used for a corner store use within the previous three (3) years established by a certificate of occupancy, permit records, or other historical documents accepted by the Zoning Administrator; and

Not Applicable.

(g) In the R-3/GT zone, no nearer than seven hundred and fifty feet (750 ft.) to a property line of a lot in an MU or NMU zone.

Not Applicable.

U-254.7 A corner store shall not be permitted:

- (a) On an alley lot;**
- (b) On a lot or within a building containing more than one (1) dwelling unit or another corner store;**
- (c) Within a building that is accessory to the principal building on the lot;**
- (d) On an R zoned lot within Squares 1327 or 1350, 1351, 1352, or 1353 inclusive; or**
- (e) In the R-3/GT zone, on an interior or through lot that has not been used for corner store uses for three (3) or more consecutive years shall not be deemed eligible for a corner store use.**

The Subject Property does not fall within any of the descriptions within (a) through (e) above.

254.8 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.

Applicant seeks a special exception to this requirement as its proposal new use as a restaurant requires that it continue to maintain its present kitchen functions. This existing on-site cooking capability has occurred without any adverse impacts to adjacent neighbors or to the local community. There have been no complaints filed by either the government agencies regulating fire protection or those regulating health or the public regarding the smell of noxious odors or excessive smoke or other problems. Applicant's intended new 'corner store use' as an "eating and drinking establishment" requires on-site cooking of food and the same grease traps as exist now on the Subject Property. This new use is not likely to attract any adverse impacts or complaints that would not have been raised by the immediate neighbors and the local community regarding current operations.

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

Applicant seeks a special exception to this requirement as its proposed new use will seek approval of a Restaurant Class Liquor License, as may be granted in the future by the DC ABC Administration. Any and all conditions or requirements of the DC ABCA will be fully complied with during future new operations. The Applicant has received numerous requests for alcohol services with dining similar to other restaurant facilities throughout the city. There will be future

sales of alcoholic beverages for consumption on premises as a restaurant in compliance with the District of Columbia ABC Administration. Any conditions imposed by DC ABCA will be followed by the Applicant as a condition and requirement of a Restaurant Class Liquor License. Restaurants are required to maintain a certain percentage balance of food and alcohol sales. There will be no sale of alcoholic beverages for off-site consumption by patrons of the restaurant.

254.10 All storage of materials and trash shall occur within the building area devoted to the corner store. There shall be no external storage of materials or trash.

Applicant seeks a special exception to this requirement as its existing operation currently has external storage of trash with regular private pick-up for disposal. This requirement is and will be continued and may be modified by conditions for public space approval from DDOT that may be imposed. Those conditions, and any sought to be required by the Board, will be 100% complied with as set.

254.11 There shall be no on-site use or storage of dry cleaning chemicals in a corner store.

This requirement is and will be 100% complied with.

254.12 Only one (1) external sign may be displayed on the building's façade, provided that the sign is not illuminated and is flush-mounted.

There are currently two small signs on the Building, which were there for the previous use. The Applicant is determining whether relief is needed from the Board for a second sign, but is willing to comply if the one sign must be removed.

IV. ARGUMENT.

The Applicant is requesting special exception zoning relief from certain "Corner Store" locational requirements of U-254 of the Zoning Regulations, due to the Subject Property's grandfathered status as an existing retail food operation for many years that serves a neighborhood need with community support and lack of community opposition or complaints in the same location over decades of operations within the RF-1 zone.

The burden of proof for the requested special exceptions is well established. The Board of Zoning Adjustment may grant special exception relief if it finds that "(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan." *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning*

Adjustment, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested zoning relief from the corner store requirements for a use defined as “retail food and drinking establishment”.

A. The Subject 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 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.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors that affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990). The Subject Property is faced with exceptional conditions relating to its existing configuration as a commercial use and its small size without alley access. The first floor and cellar basement have always been used for commercial retail purposes. The ground floor and cellar have never been used for any residential purposes for decades continuously and without interruption. Accordingly, the Building is not configured for residential purposes as it has store windows and a corner entrance facing onto two major street arterials in order to attract patrons. Costly and extensive remodeling and renovations would be required to convert the existing conditions to residential use. Consequently, these exceptional conditions create impediments to a financially viable residential situation that would lead to a practical difficulty if the zoning regulations are strictly enforced, especially given the small area with limited livable or suitable space for market residential use.

In addition, the Property has a unique location. The existing retail food service use would be otherwise permitted to continue as a “grandfather” food operation, but for the Applicant’s need to expand its operation as a restaurant for outdoor patio dining on a weather-permitting and seasonal basis in the RF-1 zone, which now similarly operates. While that fact alone may not be

unique, it does create an exceptional circumstance when the history of the Subject Property is considered. Based on a review of this corner lot history, the Subject Property is one that has always served retail commercial uses, including a retail store prior to its current categorization as a “fast-food” store use, and is not fully residential.

B. Strict Application of the Zoning Regulations Would Result in a Practical Difficulties to the Owner.

The history of use and configuration of the Building creates an exceptional situation where the Owner has always leased the ground floor for commercial purposes. If the Applicant is forced to close, the Owner will suffer practical difficulties if the special exception relief is not granted. While the building originally had a C of O for retail food service use for the first floor, that commercial C of O has never expired. Use of the Building as a single-family row-dwelling is not feasible now nor previously. There is already a residential use established on the second floor above, and as the only matter-of-right use, which would continue as a single-family row-dwelling. Any future residential expansion beyond this limited area would require extensive renovation in order to create a marketable floor plan. Even then, the existing first floor features, including multiple store windows and a corner entrance onto high traffic streets are not conducive to residential use. The entire façade of the first floor would have to be redesigned, which could prove difficult as it would require oversight and approval from many governmental agencies, including, but not limited to, DOB, OP, DDOT, OGB and HPRB.

As the existing first floor and basement have always been used for commercial purposes and any alterations to convert the Building to a single-family residential use would not be feasible, the Owner and the Applicant will be faced with a practical difficulty if the relief is not granted.

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 will it

harm the zone plan. Regarding the public good, The Application received a resolution in support from ANC 6A. (See Exhibit of ANC). The expanded operation by DBP as a restaurant with an outdoor patio was planned and created in conjunction with community input and serves as a contributing neighborhood asset and amenity that could be available for future use and provide for the neighborhood benefit where it is now situated. (See Exhibit-Community Support Submission.) DBP has a proven track record of successful operations, without objection or opposition, and for giving back to the neighborhood in which it is located. As described above, the nature of the new use is relatively benign with little, if any, negative adverse community impacts within the zone over present conditions.

Regarding the zone plan, the first floor and basement space have been used for commercial purposes since it was first built and the use itself is permitted via “grandfathered” as a non-confirming use, whose status has been continuous and uninterrupted for decades. The Applicant is proposing to continue to use the first floor and basement for commercial retail purposes, which will permit outdoor patio seating permitted via a special exception when granted upon approval of public space expansion by Permit Approval.

V. CONCLUSION.

For the reasons outlined in this Supplemental Statement in satisfaction of the burden of proof, the Applicant respectfully requests the special exception relief be granted as detailed above which such conditions as the Board deems appropriate, if any.

Respectfully Submitted,

/s/Anthony M. Rachal III

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Date: January 20, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 20, 2026, copies of this Supplemental Statement Burden of Proof were emailed to the following parties of record:

1. D.C. Board of Zoning Adjustment
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2. D.C. Office of Planning
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/s/Anthony M. Rachal III

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