

**DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**

**Applicant's Statement of Carl O. Winberg Trust**  
**1355-1359 H Street, NE**

**I. INTRODUCTION.**

This Statement is submitted on behalf of 1355-1359 LLC (the “**Contract Purchaser**”) and Carl O. Winberg Trust, (the “**Owner**”) owner of the following contiguous properties that are the subject of this Application:

1359 H St NE (Lot 163)  
1355 H St NE (Lot 139)  
1355 Rear H St NE (Lot 140)  
1357 H Street NE (Lot 144)  
1361 Linden Ct NE (Lot 136)  
(The “**Properties**”)

The Contract Purchaser and Owner are hereinafter collectively referred to as the applicant (the “**Applicant**”). The Properties are located in both the NMU-4/H-A and MU-4 zones. The Applicant proposes combining the two street-facing lots (1355 and 1359 H Street) and three alley lots (Lot 140, 144, and 136) to create one single record lot. The existing buildings will become one building (the “**Building**”) which the Applicant is proposing to adaptively reuse as a food market, along with small retail spaces (the “**Project**”). The Applicant is not proposing to expand or alter the existing buildings’ height or footprint.

The proposed consolidation results in a single record lot consisting of an existing building not compliant with the rear yard setback requirement. Also, the consolidation of the separate buildings results in a parking requirement that previously didn’t exist due to each individual building being below the floor-area threshold for a parking requirement. Accordingly, the Project requires special exception relief for the rear yard setback pursuant to G-207.14<sup>1</sup>, and from the new 4-space parking requirement pursuant to C-703.2.

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<sup>1</sup> Pursuant to H-901.1, the MU-4 zone development standards in Subtitle G, Chapter 2 shall apply to the NMU-4/H-A, NMU-4/H-H, and NMU-4/H-R zones except as specifically modified by this chapter. The rear yard requirements are not modified in the NMU-4/H-A zone, and the portions requiring rear yard relief are located in the MU-4 zone.

The proposed use will be similar to Union Market, but on a smaller scale. Accordingly, some of the spaces may be considered 'fast food' or 'fast casual' consistent with the use categorization of the food stalls in Union Market and other similar uses. Fast food is permitted only via special exception in the MU-4 and NMU-4/H-A zones. Accordingly, the Applicant is also seeking relief pursuant to U-513.1(f) and H-6007.1(e)(2), the respective (and identical) requirements for the MU-4 and NMU-4/H-A zones.

**II. JURISDICTION OF THE BOARD.**

The Board has jurisdiction to grant the requested special exception relief requested pursuant to X-901.2, C-703.2, G-207.14, U-513.1(f) and H-6007.1(e)(2).

**III. BACKGROUND.**

**A. Description of the Property and Proposed Project.**

The Property comprises five lots—two street-facing lots (1355 H Street and 1359 H Street) and three alley lots (1355 Rear, 1357 H Street, and 1361 Linden Court). Once combined the Property will have a total land area of 8,757 square feet and a combined existing FAR of approximately 1.0. There will be no expansion or extensions of the existing improvements. These are existing commercial properties most recently used for various commercial uses including restaurant and retail.

The proposed use will still offer retail and food/drink, in the form of stalls, similar to Union Market. As shown on the plans, the proposal includes 12 food stalls. The proposal will benefit patrons and customers as there will be diversified food offerings and retail at one single location.

**B. Surrounding Area.**

Abutting the Property to the north is H Street, to the south is the public alley. Abutting the Property to the west is 1353 H Street, which has a C of O for restaurant use. Abutting the Property to the west is another commercial property. The area is primarily characterized by commercial uses in an urban setting, along with mixed-use commercial and apartment uses. The Property is directly adjacent to two H Street Streetcar stops and the X2 bus line. While H Street is generally a commercial corridor, some residential properties are on the surrounding blocks and multi-family buildings along H Street. The Property's Walk Score is 95, considered a "Walker's Paradise."

**IV. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE X-901.2, C-703.2.**

**A. General Special Exception Requirements.**

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.

The Applicant is not proposing changes to the building footprints, but merely combining the existing commercial buildings. Further, the proposal is not typical 'fast food' – but rather a food market, like Union Market, but on a smaller scale. Given that the other adjacent properties are commercial uses and there is no space expansion resulting from this redevelopment, the proposal will not tend to adversely affect the use of neighboring properties.

**B. Special Exception Requirements of Subtitle C-703.2.**

The existing uses have the same categorization as the proposed uses in terms of the parking requirement. However, there is no parking requirement currently as each individual use/individual building is below the threshold to trigger parking (typically triggered at 3,000 sq. ft. of GFA). However, combined, the Property will have approximately 9,000 sq. ft. of GFA, triggering the parking requirements.

As noted above, there are existing commercial uses within the same amount of space, which is being used for similar commercial uses. However, the combination of the lots triggers the need for four parking spaces. Ordinarily, eight parking spaces would be required for the use; however, the proximity to the Streetcar line permits a 50% reduction in the number of parking spaces, resulting in a requirement of four spaces. Again, the Property has consistently been used for commercial uses in this same configuration in this same amount of space without any parking given the site constraints and surrounding transportation characteristics.

Accordingly, the Applicant is requesting special exception relief for four parking spaces pursuant to C § 703.2.

**Section 703.2 "The Board of Zoning Adjustment may grant a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant's demonstration of at least one (1) of the following:**

The Applicant is only required to satisfy one of the considerations under C § 703.2. The information below includes the section that most safely applies to this subject Property and Application.

**(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;**

While the Property has alley access, the existing alley buildings extend all the way to the lot line and there is no reasonable way to provide off-street parking given the existing improvements on the site as demonstrated in the Photo Exhibit.

**(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;**

The Property is well served by mass transit. The Property is directly adjacent to two H Street Streetcar stops and the X2 bus line. Proximity to either the Streetcar line or X2 Bus Line makes the Property eligible for a 50% reduction in parking—the Property is within steps of both.

**(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;**

As described directly above in (b), the Property is well-served by transportation and the H Street Corridor is a well-established, walkable commercial street. While H Street is generally a commercial corridor, there are some residential properties on the surrounding blocks. The Applicant anticipates many of the patrons will come from the nearby residential areas within walking distance. The Property has a Walk Score of 95 and is considered a “Walker’s Paradise.” Accordingly, the characteristics of the neighborhood minimize the need for the required parking spaces.

**Section C-703.3 Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide, and shall be proportionate to the reduction in parking demand demonstrated by the applicant.**

The reduction in the required number of parking spaces (four spaces) is only for the amount the applicant is physically unable to provide. Regarding demand for parking, as discussed above, the Applicant anticipates that the transportation characteristics and amenities in the neighborhood will bring patrons without cars.

### **C. Special Exception from the Rear Yard Requirements**

The Applicant is proposing to combine the existing street-facing lots with alley lots. The alley lots are improved with alley buildings and they have a different set back requirement than street facing lots (7.5 ft. from the centerline of the alley), which is being met here. The Applicant met with the Office of the Zoning Administrator, which determined that the lot combination would create a new nonconforming situation with respect to the rear yard as the alley buildings would become street-facing buildings.

For a street-facing building in the MU-4 and NMU-4/H-A zones, a rear yard of 15 feet is required in the respective zones. For the first 20 feet of building height at the rear of the building, the rear yard is measured from the centerline of the alley to the rear line of the property. In this case, there is a 30-foot alley, so the Building meets the rear yard requirements for the first 20 feet of building height. The total building height is approximately 24 feet, so only the 4-foot portion above the 20-foot height line is subject to a different measurement method, that being from the rear lot line to the building. As shown on the second-floor plan in Plans, there are existing improvements on the second floor that extend to the rear lot line. The Applicant proposes to maintain these existing improvements and use them as a bathroom/storage space, and stair access. Accordingly, the Applicant is seeking rear yard relief to maintain these portions of the building that are above 20 feet in height and are not set back from the Property line.

**207.14      Relief from the rear yard requirements of Subtitle G § 207 may be permitted if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:**

**(a)      No apartment window shall be located within forty feet (40 ft.) directly in front of another building;**

No residential (apartment) use is proposed.

**(b)      No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;**

No office use is proposed.

**(c)      In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable**

**rooms shall be considered in determining distances between windows and appropriate yards;**

N/A.

**(d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and**

The Applicant seeks relief from the parking requirements, but there shall be adequate access and loading. The street-facing lots will have previously unavailable alley access.

**(e) Upon receiving an application for relief from rear yard requirements of this section, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with coordination of reviews in writing from all relevant District of Columbia departments and agencies, including:**

- (1) The District Department of Transportation;**
- (2) The Department of Housing and Community Development; and**
- (3) The Historic Preservation Office if the application involves a historic district or historic landmark.**

#### **D. Special Exception for 'Fast-Food'**

While a food market is not typically thought of as 'fast-food,' the Zoning Regulations do not have a separate category for this type of dining and the Office of the Zoning Administrator has traditionally categorized such uses as 'fast-food' for zoning purposes. Accordingly, the Applicant is seeking relief to provide a food market, or 'fast-food' use pursuant to U-513.1(f) and H-6007.1(e)(2), which have identical requirements for the respective MU-4 and NMU-4/H-A portions:

**(f) Fast food establishments or food delivery service eating and drinking establishments subject to the following conditions:**

- (1) If the use is a single tenant in a detached building;**
  - (a) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; and**

**(b) If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot;**

This does not apply as this is not a single tenant in a detached building.

**(2) Any refuse dumpster used by the establishment shall be housed in a three- (3) sided enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face or be within ten feet (10 ft.) of a R, RF, or RA zone;**

Any dumpsters will be housed and screened in accordance to this requirement.

**(3) The use shall not include a drive-through;**

The use does not include a drive-through.

**(4) The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;**

There is no increase in commercial use space and the use is located in a commercial area with similar uses, and for this among other reasons, is not designed and will not be operated so as not to become objectionable to neighboring properties.

**(5) The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7 to accommodate the needs of patrons and employees;**

The Applicant is seeking special exception relief for parking.

**(6) The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and**

As there will be no on-site parking, the use shall not create any dangerous traffic conditions. Further, the Streetcar line has a stop directly in front of the building and it is on a main corridor in the area, adjacent to other commercial shops. Accordingly, the use shall not create any objectionable traffic conditions. Further, the proposal consists of the same types of commercial uses that have historically been at this location, and the Applicant is not proposing any expansion of the uses.

(7) **The Board of Zoning Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.**

The Applicant will comply with additional conditions.

**V. CONCLUSION.**

For the reasons outlined in this Applicant's Statement, the Applicant respectfully requests the special exception relief as detailed above.

Respectfully Submitted,

*Alexandra Wilson*

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Alexandra Wilson  
Sullivan & Barros, LLP  
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