

APPLICATION OF OLD CITY MAO, LLC FOR MODIFICATION OF SIGNIFICANCE
TO BZA ORDER 13991

INTRODUCTION

In 1983, the former owner of the building located at 522 K St NE, who was also at the time the proprietor of the corner market located at that address, applied for a Special Exception to allow him to cook and prepare food in his market. The Exception was granted. The Market then continued to operate, trading as the ABC Market continuously from 1983 until 2015. Then in 2015 the market closed for renovations and re-opened under the new name: Old City MAO, LLC trading as: Old City Market and Oven. Prior to commencing any renovations, the current owner met with officials from DCRA and ABRA to discuss the new concept of the store and to ensure that the new concept would be compliant with the existing certificate of occupancy. After receiving assurances that there was no conflict, the owner engaged the services of an architect, pulled all necessary permits and renovated the store. The new store incorporated a small commercial kitchen wherein hot food is prepared in a wood/gas fired brick oven. In addition to the oven and kitchen, the store also has a coffee bar wherein customer can purchase brewed coffee or espresso drinks. The store also continues to sell a wide variety of grocery items typically found in neighborhood convenience stores, as well as fresh produce, dairy, beer, and wine.

Old City Market and Oven opened for business in November 2016 and has been in continuous operation since that date. However, during the first quarter of 2017 the Applicant was advised by the Office of Zoning that certain business practices engaged in by the Applicant were in violation of its current certificate of occupancy. Specifically, the Applicant was told that it could have no seating for its customers for any reason, not merely prohibiting the seating for sit down service. The Applicant was further advised that it would need to seek a modification of the original BZA order if it sought to have more than two employees; if it intended to use the basement for retail use; if it wished to be opened other than from 8:00 am until 8:00 pm; and if it wished to have any seating for its customers. As a result, it has filed this Petition.

STATEMENT OF THE NATURE OF, AND GROUNDS FOR, THE MODIFICATION

The Applicant seeks a Modification of Significance to the Board of Zoning Adjustment Order No. 13991 to allow it to operate within the full scope of the law pertaining to corner stores in residential neighborhoods. Specifically, as identified by the Zoning Administrator, the Applicant seeks as a minimum: 1) addition of accessory Fast Food Establishment to the Certificate of Occupancy granted for Retail Grocery Store/Deli; 2) expansion of the retail to the basement; 3) a change in the operating hours from 8 am to 8 pm to 8:00 am until 9:00 pm; 3) an increase in the number of employees from two to seven; and 4) an increase in the number of seats from 0 to eighteen. However, as previously stated, these are the minimal modifications we seek as identified by the Zoning Administrator; but what we actually want is to be able to operate our store within the full range and authority granted to corner stores in a residential neighborhood as a matter of right, without limitation or restriction.

The Applicant is a corner store, which is permitted as a matter of right, and has been operating as a corner store since at least 1941 (the date of an invoice, found during renovations, for the store when operating as a pharmacy). By definition, "a corner store use shall be a retail, general service, arts design and creation, or eating and drinking establishment use" Title 11 Section 254.1. Since 1983 the store has had a certificate of occupancy that permitted use as a grocery/delicatessen wherein food was prepared and sold. At the time the BZA order was issued, it made certain findings of fact: that the store would have "no tables or seats for on-site sit down service"; that the store had only two employees; that the store hours would be 8 am to 8 pm; and that the basement would be used for storage. Those findings of fact have since become restrictions on the use of the building and the operation of the Store that are now more restrictive than the law permits. The Applicant seeks to remove these restrictions and simply permit it to operate fully within the regulations and the original BZA Special Exception which permitted the cooking of food. To permit seating within the store, a full contingent of employees, and full use of the basement, would not be a non-conforming use, but would merely allow it to operate in a manner that it could do as a matter of right, had it not previously sought the special exception to permit the preparation of hot food.

Prior to filing this Application, the Applicant had posted notice to all our customers that we intended to apply for this modification. Attached to this Application is a copy of that notice and the signatures of support of all the people who support this application. Please note that the support of people comprises over 800 signatures. We have also discussed this Application with everyone who has come into the store. As of this date not one single person has voiced an opposition to this application and our having seating for our customers. Indeed, most people have uniformly voiced their concern that we have not been able to permit our customers to be seated.

STATEMENT OF THE NATURE OF THE MODIFICATION

The Building in which this store is located was built approximately one hundred years ago. The first floor and the basement have been used commercially for over seventy years, and may have been used commercially when first constructed. According to older members of the community, and according to documents discovered during renovations, back in the 1940s the first floor and the basement were used as a pharmacy and convenience store. According to one witness, the store had a counter for seating and served ice cream sodas, but this information could not be corroborated. However, we do know that the convenience store sold fresh milk, cheese and ice cream in addition to drugs and other medications in 1941 evidenced by a sales invoice we found dating back to that time. However, by the 1970s the store was merely a convenience store. Then in 1983 the building owner, Kwang B. Jeon and his spouse, In A. Jeon, applied for a special exception to change a non-conforming use from drug store-food products to grocery store and delicatessen. The application was granted in October 1983, Application No 13991. Shortly thereafter, Kwang Jeon, who had been operating the store, sold the store, but not the building, to the Kim family (father and two sons), who operated the store as a convenience store with a deli counter. They sold hot and cold sandwiches and soups.

In the early 1990s, Curt Hansen acquired the property from Kwang Jeon. He continued to rent the store to the Kims, but after discovering that the Kims had engaged in certain questionable business practices, he indicated that he would not renew their lease. The Kims sold the business to Khalid Ibnoujala, who continued to run the business as a convenience store through 2014. Subsequently, Curt Hansen decided

to do a joint venture with Mr. Ibnoujala, wherein Hansen would renovate the store and produce hot food, but this time in a wood fired oven. Prior to beginning renovations, Mr. Hansen met with officials from Zoning, Health and the ABC Board to confirm that the renovations and intended use were compliant with the pre-existing certificate of occupancy. Hansen then engaged the services of an architectural firm, an engineering firm, and a general contractor in order to renovate the building. However, due to the length of the process and the renovations, Mr. Ibnoujala subsequently obtained employment with another business organization and decided not to pursue the business endeavor with Hansen.

Prior to the renovations, Mr. Ibnoujala used the first floor of the building for retail sales and the basement level contained a bathroom and storage rooms. Subsequently, the basement was completely renovated, and, as per the plans and the requirements of the City for such renovations, the pre-existing bathrooms were completely gutted and renovated to become handicapped/wheelchair accessible. The ceilings and stairwells were all completed with a two hour firewall rating, and emergency lights and exit lights and signs were installed as required by the Building Code. Additional retail shelving for food items were installed, occupying over 60% of the lower level retail space. That shelving contains most of the items typically found in a convenience store such as breakfast cereals, baby foods, condiments, flours, spices, canned foods, dry foods, household cleaning items, paper goods, pet foods, soaps, etc. The rest of the lower level retail space is devoted to the sale of books, toys, games, records, cds and art work.

The upper level is presently dedicated to the sale of food and beverages. There is a point of sale counter approximately 16 feet long that incorporates a small bakery display case and refrigerated grab and go. Behind the point of sale counter is another counter along the back wall. Atop that counter is an espresso machine and a drip coffee machine, a hand sink, and a utility sink. Along the back wall beginning on the other side of the stairwell leading to the lower level is a row of display refrigeration containing water, juices, sodas, beer and refrigerated wine. Perpendicular to that refrigeration is a display freezer containing frozen vegetables and fruits, ice and ice cream. Continuing across the store is a small deli counter and deli display case which stores fresh fruits and vegetables as well as some prepared salads. Along the wall closest to 6th Street is a produce display and another merchandizing refrigerator containing milk, eggs, cheeses, yogurts, fruit juices, deli meats, salads, and other items. Then along that wall is approximately 20 feet of shelving holding wines. Down the center of the store are two rows of shelving containing impulse food items: chips, crackers, dips, candy, snacks, bread, etc. as well as grocery items: pasta, oils, vinegars, sauces, dry goods, etc.

Original to the building are two bays: one on the sixth street side of the building and the other on the K Street side of the building. During the time Khalid Ibnoujala operated the store, he used the 6th Street bay as the Point of Sale area wherein he sat behind a plywood and plexi-glass wall. The K Street bay held a freezer. After the renovations, the windows were restored in the bays (they had been boarded up and enclosed in vinyl siding since the 1970s) and a small 9 inch wide counter was installed just below each picture window. The purpose of the counters was to allow patrons to have a place to stand and drink their coffee while waiting for their food to be prepared. Downstairs three small tables with chairs were set up so that people could sit and read a book or work on their computer while waiting for their food.¹ People used the tables and chairs for a variety of reasons. We had a number of teachers from

¹ . Please note that at the time we opened, we did not think these three tables violated our certificate of occupancy because we did not offer and did not provide sit down service. We have never invited patrons to eat

the area schools (J.O. Wilson and Kipp Academy) use the tables and chairs to meet and talk after school, grade papers, etc. We had DC employees from the Office of Aging use our seating to interview job applicants (because there were insufficient facilities in their building). We had retirees who had been using the facilities at the Office of Aging, come in and sit and surf the internet. We have had local customers come in and listen to records. In addition to the few seats downstairs, we had also brought in a couple of stools for patrons to sit on the first floor at the bay windows. People liked to sit and gaze out the window while drinking their coffee or surfing the internet. After we were informed by the Office of Zoning that the 8 chairs and the four stools we had put out for our customers violated our certificate of occupancy, we removed them. Approximately six weeks after we opened, we were told we needed to remove all of the seats because they were in violation of our certificate of occupancy. We immediately removed them and then put out petitions for our customers.

We seek to amend the Special Exception to permit seating for our customers. We would like to have seating on the first and lower levels within the store (approximately eight seats on the first floor and ten on the lower level). We would also like to be able to expand in the future and have seating in the front yard outside. If our customers want to eat in the store, we do not want to deny them that right. Thus, we also seek to add Fast Food Establishment to our type of business, if that is required.

We also seek to expand our retail into the basement and continue to offer our patrons a full contingent of products, art and comfort to our patrons in the lower level.

We would like to be able to have more than two employees. We could find no restriction on the number of employees within the statutes or regulations pertaining to corner stores, and therefore we do not believe we should be restricted in the number of persons employed at our store. Nevertheless, we have estimated that we would need to be able to have approximately seven employees to cover all shifts and tasks.

The zoning administrator indicated that we wished to change our hours from 8 am to 8 pm. That is not entirely accurate. We would like to be able to have the store open from 7 am until 9 pm, but currently we were opening from 8:30 am until 9:00 pm Monday through Saturday and 8:30 am until 6:00 pm on Sunday. Again, we found nothing in the regulations limiting the hours for a corner store, and we would prefer that our hours not be restricted by the Special Exception. We want to cater to the needs of our neighborhood. If the neighborhood wants us to be open earlier than 8 or 9 am, we would like to be able to do that without having to petition for another modification of significance.

Currently we have been told that if an activity associated with our business was not specifically identified in the 1983 BZA order, we cannot engage in that activity. We would like to see such a restriction lifted, and we be permitted to engage in all ancillary business activities normally associated with a corner market and our certificate of occupancy. We would like to be able to deliver food to our customers in the area. We would like to be able to expand the types of things we sell to include all of the things that a corner store in a residential neighborhood can sell. One thing we would like to sell are potted plants. We are presently trying to determine just what type of things the neighborhood wants from us, and we are trying to accommodate our customers. We do not think we should have to seek permission to engage in these types of activities, if they are normally associated with a corner store type

their food in our establishment and did not provide any accommodations for them to do so (such as plates, utensils, serving cups, etc.).

of business and address the needs of the neighborhood. Additionally, all of these activities require additional manpower, we would prefer to not be limited or constricted in the number of employees we may employ, our limitation should be only constricted by the nature of our business: a corner store, and the support of our patrons: our neighbors.

Since opening the store we have had an over whelming response from our patrons asking that the BZA permit us to have seating once again. We have garnered over 800 signatures of people mostly from the neighborhood supporting this application.² Not a single person has indicated that they do not want seating, nor has anyone indicated that they do not want us to be able to utilize the basement for retail. After speaking directly with hundreds and hundreds of people about this issue, the vast consensus is that the people in this neighborhood want us to be open earlier and later than our stated hours. They want us to have seating so that people can sit and relax while waiting for their food and/or occasionally dine in the premises. They want us to deliver food. They want outdoor seating. They want these things for two reasons: they want them out of their own self-interest, i.e. they want to be able to sit and eat and they want to be able to order food earlier and later in the day; but they also want this so that the store can survive and perhaps thrive. The people in this neighborhood want this store to succeed. We work very hard to cater to their needs. We built a place that the neighborhood can be proud of. This is their store- a unique place that they can call home. When the parents of young people living in the neighborhood come to visit their children, the children take them to our store to show it off. When friends from other parts of town come to visit their friends in this neighborhood, the locals take them to this store to show it off. Often, we have a customer come in and marvel at the transformation of this store from when it was simply a tired plexi-glass encased corner store. They admire the hardwood floors, colorful ceramic tile, reclaimed wood paneling, and cherry wood shelving. And of course, everyone loves the pizzas.

The Washington City Paper named this store “the Best Bodega in Washington, DC” in April 2017 after the store had been open for less than five months. This store is most definitely an asset to this community, and we work very hard to address the wants and needs of the entire community. We hire local and we buy local. Quite frankly we are, or should be, the poster child for what a corner store can be and can offer. We do not want to be a restaurant with sit down table service. We do not seek an in-house consumption liquor license. But if a person wants to eat their food from out of their take-out box on the premises, they should be permitted to do so.

Since opening the store we have met with an extremely enthusiastic response from the neighborhood and an extraordinarily contrarian response from our government. Every time we have tried to do

² Please note that the Petition simply addressed the issue of seating because at the time we were under the impression that this was the only issue that needed to be addressed. Subsequently, we were informed by the Office of Zoning that we need to address all of the findings of facts in the 1983 Order which have since changed. Although those findings of facts were never formally incorporated into the Order, we have been informed by the Office of Zoning, that they routinely interpret these orders as if the facts were incorporated into the Order, and thus any deviation from the way the business operated in 1983 must be addressed by another BZA petition. Additionally, we have been told that anything that was not addressed in the order, such as whether we can deliver food to our customers, must be addressed in a new BZA petition. We have discussed all of these issues with our customers and the people in the neighborhood. Everyone has provided us their full support on all of these issues. If we did not have such support, we would not seek to have these changes. We are after all a neighborhood business. It would make no business sense to seek changes that the neighborhood does not want.

something that the neighborhood becomes enthusiastic about, the government has shut us down. We built a flower box along our side yard. The government told us to remove it. We built another flower box in our fenced in front yard. We again were told to remove it. We arranged seating for our patrons while they waited for their order. We were ordered to remove them. We promised our patrons we would begin delivery, and bought a bicycle for that purpose. We were told we could not deliver. As a result, we have not been able to grow this business into a profitable venture. Every month we are losing money as we watch people go down the street to other takeout establishments, but where they can sit and eat their food. We lose business every cold or rainy day when people don't want to walk to the store but prefer to order and have food delivered to them. We lose business because we are limited in the manner we can advertise our goods. We lose business because we cannot improve the aesthetics of our outdoor space without being stopped and told to tear it down.

STATEMENT OF WHY THE BZA SHOULD APPROVE THIS PETITION

Please note that we have been unable to determine what specific criteria the Board considers for an Application for a Modification of Significance. Therefore, we have chosen to argue for approval based on the review standards for Special Exceptions as found at Subtitle X Section 901. Under those standards the Board must find that Special Exception will:

- a. Be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps
- b. Not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- c. Meet such special conditions as may be specified in this Title.

Currently, the store is fully compliant with the provisions of Sections 254.5 through 254.12 of the regulations; and permitting seating, allowing more than two employees, and allowing full use of the basement of the building will not change that in any manner. The store is located on a corner lot. There is no other eating or drinking establishment or corner store within 500 feet. It is not located on an alley. The 1983 BZA order permitted an exception to Section 254.8, to allow on site cooking of food. Since 1983 there has never been a complaint from anyone in this neighborhood about that earlier Special Exception. The ABC license does not permit on site consumption of alcohol, and the Applicant does not seek to amend that restriction³. Prior to opening this past November 2016, a DC Zoning inspector came and inspected the Premises regarding the conformity of signage, trash storage, basement requirements, and all other aspects of the store. The inspector passed the store and as a result a certificate of occupancy was issued.

Since commencing business under the new ownership, the store has been producing food out of its wood and gas fired brick oven. There are no deep fat fryers and no foods are fried. As a result, there are no offensive smells or odors resulting from the food preparation or cooking. Because the brick oven is a combination of gas and wood exhausted through a commercial hood, there is minimal smoke or particulate from the chimney. Although we have been operating the kitchen for over six months, we have never received a complaint from anyone that the store produces unseemly smells, noise, or any

³ Please note that we do anticipate amending our ABC license at some point to permit tastings, but we hope never to have to seek an amendment for in house service.

other offensive side effects. Indeed, we have only received compliments about the atmosphere of the store and its enhancement of the neighborhood.

We currently do not adversely affect the neighboring properties, and loosening the restrictions of the 1983 Order will not change that. Since operating the store, we have instituted a policy of daily policing the sidewalks and streets abutting the store. We pick up the trash that jettisons from the numerous trash trucks barreling down 6th Street each day. We weed the city sidewalks. We sweep out the gutters and clear the street sewer openings. At least once a month we rake out the streets and sidewalks up 6th Street at least half the block up to L Street. We have made numerous donations to schools and civic groups of pizzas and store gift certificates to help them raise money for their projects. We routinely offer free coffee to people participating in civic oriented demonstrations and marches. We have organized the neighborhood children into trash patrols, offering them free treats and drinks in exchange for bags of trash they pick up in the neighborhood. We serve as the off hours drop off and pick up area for the local Community Farm Association. Everyone in the neighborhood, including our immediate neighbors have all commented on how we are an asset to the neighborhood. Our very presence has increased the value of homes in the neighborhood. Indeed, several realtors have commented on how when they show a house in the neighborhood they specifically take them to our store, because it is an additional selling point.

By loosening the restrictions of the 1983 Order and permitting us to have seating, we will only be enhancing all the good things we provide to this neighborhood. Although a lot of our customers who order pizzas or other food may call in first to place their order, still most people come to the store to personally order their food. Once people place their order they must wait for it to be prepared. This may take up to 30 minutes depending on how busy is the kitchen and how involved is the order. Almost all food is cooked to order. This is not a fast food establishment. Everything is made from scratch with fresh ingredients, even down to the pizza dough. As a result, a lot of our customers must wait for their order to be prepared. Presently, due to the interpretation of the 1983 Order, we are not permitted to allow our customers to sit while waiting for their food. Our customers are outraged by this restriction and have asked that we be permitted to have seating. Many of our customers have also asked that they be permitted to eat their food in the premises. Although it is self-evident that this is not a restaurant, we do not oppose customers eating here. We understand that people may prefer to eat their food outside their own homes.

But as we previously stated, the seating is not and would not be merely so that people can eat food on the premises. The seating is also for people to simply sit and read, work, play games, write, or listen to music. We have a piano in the basement for anyone to play. It would be nice if they could sit at the piano and play. It would be nicer if other people could sit around the piano and listen or join in and sing. When we first opened, there were a number of students from Howard University who came to the store. They played some of the jazz records on the phonograph and then sat around singing while one played the piano. After the chairs were removed they found the store no longer as comfortable and ceased coming. As previously stated, teachers used to come to sit and grade papers. One teacher, who works at the Kipp Academy and lives in the neighborhood used to come on a regular basis once a week. She would come and sit at a table for hours at a time nursing a single cup of coffee and grading papers. She liked coming here because she could work uninterrupted, whereas when she tried to work at home she found there were too many distractions. Once we were required to remove the chairs, this person had to work through the home distractions.

Under the previous order, the BZA made a finding of fact that the basement was principally used for storage. It also found that the hours of operation were from 8:00 am until 8:00 pm and that the store had only two employees. Under the present operation, the basement is used not only for storage but also for retail. One portion of the basement is for storage, containing mechanical equipment and a walk in cooler as well as storage shelves. Another portion of the basement (approximately 650 square feet) contains retail space which would include a small area for three tables and chairs. Also within the basement are two bathrooms one of which is wheel chair accessible. The expansion of the use of the basement to include the retail space again only benefits the neighborhood because it allows us to provide more inventory for sale and more varied inventory. Without exception, everyone who has come down to our basement has exclaimed that the basement is charming, fun and a delight. Our patrons have further indicated that they would like to see the store hours expand beyond their current hours. Presently we are opening a little earlier than our stated hour of 9:00 am in order to accommodate our customers. We are trying to open by 8:00 am as per the original BZA order. The kitchen closes at 8:00 pm and the store closes at 9:00 pm. Again no one, no customer or neighbor, has complained that our hours are too long, that we open too early, or that we stay open too late. The only complaint is that we are not opened longer. To expand the hours of operation would once again only enhance the neighborhood and address the needs of the residents. However, to address all of the needs of the residents as far as the store hours in concerned, to maintain the property and police the area streets and sidewalks, and to prepare wholesome food to order all takes a lot of labor. This cannot be done with simply two employees. Indeed, restricting the number of employees to two only hurts the neighborhood and does not allow us to address the needs and wants of our residents. People in this neighborhood do not want cheap easily prepared fast food. They want quality food at reasonable prices. This means time and labor. We cannot operate with simply two employees.

In summary, we seek to expand the Special Exception granted in 1983 to allow us to continue to cook food, but also operate within the full allowance of the law pertaining to Corner Stores. We seek to lift the restriction on seating and allow us to have seating for customers, so they can sit while waiting for their food to be prepared, or while drinking a cup of coffee, doing work on their computers, or eating their food. We seek to lift the restriction on the number of employees, so that we can employ sufficient numbers of people to meet the demands that our customers create for this business. We seek to use our lower level for retail as well as storage. We seek to be able to change our business model as needed in order to address the wants and needs of our neighborhood clientele. Our business is a neighborhood business, addressing the needs of the neighborhood. Granting this modification will not change that. We are what the neighborhood wants. We are what the City professes it wants in a neighborhood store. There simply are no real adverse consequences to granting this modification.

The Office of Zoning has set forth parameters on the number of employees, the number of chairs, and the hours of operation of the store. We recognize and understand these numbers and facts are important so that the Board and the Office of Planning can determine whether the requested modifications would adversely impact the neighborhood. However, we would prefer that these parameters not become so restrictive that we must seek another modification for every variance from these numbers. For instance, we have stated that we anticipate up to seven employees at the store. We made this request because we thought that this might be the greatest number of employees we might need to hire (presently we do not have that many employees), but that number does not take into account the possibility that we would have part time employees, i.e. people who may work merely one

or two shifts a week such as retired persons or students. We also indicated that we would open at 8:00 am, but if there is a need to open say at 7:00 am so that people can grab a cup of coffee and a muffin on their way to work, we would like to be able to do that without having to file for another modification. If there are regulatory or statutory restrictions on the hours of operation of a residential corner store, or on the number of employees, we have no problem in adhering to those restrictions, but we would prefer that we not have to abide by more onerous restrictions simply due to the fact that we were granted a special exception twenty four years ago which permitted us to cook food. There are other ways to ensure and guaranty that we will continue to operate simply as a neighborhood corner store, and continue to address the needs and concerns of the neighborhood.

WITNESSES AND WITNESS SUMMARIES

The Applicant reserves the right to call Curt Hansen, Mahadi Lawal, Waverly Phillips and Mary Phillips as witnesses in this matter, all of whom have worked at the Store and are familiar with the store's layout, operations, and clientele. They can all testify, based on personal knowledge and information as to the need for the changes proposed in this application, the lack of adverse consequences should these changes be permitted, and the neighborhood support for such changes. Additionally, the applicant reserves the right to call any and all witnesses identified in the petition. Such witnesses will voice their support for this application and the need for the changes sought. The Applicant does not anticipate calling any expert witnesses.

Respectfully Submitted,

/S/ Curt S. Hansen

CURT S. HANSEN, owner of the Building, and sole member of the Applicant LLC

CERTIFICATE OF SERVICE

I hereby certify that within twenty four hours of acceptance of this Application by the BZA I will cause to be mailed, by certified mail, a copy of the foregoing application, statement, and supporting documents upon the following individuals and organizations:

The District of Columbia Office of Planning
1100 4th Street, SW, Suite 650 East
Washington, DC 20024

Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, DC 20013-7787

/S/ Curt S. Hansen

CURT S. HANSEN