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106 13th Street, SE

BZA APPLICATION NO. 20445

MAY 26, 2021

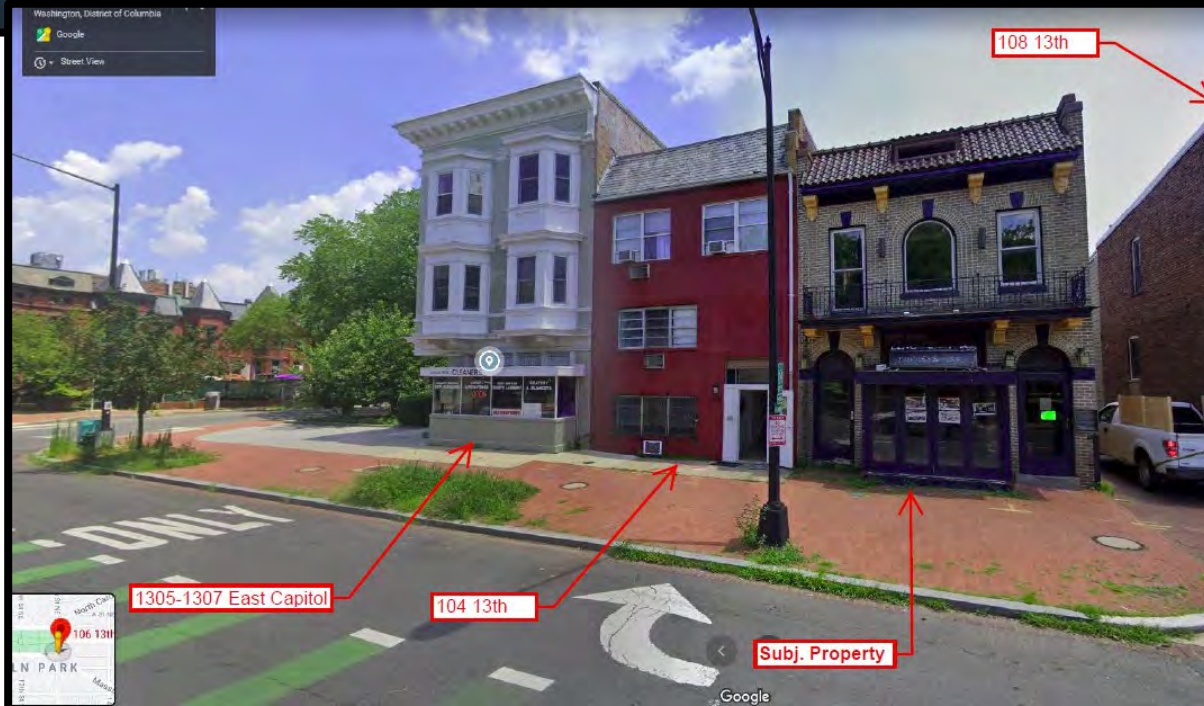
SPIRO GIOLDASIS

Board of Zoning Adjustment
District of Columbia
CASE NO.20445
EXHIBIT NO.55

Overview and Requested Relief

- The first floor currently has a Certificate of Occupancy for legal restaurant use, unique for an RF-1 property.
- The Applicant is requesting a use variance to expand the restaurant use the second floor and basement of the property.
- The second floor was, at one point, used as a deli but then subsequently converted to a residence for the restaurant owner, so the Certificate of Occupancy lapsed for that portion.
- The basement is vacant right now and because it's too far below grade, it can never be used for residential purposes, so the intention is to convert that space to additional seating/storage/kitchen for restaurant use.

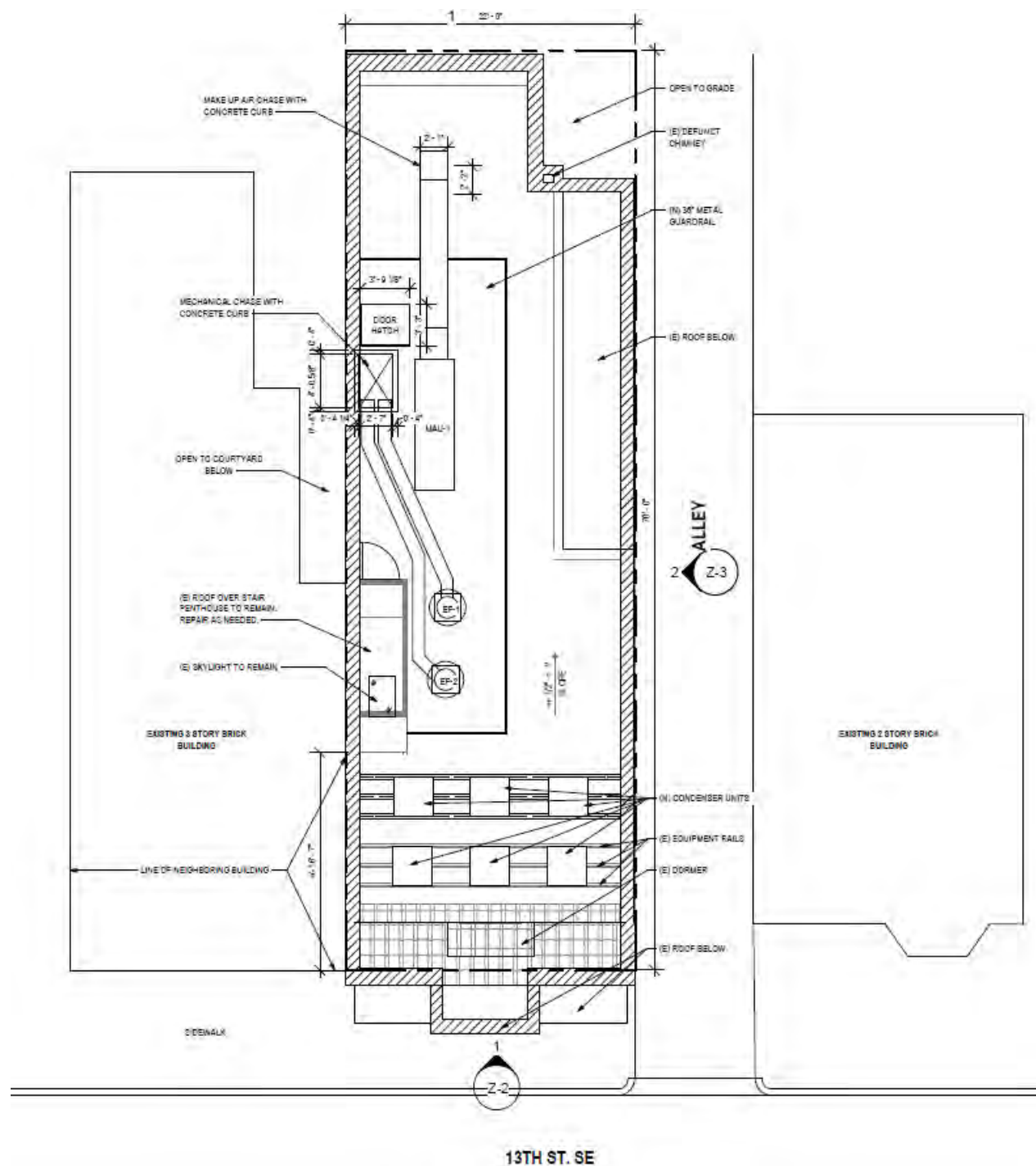


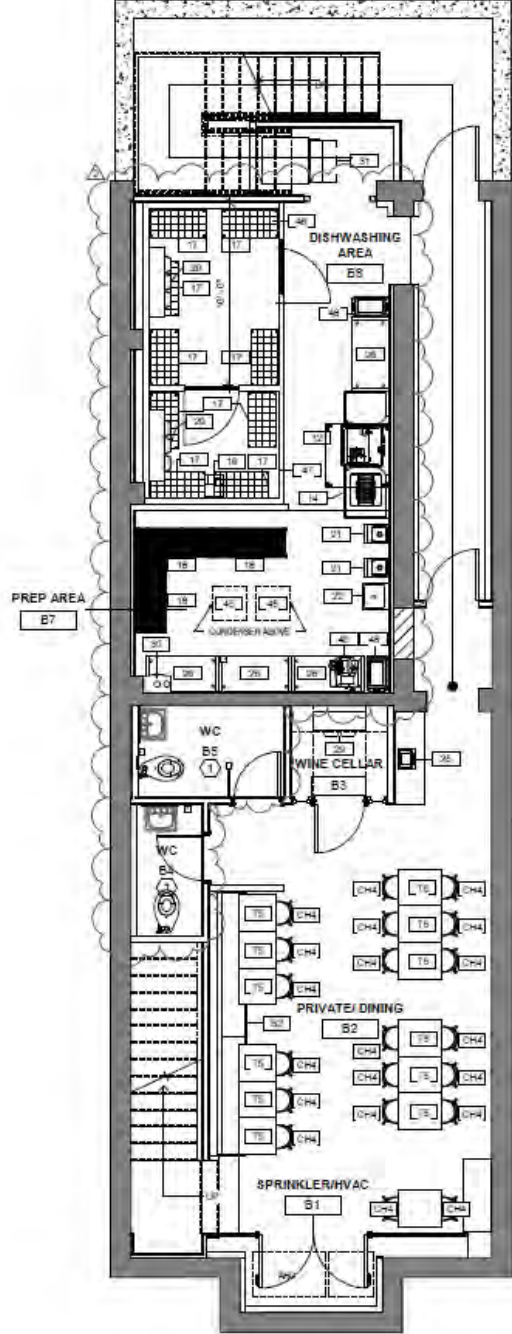


Proposed Restaurant Use

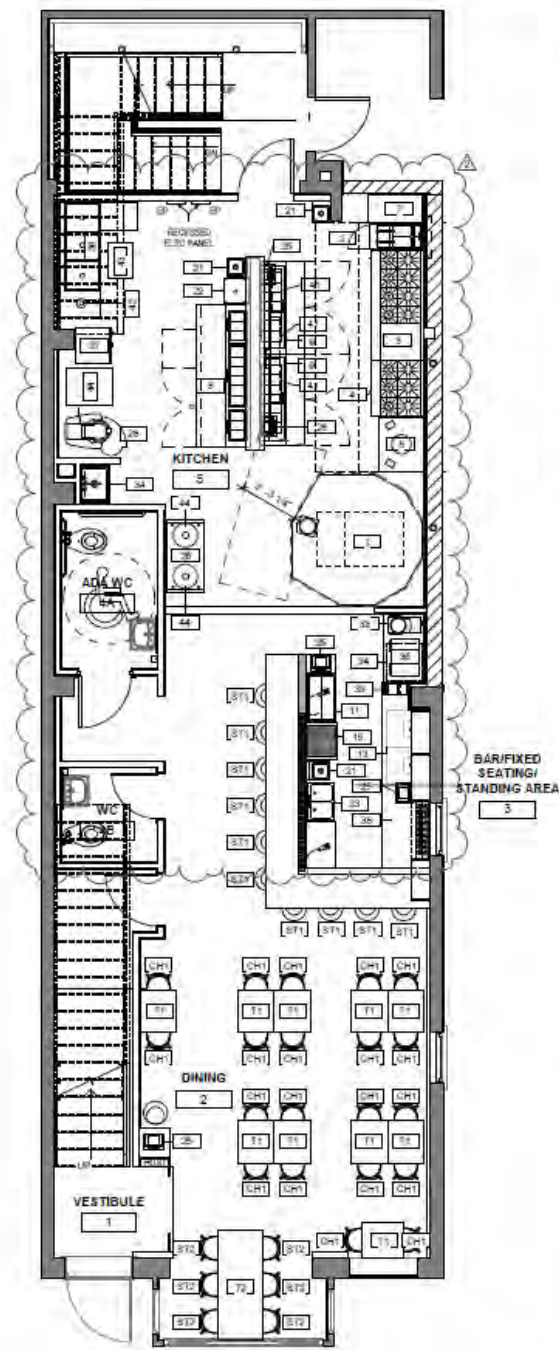
- Mr. Gioldasis owns and operates Pacci's Trattoria, an Italian restaurant in Silver Spring
- Proposing to open a second location at the Property.
- Currently the Certificate of Occupancy permits 50 seats
- The Applicant is proposing to have up to 130 seats (per building code) - with 30 seats in the cellar, 40 on the first floor and 60 on the second floor.
- The proposed hours of operation are 11:30am to 2:30pm and 4:30pm to 9:30pm.
- The Applicant anticipates a maximum of 22 employees (split up between shifts)
- Anticipates this to be a neighborhood restaurant; also only ~0.5 mi. from Stadium Armory metro

Site Plan

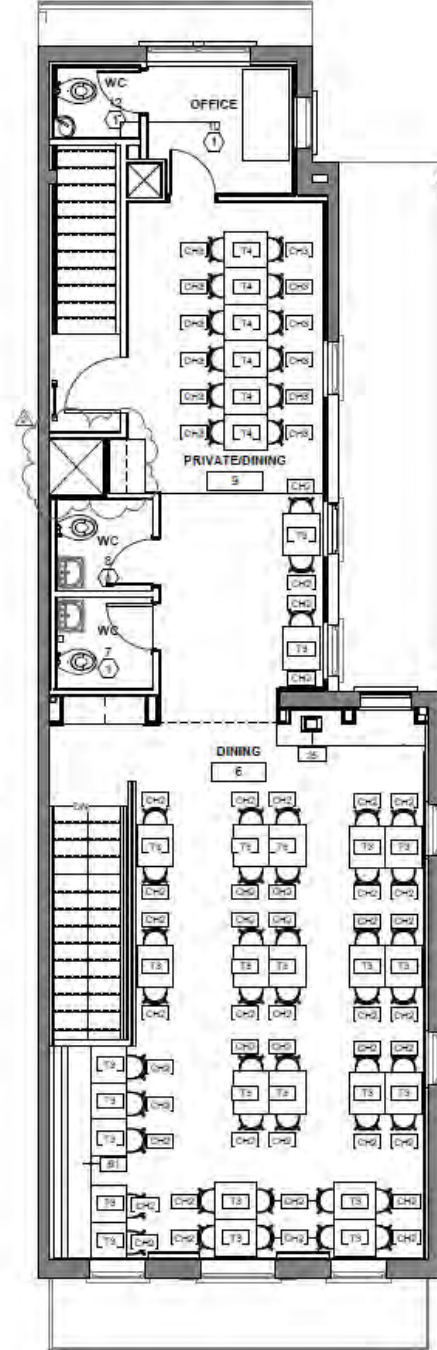




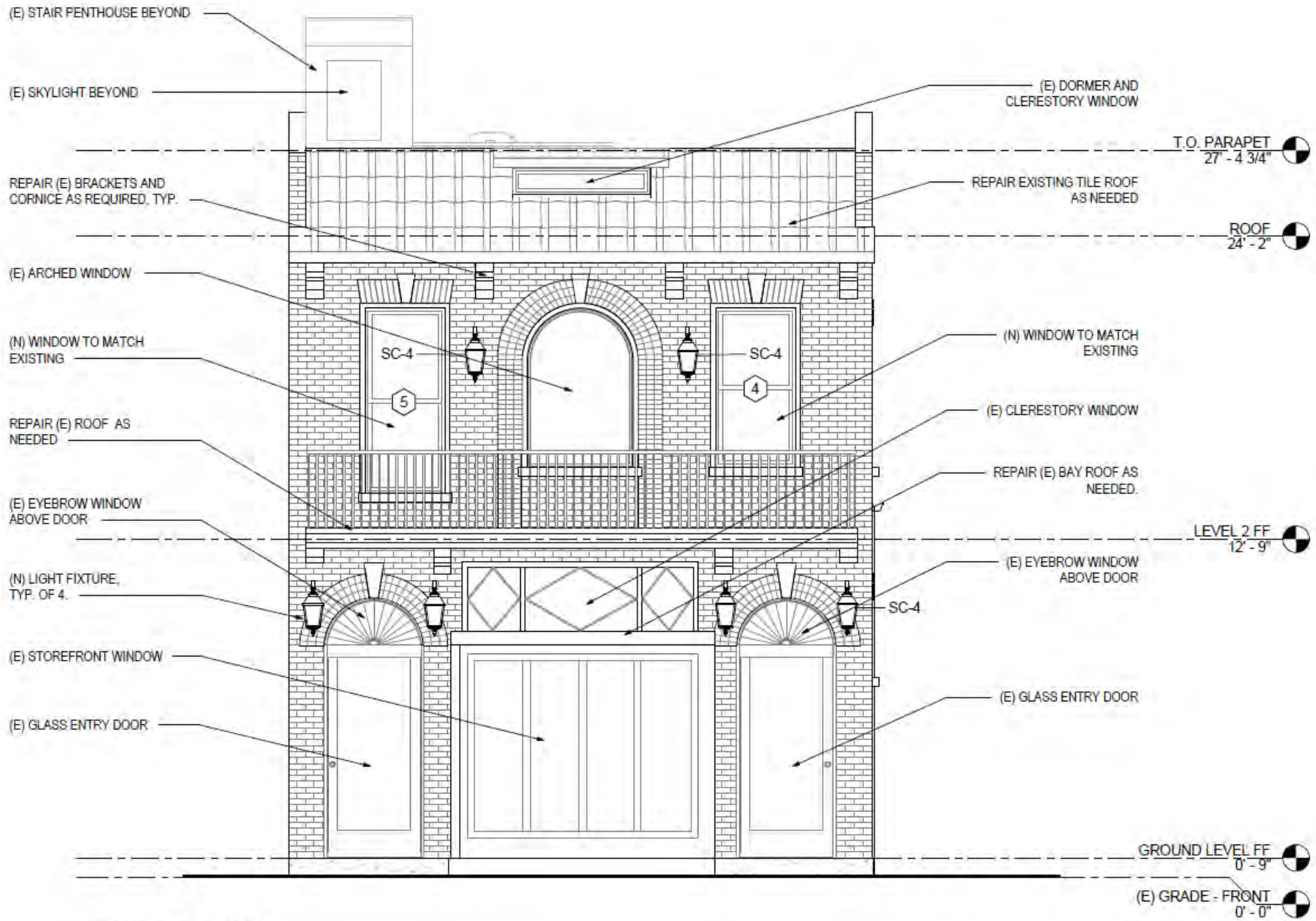
Cellar Floor Plan (28 seats)



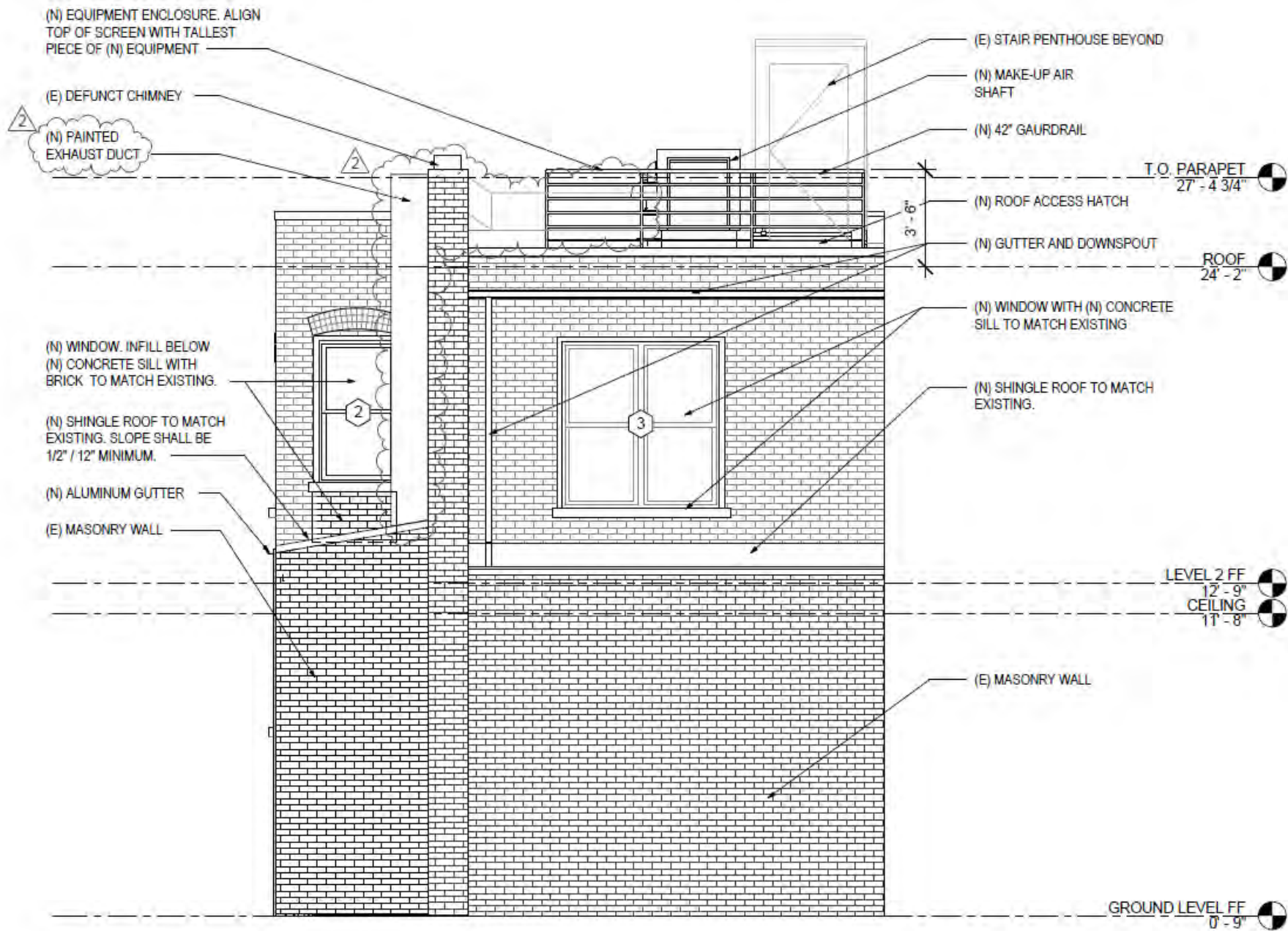
1st Floor Plan (32 seats)



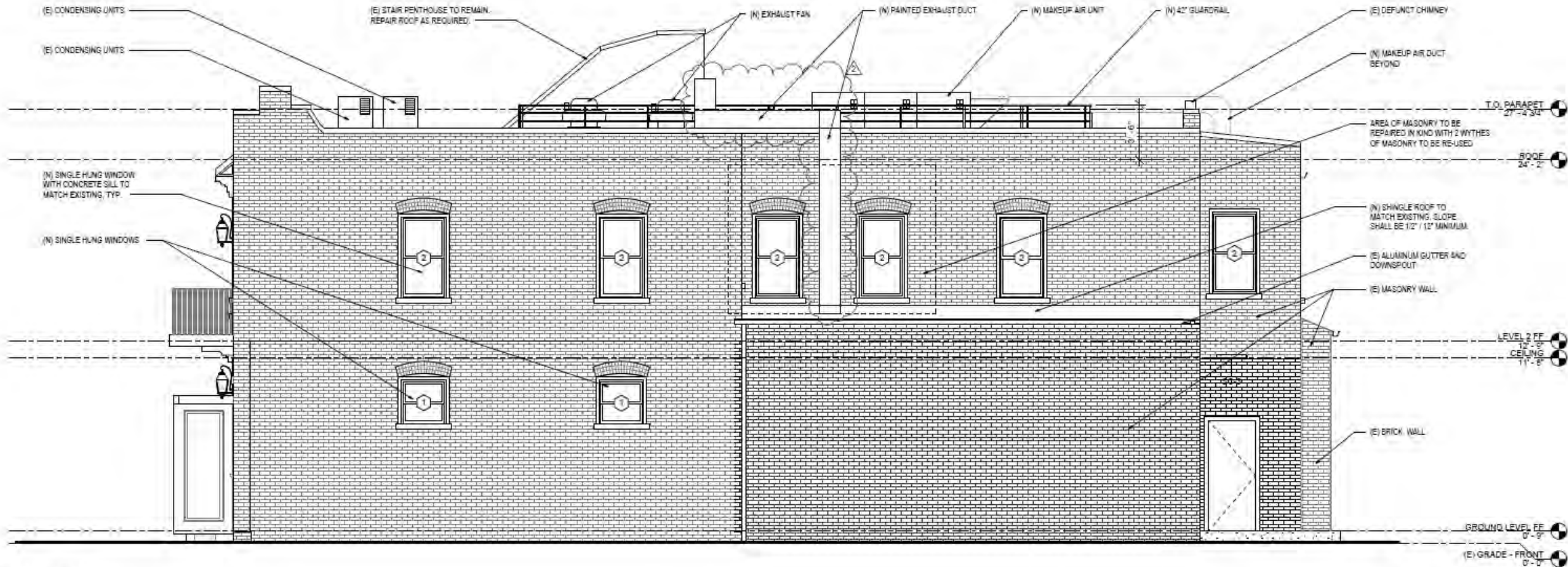
2nd Floor Plan (68 seats)



① FRONT ELEVATION
1/4" = 1'-0"



② BACK ELEVATION
1/4" = 1'-0"



3 SIDE ELEVATION
 1/4" = 1'-0"

Legal Standards and Applicable Regulations

The Board is authorized to grant use variance relief where it finds that 3 conditions exist:

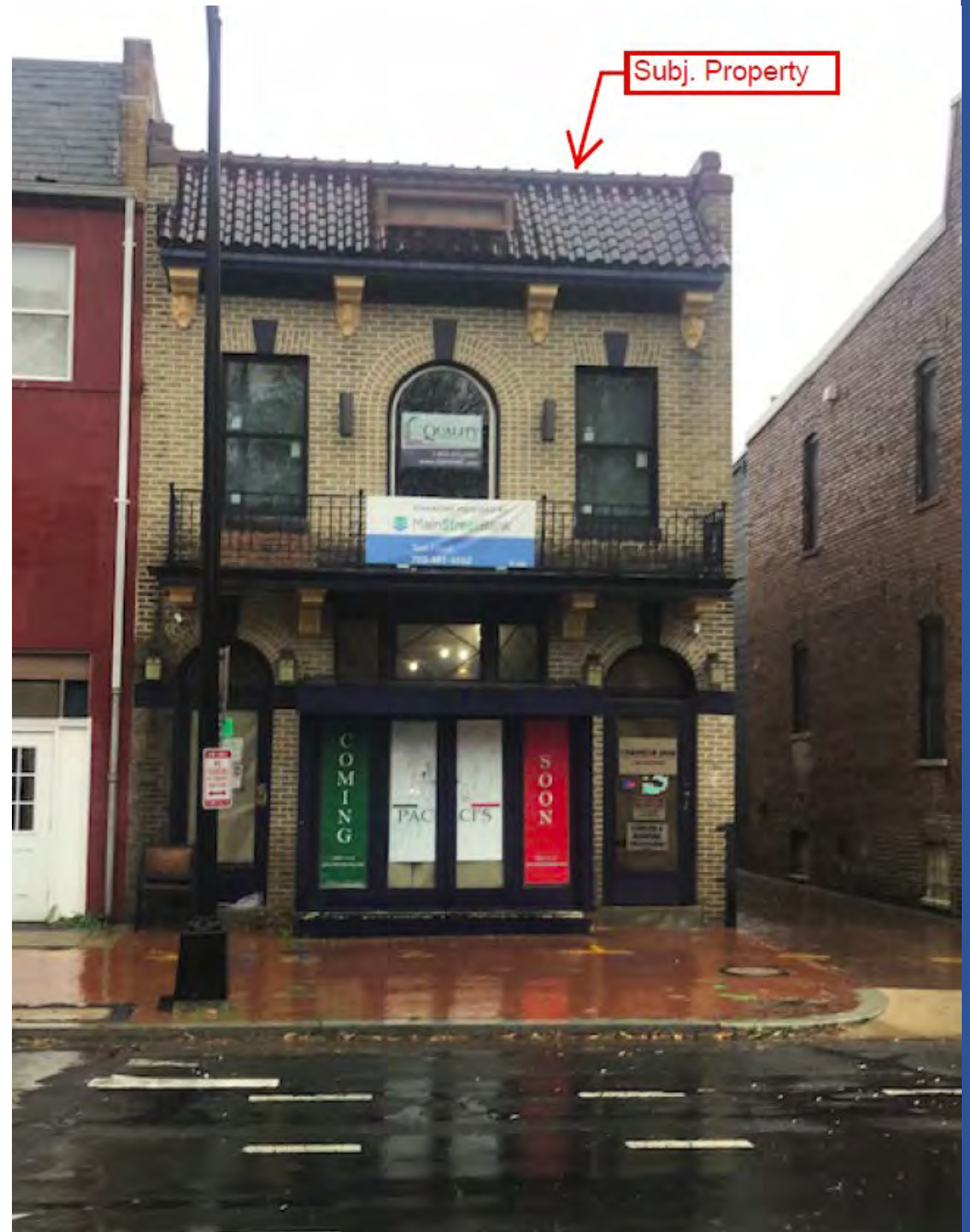
- 1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or conditions;
- 2) The owner would encounter an undue hardship if the zoning regulations were strictly applied; and
- 3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map

Exceptional Conditions

- The phrase “other extraordinary or exceptional situation or conditions” in the above-quoted variance 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** which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990).
- The Property is faced with exceptional conditions relating to its:
 - Valid Certificate of Occupancy for restaurant use in the RF-1 Zone
 - History of failed restaurant use on the 1st floor
 - Existing configuration

History of First-Floor Failure

- Applicant is requesting a use variance to expand the restaurant use to the cellar and 2nd floor of the building.
- As stated in the ANC Report and the support letters from neighbors, this building has a long history of failed enterprises which show that clearly the historic interior layout simply is insufficient in creating a successful restaurant.
- Over the last 10 years, at least 4 restaurants have started and failed in this building when only able to make use of the first floor, even during an era where they should have thrived.
- The 2nd floor residential units have been vacant for years, most recently occupied by the owner only out of necessity.
- Essentially the two permitted uses compete creating difficulties with the existing permitted uses.



Exceptional Conditions/Situations

It is unique that this RF-zoned property is legally allowed to do restaurant use and has a valid Certificate of Occupancy.

This property has a long history of failed restaurants, as they are unable to successfully operate on the 1st floor alone.

Due to a recurrence of failed restaurants, there has been a continuous vacant commercial space on the first floor. This has made it challenging to rent the residential units, as the vacant commercial space poses a security risk to potential tenants.

The cellar space is currently configured as space associated with the restaurant use. This is an exceptional situation, because the space could not reasonably be converted into a residential unit to comply with building code requirements.

Since the cellar is completely below grade, there would be no windows, and there could be no reasonable direct connection between the cellar and the upper-level residential space.

Undue Hardship

- An owner is presented with an undue hardship when their **“property cannot be put to any zoning-compliant use for which it can be reasonably adapted.”** Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 542 (D.C. 1972).
- The D.C. Court of Appeals upheld this Board’s approval of a use variance and noted that **economic harm to an owner in converting a portion of their property into a zoning-compliant use, coupled with significant limitations on the utility of a building, constituted undue hardship necessary to satisfy the second prong of the use variance test.** The Oakland Condo v. District of Columbia Bd. of Zoning Adjustment, 22 A.3d 748 (D.C. 2011).
- The existing use and configuration of the Property as well as its unique history of failed restaurants creates an exceptional situation where the Applicant will suffer an undue hardship (vacancy and economic harm) if the use variance is not granted.

Cellar Use

- The cellar space is currently configured as space associated with the restaurant use and can not comply with building code requirements for residential use.
- Since the cellar is completely below grade, abutting an alley and another building, there is no chance for creating egress windows or emergency rescue openings, as required for residential use but not for commercial use.

Second Floor Use

- The second floor has not been consistently rented and has been periodically vacant
- The first floor can legally be used for restaurant use only and it would be unfeasible to convert it to residential use, but on the flipside, the use as a restaurant prevents the marketability of the space above. Essentially the two permitted uses compete creating difficulties with the existing permitted uses.
- There is a real estate agent letter in the record (Ex. 33) to this effect noting the difficulty of renting out space above a restaurant (noise, smells, etc.) and the difficulty of operating a restaurant only on one floor (previous owners have had to foreclose, etc.)
- Similar BZA case: (944 Florida Avenue) where that owner wanted to operate a salon on the first and second floors (first floor was always used commercially, second floor only residential) and they were granted relief because the board found that no one would want to live above a salon.
- This building is not set up like a large commercial building with retail and restaurant use below and a big thick wall separating the retail uses from residential above like in larger apartment buildings. In that scenario, the residents above would be blocked from noises and smells due to the extent of construction.
- Here we have a small historic building which can't be insulated to that degree.

No Substantial Detriment to the Public Good

- There is substantial support for Pacci's in the neighborhood, including from adjacent neighbors and the ANC.
- The first-floor of this building is legally permitted for restaurant use only. Granting the proposed use variance would allow for a restaurant to finally succeed in this space and for residents to finally have a neighborhood eatery.
- To deny this use variance would result in another failed restaurant and subsequently a vacant decaying building.

Comments from the Community

“As a member of the community, I have watched previous restaurants occupy that building but fail due the financial difficulties resulting from operating on only one floor, limiting table space. This has caused the building to sit vacant and unused for almost 3 years which is not great for our community nor its value. **I am eager to see a restaurant succeed here** and think it would be a great addition to the community, especially a family run and small business operation.” – Rama Moorthy; 1308 A Street, SE

“As a decades-long resident of Lincoln Park, I support the development of the building into a family style restaurant. **This building has been decaying for years. It’s been broken into and it’s been a magnet for other criminal activity.** We can’t wait to have a restaurant in the neighborhood, right around the corner. It will help bring vibrancy and certainly make our lives easier.” – Gabriella Boston; 1315 East Capitol Street, SE

Comments from the Community

“We are extremely supportive of the variance and understand the hardships of having restaurant use on just one floor. **We have lived next-door for 17 years and have seen a lot of turnover in this space. This turnover evidences the difficulty of operating the restaurant use on just one floor with residential use on the top.** A restaurant use on all three floors makes sense in this space and location. [Mr. Gioldasis] is the most promising new restaurateur we have had in that spot...” – Natalie Moffett; 108 13th Street, SE (next-door neighbor)

“**With respect to the restaurant’s proposed use of the second floor, I suspect that one reason why so many past restaurants at this location have failed is that they have been confined to only one floor where they can have only a few tables.** This has forced them to try to cater to higher-end clientele rather than to the regular neighbors and families who live nearby... **In order to support that model the restaurant has to be able to use the capacity offered by the second floor.**” – Jason Maga; 112 Kentucky Avenue, SE

No Substantial Impairment to the Intent, Purpose, Integrity of the Zoning Regulations

- The Property already has a legal Certificate of Occupancy for restaurant use on the first floor which is unique for the RF Zone.
- The second floor was, at one point, used as a deli but then subsequently converted to a residence for the restaurant owner, so the Certificate of Occupancy lapsed for that portion.
- The current residential units on the second floor have been vacant for years, only recently occupied by the Applicant out of necessity.
- Therefore, granting this use variance will not substantially remove residential units from the RF-1 Zone, as these units have already been unoccupied for years and are not providing housing in the District due to their configuration and connection to the vacant restaurant space below.

