

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 20445 of 106 13th Street, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use restrictions of Subtitle U § 301 to expand an existing, nonconforming, restaurant use to the cellar of a semi-detached, two-story commercial building in the RF-1 Zone at premises 106 13th Street, S.E. (Square 1036, Lot 60)

**HEARING DATE:** May 26, 2021 and June 9, 2021  
**DECISION DATE:** June 9, 2021

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 14, 2021, at which a quorum was present, the ANC voted to support the application as originally proposed, finding that the application met the criteria of the use variance. (Exhibit 37.) The ANC report raised no issues or concerns.

OP Report. The Office of Planning submitted a report recommending denial of the use variance to expand the restaurant use to the second floor but expressing no objection to the use variance to expand the use to the cellar. (Exhibit 35.) The Applicant subsequently amended the application to request expansion of the restaurant use to the cellar only.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 36.)

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Persons in Support. The Board received 18 letters in support from neighbors (Exhibits 29-34, 38, 41-44, 47, 49-54) and a petition in support with 23 signatures. (Exhibit 12.) At the public hearing on May 26, 2021, seven individuals testified in support of the application.

Persons in Opposition. The Board received a letter in opposition to the application from nearby residents (Exhibit 27) and a letter from Capitol Hill Restoration Society in opposition that primarily focused on the impact of expanding the use to the second floor, which is no longer proposed. (Exhibit 20.) One individual testified in opposition to the application.

**Use Variance Relief**

The Applicant seeks relief under Subtitle X § 1002.1 for a use variance from the use restrictions of Subtitle U § 301 to expand an existing, nonconforming, restaurant use to the cellar of a semi-detached, two-story commercial building in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS<sup>1</sup>** at **EXHIBIT 58**.

**VOTE: 4-0-1** (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; Lorna L. John not participating)


**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>1</sup> Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** June 11, 2021

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.