



January 24, 2024

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Mr. Frederick Hill, Chairperson
Board of Zoning Adjustment
District of Columbia Office of Zoning
441 4th Street NW, Suite 200/210-S
Washington, DC 20001

VIA: Interactive Zoning Information System Filing - IZIS

RE: BZA 20996: 106 13th Street SE; To expand an existing restaurant use to the second floor of a semi-detached, two-story with basement, commercial building in the RF-1 zone. (Square 1036, Lot 60)

Dear Chairman Hill:

At a regularly scheduled, properly noticed, meeting on November 14, 2023, with a quorum present, Advisory Neighborhood Commission (ANC) 6B voted (9-0-0) to support the applicant's above-referenced request. Our reasons for doing so are further elaborated below.

Pacci's is an existing restaurant located at 106 13th Street SE. It currently operates on the ground and basement levels of the building. The expansion of the non-conforming restaurant use to the basement level was previously granted by the Board in case No. 20445.

Subtitle X §1000.1 lays out a three-pronged test in order to grant a use variance: (1) the property must be affected by "exceptional narrowness, shallowness, or shape" or "exceptional topographical conditions" or "other extraordinary or exceptional situation or condition," (2) the strict enforcement of the zoning regulations as adopted "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property" and (3) 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."

First, we will address the exceptional situation and hardship prongs. The restaurant is located in a townhouse. The ground floor has historically (several decades at least) been used as a restaurant and the second floor at one point operated as a deli. The floor plate lends itself to limited seating and having adequate seating for patrons is the lifeblood of a successful restaurant. This has only grown in importance in the post-COVID restaurant environment.

ANC 6B has witnessed first-hand the difficulty of operating a restaurant in such a small space as various operators have come and gone. Four previous restaurants attempted to succeed under more favorable business conditions, but the limited seating capacity was cited by all as one of the primary reasons they were forced to close. Pacci's has made efforts (the aforementioned expansion to the basement) to increase its seating capacity, but dining in the basement has not been well received by customers. Therefore, seating on the second floor is the only viable option to ensure the overall health of the operations of the restaurant; a restaurant, we will point out later in this letter, which is a desired amenity in the neighborhood. Pacci's is operating but currently not generating sufficient revenues to ensure its future success which could be better secured by granting the use variance and removing an extraordinary hardship.

It has been suggested that because a residential use, in theory, could be constructed over the restaurant that it must be done in this case. We grant that there are numerous successful examples of "living above the store" across the city. However, just because it can work does not mean that it will work in every instance. This is one of those instances.

The building has not been used as a residential building since at least the 60's and the second floor has sat mostly vacant for years. Ownership has had little success in finding a tenant. Additionally, the upper and ground floors are directly linked together with no separation. Using the front staircase would require any tenant to walk into the restaurant first before proceeding up the stairs. Reconfiguring the stair to provide separate entrances to the residence and the restaurant would impact the amount of seating area available and entail significant expense. Adding a separate entry and staircase (either from the adjacent alley or from the front) is not possible because the property occupies the full area of the lot. The only door on the alley side is for an internal fire egress stairwell that also holds the refuse generated by the restaurant. This means that to accommodate a proper residence substantial rework would be required. This would present exceptional practical difficulties and an additional undue hardship on the owner of the building and operator of the restaurant. Alternatively, converting the first floor to a residential use would require a substantial investment which the owner could not recoup. This would be an even more significant hardship than reconfiguring the stair. Combined with the economic hardship of customer/seating limits due to the size of the floorplate we believe the applicant has provided sufficient evidence that meet the tests for the first two prongs.

The third prong of the test requires that the applicant show that granting of the relief sought could be done "without substantial detriment to the public good" or "substantially impairing the intent, purpose, and integrity of the zone plan." Not only will granting the use variance not have an adverse impact on the public and community, but also the opposite may be true: denying the variance will negatively impact the community. Pacci's is an asset to the community, adding vibrancy. It is also tightly interwoven into the fabric of the neighborhood. Community support for Pacci's is substantial with over 70 letters of support having been submitted to the case record. Neighbors testified to the extraordinary accommodations that the owner has provided to neighbors, especially considering that it is in a residential zone. We believe a more succinct and clear demonstration of a project's contribution (and lack of adverse impact) to the public good would be hard to find.

Additionally, the restaurant use is existing (and has been for quite some time), and the variance is simply acknowledging a unique set of circumstances. It is not a wholesale conversion of a residential property to a commercial operation. The zoning code is not a strait jacket and variances were made to address situations such as this where strict application of the zoning regulations would lead to the infringement of enjoyment of property and undesirable vacancy.

There is also precedent for the BZA granting variances in similar cases. BZA Case Nos. 18838 and 20489 both dealt with the expansion of existing restaurants from the first to second floor in row-houses in RF-1 zones. Relief was granted in both cases. The situation here is extremely similar (if not identical) to the material facts in those cases and would suggest granting relief as a matter of consistency and equal treatment.

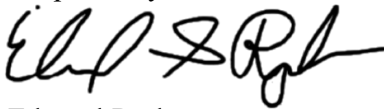
For the reasons stated above, ANC6B supports the applicant's request for a use variance and would urge the Board to grant this relief.

Please also find attached a completed copy of Form 129.

Frank D'Andrea is authorized to represent ANC 6B in front of the Board on this matter.

Please contact Frank D'Andrea, Chair of ANC6B Planning and Zoning Committee at 6b04@anc.dc.gov if you have questions or need further information.

Respectfully,



Edward Ryder
Chair, ANC 6B

Cc:

Applicant:	Spiro Gioldasis
Counsel of Applicant:	Alexandra Wilson
PZ Committee Chair:	Frank D'Andrea
SMD Commissioner:	Chander Jayaraman, SMD 6B06