

# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 487

Case No. 85-14

April 21, 1986

(Luigi's Bridge - Use of Public Air Space)

Pursuant to notice, a public hearing of the District of Columbia Zoning Commission was held on January 9, 1986. At that hearing session the Zoning Commission considered an application from Giobatta C. Bruzzo, Luigi, Inc., Debora C. Bruzzo Trust and Giobatta C. Bruzzo, Jr., Trust, for review and approval of the use of airspace over a public alley, pursuant to the District of Columbia Public Space Utilization Act of October 17, 1968, as compiled at Section 7-941 et. Seq. D.C. Code (1973). The public hearing was conducted in accordance with the provisions of Chapter 6 of the Rules of Practice and Procedure before the Zoning Commission.

### FINDINGS OF FACT

1. The application, which was filed September 5, 1985, requested review and approval of the use of airspace above a public alley between lots 43 and 61 in Square 117.
2. The Zoning Commission's jurisdiction in the execution of airspace leases, pursuant to the District of Columbia Public Space Utilization Act of October 17, 1968, requires in part, that:

"The Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, has determined the use to be permitted in such airspace and has established regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, off street parking and floor area ratios applicable to such structure, and easements of light, air, and access;"

3. The applicants, Luigi, Inc. et. al., propose to execute a lease for the use of airspace with the Government of the District of Columbia to construct an expansion to their existing restaurant. The addition will increase the dining facility and will be located fifteen feet above the public alley between lots 43 and 61. Lots 43 and 61 are located in a C-3-C zone district.
4. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent.
5. The subject site is located between lots 43 and 61 in Square 117 on the west side of 19th Street between L and M Streets, N.W. The site consists of approximately 1,035 square feet of alley area.
6. The adjacent restaurant, lot 43, occupies 1,760 square feet and has two floors for a total gross area of 3,520 square feet. The construction of the 1,000 foot addition would bring the gross square footage to 4,520 square feet at a floor area ratio (FAR) of 2.53.
7. The zoning pattern in the immediate area of the subject site to the north, west and south is in the C-3-C District, and to the immediate east, southeast and northeast area is in the C-4 District,
8. Across 19th Street from the subject site are high-rise office buildings from L to M Streets. Across 20th Street from the subject site is the Lafayette Plaza PUD development. There are three townhouse structures abutting the subject alley.
9. The Commission finds that the subject site is in a high density commercial area, according to the Land Use Element of the Comprehensive Plan.
10. The applicants proposed to construct a one-story connector over public airspace to allow for additional dining for the adjoining Luigi's Restaurant. The addition will measure from the building line at 19th Street to a depth of sixty-four feet, beginning fifteen feet above the alley surface, fifteen feet wide, nineteen feet in height and containing approximately 980 square feet of floor area.
11. The applicants indicated that the proposed construction, "Luigi's Bridge", was the only way to expand onto the current Luigi's Restaurant. They indicated, through testimony at the public hearing that

providing a third floor addition to the existing structure was not feasible.

12. The applicants indicated that the proposed structure would architecturally and aesthetically unify the middle of the block while expanding opportunities for pedestrians to dine in the business district dominated by large office building type structures.
13. The applicants, through their project architect, testified that it was more economical to develop horizontally instead of vertically because the existing roof was sloped and served to locate the existing mechanical equipment for the restaurant. The architect believed that the roof could not support an additional floor, but that the bearing walls possibly could support an additional floor, as a result of soil tests.
14. The applicants contended that the requested air rights lease has no negative impact on any abutting privately owned property or property in close proximity.
15. The applicants indicated that working with the District of Columbia Government agencies to undergo the process of securing a lease agreement for use of public air-space over the past three years has resulted in limited timing to proceed in the construction of the proposed project.
16. The applicants, through their project architect, indicated the following, as a result of meetings with the Office of Planning:
  - a. The alley will remain open to all traffic during and after construction, At the beginning of construction the alley will be blocked off for a period of less than 6 hours while the steel beams are placed, After that, the materials will be set on the deck as they arrive;
  - b. The addition will be one story and will be brick and there will be no signage whatsoever on the addition:
  - c. Raising the floor increases the number of steps from the existing restaurant to the addition. This creates an excessive burden on both customers and service personnel and is respectfully declined:
  - d. Lights will be added along each side of the alley (6 per side). Existing windows will not be infilled with brick, except where a

substantial part of the window is covered by the addition: and

- e. All existing electrical, telephone, and gas piping will be relocated so that it is hidden within the addition and the rear facade will be brick and will have a direct relationship with the front.
17. The applicants, indicated that parking for the project would be impossible and there were no plans to incorporate parking spaces on the subject site. They further contended that there were no parking and Loading requirements because of credits associated with the existing uses and the construction of the addition would not require on-site parking or loading. The Commission disagrees.
  18. The applicants indicated that there were numerous parking facilities which could be used by patrons in the surrounding area. They indicated that most of their daytime patrons are pedestrians and not motorists and would come to the restaurant for mid-day and evening dining immediately after business hours.
  19. The District of Columbia Office of Planning (OP), by memorandum dated December 30, 1985 and by testimony presented at the public hearing, recommended approval of the application, noting that the air rights and functional. aspects of the alley are significant issues in this case. The OP indicated that the proposed use of air rights project would provide additional restaurant space and employment opportunities which are an economic development objectives for Central. Employment Area,
  24. The OP recommended approval of the application provided that the applicants address the following:
    - a. The alley shall be kept free from obstruction and open to vehicular and pedestrian traffic with appropriate signs, including during the construction period;
    - b. The addition would be one-story high and of brick construction to express continuity of the facade at 19th Street;
    - c. The passageway under the proposed restaurant addition should be designed as a positive element of the building complex, not as leftover space. The passageway should be constructed with a vaulted ceiling, springing from the horizontal members on either side

and repeating the shape of the brick soldier course arch above the upper window on the front facade, raising the floor level inside by about 15 inches, as compared to the drawings on file;

- d. The passageway should be provided with appropriate lighting to protect the functional state of the alley. The windows currently proposed to be infilled with brick would be kept open and functional;
  - e. The wiring and utilities connections should be located somewhere other than the passageway walls;
  - f. The rear facade, which can be seen from 20th Street, should be designed with some recall of the overall character of the 19th Street; and
  - g. The signage should not include flashing lights.
21. The District of Columbia Department of Public Works (DPW), by report dated December 23, 1985, indicated the following:
- a. The proposed air rights structure complies with the Air Rights Regulations of the District of Columbia relative to minimum height clearance;
  - b. The alley in question has extensive interior loading operations which necessitate that the trucks use the fifteen foot-wide east-west alley for access to a thirty foot-wide interior alley system. Access is available from 20th Street into the alley interior and it is expected that traffic disruption would be minimal during the construction phase. It is necessary for the applicants to obtain the signatures of all affected parties on a letter authorizing the closing;
  - c. There are no alley lights within the alley segment which is being bridged. It may be necessary for the applicants to provide additional lighting within the alley to enhance pedestrian and vehicular safety; and
  - d. If the application is approved, the following two conditions should be included in any air-space use lease agreement:

- i. A paragraph containing a proviso that failure to make an annual payment of rent for the use of the public space shall be a basis for termination of the lease; and
  - ii, Cancellation or termination of the required liability insurance policy will also terminate the lease agreement.
  
22. There was no report from Advisory Neighborhood Commission " 2B in support of or opposition to this application.
  
23. The 1120 " 19th Street Limited Partnership, by submission dated February 20, 1986, included but was not limited to, the following issues in opposition:
  - a. The alley, because of the one-way street configuration in the neighborhood, serves a major thoroughfare between 20th and 19th Streets, N.W., contrary to Z.C. Case No. 76-27, the only case heard regarding use of airspace;
  - b. The alley provides interior loading access to nearly all buildings in the block bounded by L, M, 19th and 20th Streets, contrary ta Case No. 76-27;
  - c. The applicants are submitting an unacceptable design of the "bridge";
  - d. The applicants have already expanded its business onto public space with a sidewalk cafe, so a second grant of public airspace should be conditioned upon compliance with applicable zoning regulations;
  - e. There is no rationale for the applicants to evade parking requirements enacted for the benefit of the public;
  - f. The subject proposal ignores handicapped accessibility under the D.C. Arthitectoral Business Act, D.C. Code §6-1701 and §6-1703;
  - g. Increased potential exists for impairing firefighting apparatus to traverse the alley or ladder access to rise over the bridge structure. Neither is there any new emergency exit;

- h. Increased public health risks from additional garbage, rats, toxious and odors could exist:  
and
  - i. The addition of the tunnel from the bridge structure will not improve or enhance the streetscape.
24. Stanley D. Jones, Esq., on behalf of 1112 - 19th Street Associates, by letter dated December 12, 1985, indicated concerns about approval of the application with regard to the surrounding merchants relying upon the subject alley system for transporting goods in and out of loading docks of Jos, A. Bank Clothiers, and T.H. Mandy Sports Wear and has a direct negative impact if any construction barriers are introduced.
25. The Commission finds that the major issue, on which this case turns, is whether the applicants satisfied the criteria for the execution of airspace leases, as indicated in Finding No. 2 of this order,
26. The Commission does not believe that the proposed use is inappropriate but finds that issues associated with access and parking are not adequately resolved.
27. The Commission does not concur with the recommendation of the Office of Planning,
28. The Commission finds that the alley system provides vital access for service to the interior of Square 117 and several businesses. The Commission believes that the temporary closing of that alley for the purpose of construction would cause severe damage to the operations of many businesses that use the alley. The Commission is not persuaded that the temporary closing and disruption of the alley would take only six hours.
29. The Commission finds that the applicants have not made adequate provisions for the handicapped to gain access to the proposed expanded dining area,
30. The Commission notes the applicants existing use of public space in the right-of-way of 19th Street. The Commission believes that the number of patrons that would be accommodated in that area, the existing restaurant and the proposed addition would generate trash collection, parking, and loading needs that were not adequately addressed by the applicants.

CONCLUSIONS OF LAW

1. The Zoning Commission of the District of Columbia, must determine the use and Zoning Regulations applicable to

the use of airspace, consistent with zoning applicable to abutting privately owned property,. for individual applications as they are brought before this Commission, The standards for the Commission's approval are set forth in Section 7-944 D.C. Code wherein Congress has provided that the Commission must establish such regulations "consistent with regulations applicable to the abutting privately owned property including limitations and requirements respecting the height of any structure to be erected in such air-space, off-street parking and floor area ratios applicable to such structure, and easements of light, air and access. . ."

2. The Commission concludes, that the phrase "structure to be erected in such airspace" contained in Section 7-944 D.C. Code includes the entirety of any structure of which a part is to be erected within airspace. The Commission has the authority to adopt regulations applicable to the airspace and the parcels assembled in conjunction therewith.
3. The instant application, pursuant to the terms of the District of Columbia Space Utilization Act, is not an appropriate utilization of airspace because of unresolved criteria including access and off-street parking.
4. The applicants have not carried the burden of proof necessary to sustain the approval of said application pursuant to Section 7-1034(2) of the District of Columbia Code.
5. The Zoning Commission could not accord to the Advisory Neighborhood Commission 2B the "great weight" to which it is entitled, as no statement in support of or in opposition to the application was entered into record.

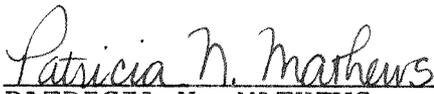
#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission of the District of Columbia hereby orders that this application for use of public airspace above an alley between lots 43 and 61 in Square 117 on the west side of 19th - Street between L and M Streets, N.W. be DENIED.

Vote of the Commission taken at the public meeting on March 10, 1986: 4-0 (Patricia N. Mathews, Lindsley Williams, Maybelle T. Bennett and John G. Parsons, to deny - George M. White, not voting not having participated in the case).

This order was adopted by the Commission at a special public meeting on April. 21, 1986, by a vote of 4-0 (Maybelle T. Bennett and Patricia N. Mathews, to adopt as amended; **John G. Parsons**, to adopt by absentee vote; and Lindsley Williams, to adopt as amended by absentee vote - George M. White, not voting not having participated in the case).

In accordance with Section 4 5 of the Rules of Practice and Procedure before the **Zoning** Commission of the District of Columbia, this order is final and effective upon publication in the D.C. Register, specifically on 02 MAY 1986.



PATRICIA N. MATHEWS  
Chairperson  
Zoning **Commission**



CECIL B. TUCKER  
**Acting Executive Director**  
Zoning Secretariat

order#487/LJPN