

## **MEMORANDUM**

**TO:** District of Columbia Zoning Commission

**FROM:** *JL* Joel Lawson, Associate Director Development Review

**DATE:** March 24, 2017

**SUBJECT:** BZA Case 19076A (1544 9<sup>th</sup> Street, N.W.) for a Modification of Consequence

Subtitle Y § 703 provides for Board of Zoning Adjustment consideration of a modification of consequence to approved orders or plans as follows:

### **703 CONSENT CALENDAR – TECHNICAL CORRECTIONS, MINOR MODIFICATION, AND MODIFICATION OF CONSEQUENCE, TO ORDERS AND PLANS**

703.1 This section applies to all applications and appeals filed with the Board under this subtitle.

703.2 The procedure shall allow the Board, in the interest of efficiency, to make, without public hearing, technical corrections, minor modifications, or **modifications of consequence** to previously approved final orders including any plans approved in such orders.

703.3 For purposes of this section, “minor modifications” shall mean modifications that do not change the material facts upon which the Board based its original approval of the application.

703.4 For the purposes of this section, the term “**modification of consequence**” shall mean a proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.

A more substantive “modification of significance” requires the holding of a public hearing, in accordance with Subtitle Y § 704.

## **I. RECOMMENDATION**

After a review of the request, including a comparison of the modified plans against the approved plans and the Order (BZA 19076); the Office of Planning (OP) has no objection to the proposed modifications. The requested modifications are changes to the conditions cited by the Board in the final order. The material facts upon which the Board based its original approval have not changed. Therefore, OP agrees that the proposed modifications are consistent with the intent of the Board in approving the use variance and fall within the scope of Section 703, Subtitle Y for review as a modification of consequence, without a public hearing.

## **II. BACKGROUND**

BZA Order 19076 approved the use variance to permit a specialized restaurant within the R-4 zone (RF-1 under ZR58). That restaurant no longer occupies the space and the applicant requests a modification of consequence to allow for another restaurant user to occupy the space.

### III. MODIFICATION REQUEST and OP ANALYSIS

The subject of this application is a modification to four of the eight conditions approved affecting the operation of a restaurant use at the subject property, as described below. **Additions in bold** and ~~deletions in strikeout~~. No other changes are proposed.

3. ~~Only the evening meal shall be served, by reservation only, with no more than two seatings per evening. One table may be left open each evening for neighborhood 3 residents without a reservation.~~ Trash and recyclables, including waste oil, shall be stored in the fenced area at the west of the building, with all trash service being accomplished from that rear location. No trash or recyclables shall be stored in public space on either 9th or Q Streets, N.W., regardless of whether said space is considered “parking” and maintained by the property owner under an easement.

The original application included specific approval for a specialized type of restaurant. OP supports the current modification to allow the space to be operated by a more traditional type of restaurant.

5. The Applicant shall engage a valet parking service to provide parking for the restaurant’s customers **from 6:00 pm till closing** ~~during all hours of operation.~~

OP supports requiring the applicant to engage a valet parking service during the evening hours when parking within the neighborhood is scarce, minimizing the impact on nearby residences.

6. Any alterations of the exterior of the building at 1544 9th Street, N.W., and any **new** signage for the restaurant shall be approved by the DC Office of Planning’s Historic Preservation Office, as the property is located within the boundaries of Shaw Historic District. **Approved signage may be replaced as necessary.**

OP supports this modification as the Historic Preservation Office indicated that it had no comments on the requested changes, and any significant change to the exterior would be subject to historic preservation review.

7. The green space “parking” area on the Q Street side of the building at 1544 9th Street, N.W. ~~shall not may~~ be used for **limited** outdoor seating for the restaurant, ~~but instead shall be maintained as a green space, including and as~~ a garden where herbs and vegetables for use in the restaurant’s kitchen may be grown. If the green area at the rear of the property is to be fenced, the Applicant shall seek approval from the DC Office of Planning’s Historic Preservation Office, and said fencing shall be of a character consistent with historic fencing found in the Shaw Historic District.

OP supports this modification to permit outdoor seating, noting that any outdoor seating would require Public Space Committee approval.

### IV. ANC/ COMMUNITY COMMENTS

To date, ANC 6E has not submitted a report to the record, although OP understands that the ANC reviewed the application at its regularly scheduled meeting of March 7, 2016.

### V. AGENCY COMMENTS

No comments from other District agencies have been filed or provided to OP.