

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Anne Fothergill, Case Manager
JL Joel Lawson, Associate Director Development Review
DATE: February 16, 2016
SUBJECT: BZA Case 19180 for special exception relief at 1525 9th St NW

I. OFFICE OF PLANNING RECOMMENDATION

OP recommends that the Board **approve** the application for a Special Exception under § 3104.1, subject to additional criteria in § 2003.1, to allow a nonconforming use to be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the following conditions:

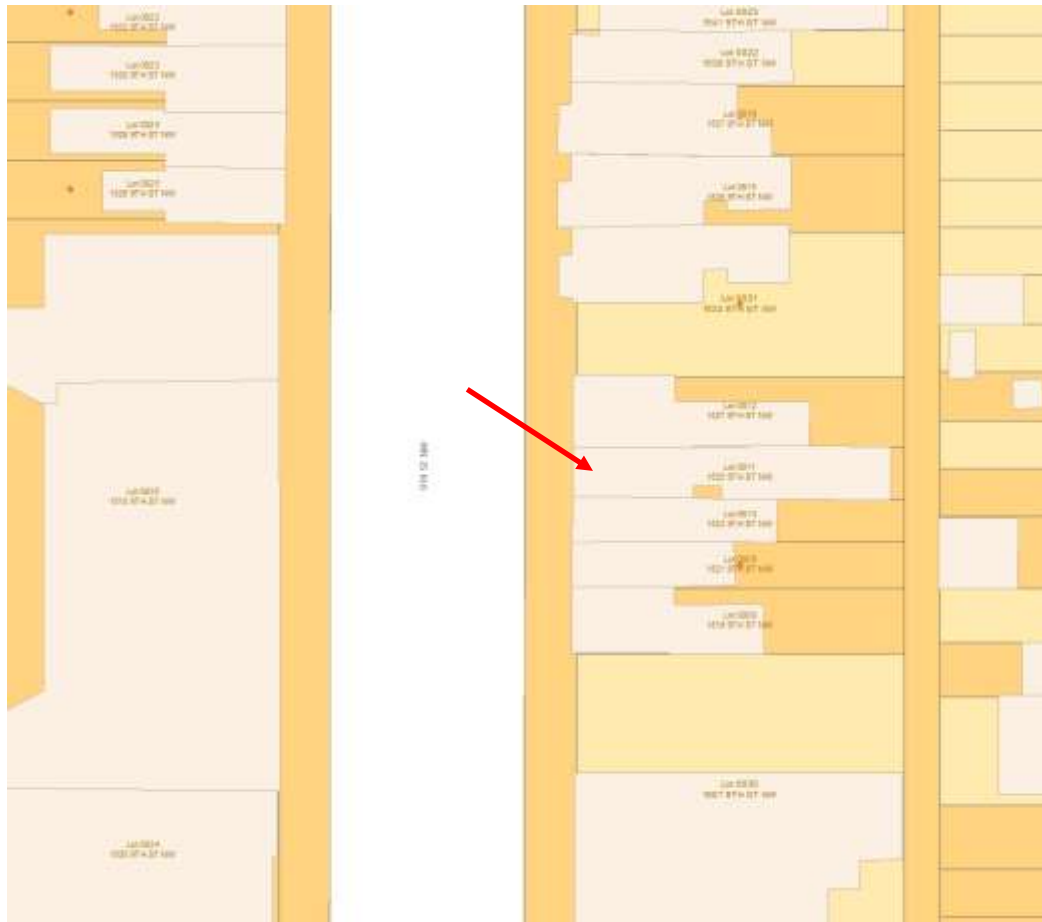
1. The ground floor use at the subject property may be a use permitted by:
 - §701.1 - except bar/cocktail lounge and gas station;
 - §701.4 - except restaurant; or
 - office use in keeping with the previous ground floor office use.

2. Any future lease includes the conditions as proposed by the Applicant outlined in Attachment B.

II. LOCATION AND SITE DESCRIPTION

| | |
|-------------------------------|--|
| Address | 1525 9 th Street, N.W. |
| Legal Description | Square 397, Lot 811 |
| Ward / ANC | Ward 6; ANC 6E |
| Zone | R-4 |
| Historic District or Resource | Shaw Historic District |
| Lot Characteristics | Rectangular lot of 1439 SF |
| Existing Development | Two-story row dwelling with vacant office space on ground floor and residential space on 2 nd floor |
| Adjacent Properties | The adjacent properties are both zoned residential but the property to the north received a special exception allowing a commercial gallery on the ground floor. |

| | |
|------------------------------------|---|
| Surrounding Neighborhood Character | The neighborhood is mixed use with residential, commercial, and institutional uses. |
| Proposed Development | The Applicant proposes that the ground floor be permitted to continue to have the previous nonconforming office use or any use allowed in the C-1 zone. |



III. ZONING REQUIREMENTS and RELIEF REQUESTED

| Zone R-4 | Regulation | Existing | Proposed | Relief |
|--|---|---------------------|---|-----------------------------------|
| Change of use within structure § 2003 | A non-conforming use may be changed to a use that is permitted by-right in the most restrictive zone in which the existing non-conforming use is permitted by-right, subject to conditions. | Vacant office space | Proposed use permitted in more restrictive C-1 zone | Special Exception Required |

IV. OP ANALYSIS

A. Consistency with § 2003.1 (changing uses within the ground floor)

2003.1 If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

The Applicant proposes that the previous office use be allowed (the recently vacated ground floor had been office space for decades) or any use that is allowed in the C-1 zone. The Applicant, after discussion with OP, provided a reduced list of C-1 uses that they would be willing to be limited to (see Attachment A). In the past, the BZA has approved special exceptions under § 2003 for a specific proposed use and tenant.

OP is recommending a condition of approval that provides greater than typical use flexibility for the ground floor space, but which sets some limits on the permitted C-1 uses to mitigate possible adverse impacts to neighboring residential properties. That is, OP supports relief to allow the C-1 uses permitted by §701.1 - except bar/cocktail lounge and gas station, §701.4 - except restaurant, and office use in keeping with the previous ground floor office use. Uses not permitted would tend to have a greater potential impact, so should require BZA review of the specific use proposed. These uses would be allowed on the top floor of the subject property.

2003.2 The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.

A proposed office or limited commercial first floor uses are not likely to have an adverse effect on the current or future neighborhood character, particularly in this block of 9th Street, N.W. The subject property is in the R-4 zone but the C-2-A line is less than 100 feet to the south. The block is a mix of residential and commercial properties including a design studio/gallery, a church, church-based community center, and a future restaurant. In 2013, the BZA approved a specific commercial use – a design studio/gallery - on the first floor of the adjacent property at 1527 9th Street.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

Since the Applicant is not proposing a specific tenant where external effects can be identified, they have committed to the ANC to a number of conditions to proactively address potential issues related to a commercial use including no live music, an indoor trash room, limited hours of operation, limited delivery hours,

interior soundproofing, ventilation, signage, and others. The list of conditions is in Attachment B and OP would recommend that this list be a condition of the BZA approval, should the BZA approve the relief. The building is in the Shaw Historic District and exterior changes to the building and signage would need to be reviewed and approved by the HPRB.

2003.4 *When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.*

This standard is not applicable to this case.

2003.5 *In Residence Districts, the proposed use shall be a dwelling, flat, apartment house, or a neighborhood facility.*

The Applicant states that the proposed C-1 uses that they intend to locate on the ground floor of the subject property will be retail and service establishments that will serve the neighborhood and will therefore be a neighborhood facility. While “Neighborhood Facility” is not defined in the Zoning Regulations, in Case No. 16412 the Board found that characteristics of a neighborhood facility include:

- It will be patronized mainly by people who live and work close-by;
- It will not be used by any one group and may be used by all community members;
- It is not exclusive; and
- It is accessible by walking.

Based on the mid-block location of this building and the absence of parking, it is likely that the proposed use would be patronized by people who live and work close-by and will be within walking distance of many residents and community members, but without a specific tenant identified there is no certainty that the use will meet all four criteria. However, the Applicant has stated that they have tried to find another office tenant but have not had any success and they need to secure the zoning relief first before they can get a tenant in that space.

2003.6 *For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:*

The proposed list of uses is first allowed as a matter of right in the C-1 zone.

2003.7 *The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.*

The applicant has agreed to the proposed restrictions as shown in Attachment B and the limited list of C-1 uses as shown in Attachment A, and OP has recommended a condition of approval that further limits the permitted C-1 uses.

V. COMMENTS OF OTHER DISTRICT AGENCIES

At the time of the staff report, no other agency comments had been submitted.

VI. COMMUNITY COMMENTS

On February 3, 2016, ANC 6E voted 5-2 in support of the application.

The adjacent neighbor to the north submitted a letter of support (Exhibit 29D). The adjacent neighbor to the south has requested Party Status in opposition (Exhibit 27).

AUTHORITY: Unless otherwise noted, the authority for this chapter is the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (formerly codified at D.C. Code §§ 5-413 to 5-432 (1994 Repl. & 1999 Supp.))).

SOURCE: §§ 5101.1 and 5101.2 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8389 (October 20, 2000).

701 USES AS A MATTER OF RIGHT (C-1)

701.1 The following service establishments shall be permitted in a C-1 District as a matter of right:

- (a) Bank or other financial institution;
- (b) Bar or cocktail lounge;
- (c) Barber or beauty shop;
- (d) Cobbler or shoe repair shop;
- (e) Collection station for dry-cleaning, dyeing, or laundry;
- (f) Dressmaking shop or establishment;
- (g) Frozen food locker for family or individual use only;
- ~~(h)~~ Gasoline service station existing on May 12, 1958;
- ~~(i)~~ Gasoline service station as an accessory use to a parking garage or public storage garage, subject to the provisions of chapter 23 of this title; provided:
 - (1) All portions of the gasoline service station shall be located entirely within the garage;
 - (2) No part of the accessory use shall be visible from a sidewalk; and
 - (3) Signs or displays indicating the existence of the accessory use shall not be visible from the outside of the garage;
- (j) Group Instruction Center or Studio;
- (k) Laundry, self-service, not exceeding twenty-five hundred square feet (2,500 ft.2) of gross floor area;

- (l) Laundry or dry cleaning establishment, not exceeding twenty-five hundred square feet (2,500 ft.2) of gross floor area;
- (m) Locksmith;
- (n) Newspaper distribution station;
- (o) Optician and optometrist;
- (p) Radio or television repairs;
- (q) Shoeshine parlor;
- (r) Tailor shop or valet shop not exceeding twenty-five hundred square feet (2,500 ft.2) of gross floor area; and
- (s) Watch repair shop.

~~701.2~~

Any use permitted in any R-5 District under §§ 350.4 and 350.5 or in the SP District under § 501, except a community-based residential facility for seven (7) or more persons not including resident supervisors or staff and their families, shall be permitted in a C-1 District as a matter of right.

~~701.3~~

A youth residential care home, community residence facility, or health care facility for seven (7) to eight (8) persons, not including resident supervisors or staff and their families, shall be permitted in a C-1 District as a matter of right; provided, that there shall be no property containing an existing community-based residential facility for seven (7) or more persons either in the same square or within a radius of five hundred feet (500 ft.) from any portion of the subject property.

701.4

The following retail establishments shall be permitted in a C-1 District as a matter of right:

- (a) Art supplies store;
- ~~(b)~~ Automatic ice delivery station;
- (c) Automobile accessories sales, excluding installation;
- (d) Bakery; provided, that any manufacture of bakery goods shall be limited to goods retailed on the premises;
- (e) Bicycle sales and repair;
- (f) Book store;

- (g) Camera or photographic supplies store;
- (h) Cosmetics or toiletries store;
- (i) Drug store or pharmacy;
- (j) Electric appliance store, including television and radio sales;
- (k) Flower stand or florist shop;
- (l) Food or grocery store;
- (m) Gift shop;
- (n) Hardware store;
- (o) Hobby shop, including the sale of toys;
- (p) Jewelry store;
- (q) Music store;
- (r) Newsstand;
- (s) Notions or novelty store;
- (t) Off-premises alcoholic beverages sales;
- (u) Paint store;
- (v) Prepared food shop, with no more than 18 seats for patrons and no drive-through except that no limitation on seats shall apply to a prepared food shop in Square 5912.
- (w) Restaurant, but not including a fast food establishment or a food delivery service. A fast food establishment with no drive-through shall be permitted in Square 5912, Square 3499 (Lot 3), and Square 3664 (Lot 820) as a matter of right.
- (x) Sporting goods store;
- (y) Stationery store;
- (z) Tobacco products store; and
- (aa) Variety store.

701.5 Other service or retail use similar to that provided for in §§ 701.1 and 701.4, including assemblage and repair clearly incidental to the conduct of a permitted service or retail establishment on the premises, shall be permitted in a C-1 District as a matter of right.

701.6 The following uses shall also be permitted in a C-1 District as a matter of right:

(a) Chancery;

(b) College, university, or other academic institution of higher learning;

~~(c) Fire Department Support Facility;~~

~~(d) Hotel or inn;~~

(e) Library; (other than public library);

(f) Office, except new chancery and international organization;

~~(g) Optical Transmission Node;~~

~~(h) Parking lot, parking garage, or public storage garage, subject to the provisions of chapter 23 of this title;~~

~~(i) Rooming or boarding house; provided:~~

(1) No sign is displayed on the premises;

(2) No advertisement is displayed or published on or off the premises holding out the establishment to be a hotel, motel, inn, hostel, bed and breakfast, private club, tourist home, guest house, or other transient accommodation;

(3) Cooking facilities are not provided in any individual unit; and

(4) In a rooming house, no central dining or food preparation area is provided for guests.

~~(j) Telephone exchange, electric substation using non-rotating equipment, and natural gas regulator station.~~

701.7 - 701.9 [DELETE]

1525 NINTH STREET LLC

February 2, 2016

Commissioner Alexander M. Padro
ANC 6E01
1519 8th Street, NW
Washington, DC 20001-3205

Dear Commissioner Padro:

As a representative of 1525 Ninth Street LLC ("Applicant"), the entity that owns the property at 1525 9th Street, NW (Square 397, Lot 811), I want to thank you for working with us to identify and address any concerns regarding our recent Board of Zoning Adjustment application (*No. 19180, to allow new retail uses in addition to the current office use on the first floor of our building*), in order that we may obtain the community's and the ANC Commission's support.

As we discussed, Applicant will agree to impose, by lease, specific restrictions and obligations, as more fully described below, on any of its future retail tenants on the first floor of 1525 9th Street, NW ("Tenant"), as a demonstration of Applicant's intention to continue to serve as a responsible property owner and a good neighbor. Applicant also will agree to include these restrictions in all its future retail leases of the first floor of 1525 9th Street, NW ("retail leases"), whether or not these restrictions are ultimately incorporated into the Board's Zoning Order and regardless of whether they are enforceable by the DC Office of Zoning or the Zoning Administrator.

Applicant agrees that all its future retail leases:

- 1) Shall include a provision prohibiting the Tenant from having any entertainment, live music or DJ and precluding the Tenant from applying for an entertainment endorsement to an Alcoholic Beverage Control license from the District of Columbia Alcoholic Beverage Regulatory Administration.
- 2) Shall include a provision obligating the Tenant to construct an indoor trash room, so that no dumpsters or other trash receptacles for commercial refuse, recyclables or waste oil will be placed outdoors, to construct such trash-room prior to Tenant filing an application for the issuance of its Certificate of Occupancy and commencement operations, and to contract for daily trash collection thereof.
- 3) Shall include a provision prohibiting the Tenant from conducting commercial operations at the property other than from 7:30 AM to 10:30 PM, Sunday-Thursday, and 7:30 AM to 11:00 PM, Friday-Saturday.
- 4) Shall include a provision prohibiting the Tenant from either receiving deliveries or having trash, recyclables or waste oil collected except from 9:00 AM to 9:00 PM daily.

- 5) Shall include a provision requiring the Tenant to install soundproofing materials along the interior wall of Applicant's building where it adjoins the building at 1523 9th St. NW, including within Applicant's interior light well walls, prior to Tenant applying for the issuance of its Certificate of Occupancy and commencing operations.
- 6) Shall include a provision requiring the Tenant to repair or replace the concrete flooring in the aforementioned interior light well and on the alley side of the building, prior to the Tenant applying for issuance of its Certificate of Occupancy and commencing operations.
- 7) If a Tenant is a restaurant or other food use, and a kitchen is installed, a provision requiring that the Tenant's kitchen hood shall be vented through the second-floor and the roof of the building and that odor scrubbers shall be installed to mitigate kitchen exhaust containing strong odors from being vented into the environment, prior to any such Tenant applying for its Certificate of Occupancy and commencing operations.
- 8) Shall include a provision that the Tenant install "soft close" hardware on all retail entrance doors, with the aim of mitigating slamming sounds when said doors close, prior to any retail Tenant applying for the issuance of its Certificate of Occupancy and commencing operations.
- 9) Shall include a provision that any alterations to the exterior of the building at 1525 9th Street, NW, and any signage for the restaurant must be approved by the DC Office of Planning's Historic Preservation Office, as the property is located within the boundaries of the Shaw Historic District.

We hope that these measures, intended to minimize any potential negative impacts of the use of the first floor of 1525 9th Street, NW for commercial uses other than offices, will make clear the intentions of the owners of the building to be good neighbors with the intention that any retail use of the building's first floor is an asset to the neighbors and the community at all times.

Thank you for your support of our BZA application and the effort to bring a non-office retail use to 1525 9th Street, NW. Please do not hesitate to contact me if you have any questions about the BZA application or the steps we are committed to taking to earn the community's trust, and your own.

Sincerely,

1525 NINTH STREET LLC

By: 

Robb LaKritz, Managing Member