



MEMORANDUM

TO: District Board of Zoning Adjustment

FROM: Stephen Cochran, Case Manager

Joel Lawson, Associate Director Development Review

DATE: May 28, 2013

SUBJECT: BZA Application 18557 – Special Exception and Use Variance Requests for 1527 9th Street, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The applicant requests permission to a first-floor non-conforming beauty salon to non-conforming art uses and to extend those uses to the building's now-vacant second floor:

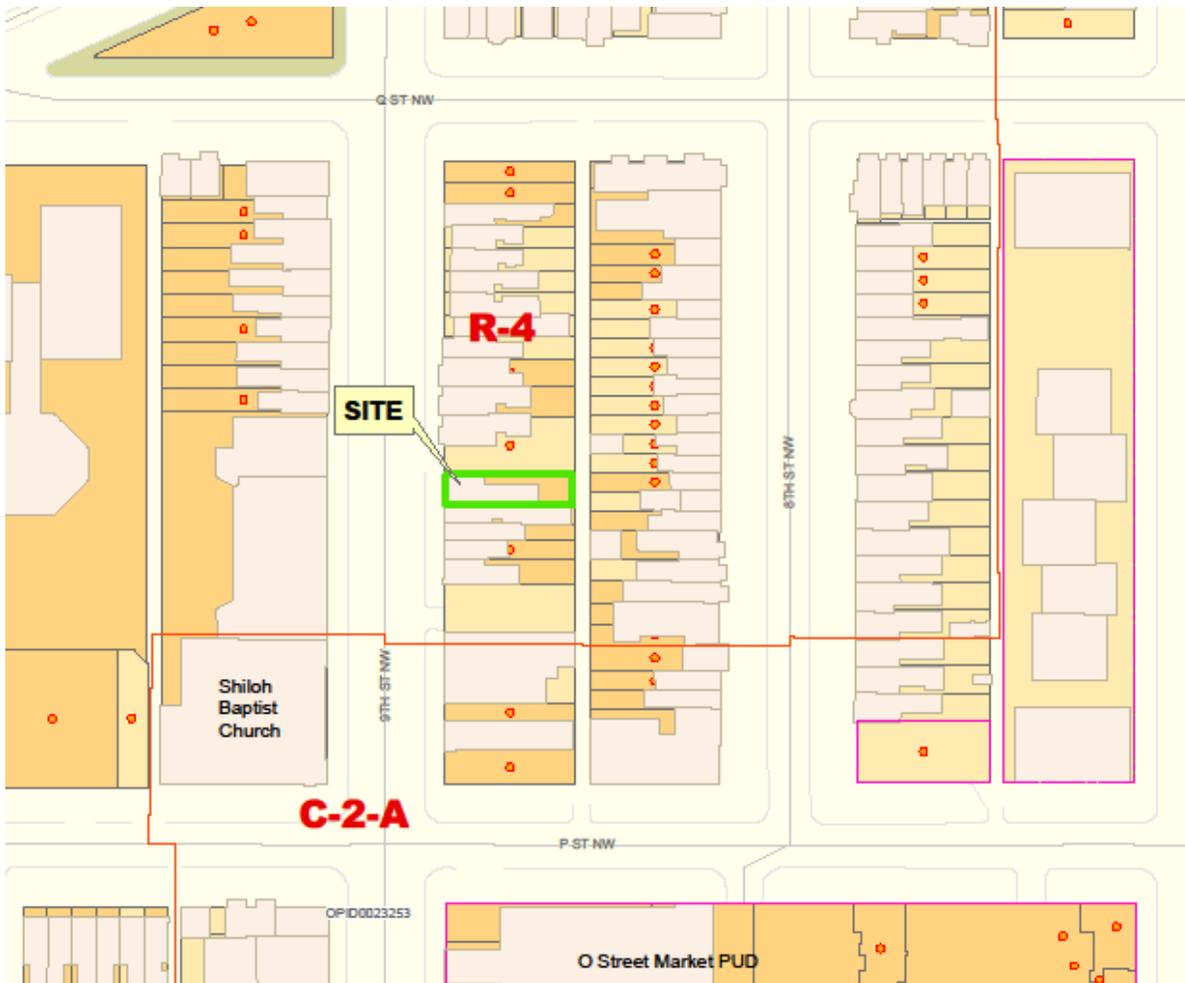
The Office of Planning (OP) **recommends the Board:**

- **Approve the § 2003 request** – a special exception to convert the first floor use from one non-conforming use to another, subject to the following conditions:
 - The art gallery and art studio shall not be used by more than 5 people between the hours of 9 p.m. and 8 a.m. ;
 - The applicant shall supply information regarding trash pick-up that are acceptable to the Board.
- **Deny the § 2002.3 request** – a use variance to permit the extension of a non-conforming use to portions of the structure not now devoted to a non-conforming use.

II. AREA AND SITE DESCRIPTION

Address: 1527 9 th Street, N.W	Legal Description: Sq. 0397, Lot 812	Ward: 6	ANC: 6E
Historic District: Shaw Historic District. Not contributing building.	Zoning: R-4 – single family row houses and flats. Commercial art galleries, studios and accessory office spaces are not permitted in this zone. The C-2-A zone begins 100 feet to the south.		
Lot Characteristics	Flat rectangular lot with alley in rear		
Existing Development	Semi-detached two-story structure with existing commercial use on first floor, entered from 9 th Street. The second floor is vacant space, which has been historically used as two apartments, and has a separately enclosed stairway from 9th Street, N.W.		
Adjacent Properties: South: similar two-story structure with first floor commercial use. North: surface parking lot.	Neighborhood Character: The northern Shaw area is a moderate density mixed use neighborhood with two-story to five-story buildings, and residential, commercial, retail and institutional uses.		





III. PROJECT DESCRIPTION

Applicant	1527 9 th , LLC
Proposal	<p>Convert the first floor of a two-story structure from a beauty salon, for which there is a valid certificate of occupancy (C of O), to a commercial art gallery and art studio, a use not permitted by-right in the R-4 zone.</p> <p>Expand the new non-conforming use to the second floor of the building, which had been used as two apartments, but which is now vacant and without a valid C of O.</p>
Relief Sought	<p>§ 2003 special exception: to convert the first floor use from one non-conforming use to another</p> <p>Use Variance from § 2002.3 to permit the extension of a non-conforming use to portions of the structure not now devoted to a non-conforming use</p>

V. ZONING REQUIREMENTS

R-4 Zone	Regulation	Existing	Proposed	Relief
Height § 400	40-foot max.	30 feet	No change	None required
Lot Width § 401	18-foot min.	20 feet	No change	None required
Lot Area § 401	1,800 SF	1,886.6 SF	No change	None required
Floor Area Ratio § 402	None prescribed	--	--	None required
Lot Occupancy § 403	60% max.	54%	No change	None required
Rear Yard § 404	20-foot min.	25 feet	No change	None required
Side Yard § 405	None required. If provided, 8-foot min.	None	No change	None required
Changing Uses within Structures § 2003	Non-conforming use may be changed to use permitted by-right in most restrictive zone in which existing non-conforming use permitted by-right, subject to conditions	Existing beauty parlor permitted in C-1	Proposed art gallery and studio first permitted in more restrictive SP zone	Special Exception Required
Non-Conforming Uses within Structures § 2002.3	A non-conforming use may not be extended to portions of structure not devoted to that non-conforming use.	Vacant. No certificate of occupancy for non-residential use.	Extension of proposed non-conforming use – accessory office space	Use Variance 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 proposed gallery and studio are first permitted in the SP zone, which is more use-restricted than the C-1 zone in which the existing beauty parlor is first permitted.

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.

The proposed first floor use is not likely to have an adverse effect on the current or future neighborhood character, particularly in the 1500 blocks of 7th Street and, N.W. Despite ¾

of the street frontage being in the R-4 zone, it remains a mixed-use street. There has been significant re-investment in residential properties during the last decade, but the street remains a mix of single family residences and flats, a church, church-based social and community services, and retail offerings – several with residential uses on the second floor.

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.*

The use would not likely create negative external effects, provided:

The hours that more than five people may simultaneously use the first floor art gallery and art studio shall be from 8:00 a.m. to 9:00 p.m., with the exception of two evenings per month, when the occupancy restrictions shall not begin until 10:30 p.m.

The applicant shall provide information acceptable to the Board about trash storage and pick-up.

These conditions are recommended to respect the residential uses across the alley from the applicant's rear property line, and to ease the transition from the more commercial area to the south and the residential area to the north, and have been discussed with the applicant. While OP is aware of parking shortages in the vicinity during the hours of Sunday church services, the applicant proposes to provide 2 parking spaces behind the building for the proposed uses. No parking spaces or loading provisions are required.

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 application states that the art gallery and art studio uses are intended to provide opportunities for neighborhood residents to view and exhibit art, and to learn more about art through presentations, discussion and instruction. The applicant has indicated that testimony will be presented at the public hearing explaining that proposed use is a neighborhood facility that will meet the Board's previously determined characteristics of a neighborhood facility:

- 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.¹

There is no indication that the proposed use would be for the exclusive use of any one group and the site is surrounded by residences within walking distance. OP found this proposal to be consistent with the above-stated characteristics of a "neighborhood facility" allowed in R-4 under this standard.

¹ generalized from BZA Orders 1641212 and 18034

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 existing use is first allowed as a matter of right in the C-1 zone. The proposed use is first permitted in the more restrictive SP 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 on the hours of operation and will provide information concerning trash and waste pick up by the public hearing.

B. Consistency with § 2002.3 (conversion of second floor to non-conforming use)

2002.3 *A non-conforming use shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment or amendment of this title, or to another structure.*

The applicant has not demonstrated that the application meets the criteria for a use variance that are established by § 3103.2.

1. BECAUSE OF EXCEPTIONAL CONDITIONS OF THE PROPERTY OR OTHER EXTRAORDINARY SITUATIONS, AND
2. THE STRICT APPLICATION OF THE ZONING REGULATIONS WOULD RESULT IN UNDUE HARDSHIP UPON THE OWNER OF THE PROPERTY.

The applicant has not established that the property has exceptional conditions that would preclude the second story being used for a use permitted by-right without imposing undue hardship on the applicant.

The applicant cites six conditions relating to the mixed-use neighborhood context, but not to the property itself, in attempting to establish the unsuitability of the building's second story for residential use.

Two points in the applicant's case relate to the property. They state that while the second story of the building had once been used for two apartments, it is now so deteriorated that it would require exceptional investment to return it to residential use; and that the applicant would suffer undue hardship from the combination of this expense, the length of time it would take to recoup the expense in an uncertain residential market, and the inability to use the second story for administrative space necessary to the functioning of the first floor gallery and studio.

The application establishes none of this. The Shaw neighborhood is experiencing considerable residential and mixed-use investment, ranging from individual row-houses to the two block-square O Street Market development less than a block south of the applicant's property. The configuration of the applicant's building is congruent with non-residential use on the first floor and residential use on the second floor. There is a separate entrance for the second floor directly from 9th street, plumbing stacks, an exterior secondary stairway, and parking in the rear. The

applicant has provided no information to establish that while second floor renovation for non-residential use would be practical, renovation for residential use would impose a hardship.

Finally, the applicant states that it purchased the property expressly for leasing it for the proposed art gallery, studio and second-floor administrative space. OP notes that neither property's zone district nor the zoning regulations have changed since the applicant purchased the property.

3. GRANTING THE RELIEF WOULD NOT RESULT IN A SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD OR IMPAIRMENT OF THE INTEGRITY OF THE ZONING REGULATIONS.

Granting relief enabling the second floor would not likely result in a substantial detriment to the public good. However, granting relief from § 2002.3 without a demonstration that the first two parts of the three- part test have been met would impair the integrity of both the residential R-4 zone and the variance purpose and process.

V. HISTORIC PRESERVATION

Changes to the building exterior and adjacent public space are subject to review by the State Office of Historic Preservation (SHPO) and possibly the Historic Preservation Review Board. The applicant is proposing to renovate/restore the building without significant exterior changes.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

DDOT will provide any agency comments under a separate cover.

VII. COMMUNITY COMMENTS

ANC 6 E voted unanimously on May 1, 2013 to recommend approval of the project.