



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Jennifer Steingasser, Deputy Director

**DATE:** February 16, 2010

**SUBJECT:** BZA Application 18034, 1916 9<sup>th</sup>, N.W., Square 361, Lot 122

### **SUMMARY RECOMMENDATION**

The Office of Planning (OP) recommends **APPROVAL** of:

- **An area variance to § 403.2 of Title 11 DCMR** to increase the lot occupancy from 40 to 57.6 percent (52 percent existing);
- **A use variance to § 2002.5 of Title 11 DCMR** to enlarge a structure devoted to a nonconforming use; and
- **A Special exception relief pursuant to § 2003 of Title 11 DCMR** to change the use from a beauty salon to an art gallery and community center.

### **AREA AND SITE DESCRIPTION**

Address	1916 9 <sup>th</sup> Street, N.W.
Legal Description	Square 361, Lot 122
Ward	1
Lot Characteristics	Rectangular lot, with no alley access.
Existing Development	Two-story structure
Zoning	R-4 – row dwellings, conversions and apartments
Historic District	Greater U Street
Adjacent Properties	North: Offices and commercial uses South: Restaurant, followed by residential structures East: Across 9 <sup>th</sup> Street, commercial uses West: Residential row houses and vacant lots
Surrounding Neighborhood Character	Mixture of residential and commercial uses.

### **HISTORY**

Prior to 1990 the subject property was zoned C-M-1 and used as a beauty salon, a conforming use. Zoning Commission Case No. 87-7 rezoned the site from C-M-1 to R-4 on February 23, 1990. At that time the beauty salon use became nonconforming. The beauty salon use continued until recently, with the last certificate of occupancy issued for that use at the subject property on March 11, 2008, less than three years



ago. On April 23, 2009 the applicant was issued a permit for the interior demolition of all floors, and on November 25, 2009 the applicant filed the subject application.

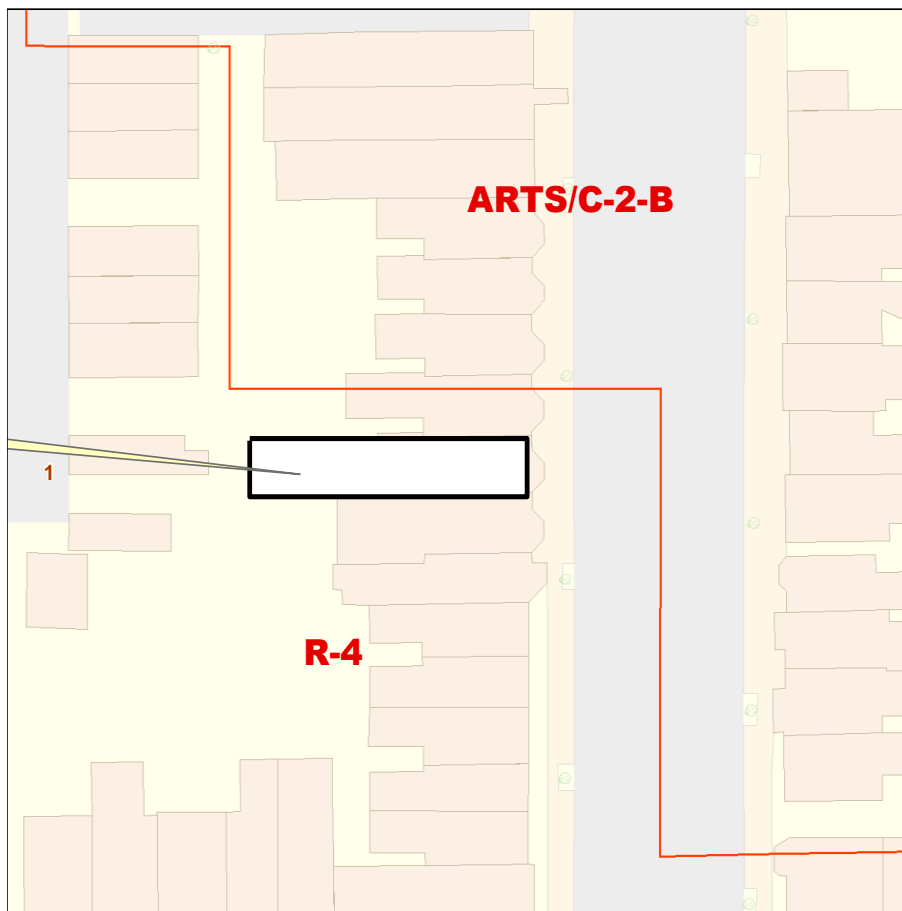
**APPLICATION IN BRIEF**

The applicant, William Basiliko, proposes to convert an existing commercial building, originally constructed as a two-story residential row house in 1900, into an art gallery and community center. The building would primarily be used as an art gallery, displaying the works of local artists, with occasional use as a community center for neighborhood groups.

The first and second floors would be reconfigured into large rectangular areas for the display of artwork. The rear wall would be removed and a new rear façade of glass added to enlighten the interior space. Handicap accessible restrooms would be added to each floor and a small galley kitchen added to the first floor for use during art openings. An office would be provided on the second floor.

The rear yard would be redesigned as a garden with outdoor seating and a fountain. An outdoor staircase would be added to provide egress from the second floor of the building, in compliance with the building code. A new interior staircase, in conformance with the building code and ADA, would provide access to the second floor.

No parking would be provided as the subject property has no alley access.



Zoning and Vicinity Map

**ZONING REQUIREMENTS and REQUESTED RELIEF**

	<b>Permitted/ Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Rear Yard (min.)</b>	20 feet	41 feet, 10.5 inches	40 feet, 7 inches	Special exception required <sup>1</sup>
<b>Lot Occupancy (max.)</b>	40 percent	52 percent	57.6 percent	17.6
<b>Parking (min.)</b>	None		None	None required <sup>2</sup>

**OFFICE OF PLANNING ANALYSIS**

**Area Variance to § 403.2 – Lot Occupancy**

Section 403.2 sets the maximum lot occupancy within the R-4 district for uses other than residential, churches or schools at 40 percent. The subject application proposes to increase the existing lot occupancy from 52 to 57.6 percent.

Uniqueness

The subject property has been used for commercial purposes since at least the 1960s and the applicant proposes to continue the commercial use of the building. Although use of the building for commercial use is permitted because its nonconforming status, the applicant now proposes to renovate the structure and bring it up to code. This requires the provision of a secondary means of egress from the second floor and handicap accessible restrooms.

The application proposes to extend the rear of the building outward and provide an exterior door from the second floor with a landing and stairwell to the rear yard, and fill in the courtyard to provide for ADA compliant restrooms. A new rear wall to the building would also permit the applicant ADA compliant exterior doorways on the first and second floors to the rear yard.

Practical Difficulty

The rear building addition is necessary to bring the building into compliance with the building code and ADA regulations to the extent possible. Without the granting of this variance the applicant would be unable to provide a secondary means of egress from the second floor and would not be able to provide handicap accessible restrooms.

Intent of the Zone Plan

The requested variance would not substantially impair the intent, purpose and integrity of the zone plan. The DUKE Plan, dated 2004, recommends that 9<sup>th</sup> Street become a “neighborhood serving retail district with a mix of cutting edge, locally-owned boutique shops, offices, eateries and restaurants.” It also recommends that 9<sup>th</sup> Street be rezoned to be consistent with existing uses, which would include the previous use beauty salon use of the property, and the proposed art gallery and community center.

The Convention Center Area Strategic Development Plan 2006 recommends that the 1900 block of 9<sup>th</sup> Street be rezoned to an appropriate commercial district to permit a “main street pattern of commercial development.” An art gallery and community center would contribute to a main street pattern of commercial development.

<sup>1</sup> Special exception approval required because proposed use is nonconforming to the provisions of the R-4 district.

<sup>2</sup> No parking is required because the site is located within the Greater U Street Historic District.

**Special Exception pursuant to § 2003 – Changing Uses within Structures**

The Board is empowered to permit the change of nonconforming uses subject to the following criteria:

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 surrounding area within 300 feet of the subject property includes commercial establishments along both sides of the 1900 block of 9<sup>th</sup> Street, commercial uses on the south side of U Street and Florida Avenue, office uses on Vermont Avenue and row houses, flats and apartment buildings near the intersection of 9<sup>th</sup> and T Street. The proposed uses, art gallery and community center, would be consistent with the commercial uses located to the north and to the south of the subject property, and would be consistent with the DUKE Plan and the Convention Center Area Strategic Development Plan. Both of those plans recommend commercial development for this block of 9<sup>th</sup> Street, consistent with the proposed uses.

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 proposed uses should not result in any deleterious external effects. Each use, the art gallery and the community center, are intended to serve the local community. Therefore, it would be expected that most people would not drive to the site, but rather walk. It would be located between existing commercial uses that would be compatible with the proposed uses. The site is also well served by public transit, including an entrance to the U Street/ Cardozo Metrorail station on the Green Line at 10<sup>th</sup> and U. The two proposed uses are also generally quiet uses that produce no odors. As uses that would generate minimal refuse, they are particularly appropriate for a lot with no alley access.

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.*

The applicant agrees to this provision.

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

The proposed use would be an art gallery, featuring the works of neighborhood artists, and the community center would make the building available to neighborhood groups for meetings.

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

- (a) W-0, R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;
- (b) SP-1 and SP-2;
- (c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);

- (d) W-1, W-2, and W-3;
- (e) CR; and
- (f) C-M-1, C-M-2, C-M-3, and M.

A beauty salon is a use first permitted as a matter-of-right within the SP district, the same as for community center. An art gallery is first permitted by special exception within the R-5 district and as a matter-of-right within the SP district. The subject application is in conformance with this criterion.

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 Office of Planning makes no additional recommendations.

### **Use variance pursuant to § 2002.5 - Nonconforming Uses within Structures**

#### Uniqueness

The subject property is unique in that it was developed as a residential property and is now located within an area recommended for commercial uses. The building does not conform to either current building codes or ADA. The applicant is required to provide a secondary means of egress from the second floor and wider exterior doorways into the rear yard, and the provision of handicap accessible restrooms would contribute to making the building handicap accessible.

#### Practical Difficulty

Without the expansion of the building, the applicant would not be able to provide handicap accessible restrooms within the building while maintaining the remainder of the interior space as a large usable area and provide for rear yard access out the back of the building. Provision of handicap accessible restrooms would occupy approximately 12 percent of the building if the applicant is not permitted to enlarge the structure, a significant amount of area to be devoted to just one necessary accessory use.

#### Intent of the Zone Plan

The DUKE Plan and the Convention Center Area Strategic Development Plan each recommend commercial use of this portion of 9<sup>th</sup> Street to create an active commercial environment. The proposed building addition to this structure would be minor but would allow for the modernization of this space. Therefore, the granting of this special exception would further the recommendations of these two area plans.

### **AGENCY COMMENTS**

The District Department of Transportation (DDOT) had no comments on the application.

### **COMMUNITY COMMENTS**

ANC 1B did not respond to a request for comments from the Office of Planning.

### **RECOMMENDATION**

The Office of Planning has reviewed the application in terms of the property's zoning, the intensity of use, the character of the neighborhood and the standards for special exception. The Office of Planning concludes that the area variance to increase lot occupancy, the use variance to enlarge a structure devoted

to a nonconforming use and a special exception to change the use from beauty salon to art gallery and community center conform to the applicable provisions of the Zoning Regulations. In addition, use of the subject property as an art gallery and community center would further the recommendations of the DUKE Plan and the Convention Center Area Strategic Development Plan 2006 for the 1900 block of 9<sup>th</sup> Street, N.W. Therefore, the Office of Planning recommends approval of the following:

- **An area variance to § 403.2 of Title 11 DCMR** to increase the lot occupancy from 40 to 57.6 percent (52 percent existing);
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JS/sjm<sup>AICP</sup>

Case Manager: Stephen J. Mordfin, AICP