



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

DATE: March 2, 2010

SUBJECT: BZA Case 18044 - Request for a use variance at 644-646 Rock Creek Church Road, N.W.

I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends approval of the use variance request to allow a prepared food shop within the R-4 district.

OP notes that BZA Case No. 17906, a request to permit the addition of a prepared food shop to an existing nonconforming grocery store within the R-4 district, was dismissed by the Board on April 14, 2009.

II. AREA AND SITE DESCRIPTION

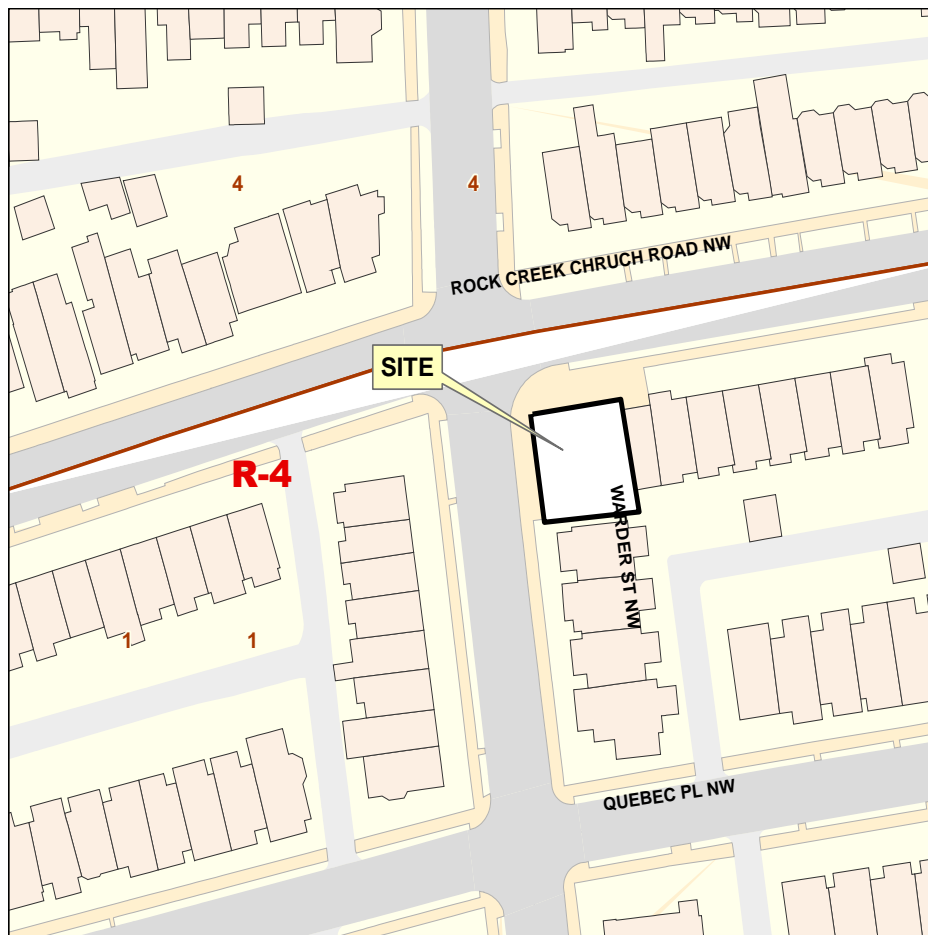
Address/Location:	644-646 Rock Creek Church Road, N.W.
Legal Description:	Square 3034; Lot 809
Ward:	1
Lot Characteristics:	Level rectangular lot with no alley access.
Existing Development:	One-story commercial building with a grocery store occupying two retail spaces. Retail entrance faces the intersection of Warder Street and Rock Creek Church Road
Zoning:	R-4
Historic Designation:	None
Adjacent Properties:	North, East & West: Row houses East: One-story commercial building converted to residence use, followed by row houses
Neighborhood Character:	Primarily single-family residential. Commercial uses are located two blocks to the west on Georgia Avenue

III. APPLICATION IN BRIEF

Meron Shewangezaw, the applicant, has requested zoning relief to permit a “prepared food shop” as an accessory use to an existing nonconforming grocery store in a residentially zoned building at 644-646 Rock Creek Road, N.W. The prepared food shop would serve hot beverages, danishes and donuts for breakfast, and Panini sandwiches, cold, grilled or toasted, for lunch. Seating would initially not be provided, but two to three tables would probably be added in the future outside the building adjacent to the public sidewalk and within the subject property.



IV. AREA AND SITE DESCRIPTION



Zoning and Vicinity Map

The subject property is located in the southeast corner of the intersection of Warder Street and Rock Creek Church Road, N.W. It is improved with a one-story retail building constructed in 1911, prior to the adoption of the Zoning Regulations. It is a corner store with direct pedestrian access to the sidewalk facing the intersection. The site has no alley access and refuse dumpsters are stored on the subject property on the west side of the building, between the building and the Warder Street sidewalk. No off-street parking or loading is provided.

V. HISTORY

- 1911: Subject building constructed as one-story retail building.
- 1956: Grocery store established on subject property.
- May 12, 1958: Current Zoning Regulations adopted.
- April 7, 2004: Applicant purchased property.
- October 22, 2009: Prepared food shop use denied by Zoning Administrator.

December 29, 2009: Application for use variance filed to permit a prepared food shop.

VI. ZONING REQUIREMENTS and REQUESTED RELIEF

The subject property is located within the R-4 district, as are all surrounding properties. The R-4 district is a residential zone that permits single-family detached and semi-detached housing, row houses and flats. Commercial uses are not permitted.

Relief Requested

The applicant requests a use variance from § 330.5 to allow the establishment of a prepared food shop as an accessory use within an existing nonconforming grocery store. Prepared food shops are not permitted within the R-4.

VII. OFFICE OF PLANNING ANALYSIS

The subject application is similar to BZA 17906, which was dismissed by the Board on April 14, 2009. That case was referred to the Board by the Zoning Administrator pursuant to § 2003, which provides for the changing of nonconforming uses within structures. In that case the BZA determined that the addition of prepared foods, such as coffee, tea, hot dogs and delicatessen sandwiches, was an accessory use to the existing grocery store, and not the addition of a second principal use. The definition of a prepared food shop indicates that a prepared food shop is a principal use. The Board also noted that the sale of such items is a customarily accessory use to grocery stores, including such vendors as Harris Teeter and 7-Eleven, and that a separate certificate of occupancy is not required for the establishment of accessory uses. As the Board concluded that no new certificate of occupancy would be required, it also concluded that no zoning relief would be required.

The Office of Planning views the subject application as similar to BZA 17906. Although the subject application was referred by the Zoning Administrator as a use variance to permit the sale of prepared foods, OP notes that the requests are similar. In both case cases the applicant requested permission to add the sale of prepared foods to an existing nonconforming grocery store within the R-4 district.

A review of the subject application against the provisions of § 2003 would find the application in conformance with the criteria contained within that section. The applicant does not propose a change of use, but is proposing to continue the existing grocery store use and add the sale of freshly made coffee, donuts and sandwiches as an accessory use. Grocery stores are first permitted as a matter-of-right in the C-1 district, as are prepared food shops. The addition of prepared food would not require any physical alterations to the interior or exterior of the structure that would cause an increase in the square footage of the space. The existing and proposed uses would not create any vibrations or odor and the design and siting of the building would not change.

Should the Board determine that a use variance is required, OP offers the following analysis.

Variance Criteria

The requested variance relief must satisfy the following criteria for area variances:

1. Is the property unique due to:
 - a. Exceptional narrowness, shallowness, or shape at the time of original zoning regulation adoption,
 - b. Exceptional topographical conditions or
 - c. Other extraordinary or exceptional situation?

The subject property was developed as corner store with a one-story retail building. The entrance to the building faces the intersection of Warder Street and Rock Creek Church Road, each of which is classified as a collector roadway. The building has no green space, as the frontages along both of the streets are concrete paved to facilitate customer access to the building, making it particularly suited for the existing grocery store use. The site has been used as a grocery for the last 54 years. That use is proposed to continue as a nonconforming use by the applicant. However, no changes to that use are permitted due to its nonconforming status without Board approval.

Since the grocery use became nonconforming in 1958, retailing has changed and evolved, especially as it relates to grocery stores, which now offer more than just products to be purchased for use at home, but also limited prepared food items. This change could not have been anticipated over half a century ago when the use became nonconforming, and results in an extraordinary or exceptional situation for the applicant to remain as a competitive grocery store.

2. Does the uniqueness, in combination with the zoning regulations, result in peculiar and exceptional practical difficulties to the owner?

The proposed addition of prepared foods, which would consist of hot beverages, danishes, donuts and sandwiches, is an accessory use that has become standard fare to many grocery stores. The sale of hot beverages and light fare is viewed as a part of the business of the sale of grocery items and a convenience for patrons, and not a second commercial use. Therefore, to not permit the applicant to add the sale of these items to the existing nonconforming grocery store use would result in exceptional difficulties because it would not permit the use to evolve to current marketing standards.

3. Does granting the variance result in a substantial detriment to the public good or will it substantially impair the intent, purpose, and integrity of the zone plan?

The requested variance, if granted, should not pose a substantial detriment to the public good. Granting of this application would allow for the applicant to continue serving the public with a 21st century grocery store, providing goods and services now normally anticipated in a corner grocery store.

VIII. COMPREHENSIVE PLAN

The subject property is designated for moderate density residential use on the Comprehensive Plan Future Land Use Map, as are the surrounding properties to the north, south and west. While these designations provide a general framework for development, they may not always be practical when viewed at the scale of an individual building on a specific lot. In addition, the land use designation alone does not take into account other relevant Plan policies for this site, including protection of small businesses and essential services that serve Mid-City.

IX. COMMENTS OF OTHER DISTRICT AGENCIES

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

X. COMMUNITY COMMENTS

ANC 1A informed the Office of Planning that they took no opinion on the request.

The Park View United Neighborhood Coalition (UNC) submitted a letter to the file dated January 7, 2010 in support of this application.

XI. CONCLUSION AND RECOMMENDATION

The Office of Planning recommends **approval** of the requested use variance to allow the addition of a prepared food shop as an accessory use to the existing nonconforming grocery store. The proposed request should not substantially detriment the public good or the zone plan and is based on the difficulties arising out a set of exceptional circumstances affecting this property.

JS/sjm ^{AICP}
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