



## MEMORANDUM

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

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

**DATE:** June 1, 2010

**SUBJECT:** BZA Case No.18066, 1201 S Street NW

### I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) cannot make a recommendation about the proposed change of use pending receipt of the following information:

- a revised floor plan consistent with the 18-seat limit on matter-of-right prepared food uses in the C-1 district;
- the projected number of employees and proposed hours of weekday and weekend operations;
- clarification of the number of dwelling units onsite and where residents park their vehicles; and
- provisions for the storage and pick-up of trash, employee parking and deliveries.

### II. AREA AND SITE DESCRIPTION

<b>Address:</b>	1201 S. Street NW
<b>Legal Description:</b>	Square 0275, Lot 0025
<b>Ward:</b>	1
<b>Lot Characteristics:</b>	Rectangular corner lot that is 1,856 square feet in size with frontages along S Street to the south and 12 <sup>th</sup> Street NW to the east. The application indicates that a retail grocery store occupies the ground floor and cellar area of the existing two-story building and there is a one-family dwelling on the second floor (refer to Figure 1). However, OP observed five gas meters and five electric meters on the building.
<b>Adjacent Properties:</b>	Neighboring properties to the north and west are developed with two-story row dwellings with access to a rear alley approximately 13-feet wide that extends west from 12 <sup>th</sup> Street NW. To the south, immediately across S Street, is Garrison Public Elementary School.
<b>Zoning:</b>	R-4 – Retail food and grocery store uses are not an allowable in this zone.
<b>Neighborhood Character:</b>	Moderate-density residential.
<b>Historic Preservation:</b>	Greater U Street Historic District

### III. APPLICATION IN BRIEF:

**Applicant:** Charles Emore

**Proposal:** The applicant proposed to change the non-conforming grocery use on the ground floor and in the cellar to a coffee shop and delicatessen (prepared food shop) use with a maximum 18 seats. A were mentioned in the application. Interior construction and some cosmetic changes to the building exterior are contemplated. Submitted plans also show exterior seating east of the building in public space (refer to Figure 1).

Based on Certificates of Occupancy for the grocery store issued in 1950 and in 2009 (the later necessitated by a change in ownership), the existing retail use is legally non-conforming because it predates the regulations. Accordingly, the applicant submitted an application for special exception approval of the desired change-in-use in accordance with § 2003.1 of the regulations.

### IV. ZONING ANALYSIS

#### Consistency with § 2003.1

*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.*

Both the food / grocery store (§ 701.4 [l]) and a “prepared food shop, with no more than 18 seats and no drive through” (§ 701.4 [v]), are uses first allowed as a matter of right in C-1. However, the submitted building and site plans show 33 seats with additional exterior seating in public space. This additional seating would be subject to the approval of the District Department of Transportation (DDOT) Public Space Committee.

The amount of interior seating exceeds the above-referenced seating limitation on prepared food establishments allowed as a matter-of-right in C-1, and the amount requested under this application. Therefore, either the floor plan should revised or the application amended to a request for a use variance.

*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.*

One-family dwellings, a school and the 12<sup>th</sup> YMCA are in the vicinity. All the surrounding properties are developed. This proposal would not involve significant changes to the existing building. The most significant physical change would be the introduction of outdoor seating in the public space. The hours of operation of the proposed use, provisions for employee and customer parking, and trash storage and collection all have the potential to adversely impact the neighborhood, but the application lacks information about how these issues would be addressed.

*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 most significant potential impacts to the community are related to the hours of operation, employee and customer parking, and trash storage and collection. Submitted plans lack information about how these issues would be addressed. In fact, no trash storage area or dumpster location for the proposed use is indicated on the submitted plans.

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 either a dwelling, flat, apartment house, or a neighborhood facility.*

The application indicates that testimony will be presented at the public hearing explaining that proposed use is a neighborhood facility and "... of the necessity of coffee house ... to (serve) the immediate neighborhood."

The Board previously determined characteristics of a neighborhood facility include:

- that it is patronized by people who live and work close-by;
- it not used by any one group and is utilized by all community members;
- is not exclusive; and
- it is accessible by walking.<sup>1</sup>

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.

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

Both the existing and proposed uses are first allowed as a matter of right in C-1, provided the proposed use is limited to 18-seats maximum.

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 was requested to provide the additional information highlighted above. OP has not received this information which is needed to complete its analysis, and for the Board to have sufficient information upon which to base its final decision.

OP is unable to make a recommendation pending receipt of the requested information.

## **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. Based on its initial review, SHPO determined that its design issues could be addressed during the permitting stage.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

DDOT will provide any agency comments under a separate cover.

## **VII. COMMUNITY COMMENTS**

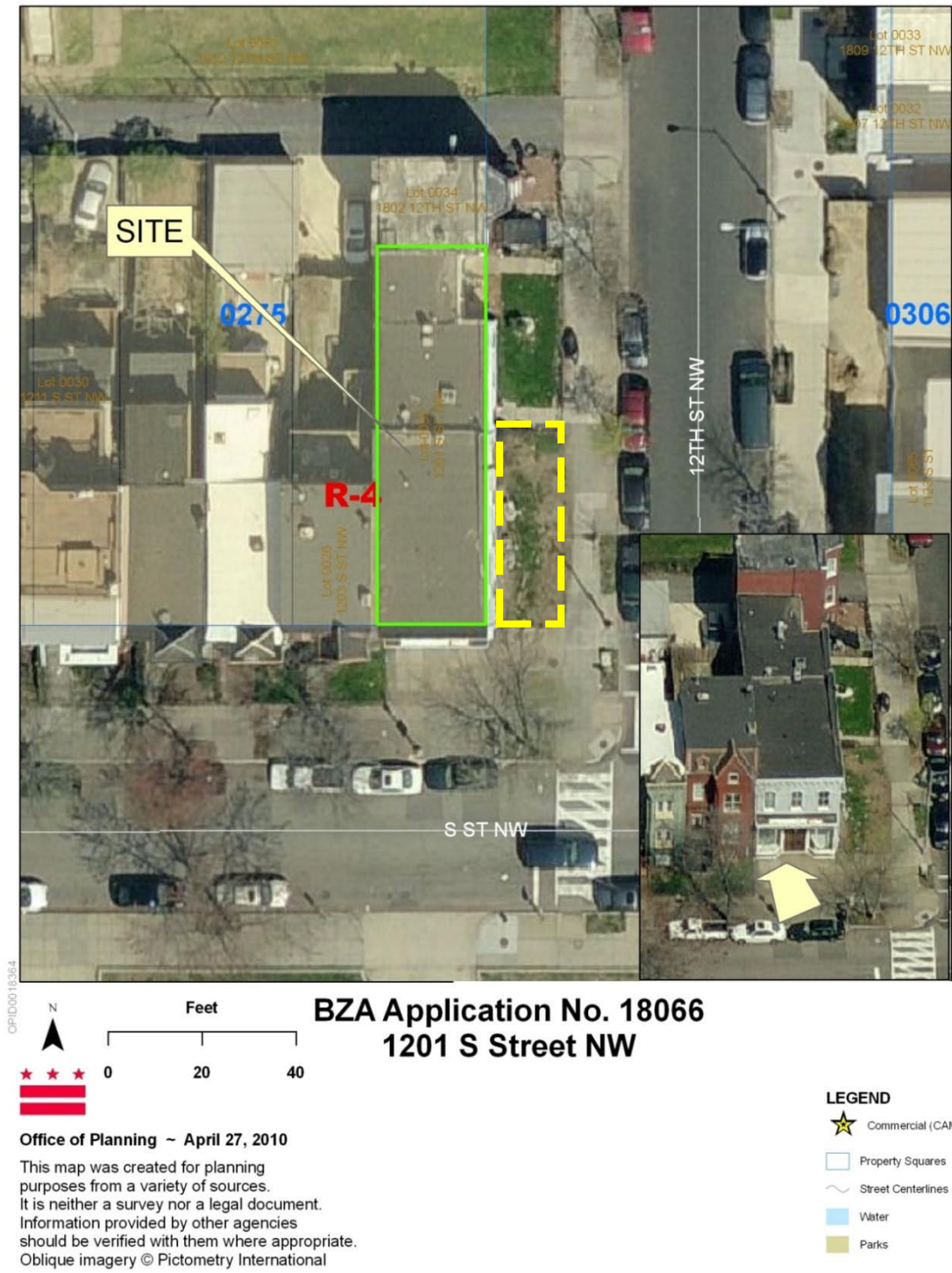
This application was forwarded to Advisory Neighborhood Commission (ANC) 1B for review and comment.

To date it has not been considered by the ANC.

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<sup>1</sup> generalized from Application No. 16412 – 2128 Florida Avenue NW, Findings of Fact (No. 3)

Figure 1



### VIII. CONCLUSION AND RECOMMENDATION

OP cannot make a recommendation at this time pending receipt of the additional information referenced above.

JS/afj

Arthur Jackson, Project manager