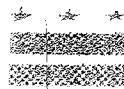


GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Exhibit II



Office of the Director

MEMORANDUM

DATE: January 28, 2004

TO: District of Columbia Board of Zoning Adjustment

THROUGH: *HSF*
Andrew Altman, Director OP
Ellen McCarthy, Deputy Director OP

FROM: David J. McGettigan, AICP *DJM*

SUBJECT: Board of Zoning Adjustment Case No. 17071
Roots and Dao
1312 13th Street, N.W.
Square 243 Lot 12

Summary

The applicants seek a special exception from the provisions of 2003.1 to allow a change from one nonconforming use (laundry) to another nonconforming use, office. The subject property lies in the R-5-C zone and the Greater 14th Street Historic District.

Recommendation:

The Office of Planning recommends denial of the special exception based on the following findings:

- ❖ The change from one nonconforming use to another assumes that there is existing nonconforming use of the site. Title 11 DCMR §2005.1 specifically addresses this issue. "Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located." No evidence has been provided to document that a

BZA
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Exhibit No. 26

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17581
Board of Zoning Adjustment
District of Columbia
CASE NO. 17581
EXHIBIT NO. 20
EXHIBIT NO. 20

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non-conforming use has actually been in operation on the property within the last three years

- ❖ Title 11 DCMR §2003.5 states “in Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.” The proposed office use is not a neighborhood facility and commercially zoned property is within one block of the subject property.
- ❖ The request would be more appropriately considered as a use variance. The information provided has not indicated that the tests for a use variance can be met.
- ❖ Given the above the applicant’s proposal does not meet the intent and purposes of the Zoning Regulations.

Background

The applicants, Edward B. Rooths and Nancy N. Dao, own 1312 13th Street, NW (Square 243 Lot 12). The property lies in the R-5-C Zoning District and contains approximately 2,147 square feet of land. The lot is improved with a three- and one-half story brick and stucco row dwelling. The second and third floors are occupied as 4 residential dwelling units. The first floor and basement were issued a certificate of occupancy for “laundry service (laundry & office space)” on June 13, 2003; however, there is no evidence of its operation or a business license.

The neighborhood is characterized by residential rowhouses that have been converted to multi-family dwellings and some multi-family dwellings. The nearest commercial district is a block west on 14th Street. The lot, at the middle of the block between N Street, NW and Logan Circle does not abut a public alley but is surrounded on its west, north and south by adjoining multi-family residential buildings. No parking or loading spaces are provided on the site.

Project Description

The proposed use is for an accounting, consulting and tax service business, which has been in operation, according to the applicant’s statement, within the last three years. The applicants “were previously unaware that the current office use is not a clearly-permitted nonconforming use, and they now seek to have the basement and first-floor use conclusively approved as a permitted nonconforming use.” According to the applicant the application is strictly related to the use of the property and does not “involve any proposed buildings to be erected or altered, any changes in landscaping, or any other changes to the external appearance of the property.”

Zoning

The proposed commercial use is not permitted in the R-5-C Zone District and the applicant is seeking relief under the non-conforming use provisions of Chapter 20. Specifically, §2003:

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2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions respectively, 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.

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.

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.

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.

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

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) 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.

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.

In addition, §2005.1 states that discontinuance of a nonconforming use for more than three years shall be construed as evidence of no intention to resume active operation and any subsequent use must conform to the regulations.

Analysis

The provisions of §2005.1 make it incumbent upon the applicant to show that the commercial use of the property has not been discontinued for more than three years. Nothing in the applicant's application establishes that this is the case. The applicant must either prove that the use has not been discontinued or request a use variance from this provision. Several neighbors have notified the Office of Planning of their intention to testify that a laundry has not operated on the site for well over 30 years. Below is a list of the Certificates of Occupancy on record for the subject property.

Number	Date Issued	Use	Floors
114676	08-20-1947	Barber-valet shop	Basement
116264	11-03-1947	Cleaning and dyeing agency	Basement

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116318	11-05-1947	Barber shop	Basement
A 909	11-01-1949	Pressing establishment – not more than five persons employed	Basement
B 73932	10-05-1970	Apartment house (4 apts.)	All & Basement
B101582	06-03-1977	Apartment house (4 units)	All
B111487	03-27-1979	2 family flat, 1 unit basement, 1 unit 1 st floor	Basement and 1st
B146419	08-20-1986	Apartment house (4 units)	2 nd & 3rd
1890948	06-23-1989	Industrial Laundry Service <2500 SF (also shoe repair)	Basement
	04-14-2000	Apartment (4 units)	2 nd & 3rd
CO 25923	12-19-2001	Laundry Service	Basement & 1st
CO 36543	06-28-2002	Laundry Service (laundry & consulting)	Basement & 1st
CO 37193	07-12-2002	Laundry Service (laundry & consulting)	Basement & 1st
CO 56426	06-13-2003	Laundry Service (laundry & office space)	Basement & 1st

From this record it appears that the non-conforming use of the basement was discontinued in 1970 for a residential use. As evidenced by the 1977 and 1979 certificates of occupancy, residential use of the basement was continued until 1989 when a certificate of occupancy was issued for the basement as a laundry. There are no records of a special exception or variance for the property, so it is unclear why the 1989 certificate was issued.

Even assuming the 1989 issuance of a certificate of occupancy for a laundry was not an error, in a letter to Commissioner Kramer of ANC 2F, the Business and Professional License Administration states that there is no record of a business license for the owners and businesses listed in the certificate of occupancies issued in the past three years. (see Attachment 5) Therefore, the applicant has not met the provisions of §2005.1.

Special Exception Provisions

Approval of a special exception under §2003.1 is subject to the conditions outlined in 2003.2 through 2003.7.

§2003.2 Adverse Effects

The applicant has provided little information on the number of employees, hours of operation, number of customers, projected vehicle trips, deliveries, trash collection, and signage aspects of the proposed use. The applicant does state that the business will generally consult with one client at a time, so in the applicant's opinion no increased traffic or parking concerns exist beyond what would normally occur when a guest visits any other resident of the neighborhood. Without some additional information the adverse effects, if any, cannot be determined, but a residential use is generally less intense than a

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commercial use.

§2003.3 Deleterious External Effects

External effects such as noise, illumination, vibration, odor, and design and siting effects will not be created by the proposed use. As discussed above traffic, parking and loading impacts cannot be determined. No parking or loading is provided on the property and no evidence is presented to explain how any of the post-1958 certificates of occupancy were issued without adequate parking.

§2003.5 Residential Use Restrictions

In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility. OP does not agree that a consulting and tax service qualifies as a neighborhood-serving use, therefore, this would more properly be a use variance and not special exception as listed in the application. Additionally, adequate commercially zoned property is located in close proximity to the property, so necessary neighborhood facilities that would require commercial zoning could be located in the neighborhood.

In addition, in accordance with §3104, the request must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and not tend to affect adversely the use of neighboring properties. As discussed above, it cannot be determined from the evidence presented in the application if the proposed use will not tend to affect adversely the use of neighboring properties. However, the intent of the Zoning Regulations, particularly Chapter 20, is to phase out or reduce nonconforming uses and structures. In requiring relief from compliance with §2003.5 and §2005.1, the application is not in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

ANC Recommendation

ANC 2F voted to oppose the application.

Recommendation

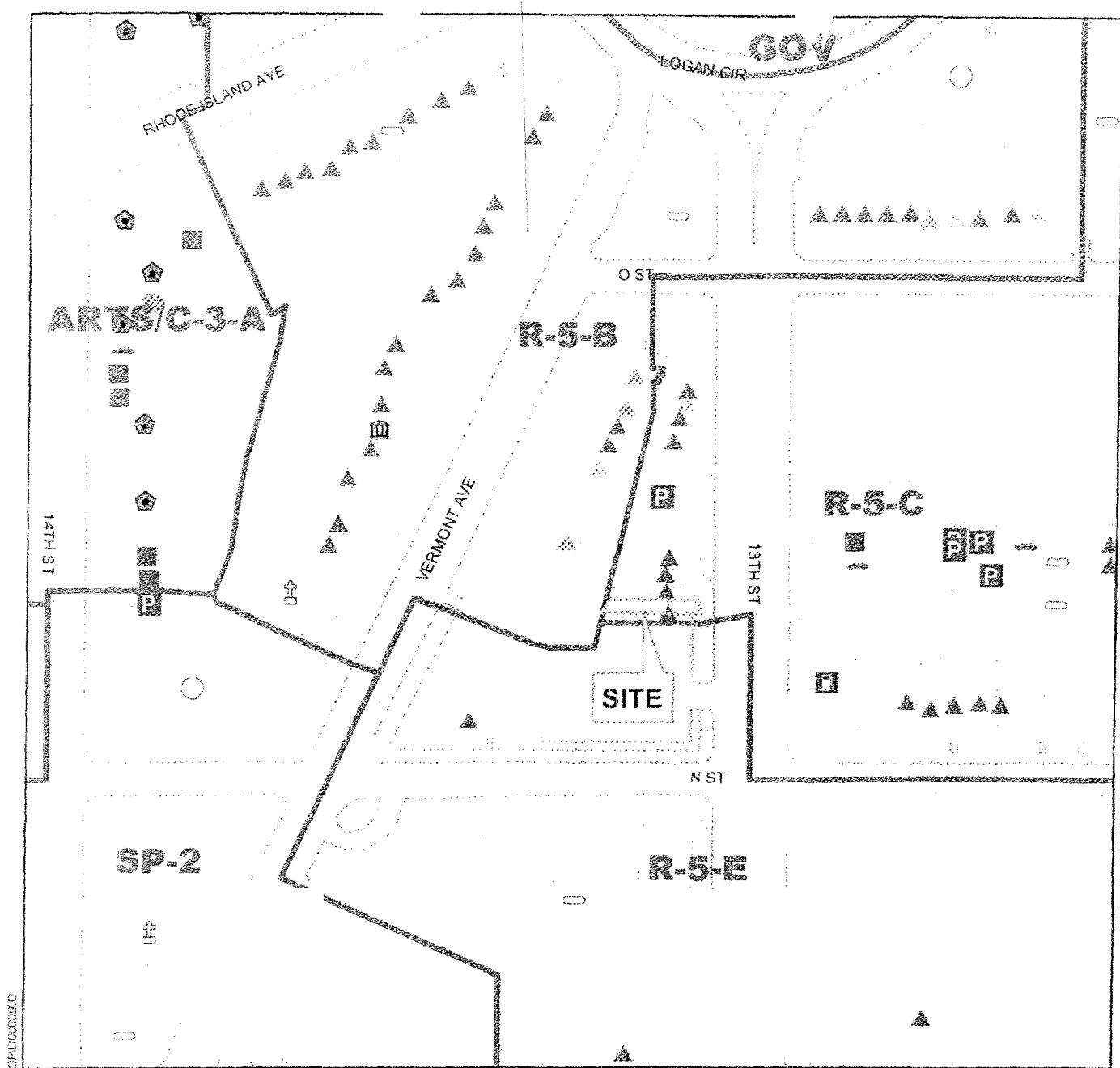
The applicant has not met the burden of proof for a special exception as outlined above and the applicant has not shown that the laundry use was not discontinued as required by §2005.1. The Office of Planning recommends the case be denied.

Attachments:

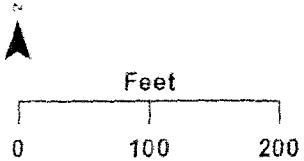
1. Zoning and Use Map
2. Comp Plan Map
3. Aerial Photo
4. Certificates of Occupancy

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5. Business and Professional License Administration letter



Zoning and Land Use BZA Application #17071



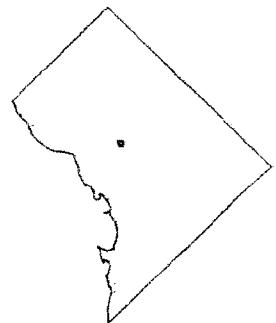
Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning - October 2, 2003

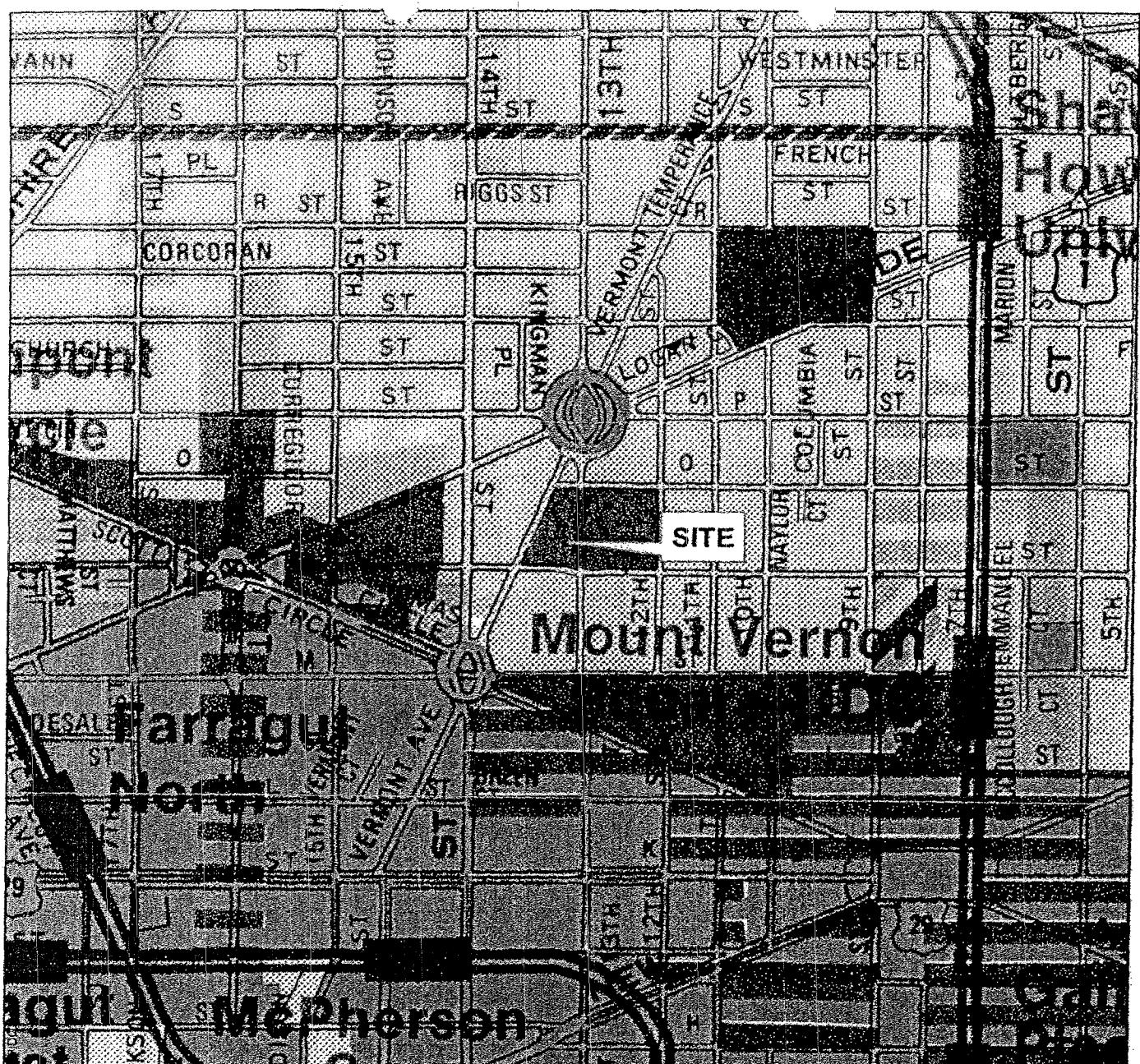
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Note: Land Use Info based on OTR records.

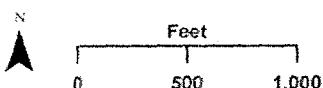
Land Use Legend	
▲ SF Non-Conforming Row house	■ Parking Garage/Lot
● Single-family Semi-detached	● Warehouse
▲ Accessory Garage	▲ Religious
▲ Flat	▲ Educational
▲ Condominium	■ Museum, Library, Gallery
▲ Multi-family Dwelling	○ Special Purpose
■ Retail	□ Vacant
■ Office	■ Service Station
■ Vehicle Sales	



Attachment 1



Comprehensive Plan Map BZA Application #17071



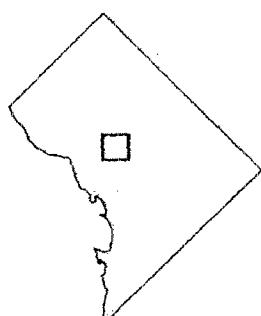
★ ★ ★ Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ December 11, 2003

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Generalized Land Use Key

Residential Low Density	Commercial Low Density	Federal
Residential	Commercial	Institutional
Moderate Density	Moderate Density	Local Public
Residential Medium Density	Commercial Medium Density	Parks, Recreation and Open Space
Residential High Density	Med.-high Density	Production and
Water	Commercial High Density	Technical Employment



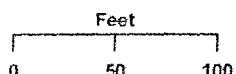
Attachment 2



N



**Aerial Photo
BZA Application #17071**



★ ★ ★
Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ October 15, 2003

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Attachment 3