

**MEMORANDUM**

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TO: District of Columbia Board of Zoning Adjustment

FROM: Karen Thomas, Case Manager
 Joel Lawson, Associate Director Development Review

DATE: November 18, 2011

SUBJECT: BZA Case No.18274- **SUPPLEMENTAL REPORT**

BOARD OF ZONING ADJUSTMENT
 District of Columbia

CASE NO. 18274EXHIBIT NO. 31**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of special exception relief pursuant to 11 DCMR 3104, Subsection 2003.1, to permit a **prepared food shop** on the ground floor of the apartment building at 1221 Massachusetts Avenue N.W.

II. BACKGROUND

At the scheduled Board hearing on November 15, 2011, to consider the establishment of a delicatessen on the ground floor of the subject property subject to review as a use variance, the Board:

- Determined that the term delicatessen is no longer applied within the current Zoning Regulations and the proposed use be correctly addressed as a **prepared food shop**; and
- Questioned whether the relief should be appropriately considered under Section 3104 for special exception relief pursuant to Subsection 2003.

The Board discussed that the proposed prepared food shop would be first permitted in the C-1 District, where the prior use of the 400-square-foot space (by the adjoining optometrist office) was also permitted.

At the Board's request, OP subsequently met with the Zoning Administrator who concurred with the Board that the proposed use should be reviewed through a special exception relief request pursuant to Section 3104, subsection 2003.1. Therefore, this supplemental report is in response to the Board's request that the relief be appropriately addressed according to the Zoning Administrator's determination.

III. ZONING REQUIREMENTS and REQUESTED RELIEF

The proposal includes the request to establish a **prepared food shop** within an existing 400-square foot vacant space in a portion of the first floor of a residential apartment building in the DD/R-5-E District. The anticipated hours of operation would be between 6:30 am to 6:30 pm.

SPECIAL EXCEPTION

A nonconforming use change (in any district) requires special exception relief pursuant to subsection 2003.

§ 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, 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.

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The proposed prepared food shop is first permitted in the C-1 District, where the prior use of the space, as a portion of an optometrist office, is also 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 property has an established history of office and commercial use on its first floor. These uses were permitted through special exception relief when the property was zoned SP-2. Thus, the mixed-use nature of the building predates the current DD/R-5-E District. Prior certificates of occupancy indicate that a prepared food shop (formerly delicatessen) had previously existed on the property. The surrounding properties are also mixed-uses among residential properties, so the character of the immediate neighborhood would not be adversely affected.

The surrounding area of the apartment building is within the commercial C-2-C District and the Downtown Development Overlay, the latter of which is intended to create a balanced mix of uses. Therefore, the proposed use which is first permitted in the more restrictive C-1 District would be compatible with the moderate density commercial uses of the surrounding C-2-C and SP-2 Districts.

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 establishment is not anticipated to be an area attraction which would draw vehicular traffic to the site. The use is intended primarily to serve the existing building tenants and others within walking distance of the building's location. Trash generation is not anticipated to be excessive since the majority of purchases would be taken away by customers. Two small tables are shown on the proposed floor plan for customers who may wish to consume their purchases on-site. There are adequate on-site trash disposals for existing businesses located at the rear of the property.

The District Department of Transportation (DDOT) determined that there would be no adverse impact to the transportation system and the property has on-site loading facilities if and when loading is necessary.

The hours of operation from 6:30 am to 6:30 pm are not expected to become a nuisance to the residents of the apartment building or the surrounding neighborhood as the hours are customary for this type of service.

No adverse impacts due to odor are anticipated due to the shop's operation on the first floor of the building, since no commercial kitchen would be installed in the space. No outdoor lighting is proposed and any external signage would be subject to the building management's review, as well as approval through the Department of Consumer and Regulatory Affairs (DCRA).

Section 3104

3104.1 The Board is authorized ... to grant special exceptions, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

The proposed prepared food shop would not be inconsistent with the intent and purpose of the Downtown Development Overlay as the overlay also supports ground floor retail use for new construction or an altered building (§1703.3). The apartment building and the establishment of office and commercial uses on its ground floor predate the establishment of the overlay district and its demonstrated history since 1964 has not shown a history of residential use within the first floor and lobby of the building. Further, no addition to the building is anticipated which would increase the permitted commercial FAR or adversely impact the potential for a residential use as anticipated by the R-5-E District. Therefore, OP does not anticipate

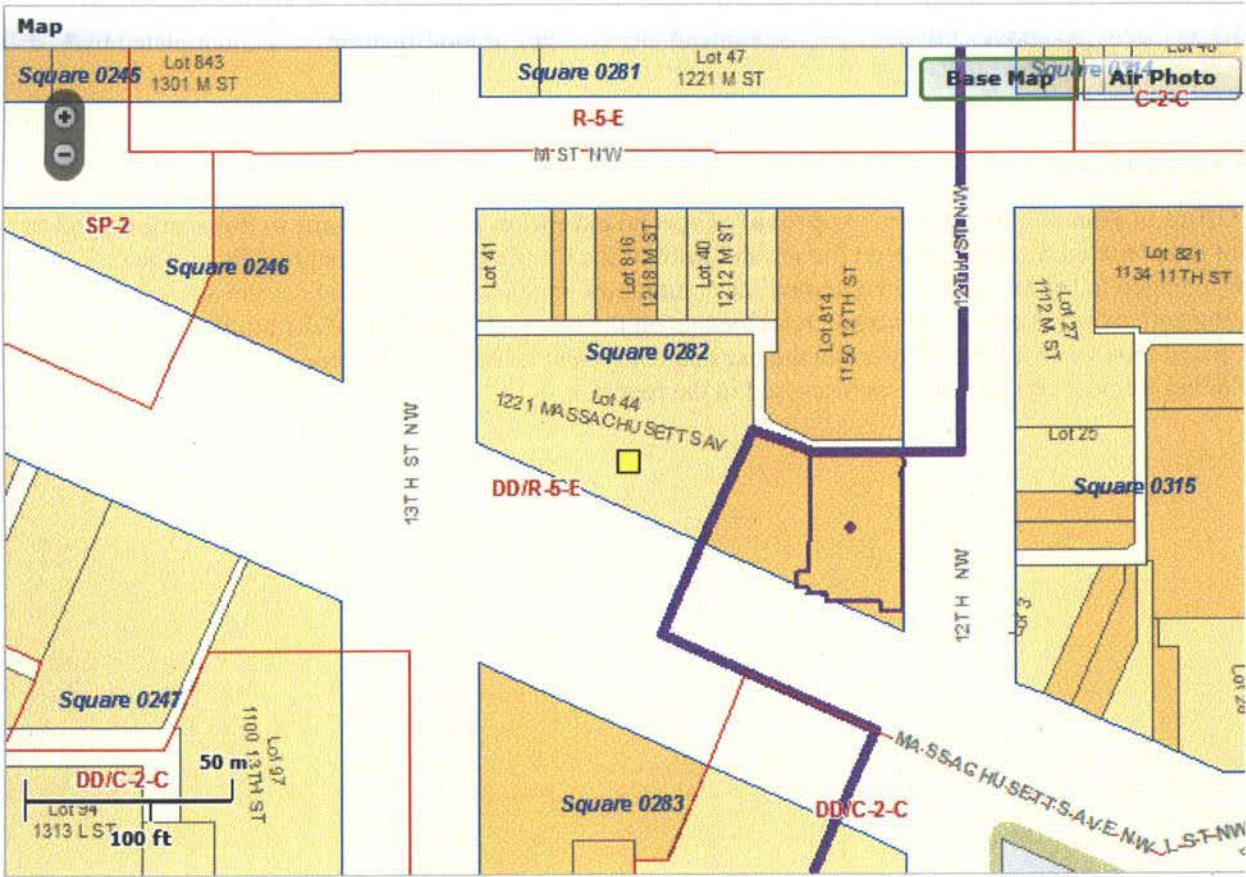
substantial harm to the Zoning Regulations due to the prepared food shop's use of the small space on the first floor.

Grant of special exception relief would be in harmony with the general purpose and intent of the Zoning Regulations as evidenced by the satisfaction of the special exception criteria of subsections 2003.2 and 2003.3 as discussed above. OP does not recommend any changes or modifications as contemplated by § 2003.7

IV. CONCLUSION

The Office of Planning recommends **approval of special exception relief pursuant to Subsection 2003** to permit the prepared food shop use on the ground floor of the Cambridge Apartment building. The proposed use is intended to primarily serve the immediate community, including the residents of the apartment building and the other office and commercial tenants on the lobby/ground floor of the building and is not anticipated to have an adverse impact on the use and enjoyment of neighboring property or harm the intent of the Zoning Regulations and Map, as discussed in the report.

ATTACHMENT



ZONING MAP – 1221 Massachusetts Ave NW