

District of Columbia Office of Planning  
**D.C. OFFICE OF ZONING**



**MEMORANDUM**

**TO:** District Board of Zoning Adjustment  
**FROM:** Paul Goldstein, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** May 15, 2012

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BOARD OF ZONING ADJUSTMENT  
 District of Columbia  
 CASE NO. 18352  
 EXHIBIT NO. 58

**SUBJECT:** BZA No. 18352 - Request for use variance relief for a commercial use in a residential zone at 1123 Pennsylvania Avenue SE

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) **recommends approval** of the requested use variance relief from § 330.5 to permit the commercial use of residentially-zoned property at 1123 Pennsylvania Avenue SE (Square 994, Lots 44 and 838). More specifically, the requested commercial use would allow for the outdoor display and sale of seasonal merchandise and storage accessory to an existing retail hardware store.

**II. AREA AND SITE DESCRIPTION**

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| Address:                            | 1123 Pennsylvania Avenue SE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Legal Description:                  | Square 994, Lots 44 and 838 (hereinafter, collectively the "Site")                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Ward/ANC:                           | 6/6B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Lot Characteristics:                | The Site includes Lots 44 and 838, which are under separate ownership. It borders Pennsylvania Avenue to the north, 11 <sup>th</sup> Street to the west, and 12 <sup>th</sup> Street to the east. A small residentially-zoned portion at the rear of both lots (hereinafter, "Rear Portion") measures 4,590 square feet in lot area. <sup>1</sup> The Rear Portion is accessible from adjacent streets by: (1) an approximately 10' wide private alley from 11 <sup>th</sup> Street which is subject to an easement ensuring access to the rear of Lots 22, 23, 24, 25, and 44; and (2) crossing the commercially-zoned area of the Site from Pennsylvania Avenue. <sup>2</sup> |
| Zoning:                             | Split-zoned CHC/C-2-A and R-4<br>CHC: Capitol Hill Commercial Overlay District<br>C-2-A: Medium density mixed-use<br>R-4: Row dwellings and flats                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Existing Development:               | The Site is improved with two story-commercial buildings, one of which (Lot 44) contains Frager's Hardware Store ("Frager's"). The Rear Portion, as well as part of the commercially-zoned area of the Site, is covered by an impervious "blacktop" surface.                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Historic District:                  | Capitol Hill Historic District                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Adjacent Properties:                | The Site abuts Lot 827 to the west along Pennsylvania Avenue, which contains a commercial building also associated with Frager's Hardware (but which is not included in this application). Approximately a dozen row dwellings border the Site to the west, south, and east.                                                                                                                                                                                                                                                                                                                                                                                                    |
| Surrounding Neighborhood Character: | The surrounding neighborhood is characterized by low scale commercial uses largely concentrated along Pennsylvania Avenue and residential uses of varying intensity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

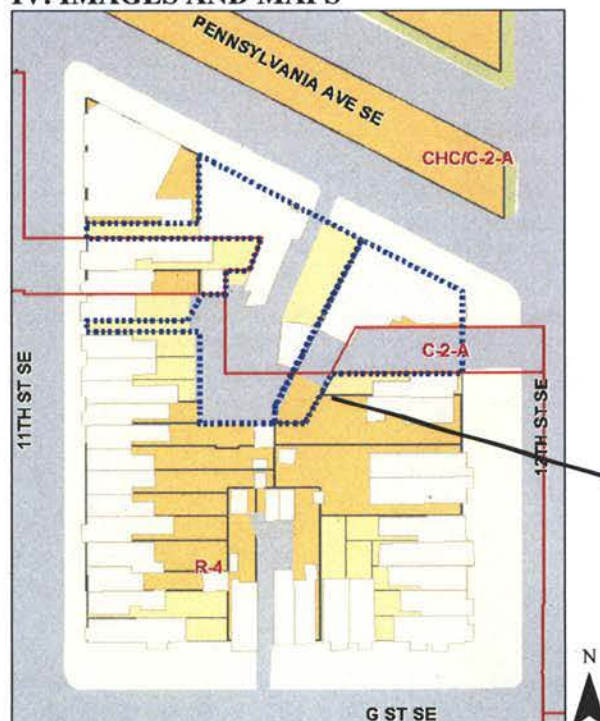
<sup>1</sup> The residential zoned portion of Lot 44 measures 3,747 square feet and Lot 838 measures 843 square feet.

<sup>2</sup> The alley is owned, in part, by CWC, Inc.

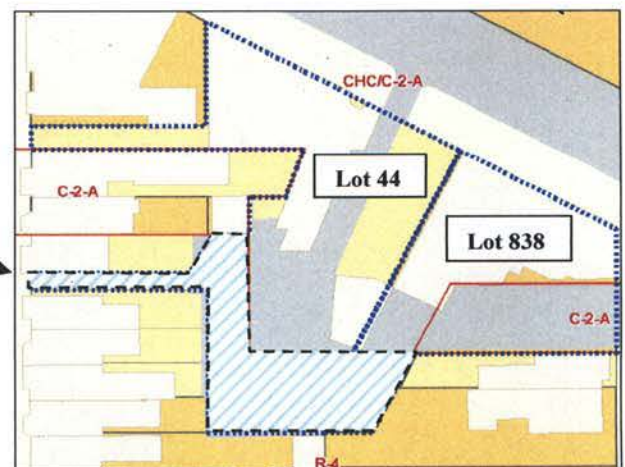
### III. PROJECT DESCRIPTION IN BRIEF

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| Applicant:     | CWC, Inc. and Mahmoud Abd-alla, Trustee                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Proposal:      | <p>The Applicant proposes that the Rear Portion (the R-4 zoned area of the Site) continue to operate as a location for outdoor display/sale of seasonal merchandise and storage accessory to Frager's.<sup>3</sup> More specifically, the use would include "seasonal merchandise, such as outdoor plants, flowers and mulch in the summer and Christmas trees, wreaths and snow shovels in the winter."<sup>4</sup> The commercial use of the Rear Portion would be associated with, or an extension of, the existing accessory outdoor use adjacent to Frager's as permitted in the commercially-zoned area of the Site.</p> <p>The Applicant also intends to install new landscaping treatments as conceptually presented in Exhibit E in the Prehearing Submission dated May 8, 2012.</p> <p>According to the application, Frager's and the associated commercial use of the Rear Portion have occurred on the Site for decades.<sup>5</sup> However, the use of the Rear Portion was discontinued following a "Notice to Discontinue Illegal Use of Premises" letter sent by DCRA on November 14, 2011.</p> |
| Relief Sought: | Use variance pursuant to § 330.5 – proposed commercial use of property zoned residential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

### IV. IMAGES AND MAPS



View of the site (outlined)



Residentially-zoned portion of site (highlighted by hatch) referenced as the "Rear Portion"

<sup>3</sup> The rear of Lot 838 would be used by Frager's for the requested accessory purposes pursuant to a lease agreement.

<sup>4</sup> See application dated January 27, 2012, page 1.

<sup>5</sup> The Applicant indicates that seeking a "grandfathered" status for the commercial use under zoning is not a feasible solution.



View of the Property (identified with an arrow) looking south across Pennsylvania Avenue; Source: Bing Maps (2010)

#### **V. ZONING RELIEF REQUESTED:**

The proposed commercial use of the residentially-zoned portion of the Site is not a permitted use in an R-4 zone. As such, the Applicant has requested use variance relief.

#### Use Variance (§ 330.5)

The use variance requirements pursuant to § 3103 to be met are as follows:

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

There are exceptional conditions impacting the Rear Portion of the Site. The split-zone designation causes the Rear Portion of the site, which is zoned R-4, to be functionally isolated from the Property's dominant commercial use fronting Pennsylvania Avenue (the portion of the Property zoned CHC/C-2-A). The Rear Portion is irregularly shaped and has a single direct access point to the street (11<sup>th</sup> Street) by way of a private 10' wide alley. The use of the alley is restricted pursuant to an easement. Aside from the private alley, the Rear Portion only is accessible by crossing commercially zoned areas of the Site. The application also indicates that retail use has operated in the Rear Portion for approximately 80 years.<sup>6</sup>

- 2. By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or an exceptional and undue hardship upon the owner of the property.**

The strict application of the Zoning Regulations would result in an undue hardship to the owner of the Property. Frager's historically has used the Rear Property for accessory storage and retail uses. According to the Applicant, the recent inability to use such space already has caused a detrimental financial impact on the business. Frager's has sustained increased operating costs as it rents storage space in Maryland to offset the loss of available space. The Applicant asserts that the burden of transporting goods between locations and related reduced on-site inventory has increased the business's financial burdens and depressed sales.

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<sup>6</sup> See Prehearing Statement, dated May 8, 2012, page 5.

The residentially-zoned portion of the Site also cannot reasonably be put to a conforming use. The majority of the Site is commercially zoned and has historically operated commercially. The Rear Portion is landlocked save for a 10' wide easement connecting to 11<sup>th</sup> Street. The residential area could not be subdivided into a conforming residential lot of record due to the limited street frontage, among other limitations. As such, strictly limiting the Rear Portion to R-4 uses would likely render the space inoperative for the historic commercial use of the Site and generally unusable.

**3. The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

Granting a variance should not cause substantial detriment to the public good. The Applicant has indicated that extensive discussions have taken place with immediate neighbors concerning the use of the Rear Portion and, more precisely, the private alley. The Applicant's Prehearing Statement provides that an agreement has been reached with immediate neighbors addressing outstanding concerns and a copy of the agreement was included as Exhibit G. OP also acknowledges that it has received an unusually high number of letters and emails in support of the application. More generally, OP is supportive of neighborhood serving businesses and the requested relief would allow for the continuation of a long-standing use.

The variance should not impair the intent, purpose and integrity of the zone plan. The Applicant would continue a historic commercial use in the Rear Portion of the Site, and the residentially zoned space otherwise could not reasonably be used as zoned.

**VI. ANC/COMMUNITY COMMENTS**

The Applicant has indicated that the Planning and Zoning Committee of ANC 6B voted unanimously to recommend that ANC 6B support the application. OP also has received more than a dozen communications expressing support for the application. Additionally, as further discussed in the Prehearing Statement, 13 homeowners or tenants proximate to the Site have expressed support for the application after negotiating an agreement with Frager's.<sup>7</sup> OP has not received any letters in opposition to the application.

**VII. OTHER AGENCIES**

DDOT submitted comments, by letter dated May 8, 2012, to the Office of Zoning expressing "no objection" to the application.

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<sup>7</sup> See Prehearing Statement, page 7 and Exhibit G.