

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Megan Rappolt, AICP, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: October 21, 2014

SUBJECT: BZA Case 18838 – Request for a use variance under § 330.4, R-4 Districts: General Provisions for a building located at 2737 Sherman Avenue, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (“OP”) recommends the Board of Zoning Adjustment (“BZA”) **approve** the requested use variance relief of § 330.4, R-4 Districts: General Provisions for restaurant uses **in the basement and ground floor only**, subject to the following conditions. OP does **not** support approval of restaurant uses within the second floor of the building. This recommendation is subject to the following conditions, which have been reviewed by the Applicant:

1. Refuse shall be stored and collected within the building. It will be collected during the hours of 10 am to 3 pm. Rodent and pest control measures shall be implemented. No trash shall be stored in public space adjacent to the lot.
2. Loading/deliveries shall take place approximately one time a month during the hours of 9 am to 5 pm.
3. The indoor hours of operation are limited to 10 am to 1 am Sunday through Wednesday; Thursday through Saturday 10 am to 2 am. Outdoor café seating hours of operation are limited to 10 am to 11 pm every day and are ultimately subject to review, approval and permitting through the District’s public space process.

II. LOCATION AND SITE DESCRIPTION

Address	2737 Sherman Avenue, N.W.
Legal Description	Square 2885, Lot 100
Ward/ANC	1/1B
Lot Characteristics	The generally rectangular corner lot is 935 sf in area with a frontage of 50 feet on Sherman Avenue, 17.59 feet on Girard Street with no alley access
Zoning	R-4 – flats, row houses and conversions
Existing Development	Two-story building which has been vacant for over 5 years. Prior use was a grocery store.
Historic District	None
Adjacent Properties	Residential row dwellings

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Surrounding Neighborhood Character	Primarily residential. A liquor store, gas station and small grocery store are located two to three blocks north of the property, along Harvard Street. Additionally, the property is in close proximity to commercial uses on Georgia Avenue as well as Howard University.
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III. APPLICATION IN BRIEF

Proposal	Convert a vacant two-story building, historically used for grocery store uses on the first floor, to a neighborhood-serving restaurant.
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IV. ZONING REQUIREMENTS

R-4 Zone	Regulation	Existing	Proposed	Relief
Height § 400	40' or 3-story max.	2-stories	2-stories	None required
Lot Width § 401	18 ft. min.	19.11 feet	19.11 feet	None required
Lot Area § 401	1,800 SF min.	935 SF	935 SF	None required ¹
Floor Area Ratio § 402	None prescribed	--	--	None required
Lot Occupancy § 403	60% max.	Near 100%	Near 100 %	None required ¹
Rear Yard § 404	20 ft. min.	0'	0'	None required ¹

¹Existing Nonconformity

V. BACKGROUND AND REQUESTED RELIEF

The Applicant seeks permission for a restaurant use, which is not permitted in residential districts. As such, use variance relief from § 330.4 R-4 Districts: General Provisions is required. For your reference, restaurant uses are first permitted as a matter of right in the C-1 Neighborhood Shopping District.

The Applicant proposes to establish a neighborhood restaurant on all floors of the existing building. According to building permit records, the ground floor of the building likely was designed for commercial use when the building was originally constructed in 1915. Even though the original permit issued for the lot (and adjacent two lots 786 and 784 Girard Street NW) was for a “dwelling,” there is a note on the permit that indicates the largest of the three lots, which is the subject lot, “has a store.” In addition, it is clearly documented in its recent history that grocery store use took place on the first/ground floor of the building. The Applicant has provided Certificates of Occupancy dating from 1965 to 2004 for first-floor grocery store use, which last took place approximately 5 years ago. According to the Applicant, the building has been vacant since then. As such, per § 2005, discontinuance of a nonconforming use for any period more than three years shall require future uses to conform to the applicable zoning regulations.

The Applicant proposes to establish a 28-seat restaurant on the first floor (includes bar seating), and kitchen, food preparation and storage in the basement of the existing building. The second floor is

planned for initial use as restaurant office and storage space, and future use as dining expansion space with 20 seats; however a plan for the second floor was recently submitted by the Applicant, but does not show seats, a layout, etc. The kitchen ventilation (through the roof or otherwise) has not been determined at this time according to the Applicant. Access to the restaurant is planned through the existing Sherman Avenue entrance. No entrance is planned on the Girard Street elevation. The Applicant also intends to use the public space adjacent to the Sherman Avenue sidewalk for 24 outdoor café seats. A Construction/Alteration and Repair permit has been issued as the Applicant has recently undertaken replacement of the windows and roof, as well as brick and mortar repair because the building had significant leaking. According to the Applicant, the interior work thus far includes general clean-up and cosmetic repair of the drywall.

Restaurant use is a different type of retail use than grocery store use in terms of intensity, frequency of patronage, peak hours of operation, duration of time spent in the establishment, trash creation, etc. As the site is located within an R-4 zone, the Applicant proposes to limit the indoor hours of operation to 10 am to 1 am Sunday through Wednesday; Thursday through Saturday 10 am to 2 am; and the outdoor café hours from 10 am to 11 pm every day. The Applicant worked with the ANC on the proposed hours of operation and the ANC's ABC committee and full ANC voted in favor of the Applicant's request. In addition, the Applicant agreed to limit small truck deliveries to one time per month, taking place between the hours of 9:00 am to 5:00 pm, Monday through Friday. Due to the lack of alley access, café seating and adjacency to public space, the Applicant agrees to store and collect trash within the building. Additionally, the Applicant agrees to implement rodent and pest control measures.

The Applicant will be required to go through the public space review and permitting process in order to potentially utilize the sizable public space adjacent to the Sherman Avenue sidewalk for outdoor café seating, or in any other manner.

VI. OFFICE OF PLANNING ANALYSIS: Variance Relief from § 330.4, R-4 General Provisions

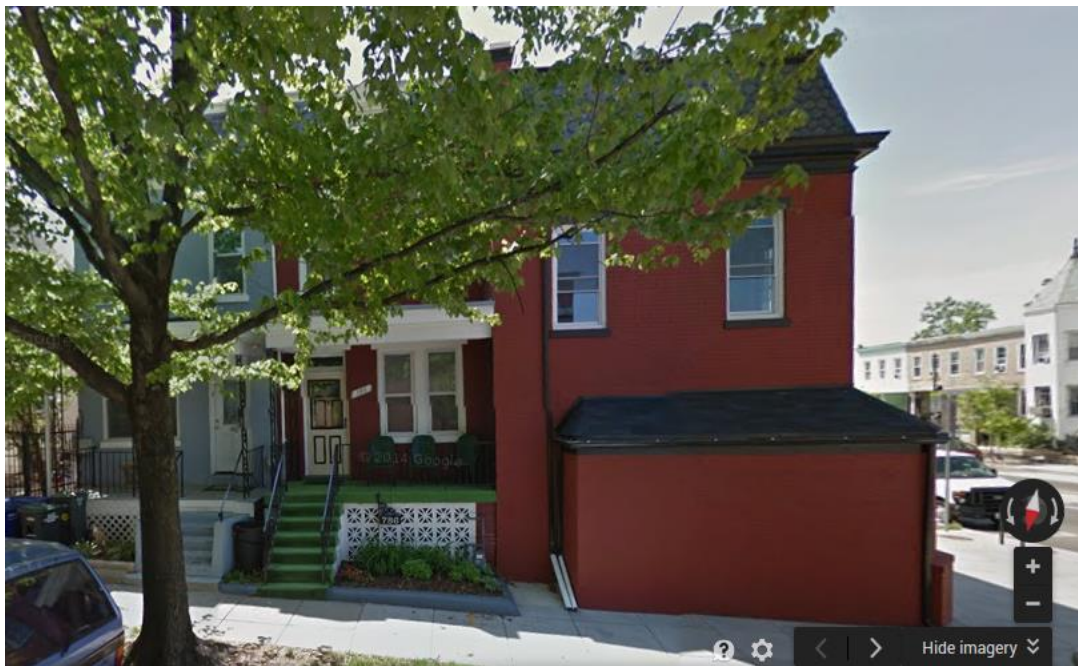
The Applicant requests variance relief from the residential use zoning regulations of § 330.4, R-4 Districts: General Provisions. Pursuant to DCMR 11§3103, variances from the zoning regulations can be authorized by the Board of Zoning Adjustment, so long as a uniqueness or an exceptional situation exists with an undue hardship, and detriment to the public good or zoning regulations do not result. As such the Applicant must show that the application meet the three-part test described in §3101:

Does the Property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions, which results in an undue hardship on the property owner?

The Property, particularly the ground floor, exhibits specific uniqueness with respect to building form and site design characteristics, which results in an undue hardship to the owner. It does not share the similar row house form of other residential buildings immediately surrounding it, even though the two adjacent row homes on Girard Street were built at the same time, under the same permit, by the same architect and builder. There is no front porch, steps, raised yard, barrier nor landscaping buffer between the building entry and the public sidewalk. In this way, it is more physically and visually accessible than residential structures. Other nearby ground floor

commercial properties located on corners, like the Fairmont Liquor Store (2699 Sherman Avenue), Foote's Plumbing and Heating (2800 Sherman Avenue) and the City Corner Store (2603 Sherman Avenue) to the south, also have direct access onto the public sidewalk. These ground-floor commercial buildings appear slightly taller (ranges from approximately a half to a full-story) and/or have more prominent roofs than surrounding residential structures. In addition, the main entrance of the building is located on the broad, eastern façade, which is set back from the fenced and slightly elevated front yards of its neighbors. An entry on this side of a building is not typical compared to the surrounding row house pattern. It also has large, store window openings and a sidewalk vault access to the basement which is unique as compared to other residential structures in the surrounding area. There is no alley access or a substantial/useable rear yard, which other row homes in the area have.

The ground floor of the Property also exhibits an exceptional situation or uniqueness in that it has been utilized as a commercial use since the 1960s. Further, based on building permit records, the ground floor was originally built for a ground floor commercial purpose (a store). According to the Applicant, the second floor of the structure does not appear to have been used as a residence, as the existing interior layout does not include interior dividing walls, showers, a kitchen etc.; however no records indicate that it was used in a manner other than a residential. Store front windows on the ground floor would need to be redesigned or modified so the façade has the visual appearance of a residential structure. These exterior and ground floor changes could be costly and difficult.



Existing north elevation (Girard Street).



Existing west elevation (Sherman Avenue).

The Applicant states it would be “prohibitively expensive” to convert the ground floor to residential use; however at the time of the writing of this report, no additional information or study was provided to elaborate on how and why the conversion is costly, except for stating interior walls, kitchen, bathrooms etc. are needed. In addition, it is plausible (but not substantiated) that the entire area of the structure may not be able to be utilized in a traditional residential layout, due to the building’s form and siting, as described above.

Can relief be granted without substantial detriment of the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

Public Good

Restaurant use in the basement and first floor only of this vacant building in an R-4 district will likely not result in a substantial detriment to the public good, due to the small size of the restaurant, and so long as occupancy limits are maintained, appropriate hours of operation occur and other operational conditions are met. The hours of operation approved by the ANC’s ABC committee and ANC for both the interior and public sidewalk café are from 10 am to 11 pm all week, and likely will not substantially impose on the adjacent residents and general residential character of the immediate area.

Additionally, it appears that neighborhood-serving retail use of the first floor of the building has not been known to cause detriment to the public good in the past, as COs were repeatedly issued for grocery store use over a known period of 40 years. However, ground floor restaurant uses can be a more intense use than grocery stores, or even prepared food shops, coffee shops, and carry-outs. Restaurants differ primarily due to the fact that food and drinks are prepared and consumed on the premise, as well as liquor licensing distinctions. Patrons will likely be present on the premise for a longer duration of time than they would be in a grocery store, or carry out; but perhaps only slightly longer than a coffee shop with seating (considered a prepared food shop). Ultimately, due to the small size of the first floor (approximately 600 sf of dining and bar area, not including restrooms), proposed occupancy limits, and operational conditions agreed to by the Applicant, a neighborhood-

serving restaurant could be considered an acceptable use of a vacant ground floor retail space at this particular location. As mentioned, ANC 1B supports restaurant uses on the property. Letters of support from the directly adjacent property owners to the east and south have been entered into the record, as well as signatures of support from nearby residents.

Finally, the Applicant believes a restaurant will be a good fit for the immediate neighborhood, as do the ANC and supporters from the immediate neighborhood. The restaurant will provide a neighborhood-serving amenity for residents as the closest restaurants (which appear to be primarily carryout and/or prepared food shops) are located on Georgia Avenue approximately .2 to .3 miles to the east, and to the northwest, a .6 mile walk to restaurants in Colombia Heights and the 11th St. /Park Road commercial area. The U-Street corridor with its amenities is .7 miles from the Property to the south. Several liquor stores and two corner grocery stores exist within several blocks of the property, so the Applicant believes a restaurant will add to the immediate neighborhood.

Zoning Map and Regulations

There will likely be no substantial harm to the Zoning Regulations in approval of the Applicant's request for basement and first floor restaurant uses only within this particular property. The approval of first floor and basement restaurant uses would allow for activation of this currently nonresidential, vacant space for neighborhood-serving commercial use, which it likely has done since it was first constructed, prior to the adoption of the Zoning Regulations.

There could be harm to the Zoning Map and Regulations in converting the second floor to restaurant uses. Restaurant uses within an entire building expands a non-conforming commercial use in an R-4 district.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

DDOT's report is under separate cover and includes their recommendations.

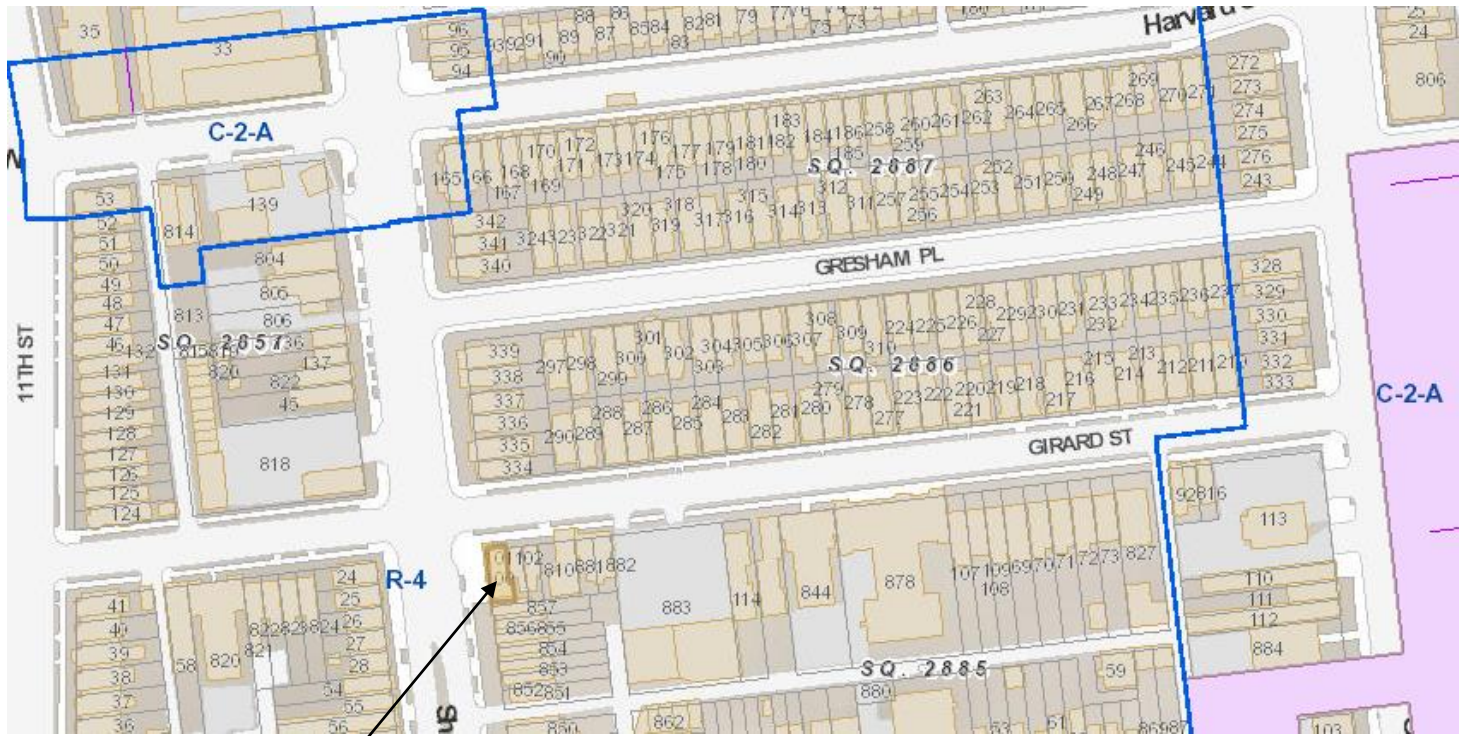
No other agency comments were received.

VIII. COMMUNITY COMMENTS

ANC 1B voted to support the application. A Settlement Agreement with the ANC was reached and it includes hours of operation, removal of tables and chairs from outdoor areas, security, maintenance, trash and signs.

At the time of the writing of this report, letters in support of the application by both adjacent neighbors were submitted to the record, as well as many signatures of support by nearby residents. In addition the Georgie Avenue Community Development Task Force submitted a letter in support. No letters of opposition have been submitted to the record at the time of the writing of this report.

Attachment: Location Map



The Property