

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF PLANNING



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MEMORANDUM

TO: Board of Zoning Adjustment
FROM:  Jennifer Steingasser, Deputy Director
DATE: July 14, 2008

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17801

EXHIBIT NO. 27

SUBJECT: BZA Application 17801, 4530-4532 Georgia Avenue, NW

SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends approval of this use variance application.

APPLICANT'S REQUEST

On behalf of current tenant "Flip-it Bakery," applicant Eugenia Lewis requested Board of Zoning Adjustment approval of a variance from § 330.5 to allow continuation of a retail use (retail bakery and delicatessen) on the subject property in a Residential (R-4) district.

After signing a lease and securing buildings permits from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), the applicant's tenant proceeded to renovate 4530 and 4532 Georgia Avenue for bakery and delicatessen uses. It was not until after applying for a Certification of Occupancy that the tenant was notified that retail uses are not permitted because the property is in an R-4 District. DCRA did issue a temporary Certificate of Occupancy No. 132881 that expired on December 26, 2007 to allow the owner the opportunity to request the required zoning relief. This zoning relief application was filed on March 13, 2008.

AREA AND SITE DESCRIPTION

Surrounding development consists of two-story, one-family dwellings to the north across Buchanan Street; a two-story residential condominium conversion on the abutting property to the south; two-story one-family dwellings to the east across Georgia Avenue; and row dwellings on the adjacent properties to the west. The subject property and all the surrounding properties are in an R-4 District (refer to Exhibits 1 and 2).

The subject property is an irregularly-shaped 4,146 square-foot (0.09 acre) lot in the southwest corner of the Buchanan Street intersection with Georgia Avenue, NW. The property is developed with a single one-story building that currently appears divided into two storefronts facing Georgia Avenue with "4526" (vacant) and "4530-4532" addresses. This building extends to three property lines and is setback 15 feet from Buchanan Street consistent with an existing building restriction line. A stem of the existing alley ends behind the 4526 Georgia Avenue lease space but there are no parking spaces onsite.

Board of Zoning Adjustment
District of Columbia

D.C. land records indicate the existing building was constructed in 1918. DCRA records indicate that separate Certificates of Occupancy have been issued for:

- a hand-laundry, and television and radio service and sales at 4530 Georgia Avenue between August 1948 and March 1979 (refer to Exhibit 3); and
- a delicatessen and a restaurant and service delicatessen at 4532 Georgia Avenue between February 1972 and October 2001 (refer to Exhibits 4 and 5).

4530 Georgia Avenue was the subject of previous BZA actions:

- Appeal No. 8648 (March 1966): to change a nonconforming hand laundry to retail sales of refrigerators and appliances was denied;
- Appeal No. 8904 (September 1966): to change the nonconforming laundry to servicing and rental of television and radios was conditionally approved; and
- Application No. 12763 (1979): a request to add sales of used televisions, radios and records to the existing nonconforming uses was granted.

Based on this information, commercial uses have occupied these building since before the existing Zoning Regulations were approved in May 1958. There is no indication in the public record that they have ever been used for residential purposes, and they appear to be constructed as commercial buildings. There is also no indication that a retail use has been operated on the subject properties recently. Per § 2005 of the Zoning Regulations, the legally non-conforming status of this lease space has lapsed because vacancy longer than 3 years is "... *prima facie* evidence of no intention to resume active operation of a nonconforming use." Therefore "Any subsequent use shall conform to the regulations of the district in which the site is located."

The referenced renovation resulted in the "Flip-it Bakery" establishment occupying both of the subject lease spaces. The applicant would like to continue the existing delicatessen and bakery uses that can only be allowed in the R-4 District with approval of a variance to § 330.5.

COMPREHENSIVE PLAN

2006 Comprehensive Plan Future Land Use Map

The subject property is designated Moderate Density residential which defines the District's row house neighborhoods as well as its low-rise garden apartment complexes.

2006 Comprehensive Plan

Planning and Development Priorities (§ 2207)

- c. *Neighborhood-serving commercial facilities need to be upgraded and expanded throughout the Planning Area. ... The community also expressed a strong preference for neighborhood-serving, rather than regional commercial uses. Such uses should be complementary to the low scale of existing development, and should enhance neighborhood identity through façade improvements, landscaping, signage, and lighting. Urban design excellence must be a very high priority.*

ZONING RELIEF REQUIRED

Compliance with §3103.2

Retail uses are not allowed in an R-4 district as a matter of right or by special exception. The zoning relief needed is a “use” variance requiring that circumstances surrounding this request are “unique” and that the usual application of the particular regulation would result in “exceptional and undue hardship.”

- Extraordinary or exception conditions: The subject property appears to have only serviced commercial uses since there are no private spaces that could be used for sleeping areas and no bathrooms equipped with a shower or bathtub. Over time, zoning relief requested of and approved by the Board of Zoning Adjustment resulted in the uses on-site gradually evolving from service to retail uses. During this transition, the property has remained the only commercial node in an otherwise overwhelmingly residential area.
- Peculiar and Extraordinary Practical Difficulties: Building permits approved for referenced renovation of 4530 and 4532 Georgia Avenue were issued based in part on the previous pattern of land uses on the property. Given its history and the current configuration of this one-story building and the adjacent vacant commercial spaces for residential uses permitted in the R-4 District would not be practical.
- Detriment to the Public Good: Based on comments included in the Advisory Neighborhood Association recommendation dated April 28, 2008 (refer to Community Comments section below); the existence of these retail uses has benefited the community. Not approving a use variance would likely result in the space remaining vacant, which would be detrimental to the neighborhood and the streetscape.

Under these circumstances, there is a *peculiar and extraordinary* practical difficulty.

COMMUNITY COMMENTS

Advisory Neighborhood Commission (ANC) 4C unanimously voted to support this variance request at its regularly scheduled meeting on May 13, 2008. The Commission noted that: 13 neighboring property owners expressed no objection; a Commission observation that the establishment is “... clean, well lighted and tastefully decorated;” and that “... customers in the establishment thought that it was an asset to the community.”

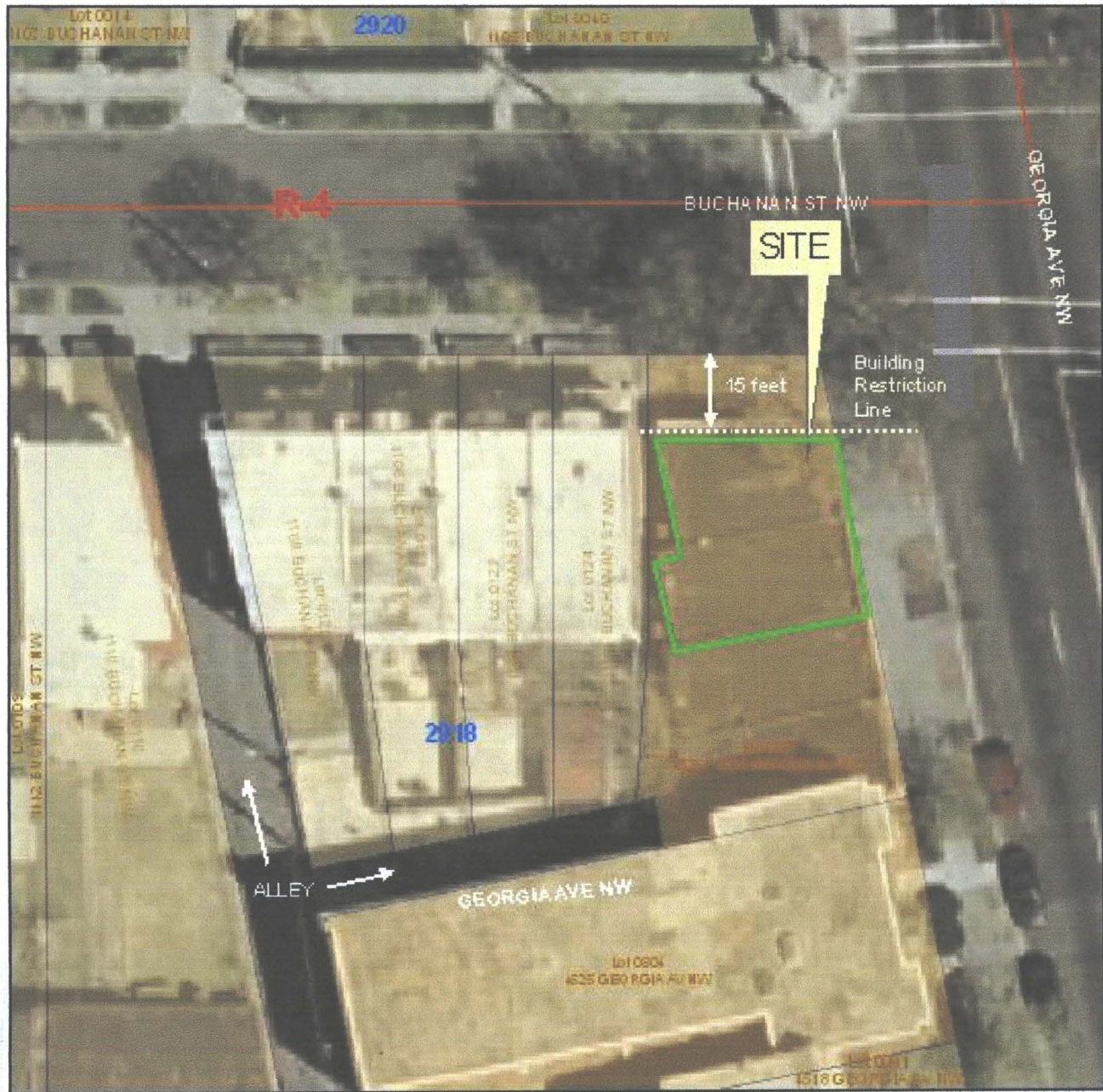
Ward 4 Councilperson Muriel Bowser also wrote a letter of support.

RECOMMENDATION

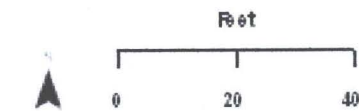
OP recommends approval of this use variance application.

JS/afj

Attachment:	Exhibit 1	Aerial Including Zoning
	Exhibit 2	View of the Site to the West
	Exhibit 3	Certificates of Occupancy for 4530 Georgia Avenue, NW
	Exhibit 4, 5	Certificates of Occupancy for 4532 Georgia Avenue, NW



BZA Application No. 17801
View to the West



*** Government of the
District of Columbia
Adrian M. Penty, Mayor

Office of Planning ~ July 8, 2008

This map was created for planning
purposes from a variety of sources.
It is neither a survey nor a legal document.
Information provided by other agencies
should be verified with them where appropriate.
Oblique Imagery © Photometry International

LEGEND

- Property Squares
- Owner Points (Lite)
- Street Centerlines
- Water
- Parks



BZA Application No. 17801
View to the West

★ ★ ★ Government of the
District of Columbia
Adrian M. Fenty, Mayor

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Oblique Imagery © Pictometry International

DEPARTMENT OF BUILDING INSPECTION.
DISTRICT OF COLUMBIA

CERTIFICATE OF OCCUPANCY

Washington, D. C. 8-14-48

THIS CERTIFICATE SHALL BE CONSPICUOUSLY POSTED AT ALL TIMES

Permission is hereby granted to Lee Thack Hing
to use the 1st floor(s) of the building located on Lot 100 Square 2918
Premises 4530 Georgia Ave., N.W. for the following purposes:
Hand Laundry - Not more than five employees

This certificate does not take the place of any license required by law, nor does it authorize the use of boilers, motors, or machinery. Any change in the use or occupancy of this building shall require a new certificate.

Zone Res. B-2 Fee, \$ 4.00
ROBERT H. DAVIS,
Director of Inspection
By C. G. Nolan
Permit Clerk

Form 8-14-48

CERTIFICATE OF OCCUPANCY

Washington, D.C. DECEMBER 7TH 1946

Permission is hereby granted to FORREST SIMS
to use the FIRST floor(s) of the building located on Lot OF 100 Square 2918
known as premises 4530 GEORGIA AVENUE, N.W. for the following
purpose(s): TELEVISION & RADIO SERVICING-SUBJECT TO CONDITIONS OF
BZA APPEAL #8904 BZA-8904

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF LICENCES & INSPECTIONS, GOVT. OF DIST. OF COL.

OFFICE COPY

ZONE B-4 FEE \$ 12.00
Chief, Permit Branch
W. Keith McPherson
Permit Clerk

CERTIFICATE OF OCCUPANCY

Washington, D.C. March 16, 19 72

Permission is hereby granted to Colvin Harris Serrano Jr.
to use the First floor floor(s) of the building located on Lot 100 Square 2918
known as premises 4530 Georgia Ave. NW for the following
purpose(s): T.V. & Radio repairs; plus sales of used T.V. Radios; HIPI Services
to sales and records on the premises

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF ECONOMIC DEVELOPMENT, GOVT. OF DIST. OF COL.

OFFICE COPY

ZONE B-6 FEE \$ 30.00
Chief, Permit Branch
Charles D. [Signature]
Permit Clerk

Form 10-D-201
CERTIFICATE OF OCCUPANCY
 No. **B 81037**
 Washington, D.C., **FEB 17**, 19 **72**

Permission is hereby granted to **MARY L. HARRIS**

To use the **FIRST** floor(s) of the building located on Lot **25** Square **2018**

known as premises **4532- GEORGIA AVE, N. W.** for the following purpose(s) **DELICATESSEN**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPT. OF ECONOMIC DEVELOPMENT, GOVT. OF DIST. OF COL.

ZONE **R-4** FEE **16.00**

By *Chief, Permit Branch*
Patricia E. Bepko
 Permit Clerk

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Form 10-D-201
CERTIFICATE OF OCCUPANCY
 No. **B122835**
 Washington, D.C., **11/12/80**, 19 **80**

Permission is hereby granted to **1st. Sup. Use**

to use the **1st Floor** floor(s) of the building located on Lot **25** Square **2018**

known as premises **4532 Georgia Avenue, N.W.** for the following purpose(s) **Delicatessen**

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY for the premises, or part thereof, and for the purpose(s) indicated above, and IS NOT TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

DEPARTMENT OF LICENSING, INVESTIGATIONS AND INSPECTIONS GOVT. OF DIST. OF COL.

ZONE **R-4** FEE **27.00**

By *Chief, Permit Branch*
N. Francine Richard
 Permit Clerk

OFFICE COPY

Department of Consumer and Regulatory Affairs Building and Land Regulation Administration 641 North Capitol Street N.E., Room 2100 Washington, D.C. 20002 Tel: (202) 442-4470 Fax: (202) 442-4962		Government of the District of Columbia SLIRA #4A	
C of O CERTIFICATE OF OCCUPANCY			
PERMIT NO. CO 20869		THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS	
DATE: 10/10/01			
ADDRESS: 4532 GEORGIA AVE NW Z	FLOOR(S) FIRST FLOOR	PRECLID: (OPTIONAL) ONE	WARD: ZONE:
PERMITS/CHANGES GRANTED TO: CORPORATION: CAMPBELL CARTER/NICKISHA GOLDEN LP ID No.: LP2477		TRADING AS: DOWN TO EARTH MARKET	
APPROVED USE: RESTAURANT, SERVICE DEL		PREVIOUS USES: RESTAURANT, SERVICE DEL	
TYPE: CHANGE OF OWNERSHIP	STATUS: STANDARD	OCCUPIED SQ' FT 2,918	EXPIRATION DATE: NONE
DESCRIPTION OF USE: DELICATESSEN NO SEATS			FEE: \$57.00
THIS CERTIFICATE SHALL BE POSTED PROMINENTLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID INDEFINITELY, UNLESS AN EXPIRATION DATE IS SET, VALID ONLY FOR THE PREMISES AT THE ABOVE ADDRESS OR PART THEREOF, AND FOR THE PURPOSE(S) INDICATED ABOVE, AND IS NOT TRANSFERABLE TO ANOTHER PERSON OR PREMISES UNDER ANY CIRCUMSTANCES. ANY CHANGE IN THE TYPE OF BUSINESS, OWNERSHIP OF BUSINESS, OR PART OF PREMISES USED THEREFOR, WILL RENDER THIS CERTIFICATE VOID AND A NEW CERTIFICATE MUST BE OBTAINED.			
David A. Clark DIRECTOR		PERMIT CLERK ADEMOLA SHITTU	