

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Karen Thomas, Case Manager
JL Joel Lawson, Associate Director Development Review
DATE: February 16, 2018

SUBJECT: BZA Case 19686: Application for use variance relief from the use restrictions of Subtitle U § 301.1, to permit a prepared food shop/deli establishment on the ground floor of a residential flat in the RF-1 zone at premises 207 New York Avenue N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of use variance relief pursuant to X § 1001.1 to permit a prepared food shop/deli on the ground floor of the premises at 207 New York Avenue, N.W., subject to the following conditions:

- The hours of operation are limited to Monday through Saturday 6:00 am to 7:00 pm., with a maximum staff of two persons.
- Trash shall be stored within the building. Rodent and pest control measures shall be implemented.
- Loading/deliveries shall take place in the rear.
- Liquor will not be sold on the premises.

The applicant has agreed to these conditions.

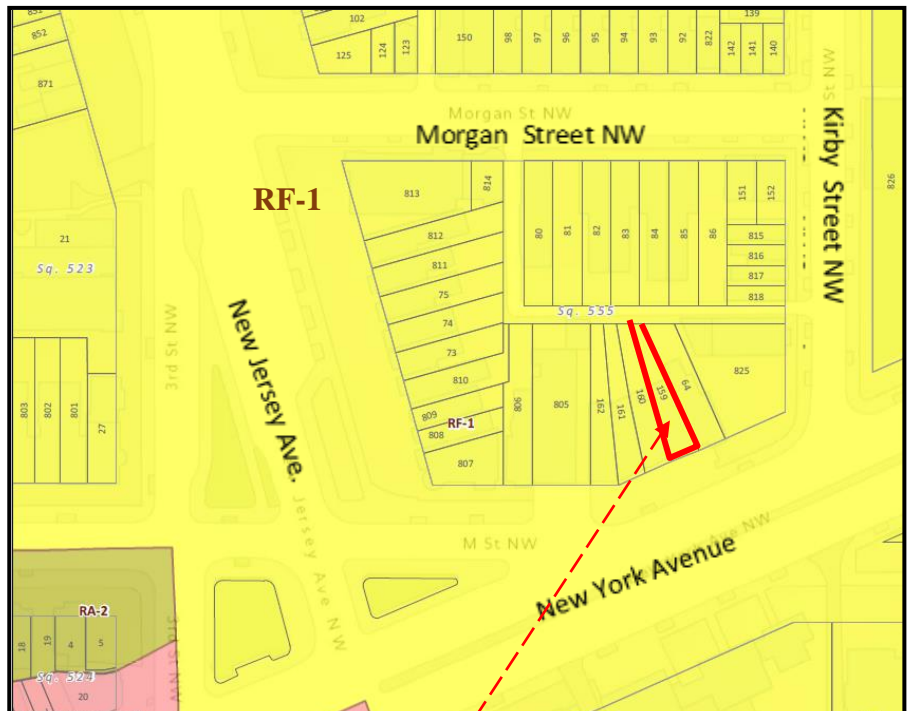
II. LOCATION AND SITE DESCRIPTION

Address	207 New York Avenue, NW
Applicant	Trang Ngyuen
Legal Description	Square 0555, Lot 0159
Ward, ANC	Ward 6, ANC 6E
Zone	RF-1
Historic District	Mount Vernon Historic District
Lot Characteristics	The lot is an almost cone-shaped lot, measuring 20 feet in width at the New York Avenue frontage and 9 feet at the rear property line, which abuts a 12-foot wide alley system.

Existing Development	The property was formerly a one-story commercial use, most recently as a laundromat. A two-story addition is a part of recent renovations to the building, with two upper residential floors and the ground floor remained an 800-sf open area to accommodate another retail use.
Adjacent Properties	The property abuts a residence to the east and to the west there are four commercial uses separating the subject property from the next residential use.
Surrounding Neighborhood Character	To the rear and north along New Jersey Avenue within the square are a mix of single family homes, flats and small apartment uses.

III. APPLICATION IN BRIEF

The applicant proposes to establish a retail use as a prepared food shop/deli on the ground floor of the existing flat. In conjunction with renovation of the structure in 2017, including the addition of a flat in two levels above the existing ground floor which was formerly used as commercial space for a laundromat. The applicant applied for certificates of occupancy, including one to continue use of the ground floor space space, when the Zoning Administrator determined that a use variance would be required.



Location and Zoning Map



IV. ZONING REQUIREMENTS

Item	Reg.	Existing	Required / Permitted	Proposed	Relief
Lot Area		1,410 SF	1,800 sf. minimum,	Same	Existing non-conforming
Uses	<i>U-301</i>	<i>Vacant 1st floor, C's of O for laundromat - issued 1948 - 2003; Residential Flat - 2nd and 3rd Floor.</i>	<i>residential and selected uses, not including general services or eating and drinking establishment</i>	<i>Prepared food shop/deli</i>	<i>Use Variance Requested from RF-1 Use Group (RF) - to an MU- Use Group D - Retail, corner store, prepared food shop/deli Use</i>

V. BACKGROUND and RELIEF REQUESTED

The ground floor of the subject property was purpose-built as commercial floor space in 1924. A historical review of prior certificate of occupancies from 1948 through 2003 indicated that the uses were first documented as a dry-cleaning plant (1948), and subsequently thereafter operated as a laundromat (2003). According to the applicant’s statement to OP, the property was vacant for a year and a half prior to their ownership in 2016 and renovation of the property in 2017. The applicant now seeks permission for a deli use (as provided to OP via email), which is not permitted in residential districts. The former use is first permitted as a service use under the MU-Use Group D, and the proposed use is a retail use first permitted in the same category.

The proposed use is a retail use rather than a service use of the former laundromat in terms of intensity, frequency of patronage, peak hours of operation, duration of time spent in the establishment, trash creation, etc. The Applicant proposes to limit the hours of operation to Monday through Saturday from 6:00 am to 7:00 pm, with a maximum of 2 staff persons. The Applicant met with the ANC 6E on the proposed hours of operation and agreed that the sale of liquor would not be permitted. There is alley access to provide for loading and delivery by small vans and the Applicant agrees to store and collect trash within the building. Additionally, rodent and pest control measures would be implemented.

The following includes the definitions and related zoning regulations from which the proposed use as a prepared food shop/deli is derived:

1. Definitions: [Subtitle B § 200.2](#)

(j) Eating and Drinking Establishments:

- (1) The sale of food, alcoholic drinks, or refreshments prepared on the premises and sold to customers for consumption on or off the premises;*
- (2) Examples include, but are not limited to: prepared food shop¹, restaurant, fast food restaurant, or fast food drive-through; within these defined terms, uses may*

¹ Definition under B § 100:

also include, but are not limited to, bar, café, cafeteria, cocktail lounge, coffee shop, delicatessen, an ice cream parlor or nightclub; and....

A prepared food shop or deli is identified under U § 254 Use Permissions, where in the RF-1 zone, as a corner store use, it would be typically permitted by special exception. The proposal does not meet the corner store criteria.

VI. OFFICE OF PLANNING ANALYSIS

Variance Relief from U § 301.1

Pursuant to X §1001.4 (a) and (b), *a use variance is a request to permit a use that is not permitted matter-of-right or special exception in the zone where the property is located or a use that is expressly prohibited in the zone district where the property is located.*

Further, an applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property (X § 1002.2).

i. Exceptional Situation Resulting in a Hardship

The existing situation of the long-standing commercial space, in combination with the 1,410 square feet lot area, create a hardship for the applicant in converting the space to residential use on the ground level. The one-story commercial level has never supported residential uses, and is not now designed to do so. Further, the existing small lot area would not satisfy the operational or area requirements for matter-of-right uses, including a daycare use, or medical use.

The existing interior layout does not include interior dividing walls, showers, a kitchen etc. 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, consistent with the Mount Vernon Historic District. The Applicant has stated that these exterior and ground floor changes could be costly and difficult. The exceptional situation of the property, in this instance, would create a hardship on the applicant to convert the space to a use anticipated under U § 301.1.

ii. No Substantial Detriment to the Public Good

There are four one-story commercial properties and a former fire station building (now a gym) existing between residential structures, all developed around the 1920's with commercial uses since that time. It is not anticipated that any retail use that may be permitted on the ground level would create a traffic nuisance, since there is no parking available along the New York Avenue frontage and existing businesses, such as the gym, barbershop and carryout, cater to pedestrian users from the immediate neighborhood. Continued commercial use of the ground floor level would be consistent with the pattern of development along this side of the square and the proposed use would be neighborhood-serving. OP recommends conditions on its operations to mitigate impacts on the neighborhood, including to its hours of operation, trash removal, rodent control, loading and

Prepared Food Shop: A food and beverage business that offers seating or carry out service, or both, and which is principally devoted to the sale of prepared food, non-alcoholic beverages, or cold refreshments. This term includes, but is not limited to, an establishment known as a sandwich shop, coffee shop, or an ice cream parlor.

delivery locations. DDOT has indicated to OP that while the alley is narrow, a small vehicle would be able to navigate the alley for delivery purposes.

iii. No Substantial Harm to the Zoning Regulations

The RF-1 zone is considered a moderate density zone district used to define the District's row house neighborhoods. This block has historically included low-density commercial. The proposed ground floor use as a prepared food shop/deli, is a low-density commercial use, and it would not be anticipated as harmful to the Regulations.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

At the writing of this report, comments from other district agencies were not noted in the record.

VIII. COMMUNITY COMMENTS

The Applicant informed OP via email that the request was presented to the ANC 6E at its regularly scheduled meeting on February 6, 2017, and the ANC voted in support of the variance request. The ANC's report was not noted in the record at the time of writing of this report.