

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Cochran, Development Review Specialist
AS for
 Joel Lawson, Associate Director Development Review
DATE: September 17, 2021

SUBJECT: BZA Case 20489 1914 9th Street, N.W. to expand a restaurant use and construct roof deck in a residential zone

I. BACKGROUND AND OFFICE OF PLANNING RECOMMENDATION

The applicant has withdrawn its previous roof deck-related special exception and use variance requests (Exhibit 32). For the revised application’s remaining request the Office of Planning (OP) recommends **Approval** of:

- The requested use variance relief from Subtitle U § 204.1, pursuant to Subtitle X Chapter 10, to expand an existing restaurant use to the second floor of a building in the RF-1 zone.

Address	1914 9 th St., NW
Applicant	The Culinary District, Inc. as represented by John Patrick Brown of Greenstein DeLorme & Luchs (Exhibit 31)
Legal Description	Square 1361 Lot 123
Ward, ANC	Ward 1, ANC 1B
Zone	RF-1
Historic District	U Street
Lot Characteristics	18.33’ x 92’ 1,686 SF interior lot with no alley access or parking
Existing Development	Permitted restaurant use in cellar and 1 st floor of a residentially zoned building. Previous use of and current fit-out for restaurant use on 2 nd floor.
Adjacent Properties	1912 9 th Street, to the south is a three-story plus basement 4-unit rowhouse. 1916 9 th Street, to the north is a two-story plus basement two-unit condominium rowhouse similar in exterior appearance to 1914 9 th Street. To the west, behind the property’s rear yard, there is a small two-story rowhouse on 9 ½ Street.

<p>Surrounding Neighborhood Character</p>	<p>The neighborhood is very mixed-use, containing residential row-houses, low and mid-rise apartments, and many restaurants, bars, and other commercial uses in the U Street corridor to the immediate north, and in the Shaw commercial areas on 9th and 8th Streets. The zoning is the mixed-use Arts-2 district on the east side of 9th Street and the northern half of the western side of the 1900 block of 9th Street. The RF-1 district encompasses the southern half of the square bounded by 9th, 9 ½ T and U Streets, but contains grandfathered commercial uses as well as by-right residential uses.</p>
<p>Proposed Development</p>	<p>This would be an expansion of an existing non-conforming use into the 2nd floor of a building that has not had a residential use for at least 30 years. Granting the requested relief would allow the existing restaurant to legitimately occupy the entire building. The applicant states the previous restaurant had a total of 76 seats on the cellar through 2nd floor. The applicant would expand this to 101 – 106 seats on the same floors.</p>
<p>Property Location and Vicinity Map</p>	

II. OFFICE OF PLANNING ANALYSIS

The Form 135 submitted by the applicant did not contain any dimensional or other numerical information. OP has analyzed only the request for the use variance.

A. SUBTITLE X§1000- Use Variance Relief

The existing restaurant use is a non-conforming use for the zone. Per Subtitle C § 204.1 the use cannot be expanded in gross floor area or intensity without a use variance.

Exceptional Situation

The Applicant has demonstrated there are exceptional conditions pertinent to the requested variance to expand the restaurant use into the existing second floor. Cited are:

- the previous use of the second floor for restaurant purposes,
- the near-completion of permitted renovation work for use of that floor as a restaurant, and
- the infeasibility of retrofitting the building to accommodate a new residential use on the second floor.

As shown in Exhibits B – D attached to Case Exhibit 35, the 2nd floor was used for restaurant seating and bar space by at least two operators prior to the current owner's purchase of the building.

The applicant received two building permits to upgrade the previous restaurant use: one permit for the cellar and first floor, and a separate permit for the second floor. The latter (Case Exhibit 35, Exhibit H) seems to indicate the 2nd floor was already used for restaurant purposes. A question arose about whether there had ever been a valid certificate of occupancy for the restaurant use of the second floor only after completion of the renovations authorized by the cellar/1st floor permit, and the near-completion of the 2nd floor renovations authorized by the 2nd floor permit. At that point the Department of Consumer and Regulatory Affairs (DCRA) issued a permit for restaurant occupancy work completed under the permit for the cellar and 1st floor but referred the applicant to the Board for a variance for restaurant use of the 2nd floor renovations.

The applicant has filed Certificate of Occupancy records indicating that the building has not been used for residential purposes since at least 1991, that all of part of the second floor was used for office use during part of that 30-year period, that the entire building was used for restaurant purposes from 2000 to September 17, 2019, and that the second floor may have had an occupancy permit for restaurant use as of 2014.

Resulting in an Undue Hardship to the Property Owner

The Applicant has demonstrated that it would be difficult to retrofit the second floor and building entrance for a separate residential use. Unlike another case recently considered by the Board, there has not been any residential use of the building for over three decades, and the applicant has completed nearly all of the permitted renovation work for a non-residential use. Because there was not an existing residential use in the building and building permits were authorized for a single non-residential use, the entire building has only a single HVAC system for all floors. Additionally, there are no provisions for noise, odor, fire utility or security separation between the restaurant use and a hypothetical residential use on the second floor.

The applicant states it has already spent approximately \$300,000 (Exhibit 35, page 8) renovating the second floor and that it would cost at least \$300,000 more to convert the already-constructed third-floor restaurant space to something suitable for residential use (Exhibit 35, page 9). The loss of the 26 seats on the second floor would also decrease the restaurant's revenue, placing a heavier burden on the combination of any new second-floor residential unit and a smaller-sized restaurant to recoup the additional demolition and

retrofitting costs of eliminating the 2nd floor restaurant use and converting the space to an apartment.

No Substantial Detriment to the Public Good

Granting the proposed use variance would not likely result in a detriment to the public good. Approval of the request would not result in the loss of an existing residential unit, just the legitimization of previous restaurant uses on the 2nd floor. The increase in the number of seats may generate revenue that would help stabilize restaurant use in a building that has seen three restaurant uses in the last ten years. It would not introduce a new use into the building or into a neighborhood that already has a substantial mix of uses

In a neighborhood with a walk-score of 99 and a location two blocks from the Metro, the additional seats would not likely result in a substantial increase in parking demand. The second-floor restaurant use would be entirely enclosed and would not likely generate any more noise than had been generated by the previous restaurant use of the second floor.

The applicant states that the adjoining property owners to the north and south have informed the ANC they have no objection to the application and that ANC 1B voted to support the application. However, at the time OP completed this report the file contained no communications from either adjacent property owner or from the ANC.

No Substantial Impairment to the Intent, Purpose, Integrity of the Zoning Regulations

Granting the proposed use variance would not substantially impair the intent, purpose, and integrity of the zoning regulations. A principal purpose of the regulations is to retain neighborhood character. The mixed-used character of the U Street and Shaw neighborhoods is well-established. It existed well before the current zoning regulations or the 1958 regulations were written. The requested use variance would not be inconsistent with the surrounding neighborhood character. While the RF-1 zone is intended for residential uses, it would not impair the zoning regulations to grant a variance to retain an existing non-residential use in a building that does not already have residential uses and does not have vacant space that could be converted to residential use without substantial changes to the building.

III. OTHER DISTRICT AGENCIES

No comments had been submitted by other District agencies when this report was completed.

IV. ADVISORY NEIGHBORHOOD COMMISSION

At the time OP completed this report there was no filing from ANC 1B in the record.

V. COMMUNITY COMMENTS TO DATE

There were no letters in file at the time OP completed this report.