

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Philip Bradford, AICP, Case Manager
Joel Lawson, Associate Director Development Review

DATE: September 5, 2024

SUBJECT: BZA Case 21160, Request for use variance to permit a prepared food shop and retail use within an existing art gallery at 1314 21st Street NW.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following use variance relief:

- A Use Variance from Subtitle U § 401.1 pursuant to Subtitle X § 1001.2 (Prepared food shop, and retail use is generally not permitted as a matter-of-right in the RA-2/DC zone; permission to add these uses in addition to the principal use of art gallery is requested).

II. BACKGROUND

Ching Ching Cha, an Asian pottery gallery displaying Yixing teapots, artisanal pottery, and other tea accessories, initially opened in Georgetown in 1998 and recently moved to the subject property located at 1314 21st Street NW. The building was constructed in 1920 with a commercial space on the ground floor which has been used previously as a dry cleaning, valet, and laundry pick up facility, and as an art gallery which is permitted by special exception in the RA-2/DC zone. The applicant has an existing Certificate of Occupancy (Permit No. CO2301607, Exhibit 393A) which notes the occupancy and use as an art gallery. In addition to the primary use of art gallery, the applicant performs a traditional tea service and sells tea as an incidental use.

According to the applicant, the Department of Buildings is requiring that prepared food shop and retail uses be included on the Certificate of Occupancy, both of which are not permitted in this residential zone. The applicant originally requested this as a special exception and area variance (Exhibit 4), but subsequently amended to a request for a use variance (Exhibit 393B), although to date an updated statement addressing the use variance test has not been filed to the record by the applicant. The proposed uses would be located within the existing space and no expansion of the tenant space is proposed.

III. LOCATION AND SITE DESCRIPTION

Address	1314 21 st Street NW
Applicant	Sullivan and Barros, LLP for Three Tables LLC
Legal Description	Square 0069, Lot 0228
Ward, ANC	Ward 2; ANC 2B
Zone	RA-2/DC

Historic District	Dupont Circle Historic District
Lot Characteristics	21.5 ft. by 115.33 ft. rectangular lot with a 12 ft. public alley located at the rear. The lot is bound by Newport Place NW to the north, 21 st Street NW to the east, existing row dwellings to the south, and the public alley to the west.
Existing Development	The property is developed with a three story mixed use building with condo units above the ground floor retail space.
Adjacent Properties	The adjacent lot to the south is developed with a multiple-dwelling rowhouse.
Surrounding Neighborhood Character	Mixed use neighborhood with rowhouses and apartment buildings within the square and larger scale residential, office, and hotels closer to Dupont Circle.
Proposed Development	To permit prepared food shop and retail uses within the existing art gallery. The applicant does not propose any expansion of the tenant space.

IV. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone-	Regulation	Existing	Proposed	Relief
RA Zone Use Permissions U § 401.1	Residential uses permitted; art gallery permitted	Art gallery	Art gallery, prepared food shop, retail	Use Variance Requested

V. OFFICE OF PLANNING ANALYSIS

a. Use Variance Relief from Subtitle X § 1000.1

- i. *Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties / Exceptional or Undue Hardship To the Property Owner*

a. *Extraordinary or Exceptional Situation*

The applicant has relocated to the existing tenant space that was previously used as an art gallery and proposes to include uses that are not permitted by right in the zoning district to their Certificate of Occupancy. The applicant derives 70% of their income from the display and sale of tea pots and accessories, which exceeds the 50% minimum requirement in the definition of Art Gallery in Subtitle B § 100.2. The remaining 30% of their revenue comes from the tea service and sale of tea which have been defined as prepared food shop and retail uses. Although incidental to the art gallery, both have been determined to be not permitted by right in the RA-2/DC zone, thus requiring a use variance.

b. *Exceptional Practical Difficulties / Exceptional or Undue Hardship*

The property was constructed and has continually been operated as a mixed-use building with the first floor designed as a commercial space. The ground floor includes large windows and an angled entrance at the corner to allow easy access for shoppers. The interior layout also results in an exceptional difficulty to convert the ground floor to a matter of right residential

use as it does not contain a full kitchen, bathroom, or bedroom with windows and would require significant alterations to the interior and exterior of the building to convert the purpose-built commercial space to a residential use.

ii. No Substantial Detriment to the Public Good

Granting a use variance to allow the art gallery to serve and sell tea should not result in a substantial detriment to the public good. The requested relief would allow the existing space to showcase traditional tea service and demonstrate the use of the antique teapots and accessories on display in the gallery. There is no carryout service offered which could cause an increase in traffic or waste in the neighborhood. On-street parking demand is expected to continue to be minimal and the location is approximately 270 feet away from Dupont Circle Metro station. Hundreds of letters in support have been filed to the record; to date no letters in opposition have been filed.

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

The Dupont Circle Residential Apartment Zones purpose and intent chapter includes Subtitle F § 500.2 (b) “*Provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character*”. As such, granting the requested relief should not result in a substantial impairment to the integrity of the Zoning Regulations. [Exhibit 6](#) provides the interior floorplan of the tenant space, showing an occupant load of ten and [Exhibit 8](#) outlines the hours of operation. With such a small space and limited hours along with preexisting commercial uses operating in the space since at least the 1970’s, granting the use variance would support the intent of the RA-2/DC zoning district and allow the incidental uses of prepared food and retail be included as part of the art gallery.

VI. OTHER DISTRICT AGENCIES

DDOT informed OP that they have no objection to the proposal. As of the writing of this report, no other District Agencies have provided comments for this application.

VII. ADVISORY NEIGHBORHOOD COMMISSION

ANC 2B submitted a report in support at Exhibit 17.

VIII. COMMUNITY COMMENTS TO DATE

At Exhibits 21-80, 83-296, 298-363, 365-392, 394-424 are filings from community members in support of the application filed to date.

Attachment: Location Map

