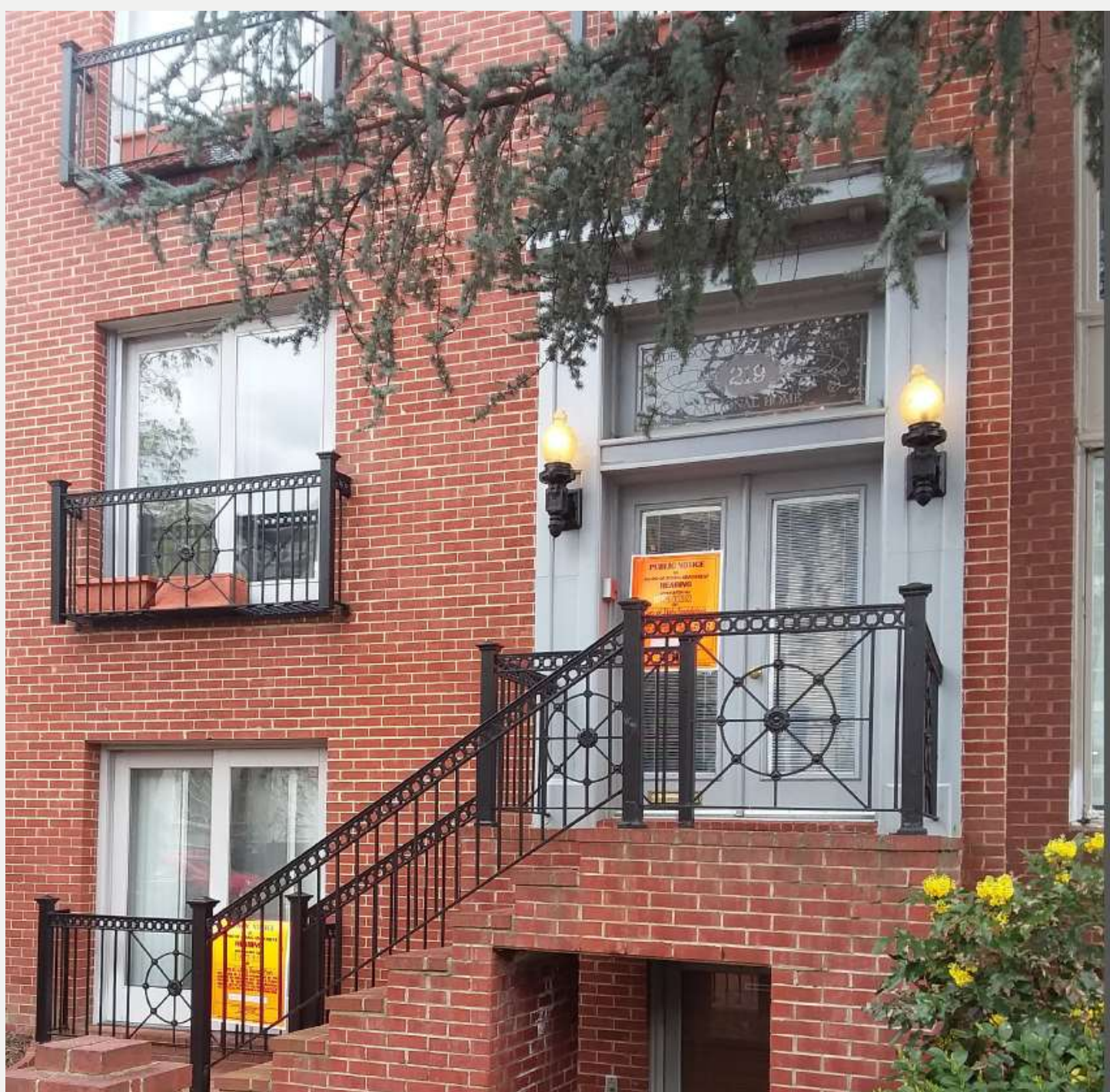


**BZA Application #19730**  
219 E Street NE  
Sons of Italy Foundation



**Presented by:**  
Samantha L. Mazo  
Cozen O'Connor

Board of Zoning Adjustment  
District of Columbia

CASE NO. 19730

EXHIBIT NO. 58



# The Property – 219 E Street NE



# Zoning Map – Close proximity to Mixed-use zones



**Square 0755**

**Lot 0032**

**RF-3 Zone**

**Capitol Hill  
Historic District**

# Building's Office Layout



# Background on the Sons of Italy Foundation

- 501(c)(3) that is organized and operated for charitable purposes
- Foundation provides donations to various charities including the Alzheimer, Autism and Wounded Warriors Foundations
- Foundation has owned the Property since 1980 & always used as a non-profit office
  - Foundation has always operated in a quiet and harmonious manner
  - No violations or complaints by neighbors
  - Seeking to maintain status quo; no request to increase intensity of use or to change the building

# Foundation Needs Relief to Keep the Status Quo

- The Foundation has four staff members
- The Foundation does not, and will not, host events or large gatherings
  - No large conference room in the building
- One staff member parks in one of three parking spaces at the rear of the building
- No proposed changes to the building

## Previous Building Permits and Business Licenses

- Structure constructed as a residence pursuant to Building Permit No. B271230 in 1980
- On July 24, 2003, DCRA issues Alteration and Repair Permit No. B453508 to reconstruct the stoop
- On September 11, 2011, DCRA issued a Supplemental/Plumbing and Gas permit
- DCRA issued Basic Business License No. 69007463 effective from August 1, 2011 to July 31, 2013
  - License references Certificate of Occupancy No. 091143124 (which cannot be located at DCRA)
- DCRA issued Basic Business License No. 69007465 effective from August 1, 2013 to July 31, 2015
  - This License also references Certificate of Occupancy No. 091143124 (which cannot be located at DCRA)

# Relief Requested

## Special Exception (§ X-901.2)

To continue the nonprofit organization's use for the purposes of the nonprofit organization's office (§ U-203.1(n))

## Area Variance (§ X-1000.1)

From the 10,000 square feet requirement of the special exception (§ U-203(n)(2))

Well settled in both BZA and D.C. Court of Appeals jurisprudence that relief from the 10,000 s.f. requirement is an area variance from the underlying nonprofit organization special exception. *See BZA Case No. 15555 – Application of Ann Cullen; See also BZA Case No. 19131 - Application of Delta Sigma Theta Sorority, Inc* (both granting relief from the 10,000 s.f. requirement as an area variance). *See also French v. Bd. of Zoning Adjust.* 658 A.2d 1023 (1995) where the D.C. Court of Appeals expressly upheld the BZA's approval of the 10,000 s.f. relief as an area variance.



# Special Exception Standard

The Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations.

- The courts have found that special exception relief is presumed to be appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. *See First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (1981).

# Relief is Harmonious with the Intent of Zoning Regulations and will not Adversely Affect Neighboring Property

- Foundation is a 501(C)(3) non-profit organization that is organized and operated for charitable purposes.
- Property was constructed as a residence.
- Property is located only two lots away from commercially-zoned land (MU-24 and MU-26) to the west and south
- For 37+ years, the Foundation's use has been a good neighbor that has operated in a harmonious manner with the surrounding uses
- Continuing the current Foundation use will not tend to adversely affect the use of neighboring properties
  - No traffic impacts: only four employees, three parking spaces on-site, close walking distance to Union Station
  - No large events or associated noise
- Status Quo will be maintained

# Relief Satisfies Special Conditions of Subtitle U § 203.1(n)

1. *If the building is listed in the District of Columbia's Inventory of Historic Sites or, if the building is located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites;*
  - Property is located in the Capitol Hill Historic District
2. *If the gross floor area of the building in question, not including other buildings on the lot, is ten thousand square feet (10,000 sq. ft.) or greater;*
  - Applicant has requested area variance relief from the 10,000 s.f. gross floor area requirement
3. *The use of existing residential buildings and land by a nonprofit organization shall not adversely affect the use of the neighboring properties;*
  - Continuing the current Foundation use will not tend to adversely affect the use of neighboring properties

## **Relief Satisfies Special Conditions of Subtitle U § 203.1(n)**

4. *The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood;*
  - Three parking spaces are provided and only one is used
  - The Property is approximately 1,000 feet from Union Station and so is very accessible to metro and transit
  
5. *No goods, chattel, wares, or merchandise shall be commercially created, exchanged, or sold in the residential buildings or on the land by a nonprofit organization, except for the sale of publications, materials, or other items related to the purposes of the nonprofit organization; and*
  - No goods are sold or created on the Property
  
6. *Any additions to the building or any major modifications to the exterior of the building or to the site shall require approval of the Board of Zoning Adjustment after review and recommendation by the Historic Preservation Review Board with comments about any possible detrimental consequences that the proposed addition or modification may have on the architectural or historical significance of the building or site or district in which the building is located;*
  - No structural changes are proposed or intended

# Area Variance Standard

- Under 11 DCMR § X-1000.1, the Board is authorized to grant an area variance where it finds that:
  - (1) The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
  - (2) The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
  - (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.
- Area Variance Standard is “More Flexible” for a Non profit:
  - *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1099 (DC 1979) (The Board applies a reduced standard of review for an applicant’s request for an area variance because an applicant provides a public service as part of their nonprofit mission)
  - *St. Mary’s Episcopal Church v. DC Zoning Comm’n & Hillel at the George Washington Univ.*, 16-AA-491 (D.C. 2017)(stating that the Board “may be more flexible when it assesses a non-profit organization”)

# Property is Exceptional and Unique

- The unique or exceptional situation may arise from a confluence of factors which affect a single property (*Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990))
- More flexible standard of review applied for Exceptional Condition for a non-profit organization (*Monaco* , 407 A.2d at 1099)
- Past actions of permitting authorities giving rise to the good faith, detrimental reliance can create exceptional conditions (*Monaco*, 407 A.2d at 1097)
- Exceptional Conditions here:
  - DCRA issued Basic Building Licenses from 2011 - 2015
  - DCRA cannot find the Certificate of Occupancy referenced on the business licenses
  - Foundation has paid a commercial tax rate since 2005
  - Foundation has used the Property as a non-profit office for 37+ years
  - Building's internal configuration is non-residential

## Exceptional Conditions Create Practical Difficulties

- 10,000 GFA requirement cannot be met – no additions to the building are contemplated or proposed
- Certificate of Occupancy not present in DCRA records and archived materials; however, Foundation paid commercial tax rate and obtained licenses for its continued operation
- Foundation's longstanding use and ownership of the building for 37+ years
- Would be unnecessarily burdensome to force the Foundation to move or sell the building if non-profit office use cannot continue

# No Substantial Impairment of Zone Plan or Detriment to the Public Good

- Close proximity to mixed-use zones
  - Property is located just two lots away from the MU-24 Zone and across the rear alley from the rest of the square that is zoned MU-26
  - Serves as a transitional buffer between residential and commercial districts
- Zoning Regulations' concept that non-conforming uses can be "continued, operated, occupied, or maintained" (Subtitle C-201.2) could be a instructive because business license existed in 2015
- Foundation has been a good neighbor for 37+ years
- No complaints against the Foundation, and Application has support of the community
- Day-to-day operations proportionate to building's size and number of employees
- No changes are proposed to the operations or the Property

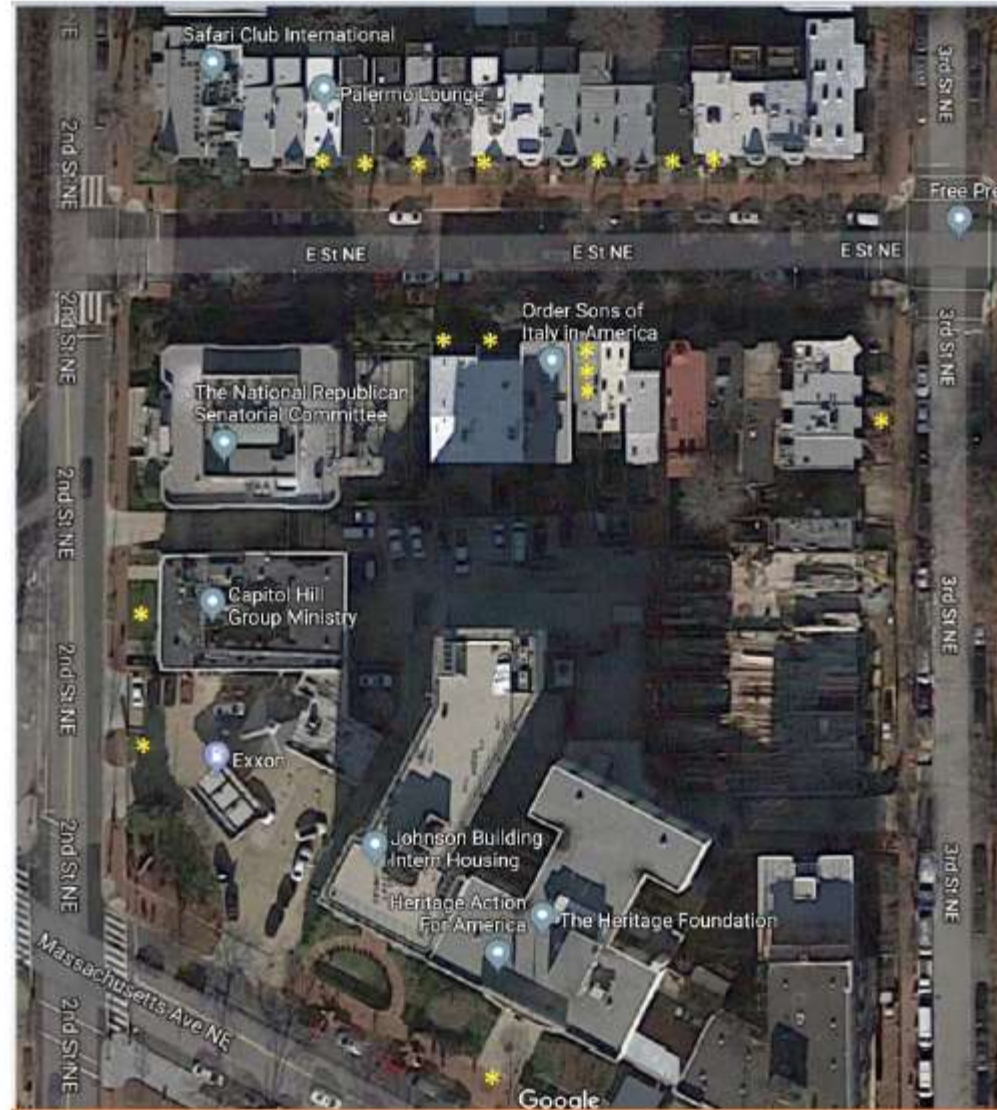


# Community Support For Application

- Sixteen letters of support
- Letters of support from all adjacent property owners (there is no 217 E Street NE)
  - 215 E Street NE
    - Andrew Malen
  - 221 E Street NE
    - Alex Nunez
    - L.B. Farrell
  - 221 ½ E Street NE
    - Stephen Gibbons
- Unanimous support from ANC 6C
- Support from Capitol Hill Restoration Society
- Support from the Architect of the Capitol

# Community Support for Application

Yellow asterisks identify letters of support in the BZA Record



# ANC 6C's Proposed Conditions of Approval

- A maximum of five employees; and
- No receptions or other events shall be hosted for outside persons

**The Applicant accepts these conditions**

# Plat

**SUBDIVISION  
SQUARE 755**

BEFORE ME, the undersigned authority, on this 22<sup>nd</sup> day of May, 1979.

Present, and acknowledged to me by the person whose name is subscribed to the foregoing instrument, the following persons, to-wit:

Ernest G. Leung  
Ernest G. Leung

Robert J. ...  
Robert J. ...

Robert J. ...  
Robert J. ...

Robert J. ...  
Robert J. ...

Witness my hand and seal of office this 22<sup>nd</sup> day of May, 1979.

[Signature]  
Notary Public

DEPARTMENT OF FINANCE AND  
REVENUE  
MAY 22 1979

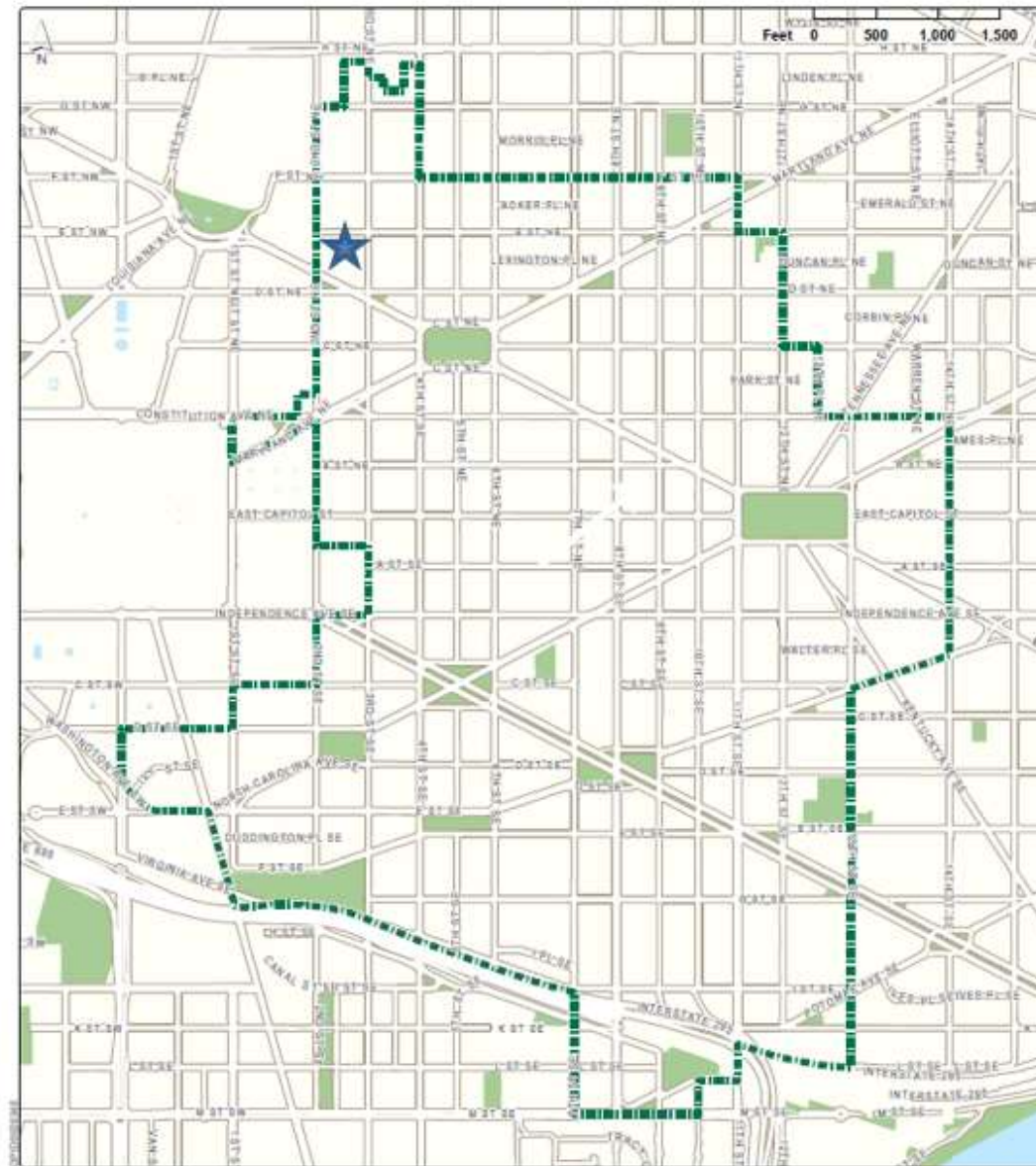
DEPARTMENT OF HOUSING AND  
COMMUNITY DEVELOPMENT  
Mar 23 1979

OFFICE OF THE SURVEYOR  
May 23 1979

DEPARTMENT OF DISTRICT GOVERNMENT  
OFFICE OF THE SURVEYOR  
Requested by: [Signature]  
Checked by: [Signature]  
Checked by: [Signature]  
Case No. 19730  
EXHIBIT NO. 3  
Date: May 23 1979  
Book: 176

# Foundation pays corporate taxes

- Property assessed as a private club
- Has paid commercial taxes since at least 2007
- On January 10, 2012, a Certificate of Good Standing was issued from Office of Tax & Revenue



Capitol Hill Historic District



Office of Planning – December 3, 2015  
 Government of the District of Columbia  
 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.

 Historic District Boundary

