

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Maxine Brown-Roberts, Project Manager
JL Joel Lawson, Associate Director Development Review

DATE: September 20, 2019

SUBJECT: BZA Case 20104 – Special Exception to permit the use of an existing residential building as an office by Zeta Phi Beta Sorority, Incorporated and Variance relief for not meeting the minimum 10,000 square feet of building area at 1461 S Street, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **denial** of the following special exception relief:

- Use of existing residential building by a nonprofit organization for the purposes of the nonprofit organization, Subtitle U § 203.1(n), (residential use existing; residential and nonprofit organization use proposed) pursuant to Subtitle X § 900.

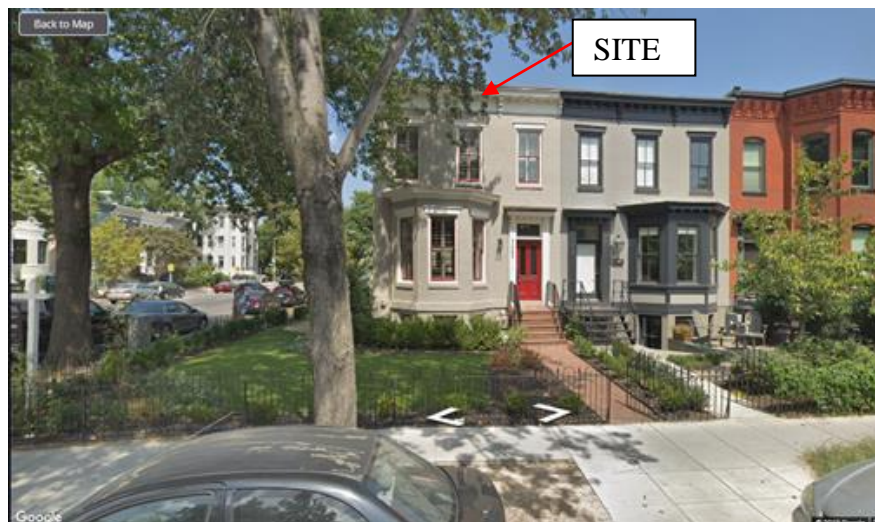
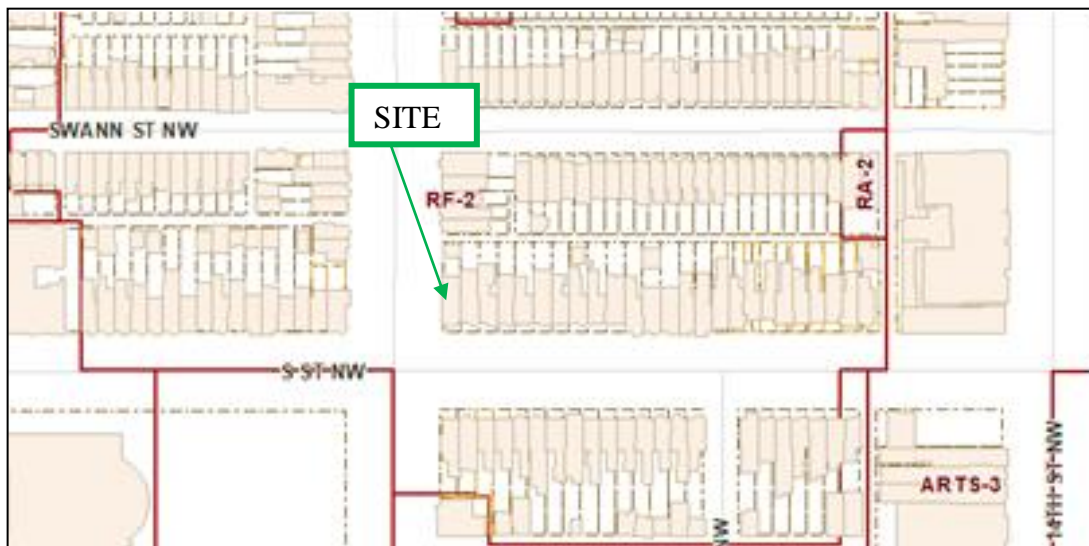
The Office of Planning (OP) recommends **denial** of the following variance relief:

- Gross floor area requirement for a nonprofit organization located in a residential building, Subtitle U § 203.1(n)(2), (10,000 square feet minimum required; 2,904 square feet proposed, with 1,345 square feet of office use) pursuant to Subtitle X § 1000.

II. LOCATION AND SITE DESCRIPTION

Address	1461 S Street, N.W.
Applicant	Zeta Phi Beta Sorority, Incorporated, represented by Edward L Donohue
Legal Description	Square 0206, Lot 25
Ward, ANC	Ward 2, ANC 2B
Zone	RF-2 - Dupont Circle Residential Flat Zone is intended to recognize Dupont Circle area as a unique resource in the District of Columbia that must be preserved and enhanced. The RF-2 zone permits moderate to medium density residential uses and limited compatible non-residential uses.
Historic District	Greater U Street Historic District
Lot Characteristics	A rectangular shaped corner lot with an area of 2,030 square feet with 20.30 feet of frontage along S Street and 100 feet of frontage along 15 th Street. A ten-foot-wide public alley abuts the north side, rear, of the lot.

Existing Development	The lot is currently improved with a two-story plus basement row dwelling and a one-story carriage house to its rear.
Adjacent Properties	The properties on all sides of the subject property are developed with two-story row dwelling except that to the southwest is the Scottish Rite Temple site.
Surrounding Neighborhood Character	The area is predominantly developed with two- and three-story row dwellings in the RF-2 zone with apartment building and institutional uses in the wider neighborhood in the ARTS-3 and RA zones.



III. APPLICATION IN BRIEF

The applicant, Zeta Phi Beta Sorority, Incorporated, proposes office and residential use in the existing two-story plus basement residence. The Sorority is recognized by the Internal Revenue Service as a 501(c)7 nonprofit organization (social club). The applicant provides that the building

is composed of a first, second, and basement levels and a one-story carriage house also with a basement. In the initial submission, the applicant stated that the building has a total square footage of 4,199 square feet which would all be used for the nonprofit office. The uses and measurement were subsequently revised, and the applicant submits that the building has a total square footage of 2,904 square feet (including carriage house and its basement) of which 1,345 square feet on the first and second floors would be dedicated to the requested office use while the basement and carriage house would remain for residential use. The applicant has requested special exception relief to permit the nonprofit use in a residential building, as well as a variance for not meeting the 10,000 square foot minimum threshold. No additions to the building are proposed.

The applicant has provided that:

1. Office use would be confined to the first and second floor with residential use in the basement and the carriage house.
2. Office hours would be Monday through Friday, 9:00 AM to 5:00 PM.
3. The office use would accommodate six staff members.
4. There would be no events on the property.
5. The property would not be rented for any third-party purposes.
6. Two parking spaces are provided and accessed from the alley¹. Staff would also use public transportation and ride sharing services.

IV. OFFICE OF PLANNING ANALYSIS

1. Special Exception Relief from Subtitle U § 203.1(n), pursuant to Subtitle X § 900, to allow a residential building to be occupied by a nonprofit organization.

203.1 The following uses shall be permitted as a special exception in R-Use Groups A, B, and C, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 subject to applicable conditions of each section:

(n) Use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of the nonprofit organization:

(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;

The building is located within the Greater U Street 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;

The regulations require that the building proposed to be converted have a gross floor area of 10,000 sq.ft. minimum. In this case, the gross floor area of the building, including the carriage house, is only 2,904 square feet, and of this, 1,345 square feet would be for the proposed non-profit office use. The applicant has requested a variance from this provision, and the analysis is provided below.

¹ The parking spaces seem to be in public space

OP is not supportive of the proposed non-profit office use that is so significantly lower than the minimum required, in a building that is entirely consistent in form and size with other residentially occupied rowhouses in this area.

- (3) *The use of existing residential buildings and land by a nonprofit organization shall not adversely affect the use of the neighboring properties;*

The proposed use by a nonprofit organization, as provided by the applicant should not adversely affect the use of neighboring properties. The applicant has proposed that six employees would be at the site at any one time and that there would be no visitors to the site. In addition, there would be no events and the office hours would be limited to Monday to Friday between 9:00 am and 5:00 pm. With the limited work hours, the lack of events and having no visitors the use should not adversely affect the use of neighboring properties. The applicant states that the remainder of the building would be rented for residential use, but it is unclear how many people would occupy that space.

- (4) *The amount and arrangement of parking spaces shall be adequate and located to minimize traffic impact on the adjacent neighborhood;*

Two off-street parking spaces are provided for use by the employees who would also use public transportation and ride share services. The applicant did not indicate how the parking requirement for the residential use would be met. The applicant has indicated that there would be no visitors to the site, no events at the site and would therefore not impact traffic movements in the surrounding neighborhood.

- (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, chattel, wares, or merchandise would be commercially created, exchanged, or sold 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 additions or modifications to the building have been proposed with this application. The applicant is aware that any proposed modifications could require review and approval from the Historic Preservation Office.

2. Variance Relief from Subtitle U § 203.1(n)(2), pursuant to Subtitle X § 1000, to allow a nonprofit organization to occupy a residential building not having 10,000 square feet of gross floor area.

i. Exceptional Situation Resulting in a Practical Difficulty

The regulations require that the building proposed to be converted have a gross floor area of 10,000 sq.ft. minimum. As such, the provision is clearly not intended to encourage the conversion of

viable residential buildings to non-residential non-profit office use, but rather to acknowledge that the lower density residential zones include some very large, historic, former single dwelling residential buildings that may no longer be viable for residential use, but which must be retained. As such, the provision is intended to provide an additional opportunity for the use of these exceptionally large buildings by non-profits.

In this case, the gross floor area of the building, including the carriage house, is 2,904 square feet, or less than 1/3 of the requirement amount. Of this, 1,345 square feet would be for the proposed non-profit office use. The applicant has argued that the property is exceptional as its headquarters is at 1734 New Hampshire Avenue, NW in a building which exceeds 12,000 square feet and that the proposed office at 1461 S Street, NW is intended to be ancillary office space. However, the regulations do not provide for ancillary space to an existing non-profit use in additional buildings.

The applicant also states that a building with 10,000 square feet or greater would be too large for the 6 employees. While this may be true, the intent of the provision is, as stated, to only address very large building that may not meet current residential needs; not to accommodate the conversion of viable residential uses to non-residential uses such as this.

The applicant further requested that the two locations (approximately four blocks apart) be considered in aggregate to satisfy Subtitle U, § 203.1(n). Again, there is no language in the provision that would support this combination of lots. In addition, the locations have distinctively different characteristics as the New Hampshire building is located within an apartment zone, along a major thoroughfare and is more than 10,000 square feet in area. Conversely, the subject property is located within the RF-2 zone and within a community of lower scale row dwellings.

Finally, the applicant states that in a past approval, BZA 15555, the Board determined that “the 10,000 square feet is arbitrary, and that its purpose was to establish a standard and not an inflexible rule” and that the Sorority is therefore deserving of the flexibility. OP disagrees with this assertion, with additional analysis below. While the Board has authority to approve variance relief from this 10,000 square foot area minimum, an applicant is required in each case to meet the strict variance test. In this case, the deviation requested is a dramatic reduction, less than 1/3 of the required amount, to allow the provision to be applied in a way not intended, and the applicant has not met the variance test.

The applicant further references specific cases in which the Board approved relief in the past. However, OP notes that the similarities to the subject case are only that the applicant was a non-profit organization.

BZA 15555 – 2110 Leroy Place, N.W. This property is in the R-3 (R-20) zone and the property is surrounded with predominantly residential uses, but also with several chanceries and nonprofit organizations. The building had been used for over 50 years for various office purposes, was configured for office use and major renovations would have to be undertaken to convert it back to residential use. The total building has more than 10,000 gross square feet, but due to the topography of the site a portion of the square footage was in a basement level, which would also be used by the nonprofit, resulting in 9,572.59 square feet gross square footage counted in that case. The Board in its Conclusion of Law and Opinion at page 15, second paragraph, states:

*The Board concludes that the requested variance from the 10,000 square feet of gross floor area requirement is an area variance, the granting of which requires the showing of a practical difficulty upon the owner inherent in the property itself. The Board concludes that the proposed addition is minor in nature and is required for compliance with District Codes. The Board notes that the existing gross floor area of the structure is very close to 10,000 square feet and that the deviation is minor and the proposed addition will increase the gross floor area of the structure to less than ten square feet short of the 10,000 square foot requirement and is necessary to ensure the fire safety of the building. The Board concludes that the site is exceptional because of its size, shape, topography and the configuration of the existing building on the site. The site's triangular shape, steeply sloping grade, large building size for the site, previous history of chancery use and interior configuration combined, make the site exceptional. Additionally, the Board concludes that the application, as conditioned below, can be granted without impairing the intent, purpose and integrity of the zone plan. **The Board is of the opinion that the 10,000 square-foot figure is arbitrary, and that its purpose was to establish a standard, not an inflexible rule.**² The Board concludes that it is not reasonable to consider the building for single-family purposes due to its size, configuration and history, and that the variance will ensure the preservation of and continued use of the existing structure.*

OP agrees that the intent and purpose of the Regulations are to establish a standard and grants the Board discretion and flexibility, through the variance relief, to assess each circumstance on its own merit and allow deviations from the standard. Unlike the referenced case where the deviation was 427.4 square feet, the proposed deviation in this case is over 7,000 square feet. The applicant has not provided any adequate information to address the exceptional situation leading to a practical difficulty.

The applicant cites three additional cases in which the BZA has approved applications for non-profit uses. BZA 19131 – 1777 New Hampshire Avenue, NW, is in the R-5-B (RA-2) zone in which the building had 6,000 square feet, was connected and combined with the adjacent building which already housed a nonprofit organization and would have a total of 32,361 square feet. The neighborhood includes a mix of residential, office, embassy, hotel, institutional and commercial uses. The proposal is only similar to this example in that both applicants are non-profit entities as the extent of the flexibility and the neighborhood are very different.

In BZA 16762 – 1460-1462 Columbia Road, NW, the property is in the R-5-B (RA-2) zone and approved for a Community Service Center which is allowed by special exception in a residential zone. The community service center is located in a multifamily residential building which serves residents of the immediate neighborhood. This case is not comparable to the proposal as the requested relief are different.

In BZA 13419 – 224 2nd Street, SE in the R-4 (RF-1) zone, the Board states that “*the fact that other R-4 use could be put into this building does not preclude the (non-profit) use.*” and that “*conversion to housing units would overuse the building and cause irreparable damage.*” Although the Order for BZA 13419 Order is not available online, it seems that the building was configured for nonresidential use which it had accommodated for an extended period. To be able to use the building for residential use would entail reconfiguring the internal layout and there were concerns

² Emphasis added

that the building could be damaged during the reconfiguration. The comparison of the applicant's proposal to this example is not appropriate as the situations are different in that the subject building has always been used for residential use and is configured for residential use.

The applicant has not provided any information to address the exceptional situation leading to a practical difficulty and has not provided any information to show that the 1,345 square feet of office space cannot be accommodated elsewhere. The property was constructed for residential use and has always been used for residential use. It seems the building has been renovated, put up for sale and was purchased by the applicant in April of 2019. The property was listed on the Zillow website as a residential property (Attachment I) and does not seem to have been advertised with office as an alternate use.

ii. No Substantial Detriment to the Public Good

The requested relief from the 10,000-square foot requirement could be of detriment to the public good. Although the intended office use would be a low intense use, providing space for few employees, and with no customer visits to the site, the neighborhood is predominantly residences, as intended by the zoning. The proposal would replace a residential use in a building which is clearly set up for residential use, and the loss of viable residential space is contrary to the public good.

iii. No Substantial Harm to the Zoning Regulations

The requested relief would cause substantial harm to the Zoning Regulations. The purpose and intent of the regulation is to allow large, historic properties in residential zones to be occupied by nonprofit uses. The proposed building is within a historic district, but the total square footage of the house is 2,904 square feet of which 1,345 would be dedicated to the nonprofit use. The Regulations allow nonprofit uses in the larger buildings in residential zones because it is believed that it would have less impact than a general office use and it would allow the occupancy of these large buildings that would not be able to be financially viable to be occupied by one or two families. In smaller buildings, such as the subject site, nonresidential uses are not encouraged unless they are home based businesses. Having this nonprofit office use which is significantly below the minimum size at this location would be contrary to the intent of the Regulations. The applicant did not address this standard in their submission.

V. COMMENTS OF OTHER DISTRICT AGENCIES

DDOT has filed a report noting that it has no objection to the request (Exhibit 35).

VI. COMMUNITY COMMENTS

The property is within ANC-2B. At the time of this report that ANC had not provided a report to the file. Letters of support are entered at Exhibits 36 and 37.

