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**To:** City of Albany Board of Zoning Appeals  
**From:** Brad Glass | Director of Planning  
**Re:** Project #00337, 299 South Allen Street  
**Date:** March 27, 2020

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The Board of Zoning Appeals is currently reviewing an application to relocate the For Pete's Sake Thrift Shop to the property at 299 South Allen Street. The premises are improved with an +/- 9,000 square foot, two-story structure with limited ancillary parking at the rear of the structure. The structure was constructed in 1976 and has since been populated by a variety of office uses.

The applicant proposes to occupy the first level of the premises – approximately 3,000 square feet - for the purposes of a retail use, the For Pete's Sake Thrift Shop. The initial classification of the use as "Retail, General" was based upon the proposed size of the use and the variety of the products being sold. There is no general objection to the use being classified as "Retail, Specialty," should the Board feel that is the more appropriate classification.

The Planning Office was contacted about the prospective reuse in July 2019. It was noted that while a retail use is not a permitted use in the applicable R-M zone district, the intent of the USDO was clear in its accommodation of nonresidential uses in several residential zones where existing building typologies are conducive to those uses and provided that said uses are not of a scale and scope altogether incompatible with traditionally permitted uses. The R-M district is inclusive of two such accommodations (hereafter referenced as the Provisions #1 and #2):

1. Portions of the ground or basement floor of a residential structure that was physically constructed or adapted to accommodate nonresidential uses (for example, through an addition extending closer to the sidewalk than the original façade of the building, or through the installation of display windows) before January 1, 2015, may be used for the following uses, but the area devoted to such uses may not be expanded beyond the ground or basement floor constructed or adapted for nonresidential purposes before January 1, 2015.

As a Permitted Use: Specialty Retail, Office, or Personal or Business Services.  
As a Conditional Use: Restaurant.

2. A structure that was originally designed and constructed for a nonresidential use may be occupied for any use in the "Residential" or "Civic and Institutional" categories in Table 375-3-1 (Permitted Use Table) upon the issuance of a Conditional Use Permit.

The inquiry received was reviewed by the Chief Planning Official (Commissioner of Development and Planning) and the Director of Planning, whom applied the accommodation provisions to the subject case.

The structure was deemed ineligible for consideration under the Provision #1 due to the structure's incompatibility with the general intent of the provision. The intent of the first provision is to accommodate "storefront" properties, which can be described as traditionally mixed-use buildings where the ground (or basement) level has been altered (or in some cases constructed) to accommodate a nonresidential use. This intent is marginally communicated through the "for example" content within the provision itself, but also in its distinction from Provision #2. The CPO has declined accommodation under Provision #1 in cases where the stated physical alterations to the building structure are not present, such as that of 372 New Scotland Avenue, where the

location of a Personal of Business Service use was the subject of a BZA appeal, and in others case not immediately at our disposal. Recognizing the need for additional clarity in the language of Provision #1, revised text and a new definition of "preexisting storefront" are among the proposed edits to the USDO currently awaiting review by the Common Counsel.

With respect to Provisions #2, it was concluded that while the provision is applicable to the structure in question the proposed use does not fall within the "Residential" or "Civic and Institutional" categories in Table 375-3-1 (Permitted Use Table) and thus is ineligible for Conditional Use Permit consideration.

In light of the aforementioned, the CPO and Director of Planning reviewed provisions of the USDO relating to pre-existing development and nonconformities. These provisions provide an allowance for a nonconforming use to be converted to a different nonconforming use ("substitution") provided that the Board of Zoning Appeals determines that the alternate use is in the same or a less intensive land use category based on Table 375-3-1 (Permitted Use Table). In the case of the subject property, the existing (office) and proposed (retail) uses are nonconforming uses given the aforementioned ineligibility with respect to Provisions # 1 and #2. It was therefore concluded that the only means of the applicant's pursuing the proposal, absent a Use Variance, would be to apply the substitution of nonconforming use provision outlined in 375-5(F)(3)(d) of the USDO.

In conclusion, this memorandum is not meant to constrain the BZA's actions, but to inform you that consideration has been given to how to process the proposed change of use application in light of the various potentially applicable provisions within the USDO, with the matter having been resolved as stated.