

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: Megan Rappolt, Case Manager

JL Joel Lawson, Associate Director Development Review

DATE: December 30, 2014

SUBJECT: **BZA Case 18891** – request for special exception and variance relief for a six-story apartment building with ground floor retail proposed on property located at 1401 Florida Avenue NE

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (“OP”) recommends approval of the following relief requested by the Applicant:

Special Exception pursuant to:

- § 1320.4 (f), H Street NE Neighborhood Commercial Overlay District (“HS”), new building on a lot over 6,000 sf; and

Area Variance Relief from:

- § 772 Lot Occupancy (75% maximum, 80% max. per IZ, 99% proposed);

OP may also be able to support the below requests, should the Applicant provide requested additional information to justify the requests:

Special Exception pursuant to:

- § 411.11, Roof Structures located below the Height Act limit (1:1 roof structure setback required; the application does not detail the required amount or the proposed amount); and

Area Variance Relief from:

- § 2101.1 Parking (a minimum 25 vehicle spaces are required, 0 are proposed).

The original application as filed was not supportable and was generally lacking in the information needed for OP or the community to adequately assess the relief requested. The Applicant filed a revised Pre-hearing statement on December 22, 2014, which eliminated the originally requested relief for additional height and to reduce the requested additional FAR. While it appears the revised plan address some of OP’s concerns with regard to additional height and density, additional information is needed to fully vet the proposed project in terms of FAR and parking as well as loading considerations, even though off-street loading is not required.



II. LOCATION AND SITE DESCRIPTION

Address:	1401 Florida Avenue NE
Legal Description:	Square 1049 N, Lots 5, 6, 802 and 804
Ward:	6A
Lot Characteristics:	The triangularly- shaped lot is 6,648 square feet (0.15 acres) with prominent frontages along 14 th Street, H Street and Florida Avenue NE. There is no alley serving the lot, and a large public space currently used as parking, is situated between the lot and the Florida Ave. NE right-of-way. Two curb cuts exist along the Florida Ave NE. frontage.
Zoning:	HS-A/C-3-A – multiple dwelling buildings are allowed in this district. This property and surrounding properties were placed within the H Street Northeast Neighborhood Commercial Overlay in 2011 (ZC Case 10-19) at the request of Advisory Neighborhood Commission (ANC) 6A.
Existing Development:	Lot 6 is a paved vacant space with no structures. The other lots contain 3 row house buildings built at the turn of the 20 th C.
Historic District:	None
Adjacent Properties:	To the south and west, two-story row homes with commercial uses, built between the late 1800s to the early 1900s. To the north, the 10-story Delta Towers Building with its adjacent surface parking lot. To the east, the Starburst Intersection of Benning Road, Florida Avenue, Maryland Avenue and H Street NE.

III. PROJECT DESCRIPTION-IN-BRIEF

Applicant	14 & H , LLC represented by Meredith Moldenhauer
Proposal:	A 6-story/70' tall building with 35 residential units and 4,958 square feet of ground floor retail. 25 parking spaces are required and none are provided.
Relief Sought:	§ 1320.4(f) – special exception to allow construction on a lot larger than 6,000 square feet; §411.11 special exception in order to modify roof structure regulations of §770.6; area variance relief per§ 3103 from lot occupancy (§772), FAR (§771) and parking requirements (§ 2101.1)

IV. ZONING REQUIREMENTS

HS-A/C-3-A District	Regulation	Proposed ¹	Relief
Height (ft.) § 770/§ 1324.13 ²	70 feet	70 feet	None
Floor Area Ratio § 771	4.8 (includes .8 FAR IZ bonus)	5.25	Required
Number of Apartments	not regulated	35	None
Lot Occupancy § 772/§2604	80% residential/100% commercial	99%	Required
Rear Yard (ft.) § 774 and §774.11	2 ½ in./vert. foot (15.625') measured from CL of street	>15.625'	None
Side Yard (ft.) § 775	None or 2 in./vert. foot	None	None
Open Court § 776	4 in. width/vert. foot (min. 15 feet)	N/A	None
Roof Structures § 770.6	18.5 feet	Unsure	Not certain
Lot Area§ 1320.4 (f)	Review required for any lot greater than 6,000 sq.ft.	6,648 sq.ft. existing	Required
Parking, Bicycle § 2119	5% x required vehicle parking (2)	21	None
Parking, Vehicle § 2101	1 space/2 dwellings and 1 space/300 sf over 3,000 sf of retail (18 min. and 7 retail) = 25 required	0	Required
Loading § 2201	1 loading berth @ 30 feet deep (retail) If 5,000 sf to 20,000 plus cellar; and loading facilities for 50 units or more	0	None required

V. OP ANALYSIS

Project Relief Summary

Per Section 1320.4 (f) of the H Street Neighborhood Commercial overlay district, special exception approval is required for new construction on a lot that exceeds 6,000 square feet. Special exception regulations for the H-Street Overlay District are found in Section 1325. Both 1325.1 (a) and 1325.4 require that Applicants demonstrate a project is consistent with the design intent of the design requirements of Section 1324 Design Guidelines as well as the design guidelines of the H Street N.E. Strategic Development Plan.

In terms of all other requested relief, OP requested additional information to evaluate the requested roof structure relief and a transportation analysis so parking relief can be analyzed. On December 22, a revised Pre-Hearing statement was submitted with revised plans that eliminated the request for additional height and reduce the requested additional FAR. However, OP cannot properly evaluate the roof structure or parking loading relief without additional information from the Applicant.

¹ Information provided by applicant.

² C-3-A height limit is 65'. Per HS Design Requirements, buildings providing 14' clear floor-to-ceiling heights that front H St., Florida Ave. and 14th Street are granted 5 additional feet of height.

Special Exception Relief Pursuant To:

1) Applicable H Street Regulations

- 1320.4: The following buildings, structures, and uses are permitted only by special exception if approved by the Board of Zoning Adjustment, in accordance with the standards specified in § 3104 and 1325 of this Title... (f): Construction of a new building or enlargement of the gross floor area of an existing building by fifty (50%) or more, if located on a lot that has six thousand sf (6,000 sf) or more of land area.
 - The proposed Property is 6,648 sf and as such, a special exception is required and is subject to §1325 Special Exception Requirements (HS).
- 1325.1: The buildings, structures, and uses listed in § 1320.4 and exceptions from the requirements of the H Street Overlay District shall be permitted as a special exception if approved by the Board of Zoning Adjustment after public hearing, based on § 3104, provided the following criteria and the requirements of § 1304 are met:
 - (a) The project is consistent with the design intent of the design requirements of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan;
 - The design guidelines of the H Street N.E. Strategic Plan were established to provide development guidelines and architectural standards to guide the redevelopment, rehabilitation or development of new properties within the H Street corridor. The Property is identified as a “Type II” development which typically occurs as a rehabilitation of small lots and/or new infill development of small or assembled lots. The following chart shows how the proposed project conforms to the applicable “Type II” development guidelines and architectural standards of the design guidelines of the H Street N.E. Strategic Plan:

	Guideline	Proposed Project
Building Envelope: Buildings are to be set on the front and side property lines. Buildings may max. lot coverage and should be 2-4 stories tall	- 0’ setback from property line at front and side streets; - 10-25’ setback from property line at rear yard; - Building Height: 2-4 stories	Conforms to 0’ setbacks from property lines at all frontages. Exceeds recommended building height by 2 stories.
Encroachments	Projections over ROW starting at eight feet above the sidewalk for a horizontal distance of six feet	Unknown; projections shown 15’-6” but unsure of horizontal distance.
Parking	Shall occur behind the building or located below-grade; shared parking encouraged.	No parking is proposed to be provided.
Storefronts: Area that is between 18” above ground to w/in 12” of finished ceiling of ground floor. Clear glass and brick, wood, metal should be used.	Windows/doors should occupy >60% of store front	Appears to conform, but not specifically detailed in the application.
Windows and Doors	Shall be vertically-oriented and rectangular	Generally conforms

Awnings and Canopies	Can encroach over a sidewalk beginning of 8' in height. Can be triangular in section; have lettering; made of canvas, wood, metal or glass.	Unknown – information not submitted by the applicant.
Walls	Should be masonry, stucco, concrete panel, glass, metal; all elevations should be designed as “fronts”; blank walls are not permitted; bldgs. should express a base, middle, & top;	Generally conforms. There is an area of blank wall of 30' along 14 th St. NE. that would benefit from additional articulation and/or fenestration.
Roof, Parapet, Cornice	Roofs should be flat; include a parapet (18”) & screening of mechanical equipment; and cornices should be made of certain materials located near the top the building in keeping with local historical vernacular	Conforms with regard to a flat roof. The style departs from the vernacular of H Street N.E. but is not inappropriate for an apartment building.

(b) The architectural design of the project shall enhance the urban design features of the immediate vicinity in which it is located; and, if a historic district or historic landmark is involved, the Office of Planning report to the Board shall include review by the State Historic Preservation Officer and a status of the project's review by the Historic Preservation Review Board;

- In terms of the overall architectural design of the project, the contemporary design, large windows, primarily glass base, etc. may depart from the characteristic architectural fabric of H Street NE, but are appropriate for a new apartment building and will help to activate the streetscape. It appears that the ground floor use of retail, multiple doors/entries and design of the ground floor is consistent with the H Street Plan recommendations in terms of first floor height and retail presence. Finally, the property is not within a historic district nor is it historic landmark.

(c) Vehicular access and egress shall be located and designed so as to encourage safe and efficient pedestrian movement, minimize conflict with principal pedestrian ways, function efficiently, and create no dangerous or otherwise objectionable traffic conditions;

- No vehicular access/egress to the Property has been planned. A “loading/parking lane” has been introduced along Florida Ave. NE; however more information is required to properly evaluate it.

(d) Parking and traffic conditions associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences;

- It is unknown if parking and traffic conditions caused by the project will adversely affect adjacent or nearby residents. A traffic impact analysis was requested. At the time of the writing of this report, a study has not been submitted. OP has requested that the applicant provide the normal and adequate level of information needed to assess potential impacts of the parking relief and for the loading/parking lane.

- (e) Noise associated with the operation of a proposed use shall not adversely affect adjacent or nearby residences; and*
 - Multiple dwelling buildings are allowable uses in this district. Outdoor gatherings onsite would be limited to small balconies on some individual units and in the adjacent public space areas that appear to be planned as outdoor cafes (both Florida Ave NE and 14th Street NE). The mechanical equipment appears to be located to not generate noise that would affect adjacent properties across H, 14th Streets nor Florida Ave. The proposed project, therefore, is not anticipated to adversely impact neighboring residential or commercial properties.
- (f) The size, type, scale, and location of signs shall be compatible with the surrounding corridor and consistent the design guidelines of the H Street N.E. Strategic Development Plan.*
 - No building signs or canopies are shown on the submitted plans; however the Pre-Hearing statement indicates the signs associated with the residential and retail uses will be compatible with the size, type, scale and location found in the H Street N.E. corridor. More information was requested of the Applicant in this regard.
- 1325.2: *An applicant may demonstrate compliance with § 1325.1(f) by demonstrating that the signage will be exclusively located on upper facades, awnings, and transom windows, constructed of durable materials, and sensitively designed; and will not affect more than twenty percent (20%) of display windows, consist of backlit box signs or neon product advertisements, block visibility into a store, or be overly obtrusive.*
 - No building signs or canopies are shown on the submitted plans. More information was requested of the Applicant.
- 1325.3: *The Board may impose requirements pertaining to design, appearance, signs, massing, landscaping, and other such requirements as it deems necessary to protect neighboring property and to achieve the purposes of the H Street Overlay District.*
 - OP has requested, and recommends the Board require, more information regarding the roof plan and transportation impact study so associated relief can be properly evaluated, as the Property is located at a very prominent/highly-trafficked intersection.
- 1325.4: *Applicants shall demonstrate that projects requiring a special exception shall be consistent with the design intent of the design requirements, of § 1324 and the design guidelines of the H Street N.E. Strategic Development Plan.*
 - See chart on page 4. Additional information is required in order to properly determine if the project can ameliorate transportation impacts related to the provision of no parking and the proposed parking/loading lane.
- 1324.1: *The design requirements of §§ 1324.2 through 1324.16 shall apply to any lot in the HS Overlay District for which a building permit was applied after October 25, 2004.*

- 1324.2: *Buildings shall be designed and built so that not less than seventy-five percent (75%) of the streetwall(s) to a height of not less than twenty-five feet (25 ft.) shall be constructed to the property line abutting the street right-of-way. Buildings on corner lots shall be constructed to both property lines abutting public streets.*
 - It appears one hundred (100) percent of the street walls to the full building height would continue along 100% of the adjacent frontages of 14th Street, H Street and Florida Avenue NE.
- 1324.3: *New construction that preserves an existing façade constructed before 1958 is permitted to use, for residential uses, an additional 0.5 FAR above the total density permitted in the underlying zone district for residential uses.*
 - Façade preservation is not part of the proposed design and thus the project is not eligible for additional permitted .5 FAR. However, a development on the Property could take advantage of this bonus due to the presence of three existing buildings built around the turn of the 20th Century, and based on guidance from the Strategic Plan.
- 1324.4: *In C-2 Districts within the HS Overlay District, seventy percent (70%) residential lot occupancy shall be permitted.*
 - Not applicable in this case as the property is zoned HS/C3A.
- 1324.5: *For the purposes of this Section, the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin.*
 - Residential uses (other than the residential entry on the ground floor) are first shown on the second floor of the proposed building. It appears the lot occupancy would be the same on every floor.
- 1324.6: *For the purposes of § 1324.5, "residential uses" includes single-family dwellings, flats, multiple dwellings, rooming and boarding houses, and community-based residential facilities.*
 - The proposed project is primarily a multiple dwelling building.
- 1324.7: *Parking structures with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street N.E., or 15th Street, N.E. shall provide not less than sixty-five percent (65%) of the ground level frontage as commercial space.*
 - Not applicable as the project does not include a parking structure.
- 1324.8: *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street, N.E., 14th Street, N.E., or 15th Street, N.E. shall devote not less than fifty percent (50%) of the surface area of the streetwall(s) at the ground level of each building to display windows having clear or clear/low-emissivity glass, except for decorative or architectural accent, and to entrances to commercial uses or to the building.*
 - It appears the ground floor retail element of project meets this requirement.

- 1324.9: *Security grilles shall have no less than seventy percent (70%) transparency.*
 - It appears that there are no security grilles shown on the plans; however the Applicant should clarify. OP would not support relief from this provision.
- 1324.10: *Each commercial use with frontage on H Street, N.E., Florida Avenue, N.E., Maryland Avenue, N.E., 13th Street N.E., 14th Street, N.E., or 15th Street, N.E. shall have an individual public entrance directly accessible from the public sidewalk. Multiple-dwellings shall have at least one (1) primary entrance on H Street directly accessible from the sidewalk.*
 - It appears there are individual retail entrances on H Street NE, 14th Street and one on Florida Ave NE which lead to either public sidewalk or public space. The primary entrance of the residential use is accessible from the H Street NE sidewalk.
- 1324.11: *Buildings shall be designed so as not to preclude an entrance every forty feet (40 ft.) on average, for the linear frontage of the building, excluding vehicular entrances, but including entrances to ground floor uses and the main lobby.*
 - It appears the design of the building will not preclude an entrance every forty feet (40 ft.) for the linear frontage of the building.
- 1324.12: *The ground floor level of each new building or building addition shall have a uniform minimum clear floor-to-ceiling height of fourteen feet (14 ft.) if the building: (a) Fronts **H Street, N.E.**; or (b) Fronts **Florida Avenue, N.E.**, Maryland Avenue, N.E., 13th Street, N.E., **14th Street, N.E.**, or 15th Street, N.E. and would have ground floor space occupied by one (1) or more service, retail, or office uses permitted as a matter of right in the underlying zone.*
 - It appears the floor-to-floor height of the ground floor is a uniform 15'-1". OP asked the Applicant to confirm the floor-to-ceiling height of the ground floor, as it is not shown on the plans.
- 1324.13: *Buildings subject to § 1324.12 shall be permitted an additional 5 feet (5 ft.) of building height over that permitted in the underlying zone.*
 - It appears the Applicant is taking advantage of the additional five feet of height provided by this section.
- 1324.14: *Projection signs shall have a minimum clearance of eight feet (8 ft.) above a sidewalk and fourteen feet (14 ft.) above a driveway, project no more than three feet, six inches (3 ft., 6 in.) from the face of the building, and end a minimum of one foot (1 ft.) behind the curbline or extension of the curbline.*
 - No information on the plans regarding the location of proposed signs has been provided by the Applicant; OP has requested that this information be provided.
- 1324.15: *Façade panel signs shall not be placed so as to interrupt windows or doors and shall project no more than twelve inches (12 in.) from the face of the building.*
 - It does not appear façade panel signs are proposed, although this is not detailed in the application.

- 1324.16: *Roof signs are prohibited.*

- Roof signs are not shown on the proposed plans and are not addressed in the Pre-Hearing statement by the Applicant, so OP assumes they are not proposed. OP would not support roof signs at this location.

2) **Roof Structure Relief of Sections 411 and 770.6**

- 411.11: *Where impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, **770.6**, 840.3, or 930.3, when applicable, and to approve the material of enclosing construction used if not in accordance with §§ 411.3 and 411.5; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*
 - The Applicant requests special exception relief under this section as the proposed roof structure will not meet the required 1' per 1' height setback required in §770.6, although the extent of relief needed has not been adequately detailed by the applicant.
- 770.6: *If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows: (a) It shall meet the requirements of § 411; (b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; ... (d) It shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.*
 - It appears there is a stair and elevator penthouse along the 14th Street part of the roof and there is 0' setback from the edge of the roof below. OP has requested that the applicant verify that this information, and to clarify whether the proposed roof structures are a uniform height per §770.6 (d).

Area Variance Relief:

The Applicant seeks area variance relief from FAR, lot occupancy regulations and parking. Pursuant to DCMR 11§3103, variances from the zoning regulations can be authorized by the Board of Zoning Adjustment, so long as certain exceptions exist, those exceptions result in a practical difficulty in meeting the regulations, and detriment to the public good or zoning regulations do not result. Area variances allow for relief of requirements that affect the size, location, and placement of buildings and other structures such as height, floor area ratio, lot occupancy, yard width and depth, and minimum court size.

- 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions, and does the extraordinary or exceptional situation impose a practical difficulty, which is unnecessarily burdensome to the applicant?***

FAR: The Applicant states that due to the size and shape of the lot, the ability to design a functional structure is limited. Additionally, the Applicant states the core functions are 17% of the building floor area, which is a larger proportion than would be found in larger projects, but has not provided data to support this statement. The Applicant states that the part of the building that reflects the pointed-shape has limited practical use or marketability to potential residents; limits the location of the core functions; and makes it difficult to layout double-loaded corridors with plausible units. OP does not agree. Because the Applicant has shown a layout and units on a double-loaded corridor, it appears the triangular-shape does not cause a practical difficulty in achieving building area on the lot. Additionally, it would seem the units with the triangular-floor plates will enjoy more glass, better views, etc. as compared to the typical rectangular-shaped units in the building. Finally, additional density of .5 FAR is possible in the H Street Corridor with building façade preservation of which a development on this site could take advantage.

Lot Occupancy: The Applicant states that, because the site fronts on multiple streets, it is practically difficult to meet the both the lot occupancy requirements and requirement of the H-Street Overlay (§1324.2) that no less than 75% of the building/street-wall be constructed on the property line, and must be constructed on both property lines on corner lots. OP agrees that this particular Property, due to its shape, small size, and frontage on three prominent streets, it is practically difficult to meet the lot occupancy regulations, particularly without requiring relief from other sections of the regulations. It likely could require certain areas of the residential portion of the building/street-wall be recessed and would impact the ability to meet the street wall requirements.

Parking: Per §2101, the retail parking space requirement is based on 1 space per 300 feet of GFA over 3,000 sf of retail GFA. The proposed development includes 4,958 sf of retail gross floor area, so 7 retail spaces are required. For residential uses, 1 space/2 dwellings is required, so for 35 units, 18 spaces are required. The Applicant states the provision of parking at-grade or underground would reduce the limited buildable area, be extremely burdensome and would result in an extremely inefficient garage in terms of use of space compared with the cost to build it. The Applicant also states due to the shape of the lot and required ramps, underground parking cannot be provided. Based on the submitted plans/study, it appears that underground parking could be possible, however the ramp may be steep and it would likely only accommodate a few cars, so may be impractical. OP requested additional justification in the form of a transportation analysis that includes nearby available parking.

2. *Can the relief be granted without substantial detriment to the public good?*

The requested relief from FAR could not be granted without substantial detriment to the public good. The proposed development exceeds the permitted density in a location where there is an overlay zone that permits additional density of .5 FAR for the public good of facade preservation. Granting additional density of .4 FAR without facade preservation and without other adequate justification undermines the incentive in the overlay zone. Additionally, without adequate parking analysis from the applicant and additional detail about the loading/parking lane, it is difficult to determine potential impacts of the parking relief requested. However, the requested relief from lot occupancy should have not be of detriment to the public good, and would help to achieve the desired level of street activation.

3. *Can the relief be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?*

As proposed, the relief cannot be granted without substantial impairment to the intent, purpose and integrity of the Zoning Regulations and Map. The proposed development exceeds the permitted density regulations and in this way, impairs the intent of the H Street Overlay District as well as the C-3-A District. Granting additional density of .4 FAR without facade preservation undermines the intent and goals of the overlay zone. Parking relief may be supported with the provision of additional information and mitigation strategies; however the Applicant has not submitted any additional information in this regard. Relief with regard to lot occupancy could be granted without substantially impairing the regulations.

VI. AGENCY COMMENTS

The District Department of Transportation's ("DDOT") report is under separate cover.

VII. COMMUNITY COMMENTS

Adjacent Neighbors: While at the time of the writing of this report, only one letter of support from nearby residents (1350 Maryland Ave NE) has been entered into the record, several nearby businesses entered letters of support into the record.

Ward/ANC: The property is within ANC-6A. At the time of the writing of this report, no information regarding ANC 6A's position on this development has been entered into the record.

Attachment: Aerial Location Map



LOCATION MAP