

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Ron Barron, Case Manager
 JL Joel Lawson, Associate Director Development Review
DATE: April 21, 2025

SUBJECT: BZA Case 21151, Request for area variance and special exception relief to permit restaurant use in an existing, detached, two-story with cellar, mixed use building in the RF-1 residential zone at 2324 North Capitol Street, NW

I. OFFICE OF PLANNING RECOMMENDATION

Although the filing from the applicant is not clear, the Office of Planning (OP) interprets it as requesting the following relief.

OP recommends **denial** of the following special exception and variance relief:

- Subtitle C § 204.9, special exception to allow change from one nonconforming use to another nonconforming use.
- Subtitle C § 204.9(b), area variance to allow a new nonconforming commercial use.
- Subtitle C § 204.1, for the expansion in area and intensity of use of a proposed nonconforming use.

While the applicant makes a compelling case for why the normally intended use in the zone – residential – is not viable for the ground and lower level of the building and would present an undue hardship to the owner, the applicant has not addressed how the proposed use adequately addresses the use variance test, or why a potentially less impactful use, such as uses that, according to the filing, were originally envisioned or through the Corner Store provisions, would not be a reasonable use more consistent with the intent of the zone, and the intent of the BZA relief process.

II. LOCATION AND SITE DESCRIPTION

| | |
|---------------------|--|
| Address | 2324 North Capitol Street, NW |
| Applicant | Dinesh Tandon and Nidhi Tandon |
| Legal Description | Square 3124, Lot 143 |
| Ward, ANC | Ward 5; ANC 5E |
| Zone | RF-1, low to moderate density residential |
| Historic District | Bloomingdale Historic District |
| Lot Characteristics | Regular corner lot with about 1,500 sq. ft. of area, 22.2 ft. front and rear lot lines and 80 ft. side yard lines. |

| | |
|------------------------------------|---|
| Existing Development | The subject property is improved with a two-story + cellar mixed-use row building. The cellar level and first floor of the building were most recently used for retail use. |
| Adjacent Properties | The subject property is on a corner lot which abuts Bryant St. NW to the north, North Capitol St. NW to the east, a residential structure with which it shares a wall at 2322 N. Capitol St. NW and a public alley to the west. |
| Surrounding Neighborhood Character | The neighborhood is primarily moderate density residential characterized by two-story residential attached row-houses. |
| Proposed Development | change the existing nonconforming retail use to nonconforming restaurant use; expansion of the non-conforming use ¹ |

III. ZONING REQUIREMENTS and RELIEF REQUESTED

| Zone | Regulation | Existing | Proposed | Relief |
|---------------------------------|---|---------------------------------------|---|-------------------------|
| Density E § 201 | 1.8 | Not Provided | No Change | None Requested |
| Lot Width E § 202 | 30 ft. | 22.2 ft. | No Change | None Requested |
| Lot Area E § 202 | 3,000 sq.ft. min. | 1,772 sq. ft. | No Change | None Requested |
| Height E § 203 | 35 ft. max. | 27 ft. | No Change | None Requested |
| Front Setback E § 206 | Within Range | Conforming | No Change | None Requested |
| Rear Yard E § 207 | 20 ft. min. | 18.9 ft. | No Change | None Requested |
| Side Yard E § 208 | None required, but 5 ft. min. if provided | 13 ft. | No Change | None Requested |
| Lot Occupancy E § 210 | 40% max. | 75% | No Change | None Requested |
| Parking C § 701 | 0 spaces | 0 Spaces | No Change | None Requested |
| Non conforming Use C § 204.9 | Conversion of non-conforming use | Non-residential ground floor & cellar | Change to different non-residential use | Sp. Ex requested |

¹ The Zoning Administrator has determined that expanding a non-conforming non-residential use to include sidewalk tables constitutes an expansion of the non-conforming use

| Zone | Regulation | Existing | Proposed | Relief |
|-----------------------------------|--|---------------------------------------|--|---|
| Use Permissions U §§ 204.9 (b) | Conversion to use other than residential not permitted | Corner store retail use | Eating and Drinking Establishment Use requested | Area/Use Variance relief requested |
| Nonconforming Uses C § 204.1 | No expansion of nonconforming use | Non-residential ground floor & cellar | Eating and Drinking Establishment use to include outdoor seating | Use Variance relief required |

IV. OFFICE OF PLANNING ANALYSIS

The subject property is improved with a two-story with cellar, semi-detached mixed-use structure in an RF-1 zone. According to HistoryQuest DC, the building was built in 1920 as a mixed-use structure with corner store uses on the ground level and a residential unit on the upper story. The property had been used for many years as a convenience and grocery store, which ceased operations in 2022. The applicant proposes to repurpose the structure as a full-service restaurant with outdoor café seating, a full bar and indoor seating on the first level, and kitchen with takeout window on the cellar level. The applicant has stated that the second level would be used as a residential apartment, and it has a separate entrance from the street. A full-service restaurant is not a permitted use in an RF-1 zone.

OP understands the request to include:

- Special Exception relief under Subtitle C § 204.9 (non-conforming uses) to allow a change from one nonconforming use to another. This section states “[a] nonconforming use may be changed to another nonconforming use if approved by the Board of Zoning Adjustment as a special exception”.
- Area (or Use) Variance from a condition of the special exception review, Subtitle C § 204.9 (b) which limits any change of use in an RF Zone to “either a single dwelling unit, flat, or a multiple dwelling unit development.” Subtitle X § 1001.3 cites “[p]reconditions to the establishment of a matter of right or special exception use,” as an example of an area variance.
- Use Variance relief to allow an expansion of the non-conforming use, not permitted by Subtitle C § 204.1, which states in part that “A nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity...”. The requested relief results from the applicant’s proposal to provide café seating in public space, which has been determined to require this use variance relief. OP would also not support an expansion of the non-conforming use to the currently residential upper floor of the building, but that is not proposed as part of this application.

Subtitle C § 204.1, states that a “nonconforming use of land or structure shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment of this title.”

It is reasonable to anticipate that a conversion from a corner store use to a restaurant use could be interpreted as an increase in “use intensity.” Further, the addition of café seating in public space adjacent to the subject property constitutes an expansion of the restaurant use, which, in the RF-1

zone, is nonconforming. The applicant has in fact anticipated this and requested use variance relief for both the restaurant use and the provisions of Subtitle C § 204.1 to allow café seating, and use variance relief would appear to be the most appropriate for the proposed use. This is a self-certified application so OP has evaluated it accordingly, but has combined the two forms of the variance relief into one analysis.

Subtitle C § 204.9 – Changing one non-conforming use to another

204.9 A nonconforming use may be changed to another nonconforming use if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

- (a) The proposed non-conforming use would be permitted as a matter-of-right in the most restrictive subtitle in which the existing non-conforming use is permitted as a matter of right, in accordance with following order, from most restrictive to least restrictive subtitle:*
 - (1) Subtitle D – Residential House (R) zones;*
 - (2) Subtitle E – Residential Flat (RF) zones;*
 - (3) Subtitle F – Residential Apartment (RA) zones;*
 - (4) Subtitle H – Neighborhood Mixed-Use (NMU) zones;*
 - (5) Subtitle G – Mixed-Use (MU) zones;*
 - (6) Subtitle I – Downtown zones (D);*
 - (7) Subtitle J – Production, Distribution, and Repair (PDR) Zones; and*
 - (8) Subtitle K – Special Purpose Zones.*

Both the former grocery store use and the proposed restaurant use are first permitted in the NMU and MU zones

- (b) In the R, RF, or RA zones, the proposed use shall be either a single dwelling unit, flat, or a multiple dwelling unit development; except on an alley lot, the proposed use may only be a single dwelling unit;*

The applicant has requested area or use variance relief from this provision, as a residential use is not proposed in the existing non-conforming portion of the building.

- (c) In the R and RF zones, the corner store provisions of the relevant subtitle shall apply;*

The applicant states that the corner store provisions (Subtitle U § 254) would not apply for the proposed use, with which OP concurs as the proposed use would be inconsistent with many of the corner store provisions, including area devoted to that use, the nature of the full service restaurant / bar proposed, the likely number of employees, and the proposal for outdoor seating.

- (d) The external impacts of the proposed use will be deemed to be no greater than the existing use;*

The proposed use has the potential for greater external impacts than the existing use. Please below and refer to the variance analysis below.

- (e) *The proposed use shall not adversely affect the present character or future development of the surrounding area within at least three hundred feet (300 ft.) of the site;*

The proposed use should not negatively impact the character of this building, which was designed and built as a mixed use building with a non-residential design for the ground floor. While the proposed use could have external impacts as discussed below, OP would not expect it to significantly adverse impact or cause future development of the surrounding rowhouse area.

- (f) *The proposed use shall not create any deleterious external effects, including, but not limited to, noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects;*

The nature of the proposed use, a full-service restaurant with bar and dedicated delivery window, could create deleterious external effects not anticipated for this zone, particularly with respect to noise, traffic, parking, and loading. The applicant has also not adequately addressed trash storage and pick-up, which could result in additional adverse impacts.

- (g) *When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use; and*

Not applicable, except that OP would also oppose any proposal to change the currently conforming upper floor residential use to additional non-residential space.

- (h) *The Board of Zoning Adjustment may require the provision of changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.*

The applicant should, at a minimum, clarify trash storage and the nature of the delivery pick-up service; locate outdoor seating to minimize potential impacts on adjacent neighbors or other users of the public space; signage design; any out-door sound system for music; and location and design of lighting to minimize light spill to surrounding houses. It is assumed that the business would limit hours of operation to be within those permitted under the ABCA license.

Subtitle X § 1002, VARIANCE REVIEW STANDARDS

1002.1 The standard for granting a variance, as stated in Subtitle X § 1000.1 differs with respect to use and area variances as follows:

- (a) *An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and*
- (b) *An applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.*

Extraordinary or exceptional situation or condition

The applicant has demonstrated that it would likely be unreasonable to convert a long-standing commercial use to a conforming residential use. The subject property has been a corner store since its construction in 1920 and public records show that the site has only been used for ground floor commercial and upper-level residential uses..

The RF-1 zone provides very few non-residential matter-of-right options. The building is also a historically contributing structure in the Bloomingdale Historic District, with large bay windows facing North Capitol and Bryant Streets NW which would be ill-suited to residential use and conversion to a suitable residential design would be inconsistent with the historical character of the neighborhood.

The applicant also maintains that converting the property to another non-conforming non-residential use would be unreasonable. Prior to this application, the owner attempted to open a corner store with some off-premises alcohol sales. The applicant determined that a corner store use was not economically viable without this license, but that was not permitted by ABCA due to opposition from the community. However, the applicant does not discuss other potential options for use of the space.

While zoning compliant uses to which the site may be put are limited, the applicant has not made a compelling or comprehensive argument that, even when taken together, these constitute an extraordinary or exceptional situation or condition with respect to the property that meets the test for a variance.

Exceptional and undue hardship

For the reasons stated above, the applicant has not made a sufficient argument that an extraordinary circumstance results in an exceptional or undue hardship. It would appear that other uses, some of which the applicant previously examined, exist for the reasonable use of this property.

No substantial detriment to the public good

The applicant argues that a change from a retail corner store use to a restaurant and bar use would not create substantial new detrimental conditions on the subject property. However, the applicant's statement does not explain how the hours of operation, the handling of noise, trash, parking, and other potential adverse impacts would be handled. The applicant is proposing a full bar and outdoor seating, as well as a pick-up delivery window, which would anticipate delivery drivers as well as local patrons. These impacts to the immediate neighbors should be more fully addressed.

No Substantial Impairment to the intent, purpose, and integrity of the zone

The unaddressed impacts noted above could also constitute a substantial impairment to the intent, purpose and integrity of the zone. The RF-1 zone is intended to *"provide for areas predominantly developed with residential row buildings of three (3) or more stories within which no more than three (3) or four (4) principal dwelling units are permitted, respectively."* While this section does make some provision for *"limited compatible non-residential uses,"* the proposed use has the potential to create adverse conditions that may not be compatible with existing residential uses. The regulations are also intended to discourage the expansion of existing non-conformities, particularly where other options exist.

V. OTHER DISTRICT AGENCIES

DDOT submitted a report at [Ex. 101](#) in which they stated no objection to proposed relief, provided the outdoor seating is properly permitted.

The Historic Preservation Office reviewed the application and had no objection.

VI. ADVISORY NEIGHBORHOOD COMMISSION

Exhibit 134 is a memo from the Commissioner for SMD 5E06, which is located directly across North Capitol Street. This letter notes that the ANC elected to take no position on this case.

At Exhibit 136 is a memo from the SMD 5E05 Commissioner, within which the site exists.

At Exhibit 79 is a memo from the SMD 5E04 Commissioner.

VII. COMMUNITY COMMENTS TO DATE

Multiple letters in support and in opposition have been submitted to the record.

Location Map

