

## **MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** *JL* Joel Lawson, Associate Director Development Review  
**DATE:** December 2, 2024

**SUBJECT:** BZA Case 21224 (530 Penn Street NW) to permit a new entertainment, assembly, and performing arts use within an existing building.

### **I. OFFICE OF PLANNING RECOMMENDATION**

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

- Matter of Right Uses within the PDR Zones, Subtitle U § 801(e), pursuant to Subtitle X § 901.2 (Entertainment, assembly, and performing arts use permitted by special exception).

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

- Entertainment, assembly, and performing arts use, Subtitle U § 802.1(e); Conditions
  - (2) - shall not abut a residential use or zone; site abuts a residential zone to the rear and a high density mixed use residential building to the west; and
  - (4) - external performances or amplification not permitted.

In this case, the property is within the mixed use/PDR area known as Florida Avenue Market; numerous PUDs have been approved in the area for medium to high-density mixed-use developments.

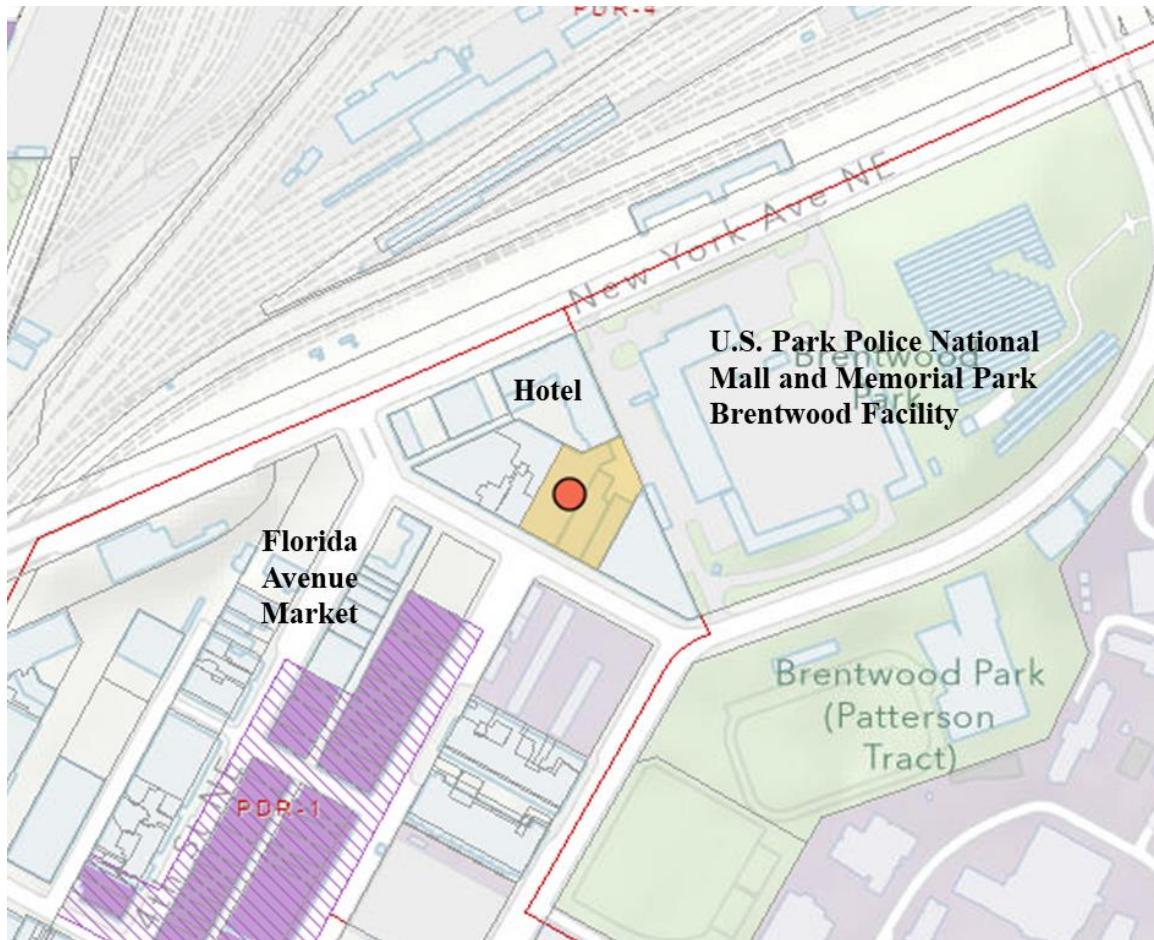
The application notes that the owners of the subject site obtained a Certificate of Occupancy (C of O) for “assembly use for art and music activation”, and organized a number of event accordingly. The applicant was subsequently informed that BZA relief was required for the use, and the C of O was deemed invalid until the relief was obtained.

### **II. LOCATION AND SITE DESCRIPTION**

Address	530 Penn Street NE
Applicant	Ai Pop Up, LLC
Legal Description	Square 3594, Lot 6
Ward, ANC	5 / 5D
Zone	PDR-1 – Moderate Density production, distribution and repair.
Lot Characteristics	Irregular shaped lot fronting onto Penn Street NE to the south with three small structures. The structure for the use in question is apparently vacant. There is no rear alley.

Adjacent Properties	The U.S. Park Police National Mall and Memorial Park Brentwood Facility to the rear in the RF-1 zone; an independent movie theatre to the east in the PDR-1 zone, and a hotel and a new high density mixed use retail and residential building adjacent to the west/north, with PDR-1 base zoning but with PUD/MU-9 zoning.
Surrounding Neighborhood Character	The site is within the medium to high density mixed use Florida Avenue Market area.
Proposal	The site is developed with three structures, and the use for which relief is requested would be mainly located within one of the small structures which the application notes has existing outdoor patio space at the rear. The Applicant has a short-term lease for the building to transform the vacant office space to an entertainment event space. No expansion of existing building is proposed. The proposed use would be temporary, prior to the eventual redevelopment of the lots. As noted by the applicant, the use of the property would consist of “approximately 10-12 events between now and early 2025”.

### Location Map



### **III. RELIEF REQUESTED**

The applicant has requested relief from the following provisions:

802.1 The following uses shall be permitted in any of the PDR zones if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9 and subject to the applicable conditions for each use below:

...

**(e) Entertainment, assembly, and performing arts uses, subject to the following conditions:**

...

**(2) The property shall not abut a residential use or residential zone;**

...

**(4) External performances or external amplification shall not be permitted;**

...

The Zoning Administrator has determined that the applicant may request special exception relief from the use provisions, as well as area variance relief from the noted conditions.

### **IV. OFFICE OF PLANNING ANALYSIS**

a. **Special Exception Relief to allow an Entertainment, assembly, and performing arts use, pursuant to Subtitle X § 901.2, and Subtitle U § 802.1 (e) and subject to the conditions of that section.**

***U§802.1(e) Entertainment, assembly, and performing arts uses, subject to the following conditions:***

***(1) The use shall be located and designed so that it is not likely to become objectionable to neighboring property because of noise, traffic, parking, loading, number of attendees, waste collection, or other objectionable conditions;***

The proposed use should not be unduly objectionable to neighboring properties. The subject use would be within an existing building, and the property appears to be well buffered from nearby residential neighborhoods by other uses within and adjacent to the Florida Avenue Market. The use would be next to a recently constructed high density residential building to the west of the site. However, the proposed use should not result in a significantly greater impact than other uses permitted by right in this zone. The proposed outdoor area is not directly adjacent to the residences and is at the back of the property, adjacent to the Federal lands. The intended limited nature of the events would further limit impacts.

The area within which the site sits is an activated, mixed use area. It is anticipated that the site will eventually be redeveloped, presumably with medium to high density mixed use development consistent with planning for the area, so more intensive use is anticipated.

(2) *The property shall not abut a residential use or residential zone;*

The applicant has requested relief from this section, analyzed below.

(3) *There is no property containing a live performance, night club or dance venue either in the same square or within a radius of one thousand (1,000 ft.) from any portion of the subject property;*

Neither OP nor the applicant are aware of other such uses within 1,000 ft. of the subject site.

(4) *External performances or external amplification shall not be permitted; and*

The applicant has requested relief from this section, analyzed below.

(5) *The Board of Zoning Adjustment may impose additional requirements as it deems necessary to protect adjacent or nearby residential properties, including but not limited to:*

(A) *Soundproofing;*

(B) *Limitations on the hours of operation; and*

(C) *Expiration on the duration of the special exception approval;*

Because this is intended to be a temporary use, OP does not propose conditions of approval. The building itself is relatively small, so the size of events would be limited accordingly.

### **Special Exception Relief from Subtitle A§207.2 pursuant to Subtitle X § 901**

901.2 *The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:*

(a) *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The PDR zone is intended to permit a broad range of uses, and the limitations related to this use are generally met as discussed below and in applicant filings. Particularly since this is intended to be a temporary use, until such time as the site is able to be redeveloped consistent with the context and planning for the area, the proposed use would generally be in harmony with the general purpose and intent of the Zoning Regulations

(b) *Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and*

As discussed above, because of the context and the nature and extent of the proposed use, the use of neighboring property should not be unduly adversely impacted.

(c) *Subject in specific cases to the special conditions specified in this title.*

As noted above, the proposed site and use would generally meet the conditions, but the applicant has requested relief from two conditions, discussed below.

**b. Area Variance Relief from Subtitle U § 802.1(e) (2) and (4).**

The conditions for which the applicant requests relief reflect the location and context of the site (U § 802.1(e) (2) - the property shall not abut a residential use or residential zone); and the existing building configuration (U § 802.1(e)(4) - external performances or external amplification shall not be permitted).

**i. Exceptional Situation Resulting in a Practical Difficulty**

**Exceptional Situation or Condition**

The applicant cites the permit history as being an exceptional condition, in that the District issued a Certificate of Occupancy for the proposed use, upon which the applicant relied in making decisions regarding the use of the property.

The nature of the site also presents an unusual circumstance, in that the site is adjacent to residentially zoned land, but that land is used, and has historically been used, for non-residential, Federal use purposes.

**Resulting in a Practical Difficulty**

The applicant cites the issuance of the C of O, which resulted in them scheduling and selling tickets for events in the space, consistent with that C of O.

**ii. No Substantial Detriment to the Public Good**

OP concurs with the applicant that the proposed use, which requires the requested relief from the noted conditions, should not result in substantial detriment to the public good. The use would be well separated from residential neighborhoods. It would primarily occur inside the existing building, with some over-flow to an existing exterior patio which is not adjacent to a use that should be significantly negatively impacted. In addition, the temporary and sporadic nature of the use, as described by the applicant, should further minimize potential impacts. The proposed use would not be considered inconsistent with the context, the active mixed use Florida Market area.

**iii. No Substantial Harm to the Zoning Regulations**

The proposed use itself is permitted by special exception, which means that it is not inconsistent with the intent of the zone provided the conditions are met. In this case, the applicant has made a sufficient case for the relief from the conditions that would not be met.

**V. COMMENTS OF OTHER DISTRICT AGENCIES**

DDOT informed OP that they have no objections to this request. Comments from other district agencies had not been entered into the record as of the date of this report being filed.

**VI. ANC COMMENTS**

Comments from ANC 5D had not been added to the record as of the date of this report.

**VII. COMMUNITY COMMENTS TO DATE**

No comments from the community had been entered into the record at the time this report was filed.