



CORRECTED MEMORANDUM

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

DATE: December 13, 2024

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

I. BACKGROUND

At Exhibit 27 is an OP report recommending approval of this application, and providing analysis of relief. Since filing, it was determined that an updated and corrected report was required to attempt to provide analysis of the current filings and relief requests.

II. OFFICE OF PLANNING RECOMMENDATION

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

- Special Exception Uses within the PDR Zones, Subtitle U-802.1(c) pursuant to Subtitle X § 901.2 (eating and drinking establishments with a live performance, night club or dance venue).
- Special Exception Uses within the PDR Zones, Subtitle U-802.1(e) pursuant to Subtitle X § 901.2 (entertainment, assembly, and performing arts uses).

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

- Eating and drinking establishment use, Subtitle U § 802.1(e) condition (2) pursuant to Subtitle X § 1000.1 that the eating and drinking establishment use shall not abut a residential use or zone; and
- Entertainment, assembly, and performing arts use, Subtitle U § 802.1(e) condition (2) pursuant to Subtitle X § 1000.1 that the entertainment use shall not abut a residential use or zone; and

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.

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 events accordingly. The applicant was subsequently informed that BZA relief was required, and the C of O was deemed invalid until the relief was obtained.

III. LOCATION AND SITE DESCRIPTION

Address	530 Penn Street NE
Applicant	Cozen O'Connor for Songbyrd LLC and Ai Pop Up, LLC
Legal Description	Square 3594, Lot 6

Board of Zoning Adjustment

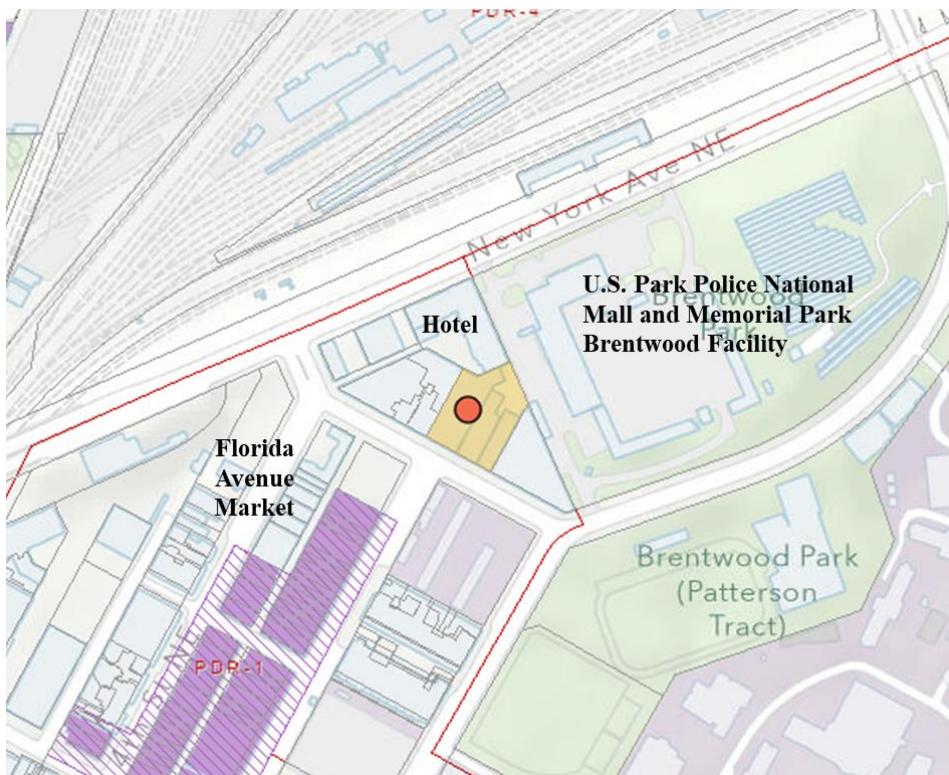
District of Columbia

CASE NO.21224

EXHIBIT NO.30

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. There is no rear alley.
Adjacent Properties	The U.S. Park Police National Mall and Memorial Park Brentwood Facility is to the rear in the RF-1 zone; an independent movie theatre is to the east in the PDR-1 zone, and a hotel and a new high density mixed use retail and residential building are 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 uses for which relief is requested would be located within one of them. The Applicant has a short-term lease for the building and is seeking relief to allow the transformation of vacant office space to an entertainment event space (Ai Pop Up), as well as for an existing restaurant with live entertainment use (Songbyrd). No physical expansion of the existing building is proposed. As noted by the applicant, the use of the property would, in addition to the existing restaurant space, include “approximately 10-12 events between now and early 2025”.

Location Map



IV. 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:

...

(c) Eating and drinking establishments with a live performance, night club or dance venue, subject to the following conditions:

...

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

...

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

...

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

V. OFFICE OF PLANNING ANALYSIS

a. Special Exception Relief to allow and eating and drinking establishments with a live performance, night club or dance venue; and an entertainment, assembly, and performing arts use, pursuant to Subtitle X § 901.2, and Subtitles U §§ 802.1 (c) and (e) and subject to the conditions of those sections.

Because the review criteria are the same for both provisions, OP has provided analysis of both together.

U§802.1(c) Eating and Drinking Establishment, subject to the following conditions /

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

The existing and proposed uses should not be unduly objectionable to neighboring properties. They would be primarily 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 site is close to a recently constructed high density residential building to the west. However, the uses on the subject site should not result in a significantly greater impact than other uses permitted by right in this zone or in the activated, mixed-use area. It is anticipated that the subject 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 for both uses, 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 live entertainment, nightclub, or dance venue uses within 1,000 ft. of the subject site.

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

The application has been amended to remove the previously requested relief from this section for both uses.

(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;*

OP does not propose conditions of approval. The building itself is relatively small, so the size of events and potential impacts in this setting 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 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(c)(2) and (e)(2).

The conditions for which the applicant requests relief reflect the location and context of the site – in each case, that the property shall not abut a residential use or residential zone.

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. The site is also developed with multiple structures, and the structure within which the uses would be located is not directly adjacent to residential uses.

Resulting in a Practical Difficulty

The applicant cites the issuance of the C of O, which resulted in the scheduling and selling of 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 uses, which result in 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, and would primarily occur inside the existing building. In addition, the temporary and sporadic nature of the proposed events use, as described by the applicant, should further minimize potential impacts. The existing and proposed uses would not be considered inconsistent with the context, the active mixed use Florida Market area.

iii. No Substantial Harm to the Zoning Regulations

The uses are permitted by special exception, subject to conditions, in this zone. In this case, the uses themselves would not be adjacent to residential uses, particularly so for low density residential, and are within a high density mixed use area where similar uses exist. As such, the applicant has made a sufficient case for the relief from the residential-proximity condition that would not be met.

VI. 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.

VII. ANC COMMENTS

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

VIII. COMMUNITY COMMENTS TO DATE

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