

**Summary of FAR Variance Relief**  
**1355-1359 H Street, NE**

**I. INTRODUCTION.**

**A. Project Description**

The overall proposal is to combine the five existing lots into one record lot. The new use is akin to a small urban mall serving the local community. The proposal would include incubator spaces at the rear for small local businesses or restauraners trying new concepts. It would be anchored by a cafe/coffee shop fronting on H Street aimed to be a community gathering space/potential workspace, as well as a bar/restaurant concept in the other street facing space. There would also be some gym/exercise spaces on the second level. There is also an outdoor rooftop space. As discussed with the ANC, any tenant who wishes to have a liquor license would have to go through the ABRA process. These details would be worked out for each individual space with the ANC for each ABRA license.

**B. FAR Request**

In addition to the other relief detailed in the Applicant's initial Burden of Proof Statement, the Applicant is now seeking to add FAR relief. The Applicant will provide a comprehensive statement as part of its prehearing package.

The Property is split-zoned MU-4 and NMU-4/H-A. The NMU-4/H-A portion includes the existing street-facing lots fronting on H Street. The Applicant is maintaining the existing façade along H Street and therefore each respective side is entitled to an FAR of 1.5. The proposal is to combine the lots, which are currently all tax lots. Despite the previous use, which appears to have permitted unrestricted access between some of the lots, this unrestricted access, without lot combination, is not permitted by building code. Once the lots are combined, the existing improvements on the NMU-4/H-A side are deemed nonconforming with respect to FAR, as they have a total FAR of 1.55 as demonstrated on the FAR Sheet. The Applicant is not proposing to increase the FAR on the second floor, and in fact will slightly decrease the overall GFA on the second floor NMU-4 side improvements by moving a wall. However, the Applicant is proposing to cover an open area in the middle of the first floor on the NMU-4/H-A side. Covering the existing space, which is currently open to the elements, will result in an increase in FAR of approximately 150 square feet, or .04 FAR, for a total of 1.59 FAR on the NMU-4/H-A side. The MU-4 portion

is conforming and will remain conforming. And the total FAR for the Property is conforming at 1.49.

As outlined below, the request meets the standards for area variance, as complying with FAR would require removal of existing pre-1958 FAR space on the second floor; or removal or portions of existing roof space covering the existing first floor. Both options would dramatically impact the functionality of the space.

## **II. THE APPLICATION MEETS THE STANDARDS FOR AREA VARIANCE APPROVAL.**

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.” *Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, No. 16-AA-932, 2018 WL 1748313, at \*2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted).

### **A. Extraordinary or Exceptional Condition Affecting the Subject Property Resulting in a Practical Difficulty if the Zoning Regulations were Strictly Enforced**

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2d 1164, 1168 (D.C. 1990). The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested;” “the weight of the burden of strict compliance;” and “the effect the proposed variance(s) would have on the overall zone plan.” Thus,

to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome; not impossible.

**1. Extraordinary or Exceptional Condition Affecting the Property, Leading to a Practical Difficulty**

The Property is subject to a confluence of factors that create an exceptional condition, primarily stemming from its split-zoned designation, existing pre-1958 improvements, and the building's historic configuration. The Property is split-zoned NMU-4/H-A and MU-4, creating unique challenges in applying FAR requirements across the site. The MU-4 portion is compliant and has FAR to spare, while the NMU-4/H-A portion exceeds its FAR limit due to the existing structures. Additionally, the existing structures are odd, with some portions of the first floor being open to the elements on both the MU-4 and the NMU-4/H-A lots. Additionally, the NMU-4/H-A side has pre-existing non-conforming structures that predate the zoning regulations and already exceed the FAR limit. Demolishing portions of these structures to comply with zoning would be unnecessary, wasteful, and disruptive to the character of the property and the surrounding area. Finally, the Property's existing layout, including a courtyard that has been used as a beer garden with cabin-type structures, reflects its long-standing commercial use and unique character. The Applicant's proposal includes covering approximately 150 square feet of this open area on the NMU-4/H-A side, an internal adjustment that marginally increases the gross floor area while maintaining the existing form of the structure. These conditions, taken together, create an exceptional situation which, without relief, would result in practical difficulties to the Applicant if the regulations were strictly applied.

Simply combining the lots, without any additional work (i.e., not covering the first-floor space), would still require relief, and specifically require the demolition of approximately 200 square feet of existing FAR on the second floor, which pre-dates the zoning regulations. If the Applicant wanted to comply and cover the existing first floor space, it would need to remove approximately 350 square feet of existing FAR from the existing second floor space. This square footage would need to be removed from the NMU-4/H-A portions which face H Street. So, the removal would need to occur on the street-facing or central portions of the Property. Demolishing this amount of square footage from long-existing structures on structures on the second floor would impact the functionality of the space. It would also potentially impact the Applicant's ability to

maintain the existing façade. The maintenance of the existing façade is what permits the Applicant to utilize the 0.5 FAR bonus, so demolishing portions of the existing second floor structure could create a situation leading to a larger nonconformity if the façade is compromised and unable to be maintained.

The other by-right alternative would be to demolish portions of the existing first floor roof in order to keep the second floor improvements in tact and maintain the 0.5 bonus. This is equally if not more impractical as it would leave 350 square feet of the first floor open to the elements. Either option creates clear practical difficulties in utilizing the space as it would require demolition or removal of pre-1958 existing commercial space.

**B. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.**

The Applicant is not seeking to create new space but rather to weather-protect an existing area, ensuring its functionality for year-round use. Granting the requested relief would not negatively impact neighboring properties or the character of the surrounding area. The overall FAR for the property will remain within the permitted 1.5 FAR limit when considering both the NMU-4/HA and MU-4 portions together. The relief is limited to maintaining the existing improvements on the NMU-4/HA side, including the second-floor structures, without requiring unnecessary demolition or alteration of long-standing, pre-1958 improvements. These structures have been an integral part of the property's historic configuration and contribute to the character of the H Street corridor.

The proposal also aligns with the broader goals of the zoning regulations by promoting the efficient use of existing structures, supporting neighborhood-serving uses, and enhancing the functionality of the space without increasing density or creating adverse impacts. The ANC has been informed of the potential need for FAR relief, and the Applicant has been transparent in its communications regarding the scope of the project.

The requested relief is consistent with the intent of the Zone Plan, maintains the character of the neighborhood, and ensures the continued usability of the property without creating any new (perceivable) nonconformities or adverse impacts. Therefore, the Board can grant the requested relief without substantial detriment to the public good and without impairing the purpose and integrity of the zoning regulations.

## **II. CONCLUSION.**

The requested relief is driven by the site's unique conditions, including its split zoning, pre-1958 improvements, and the modest nature of the proposed first-floor enclosure. The overall project remains consistent with zoning intent, and the Applicant's proposal represents the most practical and least disruptive approach to achieving compliance. Accordingly, the Applicant respectfully requests approval of the variance relief as part of its updated application.

Respectfully Submitted,

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