

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Prehearing Statement of 1355-1359 H ST NE LLC
1355-1359 H Street, NE

I. INTRODUCTION.

This Statement is submitted on behalf of 1355-1359 H ST NE, LLC (the “**Applicant**”) owner of the following contiguous properties that are the subject of this Application:

1359 H St NE (Lot 163)
1355 H St NE (Lot 139)
1355 Rear H St NE (Lot 140)
1357 H Street NE (Lot 144)
1361 Linden Ct NE (Lot 136)
(The “**Properties**”)

The Properties are located in both the NMU-4/H-A and MU-4 zones. The Applicant proposes to consolidate the two street-facing lots (1355 and 1359 H Street) and three alley lots (Lot 140, 144, and 136) to create one single record lot. As described more fully below, the existing buildings will become one building (the “**Building**”) which the Applicant is proposing to adaptively reuse as an urban mall with a mix of restaurants, small concept dining areas, exercise space and retail spaces (the “**Project**”).

The existing alley lots currently comply with the rear setback requirements for alley lots. Once consolidated, they will become street-facing lots, triggering the need for rear yard relief. Further, the Applicant is proposing to slightly raise the rear wall in the center of the Property, technically increasing the non-conformity as that portion will be above the 20-foot portion measured from the alley. Accordingly, the Project requires special exception relief for the rear yard setback pursuant to G-207.14.¹

DOB determined that due to the nature of the individual tenant spaces, some of the spaces for eating and drinking may be considered ‘fast food’ or ‘fast casual’ consistent with the use categorization of the food stalls in Union Market and other similar uses. Fast food is permitted only

¹ Pursuant to H-901.1, the MU-4 zone development standards in Subtitle G, Chapter 2 shall apply to the NMU-4/H-A, NMU-4/H-H, and NMU-4/H-R zones except as specifically modified by this chapter. The rear yard requirements are not modified in the NMU-4/H-A zone, and the portions requiring rear yard relief are located in the MU-4 zone.

via special exception in the MU-4 and NMU-4/H-A zones. Accordingly, the Applicant is also seeking relief pursuant to U-513.1(e) and H-6007.1(e)(2), the respective (and identical) requirements for fast food use in the MU-4 and NMU-4/H-A zones.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the requested special exception relief requested pursuant to X-901.2, G-207.14, U-513.1(e) and H-6007.1(e)(2).

III. BACKGROUND.

A. Description of the Property and Proposed Project.

The Property is comprised of five lots—two street-facing lots (1355 H Street and 1359 H Street) and three alley lots (1355 Rear, 1357 H Street, and 1361 Linden Court) which have a total land area of 8,837 square feet. The two street facing lots are primarily zoned NMU-4/H-A, although there is a portion of 1359 H Street zoned MU-4. The alley lots are zoned MU-4.

As demonstrated in the photographs included with this submission, the existing courtyard area was most recently used as a beer garden and there are cabin type structures meeting that unique motif. It appears that despite the separate lots and structures, there was unrestricted access between the 1355 H Street property and at least two of the alley lots. So, the proposal is effectively continuing the unrestricted access, albeit under proper code review and licensing by combining the lots formally. Because these have been under common ownership and continue to be under common ownership and they are commercial properties, the former Zoning Administrator and current zoning Administrator have interpreted A-301.3(c) to consider this type of arrangement to constitute a single commercial building for zoning purposes.

Accordingly, the challenge with keeping the lots separate is not a zoning code issue but rather a Building Code issue. Per the Building Code, openings across lot lines are not permitted. Additionally, each building would be required to have its own dedicated water and sewer services, rather than the single domestic, fire, and sewer connections we are proposing. Given that the space will be sprinklered, the presence of openings at existing lot lines further complicates matters, as this would necessitate either fire-rated separations or a complex combination of easement agreements and code modifications to allow such openings. So, while these are considered one structure (due to their historic and continued common ownership) for zoning purposes, they need

to be combined into one record lot for Building Code purposes to allow for the existing access to continue safely.

Given the existing structures the proposal is to also improve the current layout within selected demolition of non-structural walls and fully cover the first floor. Currently, some portions of the first floor are open to the elements. The result is a slight increase in overall GFA/FAR, which is still within the total 1.5 permitted for the lot. Although the 'new' FAR being added is not really new, it is just the result of previously uncovered first floor space being covered and therefore now counting towards FAR. The second-floor structures will be slightly adjusted and added to, again still within the 1.5 permitted FAR for the lot. An FAR chart and updated plans are forthcoming, detailing these changes. The façade will be preserved, although some openings will be adjusted, which is permitted to a certain extent, subject to ZA approval as to what constitutes 'preservation.' But the intent is to preserve the façade and the Applicant will work with DOB during permitting to ensure that it is deemed 'preserved' for zoning and FAR purposes.

In terms of the proposed use, the overall proposal 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. These are the 'fast food' uses requiring relief. Other than the fast-food, all other uses are permitted entirely by right in this zone. For example, 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 which would be available primarily for the upstairs tenants or for private events.

As discussed with the ANC, any tenant who wishes to have a liquor license would have to go through the ABRA process and most of the uses are by right uses except for the fast-food, so additional details would be worked out for each individual space with the ANC for each ABRA license, including hours of operation. The 'fast-food' uses would also go through the ABRA process if they wished to serve alcohol. The hours of operation for the tenant space would be unique to the use. For example, a coffee shop might close at 5pm, and a restaurant/bar would open at 5pm and stay open as late as the ABRA agreement permits.

While the ABRA process is an appropriate safeguard for any bar/restaurant related uses and will help determine hours of operation, noise, etc., the Applicant has discussed aspects of the

operation that are directly related to the requested rear yard and use relief, such as loading and trash, with DDOT and OP, as discussed more fully below. The Applicant will continue any discussions and work with both DDOT and OP before the hearing and updated the record if additional details are needed.

B. Previous Use and the Surrounding Area.

The area is primarily characterized by commercial uses in an urban setting, along with mixed-use commercial and apartment uses. The Property is directly adjacent to two H Street Streetcar stops and the X2 bus line. While H Street is generally a commercial corridor, some residential properties are on the surrounding blocks and multi-family buildings along H Street. The Property's Walk Score is 95, considered a "Walker's Paradise." Abutting the Property to the north is H Street, to the south is the public alley. Abutting the Property to the west is 1353 H Street, which has a C of O for restaurant use (formerly Rock n Roll Hotel). Abutting the Property to the west is another commercial property (1361 H Street).

Like many parts of the District, the H Street area and the 1300 block of H Street NE has experienced significant challenges and transformations in its commercial landscape due to the COVID-19 pandemic and subsequent developments. The pandemic led to a notable decrease in foot traffic, adversely affecting businesses that relied on office workers and regular patrons. This downturn resulted in the closure of many establishments in the area. For example, this Property was previously occupied by Biergarten Haus, which closed in Fall 2023 due to "challenges of the restaurant industry since the pandemic, the current economic climate, and the spike in violent crime have made it increasingly difficult to operate and impossible for us to survive. We have explored all options, but regrettably, we have no choice but to close our doors."² This initiative aims to revitalize the area by fostering entrepreneurship and attracting diverse local businesses that could not otherwise get this exposure or foot traffic due to costs of operating a single business at this location.

IV. THE APPLICATION SATISFIES THE GENERAL AND SPECIFIC SPECIAL EXCEPTION REQUIREMENTS OF SUBTITLE X-901.2, G-207.14, U-513.1(F) AND H-6007.1(E)(2)
A. General Special Exception Requirements.

² <https://x.com/jsidman/status/1722603956126314540>

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. The uses are primarily by-right uses, but for the ‘fast-food’ uses, which are just smaller concept restaurants and not true ‘fast-food.’

Based on the existing improvements, it appears that despite the separate lots and structures, there was unrestricted access between the 1355 H Street property and two of the alley lots. So, the proposal is effectively continuing the unrestricted access, albeit under proper code review and licensing by combining the lots formally, making the building safer and protecting it from the elements. Given that the other adjacent properties are commercial uses and there is no envelope expansion resulting from this redevelopment, the proposal will not tend to adversely affect the use of neighboring properties.

B. Special Exception from the Rear Yard Requirements

The Applicant is proposing to combine the existing street-facing lots with alley lots. The alley lots are improved with alley buildings, and they have a different setback requirement than street facing lots (7.5 ft. from the centerline of the alley), which is being met here. The Applicant met with the Office of the Zoning Administrator, which determined that the lot combination would create a new nonconforming situation with respect to the rear yard as the alley buildings would become street-facing buildings.

For a street-facing building in the MU-4 and NMU-4/H-A zones, a rear yard of 15 feet is required in the respective zones. For the first 20 feet of building height at the rear of the building, the rear yard is measured from the centerline of the alley to the rear line of the building. In this case, there is a 30-foot alley, so the Building meets the rear yard requirements for the first 20 feet of building height since the centerline of the alley is 15 feet from the rear of the building. Above that 20 ft. point, rear yard is measured from the rear lot line. The total building height is approximately 24 feet, so the upper four feet of the building portion is subject to a different measurement method, that being from the rear lot line to the building. As shown on the second-floor plan in Plans, there are existing improvements on the second floor that extend to the rear lot line. The Applicant proposes to maintain these existing improvements and also raise a portion of the rear wall to meet the second floor. This portion will only be 4 inches above the 20-foot point.

Accordingly, the Applicant is seeking rear yard relief to both maintain these portions of the building that are above 20 feet in height and are not set back from the Property line and to slightly increase the height of the rear wall to meet the existing height.

207.14 Relief from the rear yard requirements of Subtitle G § 207 may be permitted 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) **No apartment window shall be located within forty feet (40 ft.) directly in front of another building;**

No residential (apartment) use is proposed.

- (b) **No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;**

No office use is proposed.

- (c) **In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;**

N/A.

- (d) **Provision shall be included for service functions, including parking and loading access and adequate loading areas; and**

The proposal will not remove any existing space or functions, as the request is limited to the space above 20 feet in height at the rear. Setting that space back and therefore doing a by right project would have no impact on any service areas nor parking or loading. So, the by-right proposal and current proposal are identical in terms of available space for those functions. The space will have access to both H Street and the alley for loading purposes. Loading and parking areas are not required and the historic uses on site are the same as what is being proposed (eating/drinking, retail and service). Further, the 'new' FAR being added is not really new, it is just the result of previously uncovered first floor space being covered. The difference

between a by-right and SE use notwithstanding, the Applicant has had discussions with DDOT with respect to loading. It was pointed out that the alley behind the Property is very wide, at 30 feet, and would be the preferred place for loading to occur. The Applicant is amenable to that and that is likely where the loading occurred for the previous uses. The future tenants will coordinate trash pick-up and the Applicant anticipates trash pick-up will occur daily. Trash will be stored internally.

- (e) **Upon receiving an application for relief from rear yard requirements of this section, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with coordination of reviews in writing from all relevant District of Columbia departments and agencies, including:**
 - (1) **The District Department of Transportation;**
 - (2) **The Department of Housing and Community Development; and**
 - (3) **The Historic Preservation Office if the application involves a historic district or historic landmark.**

C. Special Exception for ‘Fast-Food’

While the proposed small concept eating and drinking uses are not thought of as ‘fast-food,’ like McDonalds, the Zoning Regulations do not have a separate category for this type of dining and the Office of the Zoning Administrator is categorizing this as ‘fast-food’ for zoning purposes. Accordingly, the Applicant is seeking relief to provide eating and drinking uses in small concept spaces, or ‘fast-food’ use pursuant to U-513.1(e) and H-6007.1(e)(2), which have identical requirements for the respective MU-4 and NMU-4/H-A portions:

- (e) **Fast food establishments or food delivery service eating and drinking establishments subject to the following conditions:**
 - (1) **If the use is a single tenant in a detached building;**
 - (a) **No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a R, RF, or RA zone, unless separated therefrom by a street or alley; and**

- (b) **If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot;**

This does not apply as this is not a single tenant in a detached building.

- (2) **Any refuse dumpster used by the establishment shall be housed in a three- (3) sided enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face or be within ten feet (10 ft.) of a R, RF, or RA zone;**

Trash shall be stored internally in a storage room(s) at the rear of the building, adjacent to the alley. The plans are being updated to reflect this and will be submitted to the record soon after this filing. Trash will be coordinated by the future tenants, but the Applicant expects trash will be picked up on a daily basis.

- (3) **The use shall not include a drive-through;**

The use does not include a drive-through.

- (4) **The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;**

The requested relief is limited to only a handful of tenant stalls, not the entire building. Further, there is no increase in commercial use space and the use is located in a commercial area with similar uses, and for this among other reasons, is not designed and will not be operated so as not to become objectionable to neighboring properties.

- (5) **The use shall provide sufficient off-street parking, but not less than that required by Subtitle C, Chapter 7 to accommodate the needs of patrons and employees;**

As noted above, the area is a Walker's Paradise and there is ample public transportation. Parking is not required and the previous uses on site are the same as

what is being proposed (eating/drinking, retail, and service). Further, the ‘new’ FAR being added is not really new, it is just the result of previously uncovered first floor space being covered.

(6) The use shall be located and designed so as to create no dangerous or otherwise objectionable traffic conditions; and

As there will be no on-site parking, the use shall not create any dangerous traffic conditions. Further, the Streetcar line has a stop directly in front of the building and it is in a main corridor in the area, adjacent to other commercial shops. Accordingly, the use shall not create any objectionable traffic conditions. Further, the proposal consists of the same types of commercial uses that have historically been at this location, and the Applicant is not proposing any expansion of the uses.

(7) The Board of Zoning Adjustment may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.

The Applicant will comply with additional conditions. It will note that each individual tenant seeking to serve alcohol will have to go through the ABRA process, allowing ample review of each proposed use by the community in addition to the Board of Zoning Adjustment review. This sentiment was shared by the ANC.

V. CONCLUSION.

For the reasons outlined in this Applicant’s Statement, the Applicant respectfully requests the special exception relief as detailed above.

Respectfully Submitted,

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