

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Crystal Myers, Case Manager
 JL Joel Lawson, Associate Director Development Review
DATE: May 1, 2025

SUBJECT: BZA Case 21279: Request for special exception and area variance relief to allow an eating and drinking establishment with live performance use.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exception pursuant to Subtitle X §901:

- U § 802.1(c) Eating and Drinking Establishments with live performance, night club or dance venue

The Office of Planning (OP) recommends **approval** of the following area variance relief pursuant to Subtitle X §1000:

- U § 802.1(c)(3) Eating and Drinking Establishments with live performance, night club or dance venue

Three weeks after this case was filed, a BZA case for an entertainment event and music venue use was filed for 405 and 407 Morse St. NE, which is across the street from the subject site (BZA 21292). The Zoning Administrator's office advised that, in an abundance of caution, both cases request area variance relief from the location restriction in their respective special exception section.

II. LOCATION AND SITE DESCRIPTION

Address	400 Morse St. NE
Applicants	ARP Morse LLC
Legal Description	Square 3589, Lot 29
Ward, ANC	Ward 5; ANC 5D
Zone	PDR-1
Historic Districts	Union Market Historic District/Site of Union Market Terminal
Lot Characteristics	45ft. x 91.6ft. rectangular lot with a public alley on eastern side
Existing Use	Vacant, formerly a neighborhood restaurant
Adjacent Properties	Warehouse building
Surrounding Neighborhood Character	This is in the Union Market neighborhood, which has a mix of commercial, industrial, and apartment buildings. NOMA Metrorail station is approximately 0.3 miles away.

Proposed Development	The applicant would like to operate a restaurant with live performance in this historic building. No significant exterior work is proposed.
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III. LOCATION



IV. ZONING REQUIREMENTS and RELIEF REQUESTED

PDR-1	Regulation	Proposed ¹	Relief
U § 802(c)	Special Exception for Eating and Drinking Establishment with live performance	Special Exception for Eating and Drinking Establishment with live performance	Special Exception Requested
U § 802(c) (3)	Location cannot be within 1,000 ft of another property with live performance	Property across the street at 405/407 Morse St. has a pending BZA case (21292) requesting to have live performance	Area Variance

¹ Information provided by the Applicant

V. OP ANALYSIS

Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS

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;*

Granting the relief would be in harmony with the general purpose and intent of the Zoning Regulations and Maps. The PDR-1 zone allows eating and drinking establishments to have live performances if they comply with the special exception criteria in U§ 802. The proposal complies all the criteria in U§ 802 except the location requirement. The applicant provided sufficient justification for an relief from this requirement.

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

Granting the requested relief should not adversely affect neighboring properties. The proposed use generally complies with the special exception criteria in Subtitle U § 802. The sit is located internal to the Florida Avenue Market area, which is a vibrant mixed use (including PDR uses) neighborhood, and the use would not be proximate to existing low density residential neighborhoods. Therefore, the proposed use should not adversely impact the neighboring properties.

Subtitle U Section 802 Eating and Drinking Establishments with live performance special exception:

- (c) *Eating and drinking establishments with a live performance, night club or dance venue, 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 would be located and designed so that it is unlikely to be objectionable to the neighboring properties. It is proposed in a location surrounded by properties with commercial and industrial uses. Noise, traffic, parking, number of attendees, and waste collection would be sufficiently managed to prevent them from creating an objectionable condition to surrounding properties.

Noise

Noise would be minimized in various ways. The applicant advises that noise would be kept within what is permitted by the District's Noise Regulations. The audio system would have sound limiters installed on the audio system. This would help to ensure that the overall volume stays within the acceptable threshold. During live music performances all windows and exterior doors would be kept closed to minimize noise spills.

The Applicant emphasizes that the space is designed to be primarily a restaurant. The live music component would be curated to enhance, not overpower, the guest experience. There

would be a sound technician on site during all live music performances to monitor and manage sound levels in real time. The Applicant would also conduct regular sound checks.

Traffic/Parking

The Regulations do not require that parking be provided on this site because the building is historic and will not be expanded. The property is approximately 0.3 miles of the NOMA Metrorail station and bus corridors, providing alternatives to driving to the site. There are also pay parking options in the immediate area.

Number of Attendees

The proposal would not exceed the building's permitted maximum occupancy, which is 295 people.

Loading/ Waste Collection

The Regulations do not require that loading facilities be provided. Loading and waste collection activities would occur in the public alley on the eastern side of the property. There are dumpsters behind the property along the alley.

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

The subject property does not abut a residential use or residential zone. The surrounding properties are zoned PDR-1. The only abutting property, which is to the north, is a warehouse.

(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 feet (1,000 ft.) from any portion of the subject property;

Three weeks after this case was filed, a special exception case for an entertainment event and music venue use was filed for 405 and 407 Morse St. NE, (BZA 21292). Under the advice from the Zoning Administrator's office the applicant requested area variance relief from this requirement. Discussion and analysis of the area variance request is provided after this section.

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

All performances would be inside the building and there would be no external amplification.

(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 recommend any additional requirements in this case.

Subtitle X Section 1000 AREA VARIANCE STANDARDS for having the proposed use near a property containing live performances

Exceptional Situation

There are multiple exceptional situations related to the use of this existing historic building.

First, when the Applicant applied for this case, they were unaware of any other property within 1,000 ft containing live performances. Three weeks after they filed, a special exception case for an entertainment event and music venue use was filed for 405 and 407 Morse St. NE, (BZA 21292).

Second, the existing building has a challenging design for an eating drinking establishment. The building is historic and changes to its interior structure are limited by historic preservation requirements. It was originally used as a warehouse, which is why it has a single-story front-loading area. The area is partitioned from the rest of the building interior by a historic structural column grid, which makes the interior space challenging. Currently a wall sits along this column line and it almost walls off this portion of the first floor from the rest of the first floor. The Applicant kept this bifurcated configuration when they operated their previous restaurant in the building, but this wall causes inefficient use of space. The Applicant would like to remove the interior wall, locate a stage with adjacent seating in the westernmost space, and locate a dining area throughout the rest of the first floor.



Figure 1: Excerpt of First Floor Plan. Original columns marked in green.

The third situation is that the Applicant has determined they cannot operate a viable restaurant establishment in this location without a concept that attracts customers from all over the DC area. Previously the Applicant operated a neighborhood restaurant, but it did not draw enough customers to be viable. The new restaurant concept's inclusion of live performance is expected to attract more diners and guests from around the District and the surrounding area.

Strict application of the Regulations would result in a practical difficulty

If the requested variance relief from the location restriction is not granted, then the Applicant would have to find a different location for this use. Leaving the subject property would be very difficult because the applicant has already significantly invested in it. In the past they renovated and restored the building to convert it into a restaurant. Ultimately, this restaurant was unsuccessful because it did not attract enough customers from outside the local area. The Applicant believes being permitted to have live performances would help make their new establishment financially viable.

If they are denied this relief the Applicant could remain on the property to operate another restaurant without live performance or other PDR-1 use. In doing so they would have to find a way to utilize the first floor's challenging space configuration caused by the building's historic column grid.

There would be no substantial detriment to the Public Good

Granting area variance relief would not result in substantial detriment to the public good. As discussed in more detail in the special exception section below, the use complies with all other parts of the special exception criteria. Therefore, this use should not negatively impact on the neighboring properties. It is expected to add to the public's experience in the Union Market neighborhood.

There would be no substantial impairment to the intent, purpose, and integrity of the Zone Plan

Granting area variance relief should not result in substantial impairment to the Zone Plan. The PDR-1 zone allows the proposed use as a special exception. Besides the location requirement, this proposal satisfies the special exception. If the proposal is permitted to exist across the street from an establishment with live performance at 405/407 Morse Street it should not significantly disturb the neighboring properties. Union Market area is a growing commercial and entertainment location, and the adjacent property is a warehouse. These surrounding uses are compatible with the proposed use. This relief would allow this historic building to be reused as a restaurant with a large enough customer base to be economically viable.

VI. OTHER DISTRICT AGENCIES

In an email to OP, DDOT stated they have no objection to the relief request. As of the writing of this report, no other agencies have provided comments to the record.

VII. ADVISORY NEIGHBORHOOD COMMISSION

There is no report from ANC 5D in the record at this time.

VIII. COMMUNITY COMMENTS

There are no community comments in the record at this time.