

## **MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Crystal Myers, Case Manager  
 JL Joel Lawson, Associate Director Development Review  
**DATE:** May 8, 2025

**SUBJECT:** BZA Case 21292: Request for special exception and area variance relief to allow an entertainment space and music venue 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(e) Entertainment, assembly, and performing arts use

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

- U § 802.1(e)(3) Entertainment, assembly, and performing arts use

After this case was filed, the Applicant learned of an eating and drinking establishment with live performance use special exception case was also filed for 400 Morse St. NE, (BZA 21279, public hearing date of May 14, 2025). The Zoning Administrator's office advised that both cases request area variance relief from the location restriction in their respective special exception section.

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

|                                    |  |
|------------------------------------|--|
| Address                            | 405 and 407 Morse St. NE   |
| Applicants                         | Oak at Morse St, LLC   |
| Legal Description                  | Square 3588, Lots 15 and 16  |
| Ward, ANC                          | Ward 5; ANC 5D   |
| Zone                               | PDR-1  |
| Historic Districts                 | Union Market Historic District/Site of Union Market Terminal   |
| Lot Characteristics                | Two rectangular lots with a total land area of approximately 3,400 sq.ft.  |
| Existing Use                       | Vacant commercial structures   |
| Adjacent Properties                | General merchandise wholesale building to the west and a tofu manufacturing business to the east.  |
| Surrounding Neighborhood Character | This is in the Florida Avenue 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 an entertainment event space and music venue in this building. No significant exterior work is proposed. |
|----------------------|--|

### III. LOCATION



### IV. ZONING REQUIREMENTS and RELIEF REQUESTED

| PDR-1          | Regulation   | Proposed <sup>1</sup>  | Relief                             |
|----------------|--|--|------------------------------------|
| U § 802(e)     | Special Exception for Entertainment, assembly, and performing arts           | Special Exception for Entertainment, assembly, and performing arts   | <b>Special Exception Requested</b> |
| U § 802(e) (3) | Location cannot be within 1,000 ft of another property with live performance | Property across the street at 400 Morse St. has a pending BZA case (21279) requesting to have live performance | <b>Area Variance</b>               |

<sup>1</sup> 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 entertainment venues if they comply with the special exception criteria in U§ 802(e). The proposal complies with all the criteria in U § 802 except the location requirement. The applicant provided sufficient justification for an area variance 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. Besides the location requirement, the proposed use complies with all other special exception criteria in Subtitle U § 802. The applicant provided sufficient justification for an area variance from the special exception's location requirement. The site is internal to the Union 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 use should not adversely impact the neighboring properties.

### **Subtitle U Section 802 Entertainment, Assembly, and Performing Arts uses:**

- (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 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. The closest residential building is to the southeast and is separated from the property by an alley. 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 and would stay within the levels permitted by the District's Noise Regulations. Music and performances would only occur indoors, and the interior would be soundproofed. The speakers and sound system would be directed toward the center of the room and away from the walls. And the floors, doors, windows, and entryway would include noise reduction features to minimize impacts on the outside. In addition to these mitigation measures, staff and DJ's would be educated on the volume limits and on how to properly use the sound system. Sound levels would also be checked regularly near exists and exterior walls, especially during peak hours.

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 from the NOMA Metrorail station and bus corridors, providing alternatives to driving to the site. There are also many pay parking options in the immediate area.

Number of Attendees

The proposal would not exceed the building's permitted maximum occupancy, which is 240 people.

Loading/Waste

The Regulations do not require that loading facilities be provided. Loading and waste collection activities would occur via the alley and through the main entrance. All trash and recycling would be placed in closed bins and picked up by a private service twice a week.

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

The subject property is not abutting a residential use or a residential zone. The surrounding properties are warehouse and commercial uses. The closest residential use is across the alley, which is south of the subject property.

*(3) There is no property containing a live performance, night club or dance venue either in the same square or within*

After filing this application, the applicant learned of a special exception case requesting to have an eating and drinking establishment that includes live performances at 400 Morse St. NE, (BZA 21279). Following 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 occur inside the building and no external amplification is proposed.

*(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**

At the time of filing for this case the Applicant was unaware that a nearby property filed a BZA case for a special exception use including live performances. Prior to filing, the Applicant made a

good faith effort to determine the type of relief needed for the proposed use. This effort included directly communicating with the Zoning Administrator's office on February 10, 2025. Based on the information available at the time, the Zoning Administrator's office confirmed that only special exception relief is necessary for the proposed entertainment space and music venue.

Three days later, BZA case 21729 for an Eating and Drinking Establishment with live performances was officially accepted by the Office of Zoning. The Applicant relied on the Zoning Administrator's office's accurate (at the time) confirmation that only special exception relief is necessary. Consequently, they moved forward with plans for this use as a special exception.

### **Strict application of the Regulations would result in a practical difficulty**

The owner of the property has had a difficult time securing a viable tenant to use the space. Consequently, the property has been vacant for an extended period. Now the owner has a tenant prepared to rent the space if the proposed use is approved. Denying relief would mean the owner would lose this tenant and the space would remain vacant.

### **There would be no substantial detriment to the Public Good**

Granting the requested area variance relief would not result in substantial detriment to the public good. The proposed use would add to the vibrant mixed-use and entertainment activity in the Florida Avenue Market district. It would serve as a private event space so it would only be booked for discrete events on an irregular or limited schedule. As such, it should not regularly be operating at the same time as the establishment at 400 Morse St. NE.

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

Granting the requested 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 eating and drinking establishment with live performance at 400 Morse Street it should not significantly disturb the neighboring location. The Florida Avenue Market area is a growing commercial and entertainment location, and the adjacent property is a warehouse. These surrounding uses are compatible with the properties.

## **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.