

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Crystal Myers, Case Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** April 8, 2021

**SUBJECT:** BZA Case 20445 106 13<sup>th</sup> ST SE, to expand a restaurant use in a residential zone

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **Denial** of the following use variance relief:

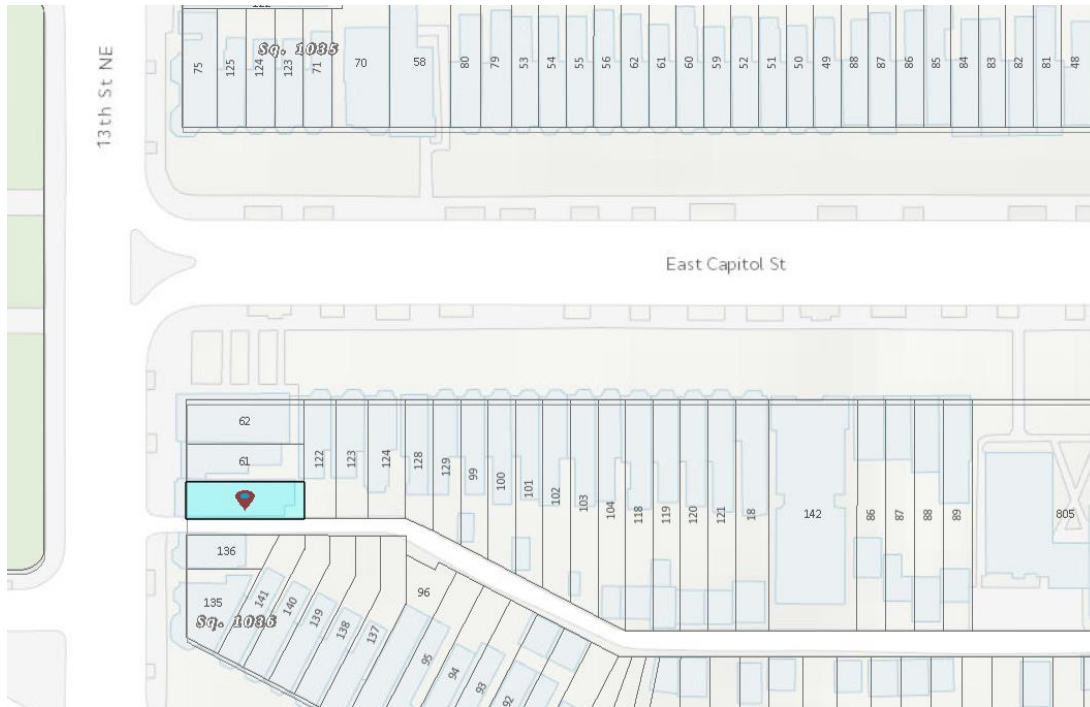
- Subtitle U § 301, to expand a restaurant use in the RF-1 zone to the second floor of the building

The application would convert the entire building to restaurant use. Currently, the ground floor of the building is configured for use as a restaurant, and it is OP’s understanding that the cellar is also configured as support space for the restaurant business. OP is not opposed to the continued restaurant use in the cellar. However, the upper floor is configured as two residential units with an existing separate entrance from the street, and OP is opposed to the use variance for the conversion of that conforming residential space to restaurant use, and does not believe the applicant has made a sufficient case for that use variance.

**II. LOCATION AND SITE DESCRIPTION**

Address	106 13 <sup>th</sup> ST. SE
Applicant	Sullivan and Burros on behalf of 13 <sup>th</sup> Street LLC
Legal Description	Square 1036 Lot 60
Ward, ANC	Ward 6, ANC 6B
Zone	RF-1
Historic District	Capitol Hill Historic District
Lot Characteristics	1,540 sq. ft. rectangular lot
Existing Development	Mixed use building with 2 residential units, ground floor restaurant and support space for the restaurant use in the cellar.
Adjacent Properties	There is an adjacent building to the north and to the east. Both are rowhouses converted into multiple dwelling buildings.
Surrounding Neighborhood Character	The neighborhood is predominantly residential with a mix of rowhouses and low density multiple dwelling buildings
Proposed Development	The proposal would allow the existing restaurant to use the entire building. This would replace the 2 existing residential units on the second floor.

### III. Vicinity Map



### IV. OFFICE OF PLANNING ANALYSIS

#### SUBTITLE X§1000- Use Variance Relief

##### Exceptional Situation

The Applicant has not demonstrated an exceptional condition with the property to expand the restaurant use into the existing second floor, which is currently developed with residential units consistent with the zone.

The cellar space is currently configured as space associated with the restaurant use. This is an exceptional situation, because the space could not reasonably be converted into a residential unit to comply with building code requirements. Since the cellar is completely below grade, there would be no windows, and there could be no reasonable direct connection between the cellar and the upper level residential space.

According to the Applicant, the separation between the residential units on the second floor and the restaurant use on the first floor is not enough to prevent smells and noises, although this is the current situation, and the applicant is proposing considerable upgrades to the interior of the building which could address this issue. Residential units above retail space, including restaurant space, are common in many parts of the District.

##### Resulting in an Undue Hardship to the Property Owner

The Applicant argues it is difficult to rent out the residential space when there is a restaurant use on the first floor. However, the residential unit was previously occupied, and the building has been a mixed-use building for over 30 years. Residential units above retail are common in

the District. It currently has its own, separate entrance from the street which has not prevented the use of the ground floor for the restaurant use, and which could be maintained.

The cellar area is not suitable as a residential unit. Nor would it be reasonably usable as storage space or other type of space associated with the residential units, as there is no connection between the cellar and the residential floor other than through the main floor. According to the applicant's plans, the cellar is currently used as support space for the restaurant, and possibly some seating.

#### **No Substantial Detriment to the Public Good**

Granting the proposed use variance could result in a detriment to the public good. If granted, the proposal would result in the loss of residential units in a residential zone. It would also permit the restaurant use to go from 50 seats to up to 130 seats, a scale of use which could be inconsistent with the character of the area which is intended to be single-family residential. There is a neighborhood dry cleaner shop at 1301 East Capitol St. SE. but otherwise there appears to be no other commercial establishments in the immediate area. However, OP notes that there is considerable support for this business in the neighborhood, including from adjacent neighbors and the ANC.

#### **No Substantial Impairment to the Intent, Purpose, Integrity of the Zoning Regulations**

Granting the proposed use variance would substantially impair the intent, purpose, and integrity of the zoning regulations. This zone is intended to be residential in character, whereas this application would convert the entire building to a non-residential use with a substantial number of seats. The Applicant has not provided a sufficient argument to support converting the conforming residential space on the second floor of the building into nonconforming restaurant space.

### **V. OTHER DISTRICT AGENCIES**

As of the writing of this report, no comments have been submitted by other District Agencies.

### **VI. ADVISORY NEIGHBORHOOD COMMISSION**

As of the writing of this report, there is no report from ANC 6B in the record.

### **VII. COMMUNITY COMMENTS TO DATE**

A near-by property owner submitted a letter in opposition to the record, (Exhibit 27). There are four letters in support, including letters from two adjacent neighbors, (Exhibits 29-32). There is also a letter in support from a real estate company, (Exhibit 33).