MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Arthur Jackson, Case Manager

Joel Lawson, Associate Director Development Review

DATE: September 13, 2011

SUBJECT: **BZA Case No. 18247**, 1309 and 1311 H Street NE

I. OFFICE OF PLANNING RECOMMENDATION

With regards to this proposal for major rehabilitation of the existing buildings on the subject properties for a single restaurant use, the Office of Planning (OP) **recommends approval** of area variances from:

- § 2101 (a minimum 16 vehicle spaces are required, none are proposed); and
- § 2201 (1 loading berth 30-feet deep and 1 loading platform of 100 s.f. is required, no loading facilities are proposed).

OP also **recommends approval** of a use variance to increase the non-residential floor area ratio (FAR) allowed under § 1323.2 from 1.0 to 2.67. However, in light of the provisions of § 404 of the Zoning Regulations, relief requested from the § 772 requirement for a rear yard setback of 15 feet does not appear to be needed.

II. AREA AND SITE DESCRIPTION

Address:	1309 and 1311 H Street NE
Legal Description:	Square 1027, Lots 88 and 89 (respectively)
Ward:	6
Zoning:	HS-A/C-2-A
Lot Characteristics:	Two abutting lots with frontage along H Street NE that are both 15-feet wide with a combined area of 1,950 square feet (0.04 acre). Neither lot has a curb cut along H Street or any rear alley access. There is a pedestrian easement across on the abutting church property to the south for the purposes of emergency egress and the conveyance of trash from the subject properties to 14th Street.
Adjacent Properties:	To the north across H Street are two- and three-story row buildings that are either vacant or occupied by retail uses including restaurants, and a church; immediately to the south is a garage constructed on referenced church property that extends to H and 13th Streets; to the east along the same frontage is the Atlas Performing Arts Center; and to the west are two three-story row buildings occupied by residence and a restaurant and a church building on the corner (refer to Figure 1).

Neighborhood Character:	Moderate-density residential and commercial
Historic Preservation:	None

III. APPLICATION IN BRIEF:

Lot 88 at 1309 H Street NE is developed with a vacant three-story row building (circa 1940) and the abutting lot 89 at 1311 H Street NE is occupied by a vacant one-story row building (circa 1900). Both buildings occupy the entire lot and have no loading berths, loading platforms or parking spaces onsite. The applicant proposed to rehabilitate and expand both structures for use as a single three-story restaurant. The revised proposal in the Pre-Hearing Statement of the Applicant dated September 6, 2011 would provide:

- office, cooking and preparation, coolers, storage and the employee dressing and restroom areas for new establishment in the combined and renovated cellar;
- an open dining room, a bar and restrooms on the ground (street) level;
- an open dining room and smaller bar on the second floor and;
- an open dining room, bar and exterior court for seasonal dining on an expanded third floor.

A U-shaped stair and straight stair positioned at opposite corners of the building would provide customer and staff access between the basement and all three floors.

While the Statement indicates that this proposal would "replace" the existing buildings onsite, the applicant explained this meant that the property would go from being vacant to being occupied by a new use. This major rehabilitation, as proposed, would add two floors atop the one-story building on lot 89 and extend of the partial third floor atop the building on lot 88 to the rear building wall.

IV. ZONING REQUIREMENTS and REQUESTED RELIEF

HS-A/C-2-A Zone	Regulation	Existing [1]	Proposed [1]	Relief
Height (ft.) § 770	50 ft. max.	39 ft.	SAME	None required
Lot Width (ft.)	None	30 ft. (total)	SAME	None required
Lot Area (s.f.)	None	1,950 s.f. (total)	SAME	None required
Lot Occupancy § 772	100%	100%	SAME	None required
Rear Yard (ft.) § 774	15 ft. min.	None	SAME	***-15 ft.***
Open Court § 776	12 ft.	None	13.75 ft.	None required
Floor Area Ratio § 1323.2 (non-residential)	1.0 (max.)	1.71 (3,325 s.f.)	2.67 [2] (5,197 s.f.)	***+1.67***
Parking § 2101	16 spaces	None	SAME	***-16 spaces***
Loading § 2201	1 loading berth 30-feet deep; 1 loading platform 100 s.f.	None	None	***Relief Required***

[1] Information provided by applicant.
[2] FAR relief request reduced from 3.0 to 2.67 in the supplemental submission

Zoning relief is required because:

- The current nonresidential FAR would increase from 1.71 to 2.67 although the allowable nonresidential FAR for new construction under § 1323.2 in the H Street Overlay Arts Sub-district is 1.0 FAR.
- There are no provisions in this proposal to add the loading facilities and onsite parking required under §§ 2101 and 2201.

In light of the above, the applicant submitted this application requesting approval of area variances from these requirements. However, consistent with the Board of Zoning Adjustment (BZA) determination in BZA Application No. 18111, relief sought from a non-residential floor area limitation is a use variance. The OP analysis is will therefore be based on the higher "undue hardship" standard.

Relief requested from the requirement under § 772 for a rear yard setback of 15-feet may not be needed to extend the additional floors to the rear site boundary. As stated in the regulations:

> *"404.4 In the case of a building existing on or before May 12, 1958, an extension or addition may be made to the building into the required rear yard; provided, that the extension or addition shall be limited to that portion of the rear yard included in the building area on May 12, 1958."*

Both buildings predate 1958 and occupy the entire site, and addition floors would not extend into the required rear yard to any further than the existing building(s).

V. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from §§ 2101 and 2201 (Parking and Loading)

i. Uniqueness Resulting in a Practical Difficulty

At 30 x 65 feet this is one of the smallest sites on this square with H Street frontage. The existing buildings occupy 100% of what little property there is. Without a curb cut along H Street or any rear alley access, there is no way for service, delivery or passenger vehicles to access the site from the public right-of-way. The existing development leaves no room for service or customer parking onsite, and the 1,950 square-foot property is too small to permit below grade facilities to address these requirements.

Figure 1

The site width and size, therefore, presents a practical difficulty with regards to providing the required onsite parking spaces and loading facilities.

ii. No Substantial Detriment to the Public Good

The subject location is well positioned to minimize the need for onsite parking. A number of regular Washington Metropolitan Transit Authority (WMATA) Metrobus routes travel pass the site along H Street. There are also Capital Bikeshare Stations in vicinity and the property will have immediate access to the new streetcar service along H Street. The applicant also

anticipates that the surrounding neighborhood would supply a majority of the restaurant clientele and employees.

Regarding service and deliveries to the site, these would be scheduled at particular times to limit congestion along the street and the applicant anticipates that deliveries by large trucks would be infrequent. In light of the transportation options, the anticipated customer base and delivery management strategy, it does not appear that the proposed parking reduction and the lack of onsite loading facilities would negatively impact the surrounding neighborhood.

iii. No Substantial Harm to the Zoning Regulations

Granting the requested zoning relief in accordance with these provisions would not be detrimental to the intent and integrity of the Zoning Regulations.

b. Variance Relief from § 1323.2 (Floor Area Ratio)

i. Uniqueness Resulting in an Undue Hardship

The uniqueness of this proposal involves not only the size of the lot but the fact that it would combine and rehabilitate two long-vacant buildings for the proposed new use.

Over time there have been a number of alterations to these building. A fire in the building on lot 89 destroyed two upper floors that were never replaced. The applicant indicated that stairs between the floors of the three-story building on lot 88 have been removed. What remains of these structures has a combined floor area of 3,325 square feet equal to 1.71 FAR. The buildings are also legally non-conforming because they pre-date the current regulations.

The Statement notes the many challenges of providing core improvements now required under the Building Code, particularly the impact of these requirements on the available floor area. New stairways and the plumbing for restrooms must be reintegrated into the expanded development. The proposed stair pair must serve all three floors. This particular requirement would apply regardless of whether or not floors were added to the combined structure [3].

Loss of a significant amount of the existing floor area to address these requirements would create an undue hardship on the applicant because the floor area remaining for the proposed use would be reduced by approximately half. In similar cases, the BZA has generally granted relief to replace floor area in nonconforming buildings that is lost due to the current Building Code requirements. Table 1 below lists the estimated additional floor area needed to:

- offset interior space that would be occupied by required stairways and restrooms facilities in the existing structure (shown by building and floor under Category A) [4];
- extend the U-shaped stair in the northeast corner of the site up to the second and third floors (shown under Category B); and
- extend the interior of the partial third floor to the north and east to meet the third floor stair enclosure (shown under Category C).

Based on this estimate, approximately 1,830 square feet of additional floor area would be needed to offset the listed requirements. This floor area amount would increase the existing floor area to 5,178 square feet or a 2.64 FAR.

[3] The Department of Consumer and Regulatory Affairs confirmed that two stairways would be required for a three-story restaurant use

[4] This figure excludes cellar improvements that are not included in calculation of the floor area ratio

Table 1: Estimated Additional Floor Area Necessary to Offset Core Building Code Requirements

Property Address	Floor Status	Floor #	A	B	C	*TOTAL*
1309 H Street NE	Existing	1	240 s.f.			*240 s.f.*
		2	114 s.f.			*114 s.f.*
		3	95 s.f.			*95 s.f.*
	Proposed	***3***[5]			525 s.f.	*525 s.f.*
1311 H Street NE	Existing	1	278 s.f.			*278 s.f.*
	Proposed	***2***		290 s.f.		*290 s.f.*
		3		290.s.f.		*290.s.f.*
						1,832 s.f.

This estimated FAR total is essentially the same as the FAR relief requested by the applicant.

Although OP would much prefer that the proposed major rehabilitation project resulted in some new residential units, in accordance with the objectives of the HS-A Overlay sub-district, this would likely be difficult, if not impossible given the small size of the site. Given the improvements to the form and character of the existing dilapidated structures, and the vitality the proposed sit-down restaurant is anticipated to add this corridor, this proposal is not otherwise inconsistent with the overall intent of the H Street Overlay.

The provision of housing above the retail would make it more fully consistent with the intent of the overlay and H Street Corridor Revitalization Plan.

ii. No Substantial Detriment to the Public Good

Since this additional floor area would essentially serve to replace space lost to meet Building Code requirements, the resulting floor area amount onsite for the proposed use should be the same as currently exists. Retaining the existing amount of floor area for the proposed restaurant use would not be detrimental to the public good.

iii. No Substantial Harm to the Zoning Regulations

Granting the requested zoning relief in accordance with these provisions would not be detrimental to the intent and integrity of the Zoning Regulations.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT) did not prepare any written comments on this case but the agency does anticipate working with the applicant to address the specific loading and delivery requirements of the proposed restaurant use.

VII. COMMUNITY COMMENTS

At a regularly scheduled meeting on September 8, 2011, Advisory Neighborhood Commission (ANC) 6A voted unanimously to recommend approval of the requested variances.

[5] This represents the interior square footage required to extend the partial third floor to meet the enclosure for the proposed U-shaped stair