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**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Y Elisa Vitale, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** January 2, 2013

**SUBJECT:** BZA Case 18484 - request for variance relief pursuant to §§ 400.1 and 401.3 to permit the continued use of an existing four-story, three-unit apartment building at 26 T Street NE.

**I. OFFICE OF PLANNING RECOMMENDATION**

While the Office of Planning (OP) **does not oppose** the requested lot area relief (§ 401.3), OP **cannot recommend approval** of the requested height and number of stories relief (§ 400.1), concerning the continued use of an existing four-story, three-unit apartment building at 26 T Street NE. Pursuant to § 3103.2, the Applicant requested the following:

- Area variance relief from § 400.1 to permit a height of 46 feet and 10 inches and four stories (40 feet and three stories required); and
- Area variance relief from § 401.3 to allow a lot area of 1,750 square feet (2,700 square feet required).

**II. LOCATION AND SITE DESCRIPTION**

Address:	26 T Street NE	BOARD OF ZONING ADJUSTMENT District of Columbia
Legal Description:	Square 3509S, Lot 39	CASE NO. <u>18484</u>
Ward:	5C	EXHIBIT NO. <u>32</u>
Lot Characteristics:	The subject lot (property) is rectangular in shape and measures 18.33 feet in width by 95.5 feet in length. The property fronts T Street NE to the south and a 15-foot wide public alley to the north.	
Zoning:	R-4 – detached, attached, semi-detached, single family dwellings and flats.	
Existing Development:	Four-story, three-unit apartment building, which is not permitted in this zone.	
Adjacent Properties:	Attached row dwellings.	
Surrounding Neighborhood Character:	Mix of attached and semi-detached row dwellings. The property is one block east of the North Capitol Street commercial corridor.	

**III. PROJECT DESCRIPTION IN BRIEF**

Applicant:	Ifeanyichukwu Egbuniwe, property owner
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Proposal:	<p>The applicant is seeking area variances to legitimize, for zoning purposes, the continued use of an existing four-story, three-unit apartment building.</p> <p>The applicant purchased the property on January 10, 2012, at which time all improvements and renovations had previously been completed. On February 16, 2012, the applicant registered the change of ownership and obtained a new Certificate of Occupancy (#CO1201201) for an apartment building with three units.</p> <p>On April 20, 2012, the Department of Consumer and Regulatory Affairs (DCRA) issued a notice to revoke the Certificate of Occupancy because it was issued in error and a permit had not been issued, nor had an inspection been conducted, to convert 26 T Street NE from a flat to a three-unit apartment. On June 1, 2012, the Office of the Zoning Administrator issued a notice informing the applicant that the property was in violation of the Zoning Regulations citing the conversion to a three-unit apartment building, as well as structural alterations made without permits. The Zoning Administrator's letter indicated that the structure consisted of five stories and that no permit was issued for the construction of the top story addition.</p>
Relief Sought:	<p>Area variance pursuant to 11 DCMR § 3103.2: variances from the maximum allowable height and number of stories at § 400.1 and the minimum required lot area at § 401.3 to allow for the continued use of a flat in the R-4 zone as a 3-unit apartment building.</p>

#### IV. ZONING REQUIREMENTS

R-4 Zone	Regulation	Existing	Proposed <sup>1</sup>	Relief:
Height (ft.) § 400	40 ft. max. 3 stories	35 ft. 6 in. 3 stories	46 ft. 10 in. 4 stories	6 ft. 10 in. 1 story
Lot Width (ft.) § 401	18 ft. min.	18.33 ft.	No change	None required
Lot Area (sq.ft.) § 401	2,700 sq. ft. min. <sup>2</sup>	1,750 sq. ft.	1,750 sq. ft.	950 sq. ft.
Rear Yard (ft.) § 404	20 ft. min.	31 ft. 4 in.	No change	None required
Side Yard (ft.) § 405	None required	N/A	N/A	None required

#### V. OP ANALYSIS: VARIANCE

The applicant proposes to legitimize, for zoning purposes, the continued use of an existing four-story, three-unit apartment building. Flats are permitted uses in R-4 zones; whereas, the conversion of an existing building to an apartment use is permitted only where there is 900 square feet or more of lot area per unit. The site provides 583.33 square feet per unit.

<sup>1</sup> Information provided by applicant.

<sup>2</sup> 900 square feet of lot area per unit.

### ***Lot Area***

1. *Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?*

While the land does not exhibit a specific uniqueness leading to a practical difficulty, there is an exceptional situation because the applicant demonstrated good faith, detrimental reliance on the actions of city officials. The applicant was not involved in the renovation or conversion of the flat to a three-unit apartment building. The applicant believed, in good faith, that the building, as constructed, marketed, and sold, was in compliance with all regulations and requirements. The applicant, to her detriment, relied on DCRA's issuance, in error, of the Certificate of Occupancy for a three-unit apartment building.

2. *Does the extraordinary or exceptional situation described in the first part of the variance test impose a practical difficulty which is unnecessarily burdensome to the applicant?*

The strict application of the zoning requirements, with respect to lot area, would result in a practical difficulty due to the unnecessarily burdensome financial hardship it would cause the applicant. When purchasing the property, the applicant secured a mortgage based on a good faith reliance on a Certificate of Occupancy for a three-unit apartment building with the intention of renting two units to cover the mortgage costs. Without relief from the lot area requirement (§ 401.3), the applicant would be required to convert the structure from three-units to two-units, which would result in a financial loss, constitute a default of the applicant's bank loan, and potentially reduce the future sales price of the property.

3. *Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?*

Typically, OP opposes strongly relief to allow conversion of a row house to a multi-dwelling building in R-4. In this case, however, due to the extenuating circumstances noted above, relief could be granted without substantial detriment to the Zoning Regulations or the public good. The property functions as a three-unit apartment building and no additional construction is proposed. The applicant has provided letters of support from surrounding residents expressing support for the requested zoning relief.

### ***Height and Number of Stories***

1. *Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?*

With respect to the requested relief for height and number of stories (§ 400.1), there is not an exceptional situation or condition that leads to a practical difficulty. The lot is a typical shape and size for residential properties in the Square, and the R-4 zoning permits up to three stories and 40 feet of height. While the applicant successfully argues that a good faith, detrimental reliance was made with respect to the number of units, based on DCRA's issuance, in error, of a Use and Occupancy permit for a three-unit apartment building, the top floor was constructed without permits. The variance process is not intended to provide retroactive relief for illegal construction. This situation does not appear unique or exceptional to the Property, nor does it impose a practical difficulty.

2. *Does the extraordinary or exceptional situation described in the first part of the variance test impose a practical difficulty which is unnecessarily burdensome to the applicant?*

There is no practical difficulty because the applicant could operate the property as a three-unit apartment building without the top floor addition. Based on a review of the floor plans submitted by the applicant, the two rental units are located on the first (basement) and second floors, while the applicant's unit is located on the third and fourth floors.

3. *Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?*

The top floor addition is contrary to the Zoning Regulations for height and number of stories (§ 400.1) for the R-4 zone and is not in keeping with the surrounding neighborhood. The R-4 zone permits a maximum height of 40 feet and three stories; the subject property measures 46 feet and 10 inches in height and four stories.

However, should the Board of Zoning Adjustment (BZA) not concur with OP's recommendation to deny the requested variance relief for height and number of stories (§ 400.1), OP discussed with Historic Preservation Office<sup>3</sup> staff ways to lessen the visual impact of the addition, and would recommend the following conditions of approval:

1. Install a metal frieze between the "cornice" and existing third floor windows;
2. Remove turret roof;
3. Add street facing windows to the top floor addition;
4. Install a "cornice," which would be subordinate to the main "cornice," under eaves; and
5. Replace siding with brick veneer painted to match the original house.

In the alternative, the BZA could impose a more aggressive set of design related conditions to promote a design more in keeping with the surrounding neighborhood, including the following:

1. Drop the third floor windows down to the original sill level;
2. Fill the newly created space with a metal frieze band;
3. Remove the turret;
4. Extend the new fourth floor forward to match the bay front footprint of the original house so that the new floor becomes an exact extension of the front façade and projection;
5. Fenestrate the new fourth floor with short windows (the top floor of this row follows the convention of short "attic" windows being smaller than all the other floors);
6. The addition should be constructed of painted brick to match the house below; and
7. The new fourth floor should be capped by an intermediate sized cornice (not the eaves it has now) that is subordinate in dimension to the main "cornice."

## VI. COMMUNITY COMMENTS

The applicant submitted letters from surrounding residents that indicate support for the requested relief. An official position had not been received from ANC5C at the time this report was written; however, the applicant asserts that the ANC took a position on December 18, 2012, to support the subject application.

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<sup>3</sup> Although the site is not within a Historic District, Historic Preservation Office staff were consulted to discuss typical ways that the addition could be made more in keeping with neighborhood character.

## **VII. COMMENTS OF OTHER DISTRICT AGENCIES**

Comments had not been received from other agencies at the time this report was written.

### **Attachments:**

1. Location map



