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MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Karen Thomas, Case Manager
Joel Lawson, Associate Director Development Review
DATE: January 22, 2013
SUBJECT: BZA Case 18495 – 448 Emerson Street NW

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of use variance relief to permit the continued use of an existing flat in the R-3 district, at premises 448 Emerson Street, NW.

II. LOCATION AND SITE DESCRIPTION

Address	448 Emerson Street NW
Legal Description	Square 3251, Lot 0213
Ward	4, ANC 4D
Lot Characteristics	Unremarkable rectangular lot.
Zoning	R-3 – row and semi-detached, single-family dwellings. A flat is not permitted in this residential zone district.
Existing Development	The property is developed with a nonconforming three-story flat, with parking at the rear, accessed from a 16-ft. wide alley at the rear.
Adjacent Properties	The subject property is a corner lot at the south east corner of 5 th and Emerson Street with alley access at the rear. It abuts a row dwelling to the east and surrounding properties on Emerson and 5 th Streets are all row dwellings within the R-4 District.
Surrounding Neighborhood Character	The housing stock is predominantly row dwelling structures within the R-3 district. Square 3304 to the southeast of the subject square is comprised primarily of small garden apartments with some row dwellings in the R-5-A district.

III. APPLICATION IN BRIEF

The applicant, Jose Contreras, is requesting a use variance to continue the use of his existing flat in the R-3 District. The applicant included supporting documentation indicating that the previously constructed single family dwelling was legally modified to a flat in 2007 by building permit # 101301 and has been used as such since that time.

BZA

Case NO. 18495
EXHIBIT NO. 24

Board of Zoning Adjustment
District of Columbia



IV. ZONING REQUIREMENTS and REQUESTED RELIEF

The R-3 District is designed essentially for row dwellings within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. In an R-3 District, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for any use permitted in an R-2 District under § 300.3 and row dwellings. (§§ 320)

The Zoning Administrator by letter dated October 2, 2012 indicated that Board approval is required to allow continued use of the former single-family dwelling as a two-unit flat in the R-3 district pursuant to § 320.3.

V. OFFICE OF PLANNING ANALYSIS

Variance Relief from § 320.3

A use variance may be approved for an extraordinary or exceptional situation.

i. Exceptional Situation Resulting in an Undue Hardship

The applicant was recently informed by DCRA that the existing flat was a prohibited use of the property in that zone district.

In this case, the applicant cites as evidence that the property was modified to a flat by interior renovation, as documented by plans to the Department of Consumer and Regulatory Affairs (DCRA) in 2007. The plans explicitly stated that it represented the conversion of a single family dwelling to a flat. However, at that time, agency staff did not immediately inform the applicant that conversion of a single family dwelling to a flat was not permitted in the R-3 district and the applicant was issued a building permit to permit the conversion, without BZA approval for a use variance. The basement unit of the flat has subsequently been a rental unit and provides support income for the applicant.

Therefore, the inadvertent error in the issuance of a permit allowing the conversion in the first instance five years ago is an exceptional situation; and its re-conversion back to a single family dwelling would be a severe hardship to the applicant.

ii. No Substantial Detriment to the Public Good

To OP's knowledge, there has been no substantial detriment to the public good due to the occupancy of the one-bedroom unit for the past five years. The use should not incur undue harm to the neighborhood due to noise, traffic or other adverse impacts

iii. No Substantial Harm to the Zoning Regulations

No substantial harm should accrue to the Zoning Regulations, since in this instance undue hardship to the applicant is due to a District agency's error and subsequent approval by the Board would not imply approval for conversions of row dwellings to flats in the R-3 district, which would not be supported by the Office of Planning.

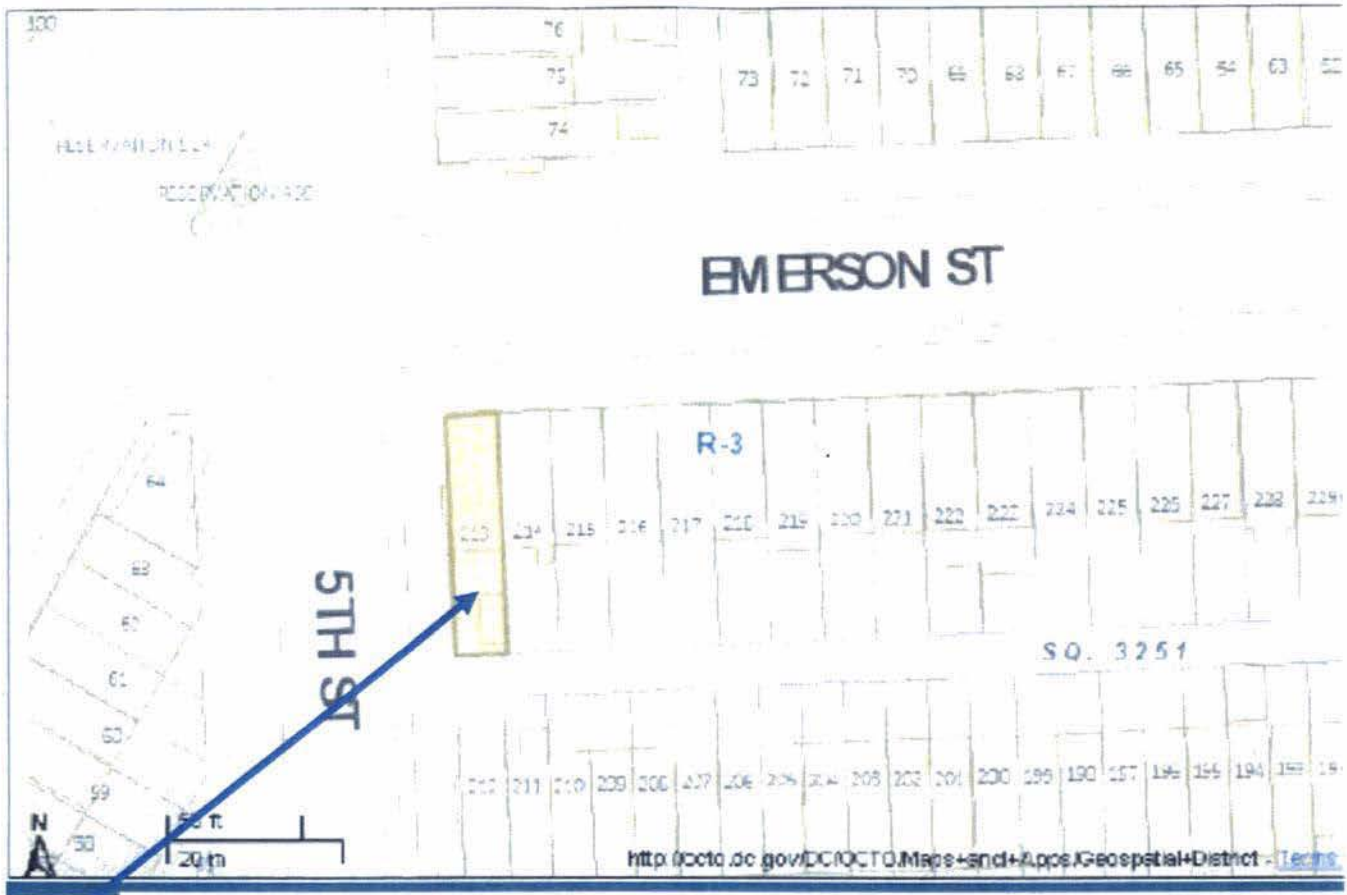
VI. COMMENTS OF OTHER DISTRICT AGENCIES

No other agency has provided comments to the record

VII. COMMUNITY COMMENTS

The Advisory Neighborhood Commission 4D would submit their comments to the record

Attachment: Location and Zoning Map



LOCATION and ZONING MAP