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MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Elisa Vitale, Case Manager
Joel Lawson, Associate Director Development Review
DATE: July 9, 2013

SUBJECT: BZA Case 18585 - use variance request to permit the continued use of an existing flat in the R-3 zone at 446 Emerson Street, NW.

I. OFFICE OF PLANNING RECOMMENDATION

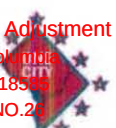
With regards to this proposal to permit the continued use of an existing flat in the R-3 zone, the Office of Planning (OP) recommends **approval** of the requested use variance from § 320.3 pursuant to § 3103.2.

II. LOCATION AND SITE DESCRIPTION

Address	446 Emerson Street NW	BOARD OF ZONING ADJUSTMENT District of Columbia
Legal Description	Square 3251, Lot 0214	CASE NO. <u>18585</u>
Ward	ANC 4D	EXHIBIT NO. <u>26</u>
Lot Characteristics	Rectangular lot.	
Zoning	R-3 – row and semi-detached, single-family dwellings. A flat is not a permitted use in this residential zone.	
Existing Development	The property is developed with a nonconforming three-story flat, with parking at the rear, which is accessed from a 16-foot wide alley.	
Adjacent Properties	The subject property abuts row dwellings to the east and west. The property at 448 Emerson ST NW is being used as a flat. The surrounding properties on Emerson and 5 th Streets are row dwellings within the R-3 zone.	
Surrounding Neighborhood Character	The housing stock is predominantly row dwelling structures within the R-3 zone. Barnard Elementary School is located to the south of the subject property.	

III. PROPOSAL

The applicants, Maria Webb Gomes and Ronald J. Gomes, are requesting a use variance to continue use of the existing flat in the R-3 zone. The applicants state that the two upper floors will be owner-occupied and the basement would be rented as a separate unit.



IV. ZONING REQUIREMENTS

The R-3 zone provides for areas predominantly developed with single family attached rowhouses on small lots, and includes areas where attached houses are mingled with detached houses and semi-detached houses. In an R-3 zone, 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 zone under § 300.3 and row dwellings (§ 320.3).

V. OP ANALYSIS

AREA VARIANCE RELIEF PURSUANT TO § 320.3

The building was constructed as a single-family house around 1925. According to the applicant, when she purchased the building as a rental property in 2005, it was already converted to two units – the basement unit and the upper two floors. Each unit is self-contained with a kitchen, bathroom, and separate means of access and egress.

At the time of purchase in 2005, Ms. Webb Gomes resided on the upper two floors and rented the basement apartment. In 2007, Ms. Webb Gomes moved out of the property and rented both the basement and upper two floors. In 2012, Ms. Webb Gomes and Mr. Gomes moved back in to the property, but did not rent the basement apartment due to major water issues. The Gomes submitted building permits to complete work to address the water damage in the basement and learned that use of the property as a flat was not legal. The applicants have been paying taxes on the rental income, as well as Unincorporated Business Taxes.

The proposal meets the requirements of the use variance as follows:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;

The property is unique due to an exceptional circumstance in that the building was subdivided and physically configured as two units prior to purchase by the applicants in 2005. The applicants purchased the building as an income producing property, configured with two units, and continued to use the property in such manner until the discovery of water damage. The applicants state that they plan to retire, live on the upper two floors of the building, and use the rental income from the basement apartment to supplement their income in retirement. The building was not used as a single-family residence from at least 2005 until the water damage was discovered in 2012. Furthermore, each unit is independent and self-contained and the property no longer functions as a single-family house.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

Conversion of the building back to a single-family house would result in an undue financial hardship for the applicants. According to the applicants, work completed by previous owners was done incorrectly and contributed to the expensive water damage.

The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The existing two-family use has existed for at least 7 years with no negative impact on the surrounding community. The proposal should not impair the intent or integrity of the zoning regulations. Under § 202.10, the applicant could add an accessory apartment as a special exception. However, relief would likely be required from a number of the provisions of § 202.10, including minimum lot area, gross floor area, creation of an additional entrance on a wall of a house that faces a street, and possibly percentage of gross floor area.

VI. COMMUNITY COMMENTS

Comments had not been received from ANC 4D at the time this report was written.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

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

Attachment: Location and Zoning Map

