

## **MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Karen Thomas, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** August 29, 2014

**SUBJECT:** BZA Case 18794 - Request for variance relief under § 3103 to construct an addition to an existing single-family dwelling at 1740 New Jersey Ave., NW for the purposes of conversion to an 8-unit apartment building in the R-4-district.

### **I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends denial of the following variance relief:

- § 401.3 Lot Area (7,200 sf required for a conversion to eight units at 1 / 900 sq.ft., 1,685 existing, or 210.6 sq. ft. / unit);
- § 2001.3 Non-conforming structure requirement (existing lot occupancy - 100%, 60% required: open court - 2.5 ft. existing; 6 ft. required for existing row dwelling) ; and
- § 2101 Off-Street Parking ( 1/3du – 3 spaces required; none existing/ 5 off-site provided);

While OP supports the renovation of this building, OP cannot support the renovation with additions as proposed to facilitate the creation of an 8-unit apartment building, well beyond the development intensity anticipated within the R-4 District, particularly on a small lot such as this.

### **II. LOCATION AND SITE DESCRIPTION**

|                      |                                                                                                                                                               |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Address              | 1740 New Jersey Avenue NW                                                                                                                                     |
| Legal Description    | Square 508 N, Lot 9                                                                                                                                           |
| Ward                 | 6/ANC 6E                                                                                                                                                      |
| Lot Characteristics  | Irregularly shaped lot with street frontage on three sides; no alley access at the rear.                                                                      |
| Zoning               | R-4                                                                                                                                                           |
| Existing Development | Single-family detached structure, permitted in this zone.                                                                                                     |
| Adjacent Properties  | Predominantly single-family row dwellings and flats. The adjacent record lot to the west is under a matter-of-right renovation and is owned by the applicant. |

**III. PROJECT DESCRIPTION IN BRIEF**

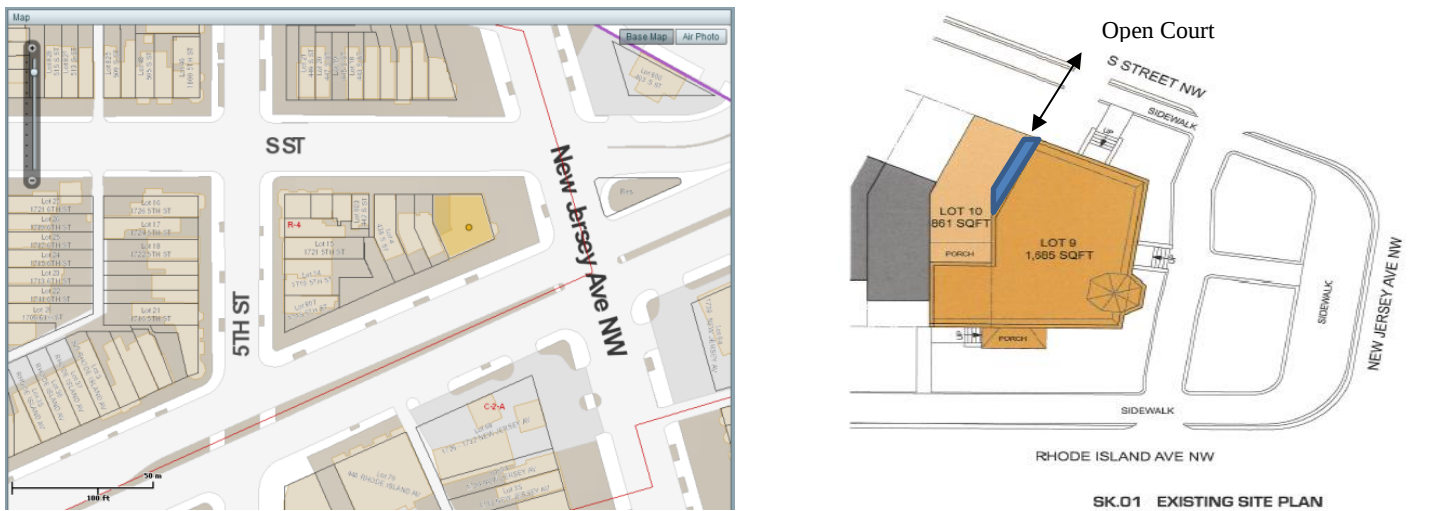
|               |                                                                                                                                                                                                                                                     |
|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant     | Newton Street Development 3 LLC                                                                                                                                                                                                                     |
| Proposal      | The applicant proposes to convert an existing vacant 2-story corner row dwelling as an eight unit apartment building, including an upper story addition (third floor), a new roof deck, and renovations to the cellar to accommodate two new units. |
| Relief Sought | Based on submitted plans, the applicant would require relief from - the nonconforming structure requirements of § 2001.3; lot area requirement under § 401.3 and the on-site parking requirement of § 2101.                                         |

**IV. ZONING REQUIREMENTS**

| <b>R-4 Zone</b>          | <b>Regulation</b>             | <b>Existing</b> | <b>Proposed <sup>1</sup></b>       | <b>Relief</b>                                                                                                                                        |
|--------------------------|-------------------------------|-----------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Height (ft.) § 400       | 40 ft. max.                   | 27 ft.          | 37 ft.                             | None required                                                                                                                                        |
| Lot Width (ft.) § 401    | None prescribed               | 31 ft.          | 31 ft.                             | None required                                                                                                                                        |
| Area requirement § 401.3 | 900 sq. ft./unit              | 1,685 sq. ft.   | 7,200 sq. ft.                      | -5,515 sq. ft. (1 unit / 210.6 sq.ft. of lot)<br><b>Relief required</b>                                                                              |
| Number of dwelling units | 2                             | 1               | 8                                  | <b>6 - Relief required</b>                                                                                                                           |
| Lot Occupancy § 403      | 60 % max.                     | 100 %.          | 100 %                              | <b>Existing non-conformity</b><br><i>Proposed to be expanded by the addition of a non-conforming upper story</i><br><b>Relief required- §2001.3</b>  |
| Open Court § 406         | 4"/ft ht. not less than 6 ft. | 2.5 ft.         | 2.5ft.                             | <b>Existing Non-conformity</b><br><i>Proposed to be expanded by the addition of a non-conforming upper story</i><br><b>Relief required -§ 2001.3</b> |
| Parking § 2101.1         | 1/3 du.                       | 0               | 0<br>(5 off-site spaces proposed ) | <b>Existing Non-conformity</b><br><b>Relief required</b>                                                                                             |

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



**Figure 1 - Zoning and Location Maps**



**Street View**

The proposal would add *seven* apartments for a total of *eight* units within the existing structure in the R-4. Submitted plans show that the renovation would:

- Separate the west wing of the building and assign it to Lot 10 as a separate by-right development;
- Create two basement units in the existing cellar area;
- Create two units, on each of the 1<sup>st</sup> and 2<sup>nd</sup> floors;
- Add a third floor for two additional new units;
- Create a penthouse area with roof deck storage; mechanical maintenance room and a roof deck for residents.

## V. OP ANALYSIS

### Variance Analysis

In order to be granted a variance, the applicant has the burden of showing that the property is unique because of some physical aspect or other *extraordinary or exceptional situation or condition inherent in the property*, that strict application of zoning regulations will cause practical difficulty to the applicant and that granting the variance will do no harm to public good or to integrity of the zone plan.

#### 1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions which results in a practical difficulty which is unnecessarily burdensome to the applicant?

While the property does exhibit some unique characteristics, none of the unique circumstances result in a practical difficulty which justifies the requested relief, with the possible exception of the request for relief from parking. The property exhibits the following:

- The lot is small and irregularly shaped, although there are many other small and irregularly shaped lots on the square. There are 14 lots within the square and the applicant's ownership area includes 2 lots, lots 9 and 10, of which lot 10 is unrelated to this application. However, a portion of the existing structure is located on Lot 10. The portion of the structure on Lot 10 would be converted into a flat. As seen above in Figure 1, all the lots within this square are irregularly shaped and based on the Office of Tax and Revenue (OTR) records, non-conforming to lot area. The smallest recorded lot size is 446 sf (446 S St., NW), and the largest is the applicant's, Lot 9 at 1,685 sf. The residences within the square are either single-family dwellings or flats. Regardless, the size of the lot and the irregular shape would not justify relief for providing four times the permitted number of units on the site.
- There is no alley access to the lot and it fronts on two main avenues of the District and a portion of a well-travelled street. No parking is currently legally provided on the lot. A concrete driveway that has access both on Rhode Island Avenue and S Street shown on the Surveyor's plat provided by the applicant is located within public space. Therefore, there is a practical difficulty in providing parking for residential use on this property, as none could be physically located on the lot.
- It is an existing non-conforming property due to its lot area and lot occupancy, and open court, which are neither unique or unusual circumstances and which does not justify the relief requested;
- The property is located in a FEMA flood zone, which is not a unique circumstance and one which would, if anything, make the addition of cellar units a questionable decision; and
- The residential property was formerly used as a doctor's office, which is a permitted use in this zone (if the doctor lived on the premises).

#### 2. Can the relief be granted without substantial detriment to the public good?

##### *Lot Area Requirement - § 401.3*

The 900 sf lot area per unit requirement under § 401.3 was intended for the conversion of residential and other structures to three or more units on lots 2,700 sf or greater in the R-4 District. Smaller lots, regardless of their size under 2,700 sf are permitted a flat (two units) as a matter-of-

right. As proposed for the subject 1,685 sf lot, the square foot per lot area would be effectively reduced to 210 sf per unit. This would intensify the density of the lot beyond that anticipated by the R-4's provision for conversions of existing structures to apartment buildings.

*Nonconforming structures devoted to a conforming use - § 2001.3: Lot Occupancy, Open Court*

The lot occupancy and open court are existing nonconformities of the property. A third floor addition for an additional two units has not been justified, as this would extend the existing nonconformities. The applicant has not explained the uniqueness / practical difficulty associated with the building or property that warrants the third floor addition, *except for lack of profitability*, or why a new third floor would not conform to the lot occupancy and open court requirement. There has been no explanation offered as to why the basement area after remediation, could not be used to locate mechanical equipment instead of residential units.

Relief can be granted from these aspects without detriment to the public good for renovations to the structure within the prescribed guidelines of the regulations for conversion to a flat. It would be impractical to fill in the court, as there are windows on the existing building in the area of the court, which would result in loss of light and air to the residence. A required court width would result in an impractical demolition to the building.

*Parking - § 2101*

Relief can be granted without detriment to the public good since the location is within a transit accessible neighborhood, with access to both a Metro Station (Shaw/Howard - a block west at S Street) and major bus lines along the Rhode Island and Florida Avenue corridors, and the site currently lacks a curb cut.

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

*Lot Area Requirement - § 401.3*

As previously stated, the proposal for 8 units on the lot would significantly exceed the anticipated or effective FAR for the present lot within the R-4 District (1.8 FAR). The proposed full third floor addition would be contrary to the intent of the regulations for additions to nonconforming structures.

The initial basis of the R-4 Zone designation was to establish a scale of density whereby a row dwelling or flat would be permitted on a lot of 1,800 square feet. In ZC Case No. 77-42, Order 211, the Commission determined that the application of the 900 square feet of lot area/apartment criteria should apply to prevent excessive density and help stabilize the R-4 district. While apartments do exist within the R-4, they are not characteristic of the zone. Thus, the current Regulations limit erosion of the row house character through Section 401 .3 which permits the conversion of pre-1958 buildings in the R-4 District to apartments subject to the requirement of 900 square foot of lot area per apartment. A reduction to 210 sf per unit would represent a significant reduction of the lot area requirement and impairment to the intent, purpose and integrity of the Zoning Regulations and Map.

*Nonconforming structures- § 2001.3: Lot Occupancy, Open Court*

No addition to the building's foot print is proposed. However, there has been no explanation as to why nonconforming aspects of the structure should be expanded to facilitate the renovation of the

structure, which would be contrary to § 2001.3 (b) (2) and § 401. Thus, the intent and purpose of the regulations would be harmed with relief from these requirements.

*Parking - § 2101*

Relief from parking for a row house or flat could be granted without impairing the intent purpose and integrity of the Zoning Regulations and Map.

**VI. COMMUNITY COMMENTS**

The applicant presented the proposal to the full ANC 6E on June 3, 2014. The ANC will submit its report to the Board under separate cover. (The proposal received support from the ANC's Zoning Committee at the writing of this report.)

**VII. CONCLUSION**

The lot is similar in size and irregularity of shape to others within the square. It exhibits no uniqueness or exceptional situation that would result in a practical difficulty to the owner. Relief cannot be granted without detriment to the public good.