

## **MEMORANDUM**

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

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

**DATE:** March 24, 2015

**SUBJECT:** BZA Case 18979, 400 K Street, NE, Variance Relief Pursuant to § 2001.3 for Lot Occupancy

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

The Office of Planning (OP) cannot support the requested § 2001.3, Lot Occupancy (60% maximum; 75.5% existing and proposed) relief for the existing nonconforming structures at 400 K Street NE.

Should the Board of Zoning Adjustment (BZA) approve the requested relief, OP notes that the Order should clearly state that it does not permit the use of the carriage house structure as a third dwelling unit, in addition to the flat in the principal structure.

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

|                                    |                                                                                                                                                                                                                                                                                          |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Address                            | 400 K Street, NE                                                                                                                                                                                                                                                                         |
| Legal Description                  | Square 806, Lot 44                                                                                                                                                                                                                                                                       |
| Ward/ANC                           | 6, 6C                                                                                                                                                                                                                                                                                    |
| Lot Characteristics                | The rectangular lot is 1,907.6 square feet in area, and is bordered on the north by a ten foot wide public alley, on the east by the adjoining row dwelling, on the south by K Street, NE (20.08 feet of frontage), and on the west by 4 <sup>th</sup> Street, NE (95 feet of frontage). |
| Zoning                             | R-4 – Row dwellings, conversions, and apartments.                                                                                                                                                                                                                                        |
| Existing Development               | Three story row dwelling, being used as a flat, which is permitted in the zone.                                                                                                                                                                                                          |
| Historic District                  | Not applicable.                                                                                                                                                                                                                                                                          |
| Adjacent Properties                | Adjacent properties are primarily row dwellings.                                                                                                                                                                                                                                         |
| Surrounding Neighborhood Character | The surrounding neighborhood character is primarily residential. The nearest commercial corridor is located on H Street, NE, which is approximately two blocks south of the subject site.                                                                                                |

### **III. APPLICATION IN BRIEF**

The applicant is requesting relief under § 2001.3 to allow improvements to remain on the property that were constructed contrary to the issued building permit. Building permit B0902687 was

approved for a third floor addition to the principal structure; however, the permit was issued based on the premise that the carriage house structure did not have a roof, so did not count towards the maximum permitted lot occupancy. Upon inspection of the permitted work, it was determined by the Department of Consumer and Regulatory Affairs (DCRA) that the carriage house structure was under roof, so does count towards lot occupancy.

The applicant is requesting variance relief to validate the existing conditions on the property, which exceed the permitted lot occupancy (60% maximum; 75.5% existing and proposed) and to allow the use of the principal structure as a flat and the carriage house as an artist's studio. However, as configured on the plans, the Zoning Administrator has advised OP that the carriage house would be considered a third, non-conforming dwelling unit. Relief to allow a third unit on the property was not requested, and would not likely be supported by the Office of Planning.

#### IV. ZONING REQUIREMENTS AND RELIEF REQUESTED

| R-4 Zone               | Regulation               | Existing <sup>1</sup> | Proposed            | Relief        |
|------------------------|--------------------------|-----------------------|---------------------|---------------|
| Height § 400           | 40 ft. max.<br>3 stories | 30 ft.<br>3 stories   | 30 ft.<br>3 stories | None required |
| Lot Width § 401        | 18 ft. min.              | 20.08 ft.             | 20.08 ft.           | None required |
| Lot Area § 401         | 1,800 sq. ft.<br>min.    | 1,907.6 sq. ft.       | 1,907.6 sq. ft.     | None required |
| Floor Area Ratio § 402 | None prescribed          | --                    | --                  | None required |
| Lot Occupancy § 403    | 60% max.                 | 75.5%                 | 75.5%               | <b>15.5%</b>  |
| Rear Yard § 404        | 20 ft. min.              | 20+ ft.               | 20+ ft.             | None required |

#### V. OFFICE OF PLANNING ANALYSIS

##### a. Variance Relief from § 2001.3, Nonconforming Structures

##### i. Exceptional Situation Resulting in a Practical Difficulty

The applicant has not demonstrated that there is an exceptional situation resulting in a practical difficulty. The rectangular lot is consistent with other lots in Square 806 and meets the lot width and lot area minimums for the R-4 zone. The prevailing character of the square is two-story row dwellings with some structures being used as single-family dwellings and some structures being used as flats.

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<sup>1</sup> Information provided by applicant. See Exhibit 7.



**Figure 1: Square 806, K Street NE Elevation**



**Figure 2: Square 806, 4th Street Elevation**

The subject property was being used as a flat when the applicant sought approval for the third floor addition to reconfigure the two dwelling units. The applicant argues that demolition of the carriage house to permit any addition to the principal structure would be a peculiar and practical difficulty. Baist maps indicate that accessory buildings were common in Square 806 (see Figure 3, below); however, it appears that a number of such structures have been demolished over time. The site is not in a historic district, so the carriage house is not required to be retained.

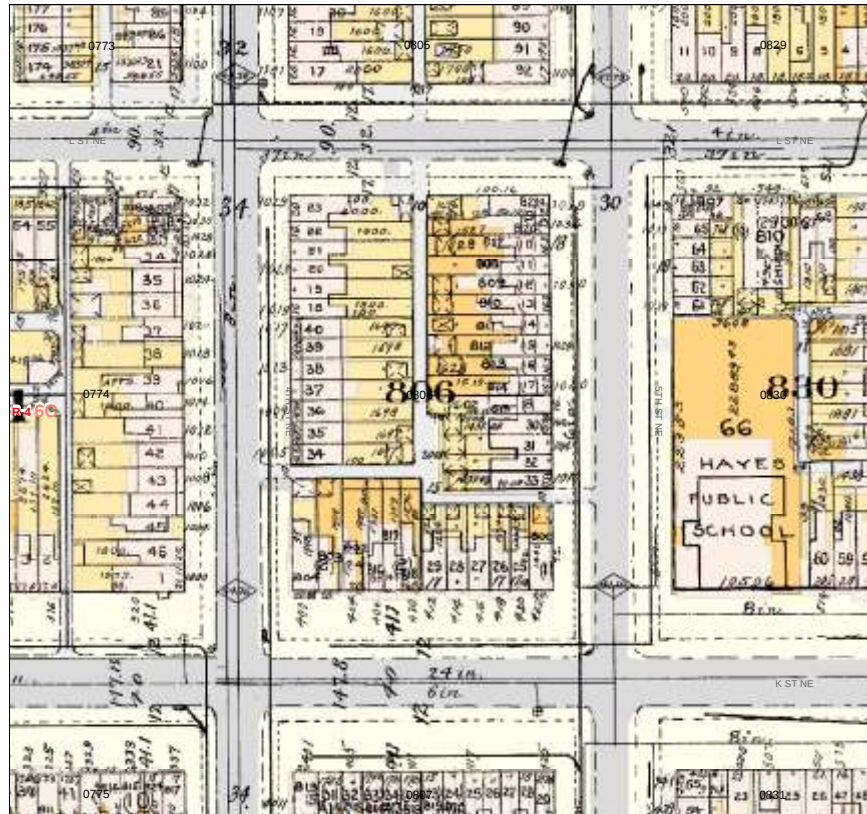


Figure 3: Baist Map (1959)

## ii. No Substantial Detriment to the Public Good

The requested relief causes detriment to the public good. The third floor addition is visible from 4<sup>th</sup> and K Streets, NE and is not in keeping, in design or massing, with the character of the neighborhood. With the proposed use of the carriage house as an artist's studio that spans both floors of the structure, the applicant is not providing parking for the flat or the third unit/artist's studio. A concrete parking pad has been installed in the public space along 4<sup>th</sup> Street NE, which was not approved by the Public Space Committee.

## iii. No Substantial Harm to the Zoning Regulations

No nexus has been established between the requested lot occupancy increase and the practical difficulty in making use of the existing two-story dwelling with carriage house. Approval of the requested relief would be an ex post facto approval of illegal construction. Therefore, the granting of the requested variance would result in substantial harm to the Zoning Regulations.

## VI. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT) has not objection to the approval of the requested variance. (See Exhibit 29.) However, DDOT's lack of objection to the zoning variance should not be viewed as an approval of public space elements.

## VII. COMMUNITY COMMENTS

ANC 6C voted 6-0-0 at its April 8, 2015 regularly scheduled meeting to oppose the application as currently presented. (See Exhibit 30.)

Attachment: Location Map

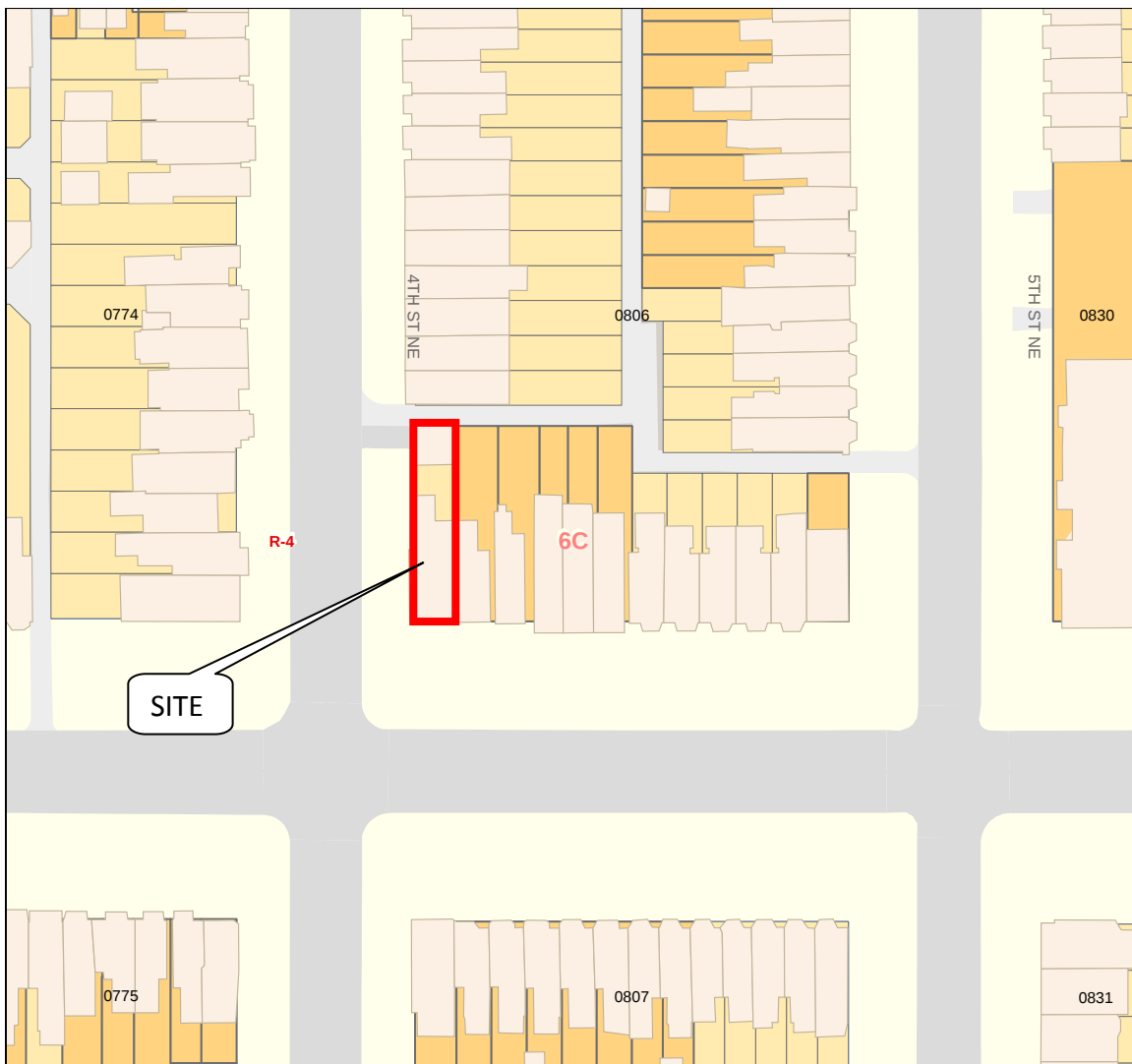


Figure 4: Location Map