

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Brandice Elliott, Case Manager
 Joel Lawson, Associate Director Development Review
DATE: June 2, 2015
SUBJECT: BZA Case 19007, 18 T Street, N.E.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **cannot recommend approval** of the following:

- § 400.1, Height of Buildings or Structures (40 feet/3 stories maximum, 42.5 feet/4 stories proposed);
- § 403.2, Lot Occupancy (60% maximum, 79% proposed); and
- § 2001.3, Additions to Nonconforming Structures.

II. LOCATION AND SITE DESCRIPTION

Address	18 T Street, N.E.
Legal Description	Square 3509S, Lot 43
Ward	5, 5E
Lot Characteristics	The rectangular lot has an area of 1,751 square feet and a frontage of 18.34 feet along T Street. The rear of the lot, at 18.34 feet, abuts a 15 foot public alley.
Zoning	R-4 – Row dwellings.
Existing Development	Row dwelling, permitted in this zone.
Historic District	N/A
Adjacent Properties	Adjacent properties tend to be of a similar size and type of development.
Surrounding Neighborhood Character	The surrounding neighborhood character is predominantly residential, consisting largely of row dwellings. The lot is located approximately one-half block from North Capitol Street, where many retail services are provided. The property is also approximately two blocks south of Rhode Island Avenue, which is the predominant commercial corridor in the area.

III. APPLICATION IN BRIEF

The applicant is seeking area variances to legitimize the continued use of an existing four story flat. The applicant entered into a contract to purchase the property from the current property owners in late November 2014, and will close upon the issuance of a permanent certificate of occupancy. The General Counsel for the Department of Consumer and Regulatory Affairs (DCRA) will not authorize the issuance of a temporary certificate of occupancy while the parties involved with the construction, including the property owners, developer and contractor, are being investigated for illegal construction, and additionally, consumer fraud by the developer.

Between May 29, 2012 and December 2014, the previous homeowners underwent construction to renovate the existing row dwelling. In doing so, two building permits from DCRA were reviewed and approved. The first building permit (B1214503) for construction, addition and alteration was issued May 7, 2013, and permitted the following work:

- Interior renovation to include removal of non-load bearing walls, replacement of electrical, mechanical and plumbing systems, doors and windows of a two family flat.

This permit allowed for the conversion of the attic into an additional third floor. Because this permit was marked “interior work only” by DCRA, the application was not routed through the zoning review staff for review, which left the Zoning Review Division unaware of the additional floor that was under construction.

An additional building permit (B1307184) for construction, addition and alteration was issued June 7, 2013, and permitted the following work:

- Demolition of the existing floor slab at the cellar, removing eight inches of topsoil and providing a new concrete slab; and
- Removal of four inches of topsoil and a portion of the retaining wall to provide space for a new compliant parking space.

Under this second permit, the contractor excavated the public space in front of the row dwelling and replaced a basement window with a door, which is consistent with a note provided from the Zoning Reviewer in DCRA indicating that a new basement entry would be provided. However, this permit indicates that there are two stories, which is inconsistent with the first permit that approved the addition of a floor for a total of three stories.

The excavation of public space to add the basement entrance resulted in the lowest level being defined as an additional floor, resulting in the building going from three stories to four stories, and increased the height above the matter of right height of 40 feet to 42.5 feet. In addition, the applicant asserts that the dwelling was already nonconforming in terms of lot occupancy; however, the unpermitted spiral staircase added approximately 36 square feet of building area, increasing the lot occupancy from 77% to 79%.

IV. ZONING REQUIREMENTS and RELIEF REQUESTED

R-4 Zone	Regulation	Existing	Relief
Height § 400	40 ft. max.	42.5 ft.	Required
Lot Width § 401	18 ft. min.	18 ft.	None required
Lot Area § 401	1,800 SF min.	1,751 SF	Existing nonconforming
Floor Area Ratio § 402	None prescribed	--	None required
Lot Occupancy § 403	60% max.	79%	Required
Rear Yard § 404	20 ft. min.	Not provided	None requested
Side Yard § 405	0 ft. min.	0 ft.	None required
Court § 406	5 ft. min./350 sq. ft.	Not provided	None requested

V. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from § 400.1, Height of Buildings or Structures; § 403.2, Lot Occupancy; § 2001.3, Additions to Nonconforming Structures

i. Exceptional Situation Resulting in a Practical Difficulty

As noted in the submission, the applicant demonstrated good faith and relied on the actions of District officials prior to entering into a contract to purchase the property. The applicant was not involved in the renovation of the flat that led to the increase in the number of stories and height and increase in lot occupancy, and believed that the building, as constructed, marketed and sold, was in compliance with all zoning regulations and requirements. The applicant relied on DCRA's issuance of building permits as verification that all improvements made to the property were done so legally. OP recognizes that the required relief is not a result of any wrongdoing on the part of the applicant, and sympathizes with their current situation, which has caused both emotional and financial distress.

While the applicant successfully argues that a good faith, detrimental reliance was made with respect to the permits issued by DCRA, it appears that incomplete information was provided to DCRA in order to bypass certain reviews, namely the zoning review, where the need for relief would have been cited. The variance process is not intended to provide retroactive relief for construction. The lot is a typical shape and size for residential properties in this square, and the R-4 zoning permits up to three stories and 40 feet of height. This situation does not appear unique or exceptional to the property, although it would impose a financial practical difficulty on the applicant, who is under contract to purchase a unit.

ii. No Substantial Detriment to the Public Good

The request for relief should not pose substantial detriment to the public good. The flat is taller than surrounding row dwellings due to the addition of a small gable roof and the removal of the public space, which created an additional floor; however, it maintains a similar roof line to adjacent structures. In addition, the use of the dwelling as a flat conforms to the R-4 zoning designation, which permits two units by matter-of-right. While the additional lot occupancy can be attributed to

the addition of a spiral staircase connecting the multi-level decks, the rear yard appears to comply with the Zoning Regulations, which requires a 20 foot minimum rear yard. Given that the ANC voted to recommend denial of the relief, it may be able to provide a different perspective regarding the impact of the construction on the neighborhood.

OP notes that during a site visit, it was observed that every row dwelling along this block of T Street has some form of landscaping in the public space. There are two examples of row dwellings where the public space has been excavated to accommodate basement entrances, and where the area in public space has been landscaped with shrubs and other greenery. This landscaping is essential to maintaining the character of the block, and, should the Board approve the requested relief, OP recommends a condition that the public space be landscaped with shrubs. The applicant has indicated that they would be agreeable to this condition.



Google Street View of T Street illustrating existing pattern of landscape in public space
★ = subject dwelling



Public Space at 26 T Street, N.E.



Public Space at 22 T Street, N.E.

iii. No Substantial Harm to the Zoning Regulations

OP generally strongly opposes relief to allow additional stories and height, as well as lot occupancy beyond what would be permitted by a special exception. However, OP is sympathetic to the applicant's extenuating circumstances as noted above.

The top floor addition is contrary to the Zoning Regulations for height, number of stories and lot occupancy for the R-4 district and is not in keeping with the surrounding neighborhood. The R-4 district permits a maximum height of 40 feet and three stories; the subject property measures 42.5 feet in height and four stories. However, the gable addition made to the fourth floor is low profile and not significantly noticeable from the street. Further, the turret that has been maintained in is keeping with the prevalent design along this block of T Street. In addition, the use of the dwelling as a flat conforms to the R-4 zoning designation, which permits two units by matter-of-right. While the additional lot occupancy can be attributed to the addition of a spiral staircase connecting the multi-level decks, the rear yard appears to comply with the Zoning Regulations.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

In a report dated May 12, 2015, the District Department of Transportation indicated that the proposed project would have no adverse impacts on the travel conditions of the District's transportation network.

VII. COMMUNITY COMMENTS

At its regularly scheduled meeting on May 19, 2015, ANC 5E voted unanimously to recommend denial of the requested relief. As of the date of this writing, five letters of support from neighbors had been submitted to the file.

Attachment: Location Map

Location Map

