

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen Cochran, Case Manager
JL Joel Lawson, Associate Director for Development Review

DATE: July 21, 2015

SUBJECT: BZA Case 19057 – 9th and T Streets NW

I. RECOMMENDATION

Hollow Creek LLC has requested relief to enable the conversion of a non-residential institutional building on the southeastern corner of 9th and T Streets, N.W. into a 27-unit apartment house in the R-4 zone. This report examines an updated set of relief requests that were confirmed as being necessary during a meeting on July 9, 2015 among the Office of Planning (OP) staff, the applicant and the Zoning Administrator. The updated relief requests, and this report, are based on the revised R-4 regulations which became effective June 26, 2015.

The Office of Planning (OP) recommends the Board of Zoning Adjustment

- **Approve** the newly requested **Variance from § 406.1** for the width of a closed court (labelled “New Recessed Window Well” in the southwest corner of the Cellar Floor Plan included on page 3 of this report) (Required --If provided, a widths of the greater of 15 ft. or 4’/ft. of height, and an area of the greater of [2 x (the square of the required court width)] or 350 sf ; Proposed –width of 9 feet, area of 391.5sf);
- **Approve** the requested **Variance from § 2001.3** for the addition of a new nonconformity (Current non-conformities -- lot occupancy, rear yard, side yard; height; roof structure, open court. Proposed expansion of non-conformity – height; Proposed new non-conformity: closed court);
- **Deny** the requested **Variance from** the height requirements of **§§ 400.1 and 330.7 (b)** to construct an additional 9 foot-high story atop the existing 52.8 foot high building (Permitted: 35 feet by-right, 40 feet with special exception; Proposed: 61.8 feet).
- At this time, **OP cannot recommend approval** of the request for a **Special Exception from § 330.7(c)**, minimum ratio of lot area per dwelling unit for a conversion of requirements of a non-residential into an apartment building in the R-4 zone; (Required -- 900 sf of lot area per dwelling unit ; Proposed -- 238.3 sf per dwelling unit). The applicant should demonstrate how the considerable amount of lot area per dwelling unit relief resulting from their proposed conversion to 27 dwelling units would be consistent with the criterion that the special exception be in harmony with the general purpose and intent of the zoning regulations.

II. LOCATION AND SITE DESCRIPTION

Address	1851 9 th Street, N.W.
Legal Description	Square 394, Lot 874
Ward and ANC	1, 1B
Lot Characteristics	Flat 99.23' x 65.05' corner lot abutting alley at rear. The existing structure occupies over 90% of the lot
Zoning	R-4– Row houses and flats, with limited permission for apartment buildings.
Existing Development	A four story plus cellar building constructed as an Odd Fellows lodge and most recently used as a high school.
Historic District	Contributing building to Greater U Street Historic district
Adjacent Properties	<u>East</u> : District-owned parking lot across a 15 foot wide alley. <u>South</u> : Two-story rowhouse. .
Neighborhood Character	Mix of single family and duplex row houses, 5 to 9 story apartment buildings, some offices, general services, retail and entertainment. Transit-oriented. High walkability index.



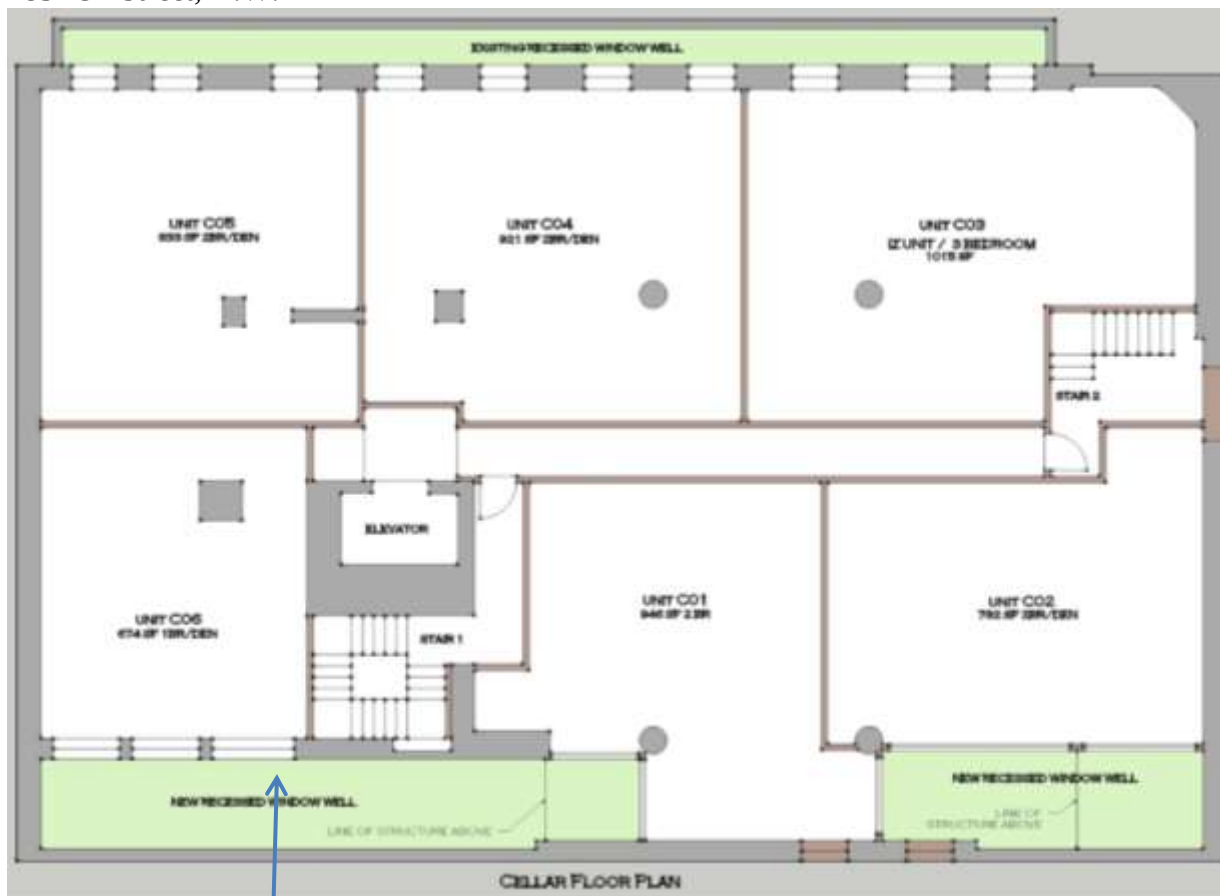
Figure 1. Site location

III. PROJECT IN BRIEF

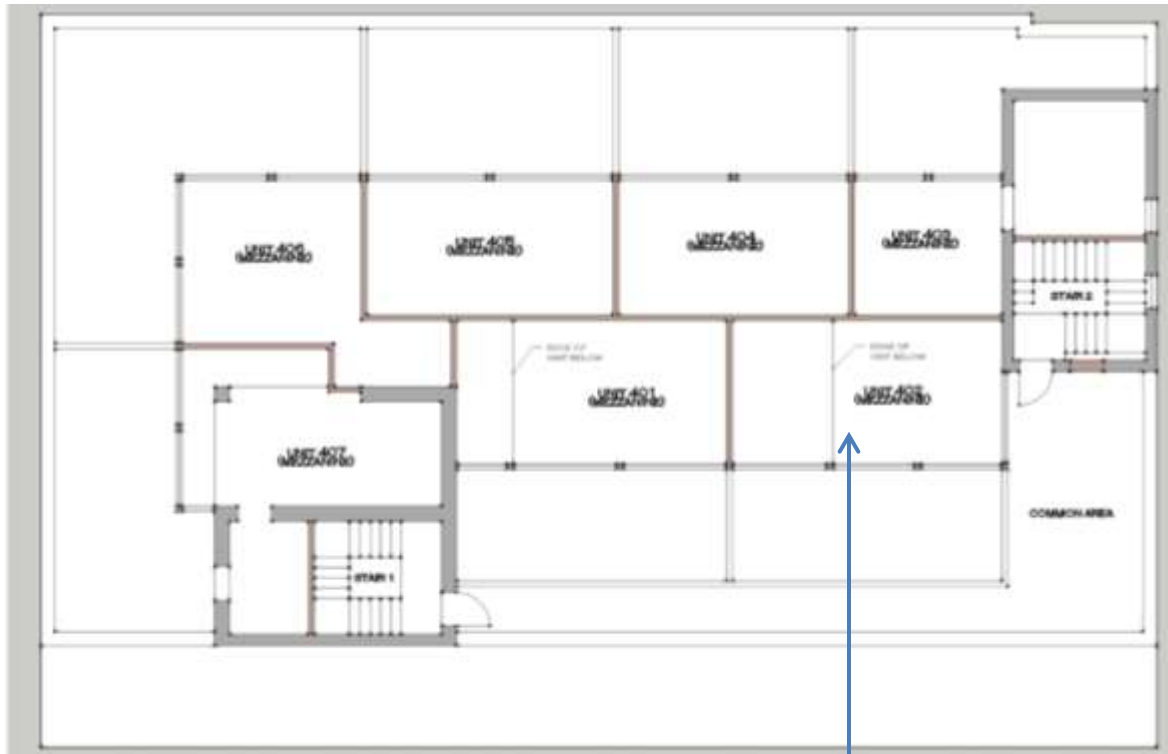
Applicant	Hollow Creek, LLC
Proposal	Convert a 4-story plus cellar institutional building into a 27-unit apartment building, including the addition of a new 5 th floor
Requested Relief	• Special Exception, § 330.7(c): Conversion of an R-4 zoned non-residential building to an apartment building with less than 900 square feet of lot area per proposed dwelling unit • Variance, §§ 400.1, 330.7(b): Addition of building height in a new fifth story and above the 35 foot/3-story by-right limit • Variance, § 406.1: Open Court width • Variance, § 2001.3: Expansion of non-conforming structure and addition of new non-conformity

Figures 2 (a) – 2(c) Follows . Proposed Building Plans for Floors Where Relief is Requested -- Cellar, First Floor and New Fifth Floor

1851 9th Street, N.W.



New non-conforming closed court



5th Floor Plan

Additional height in a new floor

IV. ZONING REQUIREMENTS

R-4 District Old/New	Regulation Old/New	Existing	Proposed	Relief
Height § 400.1 / §330.7 (b)	40/35 ft. max., 3/3 story limit	52.8 ft. 4 stories	61.8 ft. 5 stories	Variance relief for 9 ft. and 1 story
Lot Width § 401.3	18 feet	65.05 feet	SAME	None required
Lot Area § 401.3 / § 330.7(c)	900 sf lot area /du 24,300 SF for 27 units	6,461 sq. ft. (7 du by-right)	239.3 sf lot area / du (27 du proposed)	SE Under §337 for 17,839 SF less than §330.7 (c)'s requirement for 24,300 sf.
FAR § 402	N/A	N/A	N/A	N/A
Lot Occ. § 403.2	60 % / 60% by- right.	Approx. 95%+ (applicant will provide info)	SAME	Variance from § 2001.3 for addition to non- conforming building.
Rear Yard §§ 404.1, 404.4	20 ft.	0	SAME	None required. (Construction permitted by § 404.4).
Side Yard §405.1	If provided, ≥ 8'	0	SAME	None required

R-4 District Old/New	Regulation Old/New	Existing	Proposed	Relief
<i>Open Court</i> § 406.1	<i>If provided, 4”/ ft. of height, but not < 10 feet</i>		<i>9 feet</i>	<i>Existing Non- Conformity. Variance from § 2001.3 Variance of 1 foot from § 406.1</i>
<i>Closed Court</i> § 406.1	<i>If provided, width of 4”/ft. of height, but ≥ 15 ft.; area of ≥ 350 sf</i>	N/A	Width: 9 feet Area: 301.5	<i>Variance for 6 feet of width</i>
Parking §2101.1	N/A (existing parking credits)	0 (31 to 42 credits)	0 - existing credits as determined by the ZA	None required
Inclusionary Zoning § 2602.2 (c)	If >10 du's, 10% of res. gsf, with 50% low income, 50% moderate income	0	3 units 2 low-income 1 moderate income	None required

V. ANALYSIS

A. Special Exception from the Requirements of § 330.7 for the Conversion of a Non-Residential Building to an Apartment Building , With Additional Criteria in § 337

§ 330.7 permits an existing pre-1958 non-residential building in the R-4 zone to be converted to an apartment building if:

- The building exists prior to filing for a building permit;
- Any addition does not exceed 35 feet in height);
- There are at least 900 SF of lot area per dwelling unit;
- Any addition extends no more than 10 feet past the rear of an adjacent residential building;
- Original rooftop architectural embellishments or features remain unchanged;
- The applicant demonstrates that no addition or new construction interferes with the light available to an existing or potential solar energy system on an adjacent property;

- (g) A non-residential to apartment conversion prior to June 26, 2015 shall be considered conforming, but shall not be permitted to expand unless permitted as a special exception.

The building and proposed changes conform with § 330.7 (a), (d), (e) and (g) but would be non-conforming to the other provisions.

Given its corner location, its separation by an alley from the property to the east, and its location north of the south-adjacent two-story rowhouse, the proposal appears to conform to § 330.7 (f), although the applicant has not submitted studies demonstrating this.

OP's special exception analysis focuses on the § 330.7 criterion to which the application does not conform and for which relief may be granted by special exception: § 330.7 (c) 900 sq.ft. of lot area per dwelling unit.

The applicant proposes to develop 27 units within the existing building, on a 6,461 square foot lot, for a ratio of 239.3 square feet of lot area per dwelling unit.

§ 3104.1: The special exception will be in harmony with the general purpose and intent of the zoning regulations

While some relief from this provision may be justified, and OP does not oppose or support a specific number of units as acceptable on this site, the applicant has not yet demonstrated that the degree of requested relief would be in harmony with the general purpose and intent of the R-4 zone.

The applicant has posited that the construction method and layout of the institutional building, and its status as contributing structure to the historic district, pose difficulties in converting the building at a cost similar to other conversions and, therefore, require the number of units the applicant is proposing. However, at the time OP completed this report the applicant had not yet submitted information documenting that the building results in a practical difficulty for which the degree of relief requested is necessary to enable the conversion.

OP is concerned about the degree of requested relief. The recent revisions to the zone's regulations gave great emphasis to maintaining the R-4 zone's identity as a one most appropriate for one and two-unit rowhouses and similarly scaled conversions (a flat on the minimum lot size of 1,800 sq.ft. results in a unit to lot size ratio of 1 / 900 sq.ft.). While some relief from the lot area/dwelling unit ratio may be justifiable, OP is concerned that, absent a demonstration to the contrary, the requested 660.7 square feet of lot area relief per dwelling unit may not be in harmony with the intent of the R-4 zone. .

§ 3104.1: The special exception will not tend to affect adversely, the use of neighboring property in accordance with the zoning regulations.

While the extent of relief to allow the 27 units as requested may adversely impact the intent of the zoning regulations, this aspect of the necessary relief is less likely to have an adverse effect on the neighborhood. The applicant's property is located in a neighborhood that is highly accessible to transit and that is experiencing significant increases in population, new construction, and retail offerings. The applicant has referenced the location's high walk score.

However, as the applicant has acknowledged, the neighborhood is concerned about the pressure that new development is putting on available parking. Although the proposal has no parking requirement due to its existing parking credits, the applicant has attempted to address parking issues by entering into an agreement with a nearby parking operator to dedicate 10 off-site parking spaces for the building's residents for the first two-years after the building's occupancy, and has provided more bicycle parking than is required by zoning. OP encourages the applicant to consider additional transportation demand measures to further reduce any potential parking impact from the development, and to ensure that any off-site parking is provided for a longer period of time or, preferably, in perpetuity.

§ 337.2 Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(a) The light and air available to neighboring properties shall not be unduly affected;

Due to the building's corner location north of the adjacent structure and across an alley from a vacant lot, the requested special exception would not unduly affect available light or air to neighboring properties.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

There would not likely be an undue compromise to the use and enjoyment of neighboring properties. Although additional windows would be added to the building if permitted by the Historic Preservation Review Board, they would not be confronting windows or yards of adjacent buildings.

(c) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street or alley.

The conversion itself would not likely intrude substantially on neighborhood character, scale, pattern or views. The building is of a larger scale than the nearby structures but has become part of the neighborhood since built 90 years ago. However, this is not the case with the proposed vertical addition, which is addressed below.

337.3 In demonstrating compliance with § 337.2, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways.

The applicant's has provided adequate material to demonstrate the existing building and its context. The applicant has not included adequate elevations or perspective views of the proposed conversion and addition.

337.4 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

OP does not recommend any special treatment or conditions. The design of the proposed conversion will be reviewed by the Historic Preservation Review Board.

B. Variance Requests

1. § 330.7 (b) Height / Number of Stories

The property's 52.8 foot height is a pre-existing non-conforming condition, being almost 18 feet more than the currently permitted height, and the building is currently 4 stories, more than the currently permitted 3 stories. However, because the proposed addition would rise above the 40 feet that may be permitted as a special exception in the R-4 zone, the request for the 5th floor addition and additional height must be considered as a variance; and relief for the 5th story is required.

a. Exceptional Conditions Resulting in a Practical Difficulty

The applicant has not demonstrated an exceptional condition that would result in a practical difficulty if the additional floor were not permitted or which warrants this requested relief. The new fifth floor is designed to provide roof access for individual apartments, as well as new additional living space for those units. It is likely possible that such access could be achieved through construction such as roof hatches or stairway penthouses that do not include living space, which would not add defined height or an additional story to the building.

b. No Substantial Detriment to the Public Good or Substantial Harm to the Zoning Regulations

Granting relief for the additional height may pose a substantial detriment to the public good. Adding height to a building that is already well in excess of the R-4 zone's by-right height would be inconsistent with the adjacent residential scale. This would also be substantially contrary to the intent of the R-4 zone and contrary to the recent strengthening of the R-4 zone.

2. Variance, § 406.1 Closed Court and § 2001.3, Addition of New Non-Conformity to a Non-Conforming Structure

a. Exceptional Conditions Resulting in a Practical Difficulty

At the time OP completed this report, the applicant had not yet adjusted its application to request this relief or to address any variance tests. However, based on the architectural plans of the existing lowest level it appears that the building is unusual in having windows on the north, but not the south side of that level, and a building depth that would preclude meeting residential building codes if additional light were not brought into that level.

b. No Substantial Detriment to the Public Good or Substantial Harm to the Zoning Regulations

It does not appear likely that granting the variance would pose a substantial harm to the public or the zoning regulations, but the applicant has not yet provided this analysis.

3. Variance, § 2001.3 Creation of New Non-Conformity

a. Exceptional Conditions Resulting in a Practical Difficulty

The existing building is non-conforming for lot occupancy, height, rear yard and open courts. Its status as a contributing building to the Greater U Street Historic District inhibit the removal of the substantial portions of the building that would enable conformance with lot occupancy, height, rear yard, and open courts, or the addition of new construction to eliminate the existing open courts.

b. No Substantial Detriment to the Public Good or Substantial Harm to the Zoning Regulations

The architectural plans and photographs submitted by the applicant demonstrate that neither the retention of the existing non-conformities, nor the creation of a new non-conforming closed court would pose a substantial detriment to the public good or the zoning regulations.

VI. HISTORIC PRESERVATION

For this contributing building to the Greater U Street Historic District, the plans for the proposed conversion are scheduled to be considered by the Historic Preservation Review Board after this report has been submitted but before the BZA hearing.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT) has no objections to the requested relief, but, given the provision of no parking, has encouraged the applicant to consider additional transportation demand management measures. DDOT's comments will be filed under separate cover.

OP is not aware of comments from any other District agency.

VIII. COMMUNITY COMMENTS

The applicant states that there has been outreach to the neighborhood and that the architectural plans have been modified to accommodate a neighborhood-requested internal trash storage room and to provide additional bicycle parking.

The applicant was scheduled to meet with ANC 1B on July 9, 2015. There were no comments from the ANC, adjacent property owners, or members in the public at the time OP completed this report.