

BZA Case: 19164

Address: 17 U Street NW, Washington, DC 20001

Applicant: Christopher Wright

Relief Sought: Application of Christopher J Wright, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy requirements under § 403.2, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and special exceptions from the height requirements under § 400.23 and alteration of rooftop architectural element under § 400.24 to construct a three-story flat in the R-4 District at premises 17 U Street N.W. (Square 3117, Lot 3).

Contents

ZONING ADMINISTRATOR MEMO [Exhibit 40]	2
DIFFERENCES IN REQUESTED RELIEF [Exhibit 37].....	3
LOT OCCUPANCY [Exhibit 36-2, Page 2]	4
OP REPORT [Exhibit 41]	5
STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF (Exhibit 37 – Area Variance).....	6
1. UNIQUE PHYSICAL CHARACTERISTIC /EXCEPTIONAL CONDITION OF PROPERTY	6
2. PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY.....	10
3. SUBSTANTIAL DETRIMENT TO PUBLIC GOOD/IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONING PLAN.....	11
STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF (Exhibit 37 – Special Exception)	14

ZONING ADMINISTRATOR MEMO [Exhibit 40]

1. Variance for the expansion of an existing non-conforming structure pursuant to §2001.3 for the expansion of a non-conformance structure (non-compliant in lot occupancy-§ 403 and open courts - § 406) in the R-4 Zoning District. (§ 3103.2)
2. Variance to exceed the maximum permitted number of stories for a structure in the R-4 Zoning District (3) pursuant to § 400.1 to allow for a fourth story addition to an existing three-story structure. (§ 3103.2)
3. Variance from Section §403.2 to permit construction of a rear spiral staircase in excess of the allowable lot occupancy percentage. (§ 3103.2)
4. Variance to allow for the expansion of an existing non-conforming open court pursuant to § 406.1 to allow for a fourth story addition to an existing three-story structure. (§ 3103.2)
5. Special Exception pursuant to § 400.23 to allow for a structure to be erected to a height not exceeding forty feet (40 ft.) in the R-4 Zoning District. (§ 3104.1)
6. Special Exception pursuant to § 400.24(a) to allow for the alteration of an existing rooftop architectural element original to the building in the R-4 Zoning District. (§ 3104.1)

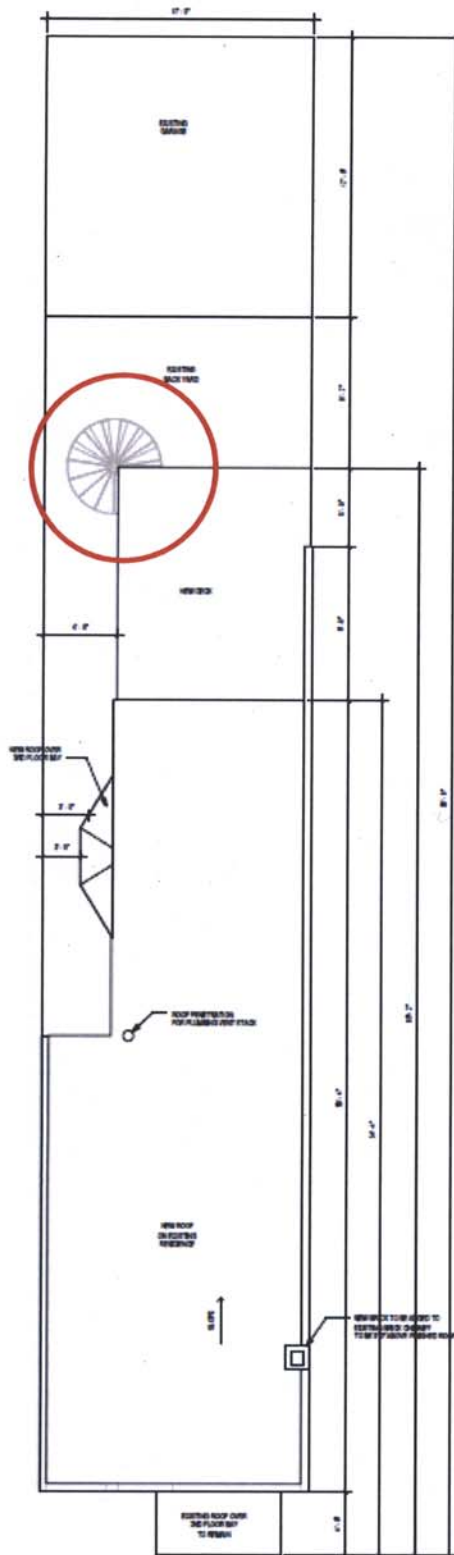
DIFFERENCES IN REQUESTED RELIEF [Exhibit 37]

1. This variance will be requested (#1 in BZA Memo)
 - The home sustains same nonconformities, with regard to lot occupancy and open court
2. This variance will NOT be requested (#2 in BZA Memo)
 - Ground plane at the front will be returned to original height, 5" higher
 - Proposed addition would be on the third, and highest, story of the structure
3. This variance will be requested (#3 in BZA Memo)
 - Intent was to decrease lot occupancy, slightly, by replacing existing stair with spiral
 - Lot occupancy of the proposed spiral staircase is 6 sq feet
 - Lot occupancy of the existing staircase is around 20 sq feet, if counted
 - Remains unclear whether DCRA considers the plans a decrease in lot occupancy
4. This variance will be requested (#4 in the BZA Memo)
 - The home sustains same nonconformities, with regard to lot occupancy and open court
 - No 4th story proposed and no clear decision on existing attic as an existing 3rd story
 - Remains unclear if this triggers the need for a full variance
5. This variance will be requested (#5 in the BZA Memo)
 - Existing height of the home is measured to the parallel roof line, at 33'8"
 - Existing gable, considered an architectural element, and proposed height is at 36'
6. This variance will be requested (#6 in the BZA Memo)
 - Existing gable is to remain, as is, with an increase in the parallel roof line

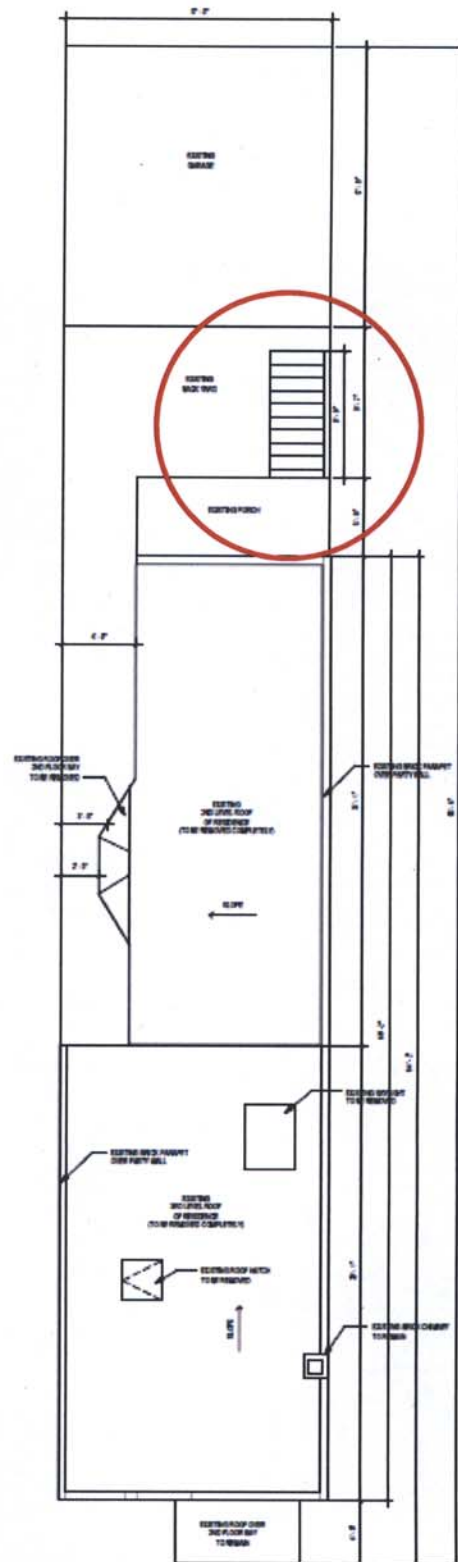
R-4 Zone	Regulation	Existing	Proposed	OP Different	Relief
Lot Width §401	18 feet min.	17 feet	no change	-	Nonconforming
Lot Area §401.3	1,800 SF min.	1,700 SF	no change	-	Nonconforming
Lot Occupancy §403	60% max.	88.38%	88.73%	-	Variance
Height §400	35'	34'	36'	Yes	Exception
Stories §400	3 stories	3 stories + attic	3 stories	Yes	None
Open Court §406.1	12'	5'	5'	-	Variance
Rear Yard §404.1	20 feet min.	27'	no change	-	None

Application of Christopher J Wright, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy requirements under § 403.2, the open court requirements under § 406.1, and the nonconforming structure requirements under § 2001.3, and special exceptions from the height requirements under § 400.23 and alteration of rooftop architectural element under § 400.24 to construct a three-story flat in the R-4 District at premises 17 U Street N.W. (Square 3117, Lot 3).

Construction according to plans in Exhibit 36-2.

LOT OCCUPANCY [Exhibit 36-2, Page 2]

2 NEW SITE AND ROOF PLAN



1 EXISTING SITE & ROOF PLAN
1/8" = 1'-0"

OP REPORT [Exhibit 41]

- “The addition of a 4th story to a rowhouse in the R-4 is OP’s primary concern regarding this variance.”
 - “If that lower level was one inch shorter and therefore less than 4’, it would be considered a cellar and not a story.”
 - “the applicant has revised the plans to show that the front grade will be returned to its original level” [Exhibit 36-2, Page 7]
 - “the lower level would be less than four feet in height and therefore would be considered a cellar - not a basement or a story”
- “...the applicant is unable to do a rear addition due to the existing non-conforming lot occupancy of 88%.”
- Lot occupancy currently non-conforming
 - “Very slight” increase in lot occupancy (.35%) due to the stair replacement
 - 2.4’ increase to the overall building height measurement.
- “The applicant provided sufficient plans and photographs”
- “DDOT has no objection to the application (Exhibit 27).”
- “The adjacent neighbors and the ANC support the expansion.”
- “... the requested relief would not appear to cause substantial detriment to the public good.”
- “The requested relief to add a fourth story to a 3-story rowhouse would pose harm to the Zoning Regulations”
 - “the lower level would be less than four feet in height and therefore would be considered a cellar - not a basement or a story”

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF (Exhibit 37 – Area Variance)

The Board is authorized to grant an area variance where a property demonstrates three characteristic elements:

- 1. The subject property must demonstrate a unique physical characteristic of shape or size, exceptional narrowness or shallowness which existed as of the time of the original adoption of the Zoning Regulations, or that there exists exceptional topographical conditions or other extraordinary or exceptional situation or condition of property;*
- 2. That the physical characteristic(s), or extraordinary or exceptional situation or condition of the property makes the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties to the owner of the property;*
- 3. That the Board is able to grant the variance without substantial detriment to the public good and without substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.*

1. UNIQUE PHYSICAL CHARACTERISTIC /EXCEPTIONAL CONDITION OF PROPERTY

The PROPERTY¹ meets the burden for demonstrating “a unique physical characteristic of shape or size” and “exceptional situation or condition of property” due to a confluence of factors²:

- Extensive roof damage and interior structural damage due to dilapidated roof
 - Overall damage to the home is major and repair to roof is not elective
 - Nonconforming open court also required a large steel beam in construction, unique to most row houses and increasing repair costs
 - Exceptional condition results in repairs greater than \$65k³
- Combination of nonconformities unique, uncharacteristically increasing occupancy

¹ The D.C. Court of Appeals has held that the exceptional situation or condition standard goes to the “property” not just the “land”; and that “property generally includes the permanent structures existing on the land.” *Clerics of St. Viator v. D.C. BZA*, 320 A.2d 291, 293-294 (D.C. 1974)

² The statute does not preclude the approval of a variance where the uniqueness arises from a confluence of factors. *Fleischman v. D.C. BZA* (D.C. 2011)

³ The Court of Appeals has repeatedly held that “economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases” *Tyler, et. al. v. D.C. BZA*, 606 A.2d 1362 (D.C. 1992).

- Built in 1906; lot occupancy (88%) since prior to Zoning Regulations
- Lot size is less than zoned at 1700 SF (-5.8%)
- No scenario, other than demolishing the back half of the main home, which removes the nonconforming aspects for lot occupancy and open court
- Nonconforming open court counts for lot occupancy (+8%)
 - *Less than 15% on block have a dogleg; fewer nonconforming*
 - *Regulation changes will no longer count nonconforming open courts*
- Garages are not common, increasing existing nonconformity (+18%)
 - *If PROPERTY was without confluence (no garage, open court didn't count) and had regulation lot area, lot occupancy would be 59%*
- Without creating more vertical and horizontal space in the third floor stairwell cannot be brought up to code (image below, Exhibit 37).
 - Not in line with building code for riser height, stair width, and tread depth.



LEVEL OF DISREPAIR & STRUCTURAL ISSUES CREATES EXCEPTIONAL CONDITION





Shifting Bricks

Window on Current Second Floor below Roof Damage (shifting bricks due to water damage)



Steel Beam

Below Second Floor Window, Steel Beam and Structural Issues with Brick

2. PECULIAR AND PRACTICAL DIFFICULTIES TO OWNER OF PROPERTY⁴

Strict compliance with the regulations is practically difficult⁵ because the adoption of the Zoning Regulations immediately resulted in the nonconformities that are subsumed in the requested variance relief as well as nonconformities with respect to lot size and lot width.

- Results of the exceptional condition are repairs greater than \$65k⁶
 - *Return on investment significantly different if additional 495 SF cannot be created on the expanded attic/3rd story, around \$200k*

Structural Labor	\$ 19,142.85
Structural Material	\$ 7,626.10
Structural Total	\$ 26,768.95
Roof Labor	\$ 27,766.67
Roof Material	\$ 11,141.22
Roof Total	\$ 38,907.89
Total Costs of Repairs	\$ 65,676.84

Cost of Repairs Due to Roof Replacement

Sales Since June 2015	Price/SF	Extrapolate 495 SF
121 V St NW	518	\$256,410
67 V St NW	508	\$251,460
75 V St NW	584	\$289,080
2037 1st St NW	436	\$215,820
50 V St NW	320	\$158,400
2103 1st St NW	389	\$192,555
13 V St NW	472	\$233,640
77 V St NW	460	\$227,700
51 U St NW	306	\$151,470

Sales in Area in Last Six Months (Source: Zillow)

⁴ Two similar area variance cases (17804, 18421) prove exceptional condition due to necessity of repairs or building. One case to hide parking spaces, due to historic designation, and the other due to significant damage to property. Both successfully argued economic viability of repairs or building in the design and requested relief.

⁵ A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. BZA*, 287 A.2d 535, 541 (D.C. 1972).

⁶ The Court of Appeals has repeatedly held that "economic use of property may be properly considered as a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in area variance cases" *Tyler, et. al. v. D.C. BZA*, 606 A.2d 1362 (D.C. 1992).

- With any other proposed expansion to the structure, additional lot occupancy would be generated, even one as modest an increase in square footage (495 SF) proposed
- While the variance relief is sought, recognizing existing nonconformance with lot occupancy, the lot occupancy percentage includes an open court that is nonconforming as to width and thus counted toward that coverage.
- The home is in need of repairs, to modernize it and deal with structural and leaking issues associated with a dilapidated roof. There is no scenario, other than demolishing the back half of the main home, which removes the nonconforming aspects for lot occupancy and open court.

3. SUBSTANTIAL DETRIMENT TO PUBLIC GOOD/IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONING PLAN

The requested relief and proposed building will not cause any impairment of intent, purpose and integrity of the zoning regulations:

- Proposed use is allowed in this area
 - Residential flat
 - Does NOT create an apartment house
 - Does NOT create condos
 - Does NOT increase height above existing architectural embellishment
- The scaling and façade treatment blends in with the neighborhood and refreshes a dilapidated property; protecting the character of my row house and neighborhood
 - Similar materials (e.g., slate) as the original materials used to maintain the character
 - No movement of the architectural element (i.e., gable) proposed...400.24(a)
 - Original architectural element will remain and be updated to account for rust...400.24(a)
 - No changes are proposed to any street-side window, in placement or size
 - No construction at a height greater than the architectural element (i.e., gable) proposed
 - All proposed additions and alterations are made within the same original footprint
 - Proposed addition still maintained below the height of adjacent neighboring turrets
- The project is a modest addition that will not create any new nonconformity.
 - The proposed structure is architecturally compatible in scale and massing to existing neighboring properties. The surrounding buildings are predominantly row dwellings,



Images: Existing Front of Home and Overlay of Proposed Alteration

- No undue impact on the light and air of neighboring properties
 - Vertical nature of the addition
 - Absence of any increase in lot occupancy
 - Substantial setback from the rear of the property for the extension
 - Open air nature of the balcony
 - Supported by the two adjacent homeowners (15 and 19 U Street NW)



Images: Existing Rear of Home and Overlay of Proposed Alteration

- Will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property
 - Limited windows on one side elevation of the addition; none on the other
 - No substantial decrease in privacy, given current separation
 - Supported by the two adjacent homeowners (15 and 19 U Street NW)

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF (Exhibit 37 – Special Exception)

In accordance with 400.23, the overall height of the third floor addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property (See SUBSTANTIAL DETRIMENT TO PUBLIC GOOD/IMPAIRMENT OF INTENT, PURPOSE AND INTEGRITY OF THE ZONING PLAN above). Additionally, For any R-4 project, under §400.24 “a roof top architectural element original to the building such as a turret, tower or dormers, shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size.” Under §400.25, the BZA can approve a special exception from §400.24 pursuant to §400.23 (analysis provided in section (b) below).

- (a) The applicant shall demonstrate that the overall building or structure height or upper addition will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

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

Given the vertical nature of the addition, as well as no increased use in lot occupancy, the effect on light and air are lessened. Additionally, the adjacent neighbors do not have roof access and the substantial setback from the rear of the property and open air nature of the balcony are directly supported by the two adjacent neighbors.

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

The adjacent neighbors support the project. The plans show limited windows on one side elevation of the addition; none on the other. The proposed roof deck creates no substantial decrease in privacy given current separation.

- (3) An addition shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;

The proposed addition will not block a chimney or vent. Any potential related code issues will be managed with neighbors.

- (4) An addition shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator; and

The adjacent properties do not have a solar energy system.

(5) The resulting building or structure height, 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 frontage;

The bulk of the proposed addition would not be readily visible from the street. The addition would be visible from the rear alley, but the addition's massing does not extend to the rear of the existing footprint of the lower levels.

- (b) The applicant shall demonstrate that overall building or structure height or an upper addition resulting from the additional five feet (5 ft.) will not have a substantially adverse effect on the defining architectural features of the building or result in the removal of such features; and

The proposed expanded roof design has lessened the impact on the form of the original front gable. The ANC and neighbors are supportive, as it also remains lower than the adjacent turrets.

- (c) In demonstrating compliance with §§ 400.23(a) and (b), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the new or extended building or structure to adjacent buildings and views from public ways.

"The applicant provided sufficient plans and photographs."