GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17377
EXHIBIT NO. 25

2005 NOV -1 PM 4:58

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D.C. OFFICE OF ZONING

TO: Board of Zoning Adjustment

FROM: Ellen McCarthy, Director

DATE: November 1, 2005

SUBJECT: BZA Application #17377
Application of 5401 – 07 9th Street, N.W.
Square 2994, Lots 23-25

I. APPLICATION SUMMARY

The applicant is seeking a §3103.2 area variance under the provisions of §2001.3 to enlarge an occupied, pre-1958, 35-unit apartment building in an R-4 zone district in upper Ward 4. The building is a non-conforming structure devoted to a conforming use.

Specifically, the applicant is requesting:

- Relief to increase the square footage of an apartment building not conforming to lot occupancy requirements of the R-4 zone, by seeking a variance from §2001.3(a).
- Relief to increase §406.1 non-conformity for two open courts, by seeking a variance from §2001.3(b)1) and (b)(2).

OP believes the self-certified application should also be requesting relief from the R-4 zone's limitation of 3 stories, as the applicant appears to be adding a 4th story.

II. OFFICE OF PLANNING SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends the Board deny the requested application.

III. SITE AND AREA DESCRIPTION *(See Attachments 1 and 2)*

The Square, in Northwest Washington, is bounded by 8th, 9th, Jefferson and Kennedy Streets. It is bisected by a 12-foot wide north-south alley. The Square has a mix of single family houses, walk-up apartments, and – on Kennedy Street --low-density neighborhood commercial uses.

The applicant's property is located in the southwestern portion of the Square, at the northeast corner of 9th and Jefferson Streets. It is a 3-story, U-shaped apartment building with a court opening to 9th Street. The building has four entrances from the courtyard and units are entered from landing off of the four staircases, rather than from corridors.

The 7,963.14 gsf footprint of the building occupies 72% of its 11,000 square foot site.

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The pre-1958, 35-unit building is occupied and is non-conforming with respect to lot occupancy, rear yard setback, the size of 2 open courts, and parking. Because it is already an apartment building, and not just being converted to one, it is not governed by §401.3's requirement of 900 square feet of lot area per apartment.

IV. AREA ZONING AND HISTORIC DISTRICTS *(See Attachment 2)*

The site is zoned R-4. The area has several zoning districts. The land on either side of Jefferson Street is R-4. Both sides of Kennedy Street, which is located to the north of the Square 2853, are zoned C-2-A. The areas north of the Kennedy Street local commercial corridor are zoned R-4. The areas to the south of Jefferson Street are zoned R-3.

The site's R-4 zone is intended for primarily row dwellings, acknowledges that many structures have been converted to flats and apartment buildings, but seeks to limit these conversions by establishing a minimum lot area per dwelling unit for conversions. *The R-4 District shall not be an apartment house district as contemplated under the general Residence (R-5) Districts...(11 DCMR §330.3).*

The structure is not historically designated, nor is it located in an historic district.

V. PROJECT DESCRIPTION

The applicant wishes to renovate the 23,946 gsf apartment building to expand the unit count from 35 to 39 by reconfiguring interior partitions and adding a top level that would be partially open to the floor below. The top level would add 2,595.09 gsf of countable floor area, as well as private roof decks. Portions of the top floor would be flush with the existing north building façade.

VI. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN (*See Attachment 3*)

The Comprehensive Plan's Generalized Land Use Map shows the general area as being suitable for moderate density residential, with neighborhood commercial land use on Kennedy Street. The Comprehensive Plan's Ward 4 Housing element does not target the area around the applicant's site as a housing opportunity area, but it does contain two objectives that support the construction of additional housing stock:

> *10DCMR §1508.1(c): Encourage the private sector to provide new housing to meet the needs of present and future District residents at locations consistent with District land use policies and objectives;*
>
> *10DCMR §1508.1(d): Develop additional public programs to support the construction, preservation and maintenance of Ward 4's rental housing stock.*

VII. DOES THE APPLICATION MEET THE TESTS FOR THE REQUESTED ZONING RELIEF?

A. Zoning Analysis

Table 1: Zoning Analysis
Pre-1958 Building in R-4 Zone District
Lot Area: 11,000 square feet Existing Building Footprint: 7, 963.14 square feet

Requirement	Minimum/ Maximum	Existing	Existing Non-Conformity	Proposed Non-Conformity	Change in Non-Conformity
Height (§400)	40' 3 stories	31.5' 3 stories	none	40' 4 stories (see below)	n/a, ***+ 1 floor over what is permitted***
Min. Lot (§401)	4000 sf 40'	11,000 sf, 110'	none	same	n/a
FAR (§402)	n/a				
Lot Occ. (§403)	40%	72%	+32%	same	none
Rear Yard Setback (§404)	20'	3.67 feet	- 16.33'	same	none
Side Yard (§405)	n/a				
Open Court (§406)	1) 14.53' 2) 16.09' 3) 14.53'	2.25' 11.58' 33.75'	- 12.28' - 4.41' conforms	Same Same Same	***2.5', + or -*** ***2.5', + or -*** None
Parking (§2101)	1 per 3 du 11 for 35 units if 1 space is grandfathered	0	- 11 spaces	-12 spaces	1 space
Loading	n/a	-	-	-	-
Dwelling Units	-	35		39	
GFA		23,946 sf	None	26,605 sf	***(+ 3,341 gsf expansion of non-conforming structure)***
Public Space Projections		4 bays @ 4 feet		No change	

Issues requiring relief are shown in ***bold italics.***

The applicant has requested relief to expand a non-conforming apartment building by constructing a 3,341 addition on top of the existing structure. This appears to constitute a story, rather than a mezzanine. ***Accordingly, the applicant also appears to require relief from §400.1's 3-story limitation.***

B. Relief Requested

The applicant is requesting a variance from 11 DCMR Section 2001.3. This section is intended to limit the size and density of structures that are already non-conforming with the Zoning Regulations.

- *Enlargements or additions may be made to the structure* [in this case, a conforming use added to a non-conforming structure]; *Provided, that the following requirements shall be met:*
  (a) The structure shall conform to percentage of lot occupancy requirements; and
  (b) The addition or enlargement shall itself conform to use and structure requirements; and;
  (c) The addition or enlargement itself shall not increase or extend any existing nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined. (Emphasis Added).

The structure is already a multiple dwelling. The application does not meet the requirements of subsections (a), (b) or (c).

- At 72% lot occupancy, the existing building exceeds the 40% lot occupancy limit for structures in an R-4 zone, and does not meet §2001.3 (a).

- The existing building has three open courts, two of which are non-conforming. These are on the north side of the building. The proposed fourth floor would increase the exterior height of the building's north side in the area of the two open courts on the north side. It would, therefore, increase the non-conformity. Although the applicant has not furnished the exact dimensions of the height increases, the applicant states that for the court width at the top building level to be in compliance with § 406.1, the wall would need to be set back by an additional 12.28 feet for one court and an additional 4.51 feet for another court. The two courts are each already more than 60% out of compliance. Adding height to the north wall defining the courts would bring them further out of compliance.

Because of the above, the applicant has requested variance relief from Section 2001.3.

C. Evaluation of Zoning Relief Tests

Based on information available to OP as of October 31, 2005 the applicant does not appear to have demonstrated that the proposed enlargement meets the standard variance tests of §3103.2 for relief from the requirements of §2001.3.

1. Uniqueness: With respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions of the specific piece of property:

It does not meet this test.

While the existing building was constructed prior to the adoption of the District Zoning regulations, the 11,000 square foot site is essentially a flat rectangle, and the 3 story walk-up is similar to many nearby structures. Although prior conditions make it impossible for the existing courts, lot occupancy and other conditions to comply with the current Zoning Regulations, the applicant has not demonstrated there is anything unique about the structure's site, configuration, or flat 7,963 square foot roof that are not unlike many similar structures in the neighborhood. The applicant seems to be relying on the existence of a present non-conformity to establish an exceptional circumstance that is then used to justify a request to expand the existing non-conformities and to establish a new one. OP does not accept that argument and believes it is directly contradictory to the intent of Section 2001. The property already has a number of units per lot, and a lot occupancy, that exceeds what is anticipated in the R-4 zone.

2. Practical Difficulties: With respect to the "Practical Difficulties" that would be "unnecessarily burdensome" and impose "Undue Hardship" to the Applicant should the application for a variance allowing the addition of a conforming use to a non-conforming structure not be approved:

It does not meet the test.

The applicant had not provided information to OP as of November 1, 2005 that demonstrated how the strict application of the Zoning Regulations would result in a practical difficulty that could not be resolved through other design solutions that would not expand the structure's square footage, create an additional floor or increase existing open court non-compliance.

The existing building is surely not a practical difficulty or unnecessary burden, as one of the intents of the R-4 zone is to limit expansions and preserve lower density development patterns.

3. Can The Relief Be Granted Without Substantial Detriment to the Public Good and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan as Embodied in the Zoning Regulations and Map?

It cannot.

The intent and purpose of the R-4 zone district is clearly stated in the Zoning Regulations:

> *(§330.1) The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families.*
>
> *(§330.3) The R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.*
> (Emphasis Added).

The existing structure is already a grandfathered non-conforming apartment building in an R-4 zone. The intent of §2001.3 is to restrict enlargements or additions to non-conforming structures in the following ways:

(a) The existing structures must conform to lot occupancy requirements, and;
(b) The proposed addition or enlargement:
    (1) Shall conform to use and structure requirements
    (2) Shall not increase any existing nonconformity, and
    (3) Shall not, when combined with the existing non-conforming building, create any new nonconformity.

OP is very concerned about the increasing number of variance cases and inquiries to OP attempting in increase the number of and size of apartment buildings in the R-4 zone. OP believes that granting the requested relief would be s substantial detriment to the public good in an R-4 zone district. OP further believes that, given the clear intent of the R-4 zone district, and also because there has been no demonstration of uniqueness or practical difficulty, granting the relief would substantially impair the integrity of the R-4 zone plan.

VIII. COMMUNITY COMMENTS

ANC 4D had not filed comments as of October 25, 2005.

X. OTHER AGENCY COMMENTS

There were no other agency comments on file as of October 25, 2005.

XI. OP RECOMMENDATION

The structure does not now "conform to the percentage of lot occupancy requirements" (§2001.3 (a); the fourth floor addition would not conform to structure requirements (§2001.3 (b) (1); the addition's increase of open court non-conformance (see below) would contradict the restriction to neither increase or extend any existing, nonconforming aspect of the structure (§2001.3 (b) (2); adding a 4th floor to a 3 story building in an R-4 zone contradicts the restriction on creating any new nonconformity of structure and addition combined (§2001.3 (c).

In OP's opinion:

- The applicant has not demonstrated uniqueness, as the existence of a non-conforming structure is not in and of itself sufficient to establish its uniqueness for expanding a non-conformity in direct conflict with Section 2001.3.

- The applicant has not demonstrated a practical difficulty in renovating the building without expanding its square footage or raising building height and thereby increasing the present open court non-conformities in direct conflict with Section 2001.3;

- The applicant has not demonstrated that, in an R-4 zone intended primarily for row dwellings, there would be not be a substantial detrimental impact on the public good or

substantial impairment of the intent, purpose and integrity of the zone plan from expanding a non-conforming apartment building by increasing square footage, adding a fourth a floor, and increasing the non-conformity of two open courts through additional height.

The Office of Planning recommends the Board deny the requested variances from §2001.3.

emc/slc

Attachments

1: Location and Zoning Map
2: Site Ortho Photo
3: Comprehensive Plan Land Use Map



Feet

N

0 50 100 150

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5401-07 9th Street, N.W.

Attachment 1
Site and Zoning

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Anthony A. Williams, Mayor

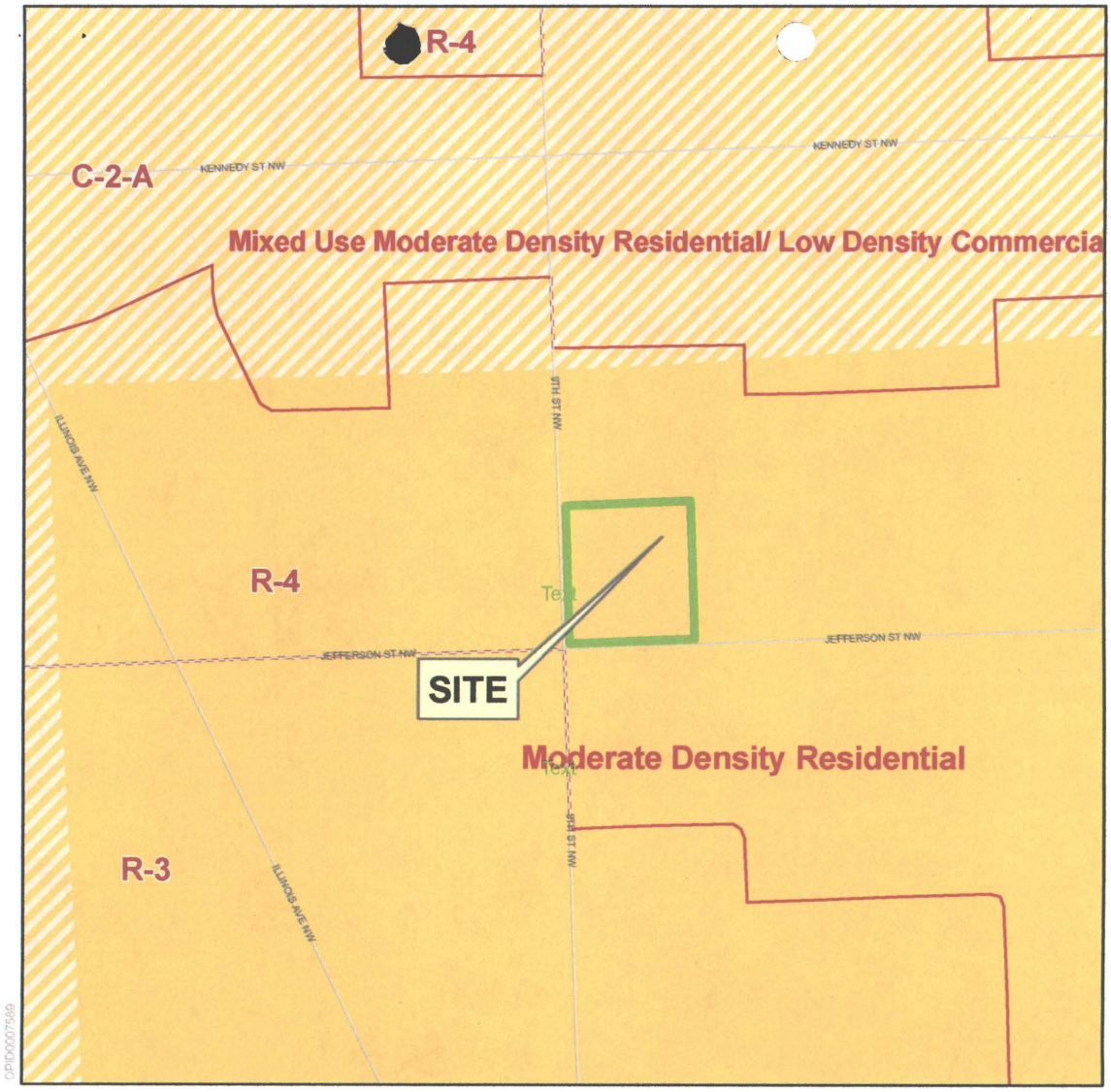
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Water

Street Centerlines

Zoning Districts



Feet

N

0 50 100 150

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Attachment 2
Site and Land Use

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Water

Street Centerlines

Zoning Districts



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Feet
0 20 40 60

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Attachment 3
Looking East to Site

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Water
Street Centerlines
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