GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Ellen McCarthy, Director, OP

DATE: November 8, 2005

SUBJECT: BZA Case #17388, 1360 Kenyon Street NW

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17388
EXHIBIT NO. 24

I. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning recommends **denial** of this application, having not met the relevant tests as outlined in the Zoning Regulations.

II. APPLICATION-IN-BRIEF

Location 1360 Kenyon Street NW
Square 2848, Lot 44; ANC 1A

Applicant: Taylor Property Development LLC, owner

Zoning: R-4

Proposal: Addition to an existing non-conforming building within the R-4 District.

Relief Sought: Variance to permit enlargement of an existing nonconforming structure (§2001.3), pursuant to §3103. A variance to court width (§406.1) was originally requested but has been removed from the application. OP believes that variances to building height and number of stories (§400) are also required.

III. AREA AND SITE DESCRIPTION – Refer to Location Plan & Site Plan Attachments I & II



The property is located in the Columbia Heights neighborhood. It is within Square 2848, bounded by Kenyon Street NW to the north, by 14th Street NW to the west, Irving Street NW to the south, and 13th Street NW to the east. An alley runs through the center of the square.

The square is developed primarily with rowhouse structures, some used as flats and small apartment buildings, as well as religious buildings and low rise apartment buildings. The square is split zoned, C-3-A along 14th Street, and R-4 for the remainder. The square is not within a historic district or overlay area.

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The subject site is developed with a 3 story plus basement rowhouse, which has been used as a 9 unit apartment building for many years. The lot area is 2,471 square feet in area, which, in this zone, would permit 2 residential units (1 / 900 sq.ft. of lot area). There is no parking on this site.

IV. PROJECT DESCRIPTION

The owner wishes to renovate the building, and convert it from a 9 unit apartment building to a 5 unit apartment building, with one unit on each floor. Each residential unit would be larger than is currently the case, and the applicant is proposing an extensive addition to the second, third and fourth floors to increase the size of the building from about 4,722 sq.ft. to 5,966 sq.ft., a 26% increase.

V. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map designates the property as *moderate density residential*, for which row houses and garden apartments are the predominant use. The existing apartment use predates the current zoning and Comprehensive Plan language. The site is also close to the "Columbia Heights Housing Opportunity Area and a "Columbia Heights Development Opportunity Area". The Comprehensive Plan indicates that these designations encourage the provision of additional commercial and residential development along the C-3-A zoned portion of Columbia Heights, along 14th Street NW.

The provision of housing and the rehabilitation of existing buildings are supported by many sections of the Comprehensive Plan. However, enlargement of the existing non-conforming building, as proposed, would conflict with other Comprehensive Plan provisions pertaining to the preservation of the character of low density neighborhoods, as outlined in Chapter 1 - Major Themes:

§102 Stabilizing And Improving The District's Neighborhoods

§102.2 The District elements of the Plan propose that the residential character of neighborhoods be maintained and improved. Many city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced.

The proposal is also explicitly contrary to language related to the preservation of the row house neighborhoods of Ward 1, as outlined in Chapter 12:

§1231 Ward 1 Actions To Implement Land Use Objectives

§1231.1 The actions to implement land use objectives are as follows:

(d) To protect the character of residentially zoned row house neighborhoods by limiting the density of development and preventing intensification of use through the subdivision of structures by doing the following:

(1) Amending the housing code to require more space per occupant per room;

(2) Enforcing the housing regulations to prevent overcrowding within structures;

(3) Enforcing the zoning regulations to prevent illegal units and illegal occupancies;

(4) Amending the R4 and R5 zoning regulations to prevent intensive unit subdivision of rowhouses or rezone predominantly rowhouse areas to lower unit subdivision density where currently zoned for intensive unit subdivision; and

(5) Sponsoring these zoning changes for rowhouse areas in ... the area between 14th and 16th Streets, ...;

VI. ZONING

The site is zoned R-4 - row dwellings, conversions and apartment residential use. Although the Zoning regulations acknowledges that the R-4 District includes a "*substantial number of conversions of the dwellings into dwellings for two (2) or more families*" (§330.1), the zone also specifically states that "*the R-4 District shall not be an apartment house district as contemplated under General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement*" (§330.3), and "*... its primary purpose shall be the stabilization of remaining one-family dwellings*" (§330.2). An apartment building on this site conforming to the lot area restrictions would be limited to 2 units, as opposed to the 5 units proposed.

VII. REQUESTED ZONING RELIEF - refer to Project Profile, Attachment V

The applicant had originally requested relief from open court width (§406.1) and to permit additions to a non-conforming structure (§2001.3). The applicant has since amended the proposal to eliminate the need for the court width variance by roofing over the existing courtyard area. OP would have no concerns with this specific aspect of the relief, however, and would recommend that the courtyard remain open to the sky to allow light and air to enter.

In its application, the applicant notes that "*The proposed additions to the second, third and fourth floor levels will not create any new nonconformity of structure and addition combined.*" (Supplemental Statement, p.8). However, it is the opinion of OP that the upper story addition extends and therefore increases the existing non-conformities related to height and number of stories, and variances to these regulations (§400) are also required. The possible need for these variances, however, does not impact OP's analysis of the application before the BZA.

Section 2001.3 of the Zoning Regulation states that *"Enlargements or additions may be made to the* (existing non-conforming) *structure; provided:*

(a) The structure shall conform to percentage of lot occupancy requirements;

(b) The addition or enlargement itself shall:
(1) Conform to use and structure requirements; and
(2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
(3) Nor create any new nonconformity of structure and addition combined."

In this case, the existing structure does not conform to lot occupancy, and leads to the increase of existing nonconforming aspects of the structure, namely height and number of stories.

Does the property exhibit specific uniqueness with respect to exceptional shape, narrowness, shallowness, topography or other extraordinary or other exceptional situations or conditions?

No. Over 80% of the R-4 zoned lots on this square are of about the same size as this lot – between 2,400 and 2,500 square feet. As such, the lot area is not exceptional or unique, and is not overlay

large or small for a conforming use in accordance with R-4 standards. It is rectangular in shape and does not have a significant slope or other unique natural characteristic. The applicant has not demonstrated any exception condition with respect to the structure which would necessitate new or increased non-conformities. The presence of an existing non-conformity, especially a use nonconformity, can not be used as an exceptional circumstance to permit increased and additional non-conformities. Rather, the language of the zoning regulation is specifically intended to discourage additions which would create new or expanded non-conformities which this proposal would do for a non-conforming use.

Does the extraordinary or exceptional situation impose a practical difficulty that is unnecessarily burdensome to the applicant?

No. The application of the Zoning regulations does not present a practical difficulty, and additional relief to further increase the non-conformity of the existing structure is not warranted. Although the applicant states that "*The strict application Section 2001.3(b) with regard to number of stories would pose a practical difficulty.*"(p.8 of the supplemental submission), this does not pose a practical difficulty since the intent of the provision is to limit the provision of additional space, as the regulation is intended to preserve a low intensity form of development. Section 2001.3, rather than constituting an unnecessary burden, is specifically intended to ensure preservation of the character of lower density residential areas by limiting the ability to exacerbate non-conforming uses.

Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

No. The requested relief would impair the intent, purpose, and integrity of the Zoning Regulations and Map, and the variance(s) would be contrary to the intent of the R-4 District. The applicant cites the regulations themselves as creating the exceptional condition leading to practical difficulty. As noted above, OP does not accept this argument, and believes that §2001.3 is specifically intended to prevent increasing the size and density of buildings that are already non-conforming to post 1958 Zoning. The variance also expands an existing non-conforming use, which is contrary to the Map.

VIII. ADVISORY NEIGHBORHOOD COMMISSION (ANC) COMMENTS

The Supplemental Statement from the applicant notes that ANC 1A voted to support the proposal at its May 11, 2005 meeting.

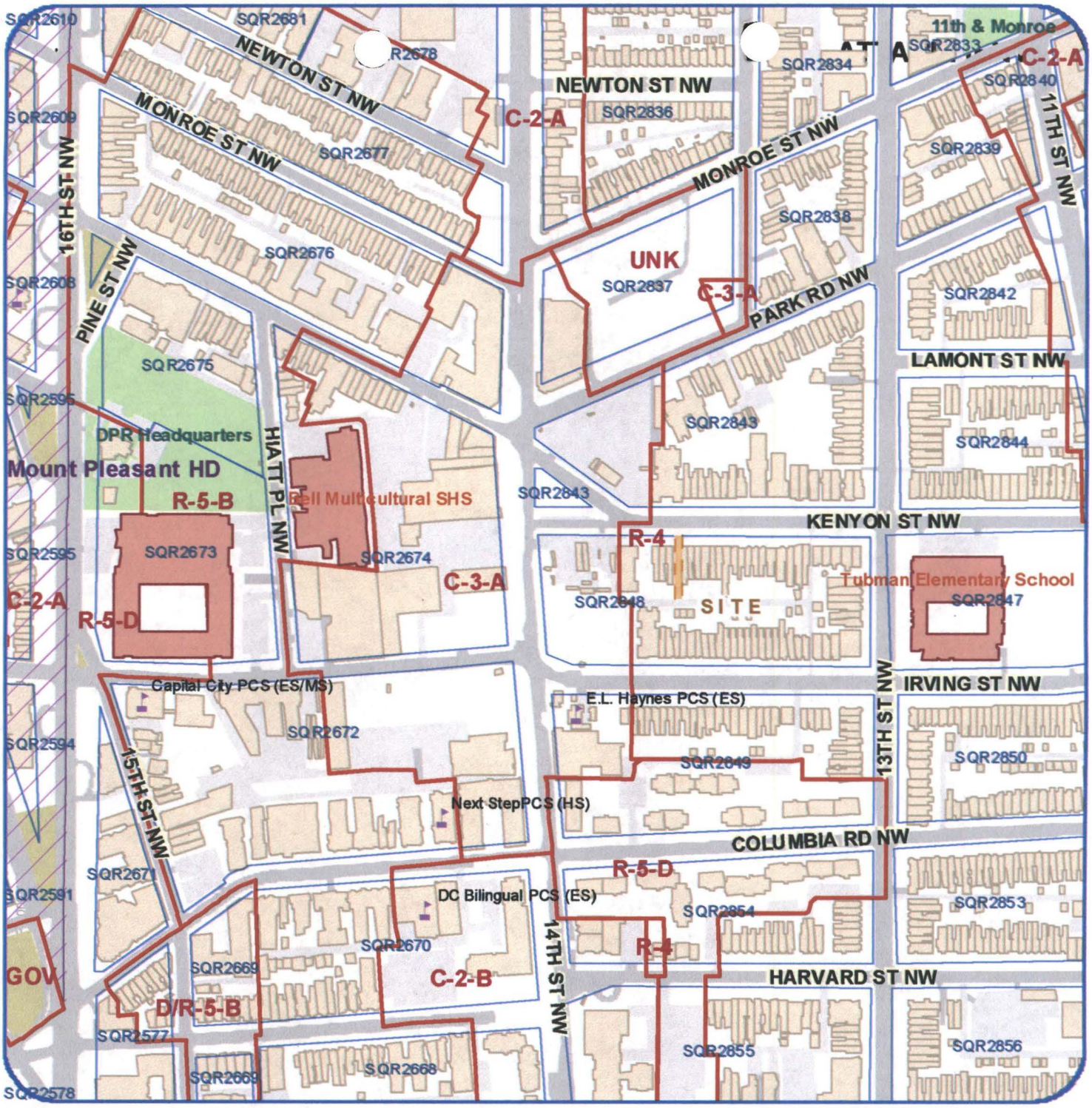
IX. OP SUMMARY RECOMMENDATION

OP strongly supports the rehabilitation of vacant or derelict properties for new housing. However, the applicant has not met the required variance tests and has not demonstrated that the additional space is required for the restoration of the building or for the structure to function as the intended use. OP does not believe the test can be met for a proposal such as this - to permit the physical expansion of a building being put to a non-conforming apartment use in the R-4 district. The proposal is not consistent with the Comprehensive Plan, and would undermine of the intent and integrity of the Zoning Regulations. As such, the Office of Planning recommends that this application be **denied**.

EM/jl

ATTACHMENTS:

I. Location Plan
II. Site Plan
III. Project Profile



Legend

- Zoning Districts
- Property Squares
- National Parks (NPS)
- Historic Districts
- DC Parks

BZA Case 17388
1360 Kenyon Street NW - Location Plan

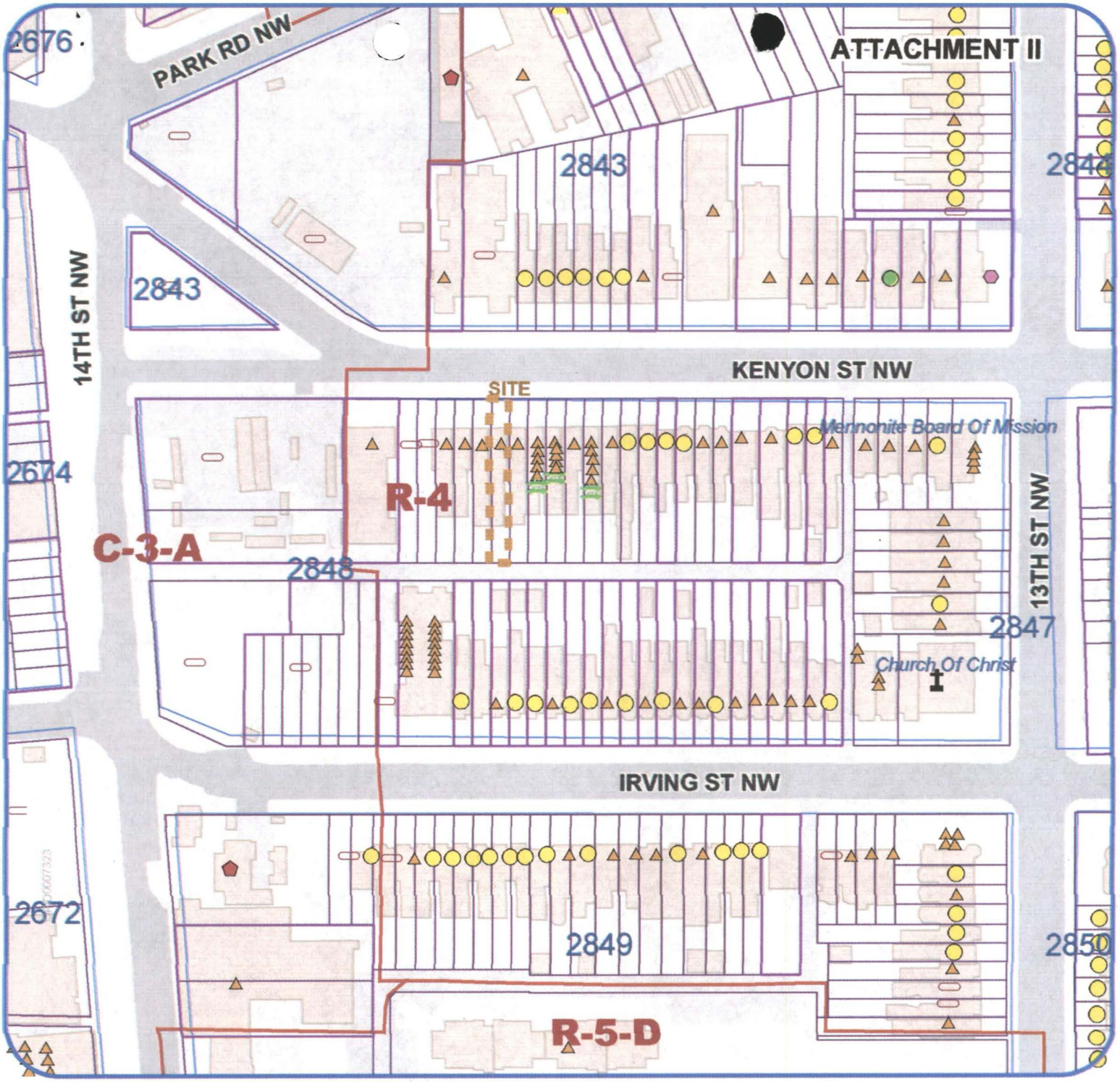
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Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ November, 2005

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.



Legend

- Rowhouse
- Semi-Detached Dwelling
- Resid. Garage
- Multi-family
- Small Hotel
- Store
- Office
- Parking
- Religious
- Vacant

BZA Case 17388
1360 Kenyon Street NW - Site Plan

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Government of the
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Anthony A. Williams, Mayor

Office of Planning ~ October, 2005

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Standard	R-4 Zone Regulations	Existing [1]	Proposed [1]	Variance
Use: (§330.5)	Row dwelling or flat, apartment conversion	Vacant 9 unit apartment building[2]	5 unit apartment building	Existing non-conforming use
Height	40 ft. max	44.02 ft.	44.02 ft.	**Variance required** [3]
(§400)	3 stories	4 stories	4 stories	**Variance required** [3]
Lot Area (§401)	4,000 sq.ft. min.	2,471.1 sq.ft.	Unchanged	Existing non-conforming
Lot Width (§401)	40 ft. min.	16.7 ft.	Unchanged	Existing non-conforming
Floor Area Ratio: (§402)	None prescribed	4,721.9 sq.ft. (FAR of 1.91)	5,965.9 sq.ft. (FAR of 2.41)	Addition of 1,244 sq.ft.
Lot Occupancy: (§403)	40% max (988.4 sq.ft.)	58 % (1,472 sq.ft.)	58 % (1,472 sq.ft.)	**Variance required**
Rear Yard: (§404)	20 ft min.	36 ft.	36 ft to enclosed living area; 29 ft to deck / stairwell	Conforming
Side Yard: (§§405.3 / 405.9)	Not required	0 ft.	0 ft.	Conforming
Court Width: (§406.1)	4" / ft. of height = 16.4 ft.	3.1 ft.	0 ft.[4]	Conforming
Parking: (§2101.1)	1 / 3 dwelling units min.?	0 (3 required?)	1 (2 required?) [5]	Existing non-conforming

[1] Information provided by the applicant.

[2] Existing non-conforming situation – the applicant has supplied documentation of Certificates of Occupancy for an apartment use, dating from at least 1968, to 2005.

[3] Variance required for expansion on non-conformity.

[4] By covering over the existing courtyard, the applicant has eliminated this non-conformity. OP would support relief to allow the courtyard to reamin open to the sky to allow light and air.

[5] The rear yard appears to be paved; there would be room for one conforming or two non-conforming but functional parking spaces.