

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anne Fothergill, Case Manager
Joel Lawson, Associate Director for Development Review

DATE: February 23, 2016

SUBJECT: BZA Case 19164 – 17 U St NW

I. RECOMMENDATION

This application has undergone considerable revision since the time of filing, and continued to be revised up to the day this report was required to be filed. This report reflects OP's understanding of the application at this time and is based on the Zoning Administrator's determination of relief needed. Based on this, the Office of Planning (OP) cannot support the following variances to expand an existing non-conforming house by adding a 4th story in the R-4 Zoning District:

- § 2001.3 for the expansion of an existing non-conforming structure (non-compliant in lot occupancy § 403 and open court § 406)
- § 400.1 to exceed the maximum permitted number of stories for a structure to allow for a fourth story addition to an existing three-story structure
- § 406.1 to allow for the expansion of an existing non-conforming open court to allow for a fourth story addition to an existing three-story structure
- § 403.2 to permit construction of a rear spiral staircase in excess of the allowable lot occupancy percentage

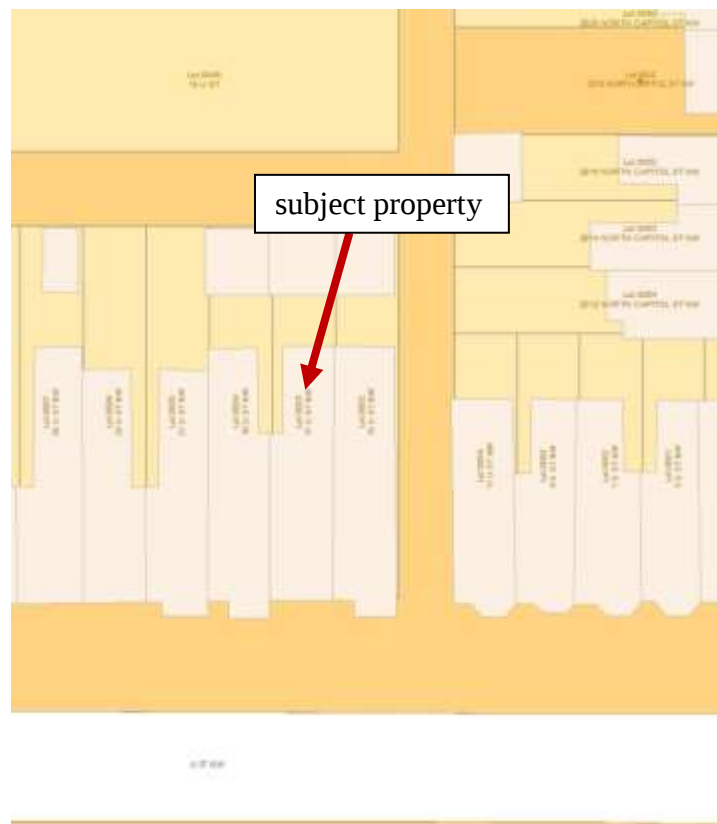
Since the additional relief is contingent on the variances, OP cannot support the following Special Exceptions:

- § 400.23 to allow for a structure to be erected to a height exceeding 35 feet
- § 400.24 (a) to allow for the alteration of an existing rooftop architectural element original to the building

II. LOCATION AND SITE DESCRIPTION

Address	17 U Street, N.W.
Legal Description	Square 3117, Lot 0046
Ward and ANC	Ward 5, ANC 5E
Lot Characteristics	A 1,700 SF rectangular lot with an alley at the rear (north)
Zoning	R-4 - 3-story row dwellings and flats are allowed in this district
Existing Development	The subject property is improved with a 3-story plus attic* 1906 row dwelling and a garage at the rear of the property.
Historic District	N/A
Adjacent Properties	The subject property is a row dwelling on a block of residential row dwellings. The rowhouses directly to the east and west have similar footprints and garages at the rear on the alley. Behind the houses on this block of U Street to the north of the alley is Crispus Attucks Park. Across the street to the south is the rear of an apartment building that faces Rhode Island Avenue.
Neighborhood Character	The property is located within a residential neighborhood consisting primarily of row dwellings. To the east, the block of North Capitol Street located in this square consists of residential row dwellings.

*number of stories determined by the Zoning Administrator



III. APPLICATION IN BRIEF

The Applicant proposes to enlarge the existing attic of the subject property and construct a new roof deck off the rear of the top floor. The Zoning Administrator has determined that the existing attic is not a story and that the lower level is a basement, which is a story. Since the building currently has three stories (basement plus two upper levels), the proposed expansion and conversion of the attic to a story would constitute a new 4th story on this building.

The Applicant also proposes to construct two 58 SF rear balconies off the rear of the 2nd and 3rd story and to install spiral staircases from the top floor deck to grade. Both height and lot occupancy are currently non-conforming and the applicant proposes a very slight increase in lot occupancy (.35%) due to the stair replacement and a 2.4' increase to the overall building height measurement.

Initially the applicant was proposing the same addition but requesting different relief. Due to the non-conforming lot occupancy, the Applicant did not propose a rear addition and instead proposed an expansion of the top floor that would result in an overall increase in the building height of 2.4 feet at the front of the building. The existing lower level measured 4'1" in height in the plans that were submitted and the Zoning Administrator determined that it is a basement, which is considered a story. If that lower level was one inch shorter and therefore less than 4', it would be considered a cellar and not a story. The variance that is needed for a 4th story is because of the basement, but the top floor attic expansion remains as originally proposed and the reason for that expansion remains the same, which is because the applicant is unable to do a rear addition due to the existing non-conforming lot occupancy of 88%.

In response to the Zoning Administrator's determination, the applicant has revised the plans to show that the front grade will be returned to its original level. As a result, the lower level would be less than four feet in height and therefore would be considered a cellar - not a basement or a story. If that is the case, the applicant would not need relief to allow four stories in the R-4 zone. Additionally, the applicant states that the top floor is not an attic, but is an existing 3rd story that would be expanded.

At the time of the staff report, the Zoning Administrator's referral memo had not yet been revised. As such, OP's analysis in this report is based on the relief that the Zoning Administrator originally determined was needed (Exhibits 39 and 40).

IV. ZONING REQUIREMENTS and RELIEF REQUESTED

R-4 Zone	Regulation	Existing	Proposed	Relief
Lot Width §401	18 feet min.	17 feet	no change	existing nonconforming
Lot Area §401.3	1,800 SF min.	1,700 SF	no change	existing nonconforming
Lot Occupancy §403	60% max.	88.38%	88.73%	variance requested
Height §400	35'	34.1'	36.5'	special exception requested
Stories §400	3 stories	3 stories + attic	4 stories	variance requested
Open Court §406.1	12'	5'	5'	Variance requested
Rear Yard §404.1	20 feet min.	27'	no change (garage to remain)	none requested

V. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from § 403, Lot Occupancy; § 400, Number of Stories; § 406, Court, and § 2001, Nonconforming Structures

The Board of Zoning Adjustment may grant a variance under § 3103.2 upon a showing that:

i. The property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition which results in a practical difficulty to the owner;

The applicant had originally submitted a statement to address the variance test based on a self-certified application. The application went to the BZA on January 26, 2016 and OP and the BZA had questions about the specific relief that was needed. Subsequently, the Zoning Administrator reviewed the application and the February 18, 2016 referral memo outlines the relief that he determined was needed for this proposal. In response to the need for four variances, the applicant has not demonstrated that there is an exceptional situation related to the property that results in a practical difficulty.

OP finds that the conditions noted by the applicant do not constitute an exceptional situation of this property. There are many houses in the District that were constructed prior to the zoning regulations and are currently non-conforming for lot occupancy, lot area, and lot width. The subject lot measures 17 feet by 100 feet with an area of 1,700 square feet, which is slightly below the 1,800 SF minimum lot area in the R-4 zone. The property is in a block of houses on U Street

with similarly sized lots - some houses have similar footprints and garages and some have smaller footprints and no garages. This property and the two adjacent dwellings appear to have a footprint of approximately 1,000 square feet with similar non-conforming lot occupancy and the subject property is not unique in its condition.

The property's non-conforming open court counts toward lot occupancy, which increases the lot occupancy by approximately 8%. In the recently approved zoning regulations, which will go into effect later this year, a non-conforming open court will not count towards lot occupancy, but even without the open court, this property would still have approximately 80% lot occupancy and a variance would be needed for any expansion.

ii. The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

The adjacent neighbors and the ANC support the expansion. The building's number of stories will continue to read the same as seen from the street. The proposed top floor expansion would not occupy the entire footprint of the lower levels. As such, 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 R-4 zoning changes that were recently adopted were in response to one of the chief complaints that increased height in this zone is having a negative impact on neighborhood character. The 4th story would not be in keeping with the recently verified and strengthened intent of the Zoning Commission to limit height and number of stories in the R-4 District. The addition of a 4th story to a rowhouse in the R-4 is OP's primary concern regarding this variance.

VI. Special Exception Relief pursuant to §400.23 and §400.25

A review of the requested Special Exception relief related to the proposed expanded height would be unnecessary should the Board deny the variance request for the 4th story and other related variances. However, OP has provided the following analysis of the requested Special Exceptions for height and alterations to an existing rooftop architectural element.

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;

The adjacent neighbors do not have roof access but the expansion of the attic to a new fourth floor with a height greater than 35 feet could affect the light and air of neighboring properties.

- (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. The proposed roof deck off the rear of the top story could affect neighboring properties' privacy.

- (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 but it appears to be adjacent to the subject property's chimney, which could be a code issue.

- (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 applicant has stated that 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, although the new roof form would be slightly visible from U 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, which would reduce its visibility and visual impact from the rear.

- (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 been altered from the initial submission (Exhibits 9 and 12) which has lessened the impact on the form of the original front gable. To preserve the integrity of this feature, OP recommends that any expansion of this roof should be set back a few

feet from the front plane to allow the front gable to continue to read as a stand-alone feature when viewed from the street.

- (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. However, the plans have changed a number of times and there may be some inconsistencies between the photos and existing elevations. Should the applicant proceed with a building permit, those would need to be addressed.

VII. COMMENTS OF OTHER DISTRICT AGENCIES

DDOT has no objection to the application (Exhibit 27).

VIII. COMMUNITY COMMENTS

The ANC supports the application (Exhibit 28) but the relief may have changed since this was presented to the ANC. The Applicant submitted signed forms of workplan notification from two adjacent neighbors (Exhibit 11).