

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Karen Thomas, Case Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** July 14, 2017

**SUBJECT: BZA 19539:** Application of 74 R Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for variances from the lot occupancy requirements of Subtitle E § 304.1 and the nonconforming structures requirements of Subtitle C § 202.2, to allow retention of an addition to an existing one-family dwelling being converted into a conforming flat in the RF-1 District at 74 R Street N.W. (Square 3101, Lot 57).

**I. OFFICE OF PLANNING RECOMMENDATION**

While the applicant has made, at best, a very weak case for this application, the Office of Planning (OP) **cannot make a recommendation regarding variance relief** from the following:

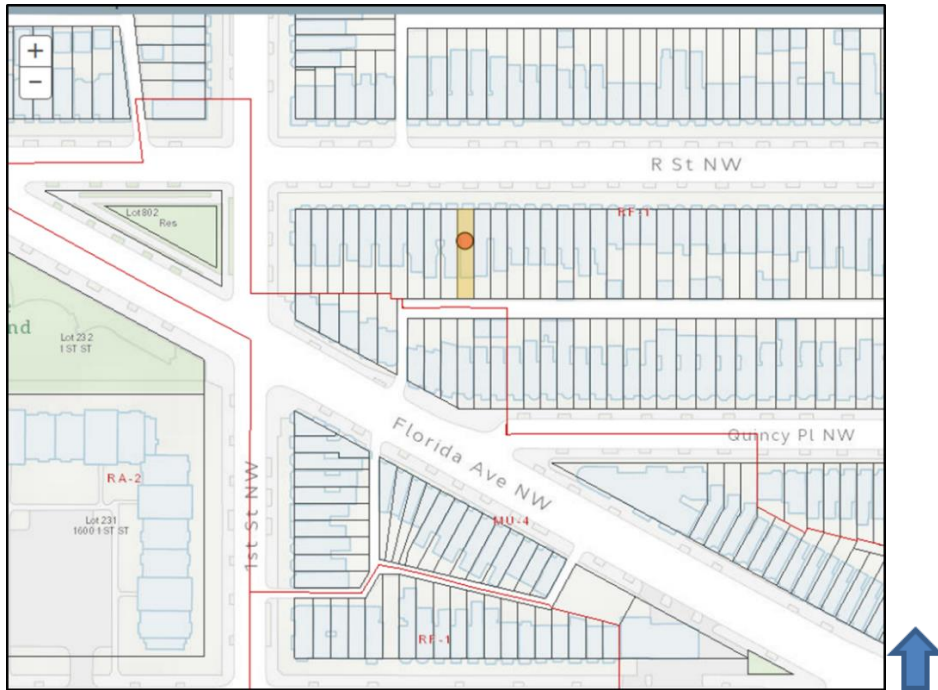
- E § 304.1 (60% maximum, 70% by special exception, 66% previous to recent additions; 70.17% existing and proposed); and
- C § 202.2 Addition to a nonconforming structure;

unless the applicant submits additional, acceptable justification at or prior to the hearing.

**II. LOCATION AND SITE DESCRIPTION**

Address	74 R Street, NW
Applicant:	74 R Street LLC
Legal Description	Square 3101, Lot 57
Ward / ANC	Ward 5; ANC 5E06
Zone	RF-1
Lot Characteristics	The lot is a rectangular 1,500 sf. flat lot of similar proportions to 74% of lots in the square, which front on R Street to the north. It abuts a 20 feet-wide alley at the rear.
Existing Development	The lot is developed with a single-family dwelling which was converted to a flat (two units), which is a permitted use in the zone.
Adjacent Properties	The property fronts on R Street to the north and abuts a 20-foot wide rear alley, while abutting row dwellings to the east and west.
Surrounding Neighborhood Character	The neighborhood consists primarily of one-family dwellings and flats within the RF-1 District and abutting the low density commercial district (MU-4) south of the property.

Proposed Development	The applicant is proposing to complete the renovation and conversion of the one-family dwelling to a flat, including a third story addition, infill of a former court and addition of a rear staircase structure. The property, prior to the third-floor addition and extension was a nonconforming structure at 66% lot occupancy. The lot occupancy is now proposed to remain at 70.17%.
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Site Location

**III. ZONING REQUIREMENTS and RELIEF REQUESTED**

Zone – RF-1	Regulation	Existing	Proposed	Relief
Height E § 303	35 ft.; 40 ft. max by special exception	35ft.	35ft	None required
Lot Width § 401	18 ft.	16.67 ft.	16.67 ft.	Existing nonconforming
Lot Area § 401	1,800 sq. ft. min.	1,500 sq. ft.	1,500 sq. ft.	Existing nonconforming
Floor Area Ratio § 402	None prescribed	N/A	N/A	N/A
Lot Occupancy § 403	60 % max. (900 sq.ft.)	66% (990 sq.ft.)	70.17 % (1052.6 sq.ft.)*	<b>Variance requested</b>
Rear Yard § 404	20 ft. min.	28 ft.	22 ft.	None required
Side Yard § 405	5 ft. min., if prov.	0 ft.	0 ft.	None required

\* By OP’s calculations, the building footprint with the unauthorized addition would be 1,033 sq.ft. for a lot occupancy of about 68.9%; the stair increases the footprint to 1052.6 sq.ft., or 70.17% lot occupancy.

#### IV. OFFICE OF PLANNING ANALYSIS

The applicant pursued renovation of the nonconforming structure (then 66% lot occupancy) through the addition of a third floor and infill of a small court to the west of the structure. Based on permit records for the subject property, the renovation project appears to have exceeded issued permits. The applicant subsequently tried to correct their lot occupancy error by removing the rear wall and proposed decks, which reduced the lot occupancy but would have still required special exception approval pursuant to E § 5201. However, the rear staircase results in the lot occupancy of slightly over 70%, which requires variance relief for the unauthorized increase in lot occupancy from 66% to 70.17% (an increase in footprint of 62.6 sq.ft.). OP suggested to the applicant that they find a way to reduce the total lot occupancy to 70% or less, which OP calculates to be a reduction of about 2.6 sq. ft., and modify the request as a special exception which is more likely to be supportable. However, although the amount of relief is small, the variance test must be met by the applicant.

#### Variance Relief from E § 304.1, C § 202.2

##### i. Exceptional Situation Resulting in a Practical Difficulty

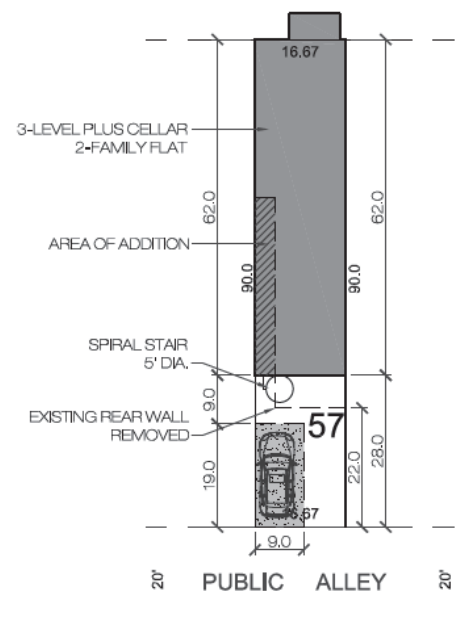
The applicant to date has not made an acceptable case for an exceptional situation resulting in a practical difficulty, stating that the property is abutted by two larger row dwellings, as the buildings located at 72 R and 76 R Street extend beyond the rear of the structure, creating a shadow and causing issues with light and air and that it is also unique due to the exceed lot occupancy at 66%. However, this does not appear to be exceptional for this lot, or for RF lots in general.

The infill of the court area was the logical area on the lot to add living space for the renovated structure, and this, combined with other building area removed, results in a lot occupancy of less than 70%, which would be permitted through an approved special exception.

However, because this is a flat (also a common and permitted use in RF), a rear stair is required and this apparently was not “designed in” to conform to lot occupancy. Since construction is complete, moving or reducing the size of the addition or the stair slightly could be difficult and could now create difficulty.

However, again, this is a situation of the applicant’s own making and OP does not accept the presence or retention of non-permitted construction as justification for BZA relief. OP is also confident that, had this been submitted prior to construction, OP would have opposed variance relief and requested that the applicant investigate ways to at least return to the amount permitted by special exception.

R STREET, N.W.



**ii. No Substantial Detriment to the Public Good**

Granting the requested relief would not likely have a substantial impact on the public good. The proposed changes would not significantly deviate from the established character of the neighborhood. The infill addition in the court is not visible from surrounding streets and provides for a uniform rear façade visible from the alley. The adjacent home to the west does not have a similar court and is constructed to the lot line. The third-floor addition, while visible from the street satisfied the regulations for such additions based on the issued permits. The rear staircase, the last element to be installed, while visible should have no undue impact on light, air or privacy. It is OP's understanding from the applicant that both the Bloomingdale Civic Association and the ANC are not opposed to this relief.

**iii. No Substantial Harm to the Zoning Regulations**

Granting variance relief without adequate justification or rationale would result in harm to the zoning regulations; OP questions whether the applicant has done this. Granting relief *because* the nonconforming addition is already constructed would be of very substantial harm to the integrity of the regulations and the BZA relief process, and should not be accepted.

However, OP fully acknowledges that the lot occupancy relief of this amount would not result in significant additional visual bulk beyond that anticipated in the regulations, particularly since it can be argued that it is for an open, unenclosed stairwell required by code rather than enclosed livable space, and this also addresses whether the proposal would result in substantial harm to the intent or integrity of the regulations.

**V. COMMENTS OF OTHER DISTRICT AGENCIES**

At the writing of this report, comments from other District agencies were not noted in the record.

**VI. COMMUNITY COMMENTS**

The Bloomingdale Civic Association voted to approve the application on June 26, 2017. The ANC 5E's recommendation had not yet submitted a report to the record.

Adjacent neighbors: Exhibit 31 includes a letter in support from the neighbors at 76 R Street N.W.