

SUPPLEMENTAL REPORT

TO: District of Columbia Board of Zoning Adjustment
FROM: Elisa Vitale, Case Manager
Joel Lawson, Associate Director Development Review
DATE: June 8, 2018
SUBJECT: BZA Case 19712, 452 Newton Place, NW, Variance from U § 320.2(d) to allow conversion to a three-unit apartment building not meeting the minimum lot area.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **denial** of the following:

- Special exception pursuant to X § 901.1 from U § 320.2 for conversion of an existing residential building to an apartment house; and
- Area variance pursuant to X § 1002.1 from U § 320.2(d), land area for conversion (minimum of 900 square feet of land area per unit required, 886.67 square feet proposed).

II. BACKGROUND

The Office of Planning (OP) and the District Department of Transportation (DDOT) filed reports on March 22 and March 16, 2018, respectively (Exhibits 35 and 34). The OP report recommended denial of the relief requested.

The Applicant retained new legal counsel and the new attorney filed a letter requesting postponement and updating the Applicant's name on March 27, 2018 (Exhibit 36).

On April 23, 2018 (Exhibit 40), a revised Self-Certification was filed amending the requested relief to include the following, in addition to the previously requested special exception:

- Area variance pursuant to X § 1002.1 from U § 320.2(d), minimum land area required for conversion (minimum of 900 square feet of land area per unit required, 886.67 square feet proposed).

The records indicate the following permit history for the property.

September 30, 2014	Interior demolition permit.
February 12, 2015	Interior renovation of existing structure permit.
May 6-8, 2015	Supplemental Electrical, Mechanical, and Plumbing permits.
October 22, 2015	Use change from two-family flat to three-unit condo building. Porch alteration to accommodate 2 nd floor access.
February 8, 2016	Interior renovation of existing two unit flat.
May – September, 2016	Supplemental Plumbing and Electrical permits.

December 16, 2016	Revision to February 8 th permit to remove stove per Zoning Administrator – to comply as wet bar.
December 30, 2016	Certificate of Occupancy (C of O) for 2-unit flat.
November 21, 2017	DCRA notice to revoke C of O unless property is brought in to compliance with 2-unit flat designation.
November 30, 2017	Revised notice to revoke C of O because it does not reflect current owner and property is being used as a three-dwelling unit building.
April 12, 2018	DCRA Notice to not renew leases for basement and first floor pending BZA action in the subject case.

III. LOCATION AND SITE DESCRIPTION

Address	452 Newton Place, NW
Applicant	Sullivan and Barros, attorney, on behalf of Newton Park Apartments Condominium Unit Owners Association, owner.
Legal Description	Square 3036, Lot 89
Ward, ANC	Ward 1 / ANC 1A
Zone	RF-1 - The purpose of the RF-1 zone is to allow for detached, attached, semi-detached, single-family dwellings and flats.
Historic District	Not applicable.
Lot Characteristics	The Property is a rectangular, corner lot that measures 28 feet in width and 95 feet in length. The Property is bound by Newton Place, NW to the north; Warder Street, NW to the west; a 15-foot wide improved public alley to the south; and an adjacent rowhouse lot to the east.
Existing Development	The existing Property is improved with a 2-story brick rowhouse with basement.
Adjacent Properties	The adjacent property to the east is improved with a 2-story rowhouse.
Surrounding Neighborhood Character	The surrounding neighborhood is residential in character with Bruce Monroe Elementary School and the Park View Recreation Center to the northwest.
Proposed Development	The Applicant has converted the existing rowhouse to a three-unit apartment building; however, the property does not provide the required 900 square feet of land area per unit.

IV. ZONING REQUIREMENTS and RELIEF REQUESTED¹

Zone - RF-1	Regulation	Existing	Proposed	Relief
Height (ft.) E § 303	35 ft.	28 ft.	28 ft.	None Required
Lot Width (ft.) E § 201	18 ft.	28 ft.	28 ft.	None Required
Lot Area (sq. ft.) E § 201	1,800 sq. ft. 2,700 sq. ft. for 3-unit conversion	2,660 sq. ft.	2,660 sq. ft.	REQUIRED 40 sq. ft.
Lot Occupancy E § 304	60 %	44 %	44 %	None Required
Rear Yard (ft.) E § 306	20 ft.	31 ft.	31 ft.	None Required
Side Yard (ft.) E § 307	0 ft.	0 ft.	0 ft.	None Required
Parking C § 701	1 / 2 dwelling units	3 spaces	3 spaces	None Required

V. OFFICE OF PLANNING ANALYSIS

a. Special Exception Relief from U § 320.2

Subtitle U § 320.2 allows, as a special exception, the conversion of a structure to an apartment building, subject to the following criteria. The Property does not meet the minimum land area required and would, therefore, require Variance Relief from U § 320.2(d).

320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:

(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);

The existing height of the building is 28 feet and the Applicant is not proposing any exterior modifications that would result in an increase in building height.

(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;

Not applicable, the Applicant is proposing three units at the Property.

¹ Information provided by Applicant, Exhibit 40.

- (c) *There must be an existing residential building on the property at the time of filing an application for a building permit;*

There is an existing residential building on the property.

- (d) *There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The lot area is not sufficient to accommodate three units; 2,700 square feet would be required and the Property contains 2,660 square feet of land area.

- (e) *An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

The Applicant is not proposing an addition to the existing building.

- (f) *Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;*

The Applicant is not proposing a roof structure or penthouse.

- (g) *Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system....*

OP has found no evidence of an existing or permitted solar energy system on the adjacent property at 450 Newton Place, NW.

- (h) *A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

The Applicant is not proposing to modify a rooftop architectural element.

- (i) *Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

The Applicant has not proposed any additions as part of the subject application.

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

Not applicable.

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

Not applicable.

- (3) *The conversion and any associated additions, 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 or alley;*

Not applicable.

- (j) *In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The application materials include floorplans, elevations and photographs.

- (k) *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

OP recommends the Applicant work with the Public Space Committee to ensure that improvements in public space comply with all relevant District regulations.

- (l) *The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and*

The applicant has not requested any modifications or waivers from U §§ 320.2(e)-(h).

- (m) *An apartment house in an RF-1, RF-2 or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and this section.*

Not applicable.

b. Variance Relief from U § 320.2(d)

i. Exceptional Situation Resulting in a Practical Difficulty

The Applicant has not demonstrated an exceptional situation resulting in a practical difficulty. The Applicant states that the property is uniquely large for the square; however, there are seven lots in Square 3036 with land area ranging from 2,780 square feet to 4,200 square feet. Therefore, the subject property is not uniquely large.

Furthermore, the Property could be used as a legally conforming flat. While the property has a history of interaction with the Department of Consumer and Regulatory Affairs (DCRA) (Exhibits 10, 11, 14, 15, and 16), the Applicant's proposed apartment conversion would be in violation of the Certificate of Occupancy (CO1603907) for the property, which permits use as a two-unit flat.

ii. No Substantial Detriment to the Public Good

The provision of three units rather than the permitted two unit would likely not result in substantial detriment to the public good. However, the Property is not in compliance with its C of O. The Applicant received notice on November 21, 2017 from the Office of the Zoning Administrator that CO1603907 would be revoked unless the Property was brought in to compliance. The notice indicated the following:

1. A new C of O was required based upon a change in ownership; and
2. The Property is zoned RF-1, which allows only 2 units as a matter of right.

iii. No Substantial Harm to the Zoning Regulations

The RF-1 zone permits 2 units as a matter-of-right and allows for the conversion of existing residential buildings to an apartment house by special exception provided that there is a minimum lot area of 90 square feet per dwelling unit. The subject property fails to meet the 900 square foot requirement. Allowing the retention of this conversion, completed without necessary permits, would cause harm to the intent and integrity of the Zoning Regulations.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT), via memo dated March 15, 2018, indicated that it had no objection to the requested special exception relief.

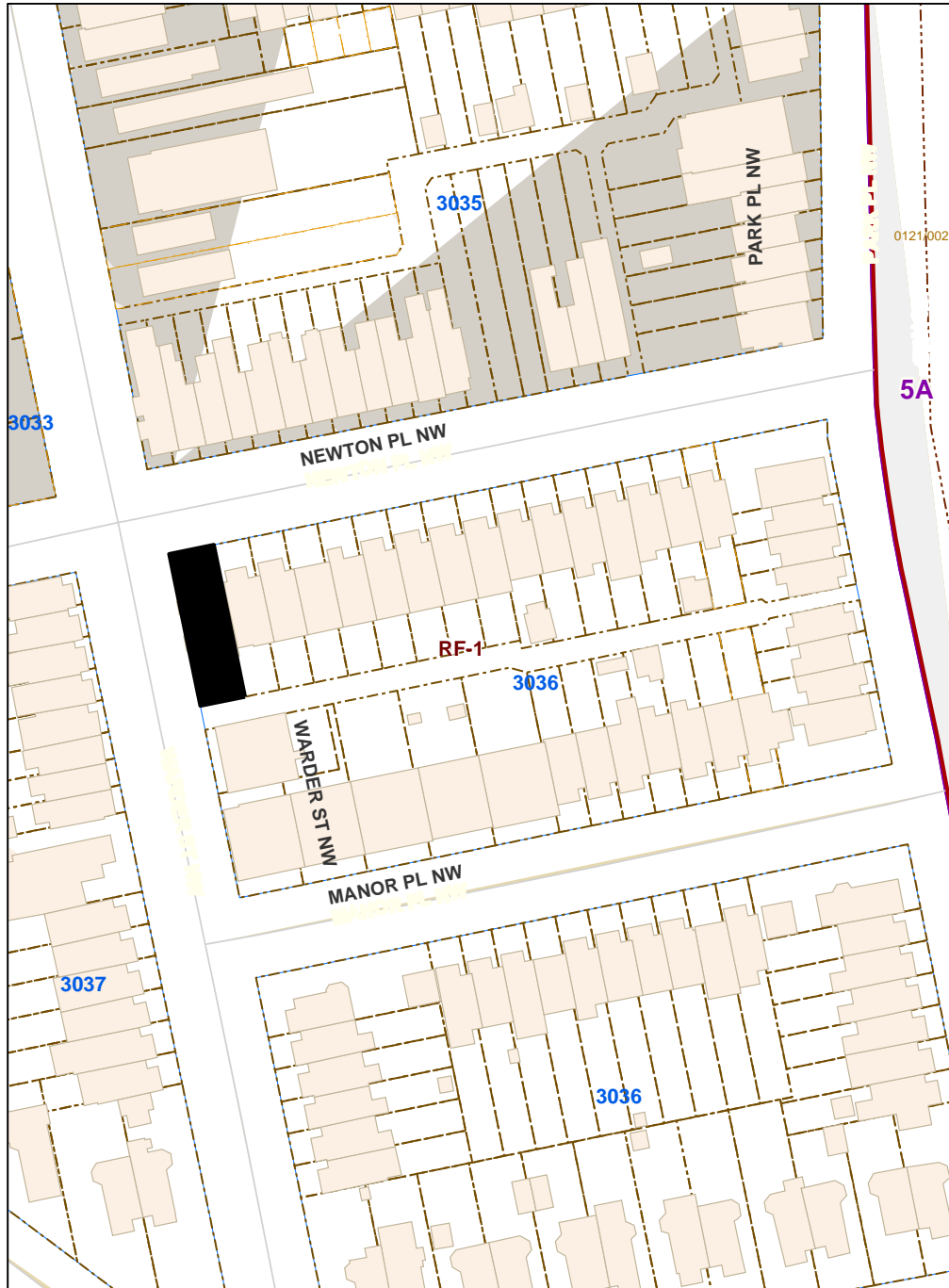
VII. COMMUNITY COMMENTS

Comments from community members, including ANC 1A, had not been received at the time this report was written.

Attachments:

Location Map

Summary of Land Area for Lots in Square 3036



Attachment: Location Map, 452 Newton Place, NW

Summary of Land Area for Lots in Square 3036

Square 3036 Lot	Land Area
0112	4200
0111	4200
0110	4175
0108	3191
0109	3097
0115	3020
0113	2780
0089	2660
0114	2600
0097	2043
0096	2043
0095	2043
0094	2043
0093	2043
0092	2043
0091	2043
0090	2043
0074	2000
0073	2000
0072	2000
0071	2000
0070	2000
0069	2000
0804	2000
0806	2000
0080	2000
0079	2000
0078	2000
0077	2000
0076	2000
0075	2000
0100	1321
0101	1317
0104	1303
0105	1300
0102	1285
0103	1280