

## SUPPLEMENTAL MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Maxine Brown-Roberts – Project Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** April 26, 2018

**SUBJECT:** SUPPLEMENTAL REPORT - BZA 19734 - request for special exception relief to construct a third-floor partial addition to a flat at 1432 Newton Street, NW in the RF-1 zone.

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### I. BACKGROUND

In the original submission, the applicant, Angel Donchew, requested special exception review pursuant to Subtitle E § 5201 and Subtitle E § 5203 to extend nonconforming aspects of the building within its existing footprint. From the architectural drawings and photos submitted by the applicant, the Office of Planning (OP) noted that the third-floor addition and roof deck would extend more than ten feet beyond the third-floor rear walls of the adjacent buildings. OP advised the applicant that special exception relief from the requirements of Subtitle E § 205.5, rear wall extension, would therefore be necessary. OP also noted that there would be windows close to the addition on the adjacent buildings and that the applicant had not provided any analysis to demonstrate that the light and air would not be adversely affected by the addition. OP also recommended that the applicant provide a full analysis of how the requirements of Subtitle E § 5201, Subtitle E § 5203, and Subtitle E §§ 5201.3 through 5201.6 would be met. The applicant subsequently met with the adjacent neighbors and reduced the size of the addition, removed the roof deck and removed the windows.

### II. OFFICE OF PLANNING RECOMMENDATION

The applicant proposes to add a third floor to the two-story portion of a flat at 1432 Newton Street, NW in the RF-1 zone. Based on the revised plans, OP now recommends **approval** of the following:

#### Pursuant to Subtitle E § 5201:

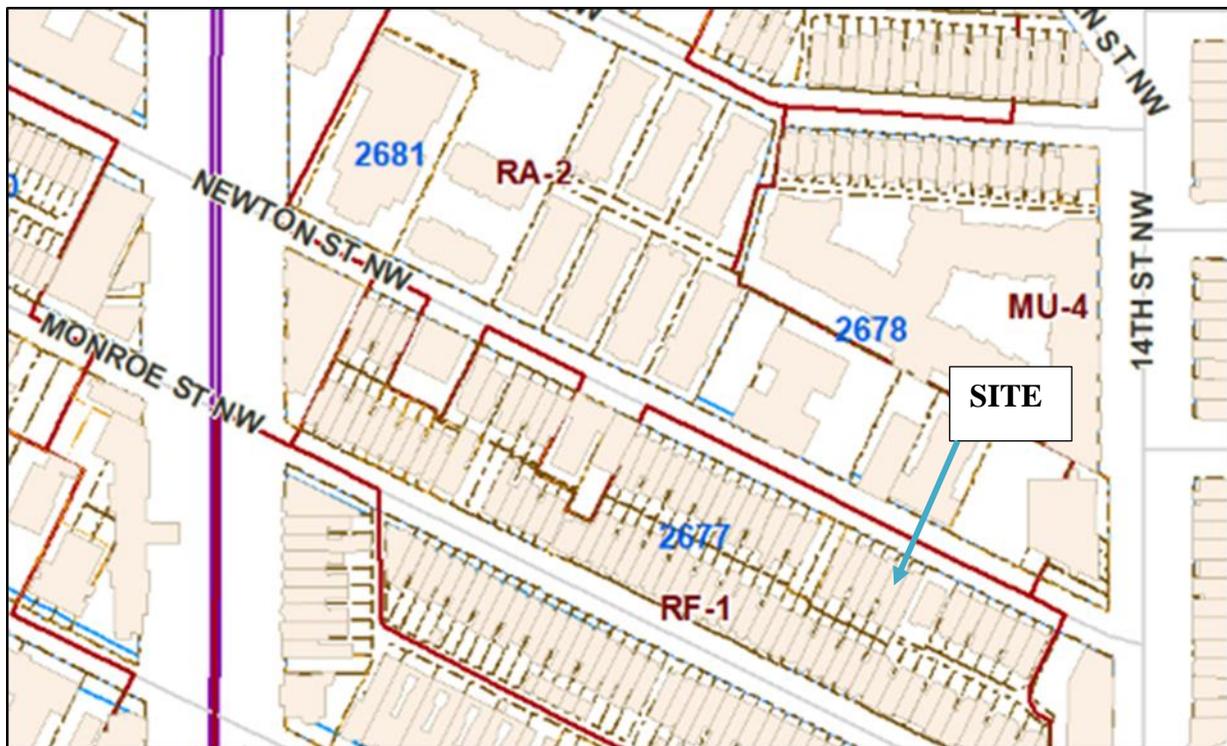
- Subtitle E § 202.2, addition to a nonconforming structure.
- Subtitle E § 205.4, rear wall extension (10 ft. allowed, 22.58 ft. proposed);
- Subtitle E § 304.1, lot occupancy (60% max. allowed, 70% by SE, 68.76% existing, 68.76% proposed); and
- Subtitle E § 306.1, rear yard (20 ft. min., 17.8 ft. existing, 17.8 ft. proposed).

#### Pursuant to Subtitle E § 5203:

- Subtitle E § 303.1, height (35 ft. max., 40 ft. by SE, 39.45 ft. existing, 38.1 ft. proposed).

### III. LOCATION AND SITE DESCRIPTION

Address	1432 Newton Street, NW
Legal Description	Square 2677, Lot 371
Ward and ANC	ANC 1A
Lot Characteristics	The property is 1,666 square feet, rectangular lot.
Zoning	RF-1
Existing Development	A three-story plus cellar flat.
Historic District	Not within a historic district.
Adjacent Properties	To the east and west are three-story row houses; to the north is a five-story apartment building and to the south is a two-story rowhouse.
Neighborhood Character	The surroundings are primarily residential, with two- and three-story rowhouses and three- to five-story apartments. Newton Street is bounded by 14 <sup>th</sup> and 16 <sup>th</sup> Street commercial corridors.



Site Location



**IV. PROJECT DESCRIPTION IN BRIEF**

The current structure has three stories to the front and two stories to the rear. The applicant proposes to extend the third story to accommodate two-bedrooms and a deck. The addition would be within the footprint of the existing structure.

**VI. ZONING REQUIREMENTS**

RF-1	Regulation	Existing	Proposed	Relief
Lot Size, Subtitle E § 201.1	1,800 sq. ft.	1,666.7 sq. ft.	1,666.7 sq. ft.	<b>Existing Non-Conformity</b>
Lot width, Subtitle E § 201.1	18 ft.	16.667 ft.	16.667	<b>Existing Non-Conformity</b>
Height, Subtitle E § 303.1	35 ft./3 stories max. 40 ft. by spec. exception	39.45 ft.	38.1 ft.	<b>Special Exception</b>
Lot occupancy, Subtitle E § 304.1	60% max. 70% by SE	68.76%	68.76%	<b>Special Exception</b>
Rear Yard Subtitle E § 306.1	20 ft.	17.8 ft.	17.8 ft.	<b>Special Exception</b>
Rear Wall Extension Subtitle E § 205.4	10 ft.	0 ft.	22.58 ft. (12.58 ft. beyond the allowed 10 ft.)	<b>Special Exception</b>

## V. OFFICE OF PLANNING ANALYSIS

The applicant has requested special exception review pursuant to Subtitle E § 5201 to address the nonconforming lot occupancy, rear yard, and addition to a non-conforming structure; Subtitle E § 205.5, rear wall extension beyond 10 feet pursuant to Subtitle E §§ 5201.3 through 5201.6; and Subtitle E Sections 303.3 pursuant to Subtitle E § 5203 for height.

### **Nonconforming lot occupancy, rear yard, and addition to a non-conforming structure and rear wall extension - Subtitle E § 5201**

***5201.1 The Board of Zoning Adjustment may approve as a special exception in the R zones relief from the following development standards of this subtitle, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:***

- (a) Lot occupancy;***
- (b) Yards;***
- (c) Courts;***
- (d) Minimum lot dimensions;***
- (e) Pervious surface; and***
- (f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.***

The proposed third floor addition requires relief for lot occupancy, rear yard, and addition to a structure that is non-conforming in these areas.

***5201.2 Special exception relief under this section is applicable only to the following:***

- (a) An addition to a residential building;***
- (b) A new or enlarged accessory structure that is accessory to such a building;***
- (c) A reduction in the minimum setback requirements of an alley lot.***

The proposal is for a third-floor addition to a residential building.

***5201.3 An applicant for special exception under this section shall demonstrate that the proposed addition or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:***

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

The property to the east (1430 Newton Street) is developed with a building that has three complete stories. The enclosed portion of the proposed addition would extend 9.1 feet beyond the furthest rear wall of that building. Where the addition would extend beyond the furthest rear wall of the adjacent building, there would be a 4.42-foot-wide side yard on both properties. With the combined side yards, the addition would only minimally affect the light and air to the windows on 1430 Newton Street.

The building to the west, 1434 Newton Street, has three-stories, similar to the subject building and the proposed addition would extend 22.58 feet beyond the third-floor rear wall of that building, which is 12.58 more than permitted by-right. Due to the east-west orientation of the properties, the light and air to the window on 1434 Newton Street should only be minimally affected, mostly in the mornings.

The subject building and the adjacent buildings all have similar reduced rear yards and lot occupancy. The proposed addition would not expand the nonconforming rear yard and lot occupancy and would not unduly affect the light and air to the adjacent neighbors.

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

The adjacent neighbors' privacy of use and enjoyment should not be unduly compromised as the addition would not have windows on either side and there would be no direct views into windows from the proposed deck. The neighbor to the east at 1430 Newton Street has submitted a letter of support for the addition (Exhibits 50 and 51).

- (c) *The addition or accessory structure, together with the original building, 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 proposed addition together with the original building should not substantially visually intrude upon the character, scale, and pattern of the houses in the area. As a rear addition, it would not be visible from Newton Street and there is no alley to the rear. Other buildings within the square, including the house to the east, has third floor additions, some of which are larger than the proposal and with similar materials.

- (d) *In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways; and***

The application includes plans, elevations and photographs to represent the proposed addition.

- (e) *The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).***

The existing lot occupancy is 68.76% for the lower two floors, and the proposed addition would also result in a lot occupancy of 68.76% for the third floor.

- 5201.4 *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 and nearby properties.***

OP recommends no special treatment.

- 5201.5 *This section may not be used to permit the introduction or expansion of a nonconforming use as a special exception.***

The structure would continue to be used as a flat which is a permitted use in the RF-1 zone.

- 5201.6 *This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.***

The height of the existing building is 39.45 feet and 3 stories. The height of the area with the proposed addition would be a maximum of 38.1 feet and three stories. The applicant has requested special exception from the height requirement of Subtitle E § 303.3 pursuant to Subtitle E § 5203.

**Height - Subtitle E Sections 303.3 pursuant to Subtitle E § 5203**

***303.3 A building or other structure may be erected to a height not exceeding forty feet (40 ft.) if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, subject to Subtitle E § 5203.***

The building would have a maximum height of 39.45 feet.

***5203.1 The Board of Zoning Adjustment may grant as a special exception a maximum building height for a principal residential building and any additions thereto of forty feet (40 ft.) subject to the following conditions:***

The existing building has a height 39.45 foot. The rear of the third-floor addition would measure 38.1 feet maximum.

***(a) The building is not on an alley lot;***

The property does not abut an alley and neither is the building on an alley lot.

***(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;***

The adjacent properties do not have a chimney or external vents on the party walls shared with the subject property (Exhibit 48).

***(c) Any addition, including a roof structure or penthouse, 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;***

The applicant states that there is no known solar energy system on the neighboring properties.

***(d) A roof top architectural element original to the house 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;***

The applicant states that none of the architectural elements at the front of the building would be removed or changed because of the proposed addition.

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

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

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

The adjacent building at 1430 Newton Street has a third story addition with windows. A substantial portion of the building would be separated by side yards. The privacy to the window from the addition would not be unduly compromised as the addition would have no windows. The house to the west, at 1434 Newton Street, has a window on the third floor but its light, air and privacy would not be unduly affected due to the orientation of the building and no windows on the sides of the addition.

The proposed deck would be on the rear portion of the addition and would not negatively impact the privacy of adjacent properties as there would be no direct views into the windows on adjacent properties. Additionally, the large trees in the rear yards would help to minimize views and preserve privacy.

- (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; and*

The proposed addition would not be visible from Newton Street and does not abut an alley. However, several buildings have similar, and larger third floor additions to their rear and therefore the rear of the structure would be similar in character and scale to other structures.

- (f) *In demonstrating compliance with Subtitle E § 5203.1(e) 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 applicant has provided sufficient illustrations and view diagrams to demonstrate compliance with this subsection.

**5203.2** *The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in Subtitle E §§ 5203.1(a) through (f) provided, that any modification or waiver granted pursuant to this section shall not conflict with Subtitle E § 5203.1(e).*

The applicant has not requested any waivers

**5203.4** *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.*

No additional special treatment beyond what is included in the application appears to be needed.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

The Department of Transportation (DDOT) has no objection to the approval of the requested special exceptions (Exhibit 43).

## **VII. COMMUNITY COMMENTS**

The property is within ANC-1A. On April 11, 2018 the ANC voted to recommend approval of the proposal (Exhibit 56).