

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Jonathan Kirschenbaum, Case Manager  
*JL* Joel Lawson, Associate Director Development Review  
**DATE:** July 13, 2018

**SUBJECT:** BZA Case 19803 – 1151 Oates Street, NE to permit a rear enlargement and a third-floor addition to an existing two-story residential flat.

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following special exception relief:

- Residential Flat Conversion, Subtitle U § 320.2, pursuant to Subtitle X § 901.2 (two-unit residential flat permitted, three-unit residential building proposed);
- Side Yard, Subtitle E § 307.4, pursuant to Subtitle E § 5201 (2 feet minimum permitted, 1’-7” for existing and proposed side yards); and
- Nonconforming Structures, Subtitle C § 202.2, pursuant to Subtitle E § 5201 (proposed rear extension and third floor addition to an existing residential flat).

OP recommends **approval** of the following waiver in connection to the residential flat conversion special exception request:

- Rear Extension, Subtitle U § 320.2(e), pursuant to Subtitle X § 901.2 (rear addition shall not extend further than 10 feet past the furthest rear wall on adjacent property, rear addition will extend a total of 15 feet past the furthest rear wall on adjacent property).

The most current submissions (Exhibits 35 and 35A) indicate that the originally requested waiver to remove rooftop architectural elements has been withdrawn, as the plans have been changed to retain this feature.

**II. LOCATION AND SITE DESCRIPTION**

Address:	1151 Oates Street, NE
Applicant:	1151 Oates Street NE LLC
Legal Description:	Square 4064, Lot 0804
Ward / ANC:	5/5D
Zone:	RF-1
Lot Characteristics:	Rectangular interior lot measuring 25 feet in width and 150 feet in depth. The lot is bounded by Oates Street, NE to the north, a 20-foot improved alley to the south, and adjoining residential lots to the east and west.

Existing Development:	Detached two-story (plus cellar) residential flat (two-units).
Adjacent Properties:	One-family detached dwelling, and a multi-family residential building.
Surrounding Neighborhood Character:	The surrounding neighborhood character is single-family detached houses, residential flats, and apartment buildings.
Proposed Development:	The applicant proposes to construct a rear enlargement and a third-floor addition to an existing two-story residential flat, and to convert it from two to three dwelling units. The three-story rear addition would extend the building footprint 15 feet past the furthest rear wall of the property to the east. The third-floor addition would extend upward both non-conforming side yards, and retain the existing width at one foot seven inches. The third story addition would increase the height of the building from 24 feet to 33 feet, and it would be set back three feet from the front wall of the building to retain the cornice. Three parking spaces would be provided.

### III. ZONING REQUIREMENTS and RELIEF REQUESTED

RF-1 Zone	Regulation	Existing <sup>1</sup>	Proposed	Relief
Height (ft.) E § 303	35 ft. max./3 stories	24 ft.	33 ft./3 stories	None required
Lot Width (ft.) E § 201	n/a	25 ft.	No change	None required
Lot Area (sq. ft.) E § 201	n/a	3,750 sq. ft.	No change	None required
Lot Occupancy E § 304	60% max.	20%	29%	None required
Rear Yard (ft.) E § 306	20 ft. min.	93 ft.	78 ft.	None required
Front Setback (ft.) E § 305	Setback must be in range of existing front setbacks	n/a	No change	None required
Side Yard (ft.) E § 307.4	Existing side yards shall not be decreased, and width of the existing side yard shall be a min. of 2 ft.	1 ft. 7 in. <sup>2</sup>	1 ft. 7 in.	<b>Variance relief: Vertical extension of a non-conforming side yard</b>
Residential Flat Conversion U § 320.2(d)	900 sq. ft. min. of land area per dwelling	2 units	3 units (1,250 sq. ft. of land area per dwelling unit)	<b>Special exception relief requested</b>

<sup>1</sup> Information provided by the Applicant. See Exhibit 35C.

<sup>2</sup> The setback width of the side yards ranges between 1 ft. 7 in. and 5 ft. 5 in. The applicant requires side yard setback relief because the third-floor addition vertically extends portions of the side yards that are only 1 ft. 7 in.

<b>RF-1 Zone</b>	<b>Regulation</b>	<b>Existing<sup>1</sup></b>	<b>Proposed</b>	<b>Relief</b>
Rear Extension U § 320.2(e)	Addition may not extend more than 10 ft. past furthest rear wall of adjacent building	0 ft. past the building to the east and west	15 ft. past the building to the east	<b>Waiver requested: 5 ft.</b>
Roof Top Architectural Element U § 320.2(h)	Removal or altering of roof top elements prohibited	Roof top cornice	Retention of roof top cornice	None requested
Parking C § 701	1 parking space per dwelling	1 parking space	3 parking spaces	None required

#### **IV. OP ANALYSIS**

##### **Subtitle E Chapter 5201 ADDITION TO A BUILDING OR ACCESSORY STRUCTURE**

*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 applicant requests relief from the following development standards:

- side yards; and
- limitations on enlargements or additions to an existing nonconforming structure.

The applicant requires relief from the above development standards for the proposed third floor addition. This addition would vertically extend the two existing side yards, which are set back from the side property lines at varying widths. Portions of these side yards are non-conforming along the front half of the building at one foot seven inches, but are fully conforming along the rear half of the building. Thus, OP’s analysis is for the proposed third floor addition along the front half of the building, where portions of the side yards are non-conforming.

*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; or*
- c) A reduction in the minimum setback requirements of an alley lot.*

The applicant proposes to construct an addition to a residential flat 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 applicant submitted a shadow study demonstrating the impact of shadows during the year based on both the third-floor, and the rear additions. Though the proposed building additions would generate new shadows on the properties to the east and west, it would appear not to be a significant amount. New shadows created would primarily be on portions of the rear yard of the apartment building to the west, which does not have any outdoor recreation space. The shadows cast on the property to the east would be minimal, and the property owner has submitted a letter of support into the record (Exhibit 30).

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

Privacy and enjoyment of neighboring properties should not be unduly compromised. The third-floor addition would vertically extend the existing non-conforming eastern side yard, but would not have any windows on this portion of the side yard. Other portions of the third-floor addition would have windows along both sides of the building, but they would be along conforming side yards.

*(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 third-floor addition will align with the existing side walls of the building, and will not alter the footprint of the existing portion of the building, which contains the non-conforming side yards. There should not be a substantial visual intrusion when viewed from the street. Given the significant depth of the lot, there should not be substantial visual intrusion when viewed from the alley.

*(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 applicant submitted a survey, architectural plans, and photographs to illustrate the proposed addition and surroundings.

*(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in...table [5201.3]:*

The maximum permitted lot occupancy that the Board may approve in an RF-1 zone is 70 percent. The applicant states that the total lot occupancy with the proposed addition is 29 percent.

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.*

No special treatment of the proposed addition is recommended.

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

The proposed addition 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 number of stories and height created by the addition would be conforming.

### **Subtitle U Chapter 3 SPECIAL EXCEPTION USES (RF)**

U § 320.2 *Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house 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 total proposed height of the building with the third-floor addition would be 33 feet.

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;*

The proposed building would only include three dwelling units, and would not be subject to the Inclusionary Zoning requirements.

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

An existing residential flat building exists on the subject property.

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

The proposal would provide 1,250 square feet of land area per dwelling unit.

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

The applicant has requested a waiver from this section, pursuant to Subtitle U § 320.2(i), because the eastern side wall would extend 15 feet past the adjacent building's rear wall. As discussed below, the additional five feet would not appear to result in a significant or undue impact.

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 states, and aerial imagery shows, that the proposed third floor addition would not block or impede the functioning of a chimney or other external vent on either

neighboring building.

- 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...*

The applicant states, and aerial imagery shows, that the proposed third floor addition would not interfere with the operation of an existing solar energy system.

- 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 now proposes to set back the third-floor addition three feet from the front wall of the building to retain the rooftop cornice.

- 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:*

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

The proposed rear addition would extend 15 feet past the rear wall of the building to the east, and would not extend more than 10 feet past the rear wall of the building to the west. The applicant submitted a shadow study demonstrating the impact of shadows during the year based on the existing built condition, a matter-of-right 10-foot extension, and a proposed 15-foot extension. New shadows created by the additional five feet of rear addition would primarily be on portions of the rear yard of the apartment building to the west, which appear to be mainly used for parking. The shadows cast on the property to the east would be minimal, and the property owner has submitted a letter of support into the record (Exhibit 30). Further, the amount of shadows that would be cast on either property does not significantly differ between an addition that could be built as a matter-of-right or the proposed.

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

Privacy and enjoyment of neighboring properties should not be unduly compromised. The third-floor addition that would vertically extend the existing non-conforming eastern side yard would not have any windows along this side yard. Other portions of the third-floor and rear additions would have windows along both sides of the building, but they would be along conforming side yards set back at least five feet from the side property lines. Further, the windows along the eastern side yard would be placed furthest away from the neighboring property's rear wall windows.

- (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;*

The predominate building typology of the subject block frontage is two-story buildings, approximately 25 feet in height, with a consistent front setback, and rooftop architectural elements. OP worked with the applicant to design a building to fit more harmoniously within the existing streetscape. The applicant now proposes a third-floor addition that is set back from the existing front wall by three feet, and retains the existing rooftop cornice. Given the significant depth of the lot, there should not be substantial visual intrusion when viewed from the alley.

- 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 applicant submitted a survey, architectural plans, and photographs to illustrate the proposed addition and surroundings.

- 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 does not propose any special treatments.

- 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)*

The applicant has requested a waiver from Subtitle U § 320.2(e).

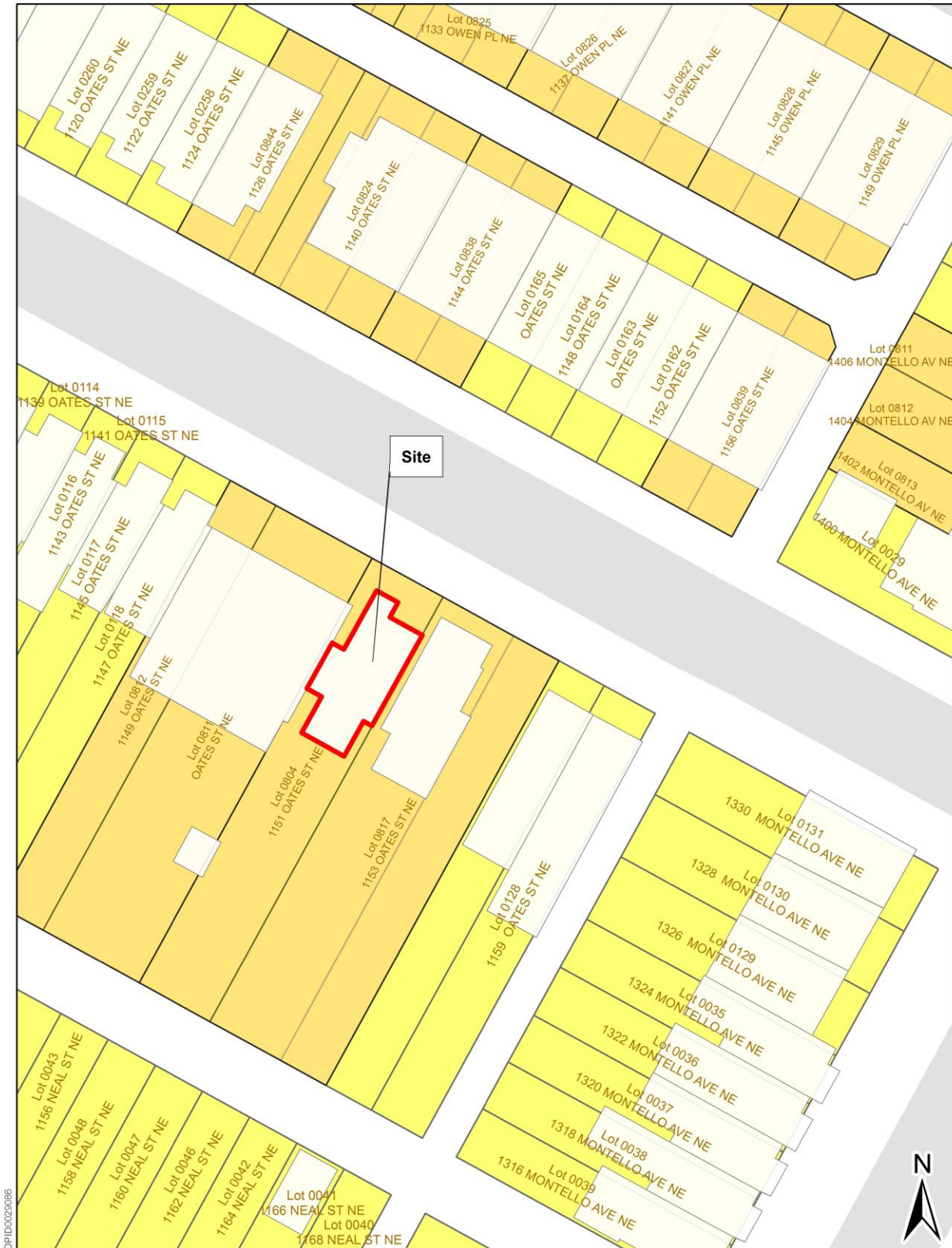
## **V. COMMENTS OF OTHER DISTRICT AGENCIES**

No comments from other district agencies were received at the time this report was drafted.

## **VI. COMMUNITY COMMENTS**

No comments had been filed to the record from the ANC at the time this report was drafted. Three letters of support from neighbors have to date been filed (Exhibits 30, 31, and 33).

### Attachment 1: Location Map 1151 Oates Street, NE



OPID0029096