

SUPPLEMENTAL MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Brandice Elliott, Development Review Specialist
 JL Joel Lawson, Associate Director Development Review
DATE: July 7, 2021

SUBJECT: BZA Case 20143 (1117 Morse Street, N.E.) - Office of Planning Response to Board Request of June 25, 2021

I. BACKGROUND

The subject self-certified application was heard by the Board of Zoning Adjustment (BZA) at its November 20, 2019 and December 18, 2019 public hearings. The role of the Office of Planning (OP) in a BZA case typically is to provide analysis of the requested relief against the relevant tests for that relief as contained in the Zoning Regulations. OP provided this in a report at Exhibit 40 in the record, which indicated that the application had met the relevant tests, and accordingly recommended approval of the request. The Board approved the application at its December 18, 2019 hearing.

At its public meeting on June 23, 2021, the Board moved to rescind the prior vote and to reopen the record so that both the applicant and OP could address the eligibility of specific requested relief for the proposal. This report responds to that request. While this is not a determination for OP to make, this report focuses on whether OP believes the applicant requested permissible relief under zoning.

OP analyzed and the BZA acted on a self-certified application. The Zoning Administrator would determine whether plans submitted for the project's building permit reflects the relief granted by the Board, and whether all required relief was obtained. For the purposes of this response, OP has consulted with the Zoning Administrator.

II. ELIGIBILITY OF RELIEF

The Board has requested OP comments as to how the self-certified application is eligible for the following requested relief:

1. *A special exception to authorize a principal dwelling unit in an accessory structure under either:*
 - a. *Subtitle U § 301.1(e) - since the proposed accessory structure is neither “matter-of-right” nor located within a required setback; or*

Subtitle U §301.1(e) of the Zoning Regulations reads as follows:

*An accessory building constructed as a matter-of-right after January 1, 2013, and that is located within a required setback shall not be used as, or converted to, a dwelling unit for a period of five (5) years after the approval of the building permit for the accessory building, **unless approved as a special exception**; (emphasis added)*

A principal dwelling in an accessory building is a permitted use provided that it meets the conditions of this section. However, this section also specifies that proposals not meeting those conditions may be “approved as a special exception.” By approving the requested special exception relief to allow an accessory building to house a dwelling unit, the Board waived the conditions that the proposed accessory structure be matter-of-right and not located within a required setback.

b. Subtitle U § 301.1(c) – since the proposed accessory structure is not an “expansion or addition” to an existing accessory building; and

The proposal consisted of the construction of a new accessory structure and not an expansion or addition. Therefore, this section does not apply to the project.

2. A special exception to authorize the conversion of an “existing residential building” to an “apartment house” under Subtitle U § 320.2 when the proposed third unit is in a separate and new structure and not the existing residential building, give the specific language of Subtitle U § 320.2 and the definition of “apartment house” in Subtitle B § 100.2.

An apartment house is defined by the Zoning Regulations as “*any building or part of a building in which there are three (3) or more apartments...*” The Zoning Administrator has provided clarification that an apartment house is a use of a property and not a building, and precedent allows for the definition to read more broadly because of how buildings have historically been issued Certificates of Occupancy (COO). COOs are issued for properties and not for individual buildings on the property, so accessory buildings do not receive separate COOs. As a result, the proposal complies with the definition of an apartment house, as it would consist of three units on one property.

Subtitle U §320.2 allows for “*the conversion of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house...*” As such, an apartment house use applies to the property and not a specific building, so the proposal would qualify for a conversion under this section.

Therefore, the project is eligible for relief under these sections.