



SUPPLEMENTAL MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Matthew R. Jesick, Development Review Specialist

JL Joel Lawson, Associate Director Development Review

DATE: December 2, 2024

SUBJECT: BZA #20280A – Modification with Hearing – 622 I Street, NE

I. BACKGROUND

The Board held a hearing on this case on November 6, 2024. At that time the Board asked the Office of Planning (OP) to comment on the zoning history of the subject property, including past BZA actions and building permits. The BZA also requested that OP comment on whether the zoning history of a property can be used as part of an exceptional condition in the evaluation of a variance test¹ - although it is not typically the role of OP to provide such opinions, this memo is intended to addresses those points.

As analyzed in the original OP Report at Exhibit 21, OP continues to recommend approval of this modification.

II. ZONING HISTORY OF THE SUBJECT PROPERTY

By Order dated July 15, 2022, the Board approved relief to construct an addition to an existing row dwelling at 622 I Street, NE, and establish a three-unit multifamily dwelling. The two areas of relief granted were:

- U § 320.2 – Conversion of an existing building in the RF zone to a multifamily building; and
- E § 207.4 (then E § 205.4) – Rear yard / depth of rear addition.

The owner at the time of the original BZA case subsequently sold the property to the present owner, who applied for and obtained a building permit for the project. That permit was issued on October 19, 2023. According to OP's correspondence with the applicant, on the basis of the prior BZA approval the present applicant invested in the production of permit set drawings, and paid the relevant fees and applied for the building permit and a subdivision.

III. USE OF ZONING HISTORY TO ESTABLISH AN EXCEPTIONAL CONDITION

The DC Court of Appeals had held that the zoning history of a site can be considered an exceptional condition. In *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1098

¹ During the hearing the Board initially asked OP to investigate the original intent behind the drafting of the relevant section of the Zoning Regulations, C § 303.4, but later withdrew that request. OP nevertheless attempted to research the history of the section. OZ staff was able to find the original Order (#65-131), but the Order contained no discussion about the intent, and no transcript could be located that would have provided more information about the original purpose of the section.

(DC 1979), the Court of Appeals held that “past zoning history can be taken into account in the uniqueness facet of the variance test.” In the BZA decision under review, the Board had found “the applicant … made major expenditures on the building and land on the basis of the prior action of the Zoning Commission and the Board of Zoning Adjustment.” *Id.* at 1096. As explained by the Court, the property owner

Could originally have located elsewhere or possibly secured a zone change for the site. However, the Zoning Commission … implicitly approved the site and indicated the intervenors should proceed by means of a variance. Moreover, the BZA granted variance for the greatest part of the project. [The property owner] proceeded in good faith to construct the Capitol Hill Club and stage one of the office building and secured a variance for the second stage of the office as well. These actions by the zoning authorities provided implicit assurance that the project could be completed.

Id. at 1097.

In the present case, while not part of OP’s rationale for our recommendation of approval (see the full OP report at Exhibit 21), the Board could use the zoning history of the subject site as part of the basis for an approval of the requested relief. As in the Monaco case, the owner of the property had multiple zoning actions, including a BZA approval and the issuance of a building permit, on which to reasonably base further investments in the property. As of this writing, the record does not contain a description of those investments, but according to OP’s correspondence with the applicant, they included the professional services for the permit set drawings, the application and fees for a building permit, and the application and fees for a subdivision.