

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Anne Fothergill, Development Review Specialist  
*JL* Joel Lawson, Associate Director Development Review

**DATE:** November 29, 2021

**SUBJECT:** BZA Case 20548 to permit an addition to and conversion of a commercial building to a mixed-use building at 1400 9<sup>th</sup> Street, N.W.

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of the following special exception relief pursuant to Subtitle X Chapter 9:

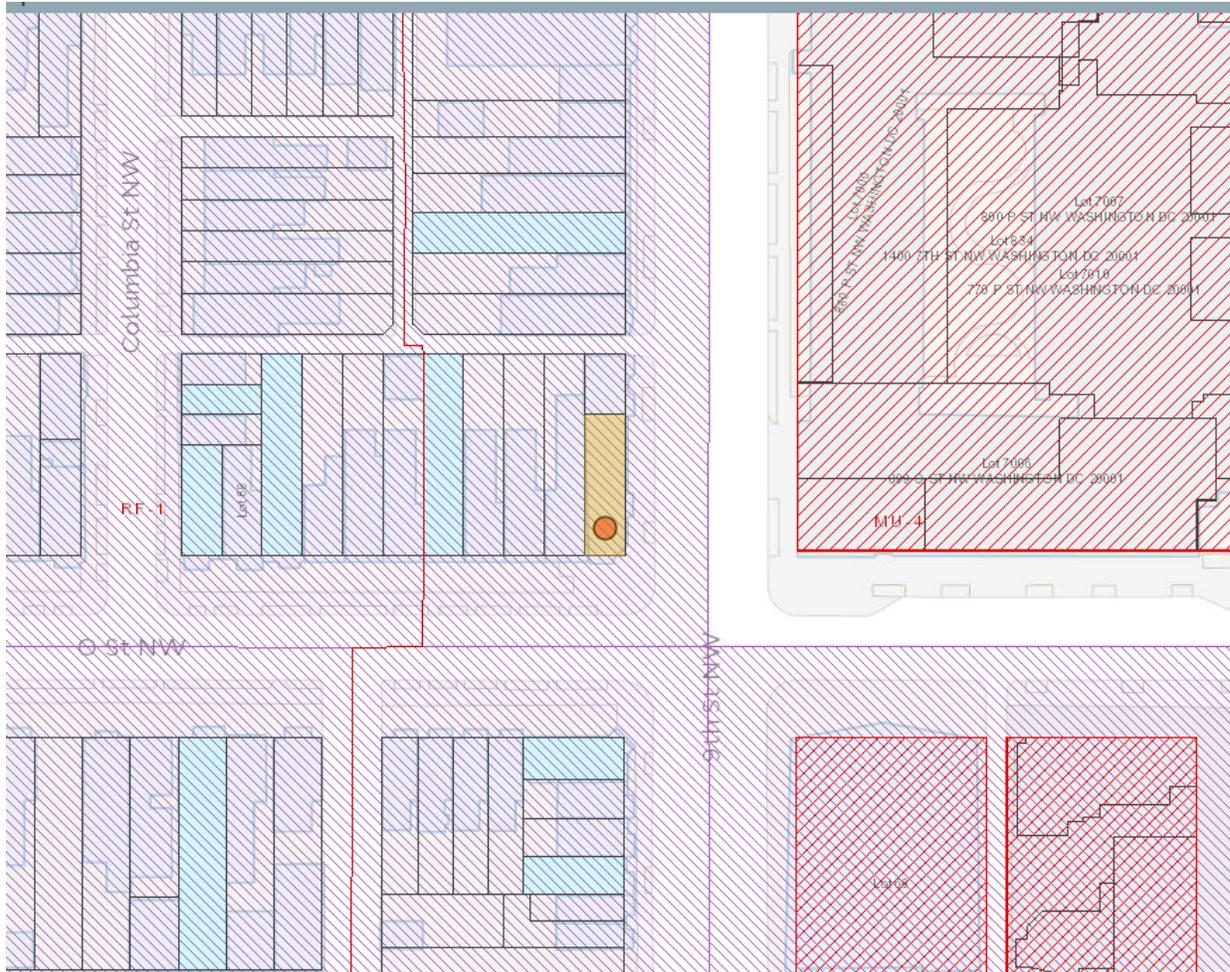
- Rear Yard, Subtitle G § 405.2, pursuant to Subtitle G §§ 1200.4 and 1201.1 (15 feet minimum required; 0 feet existing; 0 feet proposed)
- Lot Occupancy, Subtitle G § 405.2, pursuant to Subtitle G § 1200.4 (60% maximum allowed for residential use; existing 2<sup>nd</sup> floor: 75% residential use; proposed 2<sup>nd</sup> floor: 86% residential use)
- Parking, Subtitle C § 701.5, pursuant to Subtitle C § 703.2 (1 space required; 0 spaces existing; 0 spaces proposed)

Prior to or at the Public Hearing, the applicant should clarify how trash and recycling for both the residences and the retail space will be stored and handled.

**II. SITE AND PROJECT DESCRIPTION**

Address	1400 9 <sup>th</sup> Street, N.W.
Applicant	1400 9 <sup>th</sup> St NW LLC
Legal Description	Square 0366, Lot 0800
Ward, ANC	Ward 2, ANC 2F
Zone	MU-4
Historic District	Shaw Historic District
Lot Characteristics	1,400 square foot rectangular corner lot with 20 feet of frontage along O Street NW and 70 feet along 9 <sup>th</sup> Street NW. There is an improved lot to the north located between the subject property and a public alley located to the north, so the subject property has no access to the alley.
Existing Development	Two story vacant building covering the entire lot.
Adjacent Properties	The adjoining property to the north on 9 <sup>th</sup> Street NW is a two-story mixed-use building. The adjoining property to the west on O Street NW is a three-story residential row dwelling. Directly across O Street NW to the south is a three-story mixed-use building. Directly across 9 <sup>th</sup> Street NW to the east is a 9-story hotel and the parking garage entrance to the hotel (part of a PUD).

Surrounding Neighborhood Character	The surrounding area has a mix of commercial and residential uses.
Proposed Development	The Applicant proposes to renovate the currently vacant building. The project consists of the conversion of part of the existing building to residential use, a rear addition to the 2 <sup>nd</sup> story, and additions of a third and fourth story to the building, resulting in six residential units and ground floor commercial and residential uses. There is no parking on site currently or proposed. The design shown in this application has received concept approval from the Historic Preservation Review Board.



**III. ZONING REQUIREMENTS and RELIEF REQUESTED**

MU-4 Zone	Regulation	Existing	Proposed	Relief
Height G § 403.1	50 feet max.	27 feet	45 feet	None required
Lot Width	No requirement	20 feet	No change	None required
Lot Area	No requirement	1400 square feet	No change	None required

<b>MU-4 Zone</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Floor Area Ratio G § 402.2	2.5 max. residential use 1.5 max. non residential use	1.74 total FAR .75 residential .99 non-residential	2.34 total FAR 1.84 residential .5 non-residential	None required
Lot Occupancy G § 404.1	60% max. for residential use	1 <sup>st</sup> floor: 99% (commercial) 2 <sup>nd</sup> floor: 75% (residential)	1 <sup>st</sup> floor: 99% (51% commercial/49% residential) 2 <sup>nd</sup> floor: 86% (residential) 3 <sup>rd</sup> floor: 50.5% (residential) 4 <sup>th</sup> floor: 39.2% (residential)	<b>Relief requested for 2<sup>nd</sup> floor</b>
Rear Yard G § 405.2	15 feet min.	0 feet	0 feet	<b>Relief requested</b>
Parking C § 701.5	1 space min.	0 spaces	0 spaces	<b>Relief requested</b>

**IV. OFFICE OF PLANNING ANALYSIS**

The applicant proposes upper floor additions with zero rear yard, as currently allowed by special exception in this zone. The building now provides no rear yard; at the rear property line, it adjoins the adjacent building’s side party wall with no windows. The ground floor currently has 99% lot occupancy and the second floor currently has 75% residential lot occupancy. At 86%, the proposed second floor would need residential lot occupancy relief; the 3<sup>rd</sup> and 4<sup>th</sup> floors would be below the maximum lot occupancy permitted for residential use in the zone.

**A. Special Exception Relief from Subtitle G § 405.2, Rear Yard and G § 406.1, Lot Occupancy pursuant to Subtitle G § 1200.4**

*Subtitle G § 1200.4 Relief may be granted as a special exception by the Board of Zoning Adjustment to the development standards and regulations of this subtitle where, in the judgment of the Board, the special exception:*

*(a) Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;*

Overall, the project would be in harmony with the general purpose and intent of the zoning regulations. The Mixed Use zones, including MU-4, are intended to permit the orderly development of land with appropriately scaled mixed use or residential buildings. The proposed building would be within the maximum permitted height and FAR for the MU-4 zone. The regulations allow for a building of this size with rear yard and lot occupancy relief by special exception and the project meets the specific criteria for relief by special exception.

*(b) Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and*

This project would not appear to adversely affect the use of neighboring properties. The first, third, and fourth floors would be within the permitted lot occupancy in the zone. The adjoining properties

are row dwellings with no windows on the party walls. The neighboring properties could continue to be used as residential and mixed use properties without undue adverse effects from this project.

*(c) Is subject in each case to any applicable conditions specified in this chapter.*

Subtitle G § 1201.1 provides additional criteria specifically for rear yard relief:

***Subtitle G § 1201.1 The Board of Zoning Adjustment may grant relief to the rear yard requirements of this subtitle as a special exception pursuant to Subtitle X, provided:***

***a. No apartment window shall be located within forty feet (40 ft.) directly in front of another building;***

No apartment window would be located within 40 feet directly in front of another building.

***b. No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen (18 ft.) in front of a blank wall;***

The Applicant is not proposing an office use.

***c. In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;***

The building is sited parallel to the adjacent buildings.

***d. Provision shall be included for service functions, including parking and loading access and adequate loading areas; and***

The project is not required to provide any loading and the Applicant has requested relief from the parking requirements, as the existing building essentially covers the entire lot with no parking and no curb cut for access to parking.

***e. Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office.***

The Historic Preservation Office staff for the Shaw Historic District stated that the concept design as shown in this application had been approved by HPRB.

**B. Special Exception Relief from Subtitle C § 701.5, Parking Requirements, pursuant to Subtitle C § 703.2**

*Subtitle C*

*703.1 This section provides flexibility from the minimum required number of parking spaces when the provision of the required number of spaces would be contrary to other District of Columbia regulations; or impractical or unnecessary due to the shape or configuration of the site, a lack of demand for parking, or proximity to transit.*

*703.2 The Board of Zoning Adjustment may grant a full or partial reduction in number of required parking spaces, subject to the general special exception requirements of Subtitle X, and the applicant's demonstration of at least one (1) of the following: (applicable criteria noted)*

*(a) Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8;*

*(b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*

...

*(h) The property does not have access to an open public alley, resulting in the only means by which a motor vehicle could access the lot is from an improved public street and either:*

*(1) A curb cut permit for the property has been denied by the District Department of Transportation; or*

*(2) Any driveway that could access an improved public street from the property would violate any regulation of this chapter, of the parking provisions of any other subtitle in the Zoning Regulations, or of Chapters 6 or 11 of Title 24 DCMR;*

...

The Applicant has requested relief from the one parking space that would be required, in keeping with Subtitle C Section 703.3. The project qualifies for the Special Exception from parking requirements since it meets the criteria listed above:

- The existing property does not currently provide on-site parking and the existing building, to be retained, covers the entire lot, resulting in a physical constraint for the provision of parking on the lot;
- The property does not have access to an alley and there is no curb cut from the street;
- The property is well served by transit near its location in Shaw.

*703.3 Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide, and shall be proportionate to the reduction in parking demand demonstrated by the applicant.*

The Applicant has requested relief from the one parking space that would be required, in keeping with this provision.

*703.4 Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval.*

To date, a transportation demand management plan has not been filed to the record. Typically, a full TDM Plan is not required if the relief is for only one parking space, but it is expected that DDOT will address this in their report and that the applicant will adhere to any TDM measures.

## **Subtitle X Section 901**

*901.2 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:*

- 1. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

The proposed addition to a mixed-use building would be in harmony with the general purpose of the MU-4 zoning regulations. Residential lot occupancy, rear yard, and parking relief are permitted by special exception and the application is consistent with the specific review criteria of this zone for the special exceptions. The building would comply with all other development standards of the zone.

- 2. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

The proposed additions to the building would not appear to have an adverse effect on the use of neighboring properties as discussed above.

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

At Exhibit 39 is a DDOT report stating no objection to the application, subject to the applicant funding one short-term bicycle parking rack near the building.

At the time of this report, no other agency had filed comments to the record.

## **VI. ANC COMMENTS**

At the time of this report the ANC had not filed a memo into the record.

## **VII. COMMUNITY COMMENTS TO DATE**

The property owner at 1420 9<sup>th</sup> Street, N.W. filed a statement of support in Exhibits 37 and 38.