District of Columbia
Office of Planning

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Stephen Cochran, Zoning & Special Projects Planner

JL Joel Lawson, Associate Director Development Review

DATE: April 25, 2023

SUBJECT: BZA Case 20867, 1934 35th Place, NW, Supplemental Report on revised application for special exceptions to convert of flat to single family dwelling with an accessory apartment in the R-20 zone.

I. BACKGROUND

Responding to the Board of Zoning Adjustment comments at hearings in February and March of this year, the applicant has revised its previous proposal, which would have expanded the existing building and retained its use as a flat. In the R-20 zone a building with a conforming use may expand within certain limits as a special exception. However, for a non-conforming use, such as a flat, use and area variances would have been required.

The applicant is now proposing to expand the building and convert it to a use-conforming single-household residence with an accessory apartment. In the R-20 zone, an accessory apartment requires a special exception, which the applicant is requesting. The applicant continues to request special exceptions for additions that would result in a lot occupancy increase on the second floor and a decrease in the depth of the rear yard.

The proposed exterior design and dimensions are the same as in the earlier request, but with the building's conversion to a conforming use, they may now be considered as special exceptions, rather than as variances.

II. OFFICE OF PLANNING RECOMMENDATION

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

- A Special Exception from the use requirements of Subtitle U §253.4 pursuant to Subtitles D § 5201 and X §901.2 (Single-household use permitted by-right; non-conforming flat existing; single-household residence with accessory apartment requested)
- A Special Exception from the lot occupancy requirements of Subtitle D § 1204.1, pursuant to Subtitles D § 5201 and X §901.2 (60% permitted; 69.8% existing; 70% proposed)
- A Special Exception Use from the rear yard requirements of Subtitle D § 1206.2 pursuant to Subtitles D § 5201 and X §901.2 (20 ft required; 11 feet existing, 7.7 feet proposed).

The application may also require a waiver from Subtitle U § 253.9 (a), to which OP would have no objection. (See footnote in Section V. A of this report).

Board of Zoning Adjustment
District of Columbia
CASE NO.20867
EXHIBIT NO.47

III. LOCATION AND SITE DESCRIPTION

Address	1934 35th Place, NW
Applicant	Alexandra Wilson, attorney, on behalf of Stella Ajello, owner.
Legal Description	Square 1296E, Lot 312
Ward / ANC	2 / 2E
Zone	R-20 – permits detached, semi-detached, and row buildings on small lots, and includes areas where row buildings are mingled with detached buildings and semi-detached buildings.
Historic District	Immediately adjacent to, but not within the boundaries of, the Old Georgetown historic district
Lot	Generally flat rectangular corner lot. On the north it has 50.05 feet of frontage he north, on the south side of what is known as both Whitehaven Parkway, N.W. and U Street, N.W.; on the east, 18.47 feet on the west side of 35th Place, N.W., to the south, 50.0 feet along the adjoining property line; and to the west 16.14 feet along the 15-foot -wide alley at the rear of the property. .
Location (site shaded in aqua)	
Existing Development	The property is improved with a two-story row building used as a residential flat, which is a non-conforming use in the R-20 zone, but for which the building has had a Certificate of Occupancy since at least 1958. The building has an enclosed footprint of approximately 560 square feet. It faces east onto 35th Street and also has windows on its north side along Whitehaven Parkway / U Street and on its rear facing a public alley. The rear yard is 11-feet deep and there is no parking space. There is a 1-bedrom, 1-bath unit on each of the two floors. The outside entry to both units is a common front door on 35th Place that opens into a shared vestibule. From there separate apartment doors lead to each

	respective unit. The first floor unit has direct access to the back yard. The second floor unit has access to the yard via steps from a rear door and small porch on that level.
Adjacent Properties	The applicant's building is one of a row of what were originally similar two-story buildings, although others appear to be one-family dwellings rather than flats. Several buildings in that row have added 3rd stories in the last decade. The adjoining property to the south, at 1932 35th Pl. NW, is improved with a single-household 3-story row building, as is the building at 1930 35th Place. To the east, across 35th Place is a three-story corner row building. Holy Rood cemetery is to the north, atop a hill. To the west, across an alley is the front yard of the north-facing two-story row, at 3526 Whitehaven Parkway.
Surrounding Neighborhood Character	The nearby neighborhood comprises one-household residential use, primarily in row buildings. One block to the east is the Hardy School and field and its parking lot which is used by the Georgetown Flea Market on weekends. Wisconsin Avenue, with a mix of medium density commercial and residential uses, is two blocks to the east.
Proposed Development	The Applicant proposes the following in conjunction with the conversion of the flat to a single-household residence with an accessory dwelling unit: 1) Retain the existing 560 sq.ft. first floor; 2) At the back of the second story, add 40 sq.ft. of enclosed space and replace the existing porch and straight run of stairs to the back yard with a deck and a circular stair to the yard, adding 0.2% to the floor's lot occupancy and decreasing the depth of the rear yard by 3.3 feet; 3) Add a third story with a rear wall, set back 5-feet from the second story's rear wall; and, 4) within that 5-foot setback, build a deck with a circular staircase leading to a new roof deck also set back 5-feet from the 2nd story rear wall and enclosed with parapet walls on three sides. The 570 additional square feet would increase the size of the building from an existing 1,099 SF to a proposed 1,669 sq.ft. Proposed alterations to the front façade conform to the zoning regulations and would essentially match those made at 1930 and 1932 35thPlace. Access to the building would continue to be from a single entrance on 35th Place. Access to the principal and accessory units would be from a common internal foyer. What is now a rental unit on the first floor would continue to be rented as a 1-bedroom/1 bath accessory unit and the owner's unit would be a two-bedroom, 2.5 bath unit on the second and third floors, with a roof deck.

IV. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone – R-20	Regulation	Existing	Proposed	Relief
Accessory Apartment **U § 253.1 – 253.8** Bld. Min. GFA % Accessory Use Entrance	Permitted as special exception 1,200 sq.ft. < 35% One, if street-facing	N/A. C of O for, and use as, a Flat	single-household dwelling with accessory unit 1,669 sq.ft. <34.4% One	**Special Exception Requested**
Lot Width D § 1202 (for row building)	20 ft.	18.47 ft.	Same	Existing non-conformity
Lot Area § 1202	2,000 sq. ft. min.	865 sq. ft.	Same	Existing non-conformity
Height D § 1203	35 ft. and 3 stories max.	20 ft. , 2 stories	31.75 ft., 3 stories	None Required
Lot Occupancy **D § 1204**	60% max. 70%, by special exception	69.8%%	70%, only for 2nd floor	**Special Exception Requested**.
Front Setback D § 1205	Consistent with adjacent properties	Consistent	Consistent	None Required
Rear Yard D § 1206	20 ft. min.	11 ft.	7.7 ft.	**Special Exception Requested**
Side Yard D § 1207	None required	0 ft.	0 ft.	None Required
Pervious Surface D § 1208	20% min.	Not provided	Not provided	None Required
Parking C § 701	None required	0 spaces	0 spaces	None Required

V. OFFICE OF PLANNING ANALYSIS

The property has been used as a flat since at least 1958, as indicated by a certificate of occupancy (C of O) from that year. However, a flat is a nonconforming use in the R-20 zone and expansion would require variances. Due to the high burden of proof needed to secure a use variance, the revised application proposes to convert the flat into a conforming single-household residence with an accessory apartment. The second-floor rear porch and staircase to the back yard would be replaced with an uncovered metal deck and a circular stair that would marginally increase the second floor's lot occupancy by 0.2% and would decrease the rear yard's depth by 3.3 feet. While there would also be a third-floor addition and a roof deck, these would be set-back from the second floor's rear wall and would not require lot occupancy relief.

A. .Special Exception for an Accessory Dwelling Unit in the R-20 Zone

Subtitle U § 253.4 permits an accessory apartment in this zone in either a principal dwelling or an accessory building if approved by the BZA subject to the following criteria.[1] .

1

U 253.5: Either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use.

The applicant-owner states that the building shall be owner-occupied as long as there is an accessory apartment use in the building.

U253.6 The total number of persons that may occupy the accessory apartment shall not exceed three (3), except in the R-19 or R-20 zone where the aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6).

The applicant states that no more than 6 people, in aggregate, shall occupy the building.

U 253.7 An accessory apartment *located in the principal dwelling*[2] *shall be subject to the following conditions:*

(a) *The house shall have a minimum of gross floor area* [of 1200 square feet in the R-20 zone], *exclusive of garage space…*

The house would be expanded to 1,669 square feet.

(b) The accessory apartment unit may not occupy more than thirty-five percent (35%) of the gross floor area of the house.

The accessory unit would occupy no more than 34.4% of the house.

(c) Except as provided in Subtitle U § 253.7(d), if an additional entrance is created to a house it shall not be located on a wall of the house that faces a street;

The existing entrance on 35th Place would continue to be the only entrance to the house.

An additional entrance to a house in an R-3, R-13, R-17, or R-20 zone may be located on a wall of the house that faces a street provided…

No additional entrances would be created.

Subtitle U, § 253.4 permits an accessory apartment in the R-19 and R-20 zones "as a special exception in either a principal dwelling or an accessory building…". However, Subtitle U § 253.9 states that an accessory apartment in those zones shall be permitted only on the second story of a detached accessory building, without limiting that restriction to an accessory apartment in an accessory building. It seems likely that the latter section was intended to apply only to an accessory apartment proposed within an accessory building, but the plain language of the regulation does not state that. Given differences between the two subsections on where an accessory apartment in the zone may be located, out of an abundance of caution the applicant may wish to request a waiver from Subtitle U § 253.9. Such a waiver is permitted by Subtitle U § 253.10, which allows the Board to waive up to two of the requirements specified in Subtitle U § 253, other than the owner-occupancy requirement and the limitation on the number of building occupants in the R-19 and R-20 zones. OP would have no objection to such a waiver.

B. Special Exception Relief pursuant to Subtitle D § 5201.1 from the Lot Occupancy Requirements of Subtitle D §1204 and the Rear Yard Requirements of Subtitle D § 1206

1. Subtitle D § 5201.1

5201.2 For a new or enlarged accessory structure to a residential building on a non-alley lot, the Board of Zoning Adjustment may grant special exception relief from the following development standards as a special exception and the general special exception criteria at Subtitle X, Chapter 9.

(a) ***Lot occupancy*** *subject to the following table*

TABLE D § 5201.1(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION	
Zone	Maximum Lot Occupancy
R-3, R-13, and R-17 R-20 - Row dwellings	70%
R-20 - Detached and semi-detached dwellings All other R zones	50%

(a) ***Yards****, including alley centerline setback; and*

(b) *Pervious surface.*

The applicant is requesting special exceptions for lot occupancy and yards.

5201.4 An applicant for special exception under this section shall demonstrate that the proposed addition, new building, or accessory structure, shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

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

The proposed 2nd-story stair landing/ deck would be similar to the size of the existing landing/deck. The circular stairway to the backyard would be uncovered and open to the air. Together they would add only 0.2% to lot occupancy. The third story addition would be set-back from the rear wall of the second story and would be no deeper than the third story addition at 1932 35th Place, to the south. The nearby properties to the west are separated by an alley, and streets separate the applicant's property from properties to the north and east. With the proposed construction's size, location and design, there should not be an undue impact on the light and air available to nearby properties. The 3.3-foot decrease in the rear yard would have no impact on the light or air available to neighboring properties.

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

The proposed landing/deck and stairs would replace a land/deck and stairs that have existed for many years but that are not code compliant. There should be no change in the frequency of use of these elements. The proposed third floor addition would include both a third-floor deck and a roof deck. Both would be set-back 5 feet from the existing building's footprint, and a roof deck. Given sight lines and distances the new construction should result in no undue compromise on the use and

enjoyment of neighboring properties. The minimal decrease in the depth of the rear yard should have no impact on the privacy of use and enjoyment of the neighboring properties/

(c) The proposed addition or accessory structure, together with the original building, or the new principal 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 street or alley frontage; and

The proposed third floor addition would be approximately the same height and depth as additions already made to 1928, 1930 and 1932 35th Place. The roof deck would be surrounded by a parapet on three sides. It would be no taller than the top of the cornice at 1932 35th Place. This addition and roof deck should not substantially intrude on the character, scale and pattern of nearby houses.

The metal circular stairs that would replace the existing non-code compliant straight wooden steps, and the circular stairs from the third floor to the roof deck, would be visible from the public alley behind the property and from Whitehaven Parkway. With recent additions to rear of 1928 and 1930 35th having established a modern aesthetic for rear additions on the street – including metal circular stairs at 1928 35th Place, the applicant's proposed staircases should not substantially intrude on the character, scale and pattern of nearby houses. With respect to the decrease in the rear yard's size, this should have no impact on the character, scale and pattern of nearby houses, since the yard would be fenced on three sides, and would not be visible from a public street or 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, new building, or accessory structure to adjacent buildings and views from public ways.

The application provides sufficient graphics to represent these relationships.

C. Special Exception Relief Pursuant to Subtitle X § 901.2 for: 1) an Accessory Dwelling Unit; 2) Lot Occupancy greater than 60% but no greater than 70%; and 3) a Rear Yard of less than 20 feet in Depth

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

Among the intentions of the R-20 zone are the retention and reinforcement of the area's mix of housing types and the retention of the area's quiet residential character and the control of compatible nonresidential uses. The proposed use of the building as a single-household residence with an accessory unit would be consistent with the intent of the zone, even more than its longtime non-conforming use as a flat. The lot occupancy increase and rear yard decrease would be minimal and would enable the replacement of a stairway that does not conform to code with one that does. The resulting lot occupancy and rear yard would not be inconsistent with the intent of the zone.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

As discussed above, the requested special exceptions would not appear to adversely impact the use of neighboring property.

iii. Would the proposal meet conditions specified by the title?

As indicated above, the proposal would meet the conditions specified by the title for each of the requested special exceptions.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

The District of Department of Transportation filed a letter at Exhibit 20 noting no objection to the then-requested variances but had not yet commented on the revised special exception relief at the time OP completed this supplemental report. There were no other comments from other District agencies in the record when this report was completed.

VII. ADVISORY NEIGHBORHOOD COMMISSION

ANC 2E filed a letter of support for the previously requested variances at Exhibit 29 but had not commented on the revised special exception requests at the time OP completed this report.

VIII. COMMUNITY COMMENTS

The owners of the adjoining building at 1932 35th Place and the adjacent property at 3526 Whitehaven Parkway filed letters in support of the variance application (Exhibits 18 & 19) but had not commented on the revised special exception requests when OP completed this report.

There was one filing in opposition to the previous variance requests, at Exhibit 33.

There were no community comments on the revised special exception at the time OP completed this report.