

## **MEMORANDUM**

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

**FROM:** Ron Barron, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** October 18, 2024

**SUBJECT:** BZA Case 21187, Request for special exception relief to permit conversion of an existing one-story commercial structure with a two-story, with penthouse, 14-unit multifamily residential structure at 3309 12th Street, NE

### **I. OFFICE OF PLANNING RECOMMENDATION**

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

- Subtitle C § 701.5, minimum parking requirements (1 space required; 0 spaces existing; 0 spaces proposed)
- Subtitle G § 207.5, rear yard requirements (20 ft. min, required; 18 ft. existing; 18 ft. proposed)

While OP supports approval of the relief requested in this self-certified application, additional relief may be required. The proposal includes a design feature that the applicant asserts is a side yard, but which could be interpreted as an open court, in which case additional relief would appear to be required. However, as this is a self-certified application, OP has provided analysis and recommendation as filed.

### **II. LOCATION AND SITE DESCRIPTION**

Address	3309 12th Street, NE
Applicant	3309 12th Street Holdings, LLC
Legal Description	Square 3930, Lot 44
Ward, ANC	Ward 5; ANC 5B
Zone	MU-3A
Historic District	None
Lot Characteristics	Regular interior lot with 4,650 sq. ft. of area, fronting onto 12 <sup>th</sup> Street NE, and with no rear alley.
Existing Development	One-story commercial building.
Adjacent Properties	To the north, the property abuts a one-story religious structure. To the east, it abuts a two-story residential lot. To the south are lots developed with a one-story commercial structure on 12 <sup>th</sup> Street, and a two-story residential structure facing Kearny Street NE.

Surrounding Neighborhood Character	The neighborhood is characterized by a mix of low and moderate-density commercial and residential uses.
Proposed Development	Conversion of an existing one-story commercial structure with a two-story, with penthouse, 14-unit multifamily residential structure.

### III. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone-	Regulation	Existing	Proposed	Relief
Density G § 201	1.0 FAR 1.2 (IZ) FAR	0.7 FAR	1.2 FAR	None Requested
Height G § 203	40 ft. max.	16 ft.	25 ft.	None Requested
<b>Rear Yard G § 207</b>	<b>20 ft. min.</b>	<b>18 ft.</b>	<b>No Change</b>	<b>Sp. Ex. Relief Requested</b>
Side Yard G § 208	2 in. per foot of building height	~ 1 ft.	8.6 ft.	None Requested
<b>Courts G § 209</b>	<b>10 ft. min.</b>	<b>15 ft.</b>	<b>6.3 ft.</b>	<b>None requested (See note below)</b>
Lot Occupancy G § 210	60 % max.	71 %	60%	None Requested
<b>Parking C § 701</b>	<b>1 space</b>	<b>0 spaces</b>	<b>0 spaces</b>	<b>Sp. Ex. Relief Requested</b>

### IV. OFFICE OF PLANNING ANALYSIS

The subject property is currently developed with a single-story building with retail use. The applicant is proposing conversion to multi-family residential use with 14 units. The relief requested is as follows:

#### A. PARKING

The minimum parking required per Subtitle C § 701 would be 1 space given that the subject property is less than 0.5 mi. from the Brookland CUA Metro station. The applicant is proposing to include no parking spaces. Relief from this section is permitted by Subtitle C § 703.

#### B. Rear Yard Relief

The applicant is proposing to retain an existing nonconforming rear yard. The minimum rear yard in the MU-3A zone would be 20 ft. The applicant is proposing to provide 18 ft. Relief from this requirement is permitted by special exception pursuant to Subtitle G § 207.

#### Additional Relief not Requested

The applicant is including a 6.3 ft. wide open space that is set back approximately 15 ft. from the provided side yard. The applicant argues that, per Subtitle G § 208.6, the setback should not be considered an open court, but a side yard. This section states, *“Any portion of a building set back from the side lot line shall be considered a side yard and not a court.”* However, based on past

interpretations from the DoB, this section may not be applicable because the setback opens onto a side yard and not the side lot line. Should it be determined that this is an open court, additional relief from the following sections may be necessary:

- Subtitle G § 209.1, Court Width (4 in. per 1 ft. of height of court but not less than 10 ft. required, 6.3 ft. proposed)
- Subtitle C § 1504.1(d), Penthouse Setbacks from an Open Court (10 ft. required, 0 ft. proposed)

#### **A. Subtitle C § 703 SPECIAL EXCEPTIONS FROM MINIMUM PARKING NUMBER REQUIREMENTS**

*703.2 The Board of Zoning Adjustment may grant a full or partial reduction in the number of required parking spaces, as a special exception pursuant to Subtitle X, Chapter 9, and subject to the applicant's demonstration to the Board's satisfaction of at least one (1) of the following:*

*Section (a) through (g) are not applicable...*

**(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 Public Space Committee; 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;*
  - (i) The presence of healthy and mature canopy trees on or directly adjacent to the property; or*
  - (j) The nature or location of an Historic Resource precludes the provision of the number of parking spaces required by this chapter; or providing the required number of parking spaces would result in significant architectural or structural difficulty in maintaining the integrity and appearance of the Historic Resource.*

The site lacks access to a public alley, leaving 12<sup>th</sup> St. NE as the only means of access. The site does have an existing curb cut, and a new curb cut would be unlikely to be approved. Any parking space located between the street and the façade of the building would be nonconforming. The site is too narrow to support underground parking, or to provide adequate access to parking in the rear lot.

#### **Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS**

The request for relief from parking requirements is not inconsistent with Subtitle X § 901 based on the following:

*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:*

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

The requested relief from the parking requirements would be in harmony with the general purpose and intent of the Zoning Regulations and Maps. Approval of the requested parking relief would facilitate construction of a moderate density multi-family residential structure. The MU-3A zone is intended to “provide facilities for housing, shopping, and business needs, including residential, office, service, and employment centers,” as well as “multiple dwelling residential development at varying densities.” The proposed use is consistent with this section.

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

Approval of the requested relief from the parking requirements for one parking space should not adversely affect the use of neighboring property. The lot is located less than 0.5 miles from the Brookland/CUA Metro station which makes it appropriate for the requested reduction. Any parking on-site would require a new curb cut from 12<sup>th</sup> Street, which would eliminate street parking opportunities and impact the sidewalk for pedestrians.

#### **B. Subtitle G § 207 REAR YARD**

*207.14 Relief from the rear yard requirements of Subtitle G § 207 may be permitted if approved by the Board of Zoning Adjustment as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:*

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

The applicant is proposing windows that look onto the rear yard. This rear yard shares a side lot line for the residential property to the east (1208 Kearny St. NE) and looks into that properties rear yard. As such, the windows would look onto the rear yard of that lot, and the garage which would be more than 50 ft. away.

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

Not applicable; not an office building.

- (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;*

As stated above, the sightlines from the proposed construction would be into a rear yard of its nearest neighbors and the only structure within view would be an accessory building. No habitable rooms would be within direct sight of any new windows.

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

Not applicable.

- (e) *Upon receiving an application for relief from rear yard requirements of this section, the Board of Zoning Adjustment shall submit the application to the Office of Planning*

*for coordination, review, report, and impact assessment, along with coordination of reviews in writing from all relevant District of Columbia departments and agencies, including:*

- (1) The District Department of Transportation;*
- (2) The Department of Housing and Community Development; and*
- (3) The Historic Preservation Office if the application involves a historic district or historic landmark.*

The District Department of Transportation is reviewing the application. There is no applicable historic district that covers this square and lot.

### **Subtitle X Section 901 SPECIAL EXCEPTION REVIEW STANDARDS**

The request for relief from side yard requirements is not inconsistent with Subtitle X § 901 based on the following:

*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:*

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

The requested rear yard relief would facilitate conversion of a vacant commercial building to a residential use. As stated above, this use would be in harmony with the purpose and intent of the MU-3A zone.

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

The requested rear yard relief would not tend to affect adversely, the use of neighboring property. As discussed above, the requested reduction would have a minimal impact on neighboring property.

### **V. OTHER DISTRICT AGENCIES**

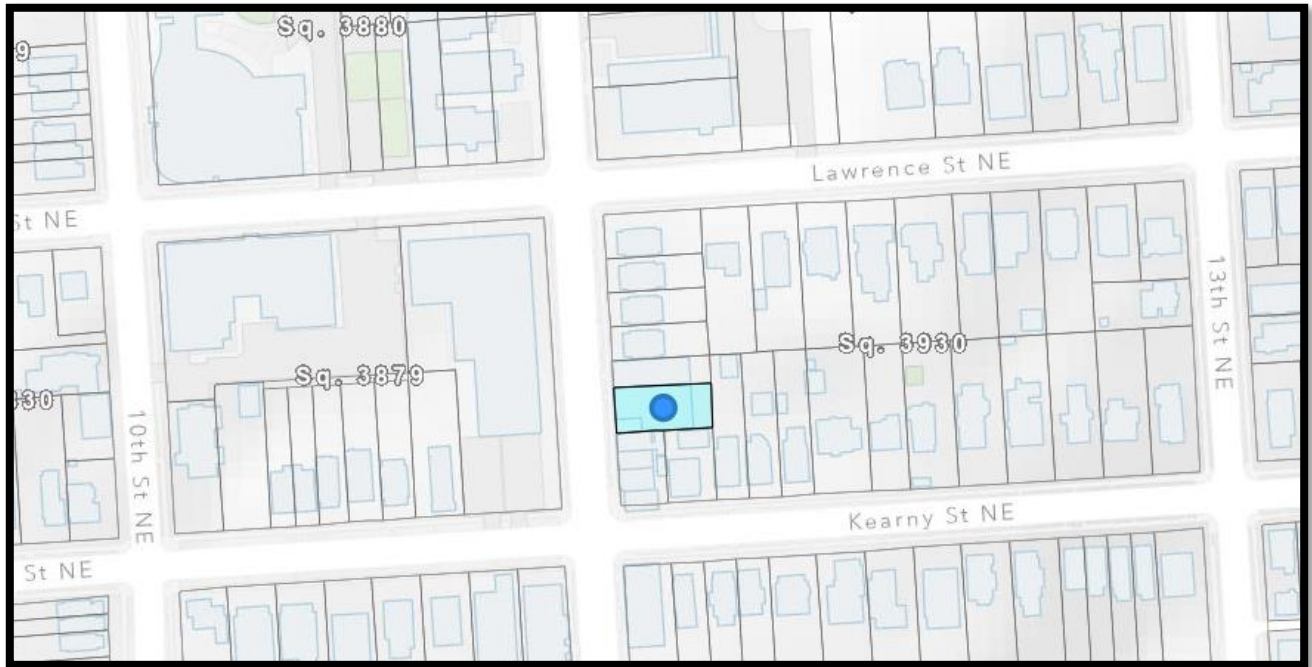
No other District agencies have submitted comment to the record at this time.

### **VI. ADVISORY NEIGHBORHOOD COMMISSION**

As of the date of this report, ANC 5B had not submitted a report to the record at this time.

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

No comments from the community have been submitted to the record at the time of this report.



**Location Map**