



## **MEMORANDUM**

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

**FROM:** Michael Jurkovic, AICP, Development Review Specialist

*JL* Joel Lawson, Associate Director Development Review

**DATE:** February 3, 2025

**SUBJECT:** BZA Case 21216: Request for Area Variances to allow a re-subdivision at 418 & 422 Franklin Street NE and 2804 5th Street NE, and Special Exception relief to allow three two-family dwellings.

### **I. BACKGROUND AND SUMMARY ANALYSIS**

The Office of Planning (OP) has had a number of conversations about this proposal and the requested relief with the applicant, and appreciates the additional filings provided to the record. OP also supports the removal of the previously requested relief from rooftop deck access stairwells, as shown on the revised building plans at Exhibit 31B.

In general, OP does not find that the justification, particularly for the first prong of the variance test, to be strong. As discussed in the OP analysis below, there are unusual / unique circumstances associated with this lot configuration, but the nexus of these unique factors to a practical difficulty to the owner/developer in providing a reasonable development consistent with the regulations is less obvious. In particular, OP does not find the apparent argument that development potential is difficult to maximize with this lot configuration to be compelling – maximizing development potential is not a guarantee under zoning, and many lots in all zones have characteristics that make fully maximizing all aspects of zoning not possible. But, there may be some practical difficulty to the developer in determining what to do with the dogleg areas – they are not large enough for a practical use, and so could present maintenance, privacy, and security issues if they are retained.

The proposal results in a lot configuration that appears to be more, not less, consistent with the intent of the zone. It does not appear to result in a level of development inconsistent with the intent of the zone. It should not result in undue impacts on neighbors. Finally, the proposed lots would be more consistent with streetscape character, particularly along 5th Street, and the proposal has community support.

### **II. RECOMMENDATION**

While OP does not accept all of the applicant's justifications for the requested variance relief, based on the OP analysis, OP recommends **approval** of area variances pursuant to X § 1002 for:

- 418 Franklin Street NE - E § 202.1, Minimum Lot Area Row Structure (1,800 sq. ft. required, 1,458 sq. ft. existing; 1,104 sq. ft. proposed);
- 422 Franklin Street NE - E § 202.1, Minimum Lot Area Row Structure (1,800 sq. ft. required, 1,202 sq. ft. existing; 1,104 sq. ft. proposed); and
- 2804 5th Street NE - E § 202.1, Minimum Lot Area Semi-detached (3,000 sq. ft. required, 1,359 sq. ft. existing; 1,950 sq. ft. proposed).



OP also recommends **approval** of the following special exception relief pursuant to Subtitle E § 5201 and Subtitle X § 901:

- 418 Franklin Street NE
  - E § 207.4, Rear Expansions (10 ft. max., 12 ft. proposed); and
  - E § 210, Lot Occupancy (60% max. by-right, 40% existing, 69% proposed)
- 422 Franklin Street NE
  - E § 207.4, Rear Expansions (10 ft. max., 12 ft. proposed); and
  - E § 210, Lot Occupancy (60% max. by-right, 48% existing, 70% proposed)
- 2804 5th Street NE
  - E § 207.1, Rear Yard (20 ft. min., 22.33 ft. existing, 6 ft. proposed);
  - E § 207.4, Rear Expansions (10 ft. max., 15 ft. proposed); and
  - E § 210, Lot Occupancy (60% max. by-right, 46% existing, 70% proposed)

### III. LOCATION AND SITE DESCRIPTION

Address:	418 & 422 Franklin Street NE and 2804 5 <sup>th</sup> Street NE
Applicant:	Sullivan & Barros on behalf of Latasha D. Boone Trustee
Legal Description:	Square 3639; Lots 26, 27 & 28
Ward / ANC:	Ward 5; ANC 5F
Zone:	RF-1, low to moderate density residential
Historic Districts	N/A
Lot Characteristics:	26: Corner Lot measuring 28.27 ft. x 52.97 ft. 27: Interior lot measuring 16 ft. x 60.67 ft. with an 8 ft. x 28.47 ft. dogleg to 5 <sup>th</sup> St NE. 28: Interior lot measuring 16 ft. x 68.67 ft. with an 8 ft. x 44.47 ft. dogleg to 5 <sup>th</sup> St. NE. There is no rear alley.
Existing Development:	Each property is improved with a Single-Family Dwelling fronting Franklin Street NE.
Adjacent Properties:	Row and Semi-detached Dwellings
Surrounding Neighborhood Character:	Moderate Density Residential Neighborhood
Proposed Development:	Each property would be improved with a three-story two-family flat. The second story units for each row building would have access through a shared stairwell on the Semi-detached 2804 5 <sup>th</sup> Street NE property.

#### IV. ZONING REQUIREMENTS and RELIEF REQUESTED

RF-1 Zone	Regulation	Existing	Proposed <sup>1</sup>	Relief:
Density E § 201	2 principal units max.	1 at each property.	2 at each property.	None Requested
Lot Width E § 202	18 ft. min.	<i>418 &amp; 422 Franklin Street NE</i>		None Requested
		16 ft.	No Change	
		<i>2804 5<sup>th</sup> Street NE</i>		
		28.27 ft.	No Change	
Lot Area E § 202	Row: <b>1,800 sq. ft. min.</b>	<i>418 Franklin Street NE</i>		Variances Requested
		<b>1,458 sq. ft.</b>	<b>1,104 sq. ft.</b>	
		<i>422 Franklin Street NE</i>		
		<b>1,202 sq. ft.</b>	<b>1,104 sq. ft.</b>	
	Semi-Detached: <b>3000 sq. ft.</b>	<i>2804 5<sup>th</sup> Street NE</i>		
		<b>1,359 sq. ft.</b>	<b>1,950 sq. ft.</b>	
Height E § 203	35 ft. max.	19.5 ft.	35 ft.	None Requested
Front Yard E § 206	Within range of existing.	0 ft.	No Change	None Requested
Rear Yard E § 207	<b>20 ft. min.</b>	<i>418 Franklin Street NE</i>		None Requested
		33 ft.	21 ft.	
		<i>422 Franklin Street NE</i>		
		25 ft.	21 ft.	
		<i>2804 5<sup>th</sup> Street NE</i>		Relief Requested
		<b>22.33 ft.</b>	<b>6 ft.</b>	
Rear Extension E § 207.4	<b>10 ft. max. beyond neighboring houses</b>	<i>418 Franklin Street NE</i>		Relief Requested
		<b>N/A</b>	<b>12 ft.</b>	
		<i>422 Franklin Street NE</i>		
		<b>N/A</b>	<b>12 ft.</b>	
		<i>2804 5<sup>th</sup> Street NE</i>		
		<b>N/A</b>	<b>27 ft.</b>	
Side Yard E § 208	None required, but 5 ft. min. if provided.	<i>2804 5<sup>th</sup> Street NE</i>		None Requested
		3.67 ft.	No Change	

<sup>1</sup> Provided by the applicant.

RF-1 Zone	Regulation	Existing	Proposed <sup>1</sup>	Relief:
<b>Lot Occupancy</b> E § 210	<b>60% max.;</b> <b>70% by sp.ex.</b>	<b>418 Franklin Street NE</b>		<b>Relief Requested</b>
		<b>40%</b>	<b>69%</b>	
		<b>422 Franklin Street NE</b>		
		<b>48%</b>	<b>70%</b>	
		<b>2804 5<sup>th</sup> Street NE</b>		
Pervious Surface E § 211	20 % min.	<b>46%</b>	<b>70%</b>	
		Not provided	Not provided	None Requested

## V. OP ANALYSIS

### Subtitle E Section 5200 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS

5200.2 *Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.*

Requested minimum lot area relief may be sought through an area variance.

### Subtitle X Section 1000 VARIANCE GENERAL PROVISIONS

1000.1 *With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."*

#### *Extraordinary or Exceptional Situation or Condition Resulting in Practical Difficulty*

##### *Extraordinary or Exceptional Situation or Condition*

The applicant provides factors which they cite as resulting in an extraordinary or exceptional condition, such as past litigations and the existing houses on the lots. For the most part, OP does not feel that they have relevance to the current situation or are unique. However, the existing lot configuration of two dog-leg lots wrapping a third, corner lot is an unusual condition.

##### *Resulting Practical Difficulty*

To meet this portion of the test, a nexus is to be established between the unique

characteristics and a practical difficulty to the owner/developer. In this case, as discussed below, OP is not sure there is a particularly strong argument for a practical difficulty arising from the lot's unique circumstances – the unusually shaped lots are already developed consistent with the regulations, and it does not appear that there is a practical difficulty in the redevelopment of each property as a two-family dwelling by-right.

Instead, the applicant's argument includes whether the individual properties could be improved with the desired level of use without the granting of area variance relief. OP is unsure of the relevance of this argument as the record does not contain renderings or other materials fully supporting this claim. More importantly, while OP has found that variance relief can be justified to achieve a reasonable development on a lot where this might not otherwise be the case, OP does not accept an argument that variance relief is justified to maximize development potential, particularly without supporting documentation.

With respect to the current shape of the lots and how that affects potential use of the properties, again OP does not accept that the configuration unduly limits the use of the three lots – each lot is currently developed with a conforming building that, it appears, could be added onto and converted to a flat without a lot reconfiguration. However, in addition to streetscape character impacts noted below, the current configuration would seem to OP to present some level of difficulty to the owner/developer in simply deciding what to do with the dogleg areas, which could present unnecessary privacy, security and maintenance concerns, particularly to the future owners of the units on the three properties.

Therefore, the lot configuration presents an unusual situations with respect to with the norms of Square 3639, and this does appear to present some practical difficulty to the owner.

#### ***No Substantial Detriment to the Public Good***

OP is supportive of the applicant's intention to add additional dwelling units to the subject properties, consistent with the zone. The applicant has provided renderings and a shadow study comparing a by-right development to the proposed one, and the potential additional impacts would not appear to be undue. However, the revised configuration would be substantially more consistent with the streetscape character of 5<sup>th</sup> Street, where the current dogleg sections interrupt the streetscape and, with the new development, would have to be secured and could suffer from lack of maintenance or neglect. The applicant has received support from the ANC, the neighbor adjacent to the north, and several area residents. Therefore, the requested relief should not result in undue impacts on the neighborhood.

#### ***No Substantial Impairment to the Intent, Purpose, and Integrity of the Zoning Regulations***

Granting of the requested relief should not result in substantial impairment to the intent, purpose, and integrity of the Zoning Regulations past what could be accomplished by-right. The RF-1 Zone is intended to provide for areas predominately developed as row buildings on small lots with no more than two dwellings per lot. In this case, the existing properties, which have existed since their subdivision in 1948,

are all substandard lots. Even without the proposed lot configuration, the lots could be converted to two-family dwellings by-right through the expansion of the existing buildings so the proposal should not intensify the use of the properties past what could be achieved by-right

While the applicant's proposal to create a more uniform lot configuration among the three properties would result in both Franklin Street properties becoming more non-conforming with respect to the RF-1 zone's minimum lot area requirement for row buildings, the corner lot would be more conforming. Because the lots are already non-conforming, and there would be no option to make all three lots conforming to current requirements.

**Special Exception from Lot Occupancy and Rear Yard – Subtitle E § 210.1 and § 207.1 and 207.4 pursuant to E § 5201**

5201.1 *For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:*

- (a) *Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;*
- (b) *Yards, including alley centerline setback;*
- (c) *Courts; and*
- (d) *Pervious surface.*

The applicant is requesting special exception relief for the proposed additions on all three lots, rear yard relief for the corner lot, and rear extension relief, to varying degrees, for all three lots.

5201.2 & 5201.3 *[not applicable]*

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, in particular:*

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

The developments on all three lots would require lot occupancy and rear extension relief, as well as rear yard relief for the corner lot. The applicant has provided solar studies as part of the amended architectural plans at Exhibit 31B, which compare a by-right option to the proposal, and which show that at times of the year, there would be a greater light impact on 5<sup>th</sup> Street and on the side elevation and rear yard of the house to the north. The largest addition would be on the corner lot, where most of the potential shade and air flow impacts would be on the 5<sup>th</sup> Street right of way, on the other lots that are part of this application, and on the neighbor to the north who has indicated support for this proposal. On the other two lots, the rear yard would be maintained and the rear extension would be smaller, at 2 feet beyond what would be permitted by right, so should not result in potentially undue impact.

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

The privacy of neighboring properties should not be unduly impacted as the views to the adjacent property would essentially remain as currently exists. Although relatively close to the adjacent building to the north, the proposed corner lot addition would face the side of that building. In addition, the plans do not show windows on the north façade of the corner lot. The other lots would provide the required rear yard, and the rear facades of those two buildings would also face the side of the property to the north. The adjacent neighbors have submitted letters in support and have expressed no privacy concerns.

(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 rear additions to the interior lots would not be visible from either Franklin or 5<sup>th</sup> Streets. The corner lot rear addition would be visible from 5<sup>th</sup> Street in particular, but is generally designed to be residential in character and to read more as a “front” rather than “side” elevation on 5<sup>th</sup> Street. The requested relief would therefore result in a proposal that would better reinforce 5<sup>th</sup> Street character.

(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 or accessory structure to adjacent buildings and views from public ways.*

The application materials include revised architectural and site plans, elevations and photos at Exhibit 31B, including solar studies.

5201.5 *The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.*

No special treatment is recommended.

5201.6 *This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.*

Granting the requested lot occupancy, rear extension, and rear yard relief is within that which is allowed by special exception in the RF-1 zone and would not appear to result in the introduction of a nonconforming use as the property would continue to be for residential use with two units on each lot.

## **Subtitle X § 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:*

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

The proposal would not be inconsistent with the purpose and intent of the RF-1 zone to allow predominantly row dwellings with up to two principal units in each. The request would be consistent with all other requirements, and the requested relief would be within that which is allowed 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*

As noted above, the requested relief should not unduly impact the use of neighboring properties, as it relates to light, air, and privacy.

(c) *Subject in specific cases to the special conditions specified in this title.*

As demonstrated above, the proposal sufficiently addresses the criteria of Subtitle E § 5201.

## **VI. OTHER DISTRICT AGENCIES**

DDOT has provided a report to the record noting no objection to the approval of this application.

## **VII. ADVISORY NEIGHBORHOOD COMMISSION**

ANC 5F has submitted a letter of support to the record at [Exhibit #28](#).

## **VIII. COMMUNITY COMMENTS**

As of the writing of this report, there are six letters of support in the record, including one from the neighbor to the north.

Attachment: Location Map

Figure 1: Location Map

