

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 21235 of 5058 Central Ave Trust, pursuant to 11 DCMR Subtitle X § 1002, for a use variance from Subtitle U § 201 to allow a two-unit flat in an existing semi-detached building in the R-2 zone at 5058 Central Avenue, S.E. (Square 5286, Lot 837).

HEARING DATE: March 5, 2025

DECISION DATE: March 5, 2025

DECISION AND ORDER

This application was filed on October 5, 2024 on behalf of 5058 Central Ave Trust (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters dated November 27, 2024 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation, the Department of Buildings (“DOB”), Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the property is located, Single Member District ANC 7C08, ANC 7E, which was also an “affected ANC,”¹ Single Member District ANC 7E05, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was sent to lessees of the subject property by December 17, 2024. Notice was published in the *D.C. Register* on December 13, 2024 (71 DCR 015065) as well as through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant, ANC 7C, and ANC 7E were automatically

¹ The Zoning Regulations define an “affected Advisory Neighborhood Commission” as “The ANC for the area within which the property that is the subject of a Zoning Commission or Board of Zoning Adjustment application or appeal is located, except that if the subject property is located on a street that serves as a boundary line between two ANCs, then the term ‘affected ANC’ means both ANCs.” (Subtitle B § 100.2.)

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parties in this proceeding. The Board received no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony from Cynthia Hartley in support of the application for zoning relief needed to allow two principal dwellings in the existing building at the subject property.

OP Report. By memorandum dated February 21, 2025, the Office of Planning recommended denial of the use variance requested by the Applicant. (Exhibit 22.)

ANC Report. By letter dated March 5, 2025, ANC 7C indicated that at a duly noticed meeting held on February 13, 2025, with a quorum present, ANC 7C voted in support of the application. (Exhibit 26.)

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the northeastern side of Central Avenue, S.E., between 50th and 51st Streets S.E., with the address 5058 Central Avenue, S.E. (Square 5286, Lot 837).
2. The subject property is irregularly shaped but generally rectangular. The lot has 28 feet of frontage on Central Avenue and its side lot lines extend approximately 132.9 feet (west) and 142.5 feet (east). The lot area is approximately 3,856 square feet. (Exhibits 2, 5, 12.)
3. The subject property is improved with a semi-detached building containing two stories and a basement. The existing building is approximately 20 feet wide and extends approximately 34.1 feet deep, not including a one-story front porch. The porch is set back more than 15 feet from the front lot line and the building has a side yard on the eastern side of the lot. (Exhibits 2, 5, 7, 22.)
4. The Applicant acquired the subject property in February 2016. At the time, the building was used as a principal dwelling. The Applicant bought the subject property with the intent to create two rental units and "never" intended to occupy the building. (Exhibits 4, 7, 7A; Transcript of March 5, 2025 at 143, 147, 170.)
5. In 2017, the Applicant undertook a project to renovate the existing building and convert it to two dwelling units. The Applicant hired an engineering firm licensed in the District of Columbia to develop design drawings and obtain a permit as well as a general contractor to oversee the project, including the conversion of the basement to a separately metered (gas and electric) one-bedroom apartment. The Applicant also hired a third-party inspector certified by the Department of Consumer and Regulatory Affairs ("DCRA"). (Exhibits 4, 7, 25; Transcript of March 5, 2025 at 141, 147-150.)
6. The engineering firm applied for a building permit for the Applicant's project. On

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February 23, 2017, an employee of the engineering firm sent an email to an employee of DCRA, a “structural reviewer” who had “left several comments” on the Applicant’s building permit application. The email sought clarification of a comment about the scope of work, explained that “only the portion on the homeowner’s property (lot 837, house number: 5058) is being modified,” and questioned whether “this circumstance [was] different than simply converting the single dwelling unit at 5058 Central Ave into a 2-unit flat?” The email mentioned that the firm had undertaken the same approach “with all other rowhouses/semidetached that [the firm had] converted into two units.” (Exhibit 24 at Exhibit B.)

7. The DCRA structural reviewer responded by email sent February 24, 2017. The response addressed building code requirements applicable when “one dwelling of a structure constructed of two semi-detached single-family dwellings is increased to two dwelling units and constitutes three semi-detached dwelling units.” (Exhibit 24 at Exhibit B.)
8. The employee of the engineering firm acknowledged DCRA’s response by email sent later the same day. The follow-up email noted that the Applicant was “proposing a change in occupancy and the homeowner will be obtaining a certificate of occupancy” and sought additional information about building code requirements related to fire safety. (Exhibit 24 at Exhibit B.)
9. By email sent February 27, 2017 to the Applicant, her engineering firm, and her contractor, the DCRA structural reviewer provided additional information about life safety requirements. By subsequent email from the Applicant’s contractor to the Applicant and the engineering firm, the contractor acknowledged DCRA’s guidance, which the contractor indicated “can be completed very quickly,” noting that the “construction of the unit separation is on the drawing now.” (Exhibit 24 at Exhibit B.)
10. On April 26, 2017, DCRA issued Building Permit No. B1702150 to the Applicant for the subject property. The description of work was stated as “Interior renovation and conversion from single family into 2 unit flat, including mechanical, electrical and plumbing. Lower basement slab and new basement entry.” The existing use was described as “single family” and the proposed use was stated as “Flat (Two Family).” (Exhibit 7A.)
11. The Applicant began the renovation project, which was completed in August 2017 at a total cost of approximately \$200,000. (Exhibits 4, 7, 24; Transcript of March 5, 2025 at 150.)
12. The Applicant has rented the two units to tenants since 2017. (Exhibits 4, 7, 25.)
13. In 2023, the Applicant undertook a project to install solar panels on the roof of the building at the subject property. The Applicant retained an installer and submitted an application to

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the Department of Buildings for a permit (No. SOL2400621).² (Exhibits 7C, 25.)

14. By email sent January 22, 2024 to a program analyst in the Office of Zoning Administration at the Department of Buildings, the Applicant stated that the installer “recently informed [the Applicant] that there is a zoning hold” on the solar permit application. The email reported that the Applicant spoke in mid-January with another person “in zoning” who informed the Applicant that “there was not a hold, but whatever it is attached to the property” and had been “since 2018.” The Applicant asked the program analyst for advice on the status and how to address the matter. (Exhibit 7C.)
15. By email sent to the Applicant on March 12, 2024, the DOB program analyst stated that the “Office of Zoning Administrator (OZA) can lift the administrative zoning hold to allow further processing of the solar permit application following an inspection confirmation that the basement conforms with the gross floor area limitation for an accessory apartment.” The email also stated that:

OZA approved building permit B1702150 to allow an accessory apartment in the basement; however, the description of work on the application stated a conversion from a single family dwelling into two units (flat.) Additionally, certificate of occupancy (C of O) application CO1703872 was submitted. Further, there was no final inspection information in DOB’s permit system for B1702150, which is required. The property was flagged as a result because two units would not be allowed as a matter of right in the property’s zone R-2. OZA understands that there may have been some confusion as to how an accessory apartment should be represented in the description of work on permit applications at that time and may be able to resolve the matter via the aforementioned inspection.... Once OZA receives the result of the inspection and [has] reviewed it [OZA] can share the final determination regarding removal of the administrative zoning hold....

(Exhibit 7C.)
16. By email sent on March 28, 2024, the DOB program analyst informed the Applicant that “the review of the inspection information...confirms that the maximum gross floor area (GFA) for an accessory apartment is not being exceeded” and “the Office of the Zoning Administration (OZA) has confirmed that they approved building permit B1702150 for a single family dwelling with [an] accessory apartment. Based on this information, the zoning administrative hold has been removed from DOB’s permit system to allow further processing of solar permit application SOL2400621....” The program analyst was “waiting for confirmation on whether any additional action will be necessary to correct the description of work on building permit B1702150 which currently indicates two separate units (a flat), and which is in error.” (Exhibit 24 at Exhibit C.)

² As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*

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17. The Applicant's 2017 project included gutting the interior of the building, lowering the basement slab by five inches, creating a new basement entrance at the rear of the building, and installing two sets of HVAC units, electric panels, plumbing, and appliances. (Exhibits 4, 5, 7, 7A; Transcript of March 5, 2025 at 141, 145.)
18. The 2017 project configured the building at the subject property as two dwellings, one in the basement and one on the first and second floors. The basement unit contains a living/dining room, kitchen, bedroom, and bathroom. The upper unit has a kitchen, dining room, living room, and bathroom on the first floor and three bedrooms and a bathroom on the second floor. (Exhibits 5, 7.)
19. Two off-street vehicle parking spaces are provided at the subject property, which abuts a public alley 15 feet wide along its rear lot line. (Exhibits 2, 7.)
20. The property abutting the subject property to the west (Lot 894, 5056 Central Avenue, S.E.) contains a two-story semi-detached building used as a principal dwelling. The building on the abutting lot shares a party wall with the Applicant's building. (Exhibits 8, 22.)
21. The property abutting the subject property to the east (Lot 40, 5062 Central Avenue, S.E.) contains a semi-detached building that extends to the side lot line in common with the Applicant's lot. The building on the abutting lot contains a principal dwelling and an accessory apartment. (Exhibits 2, 22, 24.)
22. The area surrounding the subject property primarily contains attached and detached principal dwellings as well as a public library and institutional uses. The subject property is located four blocks from the Benning Road Metro. (Exhibits 7, 22.)
23. The subject property is located in a Residential House (R) zone, R-2.
24. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.) The R zones are intended to:
 - (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development;
 - (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city;
 - (c) allow for limited compatible accessory and non-residential uses;
 - (d) allow for the matter-of-right development of existing lots of record;
 - (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and
 - (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)

25. The purpose of the R-2 zone is to provide for areas with semi-detached houses and avoid denser types of residential development. (Subtitle D § 101.6.) The R-2 zone is intended to provide for areas predominantly developed with semi-detached houses on moderately sized lots that also contain some detached houses. (Subtitle D § 101.7.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requested a use variance from Subtitle U § 201 to allow a two-unit flat in an existing semi-detached building in the R-2 zone at 5058 Central Avenue, S.E. (Square 5286, Lot 837). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), to grant a variance where, “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 the Zoning Regulations “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property ... provided that 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.” (See Subtitle X § 1000.1.) Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and ANC 7C, the Board concluded that the application satisfied the requirements for approval of the requested use variance.

Extraordinary or exceptional condition. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself but may be caused by “subsequent events extraneous to the land” at issue, provided that the condition uniquely affects a single property. *See, e.g., Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974); *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *Metropole Condo. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016). The zoning history of a property, including past actions of government officials, can constitute the “events extraneous to the land” which create the requisite exceptional situation or condition. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979).

In this case, the Board concluded that the subject property was faced with an exceptional situation and condition warranting approval of the requested use variance due to its zoning history, especially considering the issuance of a building permit that authorized the Applicant’s 2017 project to convert the existing building to use as a two-unit flat. The Applicant acknowledged not knowing “the difference between a two-unit flat” (which is not permitted in the R-2 zone) and a principal dwelling with an accessory apartment (which is permitted in accordance with the

requirements of Subtitle U § 253) until 2024.³ (Transcript of March 5, 2025 at 141, 148.) However, the Board concluded that the Applicant did not misrepresent the nature of intended project when applying for a building permit for the 2017 project. The record reflects that the engineering firm hired by the Applicant accurately described the nature of the project in emails seeking information from DCRA. The Applicant attempted to follow the required protocol to authorize *both* units as rentals; hiring a third-party inspector to complete mechanical, plumbing, electrical, and final building inspections of the subject property and directly communicating with DCRA to confirm whether a certificate of occupancy was required. The Applicant testified about efforts to obtain a certificate of occupancy before being advised by both the general contractor and DCRA that no certificate of occupancy was needed, and the Applicant subsequently obtained a business license, albeit not the correct license under the circumstances.⁴

The building permit issued by DCRA was not incomplete or otherwise ambiguous, but indicated the proposed number of dwelling units at the subject property as two and authorized a scope of work that included “conversion ... into 2 unit flat.” The building permit “is the document that reflects a zoning decision about whether a proposed structure, and its intended use as described in the permit application, conform to the zoning regulations.” *Oakland Condo. v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 753 (D.C. 2011) (citing *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (D.C. 2008)).

The Board did not agree with the Office of Planning that a “misunderstanding” about the nature of the use proposed by the Applicant “appears to mainly be between the Applicant and her development team and not with the DOB.” (Transcript of March 5, 2025 at 155.) OP’s testimony

³ The Applicant’s misunderstanding of the Zoning Regulations was not a basis to approve the application because, even without actual knowledge, the Applicant had constructive knowledge of the limitations on the use of the property under the zoning regulations in effect. *See Dwyer v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 306, 308 (D.C. 1974) (Board properly denied a use variance where hardship, if any, had not resulted from the location, situation, or condition of the property, but solely from the owners’ appropriation of the building for commercial purposes without first having obtained the necessary change in zoning; to countenance such a procedure and standard for the procurement of a variance is to encourage the destruction of planned zoning in the District of Columbia (citations omitted). *See also* Application No.20121 (Bridges 2 Psychological Services and Consultation LLC; September 4, 2024) (Applicant thought commercial use was permitted but neither information provided by real estate agents nor real property tax classification constituted a basis for a finding of undue hardship.)

⁴ According to the Applicant, the general contractor instructed the third-party inspector to obtain a certificate of occupancy but “[l]ater the owner [i.e. the Applicant] was informed that a Certificate of Occupancy (C of O) was not required in that zone.” The Applicant told the contractor that she believed that the subject property did need a certificate of occupancy “since this is a rental property and not a primary residence” and that she would “head to DCRA tomorrow morning to follow up.” (Exhibit 24 at Exhibit D.) The Applicant testified that when she “went to DCRA they too said [she] didn’t need a C of O and [she] tried to get an understanding as to why and he just said you don’t need one, and so [she] said okay, fine.” (Transcript of March 5, 2025 at 142.) “The owner proceeded to obtain a business license and rent both units,” although later “[it came] to the owner’s attention that [an] incorrect business license was obtained.” The Applicant’s subsequent “efforts to secure the correct business license” led to denial of her belated request for a certificate of occupancy. (Exhibit 4.) The DOB SCOUT database reflected that an application for a certificate of occupancy for the subject property (Application No. CO2403039) was denied by a reviewer in the Zoning Division. (Exhibit 25.)

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was based in part on an assertion that DOB (i.e. DCRA) “issued a building permit ... and no Certificate of Occupancy permit was needed because DOB understood the project to include one principal unit and one accessory apartment.... In 2017, accessory apartments were relatively new so DOB did not have a clear way of representing them in building permits, and at the time, it was standard practice to say two units when representing single dwelling houses with accessory units.” (Exhibit 22.) The 1958 Zoning Regulations permitted accessory apartments, subject to specific requirements, in Residence zones including R-2. (See §§ 199.1, 202.10, 3104.1.) The 1958 Zoning Regulations also permitted flats in some zones, not including the R-2 zones. (See §§ 199.1, 330.5(f).) The distinction between a principal dwelling with an accessory apartment and a “two-family dwelling” or flat was not new in 2017 or created by the 2016 Zoning Regulations, which became effective on September 6, 2016. (See Subtitle A § 100.3.)

The Board noted that an email to the Applicant from a program analyst at DOB suggested that “there may have been some confusion as to how an accessory apartment should be represented in the description of work on permit applications at that time.” (Exhibit 7C.) Irrespective of information provided on a permit application by an applicant, the building permit reflects the authorized use of a property. *See, Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364 (D.C.2008); Appeal No. 20232 (ANC 6C; June 12, 2026) (certificate of occupancy issued by DCRA, not information provided by owner on permit applicant, determined authorized use of property). In this case, the permit application accurately stated the proposed use and the building permit referred to a two-unit flat in both the description of work and the proposed use. Any “confusion” caused by the permit application could have been resolved by zoning officials before DCRA issued a building permit for a use that was not permitted as a matter of right at the subject property.

Undue Hardship. The Board concluded that the strict application of the zoning regulations would cause an undue hardship to the Applicant as the owner of the subject property in light of the limitations on the utility of the structure that would result absent approval of the requested variance, which would also create financial difficulties related to the restrictions on the use of the Applicant’s building. *See, Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1100-01 (D.C. 1979) (financial hardship, coupled with reliance on actions of the zoning authorities in allowing construction, constituted an undue hardship). Absent approval of the requested use variance, the use of the building at the subject property would likely be limited to one principal dwelling, perhaps with an accessory apartment as well. An accessory apartment is subject to limitations that do not similarly restrict a flat, which comprises two principal dwellings. These limitations include a requirement that either the principal dwelling or the accessory apartment must be owner-occupied for the duration of the accessory apartment use (see Subtitle U § 253.5). The Board’s authority to modify up to two requirements for an accessory apartment as a special exception specifically excludes the owner-occupancy requirement (see Subtitle U § 253.10).

The Applicant claimed, but did not provide substantial evidence to demonstrate, undue hardship premised on generalized financial losses, such as alleged loss of rental income, the need to sell the

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property because the Applicant could not meet the owner-occupancy requirement of an accessory apartment, or the cost of converting the basement to an accessory apartment, as well as tenant displacement. In any event, the Applicant's claims of financial loss did not demonstrate undue hardship to warrant the approval of the requested use variance. An owner's inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship, and a variance cannot be granted where property conforming to the zoning regulations will produce a reasonable income but, if put to another use, would yield a greater return.⁵ *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1971).

More generally, "it is well established that the mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not constitute a showing of an undue hardship that will support the granting of a use variance." *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 820 (D.C. 1977) (internal citations omitted). In this case, however, the Applicant presented more than a "mere desire" to use the subject property as a two-unit flat; that use was authorized by a building permit. The permit was not revoked, but apparently led only to an internal notation in DOB's records that was not discovered until the Applicant submitted an application for a permit unrelated to the use of the building six years after DCRA issued the permit authorizing a two-unit flat.

The Board concluded that, under the circumstances of this application, the strict application of the Zoning Regulations would result in an undue hardship to the Applicant as the owner of the subject property by precluding the use of the building as a two-unit flat. The Board did not determine that the undue hardship was self-created by the Applicant. The Applicant mistakenly concluded that the building at the subject property could be renovated as two units that could both be offered for rent. However, the building was not converted illegally to a use not permitted at that location; a two-unit flat was authorized by a building permit duly issued by DCRA. The Applicant had constructive notice of the uses permitted in the R-2 zone but, even if the Applicant had known the difference between a two-unit flat and a principal dwelling with an accessory apartment, the building permit authorized use as a flat. The strict application of the zoning regulations now would result in undue hardship by requiring use of the subject property consistent with the limitations governing an accessory apartment use. *Accord, Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484, 492-493 (D.C. 1996) (Court upheld Board's grant of use variance where property owner made reasonable efforts to locate a department store to lease the site but none could be located that offered a reasonable rate of return to the owner, and these circumstances created an undue hardship for the owner; Court rejected an argument that internal decision-making, not external development, was the principal reason why the building no

⁵ The Applicant's claims of hardship related to tenant displacement were also unavailing. "The tenant's financial problems in operating a [desired use at a particular property] are immaterial. At issue are the difficulties of the owner.... It cannot be said that the tenant's financial distress has caused the owner any difficulties whatsoever." *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1971). Approval of a variance is not warranted when "any hardship falls not on [the] owners of a building, but on their tenant who will be forced to relocate its electronic equipment." *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 820 (D.C. 1977).

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longer fit the owner's purposes because the owner had no actual knowledge of proposed restrictive regulations or constructive knowledge of the kind of restrictions that would be imposed on the property at the time it was acquired.); *Foxhall Community Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 524 A.2d 759 (D.C. 1987) (Any hardship to property owner was self-created and did not serve as the basis for a use variance where the configuration of an existing building, created by the owner over a period of years, prevented economical use in ways permitted by zoning; a variance may not be granted if the peculiar circumstances that render the property incapable of being used in accordance with zoning restrictions have themselves been caused or created by the property owner). (internal citations omitted); *Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748 at 756 (D.C. 2011) (Court affirmed Board order granting use variance where zoning officials gave permission for owners to renovate their building for use as a 12-unit rooming house; costs of building renovation constituted hardship that was not self-created despite owners' constructive knowledge of the limitations on the use of the property under the zoning regulations in effect at the time of purchase because owners could not have renovated the building for 12 units without implicit agreement and permission of government in issuing building permits and inspection approvals).

No substantial detriment to the public good or impairment of the zone plan. The Board agreed with the Applicant and the Office of Planning that approval of the requested use variance will not result in substantial detriment to the public good. The existing building was not enlarged during the 2017 project and retains the external appearance of a semi-detached principal dwelling. Similarly, the Board concluded that approval of the application will not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Map. The use variance will not alter the nature of the subject property as a moderately sized lot containing a semi-detached residential building. Approval of the application will permit a second principal dwelling at the subject property, seemingly in conflict with the purpose of the R-2 zone to avoid "denser types of residential development." However, the Board did not consider the Applicant's proposal as a "denser" development that would substantially impair the intent, purpose, or integrity of the R-2 zone, especially given that the R-2 zone permits accessory apartments subject to the requirements stated in Subtitle U § 253.⁶ The record reflects that the Applicant's 2017 project might have been capable of meeting the requirements for an accessory apartment permitted as a

⁶ Pursuant to Subtitle U § 253, one accessory apartment is permitted as a matter of right in a principal dwelling or in an accessory building in the R-2 zone, subject to specific requirements. The Applicant would not meet the requirement that either the principal dwelling or the accessory apartment must be owner-occupied for the duration of the accessory apartment use (Subtitle U § 253.5). Based on the information in the record, the Board concluded that the one-bedroom unit created in the basement of the dwelling at the subject property seemed capable of meeting other requirements for the establishment of an accessory apartment, which included that the total number of persons who may occupy the accessory apartment must not exceed three (Subtitle U § 253.6), the dwelling must have a gross floor area of at least 1,200 square feet, and the accessory apartment may not occupy more than 35 percent of the gross floor area of the house. (Subtitle U § 253.7) The Board is authorized to modify up to two of the requirements specified in Subtitle U § 253 as a special exception, not including the owner-occupancy requirement, provided that the modification would not conflict with the intent "to maintain a single household residential appearance and character in the R zones." (Subtitle U § 253.10.)

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matter of right except for the owner-occupancy requirement. Approval of the application will not substantially impair the intent, purpose, or integrity of the Residential House designation of the subject property to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, and will be consistent with the intent of the Residential House zones to provide for the orderly development and use of land and structures in an area predominantly characterized by low- to moderate-density residential development and to recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, preservation of housing stock, and low- and moderate-density housing to the overall environment to the overall housing mix and health of the city.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board did not agree with OP’s recommendation that the Board should deny the Applicant’s request for a use variance.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A)).) In this case, ANC 7C submitted a letter indicating its support for the application without stating any issues or concerns.⁷ For the reasons discussed above, the Board agrees with ANC 7C that the application should be approved.

Based on the findings of fact and conclusion of law, the Board concluded that the Applicant satisfied the burden of proof for a use variance from Subtitle U § 201.1 to allow a two-unit flat in an existing semi-detached building in the R-2 zone at 5058 Central Avenue, S.E. (Square 5286, Lot 837). Accordingly, it is **ORDERED** that the application is **GRANTED**.

VOTE: 3-1-1 (Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood voting to APPROVE; Carl H. Blake opposed; Frederick L. Hill not present, not participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 1, 2026

⁷ ANC 7E did not submit a report into the record or otherwise participate in this proceeding.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS, UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.