I. The Purpose and Policy Intent of the 900 Square Foot Rule in R-4/RF Zones: Implications for Inherited Noncompliant and Purpose-Built Apartment Buildings

A. Overview

The "900 square foot rule" was originally codified in the 1958 Zoning Regulations of the District of Columbia. It requires that, in certain residential zones, there be a minimum of 900 square feet of land area for each dwelling unit in a converted apartment house. This requirement primarily applied to the R-4 Zone (now RF zones), which originally permitted conversions of single-family rowhouses to multi-family apartment houses by right, so long as the 900 square foot per unit threshold was met.

As noted by the Office of Planning (OP), the rule acted as a density control mechanism and was aimed at managing conversions that would otherwise over-intensify low-density neighborhoods (See general discussion *January 15, 2015, Hearing on ZC 14-11*, pp.25- 32). The formula stemmed from the two-unit matter-of-right allowance on 1,800 square foot lots—establishing a baseline ratio of 900 square feet per unit (ibid., p. 27).

B. Policy Objectives Behind the Rule

The stated purposes of the rule, and its reaffirmation in the 2015–2016 R-4 text amendment that created a special exception requirement for conversions (ZC Case No. 14-11), were not to categorically prevent conversions or unit additions, but rather to:

1. **Preserve Rowhouse Neighborhood Character**

   The Commission was clear that R-4 is "not an apartment zone," and that the zone's intent is to preserve the low- to moderate-density character of rowhouse blocks (Steingasser, *January 15, 2015, Hearing*, p. 10). Conversions were made a concern to the extent that they physically altered the scale, height, or rhythm of the street. The Comprehensive Plan policies cited emphasized "stabilization of the remaining one-family dwellings" and "discouraging upward and outward extensions of rowhouses which compromise their design and scale" (Land Use Policy LU-2.1.9; ZC Transcript, *January 15, 2015, Hearing on ZC 14-11,* p. 11 and 15).

2. **Prevent Speculative Mid-Block Assemblages**
   OP and the Commission highlighted a rising pattern of speculative behavior, particularly the assembly of small rowhouse lots mid-block to form larger multi-unit apartment projects. This was viewed as an unintended byproduct of the then-liberal conversion allowances and inconsistent with the zone's purpose (Steingasser, ZC Transcript, *January 15, 2015, Hearing on ZC 14-11*, pp. 31–32; 209).

3. **Direct Multi-Family Growth to Higher-Density Zones**

OP stressed that conversions in R-4 were not necessary to meet citywide housing goals. Over 3,500 acres of land already permitted multifamily development as a matter of right. The 900 square foot rule was intended to push larger-scale development toward those designated zones (Steingasser, ZC Transcript, *January 15, 2015, Hearing on ZC 14-11*, p. 13 and 25). Since the text amendment limiting growth in the R-4 (now RF zones), the Comp Plan was updated. New policies include exploring mechanisms to encourage affordable rental housing near metro stations and supporting growth. Current policies reflect exploring approaches to additional density in low-and moderate-density neighborhoods (Comp Plan 310.15) and emphasize that it is *alterations* to row houses and apartments that are generally discouraged if they result in a loss of housing but encouraged if the increase family size units (Comp Plan 310.16)

4. Maintain a Rational, Predictable Density Standard

The 900 SF standard ensured a reasonable unit count relative to lot size. This was viewed not as an affordability tool per se, but as a means to align use with neighborhood infrastructure and built form. (ZC Transcript, *January 15, 2015, Hearing on ZC 14-11*, p. 27).

5. Aimed at Conversions to Prevent Micro Units

While the primary driver of the 2015 R-4 text amendments was the preservation of the character of existing row dwellings, another factor of the 2015 amendments was the increasing prevalence of conversions producing extremely small dwelling units—some as small as 250 to 350 square feet. These units were often created through vertical and rear additions in R-4 rowhouses that maximized unit count at the expense of building form, livability, and affordability. The Commission noted that this type of unit production often did not lead to affordability, but instead resulted in boutique condo units at high price points.(Commissioner May: "Houses that sell for $500,000 get split into two condos that sell for six and $700,000") (*ZC Transcript, June 8, 2015, Meeting on ZC 14-11, p. 9-10*)

The concern was that these conversions eroded the housing stock without necessarily increasing access. **The 900 square foot rule was intended, in part, to discourage the production of unreasonably small, market-rate units and to promote unit types compatible with family housing and long-term occupancy. That is consistent with the Comp Plan, too.**

This intent reinforces that the rule is about scale and form—not strictly about raw unit count. Thus, projects that avoid exterior alterations, preserve original structure, and deliver reasonably sized units remain within the spirit of the rule, even if the numeric standard is not met. (*ZC Transcript, June 8, 2015, Meeting on ZC 14-11, p. 8-11).*

C. How the Rule Has Been Applied in Practice

The 2015 amendments ultimately reaffirmed the 900 square foot rule, but also acknowledged the need for flexibility:

- Conversion to 3+ units was now only permitted by BZA special exception .
- Purpose-built apartment buildings were not treated the same as single-family conversions—they did not even come up in the conversation as they are not categorized as conversions. This discussion in 14-11 really targeted concerns over conversions and 'pop-ups'. Rather, they have always been viewed as already legally established multifamily uses that could potentially accommodate modest increases in unit count—particularly through internal reconfiguration, basement build-outs, or code upgrades—without needing a special exception to increase. And in fact, have continuously been permitted to increase by right within the 900 square foot rule, clearly distinguishing from conversions. Purpose-built apartment buildings were not the target of the R-4 (now RF) text amendments aimed at preventing problematic conversions in existing blocks and rows of primarily homogenous, stable, single-family blocks.

D. Why Adding Units to Existing Apartment Buildings Is Consistent With the Rule's Intent

1. The Rule Targets Conversions, Not Apartment Expansion

The legislative record is clear: the 900 square foot rule was designed to regulate conversions, especially from single-family rowhouses to multi-unit apartments, in order to preserve the form and function of low-density rowhouse neighborhoods. By contrast, existing apartment buildings, particularly those legally established and operating as multifamily dwellings—do not pose the same threats to neighborhood character.

As Ms. Steingasser acknowledged, the purpose of the rule is to prevent the "gutting" of traditional rowhouses through conversions and incompatible additions—not to bar existing apartment buildings from making modest internal changes (ZC Transcript, *January 15, 2015, Hearing on ZC 14-11***,** p. 32).

2. No Impact on Neighborhood Character

Allowing the reconfiguration or modest expansion of units *within an existing apartment building* does not introduce new bulk, height, or exterior alterations. The critical Comprehensive Plan objectives—preserving light, air, scale, and architectural features—remain fully intact. As OP testified:

Additions that maintain the existing character, height, and form may still be acceptable... The intent is not to preclude adaptive use where appropriate (*Steingasser*, *January 15, 2015, Hearing on ZC 14-11 pp. 19-20*, summarized).

3. Proposal of New Unit in Vacant Space Does Not Undermine the Rule's Purpose

The policy rationale for the 900 SF rule is rooted in managing *new* multifamily intensity on blocks not built for it. Existing apartment buildings are already consistent with multifamily use and infrastructure capacity. Adding one or two units—particularly in long-vacant basements or through internal reconfiguration—does not alter the density of the block in a way that offends the purpose of the rule.

The rule was not intended to stop all new housing, nor to lock in static unit counts across the RF zones. It was meant to prevent disruptive, speculative overbuilding that compromised neighborhood character, architectural integrity, and livability. Modest unit additions to existing apartment buildings, especially when they involve previously unused or underutilized space, such as vacant basements or oversized units—do not result in perceptible increases in building scale, massing, or intensity.

These projects are fundamentally different from the pop-up conversions and micro-unit subdivisions that drove the 2015 rulemaking. Rather than maximizing density for financial gain, these additions often serve to complete a building, respond to real housing demand, or legalize longstanding conditions.

In short, they are consistent with the spirit of the zoning regulation even when not meeting its exact numerical threshold.

4. There Is a Longstanding Practice of Granting Relief in Limited, Distinct Circumstances

While the BZA has not approved, and OP has not supported, every type of 900-foot area variance request,[1] there is a specific and distinguishable line of cases for which OP and the Board has consistently found exceptional practical difficulty in supporting and approving those applications. These successful cases fall into two distinct categories:

(1) Inherited noncompliant conversions (e.g., flats previously converted to three units).

(2) Existing purpose-built apartments adding 1–2 units within their footprint, typically in the unoccupied basement/cellar.

Such approvals reflect the principle that the 900 SF rule is not sacrosanct, but rather a guiding baseline for density that can be flexibly applied when the underlying purpose is met—particularly where no material change to form or use occurs. More importantly, these approvals also reflect

[1] See, for instance, cases from prior to 2015 that argued 'physical disrepair' as an exceptional condition. The Office of Planning consistently recommended denial in such cases, although the Board did approve some – see BZA # 18312. See also the last such case, Case No. 18598, which the Board denied. These cases, compared to the cases discussed herein, provide a clear distinction between the type of exceptional practical difficulty arguments that the Office of Planning has consistently supported and the Board has approved (inherited condition and purpose-built apartment) – vs. the types of 900-foot rule variance arguments not generally accepted by OP or the Board (disrepair).

that OP and the Board have reviewed such applications critically and found that there *is* a certain set of circumstances which can be said to satisfy the area variance test.[2]

E. Changed Conditions Since 2015

While the 900 square foot rule was reaffirmed in 2015 as a protective zoning tool, the District's housing landscape has evolved in the last decade. The city continues to face mounting pressure for additional housing production, particularly moderate-income and family-sized housing—in centrally located neighborhoods as reflected in the 2020 Comp Plan Changes and cited by many city leaders throughout the last decade since the regulations were enacted.[3][4]

Allowing modest unit increases within existing multifamily structures—particularly when no external changes are proposed—furthers the District's housing goals without jeopardizing the intent of the rule. And in fact, preserving existing affordable housing (not necessarily "IZ" but units that are effectively the same or similar rent) can help meet these goals.[5]

Adding one or two units within an existing apartment building is entirely consistent with the policy objectives, legislative history, and comprehensive plan framework that gave rise to the 900 square foot rule. The rule was intended to protect the rowhouse form, discourage overly dense conversions, and preserve low-density character. It was not intended to prohibit all modest increases in unit count in already-established apartment buildings that pre-date or comply with existing use permissions.

II. Board's History of Review and Categories of 900 Foot Rule.

The Board of Zoning Adjustment has consistently granted relief from the 900 square foot per unit requirement in two primary fact patterns: (1) inherited conditions in existing 3-unit apartment buildings that would have required variances to convert; and (2) existing purpose-built apartment buildings with vacant space as a result of modernization. This case is unique in that it has elements of both, depending on whether it is reviewed under the current inherited condition status, or de novo.

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[2] The Zoning Regulations were revised in 2016 to memorialize the D.C. Court of Appeal's ruling in Wolf v. BZA 397 A.2d 936 (1976), that variance relief from the 900-foot rule was rightly categorized as an *area* variance and not a use variance.

[3] https://housing.dc.gov/page/about-initiatives#:~:text=There%20are%20fewer%20opportunities%20for,of%20their%20income%20on%20housing.

[4] https://www.brookings.edu/articles/restrictive-zoning-is-impeding-dcs-goal-to-build-more-housing/#:~:text=Restrictive%20zoning%20can%20also:%20*%20Encourage%20homeowners,neighborhoods%20with%20three%2D%20or%20four%2Dstory%20multifamily%20buildings

[5] https://www.urban.org/sites/default/files/2023-11/Preservation%20Strategy%20Dec2014.pdf#:~:text=While%20this%20growth%20has%20led%20to%20many,their%20buildings%20affordable%2C%20raise%20rents%2C%20or%20sell.

Conversely, the Board has denied a number of these cases when the fact patterns above have not been met, as discussed more fully below.

The Board Members requested that we find full orders to provide more detail on the Board's decision in these types of cases. Most of these received summary orders, however, and the discussions for most of these cases have been relatively light. The Board typically approves cases with similar fact patterns. The Applicant has provided those transcripts so that the Board Members may review those discussions.

A. Inherited Condition

The first is the inherited condition scenario, where an applicant purchases a property that has operated for several years with more dwelling units than the 900 square foot rule would allow, and seeks to legalize apartment units which were never added to the Certificates of Occupancy. In these cases, the Board has emphasized that the regulation was never intended to retroactively eliminate long-standing, stable housing that has integrated into the neighborhood fabric without adverse effects. These cases all involved undersized lots, established multi-unit configurations, typically no exterior expansion, and no policy concerns around speculative overbuilding. The Board found in each that the relief would not impair the intent of the zoning regulations, which are aimed at preventing disruptive, high-density conversions of rowhouses—not preserving compatible uses that predate current ownership.

These cases also involve buildings that were not purpose-built apartment buildings but rather flats or single-family homes that were illegally converted. The subject case is unique and arguably stronger because it was purpose built to be an apartment building. But nonetheless, has the same fact pattern of an inherited condition discovered many years later resulting in the loss of a unit were the zoning regulations strictly enforced.

1. BZA Case No. 19517

Overview

The property at 943 S Street NW, the Applicants sought an area variance from the 900-square foot rule to allow the continued use of a three-unit building in the RF-1 zone on a 1,827 sq. ft. lot—well below the 2,700 sq. ft. required for three units under the 900-square-foot rule. The applicants purchased the property in 2009, at which time it was already configured as three self-contained units, each with separate entrances and meeting egress and code requirements. No exterior additions, envelope changes, or increase in unit count were proposed; the application sought only to legalize the existing third unit so the owners could obtain a Certificate of Occupancy.

Office of Planning Analysis

Anne Fothergill, on behalf of OP, began by noting that OP "generally does not support" relief from the 900-square-foot rule for conversions in the RF zones. However, she explained that this case met all three variance prongs. For exceptional condition, she cited the property's unique existing configuration and long-standing use: "It's an existing condition that has existed prior to this applicant's ownership. There have been three units in this building [under] at least one previous owner." Alterations to stairs, bathrooms, and plumbing made reversion to two units highly impractical and "would be a practical difficulty to make the renovations to the house" (*Fothergill*, *September 27, 2017, Hearing on BZA 19517 p. 133*). OP also identified displacement as part of the practical difficulty—removing a legal unit would mean evicting a long-standing tenant (*Fothergill*, *September 27, 2017, Hearing on BZA 19517 p. 133).*

On no substantial detriment to the public good*,* OP emphasized that "there's no additional impact to neighbors, there's not a new amount of density coming into the property," and the building's appearance would remain unchanged. For no substantial harm to the zoning plan*,* OP explained that the recommendation was tied to the unique, pre-existing condition and was not intended "in general for the 900 square feet for all cases across the board" (*Fothergill, September 27, 2017, Hearing on BZA 19517 p. 133*).

The Board's deliberations were straightforward, with little comment, other than to note that they agreed with OP's analysis and gave great weight to both OP and the ANC, who voted in favor: "*What I found to be the best analysis for me was the report from the Office of Planning and how they had gotten to their analysis in terms of approving this application. So I had said the 900 square feet is something that they do not -- I can't even remember the last time that they approved that. And so, you know, I can then get behind the application based upon the analysis that has been provided for the Office of Planning in addition to that the ANC has been in support of this application*." (*Chairperson Hill, September 27, 2017, Hearing on BZA 19517 pp. 136-137*). The Board voted 4-0-1, with Chairman Hill, Vice-Chair Hart, Ms. White, and Chairman Hood participating.

2. <u>BZA Case No. 20116 – 2705 11th Street NW</u>

The applicant in this case sought an area variance to legalize an existing three-unit apartment house in the RF-1 zone on a 1,465 square foot lot, which provided only 488 square feet of land area per unit, well below the 900 square foot per unit requirement in Subtitle U § 320.2(d). The Applicant also sought relief for one parking space via special exception. The building had received a Certificate of Occupancy in 1988 for two units, but evidence showed that a third basement unit, complete with a kitchen and bathroom, had existed for decades. The current owner purchased the property in 2019 and sought relief to maintain all three units without any exterior alterations, proposing only interior renovations to bring the building into compliance with building and safety codes.

The applicant argued that the property presented an exceptional situation creating practical difficulty. The undersized lot was an existing condition and made it physically impossible to meet the 900 square foot requirement. The three-unit configuration predated current ownership, and eliminating the third unit would require costly renovations, reduce the property's utility, and eliminate anticipated rental income. Because the building already functioned as three units, the applicant argued that granting relief would cause no adverse effect on light, air, privacy, or neighborhood character. The application was supported by the Advisory Neighborhood Commission and multiple neighbors.

The Office of Planning (OP), through planner Karen Thomas, recommended approval of all relief. OP emphasized that the property's size and configuration were not the result of any action by the applicant. The three-unit arrangement had been in place for decades, and no changes to the building's height, massing, or footprint were proposed. OP found that the 900 square foot rule was intended to control new conversions and prevent incompatible development, not to penalize longstanding uses that had proven to be compatible with their surroundings. OP also noted that granting the variance would improve code compliance and housing safety without undermining the intent of the zoning regulations.

The Board gave substantial weight to OP's favorable recommendation and the ANC's support, noting the absence of any opposition testimony. (*October 2, 2019, Hearing on BZA Case 20116, p. 194*).

The Board approved the special exception and both variances unanimously, finding that the property's unique lot size and preexisting three-unit use met the variance criteria, that there would be no substantial detriment to the public good, and that granting relief would not impair the intent, purpose, or integrity of the zoning regulations.

Chairman Hill and Ms. White led the Board's deliberations:

> Chairman Hill: So in other words, I'm always somewhat kind of interested as to how the Office of Planning gets to this. That being the case, I do agree with the analysis that the applicant has put forward in terms of the financial aspects and how the property was the way it was, and how we're getting to the three prongs of the test in order to grant the variance relief.
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> So I will be voting in favor of this application. I'm also happy to see that ANC 1B is in support, as well as the six letters of support that we've also seen from the applicant. Is there anything else that anyone would like to add?
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> Member John: Mr. Chairman, I would just -- I agree with you that 418 square feet per unit is really quite small. But I'm also persuaded by OP's analysis and the notation that from everything that we know, the property has existed like this for some time. And so that I think meets the exceptional condition requirement, and there is the practical difficulty that I think they described fairly well. So I would support the application.

(*October 2, 2019, Hearing on BZA Case 20116, p. 193-1954*)

The decision underscores that relief in inherited condition cases can be entirely consistent with the policy goals of the 900 square foot rule, particularly when it serves to regularize a long-standing use without changing the building's form or character.

3. <u>BZA Case No. 20002 – 21 Seaton Place NE</u>

The applicant sought an area variance to legalize an existing three-unit apartment house in the RF-1 zone on a 1,725 square foot lot, providing only 575 square feet per unit, far less than the 900 square foot per unit requirement in Subtitle U § 320.2(d). The property was converted to three units in the early 1990s, long before the applicant purchased it in 2002. No exterior alterations were proposed; the application was limited to bringing the property into legal compliance so a Certificate of Occupancy could be issued. (J*une 12, 2019, Hearing on BZA Case 20002, p. 35-41*)

The Office of Planning (OP), in a May 31, 2019, report, recommended approval of both the variance and the special exception. OP found that the property's size and configuration were not caused by the Applicant, that the three-unit use had existed for decades without adverse impact, and that no physical changes were proposed.

The Board found that the applicant had demonstrated a unique condition, the historic lot size and preexisting three-unit layout, that resulted in practical difficulty, as converting the property back to two units would require substantial renovation costs and loss of rental income. Because no exterior changes were proposed, they found no harm to light, air, privacy, or neighborhood character. They also noted that granting relief would have no adverse effect on the public good or the intent of the zoning regulations, citing OP's analysis and the letters of support from nearby residents. See discussion in the Transcript pp.38-42. Also, Chairman Hood noted it was " one of those rare cases, and I just would put on the record that this is not precedent setting. But I think this is a difficulty as Office of Planning has already mentioned. I think this is one of those rare cases that actually the first one I think I've seen which would allow for us to grant this request." (J*une 12, 2019, Hearing on BZA Case 20002, p. 41*). The Board voted 3-0-2, with Chairman Hill, Ms. John, and Chairman Hood participating.

4. **<u>BZA Case No. 19574 – 10 3rd Street NE</u>**

The applicant sought an area variance to legalize an existing three-unit apartment house in the RF-3 zone on a 1,985 square foot lot, providing only 662 square feet per unit—well below the 900 square foot per unit requirement of Subtitle U § 320.2(d). The property contains two historic buildings: a primary dwelling fronting 3rd Street NE and a three-story accessory carriage house fronting Terrace Court NE. The carriage house, constructed in 1881 and expanded with a third story in the 1920s, had long contained a separate residential unit above ground-floor parking. The main dwelling was configured with a basement apartment and an upper-level unit. According to

the applicant, this three-unit arrangement had existed for more than 80 years, all under the same family ownership.

The applicant explained that the property had never been formally approved for three units and held a Certificate of Occupancy for only two units, even though the existing layout predated the 1958 Zoning Regulations. No exterior alterations were proposed; the application sought only to bring the building into compliance so that a valid Certificate of Occupancy could be issued.

The Office of Planning (OP), through Anne Fothergill, recommended approval of both the special exception and the variance. OP emphasized that the lot size and existing configuration were not the result of the applicant's actions and that the units had been in continuous use for decades without adverse impact. OP noted the following:

> The [RF] regulations permit a conversion to an apartment house by special exception and the Applicant's proposal meets all of the special exception conditions except one – it does not meet the condition that ensures that there would be adequate land area (900 square feet) per residential dwelling unit. However, in this specific case, the three units have been in existence for multiple decades, well before the zoning regulations were enacted, and no adverse impact on nearby residents has been shown. Because the building has been used for a residence for decades, OP finds the relief to allow the third residential unit would not harm the zoning regulations. The relief would allow the property owner to acquire a valid Certificate of Occupancy and be in compliance with those requirements for three units.
>
> OP Report Case No. 19574

The Board voted 3-0-2, with Chairman Hill, Vice Chair Hart, and Ms. White participating.

5. <u>BZA Case No. 21335 – 2016 1st Street NW</u>

The applicant sought an area variance to legalize an existing third unit in an RF-1–zoned rowhouse located in the Bloomingdale Historic District. The property, built in 1907 as a flat, sits on a 1,800 square foot lot—providing 600 square feet of land area per unit for three units, well short of the 900 square foot per unit requirement under Subtitle U § 320.2(d). A third unit was added to the ground floor in the early 2000s, long before the current owner acquired the property. The owner testified that they inherited the configuration, had assumed it was legal, and invested in renovations to all three units following a 2020 fire. The discrepancy was only discovered when the owner sought an updated Certificate of Occupancy after completing the renovations.

The relief requested included: (1) a special exception to convert the building to an apartment house; (2) an area variance from the 900 square foot requirement; and (3) a special exception to provide one conforming parking space instead of the required two. The property has two tandem parking spaces at the rear, accessed from a 15-foot-wide alley.

The Office of Planning (OP), through case manager Matt Jesick, recommended approval of all requested relief. OP found that the property's lot size and the existence of the third unit were conditions not created by the current owner. The third unit had existed for over two decades without evidence of adverse impact on light, air, privacy, traffic, or neighborhood character. OP noted that forcing compliance with the 900 square foot rule would require costly and disruptive alterations to combine units, resulting in the loss of rental income or the creation of a permanently vacant unit—an outcome contrary to the public good. OP further concluded that retaining the unit would not impair the intent of the zoning regulations because the RF-1 zone already permits apartment houses by special exception, and no physical changes to the building were proposed.

During deliberations, Board members highlighted the "purpose-built" nature of the property, reliance on prior approvals, and OP/ANC support as sufficient grounds for approval. Vice Chair Blake noted that "the confluence of factors including the purpose built and the reliance are sufficient," and Commissioner Stidham agreed that "the purpose built and the building permit puts this in a situation where I'm prepared to support." Chairman Hill stated that he relied on "the analysis in [the Office of Planning's] report of approval." The record also emphasized that the units "cannot be combined" and that "it's not feasible to convert these into two units," which the Board accepted as grounds for granting the variance (*July 30, 2025, Hearing on BZA Case 21335, pp. 44-45, 57*). The Board voted 4-0-1, with Chairman Hill, Vice Chair Blake, Mr. Smith, and Ms. Stidham participating.

The Applicant in that case also noted similar cases, such as:

> *Case No. 19662 where Mr. Demetrios Bizbikis inherited a property that, before he owned it, had been erroneously converted into a four-unit apartment building that did not meet the 900 foot rule. It had been issued an incomplete Certificate of Occupancy. I'd like to quote the order that granted the variance waiving the 900 foot rule in that case. "The Board concludes that the Applicant's good faith detrimental reliance creates an exceptional zoning history which meets the first prong of the variance test." The Bizbikis case actually affirmed an earlier similar finding by the Board in 2012 in case 18452 where the Applicant, Lynn Myers, acquired a three-story two-unit property as part of a four person partnership. The partnership converted the property to a three-unit building, one unit per floor, no direct access between the floors, similar to this case here. Ms. Myers then bought out her partners after the work had already been completed and then discovered that it was not compliant with the 900 foot rule. She sought conversion to a three-unit building and a variance. There is only a summary order of that case available but the burden of proof statement submits that the uniqueness of the property is justified on the basis that no work, that the work on the property was completed prior to Ms. Myers' control and she had no intent to make further changes to the property. That is also true in our case here.*
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> (*July 30, 2025, Hearing on BZA Case 21335, pp. 44-45*).

The exact same thing could be said about the subject case, and these samples also support the subject case.

B. Vacant Space in Existing Apartment Buildings

The second fact pattern involves *purpose-built* apartment buildings seeking to add units entirely within their existing envelope, often by converting underused basement or ground-floor space. In 19959 (2801 R Street SE), 19718 (1800 5th Street NW), 19625 (61 Rhode Island Avenue NE), and 19570 (220 2nd Street SE), the Board approved adding units where the exterior form and height would not change, parking and trash management were addressed, and the relief would not exacerbate the very impacts the 900 square foot rule was designed to control. In 19915 (1000 Rhode Island Avenue NW), the Board allowed a cellar-to-unit conversion in a pre-1958 building, again underscoring that adaptive reuse of existing space in long-standing multifamily buildings does not implicate the policy concerns underlying the rule.

1. BZA Case No. 19959 – 2801 R Street SE

The applicant sought an area variance from Subtitle E § 201.4 to increase the number of units in an existing nonconforming apartment house in the RF-1 zone from five to six. The property is a purpose-built apartment building constructed in 1941 on a 2,583 square foot lot, yielding 516.5 square feet of land area per unit at the current five-unit configuration and 430.5 square feet per unit for the proposed six units—well below the 900 square foot per unit requirement. The building became nonconforming with the adoption of the 1958 Zoning Regulations. No exterior additions were proposed, and the application involved converting a former basement utility/storage area into a dwelling unit.

The applicant's stated exceptional condition was that the existing building layout included a basement utility room occupying half of the lower level, with its own exterior stair and entry. Relocating the building's shared mechanical systems into individual units freed up this space for residential use. The applicant testified that leaving the area vacant could create security risks, while attempting to combine it with the existing basement apartment or a first-floor unit would require extensive alterations with little usable gain. The conversion to a sixth unit would modernize the building's systems and layouts, and each current one-bedroom unit would be reconfigured to accommodate two bedrooms.

The Office of Planning (OP) recommended approval of the variance, concluding that the existing configuration created a practical difficulty and that the relief would not result in substantial detriment to the public good or substantial harm to the zoning regulations. OP noted that the project would not change the building's exterior, would not require additional excavation, and would maintain trash screening and parking arrangements. The proposed additional unit would make productive use of otherwise unused space and generate income to support the building's maintenance.

During the hearing, Board members focused on the fact that the property was a purpose-built apartment building and that the proposed unit addition was entirely internal, producing no visible change to the building's form, height, or massing. The Board also acknowledged the applicant's evidence of practical difficulty in reconfiguring the space for another purpose without significant inefficiency. (*April 3, 2019, Hearing on BZA Case 19959, p. 217-220*)

The Board also discussed the difficulty of incorporating or merging existing units to create overly large 4-bedroom units, which is also part of the difficulty in the subject case.

> Ms. White noted: So, when I read this case I thought it was fairly straightforward. It seemed to me that the Applicant does have an exceptional situation because the building needs to be renovated and the utilities are being moved from one big open space utility area in the basement to the individual units, and that it would make sense to convert that space into residential space. I think that the Office of Planning has explained the difficult in renting a four-bedroom unit for the price point and the clientele that's anticipated and so based on OP's testimony and analysis and the Applicant's representation, I am able to support this application.
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> (*April 3, 2019, Hearing on BZA Case 19959, p. 218*)
>
> Vice-Chair Miller argued it would *benefit* the public good, meeting the third prong, noting: I agree with my colleagues and if I read the record correctly, I think it is a benefit to public good that the existing units and the proposed unit are going to be two-bedroom units if I read it correctly. And so I think that's a beneficial aspect to the public good, just speaking to the third prong. (*April 3, 2019, Hearing on BZA Case 19959, p. 219*).
>
> Vice-Chair Hart initially had some concerns, but ultimately noted: I understand, we've heard three bedrooms, four bedrooms, might be viable but I understand what the Applicant and the attorney here are describing. And I do understand it being, it could be practically difficult to incorporate it, so that's where I am. (*April 3, 2019, Hearing on BZA Case 19959, p. 220*).

The Board approved the application, finding that the relief met the variance criteria, would not cause substantial detriment to the public good, and would not impair the intent or integrity of the zoning regulations. The decision reaffirmed the Board's long-standing view that adding modestly to existing apartment buildings, particularly when using interior space without exterior expansion—does not run counter to the intent of the 900 square foot rule. The Board voted 5-0-0, with Chairman Hill, Vice Chair Hart, Ms. John, Mr. Miller, and Ms. White participating.

2. <u>BZA Case No. 19718 – 1800 5th Street NW</u>

The applicant sought an area variance from Subtitle E § 201.4 to expand an existing nonconforming apartment house in the RF-1 zone from four units to six units. The property is a 1,425 square foot corner lot, resulting in 356 square feet of land area per unit at the current

configuration and 237 square feet per unit under the proposal—well below the 900 square foot per unit requirement. The building was constructed in 1913, operated as a rooming house, and was converted to a four-unit apartment house in 1941, predating the 1958 Zoning Regulations. It has been vacant since 2015, when modernization work began. The proposed expansion would convert the basement, previously used for mechanical systems, into two additional dwelling units.

The applicant explained that modernization work included moving all building mechanical systems into the individual units, freeing the basement space for residential use. Because of the existing layout, combining the basement with the first floor would disrupt the first-floor unit design and require substantial reconfiguration and new plumbing and electrical systems. The applicant testified that the existing units, each between 800–900 square feet, already provided ample storage space, making the basement unnecessary for that function. Leaving the basement vacant, they argued, would create maintenance challenges in an otherwise fully occupied building.

The Office of Planning (OP), through Brandice Elliott, recommended approval of the variance. OP found that the property's size, historic configuration, and existing basement layout created a practical difficulty, and that adding the two units would make productive use of the space without adverse effects. OP emphasized that no exterior alterations were proposed, the building's height and massing would remain appropriate to the neighborhood, and the project was located in a transit-rich area where modest increases in density were suitable. (OP Report Page 3)

During the hearing, Board members highlighted that the property was a purpose-built multifamily building. This clearly distinguished it from the rowhouse conversions the 900 square foot rule was designed to control. They agreed that the proposed use of the basement space was logical, efficient, and consistent with the building's existing residential character. (*May 2, 2018, Hearing on BZA Case 19718, pp. 40-41, 46-67*). The ANC supported the application, and the District Department of Transportation had no objection.

The Board approved the application, finding that the relief met the variance criteria, would not cause substantial detriment to the public good, and would not impair the intent or integrity of the zoning regulations. The decision aligned with prior BZA practice that modest increases to existing apartment buildings—particularly through internal reconfiguration without exterior expansion—are consistent with the intent of the 900 square foot rule. The Board voted 4-0-1, with Vice Chair Hart, Mr. Shapiro, Ms. White, and Ms. John participating.

3. <u>BZA Case No. 19625 – 61 Rhode Island Avenue NE</u>

The applicant sought an area variance from Subtitle E § 201.4 to add two additional apartment units to an existing nonconforming 21-unit apartment building in the RF-1 zone. The building, constructed in 1954 on a 6,174 square foot lot, provided only 268 square feet of land area per unit after the proposed expansion—well below the 900 square foot per unit requirement. The property fronts Rhode Island Avenue NE and is bordered by two alleys. Historically, a portion of the ground floor housed commercial uses, including a delicatessen and restaurant, until 1968, after

which it served as storage for telecommunications equipment. The commercial use ceased entirely in 2014, and its nonconforming use status lapsed after more than three years of vacancy.

The applicant proposed converting the 2,248 square foot ground-floor commercial/storage space into two one-bedroom residential units. No exterior additions were planned; the work was entirely within the existing building envelope. The applicant explained that other potential uses, such as laundry or storage, were unnecessary given existing facilities and expanding adjacent ground-floor units into the space would be disruptive to residents and produce awkward, inefficient layouts. Leaving the space vacant would be a security concern and a missed opportunity to provide housing in a transit-accessible neighborhood.

The Office of Planning (OP), through Maxine Brown-Roberts, recommended approval. OP found that the property's existing configuration and history as a purpose-built multifamily building created a practical difficulty in meeting the 900 square foot rule without a substantial reconfiguration and loss of existing housing. OP determined that the relief would not cause substantial detriment to the public good: the new units would be contained within the building, would not impact light, air, or privacy, and would replace an inactive ground-floor space with active residential use. OP also noted that many current tenants use housing vouchers, and the additional units could serve low-income residents. OP emphasized that the request did not implicate the policy concerns behind the 900 square foot rule, which were aimed at speculative rowhouse conversions, not modest infill within long-standing apartment houses.

The Board approved the variance, concluding that the relief met the variance criteria, would not substantially harm the zoning regulations, and was consistent with the RF-1 zone's character. The Board voted 4-0-1, with Chairman Hill, Vice Chair Hart, Mr. Miller, and Ms. White participating.

The case reinforces that the 900 square foot rule can be applied flexibly for purpose-built apartment buildings seeking to add modest units within their existing envelope, particularly where doing so addresses long-vacant or underutilized space without altering the building's form.

4. <u>BZA Case No. 19570 – 220 2nd Street SE</u>

The applicant, GWC Residential LLC, requested an area variance from Subtitle E § 201.4 to construct one additional apartment unit in an existing 12-unit apartment house in the RF-3 zone. The lot contains 2,774 square feet of land area, resulting in only 214 square feet per unit under the proposal—far below the 900 square feet per unit required. The property is a three-story masonry building built in 1959, located mid-block between C and D Streets SE, with frontage on 2nd Street SE. It is fully occupied and has been in continuous apartment use for decades.

The proposed unit would be created by converting the building's unused basement laundry room into a one-bedroom apartment. The applicant testified that the laundry facilities were decommissioned when in-unit laundry was installed, leaving the basement space vacant. The design involves no exterior expansion or change in building height, bulk, or footprint. The

applicant argued that converting the space to residential use would activate the underutilized area, improve security, and produce new housing in a highly transit-accessible location.

The Office of Planning (OP), through Maxine Brown-Roberts, recommended approval, citing the property's small lot size, existing configuration, and the infeasibility of meeting the 900 square foot requirement without eliminating multiple existing units. OP emphasized that the project would have no adverse impact on light, air, or privacy, would retain the building's exterior character, and would improve trash management through a commitment to indoor storage. OP's report noted: The requested relief would allow the applicant to make use of otherwise unusable space to create an additional dwelling in a mixed-use, transit-accessible neighborhood. There are no exterior modifications proposed for the building, so the height and massing of the structure would continue to be appropriate for the neighborhood in which it is located. (See page 3).

Board members concluded that the request satisfied the three-prong variance test: the lot's size and existing development created a practical difficulty, the relief would not cause substantial detriment to the public good, and the proposal would not impair the intent of the zoning regulations.

The Board approved the variance unanimously (4-0-1), with Chairman Hood being the participating Zoning Commission Member.

Board Member White leading the deliberations, stating:

> So after reviewing the record I think they met the criteria. They're going to be constructing this additional apartment in the basement level of this 3-story, 12-unit apartment house. So this basement level apartment apparently used to be the laundry room. And so that space is no longer going to be utilized for that purpose because laundry facilities are now in every unit. So there are no external alternations that are going to be happening in the building, so I think that was also supportive of their case, too.
>
> (*October 25, 2018, Hearing on BZA Case 19570, pp.19-21*)

C. <u>900 Foot Rule Aimed to Prevent this type of request:</u>

BZA Case No. 18562 – 1538 New Jersey Avenue NW

The applicant, 1538 New Jersey LLC, sought an area variance from § 401.3 to allow construction of a new three-story, seven-unit apartment building on a 2,255 square foot lot in the R-4 zone, where 900 square feet of land area per dwelling unit is required. The relief would reduce the required lot area from 6,300 square feet to the existing 2,255 square feet, providing only 322 square feet per unit. The property previously contained a two-story masonry-and-frame building constructed in 1939 as a store with an upstairs apartment, later used by a succession of churches on the ground floor and as an apartment on the second floor. The existing building was not historic or contributing and the applicant proposed to demolish it entirely.

The Office of Planning (OP), recommended denial. OP emphasized that the R-4 zone is "not a multi-family zone" and that the Zoning Commission had amended the regulations to clarify this intent. OP viewed the application not as a "conversion" but as construction of a new, larger apartment building, which would be directly contrary to the regulations' wording and intent.

OP found that the applicant had not demonstrated any unique physical conditions creating a practical difficulty. The lot was slightly larger than the minimum rowhouse lot size and identical in size to multiple neighboring properties. The "exceptional condition" claimed by the applicant—the substandard existing building—would be eliminated by demolition. OP also flagged inconsistencies in the financial information and questioned why the applicant provided cost estimates for rehabilitating the existing building when the application clearly stated an intent to demolish it.

While OP acknowledged that the building's scale would not be incompatible with the block, it concluded that adding seven dwelling units where only two were contemplated by the zoning regulations could negatively impact neighborhood character and would be "significantly contrary and detrimental to the intent and integrity of the Zoning Regulations" (OP Report, p. 5). The proposal, OP stressed, represented exactly the type of speculative overbuilding the 900 square foot rule was intended to prevent.

The Board voted 3-1-0, with Chairman Jordan, Mr. Hinkle, Ms. Allen, and Mr. Hood participating.

III. SUBJECT CASE MEETS ALL THREE PRONGS OF THE VARIANCE TEST.

Harvard Street benefits from both of these precedent lines. Like the inherited condition cases, the property was purchased with a nonconforming multi-unit configuration created by a prior owner—the 2008 Owner was in the middle of converting the lowest level to an apartment and assured permits had been secured. Upon closeout and inspection of the renovation, the former managing partner – a relative of the current managing partner who was not involved with the closeout—believed the proper documents had been issued. An inspector came to the site, saw all four apartments, all four meters, inspected the work, and did not raise any issues. A Certificate of Occupancy was issued and business license obtained. And the basement unit was rented with the other three units for over a decade. The current owner is simply seeking to legalize that existing condition. And the strict application would result in a practical difficulty in that the owner would either have to combine the basement and first floor, an impractical option at over $300,000, which would result in an overly large unit that would be difficult to rent. The alternative is to have a vacant unit. At the hearing, the Applicant said this would result in a vacant unit. This alone would clearly be difficult as it would result in a loss of income. It would also require the Applicant to maintain vacant conditioned space. This space would also be an attractive nuisance, as it would be a fully conditioned apartment at ground level that is always vacant, potentially attracting break-ins and presenting a security risk.

That would be a best-case scenario, as DOB is not going to permit the Applicant to maintain a full apartment unit without a Certificate of Occupancy for it. The Applicant needs to update the ownership on the C of O, that is what ultimately led to this variance request. And in order to do that, inspections need to occur. DOB is not going to permit an entire fourth unit to exist when it cannot be added to a C of O. One might think a contract or covenant would be sufficient, but DOB will not even permit a second kitchen in a single-family home for fear it will be rented illegally. Even if you sign a covenant stating that space will not be used as an accessory apartment, they will only allow a kitchenette. To get a full second kitchen, they require you to commit to officially calling it an accessory apartment. The concern being, if you have a second kitchen in a space, you can easily circumvent the regulations without issue and rent the space out as an accessory apartment without formal approval. This scenario takes it a step further, there would be an entire apartment existing and no level of covenant would allow for them to feel comfortable with this.

So it's not simply that an apartment would exist, they would require significant demolition, which would add cost and permanently remove a unit.

Alternatively, if the case were viewed *de novo*, as if nothing was there currently (or pre-2008 illegal construction) it aligns with the purpose-built apartment building line of approvals: the building already functioned as a multi-unit dwelling, and the "new" unit at issue is located in long-vacant basement space—precisely the type of interior, envelope-contained expansion that the Board has repeatedly found consistent with the intent of the regulations.

Indeed, had the prior owner sought to convert the basement to a dwelling unit before beginning the unpermitted work, the application would have squarely fit the fact pattern for existing apartment building cases like 19959, 19718, and 19625, all of which were approved. Or if viewed as if there were nothing currently there, it would also fit that fact pattern:

- The property is unique as it is a purpose-built apartment building that pre-dates the 1958 zoning regulations became nonconforming upon adoption of the 1958 zoning regulations.
- It is unique even relative to the adjacent properties, the only other similar purpose-built apartment buildings on the block, as those buildings' basements are already occupied. The building to the west clearly has four units, with four meters, four mailboxes, four trash cans, and what appears to be a basement level unit from street view. The Property to the east also has an occupied basement. Accordingly, only the subject property is a purpose-built apartment building constructed pre-1958 of this size and type on this block that has an unoccupied basement (in the de novo case).
- It is located in a dense area near the metro (800 ft.) from the metro with an entrance easily accessible from the street or rear alley. The property directly across the alley is unimproved and there are not 'eyes' on the property like there may be in a dense area, increasing possible security issued.

- It was modernized (in 2008) with each unit now having in-unit laundry. Each unit has two bedrooms and ample living space, approximately 1,500 square feet, three closets, and two and a half baths, resulting in no need for additional storage space.
- Similar to the other cases, without the relief, the only options are to leave it vacant, which would require the Applicant to maintain vacant conditioned space. This space would also be an attractive nuisance, as it would be a fully conditioned space at ground level that is always vacant, potentially attracting break-ins and presenting a security risk. Or alternatively, to merge the first floor and basement units. This presents the same issues, albeit maybe with slightly less cost if the basement were truly vacant from a de novo perspective, of overly large unit, costly to combine, and resulting in an overly large unit that would be very difficult to rent in this area for a reasonable price.

Additionally, as described in more detail above, the proposal meets prong three of the variance test, as it is in harmony with the purpose and intent of the 900-foot rule, which was not aimed at preventing this type of expansion. Additionally, while they are no formal IZ units, the 2BR basement unit currently matches the price of a 2BR IZ unit. The basement unit was most recently rented for $2,400 a month, whereas a 2BR IZ unit for a conversion would be priced at $2,430 a month. Accordingly, it is comparable in terms of pricing and that value is compounded by the proximity to the metro. Removing this unit will result in higher rents for the units above and remove a relatively affordable housing unit near public transit.

In short, the facts in the subject case are not only consistent with, but sit at the intersection of, two well-established lines of Board precedent. Both the inherited condition rationale and the internal expansion rationale support approval, and the combination makes the case stronger than many prior approvals—while presenting none of the speculative overbuilding or neighborhood character concerns that motivated adoption of the 900 square foot rule.

IV. THE BOARD'S OBLIGATION TO APPLY LEGAL STANDARDS CONSISTENTLY: STARE DECISIS AND ADMINISTRATIVE INTEGRITY

Each zoning case before the Board of Zoning Adjustment (BZA) must be evaluated based on the specific facts and circumstances presented. However, this does not mean the Board operates without constraint or discretion. While binding precedent may not apply in the same manner as it does to courts of law, the legal doctrine of stare decisis and principles of administrative consistency clearly govern the Board's actions.

Stare decisis is a legal doctrine requiring courts—and by extension, administrative bodies—to follow established interpretations when applying legal standards to similar facts. Derived from the Latin phrase *"to stand by things decided,"* stare decisis promotes consistency, predictability, and stability in the legal system by ensuring that decision-makers apply the same rules to similarly situated parties. It is particularly important in land use and zoning matters, where regulatory certainty is essential for orderly development and due process protections.

Although the BZA is not a court and its prior decisions do not create binding precedent, the standards it applies must remain consistent over time, unless a clear and reasoned justification is provided for a change. In other words, while the facts of each case may differ, the legal principles used to evaluate those facts must remain constant. Abrupt or unexplained departures from settled Board practice not only undermine fairness but also violate foundational norms of administrative law.

The District of Columbia Court of Appeals has squarely addressed this issue. In *Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356 (D.C. 1975), the Court reversed the Board's decision to invalidate a zoning permit based on a sudden reinterpretation of the Zoning Regulations. Petitioners in *Smith* had relied in good faith on a long-standing interpretation consistently applied by both the Zoning Administrator and the Board itself. The Court held that any departure from such an interpretation must be made prospectively and accompanied by reasoned findings. As the Court explained:

"The Board made no findings relevant to petitioners' claim that the Zoning Administrator's approval of the deck was given pursuant to a long-standing interpretation of the Zoning Regulations… so that established principles of stare decisis require any change in that interpretation to be made prospective only. While the Board is of course not bound for all time by its prior positions, it should have considered this contention..." (*Smith v. BZA*, 342 A.2d at 359) (emphasis added)

This language is critical. It confirms that the Board may evolve its interpretations, but only in a transparent and equitable manner—and never as a basis to retroactively deny relief in a case that mirrors prior approvals.

Over the last 10 years or so, the BZA has granted relief from the 900 square foot rule in a dozen or so cases involving either inherited conversions or minor unit additions to existing apartment buildings. These approvals were based on a consistent reading of the Zoning Regulations, supported by the legislative record of ZC Case No. 14-11, and informed by case-specific factors like neighborhood character, building form, and historic use. If the Board now wishes to depart from this approach, it must do so prospectively and with a fully articulated legal rationale, not by retroactively denying relief in factually similar cases.

In sum, while no applicant is entitled to automatic approval based on past cases, they are entitled to be evaluated under the same legal standards. Stare decisis ensures that the rules do not change midstream, and that like cases are treated alike. That principle applies no less in administrative zoning practice than it does in the courtroom.

Respectfully Submitted,

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