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# BZA Case No. 19517

## MEMORANDUM

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

**FROM:** Anne Fothergill, Case Manager  
 Joel Lawson, Associate Director Development Review

**DATE:** July 14, 2017

**SUBJECT:** BZA Case 19517 - request for special exception and variance relief to allow a 3-unit apartment house at 943 S Street, N.W.

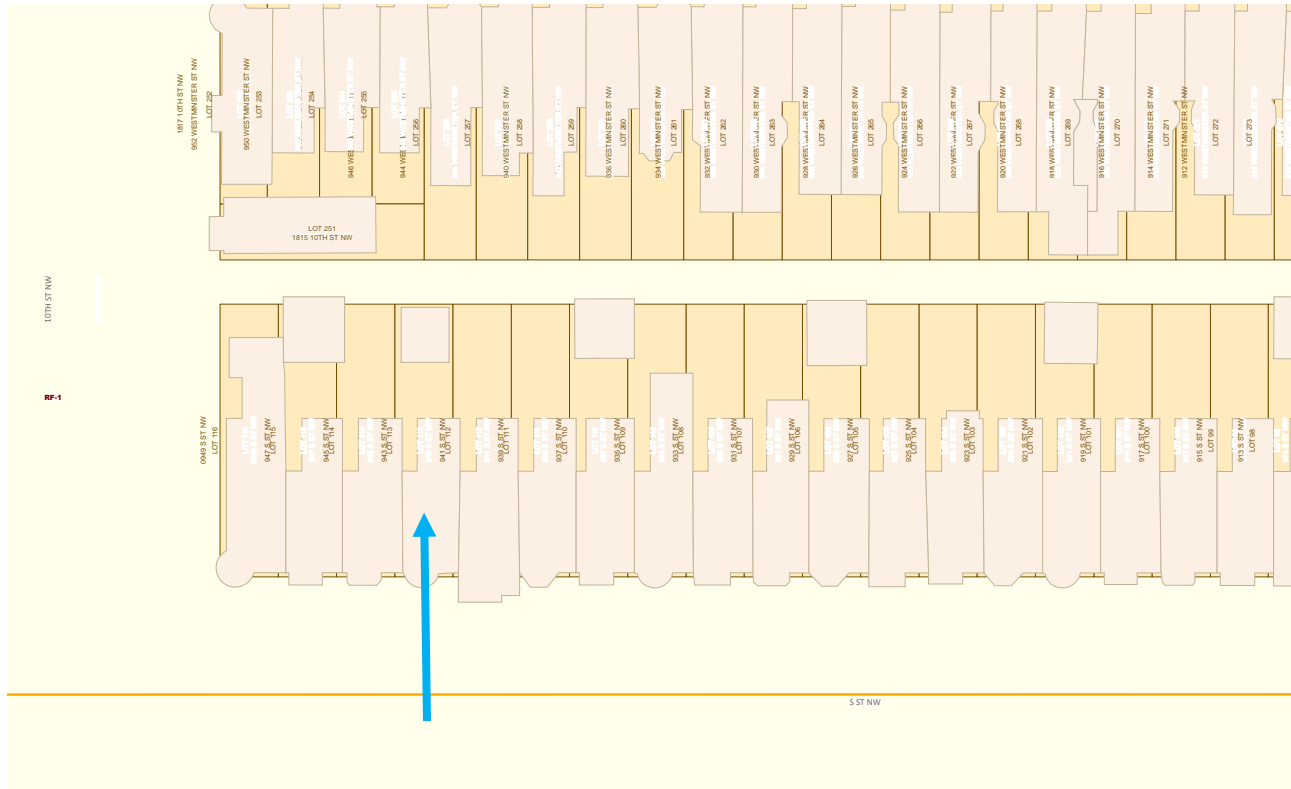
### I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following variance and special exception relief pursuant to Subtitle X Chapters 9 and 10:

- Subtitle U § 320.2 – to allow the conversion of a 3-unit apartment house with less than 900 SF per unit

### II. LOCATION AND SITE DESCRIPTION

Address	943 S Street, N.W.
Legal Description	Square 0362, Lot 0113
Ward	1
Lot Characteristics	The subject property is an 1,827 SF rectangular lot
Zoning	RF-1
Existing Development	The building currently has three residential dwelling units but no Certificate of Occupancy for three units. The applicant states that the conversion to three units happened prior to their purchase of the property in 2009. Even then, under the former zoning regulations, BZA relief would have been required for this conversion; OP could find no record of such a request.
Historic District	Greater U Street Historic District
Adjacent Properties	The adjacent properties are residential rowhouses
Surrounding Neighborhood Character	The surrounding neighborhood is primarily residential with some commercial properties in close proximity. OP found only three BZA cases for conversion of a rowhouse to an apartment building on this square – two in the 1970's and one in 2009.



### III. PROJECT DESCRIPTION IN BRIEF

This application is a request for retroactive zoning relief to allow the existing conversion of a rowhouse into a 3-unit apartment house in the RF-1 zone. The building currently has three separate residential dwelling units that are occupied and have been in existence since before the current owners bought the property in 2009; the applicant did not indicate why due diligence at the time of purchase did not bring this non-conformity to light, or indicate when the conversion may have happened (OP assumes it was not constructed as a three unit building). The Applicants propose no changes to the building as part of this application, and there would be no changes to the current conditions of the three units. The Applicants are requesting the zoning relief so that they can get a Certificate of Occupancy; to make the existing situation legal.

### IV. ZONING REQUIREMENTS

RF-1	Regulation	Existing	Proposed	Relief
Height	35 feet	35 feet	No change	None required
Lot area	2,700 SF (for 3 units)	1,827 SF	1,827 SF	Relief requested
Lot occupancy	60%	68.71%	No change	Existing non-conformity
Rear yard	20 feet	40.3	No change	None required

### V. OFFICE OF PLANNING ANALYSIS

#### A. Special Exception

**Special Exception Relief from Subtitle U § 320.2 - conversion of an existing residential building to a 3 unit apartment house:**

*320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:*

*(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The building is within the maximum height limit of 35 feet for this zone.

*(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The Applicants are proposing three units and IZ would not be applicable.

*(c) There must be an existing residential building on the property at the time of filing an application for a building permit;*

The building on the subject property is residential.

*(d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The subject property is 1,827 square feet and the Applicants are requesting a variance from this regulation; see Section V.B. of this report.

*(e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

The Applicants do not propose any additions to the building.

*(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;*

The Applicants do not propose any additions to the building.

*(g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow or shade study, or other reputable study acceptable to the Board of Zoning Adjustment;*

The Applicants do not propose any additions to the building.

*(h) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;*

The Applicants do not propose any changes to the building.

*(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

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

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

*(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;*

The Applicants do not propose any additions to the building.

*(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicants have provided adequate plans and photographs.

*(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

*(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and*

The Applicants have not requested any waivers from these conditions but have requested a variance from the 900 square foot per unit requirement found in Section 320.2(d) (see Section V.B.).

## **B. Variance**

### **Variance relief from Subtitle U § 320.2(d) - required 900 square feet of land area per dwelling unit in an apartment house:**

#### **i. Exceptional Situation Resulting in a Practical Difficulty**

The Applicants purchased the subject property in 2009 and at that time, according to the applicant, it already was a three-unit building. The three units have separate entrances and meet egress and code requirements. The Applicants do not propose to make any physical changes to the building. The property does not have the required 900 square feet per unit in land area. If the Applicants were required to convert the building back to a single family dwelling or flat to comply with the RF-1 regulations, they would be faced with substantial renovation and expense, as well as the eviction of at least one of the current residents who may also have lived in the building for some time.

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

The Applicants are not proposing any physical changes to the building and all of the current conditions including the number of occupied units would remain exactly the same. Should the requested relief be granted, there would be no new impact on the neighbors in terms of light, air, density, or privacy. As such, the requested relief would not have a substantial detriment to the public good. Numerous neighbors have written letters of support including the adjacent neighbors (Exhibits 11-14).

#### **iii. No Substantial Harm to the Zoning Regulations**

The RF-1 zoning regulations permit a conversion to an apartment house by special exception with a condition that ensures that there would be adequate land area (900 square feet) per residential dwelling unit. However, in this specific case, the three-unit apartment house has been in existence for many years, and no adverse impact on nearby residents has been shown. The relief would allow the property owners to acquire a

valid Certificate of Occupancy and be in compliance with those requirements, which is the only reason they have requested the relief.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

At the time of the staff report, no other District agency had submitted comments.

## **VII. COMMUNITY COMMENTS**

The Applicants have provided letters of support from nearby residents (Exhibits 11-14). As of the date of filing this report, the ANC had not submitted a recommendation to the record.

# BZA Case No. 20116



## MEMORANDUM

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

**FROM:** Karen Thomas, Case Manager

*Joel* Joel Lawson, Associate Director Development Review

**DATE:** September 20, 2019

**SUBJECT:** BZA Case 20116- request for special exception and variance relief to allow the conversion of a rowhouse into a 3-unit apartment house at 2705 11<sup>th</sup> Street NW.

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

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

#### Special Exception Relief:

- Subtitle U § 320.2 – to allow the conversion of a rowhouse into a 3-unit apartment house; and

#### Variance Relief:

- Subtitle U § 320.2 (d) – to allow the conversion of a rowhouse into a 3-unit apartment house on a lot with less than 900 SF per unit
- Subtitle C § 712.3 – to allow 2 compact on-site parking spaces

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

Address	2705 11 <sup>th</sup> St NW
Legal Description	Square 2858, Lot 0018
Ward / ANC	1/ 1B
Lot Characteristics	The subject property is a 1,465 SF rectangular lot abutting a 15-foot public alley at the rear.
Zoning	RF-1 – apartments are permitted through conversions subject to lot area requirements.
Existing Development	The existing Certificate of Occupancy for two units (Exhibit 11) was issued in 1988. The basement, however, has a third existing dwelling unit complete with kitchen, bath plumbing and electricity connection. The Applicant states that the conversion of the basement to an additional unit was done prior to their purchase of the property in 2019.
Historic District	N/A
Adjacent Properties	The adjacent properties are residential rowhouses.
Surrounding Neighborhood Character	The surrounding neighborhood is primarily residential rowhomes with some smaller apartment properties nearby. Square 2850 also fronts on Sherman Avenue to the east, where there are a mix of residential unit types within the RF-1 District.

Board of Zoning Adjustment

District of Columbia



### III. PROJECT DESCRIPTION IN BRIEF

This application is a request for retroactive zoning relief to allow retention of the existing 3-unit apartment house in the RF-1 zone. The building currently has three separate residential dwelling units<sup>1</sup> that were in existence well prior to the current owners purchasing the property in March 2019. Based on the previous building permits and anecdotal evidence from neighbors, the conversion appears to have been done in the 1980's.

The Applicants propose no changes to the building's footprint as part of this application, and no changes to the layout of the three units are proposed beyond interior renovations to each unit. The Applicants are requesting zoning relief to acquire a Certificate of Occupancy to legalize the existing situation and allow renovation of the interior of the units, which will be rented. The applicants intend to occupy one of the units.

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<sup>1</sup> A dwelling unit is defined as: One or more habitable rooms comprising complete independent living facilities for one or more persons and including within those rooms permanent provisions for living, sleeping, eating, cooking and sanitation (**B§ 100.2**).

#### IV. ZONING REQUIREMENTS

RF-1	Regulation	Existing	Proposed	Relief
Height E § 303	35 feet	34 feet 9 inches	No change	None required
Lot Area E § 201	900 SF per unit 2,700 SF (for 3 units)	About 488 SF per unit; 1,465 SF total	No change	<b>Relief Requested</b>
Lot Occupancy E § 304	60%	84%	No change	Existing non-conformity
Rear Yard E § 306	20 feet	17.25 feet	No change	Existing non-conformity
Parking C § 701.5	1 space per 2 units	None	2 compact 8 x 16	<b>Relief Requested</b>

#### V. OFFICE OF PLANNING ANALYSIS

##### A. Special Exception

##### **Special Exception Relief from Subtitle U § 320.2 - conversion of an existing residential building to a 3-unit apartment house:**

*320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:*

*(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The building is within the maximum height limit of 35 feet for this zone and no additions are proposed to the exterior.

*(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The Applicants are proposing three units and IZ would not be applicable.

*(c) There must be an existing residential building on the property at the time of filing an application for a building permit;*

The building on the subject property is residential.

*(d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The subject property is 1,465 square feet and the Applicants are requesting a variance from this regulation; see Section V.B. of this report.

*(e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

*(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;*

*(g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow or shade study, or other reputable study acceptable to the Board of Zoning Adjustment;*

*(h) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;*

The Applicants do not propose any changes or additions to the exterior of the building.

*(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

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

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

*(3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;*

The Applicants do not propose any additions to the building, or the addition of units to the interior beyond what has existing for many years.

*(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicants have provided adequate plans and photographs.

*(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

No special treatments are proposed by OP.

*(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and*

The Applicants have not requested any waivers from these conditions but have requested a variance from the 900 square foot per unit requirement found in Section 320.2(d) (see the following Section V. B.).

## **B. Variance**

### **Variance relief from Subtitle U § 320.2(d) - required 900 square feet of land area per dwelling unit in an apartment house:**

#### **i. Exceptional Situation Resulting in a Practical Difficulty**

The Applicants purchased the subject property in 2019 and at that time it already was a three-unit building. The property does not have the required 900 square feet per unit in land area for three units. The Applicants do not propose to make any physical/structural changes to the building. The three units have separate entrances and satisfy the requirements for separate dwelling units as interpreted by [DCRA](#) (Exhibit 14). If the Applicants were required to convert the building back to a single-family dwelling or flat to comply with the RF-1 regulations, they would be faced with substantial renovation and expense, as well as the loss of the rent they would collect for the third unit, which is part of their anticipated income, as submitted in their profit and loss analysis (Exhibit 15).

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

The Applicants are not proposing any physical changes to the building and the current conditions, including the number of occupied units, would remain the same. Should the requested relief be granted, there would be no new impact on the neighbors in terms of light, air, density, or privacy. As such, the requested relief would not have a substantial detriment to the public good. Neighbors have written letters of support (Exhibits 32 to 37).

#### **iii. No Substantial Harm to the Zoning Regulations**

The RF-1 zoning regulations permit a conversion to an apartment house by special exception with a condition that there would be adequate land area (900 square feet) per residential dwelling unit. However, in this specific case, the three-unit apartment house has been in existence for many years, and no adverse impact on nearby residents has been shown. The relief would allow the property owners to acquire a valid Certificate of Occupancy for renovations and updating of the units.

### **Variance relief from Subtitle C § 712.3 minimum parking size**

#### **i. Exceptional Situation Resulting in a Practical Difficulty**

The 18.75-foot wide lot has an existing rear yard of 17.25 feet and a lot occupancy of 84%. No changes are proposed to the building to reduce the building's size to create a required rear yard of minimum 20 feet. Therefore, the legal sized space of 9 x 19 feet would not be possible within the existing area of the rear yard. This creates an exceptional condition of the lot, which creates a practical difficulty in satisfying the parking size requirement of C § 712.3.

#### **ii. No Substantial Detriment to the Public Good or Substantial Harm to the Regulations**

The continued provision of two on-site parking spaces would be consistent with the Regulations and beneficial to the public good.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

At the time of the staff report, no other District agency had submitted comments.

## **VII. COMMUNITY COMMENTS**

The ANC 1B held its regularly scheduled meeting on September 12, 2019 and stated that there were no concerns with the application and supports the request (Exhibit 44).

Letters in support from neighbors are included in the record at Exhibits 32-37, 39, 40.

# BZA Case No. 20002

## MEMORANDUM

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

**FROM:** Anne Fothergill, Case Manager  
*JL* Joel Lawson, Associate Director Development Review

**DATE:** May 31, 2019

**SUBJECT:** BZA Case 20002- request for special exception and variance relief to allow a 3-unit apartment house at 21 Seaton Place, N.E.

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

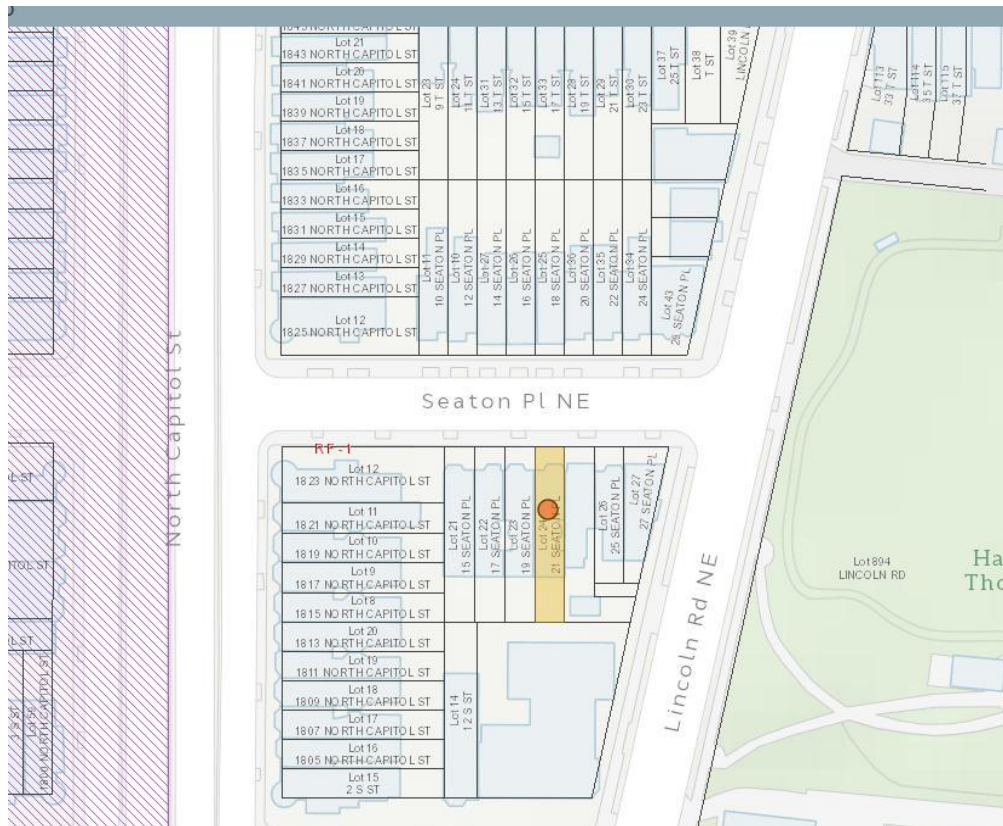
The Office of Planning (OP) recommends **approval** of the following variance and special exception relief pursuant to Subtitle X Chapters 9 and 10:

- Subtitle U § 320.2 – to allow a 3-unit apartment house on a lot with less than 900 SF per unit

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

Address	21 Seaton Place, N.E.
Legal Description	Square 3511, Lot 0024
Ward / ANC	5 / 5E
Lot Characteristics	The subject property is a 1,725 SF rectangular lot
Zoning	RF-1
Existing Development	The building currently has three residential dwelling units but no Certificate of Occupancy for three units. The Applicant states that the conversion to three units was done prior to their purchase of the property in 2002 and that it probably was done around 1993. Even then, under the former zoning regulations, BZA relief would have been required for this conversion; OP could find no record of such a request.
Historic District	N/A
Adjacent Properties	The adjacent properties are residential rowhouses
Surrounding Neighborhood Character	The surrounding neighborhood is primarily residential with some commercial properties nearby. North Capitol Street is a half block to the west and a park and recreation center a half block to the east. There appear to be other apartment house conversions on the square.





### III. PROJECT DESCRIPTION IN BRIEF

This application is a request for retroactive zoning relief to allow the existing conversion of a rowhouse into a 3-unit apartment house in the RF-1 zone. The building currently has three separate residential dwelling units that have been in existence since before the current owners bought the property in 2002. Based on the previous building permits and anecdotal evidence from neighbors, the Applicant speculates that the conversion was done between 1992 and 1994.

The Applicants propose no changes to the building as part of this application, and there would be no changes to the current conditions of the three units. The Applicants are requesting the zoning relief so that they can get a Certificate of Occupancy to make the existing situation legal.

### IV. ZONING REQUIREMENTS

RF-1	Regulation	Existing	Proposed	Relief
Height	35 feet	31 feet	No change	None required
Lot area	900 SF per unit 2,700 SF (for 3 units)	About 575 SF per unit; 1,725 SF total	No change	<b>Relief requested</b>
Lot occupancy	60%	61.2%	No change	Existing non-conformity
Rear yard	20 feet	21 feet	No change	None required

## V. OFFICE OF PLANNING ANALYSIS

### A. Special Exception

#### **Special Exception Relief from Subtitle U § 320.2 - conversion of an existing residential building to a 3 unit apartment house:**

*320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:*

*(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The building is within the maximum height limit of 35 feet for this zone and no additions or alterations are proposed.

*(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The Applicants are proposing three units and IZ would not be applicable.

*(c) There must be an existing residential building on the property at the time of filing an application for a building permit;*

The building on the subject property is residential.

*(d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The subject property is 1,725 square feet and the Applicants are requesting a variance from this regulation; see Section V.B. of this report.

*(e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

The Applicants do not propose any additions to the building.

*(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;*

The Applicants do not propose any additions to the building.

*(g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow or shade study, or other reputable study acceptable to the Board of Zoning Adjustment;*

The Applicants do not propose any additions to the building.

*(h) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;*

The Applicants do not propose any changes to the building.

*(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (1) The light and air available to neighboring properties shall not be unduly affected;*
- (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and*
- (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;*

The Applicants do not propose any additions to the building.

*(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicants have provided adequate plans and photographs.

*(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

*(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and*

The Applicants have not requested any waivers from these conditions but have requested a variance from the 900 square foot per unit requirement found in Section 320.2(d) (see Section V.B.).

## **B. Variance**

**Variance relief from Subtitle U § 320.2(d) - required 900 square feet of land area per dwelling unit in an apartment house:**

### **i. Exceptional Situation Resulting in a Practical Difficulty**

The Applicants purchased the subject property in 2002 and at that time it already was a three-unit building. The three units have separate entrances and according to the Applicant they have been inspected and meet egress and code requirements. The Applicants do not propose to make any physical changes to the building. The property does not have the required 900 square feet per unit in land area. If the Applicants were required to convert the building back to a single family dwelling or flat to comply with the RF-1 regulations, they would be faced with substantial renovation and expense, as well as the loss of the rent they would collect for the third unit which is part of their anticipated income.

**ii. No Substantial Detriment to the Public Good**

The Applicants are not proposing any physical changes to the building and all of the current conditions including the number of occupied units would remain exactly the same. Should the requested relief be granted, there would be no new impact on the neighbors in terms of light, air, density, or privacy. As such, the requested relief would not have a substantial detriment to the public good. Multiple neighbors have written letters of support (Exhibits 4 and 29).

**iii. No Substantial Harm to the Zoning Regulations**

The RF-1 zoning regulations permit a conversion to an apartment house by special exception with a condition that ensures that there would be adequate land area (900 square feet) per residential dwelling unit. However, in this specific case, the three-unit apartment house has been in existence for many years, and no adverse impact on nearby residents has been shown. The relief would allow the property owners to acquire a valid Certificate of Occupancy and be in compliance with those requirements, which is the only reason they have requested the relief.

**VI. COMMENTS OF OTHER DISTRICT AGENCIES**

At the time of the staff report, no other District agency had submitted comments.


**VII. COMMUNITY COMMENTS**

The Applicants have provided letters of support from nearby residents (Exhibits 4 and 29). As of the date of filing this report, the ANC had not submitted a recommendation to the record.

# BZA Case No. 19574

## MEMORANDUM

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

**FROM:** Anne Fothergill, Case Manager  
 Joel Lawson, Associate Director Development Review

**DATE:** October 13, 2017

**SUBJECT:** BZA Case 19574 - request for special exception and variance relief to allow the conversion of a 3-unit apartment house at 10 3<sup>rd</sup> Street, N.E.

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

The Office of Planning (OP) recommends **approval** of the following variance and special exception relief pursuant to Subtitle X Chapters 9 and 10:

- Subtitle U § 320.2 – to allow the conversion of a 3-unit apartment house with less than 900 SF per unit

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

Address	10 3 <sup>rd</sup> Street, N.E.
Legal Description	Square 0759, Lot 0838
Ward	6
Lot Characteristics	The subject property is a 1,986 SF rectangular lot with a public alley at the rear.
Zoning	RF-3
Existing Development	The subject property has two historic buildings – the primary building and an accessory building with access off the rear alley. The property currently has three residential units (one in the accessory building) and a Certificate of Occupancy for only two units; a flat is permitted in this zone. The Applicant states that the property has had the same family ownership and three residential units for more than 80 years. According to the Sanborn Atlas maps, the accessory building was constructed as a two-story building with a stable and a floor above and a third story was added around the 1920s. The accessory building was constructed in 1881, a few years before the primary dwelling.
Historic District	Capitol Hill Historic District
Adjacent Properties	The adjacent properties are residential rowhouses, apartment buildings, a church, and alley dwellings on historic Terrace Court.

Surrounding Neighborhood Character	The surrounding neighborhood is primarily residential with some commercial and institutional properties in close proximity. Across the street from this square are the Folger Shakespeare Library and the Supreme Court. OP did not find any BZA cases for conversion of a rowhouse to an apartment building on this square.
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### III. PROJECT DESCRIPTION IN BRIEF

This application is a request for retroactive zoning relief to allow the retention of the long time existing three residential units in the RF-3 zone. The building currently has three separate residential dwelling units – two in the primary building and one in the accessory building - that have been in existence since before the family bought the property 80 years ago. The accessory building was constructed in approximately 1881 as a stable with one story above and the 3<sup>rd</sup> story was most likely added in the 1920s. The accessory building has parking on the ground floor and the residential unit on the 2<sup>nd</sup> and 3<sup>rd</sup> stories. In the primary building, there is a basement unit and a second unit on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. These two units have long-term tenants and the accessory building is currently vacant after a tenant recently moved out so the Applicant could make some needed renovations.

The Applicant proposes no exterior changes to the two buildings as part of this application, and there would be no changes to the current conditions of the three units. The Applicant has withdrawn their initial request to install a roof deck on the accessory building. The accessory building currently has one garage parking space and that would remain. The Applicant is requesting the zoning relief so that they can get a Certificate of Occupancy and make the existing three unit configuration legal.

#### IV. ZONING REQUIREMENTS

RF-3	Regulation	Existing	Proposed	Relief
Height	35 feet	30 feet	No change	None required
Minimum lot area (for 3 units)	2,700 SF (for 3 units)	1,985 SF	No change	Relief requested
Lot occupancy	60%	68.7%	No change	Existing non-conformity
Rear yard	20 feet	31.88 feet	No change	None required

#### V. OFFICE OF PLANNING ANALYSIS

##### A. Special Exception

##### **Special Exception Relief from Subtitle U § 320.2 - conversion of an existing residential building to a 3 unit apartment house:**

*320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:*

*(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);*

The building is within the maximum height limit of 35 feet for this zone.

*(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;*

The Applicants are proposing to retain the existing three units and IZ would not be applicable.

*(c) There must be an existing residential building on the property at the time of filing an application for a building permit;*

The building on the subject property is residential.

*(d) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit;*

The subject property is 1,985 square feet and the Applicant is requesting a variance from this regulation; see Section V.B. of this report.

*(e) An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;*

The Applicant does not propose any additions to the building.

*(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;*



The Applicant does not propose any additions to the building.

*(g) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow or shade study, or other reputable study acceptable to the Board of Zoning Adjustment;*

The Applicant does not propose any additions to the building.

*(h) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;*

The Applicant does not propose any changes to the building.

*(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:*

- (1) The light and air available to neighboring properties shall not be unduly affected;*
- (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
- and*
- (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;*

The Applicant does not propose any additions to the building. There are numerous letters of support for this conversion from neighboring property owners.

*(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;*

The Applicant has provided adequate plans and photographs.

*(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;*

*(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and*

The Applicant has not requested any waivers from these conditions but has requested a variance from the 900 square foot per unit requirement found in Section 320.2(d) (see Section V.B.).

## **B. Variance**

**Variance relief from Subtitle U § 320.2(d) - required 900 square feet of land area minimum per dwelling unit in an apartment house**

### **i. Exceptional Situation Resulting in a Practical Difficulty**

The Applicant's family has owned the subject property for many decades and during that time it has had three residential units in the two separate buildings. The accessory building is exceptionally large and currently has one residential unit on the 2<sup>nd</sup> and 3<sup>rd</sup> floors (with parking below). The accessory building was originally constructed in 1881 with a ground level stable and 2<sup>nd</sup> floor and the 3<sup>rd</sup> floor dates to the 1920s. The Applicant does not propose to make any exterior changes to either of the two buildings.

The property does not have the required 900 square feet per unit in land area for three units. If the Applicant was required to comply with the RF-3 regulations and eliminate one residential unit in either the principal or accessory building, the Applicant states they would be faced with substantial renovation and expense, as well as the loss of the income from the third unit. The two upper floors of the accessory building are exceptionally large to be used for storage for the primary building and are better suited (and possibly purpose built) for the existing residential use. Additionally, the ground floor unit in the primary building is currently occupied by a family member who has degenerative health issues with accessibility limitations to climbing stairs and the Applicant needs to retain this as a separate unit.

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

The Applicant is not proposing any exterior changes to either building and the number of residential units would remain exactly the same as it has been for many decades. The Applicant has withdrawn the proposal for a new roof deck on the accessory building and should the requested relief be granted to allow three units, there would be no new impact on the neighbors in terms of light, air, density, or privacy. As such, the requested relief should not have a substantial detriment to the public good. Numerous neighbors have written letters of support (Exhibits 30, 32-40, 42-43, 49-50, and 52).

## **iii. No Substantial Harm to the Zoning Regulations**

The RF-3 zoning 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.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

At the time of the staff report, no other District agency had submitted comments.

## **VII. COMMUNITY COMMENTS**

The Applicants have provided letters of support from nearby residents (Exhibits 30, 32-40, 42-43, 49-50, and 52-53). As of the date of filing this report, the ANC had not submitted a recommendation to the record.

# BZA Case No. 21335



## **MEMORANDUM**

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

**FROM:** Matt Jesick, Case Manager  
JL Joel Lawson, Associate Director for Development Review

**DATE:** July 17, 2025

**SUBJECT:** BZA #21335 – 2016 1<sup>st</sup> Street, NW – Request for relief to legalize an existing 3<sup>rd</sup> unit

### **I. RECOMMENDATION**

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

- U § 320.2, pursuant to X § 901 – Conversion of existing residential building in the RF-1 zone to an apartment building; *special exception*
- U § 320.2(c), pursuant to X § 1000 – Lot Area for a conversion (900 square feet per unit required; 1,800 square feet existing; 2,700 square feet required for three units); *area variance*
- C § 701.5, pursuant to C § 703.2 and X § 901 – Vehicle parking (2 spaces required; 1 provided). *special exception*

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

Address	2016 1 <sup>st</sup> Street, NW
Applicant	Pamela Wilson, Owner
Legal Description	Square 3116, Lot 11
Ward / ANC	Ward 5, ANC 5E
Zone	RF-1 (Low to Moderate Density Rowhouses and Flats)
Historic District or Resource	Bloomingdale Historic District
Lot Characteristics and Existing Development	Existing rowhouse-type building, originally constructed in 1907 as a flat; A third unit was added on the ground floor at some point in the early 2000s; 3-story building; Lot is 18 ft. x 100 ft.; Two tandem parking spaces at the rear, accessed from a 15 ft. wide alley.
Adjacent Properties and Neighborhood Character	Adjacent buildings are similarly-scaled rowhouse buildings. Immediate surroundings are almost entirely rowhouses.
Proposal	Legalize the existing third unit; No physical changes to the property.



### III. ZONING REQUIREMENTS AND RELIEF REQUESTED

The applicant requests to legalize an existing third unit in the building by seeking special exception relief to convert a residential building to a three-unit multiple dwelling. Because the lot is less than 2,700 square feet, they also request an area variance to the rule requiring 900 square feet per unit. Finally, the application requests relief to the minimum number of parking spaces.

Item	Requirement	Existing	Proposed	Relief
<b>Conversion to an apartment building U 320.2</b>	<b>Multiple requirements</b>	<b>Three units existing, but only two permitted</b>	<b>Three unit apartment building</b>	<b>Requested</b>
<b>Lot area requirement for conversion to apartment U 320.2(c)</b>	<b>900 sq.ft. per unit</b>	<b>1,800 sq.ft. of lot area</b>	<b>3 units – 600 sq.ft. per unit</b>	<b>Requested</b>
Lot Width E 202	18 ft. min.	18 ft. min.	No change	Conforming
Lot Depth	n/a	100 feet	No change	Conforming
Lot Area E 202	1,800 sq.ft. min.	1,800 sq.ft.	No change	Conforming
Height E 203	35 ft. min. 3 stories	Height in feet not provided 3 stories	No change	Conforming
Rear Yard E 207	20 ft. min.	Not provided; estimate ~37 ft.	No change	Conforming
Lot Occupancy E 210	The greater of 60% or the lot occupancy as of the date of conversion	Not provided; OP estimates ~57%	No change	Conforming
<b>Vehicle Parking C 701</b>	<b>RF zone: 1 per 2 units = 2 spaces</b>	<b>1 legal space [2 tandem spaces]</b>	<b>No change</b>	<b>Requested</b>

### IV. ANALYSIS

#### **Special Exception for a Conversion to an Apartment Building**

The applicant seeks to legalize an existing third unit in the building. This can be achieved by requesting a conversion of a residential building to an apartment building pursuant to U § 320.2. The criteria of that section are reviewed below.

*320.2 The conversion of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house, or the renovation or expansion of an existing apartment house deemed a conforming use pursuant to Subtitle U § 301.4 that increases the number of units, shall be permitted in any of the RF-1 zones if approved by the Board of Zoning Adjustment*

*as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:*

- (a) The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;*

The building has been in existence as a residential building since its construction in 1907.

- (b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.10; and*

N/A

- (c) There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per each existing and new dwelling unit.*

The lot has 1,800 square feet of land area, equal to 600 square feet per each of the three units. The applicant, therefore, requests relief from the 900 square foot standard. That relief is analyzed below.

### **Area Variance to the 900 Square Foot Rule**

The application requests area variance relief for the minimum lot area required for conversion of a residential building to a multiple dwelling. The requirement is 900 square feet per unit, and the subject property would have 600 square feet per unit. The Board is authorized to grant the relief pursuant to X § 1000. The application must meet the three-part area variance test, which is analyzed below.

- i. Extraordinary or Exceptional Situation or Condition Resulting in Peculiar and Exceptional Practical Difficulties To the Property Owner*
  - a. Extraordinary or Exceptional Situation*

The subject property is encumbered by exceptional conditions. The present owner was not the owner when the third unit was added. According to the application, the third residential unit appears to have been added to the building in the early 2000s, and has existed in that state for over two decades. When the present owner inherited the property, they assumed that the configuration was allowed. The present owner even invested in renovations to all three units after a fire in 2020 damaged the property, and appropriate permits were obtained for improvements to all three units. The discrepancy was discovered after the renovations were complete, and an updated Certificate of Occupancy reflecting the change in ownership was sought. Once the two-unit limitation was identified, the owner began the process to legalize the unit, ultimately resulting in the present BZA

application. Furthermore, the application also contends that the design of the building makes communication between the different floors difficult to construct. See Exhibit 22A, p. 7.

*b. Strict Application of the Zoning Regulation Would Result in Exceptional Practical Difficulties*

The applicant is impacted by a practical difficulty resulting from the exceptional conditions affecting the property. In order to bring the property into compliance with the Regulations, the existing ground floor unit would need to be combined with the first floor unit, or simply vacated. A significant renovation to combine units would be expensive and practically difficult, including construction of a new interior stair and removal of a kitchen. Vacating two units through the reconstruction process and then losing one unit would significantly impact rental income or potential sales price. See economic information from the applicant at Exhibit 22A, p. 8. The application also states that the property has been offered for sale, but that the lack of a valid Certificate of Occupancy has meant that offers have been below what would be anticipated for a three-unit building.

*ii. No Substantial Detriment to the Public Good*

Granting the requested relief should not result in a substantial detriment to the public good. The unit in question has existed at this site since the early 2000s. The applicant states that “The existence of the 3rd dwelling unit has resulted in no impacts on light, air, or privacy with respect to adjacent homes, nor has it increased traffic or congestion” (Exhibit 22A, p. 9). OP also agrees with the idea that any light, noise or privacy impacts should be minimal as there would be no additions or alterations to the existing structure. OP defers to DDOT on transportation issues, but it is not anticipated that the retention of a single unit should impair the local transportation network, especially given the areas rich concentration of transit. In addition, the visual appearance of the front of the building would not change from its current, historic state. There are several other 3-unit buildings in the neighborhood, so this property would not be out of character with a varied rowhouse community. The applicant contends that not granting relief would detract from the public good, by effectively creating a permanent vacant unit. Or, should the owner attempt to revert the building to two units, that could result in unnecessary construction-related disruption to nearby residents.

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

Granting the requested relief should not impair the intent of the Regulations. The RF-1 zone anticipates and permits, by special exception, apartment buildings, and the subject property has existed as an apartment building since the early 2000s. The Regulations require that, for a conversion to an apartment building in the RF-1 zone, the property must have 900 square feet of land area per dwelling unit. While the property is unable to meet the land area restriction for a three-unit building, no changes to the existing building are proposed. Particularly given that the current owner is not responsible for the addition of a third unit, granting the area variance would not significantly impair the integrity of the zoning regulations.

### **Special Exception for Vehicle Parking**

The vehicular parking requirement for a three-unit building in the RF zone is two parking spaces. The subject site has two parking spaces, but they are in a tandem configuration. The applicant, therefore, requests relief to provide only one conforming parking space, relief that the Board may grant pursuant to the criteria of C § 703.2. Under that section, the Board need only find that one of the ten listed criteria is met, and this application would meet three of the factors. OP's review of the applicable criteria is below.

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

- (b) The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*

The property is well served by alternative modes of travel. The property is within walking distance of three priority bus corridors – Rhode Island Avenue, North Capitol Street and Florida Avenue. The property is also about two blocks away from a Capital Bikeshare station at Rhode Island Avenue. The subject site is also about seven-tenths of a mile from the Shaw Metro station.

- (d) Amount of traffic congestion existing or which the parking for the building or structure would reasonably be expected to create in the neighborhood;*

OP defers to DDOT's analysis of any traffic impacts from the development, but it is not anticipated that the project would impact traffic in the neighborhood. The building would continue to have three units and two parking spaces would be provided, but in a tandem configuration. Not providing one additional conforming parking space should not result in undue impacts.

- (g) Quantity of existing public, commercial, or private parking, other than on-street parking, on the property or in the neighborhood, that can reasonably be expected to be available when the building or structure is in use;*

It can reasonably be expected that two vehicular parking spaces would be available on the site, although only one of them would count for zoning purposes.

*703.3 Any reduction in the required number of parking spaces granted under Subtitle C § 703.2 shall be:*

- (a) Proportionate to the reduction in parking demand demonstrated by the applicant;*
- (b) Limited to the number of spaces that the applicant demonstrates cannot reasonably be provided on the site as proposed to be developed in the application; and*
- (c) Limited to relief from the minimum number of parking spaces required by this section and shall not provide relief from the location, access, size or layout, screening, or other requirements of this chapter.*



Only two parking spaces are required in this case and the relief is for one space.

## **Subtitle X § 901.2**

*901.2 (a) [Granting the special exception] Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

Granting the requested parking relief should not impair the intent of the Regulations. While the Regulations are intended to ensure the provision of enough vehicular parking for a given use, they also provide for relief from that requirement where physical constraints of the property or characteristics of the neighborhood make parking impossible to provide or unnecessary. In this case, given the multiple alternative travel modes available nearby, the small degree of relief, and that the required number of spaces would actually be present on the property, the requested relief would comply with the intent of the Regulations.

*901.2(b) [Granting the special exception] Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;*

As addressed in the above analysis, the requested special exception for one parking space would not appear to adversely affect the use nearby property. There should be no undue impacts from parking demand or traffic impacts.

## **V. HISTORIC PRESERVATION**

Staff of the Historic Preservation Office at OP indicated that they have no concerns with the requested relief.

## **VI. COMMENTS OF OTHER GOVERNMENT AGENCIES**

As of this writing the record contains no comments from other government agencies.

## **VII. ANC COMMENTS**

As of this writing the record contains no comments from the ANC.

## **VIII. COMMUNITY COMMENTS**

At Exhibit 8 are letters of support from neighbors.

## IX. VICINITY MAP



# BZA Case No. 19959

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Stephen Cochran, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** March 22, 2019

**SUBJECT:** BZA Case 19959.) to allow a nonconforming apartment house at 2801 R Street, SE, in the RF-1 zone, to increase the number of units from 5 to 6

### I. BACKGROUND

The application was modified on March 13, 2019 (Exhibits 30-30C). OP's report reflects that an exterior addition to the building is no longer proposed; that there would be no additional construction in public space; and that neither parking spaces nor a curb cut are proposed. The applicant has also confirmed to OP that what is labelled as a cellar level on the architectural plans (Exhibit 30A) is actually a basement level.

### II. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the variance requested from:

- Subtitle E § 201.4, density of an apartment house in the RF-1 zone (900 sq. ft. per unit required; 516.5 sq. ft. per unit existing; 430.5 sq. ft. per unit proposed);

### III. LOCATION AND SITE DESCRIPTION

Address	2801 R Street, S.E.
Applicant	Martin Sullivan for Capitol Enterprise, LLC
Legal Description	Square 5636, Lot 51
Ward, ANC	Ward 7, ANC 7B
Zone	RF-1 – Residential Flat Zones are intended to provide for areas predominantly developed with attached row houses on small lots within which no more than two dwellings are permitted. A building existing before May 12, 1958 in the RF-1 zone may be used for more than two dwelling units.
Historic District	None
Lot Characteristics	The rectangular corner lot is 2,583 square feet in area, with 103.3 feet of frontage along R Street, and 25 feet of frontage along 28 <sup>th</sup> Street. The lot is adjacent to an unimproved public alley.
Existing Development	The property is currently developed with a 5-unit apartment building constructed in 1941.

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Adjacent Properties	To the west, across an unimproved public alley, is a single-family house. To the north is a recently constructed structure that appears to be a flat. and west are row dwellings.
Surrounding Neighborhood Character	The surrounding neighborhood character is primarily moderate density apartment buildings, but also contains semi-detached and detached single family houses.
Proposed Development	The applicant proposes to expand a nonconforming five-unit apartment house into six units by converting the former utility room in the basement into one unit.

#### IV. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone – RF-1	Regulation	Existing	Proposed	Relief
Lot Width (ft.) E § 201	40 ft.	25 ft.	No change	Existing nonconforming
Lot Area (sq. ft.) E § 201	4,000 sq.ft.	2,583 sq. ft.	No change	Existing nonconforming
<b>Density E § 201</b>	<b>900 sq. ft. per unit</b>	<b>516.5 sq. ft. per unit</b>	<b>430.5 sq. ft. per unit</b>	<b>Variance Required and Requested</b>
Pervious Surface E § 204	10%	Not provided	No change	None Required
Height (ft.) E § 303	35 ft.	31 feet	No change	None Required
Lot Occupancy E § 304	60%	53%	No change	None Required
Rear Yard (ft.) E § 306	20 ft.	41.82 feet	No change	None Required
Side Yard (ft.) E § 307	Not required	Not provided	No change	None Required
Parking C § 701	Not required	0	No change	Existing non-conformity (C § 705.1)

#### V. OFFICE OF PLANNING ANALYSIS

##### a. Variance Relief from Subtitle E § 201.4, Density of an Apartment House in the RF-1 Zone

##### i. Exceptional Situation Resulting in a Practical Difficulty

The existing structure was constructed as a 5-unit apartment house in 1941 and became a non-conforming structure after adoption of the Zoning Regulations in 1958. The first and second floors contain a total of four one-bedroom units. A fifth one-bedroom unit occupies one-half of the basement level. The other half of the basement is a utility and storage area with a floorplan identical to the apartment unit above it.

The applicant proposes to update systems and layouts in the existing apartment building. The hot water heater, common washing facilities, and other mechanical systems now located in half of the basement would be moved to the individual units and HVAC compressors would be located on the roof. A more efficient layout would enable each current one-bedroom unit to accommodate two bedrooms and would free-up all space in the existing utility/storage area that occupies half of the basement.

Absent the requested relief, the applicant states it would be confronted by a practical difficulty that would impinge on the feasibility of the building's proposed modernization. The utility room has an exterior stair leading to a separate entry for that half of the basement. Leaving that area vacant could pose a security risk for the remainder of the building. The applicant has indicated that expansion of the ground floor unit above to incorporate this basement space would require extensive alterations, including an additional stairway, which would significantly reduce useable area on the first floor for little gain in basement useable square foot area. The applicant has also stated that the internal layout is such that the storage/utility area cannot be practically incorporated into an expansion of the existing basement unit. A vacant basement space also presents potential maintenance difficulties in that space, even while the remainder of the building is occupied.

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

The proposed additional units should not pose substantial detriment to the public good. Exterior modifications to the building are not proposed. Neighbors abutting the building should be minimally impacted, since additional excavation would not be necessary. The applicant would continue to screen the trash with a code-complaint enclosure in the building's rear yard. The income generated from the additional unit would also help to ensure that the quality of the building's future maintenance would reflect the standards of the surrounding area.

## **iii. No Substantial Harm to the Zoning Regulations**

The addition of one unit in an existing 5-unit, purpose-built apartment house should not cause substantial harm to the Zoning Regulations. The requested relief would allow the applicant to make use of otherwise unusable space to create an additional dwelling in a mixed-density neighborhood with significant transit access on nearby Pennsylvania Avenue, S.E.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

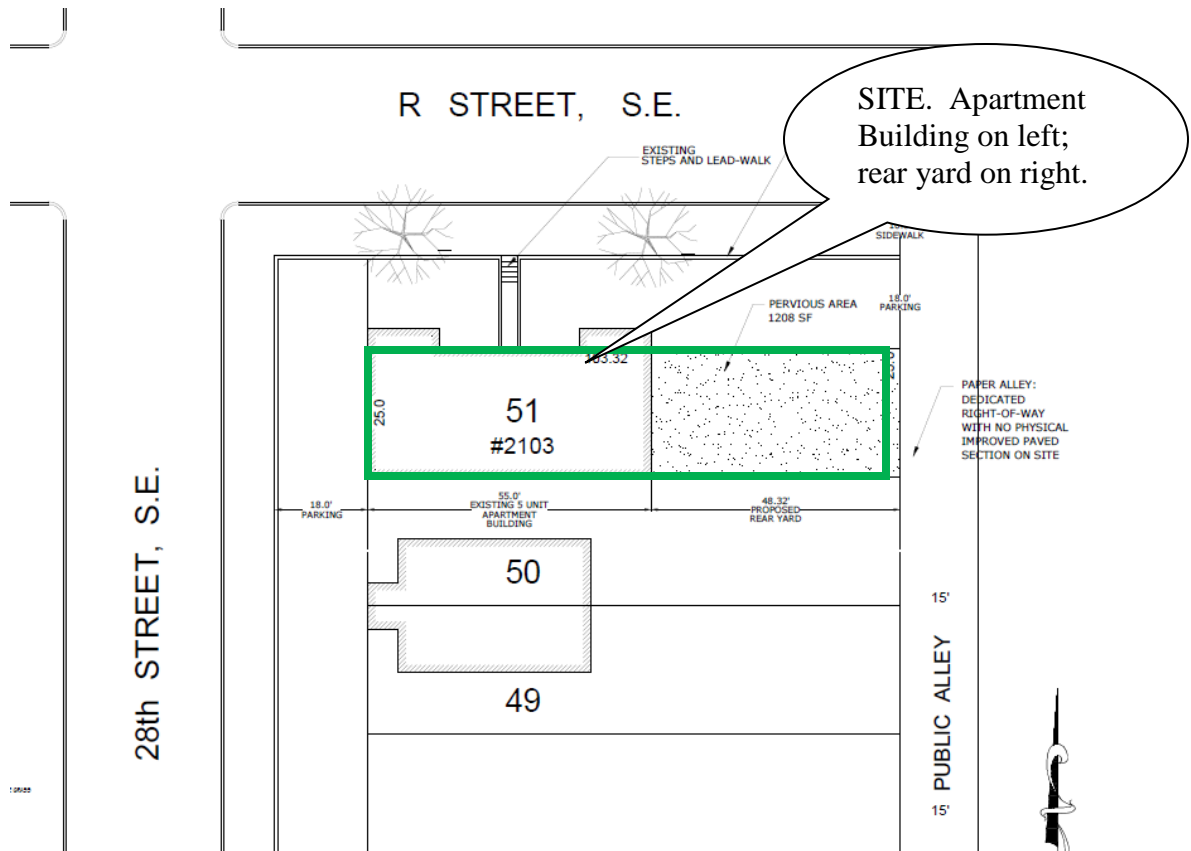
No District agency had filed a report on the application at the time OP completed this report.

## **VII. COMMUNITY COMMENTS**

At the time OP completed this report there were no ANC or community comments on file.

The applicant was scheduled to meet with the full ANC 7B on March 21, 2019. The applicant was also continuing to reach out to adjacent neighbors.





# BZA Case No. 19718



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Brandice Elliott, Case Manager  
 JL Joel Lawson, Associate Director Development Review  
**DATE:** April 20, 2018

**SUBJECT:** BZA Case 19718 (1800 5<sup>th</sup> Street, N.W.) to allow a nonconforming apartment house in the RF-1 zone to increase from four units to six units.

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

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

- Subtitle E § 201.4, density of an apartment house in the RF-1 zone (900 sq. ft. per unit required; 356 sq. ft. per unit existing; 237 sq. ft. per unit proposed);

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

Address	1800 5 <sup>th</sup> Street, N.W.
Applicant	Tommie Thomas for Revie Dow, LLC
Legal Description	Square 475, Lot 46
Ward, ANC	Ward 6, ANC 6E
Zone	<b>RF-1</b> – Residential Flat Zones are intended to provide for areas predominantly developed with attached row houses on small lots within which no more than two dwellings are permitted. A building existing before May 12, 1958 in the RF-1 zone may be used for more than two dwelling units.
Historic District	None
Lot Characteristics	The rectangular corner lot is 1,425 square feet in area, with 25 feet of frontage along S Street, and 57 feet of frontage along 5 <sup>th</sup> Street. The lot does not have alley access.
Existing Development	The property is currently developed with a structure that was constructed in 1913 and used as a rooming house until it was remodeled into a four-unit apartment house in 1941. The structure has been vacant since 2015, when construction to modernize the structure began.
Adjacent Properties	To the north and west are row dwellings. To the south, across S Street, are additional row dwellings. To the east, across 5 <sup>th</sup> Street, are additional row dwellings.

Surrounding Neighborhood Character	The surrounding neighborhood character is moderate density residential, consisting primarily of row dwellings and apartment houses.
Proposed Development	The applicant proposes to expand a nonconforming four-unit apartment house into six units by converting the basement into two units.

### III. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone – RF-1	Regulation	Existing	Proposed	Relief
Lot Width (ft.) E § 201	40 ft.	25 ft.	No change	Existing nonconforming
Lot Area (sq. ft.) E § 201	4,000 sq.ft.	1,425 sq. ft.	No change	Existing nonconforming
Density E § 201	900 sq. ft. per unit	356 sq. ft. per unit	237 sq. ft. per unit	<b>Required</b>
Pervious Surface E § 204	0%	Not provided	No change	None Required
Height (ft.) E § 303	35 ft.	Not provided	No change	None Required
Lot Occupancy E § 304	60%	Not provided	No change	Existing nonconforming
Rear Yard (ft.) E § 306	20 ft.	Not provided	No change	None Required
Side Yard (ft.) E § 307	Not required	Not provided	No change	None required
Parking C § 701	3 spaces	Not provided	No change	None requested

### IV. OFFICE OF PLANNING ANALYSIS

#### a. Variance Relief from Subtitle E § 201.4, Density of an Apartment House in the RF-1 Zone

##### i. Exceptional Situation Resulting in a Practical Difficulty

The existing structure was converted into a four-unit apartment house in 1941, and remained in that condition until it was vacated in 2015 to allow for intensive modernization of the building. Construction has been completed on the ground and second floors within the existing footprint and layout, including the incorporation of modern appliances, electric and plumbing upgrades, and structural floor improvements. The applicant has indicated to OP that the units are 800-900 square feet in area.

In modernizing the building, the mechanical systems that used to be located in the basement have been moved to the individual units, leaving the basement vacant. The applicant is unable to combine the basement with the first floor because code compliant circulation would disrupt the first-floor layout, creating an inefficient footprint. A modification this significant would also require the plumbing and electrical systems be redone, resulting in significant increases in cost. The applicant has further indicated that the generous size of the units does not necessitate that the basement be used as a storage area, as sufficient storage has been included in each unit. A vacant basement presents potential maintenance difficulties in that space, even while the remainder of the building is occupied.

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

The proposed additional units should not pose substantial detriment to the public good. Exterior modifications to the building are not proposed, as the units would be fully contained in the existing basement area. Neighbors abutting the building should be minimally impacted, since additional excavation would not be necessary. In addition, the apartment house is located in a transit-rich neighborhood where additional residential density is appropriate. In working with the ANC, the applicant has agreed to screen the trash with a code-complaint enclosure, which is an improvement from its current condition.

## **iii. No Substantial Harm to the Zoning Regulations**

The addition of two units in an existing four-unit, purpose-built apartment house should not cause substantial harm to the Zoning Regulations. The requested relief would allow the applicant to make use of otherwise unusable space to create two additional dwellings in a 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. Because this is an existing apartment house, the proposed increase in units does not require compliance with Inclusionary Zoning (IZ) regulations; however, the applicant has agreed to consider the voluntary provision of an affordable unit through this program, but has not yet provided a commitment to do so.

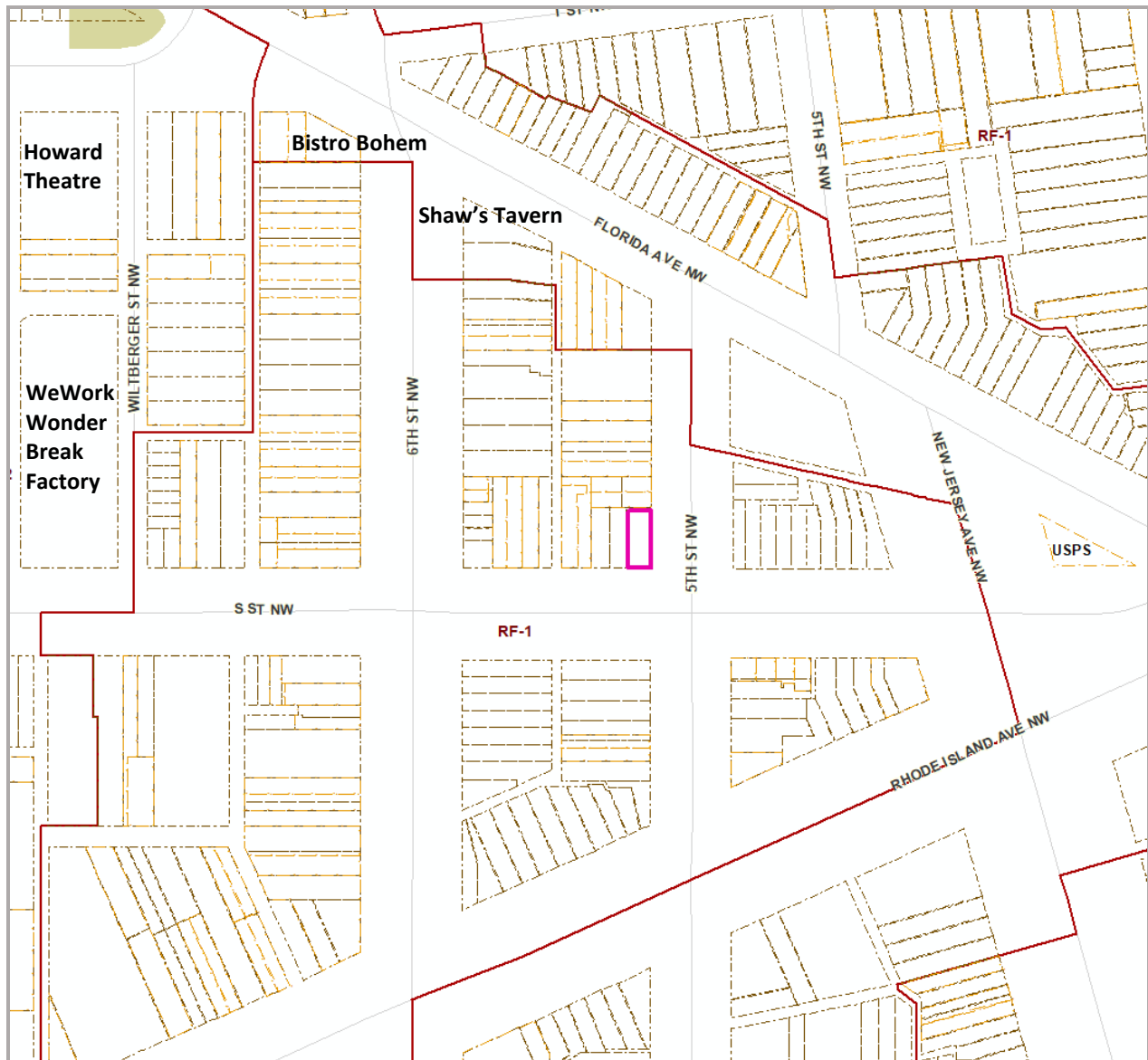
## **V. COMMENTS OF OTHER DISTRICT AGENCIES**

The District Department of Transportation (DDOT) has filed a report indicating no objection to the requested variance (Exhibit 34).

## **VI. COMMUNITY COMMENTS**

At its regularly scheduled meeting on March 6, 2018, ANC 6E voted to support the requested variance to increase the apartment house from four to six units (Exhibit 33).

Attachment: Location Map



# BZA Case No. 19625

## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Maxine Brown-Roberts, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** November 22, 2017

**SUBJECT:** BZA Case 19625 - Area variance to allow two additional apartment unit in an existing non-conforming apartment building at 61 Rhode Island Avenue, NE in the RF-1 zone.

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

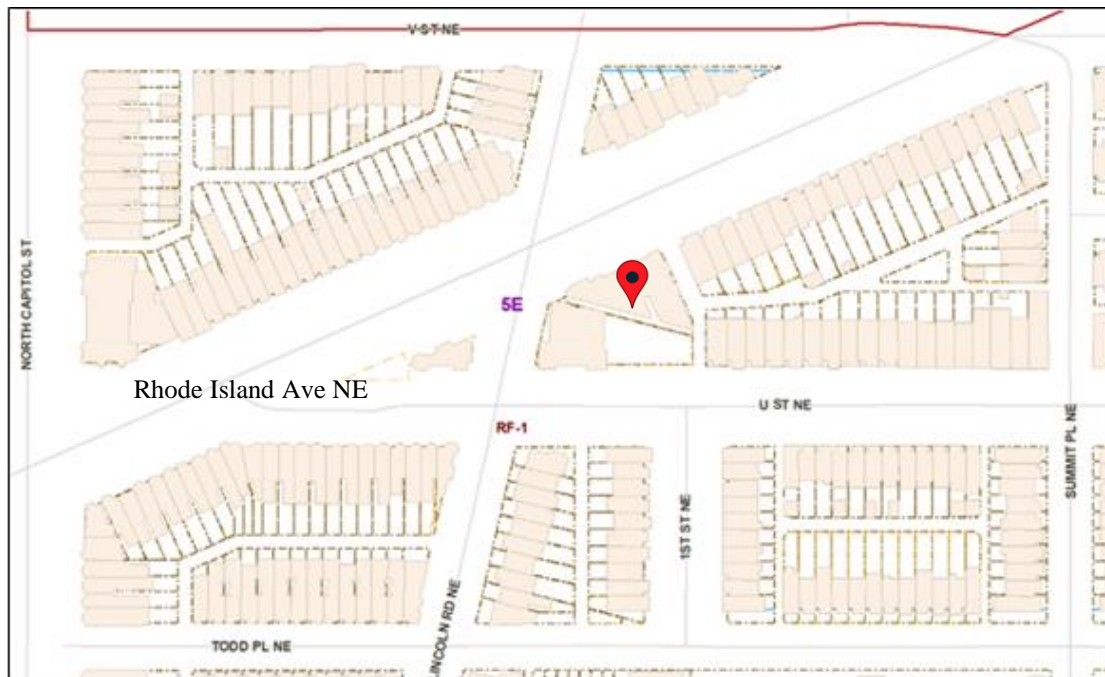
61 Rhode Island Avenue, NW (applicant) requests area variance relief from the requirements of Subtitle E § 201.4 (900 sq. ft. of lot area per dwelling unit) to add two units to an existing 21-unit apartment building pursuant to Subtitle X § 1000. The Office of Planning (OP) recommends **approval** of the following:

- Subtitle E § 201.4 (900 square feet of lot area per dwelling unit required, 268 square feet of lot area per dwelling unit proposed).

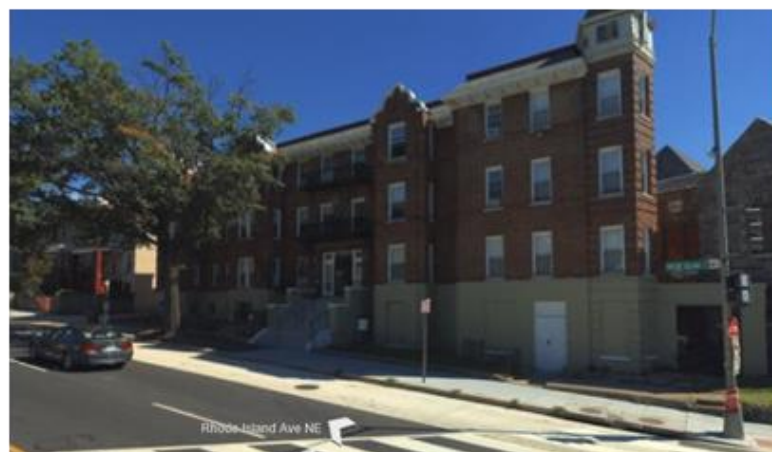
### **II. LOCATION AND SITE DESCRIPTION**

Address	61 Rhode Island Avenue, NE
Legal Description	Square 3535, Lot 58
Ward / ANC	Ward 5; ANC 5E
Zone	RF-1 – The purpose of the RF-1 zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two (2) dwelling units are permitted. There are also multi-unit buildings which predates the zoning Regulations.
Historic District or Resource	Not within a historic district.
Lot Characteristics	The nearly rectangular lot has a land area of 6,174 square feet. The property fronts on Rhode Island Avenue, NE and abuts a 20-foot wide alley along moat of its eastern property line and a 15-foot wide alley along its southeastern property line. The property gently rises from the northwest to the northeast along Rhode Island Avenue.
Existing Development	The property is developed with a purpose-built, four-story apartment building with 21 units and commercial use on a portion of the ground floor. The building was constructed in approximately 1954.

Adjacent Properties	To the north, across Rhode Island Avenue, and to the east across the alley are two and three-story row dwellings; to the south, is an undeveloped property; and to the west and southwest is the Franklin P. Nash Methodist Church.
Surrounding Neighborhood Character	The surrounding neighborhood is moderate density residential, consisting of row dwellings, flats multiple dwellings and few institutional uses. The building directly north of the subject property has a ground floor that had a commercial use but the space is now vacant.



Site Location



### **III. PROPOSAL**

The applicant proposes to convert a portion of the ground floor that previously housed commercial uses, 2,248 square feet, to two one-bedroom residential units. No exterior additions or modifications are proposed.

### **IV. ZONING REQUIREMENTS and RELIEF REQUESTED**

The building was constructed around 1954 as a 21-unit apartment building and non-residential use on the northwestern portion of the ground floor. The applicant has provided Certificates of Occupancy dating back to 1954 showing that portion of the ground floor bring uses for delicatessen and or grocery and restaurant uses up to 1968. After those uses were vacated the space was then partially used to store mechanical equipment which served Sprint and Nextel antennas located on the roof.

The applicant states that the space has been vacant since mid-2014, over three years, and the non-conforming status has expired under Subtitle C § 204.4 which states:

*Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for any period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the zone in which the use is located.*

Since the nonconforming status has expired, the approval of a use variance to resume commercial occupancy of the space would be required. The applicant has opted to convert the space to residential use as permitted in the RF-1 zone.

### **V. OFFICE OF PLANNING ANALYSIS**

#### **a. Variance Relief from Subtitle E § 201.4, Density for Apartment Houses in RF Zones**

##### **i. Exceptional Situation Resulting in a Practical Difficulty**

The applicant is faced with an exceptional situation leading to a practical difficulty in meeting the requirement of 900 square feet per unit in the building which was constructed prior to the adoption of the 1958 and current Zoning Regulations to accommodate 21 residential units and a small area on the ground floor for non-residential use. This purpose-built building cannot meet the requirement except through a major configuration of the building, and a loss of many residential units.

The applicant has indicated that using the space for other uses complementary to the residential use such as laundry or storage is not appropriate. The units run an average of 816 square feet, making the need for additional storage space not necessary. Similarly, laundry facilities are already provided on-site and additional facilities are not necessary.

Expansion of the existing ground floor units into the space would be disruptive to the occupants as they would have to be relocated, possibly off-site, during the expansion. Due to the topography and shape of the property, expanding into the space would create odd shaped, inefficient units.



Leaving the space vacant would not be an optimal situation as it could create nuisances that could pose safety and security risks to residents. In addition, having a vacant space near the of Rhode Island Avenue/U Street/Lincoln Avenue intersection which is heavily used by pedestrian could detract from the building and neighborhood. Based on all these situations, it is a practical difficulty for the applicant to use the space for any other use than residential and meet the 900-square foot per unit requirement.

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

The proposed units should not pose substantial detriment to the public good, and therefore residential uses would be appropriate. No exterior modifications to the building are proposed, as the units would be fully contained within the ground floor space. The church, adjacent residential neighbors and users of the alley and Rhode Island Avenue would be minimally impacted by the new units. As recommended by the Department of Transportation (DDOT), the applicant has agreed to replace paving in front the western portion of the building along Rhode Island Avenue which would reduce the pervious area and help to give the area a more residential feel.

## **iii. No Substantial Harm to the Zoning Regulations**

The addition of the two units in the existing 21-unit, purpose-built apartment building should not cause substantial harm to the Zoning Regulations. Many of the residents of the building currently receive rent assistance through vouchers. The requested relief would allow the applicant to make use of the space to create additional dwelling potentially for low income earners who depend on vouchers in a transit-accessible neighborhood. No exterior modifications are 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.

## **VI. COMMENTS OF OTHER DISTRICT AGENCIES**

The Department of Transportation (DDOT) has submitted a report at Exhibit 35, and has determined that the addition of the two units would have no adverse impact on travel conditions on the transportation network. DDOT has also recommended that the applicant restore the paved area in front the door on the west side of the building along Rhode Island Avenue to grass and landscaping. The applicant agrees with this recommendation.

## **VII. COMMUNITY COMMENTS**

The property is within ANC 5E. The applicant has indicated that the proposal will be reviewed by the ANC at its November 21, 2017 meeting. The ANC is expected to file a separate report to the record.

# BZA Case No. 19570

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19570 of GWC 220 Residential LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 Zone at premises 220 2nd Street, S.E. (Square 762, Lot 8).<sup>1</sup>

**HEARING DATE:** September 27, 2017

**DECISION DATES:** October 18, 2017 and October 25, 2017<sup>2</sup>

**DECISION AND ORDER**

This self-certified application was submitted on June 26, 2017 on behalf of GWC 220 Residential LLC, the owner of the property that is the subject of the application (the “Applicant”) to request an area variance from the lot area requirements of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). Following a public hearing, the Board voted to grant the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated July 18, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6 as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located; and Single Member District/ANC 6B01. On the same date, the Office of Zoning also provided notice of the application to the Architect of the Capitol. Pursuant to 11 DCMR Subtitle Y § 402.1, on July 18, 2017 the Office of Zoning also

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<sup>1</sup> The caption has been modified to reflect the name of the applicant. The initial application was submitted on behalf of George Calomiris and William Calomiris. (*See* Exhibit 8.) A statement in support of the application was submitted on behalf of “William Calomiris Company and George and William Calomiris.” (*See* Exhibit 12.) In its prehearing statement, the Applicant indicated that the “BZA application was initially submitted under the names of two of the managing members of the limited liability company that owns the property. The correct ownership entity name is GWC 220 Residential LLC.” (*See* Exhibit 32.)

<sup>2</sup> The Board deferred its decision in the case from October 18, 2018 to the decision meeting of October 25, 2018.

**BZA APPLICATION NO. 19570**  
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mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 6, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice was published in the *DC Register* on August 11, 2017 (64 DCR 7886).

Party Status. The Applicant and ANC 6B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Peter Waldron, the owner and resident of an attached principal dwelling abutting the subject property to the north.

Applicant's Case. The Applicant provided evidence in support of the requested zoning relief to allow a new apartment in the existing partial basement of the building. The Applicant proposed to create the new apartment since, according to the Applicant, the basement space was not needed for storage and was no longer needed for laundry facilities, and would otherwise go unused.

OP Report. By memorandum dated September 15, 2017, the Office of Planning recommended approval of the requested zoning relief. (Exhibit 35.)

DDOT. By memorandum dated September 15, 2017, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 36.)

ANC Report. By letter dated September 15, 2017, ANC 6B indicated that, at a properly noticed public meeting on September 12, 2017 with a quorum present, the ANC voted to support the application provided that the Applicant was required to provide “an exclusive indoor trash storage room.” (Exhibit 37.)

Party in Opposition. The party in opposition alleged that approval of the application would create “construction disruption and possible issues with rodents.”<sup>3</sup> (Exhibit 34.)

Person in support. The Board received a letter in support of the application from the National Indian Gaming Association, the owner of the abutting property to the south. The letter stated that the creation of an additional apartment unit in the building at the subject property would have no substantial impact on the neighborhood.

Person in opposition. The Board received a letter in opposition to the application from the zoning committee of the Capitol Hill Restoration Society. The letter stated that the requirements for approval of the requested variance relief had not been met because the Applicant had not demonstrated a need for the additional apartment; the Applicant's proposal to provide bicycle storage in the rear yard, rather than in the basement, was not workable because only the basement

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<sup>3</sup> The Applicant had discussions with the party in opposition about construction issues, which are outside the purview of the Board of Zoning Adjustment. They were unable to reach agreement at the time of the public hearing on this application but the Applicant expressed an intent to continue to efforts to enter into a construction management agreement with Mr. Waldron. The party in opposition agreed that the Applicant's proposed trash storage and collection measures would be “adequate” to address concerns about rodents. (Transcript of September 27, 2017 at 214.)

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apartment would have access to the rear yard; and the building lacked adequate space to provide indoor trash storage.

**FINDINGS OF FACT**

1. The subject property is a relatively large parcel located on the east side of 2<sup>nd</sup> Street S.E. between C Street and Pennsylvania Avenue, S.E. (Square 762, Lot 8).
2. The subject property is irregularly shaped but generally rectangular, with 54 feet of frontage along 2<sup>nd</sup> Street and a narrower lot width for approximately one-third of the length of the lot at the rear. The lot area is 6,657 square feet.
3. The subject property is improved with a three-story building, with a partial basement, built as an apartment house around 1955-1956. The building is configured as 12 apartments, each containing two bedrooms and approximately 800 square feet of space. A paved area is located at the rear of the lot, accessible by public alleys that abut the subject property along the rear (east) lot line and along a portion of the northern property line.
4. The partial basement is accessible via a stairway located in the first-floor hallway of the building near the front door, or via an entry located on the north side of the building. The basement has been used primarily as a laundry room for building residents. As part of a renovation of the building, the Applicant has provided laundry facilities in each of the existing apartments and the space formerly occupied by the communal laundry facilities is vacant and unused.
5. The Building has never provided storage, and because the existing apartments are relatively large, the residents' demand for storage facilities in the basement would be minimal.
6. A portion of the basement is used to provide trash storage. The Applicant now plans to create a new room in the basement for trash storage. The trash will be removed from the building via the front door for collection, which the Applicant indicated will occur three times per week.
7. The apartment building shares a party wall with buildings on each of the adjoining lots. The property to the south is used as office space by a nonprofit entity, the National Indian Gaming Association.<sup>4</sup> The party in opposition lives in the attached principal residence to the north.
8. Properties near the subject property are developed primarily with two-story attached dwellings, some used as flats. Other nearby properties include attached buildings used as

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<sup>4</sup> The Board approved, subject to conditions, the special exception and area variance relief requested to allow the expansion of the abutting building at 224 2<sup>nd</sup> Street, S.E. for use by a non-profit organization. *See* Application No. 17985 (final date of order: November 10, 2009); modified in Application No. 18114 (December 9, 2010).

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offices, a hotel, and commercial buildings. The Madison Building of the Library of Congress is located across 2<sup>nd</sup> Street to the west of the subject property.

9. The subject property is located within convenient walking distance of public transit, including bus stops on Pennsylvania Avenue and the nearby Capitol South Metrorail station. Shared bicycle facilities are also available in the vicinity. The Applicant plans to install bicycle parking facilities at the rear of the apartment building.
10. The subject property is located in the Capitol Hill historic district. However, the apartment building was constructed after the designated period of significance and is not a contributing building to the historic district.
11. The subject property is zoned RF-3. The purpose of the RF-3 zone is to provide for areas adjacent to the U.S. Capitol precinct predominantly developed with attached houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 500.1.) The RF-3 zone is intended to: (a) promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the adjacent area; (b) reflect the importance of and provide sufficient controls for the area adjacent to the U.S. Capitol; (c) provide particular controls for properties adjacent to the U.S. Capitol precinct and the adjacent area, having a well-recognized general public interest; and (d) restrict some of the permitted uses to reduce the possibility of harming the U.S. Capitol precinct and the adjacent area. (Subtitle E § 500.2.)
12. The Applicant proposes to create a new apartment, which will become the 13<sup>th</sup> apartment unit in the building, by converting the area formerly used for laundry facilities into a one-bedroom apartment containing approximately 615 square feet of space. Creation of the new apartment will not entail any enlargement or other change to the exterior of the building.
13. An apartment house in an RF-3 zone, including an apartment house existing before May 12, 1958, may not be renovated or expanded so as to increase the number of dwelling units unless there are 900 square feet of lot area for each dwelling unit, both existing and new. (Subtitle E § 201.4.) With a lot area of 6,657 square feet, the subject property would contain 512 square feet of lot area for each of the 13 planned apartments.

**CONCLUSIONS OF LAW AND OPINION**

The Applicant seeks an area variance from the minimum lot area requirement of 900 square feet per apartment unit set forth in Subtitle E § 201.4 to allow one additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). The Board is authorized under § 8 of the Zoning Act to grant variance relief 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

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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 11 DCMR Subtitle X § 1000.1.)

Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987); *DeAzcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978) (the extraordinary or exceptional condition that is the basis for a use variance need not be inherent in the land but can be caused by subsequent events extraneous to the land itself....[The] term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the zoning regulations in appropriate cases....); *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097 (D.C. 1979) (for purposes of approval of variance relief, “extraordinary circumstances” need not be limited to physical aspects of the land). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Board concurs with the Applicant’s assertion that the subject property is characterized by an exceptional condition arising from the confluence of the size, age, history, and location of the existing apartment house. The building was constructed as a 12-unit apartment house at a time when that use was permitted as a matter of right at that location. The Applicant’s building is the only purpose-built apartment house in the square, an area characterized by a variety of residential, commercial, and institutional uses. The building provided laundry facilities in the basement for the residents’ use, but, in response to changes in market conditions and technology since the building was constructed around 1955, the Applicant has undertaken a renovation of the building that will provide individual laundry facilities in each apartment. As a result, the former laundry space in the basement has become vacant. Especially since the basement was only partially excavated, the building was configured in such a way that limits access to the basement by residents of the existing apartments, which now limits the potential reuse of the space.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome....” *Metropole Condominium Ass’n v. District of Columbia*

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*Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board's consideration include the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant by precluding reuse of a basement space no longer needed for its original purpose but not well suited to another use that would not require variance relief, such as storage. The Applicant demonstrated that, absent variance relief, the basement space formerly occupied by the communal laundry facilities would likely remain vacant and unused, or at best underutilized. Because of the interior configuration of the building and the existing areas of access, the partial basement is not readily accessible to residents, and cannot be practically incorporated into the existing ground floor units. Because the existing apartments are relatively large, the Applicant predicted that the residents' demand for storage facilities in the basement would be minimal; the building has never offered storage. The Applicant also predicted low demand for bicycle storage in the basement, especially in light of plans to provide bicycle storage at the rear of the property.

No substantial detriment or impairment. The Board finds that approval of the requested variance will not result in substantial detriment to the public good or cause any impairment of the zone plan. The Applicant does not propose any enlargement of the existing building but will continue the existing apartment house use with one additional apartment. The Board does not find that the addition of a single one-bedroom apartment within the existing building will have any significant impact on the vicinity of the subject property, including the U.S. Capitol precinct and the adjacent area. The Applicant indicated that certain measures will be undertaken with respect to trash storage and collection in an effort to minimize the potential for adverse impacts especially pertaining to rodents, and the Board adopts those measures as conditions of approval in this order. The addition of an apartment within the existing building will be consistent with the residential nature of the RF-3 zone, without affecting the principal dwellings and flats in small attached buildings near the subject property.

**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 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP's recommendation that the application should be approved in this case.

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) (2012 Repl.)).) In this case ANC 6B expressed support for the Applicant's proposal provided that the Board "specifically requires an exclusive indoor trash storage room." The ANC expressed concern about "trash



**BZA APPLICATION NO. 19570**  
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management for the building” and opposed the placement of receptacles in front of the apartment building. The Board concurs with the ANC that “the option of placing trash receptacles in the exterior of this building [is] unacceptable given the history of rodent problems in that area.” (Exhibit 37.) The Board concludes that the conditions of approval adopted in this order are sufficient to address the concerns of ANC 6B with respect to trash storage, which will occur inside the building. Collection of the trash by way of the front door will ensure that trash will not be stored improperly at the rear of the building.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the lot area requirement of Subtitle E § 201.4 to allow an additional apartment in an existing 12-unit apartment house in the RF-3 zone at 220 2<sup>nd</sup> Street, S.E. (Square 762, Lot 8). It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 33 – REVISED ARCHITECTURAL PLANS AND ELEVATIONS - AND WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall store trash receptacles within the building.
2. The Applicant shall ensure that trash is removed from the interior storage location through the front door of the building.
3. The Applicant shall schedule trash collection at least three times per week.

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, and Anthony J. Hood (by absentee ballot) voting to APPROVE; one Board seat vacant).

**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:** August 16, 2018

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.

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PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.

# BZA Case No. 18562



2013 JUN -4 PM 3: 32

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Arthur Jackson, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** June 4, 2013  
**SUBJECT:** BZA Case 18562 – variance request to allow replacement of a two-story church and apartment with a three-story, seven-unit apartment building on property at 1538 New Jersey Avenue NW

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) **recommends denial** of the variance relief requested from § 401 3 to reduce the 900 square feet of land area required for each apartment in the R-4 district to 322 square feet for a proposed seven-unit apartment building. The application is somewhat unclear, but it incorrectly refers to this as a request to “convert” the existing building to a multi-family building. Rather, it appears that this request would replace the existing two-story row dwelling with a new three-story plus new cellar apartment building. The Zoning Regulations clearly state that R-4 is not a multi-family zone; the construction of new, larger apartment building is fully inconsistent with the wording and the intent of the regulations.

Although it appears parking relief and lot occupancy relief (either for the entire new structure or at least for the proposed third floor) may also be required in this case, this relief was not requested by the applicant. As a result, OP did not include the associated analysis in this report (the Zoning Administrator has yet to respond to a parking determination request). Typically OP would not support lot occupancy relief for new construction on a lot such as this with no unique constraints.

**II. LOCATION AND SITE DESCRIPTION:**

Address	1538 New Jersey Avenue NW
Legal Description:	Square 0510, Lot 0053
Ward	2C
Lot Characteristics	The rectangular interior lot has an area of 2,255 square feet (0.05 acre), and frontages along New Jersey Avenue NW and an alley that is 10-feet wide (refer to Figures 1 and 2)
Zoning	R-4 – one-family detached, semi-detached and row dwellings, flats and churches are allowed as a matter of right. Conversions of buildings existing before May 12, 1958 into apartment houses are allowed <i>only</i> if the property land area equals or exceeds 900 square feet x the number of proposed units. Apartment conversions and building expansions for apartment conversions are not allowed unless the referenced minimum lot area is provided.

**BOARD OF ZONING ADJUSTMENT**  
District of Columbia

CASE NO. 18562

EXHIBIT NO. 31



Existing Development	Historical permit records in the DC Office of Historic Preservation indicate the existing masonry and frame building was constructed in 1939 as a store with an upstairs apartment. Newspaper articles from the period indicate that the building served as the offices of the Washington Urban League for a time. Certificates of Occupancy (COs) in the Department of Consumer and Regulatory Affairs indicate that the ground floor was occupied by a succession of church uses since June 1959. The application indicated that the second floor was still used as an apartment (refer to Figure 1). The rear yard is cluttered with what appear to be lower foundation walls of several accessory buildings and overgrown landscaping, and surrounded by a gated chain-link fence approximately 7-feet tall.
Historic District	None
Adjacent Properties	Two and three-story one-family row dwellings and flats and the Second Church of God to the north and south along the same New Jersey Avenue frontage; one-story commercial building to the east across New Jersey Avenue, and the KIPP DC Academy across the alley to the west.

### III. PROJECT DESCRIPTION IN BRIEF

Applicant	1538 New Jersey LLC, the owner of record
Proposal	<p>The written statement is not entirely clear. The drawings are also unclear in that they do not provide an “existing” and “proposed” set of plans, and provide no elevations or other details.</p> <p>However, despite the language in the application that this is a request to allow the conversion of an existing two-story row dwelling, this appears to be a request to demolish the existing two-story row dwelling to allow construction of a <i>new</i> three-story apartment building with seven units. No onsite parking spaces exist or would be provided under this plan.</p>
Relief Sought	<p>Variance relief to reduce the required land area for seven apartments from 6,300 square feet to the existing 2,255 square feet.</p> <p>One-family detached, semi-detached and row dwellings are allowed in the R-4 District by right under §§ 330.5 (a) and (c), as are places of worship. Sections 330.5 (c) and 401.3 also allow apartment conversions when the lot area equals or exceeds 900 square feet for each proposed number of units. R-4 does <i>not</i> permit</p> <ul style="list-style-type: none"><li>• New apartment buildings,</li><li>• Conversions of existing row dwelling structures unless the 900 square feet of lot area per unit requirement is met, or</li><li>• Physical expansions of existing row dwelling structures to allow the addition of more apartment units.</li></ul> <p>The existing land area of 2,255 square feet is sufficient for <i>two</i> dwelling units (a flat). This proposal for <i>seven</i> apartments would require a minimum land area of 6,300 square feet, over 4,000 square-feet more than currently existing onsite and almost three times the existing lot area.</p>

#### IV. ZONING REQUIREMENTS

R-4 District	Regulation	Existing	Proposed <sup>1</sup>	Relief
Height (ft.) § 400	40 feet	21 feet, 2 floors	35 feet 8 , 3 floors	None
Land area	--	2,255 sq. ft.	SAME	None
Number of dwelling units	2	1	7	--
Area requirement § 401.3	900 sq. ft.	900 sq. ft.	6,300 sq. ft.	-4,045 sq. ft.
Lot Occupancy § 403	60% or none	63.6% <sup>2</sup>	63.6%	<i>Appears to be required, but not requested</i>
Rear Yard (ft.) § 774	20 feet	40 feet	40 feet	None
Parking, Vehicle § 2101	1 space/3 dwellings	None	None (Additional 6 units)	-2 spaces (Unclear if relief is required)

According to DC land records, the existing 70 x 20.5-foot building has a total floor area of 2,448 square feet; 1,524 square feet on the ground floor, 924 square feet on a partial second floor and no basement or cellar. As such, conversion of the existing structure to a flat would yield two units of about 1,224 square feet of gross area, which is not unusually large for a flat.

This proposal would add *six* more apartments onsite for a total of *seven* and eliminate the church use. Submitted plans indicated that the new construction would:

- create a *new* cellar level the size of the existing building footprint which is nonconforming for lot occupancy. The applicant has revised the proposal to ensure that the lower level does not count as an additional (non-conforming) story;
- construct an elevated first floor above the cellar level with steps down to the adjacent public space; and
- construct two more floors above.

OP shared initial concerns with the applicant and requested additional information on:

- the existing building height and rear yard dimension;

Figure 1



<sup>1</sup> Information provided by applicant.

<sup>2</sup> OP calculation based on the submitted plans and public land record.

- the proposed exterior elevations;
- whether the building has a basement,
- a copy of the property appraisal secured prior to purchasing the property, and
- *actual* contractor estimates for the two options provided in the application and for an allowable two-unit building (flat) conversion

In response, the applicant confirmed the existing building and yard dimension, provided a front building elevation for the proposed apartment building, revised the building section to show a basement ceiling height of 3'-11" instead of 4 feet above the adjacent grade, and revised the in-house profit-and-loss statement to include the allowable flat use, in the undated Pre-hearing Statement of the Applicant. The Statement also provided projected construction budgets and rental comparables. The applicant stated that no building appraisal was secured prior to the purchase and declined to provide an elevation for a flat option that the applicant did not plan to build.

Regarding the existing nonconforming lot occupancy, the proposal would continue and extend this nonconforming characteristic of the site. While § 403.2 of the regulations allows the, "*Greater of 60% or the lot occupancy as of the date of conversion*", this provision does not apply to completely new construction.

Regarding the parking requirement, § 2100.6 requires additional onsite parking spaces, "*when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition dwelling units, gross floor area*" and § 2100.7 requires additional parking if, "*the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate*". Accordingly, two onsite parking spaces may be required for the six *additional* dwelling units. However, since the applicant claims a 5-space parking credit for the previous church use, parking relief was not requested.

The Zoning Administrator would review this proposal for conformity with these and other Zoning Regulations at the building permit stage.

## V OP ANALYSIS

### Consistency with § 3103

The applicant for a variance has the burden of showing that the property is unique because of some physical aspect or other *extraordinary or exceptional situation or condition inherent in the property*, that strict application of zoning regulations will cause undue hardship or practical difficulty to the applicant and that granting the variance will do no harm to public good or to zone plan.

- **Unique conditions or circumstances resulting in an exceptional or practical difficulty:**

The application indicated <sup>the</sup> ~~the~~ number of challenges inherent in the existing building resulted in their intention to "demolish the existing structure and build a *new* row house on the lot" (reference original application, page 6). The existing substandard building is neither an historic or contributing structure, so nothing prevents the applicant from demolishing this structure, which they plan to do. Demolition of the substandard building would eliminate the unique condition on this site. The applicant, therefore, has not made a case for unique conditions resulting in a practical difficulty that would support construction of a new multi-family building in the R-4 zone on a lot this size.

The 20.6 x 110-foot and 2,255 square-foot dimensions of this rectangular lot are slightly larger than the minimum 18 x 100-feet and 1,800 square feet required for a row dwelling lot in the R-4 district. In fact, the size of the subject property is identical to six of the nine neighboring properties that front New Jersey Avenue along this square, so the lot is not unique in the



neighborhood or in the R-4 row dwelling / flat zone in general.

The financial information provided about the different development options for this site also appears inconsistent. According to information supplied by the applicant, 1538 New Jersey LLC bought the property in January of 2013 for \$399,900 and the assessed value of the land and improvements is just over \$590,000, with the land value assessed at \$411,000. So the current owner bought the site for *less than* the assessed land value.

Figure 2



Since the intent to “demolish the existing structure and build a *new* row house on the lot” is clearly stated in the application, it is unclear why the applicant would provide cost estimates for the flat and three-unit options based on *rehabilitating* the existing two-story building. There is also no information provided about potential proceeds from the sale of the flat or the other development options.

- **Determent the public good:**

While the scale of the new building would not be substantially incompatible with neighborhood character, construction of *seven* dwelling units on a lot on which the zoning regulations anticipate two units could negatively impact the overall quality of life and neighborhood character expectations in this compact neighborhood.

- **Detriment to the intent, purpose and integrity of the zoning regulations:**

Granting the zoning relief as requested to allow the construction of a new (or even a greatly expanded) structure that would become an apartment building would be significantly contrary and detrimental to the intent and integrity of the Zoning Regulations. The Zoning Commission amended the R-4 district regulation specifically to clarify and reinforce that this zone district is not intended to be an apartment zone. The proposed new construction would have the entirely opposite effect.

## VI. AGENCY COMMENTS

To date, the District Department of Transportation has not provided agency comments.



## **VII. COMMUNITY COMMENTS**

A signed Form 129 Advisory Neighborhood Commission (ANC) Report dated May 10, 2013, indicated the ANC 6E voted unanimously on the same date in support of the requested variance, “provided that the property has two parking spaces ” The case file also includes letters in support signed by neighbors residing at 1536 New Jersey Avenue, 404 Franklin Street, and 418 Q Street NW