

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of 245-249 8th Street NE REI, LLC
245-249 8th Street, NE (Square 917, Lot 119)

I. INTRODUCTION.

This Statement is submitted on behalf of 245-249 8th Street NE REI, LLC (the “**Applicant**”), owner of the property located at 245-249 8th Street, NE (Square 917, Lot 119) (the “**Property**”). The Property is improved with a three-story, eleven-unit apartment building (the “**Building**”) comprised of one-bedroom units. The Applicant proposes to renovate and reconfigure the Building, together with a rear addition (the “**Addition**”), resulting in an eight-unit apartment building with seven (7) two-bedroom units and one (1) one-bedroom unit with an office. The project reduces the unit count from eleven (11) units to eight (8) units, and the proposed lot occupancy will remain within the special-exception maximum of 70%.

The Applicant is requesting the following areas of relief:

- 1. Special Exception Relief – E § 210.1 - Pursuant to E § 5201 (Lot Occupancy).** Lot occupancy in the RF-1 zone is limited to 60%. The existing Building occupies 60% of the lot (2,086 sq. ft.). The Addition will bring the total lot occupancy to 70% of the lot (2,434 sq. ft.).
- 2. Special Exception Relief From U § 301.4 – Pursuant to U § 320.2 (Renovation and Expansion of an Existing, Converted Apartment House).** An apartment house in the RF-1 zone that was converted from a residential building prior to June 26, 2015 is a conforming use and structure, but “shall not be permitted to expand either structurally or through increasing the number of units, except as provided by Subtitle U § 320.2.” The Building was apparently converted to an apartment building prior to 1958. The project includes a structural addition to the Building. U § 301.4 therefore directs the Applicant to U § 320.2 for the relief necessary to undertake the proposed structural expansion, regardless of the fact that the Project decreases, rather than increases, the number of units. The Applicant accordingly requests special exception relief pursuant to U § 320.2.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception relief requested pursuant to Subtitle X § 901.2, E § 5201, and U § 320.2.

III. BACKGROUND.

A. Description of the Property and Surrounding Area.

The Property is located in the Capitol Hill Historic District and is an interior lot with 3,477 square feet of land area. Abutting the Property to the north is 251 8th Street, NE, a two-unit condo. A public alley abuts the Property to the east and 8th Street abuts the Property to the west. Abutting the Property to the south is 243 8th Street, NE, a two family flat.

B. Proposed Project.

The Property is currently improved with a three-story, eleven-unit apartment building comprised of one-bedroom units, with an existing lot occupancy of 60%. The Applicant proposes to renovate the Building and construct a three-story rear Addition to allow for additional floor area overall, reconfigured down from 11, to 8 units. The Addition conforms to all applicable development standards other than lot occupancy, including height and rear yard setback.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.

A. Overview.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, subject also, in this case, to the specific requirements for relief under E § 5201 and U § 320.2.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., Nat'l Cathedral Neighborhood Ass'n v. D.C. Bd. of Zoning Adjustment, 753 A.2d 984, 986 (D.C. 2000).

B. General Special Exception Requirements of Subtitle X § 901.2.

The granting of special exception relief for lot occupancy and for the structural expansion of the existing apartment house “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps” and “will not tend to affect adversely, the use of neighboring

property in accordance with the Zoning Regulations and Zoning Maps...” (11 DCMR Subtitle X § 901.2).

1. Project Will Be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Property is located in the RF-1 Zone and is improved with an existing, conforming apartment house. The Project does not increase the number of dwelling units on the Property, it decreases the unit count from 11 to 8, and all requested areas of relief are available by special exception. Apart from the request relief, the Building and Addition comply with the development standards of the RF-1 zone. Accordingly, the proposed Project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Project Will Not Tend to Affect Adversely the Use of Neighboring Property in Accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Addition will not unduly affect the light and air or privacy of the neighboring properties and will not adversely affect the use of neighboring properties.

C. The Application Meets the Specific Requirements of Subtitle E § 5201

The Applicant is requesting special exception relief from the lot occupancy requirement pursuant to E § 5201, which permits the Board to grant relief up to a maximum lot occupancy of 70%. The Application meets the criteria for special exception relief under E § 5201.4 as follows:

Section 5201.4(a) “The light and air available to neighboring properties shall not be unduly affected”

The Addition will allow the rear wall of the Property to be more in line with the abutting properties to the north and south. The Addition will not extend the rear wall of the Property beyond the neighboring properties rear walls and therefore shall not unduly affect the light and air available to neighboring properties.

Section 5201.4(b) “The privacy of use and enjoyment of neighboring properties shall not be unduly compromised”

The Addition shall not unduly compromise the privacy of use and enjoyment of neighboring properties. As stated above, the rear wall of the Building will not extend further than the abutting properties to the north and south. Therefore there are no north or south facing

windows. Regarding the property to the east, a rear yard of 20 feet is provided and there is an alley providing further separation between the properties.

Section 5201.4(c) “The proposed addition or accessory structure, together with the original building, or the new principal building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage;”

The Addition is located at the rear of the Building and will not be visible from 8th Street. The east side facing the alley has been designed to maintain the character and shall not substantially visually intrude upon the character, scale and pattern of houses along the alley and C Street.

D. Specific Requirements of U § 320.2.

Subtitle U § 301.4 provides that a previously-converted apartment house deemed a conforming use “shall not be permitted to expand either structurally or through increasing the number of units, except as provided by Subtitle U § 320.2.” This provision identifies two independent triggers for relief - structural expansion, or an increase in units - and directs both to U § 320.2. The Building is a conforming apartment house under U § 301.4, and the Project includes a structural addition to the Building. Special exception relief is therefore properly sought under U § 320.2 for the structural expansion of the Building.

The Applicant notes that U § 320.2 separately describes “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” as permissible by special exception, subject to certain conditions. The Project decreases — rather than increases — the number of units, from eleven (11) to eight (8). Because U § 301.4 expressly directs *structural* expansion of a converted apartment house to U § 320.2 as a distinct and independent basis for relief, separate from an increase in unit count, the Project’s structural expansion is properly evaluated under U § 320.2 on that basis. The Project’s reduction in unit count furthers, rather than undermines, the purpose of these provisions: it reduces density on the Property, improves the Building’s conformance with the 900-sq.-ft.-per-unit land area standard discussed in Section 320.2(c) below, and, because no new units are created, does not implicate the Inclusionary Zoning set-aside condition of Section 320.2(b).

The proposal satisfies the requirements of 11 DCMR Subtitle U § 320.2(a) through (c) as follows:

Section 320.2(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 is in existence on the Property and will be in existence on the Property at the time the Department of Buildings accepts as complete the building permit application.

Section 320.2(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;”

The Applicant is not proposing to increase the number of dwelling units. The project decreases the unit count from 11 to 8. Therefore, Inclusionary Zoning and the set aside requirements of Subtitle C § 1003.10 do not apply.

Section 320.2(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 Applicant is not proposing to increase the existing number of dwelling units. The existing structure is considered conforming with respect to use pursuant to U § 301.4¹.

V. CONCLUSION.

For the reasons stated above, this Application meets the requirements for special exception relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully Submitted,

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¹ See BZA Order No. 20388, 2615 13th Street, NW (special exception granted pursuant to Subtitle U § 320.2 for the physical expansion of a four-unit apartment building converted prior to June 26, 2015, notwithstanding that the building provided only 596.25 sq. ft. of land area per unit — well below the 900 sq. ft. standard — where no additional units were proposed).