

**HANOVER LAW. PC**  
*Attorneys and Counselors at Law*

14 January 2017

DC Office of Zoning  
441 4th Street, NW  
Suite 200S  
Washington, DC 20001  
Phone: (202) 727-6311  
Fax: (202) 727-6072

RE: 452 Newton Place, NW

Dear Sir/Madame:

We have been retained to represent Mr. Serhat Akin, owner of the lower two units of 452 Newton Place, NW. Pursuant to the instructions accompanying Form 120, this letter provides a detailed explanation of the proposed special use, along with a discussion of Subtitle X §901 factors. This matter is submitted pursuant to DCMR11-U320.2; 452 Newton Place was constructed prior to 1958, and the owner seeks a special exception to allow an R-1 residential building to have third unit within the dwelling.

Please note: KAIM Development Corporation is named on several of the documents exhibited with this letter. KAIM is owned by Serhat Akin and Bryan Manning. Although Mr. Akin failed to obtain his own Certificate of Occupancy when he converted the dwelling from corporate to private ownership, the history of this special use exception is tied to KAIM as much as it is to Mr. Akin personally. Per the letter from Mr. Le Grant (Exhibit 1), after obtaining a special use exception from the Board, Mr. Akin will purchase the proper Certificate of Occupancy.

**I. Reason for the Special Use Exception**

On 21 November 2017, 2017, Mr. Matthew Le Grant, Zoning Administrator, sent a certified letter to Mr. Akin regarding the deficiencies in compliance with 425 Newton Place. That letter is attached as Exhibit 1.

The deficiency stems from the addition of the third living unit within the dwelling. The original Certificate of Occupancy permitted only two living units within the dwelling. See, Exhibit 2.

**The purpose of this Special Use Exception is to allow a third living unit in the basement of 425 Newton Place, NW.**

Presently, each of the units is rented. A copy of the rental agreements is at Exhibit 3.

**II. Basis of the Special Use Exception**

On 27 March 2015, Mr. Le Grant signed a waiver to allow three units in 425 Newton Place. See, Exhibit 4. A building permit was obtained in 2015 to permit conversion to a three unit dwelling. See, Exhibit 5.

Subsequently, somewhere between Mr. Le Grant's approval, and final occupancy, the property was inspected, and failed. The failure was for exceeding permissible scope of an RF-1 dwelling. This constituted considerably confusion and resulted in a four month construction delay. See, Exhibit 6 (infraction), and Exhibit 7, (resolution). Nevertheless, during this process of stop-work, and final certificate of occupancy, the number of permissible units was decremented to two. See, Exhibit 2.

The work had, however, already been completed pursuant to the original request, and approval, by Mr. Le Grant.

The error appears to have occurred when KAIM did not file for a special exception after the stop work order. My understanding is that they believed they already had permission, regardless of the Certificate of Occupancy. This was in error. The current application submitted with this letter is a correction to KAIM's mistake.

### **III. Timeliness of Special Use Exception request**

The deficiency letter was dated 21 November 2017 (Exhibit 1). Calculating from the 24<sup>th</sup> of November, Mr. Akin has 60 days to submit his request for a special exception.

Pursuant to DCMR 11-Y204, the 60th day is the 23<sup>rd</sup> of January 2018. Mr. Akin's submission is timely.

### **IV. Special Use Exception: Impact on the Community**

In this instance, there is no impact on the community. For all intents and purposes, the third living unit will not be visible to any of the neighbors. 425 Newton Place maintains its own, private parking area behind the dwelling. To wit – there are three spaces.

1. No road use is required for parking;
2. There are no extensions to the dwelling;
3. The roof was not raised;
4. Three deck/patio areas were already present prior to the third unit becoming active as an independent living unit. See, Plan B deck elevations within this submission;
5. The setback from the sidewalk remains the same;
6. Building size, as a percentage of lot size, remains unchanged.

Mr. Le Grant opined, regarding the impact of this special use exception, as follows:

Based on the information you provided I agree that this is unlikely to adversely affect adjacent properties, and all other zoning requirements will be met by the proposed plans. (Exhibit 2)

Nothing else has changed from the time Mr. Le Grant originally approved the three units.

However, out of an abundance of caution, each neighbor will be contacted prior to the hearing, concerning potential issues with congestion (i.e. adding another person/car to the neighborhood), and any other concern they may have. Additionally, the ANC at:

Advisory Neighborhood Commission [1A]

3400 11th Street, NW, #200

Washington, DC 20010

will be contacted to ensure all neighborhood requirements and concerns are addressed.

This also comports with the requirement of the Special Use Exception filing procedure.

## **V. Review of DCMR 11-X901 Factors**

The code section calls for reviewing the following factors when considering a Special Use Exception:

The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

Mr. Akin's request for a Special Use Exception meets each criteria as follows:

- (a) The intent of the Zoning Regulation in the ANC 1A area is codified under the definition of RF-1. Here, the Zoning Board has indicated a desire to prevent tall, overcrowded buildings, and preserve the general condominium and small townhome milieu that defines the area. Most house were built before the 1970's, and the cost and crowding issues are salient in Board decisions in this area. In Mr. Akin's case, the addition of a single living unit in the basement of the house is well in line with the environment found in ANC 1A. The addition is neither intrusive on the layout and appearance of similarly situated home, nor contributing to urban sprawl. In fact, the smaller home (900 sqft) is arguably affordable, and accessible to mid-level incomes – the perfect addition to this area of DC.
- (b) There is no impact on adjacent properties. Typically, additional living units build *up*, thus creating a light and air blockage for neighbors. Additionally, on street parking, always at a premium, is often another significant problem. However, neither of these apply in this instant case. As this is a

basement unit, there is no height issue; street parking is not impacted directly, as all three units at 425 Newton Place have off-street parking. Arguably, guest parking could still add to street parking issues, however, that would be speculative. The potential, however, will be discussed with each neighbor, to ensure any complaints are brought before the Board.

- (c) In this case, the special conditions are found at DCMR11-U320.2. That code section, and Mr. Akin's comments, are as follows:

[U320.2] 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);

*ANSWER: The height of 425 Newton Place, NW is ~28 feet.*

(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;

*ANSWER: Not applicable. Only three living units.*

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

*ANSWER: There is an existing residential building here.*

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

*ANSWER: Each living unit is 900 sqft.*

(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;

*ANSWER: There is no extension to the building at 425 Newton Place.*

(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;

*ANSWER: The third living unit (in the basement) does not block or impede any chimney or external vent.*

(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, shade, or other reputable study acceptable to the Board of Zoning Adjustment;

*ANSWER: There are no solar energy systems installed at 425 Newton Place.*

(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;

*ANSWER: The third living unit (in the basement) does not change anything related to turrets, towers, or dormers.*

(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;

*ANSWER: As this is a basement addition, there is no impact on light/air, privacy, or view.*

(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;

*ANSWER: This is covered through the submission of photographs and Plan A and Plan B plats and plans submitted with this application.*

(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;

*ANSWER: Mr. Akin is open to any requirements of the Board.*

(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

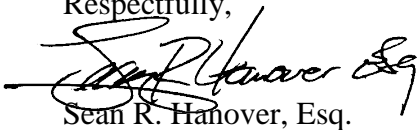
*ANSWER: Mr. Akin does not believe that any criteria need to be waived. However, at our meeting with the Board, we are grateful for any consideration that the Board may feel is required.*

(m) An apartment house in an RF-1, RF-2, or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and this section.

*ANSWER: Mr. Akin leaves this criteria herein, as the original approval from Mr. Le Grant predates June 26, 2015. As such, criteria (m) may service to expedite this request, as the structure could be deemed conforming by the Board.*

In conclusion, Mr. Akin requests that the Board approve his Special Use Exception application. There is limited to no impact on community members; there is an individual current living in the 3<sup>rd</sup> unit; the modification had original been approved by the Zoning Administrator, and KAIM complied with the Building permit requirement for >2 units. Although the final Occupancy Certificate was in error, Mr. Akin requests that you grant the Special Use Exception to allow him to rectify his mistake and obtain the proper, three unit certificate of occupancy.

Respectfully,

A handwritten signature in black ink, appearing to read "Sean R. Hanover Esq.", written over a horizontal line.

Sean R. Hanover, Esq.