

SECOND SUPPLEMENTAL REPORT

TO: District of Columbia Board of Zoning Adjustment
FROM: Elisa Vitale, Case Manager
JL Joel Lawson, Associate Director Development Review
DATE: September 19, 2018
SUBJECT: BZA Case 19712, 452 Newton Place, NW, Variance from U § 320.2(d) to allow conversion to a three-unit apartment building not meeting the minimum lot area.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) continues to recommend **denial** of the following:

- Special exception pursuant to X § 901.1 from U § 320.2 for conversion of an existing residential building to an apartment house; and
- Area variance pursuant to X § 1002.1 from U § 320.2(d), land area for conversion (minimum of 900 square feet of land area per unit required, 886.67 square feet proposed).

II. BACKGROUND

The Office of Planning (OP) and the District Department of Transportation (DDOT) filed reports on March 22 and March 16, 2018, respectively (Exhibits 35 and 34). The OP report recommended denial of the relief requested. The Applicant retained new legal counsel and the new attorney filed a letter requesting postponement and updating the Applicant's name on March 27, 2018 (Exhibit 36). On April 23, 2018 (Exhibit 40), a revised Self-Certification was filed amending the requested relief. OP issued a supplemental report on June 8, 2018 recommending denial of the relief requested (Exhibit 60).

The BZA held a hearing on June 20, 2018 and continued that hearing to September 26, 2018 to allow the Applicant to provide additional information. The Applicant submitted a timeline, revised burden of proof statement, and information regarding difficulty selling the unit (Exhibits 69 and 69A).

III. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from U § 320.2(d)

i. Exceptional Situation Resulting in a Practical Difficulty

OP has reviewed the Applicant's supplemental filing at Exhibits 69 and 69A and does not find that the burden of proof has been met to demonstrate an exceptional situation resulting in a practical difficulty. The Applicant relies on the issuance of building permits by DCRA; however, the initial DCRA permit issued (B1504361) was for a single-family dwelling containing one unit. If, as the Applicant asserts, the plans and purpose of the permit was to convert a flat to a three-unit apartment

building, the Applicant should have corrected the error with DCRA at the time of building permit issuance.

Instead, the Applicant proceeded and commenced work to convert the flat to a three-unit apartment building. DCRA issued a stop work order on June 12, 2015 for exceeding the scope of the permit. At that time, the Applicant sought to change the use from a two-family flat to three-unit condo building and relied on Zoning Administrator flexibility (noted via e-mail from the Zoning Administration dated April 6, 2015) to permit the conversion because the property did not provide the required 900 square feet of land area per unit. The Applicant continued work, but DCRA did not issue the new building permit reflecting the conversion to a three-unit apartment building until October 2015 (B1500315), at which point ZA flexibility was not available.

DCRA revoked the permit for the three-unit building (B1500315) in December 2015 and the Applicant proceeded to complete renovations of the existing flat under a new building permit issued in February 2016 (B1603923). The Applicant recognized and proceeded with improvements of the property, as a flat, in December 2015. OP does not find that the Applicant's reliance on DCRA permits to be an exceptional situation resulting in a practical difficulty. Furthermore, the Property could be used as a legally conforming flat.

ii. No Substantial Detriment to the Public Good

The provision of three units rather than the permitted two unit would likely not result in substantial detriment to the public good. The property is 40 feet short of the required 2,700 square feet. However, the Property is not in compliance with its C of O. The Applicant received notice on November 21, 2017 from the Office of the Zoning Administrator that CO1603907 would be revoked unless the Property was brought in to compliance. The notice indicated the following:

1. A new C of O was required based upon a change in ownership; and
2. The Property is zoned RF-1, which allows only 2 units as a matter of right.

iii. No Substantial Harm to the Zoning Regulations

The RF-1 zone permits 2 units as a matter-of-right and allows for the conversion of existing residential buildings to an apartment house by special exception if there is a minimum lot area of 900 square feet per dwelling unit. The subject property fails to meet the 900 square-foot requirement. Allowing the retention of this conversion, completed without necessary permits, would cause harm to the intent and integrity of the Zoning Regulations.

IV. COMMENTS OF OTHER DISTRICT AGENCIES

The District Department of Transportation (DDOT), via memo dated March 15, 2018 (Exhibit 34), indicated that it had no objection to the requested special exception relief.

V. COMMUNITY COMMENTS

ANC 1A submitted a report dated June 25, 2018 (Exhibit 66) recommending denial of the application, which reflects a 6-1-0 vote at the June 18, 2018, ANC 1A meeting. Other comments from community members had not been filed at the time this report was written.