

**MEMORANDUM**

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

**SUBJECT:** BZA Case 19958 (2021 4<sup>th</sup> Street, NW) to enlarge an existing row building and to permit a ground floor restaurant use.

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning is supportive of renovation and rehabilitation infill proposals such as this, and is supportive of this proposal in concept. However, OP has had conversations with the applicant that the standard for variance relief must be met, and to date OP does not feel that the applicant has adequately met this standard for aspects of the relief requested. As such:

The Office of Planning (OP) recommends **denial** of the following variance relief:

- Lot Occupancy, Subtitle E § 304.1, pursuant to Subtitle X § 1000 (60 percent maximum permitted; 78 percent existing at first and second floors and 47 percent existing at third floor; 76 percent proposed for first floor and 72 percent proposed for second and third floors); and
- Nonconforming Structures, Subtitle C § 202.2, pursuant to Subtitle X § 1000 (existing nonconforming structure would be enlarged creating new nonconformities).

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

- Use, Subtitle U § 301, pursuant to Subtitle X § 1000 (eating and drinking establishment use not permitted; one dwelling unit and one discontinued commercial unit existing at first floor; eating and drinking establishment proposed for entire first floor).

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

- Roof Top Architectural Element, Subtitle E § 206.1(a), pursuant to Subtitle X § 901.2 (an original roof top architectural element shall not be removed or significantly altered, existing cornice would be removed).

**II. LOCATION AND SITE DESCRIPTION**

Address	2021 4 <sup>th</sup> Street, NW
Applicant	NP 47 LLC
Legal Description	Square 3082, Lot 26
Ward, ANC	1/1B
Zone	RF-1

Lot Characteristics	Rectangular corner lot measuring 35 feet by 50 feet. The lot is bounded by 4 <sup>th</sup> Street, NW to the west, a private parking pad to the north, an apartment house to the east, and Oakdale Place, NW to the south.
Existing Development	Row building with a small rear deck. The first floor currently contains one dwelling unit and a discontinued commercial unit. The second floor contains two dwelling units, with one unit being multi-level and extending into a partial third floor of the building. The existing residential GFA is 2,258 square feet and the former commercial space GFA is 680 square feet.
Adjacent Properties	Residential buildings and parking garage.
Surrounding Neighborhood Character	Residential row buildings and facilities for Howard University.
Proposed Development	<p>The proposed renovation would eliminate the existing dwelling unit on the first floor to provide a commercial restaurant use on the entire first floor. The second floor would contain one dwelling unit, and the third floor would be enlarged to match the building area of the existing lower floors and contain one dwelling unit. The proposed residential GFA would be 2,693 square feet and the proposed commercial GFA would be 1,321 square feet. The renovations would be extensive, including a third floor addition; replacement of the front façade of the building to move the façade 3 feet to be on the property line; removal and lowering of the floor at the ground floor level, removal of the rear deck, and removal and complete reconfiguring of interior walls.</p> <p>The applicant states that the hours of operation for the restaurant would be 7:00 am to 10:00 pm Monday thru Sunday. Trash from the restaurant would be stored in an enclosed area at the ground floor with direct access to Oakdale Street through a fenced area. The applicant did not state the times or days when trash and deliveries would be made to the restaurant.</p>

**III. ZONING REQUIREMENTS and RELIEF REQUESTED**

RF-1	Regulation	Existing	Proposed	Relief
Height E § 303	35 ft. max.	35 ft.	35 ft.	None required
Lot Width E § 201	18 ft. min	35 ft.	No change	None required
Lot Area E § 201	1,800 sq. ft. min.	1,750 sq. ft.	No change	None required

<b>RF-1</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Lot Occupancy E § 304	60% max.	78% - 1 <sup>st</sup> & 2 <sup>nd</sup> floors; 47% - 3 <sup>rd</sup> floor	76% - 1 <sup>st</sup> floor;  72% - 2 <sup>nd</sup> & 3 <sup>rd</sup> floors	<b>Variance:</b> <b>16% - 1<sup>st</sup> floor;</b> <b>12% - 2<sup>nd</sup> &amp; 3<sup>rd</sup></b> <b>floors</b>
Rear Yard E §§ 205.3 & 306	20 ft. min.	0 ft.	6 ft. 9 in.	None required
Front Setback E § 305	Setback must be in range of existing front setbacks	Front setback is in range of existing front setbacks	Front setback would be in range of existing front setbacks	None required
Side Yard E § 307	None required, but 5 ft. min. if provided	None provided	None provided	None required
Parking C § 701	Residential: 1 parking space per 2 dwelling units	None provided	Existing non- conformance	None required
	Eating & drinking establishment: 1.33 space per 1,000 sq. ft. in excess of 3,000 sq. ft.	N/A	None required	
Roof Top Architectural Element E § 206.1	Removal or altering of roof top architectural elements prohibited	Roof top cornice	Remove roof top cornice	<b>Special exception relief</b>

**IV. OFFICE OF PLANNING ANALYSIS**

**a. Variance Relief from Subtitle E § 304.1, Lot Occupancy and Subtitle C § 202.2, Nonconforming Structures.**

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

The subject corner lot is regularly shaped and is larger in area than many of the record lots on the surrounding squares. The removal of the rear deck reduces the overall lot occupancy of the first and second floors to 70 percent. The proposed lot occupancy is 76 percent on the first floor and 72 percent on the second and third floor. The lot occupancy increase is due to the applicant’s decision to shift the entire front wall of the building forward to the front property line by three feet. The lot occupancy increase on the third floor is also due to this shifting of the front façade, and the addition of new third floor space above the current two-story portion of the building.

OP supports the retention of portions of the existing structure, and has no concerns in concept with the proposed third floor addition. However, OP does not accept the applicant’s argument (Exhibit 33A) that the decision to maximize density on the site creates a practical difficulty in meeting lot occupancy requirements. Likewise, the desire

to provide for a new front façade as part of the three-foot extension of the building to the property line does not appear to OP to address the variance test. OP has, instead, suggested to the applicant that revisions to the design to only require special exception relief, by bringing the overall lot occupancy of the building to 70 percent, should be considered for the first, second, and third floors of the building.

The applicant states the following reasons (Exhibit 33A) for why lot occupancy relief is required as it relates to the proposed front addition to the building:

- *Allows the Applicant to [not only] have a more-aesthetically pleasing and inviting design, but practically it adds a much-needed 105 square feet to the commercial space;*
- *Allows for three-bedroom units on the second and third floors. Without the Front Addition, the Applicant would face a practical difficulty as the commercial space would be limited to only approximately 800 square feet; and*
- *Further, the loss of the partial addition on the second and third floors would result in inefficient units in terms of size, layout, and window placement, and the Applicant would no longer be able to provide three-bedroom units.*

OP does not accept that the above arguments, individually or cumulatively, present an exceptional situation that would result in a practical difficulty. Again, OP is very supportive of the production of larger sized units, but the applicant's preferences are not part of the variance test, and the applicant has not sufficiently demonstrated why three-bedroom apartments and interior layouts would not be feasible without the lot occupancy variance.

On the ground floor, if the use variance is approved, the proposed commercial space would in fact be significantly larger than the current 680 square feet. The applicant has not sufficiently demonstrated why a practical difficulty would result in the use of the commercial space without the increase in lot occupancy.

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

OP is supportive of this project in concept and commends the applicant for proposing a well-designed project. However, the proposal would reduce the overall open space on the lot, particularly along relatively narrow 4<sup>th</sup> Street, by increasing the amount of enclosed building area than what would have previously existed. OP does not feel that the third-floor addition at a lot occupancy of 70 percent would result in a substantial detriment given the context and adjacent development. That portion of the addition would not be out of character with the streetscape and should not result in privacy, light or air impacts on the adjacent properties.

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

Approval of variance relief which has not been adequately justified by the applicant would, to OP, result in substantial harm to the zoning regulations. The intent of the lot occupancy development standard is to control the total volume of buildings and open space on a lot. While the overall lot occupancy would be decreased by removing the

unenclosed rear deck, the amount of enclosed floor area would be increased and would reduce the amount of open space, particularly on the front of the lot.

**b. Variance Relief from Subtitle U § 301, Use.**

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

The applicant states that the original part of the building was constructed around 1890 and most likely contained ground floor commercial space on the first floor and one dwelling unit on the second and third floors. The addition to the building was built in the 1940s, which created two additional dwelling units on the first and second floors. While the subject lot has been historically zoned residential since 1958, the applicant filed to the record historical certificates of occupancy (Exhibit 14) showing that the ground floor commercial space in the original portion of the building was used as a grocery store. The last certificate of occupancy was issued in 1990. The applicant's exterior photographs also show that the last use to occupy the first floor was commercial in nature. The applicant states that this space is still configured as a commercial use.

The applicant would also like to expand the commercial space into the 1940s addition and remove the existing ground floor dwelling unit to increase the size of the existing commercial space. The applicant states that a practical difficulty would result if a commercial use could not be used in this part of the building as the existing historical commercial space is exceptionally small at only 680 square feet.

The subject property is the only lot that contains a building with residential uses fronting 4<sup>th</sup> Street, NW. Across the street is a large parking garage for Howard University. The existing first-floor commercial space has a large commercial window fronting 4<sup>th</sup> Street, NW, and a corner-facing door fronting onto the intersection. The side of the historic commercial space fronting Oakdale Place, NW has no windows. There is also limited separation between the building and the sidewalk on 4<sup>th</sup> Street, NW where the windows do exist. As a result, the applicant states that there is very little privacy or security, and if the entire first floor were to be reconfigured for residential purposes it would not be an optimal or practical use. The applicant states that it would be significantly costlier to retrofit the space for residential purposes as opposed to leaving it open for commercial use.

The existing building currently contains three dwelling units and is nonconforming for density because there is not 900 square feet of land area per dwelling unit, which is required for multiple dwelling buildings in the RF-1 zone. The existing land area per dwelling unit is significantly less at 583 square feet. A variance would be required to convert the commercial space into an additional dwelling unit thereby reducing the land area per dwelling unit to 437 square feet. The historical configuration and use of the building combined with the characteristics of the block create a hardship for using the first floor of the building as a residential space.

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

Though OP would not typically support the removal of an existing dwelling unit for a commercial use, the amount of overall residential floor area would not be reduced. A restaurant use on the first floor of the building should not represent a substantial detriment to the public good as the subject block is not strictly residential in use. Due to the floor

area, the restaurant would not be subject to a parking requirement for an eating or drinking establishment.

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

Allowing a restaurant use on the first floor should not result in substantial harm to the Zoning Regulations. The restaurant use would be located in a portion of the building designed for commercial use and the elimination of the dwelling unit would make the building comply with the density requirements of the RF-1 zone.

**c. Special Exception Relief from Subtitle E § 206, Roof Top or Upper Floor Additions.**

**206.1 In an RF zone district, the following provisions shall apply:**

- (a) *A roof top architectural element original to the building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified rooftop architectural elements on all sides of the structure;*

The applicant proposes to remove the existing metal cornice on the second story of the 1940s addition. The subject cornice does not match the cornice of the original portion of the building nor does it match any other cornices on the block. The cornice proposed to be removed is not in good condition and does not add to the architectural character of the block. The cornice on the original portion would remain the same.

- (b) *Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and*

The addition would not block or impede a functioning chimney or other external vent of an adjacent properties.

- (c) *Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system.*

The addition would not interfere with the operation of an existing solar system.

**V. COMMENTS OF OTHER DISTRICT AGENCIES**

As of the date of this report, no comments from district agencies had been filed to the record.

**VI. COMMUNITY COMMENTS TO DATE**

At its regularly scheduled meeting on March 7, 2019, ANC 1B voted to recommend approval the request relief (Exhibit 31).

**Location Map**

