

Supplemental Report

TO: District of Columbia Board of Zoning Adjustment
FROM: Crystal Myers, Case Manager
Joel Lawson, Associate Director Development Review
DATE: September 2, 2020

SUBJECT: BZA #20121 – 639 Atlantic ST SE-- variance relief for a medical office use

I. BACKGROUND

This proposal is for a use variance to allow conversion of a residential building previously used as a Community Based Residential Facility into a medical office building with no residential component in the R-2 (low density residential) zone. In reports dated October 18, 2019 and November 27, 2019, OP recommended denial of the requested variance relief.

After the Public Hearing on December 11, 2019, the Board decided to continue the hearing to give the Applicant time to provide additional information. The case was rescheduled to July 15, 2019 but the Applicant submitted new information to the record two days before that date. The Board decided to postpone the Hearing to September 16 in order to give additional time to review the new information. The applicant provided additional information at Exhibits 69, 70 and 80.

II. OFFICE OF PLANNING RECOMMENDATION

OP reviewed the additional information submitted to the record and continues to recommend **Denial** of the requested relief.

III. ANALYSIS

Exceptional Situation Resulting in an Undue Hardship:

OP reviewed the Applicant's additional information and the argument that DCRA mislead the applicant, which resulted in her paying for upgrades to bring the house into compliance with the building code. After reviewing the information in the record, OP is unable to find sufficient evidence to support this argument.

At the December 11, 2019 Hearing the Applicant testified that she purchased the property because it was advertised as commercial. She attempted to rent it to a commercial tenant, but that tenant was denied a permit by DCRA because the property is zoned residential. She followed up with DCRA and she was told to submit a certificate of occupancy application. It appears that DCRA noted the need for variance relief before noting that upgrades to the house would be required.

In a March 28, 2019 letter to District Council Constituent Services the applicant recounts that an inspector noted that upgrades to the house would need to be made, (Exhibit 80, p.12, Attachment 6). The same day of this inspection, it appears that she returned to DCRA and learned that BZA variance relief would be required. After being notified of the need for variance relief, she received

an email on April 1, 2019 from DCRA that upgrades to the house would be needed (p. 10 of attachment 4 of the timeline).

All the permits related to this project show that DCRA understands the property to be residential. The only permit identifying the proposed use as a “medical office use” is the conditional occupancy permit (Exhibit 43) that notes the BZA case, and that expires in time for the Hearing.

Though OP is sympathetic to the difficult position the Applicant is in and reiterates that OP is not opposed to medical office facilities to serve neighborhood residents, OP continues to be unable to identify an exceptional situation resulting in an undue hardship to the owner, which is the first part of the relevant variance test. As the Applicant explained during the December 11, 2019 Hearing her misunderstanding began with the property being incorrectly advertised as a commercial property by the previous owner. Unfortunately, this resulted in the Applicant obtaining commercial loans and making significant financial investments into this residential property. Though OP understands this is a hardship, this hardship is unrelated to the property itself. The property is developed with a single-family house in a residential neighborhood, so OP continues to consider it appropriate for residential use.