

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anne Fothergill, Case Manager

JL Joel Lawson, Associate Director Development Review

DATE: March 6, 2020

SUBJECT: BZA Case 20218 - request for relief for an accessory apartment at 5200 Fourth Street, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following Use Variance relief pursuant to Subtitle X § 1000.1:

- Subtitle U § 253.5 – *Either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use.*

II. LOCATION AND SITE DESCRIPTION

Address:	5200 Fourth Street, N.W.
Legal Description:	3257 0088
Ward / ANC:	Ward 4 / ANC 4D
Zone:	R-3
Lot Characteristics:	1,801 SF rectangular corner lot with a 16' public alley at the rear of the property (west)
Existing Development:	2 story semi-detached flat with separate basement unit with access off Hamilton Street and a garage off the alley.
Adjacent Properties:	The square is entirely residential with row dwellings and small apartment buildings.
Surrounding Neighborhood Character:	The neighborhood is primarily residential with a mix of rowhouses, small apartment buildings and institutional uses.



III. PROJECT DESCRIPTION IN BRIEF

The subject property currently has two units with one unit upstairs and a separate basement apartment in the house that have existed for more than 30 years and prior to the Applicant's ownership of the house. The Applicant previously lived in the upstairs unit but currently lives out of state to care for a relative and both units have been rented for many years. In an R zone, an accessory apartment is allowed if the owner lives in one of the units. The Applicant is not proposing any exterior changes to the building and is applying for relief in order to get a Certificate of Occupancy and Residential Rental Business License for the two rental units. The Applicant expects to move back to the house in the future.

The application for a use variance from the owner-occupancy requirement was referred by the Zoning Administrator at DCRA as a use variance to allow a "flat" (two-unit building). A zoning chart was not provided, and no other relief was noted (Exhibit 6). However, DCRA has since amended the determination of relief needed because a flat is not a permitted use in this zone, but an accessory apartment is permitted. As such, relief required was determined to be from the owner-occupant requirement for an accessory unit (Exhibit 36). OP has analyzed the request accordingly.

IV. OP ANALYSIS

Subtitle U Section 253 ACCESSORY APARTMENT (R)

253.1 One (1) accessory apartment may be established in an R zone, subject to the provisions of this section.

253.2 An accessory apartment shall be permitted in a principal dwelling or an accessory building as a matter of right in the R zones, except the R-19 or R-20 zones, subject to the provisions of this section.

253.3 An accessory apartment proposed in an accessory building not meeting the conditions of Subtitle U § 253.8 shall be permitted as a special exception if approved by the Board of Zoning Adjustment, subject to the provisions of this section.

253.4 In the R-19 or R-20 zone, an accessory apartment shall be permitted as a special exception in either a principal dwelling or an accessory building if approved by the Board of Zoning Adjustment, subject to the provisions of this section.

253.5 Either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use.

253.6 The total number of persons that may occupy the accessory apartment shall not exceed three (3), except in the R-19 or R-20 zone where the aggregate number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, shall not exceed six (6).

253.7 An accessory apartment located in the principal dwelling shall be subject to the following conditions:

(a) The house shall have a minimum of gross floor area, exclusive of garage space in the following zones:

Zones Minimum GFA

R-1-A R-1-B R-19 2,000 sq. ft.

R-2, R-3 R-10 R-13 R-17 R-20 1,200 sq. ft.

(b) The accessory apartment unit may not occupy more than thirty-five percent (35%) of the gross floor area of the house;

(c) Except as provided in Subtitle U § 253.7(d), if an additional entrance is created to a house it shall not be located on a wall of the house that faces a street; and

(d) An additional entrance to a house in an R-3, R-13, R-17, or R-20 zone may be located on a wall of the house that faces a street provided it is below the main level of the house and if in a historic district, a determination by the appropriate body that the additional door is compatible with the character of the historic district.

253.13 Prior to renting an accessory apartment in any zone, the property owner shall obtain a Residential Rental Business License from the Department of Consumer and Regulatory Affairs and the property shall be inspected for relevant housing code compliance.

It appears that the long-standing, existing accessory apartment meets all of the above requirements, except that the owner is currently living off-site, contrary to U § 253.5. As such, variance relief from this provision is needed.

Use Variance Relief from Subtitle U § 253.5 – *Either the principal dwelling or accessory apartment unit shall be owner-occupied for the duration of the accessory apartment use.*

i. Exceptional Situation Resulting in a Practical Difficulty

The Applicant has owned the building since 1981 and at the time of purchase, the basement apartment was an existing rental unit. The separate basement apartment in this house has been in existence for at least 30 years, according to a neighbor who submitted a letter in support of the application at Exhibit 29. The Applicant has provided the leases for the two units and the insurance policy stating the building has two units. The Applicant is currently living out of state to assist a relative and relief is needed from the owner occupancy requirement, but the Applicant does intend to return to the house in the future. Without relief, the Applicant would need to evict long-term tenants and either not rent out part of the building, or do an expensive and extensive renovation to combine the two units to create only one unit in the house, which she would then have to undo when she moves back to the area and wants to live in the building and rent out one unit. All of these factors combined create an exceptional situation of this property resulting in a practical difficulty.

ii. No Substantial Detriment to the Public Good

The requested zoning relief to allow an accessory apartment without owner occupancy would not be detrimental to the public good. The two units in the building have been a longstanding condition of the property and do not appear to have had undue adverse impacts on neighbors. One of the criteria of the accessory apartment regulations is the importance of maintaining a single household residential appearance and character in the R zones and this building's exterior would not be changed and currently does maintain a single household residential appearance. A neighbor who is aware of the two rental apartments and the owner not living there wrote a letter of support in Exhibit 29.

iii. No Substantial Harm to the Zoning Regulations

Granting the requested relief would not substantially impair the intent of the Regulations. An accessory apartment is a permitted use in this zone and this basement apartment does not require any additional relief from the accessory apartment regulations. Granting a variance to allow the owner to live off-site due to the specific circumstances of the property owner and the building's long-standing two-unit configuration would not substantially harm the intent of the regulation. The accessory apartment in this building would not result in a building that would appear inconsistent in form or bulk with the intent of the zone.

V. COMMENTS OF OTHER DISTRICT AGENCIES

DDOT filed a report stating no objection to the requested relief in Exhibit 33.

VI. ANC COMMENTS

At the time of this report, no ANC comments had been filed into the record.

VII. COMMUNITY COMMENTS

An abutting neighbor to the south across Hamilton Street filed a letter in support in Exhibit 29.