

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Karen Thomas, Case Manager  
 Joel Lawson, Associate Director Development Review  
**DATE:** January 22, 2013  
**SUBJECT:** BZA Case 18495 – 448 Emerson Street NW

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **approval** of use variance relief to permit the continued use of an existing flat in the R-3 district, at premises 448 Emerson Street, NW.

**II. LOCATION AND SITE DESCRIPTION**

Address	448 Emerson Street NW
Legal Description	Square 3251, Lot 0213
Ward	4, ANC 4D
Lot Characteristics	Unremarkable rectangular lot.
Zoning	R-3 – row and semi-detached, single-family dwellings. A flat is not permitted in this residential zone district.
Existing Development	The property is developed with a nonconforming three-story flat, with parking at the rear, accessed from a 16-ft. wide alley at the rear.
Adjacent Properties	The subject property is a corner lot at the south east corner of 5 <sup>th</sup> and Emerson Street with alley access at the rear. It abuts a row dwelling to the east and surrounding properties on Emerson and 5 <sup>th</sup> Streets are all row dwellings within the R-4 District.
Surrounding Neighborhood Character	The housing stock is predominantly row dwelling structures within the R-3 district. Square 3304 to the southeast of the subject square is comprised primarily of small garden apartments with some row dwellings in the R-5-A district.

**III. APPLICATION IN BRIEF**

The applicant, Jose Contreras, is requesting a use variance to continue the use of his existing flat in the R-3 District. The applicant included supporting documentation indicating that the previously constructed single family dwelling was legally modified to a flat in 2007 by building permit # 101301 and has been used as such since that time.



#### **IV. ZONING REQUIREMENTS and REQUESTED RELIEF**

The R-3 District is designed essentially for row dwellings within which row dwellings are mingled with one-family detached dwellings, one-family semi-detached dwellings, and groups of three (3) or more row dwellings. In an R-3 District, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for any use permitted in an R-2 District under § 300.3 and row dwellings. (§§ 320)

The Zoning Administrator by letter dated October 2, 2012 indicted that Board approval is required to allow continued use of the former single-family dwelling as a two-unit flat in the R-3 district pursuant to § 320.3.

#### **V. OFFICE OF PLANNING ANALYSIS**

##### **Variance Relief from § 320.3**

A use variance may be approved for an extraordinary or exceptional situation.

##### **i. Exceptional Situation Resulting in an Undue Hardship**

The applicant was recently informed by DCRA that the existing flat was a prohibited use of the property in that zone district.

In this case, the applicant cites as evidence that the property was modified to a flat by interior renovation, as documented by plans to the Department of Consumer and Regulatory Affairs (DCRA) in 2007. The plans explicitly stated that it represented the conversion of a single family dwelling to a flat. However, at that time, agency staff did not immediately inform the applicant that conversion of a single family dwelling to a flat was not permitted in the R-3 district and the applicant was issued a building permit to permit the conversion, without BZA approval for a use variance. The basement unit of the flat has subsequently been a rental unit and provides support income for the applicant.

Therefore, the inadvertent error in the issuance of a permit allowing the conversion in the first instance five years ago is an exceptional situation; and its re-conversion back to a single family dwelling would be a severe hardship to the applicant.

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

To OP's knowledge, there has been no substantial detriment to the public good due to the occupancy of the one-bedroom unit for the past five years. The use should not incur undue harm to the neighborhood due to noise, traffic or other adverse impacts

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

No substantial harm should accrue to the Zoning Regulations, since in this instance undue hardship to the applicant is due to a District agency's error and subsequent approval by the Board would not imply approval for conversions of row dwellings to flats in the R-3 district, which would not be supported by the Office of Planning.

**VI. COMMENTS OF OTHER DISTRICT AGENCIES**

No other agency has provided comments to the record.

**VII. COMMUNITY COMMENTS**

The Advisory Neighborhood Commission 4D would submit their comments to the record

Attachment: Location and Zoning Map



**LOCATION and ZONING MAP**