



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Arthur Jackson, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** January 7, 2012

**SUBJECT: BZA Case 18448 Supplement**

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### I. BACKGROUND:

On November 27, 2012, the Board of Zoning Adjustment (BZA) held its public hearing on this request for variance relief from § 401.3 to convert the existing two-story row dwelling at 1221 Otis Place NW into a three-story, four-apartment building. The Office of Planning (OP) report dated November 20, 2012, did not support this request. During testimony, neighboring property owner Elias Wolfberg testified that the existing dwelling currently exceeds the maximum 60% lot occupancy allowed for row dwellings in the R-4 district under § 403.

The applicant agreed, stating that this structure currently occupies 65.5 % of the lot. They then requested additional variance relief from § 403 (a maximum allowable lot occupancy of 60% allowed, 65%+ lot occupancy is proposed) and § 2001.3 (further explained below) for the proposed change in use. During the neighbor's testimony, the Commission asked OP whether a third floor can currently be added to the existing two-story dwelling as a matter of right. The response was that a third floor would be allowed as a matter of right up to a height of 40 feet. In fact, pursuant to § 2001.3, *no addition* can be made to this row dwelling without zoning relief due to the existing non-conforming lot occupancy (also explained below).

Building elevations presented during the public hearing showed the row building with the proposed third floor addition. According to these elevations: the emergency stair on the rear façade would be replaced by balconies on the first, second and third floors; the third floor level would take the form of a mansard roof; and the "cone" or turret structure on second floor roof would be retained.

At the close of the hearing the public record was left open for OP comments on the merits of the additional relief request. Since the additional required relief was not identified until the public hearing, OP inquired whether any changes were needed to the annotated property plat or the proposed dwelling floor plans submitted with the original application. In response, the applicant stated that no changes were required to the submission documents.

### II. SUMMARY OP RECOMMENDATION

OP **does not support** the variance relief requested from either:

- § 401.3 (900 square feet / apartment unit is required, 450 square feet / unit is proposed); or
- § 403 (maximum lot occupancy of 60% is allowed, extension of the existing nonconforming 65%+ lot occupancy to a new third floor is proposed).

### III. ZONING REQUIREMENTS:

In light of uncovered nonconformity, relief required for this proposal now includes:

R-4 District	Regulation	Existing	Proposed	Relief?
Height (ft.) § 400	40 ft. max., 3 floors	20 feet (approximately)	39 feet (approximately)	None required



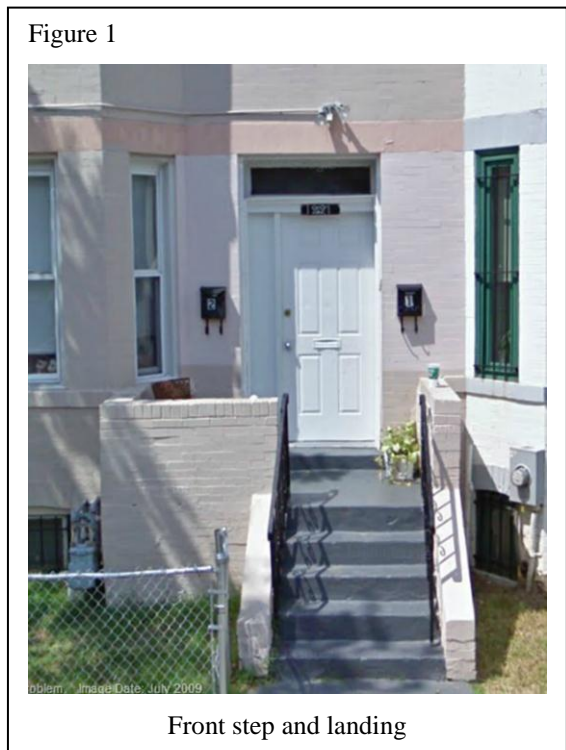
R-4 District	Regulation	Existing	Proposed	Relief?
Lot Width (ft.) § 401	18 feet min.	18 feet	SAME	None required
Lot Area (sq. ft.) § 401	1,800 sq. ft. min.	1,800 sq. ft.	SAME	None required
Lot Area – Conversion to apartments § 401	900 sq. ft./ apartment	N/A	450 sq. ft./ apartment	-450 sq. ft. / apartment
Lot Occupancy § 403	60% max.	62.5%	SAME	+ 2.5%
Rear Yard (ft.) § 404	20 feet min.	34 feet	SAME	None required
Open Court (ft.) § 406	10 feet min.	18 feet	SAME	None required
Parking § 2101	1 space / 3 units	2 spaces	SAME	None required
Additions to non-conforming structures § 2001.3.	(listed below)	Non-conforming lot occupancy	SAME	Required

OP calculations based on the submitted plat indicate that this row dwelling originally occupied approximately 57.5%<sup>1</sup> of the lot and 62.5% with the 5-foot addition, rather than 65.5%.<sup>2</sup> The existing dwelling is setback 5-8 feet from the public right-of-way. This space in front of the dwelling is open to the street and surrounded on three sides by property lines, making it consistent with the regulation definition of an open court. This court area is 18-feet wide, more than the minimum width of 10 feet required in the R-4 district for row dwelling lots under § 406. Because the court area is conforming, it is not included in building area and lot occupancy calculations for this site.

Since the existing building is nonconforming for lot occupancy, this proposal is subject to Zoning Regulation standards for additions to nonconforming structures:

*2001.3 Enlargements or additions may be made to the structure; provided:*

- (a) **The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and**
- (b) **The addition or enlargement itself shall:**
  - (1) **Conform to use and structure requirements; and**
  - (2) **Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.**



Front step and landing

The third floor addition, as proposed, would extend the current lot occupancy that does not conform with § 403 to an additional floor. The requested four apartments property would not conform to the

<sup>1</sup> (56 ft. x 18 ft.) + 26.25 sq. ft. (bay window) = 1,034 sq. ft. / 1,800 sq. ft. = 57.46%

<sup>2</sup> The front stair landing was excluded from the building area calculation because, based on the front elevation (refer to figure 1 above), the front landing is the same height as the cellar windows and ceiling which less than 4 feet above-grade.

minimum lot-area requirement for apartment uses in this zone district under § 401. Regarding the current nonconforming lot occupancy, the necessary relief could be secured by special exception approval in accordance with § 223 for a one-family dwelling or flat. Variance relief is required for all other uses.

During testimony, the applicant identified removal of the existing rear addition as one option for reducing the existing non-conforming lot occupancy. However, no changes to the current floor plans were proposed during the hearing. It would also seem that replacing the existing rear fire stair with apartment balconies, as shown in the proposed building elevation, may further increase the current nonconforming lot occupancy.

In any case, OP thinks granting the variance originally requested from § 401.3 (a minimum lot area of 900 square-feet per apartment required, 450 square-feet per apartment is proposed) and the additional variance requested from § 403 (a maximum allowable lot occupancy of 60% allowed, 62%+ lot occupancy is proposed), would bring this proposal into conformance thereby eliminating the need for relief from § 2001.3.

#### IV. OP ANALYSIS:

##### Variance relief from § 403 for lot occupancy

- **Uniqueness Resulting in a Practical Difficulty**

This additional relief request was requested by the applicant for the proposed change of use to a four-unit apartment building at the public hearing. Since no additional justification was provided, the “exceptional situations and conditions” previously identified for this proposal included:

- the deteriorated condition of the existing structure;
- the fact the existing structure was converted into an 11-bedroom boarding house which would make the proposed apartment conversion more expensive; and
- the need to increase the anticipated return from the proposed apartment conversion.

As noted above, the applicant stated during the public hearing that removal of the 5-foot addition is one option for reducing the non-conforming lot occupancy. It also appears from OP’s calculations that removal of the addition would reduce the lot occupancy to approximately 57.5%, less than the 60% allowed as a matter of right.

Under these circumstances, the applicant did not establish that there is any practical difficulty associated with bringing the structure back into conformance with § 403 (lot occupancy).

- **Substantial Detriment to the Public Good**

Granting the relief required to increase the allowable lot occupancy in order to allow third-floor construction for a *fourth* apartment unit on the subject property would be detrimental to public good. Addition of a third floor-unit would significantly reduce minimum lot area per family standards intended to restrain apartment development in what is intended to be a one-or-two family row dwelling district with limited apartment conversions. Re-establishing the allowable lot occupancy onsite would also ensure that the maximum required open space would be maintained onsite for parking and other purposes by the future tenants and home owners.

- **Substantial Harm to the Zoning Regulations**

No practical difficulty was established that prevents the applicant from bringing the existing dwelling in conformance with current Zoning Regulation lot occupancy provisions. This request coupled with the previous variance requested from § 401.11, could be counter to the

stated intent of these regulations to limit additions to row dwellings that do not meet the minimum lot area per family standards. In fact, the established area standard for conversion of row dwellings to multiple units in the zone district would be reduced drastically as a result.

Under these circumstances, granting the requested zoning relief would be contrary and detrimental to the intent and integrity of the Zoning Regulations.