



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

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

DATE: June 4, 2013

SUBJECT: **BZA Case 18562** – variance request to allow replacement of a two-story church and apartment with a three-story, seven-unit apartment building on property at 1538 New Jersey Avenue NW

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **recommends denial of** the variance relief requested from § 401.3 to reduce the 900 square feet of land area required for each apartment in the R-4 district to 322 square feet for a proposed seven-unit apartment building. The application is somewhat unclear, but it incorrectly refers to this as a request to “convert” the existing building to a multi-family building. Rather, it appears that this is request would replace the existing two-story row dwelling with a new three-story plus new cellar apartment building. The Zoning Regulations clearly state that R-4 is not a multi-family zone; the construction of new, larger apartment building is fully inconsistent with the wording and the intent of the regulations.

Although it appears parking relief and lot occupancy relief (either for the entire new structure or at least for the proposed third floor) may also be required in this case, this relief was not requested by the applicant. As a result, OP did not include the associated analysis in this report (the Zoning Administrator has yet to response to a parking determination request). Typically OP would not support lot occupancy relief for new construction on a lot such as this with no unique constraints.

II. LOCATION AND SITE DESCRIPTION:

Address:	1538 New Jersey Avenue NW
Legal Description:	Square 0510, Lot 0053
Ward:	2C
Lot Characteristics:	The rectangular interior lot has an area of 2,255 square feet (0.05 acre), and frontages along New Jersey Avenue NW and an alley that is 10-feet wide (refer to Figures 1 and 2).
Zoning:	<i>R-4</i> – one-family detached, semi-detached and row dwellings, flats and churches are allowed as a matter of right. Conversions of buildings existing before May 12, 1958 into apartment houses are allowed <i>only</i> if the property land area equals or exceeds 900 square feet x the number of proposed units. Apartment conversions and building expansions for apartment conversions are not allowed unless the referenced minimum lot area is provided.



Existing Development:	Historical permit records in the DC Office of Historic Preservation indicate the existing masonry and frame building was constructed in 1939 as a store with an upstairs apartment. Newspaper articles from the period indicate that the building served as the offices of the Washington Urban League for a time. Certificates of Occupancy (COs) in the Department of Consumer and Regulatory Affairs indicate that the ground floor was occupied by a succession of church uses since June 1959. The application indicated that the second floor was still used as an apartment (refer to Figure 1). The rear yard is cluttered with what appear to be lower foundation walls of several accessory buildings and overgrown landscaping, and surrounded by a gated chain-link fence approximately 7-feet tall.
Historic District:	None
Adjacent Properties:	Two and three-story one-family row dwellings and flats and the Second Church of God to the north and south along the same New Jersey Avenue frontage; one-story commercial building to the east across New Jersey Avenue; and the KIPP DC Academy across the alley to the west.

III. PROJECT DESCRIPTION IN BRIEF

Applicant	1538 New Jersey LLC, the owner of record.
Proposal:	<p>The written statement is not entirely clear. The drawings are also unclear in that they do not provide an “existing” and “proposed” set of plans, and provide no elevations or other details.</p> <p>However, despite the language in the application that this is a request to allow the conversion of an existing two-story row dwelling, this appears to be a request to demolish the existing two-story row dwelling to allow construction of a <i>new</i> three story apartment building with seven units. No onsite parking spaces exists or would be provided under this plan.</p>
Relief Sought:	<p>Variance relief to reduce the required land area for seven apartments from 6,300 square feet to the existing 2,255 square feet.</p> <p>One-family detached, semi-detached and row dwellings are allowed in the R-4 District by right under §§ 330.5 (a) and (c), as are places of worship. Sections 330.5 (c) and 401.3 also allow apartment conversions when the lot area equals or exceeds 900 square feet for each proposed number of units. R-4 does <i>not</i> permit:</p> <ul style="list-style-type: none"> • New apartment buildings; • Conversions of existing row dwelling structures unless the 900 square feet of lot area per unit requirement is met; or • Physical expansions of existing row dwelling structures to allow the addition of more apartment units. <p>The existing land area of 2,255 square feet is sufficient for <i>two</i> dwelling units (a flat). This proposal for <i>seven</i> apartments would require a minimum land area of 6,300 square feet, over 4,000 square-feet more than currently existing onsite and almost three times the existing lot area.</p>

IV. ZONING REQUIREMENTS

R-4 District	Regulation	Existing	Proposed ¹	Relief
Height (ft.) § 400	40 feet	21 feet, 2 floors	35 feet 8 inches, 3 floors	None
Land area	--	2,255 sq. ft.	SAME	None
Number of dwelling units	2	1	7	--
Area requirement § 401.3	900 sq. ft.	900 sq. ft.	6,300 sq. ft.	-4,045 sq. ft.
Lot Occupancy § 403	60% or none	63.6% ²	63.6%	<i>Appears to be required, but not requested</i>
Rear Yard (ft.) § 774	20 feet	40 feet	40 feet	None
Parking, Vehicle § 2101	1 space/3 dwellings	None	None (Additional 6 units)	-2 spaces (Unclear if relief is required)

According to DC land records, the existing 70 x 20.5-foot building has a total floor area of 2,448 square feet; 1,524 square feet on the ground floor, 924 square feet on a partial second floor and no basement or cellar. As such, conversion of the existing structure to a flat would yield two units of about 1,224 square feet of gross area, which is not unusually large for a flat.

This proposal would add *six* more apartments onsite for a total of *seven* and eliminate the church use. Submitted plans indicated that the new construction would:

- create a *new* cellar level the size of the existing building footprint which is nonconforming for lot occupancy. The applicant has revised the proposal to ensure that the lower level does not count as an additional (non-conforming) story;
- construct an elevated first floor above the cellar level with steps down to the adjacent public space; and
- construct two more floors above.

OP shared initial concerns with the applicant and requested additional information on:

- the existing building height and rear yard dimension;

Figure 1



¹ Information provided by applicant.

² OP calculation based on the submitted plans and public land record.

- the proposed exterior elevations;
- whether the building has a basement;
- a copy of the property appraisal secured prior to purchasing the property; and
- *actual* contractor estimates for the two options provided in the application and for an allowable two-unit building (flat) conversion.

In response, the applicant confirmed the existing building and yard dimension; provided a front building elevation for the proposed apartment building; revised the building section to show a basement ceiling height of 3'-11" instead of 4 feet above the adjacent grade; and revised the in-house profit-and-loss statement to include the allowable flat use, in the undated Pre-hearing Statement of the Applicant. The Statement also provided projected construction budgets and rental comparables. The applicant stated that no building appraisal was secured prior to the purchase and declined to provide an elevation for a flat option that the applicant did not plan to build.

Regarding the existing nonconforming lot occupancy, the proposal would continue and extend this nonconforming characteristic of the site. While § 403.2 of the regulations allows the, "*Greater of 60% or the lot occupancy as of the date of conversion*", this provision does not apply to completely new construction.

Regarding the parking requirement, § 2100.6 require additional onsite parking spaces, "... *when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition ... dwelling units, gross floor area ...*" and § 2100.7 requires additional parking if, "... *the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate ...*" Accordingly, *two* onsite parking spaces may be required for the six *additional* dwelling units. However, since the applicant claims a 5-space parking credit for the previous church use, parking relief was not requested.

The Zoning Administrator would review this proposal for conformity with these and other Zoning Regulations at the building permit stage.

V. OP ANALYSIS

Consistency with § 3103

The applicant for a variance has the burden of showing that the property is unique because of some physical aspect or other *extraordinary or exceptional situation or condition inherent in the property*, that strict application of zoning regulations will cause undue hardship or practical difficulty to the applicant and that granting the variance will do no harm to public good or to zone plan.

- **Unique conditions or circumstances resulting in an exceptional or practical difficulty:**

The application indicated the number challenges inherent in the existing building resulted in their intention to "demolish the existing structure and build a *new* row house on the lot" (reference original application, page 6). The existing substandard building is neither an historic or contributing structure, so nothing prevents the applicant from demolishing this structure, which they plan to do. Demolition of the substandard building would eliminate the unique condition on this site. The applicant, therefore, has not made a case for unique conditions resulting in a practical difficulty that would support construction of a new multi-family building in the R-4 zone on a lot this size.

The 20.6 x 110-foot and 2,255 square-foot dimensions of this rectangular lot are slightly larger than the minimum 18 x 100-feet and 1,800 square feet required for a row dwelling lot in the R-4 district. In fact, the size of the subject property is identical to six of the nine neighboring properties that front New Jersey Avenue along this square, so the lot is not unique in the

neighborhood or in the R-4 row dwelling / flat zone in general.

The financial information provided about the different development options for this site also appears inconsistent. According to information supplied by the applicant, 1538 New Jersey LLC bought the property in January of 2013 for \$399,900 and the assessed value of the land and improvements is just over \$590,000, with the land value assessed at \$411,000. So the current owner bought the site for *less than* the assessed land value.

Figure 2



Since the intent to “demolish the existing structure and build a *new* row house on the lot” is clearly stated in the application, it is unclear why the applicant would provide cost estimates for the flat and three-unit options based on *rehabilitating* the existing two-story building. There is also no information provided about potential proceeds from the sale of the flat or the other development options.

- **Determent the public good:**

While the scale of the new building would not be substantially incompatible with neighborhood character, construction of *seven* dwelling units on a lot on which the zoning regulations anticipate two units could negatively impact the overall quality of life and neighborhood character expectations in this compact neighborhood.

- **Detriment to the intent, purpose and integrity of the zoning regulations:**

Granting the zoning relief as requested to allow the construction of a new (or even a greatly expanded) structure that would become an apartment building would be significantly contrary and detrimental to the intent and integrity of the Zoning Regulations. The Zoning Commission amended the R-4 district regulation specifically to clarify and reinforce that this zone district is not intended to be an apartment zone. The proposed new construction would have the entirely opposite effect.

VI. AGENCY COMMENTS

To date, the District Department of Transportation has not provided agency comments.

VII. COMMUNITY COMMENTS

A signed Form 129 Advisory Neighborhood Commission (ANC) Report dated May 10, 2013, indicated the ANC 6E voted unanimously on the same date in support of the requested variance, "... provided that the property has two parking spaces." The case file also includes letters in support signed by neighbors residing at 1536 New Jersey Avenue, 404 Franklin Street, and 418 Q Street NW.