

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Brandice Elliott, Case Manager
*J*Joel Lawson, Associate Director Development Review
DATE: July 12, 2016

SUBJECT: BZA Case 19310 (622-624 North Carolina Avenue, S.E.) for relief to allow additions and a penthouse to an existing apartment house in the R-4 District.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following special exceptions:

- § 411.18, Penthouse Setbacks (1:1 setback from all sides required; 0 ft. from east and west building sides proposed).
- § 336.13, Expansion of an Existing Apartment House

OP recommends **approval** of the following variances:

- § 403.2, Lot Occupancy (60% maximum; 65% proposed); and
- § 2001.3, Additions to Nonconforming Structures.

The applicant has not requested variance relief from § 336.5, which is required as detailed in the report below. OP supports this relief.

II. LOCATION AND SITE DESCRIPTION

Address	622-624 North Carolina Avenue, S.E.
Applicant:	Kenneth Goulding
Legal Description	Square 871, Lot 42
Ward / ANC	Ward 6; ANC 6B
Zone	R-4
Historic District or Resource	Capitol Hill Historic District
Lot Characteristics	The flag-shaped lot is 2,547 square feet in area, with approximately 28 feet of frontage along North Carolina Avenue, and 6.5 feet of frontage along Independence Avenue.
Existing Development	The lot is currently developed with a nonconforming row dwelling that was converted into an apartment house prior to May 12, 1958.

Adjacent Properties	To the north, fronting on Independence Avenue, are existing row dwellings and apartment houses, as well as Capitol Hill Auto Service Center. To the south, across North Carolina Avenue, are existing row dwellings, an Aquatic Center, and Eastern Market. To the east, are row dwellings and apartment houses. To the west, are additional row dwellings and apartment houses.
Surrounding Neighborhood Character	The surrounding neighborhood character is predominantly residential, with some service and retail uses located throughout. Eastern Market and an Aquatic Center are located on the south side of North Carolina Avenue, Lincoln Park is located approximately 4.5 blocks to the north, and the Eastern Market Metro Station is located approximately 3 blocks to the south.
Proposed Development	The proposed development consists of additions to an existing converted apartment house in the R-4 District. The additions would expand the partial third floor to the existing rear wall, and the floor area on all three floors would be expanded to the western property line into a portion of the existing nonconforming court. These additions would allow for the apartment house to continue to have three units, but with enhanced features that include a third bedroom and handicap accessibility. Penthouses would also be added, including an elevator that would provide access to each unit. The roof deck would be accessible via a separate stair from the third floor.

III. ZONING REQUIREMENTS and RELIEF REQUESTED

Zone – R-4	Regulation	Existing	Proposed	Relief
Height § 400	35 ft. max.	33.17 ft.	33.17 ft.	None required
Lot Area § 401	900 sq. ft. min./unit	849 sq. ft./unit	849 sq. ft./unit	Required
Lot Occupancy § 403	60% max.	53%	65%	Required
Rear Yard § 404	20 ft. min.	22.83 ft.	20 ft.	None required
Court § 406	11.55 ft. min.	8.5 ft.	8.5 ft.	None requested
Penthouse Setback § 411.18	1:1 setback from all building sides <u>Stair</u> : 10 ft. <u>Elevator</u> : 2.25 ft.	Not applicable	<u>Stair</u> Front: 28.42 ft. Rear: 10.08 ft. Sides: 11.92 ft./9.17 ft./0 ft. <u>Elevator</u> Front: 28.42 ft. Rear: 22 ft. Sides: 20 ft./0 ft.	None required None required Required None required None required Required

IV. OFFICE OF PLANNING ANALYSIS

a. Variance Relief from § 403.2, Lot Occupancy; § 2001.3, Additions to Nonconforming Structures; and § 336.13, Additions to Existing Apartment Houses

i. Exceptional Situation Resulting in a Practical Difficulty

Lot Occupancy

The existing structure has a lot occupancy of 60%, which is the maximum permitted in the R-4 District. The applicant has proposed a lot occupancy of 65% for the inclusion of a second means of ingress and egress for the third unit, as required by Building Code.

As a three story structure, one means of ingress and egress is required by the Building Code, but the activation of the roof requires a second means of ingress and egress. As such, the applicant has proposed a balcony on the second floor, as well as stairs that will provide access from the rear yard to the third unit, which are located in the court and rear yard. The required access was originally to be provided by the proposed elevator; however, due to historic preservation concerns, visibility of the override was required to be reduced from the front elevation, and the elevator no longer provides roof access. The proposed stairwell to the roof is further from the entrance, which imposes a requirement to provide additional access.

While OP would not ordinarily support this relief, the combination of factors unique to this case creates an exceptional situation resulting in a practical difficulty. Particularly, the existing apartment house is located in the Capitol Hill Historic District, and preservation of the exterior as well as some interior features, including floor joists, is required. This also requires the applicant to provide access within the existing core, as it would be practically difficult to reconstruct the core in a different location to provide access within the travel distance specified in the Building Code. Given the degree of required preservation and issues of visibility from the street, providing an additional conforming means of access as required by Building Code is practically difficult without compromising the historic integrity of the dwelling.

Additions to Nonconforming Structures

Given the current height of the structure, the applicant has indicated that a court width of 11 feet is required; however, only 8.5 feet has been provided. The expansion of the third floor into the court further increases the court requirement and thus the degree of nonconformity. The Zoning Administrator has confirmed that the stairs required for ingress/egress that have been placed in the court are permitted and do not decrease its width, provided they are uncovered and open to the sky.

The requirement to maintain much of the internal structure provides an exceptional situation resulting in a practical difficulty, as much of the existing historic dwelling cannot be demolished to provide a larger, conforming court.

Additions to Existing Apartment Houses

As of the date of this writing, the applicant has not requested variance relief in order to expand an existing nonconforming apartment house, but it is anticipated that this relief will be requested prior to the hearing. An emergency technical correction was approved by the Zoning Commission on

Monday, July 11, 2016, to confirm the Zoning Commission's discussion and clear intent that compliance with all of § 336 is required. The technical correction was brought forward to correct a mistake to this section that inadvertently changed the original intent of the regulation.

Given that the proposed development does not comply with § 336.5, the proposal would require a variance from this provision. OP has discussed this with the applicant, who will provide additional information regarding this request prior to or at the hearing. Therefore, OP has provided an analysis based on information provided in the application.

336.1 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in the R-4 District if approved by the Board of Zoning Adjustment under § 3104, subject to §§ 336.2 through 336.11.

The proposed development does not comply with all the provisions of §§ 336.2 through 336.11. As a result, OP has provided an analysis for each provision.

336.2 The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit under § 3104, subject to §§ 336.3 through 336.11.

The proposed height of the third story addition is 33.17 feet, which is permitted by-right in the R-4 District.

336.3 The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Chapter 26, Inclusionary Zoning, including the set aside requirement set forth at § 2603.9.

The existing apartment house consists of three units, and the proposal to increase the floor area of the structure will not increase the number of units.

336.4 There must be an existing residential building on the property at the time of filing an application for a building permit.

The row dwelling is believed to have been constructed prior to 1878, and has consistently been used for residential purposes. While it was originally a single family dwelling, it was converted to an apartment house several years ago.

336.5 There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per dwelling unit.

The existing apartment house consists of three units, and is proposed to continue to have three units. However, only 849 square feet of land area has been provided per unit, resulting in an overall shortfall of 153 square feet. Based on conversations with the applicant, the dwelling was converted to an apartment house decades ago. The most recent Certificate of Occupancy, dated November 5, 2003, notes that it was for an apartment house consisting of three units. While OP would not typically support this relief, the property has continued three units for many years and no new units are proposed. The historic status of the property would make it practically difficult to modify the

interior to convert the structure back to a single family dwelling while maintaining features required by Historic Preservation. The applicant should provide additional information demonstrating an exceptional situation resulting in a practical difficulty, and confirm the conversion date of the apartment house.

ii. No Substantial Detriment to the Public Good

The requested variances should not cause substantial detriment to the public good. The increase in lot occupancy is due to the addition of a balcony and stairs in the court and rear yard, which is a requirement of the Building Code. The balcony and stairs would not be visible from any public right of way, and consists of a relatively small area of 127 square feet. The area is not enclosed, does not add habitable space, and should not cast a significant shadow on neighboring properties.

The existing nonconforming court would maintain its current width of 8.5 feet. The court would continue to provide separation between the subject property and the property to the west, ensuring the provision of light and air to both properties.

The existing apartment house was converted quite some time ago, currently has three units, and is proposed to continue to have three units. The neighborhood is predominantly residential in character, and apartment houses are a common feature in this area. As a result, it is not anticipated that the continuation of this apartment house would be detrimental to the public good.

iii. No Substantial Harm to the Zoning Regulations

The requested variances should not cause substantial harm to the Zoning Regulations. The R-4 District permits apartment houses provided they are compliant with the provisions of § 336. Although the existing nonconforming apartment house does not provide 900 square feet of land area per unit, the current use has been established on the site for several years, is located on a block with similar residential uses, and the number of units would not be increased.

b. Special Exception Relief pursuant to § 336.13, Additions to Existing Apartment Houses; and § 411.18, Penthouse Setbacks

Additions to Existing Apartment Houses

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The proposal is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The row dwelling was converted into an apartment house prior to June 26, 2015, and has always consisted of three units. The current proposal would not expand the number of units, but would create larger, three bedroom units with increased accessibility. Apartment houses are permitted in the R-4 District provided that 900 square feet of land area per unit has been provided; it is anticipated that the applicant will request variance relief from this provision, for which an analysis has been provided in this report.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

The proposal would not appear to adversely affect the use of neighboring properties. While an addition into the existing court would have the most impact on the neighbor to the west, the addition does not expand beyond the rear of the neighboring dwelling. In addition, the third story expansion would not appear to significantly increase shadowing to neighboring properties. The applicant has obtained letters of support from both adjacent neighbors.

Penthouse Setbacks

411.11 The Board of Zoning Adjustment may grant special exceptions under § 3104 from §§ 411.6 through 411.10 and 411.18 upon a showing that:

- (a) Operating difficulties such as meeting Building Code requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors; size of building lot; or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly, or unreasonable;*

The proposed project includes two penthouses, both of which require relief for setbacks. A staircase has been provided toward the center of the roof, providing access from the third unit to the roof deck. Setbacks have been provided from the front, sides, and rear, but the northwest portion of the penthouse does not provide a side setback on the west side. The penthouse would be located adjacent to a court and separated from the west property line a distance of nine feet. The applicant has indicated that a compliant setback for this portion of the penthouse cannot be provided due to the existing location of the core, as well as the historic status of the property. As noted in this report, the structure is historic, and much of the interior is required to be preserved; therefore, relocating the staircase would result in significant cost, be unreasonable, and potentially conflict with direction received from Historic Preservation.

The project also includes an elevator overrun that is 2.25 feet in height. Front, rear, and west side setbacks have been provided, but a setback along the east is not proposed. The overrun would be screened by the parapet along the party wall and would not be visible from the street. As with the staircase, the elevator would be located in an existing core, and relocating it would cause hardship due to the historic status of the property. Additionally, shifting the core away from the common wall would create an awkward space and lead to inefficiencies in design.

- (b) The intent and purpose of this chapter and this title will not be materially impaired by the structure; and*

The intent and purpose of this section is to ensure that the visibility of penthouses is minimized through the provision of setbacks. Setbacks have been provided that would minimize or fully screen the penthouses from North Carolina Avenue, and further review from Historic Preservation is underway to ensure they are not visible from the right-of-way. The apartment house is located midblock, making certain that the penthouses will not be visible from either end of the block. As a result, the intent of these regulations will not be materially impaired by the proposed penthouses.

(c) *The light and air of adjacent buildings will not be affected adversely.*

It is not anticipated that the proposed penthouses would have an adverse impact on adjacent buildings. The elevator overrun is fully screened by the parapet, so it would not cast a shadow that would impact adjacent properties. Compliant setbacks have been provided for the stairwell, except at the northwest corner, where it abuts the existing court. However, the penthouse would be separated from the west property line by a distance of 9 feet, and as a result, should not impact light and air to adjacent properties.

i. Is the proposal in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps?

The proposal is in harmony with the general purpose and intent of the Zoning Regulations and Maps. The regulations require setbacks for penthouses in order to reduce their visibility from the street. In this case, the applicant has met the intent through the provision of a generous front setback, screening through the use of a parapet, and providing separation between the penthouse and property line. Further review by the Historic Preservation Review Board will ensure that the visibility of the proposed penthouses remain minimal.

ii. Would the proposal appear to tend to affect adversely, the use of neighboring property?

The proposed penthouses do not appear to adversely affect the use of neighboring property. Visibility of the penthouses from the public right-of-way has been reduced, as demonstrated on the site section provided by the applicant. In addition, it is not anticipated that the penthouses would cause significant shading of neighboring properties.

V. COMMENTS OF OTHER DISTRICT AGENCIES

As of the date of this writing, comments from other District Agencies have not been received.

VI. COMMUNITY COMMENTS

ANC 6B is scheduled to discuss this case at its regularly scheduled meeting on Tuesday, July 12, 2016. Several letters of support have been entered into the record, including from neighbors located immediately adjacent to the property that would be most impacted by the proposal.

Location Map

