

**MEMORANDUM**

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

**FROM:** Matt Jesick, Case Manager  
*JL* Joel Lawson, Associate Director Development Review

**DATE:** December 2, 2016

**SUBJECT:** BZA #19387 – 3616 11<sup>th</sup> Street, NW – Variance and Special Exception relief to permit the conversion of a flat to a three-unit apartment building

**I. RECOMMENDATION**

With regard to this proposal to convert an existing flat to a three-unit apartment building, the Office of Planning (OP) recommends **denial** of the following variance relief:

- U § 320.2(d) Conversions (900 square feet of lot area per unit required; 852 square feet per unit proposed).

Should the Board consider approval of the above variance, OP would have no objection to the other requested relief:

- U § 320.2 Conversion (Special exception required to convert a residential building to an apartment house in the RF-1 zone);
- U § 320.2(a) Height (35’ permitted as a matter-of-right; 40’ permitted by special exception; 39’9” proposed);
- U § 320.2(h) Rooftop Architectural Elements (Rooftop elements shall not be removed or modified; Modified roofline proposed).

**II. LOCATION AND SITE DESCRIPTION**

Address	3616 11 <sup>th</sup> Street, NW
Legal Description	Square 2829, Lot 169
Zoning	RF-1 (Attached Single Family and Flat)
Ward and ANC	1, 1A
Historic District	None
Lot Characteristics and Existing Development	Rectangular rowhouse lot – 18’ X 142’; Lot area = 2,556 sf; Alley access at the rear; Existing two-story-with-cellar flat on the property; House has a turret above a projecting bay; Rear decks at the first and second floors.

Adjacent Properties and Neighborhood Character	The five immediately adjacent properties, including the subject property, all have identical façades, including a turret above a projection; The remainder of the block face is extremely varied with different architectural styles and a few existing upper-story additions; The property to the south is a single family residence and the property to the north is an existing three-unit building; Adjacent buildings and most nearby buildings have rear decks.
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### III. PROJECT DESCRIPTION IN BRIEF

The applicant seeks to renovate the property within the existing footprint, but to add a story and increase the number of units from two to three. To add a story, the design would keep the front part of turret feature, but behind that add a mansard-type roof. Height would be increased from 29.75' to 39.75'. Two windows would be added at the third floor – one on the face of the turret and one to the north on the main face of the building. At the rear, the first floor deck would be replaced in kind, the second floor deck would be replaced with a slightly larger deck, and new third floor and rooftop decks would be added; All would be connected by spiral stairs. See updated plans at Exhibit 58A.



## IV. ZONING REQUIREMENTS AND ANALYSIS

### Variance Analysis

Subtitle U § 320.2 permits the conversion of an existing residential building to an apartment house, subject to special exception approval by the Board, and subject to the criteria of that section. One of the criteria, § 320.2(d), requires 900 square feet of lot area per dwelling unit. In this case, the 2,556 square feet of lot area would result in 852 square feet for each of the three proposed units, and the applicant has therefore requested variance relief from subsection (d). A variance may be granted if the application meets the three-part test described in X § 1000.

#### 1. Exceptional Situation Resulting in a Practical Difficulty

In Exhibit 58, the application cites a number of supposed exceptional situations, which are listed in the following table, along with OP's analysis.

Applicant's Stated Exceptional Conditions	OP Analysis
<ul style="list-style-type: none"> <li>• Large Property Size</li> </ul>	<p>The size of the lot is not exceptional. It appears to be typical of other lots in the area and is much larger than the 1,800 square foot requirement for new lots in the RF-1 zone. Also, it is not clear how a large lot would result in a practical difficulty to the applicant.</p>
<ul style="list-style-type: none"> <li>• Peculiar Subdivision History</li> </ul>	<p>The property was until recently two separate lots, including one on the alley. The applicant purchased the alley lot and combined the two. But the fact that one lot was once two has no bearing on whether current lot area requirements are a difficulty to the applicant.</p> <p>The lot was 2,700 square feet in size when it was originally created, and before land was ceded to create an alley in the square. While exceptional, it is not clear how a subdivision to create an alley, that occurred in the realm of 100 years ago, affects the current owner.</p>
<ul style="list-style-type: none"> <li>• Location and Existing Condition</li> </ul>	<p>The applicant states that the subject property is the only lot in the square between an existing apartment and a lot large enough to create an apartment building without a variance – in other words, larger than 2,700 square feet. While perhaps unusual, it is not clear how this situation creates a practical difficulty for the owner, who can provide a conforming use on the property regardless of the use of adjacent lots.</p>
<ul style="list-style-type: none"> <li>• Existing Unit Configuration</li> </ul>	<p>The application states that the fact that there are units on the first and second floors, but no unit in the cellar, is an exceptional situation. On the contrary, such a situation is merely a happenstance of the use of the building to this point.</p>

	On page 11 of Exhibit 58, the application states that “creating a family dwelling unit by connecting the cellar with the first floor...would be practically difficult.” No evidence for that conclusion, however, is presented.
<ul style="list-style-type: none"> <li>• Substantial Rehabilitation Required</li> </ul>	The application states that the building, prior to the current owner acquiring the property, was allowed to fall into disrepair. Again, it is unclear how strict application of the Regulations would result in a practical difficulty to the applicant, since the renovation of degraded properties for conforming uses is a common occurrence in the District.

Overall, OP finds that there are no unique or exceptional conditions exhibited by this property that would lead to a practical difficulty for the applicant. The application for a variance, therefore, fails the first part of the three-part test.

## 2. No Substantial Detriment to the Public Good

Granting a variance to allow three units would likely not result in a harm to the public good. The neighborhood appears to have a scattering of apartments and apartment conversions, including the adjacent property to the north. The additional impacts to light and noise in the vicinity should be minimal. The property would continue to meet parking requirements with the provision of two spaces. Automobile traffic should not be substantially impacted, given the density of transit options in the neighborhood.

## 3. No Substantial Harm to the Zoning Regulations

Granting the requested variance could harm the intent of the Zoning Regulations. Subtitle E § 100.3(f) states that the RF zones are intended to “Prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone.” RF zones are primarily intended to provide larger units sizes for larger household types – rather than smaller apartment-type units – to allow larger households to remain in the District. On the subject site, two large units could be provided as a matter-of-right, rather than the one large unit and two smaller units contemplated with the application.

### Special Exception Analysis

As stated above, U § 320.2 allows the conversion of an existing residential building to an apartment, subject to conditions. The following is OP’s analysis of 320.2.

**320.2 Conversion of an existing residential building existing prior to May 12, 1958, to an apartment house shall be permitted as a special exception in an RF-1, RF-2, or RF-3 zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, subject to the following conditions:**

- (a) **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 to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);**

The existing building height is 29.75' and the application requests a height of 39.75'. As noted in the analysis below, OP finds that the request is consistent with subsections (f) through (i), and therefore can recommend approval of the additional height.

- (b) **The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6;**

The project would have three dwelling units, and therefore this subsection does not apply.

- (c) **There must be an existing residential building on the property at the time of filing an application for a building permit;**

There is an existing flat on the property.

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

The total lot size is 2,556 square feet, which would result in 852 square feet per unit. OP recommends denial of the applicant's requested variance to this subsection.

- (e) **An addition shall not extend further than ten feet (10 ft.) past the furthest rear wall of any principal residential building on an adjacent property;**

No rear addition is proposed with this application.

- (f) **Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;**

Chimneys for adjacent properties are not adjacent to the subject property, and therefore would not be impacted by the proposed construction. Please see Exhibit 8, Page 2.

- (g) **Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow or shade study, or other reputable study acceptable to the Board of Zoning Adjustment;**

OP has found no evidence of an existing or permitted solar energy system on adjacent properties.

- (h) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;**

The proposed design would alter the existing rooftop of the building, and the applicant therefore requests a waiver of this subsection pursuant to § 320.2(1). The most prominent rooftop feature, a turret, would be largely retained on its street-facing side. The rear of the turret would be incorporated into a mansard-type roof that would be added to accommodate the new third floor. Two windows would also be added to the front of the third floor – one incorporated into the turret, and another one north of the turret on the main façade of the building.

- (i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:**
- (1) The light and air available to neighboring properties shall not be unduly affected;**

The amount of shadow on the property to the north would likely increase some amount, but the available light should not be unduly impacted, and not beyond levels to be expected in a dense urban neighborhood.

- (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and**

Privacy should not be unduly impacted. Residential units would have windows facing the rear yard, but not the side. Although new decks would be added at the third floor and roof, rear decks are typical for most buildings in the square, and the overall impact on privacy should not be significantly greater than the existing condition. The rooftop deck would have handrails set back four feet from exterior walls, minimizing visibility into the yards of nearby properties.

- (3) The conversion and any associated additions, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street or alley;**

The proposed addition would be visible from both 11<sup>th</sup> Street and the alley at the rear. The proposed addition would increase the height of this property above the adjacent buildings with the same design. However, OP finds that the project would not substantially intrude upon the character, scale and pattern of the immediate grouping of houses. Because of the proposed design, including the mansard-type roof, the additional height would not be as prominent as it could be with other potential configurations. Also, the design would visually maintain the turret, the key feature in maintaining the rhythm of this cluster of houses. Furthermore, if looking at the

entire street frontage, as suggested by this subsection, there is a great variety of architectural types, including some existing upper story additions.

- (j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;**

The application materials include floorplans, elevations and photographs.

- (k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;**

The Office of Planning recommends no special treatments or conditions.

- (l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and**

The applicant has requested a waiver from subsection (h), governing changes to rooftop architectural features. OP recommends approval of the waiver, as the change to the rooftop would not be in conflict with § 320.2(i).

- (m) An apartment house in an RF-1, RF-2 or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and this section.**

Not applicable.

## **V. COMMUNITY COMMENTS**

As of this writing the ANC has voted to support the project, and the record contains a number of letters of support for the request.