


MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anne Fothergill, Case Manager
 Joel Lawson, Associate Director Development Review

DATE: October 13, 2017

SUBJECT: BZA Case 19574 - request for special exception and variance relief to allow the conversion of a 3-unit apartment house at 10 3rd Street, N.E.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the following variance and special exception relief pursuant to Subtitle X Chapters 9 and 10:

- Subtitle U § 320.2 – to allow the conversion of a 3-unit apartment house with less than 900 SF per unit

II. LOCATION AND SITE DESCRIPTION

Address	10 3 rd Street, N.E.
Legal Description	Square 0759, Lot 0838
Ward	6
Lot Characteristics	The subject property is a 1,986 SF rectangular lot with a public alley at the rear.
Zoning	RF-3
Existing Development	The subject property has two historic buildings – the primary building and an accessory building with access off the rear alley. The property currently has three residential units (one in the accessory building) and a Certificate of Occupancy for only two units; a flat is permitted in this zone. The Applicant states that the property has had the same family ownership and three residential units for more than 80 years. According to the Sanborn Atlas maps, the accessory building was constructed as a two-story building with a stable and a floor above and a third story was added around the 1920s. The accessory building was constructed in 1881, a few years before the primary dwelling.
Historic District	Capitol Hill Historic District
Adjacent Properties	The adjacent properties are residential rowhouses, apartment buildings, a church, and alley dwellings on historic Terrace Court.

Surrounding Neighborhood Character	The surrounding neighborhood is primarily residential with some commercial and institutional properties in close proximity. Across the street from this square are the Folger Shakespeare Library and the Supreme Court. OP did not find any BZA cases for conversion of a rowhouse to an apartment building on this square.
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III. PROJECT DESCRIPTION IN BRIEF

This application is a request for retroactive zoning relief to allow the retention of the long time existing three residential units in the RF-3 zone. The building currently has three separate residential dwelling units – two in the primary building and one in the accessory building - that have been in existence since before the family bought the property 80 years ago. The accessory building was constructed in approximately 1881 as a stable with one story above and the 3rd story was most likely added in the 1920s. The accessory building has parking on the ground floor and the residential unit on the 2nd and 3rd stories. In the primary building, there is a basement unit and a second unit on the 1st, 2nd and 3rd floors. These two units have long-terms tenants and the accessory building is currently vacant after a tenant recently moved out so the Applicant could make some needed renovations.

The Applicant proposes no exterior changes to the two buildings as part of this application, and there would be no changes to the current conditions of the three units. The Applicant has withdrawn their initial request to install a roof deck on the accessory building. The accessory building currently has one garage parking space and that would remain. The Applicant is requesting the zoning relief so that they can get a Certificate of Occupancy and make the existing three unit configuration legal.

IV. ZONING REQUIREMENTS

RF-3	Regulation	Existing	Proposed	Relief
Height	35 feet	30 feet	No change	None required
Minimum lot area (for 3 units)	2,700 SF (for 3 units)	1,985 SF	No change	Relief requested
Lot occupancy	60%	68.7%	No change	Existing non-conformity
Rear yard	20 feet	31.88 feet	No change	None required

V. OFFICE OF PLANNING ANALYSIS

A. Special Exception

Special Exception Relief from Subtitle U § 320.2 - conversion of an existing residential building to a 3 unit apartment house:

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 building is within the maximum height limit of 35 feet for this zone.

(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 Applicants are proposing to retain the existing three units and IZ would not be applicable.

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

The building on the subject property is residential.

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

The subject property is 1,985 square feet and the Applicant is requesting a variance from this regulation; see Section V.B. of this report.

(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;

The Applicant does not propose any additions to the building.

(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;

The Applicant does not propose any additions to the building.

(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;

The Applicant does not propose any additions to the building.

(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 Applicant does not propose any changes to 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;*
- (2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;*
and
- (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 Applicant does not propose any additions to the building. There are numerous letters of support for this conversion from neighboring property owners.

(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 Applicant has provided adequate plans 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;

(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 not requested any waivers from these conditions but has requested a variance from the 900 square foot per unit requirement found in Section 320.2(d) (see Section V.B.).

B. Variance

Variance relief from Subtitle U § 320.2(d) - required 900 square feet of land area minimum per dwelling unit in an apartment house

i. Exceptional Situation Resulting in a Practical Difficulty

The Applicant's family has owned the subject property for many decades and during that time it has had three residential units in the two separate buildings. The accessory building is exceptionally large and currently has one residential unit on the 2nd and 3rd floors (with parking below). The accessory building was originally constructed in 1881 with a ground level stable and 2nd floor and the 3rd floor dates to the 1920s. The Applicant does not propose to make any exterior changes to either of the two buildings.

The property does not have the required 900 square feet per unit in land area for three units. If the Applicant was required to comply with the RF-3 regulations and eliminate one residential unit in either the principal or accessory building, the Applicant states they would be faced with substantial renovation and expense, as well as the loss of the income from the third unit. The two upper floors of the accessory building are exceptionally large to be used for storage for the primary building and are better suited (and possibly purpose built) for the existing residential use. Additionally, the ground floor unit in the primary building is currently occupied by a family member who has degenerative health issues with accessibility limitations to climbing stairs and the Applicant needs to retain this as a separate unit.

ii. No Substantial Detriment to the Public Good

The Applicant is not proposing any exterior changes to either building and the number of residential units would remain exactly the same as it has been for many decades. The Applicant has withdrawn the proposal for a new roof deck on the accessory building and should the requested relief be granted to allow three units, there would be no new impact on the neighbors in terms of light, air, density, or privacy. As such, the requested relief should not have a substantial detriment to the public good. Numerous neighbors have written letters of support (Exhibits 30, 32-40, 42-43, 49-50, and 52).

iii. No Substantial Harm to the Zoning Regulations

The RF-3 zoning regulations permit a conversion to an apartment house by special exception and the Applicant's proposal meets all of the special exception conditions except one – it does not meet the condition that ensures that there would be adequate land area (900 square feet) per residential dwelling unit. However, in this specific case, the three units have been in existence for multiple decades, well before the zoning regulations were enacted, and no adverse impact on nearby residents has been shown. Because the building has been used for a residence for decades, OP finds the relief to allow the third residential unit would not harm the zoning regulations. The relief would allow the property owner to acquire a valid Certificate of Occupancy and be in compliance with those requirements for three units.

VI. COMMENTS OF OTHER DISTRICT AGENCIES

At the time of the staff report, no other District agency had submitted comments.

VII. COMMUNITY COMMENTS

The Applicants have provided letters of support from nearby residents (Exhibits 30, 32-40, 42-43, 49-50, and 52-53). As of the date of filing this report, the ANC had not submitted a recommendation to the record.