

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

October 16, 2017

Meridith Moldenhauer
Cozen O'Connor
1200 19th Street, NW
Washington, DC 20036



Re: 3002 11th Street, NW: Certificate of Service for three-unit apartment house
Square 2850, Lot 206

Dear Ms. Moldenhauer,

This letter is in reference to our meetings on July 26, 2017 and August 8, 2017 regarding your client's property located at 3002 11th Street, NW (the "Property"). Based on our discussions, your client is the recent purchaser of the Property that has been used as a three-unit apartment house since approximately 1991. The three-unit apartment house use on the Property was approved in Board of Zoning Adjustment (the "Board" or "BZA") Case No. 15863 (the "BZA Case") approved on November 30, 1993¹ and constructed in accordance with Building Permit No. B354702 (the "Building Permit"). However, neither a certificate of occupancy for a three-unit apartment house use nor the Building Permit have been located in DCRA's records to date.² Accordingly, your client has requested confirmation from this office that a certificate of occupancy for the three-unit apartment house can be issued by DCRA. Based on the evidence discussed below that the BZA Case was vested through the application for the Building Permit, I find that such a Certificate of Occupancy can be issued.

The Property has a land area of 2,697 square feet. The Property is located in the RF-1 zone district. The structure on the Property has two stories, with additional habitable space in the cellar, which is partially above-grade. The Property is a corner lot at the juncture of 11th Street, NW and Columbia Road, NW. The Property is bound to the north by row dwellings and to the west by an alley.

As part of the BZA Case, a prior owner, Marie E. Cone (the "Prior Owner"), obtained area variance relief from the Board to convert an existing flat at the Property to a three-unit apartment building in the R-4 zone district.

¹ The Office of Planning filed a report in the BZA Case, as exhibit number 26 (the "Office of Planning Report"). Per the Office of Planning report, "there is evidence that the interior of the structure had been modified to accommodate three dwelling units" prior to 1991. The Office of Planning recommended approval of the Prior Owner's BZA application.

² This office is aware that while regrettable, it is not uncommon that documents cannot be located in DCRA's records due to passage of time, flooding, consolidation of agencies and/or moving of buildings.
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The record in the BZA Case references the Building Permit. On November 30, 1993, the Board entered a Summary Order (the “Summary Order”) granting variance relief for the conversion to a three unit apartment house.

The Summary Order is attached at **Tab A**. Pursuant to its terms, the Summary Order was “valid for a period of six months, unless such time an application for a building permit or certificate of occupancy is filed with [DCRA]”.³ See **Tab A**.

Based on the documents in the record for the BZA Case, the evidence supports the conclusion that the Building Permit application was filed timely. Accordingly, the Summary Order was vested, and the relief granted in the BZA Case (conversion to a three-unit apartment house) remains valid. Accordingly, a Certificate of Occupancy can be issued at this time.

The evidence is as follows:

- Pursuant to the Office of Planning report in the BZA Case, in late-1991, the Prior Owner filed an application for a certificate of occupancy and/or the Building Permit in order to use the Property as a three-unit apartment house. A copy of the Office of Planning report is attached at **Tab B**.
- On January 24, 1992, the building plans filed as part of the Prior Owner’s Building Permit application were stamped by DCRA officials.⁴ A copy of those building plans is attached hereto at **Tab C**.
- By letter dated October 9, 1992, DCRA confirmed that an inspection of the Property had occurred and the construction under the Building Permit (specifically mentioning it by number) had been completed. A copy of the inspection letter is attached at **Tab D**.
- By letter dated February 10, 1993, the Zoning Administrator issued a referral for the Property to the Board.⁵ A copy of the zoning referral letter is attached at **Tab E**. The Zoning Administrator’s referral letter reflects “review of plans for the proposed conversion of an existing building to a three unit apartment building” at the Property. See **Tab E**. It appears that before a certificate of occupancy could be issued for the apartment house use, the Prior Owner was required to obtain zoning relief from the 900-square foot lot area requirements

³ Similarly, pursuant to Subtitle Y § 702.1, “[a]n order granting a special exception or variance where the establishment of the use is dependent on the erection or alteration of a structure shall be valid for a period of two (2)

years . . . within which time an application shall be filed for a building permit for the erection or alteration approved.”

⁴ The building plans are filed in the BZA Case as exhibit number 1.

⁵ As noted in the Office of Planning report, the Zoning Administrator’s office initially “advised the applicant that the property meets the 900 square feet of land area per apartment requirement for the conversion of an existing building in the R-4 District.” See **Tab B**. However, “a subsequent computation by the Surveyor’s Office revealed that the subdivided property falls 2.8 square feet short of the required 2,700 square feet of total land area.” See **Tab B**. Accordingly, the Zoning Administrator referred the matter to the Board of Zoning Adjustment because the Prior Owner required zoning relief from the lot area requirements of § 401.3.

for conversion of an existing building to an apartment house in the R-4 zone. See **Tab E**. As discussed here, that BZA approval was issued.

- On July 14, 1993, the Prior Owner filed the BZA Case seeking variance relief from the 900 s.f. requirements for the conversion to an apartment house.
- On November 17, 1993, the BZA held a public hearing and unanimously granted the Prior Owner's application. See **Tab A**.
- On November 30, 1993, the Summary Order was entered by the BZA. See **Tab A**.
- On May 16, 1994, building plans for the basement unit were stamped by a number of DCRA officials. A copy of the plans are attached at **Tab F**. Notably, the plans reference the Building Permit (#B354702) in the bottom right corner of page 1. See **Tab F**. The permit number matches the permit number referenced in the inspection letter attached at **Tab D**. The matching Building Permit numbers indicate that the plans were filed as part of the Building Permit review following entry of the Summary Order. Importantly, the plans were filed less than six months from the date of the Summary Order. See **Tab A**.

Furthermore, the evidence presented by your client indicates that the Property has been regulated as a three-unit apartment house for utility and tax purposes. The following forms the basis for this conclusion:

- The Property is equipped with three utility meters. Photographs of three utility meters are attached at **Tab G**.⁶
- The Property is taxed as a residential property that was converted to an apartment house. Pursuant to the Property's PIVS report, the Property is assessed the use code of "024" for property tax purposes. A copy of the PIVS report is attached at **Tab I**. According to the property tax use chart issued by the D.C. Office of Tax and Revenue ("OTR"), the use code "024" corresponds with "Residential-Conversion-Less than 5 units." A copy of OTR's use code description chart is attached at **Tab J**. Further, the description for use code "024" states that it is for a "structure with more 1 single-family unit, but less than 5; usually self-contained, under 1 roof; few accessory uses; 1 unit may be owner-occupied; original primary use not multi-family." Notably, the Property is not assessed with the "023" designation, which would indicate a flat.

Conclusion

Based on the evidence presented to me, I can conclude that the BZA Case that approved a three-unit apartment house on the Property was vested because the Building Permit application was filed before the BZA application and was referenced on a building plan dated less than six months after the Summary Order was issued.

⁶ The Property is also equipped with three, separate kitchens. Photographs of three kitchens are attached at **Tab H**.

Accordingly, this office would approve the issuance of a certificate of occupancy for the Property with the following description:

“Legal three unit apartment house (multiple dwelling) in the RF-1 Zone District that is valid pursuant to BZA Case No. 15863.”

This determination letter constitutes the first writing reflecting the administrative decision. Therefore, under Subtitle Y § 302.5 of the District’s Zoning Regulation, no subsequent document, including a building permit or certificate of occupancy, can be appealed unless the document modifies or reverses this letter or reflects a new decision.

Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments:

- Tab “A”: Summary Order in BZA Case No. 15863
- Tab “B”: Office of Planning Report filed in BZA Case No. 15863
- Tab “C”: Building plans filed in BZA Case No. 15863
- Tab “D”: DCRA inspection letter
- Tab “E”: Zoning Referral Letter filed in BZA Case No. 15863
- Tab “F”: Building plans stamped on May 16, 1994
- Tab “G”: Photographs of utility meters
- Tab “H”: Photographs of kitchens
- Tab “I”: PIVS report for the Property
- Tab “J”: Office of Tax and Revenue use code descriptions

File: Det Let re 3002 11th St NW to Moldenhauer 10-16-17