

September 19, 2023

**Via Emailed PDF**

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**Re: 1220 Maple View Place, S.E. (Square 5800, Lot 811) - Continuation of Nonconforming Flat Use in the R-3 District**

Dear Ms. Brown:

You have asked me for confirmation that the vacant two-story residential building at 1220 Maple View Place, S.E., (Square 5800, Lot 811) (“Property”), may be rehabilitated as flat consistent with its long-standing use as a two-unit building, notwithstanding its status as a nonconforming use due to its location in the single-family R-3 District. The Property is owned by Historic 1220 Maple View Place SE, LLC, a single purpose entity of the L’Enfant Trust (“Trust”), a not-for-profit historic preservation organization.

Based on our virtual meeting on September 13, 2023, and the objective proof you provided, I conclude that you have sufficiently rebutted the *prima facie* assumption under 11-C DCMR § 204.4 that the nonconforming use was abandoned, that you have demonstrated the **Trust has taken affirmative steps to resume use of the flat, and that the Trust may rehabilitate the building for use as a flat, as allowed under 11-C DCMR § 204.5.** This determination is consistent with a ruling issued by this office on December 6, 2017, regarding another property involving the use of a former medical building on the Walter Reed campus at Lot 808 in square 2950 by the Children’s National Medical Center.

**The Property and Its Current Condition**

The Property is located at the intersection of Maple View Place, S.E., and Mount View Place, S.E., in the Anacostia Historic District and is zoned R-3, as shown on the plats attached as Exhibit A. The site is improved with a two-story Victorian house that is in dilapidated condition but is deemed to contribute to the character of the historic district. Photographs of the house are included below. Pursuant to Council legislation, the D.C. Department of Housing and Community Development (“DHCD”), sold the Property and three other vacant dilapidated Anacostia houses to the Trust on March 13, 2018, with restrictive covenants requiring the

renovation of the houses and their sale as workforce housing.<sup>1</sup> See D.C. Law 22-152, effective July 27, 2018. The legislation is silent on the number of units at any of the properties. Through its Historic Property Redevelopment Program, the Trust began renovating the four properties sequentially, given funding constraints. Three of the four houses have been successfully rehabilitated but sold at a loss because the renovation and rehabilitation costs exceeded the sales price achievable with the workforce housing income restriction. The Trust is now proceeding with the renovation of the Property but wishes to continue its historic two-unit use consistent with the city’s historic preservation and affordable housing objectives while also minimizing any losses when the units are sold as condominiums.

### **Construction and Zoning History**

The house was constructed in 1902 as a two-unit residential building by N.R. Harnish, as shown in the original building permit included with Exhibit B. A separate alteration permit issued in 1911 also notes the Property’s two-family use. Historically, the building had two primary addresses<sup>2</sup> and has always had two entrances, one for each unit:

- *1220 Maple View Place, S.E.* – the entrance for this unit faces Maple View Place (on the long side of the house) and was covered by a wrap-around porch.
- *2253 Mount View Place, S.E.* -- the entrance faces Mount View Place and was designed to appear as the principal entrance at the front of the house.

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<sup>1</sup> See Deed executed March 9, 2018, from D.C. Department of Housing and Community Development to Historic 1220 Maple View Place SE, LLC, and recorded among the Land Records of the District of Columbia as Document No. 2018025602 on March 13, 2018.

<sup>2</sup> Other addresses associated with the property include 431 Spring Street, S.E., and 3126 Maple View Place, S.E.



*1975 Photograph of 1220 Maple View Place, S.E. Entrance to 1220 Maple View Place unit is in center-left of photograph; 2253 Mount View Place, S.E. is to the right.*



*1220 Maple View Place, S.E. – Unit #1 Entrance*



*2253 Mount View Place, S.E. – Unit #2 Entrance*

No zoning controls were in place at the time the house was constructed. Beginning in 1936, it was classified as “Residential B”, which permitted flats and apartments. With the enactment of the 1958 Zoning Regulations, the Property was designated R-5-A, a low-density apartment district. See Historic Zoning Maps attached with [Exhibit A](#). However, in 1978 it was “down-zoned” to the R-3 District, which restricts the use to single-family dwellings. See Z.C. Order No.

227 in Z.C. Case No. 77-30.<sup>3</sup> The Property became a lawful nonconforming “flat” upon the downzoning. The Property continues to be zoned R-3.

### **Historical Use as a Two-Unit Residence**

There are no records of any certificates of occupancy being issued for the two-unit residence. However, city directories, census records, and other sources verify that the Property continuously had two units available for rent through approximately 1987, at which time the property fell into disrepair and ultimately became uninhabitable; it was sold several times at tax sales. In 1950, the U.S. Census Records indicate that 1220 Maple View Place, S.E., was occupied by Annie Harnish, aged 95, the widow of the original owner/building N.R. Harnish; her 64-year-old niece; and a 19-year-old female lodger. The census records note that this unit was on the first floor of the house. The second-floor unit at 2253 Mount View Place, S.E., was occupied by Helen Roberts. In 1964, a newspaper ad lists the Property for sale as a two-unit house, with two kitchens, two baths, ten rooms, etc. Between 1971 and 1981, city directories list the two separate addresses for the Property, with at least one of the units occupied and the other intermittently occupied. Copies of the census records, city directories and newspaper ad are included in Exhibit C.

By 1987, the Property appears to have fallen into disrepair. A water lien was filed against the Property that year, and in 1990, the mortgage lender foreclosed on the Property and sold at a tax sale shortly thereafter. By the early 2000s, numerous wrongful housing actions and liens were filed against the Property. In 2004, the District government condemned the Property due to insanitary and uninhabitable conditions. The following year, NE Rhode Island LLC purchased the Property at a tax sale, presumably to rehabilitate and repair the house to building code standards to allow occupancy. However, the city continued to issue wrongful housing notices. Additional liens were filed against the Property and it was ultimately sold to the DHCD at a tax sale in 2014. DHCD secured permits to brace and stabilize the house to prevent its collapse to satisfy the condemnation order. In light of that work and in order to facilitate the sale of the Property, the District cancelled the condemnation notice on March 7, 2018, and the deed transferring the Property to the Trust entity was executed two days later. A list of the documents filed with the D.C. Recorder of Deeds regarding liens, violations, and sales is attached as Exhibit D.

### **Continuing Intent to Maintain 2-Unit Use**

At the time the Trust purchased the Property, DHCD did not provide any information on the Property’s condition or its historical use as a flat; the existence of two units was discovered only after the Trust undertook historical research on the house. Upon learning of the continuous

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<sup>3</sup> A copy of Z.C. Order 77-30 is available at [https://app.dcoz.dc.gov/Home/ViewCase?case\\_id=77-30](https://app.dcoz.dc.gov/Home/ViewCase?case_id=77-30).

use as a flat, the Trust determined it was in the best interest of the city’s affordable housing and historic preservation objectives, and the Trust’s fiduciary duties, to pursue renovation and rehabilitation of the Property as two units. The Trust has taken several actions since acquiring the Property to achieve these goals and objectives, while proceeding simultaneously with the sequential renovation and sale of its other three properties.

First, on May 9, 2019, the Trust met with the Zoning Administrator to discuss the type of information needed to demonstrate that, despite the building’s dilapidated condition and vacancy, the nonconforming use had not been abandoned. Next, in 2020, the Trust submitted a progress report to DHCD stating its intent to start plans for renovation of the Property as a two-family home sometime that year. However, as with most building projects, the pandemic halted those plans. In 2022, the Trust again updated DHCD that it would begin planning for redevelopment of the Property as a two-family home contingent upon the sale of the other Trust property at 1648 U Street, S.E. That same year, the Trust requested and received a \$100,000 grant from the 1772 Foundation for renovation of the Property as a two-unit house. Finally, in December 2022, Congresswoman Eleanor Holmes Norton announced that she had secured \$23 million for Community Project Funding in fiscal year 2023, of which \$2 million would be directed to the Trust to “rehabilitate a house for multi-unit affordable homeownership.” Documentation of the Trust’s continuing intent to maintain the two-unit use is attached as Exhibit E. Over 30 letters were submitted to the Council in support of the Community Project Funding for the Property, including letters from councilmembers, District agencies and numerous community members.

### **Analysis**

The Zoning Regulations define a nonconforming use as “any use of land or of a structure and land in combination, lawfully in existence at the time of this title or any amendment to this title became effective that does not conform to the use provisions for the zone in which the use is located.” 11-B DCMR § 100.2 (2016); 11 DCMR § 199.1 (1958). The Property became a lawfully existing nonconforming flat when it was down-zoned in 1978 to the R-3 District and restricted uses to one-family houses under the 1958 Zoning Regulations then in effect. At that time, city directories indicate that the Property was in used as a two-unit building with two separate addresses.

Pursuant to 11-B DCMR § 204.4, discontinuance of a nonconforming use for a period of more than three years is considered *prima facie* evidence of no intention to resume active operations as a nonconforming use, except where governmental action impedes access to the premises. This presumption may be rebutted “by objective proof of a continuing use or of affirmative steps taken to resume the use....” 11-C DCMR 204.5 (2016).

Here, the Property has been in continuous use as a flat since its construction in 1902, as evidenced by building permits, census records, a newspaper ad and city directories, until it was condemned by the District government and unsafe for occupancy. The Trust did not have access of the Property until its acquisition on December 13, 2018. Therefore, the three-year timeframe for discontinuance of the nonconforming use commenced on that date. During the ensuing three years and continuing through to the present, the Trust has taken affirmative steps to resume the use of the Property as a flat. It met with this office in May 2019 to confirm what documentation was necessary in order to maintain the flat use. It advised DHCD in 2020 and again in 2022 that it intended to rehabilitate the Property with two units. The Trust obtained a \$100,000 grant and \$2 million in community funding in 2022 and 2023, respectively, to undertake renovations for a flat. I find that this information collectively provides ample objective proof that the flat use was not abandoned and that the Trust has taken affirmative steps to resume the use beyond the three-year timeframe established under 11-C DCMR § 2045. I therefore conclude that the Trust may obtain permits to rehabilitate the Property as a flat and that a certificate of occupancy may be issued for a flat upon completion of renovations. This determination is consistent with the one issued by this office for the Children's National Medical Center at Walter Reed dated December 13, 2017, attached as Exhibit F.

Accordingly, when building permits are filed for, my office will approve permits for this property consistent with the above presented information.

Please let me know if you have any further questions.

Sincerely, Matthew Le Grant  
Matthew Le Grant  
Zoning Administrator

Attachments: Exhibits A-E

DISCLAIMER: This letter is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a "final writing", as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator's review. Therefore, this letter does **NOT** vest an application for zoning or other DOB approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DOB.

File: Det Let re 1220 Maple View Pl SE to Brown 9-19-23