MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Arthur Jackson, Case Manager

Joel Lawson, Associate Director Development Review

DATE: November 26, 2013

SUBJECT: **BZA Case 18667** – variance relief requested to allow continuation of an existing accessory dentist office in the basement of a two-story residence located at 45 Franklin Street NE

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends **denial** of the variance relief requested from § 202.2 to allow the continuation as an accessory dental use without the associated dentist residing onsite. The application did not sufficiently explain the exceptional and undue hardship associated with only being able to sell the existing one-family dwelling without the dental office.

II. LOCATION AND SITE DESCRIPTION:

Address:	45 Franklin Street NE
Legal Description:	Square 3500, Lot 0124
Ward:	5E
Lot Characteristics:	A nearly rectangular corner lot of 1,633 square feet (0.04 acre approximately) with frontages along Michigan Avenue to the north, Franklin Street NE to the east and a public alley 16 feet wide to the west that extends south from Michigan Avenue. The property slopes down from the shared southern boundary toward the Michigan Avenue frontage (reference Figures 1 and 2).
Zoning:	*R-3* – an accessory dental office is allowed by special exception in accordance with § 202 of the Zoning Regulations.
Existing Development:	According to D.C. land records, the existing masonry row dwelling was constructed in 1932. The formal entrance to the two-story residence upstairs is along the Franklin Street frontage, while the entrance to the basement dental office on the side facing Michigan Avenue. Inside are three bedrooms and a bath on the upper two floors and a half-bath in the basement. In the rear yard is a paved parking pad with five vehicle spaces that are perpendicular to and directly accessible from the adjacent alley. Three of the parking spaces are actually in public space (reference Figures 1 and 2). Although the application states that the basement dental office has existed onsite for 67 years, a search of Department of Consumer and Regulatory Affairs records by OP did not locate a Certificate of Occupancy or a business license on file for this accessory use.

Historic District:	None
Adjacent Properties:	Similar row dwellings of masonry construction.

III. PROJECT DESCRIPTION IN BRIEF

Applicant:	St. Elmo W. Crawford, the owner of record.
Proposal:	No changes are proposed to the existing dwelling and uses. The applicant wishes to sell both to another dentist. An accessory dental office is an allowable use in the R-3 District with special exception approval as accordance with the following § 202.2 requirements: *(a) The physician or dentist shall reside on the premises;* (b) No goods, chattel, wares, or merchandise shall be created commercially, exchanged, or sold in the office; (c) Exclusive of domestics, not more than two (2) persons who do not reside on the premises may be employed. *No person so employed shall be a physician or dentist*; and (d) Only one (1) sign not over one square foot (1 ft.^{2}) in area and affixed to the dwelling or free-standing shall be used. The sign, if illuminated, shall be white and non-flashing Because the prospective purchaser does not intend to live onsite, as required under§ 202.2 (a), the applicant submitted this request for zoning relief. On November 19, 2013, the applicant added several supplemental submissions to the case file: • A letter dated October 28, 2013, indicating that Dr. Enrique Matabar, the prospective purchaser, agreed to continue operating the dental office in the same manner as the current operator even though *the purchaser's father would reside on the premises*. The letter stated that the upstairs dwelling "is only suited for single occupancy and not for a family" and included the following list of what appear to be proposed operating conditions, including. 1. The upstairs use shall be limited to a single family dwelling and dental office in the basement without alteration to the structure. 2. The number of employees shall not exceed four, *no more than two of which may be dentists.* 3. The hours of operation shall not exceed from 8:00 AM to 4:30 PM, Monday through Friday except for emergency treatment. 4. The number of patients shall not exceed 15 per day. 5. There shall be no fewer than five parking spaces provided *"on site."* • A copy of an email dated November 12, 2013, to Arthur Jackson, Development Review Specialist, providing additional information to bolster the original Burden of Proof statement

	(discussed in the OP Analysis section below). • A copy of a letter dated October 28, 2013, to Richard Nero, Deputy Director of Operations, DC Office of Zoning from Celia Barnes, Chair of Advisory Neighborhood Commission (ANC) 5E explaining the ANC vote in support of this application (discussed in Agency Comments section below). • A letter to Richard Nero from Sean K. Mitchell, a Bank of American Vice-President, explaining the bank's position on loan requests "for a residential properties that actually have a business use" (also discussed in the OP Analysis section below).
Relief Sought:	A use variance to allow the continuation of the existing accessory dental office that would not meet all the standards of § 202.2. Specifically, under this proposal the dental practitioner would not reside onsite as required under § 202.2 (a) and employ other dentists onsite which is not allowed under § 202.2 (c).

IV. OP ANALYSIS

Use Variance relief requested from § 202.2 in accordance with § 3103.1

- **Unique conditions or circumstances leading to an undue hardship:**

  The application identified the unique circumstance on the subject property as the dwelling and accessory dental office uses that predate the current Zoning Regulations. The residence and dental office also have separate entrances from the adjacent streets. While a row dwelling with a professional dental office in the basement and separate entrances for both are unique characteristics, the applicant did not adequately address how this results in an undue hardship.

  The applicant would like to sell the existing row dwelling and basement dental office to another dentist who would live offsite. The supplemental letter referenced above indicated that the bank approached to finance this purchase:

  - would only consider a commercial loan instead of a residential loan, apparently because of the mixture of residence and a dental office on the same property; and
  - requires approval of a use variance prior to the settlement of the loan on December 13, 2013.

  Figure 1

  The applicant explained that one condition of the sale is that the residence upstairs must remain. The purchasing dentist plans to move his father upstairs where the new owner "could watch over him" due to the parent's multiple medical issues.

The supplements indicate that: not being able to complete the current sale would be a hardship on the current owner; requiring the new dentist's father to live somewhere else, where medical assistance may be required, would be a hardship on the prospective purchaser; and discontinuing this neighborhood dental practice "would create a hardship for the many patients who presently use this dental office for their dental services."

However, these are difficulties associated with a potential purchaser and not with the property or the uses onsite.

- **Substantial Harm to the Zoning Regulations**

Section 202 establishes clear and specific standards under which certain non-residential uses may be accessory to allowable principal uses in Residence districts. The Zoning Regulations define an accessory use as, "a use *customarily incidental and subordinate to the principal use*, and located on the same lot with the principal use." The only way a doctor or dental office is allowed in an R-3 District, per the above definition, is as an integral part of the associated dentist's home.

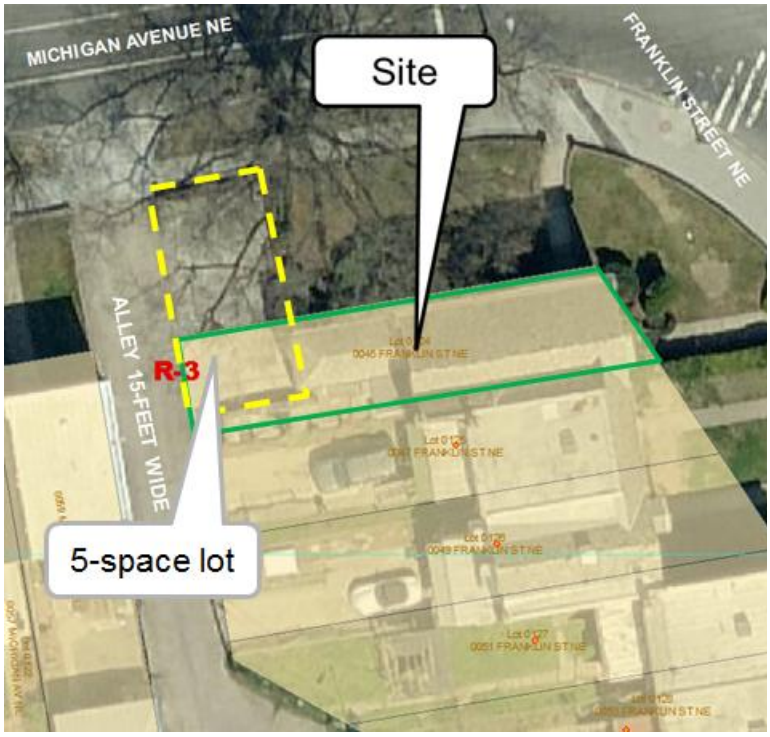
This request, to allow a dental office in a residence with more than one dentist where none of dentists reside, is contrary to the spirit of the referenced accessory use provisions. These provisions are intended to allow a practicing dentist the *flexibility* to see patients in his place of residence. Residency encourages the practitioner to operate their office in a manner that would not negatively impact the neighbors or the character of the surrounding neighborhood. Allowing a remote dental office in a Residence District would remove that incentive.

The application also failed to explain why the sale of the primary residence without the dental office is not a viable option and what would become of the residence upstairs if relocating the father to a facility with medical services becomes a necessity.

- **Detriment to the Public Good:**

There is no indication that continuing the operations of this accessory dental office, in a similar manner to what has existed over the years, would have a negative impact on neighboring properties. However, non-resident members of a dental practice may have less concern regarding the impact of day-to-day operations on the neighbors. The vitality of this corner of the square could be significantly altered when a dwelling previously occupied 7-days a week becomes a vacant property on the weekend when the office is closed. It is also unclear what would

Figure 2



ultimately become of the principal residence upstairs in the long term.

In light of these circumstances, approval of the use variance to wave the dental office residency requirement and allow other dentists to be employed on the premises would be inconsistent with and contrary to the spirit and intent of the Zoning Regulations.

V. AGENCY COMMENTS

To date, the District Department of Transportation has not submitted any written comments on this case.

VI. COMMUNITY COMMENTS

ANC 5E considered this proposal on October 15, 2013, and voted unanimously to support the requested variance relief. However, it is not clear from the above-referenced letter to Mr. Nero whether the Commission was aware that the continuation of this use would not meet all the special exception requirements under § 202.2.