



2014 MAR 25 PM 12:5~

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Paul Goldstein, Case Manager
Joel Lawson, Associate Director Development Review
DATE: March 25, 2014

SUBJECT: BZA Application #18734 – Request for area variances pursuant to §§ 406.1, 2001.3, and 2602.1 at 1815 Riggs Place NW

I. OFFICE OF PLANNING RECOMMENDATION

While the Office of Planning (OP) is supportive in concept of the creation of dedicated affordable housing, OP is not able to support the following relief for a third-story addition to an existing apartment building located at 1815 Riggs Place NW

- § 2602.1, area variance relief to impose Inclusionary Zoning (IZ) to the project.

However, if the Board determines that the Applicant has satisfied the variance test for § 2602.1 and that the proposed floor area ratio is appropriate for this site, then OP would have no objection to requests for expansion of a non-conforming building and open court relief as listed below:

- § 406.1, area variance relief for non-conforming open courts
- § 2001.3, area variance relief for the expansion of a non-conforming structure

Finally, if the Board intends to approve the application, OP requests that the following condition be included in the BZA Order to signal the Applicant's commitment

- The approval shall be conditioned on the project delivering IZ units in compliance with Title 14, Chapter 22 and Title 11, Chapter 26

OP notes that the site is presently non-conforming to lot occupancy and rear yard, although no change is proposed to these conditions

II. AREA AND SITE DESCRIPTION

Address:	1815 Riggs Place N W	BOARD OF ZONING ADJUSTMENT District of Columbia
Legal Description:	Square 133, Lot 818 (hereinafter, the "Property")	CASE NO. <u>18734</u>
Ward/ANC:	2/2B	EXHIBIT NO. <u>30</u>
Lot Characteristics.	The lot is rectangular in shape and measures 3,787 square feet in lot area. It has frontage on Riggs Place to the south and abuts a 10' wide public alley to the east and north.	
Zoning:	DC/R-5-B R-5-B moderate height and density multi-family buildings DC. Dupont Circle Overlay District	
Existing Development	The Property is developed with a two-story plus cellar multi-family building consisting of 21 dwelling units	

Board of Zoning Adjustment
District of Columbia
CASE NO.18734

Historic District	Dupont Circle Historic District, the building is not considered to be a contributing building to the historic district
Adjacent Properties.	The Property borders 3-story row dwellings to the west and north (across the public alley) Across the alley to the east are 3-story row dwellings fronting Riggs Place and the rear yard of a 4-story apartment building fronting 18 th Street. To the Property's south, across Riggs Place, is a two-story apartment building.
Surrounding Neighborhood Character:	The surrounding neighborhood consists of a range of residential building forms Retail is located northeast of the Property along 18 th Street north of S Street NW. The Property is located approximately .3 miles from the Dupont Circle Metro

III. PROJECT DESCRIPTION IN BRIEF

Applicant	1815 Riggs LLC
Proposal.	The Applicant proposes to construct a partial third floor addition to an existing two-story apartment building containing 21 units. The expansion would add three new dwelling units. The new third floor would be set back approximately 6' from the building's front, be built within the existing building footprint, and effectively cover about 52% of the lot Two decks with railings, located at the rear of the new units, would be less than 4' above the roof line and therefore should not count against lot occupancy The expansion would increase the building height to approximately 31' The building size would grow by 1,927 square feet, thereby increasing the floor area ratio from 1.65 to 2.16. The addition would extend existing non-conforming open courts. The building also is presently non-conforming to lot occupancy (85%) and rear yard (~4'), although no change to these conditions is proposed A key feature of the project is the Applicant's desire to subject the expansion to IZ, although the project as conceived is not eligible If IZ applied, the application indicates that 1,022.5 square feet of IZ/affordable square footage could be created, half of which would be eligible for low income households (the first unit and each odd unit) and half of which would be eligible for moderate income households. The Applicant appears to have calculated the IZ allocation based on 75% of the bonus density¹ Should IZ be applied to the proposal, the building's anticipated 2.16 FAR would become the matter of right maximum density for the site (rather than 1.8) and no FAR relief would be needed for the proposal No on-site parking is currently provided for the building and no additional parking is proposed.
Relief Sought.	§ 406.1, area variance relief for non-conforming open courts § 2001.3, area variance relief for the expansion of a non-conforming structure § 2602.1, area variance relief for the imposition of IZ

IV. IMAGES AND MAPS

¹ Section 2603.1 provides that an inclusionary development located in an R-5-B district for which the primary method of construction does not employ steel and concrete frame shall devote the greater of 10% of the gross floor area being devoted to residential use or 75% of the bonus density being utilized for inclusionary units OP also notes that the pre-hearing submission incorrectly references 8% (rather than the correct 10%) in footnote 3 on page SD-01

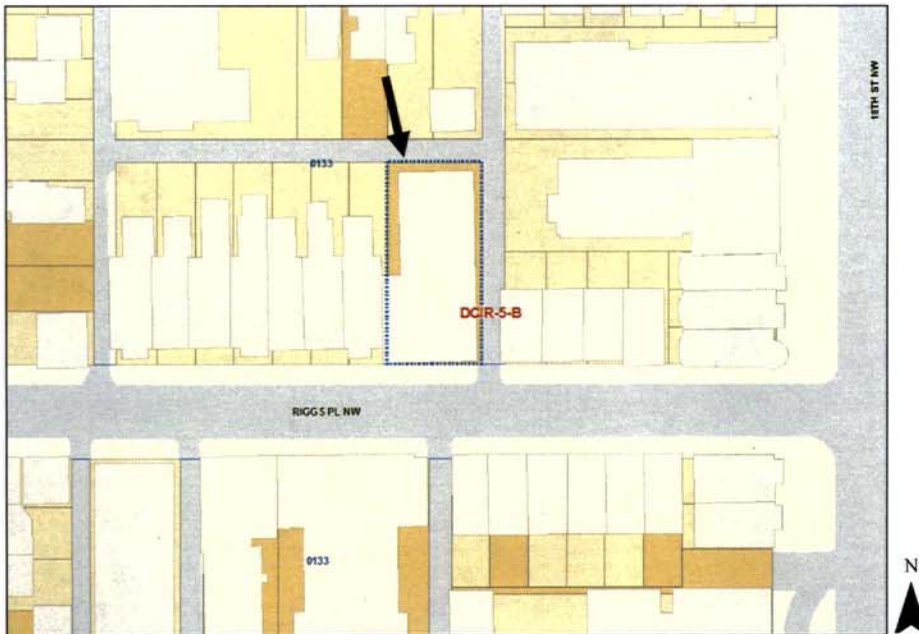
Historic District	Dupont Circle Historic District, the building is not considered to be a contributing building to the historic district
Adjacent Properties	The Property borders 3-story row dwellings to the west and north (across the public alley) Across the alley to the east are 3-story row dwellings fronting Riggs Place and the rear yard of a 4-story apartment building fronting 18 th Street To the Property's south, across Riggs Place, is a two-story apartment building
Surrounding Neighborhood Character	The surrounding neighborhood consists of a range of residential building forms. Retail is located northeast of the Property along 18 th Street north of S Street NW The Property is located approximately 3 miles from the Dupont Circle Metro.

III. PROJECT DESCRIPTION IN BRIEF

Applicant.	1815 Riggs LLC
Proposal.	The Applicant proposes to construct a partial third floor addition to an existing two-story apartment building containing 21 units The expansion would add three new dwelling units The new third floor would be set back approximately 6' from the building's front, be built within the existing building footprint, and effectively cover about 52% of the lot Two decks with railings, located at the rear of the new units, would be less than 4' above the roof line and therefore should not count against lot occupancy The expansion would increase the building height to approximately 31'. The building size would grow by 1,927 square feet, thereby increasing the floor area ratio from 1.65 to 2.16 The addition would extend existing non-conforming open courts The building also is presently non-conforming to lot occupancy (85%) and rear yard (~4'), although no change to these conditions is proposed A key feature of the project is the Applicant's desire to subject the expansion to IZ, although the project as conceived is not eligible If IZ applied, the application indicates that 1,022.5 square feet of IZ/affordable square footage could be created, half of which would be eligible for low income households (the first unit and each odd unit) and half of which would be eligible for moderate income households The Applicant appears to have calculated the IZ allocation based on 75% of the bonus density¹ Should IZ be applied to the proposal, the building's anticipated 2.16 FAR would become the matter of right maximum density for the site (rather than 1.8) and no FAR relief would be needed for the proposal No on-site parking is currently provided for the building and no additional parking is proposed
Relief Sought	§ 406.1, area variance relief for non-conforming open courts § 2001.3, area variance relief for the expansion of a non-conforming structure § 2602.1, area variance relief for the imposition of IZ

IV. IMAGES AND MAPS

¹ Section 2603.1 provides that an inclusionary development located in an R-5-B district for which the primary method of construction does not employ steel and concrete frame shall devote the greater of 10% of the gross floor area being devoted to residential use or 75% of the bonus density being utilized for inclusionary units OP also notes that the pre-hearing submission incorrectly references 8% (rather than the correct 10%) in footnote 3 on page SD-01



Aerial view of the site (highlighted)



View of the of the subject Property looking north across Riggs Place (2009)

V. ZONING REQUIREMENTS

The following table, which reflects information supplied by the Applicant, summarizes certain zoning requirements for the project and the relief requested.

<i>R-5-B Zoning</i>	<i>Restriction</i>	<i>Existing</i>	<i>Proposed</i>	<i>Relief</i>
Lot occupancy (building area/lot)	60% max.	85%	85%	Non-conforming; no change proposed
Rear yard (ft.)	4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet.	3'9"	3'9"	Non-conforming; no change proposed

Court, open	4 in per foot of height of court, but not less than 6 ft	2' (east) 7' (west)	2' (east) 7' (west)	Relief needed
Floor area ratio	1 8 max	1 65	2 16	If IZ applies, no relief is needed

In R-5-B zones, apartment buildings are a permitted use. The subject building is presently non-conforming to lot occupancy, rear yard, and open court, meaning that any building expansion would require relief from § 2001.3. The proposal would extend existing non-conforming open courts and require relief from § 406.1. With the addition, the building would exceed the maximum floor area ratio. As further discussed below, rather than request relief from FAR per § 402, the Applicant instead has requested variance relief to apply § 2602.1 (IZ) to a project where it is otherwise not applicable. Finally, the application indicates that there is presently no on-site parking and that no additional parking is required (per § 2100.7) or proposed for the expansion.

Area Variance Relief

Inclusionary Zoning (§ 2602.1)

- **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions, and does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

The Applicant's request to apply IZ to this project provokes an uncomfortable exercise of the variance test. The request arises from the Applicant's contention that the Property is exceptional because the existing non-conforming building cannot be expanded enough to trigger IZ's application. More specifically, although the building would be enlarged by about 31%, IZ only applies to eligible multi-family buildings where a new addition increases the entire development by 50% or more.² While it is true that an entirely new building containing 24 units on the site could be subject to IZ (and be permitted up to 2.16 FAR rather than 1.8 FAR), OP generally finds the Applicant's argument to be problematic. The inability of a project to be subjected to a regulation does not satisfy the burden of an exceptional situation imposing a practical difficulty which is unnecessarily burdensome to the owner.

- **Can the relief be granted without substantial detriment to the public good?**

Even though the relief request does not satisfy the first prongs of the variance test, OP does note that relief could be granted without substantial detriment to the public good. The project would produce a building form consistent with the use (apartments) and density (2.16 FAR) parameters of the R-5-B and IZ regulations, respectively. The provision of additional inclusionary units would overall be a positive contribution to the District.

- **Can the relief be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

OP is generally supportive of the creation of dedicated affordable housing in the District. But based on OP's review in preparation for this case, it does not appear that the regulations anticipated that applicants would attempt to be subjected to IZ in this manner. OP intends to examine issues raised in this application as part of a review currently underway related to the IZ regulations.

Expansion of a non-conforming structure (§ 2001.3) and open court (§ 406)

² See § 2602.1(c)(3). OP also believes that the Applicant incorrectly calculated the increase as 33.8%.

Since OP does not find that the Applicant has satisfied the area variance burden related to imposing IZ (or the associated FAR of 2.16), other relief requests pursuant to §§ 2001.3 and 406 are immaterial. However, should the Board determine that the Applicant has met the burden for relief from § 2602.1 and that the proposed FAR is appropriate, OP has no objection to these additional relief requests. The non-conforming open courts already exist and the addition is designed to minimize impacts with substantial set backs from the northern and western property lines. Additionally, although the building already is non-conforming for lot occupancy, the proposed addition would itself conform to lot coverage.

VI. ANC/COMMUNITY COMMENTS

To date, OP has not received an official submission from ANC 2B. OP has reviewed one letter in support of the application (1817 Riggs Place) and one letter in opposition to the application (1728 18th Street NW).

VII. AGENCY COMMENTS

The project is scheduled for review by the Historic Preservation Review Board (HPRB) at the March 27, 2014 meeting. OP understands that HPO staff has found the project consistent, subject to conditions, with the purposes of the preservation act and has recommended that HPRB approve the project.

JLS/pg
Paul Goldstein, case manager