BZA 17167 – Analysis of Welsh Family Limited Partnership Proposed Apartment House on Behalf of FCD Development LLC

Square 369: Lots 834, 861, 862, 865, 866, 872, 873 and 876
910 M Street, NW
Washington, DC

I. Introduction

A. Application involves eight assessment and taxation lots, all currently without any permanent structure located on the southern side of M Street NW between 9th and 10 Streets, NW.

B. Entire site is located within the Shaw Historic District.

C. The site is split zoned, the majority being DD/C-2-C and the remainder being DD/C-2-A (lots 865 and 866). Site area totals 29,940 square feet, of which all but 4,011 square feet is zoned DD/C-2-C.

D. The DD/C-2-C portion of the site is located within Housing Priority Area A of the Downtown Development District and all of the site would become so on approval of the application

E. Purpose of Analysis: To provide information to the Board of Zoning Adjustment as it considers a range of special exceptions as authorized by the Zoning Regulations and variances from other requirements of those Regulations **and** to identify any other factors that could affect development of the project as proposed:

1. Special Exceptions Applied for and Advertised:

   a. To extend the DD/C-2-C zone district requirements onto the DD/C-2-A portion of the site by 35 feet (§ 2514.2)

   b. To allow a roof structure that is not set back from each exterior wall by a distance equal to the height of that roof structure (§§ 400.7, 411, 770.6 and 777.1).

2. Special Exception Neither Applied for nor Advertised:

   a. To allow a roof structures to have walls of unequal height (§§ 777.1 and 411.5

3. Variances Applied for and Advertised from Requirements Establishing:

   a. Maximum Percentage of Lot Occupancy (§ 772.1)

   b. Minimum Depth of Rear Yard (§ 774.1)

   c. Minimum Width of Court for Building in Residential Use (§ 776.3)

   d. Minimum Setback requirements applicable to the southern face of M Street (§ 1706.15).

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e. Maximum extension of a zone boundary line within a split-zoned lot, 35 feet being allowed (§ 2514.2) and 40 being requested, an increment of 5 feet (14.3 percent)

4. The relief sought for the special exception under and a further variance from § 2514.2 provides sufficient authority for the height proposed for the entire project and its total gross floor area. Thus, no variances are sought for maximum height or maximum floor area ratio. Moreover, under the provisions of § 1706.7(b), there is no limit in floor area ratio for residential projects such as that being proposed.

5. The proposed project is not required to provide retail or other uses within the area of the DD overlay within which it is located.

6. The proposed project complies with requirements to provide residential recreation space, both the minimum total such area and the minimum portion of that to be "outdoors."

7. The proposed project complies with requirements to provide parking spaces for the apartment building, a loading berth, and a service delivery space. Analyst is not aware that any of the dimensions or other attributes of these areas, aisles, or driveways is not provided in a manner complying with the Zoning Regulations.

II. Site and Location Description

A. Located within and along north side of Square 369

B. Edges of the Site:

1. North: M Street (width of right of way: 90 feet).
2. East: Combination of a partially vacant lot (Lot 880) facing both M and 9th Streets and the western edge of a segment of a north-south public alley (width of 30 feet)
3. South: Combination of the northern limit of a portion of the lot facing both M and 9th Streets (lot 880), the northern terminus of the segment of north-south public alley (width of 30 feet), segment of an east-west public alley (width of 30 feet), and the northern terminus of a former north-south public alley (width of 20 feet).
4. West: Combination of a high-rise apartment complex known as the "Mount Vernon Plaza" and the eastern face of the former north south public alley (width of 20 feet).

C. Located within the Shaw area of the District of Columbia and within the Historic District of that name.

D. Major Features of the Surrounding Area

1. East: "New" District of Columbia Convention Center
2. South: Proposed DC Convention Center Hotel, Massachusetts Avenue, and Mount Vernon Square
3. West: Thomas Circle (along M Street at 14th Street, Eleventh Street, a vintage commercial area)
4. North: Blagden Alley within Square 368, within which there is a blend of many small trade and mercantile buildings along with row houses and some vacant land.

E. Site's longest dimension is along M Street frontage, about 205 feet, within which the western-most 20 feet is restricted by an access easement and may not be developed at or above grade.

F. Site's shape is, loosely, that of a backward facing L when viewed from M Street. Its depth west of the access easement varies: the westernmost portion (the access strip) being 125 feet deep, the portion east of that access strip being 209.58 feet deep, the portion at the northern terminus of a north-south public alley being 120 feet, and the final portion being just 100 feet deep.

G. The site is affected, significantly by several specific provisions of the DD overlay zone, one pulling development toward M Street, the other pushing it away

1. The "sreetwall" rule (§1701.3), which requires that 75 percent of each streetwall must be constructed to a height of not less than 15 feet.

2. The "setback" rule that specifically applies to properties in the DD overlay zone lying along the south side of M Street, directing a height restriction of 60 feet for the first 40 feet of depth from M Street (§ 1706.15). To the south of that setback line, heights within the DD overlay area as they would exist if the relief sought in this case is granted is limited solely by the Height Act of 1910, as amended.

H. The Height Act of 1910 limits height as a function of the class of street and the width of the street's right of way. For commercial streets, as is here the case, the height is limited to the width of M Street's right of way (90 feet) plus an additional 20 feet – for a total of 110 feet.

I. For point of measurement for the Height Act is from the "level of the sidewalk" opposite the middle of the front of the building whereas measurement of height for zoning is from the "middle of the [top of the] curb". These two appear to converge in this instance.

J. Zoning On Site and In the Immediate Area:

1. DD/C-2-C – most of site and to the west and south, everything east of eastern north south public alley.

2. DD/C-2-A – balance of Square, a portion of the site (4,011 square feet) and all else east of the eastern north-south public alley.

3. North – a mix of C-2-C along 9th Street, extending well into Square 369 as a function of Zoning Commission Order 852 which the Office of Zoning is just incorporating into its Zoning Maps. (Zone map included in Pre-Hearing submission at Tab C is not correct in this respect.) Balance of Square 369 is R-4. Thus, the Project faces land that is zoned R-4 at the very western limits of the project (western part of A&T lot 876), C-2-A for the remainder of A&T lot 876 and virtually all of A&T lot 872, then returning to R-4 for the remaining Project frontage. A corrected zoning diagram accompanies, it being supplied by the Office of Zoning after this issue was pointed out to them by this analyst:

4. Northeast, east, and southeast – zoned variously to match the zoning along 9th Street but subsequently developed by the "new" DC Convention Center which was, being in the "central area" (as defined by the Zoning Regulations), approved by the National Capital Planning Commission "in lieu" of zoning. It is vastly taller and more massive than the underlying zone plan would allow occupying 100.0 percent of the lots as well as the intervening street rights of way, although its FAR may technically comply.

III. **Overall Effect of All Relief Sought: Create a Site with the Development Potential of DD/C-2-C throughout. For a residential project such as this, the following limits would then apply that are either satisfied or not to some degree.**

A. Use: Apartment House

B. Maximum Height:

1. For the first 40 feet of depth from M Street: 60 feet, to which a parapet may be added not exceeding 4' 0" (§ 1706.15).

2. For portions of the site more than 40 feet from the M Street frontage: 110.0 feet, (regulated for proposed use at this location and zoning solely by the "Act to Regulate the Height of Buildings in the District of Columbia" (§ 1701.7, superseding § 770.1)). No limit on stories whatsoever.

C. Maximum Floor Area Ratio: Unrestricted (§ 1706.7(b), superseding § 771.2 and §§ 1706.4 and 1706.7(a))

D. Maximum Percentage of Lot Occupancy: 80.0 percent (§ 772.1)

E. Minimum Area for Residential Recreation Space: 15.0 percent of gross floor area (§ 773.3), of which at least 50 percent must be "outdoors."

F. Minimum Depth of Rear Yard: 15.0 feet (§ 774.1)

G. Minimum Width of Side Yard: None required, but if provided, then the greater of 2" foot of height of building or 6.0 feet (§ 775.5)

H. Minimum Width of Open and Closed Courtyards for a Residential Building: 4" for each foot of height of court to its elevation, but not less than 15.0 feet (§ 776.3)

I. Minimum Area of Closed Courtyard: twice the square of the width of the court, but not less than 350 ft. sq. (§ 776.4)

J. Applicable Standards for Roof Structures (§§ 777, 770.6, 411, and 400.7)

1. Minimum Setback from all exterior walls to be at least the height of the roof structure (§ 770.6)

2. Maximum Height: not to exceed 18' 6" (§ 770.6(d))

3. Maximum number of Roof Structures: One for each "required" elevator core (§ 411.4)

4. Walls of roof structures to be of equal height (§ 411.5)

5. Maximum equivalent FAR of roof structures: 0.37 (§ 411.7)

K. Minimum Number of Required Parking Spaces: 1 space for each 4 apartments (§ 2101.1)

L. Required Loading and Service Delivery Spaces (§ 2201.1)

1. Loading: 1 @ 55' depth with 200 ft. sq. loading platform

2. Service Delivery Space: 1 @ 20' depth

IV. Pertinent Zoning Calculations for Project for Which Variances Are Needed:

A. Lot Occupancy (§772.1)

1. The Zoning Regulations allow occupancy of up to 80 percent of the land area in the DD/C-2-C zone districts.

2. Applicant proposes to occupy 85 percent, that being the coverage on the ground floor and the next five floors. Above that height, lot occupancy would be 58 percent (floors 7-11). The average lot occupancy, therefore, is 73 percent. But the rules focus on the portion of the lot, effectively, under roof so the coverage of the lower floors governs.

3. A variance to allow occupancy of up to 85 percent (from 80 percent) is required.

B. Rear Yard (§ 774.1)

1. The Zoning Regulations require that there be a rear yard of 15 feet in the DD/C-2-C zone district

2. Rear yard is measured from the rearmost portion of a building to the lot line behind it.

3. Here, applicant proposes to build to the lot limit, a variance of 100.0 % thus being needed.

C. Courtyard (which applicant interprets as one "non-rectangular" open court, § 776.3).

1. If viewed as a single non-rectangular courtyard a part of which opens to a public alley with a width of more than 10 feet (as here), then the "measured" width is 108.76 feet but, due to the irregular shape, the width is not determined by that dimension but by the largest circle that can be drawn within the rectangle, which is the circle fitting in the portion just 15 feet deep.

2. In any event, the *required* "width" of an open court is a function of the height of the adjacent building wall, the "width" being the greater of 15 feet or 4" per foot of height of the wall of the facing building. At 4" per foot of such height, this means that were the building but 45' high, the court's width would fully comply, and it satisfied the minimum requirement in any event.

   It is important to note here that the abutting lots are zoned DD/C-2-A in which case the height limit is 50', with allowed lot occupancy of 60% and a required rear yard of 15 feet. Given the frontage on 9th Street, the existing building on what used to be A&T lot 837 (since merged into A&T lot 880) appears to occupy more than the allowed lot percentage but provides the required rear yard. Thus, the "width" (or really "depth") of the court is just as much as would be required for a building of most of its allowed height and thus the Project does not "crowd" the existing abutting building to the extent its western

portion overlaps with the eastern extent of the Project. Moreover, since the Project is located north of the abutting improvement, it will have no adverse impact on it in terms of light and air.

D. Setback from M Street (§1706.15)

1. The height of buildings along the southern face of M Street in the DD overlay zone are limited to 60 feet for the first 40 feet of depth from the M Street right of way.

2. Applicant proposes to establish bays that project north four feet (4.0 ft.) from the "setback" line.

3. A variance of four feet (4.0 ft.) is required from the forty feet (40.0 ft.) otherwise required.

E. Extension of Zone Boundary Line More than thirty-five feet (35.0 ft.).

1. Section 2514.2 allows the Board of Zoning Adjustment to extend a zone boundary line that runs through a lot to which more than one zoning classification applies to shift by as much as 35 feet (35.0 ft.).

2. A&T Lot 866 abuts the DD/C-2-C zone boundary line but would become part of larger "record lot" through which the zone boundary line would also run. Lot 866 is 20 feet wide and thus its western limit is reached by the 35 foot standard, with 15 feet left over.

3. A&T Lot 865 abuts lot 866 and is also 20 feet wide. The first 15 feet of this lot's width can be reached by the 15 foot standard, leaving five feet more dealt with elsewhere in this analysis.

V. Analysis of Special Exceptions Sought

A. To extend the DD/C-2-C zone district requirements onto the DD/C-2-A portion of the site by 35 feet (§ 2514.2)

1. Section 2514.2 permits the Board to extend a zone boundary line that exists within a given lot by as much as 35 feet provided that the "extension shall have no adverse impact on the present character and future development of the neighborhood" (§ 2514.2(c) along with the general standards applicable to granting all special exceptions (§3104.1), i.e., that the special exception "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

2. The shape, frontage, differential in depth, and development restrictions imposed by virtue of the "alley" type easement to the west, all serve to push development of this site toward the east and south (away from the M Street frontage, particularly with the further imposition of the height limits along the M Street frontage in the DD overlay area).

3. The effect of extending the more permissive controls of the DD/C-2-C zone to the east are, in the instant context, such that they will create no adverse impact on the present character or future development of the neighborhood

   a. to the west, the Mount Vernon Plaza apartments, with its M Street frontage designed as row houses but with entrances from the apartment complex itself

   b. to the north, Square 368, which is guided by different zoning (see Exhibit A) and a totally different specification in the Generalized Land Use Map ("moderate density residential") as opposed to "high density residential" along the M Street frontage of Square 369, the Square on which the project is to be developed.

   c. To the immediate east, within Square 369, which remains under DD/C-2-A zoning and contains a number of vintage commercial buildings that "contribute" to the character of the Shaw historic district

   d. To the east, northeast, and southeast of Square 369, which is occupied by the dominating District of Columbia Convention center.

   e. To the south, which is partially developed and partially being proposed as an area in which the "Convention Center Hotel" could develop, at least in part along with the facing portion of the Square to the south, Square 370.

B. To allow a roof structure that is not set back from each exterior wall by a distance equal to the height of that roof structure, more than one roof structure, and allow walls of unequal height (§§ 400.7, 411, 770.6 and 777.1)

1. The building requires two fire stairs but only one elevator core.
2. The number of roof structures is limited to the number of elevator cores.
3. The second fire stair is required, at a minimum, since the project proposes to satisfy residential recreation space requirements outdoors on the roof (DC Fire Code).
4. The second fire stair need not extend as far as the main roof structure as it does not house significant mechanical equipment, thus it need not extend as far above the surface of the roof.
5. That second stairwell cannot be located other than connecting directly vertically to the single loaded halls that runs along the southern face of floors 6-11.
6. While potentially lower than the main roof structure, it is not likely to be as low as required to meet the requirement that it be set back from all exterior walls by as much as its height.
7. The main roof structure may be able to be made into distinct parts, with lower segments connecting each and providing some relief from its overall shape and form on the urban horizon.
8. Thus, a special exception from the "equal height" rule is needed to allow for design flexibility as the final plans are developed for approval by the staff of the Historic Preservation Review Board.

VI. Analysis of Variances Sought

A. Tests for a Variance

1. Uniqueness (common to all variances sought)

a. Overall configuration of lot, its considerable frontage but with half of that being relatively shallow.

b. The portion of the lot along its western side where no development is allowed.

c. The zone boundary line running through it

d. The offsetting "pull" to develop along the M Street frontage and the push to setback levels more than 60 feet high by 40 feet, much of this on portions of the site that are relatively shallow.

2. Practical difficulties and/or undue hardship (common to all variances)

a. Overall site allows an FAR matter-of-right of up to 7.5 within both present zone's boundary lines (though, for an all-residential project, there is no FAR limit where DD/C-2-C).

b. Extending the boundary line 35 feet by special exception increases the thus "allowable" FAR to 8.4, the variance from the last five feet takes the FAR "allowed" to 8.5.

c. While project is able to utilize an FAR of 8.0, the amount of FAR that would result without the relief would be significantly less as a side yard would be required on the part now zoned DD/C-2-A (at least 20 feet), along with a rear yard (15 feet) and the required "width" of the open courtyard. These would result in a significant loss of gross square footage and parts of the site would site would then be too "thin" to develop reasonably or competitively.

3. **Comprehensive Plan calls for high density housing, which is the hallmark of the proposed project, a specific "public good" that applies to each of the variances sought.** *(Other elements of the third prong of the variance test discussed below as they relate to each variance sought.)*

4. Supplemental information on each variance sought:

a. Further extension of DD/C-2-C boundary line:

(i). Leaving the easternmost five feet of the record lot in the existing DD/C-2-A zone would force a change in height limits and result in a series of other adverse consequences to the development program proposed.

(ii). Corridors and fire stairs would no longer be workable and the use of the rooftop as a viable recreation area would be put "at risk."

(iii). The result could be an open area that would trigger a need for a full-sized "side yard." This would eliminate about 1/6th of the building frontage and then, when added to the part along the western wall that is another 1/6th, violate the provision requiring that at least 75 percent of the frontage have a building.

(iv). The effect on light and air to the east for such a minor increment on is *de minimus*. Past the row of commercial buildings on the western side of 9th Street lies the District of Columbia Convention Center, which is vastly more massive than the project herein proposed.

(v). Requested relief can be granted "without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map"

b. Court width

(i). The proposed court meets existing minimum standards of fifteen feet (15.0 ft.). Such a width is also sufficient to meet the requirements of the building a portion of the open court also faces, which is less than 45 feet high.

(ii). The face of the building measured for purposes of determining the required "width" faces south; thus, there is virtually no effect on elimination of sunlight on nearby properties whereas forcing the building back an additional 21 feet would make the upper floors less than half their already planned narrow depth.

(iii). The effect of having no variance would be to shift an interior corridor and other layouts that would be far less efficient or marketable (architect can provide details)

c. Rear Yard

(i). The zoning regulations require buildings in Commercial districts, as here, to provide a rear yard of fifteen feet (15.0 ft.).

(ii). The bulk of the building is necessarily forced to the rear by the terms of the "setback" rule at § 1706.15 and by other constraints on development such as the "no build" easement to the west and the need to provide some, if not all, of the open area needed for the court (discussed above).

(iii). The open area that could be achieved in the instant case is an area 76.25 feet by 15.0 feet, or 1,143.75 square feet where the property abuts a segment of a public alley that is 30 feet wide, that segment being on the north side of the public alley. Open area is already provided through the side yard (no build easement) and the courtyard to the rear of the eastern segment of the building. The added depth is needed to make reasonably full use of the property in terms of gross floor area.

(iv). The rear yard requirement serves to ensure adequate open areas where buildings back up against each other or abut a typical public alleys that are ten, fifteen, and (rarely) twenty feet wide. Here, the public alley is an interior one that was perpendicular to the main alley of the Square and such alleys were typically wider to accommodate turning movements. But, they also provide open space, light, and air – as here.

d. Percentage of Lot Occupancy

(i). The zoning limit applies effectively to the area above the ground that is occupied by any portion of any story of a building.

(ii). The Zoning Regulations limit lot occupancy to 80 percent (80.0 %).

(iii). The project's building occupies 85 percent of the land at the ground floor and floors two through six, vastly less than that above the sixth floor (58.0 %).

(iv). While "average" lot occupancy is not recognized by the Zoning Regulations, it is computable (at 72.7 %) and a reasonable concept for the Board to consider in a case such as this.

(v). The setback rule itself serves to push development "out" in a manner that results in greater lot occupancy, effectively displacing as much as the total floor area involved (five stories, each 40.0 feet deep by 185 feet wide), a total of 37,000 square feet – an area larger than the lot itself. Even if allocated across hypothetical floors, this displacement amounts to at least the five percent variance for which applicant seeks approval.

(vi). The setback rule, however, also ensures that there is more openness along M Street than would otherwise be the case, softening the impact of high-density on the

mixed use neighborhood to the immediate north in Square 368.

(vii). Additional open space is also provided to the west (side yard) and the courtyard at the rear of the eastern segment of the property.

e. Setback Requirement of the DD Overlay

(i). As noted above, the setback rule requires that areas above a height of sixty feet (60.0 ft.) be setback from the M Street property line by at least forty feet (40.0 ft.).

(ii). Applicant proposes to establish one face of the apartment building at that setback line.

(iii). However, applicant also proposes to create three bays that would project north toward M Street by four feet (4.0 ft.), thus reaching to a point some thirty-six feet (36.0 ft.) from M Street along a limited amount of the setback's main frontage.

(iv). These are minor projections, totally in keeping with the character of the historic district and more recent developments such as the projections from portions of the adjacent apartment complex (see Exhibit B, Photos 1 through 8).

(v). The "setback" to be provided even with this projection is less than the intrusion in that setback distance formed by the Mount Vernon apartment complex to the west and the District of Columbia Convention Center to the east.

(vi). The effect on the project of sending the main wall of the upper levels further to the rear simply to accommodate these projections would be to render the units much less desirable since the units and a connecting single-loader corridor would have to find space in lesser depth and the viability of the roof deck's providing adequate dimensions for residential recreation space would also be severely compromised if not ended.

VII. Conclusion:

A. The aim of the Comprehensive Plan is for the area of the project to provide high-density housing, which this project would do.

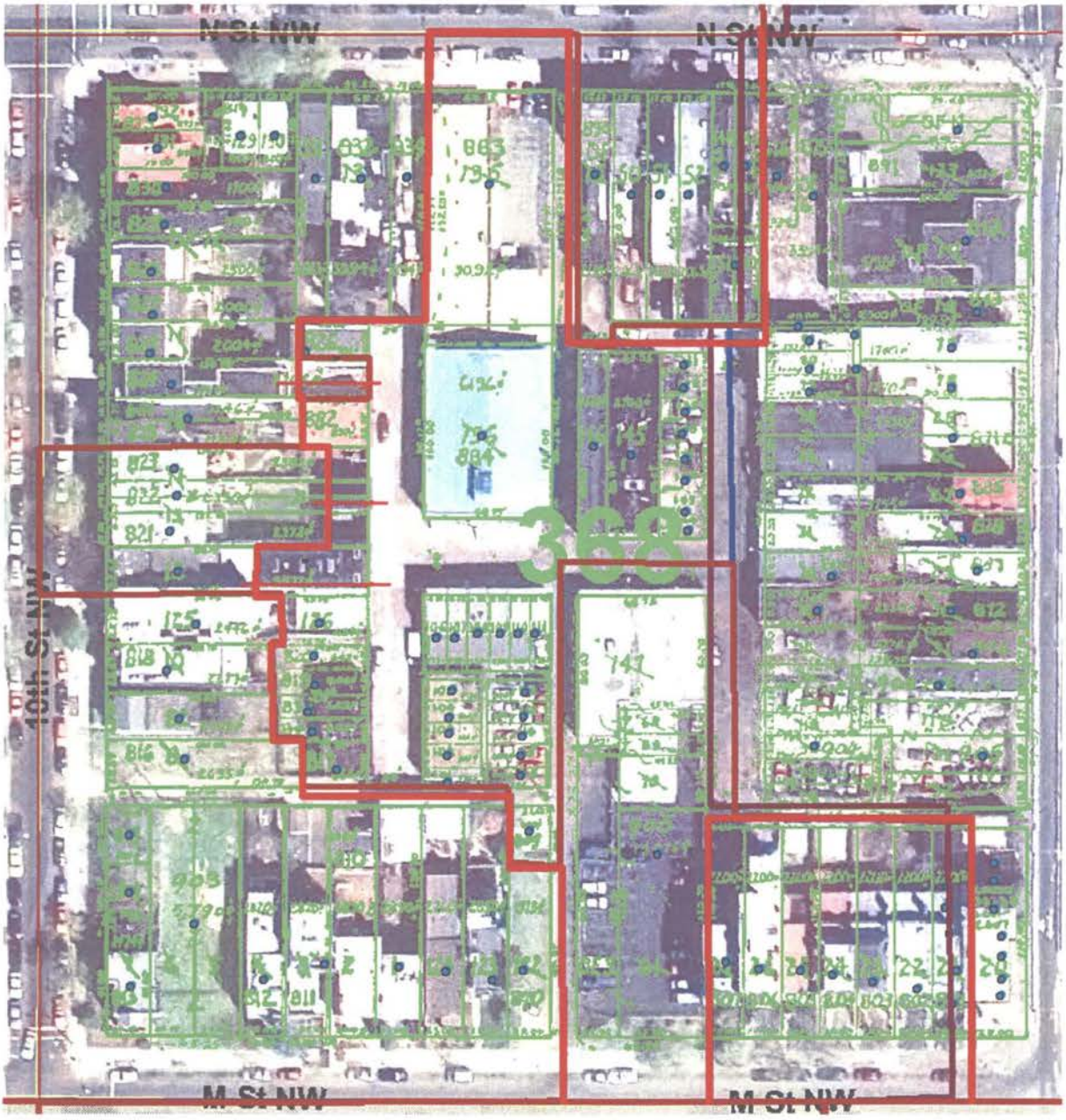
B. All variances and special exceptions have fully satisfied the applicable criteria and standards; the plans propose nothing adverse to those that abut or face it..

C. The requested relief should be granted in full. Thank you. # 2001495_v2

A

BZA 17167 -- Zoning Map for Square 368

Source: Office of Zoning



Square 368 is located directly north of Square 369. The **bright red lines** represents corrected zoning boundary lines, with C-2-A zoning extending from 9th Street west into the interior of the Square, with portions reaching both its M and N Street frontages **(ignore the maroon-colored lines).** The other areas, typically occupied by row houses, is zoned R-4. Along M Street, the westernmost **bright red** zone boundary line runs north in the middle of "Blagden Alley," that alley being virtually due north of the access easement lot in BZA Case 17167 (lot 876).

B

Image 1, showing the Mount Vernon Plaza and its fire-stair that projects well into the setback built before the setback requirement was established), looking east from 10th Street along M (Project would be in gap a left of "row houses".



Image 2, same as #1 from due west of complex. Fire stair appears to penetrate nearly 20 feet from edge of apartment tower.



Image 3, view of the Mount Vernon apartments and complex from north side of M Street, looking west from vantage point at or near "Blagden Alley." Note the numerous projections along the M Street frontage on the "row houses."

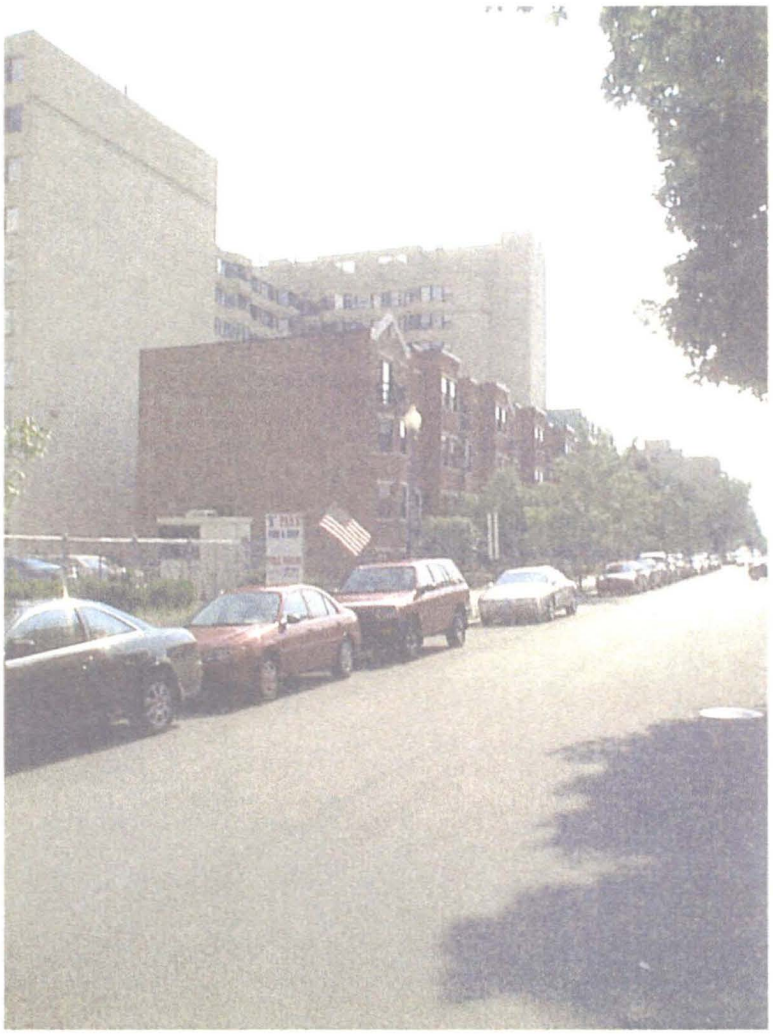


Image 4, this being the "rear" of the "row houses" that are part of the Mount Vernon apartment complex, again showing the penetration of the setback by the fire stair of the apartment building.



Image 5, looking east-south-east from M Street at 9th, showing how the new District of Columbia Convention Center ("DCCC") fails to even acknowledge the 40 foot rule that non-sovereigns must follow.



Image 6, through the DCCC along M Street (no setback or respect of height limit that others must heed.



Image 7, showing the "row houses" of the Mount Vernon Plaza and their bays projecting into "the parking"; note, too, the projections on the west-facing wall of the apartment tower's eastern tower, south of the row houses below.



Image 8, from vantage point at 10th and M Streets, looking east-north-east which shows that bays projecting into "the parking" are common among the residential buildings along the north side of M Street (between 9th and 10th Streets) as well:

