GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: September 28, 2004

TO: District of Columbia Board of Zoning Adjustment

FROM: Andrew Altman, Director

SUBJECT: Board of Zoning Adjustment Case No. 17221
1819 Belmont Road, N.W.

Summary

The applicant is seeking special exception relief from the roof structure setback requirements of §400.7(b) of the Zoning Regulations for an existing penthouse structure. The Office of Planning **recommends approval** of the requested relief based on the analysis of the special exception tests below.

Site and Area Description

The subject property is located at 1819 Belmont Road N.W, Square 251, Lot 45. The lot is 2000 square feet, of which the building occupies 70.5%. The building contains five and a half above ground stories plus an attic. The subject property and the properties to the east and west are zoned R-5-D. Properties in the neighborhood to the south are zoned R-5-B. To the north is the entertainment area of Adams Morgan zoned C-2-B. The immediate area consists of a wide variety of commercial and moderate to medium density residential uses. See Figure 1.

Project Description

The application is for a residential condominium building. The existing structure totals 70 feet plus a penthouse structure of 11'7". Building permits were issued in 2003 and the building was renovated over the last year and a half. It contains five condo units and totals 6,952 square feet of gross floor area. The penthouse structure for stairwell access to the roof deck is setback more than the required 11'7" from the front and rear walls, but only 6' from the west wall and 0' from the east wall.

BZA
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Exhibit No. 32

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CASE NO. 17221
EXHIBIT NO. 32



Figure 1: Site Area

Zoning Requirements

The applicant is requesting a special exception from §400.7(b) which requires roof structures to be setback from the exterior wall of the building a distance equal to the height of the penthouse above the roof. The building has been determined by DCRA to meet all other zoning requirements.

Section	Item	Required/Allowed	Existing	Variance
772.1	Lot Occupancy	75%	70.5%	N/A
1904	FAR	3.5	3.5	N/A
774.1	Rear Yard	15'	31'	N/A
1902.1	Height	70'	70'	N/A

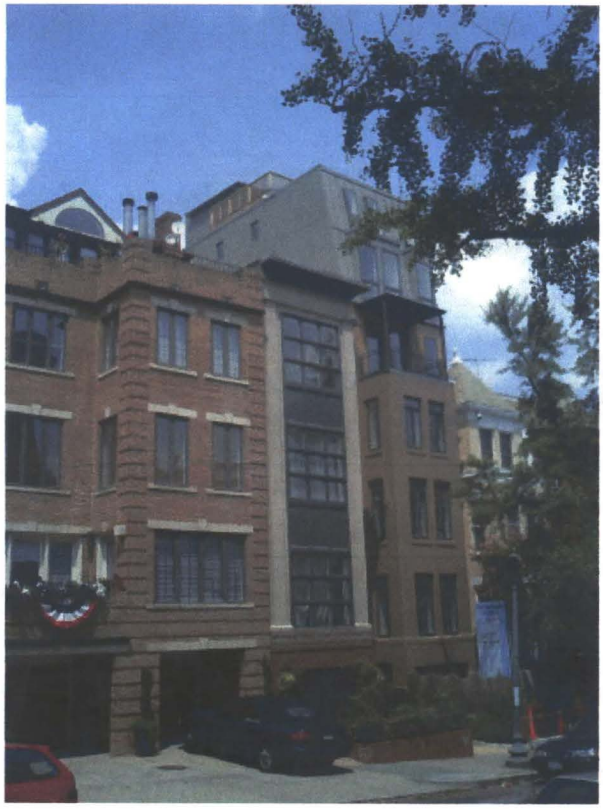



Figure 2: Views of Completed Building

Special Exception

The applicant is seeking a special exception for the reduction of the required setback for a penthouse structure. In addition to the standards of §3104 for special exception approval, §411.11 provides three criteria that must be addressed by a request for special exception relief from the roof structures standards. These criteria are listed below with staff analysis.

Section 411.1

1. Compliance is impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

The subject property is only 16.67 feet wide. A setback requirement of one to one from the side walls of any building on this lot would not allow for any reasonable roof structures. Strict compliance with the zoning regulations would be unduly restrictive by forcing any roof structure to the middle of the building and limiting its height to a few feet depending on its width. This situation is an unreasonable and unintended restriction on the use of the roof.

2. The intent and purpose of Chapter 4, Title 11 DCMR shall not be materially impaired by the structure.

The intent of this chapter is not to limit all practical use of the roof for access and

mechanics. Instead, the intent of this section is to protect the visual impact on the street and the light and air to neighboring buildings. As shown in Figure 2, the penthouse structure is only marginally visible from the street and does not add to the appearance of height from the front or rear. The side walls are party walls and, while much higher than their abutting neighbors and therefore visible, are not directly adjacent to a public way.

3. The light and air of adjacent buildings shall not be affected adversely.
The existing roof structure is less then twelve feet high and fifteen feet in length. The applicant has commissioned a shadow study to show that the penthouse will have minimal affects on the light to neighboring buildings. As of this report, OP in not in receipt of these studies, but they should be available to the Board and the Public by the time of the Public Hearing.

Based on the same arguments above, OP believes that the application also meets the standards listed under §3104. The application is determined to be in harmony with the purpose and intent of the Zoning Regulations and will not have a significant adverse impact on the neighboring properties.

ANC Recommendation

OP is in receipt of a resolution of ANC 1C in opposition to this application. The ANC states four reasons from opposing the special exception. The ANC resolution is Attachment 1 of this report. The concerns of the ANC are as follows:

> 1. The BZA lacks jurisdiction to grant a special exception from a statutory limitation under the Height of Buildings Act
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> 2. Montrose's claim under section 411.11 of the Zoning Regulations that full compliance would be "unduly restrictive, prohibitively costly, or unreasonable" is the result of Montrose's own self-inflicted harm as a result of its constant efforts throughout the duration of this project to evade compliance with the Height of Buildings Act
>
> 3. Montrose cannot comply with the requirement in section 411.11 "that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely" in order to receive a special exception.
>
> 4. The special exception sought by Montrose fails to meet the general test for special exceptions in section 3104.1 of the Zoning Regulations, in that the roof structure in question will "tent to affect adversely the use of neighboring property" and is not "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps."

OP sympathizes with the neighborhood regarding the height and appearance of this building. The structure does not complement the surrounding neighborhood and is visually problematic in the context of the adjacent structures. However, the penthouse structure itself does not add to the visual intrusion on the neighborhood, nor does it in and of itself significantly affect light and air to the surrounding properties. Assuming that the Zoning Administrator continues to find all other aspects of this building in compliance with the Zoning Regulations, OP will not oppose the special exception for the roof structure setback.

Recommendation

The Office of Planning concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 411.11 and 3104.1 of the Zoning Regulations, for the granting of the requested special exception. The request can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the Zoning Regulations.

The Office of Planning **recommends approval** of the requested relief by the Board of Zoning Adjustment to allow relief from the roof structure setback requirements of §400.7(b) at 1819 Belmont Road N.W.

Attachment: ANC resolution

AA/tp

ANC 1C RESOLUTION IN OPPOSITION TO SPECIAL EXCEPTION SOUGHT FOR ROOF STRUCTURE AT 1819 BELMONT ROAD, NW

WHEREAS, Montrose LLC, the owner/developer of 1819 Belmont Road, NW, has applied to the Board of Zoning Adjustment (BZA) for a special exception from the roof structure requirements of section 411 of the Zoning Regulations, and

WHEREAS, Montrose LLC seeks through this special exception application to avoid the effect of the BZA's recent unanimous decision in an appeal brought by the Kalorama Citizens Association and supported by Advisory Neighborhood Commission 1C, in which the BZA ruled that Montrose must comply with the Height of Buildings Act requirement that the roof structure in question "be set back from the exterior walls [by] distances equal to their respective heights above the adjacent roof",

NOW, THEREFORE, BE IT RESOLVED, that ANC 1C opposes the special exception sought by Montrose for this roof structure on the following grounds:

1) The BZA lacks jurisdiction to grant a special exception from a statutory limitation under the Height of Buildings Act.

2) Montrose's claim under section 411.11 of the Zoning Regulations that full compliance would be "unduly restrictive, prohibitively costly, or unreasonable" is the result of Montrose's own self-inflicted harm as a result of its constant efforts throughout the duration of this project to evade compliance with the Height of Buildings Act.

3) Montrose cannot comply with the requirement in section 411.11 "that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely" in order to receive a special exception.

4) The special exception sought by Montrose fails to meet the general test for special exceptions in section 3104.1 of the Zoning Regulations, in that the roof structure in question will "tend to affect adversely the use of neighboring property" and it is not "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps".

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BE IT FURTHER RESOLVED, that ANC 1C may be represented before the BZA in this special exception case by the Commissioner for Single Member District 1C08, the Chairperson of the ANC's Planning, Zoning, and Transportation Committee, and/or the Chairperson of ANC 1C.