

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19572 of SIM Development, LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the parking requirements of Subtitle C § 701.5, and pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the nonconforming structure requirements of Subtitle C § 202, to add two stories containing sixteen units to an existing two-story, nine-unit mixed use building in the MU-4 Zone at premises 1916 15th Street S.E. (Square 5766, Lot 845).

HEARING DATES: November 15, 2017; December 20, 2017; January 17, 2018
DECISION DATE: January 24, 2018
DECISION TO REOPEN RECORD: September 11, 2019

PROCEDURAL ORDER AND MOTION TO REOPEN RECORD

Subsequent to the vote of the Board of Zoning Adjustment (the “Board”) to approve the above-referenced application, the Board noted that the requested variance from the nonconforming structure requirements of Subtitle C § 202 may not be needed because there does not appear to be an expansion of the nonconforming residential lot occupancy, as explained below.

Subtitle C § 202.2 - Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:

- a) Conform to use and development standard requirements; and*
 - b) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.*
- The Property is located in the MU-4 Zone which permits a maximum residential lot occupancy of 60%, or 75% for buildings including Inclusionary Zoning (“**I**Z”) to which this project is subject. (Subtitle G § 404, Subtitle C § 1002.4).
 - The Application states that the Property is improved with an existing two-story, mixed-use building which is non-conforming with respect to residential lot occupancy at 91%.
 - The Application proposes to construct an addition comprised of an additional two residential floors and a habitable penthouse (the “**A**ddition”), all of which will comply with the lot occupancy standards at approximately 63% or less.

The record contains no explanation of how the Addition will result in the expansion or extension of the existing nonconforming residential lot occupancy. The Applicant’s Pre-Hearing Statements, the Final Plans, and the Office of Planning Report all noted that the Addition will be at

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approximately 63% lot occupancy at the third and fourth floors, with the penthouse at an even lower percentage, all in compliance with the 75% lot occupancy requirement for IZ projects in the MU-4 Zone. (Exhibits 8, 38, 35, and 45.) As noted above, additions to nonconforming structures that meet the applicable development standards and do not extend or enlarge the nonconforming aspect, or create a new nonconformity, are permissible by right. (Subtitle C § 202.2.)

Accordingly, the Board rescinds its vote to approve the application, and by its own motion reopens the case record for additional submissions to be filed to the record to provide additional arguments for the necessity of the variance relief.

The Board requests that the Applicant, Advisory Neighborhood Commission (“ANC”) 8A, and the Office of Planning file responses to the record that identify and explain the increase or expansion of the nonconforming aspect of the existing structure that necessitates variance relief from Subtitle C § 202.

Responses from the Applicant and the Office of Planning shall be due to the record by 11:59 P.M. on September 25, 2019. Any response from the ANC will be due prior to the public meeting.

The Board will deliberate on this matter at the public meeting of October 9, 2019.

Accordingly, it is **ORDERED** that the Board’s vote in this application has been rescinded and the record is reopened for the specific items requested.

VOTE: 3-0-2 (Frederick L. Hill, Lesylleé M. White, and Carlton E. Hart to APPROVE the motion; Lorna L. John and Anthony J. Hood not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 12, 2019