

9/24/2019

Frederick L. Hill
Chairperson
Board of Zoning Adjustment
441 4th Street NW
Suite 210 South
Washington DC 20001

Re: Application No. 19572 of SIM Development, LLC.

Applicant's Response to Procedural Order and Motion to Reopen Record

The specific purpose of the Board's procedural Order and Motion to Reopen the record of the reference application is to provide to the case record an explanation of the increase in or an expansion of the nonconforming aspect of the existing structure which warrants the need for relief from the nonconforming structures provisions set forth under Subtitle C Chapter 2, §202

The definition Chapter, Subtitle B provides a definition for "Nonconforming Structure" as posted verbatim below:

"Nonconforming Structure: A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreation space requirements"

In light of the foregoing, as aforementioned in filings in the related hearing(s), the subject property is a nonconforming structure specifically with respect to percentage of lot occupancy because at ninety-one percent (91%) lot occupancy, the existing improvement or building on subject property does not conform to the maximum percentage of lot occupancy (60% or 75% for IZ developments) allowed for a structure a portion of which is devoted to residential use for properties located within the MU-4 Zone District, as set forth under Subtitle G, Chapter 4, §404.1

Subtitle C, Chapter 2, § 202.2 permits an enlargement or an addition to an existing nonconforming structure, provided the enlargement itself shall

- (a) Conform to use and development standard requirements*
- (b) Neither increase or extend any existing any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined*

The applicant proposes to construct two (2) additional floors plus a penthouse atop the existing two-story structure, which constitute an enlargement or addition in the meaning of the plain text of the pertinent provisions

Pursuant to the applicability provisions of Inclusionary Zoning (IZ) Chapter set forth under Subtitle C, § 1001.2 (a) and (b), the subject property is an Inclusionary Development because the subject property is located within the MU-4 Zone District and proposes gross floor area which results in ten or more dwelling units.

The existing first and second floors within which residential use or dwelling units are located are grandfathered with respect to the existing nonconformity of structure relating to maximum permitted percentage of lot occupancy because the existing project does not propose any expansion of or increase in that nonconforming element -91% lot occupancy – of the existing structure and will conform to use and development standard requirements, as set forth under Subtitle C § 202.2 (b) and (a) respectively.

The Rules of Measurements Provisions set forth in Subtitle B, § 312.7 governs how percentage of lot occupancy shall be measured or calculated and specifically stipulates that “in the case of a building devoted to both residential and nonresidential uses, the percentage of lot occupancy for residential uses may be calculated on a horizontal plane located at the lowest level where residential uses begin”

Based on the foregoing, the basis of how the percentage of lot occupancy is measured is at the horizontal plane at which the additional floors are proposed.

As the Board’s Procedural Order attests and consistent with all other related submissions, the proposed addition at the third, fourth and penthouse will not exceed sixty-three percent (63%) measured at the horizontal plane proposed, far below the seventy-five percent allowed for an IZ development and as set forth under Subtitle C, Chapter 10, § 1002.4. Hence the nonconforming element of the structure is not expanded upon nor will the proposed addition create any new nonconformity of structure and addition combined

Conclusion

Applicant concurs with the belief of the Procedural Order based on all the foregoing, that relief from the nonconforming structures provisions of Subtitle C, Chapter 2 § 202 was and is not required because the application complies with the applicable provisions of subsections, (a) and (b).

To the extent it pleases the Board, applicant submits a revised self-certification from, Form 135 which memorializes the reduced or revised relief, and incorporates design changes recommended by OP as documented in revised elevation drawings and as follows:

- Add marquee at residential building entrance;
- Maintain metal banding over corner entrance;
- Remove arch detail from corner of building;

- Replace cement board on 3rd and 4th floors with contrasting brick materials;
- Recessed ground floor entrances
- The exterior doors have been pocketed all of the exterior doors from the building (see the revised plans and elevations)

Respectfully Submitted