

February 21, 2019

To: Mr. Clifford Moy

DC Office of Planning
Office of Zoning - BZA
441 4th Street, NW, Suite 200S
Washington, DC 20001

Burden of Proof – 5835 Colorado Ave NW

Project Overview:

Site Specifications
Square/Lots: Sq.:2937 Lots: 0832
Current Zoning: RA-1
Lot Size: 2,325 sq. ft.
Existing Condition: House in ruins due to fire

5835 Colorado Ave Associates LLC intend to develop lot at 5835 Colorado Ave NW into a five-unit condominium. Project location is near the intersection of Colorado Ave NW, Missouri Ave NW, and Georgia Ave NW, and is bound by public alleys on the North and East sides.

Relief sought:

5835 Colorado Ave Associates LLC, owners of 5835 Colorado Ave NW, seek Special Exception and Variance relief for construction a new, higher density development at site than what is currently allowable in the RA-1 Zoning District, as follows:

1. Special Exception relief sought Pursuant to Subtitle X § 901 for a new residential development in RA-1 Zone, per Subtitle U, § 421.1 and for electing to construct an Inclusionary Zoning development, per Subtitle C § 1001.2 (e).

Per Subtitle C of the 2016 Zoning Regulations:

421 NEW RESIDENTIAL DEVELOPMENTS (RA-1 and RA-6)

421.1 In the RA-1 and RA-6 zones, all new residential developments, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board of Zoning Adjustment as special exceptions under Subtitle X, in accordance with the standards and requirements in this section.

1001 APPLICABILITY

(e) Any semi-detached, attached, flat, or multiple dwellings development not described in Subtitle C §

1001.2(b) through 1001.2(d) if the owner voluntarily agrees to the requirements of Subtitle C § 1003 and meets all other requirements of this chapter

2. Variance relief sought - Pursuant to Subtitle F § 5200 and Subtitle X § 1002.1(a)
 Subtitle F § 304, Lot occupancy (40% allowed, 45% proposed); Subtitle F § 306, Side yard (8 ft. allowed, 3 ft. proposed to exterior stair, 6 ft proposed to main building exterior wall); and Subtitle C § **1005.1 of the IZ Zoning Regulations**: proportionality rule (one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type).

Per Subtitle F of the 2016 Zoning Regulations:

304 LOT OCCUPANCY

304.1 Except as provided in other provisions of this chapter, the maximum permitted lot occupancy shall be established for lots in the RA-1, RA-2, RA-3, RA-4, and RA-5 zones as set forth in the following table:

TABLE F § 304.1: MAXIMUM PERMITTED LOT OCCUPANCY

| Zone | Maximum Lot Occupancy (Percentage) |
|------|------------------------------------|
| RA-1 | 40 |
| RA-2 | 60 |
| RA-3 | 75 |
| RA-4 | 75 |
| RA-5 | 75 |

SOURCE: Final Rulemaking published at 63 DCR 2447 (March 4, 2016 – Part 2).

306 SIDE YARD

306.2 (a) In the RA-1 zone, one (1) side yard shall be provided unless the building contains three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum distance equal to three inches (3 in.) per foot of building height but not less than eight feet (8 ft.);

Per Sub-title C of the 2016 Zoning Regulations:

DEVELOPMENT STANDARDS REGARDING INCLUSIONARY UNITS

1005.1 The proportion of studio and one-bedroom inclusionary units shall not exceed the proportion of the comparable market rate units for each unit type.

Justification for Relief Sought:

To obtain Special Exception relief, the following conditions must be met:

Per Sub-title X of the 2016 Zoning Regulations:

100.1 The Board of Zoning Adjustment is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (c) Will meet such special conditions as may be specified in this title.

We address each factor in turn below.

(a) We believe that the proposed development will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning maps, as the intent of the request for relief is to accommodate an Inclusionary Zoning dwelling unit, considered to be a benefit to the community. Every effort has been made to comply with the zoning regulations, and additional relief is request only as needed due to the particular conditions of the site.

(b) We believe that the development will not tend to affect adversely the use of neighboring property, as the proposed building conforms with the regulations in terms of height, length, and lack of need for side yard when abutting an adjacent attached property. Adjacent property at 5833 Colorado Avenue NW is built along adjoining property line between the two lots and contains no windows along that side.

(c) Other conditions of Subtitle X § 901 are met.

Per Sub-title X 1000, to obtain a variance, “an applicant must show that

1. there is an extraordinary or exceptional condition affecting the property;
2. practical difficulties will occur if the zoning regulations are strictly enforced; and
3. the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.”

We address each factor in turn below.

1. Exceptional Condition/ "Uniqueness"

Relief is required due to physical characteristics of the lot in question and its surroundings, such as:

- Lot in question is the absolute smallest in its block, due to the angled geometry of Georgia Ave NW with respect to Colorado Ave NW, to which it is parallel, and the lot's proximity to where the two avenues intersect at Missouri Ave NW. Lot area is 2,325 sq ft, while the norm along that block face is approximately 3,000 sq ft, and increases gradually towards the south end of the block to near 8,000 sq ft.
- The lot is bound by alleyways on the North and East sides. An existing building on the lot is currently located along edge of property line on alley side, with no side yard.
- Lot is at the border between the RA-1 and MU-7 Zoning Districts immediately to the North and East, along Georgia Ave NW. The FAR permitted in the MU-7 is 4.0, the FAR permitted in RA-1 is 0.9, with a 20% increase for IZ developments (1.08). As a result of its borderline condition between two vastly different zoning districts, across the alley to the North of lot 0832 sits a sixty-four-unit five story building. Similar properties exist on nearby lots along Georgia Ave NW. To the South, along Colorado Ave NW, detached, semi-detached and attached dwellings with front porches prevail. Row dwellings can be found across the street. Another large multi-unit building exists at the South end of the block.
- The existing lot occupancy already exceeds the 40% maximum allowable and is currently 42%.

2. Practical Difficulty

Regarding lot occupancy: Adhering to the lot occupancy limit of 40% would result in an inadequate building footprint, and the bonus IZ FAR would not be achievable. Proposed lot occupancy is 45%, only 3% higher than current condition.

Regarding side yard width: The combination of the small lot size and its adjacency to the alley, would yield a very small building if the regulations were followed to the letter, particularly in terms of width. A side yard of eight ft on the alley side would result in a total building width of seventeen ft, making it inadequate for a multi-unit building, as at least six ft of that width would have to be devoted to shared circulation, and an additional three ft minimum for the second egress stair required. The width of the dwelling units would be reduced to eight ft, including wall thicknesses. Furthermore, the number of units would have to be significantly smaller, providing an Inclusionary Zoning unit would not be feasible, nor would it be feasible to achieve the IZ FAR of 1.08 on this site. No side yard along the alley exists currently.

Regarding IZ unit proportionality: In order to accommodate one IZ unit, a minimum of five dwelling units is needed. The typical sq ft allocated to IZ is 10%, and ten dwelling units. In the case of this development the sq ft will be closet to 20%, and one out five dwelling units will be IZ. The building size and geometry can only accommodate three two-bedroom units and two one-bedroom units, and they are compact. In order to meet the proportionality requirement for the IZ unit, a two-bedroom unit instead of a one-bedroom unit would have to set aside for IZ, adding an additional burden in terms of the economic feasibility of the development, given the building's compact size and inability to accommodate more two-bedroom units.

There is a proposed text amendment currently under consideration regarding the applicability of the Proportionality Rule to smaller developments, ZC Case No. 04-331, which supports

this position.

3. No substantial detriment to the public good or integrity of the zone plan.

The proposed development will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. Care has been taken to evaluate surrounding property types and their scale, to request relief only where deemed most appropriate and least detrimental to adjacent properties.

For example:

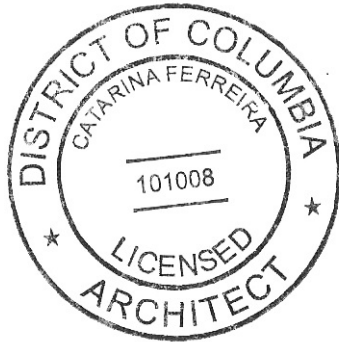
- Majority of relief requested is triggered by the intent is to build an Inclusionary Zoning development, difficult to accommodate on such a small lot.
- Building height proposed is by right. Proposed penthouse level is only one foot taller than allowable maximum building height of forty feet, while penthouses are allowed to be twelve ft tall in this district. Proposed building complies with the Zoning Regulations in other respects other than the specific requests for relief.
- An exterior stair is employed as the second means of egress for the building, instead of adding additional bulk and width to the building itself and triggering the need for FAR relief.
- Proposed building massing is broken down in a way that addresses the smaller scale of row dwelling buildings to the South. Front porch is reinterpreted in a contemporary way, and the most prominent, forwardmost portion of the building is a similar width as adjacent row dwelling.
- A Mansard roof is employed to further engage with smaller scale residential context.
- Materials are differentiated from top to bottom, further reinforcing the relationship with smaller scale buildings to the South.

We believe the proposed developments will not tend to affect adversely the Public Good for the following reasons:

- Two parking spaces are included in the proposed development, as required for up to six dwelling units, given the property's proximity to the Georgia Avenue transportation corridor.
- Reduction of side yard on alley side to three ft to the edge of the exterior stair and six ft to the primary exterior wall of the building along that side will be an improvement upon the existing condition (no side yard currently exists).
- No solar panels exist on adjoining property, no windows exist along exterior wall on North side of adjoining structure.
- Length of building proposed is roughly the same as that of existing building, and less than ten ft longer than the adjoining building to the South based on information obtained from GIS maps, there should be no impact on light and air available to the adjoining property to the South.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,



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