



**BEFORE THE ZONING COMMISSION AND
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA**



FORM 129 – ADVISORY NEIGHBORHOOD COMMISSION (ANC) REPORT

Before completing this form, please review the instructions on the reverse side.

Pursuant to Subtitle Z § 406.2 and Subtitle Y § 406.2 of Title 11 DCMR Zoning Regulations, the written report of the Advisory Neighborhood Commission (ANC) shall contain the following information:

IDENTIFICATION OF APPEAL, PETITION, OR APPLICATION:

Case No.:	20143	Case Name:	Grand Realty LLC
Address or Square/Lot(s) of Property:	1117 Morse Street NE / 4070 0136		
Relief Requested:	U-320.2; E-5201 (E-5003.1); U-301.1(e)(U-301.1(c)(1))		

ANC MEETING INFORMATION

Date of ANC Public Meeting:	10 / 12 / 19	Was proper notice given?:	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Description of how notice was given:	Please see attached ANC-5D report.					
Number of members that constitutes a quorum:	4	Number of members present at the meeting:	6			

MATERIAL SUBSTANCE

The issues and concerns of the ANC about the appeal, petition, or application as related to the standards of the Zoning Regulations against which the appeal, petition, or application must be judged (*a separate sheet of paper may be used*):

Please see attached ANC-5D report.

The recommendation, if any, of the ANC as to the disposition of the appeal, petition, or application (*a separate sheet of paper may be used*):

Please see attached ANC-5D report.

AUTHORIZATION

ANC	5	D	Recorded vote on the motion to adopt the report (i.e. 4-1-1):	6-0-0	
Name of the person authorized by the ANC to present the report:			Cmmr. Clarence Lee, Cmmr. Jason Burkett, Cmmr. Keisha Shropshire, or Kevin Horgan		
Name of the Chairperson or Vice-Chairperson authorized to sign the report:			ANC Chair Clarence Lee, ANC Vice-Chair Sydelle Moore		
Signature of Chairperson/ Vice-Chairperson:				Date:	12/17/2019

ANY APPLICATION THAT IS FOUND TO BE INCOMPLETE MAY NOT BE ACCORDED "GREAT WEIGHT" PURSUANT TO 11 DCMR SUBTITLE Z § 406 AND SUBTITLE Y § 406.

Board of Zoning Adjustment
CASE NO. 20143
EXHIBIT NO. 51



**DISTRICT OF COLUMBIA GOVERNMENT
ADVISORY NEIGHBORHOOD COMMISSION (ANC) 5D**

www.anc5d.org

December 17th, 2018

Mr. Frederick L. Hill
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W. Suite 210S
Washington, D.C. 20001

RE: *Case 20143, Application for Special Exception, Grand Realty LLC
(1117 Morse Street, NE)*

Chairperson Hill, Honorable Members of the Board:

At the Board's request, ANC 5D submits this supplemental report in response to Grand Realty, LLC (Applicant) proposals in Board of Zoning Adjustment (BZA or Board) Case [20143](#). On November 20th, the BZA held the first public hearing of this case. ANC 5D presented at the hearing. As always, we sincerely appreciate the thoughtfulness and consideration that the BZA gives when neighbors and the ANC raise concerns with projects that require zoning relief. At the conclusion of that first hearing, the BZA scheduled a limited continued hearing for December 18, 2019, giving the Applicant an opportunity to revise their design to address concerns raised by next door neighbors and the wider community.

ANC 5D submits this supplement to our original report (Exhibit 45) to inform the BZA of updates since the November 20th hearing, as requested by the BZA at the conclusion of that hearing. *See* Exhibit 49, BZA Memo to File (Nov. 22, 2019). The Applicant's original proposal sought three special exceptions to the zoning regulations in order to permit conversion of a Residential Flat (RF)-1 zoned, single family row home into three units (two units is a matter of right), with two in a modified version of the existing structure and a third in a new, detached Primary Dwelling Unit (PDU). Applicant's alternate plan was only slightly modified; it would have still required a special exception for a third unit, with a significantly less compelling concept that includes a detached, accessory building divided and shared by two of the three units in the primary building.

As outlined below, ANC 5D opposes both designs. Both fail to meet the fundamental standard by which the Board is required to judge applications for special exception within RF-1 under the Zoning Regulations of 2016. Both would provide a roadmap for outside investors to take advantage of the neighborhood's scarce natural resource, its deep backyards and large lot sizes, to get around the recent change in zoning regulations in order to develop three unit condominiums in direct conflict with the purpose of RF-1. The latter will shift the neighborhood away from affordable housing toward luxury condominiums, and away from residents who have a desire to or plan to plant roots in the District. Finally, from a procedural standpoint, Applicant did not act in good faith on the Board's request to seek a compromise or to engage the neighbors or ANC 5D subsequent to the November 20, 2019 hearing.

I. Applicable Standard for Adjudication of Special Exceptions

Case 20143 presents a clear question for the board: whether permitting a third unit in an RF-1 zoned lot is in harmony or undermines the purpose and intent of providing lots predominantly with row houses and no more than two dwelling units, as required by the zoning regulations.

A. Both of Applicant's proposals are contingent upon the Board permitting a conversion to three units (granting special exception to § U-320.2), something ANC 5D considers clearly to be inconsistent with the intent and purpose of the RF-1 zone.

Use permissions for the RF zones are specified in Subtitle U, Chapter 3, of the Zoning Regulations of 2016, with development standards identified in Chapter 3 of Subtitle E. Under section eight of the Zoning Act of 1938, as amended, the Board is authorized to grant a special exception to the development standards and permitted use only in accordance with Subtitle X section 901 of the Zoning Regulations. Section 901, in turn, identifies the standard by which the Board must adjudicate special exceptions, granting relief only where it judges the exception to:

(a) be **“in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps”**;

(b) **“not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps”**; and

(c) meet additional special conditions specified in the regulations, where applicable.

See D.C. Official Code § 6-641.07(g)(2); 11 DCMR Subtitle X § 901.2.

The Zoning Regulations identify **the purpose of the RF-1 zone is “to provide for areas predominantly developed with row houses on small lots within which no more than two (2) dwelling units are permitted.”** 11 DCMR Subtitle E § 300.1; *see also* Final Rulemaking, 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 17-23, 66 DCR 2337 (February 22, 2019). Finally, as the Board knows, special exceptions are not automatic; the Applicant bears responsibility to satisfy the full burden of proof, demonstrating to the Board that the relief sought would be consistent with the purpose and intent of the RF-1 zone and would not result in undue adverse impact to neighboring properties.

During the November 20, 2019 hearing, Applicant’s attorney stated that: “the general requirements of 901.2, [are] that the addition be in harmony with the general purpose and intent of the zoning regulations and zoning maps. Property is located in the RF-1 zone. The zoning regulations permit two units and use of a new accessory building via special exception. So the proposed use was contemplated by the Zoning Commission and enumerated in the 2016 zoning regulations.” Transcript, BZA Public Hearing, at 42-43 (November 20, 2019). Even in the most generous light, the statement is not only conclusory but incomplete and misleading. The regulations “contemplate” and “permit” two units as a matter of right, as well as a detached accessory unit such as a garage. The regulations do not “permit” what Applicant seeks absent Applicant satisfying their burden to demonstrate to the Board the ways in which the relief would be consistent with creating “areas predominantly developed with row houses on small lots within which no more than two (2) dwelling units are permitted.” 11 DCMR Subtitle E § 300.1. That is the only question before the Board. To date, Applicant has failed to meet that standard in the eyes of the community and ANC 5D.

B. Granting Applicant the relief sought will significantly and adversely affect the market for homes in the neighborhood, with effects that demonstrably run counter to the purpose and intent of the RF-1 zone and as such are squarely within the purview of the Board’s authority to consider in adjudication of Applicant’s request for special exceptions.

Chairperson Hill correctly identified the novel nature of this case during the hearing, referring to it as a “test case.” *See* Transcript, BZA Public Hearing, at 91, lines 20-21 (November 20, 2019). If granted the relief sought, Applicant’s proposal will be the blueprint for investor developers seeking to skirt the requirement that rear additions not exceed adjacent property structures by more than ten feet. *See* 11 DCMR Subtitle U § 320.2(e). That is directly contrary to the purpose and intent of areas identified as RF-1, as the Zoning Commission underscored as recently as 2016 in the debate around and issuance of the new zoning regulations. *See* Final Rulemaking, 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 17-23, 66 DCR 2337 (February 22, 2019). For the reasons detailed in section III below, ANC 5D sees several reasons for which granting Applicants request will significantly and adversely affect the market for homes in the neighborhood, with effects that demonstrably run counter to the purpose and intent of the RF-1 zone and as such are squarely within the purview of the Board’s authority to consider in adjudication of Applicant’s request for special exceptions.

II. Alternate Concept

On December 10th, one-hour prior to ANC 5D’s public meeting, the Applicant emailed alternate plans (Exhibit 50A) to Commissioners Jason Burkett (5D06), Clarence Lee (5D07) and Keisha Shropshire (5D02). When the Applicant’s architect presented the revised concept just two hours later, ANC 5D was surprised to see a concept clearly worse than that of the original plans. The Commission asked the architect whether the Applicant would consider requesting postponement by BZA of the continuation hearing, to provide the ANC and community a genuine opportunity to consider the new concept or consider alternate concepts that might bridge the gap between the

sides, as the Board directed. Unfortunately, the Applicant’s architect believed the developer would be disinclined to entertain further discussions with the ANC. Absent a genuine effort towards an alternate solution or good faith attempt to present information to the community, the ANC 5D voted again, unanimously, in opposition 6-0-0 to the application.

Although the Applicant asks the BZA to consider only their Exhibit 35A (“Prehearing Submission”) plans, there is value in both underscoring our opposition to Exhibit 35A while also reviewing the concept described by Exhibit 50A (“Alternative Plans”), to ensure the values most important to our community are clearly understood.

In the highly unusual Exhibit 50A concept, the Applicant again proposed an accessory building; however, instead of that building functioning as a Primary Dwelling Unit, the accessory building would instead function to provide one bedroom (per floor) to two of the dwelling units in the primary building. A summary of the proposed units for the two plans is shown in Table 1:

Table 1: Exhibit 35A & Exhibit 50A Comparison

	Exhibit 35A Plans	Exhibit 50A Plans
Unit #1	3 BD in Primary Bldg. (Cellar + 1st Floors) 1,545 sq-ft	2 BD: 1BD+Den in Primary Bldg. Cellar 1 BD in Accessory Bldg. 1,163 sq-ft
Unit #2	3 BD in Primary Bldg. (2nd & 3rd Floors) 1,449 sq-ft	2 BD: 1BD+Den in Primary Bldg. 1st Flr. 1 BD in Accessory Bldg. 1,249 sq-ft
Unit #3	2 BD in Accessory Bldg. (1st & 2nd Floors) 932 sq-ft	3 BD in Primary Bldg. (2nd & 3rd Floors) 1,566 sq-ft
Family-Size Units	2	1
Total Bedrooms	8	7
Livable Sq-Ft	3,926 sq-ft	3,978 sq-ft

Although ANC 5D considers many criteria when reviewing projects, two primary criteria are:

- 1) Will this project provide family-size housing?
- 2) Will any of the units be affordable to working and middle-class residents?

Despite similar total square footage, the alternate concept is **worse** than the original plans because it would yield only **one** family-size unit. Moreover, the two bedroom units would require the future homeowners to walk down the back yard to access their legal second bedroom in a shared structure. At the close of the November 20 hearing, the BZA explicitly continued the case to provide time for the parties to work toward a compromise solution. ANC 5D (to include the immediate neighbors) finds this concept so poor on its face that we question whether the Applicant approached the Board's direction in good faith.

III. Affordability & Family-Size Units

At the November 20th hearing, Mr. Robert Schafer (neighbor on the same side of the same block of Morse Street as Applicant) testified in opposition to this project on the basis that the long term effect would be to incentivize outside investors to bid up prices, preventing any prospective residents from making the District their long term home. *See* Transcript, BZA Public Hearing, at 105-106 (November 20, 2019); Exhibit 47 (Testimony of Rob Schafer). ANC 5D has since done independent research and would like to expand on the same principle.

The ANC's research shows how approval of this project would directly **jeopardize** both the **development of and incentives for family-size housing** in our neighborhood, and **decrease affordability** of any properties in Trinidad with deep lots. The result would not be in harmony with the RF-1 purpose to provide for areas predominantly developed with row houses on lots with no more than two units.

The housing market is tight in Trinidad, with houses regularly remaining on the market not more than three or four days and receiving a dozen or more offers in that timeframe. Invariably, outside investors will end up bidding against each other with cash offers on lots of substantial size. Our research revealed a formula widely used by developers to identify the "Maximum Allowable Offer" (MAO), or the amount up to which an offer can be made without risking profit margins for an investment property. Although each offer will be different and one investor may be able to afford more and another less, some common criteria are relied upon by investors for houses that need renovations to bring them up to the standard for the area. The MAO describes the high end of what an investor should consider offering, and it is calculated as follows: After Repair Value (ARV) x 65% - Repair Costs. ARV is the cost to get the house or units to the condition needed to retail for the highest possible price, by estimating the cost of likely renovation to bring a home up to the equivalent of the nicest houses (similar size, similar age, rooms & bathrooms) on the street that have recently sold.

In addition to discussions with developers, we have heard from neighbors in Trinidad for whom the calculation predicted within ten to 15 thousand dollars the highest amount an investor would be willing to offer in a bidding war. With input from developers about the costs associated with renovation, and with recent two-unit conversions as comps to estimate selling price should the home be converted to two condominiums, the MAO formula appears to be very accurate and widely relied upon.

The MAO is relied upon by real estate investors and from our research appears to be a reliable tool. The lesson for this case and any RF-1 three unit conversion is clear. If an investor or developer believes they will be able to sell three units, rather than two, the ARV piece of the calculation increases, and thus the MAO is multiplied. While a prospective homebuyer who is interested in moving into the neighborhood might be able to compete for property that could be converted to two units, as three units the price an investor would comfortably be willing to offer would far exceed what the average homebuyer or family might be able to afford.

In effect, the **affordability** (or lack thereof) of a property is set by developer price pressure, rather than comparables for nearby single-family homes. Using the MAO formula, ANC 5D obtained an estimate for what one should pay today to purchase a property on this block of Morse Street if one plans to develop two (2) condominiums. Assuming sales prices of \$600K and \$700K for the lower and upper units based on recent comps, and \$300K in renovation and construction costs, the formula yields an MAO of \$545K. That number is consistent with and supported by the fact that Grand Realty LLC purchased 1117 Morse St for \$530K in June 2019.

Having established that the sales prices for homes on this block will be set by the potential development, the obvious question is: How much would home prices increase if the BZA fails to enforce the zoning regulations where one could assume development of **three** units rather than two?

That same formula applied to a three unit conversion yields an MAO of \$820K - **an increase of \$275K** that an investor would be willing to outbid a prospective homebuyer and still know that they were not taking on too much risk. That is what will happen to homes on this and similar blocks if developers can assume they can build three units instead of a two-family flat conversion. Once that assumption is baked into development calculations, these lots will become even further out of reach for anyone looking to buy a single-family fixer-upper in Trinidad and gradually renovate over time. To which we ask the Board, if not now, when would be the right time to enforce the RF-1 zone designation?

To make matters worse, ANC 5D believes that approval of three units on this RF-1 zoned lot, will also **incentivize and promote** this and other developers to build **non-family-size** homes.

It is an uncontested fact that three two-bedroom units sell for a greater sum than two family-size (three-bedroom) units. If developers can assume they have a reasonable chance of receiving zoning relief to build three units on RF-1 zone lots, they will inevitably pursue that course. ANC 5D doesn't oppose the creation of more units. The problem lies in the fact that other construction and zoning constraints (lot size, set-backs, etc.) result in those units becoming one and two-bedroom units, instead of family-size units. This hypothesis is proven in the Applicant's own Exhibit 50A concept plans.

The District needs and welcomes developers to alleviate the **affordable** housing crisis; however, Trinidad has already lost too many family-size homes to condo conversions that lack family-size units. When developers feel constrained to building two units on RF-1 zoned lots, they instead seek zoning relief to build reasonable extensions beyond the by-right allowable 10-ft rear

addition. ANC 5D **supports and even promotes** such zoning relief applicants if it enables developers to convert a single-family homes into two family-size units. This is smart, reasonable development.

If Grand Realty LLC had requested zoning relief solely for a moderate extension in excess of the 10-ft rule, to build better-sized family-size units in the primary building, ANC5D would have viewed the project more favorably. In the event that the Applicant wishes to request a postponement, in order to present further revisions along those lines, we would welcome and support that request.

This case is a critical test of the Board's ability to honor the spirit and intent of the updated regulations, as outlined in section I above. Given the predictable and detrimental outcomes for affordability, family-size housing, and the concerns documented in our original ANC report (Exhibit 45), ANC 5D finds that Grand Realty LLC's application for zoning relief is not "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps" and urges the Board to deny the application. Subtitle X, section 901.2. Furthermore, we see no evidence the applicant has satisfied the burden of proof, as required in Subtitle X 901.3. If Applicant's request for three units is deemed to be in harmony with a zone, the purpose of which is row homes not to exceed two units per lot, what similar application would fail to meet the standard in the Board's view?

For these reasons, we respectfully ask the Board to uphold the zoning regulations and support family-size housing consistent with the purpose of RF-1 zones, and deny this application for special exceptions.

If you have any questions or need further information, please contact Commissioner Jason Burkett at 5D06@anc.dc.gov or myself at 5D07@anc.dc.gov.

Sincerely,

A handwritten signature in black ink that reads "Clarence Lee". The signature is written in a cursive, slightly slanted style.

Clarence Lee
Chair, ANC 5D