



## MEMORANDUM

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

**DATE:** March 22, 2011

**SUBJECT:** BZA Case No.18184                      1421 Florida Avenue, NW

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### **I. BACKGROUND**

The applicant delivered its pre-hearing statement to OP at 4 p.m. March 18, 2011. It contains revisions to the original application and new drawings dated 3/13/2011:

- The proposed side yard has been increased to 15 feet, and the applicant no longer requests relief from § 405.9;
- The proposed height has been reduced from 61' 11" to 60';
- The east-west width of the building's occupied portions have been narrowed and the proposed FAR has been reduced to 2.3.
- The number of apartments has been reduced from 16 to 15.
- The number of requirements from which relief is requested has been reduced from four to two.

Although the applicant states that it has decreased its proposed lot occupancy to 60% and no longer requests relief from § 403.2, the side yard decks still occupy the 63.3% of the lot originally requested. OP's evaluation continues to consider a lot occupancy variance.

### **II. OFFICE OF PLANNING RECOMMENDATION**

As of the pre-hearing statement the applicant is requesting area variance relief from:

- § 400.1            Maximum building height (50' permitted, 60' proposed);
- § 402.4            Maximum FAR (2.16 permitted, 2.3 proposed, but may correctly be approximately 3.0<sup>1</sup>);

to construct a 15-unit apartment building on vacant property at 1421 Florida Avenue, N.W.

OP recommends the BZA **deny** the request for relief from § 400.1 and § 402.4. The applicant has established that the site's topography creates an exceptional condition for the lot, but has not demonstrated a nexus between the topography and how it creates a practical difficulty. Nor has the applicant demonstrated that granting the requested height and FAR relief would not have substantial detrimental impact on adjacent properties, or on the zone regulations. The requested increases to

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<sup>1</sup> See Section V.c and Figure 2.

the R-5-B (moderate density) zoned property would be a *de facto* rezoning, as the FAR -- as calculated by OP -- would be permitted only in the R-5-C (medium density) zone, or greater.

Should the Board determine that relief would be needed from § 403.2, lot occupancy, OP would also recommend that the Board **deny** that relief.

### III. APPLICATION SUMMARY

The applicant owns a 4,141 square foot vacant lot at 1421 Florida Avenue, NW, The property slopes 28' upward from the north side of Florida Avenue north toward Belmont Street.

The applicant wishes to excavate most of the site down to the sidewalk level adjacent to Florida Avenue and construct a 15-unit apartment building, with eight enclosed parking spaces, stacked terraces in the side yard, and a rear yard terrace. It would have a height of 60 feet, a lot occupancy the applicant calculates at 60% and an FAR the applicant calculates as 2.3

The amount of FAR relief needed is underestimated, primarily because of an incorrect interpretation of the method for determining the grade from which to calculate gross floor area (GFA). This is discussed in Section VI c.

### IV. AREA AND SITE DESCRIPTION



Figure 1. Site Location in Yellow, With 2-Foot Topography Contours.

**Table 1: Site Data**

<b>Applicant</b>	Sassan Gharai	<b>Legal Description:</b>	Square 2660, Lot 237
<b>Address:</b>	1421 Florid Avenue, NW	<b>Ward:</b> 1	ANC 1B
<b>Zoning:</b>	R-5-B	<b>Historic Preservation:</b>	Greater U Street
<b>Lot</b>	Steeply sloped, slightly irregular, mid-block lot		
<b>Adjacent Properties:</b>	East - 3 story apartment building. West –through-lot from Belmont to Florida with apartment building measured at 4 stories on Belmont and appearing as 6 stories at its rear yard on Florida. North = two 2+ story and one 3+ story townhouses on Belmont, appearing as 3 and 4 stories from Florida Ave. South - three 3-story rowhouses across Florida Ave.		
<b>Area Character:</b>	Moderate and medium density apartment buildings, single-family rowhouses, and flats, with higher density residential and commercial on 14 <sup>th</sup> Street.		

**V. ZONING REQUIREMENTS and REQUESTED RELIEF**

	<b>Existing</b>	<b>Required /Permitted</b>	<b>Proposed</b>	<b>Relief</b>
Lot Area	4,140.62	n/a	same	complies
Lot Width	50 ft.	No req. min.	50 ft.	complies
<b>Lot Occ<sup>2</sup>.</b>	<i>vacant</i>	<i>60% max</i>	<b>+2,623.72 sf +63.3%</b>	<b>+139.35 sf + 3.4%</b>
<b>Height</b>	“	50 ft.	60 ft.	<b>+10ft, + 20%</b>
<b>FAR</b>	“	2.16 w/ IZ	<b>2.3 (applicant) 3.05 (OP)</b>	<b>+ 0.14 FAR, +6.5% (applicant) +0.91 FAR, +41% (OP)</b>
<b>Rear Yard</b>	“	15 ft. min	15 ft.	complies
<b>Side Yard</b>	“	15 ft	15 ft.	complies
Open Ct.	“	None	None	None
Parking	“	8 @ ½ du’s	8	complies
Loading	“	None	None	None

**Table 2. Zoning Requirements, Existing & Proposed Conditions, & Relief Requested (bolded)**

<sup>2</sup> The applicant has withdrawn its lot occupancy relief request. However, the plans continue to show a building requiring lot occupancy relief.

## VI. OFFICE OF PLANNING ANALYSIS OF REQUESTED VARIANCE RELIEF FROM

### a. Uniqueness Resulting in a Practical Difficulty

Topography: The applicant has demonstrated that the twenty-eight foot upward slope from the front to the back of the property establishes an exceptional condition, but has not demonstrated that it would result in a practical difficulty that would keep the site from being developed within the R-5-B requirements. The only development scenarios explored by the applicant are multi-unit buildings requiring significant excavations. The applicant has not demonstrated an exploration of options resulting in fewer units, less excavation, fewer parking spaces and, if fewer than ten units, no inclusionary zoning (IZ) requirement. Although FARs of 1.8 and 2.16 are permitted, respectively, for non-IZ and IZ projects, these are the maximums that are permitted to be built, not the minimum that must be built.

Dimensional Flexibility Under IZ: The applicant's states that the R-5-B, R-5-C and R-5-D zones are "peculiarly excluded" from the dimensional flexibility that §2604.2 permits for Inclusionary Zoning (IZ) developments.

The very fact that none of the thousands of properties in these zones would be entitled to additional height, lot occupancy, or modified lot dimensions to achieve IZ negates the applicant's statement that this is an exceptional condition associated with this particular property, let alone one leading to a practical difficulty justifying the requested 6.5% to 41% FAR relief or 20% height relief.

Technical Correction to Interpretation of Height Permitted Under IZ: The applicant posits that the clarification of a regulation the applicant had incorrectly interpreted is an exceptional condition leading to a practical difficulty. Prior to filing for this case, the applicant had interpreted § 2604.1 of the IZ regulations as allowing the elimination of height restrictions for an IZ project in the R-5-B zone, and allowing such a project to rise to the maximum height permitted by the Height Act. In fact, this Section was never intended to supersede the more restrictive height limitations of §§ 400.1 and 2604.2, as was clarified in a technical correction in Zoning Commission Order 04-33. OP notes that although the applicant believed that the Zoning Administrator concurred with the applicant's interpretation, this apparent concurrence lasted only from May 8 until June 18, 2010. That was six weeks out of the more than three years the applicant has owned the property<sup>3</sup>. The unique and brief incorrect interpretation does not constitute a unique condition for the property and, as such, cannot be one that leads to a practical difficulty justifying the requested 20% height relief.

### b. No Substantial Detriment to the Public Good

§ 402.4: The applicant has not demonstrated that the height and FAR relief requested would have no direct substantial impact on the public good.

§ 400.1: Granting the requested height relief would create a substantial detriment to the three houses bordering the rear of the applicant's property. These houses front on Belmont Street and have views of most of the central city. Granting the request for an additional 10 feet would block the views from the first and second stories. This would be compounded by the proposed 18'6" roof structure, which the applicant shows and as having six doors on its east side, providing access to the roof.

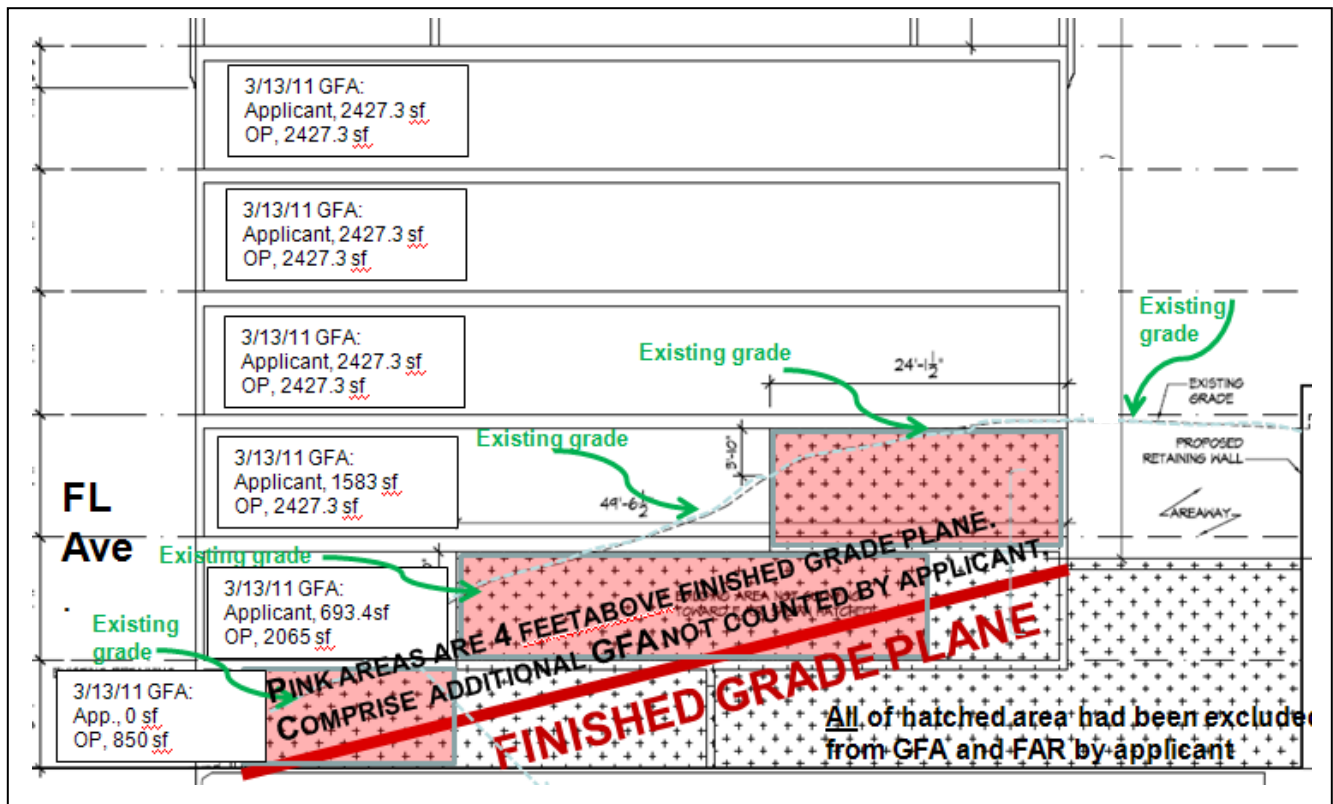
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<sup>3</sup> District records do not show a change of ownership for the property since 2007.

**c. No Substantial Harm to the Zoning Regulations**

§§ 400.1 and 402.4: The requested relief from maximum height and FAR limitations would cause substantial harm to the regulations. The applicant’s property is in the moderate density R-5-B zone, yet, as is discussed below, by OP’s calculations the requested FAR would require R-5-C (medium density) zoning. Granting the relief would be tantamount to rezoning.

The applicant’s gross floor area and FAR calculations are of concern. The applicant has used the natural grade – i.e., the hill that now rises twenty-five feet between the front and the back of the building – to calculate the gross floor area FAR. The Zoning Administrator, when consulted by OP about this application, has stated that 11 DCMR §199’s definition of Gross Floor Area requires that he use the finished grade of the building- i.e., what is projected as the post-excitation grade – to calculate FAR. The differences between the two methods are illustrated in Figure 2, below. While the natural grade method yields a projected 9,558.3 GFA and 2.3FAR (6.5% greater than matter of right with IZ), the finished grade method yields an approximately 12,624 GFA and 3.05 FAR (approximately 41% greater than matter of right with IZ) /



**Figure 2. Natural and finished grade illustration.** (The pattern indicates all of the area the applicant would not count toward FAR using the natural grade method. The pink areas would be the addition GFA counted toward FAR using the finished grade method).

The Board stated in *BZA Case 17109, Findings of Fact 36, FAR Calculations*, “Under the ‘grade plane’ method, a plane is established between the grade at the front of the building and the grade at the rear of the building. The point at which this plane intersects at a four foot level, any portion that exceeds that plane counts toward FAR and any portion that does not is considered a cellar”. The Zoning Regulations’ definition of Gross Floor Area stipulates that “Cellar area is not included in

FAR” and that a cellar is “that portion of a story, the ceiling of which is less than four feet above the adjacent finished grade. Granting FAR relief based on a natural grade plane would cause substantial harm to the zoning regulations.

## **VII. COMMENTS OF OTHER DISTRICT AGENCIES**

The Historic Preservation Review Board has given concept approval to proposed design.

There were no other comments had been filed at the time OP completed this report.

## **VIII. COMMUNITY COMMENTS**

ANC 1B voted to support the application on February 28, 2011. There are four letters of opposition on file, and two requests for party status in opposition.

JS/ Stephen Cochran, Project manager