

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Stephen Cochran, Case Manager
Joel Lawson, Associate Director Development Review
DATE: December 2, 2014
SUBJECT: BZA Case 18878, 1017 12th Street, N.W.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommendations address the relief requested in the applicant's November 25, 2014 filing, which amended the previously requested parking relief and added a request for a special exception for roof structure setback.

OP recommends:

- **Approval** of the following variances:
 - § 774.1, Rear Yard : (15 feet required, 0 ft. proposed)
 - § 2101.1, Parking, office: (6 required [1:each 1800 sf >2000 sf], 0 proposed)
- **Denial** of the requested Floor Area Ratio (FAR) variance from §1706, FAR: (8.0 by-right without TDRs, 8.5 FAR by-right with TDRs, 9.77 proposed) because the applicant has not demonstrated any practical difficulty that results from complying with the by-right FAR option of 8.0, or 8.5 through the purchase of Transferrable Development Rights.
- **Denial** of the special exception request for roof structure setback because the roof structure exceeds the maximum building height permitted by the 1910 Height Act and the Height Act does not permit relief to the one to one setback.

The Height Act is a federal regulation and allows roof structures to exceed the maximum height of the building only when the roof structure is "*set back from the exterior walls distances equal to their respective heights above the adjacent roof.*" There is no provision for the Board or the Zoning Commission to grant relief from the Height Act.

There is a direct relationship between the FAR variance and the roof structure relief requested in the November 25, 2014 filing. With the denial or withdrawal of the FAR variance the building would be lower than the maximum building height permitted by the Height Act, and the roof structure relief would then be within the authority of the Zoning Regulations, and setback relief could be granted by the Board.

The Board would also have the authority to relief for a roof structure above the Height Act limits if the setback requirements were met, but compliance with setback requirement would not help to demonstrate a nexus between the exceptional condition and a practical difficulty in developing a building within by-right FAR limits.

II. LOCATION, SITE DESCRIPTION AND PROPOSAL

<p>Applicant: Alba 12th Street LLC Address: 1017 12th St, NW Legal Desc.: Square 316, Lot 821</p>	<p>Ward and ANC: 2F Comp Plan: High-Density Commercial Historic District: None</p>
<p>Zoning: DD/C-2-C/ Housing Priority Area. This permits by-right development of high-density commercial, residential or mixed use structures and requires 4.5 FAR of residential development on site or through combined lot development.</p>	<p>Proposal: Demolish all but the façade of a non-historic 19th rowhouse structure and construct a 9 story, 9.77 FAR, 100% lot occupancy office building without parking for the applicant’s non-profit organization. The 4.5 FAR housing requirement would be met through combined lot development.</p>
<p>Lot Features: The 1,262 square foot lot is level, rectangular, has alley access on the north, and is occupied by a small-scale brick former rowhouse, converted to office use and vacant for 7 years.</p>	
<p>Adjacent Properties: The remainder of the Square is occupied by two large-scale, 10+ story office buildings.</p>	
<p>Neighborhood Character: High-density, 110-foot to 130 foot office buildings, with some remaining medium-density office buildings interspersed.</p>	

III. ZONING REQUIREMENTS and RELIEF REQUESTED

Item	Reg.	Existing	Required / Permitted	Proposed	Relief
Lot Area	none	1262	n/a	Same	Not required
Lot Width	none	25 ft.	n/a	same	Not required
FAR	1706.4 1706.7	4.7	8.0 0.5 bonus with TDRs or affordable hsg.	9.77 (includes roof structure FAR > 0.37)	1.77 FAR 1.22 FAR if TDRs purchased
Height	1902.1	Approx. 47 ft.	105 ft. (on 85 ft. ROW)	105 ft.	Building Conforms
Roof Structure	411.5	n/a	1:1 setback	Unspecified measurement on front, 0 on alley	Unspecified amount on west (front); 17 feet on north (alley), none permitted by Height Act
Parking	2101.1	0	6	6	From 6 spaces
Loading	2202.1	0	0 (less than 20,000 sf)	0	Not required
Rear Yard	774.1	none	15 ft. min.	none	15 ft.
Side Yard	775.5	none	Not required	none	n/a
Open Ct.	776.1	none	n/a	none	Not required

IV. OFFICE OF PLANNING ANALYSIS

a. Variance Relief

i. Exceptional Situation Resulting in a Practical Difficulty

The applicant has established that the lot size constitutes an exceptional condition. It is only 1250 square feet in area, which is exceptionally small for a downtown site. It cannot be combined with an adjacent lot to make for a larger, more-easily developed site because the remainder of the Square is already developed with two 110-foot to 130-foot office buildings of relatively recent vintage. The applicant has demonstrated that this exceptional condition would result in practical difficulties for compliance with:

- **Parking Requirements:** The applicant's turning radius diagram (applicant submission, Tab 12) illustrates that the shallowness of the site significantly impacts the ability of a vehicle to turn into the property and the impossibility of constructing a ramping system for below-grade parking. The rear yard discussion demonstrates the difficulty in providing any parking behind the building.
- **Rear Yard Requirements:** Tab 11 demonstrates the difficulties that would be faced in providing the required 15-foot rear yard. The building depth would be reduced to 37 feet, resulting in floors where core requirements would occupy between one-half and two-thirds of the floorplate.

Floor Area Ratio

With respect to the requested FAR relief, while the applicant's Tab 13 diagrams demonstrate that the small lot size combined with the necessarily high core factor pose challenges for developing a modern office building on the site, the applicant has not yet demonstrated that there would be a practical difficulty that has a nexus to the full 1.77 FAR of requested relief, nor has the applicant purchased the TDRs that would provide an additional 0.5 FAR for a by-right 8.5 FAR total.

ii. No Substantial Detriment to the Public Good

Parking and Rear Yard Variances

The applicant has demonstrated that granting the requested relief for parking or rear yard would not result in a substantial detriment to the public good. With respect to the 6-space parking variance, the proposed building is four blocks from the Metro Center subway station and the absence of parking would not likely result in a harm to the public. While relief from the rear yard requirement would result in more side windows in the south and east-adjacent building being covered up, those windows were constructed at-risk.

Floor Area Ratio Variance

Pertaining to the requested FAR relief, while the applicant has stated that the amount of additional square footage would be relatively small, that is not a sufficient argument.

iii. No Substantial Harm to the Zoning Regulations

Parking and Rear Yard Variances

Neither the rear yard nor the parking variances would have a significant impact resulting in substantial harm to the zoning regulations. This is not the case with the requested FAR relief.

Floor Area Ratio Variance

The applicant has not demonstrated how the FAR regulations would result in a practical difficulty. While the documents submitted on November 25, 2014 include information from the real estate firm Savills Studley, the documents focus is on the income-based viability of leasing or selling the proposed building after completion. No nexus has been established between the exceptional condition of the lot size and a practical difficulty caused by the by-right 8.0 FAR or the by-right 8.5 FAR with TDR purchases. An FAR of 9.77 is first permitted by-right in the DD/C-4/HPA zone without the purchase of TDRs, or in the DD/C-3-C/HPA zone with the purchase of TDRs. If the FAR variance were granted the applicant would be achieving a 22% increase in development rights without a map amendment or a PUD.

The increase in FAR through a BZA action, particularly without adequate demonstration of the practical difficulty, could be considered a substantial harm to the zoning regulations. The DD allows for additional density through the purchase of Transferrable Development Rights (TDRs) and the requested variance would undermine the TDR provision. Additionally, the FAR variances result in a building that is at the maximum permitted height under the Height Act and causes the roof structures to be outside the authority of the Zoning Regulations.

b. Special Exception for §§ 770.6 and 411.11, Roof Structure Setback

- i. Would the special exception be in harmony with general purpose/ intent of zoning regulations and map?*

No. The zoning regulations permit a special exception for roof structure setback relief as long as the roof structure does not rise higher than the maximum building height permitted under the 1910 Height Act, which the proposed roof structure would. Section 5 of the Height Act does not permit the District to waive this height limitation for a roof structure that does not provide a 1:1 setback from all exterior walls, which the applicant's would not.

- ii. Would the special exception tend to adversely affect the use of neighboring property?*

No. There would be a 15 foot separation from the existing building to the north. This is the same separation that building has from the 130-foot building facing it at the rear of the applicant's site. While the roof structure would block windows on the building to the south and east of the applicant's, these are at-risk windows and no setback is required from these interior property lines.

V. COMMENTS OF OTHER DISTRICT AGENCIES

There were no other District agency comments on file at the time this report was prepared.

VI. COMMUNITY COMMENTS

ANC 2F voted unanimously to support all requested relief. There were no other public comments on file at the time OP completed this report.