



MEMORANDUM

TO: Chairwoman Helen P. Ross and Board of Zoning Appeals members
FROM: Mike Craig, Zoning Administrator
DATE: January 15, 2016 for the January 25 meeting
RE: V2015-02: Variance request from UDO section 72-31.5b to permit ten 14 foot 6 inch wide multi-family units at 2217 Princess Anne Street (GPIN 7779-89-7284).

ISSUE

Should the BZA approve a variance permitting ten narrower multi-family units than are otherwise permitted at 2217 Princess Anne Street?

RECOMMENDATION

Deny the variance request on the grounds that it does not meet the requirements for a variance set forth in Virginia State Code § 15.2-2201 and § 15.2-2309.

BACKGROUND – NOVEMBER 16

2217 Princess Anne Street is a large lot in the Princess Anne Street corridor that contains two buildings. One building is a four story hotel dating to 1926. The other, called “Building C” by the Applicant, is a two story building on the southern portion of the lot close to the Princess Anne Street right-of-way. Building C dates to 1950.

2217 Princess Anne Street is zoned Commercial Highway (CH). Currently, both buildings contain office users. Building C, according to the Applicant, is primarily medical office.

Commercial Highway permits a variety of residential and non-residential uses including multi-family dwelling units. City Code § 72-32.4.C(1) states that, residential development in the CH Zoning District shall conform to R-12 Zoning District dimensional standards (§ 72-31.5.B). Here is a breakdown of how those standards apply to the development of multi-family dwelling units on the property:

2217 Princess Anne Street (2.8 acres)		
Standard	Multifamily	2217 Princess Anne Street By-Right
Residential Density, Maximum	12 units / acre	34 units
Nonresidential FAR, Maximum	N/A	N/A
District Size, Minimum (acres)	5 (may reduce with SE)	N/A (existing zoning)
Lot Area, Minimum (square feet)	None	N/A
Lot Width, Minimum (feet)		
Interior Lot	Each unit shall maintain a minimum width of 18 feet	Each unit shall maintain a minimum width of 18 feet
Corner Lot		
Front Setback, Minimum (feet)	25	25
Side Setback, Minimum (feet)	25	25
Rear Setback, Minimum (feet)	35	35
Setback from Other Districts, Minimum (feet)	40	40
Open Space Set-Aside, Minimum (%)	25%	25%
Height, Maximum (feet) *	50	40*

* Princess Anne Street Corridor Overlay limits height to 40'

VARIANCE ANALYSIS

Variations are evaluated according to the criteria contained in the UDO, Section 72-22.8, as follows – “The BZA may authorize a variance from the zoning regulations in this Ordinance as not contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice be done.” Responses to each criterion are contained in *italics*:

The City contemplates residential use for the GWEC area. The Comprehensive Plan designates this property as General Commercial and has a specific recommendation that this property be part of a larger Planned Development-Mixed Use rezoning. The intent of the rezoning is stated to be “to provide more suitable land uses as well as provide transitional uses between the commercial activity along the road and the nearby residential neighborhoods” (Comprehensive Plan p 217).

However, the area has not been rezoned and the current zoning regulation requires that multifamily units be a minimum of 18 feet wide. The City Council intended this regulation to be one of a collection of tools that would “promote the health, safety, convenience, and general welfare of the public”¹. Changing zoning tools requires a deliberate legislative act. In this case, as described in the Comprehensive Plan, the most appropriate means to change the zoning law at 2217 Princess Anne Street is through the zoning map amendment process outlined in § 72-22.4.

Further, Virginia State Code section § 15.2-2201 and § 15.2-2309 sets the following criteria that must be met for the Board of Zoning Appeals approve a Variance request:

1. “that the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance.”

The request meets this criterion:

General Washington Executive Center was acquired in good faith.

2. “the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.”

It is not clear whether this request meets this criterion:

The variance would change the type of multifamily dwelling unit permitted in the zoning district. It is unclear what impact narrower units will have on the neighborhood. This policy change should be analyzed through a zoning map amendment or zoning text amendment process.

3. “the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.”

The request does not meet this criterion:

If granted, there would be no reason why any other property in the CH Zoning District would not also qualify for a variance from the minimum unit width standard. A policy change of that magnitude is rightly made through a text amendment legislated by the City Council following the procedures set forth in City Code §72-22.3.

¹ City Code § 72-12.0

*Additionally, there are zoning classifications, like PDMU, that would permit the development of the multifamily units as proposed. The purpose of the Board of Zoning Appeals' Variance process is to provide relief when, "owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the Ordinance shall be observed and substantial justice done"*².

4. "the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property."

The request meets this criterion:

The variance would not result in such change.

5. "the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of §15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A 4 of § 15.2-2286 at the time of the filing of the variance application."

The request meets this criterion:

Special Exceptions from bulk requirements are only supposed to be considered in the context of a special use permit, special exception for use, or conditional rezoning application. However, while a Special Exception is not available the Applicant does have the ability to rezone his property to achieve his development goals.

6. "the strict application of the ordinance would produce undue hardship relating to the property;"

The request does not meet this criterion:

On Exhibit A, the Applicant states that without the requested Variance Building C could be developed as 28 units. With the Variance, Building C would only yield 22 units. Further, the Applicant has sufficient room on the site at 2217 Princess Anne Street (including building additional stories onto Building C) to construct or redevelop his other building into the full amount of residential units permitted by the existing zoning ordinance (34 units). The zoning regulation is not preventing the use of 2217 Princess Anne Street for multifamily units and therefore there is no undue hardship stemming from the zoning.

It is unclear how the Applicant's argument that the 18' width requirement is an undue hardship. Exhibit C and D purport to show that the 14' 6" wide unit requires less structural adjustment than the 18' wide units. The City's Construction Plan Reviewer, Jeff Bragg, reviewed Exhibit C and D and noted that:

"I understand that portions of these existing T-Section concrete floor panels need to be removed to allow access to the proposed 2nd floor of these units. The amount of the floor removed is initially dependent upon what is necessary to provide stairway access with proper head clearances. Depending on where the joints are located in the floor panels, and where the structural webs fall, it is also understandable that more of the floor structure may need to be removed than what is necessary for stairway access to the 2nd floor of each unit.

The one difference I see is that the 18' wide units are shown with a considerable amount of floor structure proposed being removed, as opposed to what is shown being removed in the 14' wide units. Unlike the 14' units, more of these 18' units are shown with a wide open 1st floor plan

² City Code § 72-22.8.D

without interior bearing which would naturally require larger beams to support these floor panels where they are supported. So in part there are definitely existing conditions that dictate the design, but the open floor plan shown in 'Exhibit D' seems to be exacerbating those conditions."

The Applicant has also provided other scenarios (Rejected scheme B-1 and B-2) that would permit the redevelopment of Building C into multifamily units. The reason the Applicant has rejected these scenarios are aesthetic.

City Code § 72-31.5b does not prevent the reasonable use of the property. The site is currently in use as offices. There is ample room on-site and in existing buildings for the Applicant to develop the 34 multifamily units allowed under CH zoning without a variance.

7. "the hardship is not shared generally by other properties in the same zoning district and the same vicinity;

The request does not meet this criterion:

There is no hardship and therefore any variance granted to 2217 Princess Anne Street will also have to be granted to any other property in the CH zoning district. This type of change is supposed to be handled through an amendment to the zoning ordinance itself by the City Council.

8. "the character of the district will not be changed by the granting of the variance."

The request does not meet this criterion:

As discussed, the City's Comprehensive Plan envisions a change for this area from Commercial Highway to a Planned Development Mixed Use. Part of that transition may involve permitting narrower apartments. That type of legislative policy decision is the City Council's to make. The variance process is intended to provide relief when the strict interpretation of the zoning ordinance results in an undue hardship. As demonstrated above the Applicant is not suffering an undue hardship.

CONCLUSION:

This request does not meet 4 of the 8 criteria that must be met in order for a variance to be granted by the Board of Zoning Appeals. It is unclear whether or not the proposal meets a fifth criterion. The requested variance should be denied.

ATTACHMENTS:

1. Application and Supporting Materials