



MEMORANDUM

TO: Chairwoman Helen P. Ross and Board of Zoning Appeals members
FROM: Mike Craig, Zoning Administrator
DATE: February 12, 2016 for the February 22 meeting
RE: General Washington Executive Center, LLC (Owner) requests a variance from City Code section 72-31.5b requiring multi-family units to be a minimum of 18 feet in width in order to develop twelve 14 foot 6 inch units.

ISSUE

Should the BZA approve a variance permitting twelve 14 foot 6 inch wide multi-family units where 18 foot wide units are required at 2217 Princess Anne Street?

RECOMMENDATION

Deny the variance in accordance with the proposed Record of Decision attached to this memo. The application does not meet the statutory definition of a “variance,” and the applicant has not demonstrated a “hardship.” Instead, the request is based on the applicant’s elective design choice for the conversion of an existing office building to multi-family residential use. The applicant may pursue this request through the legislative process.

BACKGROUND

2217 Princess Anne Street, known as the General Washington Executive Center, is a 2.8 acre parcel in the Princess Anne Street corridor that is generally flat and free of sensitive environmental features. The parcel is zoned Commercial Highway (CH) and contains two buildings. The primary building is a four story hotel dating to 1926 now used for offices. The other, called “Building C” by the Applicant, is a two story building located at the north-east corner of the Princess Anne Street and Hunter Street intersection. The building contains medical offices. Building C dates to 1950. The Applicant proposes to redevelop Building C from medical office into multi-family units.

Commercial Highway zoning permits a variety of residential and non-residential uses by-right including multi-family dwelling units. Multi-family development in the CH Zoning District shall conform to R-12 Zoning District dimensional standards in § 72-31.5.B¹ as shown here:

2217 Princess Anne Street (2.8 acres)		
Standard	Multifamily	2217 Princes 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 Corner Lot	Each unit shall maintain a minimum width of 18 feet	Each unit shall maintain a minimum width of 18 feet

¹ City Code § 72-32.4.C(1)

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'

The Applicant has provided several exhibits of alternatives with its application:

Exhibit B-1 shows 28 units that conform to the zoning. A balcony is added on one side of the building in order to provide access to some of the new units. The Applicant states that this concept was rejected because the proposal is “esthetically ugly” and the units would be “harder to rent.”

Exhibit B-2 shows 28 units that conform to the zoning. A central hallway is added to the second story in order to provide access to the new units. The Applicant states that this concept was rejected because it would require modification of the roof support and for “esthetical” reasons.

Exhibit C shows 22 units. Ten units conform to the zoning but 12 of the units do not conform to § 72-31.5.B in that they are 14 foot 6 inches wide. A staircase would be added to each of the narrower apartments so that each unit would be two-story. The addition of the staircase requires removal of a portion of the floor structure between the first and second story of the building. Individual bearing walls and support beams have been added to each apartment unit to carry some of the load of the new floor structure.

Exhibit D shows 20 units. Ten of the units are proposed as 18 foot wide two-story efficiency apartments. A staircase would be added to each unit and would require removal of a portion of the floor structure between the first and second story of the building. The Applicant contends that putting walls at exactly 18 feet requires the removal of more floor area than proposed in Exhibit C. A single beam has been added spanning through all of the apartments in place of the smaller support beams shown in Exhibit C. The single beam permits a more open floor plan than what is shown in Exhibit C, but its height would affect clearance on the stairways, making the stairs longer, and thus would require the removal of some of the building’s existing central support girder.

The Applicant states that requiring the apartments to be 18 feet wide requires “the Applicant to unnecessarily remove key structural supports, materials and improvements”². The Applicant states that this additional cost associated with the modification of the structure constitutes an undue hardship. The Applicant has thus requested a variance from City Code § 72-31.5.B in order to construct 12 of the multi-family units 14 foot 6 inches wide.

² Application for Variance City of Fredericksburg, Virginia. December 28, 2015. Page 2.

VARIANCE ANALYSIS

City Code § 72-22.8 states that in order for a variance to be approved, the BZA must make certain findings in accordance with the Code of Virginia. The Code of Virginia states that the burden of proof is on the Applicant to prove by a preponderance of the evidence that the application meets the definition of a variance found in section § 15.2-2201 and the criteria stipulated in § 15.2-2309:

- a. *§ 15.2-2201 defines a Variance in part as “a reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure...”*

The proposed variance is from a regulation of the width of multi-family units. The Applicant has not met the burden of proof to show that the width requirement affects the shape, size, or area of a lot or parcel of land, or the size, height, area, bulk, or location of a building or structure. The request does not meet the definition of a variance.

- b. *Under Code of Virginia § 15.2-2309.2 the application must meet one of two criteria. The first criteria states that “a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would”:*

- *{1}³ unreasonably restrict the utilization of the property*

Building C is currently used as medical office. Medical office is a reasonable use of the property. The remainder of the property is in office use as permitted by CH zoning.

In addition, the variance application has two exhibits (B-1 and B-2) that show how Building C may be reasonably converted into as many as 28 single story multi-family units. Building C’s footprint is 6% of the size of the entire site and its total floor area is 24% of the total existing building square footage on-site. Under the CH zoning, the site is large enough to permit the development of 34 multi-family units. Redeveloping Building C as 28 multi-family units would mean that 6% of the site or 24% of the existing building square footage on-site could be used as 82% of the permitted multi-family units on-site.

In addition, the Applicant could redevelop Building C into two-story units wider than 18 feet.

In addition, the parcel is not maximized. There is room on the site for building expansion (both vertical and horizontal), the building of new buildings, or the demolition of existing buildings to make room for more new construction.

§ 72-31.5.B does not prevent Building C’s existing reasonable use, nor does it prevent a myriad of additional uses of the property. The Applicant has not shown through a preponderance of the evidence that § 72-31.5.B unreasonably restricts the utilization of the property.

³ {numbers and brackets for clarity}

- **{2}** *that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance... ”:*

Building C was built in 1950. § 72-31.5.B was first adopted as § 78-309.(3) in 1984. The building’s conditions predate the ordinance and, if they create an undue hardship, may be considered as permitting a variance. As such, the Applicant asserts that the structural condition of the property prevents it from complying with the 18 foot minimum required for multi-family dwelling units in the CH Zoning District.

The Applicant’s structural analysis (Exhibits C and D) shows the conversion of one-story office units into two-story multi-family units. The City’s Construction Plan Reviewer, Jeff Bragg, reviewed Exhibits C and D and noted that the structural issues are not caused by the 18 foot wide requirement in the zoning district. The structural issues are created by adding stairwells through the existing floor structure and are exacerbated by the open floor plan shown for each unit in Exhibit D. The conversion of one-story units to two-story units is not mandated by the zoning ordinance but is rather an elective design choice preferred by the Applicant. As stated by the Applicant in Exhibits B-1 and B-2, the Applicant can either build single story units on both floors or a single story of units on the ground floor without puncturing the structure of the building. The structural issues contemplated in Exhibit C and D are created by design choices, not by the zoning ordinance.

In cases including *Martin v. City of Alexandria* and *Packer v. Hornsby* the Virginia Supreme Court has routinely found that design choices do not make a hardship, especially where the project may be built in conformance with the zoning ordinance in another form on a lot⁴.

- c. *In addition to either **{1}** or **{2}**, § 15.2-2309.2 contains a second set of five additional criteria that all must be met in order for the Board of Zoning Appeals approve a Variance request. The criteria are similar to criteria established under the definition of a variance found in § 15.2-2201. Additional definitional criteria from § 15.2-2201 have been included as appropriate.*
 - 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. The buildings on the property were built prior to the adoption of the minimum width for multi-family units that was adopted in 1984.

- 2. *§ 15.2-2309.2 states that, “the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area” and § 15.2-2201 states that, “the character of the district will not be changed by the granting of the variance.”*

This request does not meet this criterion:

The variance would change the type of multifamily dwelling unit permitted in the zoning district, but would not change the bulk or density of buildings on the overall lot. The change would not

⁴ Kamptner, Greg. (2014). *Zoning Law for the Virginia Zoning Official*. 13-10, attached.

create an increase in trip generation or parking demand. The impact narrower units will have on the neighborhood is difficult to determine and should be evaluated in the context of a legislative process.

The Fall Hill Avenue Neighborhood Association has stated that they are against the variance request citing concerns about impacts on public facilities and changes to the character of the neighborhood.

3. *§ 15.2-2309.2 states that, “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” and § 15.2-2201 states that, “the hardship will not be shared generally by other properties;”*

The request does not meet this criterion:

Building C is a sixty-year old two-story office building. The structural conditions of Building C may be unique. However, there are several multi-story structures (office buildings, old hotels, and motels) scattered through the CH Zoning District that will have unique structural conditions as well. Absent a hardship, if a policy is to be implemented making redevelopment of older two-story structures easier than it should be legislated by the City Council through text or zoning map amendments.

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. The request would not meet the criteria necessary for an Administrative Modification (in accordance with § 15.2-2286 A.4) either. However, the relief sought by the applicant is available through a zoning map amendment process, specifically, by an application for PD-MU as envisioned in the 2015 Comprehensive Plan.

CONCLUSION:

The Applicant has not proven through a preponderance of the evidence that the request meets the definition of a variance in the Code of Virginia § 15.2-2201. The request does not meet either of the two sets of criteria found in Code of Virginia § 15.2-2309.2 that must be met in order for a variance to be granted by the Board of Zoning Appeals. The variance request should be denied.

ATTACHMENTS:

1. Proposed Record of Decision
2. Excerpts from *Zoning Law for the Virginia Zoning Official*