

**Zoning Board of Appeals  
May 24, 2023 Regular Meeting**

**STAFF REPORT**

**Subject: ZBA 23-0012; 1601 South State Street**

**Summary:**

Nederveld Engineering is seeking a variance from the definition of Floor Area Ratio (FAR) in Section 5.37.2 of Chapter 55, the Unified Development Code, on behalf of the owner of all lots on the block bounded by South State Street, Henry Street, White Street and Stimson Street. Nederveld has also submitted a site plan application to develop a building that exceeds the ratio of floor area to lot area expressed as a percentage – known as FAR – allowed in the C1A/R zoning district. A variance from the definition of FAR, to exclude floor area used for at-grade parking from the calculation, is necessary to approve the proposed site plan.

**Background:**

The proposed South Town development project includes three petitions for City Council approval following a recommendation by the City Planning Commission. First is a petition to rezone the 1.7-acre block bounded by South State Street, Henry Street, White Street, and Stimpson Street from R4C (Multiple-Family Dwelling) to C1A/R (Campus Business Commercial) With Conditions. Second is a site plan to redevelop this block with a building having two multi-story towers on top of a single-story podium, including ground floor commercial and resident amenity space, 216 dwelling units on upper floors, and a 54-space parking garage within the podium. Third is a street vacation petition to vacate the public alley in the northern half of this block. See the attached May 16, 2023 Planning Staff Report for a full description of each petition.

The 1.7-acre site consists of ten lots having a total of 69,888 square feet. A petition to vacate the public alley in the northern half of the site will increase the site area to 72,148 square feet.

The normal maximum FAR in the C1A/R district is 300%. Based on its total lot area, the South Town site may have up to 216,444 square feet of floor area. An additional 8,000 square feet of floor area is allowed from the pedestrian amenity premium per Section 5.18.6 which this project has earned. Adding the amount of floor area that is 300% of the lot area plus the premium floor area, the South Town site is entitled to a total of 244,444 square feet of floor area. As a percentage of lot area, South Town may have an FAR of 311%.

The proposed development has 246,670 square feet of floor area. Expressed as a percentage of lot area, the proposed development has an FAR of 345%.

If the floor area used for at-grade parking is not included in the FAR calculation, the FAR formula is reduced by 24,278 square feet and the percentage is 308%.

The Unified Development Code regulates development two ways depending on the category of zoning designation. Residential zoning districts are regulated by density.

Density is how many dwelling units are permitted based on the size of the site. Each zoning district requires a minimum amount of lot area per dwelling unit. The size of any one dwelling unit is less important than how many there are in total. Buildings containing the dwelling units have no minimum or maximum standard, but they must fit within the buildable envelope of the lot. The combination of minimum lot area (site size) and minimum lot area per dwelling unit (density) establishes the premise of residential neighborhood character in our city.

Mixed use, and nonresidential and special purpose, zoning districts are regulated by FAR, a measure of how big a development can be. FAR is the ratio of building size to lot size, expressed as a percentage. What the building contains is less important than the overall size of the building. Buildings can include any of the permitted uses of the zoning district in any proportions are within the FAR percentage allowed for that zoning district. The combination of required setbacks, height limits, and FAR standards creates a virtual three-dimensional box for the acceptable mass of development – how much space the built environment may occupy and, therefore, how much must remain unbuilt. No matter how floor area is used, whether for office, dwelling unit units or vehicle parking, all floor area above the ground contributes towards the mass and bulk of a development and how it impacts the built environment.

**Description:**

The definition of FAR (Floor Area Ratio) inherently includes the definitions of Floor and Floor Area. These three terms are defined as:

**Floor**

The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction and top of wood flooring in wood frame construction.

**Floor Area**

The sum of the area, in square feet, of the floor of all stories of a building or structure measured from the exterior faces of the exterior walls separating two buildings, excluding: stairwells (including landings), escalators, elevator shafts, ramps, vertical chases or chutes, and attics in which occupancy is prohibited under Chapter 105 (Housing Code) of City Codes in buildings that contain only residential uses.

**Floor Area Ratio**

The sum of the floor area of all principal buildings and accessory buildings and structures on a lot divided by the lot area expressed as a percentage. When calculating floor area ratio, the following shall be excluded: floor area used for required premium or PUD vehicle parking and required bicycle parking, and floor area used for below grade parking where below grade means more than half of the volume of that story is below the finished grade.

The South Town development has 246,670 square feet of floor area measured from the exterior faces of the exterior walls of all stories. Expressed as a percentage of lot area, the South Town development has an FAR of 345%.

The applicants seek a variance from the definition of Floor Area Ratio provided in Section 5.37.2 to also exclude floor area used for at-grade parking. With a granted variance from the definition of Floor Area Ratio, the 24,278 square feet of floor area used for parking in the 246,670-square foot building will not be included in the FAR calculation. The South Town FAR calculation will use 222,404 square feet of floor area and will result in an official FAR of 308%.

### **Standards for Approval- Variance**

The Zoning Board of Appeals has all the power granted by State law and by Section 5.29.12, Application of the Variance Power from the UDC. The following criteria shall apply:

- (a). ***That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the City.***

Applicant's Response: The property is a continuous front yard boundary along a public right of way as assembled parcels into a full block development. While C1A/R does not have a maximum front yard setback<sup>1</sup>, to best balance the placement of the building according to intended design standards of the UDC, the project team reviewed recommendations of the downtown character massing (Table 5.17-6) and front setback standards (Table 5.17-7) as well as setback standards of similar zoning including TC1 with maximum 10' setback and C1, C1B, C2B, and C3 with maximum 25' setback (Table 5.17-4). The general intent understood in this analysis is to maintain an activated streetwall and limit the extent of setbacks at the front property boundary which is the entirety and peculiarities of the specific project site.

In lieu of seeking a variance to allow front yard parking within the 25' setback (5.19.9A & B3)<sup>2</sup> and in order to maintain an activated streetwall for the project, the parking area is integrated into the interior ground level of the project. To avoid a courtyard of visible parking and improve the non-motorized connections through the site, the project proposes a roof garden as a structural amenity providing sustainable infrastructure to the project not able to be measured against current UDC sustainability components.

The parking is located at the ground level because below grade parking (which would not be included in the FAR calculations (5.37.2, pg. 290) is technically infeasible because of the high water table specifically in the site area.

- (b). ***That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a***

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<sup>1</sup> Incorrect. The C1A/R district requires a minimum front setback of 10 feet.

<sup>2</sup> Parking within a building is not subject to the design standards for parking in Section 5.19. Buildings are subject to the area, height and placement regulations provided in Section 5.17 for the zoning district in which they are located.

***higher financial return, or both.***

Applicant's Response: Failure to grant the variance would result in the removal of the roof garden to the parking area, the vehicular use area would then be an outdoor area, redesigned with required landscaping islands, and further reducing the provided parking. During the community participation meeting there were comments both approving of the amount of parking (less than previously required) and concerns about the minimal amount provided. We believe the development as currently designed has balanced the concerns and benefits with the current parking count. To meet the vehicular use area requirements would reduce the parking to levels more community members would be concerned with. Without the roof garden, the site plan would reduce non-motorized pathways through the site, increase heat-island effect, and limit bioretention pretreatment for stormwater (5.22). The inclusion of the roof garden is an increased financial commitment to the project with an understanding of its improvement to the quality of experience of the site and the sustainable benefits it provides.

- (c). ***That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.***

Applicant's Response: The variance would provide a volume of bioretention as pretreatment to stormwater that would otherwise not be realized in the project. Likewise, the roof garden with access at White Street, Henry Street, and Stimson Street allows pedestrian and non-motorized connections through the site and specifically an extension of the pedestrian amenity plaza along Stimson to additional outdoor space on the roof for public access as provided in the development agreement.

- (d). ***That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.***

Applicant's Response: The variance provides a streetwall interface with activated ground floor for the continuous perimeter of the site understood as the intent of setback and building placement requirements by similar zoning district standards in the UDC. Alternative design analysis to provide a vehicular use area and required landscape screening at the perimeter of the site would increase the average building height along the residentially facing Henry Street to 8 stories instead of distributing density and sloping down to the context of the neighborhood.

- (e). ***A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.***

Applicant's Response: The variance supports the sustainability goals and improved the application to sites with variability in solar access to incorporate

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additional sustainable infrastructure. The variance requests additional exception to vehicular use areas and parking to be excluded from FAR calculations which is consistent with intent to maintain parking conditions with improvements allowed that increase sustainability components of a project. This exclusion towards FAR would not be applicable to building areas beyond parking use, maintaining the FAR requirements of the UDC of enclosed occupiable space.

Respectfully submitted,

*Alexis DiLeo*

**Alexis DiLeo, AICP**  
**City Planner**

Attachment – May 16, 2023 Planning Staff Report (South Town) (1601 S State St)