

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of KB Developers, LLC and Rupp OB, LLC
ANC 2F

2011 OCT 17 AM 10:09
BZA Application No.
Hearing Date:

APPLICANT'S STATEMENT

This is the application of KB Developers, LLC and Rupp OB, LLC (collectively, the "**Applicant**") for variance relief to allow the construction of three row dwellings on three new alley lots. The property that is the subject of this application is 1321-25 Naylor Court, NW (Square 367, Lot 862) (the "**Property**"). A Surveyor's plat is included in Exhibit C. The Property is included in the R-4 Zone District. An excerpt of the Zoning Map is included in Exhibit D.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve variances from the following two sections of the Zoning Regulations:

1. Section 401.3 (minimum lot width and lot area): The required lot width is 18 feet, and the required lot area is 1,800 square feet. Two of the proposed lots have widths of 17 feet and areas of 1,615 square feet. One of the proposed lots has an area of 1,710 square feet and a conforming width of 18 feet.
2. Section 403.2 (lot occupancy): The maximum permitted lot occupancy is 60%. The proposed lot occupancy for each lot is 65%.

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II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Section 3103.2 of the Zoning Regulations (11 DCMR § 3103.2).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Shaw neighborhood of Ward 2. It is rectangular in shape and contains approximately 4,940 square feet of land area. The Property is an alley lot bounded by two alleys in the interior of Square 367 (which is bounded by N, O, 9th, and 10th Streets). The Property is bounded by a 15-foot public alley to the north, a row dwelling to the south, a warehouse to the east, and a 30-foot public alley (Naylor Court) the west. To the north, Naylor Court leads directly to O Street. The alley system for the Square also opens onto 9th and 10th Streets.

The Property is improved with a one-story brick garage constructed in the first decades of the 20th Century. The garage is vacant, and its roof and a portion of its rear wall have collapsed. The Property is included in the Shaw and Blagden Alley / Naylor Court Historic Districts.

The surrounding area is primarily residential in character and is dominated by moderate density two- and three-story townhouses and flats. To the east, 9th Street is characterized by moderate density retail or mixed uses: most of the block between N and O Streets is occupied by row dwellings (some now containing commercial uses) and small commercial buildings. The remaining blocks bounding the Square are residential. Across the two alleys bounding the Property are row dwellings and flats.

IV. THE PROPOSED PROJECT

The proposed project will replace the existing structure with three new three-story row dwellings.¹ Architectural plans are included in Exhibit E. The existing lot will be subdivided into three parallel rectangular lots to accommodate the three row dwellings, each with a detached

¹ At its September 22, 2011 meeting, the Historic Preservation Review Board approved the demolition of the existing structure and approved the proposed project.

accessory garage at the rear. Lot 1 and 2, at the south and center, respectively, each will be 17 feet wide and have an area of 1,615 square feet. Lot 3, at the north, will be 18 feet wide and will have an area of 1,710 square feet. For each lot, the minimum required width is 18 feet and area is 1,800 square feet. Each row house will occupy 65% of its lot (the maximum permitted is 60%). Each house will contain three bedrooms and 4 ½ bathrooms.

Each of the three row dwellings will front on the 30-foot public alley. The front of the three row houses will appear almost as if they were one garage or carriage house structure in order to maintain the historic character of the alley. The third story of the row houses will be set back from the front, which will also help maintain the historic character as well as preserve light and air in the alley. The row houses will have a height of 29.9 feet (30 feet is the maximum permitted).

The detached rear garages will not open directly on to the alley. Instead, automobiles will enter an autocourt from the 15-foot alley at the northern side of the Property. The autocourt will service all three of the rowhouses, and cars will never back onto the alley since they will be able to maneuver in the autocourt.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, this application demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

The Property’s exceptional condition arises from the confluence of its alley location, size, and presence in a historic district. The Property fronts on an alley, but the alley is historically quite wide at 30 feet. For an alley lot and a residential lot, the Property is quite large. Most alley lots in the Property’s vicinity are considerably smaller, and this lot is the largest alley lot in the Square to be used for residential purposes (the larger property to the east is occupied by the District of Columbia archives). The vast majority of the lots in the Square are also smaller than the Property, particularly the lots used for single family residential purposes. The plat in Exhibit F illustrates how the Property is uniquely large when compared to other lots in the Square, and particularly so when compared to other residential lots in the Square. Thus, the Property is unique because it is an unusually large residential alley lot. This lot size makes sense for commercial use but not for single family row dwellings in the R-4 zone.

Further, the Property's zoning history also contributes to its exceptional condition: when the Property was downzoned from commercial to R-4, it resulted in a use that was incongruous with the surrounding residential uses. In addition, if the commercial zoning had remained, most of the proposed project would be matter-of-right.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA's consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: "the severity of the variance(s) requested"; "the weight of the burden of strict compliance"; and "the effect the proposed variance(s) would have on the overall zone plan." Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In this case, complying with the Zoning Requirements with respect to lot width and area, and lot occupancy would create a practical difficulty for the Applicant. This site cannot be converted into a conforming residential use without some sort of BZA relief. The existing structure is not suitable for residential use, and the Property, with 4,940 square feet of land area, is simply too large for single family use, particularly for an alley lot. One single family dwelling on the Property at 60% lot occupancy would contain about 8,892 square feet, which is way out of scale and character for the neighborhood. Thus, some change in density and configuration of the Property are necessary for residential use. That the site has gone undeveloped for so many years despite the robust development all around it is indicative of the fact that a matter-of-right project is not feasible.

Indeed, the fact that a project containing two single family dwellings (approved in BZA Order No. 17485) did not proceed is one indication of the extreme difficulty of a viable project on the site. Furthermore, there is simply no market in this neighborhood for two single family dwellings of the size that would result from complying with the Zoning Regulations. If the site were redeveloped into only two conforming dwellings, then each dwelling would be 4,400+ square feet; this is considerably larger than the row dwellings in the neighborhood that generally contain 1,500 – 2,500 square feet. Simply put, there is no market for 4,400+ square foot houses on an alley in this neighborhood, and the Applicant would not be able to sell them. If the site were developed into three lots as proposed, then each house would be in the compatible range of 1,800 – 2,200 square feet.

The lot occupancy slightly exceeds the matter-of-right limit in order to minimize impacts on the 30-foot alley. The third floor of each house has been set back to minimize visual impact and to minimize any possible impacts on available light and air in the alley. Bay windows were added to the rear of each house in order to accommodate the setback from the front. By pushing this density

to the rear, the lot occupancy increased. Thus, the lot occupancy is slightly higher than matter-of-right, but the impact is no more than if the houses were conforming.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

The requested variance relief would not be detrimental to the public good or the Zone Plan. The proposed residential use is compatible with the neighboring buildings. The Applicant designed the project to be harmonious in scale and design with the adjacent properties, and any impacts from the requested relief would be borne by the residents of the three proposed houses much more so than the neighboring properties.

The proposed project is not overly large and does not impose on neighboring properties. The proposed three single family dwelling scheme would result in density that is suitable for the neighborhood. The amount of required relief is negligible: one foot of width for two of the three lots and less than 200 square feet in area for each of the three lots. The proposed lot occupancy is only slightly larger than the existing building, which has a lot occupancy of 62%.

The requested relief will not adversely impact neighboring properties. The presence of single family dwellings on the proposed lots is commensurate with most of the single family dwellings nearby, and their presence on a wide 30-foot alley would not crowd or overburden the alley or neighboring properties. The proposed lot widths, lot area, and lot occupancy will not contribute to overcrowding or to density uncharacteristic of the neighborhood, and they will not affect available air or light to neighboring properties. The proposed houses are very similar to other nearby single family dwellings in terms of lot size and lot occupancy. The zoning and neighborhood characteristic of moderate density row dwellings result in the site wanting to be developed in a similar manner. In fact, the presence of a new and similar residential use would positively impact the neighboring properties and would be similar in scale, density, and bulk to

neighboring properties. Thus, the proposed project will not be detrimental to the public good or the Zone Plan.

VI. COMMUNITY OUTREACH

The Applicant has already actively engaged the neighbors, the Blagden Alley – Naylor Court Association (“BANCA”), and the affected ANC about the proposed project. The Applicant met with BANCA at their meeting on July 20, 2011. Meeting minutes are attached as Exhibit G. At that meeting, BANCA was enthusiastically supportive of the proposed project.

The BANCA Secretary (and a neighbor of the site), wrote a letter to the Applicant in which he memorialized BANCA’s strong support for the proposed redevelopment of this site, especially since this site has long languished (his letter is attached as Exhibit H). The BANCA letter concluded by stating, “I give you my full support and endorsement for three town houses (3 single family residences) on this property. Most encouraging is the fact that you are so open minded about the project and are already following all of the requisite paths and doors to an attractive and highly successful completion.”

In addition to BANCA, individual neighbors support the proposal for the three townhouses on the site. Greg Melcher, President of BANCA and an owner and resident of property directly across the alley from the site, expressed his strong support for the proposed three-townhouse scheme and stated his understanding of the challenges with developing an alley property (his email is attached as Exhibit I). In fact, as a nearby resident and owner, he supports the proposed density: “The proposed density of these three townhouses is appropriate for what is allowed on a 4750 square foot residential zoned R4 [sic] lot.”

VII. EXHIBITS

EXHIBIT A	Application Form, Self-Certification Form, and Authorization Letters
EXHIBIT B	Statement in Support
EXHIBIT C	Surveyor's Plat
EXHIBIT D	Excerpt of Zoning Map
EXHIBIT E	Architectural Plans and Drawings, including Photos of Property
EXHIBIT F	Plat of Square Illustrating Sizes of Nearby Properties
EXHIBIT G	BANCA July 20, 2011 Meeting Minutes
EXHIBIT H	Support Letter from BANCA Secretary
EXHIBIT I	Support Email from BANCA President
EXHIBIT J	Names and Addresses of all Property Owners within 200 Feet of the Property

VIII. CONCLUSION

Because of the foregoing reasons, the Applicant satisfies the criteria for area variance relief and respectfully requests that the Board approve this application.

Respectfully submitted,
GOULSTON & STORRS, P.C.


John Epting


Cary Kadlecek

Date: October 14, 2011