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MEMORANDUM

TO: District Board of Zoning Adjustment

FROM: Paul Goldstein, Case Manager
Joel Lawson, Associate Director Development Review

DATE: October 9, 2012

SUBJECT: BZA No. 18406 - Request for a use variance to accommodate multi-family residential use in an existing alley building (Square 514, Lots 2214-2216).

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **recommends approval** of the following use variance to validate three residential units in an existing alley building at the rear of 1131 5th Street NW (Square 514, Lots 2214-2216):

- § 2507.1, multi-family residential use of an alley building.

Following the original submission, the Applicant filed a supplemental submission to the record to include the third unit owner as a co-applicant so that all unit owners are now participating in the application. OP now also understands that the two on-site parking spaces located inside the ground floor of the subject building are owned by neighboring property owners from an adjacent street facing residential building (456 M Street NW).¹ OP has asked the Applicant to confirm this point. To date, OP is not aware of any active participation or acknowledgment from the parking space owners should such involvement be needed in the application, although parking is a permitted use on an alley lot.

II. AREA AND SITE DESCRIPTION

Address:	Rear of 1131 5 th Street NW	BOARD OF ZONING ADJUSTMENT District of Columbia
Legal Description:	Square 514, Lots 2214-2216 (hereinafter, the "Property") ²	CASE NO. <u>18406</u> EXHIBIT NO. <u>26</u>
Ward/ANC:	6/6E	
Lot Characteristics:	The Property is irregular in shape and totals 1,993 square feet. The Property borders a 30' wide segment of the Square's alley network. The widest alley path by which the Property connects to a street would occur via a 20' wide segment connecting to M Street to the north.	
Zoning:	DD/R-5-B: DD: Downtown Development Overlay District – the Overlay has no specific bearing on this particular lot or case. R-5-B: Moderate height and density residential use	
Existing Development:	The Property is improved with a two-story alley building containing approximately 3,986 square feet. ³	

¹ OP has reviewed separate deeds for the parking spaces which are identified as lots 2217 and 2218.

² OP notes that the Property also appears to be composed of record lots 48-50 and was at one time referenced as tax lot 827.

³ See Pre-hearing submission dated October 1, 2012, page 3.

Historic District:	Mount Vernon Square Historic District ⁴
Adjacent Properties:	The Property is separated by narrow alley segments to the west and north from the rear lot lines of several residential properties. To the south, the Property directly abuts the northern border of a residential rear yard. To the east, across a 30' wide segment of the alley network, is an alley lot which the Office of Tax and Revenue identifies as an accessory garage.
Surrounding Neighborhood Character:	The south side of Square 514 has multi-family high density development (zoned DD/C-2-C). The west and north sides of the Square are predominately a mix of low to medium single family and multi-family residential uses zoned DD/R-5-B. More generally, development along New York Avenue NW (which runs along the Square's south side) is characterized by a variety of uses at different building scales. New York Avenue also is characterized by more intensive vehicular traffic, particularly at the intersection of I-395 and New York Avenue. The Property is located approximately two blocks east of the Convention Center and its adjoining metro station.

III. PROJECT DESCRIPTION IN BRIEF

Applicants:	Erin Murphy (Unit A), Johanna Sears (Unit B), and Ali Tahriri (Unit C)
Proposal:	The application proposes to legitimize for zoning purposes three existing residential units in an alley building. Historically the building had been used for "warehouse" or "storage" uses.⁵ The application indicates that an apartment building conversion was completed in March 2008. Two of the current owners purchased their units in 2009 and one current owner purchased a unit in 2012. OP understands that at least two of the owners currently live in the units as their principal residence, and that the Office of Tax and Revenue has been taxing the units as residences. However, a June 30, 2010 Zoning Administrator letter alerted unit owners that no building permits had been granted for the residential conversion of the Property and consequently no certificate of Occupancy had been granted. Additionally, the existing multi-family residential use also was not permitted by zoning without relief. Based on past photographs of the site and baist maps, it does not appear that the general volume and footprint of the building was changed during the residential conversion.⁶ As a result, the Applicant has not applied for relief from any dimensional requirements. No new construction is proposed in the application. It also appears that the two interior parking spaces were sold by the developer to neighboring property owners in December 2008.
Relief Sought:	§ 2507.1: the use of an alley lot for multi-family residential dwellings.

⁴ The building is considered a historic resource contributing to the historic district.

⁵ See Pre-hearing submission dated October 1, 2012, page 3 and Exhibit G. See also Applicant's submission dated April 30, Exhibit B.

⁶ It does appear that a roof deck was added, but the Applicant indicates that the deck would have been permitted as a matter of right under zoning.

IV. IMAGES AND MAPS



Aerial view of the subject site (highlighted in blue and identified with arrow)



View of the subject block looking west toward 5th Street NW (Property identified)

V. ZONING REQUIREMENTS

Section 2507.1 provides that “[e]xcept for use as a one-family dwelling, a structure shall not be erected, constructed, converted, altered, remodeled, restored, or repaired for human habitation on an alley lot.” Since the application is for a multi-family residential use in an alley building, a use variance is required. The Property is located on an alley network which accesses surrounding streets via four connections (at 10', 15',

15', and 20' widths).⁷ Finally, since the building is considered a historic resource contributing to the Mount Vernon Historic District, it does not appear that any parking relief is required.⁸

Use Variance Relief (§§ 2507.1)

1. Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?

The Property exhibits a confluence of exceptional conditions. Physically, the site is an irregular shape, bordered by three public alley segments, and occupied with a pre-1958 building. OP estimates that the site is one of only two alley lots in the subject alley. Beyond the site conditions, the project has a peculiar history as is more thoroughly detailed in the Applicant's submissions. A developer converted the building to residential use in 2008 without the necessary zoning permissions and building permits. A plat of condominium was entered with the Recorder of Deeds that same year.⁹ The building has residential layouts, as shown in photographs provided with the Pre-hearing submission, is served by three separate utility meters related to each respective unit, and is taxed by the Office of Tax and Revenue as residential units.¹⁰

The application indicates that the present unit owners are downstream purchasers (two bought units in 2009, one in 2012) who made substantial investments in their acquisitions. The buyers also had title insurance at the time of their purchases.¹¹ DCRA's letter detailing the violation of the zoning and permitting rules was dated June 30, 2010, more than a year after two of the unit purchases occurred. At least two of the current owners use the units as their principal residences. While unauthorized construction does not generally serve as a compelling basis for an exceptional condition determination, the subject case is atypical in the challenging situation encountered by the unit owners.

2. Does the unique or extraordinary conditional impose an exceptional and undue hardship upon the owner of the property?

The exceptional condition does impose an undue hardship upon the owners of the Property. Without relief from zoning, no residential use of the building would be permitted.¹² The range of permitted uses on an alley lot in a DD/R-5-B zone, which include an artist studio, private garage, or church, likely would require a prohibitively expensive building conversion serving no practical purpose for the multiple owners currently using the Property as residences.

3. Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

Relief can be granted without substantial detriment to the public good. The Property already functions as a three unit apartment building and no additional construction is proposed. The application indicates that some neighboring property owners have expressed support for the application and that ANC 2C voted to the support the relief.

⁷ The Zoning Administrator indicated to OP that additional relief (such as §§ 2507.2 or 2507.3) related to the alley width would not be necessary.

⁸ R-5-B zones require 1 parking space per each 2 dwelling units (see § 2101.1); however, historic resources are not required to provide parking for the proposed increase of intensity of use (see § 2120.3).

⁹ See Pre-hearing submission dated October 1, 2012, Exhibit B.

¹⁰ See Pre-hearing submission dated October 1, 2012, page 6 and Exhibits K, L, M and N.

¹¹ See Pre-hearing submission dated October 1, 2012, page 6 and Exhibits P, Q, and R.

¹² Even a single family alley dwelling would likely require use variance relief pursuant to § 2507.2 due to the sub-30' wide alley width of the subject alley.

The relief could be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map. The requested relief would legitimize an existing use in a residential zone which permits multifamily residences (R-5-B).

VI. ANC/COMMUNITY COMMENTS

The application indicates that ANC 2C voted to support the proposal at a September 5, 2012 meeting. To date, OP has not received an official submission from the ANC. Additionally, the application indicates that there are supportive neighbors. To date, OP has not received any submissions from neighboring property owners.

VII. OTHER DISTRICT AGENCIES

DDOT submitted a letter, dated September 27, 2012, expressing no objection to the application. OP anticipates that the Washington DC Fire & EMS Department (FEMS) will file a submission under separate cover.