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August 12, 2013

Via Hand Delivery

Lloyd Jordan, Chairperson
Board of Zoning Adjustment
for the District of Columbia
441 4th Street, N.W., Suite 210S
Washington, DC 20001

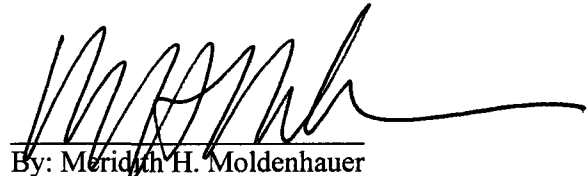
Re: BZA Application No. 18511 of Alleyoop, LLC/1018 Irving Street, NW
Proposed Decision and Order

Dear Chairperson Jordan and Members of the Board:

On behalf of Alleyoop, LLC, enclosed please find the proposed decision and order for the above-referenced zoning application.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meridith H. Moldenhauer

Enclosures:

Cc: Ms. Jennifer Steingasser, Office of Planning (via email)
Mr. Joel Lawson, Office of Planning (via email)
Mr. Paul Goldstein, Office of Planning (via email)
Advisory Neighborhood Commission 1A, c/o Commissioner Thomas Boisvert, Chair (via email)
Mr. Adetokunbo Ladejobi (via email)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18511

EXHIBIT NO. 52

Board of Zoning Adjustment
District of Columbia

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2013 AUG 12 PM 12:15

Application No. 18511 of Alleyoop LLC, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions under §330.4, a variance from the alley lot requirements (§2507), the use requirements exclusively for the office use (§330), and the nonconforming structure requirements (§2001), lot area and width requirements (§401), rear yard requirements (§404), and side yard requirements (§404.1) to allow the Applicant to subdivide an alley lot into three separate lots and convert an existing automotive repair shop to an office use and two artist studios in the R-4 District at premises rear 1018 Irving Street, NW (Square 2851, Lot 837).¹

HEARING DATES: March 5, 2013; April 2, 2013

DECISION DATES: April 30, 2013; July 23, 2013

DECISION AND ORDER

On December 17, 2012, Alleyoop, LLC (the "Applicant"), the owner of 1018 Irving Street NW (the "Property"), filed an application with the Board of Zoning Adjustment (the "Board") for zoning relief. The Board held a public hearing on the application on March 5, 2013. The Board held a second public hearing on the application on April 2, 2013 to allow the Applicant to supplement the record. On the April 30, 2013 decision date, the Board approved a motion to table the decision pending a subsequent submission by the Application. The Applicant renoticed the community in connection with an Amended and Restated Application filed on May 7, 2013. Following public deliberation on July 23, 2013, the Board voted 3-1-0 to approve the application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.1, notice of the hearing was sent to the Applicant, all individuals and entities owning property within 200 feet of the Property, Advisory Neighborhood Commission ("ANC") 1A, and the Office of Planning ("OP"). The Applicant posted placards at the subject property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

The Applicant's Case. The Applicant was represented by Meridith H. Moldenhauer Esq., of Griffin, Murphy, Moldenhauer & Wiggins, LLP. Greg Gardner testified on behalf of the Applicant.

ANC 1A. The Property is located within the area served by ANC 1A, which is automatically a party to this application. ANC 1A filed a letter and resolution, dated January 8, 2013 indicating that ANC 1A, at its regularly scheduled meeting on January 13, 2013, which was properly advertised and where a quorum was present, voted 8-0-2 in support of the application. *See* Exhibit No. 23. Commissioner Kent Boese, on behalf of ANC 1A, testified in support of the application. ANC 1A filed a second letter and resolution, dated July 11, 2013 indicating that

¹ The initial application sought variance relief, pursuant to 11 DCMR §3103.2, from the alley lot requirements (§2507), the use requirements (§330), and the nonconforming structure requirements (§2001) to allow the Applicant to convert an existing automotive repair to a mixed-use office/residential building.

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ANC 1A, at its regularly scheduled meeting on June 13, 2013, which was properly advertised and where a quorum was present, voted 9-0-1 in support of the Revised and Amended application.

Office of Planning (OP) Report. OP submitted a report on February 26, 2013, recommending approval in part and denial in part of the original application. OP submitted a supplemental report on May 14, 2013 recommending approval of the Revised and Amended application.

Party in Opposition. Mr. Adetokunbo Ladejobi, a resident of the property at 3029 11th Street, NW, which abuts the entryway of an alley that leads to the Property, submitted a request for party status. *See* Exhibit No. 27. The Board granted his request for party status to represent himself as an individual in opposition.

FINDINGS OF FACT

Background on Applicant and Property

1. The Property is a large alley lot with approximately 5,901 square feet of land area and a width of roughly 52.7 ft.² The lot is the largest on the Square.
2. The Property is bounded on three sides (east, west, and south) by public alleys.
3. The north side of the Property was historically abutted by a public alley as well. However, that segment of public alley was subsequently deeded to properties abutting Irving Street NW.
4. The existing structure has a footprint of roughly 4,072 square feet occupying 67% of the lot.
5. The remainder of the lot is an open yard at the north end of the Property. The open yard allows for 24.8 feet of separation between the structure and the property to the north fronting on Irving Street NW.
6. The Property consists of a one-story, 18.5 foot tall, automotive repair shop that has been in use since at least 1928 and remained in use and operation until September 2012.
7. The Property is contaminated by oils, solvents and chemicals due to the extended use as an automotive repair shop. Environmental remediation may include excavation and removal of contaminated soil as well as hauling and dumping fees.
8. The roof structure on the Property suffers from substantial fire and water damage. To ensure safety, the entire roof structure, including the cast-in-place concrete roof structure, must be removed.

² The Deed references two lot numbers for purposes of identification. The lots were combined into one lot well before the purchase of the lot by the Applicant.

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9. Following acquisition of the Property, the Applicant discovered extensive unrepaired fire damage covered by ceiling drywall in addition to substantial unanticipated water damage.
10. The Applicant neither knew nor should have known the degree of the environmental contamination and extent of costs associated with proper clean-up at the time of acquisition.
11. The Property is approximately 2½ blocks east of the Columbia Heights Metro Station.
12. The Property is not located within any historic district, and the existing building on the Property is not listed on the D.C. Inventory of Historic Sites.
13. The Applicant's Amended and Restated Application proposed to subdivide the existing alley lot into three separate lots. The lots are labeled as "Lot A," "Lot B," and "Lot C." Each subdivided lot will have a portion of the existing automotive repair structure. Lot A will have an office. Lots B and C will have artist studios.
14. The Applicant will preserve the existing building and the existing footprint will remain the same.
15. The existing height, at 18.5 feet, will be increased slightly to 19.5 feet tall.

Zoning Relief Requested

Rear yard (§404)

16. Subdivision modifies the existing nonconforming rear yard required. An R-4 District requires a 20 foot rear yard.
17. Division of the existing structure into three segments on three different lots does not allow for a compliant rear yard to be provided for any of the three lots.
18. Lots A and B have no rear yard. Lot C has a rear yard of 5 feet.
19. While relief is being requested for the various rear yards of the new lots, the size and orientation of the footprint of the existing structure remains unchanged.

Side Yard (§405)

1. Subdivision also modifies the existing nonconforming side yard required.
2. A side yard is not required in an R-4 District, however if one is provided, it must be 3 in/foot of height but no less than 8 feet.
3. Lots A and B have 24.8 foot side yards. Lot C has a nonconforming side yard.
4. Thus, side yard relief is required for Lot C.
5. Again, while relief is being requested for the side yard of Lot C, the size and orientation of the footprint of the existing structure remains unchanged.

Office Use on an Alley Lot in the R-4 District (§330.4)

6. While the amount of commercial space is being substantially reduced, and a less intensive use is taking its place, use variance relief is required from §330.4 to allow office use on Lot A in the R-4 District.
7. Lots B and C will be used as artist studios, a permitted use as a matter of right on alley lots under §2507.5.

Lot Occupancy (§403.2)

8. The maximum lot occupancy permitted for office and artist studios, grouped into “all other structures” under §403.2, is 40%.
9. After subdivision, Lot A occupies 57% of the lot, Lot B is at 67% lot occupancy, and Lot C is at 85% lot occupancy. Each new lot requires lot occupancy relief.
10. While the new lot lines change the lot occupancy on each lot, the footprint of the existing structure will remain unchanged.

Lot Area and Lot Width (§401)

11. Subdivision also requires lot area and lot width relief.
12. While row dwellings and flats require only 1800 square feet and 18 feet in width, the office and artist use are again grouped into the “all other structures” under 401.3, which requires 4000 square feet of lot area and 40 feet in lot width.
13. Lot A is 2301 square feet and Lots B and C are 1800 square feet.
14. Thus, all 3 require lot area relief.
15. Lot C, at 35.6 feet wide, also requires lot width relief.

Alley Lot Requirements (§2507) and Nonconforming Structure requirements (§2001.3) regarding Height

16. Area variance relief is required regarding the height permitted on an alley lot.
17. Under 2001.3, an addition to an existing nonconforming structure may neither increase nor extend any existing, nonconforming aspect of the structure.
18. Under §2507.4, the height of an alley structure may not be greater than the distance from the opposite side of the abutting alley to the outside wall of the structure nearest the alley.
19. When all three alleys are considered, the most restrictive allows for a height of 12.4 feet.
20. The automotive repair shop has an existing height of 18.5 feet.

21. The revised proposal increases the height, as measured to the top of the finished ceiling, by 1 foot and thus variance relief is required.

CONCLUSIONS OF LAW

Exceptional Circumstance

1. The Board, agreeing with the Office of Planning, concludes that based on a confluence of factors an exceptional circumstance exists at the Property.
2. At 5,901 square feet, the Property is unusually large. The Property is roughly 3 times larger than some of the bigger lots and 8½ times larger than the lots in the southeast corner of the Square.
3. Moreover, the lot is an irregular octagon shape. The existing structure follows the awkward shape of the lot creating a bay and many angular walls.
4. The Applicant has presented substantive evidence proving the exceptional existing physically deteriorated condition of the Property and necessity for substantial renovation.
5. The Property is environmentally contaminated resulting in potential clean-up costs and a significant risk of future liability.
6. The Property is surrounded by a network of public alleys.

Practical Difficulty and Undue Hardship

Office Use on an Alley Lot in the R-4 District with Respect to Lot A (§330.4)

1. The unique history of the building, operated as a nonconforming automotive repair shop since well before 1958, and the substantial remediation and renovation costs justify the use variance for the office use.
2. Furthermore, it is neither prudent nor marketable to have residential use on the ground floor due the environmental conditions at the Property.
3. Utilization of the Lot A in its current condition for the any of the permitted matter-of-right uses is not financially feasible.
4. The same is true of the parking and storage uses permitted only by special exception.
5. By subdividing the lot into three separate lots, and utilizing Lots B and C for matter-of-right artist studio use, the Applicant has greatly reduced the use variance relief being requested. The office and artist studio uses are far more suitable for the R-4 District than the existing automotive repair use.
6. Therefore, strict application of the use provision in an R-4 District preventing office use on Lot A would impose an undue hardship on the Applicant.

Lot Occupancy (§403.2); Lot Area and Lot Width (§401); Rear yard (§404); and Side Yard (§405) Relief

7. The lot occupancy, lot area, lot width, rear yard, and side yard requirements cannot be met without wasteful demolition of the existing nonconforming structure on the lot.
8. Subdivision into three separate lots brings the existing lot into conformity with the remainder of the Square. However, regardless of how the lots are subdivided, a similar combination of relief would be required.
9. The footprint of the structure on the lot will remain unchanged.
10. Due to the existing structure on the lot, strict application of the lot occupancy, lot area, lot width, rear yard, and side yard requirements would prevent subdivision of the Property into lots of more appropriate size.

Alley Lot Requirements (§2507) and Nonconforming Structure requirements (§2001.3) regarding Height

11. The existing structure is 18.5 feet tall which is an existing nonconformity. The revised proposal increases the height, as measured to the top of the finished ceiling, by 1 foot and thus variance relief is required.
12. The existing one-story structure, at 18.5 square feet, must be divided into two stories to reduce first floor use and limit exposure to the environmental conditions at the site. Furthermore, an office or matter-of-right use such as an artist studio occupying a single 18.5 foot tall space would be inefficient and present marketing difficulties. Division into two stories allows for a more conventional layout in the spaces.
13. Above the ceiling height is a roof peak and 2'-9" parapet. The roof peaks, sloping in two directions, which is necessary for proper stormwater management. Due to the large site and lack of existing stormwater sewer system, the Applicant has sloped the roof to direct as much runoff as possible to the side yard to be piped into drywells and catch basins. The sloped roof also allows for a small attic space to house the HVAC air handling unit and ductwork trunk lines.
14. The repair and 1 foot addition is pulled back from the property line on the southern end to allow for light and air on neighboring properties. The existing structure is in poor condition due to a damaged roof structure, deteriorating exterior walls, water damage, and fire damage. The capacity of the existing masonry walls to support the roof structure, which must be replaced, has been compromised. Setbacks are inefficient from a construction and waterproofing perspective. The Applicant contemplated setbacks on the second story but any additional setbacks require additional interior columns, which makes achieving a proper interior parking layout difficult.
15. The parapet allows for the rooftop mechanical equipment to be hidden by a small architectural embellishment. Additionally, in order to create quality art studios, large

windows are necessary on the second floor. These windows reach all the way to the ceiling and the parapet adds a proportionate scale to the significantly masonry building.

No Substantial Detriment to the Public Good or Zone Plan

16. There will be no substantial detriment to the public good or impairment to the intent, purpose, and integrity of the zone plan by approving the zoning relief.
17. Section 13(b)(d) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Code § 1-309.10(d)(A)), requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. In this case, ANC 1A recommended approval of the requested relief subject to the conditions enumerated herein. *See Exhibit 23.* The Board accords the ANC recommendation the great weight to which it is entitled and concurs in its recommendation.
18. The requested variance is in furtherance of the public good and zoning regulations. The zoning relief will permit renovation of a dilapidated automotive repair shop. An automotive repair shop, which relies upon a significant number of unscheduled daily visitors and the use of combustible chemicals and solvents, is incompatible with a residential district.
19. The Applicant is expending considerable resources to resolve environmental and health related hazards at the Property as a result of the prior use.
20. The office use proposed by the applicant is far more in keeping with the intent of the R-4 District and the artist studios are permitted as a matter of right.
21. The Applicant has carefully considered waste management, pedestrian crossing, and safety in the alley.
22. The 1 foot addition is consistent architecturally with the surrounding neighborhood and provides the requisite light and air necessary. Furthermore, as testified to at the hearing, all rear yards on the block are required to have 20 foot rear yards and the alley lot is surrounded on three sides by public alleys. Thus, the new proposed height will have a limited impact on the light and air of neighboring property owners.
23. The Office of Planning has indicated a clear goal that alley lots, once dirty and crime-ridden, are now a key component to the District's planning efforts. *See Alleys: DC's Other Streets Are Attracting Attention*, Exhibit M of Applicant's Supplemental Submission (Exhibit 34). The Applicant's proposal will enhance and improve the underutilized alley and existing structure.
24. Moreover, residents that live in the immediate area have proffered 10 letters in support of this application. *See Exhibit No. 37 and Additional Neighbor Letters of Support, Exhibit N of Applicant's Supplemental Submission (Exhibit 34).*

CONCLUSION

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proof variance relief pursuant to 11 DCMR § 3103.2 from the alley lot requirements (§2507), the use requirements exclusively for the office use (§330), and the nonconforming structure requirements (§2001), lot area and width requirements (§401), rear yard requirements (§404), and side yard requirements (§405) to allow the Applicant to subdivide an alley lot into three separate lots and convert an existing automotive repair shop to an office use and two artist studios in the R-4 District at premises rear 1018 Irving Street, NW (Square 2851, Lot 837).

Accordingly, it is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Implement a trash pick-up restriction plan;
2. Install appropriate no parking signs;
3. Install 3-5 long term bike spaces within the proposed garage;
4. Install DDOT approved pedestrian markings on the existing paved surface in the alley;
and
5. Upgrade the existing alley.

VOTE: 3-1-0 (Lloyd J. Jordan, Jeffrey L. Hinkle, Marcie Cohen to Approve; Kathryn Allen to Deny; 1 seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____

SARA BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6. PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR

GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on _____, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, or delivered by electronic mail in the case of those ANC's and SMD's that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: _____

SARA BARDIN
DIRECTOR, OFFICE OF ZONING