

BZA APPLICATION NO 18533
APPLICANT'S REBUTTAL AND CLOSING STATEMENT

Rear yard--The Applicant has provided evidence and testimony to demonstrate that rear yard variance relief is not required in this instance. Addressing the Office of Planning's interpretation of how the rear yard is to be measured, a plain reading of the definition of "yard, rear" in Section 199 indicates that the rear yard is the "yard between the rear line of a building and the rear lot line, except as provided elsewhere in this title." The second sentence of the definition then states that the rear yard "shall be for the full width of the lot and shall be unoccupied." The only reasonable way that these two sentences can be interpreted is that the area of the lot behind the rear line of the building shall be unoccupied for the full width of the lot at that point on the lot. The minimum depth of rear yard is then measured between the rear line of the building and the rear lot line.

There is only one rear lot line for a lot, as previously confirmed by the Office of the Zoning Administrator (Exhibit H-1 to the Statement of the Applicant, Ex. 26). Nowhere in the Zoning Regulations is the rear lot line referred to in the plural (i.e., "rear lot lines"). Under OP's interpretation, the rear line of the building would need to be set back from all three of the lot lines along the northeast side of the lot (the 70 ft. line, the 18 ft. line, and the 72 ft. line, as described at the public hearing, and as shown on the subdivision plat at Tab D of the Statement of the Applicant (Ex. 26) and the building plans for the project), and run in a continuous plane from Lanier Place to the public alley. This requirement would be plainly inconsistent with the language of the regulations and the prior rulings by the Zoning Administrator's Office. The Applicant has provided precedent from five previous Zoning Administrators who have interpreted the definition of "yard, rear" to allow building configurations with rear yard locations and methods of measurement in the same way that the Applicant has proposed in this case. OP has provided none.

The Zoning Administrator's application of the test applied by the Board in the Mt. Pleasant Library appeal to determine the location of the rear yard would not produce a reasonable result under the specific facts of this case, as explained more fully in paragraph 1 a of the Applicant's letter to the Board dated April 24, 2013. The Applicant believes that its interpretation of the location of the required rear yard produces a reasonable result under the facts of this case, and requests the Board to so determine. "Indeed, it is the Board, and not the Zoning Administrator, which has the final administrative authority to interpret the Zoning Regulations." Application No. 17459 of DC Hampton LLC, *quoting Murray v. DC Board of Zoning Adjustment*, 572 A.2d 1055, 1058 (DC 1990).

Accordingly, the Applicant respectfully requests that the Board approve the application with the rear yard as shown in the Applicant's plans. Alternatively, if the Board disagrees with the Applicant, the Applicant respectfully requests that the Board grant rear yard variance relief in this case to allow the building to be constructed as proposed.

Parking in vault space beyond Building Restriction Line--The Applicant has proposed to provide 24 parking spaces within the property line in the garage. Eighteen of those spaces will be provided for the 36 residential units, in conformance with the Zoning Regulations, and six of

those spaces will be provided for the retail tenants. The garage will be secured, and will not be available for public parking.

Seven of the parking spaces are beyond the Building Restriction Line. Although these spaces are located on the Applicant's property, the existence of the Building Restriction Line subjects this below-grade space to the jurisdiction of DDOT, and this space is considered as vault space. The Zoning Administrator has advised the Applicant and the Office of Planning that the originally-requested variance from Section 2116.4(a), which prohibits parking spaces between a Building Restriction Line and a lot line abutting a street, does not apply to below-grade garage spaces, but instead only to parking spaces that are at or above grade.

DDOT's written report states "the position of DDOT that parking vaults in public space or in the building restriction line should not be allowed." DDOT also testified at the public hearing that they would not approve this vault space at the permit application stage of this project. This testimony is directly counter to DDOT's own published policy and relevant sections of the DC Municipal Regulations. DDOT advises at page 6 of their report in this case that "the DDOT Public Realm Design Manual will serve as the main public realm reference for the Applicant." Relevant portions of the Public Realm Design Manual, jointly issued by the Directors of DDOT and OP, are attached hereto. According to Sections 5.4.2 and 5.4.2.1 of the Public Realm Design Manual, "automobile parking" is a "common type of use" and one of the "Acceptable Uses" of vault spaces. Automobile parking is also specifically permitted in vaults pursuant to the Building Code, 12A DCMR Section 3202.9.2.3, and the Public Space and Safety Regulations, 24 DCMR, Section 215.4. Relevant portions of both of these regulations are also attached. The Public Space and Safety Regulations were duly adopted pursuant to the administrative rulemaking process in the DC Administrative Procedures Act (DCAPA). The Building Code was also duly adopted pursuant to the DCAPA administrative rulemaking process, and in addition was approved by the Council of the District of Columbia in Resolution 17-877 on December 2, 2008. DDOT's testimony on this issue in this case is counter to the DDOT's Director's published position and the District of Columbia Municipal Regulations. The Applicant will address this issue further with DDOT at the permit application stage.

DDOT has also testified that the plan provides too much parking. In cross-examination, DDOT stated that they would not be opposed to a reduction in the number of on-site parking spaces to 19, with the assumption that if the vault is not available for parking, the Applicant could reconfigure the parking spaces within the garage to accommodate 19 parking spaces. In response and rebuttal to this DDOT testimony, the Applicant's expert transportation planning witness has expressed her opinion (attached hereto) concurring with stated position of DDOT (the city's own expert) that 19 on-site parking spaces would be adequate for this project. Eighteen of the spaces will continue to be available for the 36 residential units, and one retail space will be provided. The Applicant also notes that in a recent case before this Board for a similar, but much larger mixed-use retail and residential development within three blocks at 1700 Columbia Road, N.W. (Application No. 18506), the Board granted parking variance approval that resulted in no parking for the retail portion of the project. The Board's Order is not yet available.

Accordingly, the Applicant respectfully requests that the Board approve the 24-space parking plan as submitted by the Applicant, with the condition that if the parking spaces beyond the

building restriction line must be removed per DDOT, the parking spaces in the garage can be reconfigured, provided that at least 19 parking spaces are included on site in the garage

Roof Structure Special Exception

The record reflects that no concern has been expressed regarding the requested roof structure special exception relief. The relief will allow the Applicant to construct less mass on the roof than what is otherwise required by the Zoning Regulations, and to set the elevator and stair #1 away from the Lanier Place frontage. Accordingly, the Applicant respectfully requests that the Board approve the application with the roof structures as shown on the plans.



Public Realm Design Manual

A Summary of District of Columbia Regulations
and Specifications for the Design of Public Space Elements



Government of the District of Columbia
Vincent C. Gray, Mayor

Dear Neighbor,

Majestic views of national monuments, leafy residential streets, and wide sidewalks in commercial areas... these are iconic images of Washington, DC. Much of the daily routine of District residents, workers, and visitors takes place in settings like these. This is where we walk to school, wait for the bus, talk to neighbors, walk the dog, window shop, or sit outside in a café to drink a cup of coffee. Having such an extensive network of public space enhances the quality of life for our residents and visitors, and ensures that the city has the foundation to become a more walkable and sustainable city.

The District's public space is a valuable asset worthy of our stewardship and - with the help of all residents and property owners - is one of the unique features that makes our city great. The Guide to the District of Columbia's Public Space Regulations is a resource for learning about the importance of the District's public space, the regulations that guide its use and form, and the rationale behind them. Property owners are required to maintain the public space adjacent to their property, so it is important that these ideas are understood clearly.

Beginning with the L'Enfant Plan and continuing to today, Washington, DC has a notable history of using public space to define the city and give character and grace to neighborhoods. From inspirational views of the Capitol along leafy avenues to neighborhood networks of small green spaces, parks, schoolyards and recreation centers, to commercial boulevards with sidewalk cafes and street festivals - these defining characteristics of our public space are not the result of happenstance. Rather, it is the result of thoughtful planning, regulation and long-standing traditions of enhancing the public right-of-way. Today, the District Department of Transportation reviews approximately 6,000 public space permits annually to ensure that the interest of the public is protected.

Public space contributes to the quality of life for everyone. It can only be maintained and enhanced with the help of all residents and property owners. Together we can maintain and improve this beloved public resource in a way that is environmentally responsible and that contributes to our everyday lives.

Sincerely,



Harriet Tregoning, Director
DC Office of Planning



Terry Bellamy, Acting Director
DC Department of Transportation

TABLE OF CONTENTS

INTRODUCTION

- 1-1 1 1 The Importance of Public Space
- 1-2 1 2 How to Use This Guide
- 1-4 1 3 The Public Space Committee
- 1-6 1 4 Important Definitions

ROADWAYS

- 2-1 2 1 Overview
- 2-2 2 2 Policies And Regulations
- 2-3 2 3 Streets
 - 2-3 2 3 1 Alignment Of New Public Streets
 - 2-3 2 3 2 Right-Of-Way Width
 - 2-3 2 3 3 Minor Streets
 - 2-5 2 3 4 Standard Roadway Elements
- 2-7 2 4 Curbs and Gutters
 - 2 7 2 4 1 Standard Curbs
 - 2-7 2 4 2 Standard Gutters
 - 2-7 2 4 3 Federal Aid Streets, Historic Districts, And Special Districts
- 2-9 2 4 4 Radius Standards For Driveways and Alleys
- 2-10 2 5 Medians
- 2-10 2 5 2 Width And Material Requirement

SIDEWALKS

- 3-1 3 1 Overview
- 3-2 3 2 Policies
- 3-3 3 3 Sidewalk Design Standards
 - 3-3 3 3 1 Sidewalk Width
 - 3-4 3 3 2 Grades And Slopes
 - 3-6 3 3 3 Materials
- 3-8 3 4 Driveways
 - 3-8 4 4 1 Width
 - 3-9 3 4 2 Location
 - 3-9 3 4 3 Design
 - 3-9 3 4 4 Number Of Driveways For Businesses
 - 3-9 3 4 5 Circular Driveways
 - 3-9 3 4 6 Grading
 - 3-10 3 4 7 Downtown Streetscape Driveway Regulation
- 3-11 3 5 Sidewalk Cafes
 - 3-11 3 5 1 Furnishing And Fixtures
 - 3-12 3 5 2 Clear Sidewalk Space And Location
 - 3-13 3 5 3 Food And Serving Standards
 - 3-13 3 5 4 Additional Regulations For Enclosed Sidewalk Cafes
 - 3-14 3 5 5 Seating Capacity

- 3-15 3 5 6 Additional Regulations For Unenclosed Sidewalk Cafes
- 3-16 3 6 Street Trees
 - 3-16 3 6 1 Street Tree Spacing And Placement
 - 3-18 3 6 2 Tree Species Selection
 - 3-19 3 6 3 Treatment Of Tree Box Area
 - 3-20 3 6 4 Tree Box Beautification
- 3-23 3 7 Bike Racks
 - 3-23 3 7 1 Placement
 - 3-24 3 7 2 Design
 - 3-24 3 7 3 Installation
 - 3-24 3 7 4 Technical Consultation

LANDSCAPING AND THE PUBLIC PARKING AREA

- 4-1 4 1 Overview
- 4-3 4 2 Policies
- 4-4 4 3 Maintenance Responsibility
- 4-4 4 4 Public Parking
- 4-6 4 5 Fences
 - 4-6 4 5 1 Material and Height
 - 4-7 4 5 2 Location and Placement
- 4-8 4 6 Retaining Walls And Grading
 - 4-8 4 6 1 Maintenance
 - 4-8 4 6 2 Retaining Walls
 - 4-8 4 6 3 Grading

BUILDING PROJECTIONS

- 5-1 5 1 Overview
- 5-1 5 2 Policies
- 5-1 5 3 General Regulations
- 5-4 5 4 Subsurface Projections
 - 5-4 5 4 1 Areaways
 - 5-6 5 4 2 Vaults
 - 5-6 5 4 2 1 Uses
 - 5-6 5 4 2 2 Placement and Covers
- 5-8 5 5 Above Ground Projections
 - 5-8 5 5 1 Balconies
 - 5-8 5 5 2 Bay Windows, Towers, Oriels, and Colonnades
 - 5-10 5 5 3 Porches
 - 5-11 5 5 4 Steps And Ramps
 - 5-12 5 5 5 Permanent Doors And Windows
 - 5-12 5 5 6 Awnings
 - 5-13 5 5 7 Canopies
 - 5-14 5 5 8 Marquees

APPENDIX A

5.4.2 VAULTS

Vaults are below grade projections that are covered at the top. Common types are used as parking garages or to house electrical transformers.

Vault permit applications shall include a site plan showing the location and dimensions of the vault, all openings, and its depth. The applicant shall also record with the Recorder of Deeds a written agreement signed by the owner of the abutting property contracting to release and relinquish the vault space, and to remove, free of expense to the District of Columbia, all structural parts of the vault when so ordered by a code official (12-3202.9.2.1).

The size and extent of vaults shall be decided on a case-by-case basis. Vaults shall not extend within 2.5 feet of the center of an alley (12-3202.9.2.2).

5.4.2.1 USES

The following are acceptable and unacceptable uses of vaults (DCMR 12A-3202.9.2.3 and 24-215.4):

Acceptable Uses

Storage of readily movable personal property and equipment
Sales/office space
Fuel oil tanks
Automobile parking
Ducts, pipes, wiring, fans, ducted air shafts, and similar items that are removable

Unacceptable Uses

Public entrances to basements
Exit corridors (unless there are open stairs in areaways)
Housing of boilers, plumbing fixtures, or flammable gases like propane
Mechanical appliances
Equipment that cannot be moved in 24 hours

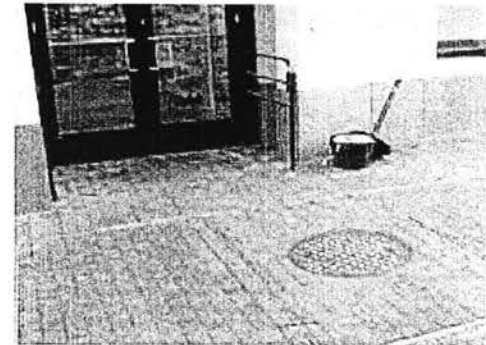
Note: Other uses not specifically forbidden by law or regulation may be approved by the Director of the Department of Transportation if the Director finds it is in the public interest to do so (DCMR 24-215.4).

5.4.2.2 PLACEMENT AND COVERS

Placement

Vaults shall be located on private property whenever possible. If, for some compelling reason, a vault may not be located on private property a permit for placing a vault in public space may be granted if:

1. The vault is located adjacent to ground floor retail in a commercial building and has a solid cover that is flush with the surrounding surface and matches the adjacent paving material.



Vaults located in the pedestrian pathway should have solid covers that match the adjacent sidewalk.



Vaults with grated tops are preferably located in alleys.

215 VAULTS: GENERAL PROVISIONS

- 215 1 No excavation or structural work of any kind, including abandonment, shall be done on a vault without a permit, nor shall any vault remain in public space unless authorized by a valid permit issued to the owner
- 215 2 Vaults constructed on or after July 1, 1969, are subject to the provisions of the Act, and shall be subject to all applicable portions of all regulations of the District
- 215 3 When, in accordance with § 306 of the Act, the Director of Consumer and Regulatory Affairs serves a notice upon an owner informing him or her that the vault is unsafe, the owner shall immediately, upon obtaining the proper permit, make repairs or abandonment in accordance with the specifications of the Department of Consumer and Regulatory Affairs. Repairs or abandonment shall be completed within the time stated in the Director's notice
- 215 4 Vaults shall not be used for any purpose prohibited by the Building Code (12 DCMR). Vaults may be used for storage of readily movable personal property, as sales or office space, for the storage of fuel, or for the parking of motor vehicles. Other uses not specifically forbidden by law or regulation may be approved by the Director if the Director finds it is in the public interest to do so. ✓
- 215 5 Any person who violates any provision of §§ 215 through 219 of this chapter shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment for not more than ten (10) days for each and every day the violation continues

SOURCE Article 43, §§ 4(a), (c)(1), (f), (i), & (5) of the Police Regulations (May 1981)

3202.9.2.2 Size and openings. Vault design shall comply with the following:

1. Approval of the size and extent of vaults, and of the number and size of vault openings, shall be a matter of special determination in each case by the code official.
2. Vaults extending under alleys shall have no openings in the alley pavement, and shall not extend within 2 5 feet (762 mm) of the center of the alley.

3202.9.2.3 Use of vault space. The use of the vault space shall be subject to the following conditions:

1. The code official is authorized to approve transformer vaults exclusively to house utility equipment. Storage in such vaults shall be prohibited.
2. Vaults in business districts shall not be used for the following purposes. public entrances to basements; means of egress corridors; housing of boilers; housing of plumbing fixtures; housing of storage tanks for propane or other flammable gas; or the housing of mechanical appliances or any equipment not removable within 24 hours.
3. Vaults shall be allowed to be used for the following purposes: access to open areaway stairs; storage of readily movable personal property and equipment; sales or office space, housing of fuel oil storage tanks; parking of motor vehicles; installation of ducts, pipes or wiring, location of ducted air shafts, housing of fans; and housing of similar items which can be removed or relocated if vault space is removed.
4. Fuel oil filling pipes, in vaults in business districts, shall be extended to within 18 inches (457 mm) of the curb line when physically possible. Such pipes shall terminate in filling boxes of approved design. A separate permit shall be required for such filling pipes and filling boxes.
5. If openings in the roofs of vaults are used for sidewalk elevators or for runways, they shall be located as near to the curb as possible and shall be equipped with heavy metal safety doors and frames.
6. The code official is authorized to approve other uses not forbidden by law, code, or regulation.



WELLS + ASSOCIATES

MEMORANDUM

TO: The District of Columbia Board of Zoning Adjustment

FROM: Jami L. Milanovich, P E

DATE: April 23, 2013

RE: Board of Zoning Adjustment (BZA) Case No 18533 (1827 Adams Mill Road, NW)

The Applicant's parking plan would provide 24 vehicle parking spaces (18 for residential use and 6 for retail use). Seven of those parking spaces would be located beyond the Building Restriction Line (as allowed in accordance with the District Department of Transportation's (DDOT's) Public Realm Design Manual).

Based on DDOT's testimony at the April 9th hearing and based on DDOT's report dated April 2, 2013, which indicated that "parking vaults in public space or the building restriction area should not be allowed," the Applicant studied this to determine the impact on parking supply for the project. With the elimination of parking within the vault, the Applicant would provide a minimum of 19 vehicle parking spaces.

Wells + Associates has evaluated this reduction in parking and has determined that the loss of up to five additional parking spaces would not result in an undue burden on the adjacent street system for the following reasons:

1. The subject site is located amidst a multi-modal network that provides seven bus routes, a Metro station within a 12-minute walk of the site, Zipcar facilities, and a nearby Capital Bikeshare station. Additionally, Mr. Jamie Henson provided testimony on behalf of DDOT at the BZA Hearing on April 9, 2013 that indicated "bicycles and bikeshare, in particular, are very highly utilized in this area."
2. The proposed development would provide bicycle parking in excess of that required by District law (20 spaces as opposed to 18 spaces) and will provide additional bicycle parking in public space for retail patrons (the number and location to be determined in consultation with DDOT during the Public Space Permit process).
3. Although a variance is not needed for the residential component, the Applicant will provide a Transportation Demand Management Plan that fulfills the requests of both DDOT and the Advisory Neighborhood Commission (ANC). Specifically, the Applicant will provide either a \$75.00 SmartTrip Card, or \$75 toward a one-year membership in either a Bikeshare or Carshare service to each new resident, and
4. The peak parking demand for retail uses is projected to be just 10 parking spaces. At a minimum, one space (and up to six spaces) would be designated on site for retail employees. Other retail employees who drive would likely use nearby, off-street public parking facilities due to the time-restricted on-street parking (Ward 1 Excepted) located near the site.

We also note that in Mr. Henson's testimony he indicated that DDOT "absolutely would not be opposed" and "would have no problem" with 19 parking spaces for the project.

In conclusion, if DDOT does not allow parking in the area beyond the Building Restriction Line, we do not believe that a reduction of an additional five parking spaces will cause an undue impact to the surrounding street system. Additionally, as noted by Mr. Henson at the April 9th hearing, the Mayor has set a goal of achieving a 75 percent non-auto mode share for the City. According to DDOT, reductions in parking help achieve this goal.

We trust that this memorandum provides you with sufficient information regarding the traffic impacts of the proposed redevelopment of 1827 Adams Mill Road, NW. Should you require any additional information, please do not hesitate to contact Jami Milanovich at (202) 556-1113 or jmilanovich@mjwells.com.