

Thursday, May 15, 2014

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Dear Chairman Jordan and Members of the Board of Zoning Adjustment

2014 MAY 16 PM 12:19

I am writing my fourth letter in opposition for the project in question (BZA case #18638, Rosebusch LLC and Gregg M. Busch). I am a resident of the building across the back alley from the proposed structure, at 1515 15th St NW, #430. I feel compelled, as the record to the case remains open, to submit further written testimony to summarize my previous concerns as well as point out how the applicants have continued to fall short in providing the required proof and justification to allow for the variance for parking.

I believe that approval of this plan by the BZA, with its inadequate supporting documentation and disregard for the zoning code and impact to the neighborhood, will create a significant bad precedent by opening the doors for other developers looking to build similar structures without regard to parking restrictions. It will put a tremendous burden on private citizens and neighborhoods, who will have little or no recourse to object to outlandishly large structures for the lots they will occupy, as an important tool for moderating size and density will be lost.

This case has been exceptionally frustrating to me, as it would seem clear that there should be very little to support the number variances and special exceptions that were needed by the developer to build the structure they originally proposed. Even though the applicants have made minor adjustments to reduce the number of variances and exceptions they were originally asking for, the parking variance is so fundamental to the size and nature of the building, that it's obvious that a major variance from existing code is the only way that this structure can be built.

This is why we have a zoning code – to provide assurance to private citizens that there is consistency and uniformity to what can and cannot be built within a particular zone. It reassures buyers that when they purchase a home, they can be assured that whatever re-development may lawfully occur nearby, it will comply with certain restrictions and comport to neighborhood norms. Indeed, it is also one of the reasons why we have a Board of Zoning Adjustment in recognition that while there should be exceptions and variances to a rigid zoning code, it should be a high burden on the applicant to show why there should be relief, and that it should take convincing multiple Board members with significant experience in zoning and urban planning to meet that high bar.

The record in this case shows little to support the high burden that the applicants are required to prove. In fact, much of what the applicants' attorneys have submitted is assertions, without any proof to back them up.

Furthermore, in the applicant's letter of April 11, 2014, requesting the Board to reopen the record and allow the applicants to file supplemental information, the applicants didn't even submit what they promised they would to convince the Board that they deserved relief.

Per the letter, they were going to provide documents to prove or explain

- Whether the number of units, which would eliminate or reduce the need for a variance, is practical or feasible
- Whether there are other viable alternative designs or uses for the property that would fall within the Regulations,
- Provide economic information to support practical difficulty, and
- Provide evidence to demonstrate whether the proposed development would have adverse impacts on traffic and parking

Case # 18638

Paul M. Mesterhazy letter in opposition

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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18638
EXHIBIT NO. 62

Board of Zoning Adjustment
District of Columbia
CASE NO. 18638
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It is my understanding that according to section 3113.8 of the zoning code these documents should have been submitted at least 14 days ahead of the hearing. At this time, the applicants have only provided one of these, the supposed parking and traffic evidence, and even this document doesn't support the claim that the building can support the limited number of parking spots as it presupposes 26% of the residents will have cars. (The traffic study states that 26% of rental households in the census tract either drive or get driven to work.) Because these other documents haven't been submitted for the record, private citizens are at a significant disadvantage in being able to review and contest their findings.

I find it extremely puzzling (and telling) that the applicants have failed to show why it cannot build a structure or redevelop the existing buildings in a manner that complies with zoning code. This gets to the heart of why the building that is being proposed is so out of place for the lot and the neighborhood. There is no record of other options that were examined, such as keeping the existing town homes, or building a new structure that only had eight units. They could have used the space for a mixed-use property, or a commercial space similar to other structures on the block, or 14th Street, that have similar lot sizes and the same zoning. I believe none of this has been submitted because it would mean that the space isn't unique, and the building that is being proposed isn't truly the only economically viable solution to the space.

Also, just because it is impractical or expensive to comply with the zoning code shouldn't be a reason to allow variances or exceptions. The applicants could build a parking garage with a car elevator if they wanted to. They choose not to, I'm assuming, because it would make the building less lucrative. But this shouldn't be a reason to not comply with the zoning code. Otherwise, claims that "it's too expensive" to comply will fill the BZA Board Room for years to come.

The following is a summary of why the applicant's proposal does not meet the first, second or third prongs of the "three-prong" test for a parking variance.

First Prong

First prong—does the property have exceptional narrowness, shallowness, or shape or an exceptional topographical condition or other extraordinary or exceptional situation or condition?

To begin, the property is not unique.

Overall Size

The applicants' lot, at 3,420 square feet, is larger than many lots found within the square and the t ARTS/C-3-A zone in which it is located (Refer to the D C Zoning Map)

Narrowness

The applicants' lot is wider than several lots on the same square and lots directly across Church Street NW (ATTACHMENT A)

Shallowness

The applicants' lot has the same depth as all the other lots on the south side of Church Street between 14th and 15th Streets NW (Refer to the D C Zoning Map)

Shape

The applicants' lot is a regular rectangle, similar to almost every lot within the square and the general area (Refer to the D.C Zoning Map)

Exceptional topographical condition

The applicants' lot is flat, with no discernable change in elevation (Refer to the applicant's plans)

Other extraordinary or exceptional situation or condition

Street and Alley Access

The applicants' lot has the same street frontage and the same alley access as all the other lots on the south side of Church Street between 14th and 15th Streets NW (Refer to the D C Zoning Map)

Similarities or Differentiations to Other Structures

The applicants propose to combine three lots with individual single-family rowhouses to create the project lot **The rowhouses, when considered individually, are each similar to the other two adjacent rowhouses; in addition, they are similar to many other structures originally built as single-family rowhouses within the ARTS/C-3-A zone.** As such, the fact that they are rowhouses is not extraordinary or exceptional situation or condition, and they are physically no different than many structures used as single- or multi-family residences or for commercial uses in the area (Refer to the D C Zoning Map and records of the Fourteenth Street Historic District available from the DC Historic Preservation Office)

Historic Designation

Further, the presence of these historic rowhouses on the applicant's lot does not make for an extraordinary or exceptional situation or condition. The ARTS/C-3-A zone in which the applicant's lot is located lies almost entirely within the Fourteenth Street Historic District. The ARTS/C-3-A zone includes multiple contributing structures to the historic district that house successful matter-of-right uses. The basic fact that the ARTS/C-3-A zone in which the applicant's lot is located includes so many contributing structures to the historic district, including many small rowhouse structures similar to those on the applicant's lot, indicates that the property is not unique (Refer to the D C Zoning Map and records of the Fourteenth Street Historic District available from the DC Historic Preservation Office)

To support the fact that the rowhouses' historic designation is not unique, in *Myrick v D C Board of Zoning Adjustment*, 577 A 2d 757 (1990), and referencing *Capitol Hill Restoration Society, Inc v District of Columbia Bd of Zoning Adjustment*, 534 A 2d 939, 941 (D C 1987), the D C Court of Appeals found that

"[T]he fact that a piece of property or a structure is located in an historic district cannot satisfy an applicant's burden of proving that the hardship is peculiar to that property or structure. While it may be true that the structure on 1691 has been in existence for over 100 years, there is nothing in the record to indicate that this is not the case for any other home in the Georgetown Historic District. Similarly, there was no testimony *761 indicating that the narrowness of the structure at 1691 or the narrowness of the existing addition to that structure was not a condition shared by other lots and homes in the area. In fact, the record indicates that lots of approximately the same size exist only one block away "

And further

"This court held that a property's location in an historic district is not sufficient to justify a finding of uniqueness, otherwise, every property so classified would be entitled to a variance "

In addition, the applicant claims that a requirement by the Historic Preservation Review Board (HPRB) to preserve portions of the historic rowhouses is an extraordinary or exceptional situation or condition

However, preservation of portions of the historic rowhouses would be most likely be a requirement for any modification to the structures, including modifications that would retain any matter-of-right use. **The HPRB does not require that the applicant build the project, the HPRB simply “approved the general concept as consistent with its context.”** (Refer to the HPRB report provided by the applicant)

Condition of the Property

The current deteriorated state of structures on the applicant’s lot also does not make for an extraordinary or exceptional situation or condition. Prior to purchase by the applicant, 1456 and 1458 were occupied single-family rowhouses. After the residents moved out, the applicants left open windows and doors so that the properties were left to the elements, and quit any maintenance on the properties. **Any deterioration of the livability of 1456 and 1458 is entirely of the applicants’ choosing.** 1460 appears to still be inhabited as a single-family rowhouse.

In addition, the BZA has denied a number of applications recently for properties similar to that of the applicants after finding that those properties do not meet the first prong of the variance test. These include case #s 18560, 18598, and 18566.

18560 of 3545 13th Street LLC

The property in question in this case was a rowhouse similar to those on the applicant’s property.

Under Findings of Fact of the order

“The subject property is a rectangular parcel 20 25 feet wide, with an area of 2,936 25 square feet. The property is improved with a two-and-a-half-story brick row building that is set back 20 feet from the street and has a rear yard 60 feet deep. Existing lot occupancy is approximately 57%.”

“The property abuts a public alley along its rear lot line. The Applicant removed a dilapidated accessory garage formerly located at the rear of the lot so that two parking spaces are available, accessible from the alley.”

“The building on the subject property was built approximately 100 years ago and was originally used as a one-family dwelling.”

“The Applicant testified that the building is now in poor condition due to extensive deferred maintenance and prior water damage, and that its floor plan is outdated and inefficient.”

Under Conclusions of Law and Opinion of the order

“The Board does not agree that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations will create a practical difficulty to the Applicant as the owner of the property. As described by OP, which found no exceptional situation or practical difficulty in this application, the subject property is rectangular in shape, without significant changes in grade, and is one of several similarly sized and shaped lots in its square. The building on the subject property is similar to the buildings on the abutting properties, and to many properties in the immediate vicinity. The subject property meets the requirements for lot occupancy, lot width, and lot area in the R-4 Zone. The Applicant generally knew about the somewhat deteriorated condition, which is not unusual in a century-old building, before buying the property. The Board concurs with OP’s conclusions that the current state of the property does not constitute an exceptional condition, and that the current physical configuration of the existing building does not preclude its use as a flat or a three-unit apartment house, both of which, along

with use as a one-family dwelling, are permitted as a matter of right, eliminating the need for zoning relief

18598 of 3612 Park Place LLC

The property in question in this case contained two rowhouses similar to those on the applicant's property

Under Findings of Fact of the order

"The subject property comprises two adjoining lots "

"Each of the two interior lots has 18.3 feet of frontage along Park Place, and each lot is improved with a three-story plus basement row-type building "

"The buildings on the subject property were built in 1915 and may have been used previously as one-family dwellings Each contains approximately 1,380 square feet of living space "

Under Conclusions of Law and Opinion of the order

"The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as the owner of the property The subject property is generally rectangular in shape, without significant changes in grade, and is similar to other properties in the vicinity The buildings on the subject property are similar to the buildings on the abutting lots, as well as to many other buildings in the vicinity As described by OP, which found no exceptional situation or practical difficulty in this application, the "current physical configuration of the existing building does not preclude its use for flats, or five units if the lots are combined.. ." The Applicant argues that the property exhibits an exceptional situation or condition due to the significantly deteriorated state of the existing building, especially in contrast to the generally good condition of surrounding properties, and the fact that the properties have been vacant for some time The Board does not agree that the deteriorated state of the buildings on the subject property creates an exceptional situation, or that the degree of damage present at the Applicant's buildings is extraordinary Conditions cited by the Applicant, such as damage to the roofs and walls, some attributable to poor drainage, termites, or fire, are common in vacant buildings."

18566 of Chris French and Anya Landau French

The applicants of # 18566 withdrew the application before the BZA's order was finalized; however, the BZA voted to deny the application due to the application not meeting the first prong of the variance test. The property in question in this case was a rowhouse similar to those on the applicant's property The first prong of the variance test was discussed within the Office of Planning report as follows.

"The applicant has not demonstrated that there is an exceptional situation related to the property that results in a practical difficulty The lot measures 13 94 feet by 50 08 feet and has an area of 698 square feet The property is in a group of ten two-story row dwellings located on 5th Street that all have a similar frontage and lot area. These dwellings have a floor area of approximately 1,000 square feet The floor plan provided in the application demonstrates that while the dwelling is small it is functional and appropriately sized for the lot on which it is located "

Second Prong

Case # 18638

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Paul M. Mesterhazy letter in opposition

The applicants appear to have purchased the subject lots with the sole intent of developing the proposed 38-unit building, which requires significant relief from the parking requirements of the zoning code. As discussed above, however, there is no exceptional situation or condition of the property that results in a practical difficulty for the applicant to redevelop the properties outside of the requirements of the zoning code.

The existing single-family rowhouses have been occupied since they were constructed approximately 120 years ago (one appears to still be inhabited, and the other two were vacated last year). Per the existing zoning (ARTS/C-3-A) they can still be used as conforming single-family homes, or flats, or multi-residential unit structures, or for multiple commercial uses without the need for any zoning relief. As there are many options to develop the lots under existing zoning requirements, there is no practical difficulty. For example, with the lots combined, as proposed by the applicant, the resultant 38-foot wide lot could accommodate four legal parking spaces off the alley which would allow for an 8-unit residential structure that would not need any relief from zoning. **It is the applicant's burden to show that there is a practical difficulty, but with the many options to redevelop the property under what is allowed as a matter-of-right, the applicant has failed to do so.**

Likewise, the DC Court of Appeals has determined that it is not the Board's responsibility, through granting an area variance, to ensure that a property owner gain a greater return on their investment than what they may obtain with a matter-of-right use. Specifically, in *Palmer v D C Board of Zoning Adjustment*, 287 A 2d 535 (1972), the court states that

"A clear definition of what constitutes "practical difficulties" has not been found. Where substandard lots (those having a smaller size or lesser frontage than the minimum) are involved the practical difficulty is perforce of an extreme nature—an inability to put the lot to any conforming use. In these instances the concepts of "practical difficulty" and "undue hardship" overlap so that the courts often tend to speak of them synonymously. The statute, however, does not require the owner to make such a stringent showing with the respect to area variances. Generally it must be shown that compliance with the area restriction would be unnecessarily burdensome. 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. **But it is certain that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if put to another use, will yield a greater return.**"

In BZA case No. 18560 (3545 13th Street LLC), which is also cited above, the Board and the Office of Planning confirmed this determination of the court by finding (under Conclusions of Law and Opinion of the order)

"The Applicant cited financial infeasibility as a justification for the additional dwelling unit due to construction costs and the building's current condition. The Board concurs with OP's conclusion that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if put to another use, will yield a greater return."

Further, in its 2006 review of a similar request for relief from the parking requirements for the now built condominium building immediately to the east of the subject property on Church Street (1446-1454 Church Street, the Citra 50, BZA case number 17459), the Office of Planning did not find that arguments similar to those made by the current applicant amounted to any practical difficulty. In its report for this BZA case, the **Office of Planning specifically stated that it "views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project, not from any exceptional situation or condition. The number of units creates the non-conformity."** (ATTACHMENT B)

The BZA shouldn't feel obligated to ensure that the applicants are protected from a risk-filled financial gamble. Otherwise, there will be many other developers making the dubious claim that the Board should approve their proposals because the "only" designs that make economic sense are those that maximize value for the

developers And it will lead to many smaller structures being purchased by speculating developers in order to demolish them and create overly dense buildings that have little regard to their impact on the transportation capabilities and livability of the neighborhoods they will invade.

Third prong – impact on neighbors

I have stated many examples in my previous testimony on the myriad of negative impacts to the neighbors in buildings adjacent and nearby the proposed structure. However, I would like to focus specifically on the impact of the lack of parking and the proposed “solution” to this by the applicants – the restriction in the lease to prevent lessors from obtaining a Residential Parking Permit (RPP)

Residents at this property are allowed to get a RPP and Visitor Permit (VP) per DMV and DDOT regulations Assuming that the building was to be built as proposed, and the novel approach to the reduced parking by having limitations on obtaining RPPs and VPs written into the lease to be the solution, how would this be enforced? There is nothing within existing DMV processes that would seem to be able to make this work And how would a private citizen even be able to check that renters were complying? Would they be required to go to the DMV and ask to see records? Would it even be legally enforceable to have in a lease in the first place? Even if it were permissible, a lease is a contract between a lessor and lessee – how would a third party, without privity, enforce any of the provisions if the lessor wasn’t living up to their promises and the requirements of the Board? Would the private citizen have to go to court every time, burdening the court system and forcing them to assume heavy financial burden to pay for attorney’s fees? Or maybe they should just call the police?

Lastly, I want to reiterate that the applicants never seemed to want to truly negotiate with the neighborhood or take their concerns into consideration. They were unwilling to reduce the density of the building or explore parking options to more closely meet the parking per unit requirements of the zoning code All of the proposed changes to the building that have occurred since the initial application are minimal These minimal changes have been in response to letters in opposition versus open and honest dialogue with neighbors who are impacted greater than others who do not live next to the proposed building I would actually question whether the building would pass muster with the ANC today, given that they assumed that the RPP limitations would be enforceable. Since the ability to enforce the RPP limitations is questionable at best, the BZA should send this case back for another ANC review

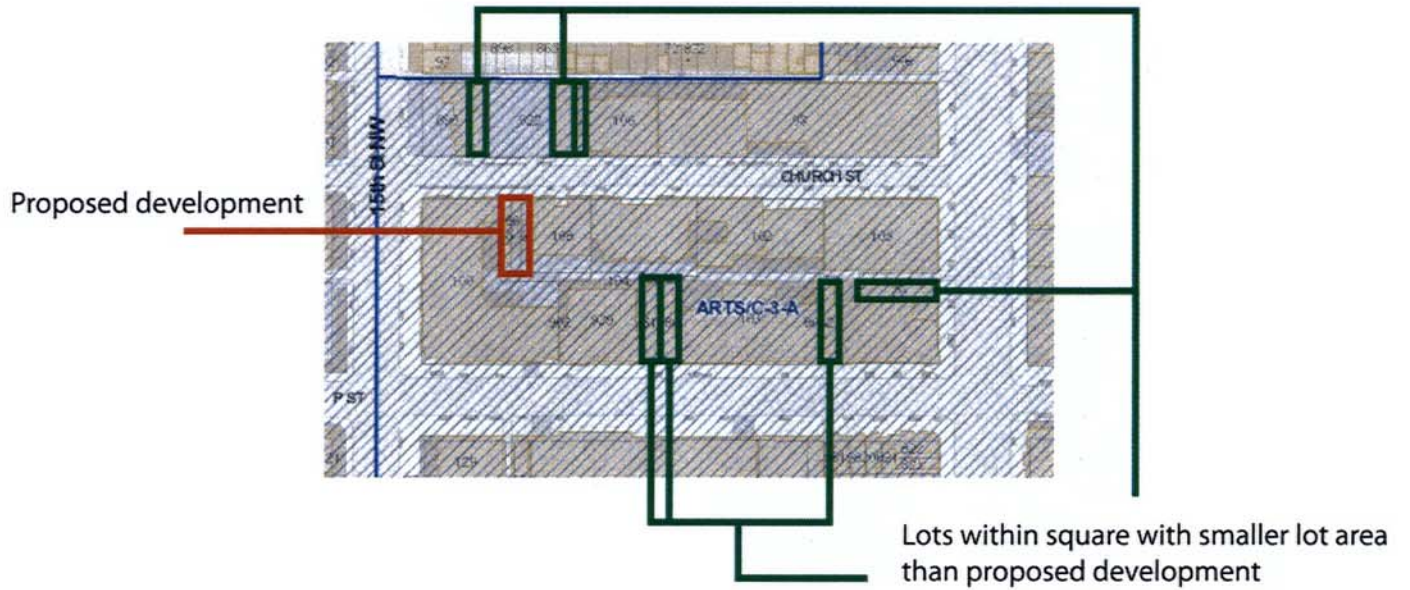
I’d like to end this testimony by pointing out that almost all of the letters by residents in support of the proposed building are by individuals who live a block or more away The only letter written by a resident in an adjacent building (the Citta 50 building) was written when the applicant had promised that the proposed parking spots would be used as a loading dock. Given that the plan has changed since this letter was submitted, it’s worth wondering if they would still be in support

Sincerely,



Paul M. Mesterhazy
1515 15th St. NW #430

ATTACHMENT A



ATTACHMENT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



DC
APR 27 2:53 PM '06

Memorandum

TO: District of Columbia
Board of Zoning Adjustment
FROM: *McCarthy*
Ellen McCarthy, Director
Office of Planning

DATE: April 25, 2006

SUBJECT: BZA Application #17459 – DC Hampton LLC 1446-1454 Church Street, N.W.

RELIEF REQUEST:

DC Hampton LLC is requesting an area variance pursuant to 11 DCMR §3103.2, from the residential recreation space requirements of §773 and a variance from the parking requirements under §2101.1, to allow the construction of a new twenty-seven unit multiple dwelling building on a site improved with a three story contributing historic structure, pursuant to §3103

SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends approval of the requested variance from the residential recreation space requirements of §773. OP does not support a variance from the parking requirements under §2101.1, as the applicant has not demonstrated an extraordinary or exceptional situation /condition that is unique to the proposed project, and because the variance would be contrary to the intent of the zoning regulations and public good.

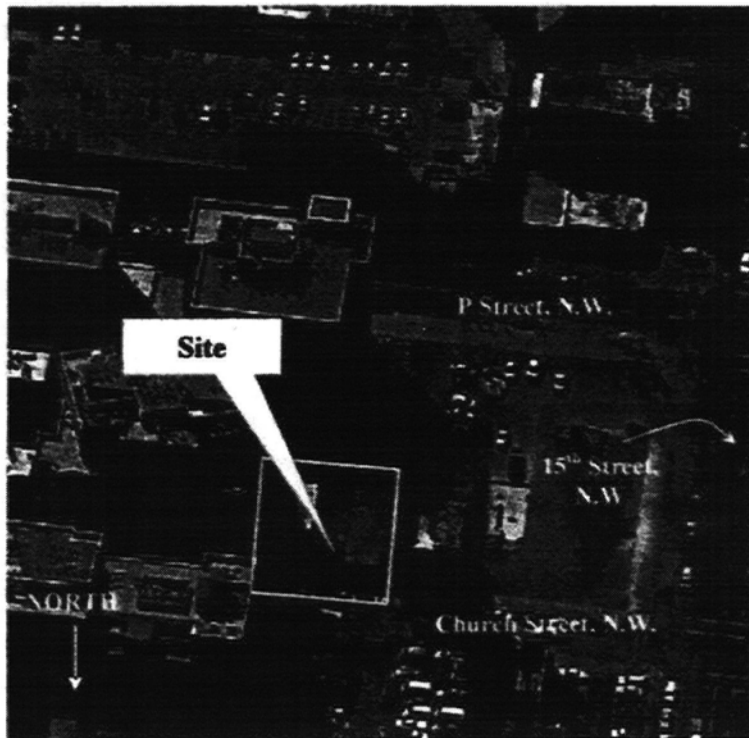
PROJECT SNAP SHOT

<u>PROPOSED ADDRESS</u>	27 unit Condominium improved w/ Historic building 1446-1454 Church Street N.W.
<u>ZONE</u>	ARTS/C-3-A
<u>SQUARE /LOTS</u>	209/ 911 and 917
<u>HISTORIC DISTRICT</u>	Greater 14 th Street Historic District
<u>VARIANCES</u>	Residential Recreational: 15% required - 0% provided Parking: 11 required (1 per 2 units) – 6 provide

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17459
EXHIBIT NO. 28

SITE AND AREA DESCRIPTION



The subject property is located at 1446-1454 Church Street, N.W. in the Logan Circle / Shaw neighborhood of Ward 2. The site fronts onto Church Street to the north, and backs unto a ten foot wide public alley to its south. Church Street is a narrow street, 50-feet, and generally has buildings that are residential and industrial in character while P Street, to its south is developed with many retail uses.

The site abuts a row of modest two and three-story row houses to the west and a seven story apartment building to the east. The site includes a 1920s contributing historic three-story apartment building, and a non-contributing one-story garage building from the 1950s all facing Church Street, and a one-story brick garage at the rear of the property fronting the alley. Only

the contributing three-story apartment building will be preserved in this project.

PROPOSAL

The applicant proposes to develop a seven-story residential condominium building. The building will include twenty-seven residential units and will retain the existing contributing historic three-story apartment structure. The proposed conceptual approach was granted by HPRB, which will incorporate the new additional units with the overall height and massing broken down into smaller, vertical building elements within a common industrial-inspired character of the Church Street area. The current proposal includes six grade-level parking spaces along the alley. The applicant originally requested an area variance from the residential recreation space requirements of §773 of the Zoning Regulations. On March 16, 2006, the applicant amended the application to also include an area variance from the parking requirement under § 2101.1 of the Zoning Regulations.

ZONING DESCRIPTION

The subject site is zoned C-3-A and is within the Uptown Arts Overlay District. The C-3-A District permits medium density development within a general pattern of mixed-use development. The ARTS overlay encourages housing, arts and retail uses on 14th and U Streets.

HISTORIC PRESERVATION

The subject property is located within the Greater 14th Street Historic District and is improved with a vacant historic three-story apartment structure in the northeast quadrant of the property. The applicant notes that the apartment building was originally constructed as a two-story office and garage for a coal

yard in 1921, designed by John Lankford, Washington's first registered African-American architect. At some point, probably around 1928, an additional third-story was added. The building was refaced with the current facade, and was converted to apartments. The Historic Preservation Office staff reviewed the final conceptual design of the proposed project and it was approved by the Historic Preservation Review Board on January 27, 2005 (see HLP.A Number: 05-082).

Variance pursuant to §773: Residential Recreational Space

For apartment houses, §773 sets forth the minimum residential recreation space required within the C-3-A District as fifteen percent, half of which must be located outdoors. The proposed building includes 29,362 square feet of gross floor area devoted to residential uses. Therefore, 4,404 square feet of residential recreation space would be required under the current regulations, of which at least 2,202 square feet must be located outdoors. The applicant is proposing to provide no common recreation space. The standard by which the BZA should approve variances is set forth in §3103.2 of the Zoning Regulations, as follows:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;

The property is flat and not exceptionally narrow, but is relatively small, with a land area of 6,525 square feet. The northeast quadrant of the site is improved with a three-story, historic multi-unit structure, which is currently vacant.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

According to the application, to provide the required 2,202 square feet of indoor recreation space, the applicant would need to devote the equivalent of two residential units or more than one half of one floor to recreation space, an additional variance for outdoor recreation space would still be necessary. Section 773.9 states, "Residential recreation space shall be physically accessible to all residents of the building served by that space". Multi-unit projects often designate roof space for recreation space, which is commonly accessible to all residents. However, to respect the existing historic building, design components such as multiple set backs break up the massing of the building prevent common accessibility to the main roof, and make the provision of roof-top recreation space difficult.

The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations Map.

The proposed project is located within blocks of public accessible recreation space, such as Logan Circle, The Stead Recreation Center, the Studio Theatre and several retail, restaurants and commercial establishments. As part of past variance requests for projects on this street, expert testimony has been received indicating tenants likely do not value most forms of recreation space in the building, but are attracted to the area for its variety of social and recreation opportunities. Further, the proposed project

includes some outdoor private recreation space; which could be considered to lessen somewhat the demand for outdoor recreation space. As such, this variance can be granted without substantial detriment to the public good. OP further notes that the Zoning Commission is currently in the process of either amending or repealing the residential recreation space regulations.

Variance pursuant to § 2100 Parking Spaces

The C-3-A District requires one parking space for every two dwelling units for apartment houses. As 27 units are proposed, this translates to 14 parking spaces. However, §2100.4 of the Zoning Regulations states:

...when the use of a building or structure is changed to another use that requires more parking spaces than required for the use existing immediately prior to the change or, if the building or structure is vacant, the use that existed immediately prior to the vacancy, parking spaces shall be provided for the addition requirement in the amount necessary to conform to §2101.

Since the current vacant historic structure was last used as a five unit apartment building, the applicant is only required to provide parking for the net twenty-two units; which is eleven off street parking spaces. Currently, six parking spaces are included in the proposal, and relief is requested for the remaining five required spaces. The standard by which the BZA should approve variances is set forth in §3103.2 of the Zoning Regulations, as follows:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;

The purpose of a variance is to modify the Zoning Regulations where, because of an exceptional situation, the strict application of the Zoning Regulations result in exceptional practical difficulties upon the applicant; such as physical characteristics which makes the property unique or difficult to use. The applicant is requesting parking relief based on the presence and location of the existing historic building on the site. The preservation of a historic structure does not make this property unique however. Recent similar apartment projects in the near vicinity incorporated historic structures and included appropriate parking (see Saxon Court, Lofts 14 One, and Lofts 14 Two). OP views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project, not from any exceptional situation or condition. The number of units creates the non-conformity.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

The Office of Planning recognizes the parking problems of the area and is concerned that the proposed variance would pose substantial detriment to the public good and impair the intent of the zoning regulations. Current zoning standards require new multi-unit developments to provide adequate parking; even projects with integrated historic structures. The current lack of adequate street parking is one of the major irritations of current residents, small business owners and consumers in this area. Increasing the number of new residents without increasing corresponding required parking will inevitably enhance this street parking problem. Community organizations such as Metro Condominium Association, Saxon Court Condominium Association, and Q Street Association have indicated opposition to a parking

variance request, citing their parking concerns in the area (see community comments below and attached).

There is no exceptional condition on this site which results in a practical difficulty associated with the provision of parking. The current plans indicate an extensive amount of new excavation that will occur behind and around the existing contributing structure. The applicant has made a valid case to OP establishing the practical and economical infeasibility of constructing below-grade parking. However, the planned excavation is proposed to be used to create space for additional dwelling units which contribute towards the need for parking variance relief.

OP questions the excavation behind and around the historic structure to create more dwelling units, which ultimately increases the need for a parking variance. OP also has apprehensions with the livability and safety of the subterranean units being created in the proposed cellar level, with only very narrow window wells (partially covered) providing air and light access and emergency egress. In addition, OP does not find a practical difficulty associated with providing additional parking on the ground floor, and/or reducing the number of units to further reduce the required parking.

A reconfigured design of the first floor plan that incorporates grade-level parking could alleviate the need to excavate and provide sufficient parking spaces for its residents (five additional spaces needed) while preserving the integrity of the existing historic structure. Such a reconfiguration, combined with a reduction in the number of dwelling units, would reduce or eliminate this variance and eliminate legitimate neighborhood concerns.

AGENCY REVIEWS

On December 16, 2004, the Historic Preservation Review Board reviewed the project's conceptual approach in which the overall height, massing and materials would relate to the common industrial-inspired character of the Church Street area. The Board recommended revisions and the project received conceptual review approval at the January 27, 2005 meeting (see HLP.A number: 05-082).

COMMUNITY COMMENTS

OP has received a letter from The Metro Condominium Association, Saxon Court Condominium Association, and the Q Street Association in opposition to the applicant's parking variance request. The letter addressed parking problems in Logan and Dupont Circles, particularly on Church Street and the immediate surrounding areas. The letter was presented to ANC 2F at its April 5, 2006 meeting to urge the ANC to oppose the parking variance and to encourage the applicant to reconsider the proposed plans to at least provide the required parking for the residences of the building. The Office of Planning has not received comments from ANC 2F.

SUMMARY AND RECOMMENDATION

The application satisfactorily meets the requirements specified pursuant to §773, residential recreation space. With regards to the proposal to vary the required parking spaces, the applicant has not met the test for approval of the variance, as the applicant has not convincingly demonstrated an exceptional situation unique to the property. OP views the need for a parking variance as a created circumstance resulting from the number of residential units (27) proposed for the project. As such, the proposed variance is contrary to the intent of the zoning regulations and contrary to the public good. The Office of Planning therefore does not support the variance request from parking requirements.

EM/sr

See Attachment -1