

**BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING
ADJUSTMENT**

Application No. 18651 of Peter Fitzgerald

**MOTION TO DISMISS OR IN THE ALTERNATIVE STAY THE ABOVE
STYLED APPLICATION**

Janet L. Schmidt along with other neighbors whose signatures appear below (collectively "Schmidt"), request that the Board of Zoning Adjustment (BZA) either dismiss or stay the above proceeding (Application) for the reasons detailed below.

**Neighbor Schmidt Joins, Adopts and Ratifies Neighbor Stansbury's
Opposition Requesting Dismissal**

Schmidt joins in, adopts and ratifies the opposition to the above styled BZA application submitted to the BZA by neighbor Brian Stansbury on January 15, 2014 and requests that the BZA deny Applicant Fitzgerald's request for the reasons cited therein regarding Applicant's failure to establish that an exceptional condition or a practical difficulty exist as well as on the basis that Applicant's request will cause a substantial detriment to the integrity of the Zone Plan and a substantial detriment to affected neighbors. This substantial detriment is described below as a supplement to Mr. Stansbury's opposition on that subject. It is noted that this opposition by Schmidt is now being filed because the deficiencies of the proposed project outlined herein were just recently brought to light incident to meetings with neighbors and Mr. Fitzgerald's attorney.

Mr Stansbury's opposition is attached as exhibit A.

**THE BZA SHOULD FOLLOW THE OFFICE OF PLANNING'S
RECOMMENDATION THAT THE VARIANCE BE DENIED.**

The ANC letter should be given no weight because the BZA cannot rely on the ANC's letter supporting the Application since the ANC was not aware that Applicant intends to build some of his project on public space, a fact that was not disclosed in Applicant's request that was before the ANC. In fact, this intention was only confirmed to Schmidt and other neighbors yesterday when they received a document indicating such intent on the part of Applicant. It is clear that Applicant's omission of this material fact from his Application is reason enough to deny the Application.

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Ms. Schmidt Qualifies for Party Status Regarding the Application

Janet L. Schmidt owns the residence located at 14 Fourth Street NE which is only 24 feet from the two contiguous parcels which are the subject of the Application before the BZA. The rear of Schmidt's property is directly across the alley from the subject property. For various reasons, Fitzgerald's application, if approved would have a considerable negative impact on Schmidt's property. There fore, Schmidt is entitled to and has submitted the appropriate application for party status in this matter to the BZA. While her timely request for party status has been pending before the Board for some time and has yet to be ruled on, the Board has previously heard from Schmidt as a designated spokesperson for a number of neighbors who are opposed to the subject project. Access to Schmidt's off street parking at the rear of her property is completely dependant upon unfettered access through the alley that runs from West to East between her property and the subject property

The other signatories to this opposition have either applied for party status or are directly affected by the Application.

Background

The Application of developer/landlord Peter Fitzgerald (Applicant) requests a variance in order to resubdivide lots, demolish existing structures and build a new building in the alley behind Schmidt's property One of the two buildings to be demolished is a historic 1884 public stable which is substantially intact.

Applicant's requested development project seeks construction of a building that will occupy 100% of its newly created lot. As a result, Applicant Fitzgerald seeks to relocate a telecommunication and utility pole that is currently located on the site. Applicant also intends to impermissibly further narrow one 20 foot wide segment of the alley to a traversable width of as little as 11 feet by the placement of an above ground gas meter structure surrounded by protective bollards. If approved as requested, Applicant's new building would also have a negative impact on the usable width of another segment of alley in that its current passable width of 26 feet could be reduced to less than 16 feet.

Applicant Has Failed To Fully Inform the BZA of The Detrimental Impact of His Application on the Surrounding Neighborhood

None of these and other negative consequences of Applicant's request to the BZA were even addressed, much less considered in conjunction with the Application that was filed with the BZA in October of 2013 even though Applicant knew or should have known about them. The detrimental impact of the Application on the surrounding neighborhood is amplified by the fact that the subject property is located in what is already a very high density occupancy block by Capitol Hill standards because of numerous apartment buildings, group homes, and extended stay facilities. None of the above impacts on the alleys surrounding the above requested project have been addressed by the relevant Departments of the D.C. Government which have jurisdiction over such matters.

The Application Needs to Be Fully Vetted By Relevant DC Agencies

For example, the D.C. Public Service Commission should be asked by the BZA to issue an impact study and transition plan addressing how Applicant would be required to remove and replace a critical utilities pole on the site of the subject property without interruption of the telecommunications and electrical services it provides to surrounding neighbors, including a pharmacy that is contracted to provide its services to the U.S. Congress. With regard to the proposed project's impact on accessibility to individual neighboring properties through the alleys that front on three sides of the proposed building, the BZA should ask the D.C. Department of Transportation to provide it with a revised impact statement that addresses Applicant's intended narrowing of one alley by installing a gas meter and bollards thereon and in light of Applicant's claimed entitlement to park two vehicles in another alley in front of the proposed building. These two issues were not known to the Department of Transportation when it provided its original review of the Application.

For many years, Applicant has sporadically parked two of its property maintenance vehicles in the alley parallel and adjacent to the proposed site's southern boundary line. Applicant has posted those areas with its own no parking signs in order to insure its exclusive use of this adjacent alley area for its own parking purposes. Applicant's agents have also asserted to neighbors that Fitzgerald has a grandfathered, exclusive right to park in those spaces. Even though this issue is not addressed in its application, it is reasonable to assume that Fitzgerald will continue to assert an exclusive right to park in such public alley areas if the residential project is built. The BZA should request a determination from the Department of Transportation as to the validity of Applicant's historical claims to and exclusive use of the alley for parking purposes before it rules on a development application that fails to address or disavow such veiled claims. Continuation of such alley parking on

a full time basis by as many as four occupants of the proposed project would have a disastrous constricting effect on an already narrow and angled alley.

Likewise, the BZA should ask the D.C. Fire Marshall to examine the impact of Applicant's narrowing of those alleys and continuing to park in them on the ability of the City to provide fire and other emergency services to those rear portions of neighboring properties that can only be accessed by way of the alleys.

Similarly, the intended project and its resultant narrowing of and parking in the existing alleys will leave no room for the placement or pick up of trash receptacles from the rear of various properties which share the alley with the project. Moreover, the Applicant has provided no space in his zero set back development plan in which to place trash receptacles which will be associated with the new building. Therefore, the BZA should ask the D.C. Department of Sanitation to determine whether its regulations regarding the setting out and removal of trash receptacles will be violated by Applicant's request that makes no provision for compliance with same. As previously noted, it has only recently been discovered that Applicant intends to constrict the 20 foot wide alley on the eastern border of its site by placing an above ground gas meter structure, surrounded by steel bollards in the alley that will reduce the passable width of that alley by 4 feet and will make it impossible for three neighbors to back out of their garages as they are currently able to do.

In a related vein, it is Schmidt's understanding that Applicant/ landlord Fitzgerald intends to operate the new residential property as a short term stay rental facility for multiple, transient occupants in what Fitzgerald's application describes only as a "single family home" Even though such intended use is permissible for existing single family homes in the District, Applicant has avoided informing the Board and neighbors of its intended use for the property because of the negative implications it would have for parking and occupant density in what is purported to be just a typical alley dwelling. Given that the subject request is for a variance, Applicant should not be afforded an unrestricted, "by right" use of the property as a small, extended stay hotel.

For this reason and other factors outlined above, the BZA should also request that the D.C. Office of Planning and Zoning update its previously issued report to the BZA that was critical of the Fitzgerald application so that it incorporates and reflects the above issues that were not made known to it in the Fitzgerald application that it reviewed.

Finally, Schmidt has researched the circa 1884 stable and carriage house referred to as 319 A Street, N.E. that Applicant calls a “garage” and seeks to demolish as part of his proposed construction project. That investigation reveals that the historic structure was built as a public stable by one James Ryon, the son of Irish immigrants, on a site which at the time was directly across the street from and in clear view of a home owned by Fredrick Douglass at 318 A Street, N.E. Mr. Ryon’s public stable was apparently the closest such commercial enterprise to Frederick Douglass’ property in 1884. Given the absence of a carriage house on Mr. Douglass’ property at that time, it is possible that his family patronized Mr. Ryon’s public stable. The stable building has remained essentially unchanged since its construction in 1884. It retains a vintage sliding door on its original hardware, as well as its side entry door, ventilation window, and original cobblestone floor. Mr. Ryon eventually became a successful real estate agent, developer, and insurance agent in Washington D.C. and was in at least one partnership with the prominent Lansburgh family. Schmidt has learned from one of Ryon’s descendants that the family maintained continuous ownership of James Ryon’s simple stable as a reminder of their forbearer’s humble beginnings for over 80 years until it was purchased by the Applicant’s family in 1968.

The above facts were presumably not known by the Historic Preservation Review Board (HPRB) when it reported to the BZA that it did not consider the 1885 stable to be a contributing historical structure. Mr. Ryon’s barely altered public stable is an all too rare example of a significant accessory structure from the era when most existing historic Capitol Hill homes were first being developed.

It is an unfortunate reality that the HPRB’s limited resources and staff do not allow it the luxury of carefully investigating a property such as Mr. Ryon’s stable. Had the HPRB been able to conduct such investigation, rather than relying primarily on Applicant’s generalized and deprecatative statements about the property and lack of disclosure about its history, it is reasonable to assume that the HPRB report would have read differently than it does. Alternatively, in the interest of full and fair disclosure, the above information about the history of the stable building could have been obtained by Applicant and shared with the HPRB at a small fraction of the cost that Applicant has spent on attorneys’ fees to shepherd its Application through the BZA process. Accordingly, the BZA should ask HPRB to review the documentation that Schmidt has compiled in order to determine whether it would find it appropriate to amend their report with regard to the historical significance of the stable building on Square 786, lot 22 that Applicant seeks to demolish.

The BZA should not overlook the fact that the ANC6C report on the Application was rendered without knowledge of the above issues as well and should

be amended accordingly after the ANC has had an opportunity to review the above requested reports from various D.C. agencies.

Given the absence of so much critical information relevant to the negative impact of Applicant Fitzgerald's request on the immediate neighborhood when coupled with Applicant's failure to meet its legal burden in requesting numerous variances as detailed in Mr. Stansbury's opposition, the BZA should deny the Application. Such approach would be reasonable under the circumstances in that it would force the Applicant to either abandon its ill-conceived project or file a new application with the BZA which fully discloses important aspects of the proposed development that are not acknowledged in the current application and have not had a proper airing before the BZA, ANC and the many interested parties to this matter.

In the alternative, Schmidt, along with the other affected neighborhood residents listed below, respectfully requests that the BZA, at a minimum, immediately stay all proceedings in the above styled matter until such time as the BZA has requested and received the above described impact reports from The Public Service Commission, the Fire Marshall, Department of Transportation, Department of Sanitation, HPRB, Office of Planning and Zoning and a revised review from ANC6B. Any stay should continue until after the affected neighbors who oppose the subject application have had a reasonable opportunity to review the above reports and provide commentary thereon to the ANC and BZA before this case is resumed.

Respectfully,

Janet L. Schmidt
Owner, 14 Fourth Street NE
Washington, DC 20002



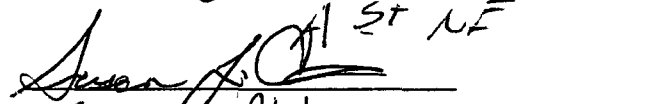
Bobette Barrasso
Owner, 323 A Street, NE
Washington, DC 20002

ISABELLA
SHEILA
HOLLIS


Owner 5 rubus Philadelphia


OWNER 327 AND 325
AST N.E


OWNER 327 AND 325
ST N.E


OWNER, 310 East Capitol St NE unit F +
2 parking spaces

Chris Nolde

CHRIS NOLDE

Chris A. Nolde

Andrew W. Wallace

Karen M. Waller

For Andrew W. Wallace
Karen M. Waller

315 A SE NE

Wash DC 20002

> 313 A SE NE
Wash DC 20002

January 15, 2014

By E-Mail Submission

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street NW
Suite 210S
Washington, DC 20001

2014 JAN 15 AM 2:45

Re Opposition to Application No. 18651; 319 A Street, NE

Dear Chairman Jordan and Members of the Board

I am writing on behalf of Brian Stansberry, owner of the property located at 308-312 Millers Court, N E (the "Stansberry Property"). The Stansberry Property includes three small one-family row dwellings. These dwellings were originally constructed as residences over 150 years ago. The easternmost dwelling, 312 Millers Court, is fifteen feet from the property which is the subject of Application No. 18651 (the "Application").¹ The granting of relief in this case will cause a substantial detriment to the Stansberry Property. Furthermore, the Application does not satisfy the variance test for the requested relief, as discussed herein.

The Variance Test

The Application requests relief from five sections of the Zoning Regulations, including relief

(i) to subdivide Lot 827 and convert the rear of that conventional lot into an alley lot, create a new alley lot where one did not exist before (from Lot 827),

(ii) to create a new lot that does not comply with the minimum lot area requirements,

(iii) to build a structure that occupies 100% of that substandard sized lot and provides no rear yard or any yard of any kind, and

(iv) to construct a large, 3 bedroom one-family dwelling in place of accessory garages, requiring parking relief.

No Exceptional Condition

The Applicant lists nine supposed unique conditions which it claims make compliance with the Zoning Regulations a practical difficulty to the Applicant. But an evaluation of those nine claimed unique

¹ Mr. Stansberry previously submitted his party status request Form 140.

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EXHIBIT NO. 41

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conditions finds that none of these conditions (some of which are duplicates) are particularly unique, and none of them are the source of any practical difficulty in complying with the Zoning Regulations.

The Applicant principally relies on the fact that the two existing garages are in poor condition. But such a condition for old accessory garages in the District is not particularly unique, and the Applicant does not explain exactly why having a garage in need of repair or replacement automatically entitles it to create a nonconforming lot and replace those garages with a one-family dwelling at 100% lot occupancy. No doubt there are plenty of accessory garages in the City in need of repair or replacement, or simply removal. Granting relief for this reason would run afoul of the uniqueness requirement and may entitle anybody with a garage in poor condition to receive similar relief to create a residence in place of the garage.

Beside the claim about the poor condition of the existing garages, the eight other claimed conditions just simply state the existing situation for which the Applicant wants relief. For instance, item #2 (duplicated by items #4 and #5) just recites the fact that the proposal does not comply with the alley-width restrictions of § 2507.2. It is not enough for variance relief to just state that the property doesn't comply, and therefore deserves relief. The other items, similarly, relate to existing nonconformities (or future nonconformities created by this proposal), none of which entitle the conversion of permitted accessory garages to such a large one-family dwelling on a non-compliant alley lot without the required width of access.

No Exceptional Practical Difficulty

The fact that the existing garages are in poor condition does not create an exceptional practical difficulty to the owner. The owner could repair or replace the garages. The owner could also simply remove the garages and use the land for parking spaces, which in this neighborhood has significant rental income value. At any rate, in contrast to what the Applicant states, there is no presumption that accessory garages, or the land on which they sit, are entitled to a separate income stream, such that *not* having that stream is a practical difficulty to the owner (particularly when the structures have always been used as accessory garages, *i.e.* no existing income stream is being taken away). If this were true, then every property owner with an accessory garage can claim that they can convert their garage to a one-family dwelling simply because the accessory garage currently produces no independent income.

Substantial Detriment to the Party Opponent (applicant) Stansberry

The construction of the proposed two-story 100% lot occupancy dwelling fifteen (15) feet away from Mr. Stansberry's property would have a substantial negative impact on the light and air and privacy of Mr. Stansberry's tenants, and consequently the value of the Stansberry Property. The Stansberry Property – which has existed as a residential use since original construction in the 19th century – has windows facing the proposed development. The proposed development has windows which would look into the Stansberry property's windows (in addition to the north-facing windows noted in the OP report). For this reason, Mr. Stansberry's property is distinctively and uniquely impacted by this proposal. Please refer to the Party Status Request filed by Mr. Stansberry for additional instances of negative impact.

January 15, 2014

Opposition to BZA Application No. 18651

Substantial Detriment to the Integrity of the Zone Plan

As the Office of Planning notes in its report, the alleged justifications for relief relate mostly to the existing and future nonconformities of the Applicant's proposal. To allow so many significant areas of relief, on multiple lots, under this set of facts, damages the integrity of the Zone Plan for several reasons. Because the property and the garages are not particularly unique, granting relief here could lead to many others seeking the same relief. Also, granting relief encourages others to hasten the deterioration of their accessory garages, knowing that once their old garages are in poor shape, they may be able to convert them to residential use. The Applicant claims that the garages can no longer be used for any purposes, but it ignores the fact that the garages may continue to be used as they always have, especially after repair or replacement. Even without the garages, the property underneath the garages can be used for valuable parking spaces.

One overlooked aspect of this Application is the effect that the proposed subdivision will have on the remaining portion of Lot 827, which fronts on A Street and has three (3) living units. This proposal extends the existing nonconformity on Lot 827, by reducing the lot area below what is already a nonconforming lot size. Effectively, this proposal is for § 401.3 relief under the 900-foot rule, which the Board has been very reluctant to grant, since the Applicant gets a fourth unit on the current Lot 827, even though Lot 827 has a land area of only 2,200 square feet. As a result, it appears that the Applicant has failed to include several areas of relief, including § 401.3 for the remainder portion of Lot 827 and § 2001.3, for an expansion of an existing nonconformity on the remainder of Lot 827.

Summary

The Applicant's proposal creates a multitude of non-compliant situations, causing a significant negative impact on surrounding properties, with no real justification under the variance test. For the reasons stated above, Mr. Stansberry respectfully requests that the Board deny the Application.

Sincerely,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is fluid and cursive, with the first name "Martin" and last name "Sullivan" clearly distinguishable.

Martin P. Sullivan

cc J. Patrick Brown, Esq.
Matt Jesick, Office of Planning

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Martin P. Sullivan

cc J. Patrick Brown, Esq.
Matt Jesick, Office of Planning