

9 September 2014

VIA IZIS

Board of Zoning Adjustment
441 4th St., N.W.
Suite 220 South
Washington, D.C. 20001

**Re: Applicant's Burden of Proof Submission
Application of Bryant Gardner, No. 18824, 1740 Church Street, N.W.**

Dear Ladies and Gentlemen:

We write to with respect to the above request for the construction of a garage with deck on it at the rear of our property at 1740 Church Street, N.W. Initially, we wish to point out that we have obtained statements of support from both of our adjoining neighbors, and from neighbors across the alley on P Street, which have been submitted into the online docket. See Dkt. No. 18824, Doc. Nos. 21 & 25-28.

I. Nature of Relief Sought

The Zoning Administrator's Referral Memorandum, Dkt. No. 18824, Doc. No. 2, provides that the project proposed herein and as further set forth in the Architectural Plans, Dkt. No. 18824, Doc. No. 5 (the "Project"), requires Board of Zoning Adjustment Approval as follows: "(1) Variance pursuant to § 403.2 for the erection of a one-story rear garage to a Single Family Structure that does not comply with maximum lot occupancy requirements (§ 3103.2); (2) Variance pursuant to § 404.1 for the erection of a one-story rear garage that does not comply with the minimum rear yard setback requirements (§ 3103.2); (3) Variance pursuant to § 406.1 for the erection of a one-story rear garage that does not comply with the minimum closed court requirements (§ 3103.2); and (4) Variance pursuant to § 2001.3 for the erection of a one-story rear garage to a nonconforming Structure that has exceeded maximum lot occupancy requirements in R-4."¹ The undersigned seeks such variances as may be required for the Project.

II. Legal Standard and Burden of Proof

Form 121 provided to the applicants indicates as follows, citing 11 D.C.M.R:

Section 3103.2 – Variances

¹ The Zoning Administrator's provides this variance is required with respect to "R-4"; yet also states that the property is "Zoned DC/R-5-B".

With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code, § 6-41 07(g)(3)(2001) (formerly codified at DC Code § 5-424(g)(3) (1994 Repl)), “[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code §6-641 01 to 6-651 02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship, Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

“An applicant must show, first, that the property is unique because of some physical aspect or ‘other extraordinary or exceptional situation or condition’ inherent in the property; second, that the strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant, and third, that granting the variance will do no harm to the public good or to the zone plan.” *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990) (emphasis added).

With respect to area variances, such as those at issue in the instant case, the lower “practical difficulty” standard applies, which has been interpreted as requiring that the applicant show that strict compliance would be “unnecessarily burdensome.” *Id.* The applicant must demonstrate that “(1) compliance with the area restriction would be unnecessarily burdensome; and (2) the practical difficulties are unique to the particular property.” *Id.* (internal citations omitted). Economic use of a property has been considered a factor in deciding the question of what constitutes an unnecessary burden or practical difficulty in variance cases. *Id.* BZA may consider a wide range of factors in determining whether there is an “unnecessary burden” or “practical difficulty”. *Id.* Increased expense and inconvenience are among the proper factors for BZA’s consideration. *Id.* Moreover, “a showing of hardship or difficulty which inheres in the land at issue is not necessary to prove uniqueness. A condition inherent in the structures built upon the land, rather than the land itself, may also satisfy the applicant’s burden of demonstrating uniqueness.” *Capital Hill Restoration Soc’y v. D.C. Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

III. Discussion and Application of Variance Factors

A. Element 1: The Physical Characteristics of the Property Makes It Difficult for the Owner to Use the Property in Compliance with Zoning Regulations (area variance)—i.e., shape and size of property, unusual topography or slope, soil problems, etc.

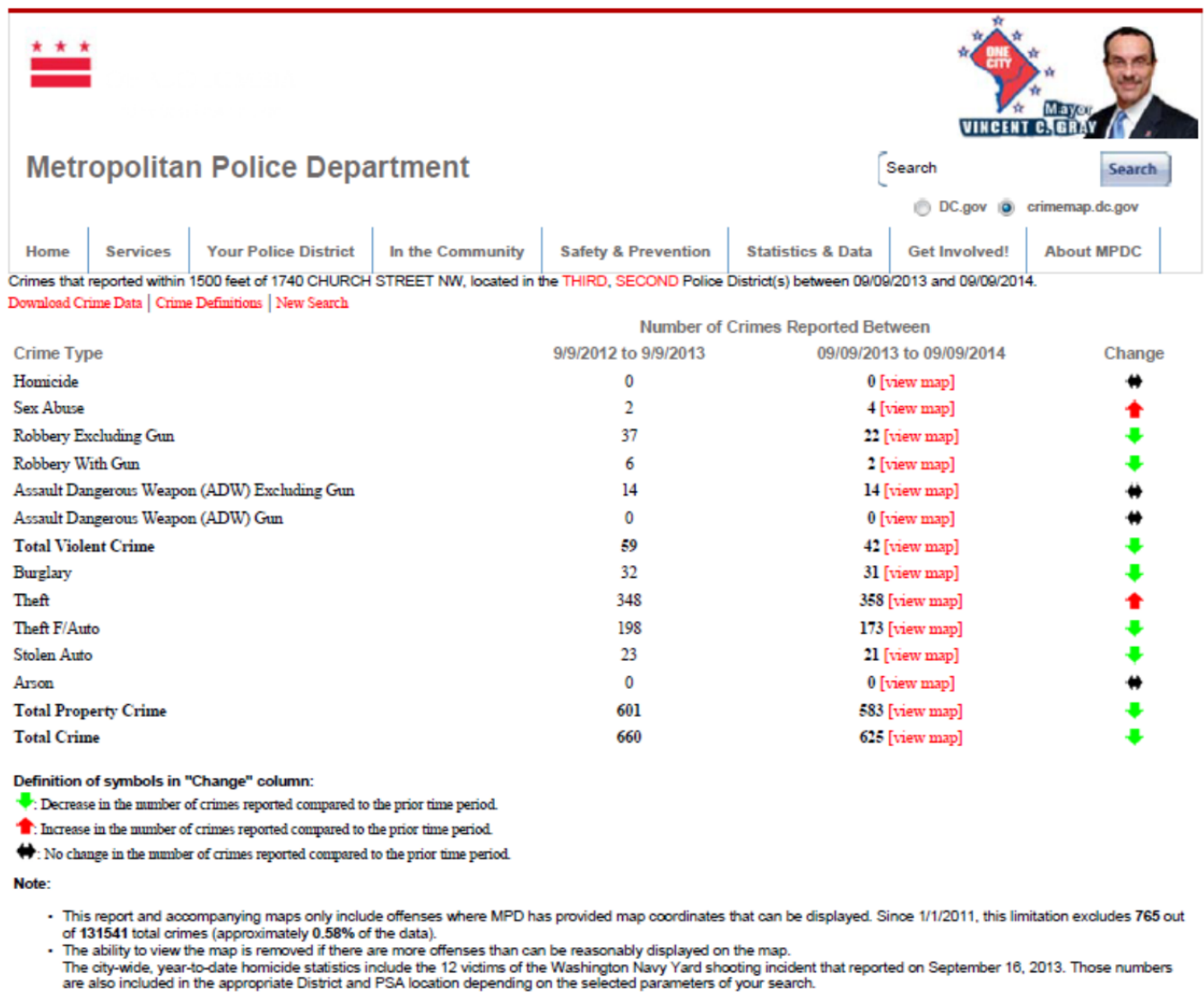
The property here is unique insofar as it is located in the densely populated Dupont Circle neighborhood of Washington, D.C., close to retail and restaurant attractions and several blocks from the Metro, where parking is at an extraordinary premium, and is located immediately adjacent to the popular Keegan Theater, which holds theater productions weekly Thursday through Sunday nights and afternoons, and which is currently undergoing a significant expansion and renovation. We have repeatedly encountered non-authorized vehicles parking in and taking the parking at 1740 Church Street, requiring police intervention and enforcement at great inconvenience. Moreover, the larger volumes of waste generated by the theater have contributed substantially to the rodent population in the immediate vicinity. The construction of the proposed garage will address these problem by securing the parking area from unauthorized access and by creating an enclosed perimeter which will deter rats and permit an elevated roof deck surface for applicant's children to recreate outdoors. Notably, the property on the other side of the theater, 1744 Church Street, already has an enclosed five-car parking garage. Lastly, the property is uniquely challenged insofar as it is the only home which adjoins the only cut-through in the block and therefore is uniquely burdened by foot traffic at all hours of the day and night, leading to increased theft crimes of opportunity. The security aspects of the garage will ameliorate this problem.

The physical characteristics of the site are such that it would not be possible to build a secure single-story roof deck garage without the requested variances. Even with demolition of the existing deck as planned, it is not possible to build a garage for even one car and thereby meet the parking space retention requirement, without exceeding the lot occupancy, rear yard, and closed court requirements. *See* Dkt. No. 18824, Ex. 5 & 6. There is no alternative design which would permit the construction of protected parking and which would also preserve secure outdoor recreation area for owners' children, discussed further below. *See, e.g. Ass'n for the Preservation of 1700 Block of N Street, N.W. & Vicinity v. D.C. Bd. of Zoning Adjustment*, 384 A.2d 674 (D.C. 1978) (permitting variance because practical difficulties of compliance would have required reduction in size of facility and programming in light of no feasible alternative which would have complied with the zoning regulations).

B. Elements 2 and 3: Granting the Application Will Not Be of Detriment to the Public Good and Granting the Application Will Not Be Inconsistent with the General Intent and Purpose of the Zoning Regulations and Map.

Currently, there is no safe place for our children to play outside in either the dogleg section on the west of the property, or in the driveway, due to rat infestation, litter incursion, trash trucks and others driving too fast in the alley, and crime. Like many of our neighbors who have signed our submitted petition in support of the proposed project or otherwise submitted individually tailored letters in support of the project, we have been the repeated victims of theft along the subject alley and sole block cut-through where the garage would be located—in our case from under our deck and alongside our house. There have been 625 crimes reported, including 583 property crimes, 358 theft crimes, 173 theft from auto crimes, and 21 stolen auto auto crimes within 1500 feet of our home in the prior year:

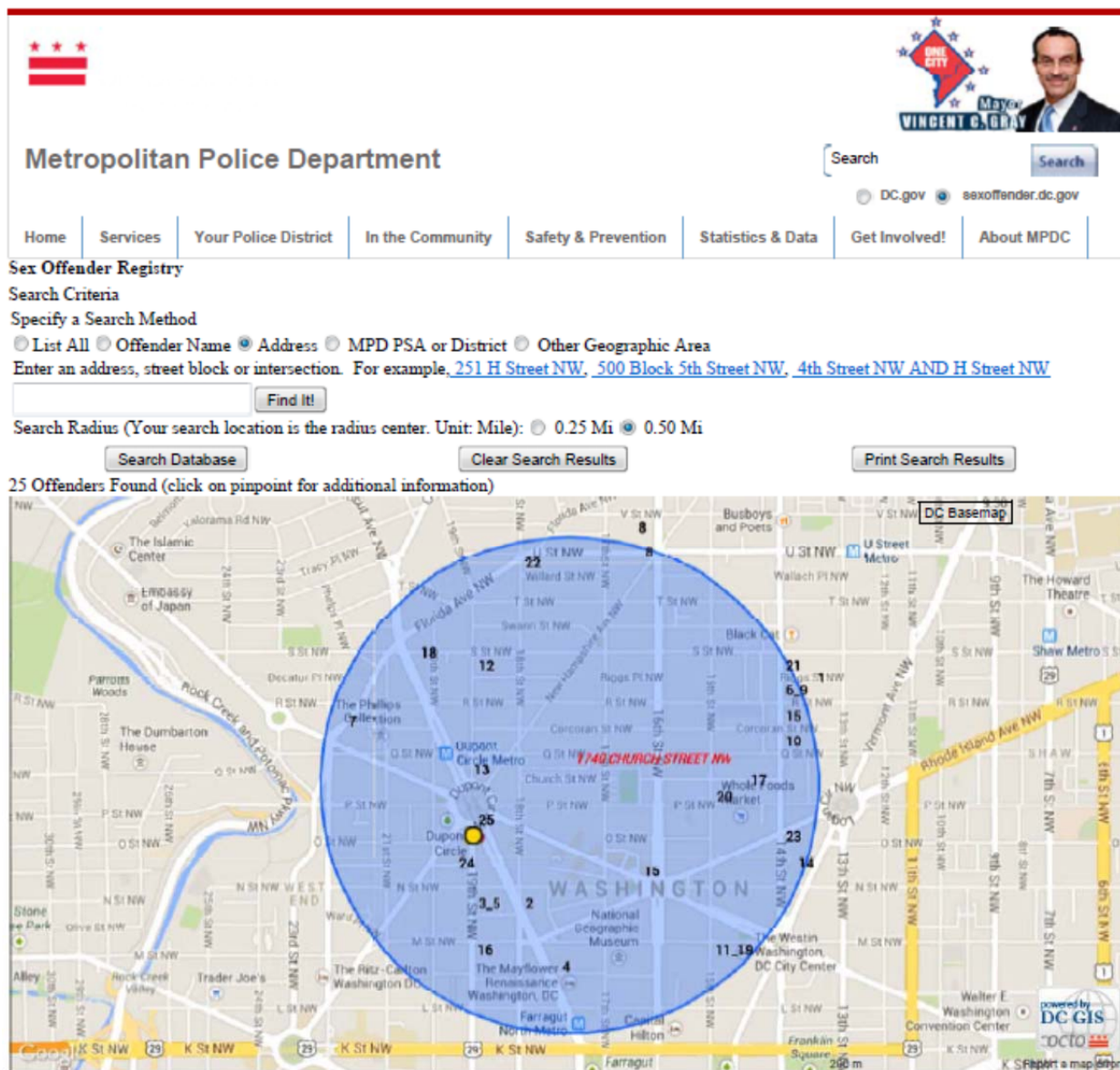
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If we are permitted to build the garage, we will have a safe place to store belongings currently outside and under the small existing deck, deterring theft and reducing the incentive for would-be thieves to patrol the area. Additionally, we will install non-intrusive lighting with respect to the garage entrance and along the side by the steps and lower rear entrance, further deterring theft with respect to applicant's property and the Keegan Theater parking area which also will benefit from lighting. We will also pave the rear area and put up a wall to prevent rodent incursions, promoting the health and wellbeing of the community. Most important to us, the proposed new deck space on top of the garage, and the protected area in the dogleg, as well as the space between the garage and house, will be a safe, enclosed area for our children to play outside without the current risk of abduction, theft, or being hit by alley traffic, and with reduced exposure to the rat/trash elements. Without the proposed project's approval, strict

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compliance will be “unnecessarily burdensome” insofar as applicants will be forced to choose between a place for their children to recreate outdoors or the continued maintenance of surface parking. There are 25 registered sex offenders within a half mile of our home:



The proposed structure will not burden our neighbors. Both flanking neighbors and neighbors across the alley have submitted statements in support. See Dkt. No. 19924, Doc. Nos. 21 & 25-28. The garage and proposed deck are in keeping with other one-story garages and decks along the same row of houses, permitting a community “back yard” community among roof deck

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users. Considering the set-backs and current uses of the decks and parking spaces across the alley, there is no encroachment of privacy.

The proposed project will help reduce parking and traffic maneuverability challenges along the public alley, thereby aiding the public good. The garage will provide a location for us to park our vehicles off the street, helping alleviate on-street parking congestion; and furthermore the setback of the structure will be farther back than current surface-parking of vehicles behind our house, reducing overall on-alley congestion especially for parkers angling into spaces across the alley.

No statements have been submitted alleging the project is inconsistent with the public good nor the general intent and purpose of the Zoning Regulations. Permitting construction of a single-story garage for the wellbeing of residents, the encouragement of families downtown, and the reduction of alley congestion and increased alley sanitation are in keeping with the zone plan residential goals and the overall goal of renewing the downtown community consistent with the preservation of historic structures.

Thank you for consideration of our request.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Bryant E. Gardner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bryant and Kate Gardner