

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

**Application of
Karl B. and Julie C. Moeller
Walker Court Lot - 429 12th Street, SE REAR
Square 992, Lots 818**

**BZA Case No. 18837
Hearing Date: October 21, 2014
ANC 6B, SMD04**

PRE-HEARING STATEMENT OF THE APPLICANT

This Pre-Hearing Statement (“**Statement**”) is submitted in support of an application for Board of Zoning Adjustment (“**BZA**”) approval by Karl and Julie Moeller (the “**Applicant**”) for variances to authorize the conversion, alteration, restoration, repair and use of a one-story storage building (the “**Structure**”) into a flat (two-family dwelling) on an alley lot in the R-4 Zone District. The tax address for the property is 429 12th Street, SE REAR (Square 992, Lot 818) (“**the Property**”).

I. NATURE OF RELIEF SOUGHT

The Applicant seeks BZA approval, pursuant to 11 DCMR § 3103.2, for use variance relief from § 2507.1 to convert, alter, restore, repair and use the Structure as a two-family dwelling on an alley lot and § 2507.2 access to the street from an alley which is not at least 30 feet in width.¹

II. JURISDICTION OF THE COMMISSION

The Board has jurisdiction to grant the requested variance relief pursuant to § 3103.2 of the Zoning Regulations.

¹ The Property has been certified as a building or structure contributing to the character of a historic district listed in the DC Inventory of Historic Sites as evidence by Exhibit A. As such, pursuant to 11 DCMR § 2120, relief from parking is not required.

III. DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

The Property consists of a large lot area of 1,306 sq. ft. and is zoned R-4 (See Exhibit B, Zone Map). The Property is currently improved with a dilapidated one-story storage facility approximately 13 ft. tall and consists of three separate compartments located on an alley lot at the rear of 429 12th Street SE in the named alley of Walker Court. The Structure, which has an unknown original construction date, has a footprint of 1,097 sq. ft. and was built within inches of the property line. See Exhibit C, photos of the Structure.

In addition to owning the Property and its related Structure, the Applicant owns and resides in the rowhouse at 426 11th Street, SE (Square 992, Lot 806) nearby and within the same square as the Property, as shown on the attached parcel map (Exhibit D). The Applicant has resided at this address since April 2001 during which time the Property and Structure were unused and left in disrepair. In April 2013, the Applicant purchased the dilapidated Property from Raymond Davis, the owner since 1998. Even before his purchase of the Property, Mr. Davis used the Structure for storing items related to his kitchen and bath construction business.

Today, the southern and western wooden walls are collapsing or have rodents living in them, and the existing doors are too rotten to be opened regularly. Power was shut off to the Structure many years ago. No other utilities were ever installed. In addition, the overall Structure is unstable, with the north brick and cinderblock wall in poor condition, all brickwork in desperate need of repair and repointing, and the uninsulated roof is sagging and leaking in several areas.

The Property faces out on a 30-foot wide portion of Walker Court and is within the boundaries of the Capitol Hill Historic District. Named alleys are generally used when residences are present and mailing addresses in a public alley are needed. Three other residences

currently occupy Walker Court, one of which was previously a one story garage that BZA approved to be converted to a residence. See Exhibit C, photos.

Square 992, which includes the Property, is bordered by D Street to the north, 12th Street to the east, E Street to the south and 11th Street to the west. The Property is accessible by 11th and 12th Street by a 15 foot wide portion of Walker Court, which bisects the square, and accessible by D Street by a 10 foot wide portion of Walker Court shown more clearly on Exhibit E.

IV. PROPOSED REHABILITATION OF THE PROPERTY

The Applicant proposes to rehabilitate this dilapidated Property with a two-story flat approximately 25 ft. in height, as shown on the attached plans (“**Plans**”). Exhibit F. The Project is in keeping with the policies enumerated in the District of Columbia’s Comprehensive Plan (“**Comprehensive Plan**”), in particular the policy on conversion of non-residential structures to housing under the Capitol Hill Area Element of the Comprehensive Plan. 10-A DCMR § 1508.10.

Each unit will be approximately 1,100 sq. ft. The Plans propose the addition of a separately entranced second-story unit above the restored first floor structure. This second unit will have access to an 800 sq. ft. roof deck. The Applicant intends to retain the first floor unit for visiting family and for extra living space. The second story unit will be rented to help the Applicant recoup the costs of renovation and repair of the overall Structure.

V. USES ALLOWED AS A MATTER OF RIGHT OR BY SPECIAL EXCEPTION

Given the unique 1,000-plus sq. ft. size of the one-story Structure, its current layout, the costs of renovation no matter the end use, its location in a named residential alley populated by other structures which received zoning relief from the BZA, its certification as a contributing structure to the historic district resulting in the Structure not being able to be demolished, the

cost of property on Capitol Hill, the potential uses that are allowed as a matter of right or by special exception in a building on an alley lot are very limited and are not appropriate, reasonable, or economically feasible for this Property and its unique Structure.

Generally, existing buildings on alley lots may only be used, as a matter of right, as “one-family dwelling” or “artist studios”, subject to certain criteria. 11 DCMR § 2507.1, § 2507.2 and § 2507.5. The only permitted special exception uses permitted on an alley lot are storage of wares and goods, parking lot, parking garage, or public storage. 11 DCMR § 333. The costs associated with the substantial structural repairs needed in this case make it cost prohibitive to convert the Structure into an artist studio or use for parking or storage. Converting the structure to a single family home only would preclude the owner from being able to use the building, requiring instead that they sell the Property or rent the entire structure as a single unit.

VI. STATEMENT OF SATISFACTION OF BURDEN OF PROOF FOR ZONING RELIEF SOUGHT

The Applicant submits that, based upon (i) its Application and the materials submitted in conjunction herewith, (ii) the evidence to be presented at the public hearing and (iii) other evidence to be submitted hereto, it will satisfy and comply with the applicable legal standards and burdens for the variances requested.

VII. JUSTIFICATION FOR REQUESTED USE AND AREA VARIANCES

The Property is zoned R-4. The Zoning Regulations state that the “R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwelling for two or more families.” 11 DCMR § 330.1. Among the uses that are permitted as a matter of right in an R-4 District is a flat. However, the Property is an Alley Lot and therefore the Applicant requests zoning relief from § 2507.1 since, except for a “one-family” dwelling, “a structure shall not be

erected constructed, converted, altered, remodeled, restored, or repaired for human habitation on an alley lot.”

In addition, the Applicant seeks relief from § 2507.2 which requires that a “one-family dwelling shall not be erected or constructed on an alley lot unless the lot abuts an alley thirty (30) feet or more in width and has from the alley access to a street through an alley or alleys not less than thirty (30) feet in width.” Although the Property fronts a portion of Walker Court 30 feet in width, the portion of the alley providing access to 11th Street (15 feet), 12th Street (15 feet) and D Street (10 feet) are all less than 30 feet. The BZA granted zoning relief to three such alley lot properties, currently used as residences, located on the northern section of Walker Court.

Pursuant to 11 DCMR §3013.2, an Applicant must satisfy three requirements to obtain approval of a use variance: (i) a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (ii) exceptional undue hardship upon the owner of the property; and (iii) no substantial harm to the public good and no substantial impairment of the zone plan. The subject Application fully meets this legal test, as discussed in more detail below.

A. An Exceptional Situation or Condition of the Property.

Here, the Property is subject to an extraordinary or exceptional situation or condition. The Court of Appeals stated that “[t]he statute does not preclude the approval of a variance where the uniqueness arises from a confluence of factors. The critical point is that the extraordinary or exceptional condition must affect a single property.” Gilmartin, 579 A.2d at 1168 (quoting Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 942 (D.C. 1987)).

It is the confluence of the following factors:

1. The Structure is in extreme disrepair and, since it is a contributing structure in the Capital Hill Historic District, the structure cannot be demolished;
2. The Structure is considered a contributing structure and the Applicant has worked with the Historic Preservation Office regarding the new design for more than a year;
3. There exists four alley lots in the subject square. Three of these alley lots contain two-story residences. The subject Property is the only one-story non-residential structure;
4. Two story structures on 12th Street with a total square footage of approximately 1,000 sq. feet, could, by right, subdivide into multi-family structures, but BZA rules inconsistently preclude similar treatment of alley lots;
5. The internal alley system is very wide at 30-or more ft.; and
6. The Alley lot, at 1,306 sq. ft., is below the minimum lot size of 1,800 sf.

B. Undue Hardship to the Owner

Continued use of the Structure as a nonresidential use is impossible due to its physical deterioration and the investments needed to save the Structure. The only matter of right use at the Property as an artist studio and the only uses permitted by special exception are uses as a single-family residence pursuant to 11 DCMR § 2507.5 and § 2507.6.

According to local contractors, adding sewer and water capacity will cost the Applicant no less than \$10,000 (and perhaps as much at \$30,000) while restoring electrical service will cost approximately \$2,000. In both cases, this is only the cost to bring the services to the Structure and have it “stubbed off.” These estimates do not include any plumbing or electrical services

within the Structure. Architects and designers familiar with construction costs in the Washington DC area, as well as input from contractors, show the cost per sq. ft. of a major construction project, such as this, to be in the \$170 to \$200 per sq. ft. price range. At this rate, a single story renovation of the Structure into an artist studio would cost perhaps \$190,000 - which must still be added to the purchase price and other preparatory costs. These totals quickly add to more than \$300,000 and fail to offer the Applicant a meaningful use of the Property that meets their needs or justifies the substantial investment required.

To purchase, renovate, and repair the structure into a two-story, single-family residence could easily cost, in total, more than \$460,000 - but a single-family occupancy would not permit the Applicant the ability to retain the first floor for their own use as they hope they will be able to do. The proposed two-unit flat configuration would simultaneously achieve the Applicant's personal use as well as economic objectives and requirements to justify the Project.

The Applicant along with their architect have met and communicated repeatedly with, and received input from, the Office of Planning and the Office of the Zoning Administrator to discuss needed variances, construction plans, proposed uses for the Property, and other issues.

As mentioned above, several renovations will be necessary to simply make the Structure safe and fit for habitation, including:

- Replacement of the current roof with an insulated and stable roof structure,
- Addition of a water supply and sewer line,
- Restoration and upgrade of the currently disconnected electrical service,
- Repair and repointing brickwork,
- Insulation of bare brick walls,
- Repair and upgrade of the damaged slab floor (and addition of a vapor barrier),
- Repair of the damaged eastern brick and cinderblock wall of the building,
- Stabilization, repair, and improvement of other exterior and interior walls, and
- Upgrade and addition of new windows and doors.

Even the most basic repairs will be costly, and current zoning regulations threaten to constrain this large, residence-worthy structure to limited uses that are cost-prohibitive to establish and will generate very limited value and/or income. Given the major investments needed, using the Property without the needed zoning relief will create an extreme financial hardship for the Applicant. The requested variances are critical to the Applicant's ability to recoup the major investment needed for a full restoration of the Property.

D. No Substantial Harm to the Public Good and No Substantial Impairment of the Zone Plan.

Relief can be granted without the detriment to the public good. In fact, the construction of a two-story alley dwelling offers substantial benefits and is consistent with the limited residential purposes of the R-4 zone and in keeping with the character of the historic district and more specifically the historical use and context of Walker Court, including existing alley dwellings. Not only would this Project restore a currently blighted property, but it would also increase housing stock of smaller rental units on Capitol Hill. Permitting two 1,000-plus sq. foot residences on the Property would create a vibrant and lived-in alley space in what is currently a vacant, crime-friendly, and underutilized alley.

The Applicant increases the safety of the alley by making the Property habitable, but without negative impacts on the surrounding properties. Residential use will not adversely impact the privacy of neighboring property owners. Nor will the Project have an effect on any other properties within the square. Several residents within the subject square have already signed a letter in support of the proposed project, including the residents closest to the Property. See Exhibit G, Map of Supporters in the Subject Square and Letter of Support.

VIII. AGENCY/COMMUNITY OUTREACH

A. Advisory Neighborhood Commission

The Applicant has met with the Advisory Neighborhood Commission (“ANC”) single member district commissioner regarding the Project and the Project is on ANC 6B’s Planning and Zoning Committee Agenda for October 7, 2014. The Applicant and his architect will present the Project before the full ANC 6B Commission on Tuesday, October 14, 2014.

B. Historic Preservation

The Property is located within the Capitol Hill Historic District, and the Applicant and his architect have repeatedly consulted with the staff of the Historic Preservation Office (“HPO”) on the design of the new alley dwelling and on October 23, 2014, the Applicant will seek concept approval from the Historic Preservation Review Board (“HPRB”).

C. Capitol Hill Restoration Society

On October 6, 2014, the Applicant appeared before the Capitol Hill Restoration Society’s (“CHRS”) historic preservation subcommittee and presented the Plans to the members of that committee. On October 7, Beth Purcell, Chair of the CHRS Historic Preservation Committee, sent an email to HPO, OP and the ANC concluding the Project is compatible with the Capitol Hill Historic District, see below and Exhibit H:

The Historic Preservation Committee of the Capitol Hill Restoration Society reviewed the plans for this project dated December 17, 213/July 22, 2014, and offers the following comments.

We believe that this modern interpretation of a storage building is effective and appropriate. The applicant plans to use the first story as an office, and the second story as a rental unit.

This is a storage building covering 100 percent of an alley lot. The applicant does not know when the building was constructed. Much of the building is deteriorated, and little of the historic fabric remains. The applicant believes that it is possible to save the brick walls, and has

incorporated these walls into the project. The stacked wood elements suggest the building's original brick. The plans call for a sliding door, similar to the original door, to provide security when closed, and natural light into the space when open. A new second story has a similar sliding screen door. The roof deck is appropriate for an alley building with 100 percent lot coverage.

We believe that the project is compatible with the Capitol Hill Historic District.

Thank you for considering our comments.

Beth Purcell
Chair, Historic Preservation Committee

IX. WITNESSES EXPECTED TO TESTIFY

- Karl B. and Julie C. Moeller, Applicant
- Ziad Elias Demian, AIA – APA, Project Architect, demian\wilbur\architects

X. EXHIBITS

Exhibit A: Historic Building Certification.

Exhibit B: Zoning Map (with the Property outlined in red) and Surveyor's Plat.

Exhibit C: Site Photographs.

Exhibit D: Annotated Parcel Map.

Exhibit E: Annotated Baist Map Showing the Alley System.

Exhibit F: Plans.

Exhibit G: Map of Supporters and Letter in Support Signed by Neighbors Within the Subject Square.

Exhibit H: E-mail Correspondence from CHRS.

Exhibit I: Outlines of testimony and expert resume for Ziad Elias Demian, AIA-APA.

XI. CONCLUSION

For the reasons set forth above, the Applicant is entitled to, and respectfully requests approval of, the grant of variance relief to allow a two-story flat at the Property.

GREENSTEIN DELORME & LUCHS, P.C.

Respectfully submitted,



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