



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM:  Matt Jesick, Case Manager
Joel Lawson, Associate Director Development Review

DATE: October 14, 2014

SUBJECT: BZA #18837 – 429 Rear 12th Street, SE

I. RECOMMENDATION

With regard to this proposal to allow a flat on an alley lot located on a sub-standard alley, the Office of Planning (OP) recommends **denial** of the following required variance relief:

- § 2507.1 Alley Lot Use (structures on alley lots may only be used for single family dwellings; a flat is proposed);
- § 2507.2 Alley Width (30' alley width required; 15' existing);

In addition, the proposal appears to require the following additional relief:

- § 2507.3 Conversion of Nonresidential Structures (Nonresidential structures on sub-standard alleys shall not be converted to residential use; residential use is proposed);
- § 403 Lot Occupancy (60% maximum; 100% proposed on the second floor);
- § 404 Rear Yard (20' minimum; zero rear yard proposed); and
- § 2101 Parking (1 space required; 2 existing; zero proposed).

OP has discussed the additional relief that appears to be required with the applicant's representative, who took it under advisement.

II. LOCATION AND SITE DESCRIPTION

Address	429 Rear 12 th Street, SE
Legal Description	Square 992, Lots 818
Ward and ANC	6, 6B
Lot Characteristics and Existing Development	Rectangular lot fronting on Walker Court on north, west and south; Abuts rowhouse lots directly to the east; No street frontage; Existing one-story structure in poor condition, formerly used for parking, now used as storage.
Zoning	R-4 (Rowhouse Residential)
Historic District	Capitol Hill
Adjacent Properties	North – Alley dwelling South, East and West – Rowhouse residential
Surrounding Neigh'd Character	Mostly rowhouses, some institutional, some commercial on Pennsylvania Avenue; Walker Court has three other existing alley dwellings.



III. APPLICATION IN BRIEF

The applicant proposes to rehabilitate the existing building and add a second floor in order to create a flat. The ground floor would be a one-bedroom unit. The second floor would be a two-bedroom unit.

IV. ZONING REQUIREMENTS AND REQUESTED RELIEF

This self-certified application requests relief from the alley lot regulations §§ 2507.1 and 2507.2. Variance relief would also appear to be required from §§ 2507.3, 403 (Lot Occupancy) and 404 (Rear Yard), as well as special exception parking relief pursuant to § 2120.6.

R-4 Zone	Regulation	Existing	Proposed	Relief
Height (ft.) § 2507.4	30' max.	12'	25'	Conforming
Lot Width (ft.) § 401	18'	27.5'	No change	Conforming
Lot Area (sf) § 401	1,800 sf min.	1,306 sf	No change	Existing nonconforming
Lot Occupancy § 403	60% max.	84%	100% on the 2nd floor	Required
Rear Yard (ft.) § 404	20 ft. min.	None	No rear yard on 2nd floor	Required
Side Yard (ft.) § 405	None required	None	No change	Conforming
Parking § 2101	1 space for a flat	2 parking spaces*	0 parking spaces	Required
§ 2507.1	A structure on an alley lot shall not be constructed or repaired for habitation except as a one family dwelling.	1 story garage / storage bld.	2 story flat	Requested
§ 2507.2	A dwelling shall not be constructed unless the alley is 30' wide to the street.	15' alley	No change	Requested
§ 2507.3	A nonresidential structure on an alley less than 30' wide shall not be converted to a residential structure.	Garage / storage building	Flat	Required

* There appear to be at least two parking spaces in the existing structure, even though they have not been used for parking for some time.

V. ANALYSIS

In order to be granted a variance, the applicant must show that they meet the three part test described in § 3103.

Variances From Alley Lot Regulations

Based on previous determinations by the Board and the Zoning Administrator, variances to §§ 2507.1 and 2507.2 are considered use variances. A variance from § 2507.3 is defined as an area variance under § 3103.5.

1. Exceptional Situation Resulting in an Undue Hardship or a Practical Difficulty

The structure on the property is in an exceptional state of disrepair, and because of the state of the building, it could be substantially expensive to rehabilitate the structure, no matter the future use. The application, on pages 6 and 7 of the October 7th written statement, provides some estimates on the amount it would cost to renovate the structure and construct the addition. OP finds, however, that the evidence presented does not adequately substantiate the claim that no other uses besides a flat would be feasible on this site. The only uses specifically addressed are an artist's studio and a single family dwelling. The costs and revenues of other special exception uses were not considered.

For a single family dwelling, the application states that costs of renovation could reach "more than \$460,000". This figure is presumably for a similar building envelope to what is proposed – a 2,200 square foot, two story structure. A single family house of that size in this location could easily generate an adequate return on the applicant's investment. The application states that the owners desire to use the first floor unit as an extension of their main house across the alley. But the Regulations clearly seek to prohibit uses more dense than single family homes on narrow alleys, and the desires of the owner do not rise to the level of an exceptional condition.

In summary, the property may have an exceptional condition, but the applicant has not demonstrated that the exceptional condition leads to an undue hardship.

The Office of Planning also refutes many of the asserted exceptional conditions that have been put forward on page 6 of the application.

	Asserted Exceptional Condition	OP Analysis
1	"The Structure is in extreme disrepair and, since it is a contributing structure in the Capital [sic] Hill Historic District, the structure cannot be demolished;"	Acknowledged.
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;"	The architectural design of the building has no bearing on the requested zoning relief, and prior discussions with a government agency are not an exceptional condition.
3	"There exists [sic] 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;"	The height of the building is not at issue in the application; The presence of two-story buildings in the alley have no bearing on the subject property or the application and do not create an undue hardship

	Asserted Exceptional Condition	OP Analysis
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;”	The Zoning Regulations intend to treat alley lots differently than lots fronting on public streets, especially lots on alleys less than 30 feet wide. This statement is also factually incorrect in that conversion to multi-family in the R-4 is based on lot size, not building size.
5	“The internal alley system is very wide at 30-or more ft.,”	It is not unique or exceptional that alleys would be narrow at one point and 30 feet wide at another.
6	“The Alley lot, at 1,306 sq. ft., is below the minimum lot size of 1,800 sf.”	The lot size is not unique; There are at least 20 lots smaller than the subject property on the square. Nor does the lot size result in an undue hardship related to the requested relief.

2. No Substantial Detriment to the Public Good

The requested relief to the subsections of § 2507 could be granted without detriment to the public good. The presence of a flat on the alley would not have a significantly different impact than would a single family dwelling. And given that Walker Court already has residential uses on it seems to indicate that services can be accommodated in this alley system, despite its substandard size.

3. No Substantial Harm to the Zoning Regulations

Granting the requested relief would impair the intent and integrity of the Zoning Regulations. As noted by the applicant, alley lots are treated differently than lots fronting on a street. The intention of the current alley lot regulations is to minimize density on alleys, and in particular on alleys less than 30 feet wide. The variance process is intended to weigh that intent against a potential undue hardship on the part of an owner, but in this case the applicant has not demonstrated that any conditions associated with the property would result in an undue hardship.

Variances From Rear Yard and Lot Occupancy

When constructing a vertical addition to an existing building the new story must meet all lot occupancy and yard requirements. In this case the second floor would have no rear yard and, OP estimates, 100% lot occupancy. The applicant has not requested relief for these aspects of the project and has not provided a variance analysis of them. OP’s analysis is below.

1. Exceptional Situation Resulting in a Practical Difficulty

The existing one-story structure on the property is in an exceptional state of disrepair, but that fact has no bearing on whether completely new construction would exceed lot occupancy or have a non-compliant rear yard. The existing building has a lot occupancy of 84% and no rear yard, and if the size of the proposed second story is dictated by the location of the existing structural walls, the applicant should provide evidence regarding that construction scenario.

2. No Substantial Detriment to the Public Good

Granting the requested relief could result in a detriment to the public good. The new structure would occupy 100% of its lot and thus have no rear yard or other property line setback, which could impact light, air and privacy for adjacent properties fronting on 12th Street.

3. No Substantial Harm to the Zoning Regulations

Granting relief could impact the intent of the Zoning Regulations, which seek to provide assurance and predictability to neighbors about the nature of structures built next to them. If a second floor were to be constructed on the subject site, it would be reasonable for residents on adjacent properties to expect some setbacks of that story, which shares lot lines with four other lots.

Variance From Parking

The existing building appears to contain at least two conforming parking spaces, although those spaces have apparently not been used for parking for many years. The proposed flat would require one parking space, and while “historic resource[s] and additions thereto are exempt from the requirement...to provide *additional* parking” (§ 2120.3, emphasis added), a new development, even if it is an historic resource, would not be permitted to remove existing parking.¹ The applicant has not requested relief for parking and has not provided a variance analysis. OP’s cursory analysis is below.

1. Exceptional Situation Resulting in a Practical Difficulty

The existing one-story structure on the property is in an exceptional state of disrepair, but that fact has no bearing on whether existing parking is retained.

¹ This is similar to case #18651, 319 A Street, NE, which the Board denied, where an applicant proposed to remove one existing parking space which had been used for storage for many years.

2. No Substantial Detriment to the Public Good

Granting the requested relief would likely not have a significant impact on the public good. One additional vehicle would not significantly increase parking demand in the vicinity. This site is also in a very walkable and transit friendly neighborhood.

3. No Substantial Harm to the Zoning Regulations

While there would likely be no great impact of one additional vehicle, granting relief could impact the intent of the Zoning Regulations, which seek to provide adequate parking for new residential development.

VI. HISTORIC PRESERVATION

The subject site is located in the Capitol Hill Historic District and the design will be reviewed by the HPRB on October 23, 2014.

VII. COMMUNITY COMMENTS

As of this writing the Office of Planning has received no comments from the community. The applicant is scheduled to go before the ANC on October 14.

VIII. VICINITY MAP

