

December 2, 2014

TO Board of Zoning Administration

FROM Barbara Schauer and Don Lipinski, 937 M Street, NW



RE: BZA Case No. 18852/18853, Application of SB Urban, LLC, 90 and 91 Blagden Alley

I. SUMMARY

We are long time neighboring residents and property owners in the area of the proposed development. It is our position that the Applicant has not demonstrated that the three prongs of the variance test have been met, and thus, they are not entitled to the requested relief.

The project's fundamental inappropriateness is the primary reason it requires four zoning variances and two special exceptions. The variances may allow a project that maximizes profitability for the owner but the proposed development would encroach unnecessarily on the surrounding historic area and degrade the surrounding residential neighborhood by its intensity and scale. A development of this type with a large number of very tiny apartments has not been tried in Washington, D.C. and there is no evidence to support the many assertions and assumptions made by the Applicant about how it would function and affect the surrounding area.

The proposed development is located in historic Blagden Alley. The interior of the Alley was re-zoned in 1996 from R-4 to C-2-A by Planning Commission Order No. 782 (Attachment 1). This re-zoning included the M Street site on Lot _____. The Order restricts the extent of C-2-A development allowed in the alley because of its historic importance and to protect the surrounding residential neighborhood. The proposed project is located in a C-2-A zone but is far beyond the scale and intensity allowed by Order No. 782.

The proposed development would have significant negative effect on the historic character of the Alley and the surrounding historic area. It would bring additional demand for parking, increased traffic in the alleys and on M and 9th Streets, many more pedestrians in the courts and alleys that are actively used by vehicles to access properties. The two buildings and the pedestrian bridge would encroach and degrade the adjacent historic courts and alleys and change the character of Blagden Alley from an historic site to a congested commercial area. This is not what was intended by the re-zoning when Order No. 782 promised its protection.

The site should be developed at appropriate scale and design to preserve the unique character of Blagden Alley and protect the surrounding historic residences. The developer is attempting to make the site fit the development and not the other way around. This may be reasonable in another more prosaic setting, but it should not be allowed in this case given the unique and important history of the area and the promises made by the Office of Planning when it was re-zoned.

II. THREE PRONGS OF VARIANCE TEST

The Applicant is required to demonstrate 1) the project is affected by an extraordinary situation or condition, 2) the zoning restrictions will result in practical difficulties, or 3) the variances will not cause substantial detriment to the public good or substantially impair the intent, purpose or integrity of the zone plan.

1. Exceptional or extraordinary situation or condition.

The Applicant has not demonstrated the property is affected by an exceptional or extraordinary situation or condition. The proposal is simply too large and intensive and the Applicant is seeking the variances and exceptions that will allow them to squeeze too much into too small and unique a site.

The area is not affected by an exceptional or extraordinary condition that needs to be overcome for it to be developed with as much intensity as possible. The area is a National historic area that is also surrounded by a District of Columbia Historic area. As such, it demands special protection against the kind of development that is being proposed, not relief from zoning restrictions to allow it.

2. Practical Difficulty.

The Applicant has not demonstrated that practical difficulties exist that would entitle them to relief. It is our position that the Applicant does not meet the standard because the project is beyond what is allowed by the zoning ordinance. The difficulties cited by the owner are due to legitimate protections of the property because of its historic status and closely surrounding historic residences.

Practical difficulties will be eliminated when a development is designed that is suitable to the site and neighborhood. Bending regulations might be a solution to improve feasibility on an irregular or more prosaic site where the surrounding area is less significant, but that is not the case with Blagden Alley.

The Applicant's claimed practical difficulties are self-imposed and brought about by their design choices. The Applicant must have understood the difficulty of their proposal from the start. They chose to pursue their development concept knowing it would require many variances and exceptions. It is a risk they took in assuming they would receive whatever relief they needed to make their concept work. Furthermore, the Applicant has not provided any alternate concepts to show the current concept is the best or only alternative.

Enforcement of the zoning ordinance does not unreasonably prevent the Applicant from using the property for an allowable use. It is our view that conforming to the zoning is not unnecessarily burdensome. Allowing these variances would not do justice to other property owners in the city who may want to develop their properties and would have to meet the zoning requirements.

3. Substantial Detriment to the Public Good or Impairment of the Intent, Purpose or Integrity of the Zone Plan.

The intent of the zone plan for the project area is described in detail in Zoning Order No. 782. The area was re-zoned in 1996 from R-4 to C-2-A to encourage small-scale, mixed-use development to improve Blagden Alley, an historic but blighted downtown neighborhood. Order No. 782 promised the surrounding historic area, including residences, would be protected for the residents themselves and for the public good since the area is located within a National historic site and a city historic area. The proposed development is detrimental to the public good by not protecting the historic alley.

It does not meet the intent of the plan as detailed in the Order because of its massive scale. The proposed project is of a scale and intensity that was not envisioned when re-zoning was debated and the Order issued. We expect the City to honor the promises made in the Order by only allowing development at a scale that enhances and protects the area and does not detract from it. The proposed development requires alley and court encroachment in order to squeeze in as many micro units as possible and does not protect the surrounding neighborhood and residents.

It is our position that the proposal by the Applicant is far larger and more intensive than the small-scale development allowed by the order and does not protect the surrounding area. In fact, the massive new development most closely resembles a dormitory, hotel or hostel with its 125 micro units and 9,000 square feet of common amenities area with a communal kitchen, gym, library, laundry, living room, den and game room, plus lobby, bike storage, maintenance area and retail space. This is not at all what was promised in 1996 when the re-zoning was debated and residents agreed to it.

The 1995 petition for re-zoning stated that the alley was a "hiding place where various criminal activities are a daily and all-night occurrence." The residents, and we were among them, agreed that allowing small-scale commercial use could re-vitalize the alley. Order No. 782 describes the thinking behind re-zoning a residential area to low density mixed use commercial. The Order explicitly states that mixed-use development and *small-scale commercial uses* only would be allowed. This change was debated at length and it was argued that it was needed to "improve the character of the alley" by encouraging small scale development, while at the same time protecting the adjoining residences and the important history of the alley, which is a National historic district. The Order explicitly states that "surrounding residential areas will be safeguarded and the development of the historic alley should be suitable for *adaptive reuse*."

A. Historic Preservation Office Review.

The staff report from the Historic Preservation Office, July 31, 2014 (Attachment 2) concluded that the concept design with its pedestrian walkway and the alley alterations are not compatible with the Blagden Alley-Naylor Court Historic District. The staff reviewer stated "The pedestrian walkway, piazza-like alley dimensions, and over use of glazing, that would be imparted on this corner of the alley combine to effectively, and incompatibly, change the scale of this part of the historic district. Rather than two buildings inserted comfortably amongst the historic buildings of the district, their literal and figurative connection aggregates to take over this corner of Blagden Alley."

The Historic Review Board disregarded the recommendation of HPO staff in a vote of 4 to 3. Their stated reason was that there appeared to be no community opposition to the plan and the ANC supported it. There is, in fact, quite a lot of community opposition to this plan and it is our view that the HPO staff's findings are the most reliable and should bear more weight than ANC commissioners. While the views of the ANC may have "great weight" in advising city agencies, they are not particularly knowledgeable of historic preservation and their support should not have more weight than staff in guiding the Board. Furthermore, the ANC knew there was community opposition but voted to support this project anyway.

It is our position that the HRB should re-hear this case in light of community opposition and give weight to the staff report, which is supported by the community.

B. Blagden Alley-Naylor Court Historic District

The Blagden Alley-Naylor Court area was designated historic by the District of Columbia on September 19, 1990 (effective November 13, 1990) and was then listed on the National Register of Historic Places on November 16, 1990 by the National Park Service. The surrounding Shaw Historic District was created in _____ by the city and encompasses Blagden Alley. It is one of only a few H-shaped alleys that remain in Washington, D.C. and should be carefully protected for future generations.

The M Street site is an important building site in the city because of its location within historic areas close to downtown. It is unique because of its surrounding. On its southern end it faces M Street, with its many Victorian row houses, on its northern end it faces the interior of historic Blagden Alley and contains an historic building, on its eastern side it faces an historic alley, and on its western side it faces a rare historic interior court. Unlike many developments where the front is the most important, all four sides of the M Street site are equally significant. This uniqueness is not a mere configuration flaw to be overcome with many zoning variances and special exceptions. It is instead a configuration to be carefully protected and enhanced.

C. Eligibility for Inclusionary Zoning

The Applicant has assumed lot occupancy based on Inclusionary Zoning, however it is not clear that the project qualifies for IZ. For Lot 164 (91 Blagden Alley) the application claims IZ.

occupancy of 74% and for Lot 165 (90 Blagden Alley) 89% occupancy is claimed This is allowed only if the units are of the Studio/Efficiency type, as described in the regulations. According to DCMR 2224 2 (d), IZ regulations do not apply to "Rooming houses, boarding houses, community-based residential facilities, or single room occupancy developments" The proposed project appears to be a more of single room occupancy or dormitory style development and does not appear to meet the requirements of IZ We request the this aspect of the applicant be re-reviewed

III. PARKING VARIANCE

The Applicant is seeking variance so they do not have to provide parking when 61 parking spaces are required for both buildings, with 39 for the M Street building alone We do not think the Applicant has demonstrated the residents, employees, and visitors will not need parking No evidence is provided to support this assertion

Zoning Order No. 782 states new "C-2-A zoning would allow the existing surface parking area on M Street, NW to be utilized and act as a generator for business activity" This may have been true in 1996 when the area was re-zoned but it is not the case now where no extra parking is available on M Street or anywhere else in the area

Parking is an issue now in the area which is close to the convention center, new hotels and residential development that brings in many more residents and visitors There is no legal parking at all in Blagden Alley, nor is there much street parking available to accommodate the number of new residents and employees who may have cars, or wish to have cars at some point. The application states there is a "very low likelihood of residents having cars" It also states "no residents would have cars" No one can say how many residents will have or want cars but it is highly unlikely to be zero

Even if only 10 percent of the 125 residents have cars or wish to have cars, that is still 13 cars that have no parking provided and must go out into a crowded neighborhood and look for them At 20 percent, the number jumps to 26. If their visitors have cars, there is no parking for them either While parking garages may be available within a quarter mile radius, there is a high demand for them as well, and people naturally will seek on street parking near where they live Nothing can prevent this and there is no way to enforce a ban on residents having cars

Furthermore, there is no discussion of the parking needs of employees The proposed development not only has a total of 125 apartments but also a large amenity space (9,000 sf) with shared kitchen, gym, library, laundry, living room, den and game room, plus a lobby, bike storage and maintenance area This requires a number of employees who will also seek parking

1. Traffic, Delivery, Moving, Maintenance and Trash Trucks

The Applicant has not addressed the issue of traffic, deliveries, tenants moving in and out, maintenance and trash removal. No loading dock is provided in the rear of the buildings so delivery, moving, trash, recycle and maintenance vehicles will have to operate from the main streets

There are no commercial parking or loading zones along 9th and M Streets that front the proposed building sites. The main building lobby would face the M Street building, which is a one way residential street. No loading zones exist to accommodate the many commercial vehicles and delivery trucks that would be expected for 125 residents and a retail space in the 9th Street building.

The Applicant has stated that trash and recycleables would be taken to the sidewalk on M Street for pickup. M Street is a residential street and is historic as well, so it is difficult to envision the trash from 125 people lined up in bins on the sidewalk waiting for pickup once a week, or being toted across the sidewalk for removal. The 4-foot sidewalk along M Street, with its many tree boxes, is heavily traveled by people on foot and does not have the room to accommodate apartment trash bins waiting for pick up.

IV. COMMENTS ON THE OFFICE OF PLANNING REPORT

The Office of Planning issued a report of its review on November 21, 2014. Community responses are now being formulated. These will be brought to the ANC for discussion and submitted to the Office of Planning as well.