Statement from the Party in Opposition to the BZA cases #18852/18853

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1. Summary

This is a letter in opposition to the following relief requested by SBUrban, LLC (the Applicant):

- Variance from Section 775.5 (side yard) for a side not providing required width (9th St Property)
- Variance from Section 2101.1 (number of required parking spaces) to provide zero parking spaces with a requirement of 22. (9th St Property)
- Variance from Section 776.3 (court width) for two open courts not providing the minimum required widths (M Street Property)
- Variance from Section 2604.2 to provide a lot occupancy of 89% on the ground floor when the maximum allowed is 75% (M St Property)
- Special exception under Section 2120.6 (required parking spaces for historic resources) to provide zero parking spaces with a requirement of 39 (M St Property)

In preparation of this letter, we reviewed other relevant BZA cases, in particular BZA Case # 18638, the Church St Micro Development Project. We were encouraged that the board in that case came very close, 3-2, to rejecting the initial 100% parking variance. The applicant in that case also dropped their request for the lot area occupancy variance. This project, unlike the Church St project is an order of magnitude larger - 123 micro units vs. 38. In this context, the request for a 100% parking variance/special exception seems brazen. This project also does not display any of the exceptional circumstances that were attributed to the previous case: the lots are significantly wider 60+ ft vs. 37.5 ft, and deeper ~140 ft and ~230 ft vs. 90 ft, which makes construction of an underground garage straightforward. The additional 20+ ft of width, in particular, crosses the threshold where invoking lot narrowness is no longer viable. The applicant's lot sizes are extremely generous, vacant or largely vacant, and are bounded by alleys on two sides (9th St lot) and 2.5 sides (M St lot). These three characteristics allow the applicant much greater flexibility in designing the new structures to comply with the already very generous matter of right allowances provided under C-2-A. For all of these reasons, there is no valid reason, as we hope to prove in the following sections, that the applicant should be granted the requested variances/special exceptions.

2. 9th St Lot Variances

The Applicant does not meet the burden of proof required for area variances for the 9th St Property.

2.1 The Property is Not Affected by an Exceptional Situation or Condition

The Applicant failed to show that there is an exceptional condition affecting the property. They list several factors about the lot and then jump to the conclusion that there is a "culmination of factors". Yet, the factors they list are **favorable**, and make the lot easier to develop.

1. At over 60 feet, the lot is wider than most lots in the square and is an extremely generous width for DC as a whole. The lot is almost a perfect rectangle with a length of 139 feet in the sense that its length is twice the width. Most lots in the DC are narrower, when compared to

their length (18 or 20 feet wide for a depth of 80+ feet). Thus, the assertion that the lot has a "narrow width for a lot with such an area" is demonstratively false. The more square nature of the lot is a favorable characteristic since it allows for more design options.

2. That "northern line jogs north" is also a positive characteristic since it provides more width to the rear of the lot. Since typically the rear is used for parking/loading, more width allows for better maneuverability.

3. Being bounded by two alleys is another favorably characteristic since this allows the Applicant to put windows, thus create bedrooms, along the entire south property line – something that most lots cannot do. If the applicant tries to make the case that having alley on two sides is itself unique, this is not the case as there are several lots in the same square that are bounded by an alley on more than one side.

4. That the southern bounding alley is "only 10 feet wide" is not a detriment. It provides sufficient one directional driving option and is still preferable to there being a neighboring lot.

5. "... Close proximity to another parcel being developed simultaneously" is a mere statement of fact and is neither a favorable nor unfavorable characteristic and has no bearing with an exceptional condition.

6. The Applicant's claim on page 7, Section A of their Statement that "the exceptional situation or condition standard goes to the property, not just the land", will not apply to the 9th St Property since the lot is vacant.

With this vacant lot, the applicant has a blank slate with no exceptional, exacerbating or challenging conditions and thus it would be unwarranted for the BZA to grant any area variances.

Lack of exceptional situation or condition is in itself sufficient for a denial of the two variances requested for the 9th St Lot. For the sake of completeness, we rebut the Applicant's claims in the remaining two prongs.

2.2 Parking Variance: No Practical Difficulty

By the Applicant's own admission a compliant underground garage can be constructed on the subject property. Whether the garage "efficiently" accommodates cars is irrelevant as far as the off-street parking requirement is concerned. Throughout the city, new projects always excavate deep underground to provide the required parking spaces. Treating this project any differently would be unfair to other projects. In the BZA Case # 18638, the Church St Micro Development Project, paragraph 21 of the order cited an unmanageable ramp grade as a reason why constructing an underground garage would pose practical difficulty. By Applicant's own admission, this is not the case here. The applicant merely states that the garage configuration is "inefficient". Unlike the Church St case, this lot is significantly wider which makes it feasible to construct a complaint underground garage.

The Applicant presents no evidence to prove practical difficulty; they only state that it will "add an unnecessary cost to the Project". It appears that the applicant considers compliance with zoning regulations "unnecessary".

2.2.1 Previous Concept Designs for this Lot Provided Parking

It is important to point out that previous concept designs for this lot included underground garage parking. See **Appendix E**. This shows that other design alternatives exist that do not require the applicant to seek a variance.

The applicant also failed to consider other ways to construct a parking garage that would be more efficient, e.g.:

- Using a car elevator
- Using an automated parking system.

2.2.2 Car Elevator

We confirmed with the office of the Zoning Administrator that utilizing a care elevator instead of a traditional ramp is acceptable "as a means of providing the off-street parking required by Chapter 21 of DCMR 11." See **Appendix B**.

Utilizing a car elevator, the applicant can provide the required 22 parking spaces on fewer than three parking levels as they seem to suggest in their submission. A car elevator makes movement of cars between garage levels very efficient since it requires a small rectangular footprint. No space is wasted on internal ramps. Thus, the entire rectangle of the underground space can be utilized for parking. Given this wide and long rectangular space uninterrupted by ramps, the applicant has numerous configuration options (90,60,45 degree parking arrangements) to fit cars on at most two parking levels.

2.2.3 Automated Parking Garage

To achieve an even higher density of car storage an automated parking garage can be used. A few projects in Washington, DC have already installed various configurations of automated parking garages. Most notable is the Camden Grand Parc Apartment complex at 910 15th St NW, Washington, DC 200051 and 460 New York Ave NW[2].

Automated parking garages can come in many configurations. Some can be installed in a space as narrow as 17'6".[3] Thus, in the narrowest configuration an automated garage can be installed on most DC lots with rear access to an alley.

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[1] http://www.multifamilyexecutive.com/property-management/apartment-trends/auto-motives-trends-in-parking-at-multifamily-properties_o

[2] http://districtsource.com/2014/04/parking-novelty-460-new-york-avenue/

[3] http://www.wohr-parking.co.uk/index.php/products/ Navigate to MultiParker 740. The narrowest configuration, just under 18 feet, assumes one row of parked cars with a parallel row for the moving mechanism.

In the previously mentioned Church St BZA case, where the available space behind the three contributing town homes was 38ft x 42ft, the 19 required parking spaces could have been provided on 5 levels, with 4 cars per level. Also note that one level inside an automated garage requires less excavation since cars are stacked more closely vertically and there are no floor systems between levels.

It is important to point out that while the discussion above was about implementing an underground garage, nothing precludes the applicant from providing some parking capacity above ground inside the building structure. Above ground parking is even cheaper per car stall, admittedly it comes at the price of losing rentable units, thus it was assumed that the applicant will focus on an underground parking solution.

2.3 Parking Variance: Substantial Detriment to the Public Good and Effect on the Zone Plan

We are still reviewing the transportation studies provided by the applicant on the 20th of January, 2015. We will provide a separate letter with our rebuttal to those reports. This section is a summary of this letter.

We are deeply concerned with the Transportation Analysis that was done. In it, the Applicant was allowed to reduce the trip generation number by 90%. This yielded numbers that were below a threshold that would require a full traffic impact study; see last page of Attachment A to the Transportation Analysis (page 47), "TDM Reduction 90%" - "Non-Auto Mode Splits/TDM for residential use is based on no on-site parking and a lease provision that will restrict tenants from obtaining a Residential Parking Permit".

2.3.1 Applicant cannot rely on other <u>privately</u> provided transportation/parking alternatives as a guarantee that there will not be detriment to public good.

The applicant should not be allowed to point to other <u>privately</u> provided transportation/parking alternatives as a way to argue that there won't be a detriment to public good. Neither the city nor the applicant have any control over those privately provided alternatives and thus cannot guarantee that they will continue to be available.

The transportation analysis done by the Applicant (see *Wells & Associates Transportation Analysis report of April 18, 2014*) suggests that parking needs will be met by nearby garages. First, we note that the irony in the Applicant claiming the demographic targeted for the new development will not use cars to argue for 0 parking and then pointing out where they can park nearby (see Wells & Associates report, p30, Figure 7) is not lost. Second, we would like to point out since the report was published, the ~100 monthly parking lot on M and 11th St (the only truly close lot available to the Applicant lot) has now been taken over by another development. In addition to this: of the nearby car sharing spots shown on p25, Figure 4 of the Wells & Associates report, the 12 zip cars have also been removed by the new construction on M and 11th St.

It's clear that the attempts to offload parking and responsibility to the neighborhood should be addressed because as the examples show, in less than one year, the predicted resources are no longer available. The Applicant must take responsibility for the demand that will be created by their development and plan to manage demand on site.

2.3.2 RPP Restrictions hard/impossible to enforce with many workarounds for tenants

When we spoke with Jonathan Rogers, a development reviewer from DDOT, we asked him how the 90% reduction was rationalized. Why 90% and not 75% for example. Presumably 90% should be based on a study or otherwise be an accepted industry standard. He said that DDOT felt that 90% was reasonable without citing any concrete study. If, in fact, there is no study to back the generous 90% reduction, this is of great concern. Essentially DDOT allowed the applicant to make assertions without any factual basis. The concept of adding RPP restriction in an attempt to influence people's driving behavior is relatively new. We request that the board reviews if any projects that use RPP restrictions have been delivered and if DDOT has conducted any before and after studies around those occupied properties.

There are also political and practical problems in betting too much on RPP restrictions:

1. It would create two types of populations, one that is eligible for RPP and the other one that is not although they live in the same neighborhood. Essentially pitting them against each other (considering how contentious the issue of parking is) may not prove to be a good long-term solution. Eventually the City Council may step in and invalidate these provisions, yet there will be no way to undo the variances.

2. The RPP restriction does not prevent other ways in which a resident may get a parking sticker. The URL in the footnote lists the various DMV parking programs.[4] The one that we can speak for from our own personal experience is the Visitor's Parking Permit for guests of DC residents. One can go to any police precinct, show a DC ID and get any zone sticker for 15 days and renew it without question for months on end. For the short term residents of this new development going spending 15 minutes to a police station with a DC resident friend (or with their own DC ID if they have/get one) once every two weeks is a good value proposition, compared to paying for a private parking garage. Another program that was brought up by an ANC commissioner at one of the meetings was the Reciprocity Permit for Temporary and Part Time Residents.

3. Lease provisions making obtaining RPP are unlikely to ever be enforced. Will the Applicant consider evicting an otherwise rent paying tenant that obtained an RPP sticker? How will they even know that a tenant acquired RPP?

4. Assuming the landlord acted against his economic interest and wants to evict the rent paying tenant that illegally obtained the RPP, will any judge allow eviction based on this lease provision? The eviction process in Washington, DC can take several months. All

[4] http://dmv.dc.gov/service/parking-permits-and-reciprocity-stickers

this time the residents of the project will continue parking in the RPP zones using their illegally obtained RPP sticker and displacing legitimate RPP holders.

5. What prevents the Applicant from changing the address of both properties back to M St and 9th St from the Blagden Alley address? In fact, if one searches the Master Address Database for the square and lot number of subject properties, it appears they have two addresses for each lot: one Blagden Alley address and one street address. If the RPP restriction only applies to alley addresses, the Applicant (or subsequent owner) can simply use the street address.

6. To make the Applicant comply, the city would need to institute some type of an audit process and implement the necessary IT system at the DMV and all Police precincts, to enable verification of RPP restrictions in real time. As taxpayers, we are opposed to the city taking on additional responsibility and expenses unless developers that propose these "solutions" cover the full expense of implementation and ongoing maintenance, in perpetuity.

With all the concerns about RPP restrictions, and the complex regulatory environment it requires to function properly, it seems that the only entity that benefits is the Applicant who for the time being has convinced everyone that this is a viable solution and is able to realize significant project savings by not providing parking at everyone else's expense. If this experiment fails, the Applicant may already no longer be associated with the project and will not be around to deal with the negative consequences.

2.3.3 Using Covenants is not enforceable

We anticipate that similar to all other micro-unit BZA cases the developer will agree to record title covenants that would require ownership of the development to prohibit RPP for tenants and/or other types of restrictions. However, covenants are difficult/impossible/expensive to enforce. What are the penalties to the Applicant for breaking such a covenant? Who in the DC government is tasked to guarantee that covenants are followed? A breaking of the covenants would also be expensive for neighbors to fight in court and would create an undue burden. Lastly, the staff at DCRA/DMV and other agencies is not trained nor tasked to look up land records, interpret and enforce covenants. What specifically happens after such a covenant is recorded? Normally, the staff at various agencies just looks at the computer screen that provides them the relevant information they need. Who is responsible that a land covenant restriction is programmed in all the relevant computer screens so they are readily available to staff?

In short, the suggestion to record a covenant is designed to sound good, while being impractical and almost impossible to implement.

2.3.4 Other parking challenges not addressed by an RPP restriction program

Beyond of the obvious impracticality of the RPP restrictions solution, there are other car usage scenarios that the applicant cannot restrict/control which will have a detrimental effect on the available parking in the neighborhood and beyond:

- "**Domino effect**" on available parking: Any car is allowed to park in half of the parking spaces available in a residential zone for up to 2 hours. Thus, a resident of this project, who would have normally kept their car overnight in a garage parks in the residential zone during the evening upon returning from work. Legitimate RPP holders will not be able to find parking where they are used to and thus drive to the next block until parking is found causing a cascade of parking problems in other neighborhoods.
- There are no restrictions to parking on Sundays on half of the available street parking.
- The building is bound to attract additional traffic in the form of visitors to residents, home deliveries, employees & contractors of the building, and employees & customers of the retail establishment.

By not even attempting to provide parking the Applicant completely and utterly dumps the burden on the city's infrastructure at great expense to the neighborhood.

Lastly, it is important to point out that currently both lots are used as open-air parking lots. While we make no claims to their esthetic appeal, on a typical Tuesday, January 13th 2015, the 9th S lot was full with some 30 vehicles, while the M St lot was also completely filled with close to 40 cars as seen in **Figure 1** and **Figure 2**.

***Figure 1**: M St lot open air parking garage will close. ~40 cars that currently use it during the day and ~10 at night will need to relocate and will likely further burden already tight street parking situation in the neighborhood.*

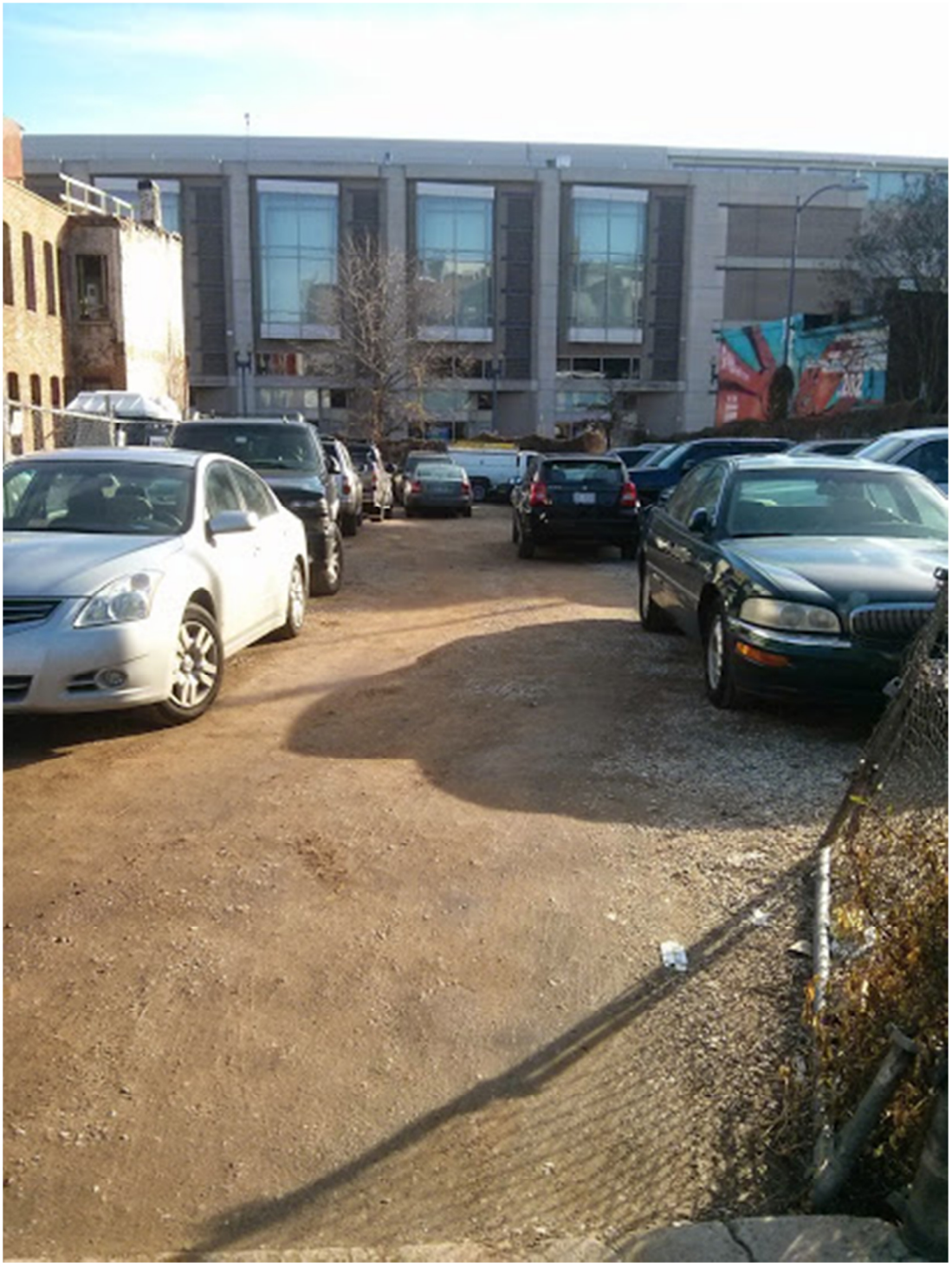


***Figure 2**: 9th St lot open air parking garage that will be eliminated. Currently some 30 cars park there during the day.*

The development of these lots will eliminate these two parking lots, which are obviously heavily used. These 70 cars represent ***current demand*** and will have to be absorbed either into the immediate residential parking zones or into nearby parking garages, thus reducing capacity in the immediate vicinity. We have seen the Applicant's survey of available garages that offers

monthly rates[5], but they do not account for the almost guaranteed reduction of up to 70 monthly parking spaces and the effect of this reduction on the potential needs for garage parking of the residents of this project. Specifically, how practical does it become to go further in search of parking?

2.4 Side Yard Variance: Strict Application of the Zoning Regulation Would Not Result in a Practical Difficulty.

Side Yard/Lot Occupancy/Court Size are different sides of the same coin with respect to maximizing internal unit density - the primary concern of the applicant. While we are not opposed to widening the 9th St Alley as the applicant proposed, in light of other choices made by the applicant that are detrimental to the neighborhood, we view the overall request for area variances negatively. Essentially, the applicant has enough width to provide two rooms within the width of the building, with 6 feet remaining unused. The Applicant dedicates these “easy to spare” 6 feet toward meeting the lot occupancy requirement (at the expense of complying with side yard requirements), to avoid increasing the back yard (which already appears non-compliant having a width of only 12’). If the Applicant did not provide the side yard, the rear yard would have to be significantly increased to meet lot occupancy thus sacrificing the stack of units in the building rear.

The Applicant failed to demonstrate practical difficulty because other conforming building designs, possibly consisting of fewer units, were not considered. The need for pedestrians to walk through the alley is also self-imposed by current design. If the Applicant were, for example, to put a more attractive lobby on the 9th St entrance, the need to walk through the alley would be eliminated/minimized.

2.5 Side Yard Variance: Substantial detriment to the Public Good and Affect on the Zone Plan

Granting the side yard variance for the building would allow the Applicant to significantly increase the internal unit capacity at the expense of compliance. The capacity increase, in turn, leads to increased demand for alley capacity, loading zone capacity, and parking. The Applicant failed to provide any amenities that would offset the increased demand. Instead the challenges of dealing with increased capacity are deferred to the neighbors and the city as a whole resulting in substantial detriment to public good.

If the lot occupancy was achieved by increasing the rear yard, it could have been sufficiently large to provide some loading capacity or for above ground stopping/parking for project residents or retail visitors. When the project is complete, the need for stopping/temporary parking for visitors, retail patrons, deliveries, etc will be significant. By way of anecdotal evidence, we visited La Colombe Coffee shop located in Blagden Alley at the rear of the M Street lot of the Applicant, on December 1, 2014. While we were there, two cars pulled over and parked behind the garage while the drivers went in for coffee **Figure 3**.

[5] Wells & Associates Transportation Analysis report of April 18, 2014

Figure 3: Cars parked outside La Colombe Coffee behind the Applicant's M Street lot so patrons can buy coffee

Extrapolate this example to the demand for temporary stopping/parking that will be generated by a complex with 123 units and a retail establishment. The Applicant provides nothing to address this future demand, instead focused on further increasing density of units.

As discussed earlier, this anecdotal example also calls into serious question the generous and unsubstantiated 90% deduction for trip generation calculations the Applicant makes. In this case, two car trips were generated for two cups of coffee at one coffee shop in Blagden Alley. The Applicant is claiming that the entire development of 123 units + retail space will for example only generate 2 new AM peak hour IN trips[6].

[6] Page 17, Table 4. of Wells & Associates Transportation Analysis report of April 18, 2014

3. M St Lot

This section discusses our reasons for opposition to claimed Parking Exception and two area variances.

3.1 Parking Special Exception

3.1.1 Parking can be provided on the remaining area of the lot excluding the historic garage

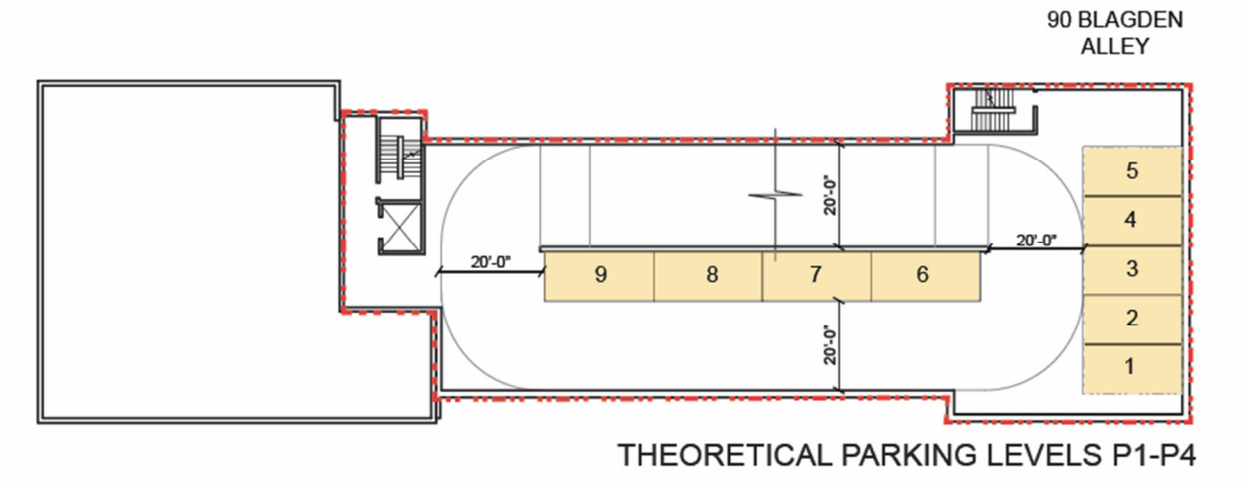
The Applicant clearly fails the special exception test since parking can be provided in the remaining area of the lot without even touching the historic garage to cause it any damage or risk its integrity. Excluding the footprint of the historic garage, the remaining space of the M St lot is larger than the entire 9th St lot. The M Street lot is also wider. Cars can enter the lot from all three alley sides, providing the Applicant great design flexibility. All arguments stated in the previous sections pertaining to 9th St Property e.g. how the underground or aboveground garage can be implemented apply here also.

3.1.2 Issue with Applicant's theoretical parking level proposal

The subject lot is 69' wide. With such width, the applicant, if they utilized a car elevator entering from the rear of the lot, could provide a garage that allows double loaded 90 degree parking, which is the most efficient way to increase car capacity.

We confirmed with the Historic Preservation Office, see **Appendix A**, that nothing prevents the applicant from utilizing the existing contributing garage in the rear of the building as an entry point to the underground garage. Also, nothing prevents them from excavating under the garage. If they did this, the theoretical parking levels could accommodate more cars (even if they did not use a care elevator), thus preventing the need to excavate 5 levels deep. As currently proposed, the applicant only assumes an underground parking garage outside the footprint of existing contributing garage, which is not valid.

Lastly, we take issue with the theoretical proposal shown below where the applicant assumes that the middle section of the garage must be narrower and does not go to the property line. If the middle section of the garage did go to the property line, instead of the four parking spaces shown as 9,8,7,6, the applicant could have put more stalls at 90, or at least 60 degree angles.



3.1.3 No proof of significant architectural or structural difficulty in maintaining historic integrity of the garage

The Applicant presented no proof that providing parking will result in "significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource". The Applicant merely states "underground parking is not possible because the Applicant cannot excavate under the historic garage without a high risk of damaging it." This statement is provided without any proof from a structural engineer and is counter to reality

- Historic buildings are very frequently excavated under and underpinned by regular homeowners let alone sophistical investors
- Some historic buildings are even ***physically moved***. It is extremely hard to believe that there is anything special about this garage

Figure 4. and **Appendix C** provides examples of historic buildings being ***physically moved*** for projects just a few blocks away from this Applicant's location. One is for a boutique hotel on the North Side of New York Ave, between 5th and 4th St, the other is for the AAMC headquarters on NY Ave, between 7th and 6th St.

Figure 4: It's hard for the Applicant to argue that there would be "significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource" when a few blocks away, developers are physically moving historical buildings in order to preserve historical constructions.

The Applicant's case does not require any moving, it merely requires excavation and underpinning. Underpinning is a much simpler process than moving and is conducted very frequently in historic neighborhoods throughout the city when homeowners "dig out" their basements to achieve higher ceiling heights. DCRA routinely approves underpinning permits in historic districts where contributing properties are underpinned. One of our Party personally obtained permit # B1308414 for underpinning of 1233 4th St NW, Washington, DC 20001 which is a contributing house in the Mt. Vernon Square Historic District during construction of a house at 1235 4th St. There is nothing more unique about the Blagden Alley garage structure and it can be trivially underpinned by any qualified contractor.

3.1.4 Previous design included the required number of parking spaces

Appendix D shows previous concept design approved by HPO that included the required number of parking spaces. This proves that the property can be developed in a way that is compliant.

3.1.5 Applicant must seek a Variance of the off-street parking requirement

Because the Applicant does not meet the requirements for special exception, and because the size of the contributing historic structure is negligible with respect to overall lot size and the size of the addition the Applicant proposed, the Applicant should seek a variance from the off street parking requirement if they insist on providing 0 parking spaces, when 39 are required.

As far as the possible variance, the discussion on why the lot has no exceptional situation is below, while all arguments made in the 9th St lot section fully apply here.

3.2 The Property is Not Affected by an Exceptional Situation or Condition

All points made in the argument against 9th St property earlier in this report apply here. The Applicant merely lists several facts about the property and unconvincingly concludes that they "combine to create exceptional condition of this property". Again, most facts are either favorable or neutral, but in no way detrimental. <u>The objective is not just to prove that the property is unique, but that its uniqueness is what makes it difficult to comply with regulation. The fact that the property is unique in a favorable way does not satisfy the first prong.</u>

- The Applicant states that "The historic garage's location at the property's rear makes it an unusual condition for constructing an addition to a building that must be retained." This is standard practice in any historic neighborhood of DC: the historic buildings are generally retained with new additions built on the remaining sections of the lot.

- The Applicant states that "The garage is one story, but it is build to the north, west, and east lot lines." Is a mere statement of fact with no bearing.

- The claim to lot's narrowness is demonstratively false, just like for the 9th St property. The width to length ratio for this lot is 69/233 = .29. A typical DC lot is 18/100 for a much lower ratio of .18.

- Being bounded by an alley on three sides is a very favorable condition for reasons discussed earlier. Additionally, Lot 136 in the same square is also bounded by a historic alley on three sides, so the condition is not unique.

- Lastly, the Applicant references a previous BZA decision #17403. We were only able to find a very brief order on this case with no supporting documentation. The order did not go into discussion of any fact, just merely listed the prongs of the variance test and stated that they were met. Based on the points above, we don't see how this lot is affected by any exceptional situations. Also, the last page of the order states the Applicant shall have the flexibility to "3) decrease the number of parking spaces to the minimum number required by Chapter 21 of DCMR". Perhaps because the previous project was more reasonable in its request, as indicated

by them offering to provide more than required number of parking spaces, the BZA weighed the options and concluded that granting an area variance was, on balance, justified.

3.3 Lot Occupancy Variance: Strict Application of the Zoning Regulation Would Not Result in a Practical Difficulty

Applicant's argument on the practical difficulty of compliance with the required lot occupancy is unconvincing. They don't explain why it is "not practical to shrink the footprint of the first floor on the new structure without shrinking the footprint of the rest of the new structure". Designs where upper floors overhang the first are very common. In fact, most loading docks are design in this exact way, where the space is open on the ground level to accommodate incoming/outgoing vehicles, while the rest of the structure overhangs the loading facility to claim back the lost lot space.

By attempting to comply with the lot occupancy and creating a structure that does not take up nearly the entire land area on the first floor, particularly in the section of the lot where the 9th street alley comes in contact with the M St lot, the Applicant could provide locations for loading facilities and possible entrances to the underground parking garage.

The first floor of the new structure where it comes in contact with the old garage can be made narrower to comply with the lot occupancy requirement. It appears that the Applicant has not considered other uses/designs that would comply with zoning regulations and has failed to show practical difficulty.

3.4 Lot Occupancy Variance: Substantial detriment to the Public Good and Affect on the Zone Plan

The detriment to the public good comes from the fact that the Applicant is determined to use more of the lot area than is allowed in order to maximize internal unit density, while simultaneously not providing parking/loading facilities which can be provided in the area that would have been available if the Applicant simply complied with regulations. See previous sections on a discussion of how the Applicant does not at all propose to solve the alley congestion problems that the project is guaranteed to create, all to the detriment to the public good.

3.5 Court Width Variance: Strict Application of the Zoning Regulation Would Not Result in a Practical Difficulty

The Applicant's claim of practical difficulty is based on an assumption that they must have a double loaded corridor and that without one there is "loss of efficiency". There is no matter of right claim to a double sided corridor or efficient internal design. The concept of "efficiency" by itself has no significance in BZA deliberations, unless it is logically connected to practical difficulty. The Applicant failed to consider other uses/building designs that would be compliant and failed to show practical difficulty of not having a double-sided corridor.

Lastly, the existing M St lot currently has an ad-hoc loading facility in the form of a large rectangular opening on the West side of the lot, as seen in first picture in **Figure 1** above. This opening is frequently used by delivery trucks to pull over and not block the alley. The proposed development will eliminate this, thus further exacerbating the situation.

3.6 Court Width Variance: Substantial detriment to the Public Good and Affect on the Zone Plan

Similar to arguments advanced in previous sections, granting court width variance for the building as proposed, would essentially double building unit capacity. The capacity increase, in turn, leads to increased demand for alley capacity, loading zone capacity, and parking. The Applicant failed to provide any amenities that would offset the increased demand. Instead the challenges of dealing with increased capacity are deferred to the neighbors and the city as a whole resulting in substantial detriment to public good.

4. Conclusion

In conclusion, and in anticipation of the pro forma statements the Applicant will submit, we request that the board reviews those with scrutiny. The general impression from this application is that the Applicant overpaid for the underlying lots and is now seeking what in essence is a bailout from the BZA. Thus, the suggested practical difficulty was created at the closing of the lot purchase transaction, likely with the Applicant's strategy all along being to seek extensive variances to make the project work. We request that the BZA gives neighborhood opposition serious consideration and deny the exceptions and variances the Applicant is seeking and ask that the Applicant simply comply with already generous zoning rules of our historic neighborhood. Enclosed on the record please find signed petitions from **135** neighbors (as of last canvassing, which will continue up until the hearing date) who are opposed to the special exception and variances the Applicant is seeking.

Appendix A: Confirmations by Historic Preservation Specialist

Gmail by Google

Sergei Mikhailov <sergei.s.mikhailov@gmail.com>

Request for information on the Blagdan Alley Micro Unit Project

Meyer, Brendan (OP) <brendan.meyer@dc.gov> Mon, Jan 12, 2015 at 2:39 PM
To: Sergei Mikhailov <sergei.s.mikhailov@gmail.com>

1) The earliest I could scan and deliver the documents you want is Friday. The drawings are also available on a walk-in basis.

2) Using existing garage openings without altering the size of the opening would not trigger a historic preservation review. Replacing garage doors is commonly approved by HPO on a walk-thru basis.

3) There is nothing intrinsically approvable or unapprovable about a rear basement garage entrance at the 9th Street site which is currently vacant. There is no historic building there to protect, garage doors are common in this part of the historic district, but the relationship of the garage opening to the overall design concept would have to be considered. The question can only be answered as part of a fully formed concept design.

4) HPO nor HPRB issues orders in the way you describe.

Brendan Meyer

Historic Preservation Specialist

DC Office of Planning, Historic Preservation Office

1100 4th Street SW, #E650

Washington, DC 20024

t: 202-741-5248

f: 202-442-7638

From: Sergei Mikhailov [mailto:sergei.s.mikhailov@gmail.com]
Sent: Monday, January 12, 2015 11:49 AM
To: Meyer, Brendan (OP)
Cc: Barbara Schauer; Ahmed Ait-Ghezala
Subject: Request for information on the Blagdan Alley Micro Unit Project

Brendan,

On behalf of the opposition party in the BZA case on the Blagden Alley project, we have the following questions:

1) Can you please send us reports/drawings on the previously approved concepts for both the 9th St and the M St lots.

2) Can you please confirm that HPO would not opposed a concept design which uses the two doors of the contributing garage in rear of the M St lot as entry points to an underground garage in the new development.

3) Can you please confirm that for the 9th St lot a concept design that proposes an entry from the rear of the lot to an underground garage could be approved by HPO.

4) Lastly, can you confirm that there is no order from the HPO that prevents the owner from underpinning or otherwise developing under the contributing garage in rear of M St lot.

Thank you.

Appendix B: Confirmation from ZA that car elevators/mechanical garages don't require a variance.

ZA has informed us that a car parking elevator would be accepted as a form of providing off-street parking for proposed development

Gmail by Google

Sergei Mikhailov <sergei.s.mikhailov@gmail.com>

Time Sensitive: Are car elevators (or automated parking garages) compliant with zoning regulations.

Beeton, Kathleen A. (DCRA) <kathleen.beeton@dc.gov> Tue, Dec 2, 2014 at 5:05 PM
To: Sergei Mikhailov <sergei.s.mikhailov@gmail.com>
Cc: "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>

Mr. Mikhailov:

Thank you for your email. The Zoning Administrator's office has accepted a car elevator or mechanized structure as you describe below as a means of providing the off-street parking required by Chapter 21 of DCMR 11.

If you have any questions or we may be of further assistance, please do not hesitate to contact me.

Best regards,

Kathleen

Kathleen A. Beeton, AICP
Deputy Zoning Administrator
Department of Consumer and Regulatory Affairs, Office of Zoning Administrator
1100 4th Street, SW, Suite E340
Washington, District of Columbia 20024
Office: 202.442.4559
Fax: 202.442.4871
Email: kathleen.beeton@dc.gov

ProjectDox is DCRA's new paperless, electronic plan submission/review program and is now required for 75,000+ square foot projects. Click **here** for more information.

From: Sergei Mikhailov [mailto:sergei.s.mikhailov@gmail.com]
Sent: Sunday, November 30, 2014 10:35 PM
To: Beeton, Kathleen A. (DCRA); LeGrant, Matt (DCRA)
Subject: Time Sensitive: Are car elevators (or automated parking garages) compliant with zoning regulations.

Mr. LeGrant / Ms. Beeton,

I am writing you, since the zoning technicians on the 2nd floor were not 100% sure, even though they did not find anything in the regs that would prohibit either a car elevator or an automated parking garage.

Some neighbors are preparing for an upcoming BZA case #18852/18853 hearing on Tueday. When researching an alternative for a more practical garage options the issue of car elevators and fully automated car garages came up. With all the micro unit developments with zero parking showing up all over the city, developers like to use the argument of additional expense when having to construct an underground garage. It is very unfortunate that going through an expense to comply with zoning reg constitutes practical difficulty these days. A car elevator will certainly make garages more efficient since no internal space is wasted to the two way ramp, instead movement of cars from level to level can be done with an efficient elevator. Thus the questions,

1) Are car elevators allowed per current zoning regulations?

2) Are automated car garages allowed in current zoning regulations? A sample automated garage brochure is attached.

This is for an apartment building where the garage will be used only by the residents (not a public garage). I know an example of each that has already been done in the city, but I wonder if they had to get a variance to install those, or those are doable now.

Thank you,

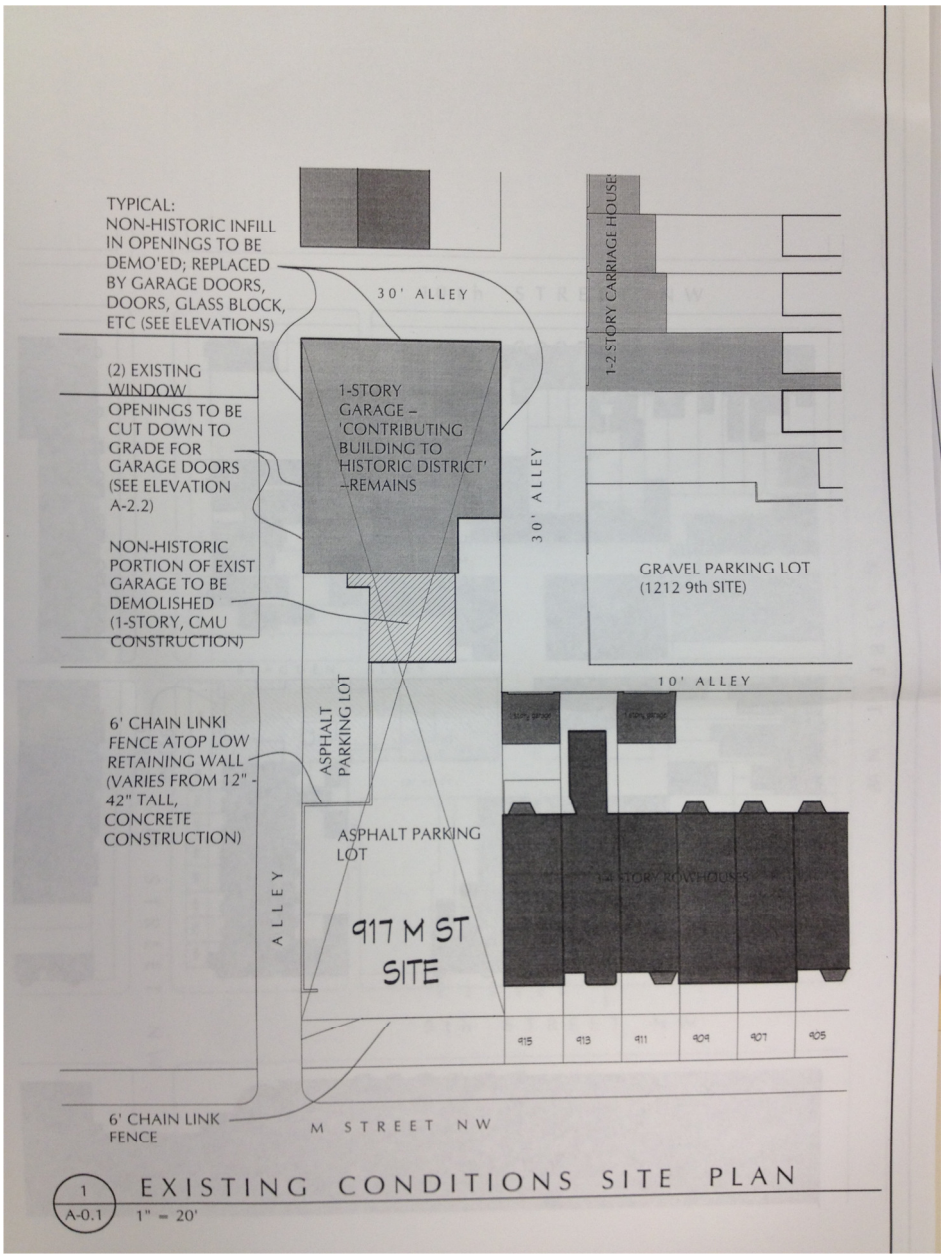
Sergei Mikhailov

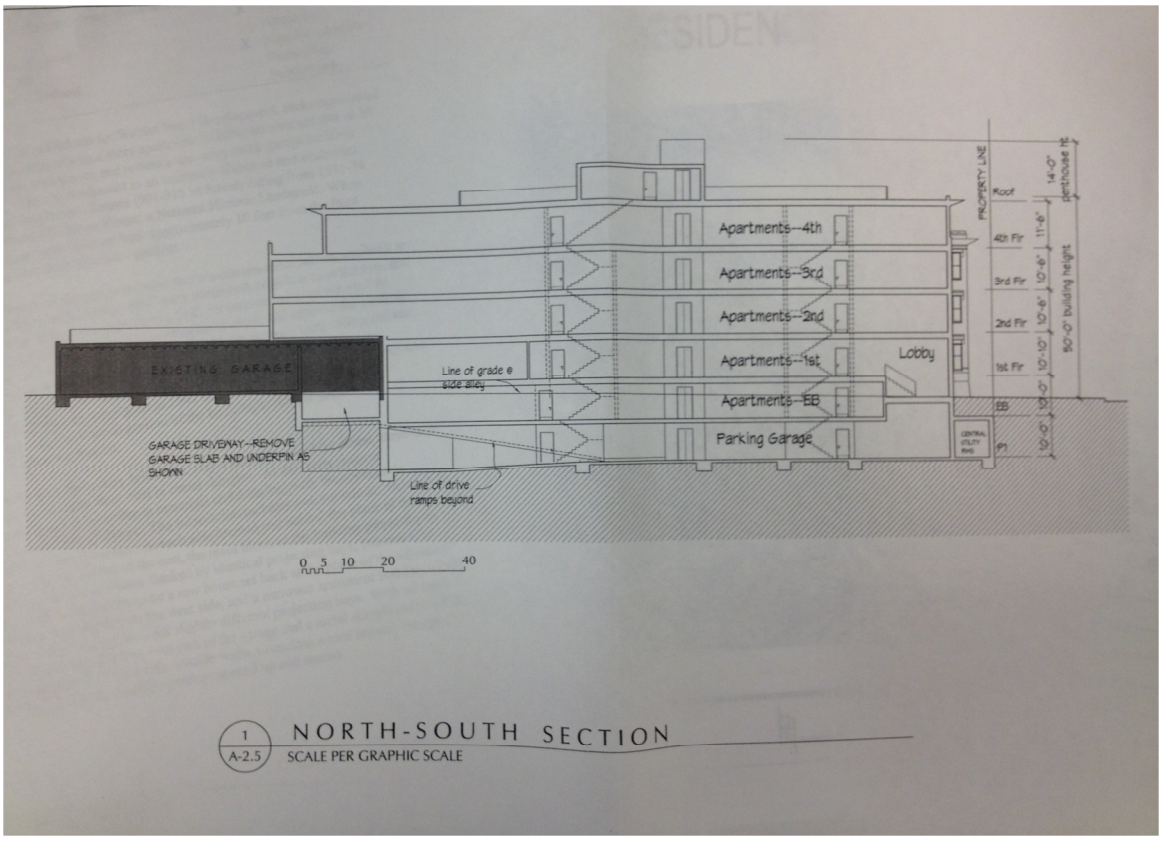
202.352.7634

Appendix C – Examples of Contributing Building Being Moved

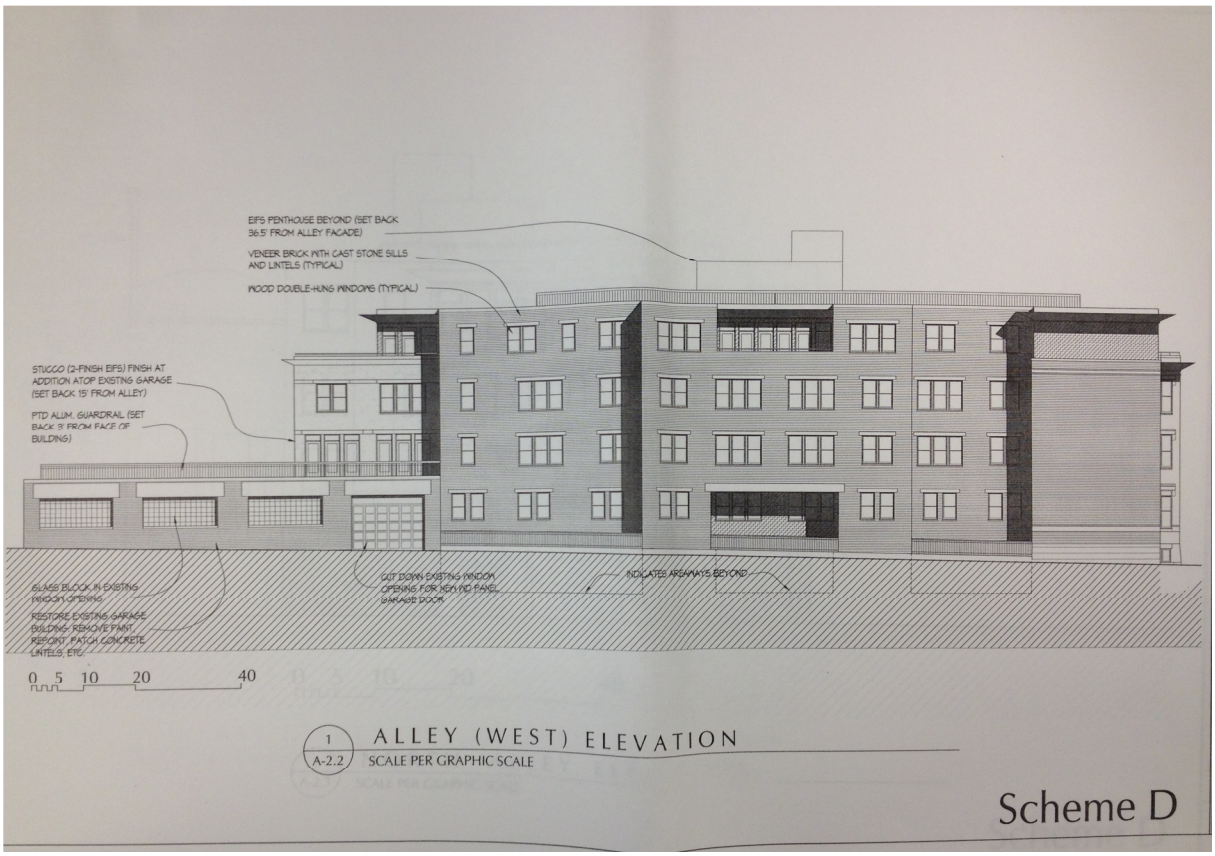
Examples of historic buildings in DC being **moved** by developers in projects close to Applicant's lot location in order to comply with regulations.

Appendix D – Previous Design Concept for M St lot included the required number of parking spaces



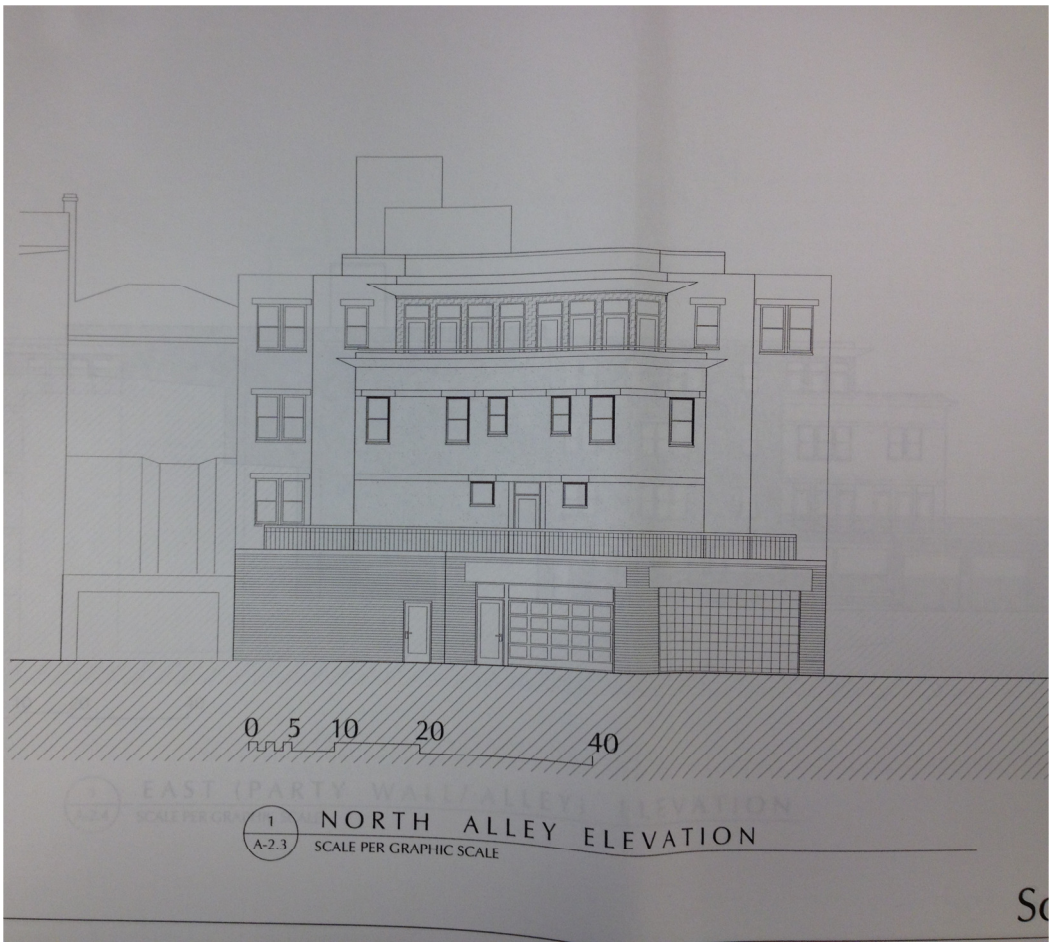


1 A-2.5 NORTH-SOUTH SECTION
SCALE PER GRAPHIC SCALE

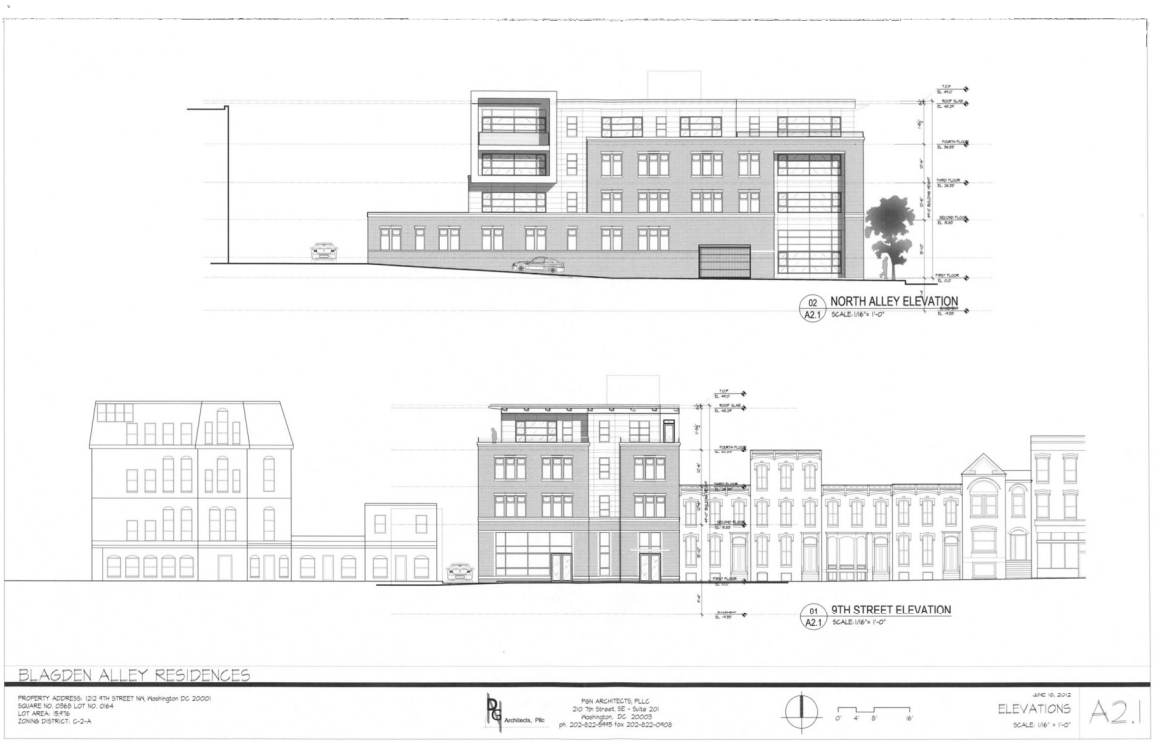


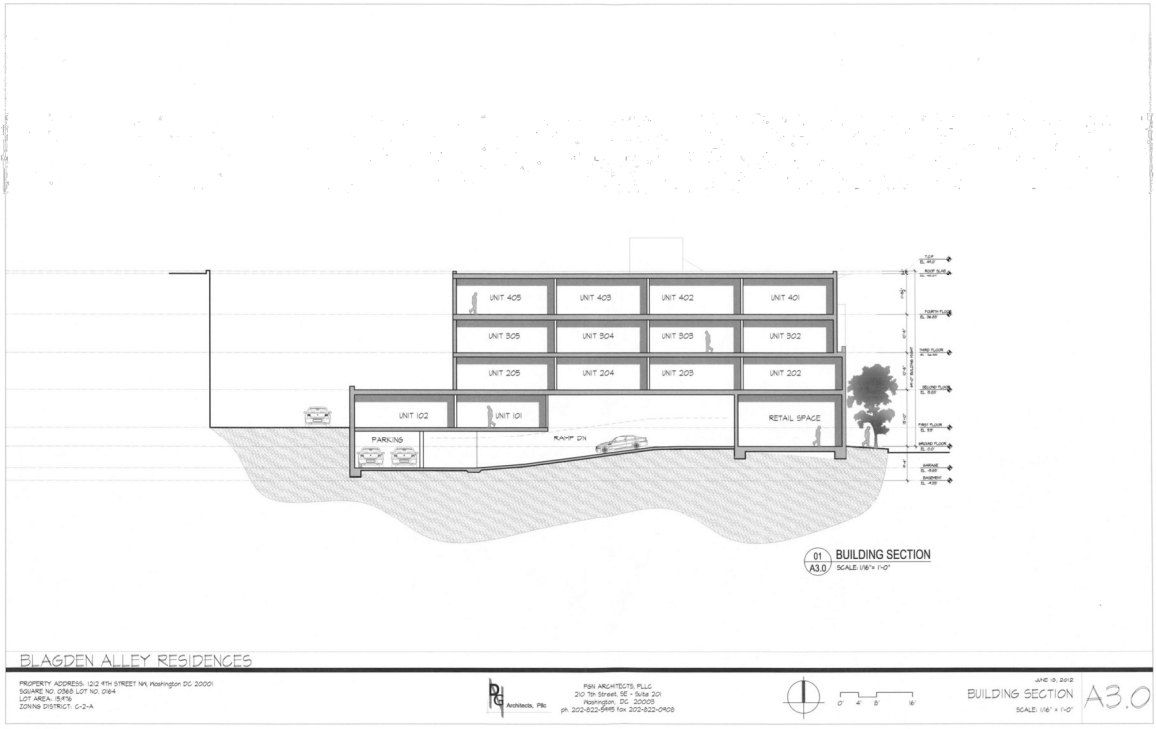
1 A-2.2 ALLEY (WEST) ELEVATION
SCALE PER GRAPHIC SCALE

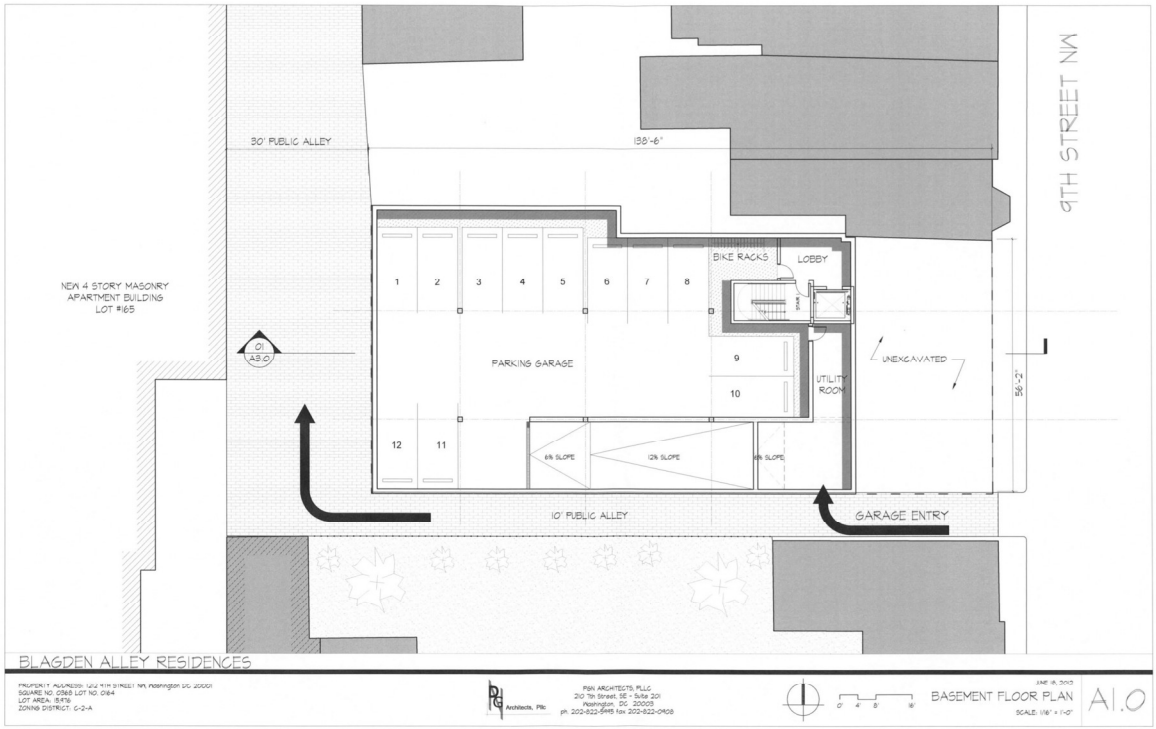
Scheme D

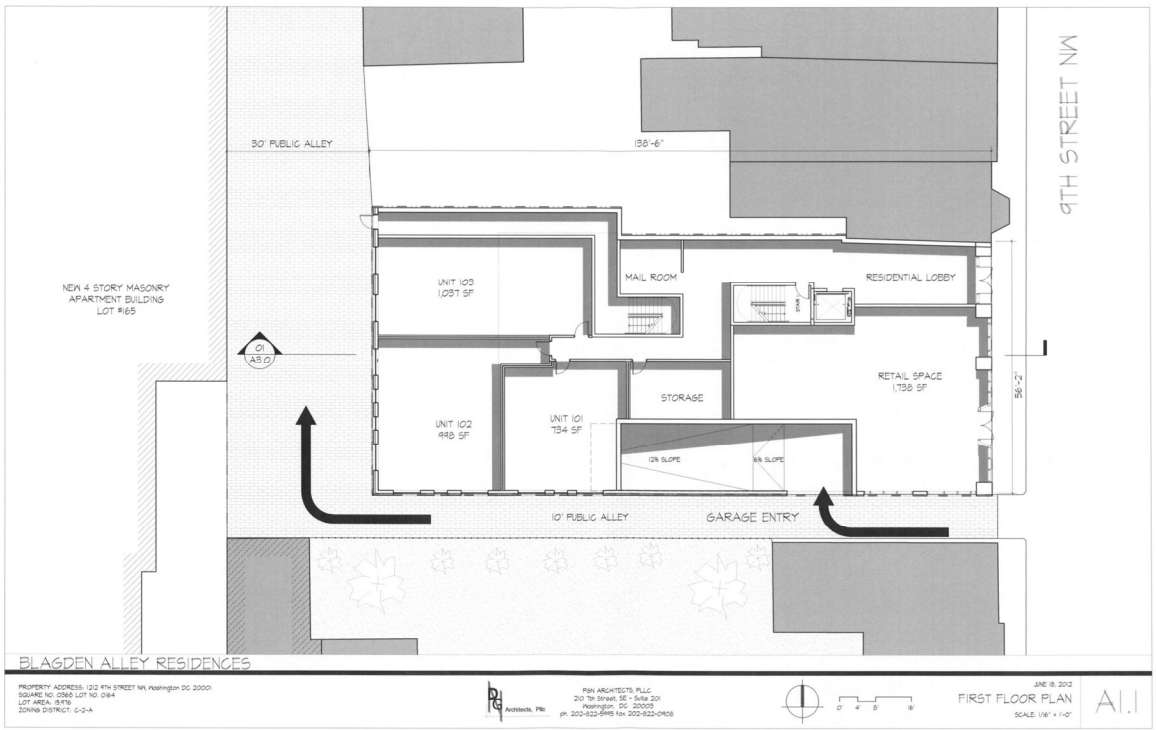

0 5 10 20 40
1
A-2.3
NORTH ALLEY ELEVATION
SCALE PER GRAPHIC SCALE

Appendix E – Previous Design Concept for 9th St lot included the required number of parking spaces






9TH STREET NW
30' PUBLIC ALLEY
138'-6"
NEW 4 STORY MASONRY
APARTMENT BUILDING
LOT #165
BIKE RACKS
LOBBY
1
2
3
4
5
6
7
8
9
10
11
12
PARKING GARAGE
UTILITY
ROOM
UNEXCAVATED
56'-2"
6% SLOPE
12% SLOPE
6% SLOPE
10' PUBLIC ALLEY
GARAGE ENTRY
BLAGDEN ALLEY RESIDENCES
PROPERTY ADDRESS: 1212 9TH STREET NW Washington DC 20001
SQUARE NO. 0368 LOT NO. 0164
LOT AREA: 15,976
ZONING DISTRICT: C-2-A
P&N ARCHITECTS, PLLC
210 7th Street, SE - Suite 201
Washington, DC 20003
ph. 202-822-5445 fax 202-822-0908
JUNE 18, 2012
BASEMENT FLOOR PLAN
SCALE: 1/16" = 1'-0"
A1.0


9TH STREET NW
30' PUBLIC ALLEY
138'-6"
NEW 4 STORY MASONRY
APARTMENT BUILDING
LOT #165
UNIT 103
1,037 SF
MAIL ROOM
RESIDENTIAL LOBBY
STORAGE
RETAIL SPACE
1,738 SF
UNIT 102
998 SF
UNIT 101
734 SF
12% SLOPE
6% SLOPE
56'-2"
10' PUBLIC ALLEY
GARAGE ENTRY
BLAGDEN ALLEY RESIDENCES
PROPERTY ADDRESS: 1212 9TH STREET NW Washington DC 20001
SQUARE NO. 0368 LOT NO. 0164
LOT AREA: 15,976
ZONING DISTRICT: C-2-A
P&N ARCHITECTS, PLLC
210 7th Street, SE - Suite 201
Washington, DC 20003
ph. 202-822-5445 fax 202-822-0908
JUNE 18, 2012
FIRST FLOOR PLAN
SCALE: 1/16" = 1'-0"
A1.1