

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 building 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 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.

Petition of Opposition to BZA Case No. 18852/18853
Application of SB Urban, LLC for Development of 90 and 91 Blagden Alley

December 2, 2014


We, the undersigned, are 74 neighboring residents and property owners in the area of 90 and 91 Blagden Alley. We oppose the planned development and strongly believe it is far too large and intensive for the site and the neighborhood. 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.


We strongly believe the Applicant has not demonstrated they are entitled to the many variances and special exceptions they seek and have not met the three conditions required by the DC Code: 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.

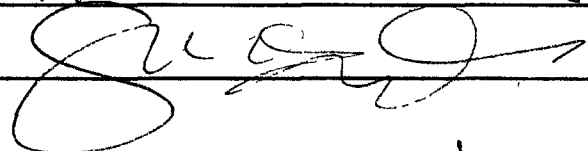
The development would be a severe detriment to the public good and would impair the purpose and intent of the protections of the Blagden Alley Historic Area. Allowing this development as it is currently envisioned would not protect the historic alley and its surrounding residences, as was promised by Zoning Order No. 782.

The inappropriate scale is the primary reason it requires the zoning variances and a special exception. These may allow a project that maximizes profitability for the owner but the project would encroach unnecessarily on the surrounding historic area and residential neighborhood.

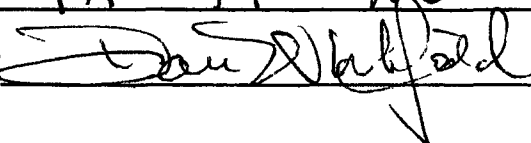
The interior of Blagden Alley (Square 368) was re-zoned in 1996 from R-4 to C-2-A by Order No. 782 of the Planning Commission. In its order, the Planning Commission promised that only small-scale development would be allowed in the newly re-zoned portions of the square to preserve its important history and protect the surrounding historic residences. We expect the City to honor the promises they made in the Order by allowing development at a scale that enhances and protects the area and does not detract from it.

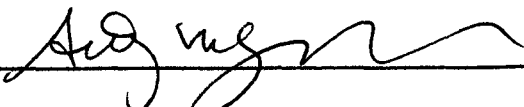
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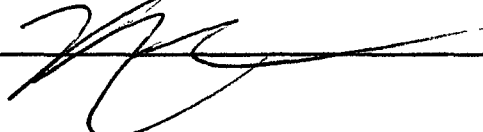
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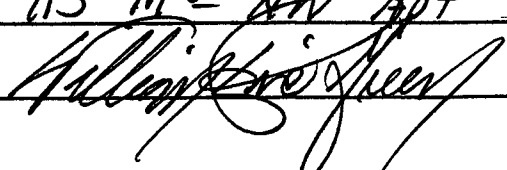
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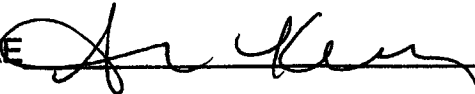
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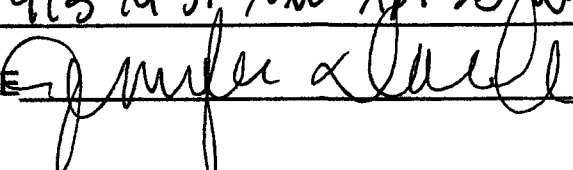
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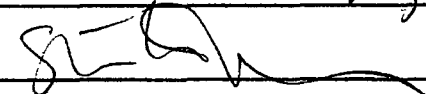
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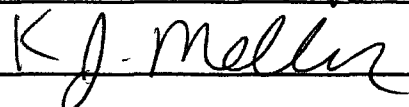
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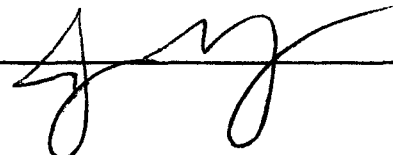
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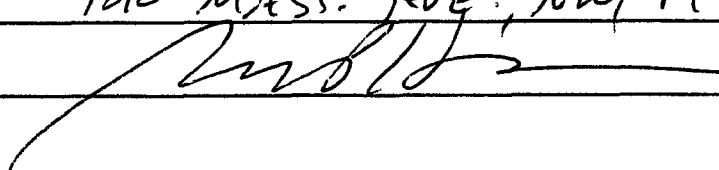
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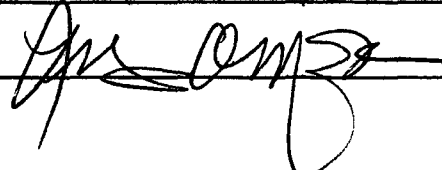
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PRINTED NAME Kenny Stevens DATE 30.11.14
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ADDRESS 2111 M St NW
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PRINTED NAME George Tutmann DATE 30 11 14
EMAIL getet@aol.com PHONE 301-455-7474
ADDRESS 927 M St N.W. Washington D.C.
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REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF yes

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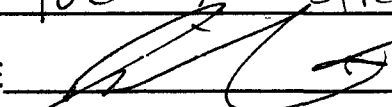
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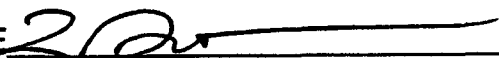
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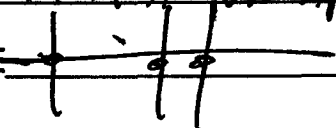
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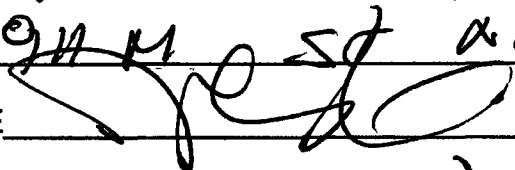
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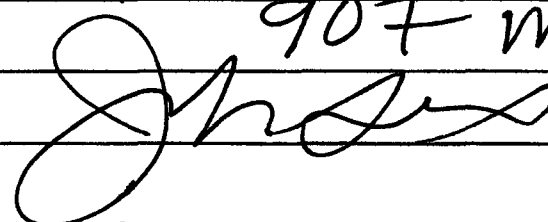
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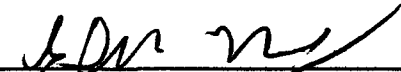
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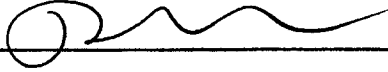
PRINTED NAME GLEN MCLAURIN DATE 11/30/14
EMAIL Glenmclaurin@gmail.com PHONE 919-625-9804
ADDRESS 903 M St NW UNIT B Washington, DC 20001
SIGNATURE 

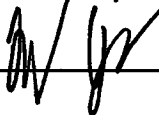
PRINTED NAME Melissa Kennison DATE 11/30/2014
EMAIL mjwalkup@gmail.com PHONE 202-525-4136
ADDRESS 1258 10th ST NW, Washington, DC 20001
SIGNATURE Melissa Kennison
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF MK

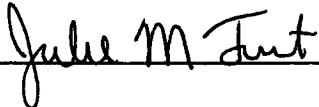
PRINTED NAME Brian James DATE 11/30/2014
EMAIL bpatrickjames73@gmail.com PHONE 202-842-4080
ADDRESS 1250 10th St. NW, Washington DC 20001
SIGNATURE Bjames
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF Bj

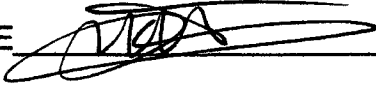
PRINTED NAME Alfredo Gómez DATE 11/30/14
EMAIL yogifredo@yahoo.com PHONE (202) 422-2391
ADDRESS 1219 10th St NW
SIGNATURE alfredogomez
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF Al.


PRINTED NAME PATRICK DIBATTISTA DATE 11-30-14
EMAIL dibattista@922.gov PHONE 202-422-2392
ADDRESS 1219 10th St NW DC
SIGNATURE [Signature]
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF [Signature]

PRINTED NAME RAISSA MENDES DATE 30-11-2014
EMAIL RAISSA.MENDES 00@gmail PHONE 202 361 0336
ADDRESS 1231 10 Street, Unit B Washington
SIGNATURE 
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF X


PRINTED NAME Aziz Yazdani DATE 11/29/14
EMAIL ayazdani1@hotmail.com PHONE (703) 655-4647
ADDRESS 1217 10th St. NW Unit A
SIGNATURE 
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF AY

PRINTED NAME JULIE FURT DATE 11/30/2014
EMAIL julie.kempton@gmail.com PHONE 703-585-7343
ADDRESS 1222 10 St NW
SIGNATURE 
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF JMF


PRINTED NAME SYLVAIN FURT DATE 11/30/2014
EMAIL SALOURS@GMAIL.COM PHONE 202-640-8909
ADDRESS 1222 10TH ST NW
SIGNATURE 
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF SF

PRINTED NAME RICHARD URBAN DATE 30 DEC 14
EMAIL RURBANINDC@GMAIL.COM PHONE 202-409-7800
ADDRESS 1235 18th ST NW #A
SIGNATURE 

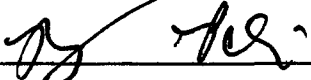
REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF 

PRINTED NAME MATT SIMSON DATE 30 DEC 2014
EMAIL MSIMSON113@AOL.COM PHONE 1609-937-7372
ADDRESS 1235 10th ST NW #3
SIGNATURE 

REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF 

PRINTED NAME William Timothy Raible DATE 30 Nov. 2014
EMAIL traible@maryknoll.org PHONE 202/450-3356
ADDRESS 1233 10th St. NW
SIGNATURE 

REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF 

PRINTED NAME Ryan Parsdis DATE 11/30/14
EMAIL rparsdis15@gmail.com PHONE 973-985-4954
ADDRESS 1235 10th St NW Disenvent
SIGNATURE 

REQUEST ADDITIONAL TIME FOR WITNESS TO SPEAK ON MY BEHALF 

202-255-4537

Barbara Schauer
schauer.barbara@gmail.com

PRINTED NAME Ethan Tichman

DATE 12/1

EMAIL EMT8709@UMD.EDU

PHONE _____

ADDRESS 910 M STREET NW APT 518 DC 20001

SIGNATURE 


PRINTED NAME Sabrina Hannah

DATE 12/1

EMAIL _____

PHONE _____

ADDRESS 910 M Street NW Washington DC 20001

SIGNATURE 


PRINTED NAME DAVID FERRELLI

DATE 12/1/14

EMAIL _____

PHONE _____

ADDRESS 910 M St. NW #1106 WDC 20001

SIGNATURE 

PRINTED NAME Alexis Fabbri

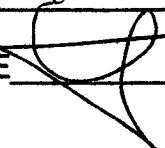
DATE 12/1/14

EMAIL alexisfabbr@gmail.com

PHONE _____

2/285-6220

ADDRESS 910 M St #507 NW DC 20001

SIGNATURE 

PRINTED NAME Massimo Fabbri

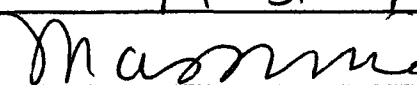
DATE 12/1/14

EMAIL fabbri.massimo@gmail.com

PHONE _____

2/285-7546

ADDRESS 910 M St NW #507 NW DC 20001

SIGNATURE 

PRINTED NAME Allison Cutting DATE 11/30/14
EMAIL _____ PHONE 202 251-4755
ADDRESS 910 m st NW Apt 114
SIGNATURE Alli Cutter

PRINTED NAME Jennifer Mason DATE 11/30/2014
EMAIL _____ PHONE _____
ADDRESS 913 M St. NW, Apt BA, Washington DC 20001
SIGNATURE [Signature]

PRINTED NAME Colleen Corrigan DATE 11/30/2014
EMAIL _____ PHONE 302-302-2134
ADDRESS 913 M St NW, #1A, Wash. DC 20001
SIGNATURE Colleen Corrigan #1B, 2A

PRINTED NAME Brian W. Shaughnessy DATE 11/30/2014
EMAIL brian1svr@verizon.net PHONE 202-898-1122
ADDRESS 913 M. St NW #1B, Wash. DC
SIGNATURE Brian W Shaughnessy (2A 20001)

PRINTED NAME Ronald Lipinski DATE 12-1-14
EMAIL DT Lipinski @ gmail.com PHONE 202 256 2205
ADDRESS 937 M ST NW 20001
SIGNATURE Ronald Lipinski

PRINTED NAME Amy Sullivan DATE 11/30

EMAIL amysullivandc@gmail.com PHONE 202-270-3051

ADDRESS 939 N Street NW, WDC 20001

SIGNATURE Amy Sullivan

PRINTED NAME ALEXANDER RILEY DATE 11/30

EMAIL alexthesieger.riley2@gmail.com PHONE 202-682-2539

ADDRESS 942 N ST, N.W. WDC 20001

SIGNATURE Alexander Riley

PRINTED NAME JANE KOEHL & ERIC COLLING DATE 11/30

EMAIL JANE.KOEHL-Colling PHONE 216 482 1055

ADDRESS 941 M ST NW USA

SIGNATURE [Signature]

PRINTED NAME Barbara Schauer DATE 12/1

EMAIL Schauer.barbara@gmail.com PHONE 202 255 4538

ADDRESS 937 M St. NW

SIGNATURE BASCH

PRINTED NAME _____ DATE _____

EMAIL _____ PHONE _____

ADDRESS _____

SIGNATURE _____

PRINTED NAME Bradley Rickel DATE 12/01/14
EMAIL brad18rickel@gmail.com PHONE 2-898-0609
ADDRESS 910 m St NW #801, WDC, 20001
SIGNATURE Bradley Rickel

PRINTED NAME Anna C Tucker DATE 12/1/14
EMAIL Cornelia8111@yahoo.com PHONE 2/483 7221
ADDRESS 1206 P St NW WDC 20005
SIGNATURE Anna C Tucker

PRINTED NAME _____ DATE _____
EMAIL _____ PHONE _____
ADDRESS _____
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PRINTED NAME _____ DATE _____
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EMAIL _____ PHONE _____
ADDRESS _____
SIGNATURE _____

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 782

Case No. 94-14

(Map Amendment @ Blagden Alley)

February 12, 1996

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 12, 1995. At that hearing session, the Zoning Commission considered the petition of residents of Blagden Alley and a proposal of the District of Columbia Office of Planning (OP) to amend the Zoning Map of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning (1994). The public hearing was conducted in accordance with the provisions of 11 DCMR 3021.

By petition dated July 24, 1994, a group of residents of the Blagden Alley area requested the Zoning Commission to rezone the interior of Square 368 from residential to a mixed-use zone district. The petition indicated that the interior of the square is a hiding place where various criminal activities are a daily and all-night occurrence. The petition noted that area residents are hopeful that the character of Blagden Alley would change by allowing the opportunity for small-scale commercial uses and residential uses to revitalize the interior of the square.

By memorandum dated October 6, 1994, (preliminary report to the Zoning Commission) OP indicated that community supporters proposed two amendments to the Comprehensive Plan for the National Capital. The two related amendments, as adopted by the City Council, are found in the Ward 2 Objectives for Neighborhood Shopping Areas, and read as follows:

1200.238(3) To allow appropriate mixed use development in the interior portion of Blagden Alley, a residentially-zoned square with historic structures such as carriage houses, unused garages and warehouses that are found to be suitable for adaptive reuse, with appropriate planning and regulatory requirements to safeguard surrounding existing residential uses.

1200.239(7) Return existing carriage houses, unused garages, and warehouses located within historic Blagden Alley to commercial and residential use under appropriate planning and regulatory controls designed to safeguard surrounding existing residential uses.

On October 17, 1994, at its regular monthly meeting, the Zoning Commission authorized a public hearing for the OP proposal which encompassed the Blagden Alley residents' petition. The OP proposal to rezone various properties in Square 368 from R-4 to C-2-A. Square 368 is bounded by 9th, 10th, M and N Streets, N.W., has an interior alley system (known as Blagden Alley) that serves many existing unused carriage houses, garages, and warehouses, and is a part of the proposed Blagden Alley Historic District.

The OP proposal, as contained in the notice of public hearing, included the following rezoning initiatives:

Change from R-4 to C-2-A lots 61, 68-70, 83, 84, 101-116, 126, 137-147, 817, 819, 820, 826, 863, 869 and 882-884, and portions of lots 12, and 821-824.

The R-4 District permits matter of right moderate density development of residential uses including detached, semi-detached and row single-family dwellings and flats with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and maximum height limit of three stories/40 feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit.

The C-2-A District permits matter of right low/moderate density development, including office, retail, service, housing, and mixed uses to a maximum height of 50 feet, a maximum FAR of 2.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of 60 percent for residential uses.

The Zoning Commission indicated that it would also receive testimony and written submissions about, and would consider adoption of other alternative proposals that were reasonably related to the scope of the proposed amendments that were set forth in the notice of public hearing.

OP, by memorandum dated December 27, 1995, (final report to the Zoning Commission) and by testimony presented at the public hearing, recommended approval of the proposed map amendments to rezone the lots in Blagden Alley from R-4 to C-2-A, as advertised. OP indicated the following:

"In summary, the potential advantages of C-2-A are three-fold: the use of the upper floor of the two-story buildings would be permitted; some incentive for residential or mixed uses would be improved, and the rezoning would be a straight forward extension of the abutting C-2-A District fronting on 9th

Street. The question of C-2-A use has been extensively discussed by petitioners in the context of potential covenants."

No other government agencies participated in or submitted reports into the record of the case at this time.

ANC-2F by letters dated September 29, 1994 and January 10, 1995, supported the proposed map amendment as proposed and recommended by the Office of Planning and in conformance with the Comprehensive Plan amendments adopted by the Council on June 21, 1994 in D.C. Bill 10-212.

By letter dated January 12, 1995 and by testimony presented at the public hearing, ANC-2F06 indicated its support for the proposed zoning change. The ANC-2F06 representative stated that commercial activity has brought positive change to Blagden Alley and should be encouraged.

The petitioners, also known as the Blagden Alley Citizens Association presented testimony in support of the proposal, and submitted a video and over 200 letters in the record of the case. The proponents/petitioners testimony to support the proposed rezoning of the Blagden Alley area from R-4 to C-2-A can be summarized as follows:

- The proposed rezoning will provide the incentive necessary for investors of the area to begin development of their properties.
- Strong mixed use development will provide vibrant street and alley scape that is needed in the area.
- The proposal will enhance the quality of life for those working and living in the alley and in the greater neighborhood and the city.
- A change of zoning would encourage legitimate businesses to develop in the alley and bring law-abiding people into the alley, and discourage the criminal activity which has been a part of the alley for years.
- Approval of the petition will increase tax revenues to the District of Columbia.

The Blagden Alley/Naylor Court Historical Society (Society) testified in opposition to the case. The Society believes that the proposed zoning changes are inconsistent with newly adopted language in the Comprehensive Plan for Square 368 in Blagden Alley. In particular, proposed changes include commercial zones on M and

N residential streets and business uses in Blagden Alley that are inappropriate for a residential neighborhood. The Society further believes that residential uses in the alley structures are still preferable to commercial uses, but support was granted for commercial zoning because some of the structures are not reasonably adaptable to residential use.

The opposition generally supported rezoning the interior lots of the Blagden Alley system for commercial and mixed uses, but with limitations generally as indicated below:

1. The C-2-A zoning should not be extended to lots fronting on M or N Streets, as proposed by OP but not originally proposed by petitioners. Residential (R-4) zoning should be retained on these frontages in the interest of maintaining residential character.
2. The mechanism of covenants as proffered by some of the petitioners and property owners to rule out certain C-2-A uses is not an effective system. Enforcement would be private, difficult and expensive.
3. Because of problems with covenants, a "historic overlay" zone should be developed and mapped to limit permitted uses and bring government enforcement to bear on any violations.
4. Residential uses in the alley structure are still preferable to commercial uses, but support was granted for commercial zoning because some of the structures are not adaptable to residential uses.

By post-hearing submission dated March 6, 1995, a member of the Logan Circle Community Association expressed opposition to the proposed rezoning as advertised. Namely, the lots fronting on M Street, N.W. and N Street, N.W., should not be rezoned to commercial C-2-A, but instead left residential as they are now. The Association supported the view of ANC-2F and the Society in opposition to the rezoning of those particular lots, otherwise, the Logan Circle Community Association was in support of the rezoning of the interior of the alley.

By post-hearing submission dated February 6, 1995, the Blagden Alley Community Association informed the Zoning Commission of its adopted position from their January 25, 1995 meeting. These issues included but were not limited to the following:

1. The Association supported C-2-A zoning for the interior of Blagden Alley with the proviso that at least 13 of the 17 affected property owners including Giorgio Furioso, would sign a covenant proposing the restriction of matter

of right uses to those compatible with residential surroundings.

2. The Association voted to support the extension of C-2-A zoning to the empty lots 61 and 863 on M Street, with the proviso that a covenant be entered into on the lots restricting any building to residential uses, and attractive landscaping be provided for any interim use as a parking lot.
3. The Association voted to support the extension of C-2-A zoning to the Lewis Company on N Street, with the proviso that a separate, more restrictive covenant be entered into by the owner limiting use to appropriate uses for a street frontage on a residential block.

By post-hearing submission dated February 14, 1995 the Department of Consumer and Regulatory Affairs (DCRA), Historical Preservation Division, opposed amending the zoning classification for street frontage properties from R-4 to C-2-A and requested that lots 883, 863 and 61 in Square 368 remain R-4, as presently zoned.

By post-hearing submission dated March 3, 1995, Giorgio Furioso indicated that he and several other property owners have agreed to sign a covenant if the Zoning Commission changes their property from R-4 to C-2-A. The letter stated that the covenant would restrict certain uses which would otherwise be permitted as a matter of right but which may not be desirable for future development of the square.

By post-hearing submission dated March 1, 1995, the petitioners re-affirmed their support for the proposal and requested the Zoning Commission to rule favorably on the petition. They further suggested that the interior of the square be zoned C-2-A, Lot 883 be zoned C-2-A and lots 61 and 863 be zoned with covenants to protect the residential character of the neighborhood.

OP, by summary/abstract report to the Zoning Commission dated March 16, 1995 summarized the testimony and evidence presented at the public hearing on January 12, 1995.

On March 20, 1995 at its regular monthly meeting, the Zoning Commission concurred with the revised recommendations of OP, the ANC-2F in part, DCRA and others who supported the proposal and determined that the proposal, as modified, was appropriate. At that time, the Zoning Commission took proposed action to change from R-4 to C-2-A in Square 368, Lots 68-70, 83, 84, 101-116, 137-147, 817, 819, 820, 826, 869, 882 and 884 and portions of Lots 12 and 821-824.

The proposed decision of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated June 29, 1995 found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

A notice of proposed rulemaking was referred to the Zoning Administrator, OP and OCC, and was published in the D.C. Register on June 16, 1995 (42 DCR 3089) for review and comment. As a result of the referrals and publication, comments were received from Ramona I. Bowden representing the petitioners dated June 29, 1995, July 17, 1995 and July 18, 1995; the Blagden Alley/Naylor Court Historical Society dated July 14, 1994; the Logan Circle Community Association dated July 18, 1995; the Lewis Company dated April 10, 1995, Knut Ringen dated July 18, 1995 and a petition from 51 citizens dated July 18, 1995.

The comments from Ramona Bowden supported the proposal, and stated that it is necessary to rezone the M Street parking lot and the Lewis Building on N Street, as well as the interior buildings of Square 368, and encouraged the Zoning Commission to include lots 61, 863 and 883 along with the interior lots in the rezoning of Square 368.

The comments from Phillip Abraham consisted of additional testimony and a modified covenant regarding his property, lots 61 and 863 in Square 368.

Giorgio Furioso's comments thanked the Commission for voting favorably for the zoning change from R-4 to C-2-A in Square 368 and requested that the Zoning Commission reconsider the two parcels, Lots 863 and 61, which were excluded from C-2-A zoning.

The comments from the Logan Circle Association thanked the Zoning Commission for its decision to rezone the interior of Blagden Alley C-2-A, while leaving the residential frontages along M and N Streets zoned R-4. The Association also requested that the testimony of ANC-2F06 be disqualified because the Commissioner lives in one of the buildings now subject to the zoning change, and believes there is a definite conflict of interest.

The comments from the Lewis Company dated April 10, 1995 indicated that the company was just informed of the Zoning Commission's decision not to include its property, 926 N Street, N.W. in the rezoning of Blagden Alley. The Lewis Company indicated that it did not participate in the hearing because it mistakenly believed one

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of the other property owners would be representing its interest. The Lewis Company urged the Zoning Commission to reconsider and include its property in the rezoning to C-2-A.

Knut Ringen's comments dated August 15, 1995, thanked the Commission for adopting the plan as presented by OP.

The comments from George Littman, dated March 6, 1995, consisted of a petition signed by 51 citizens and urged the Commission to rezone lots 61 and 863 in square 368 to C-2-A to accommodate and encourage more shops, coffee houses and cafes in the alley.

On September 11, 1995, the Zoning Commission considered the above comments and draft Z.C. Order No. 782 for final action consideration. The Commission decided to take a revised proposed action to include the lots that were initially advertised for rezoning during the public hearing process, but were not initially approved.

A notice of revised proposed rulemaking was referred to the Zoning Administrator, OP and OCC and was published in the D.C. Register on December 1, 1995 (42 DCR 6632). As a result of the referrals and publication, comments were received from Advisory Neighborhood Commission (ANC) 2F, dated January 1, 1996; ANC 2F05 dated January 3, 1996; Ramona Bowden, representing the petitioners, dated December 28, 1995; the D.C. Department of Consumer and Regulatory Affairs (DCRA) Historic Preservation Division, dated December 28, 1995; and the Blagden Alley/Naylor Court Historical Society, dated December 26, 1995.

In addition to the above referenced letters, the Commission received 18 letters of support and 6 letters of opposition to the revised notice of proposed rulemaking.

The comments from ANC-2F06, ANC-2F05 and Ramona Bowden supported the Commission's revised proposed action.

The comments from DCRA's Historic Preservation Division restated their opposition to the zoning changes for the lots that front on M and N Streets as inconsistent with their historic character.

The comments from the Blagden Alley/Naylor Court Historical Society stated that the covenant for lots 61 and 863 does not restrict development to residential uses, as called for by the Office of Planning; rather it merely restricts the entrances along M Street to residential, thus permitting the majority of development to be commercial, or even transient housing as permitted under C-2-A zoning.

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The proposed decision of the Zoning Commission was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by delegated action of the Executive Director dated July 5, 1995 found that the proposed amendments would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that C-2-A zoning would allow the existing surface parking area on M Street, N.W. to be utilized and act as a generator for business activity.

The Zoning Commission believes that having an extremely large vacant building on N Street, N.W. would destroy the validity and safety of the community.

The Zoning Commission believes that C-2-A zoning would be more economically feasible and act as a residential incentive zone for the vacant building on N Street, N.W. if a residential market exists.

The Zoning Commission believes that it is not appropriate to include covenants relating to specific properties as part of this zoning case, however; the Commission notes that nothing precludes the community and the property owners from making private covenants.

The Zoning Commission believes, after weighing and balancing all issues associated with the proposed rezoning initiatives, that the economic viability of the city and the targeted area is better served by the rezoning, as proposed.

The Zoning Commission has accorded ANC-2F the "great weight" consideration to which it is entitled.

The Zoning Commission further believes that its decision in this case is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders **APPROVAL** of amendments to the Zoning Map. The specific amendments to the Zoning Map are as follows:

Change from R-4 to C-2-A in Square 368: Lots 61, 68-70, 83, 84, 101-116, 126, 137-147, 817, 819, 820, 826, 863, 869, 882-884 and portions of Lots 12 and 821-824.

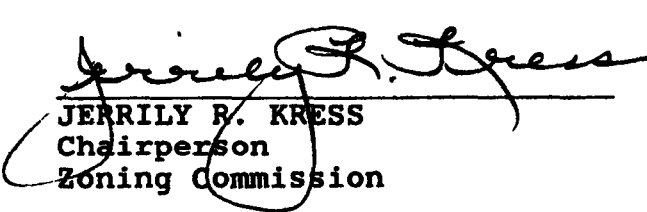
Z.C. ORDER NO. 782
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Vote of the Zoning Commission taken at the regular monthly meeting on March 20, 1995: 4-0 (John G. Parsons, Maybelle Taylor Bennett, Jerrily R. Kress and William L. Ensign to approve - William B. Johnson, not present, not voting).

Vote of the Zoning Commission taken at the regular monthly meeting on September 11, 1995, 4-0: (Maybelle Taylor Bennett, William L. Ensign, Jerrily R. Kress and John G. Parsons, to approve the revised proposed action to rezone Lots 61, 863 and 883 in Square 368 from R-4 to C-2-A.

This order was adopted as final action by the Zoning Commission at its regular monthly meeting on February 12, 1996 by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress to adopt as corrected, John G. Parsons, to adopt by absentee vote).

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is on
MAR 29 1996


JERRILY R. KRESS
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Office of Zoning

zco782/SDB/LJP

N STREET

