

January 25, 2015

To: Chairman Lloyd Jordan, Board of Zoning Adjustment

From: Opposition Party, BZA Case Nos. 18852 and 18853

**Re: Response to DC Office of Planning Memorandum, BZA #18852 and 18853 – 90 and 91 Blagden Alley, November 21, 2014**

Our overall view of the Office of Planning's report is that it lacks rigor and accepts the assertions of SB Urban (the Applicant) without in-depth questioning or analysis. The OP's report lacks substantive review, contains repeated generalities, and gives no examples.

## **ANALYSIS**

### **1. Exceptional Situation Resulting In A Practical Difficulty**

The report does not question the concept of practical difficulty. It merely accepts the findings in the Applicant's report.

For example, on page 5, M Street Property – Parking Special Exception, under the discussion of Section 2120.6, there is no explanation of how the Applicant met the burden of proof required by the test. The report states “Parking could theoretically be placed under the historic garage, but the underpinning would be difficult, extremely expensive, and could damage the historic landmark.” These assertions are completely unsubstantiated. The Applicant provided no documentation on the technical aspects, cost or possible damage to the garage. The report should ask what constitutes “difficult” and “expensive”? The reference to possible damage is also unsubstantiated and, in fact, demonstrably false. Historic building are often underpinned or moved entirely. Photos of historic buildings being moved, not just underpinned in-place, are included in the Exhibit 57 of the Case Documents. The techniques for this are used routinely. DCRA routinely approves permits in historic districts where contributing properties are underpinned.

In the case of the one-story historic garage, this would most likely be easier since there is nothing unique about it and it would be easily underpinned by any qualified contractor.

The OP's statement that “... structured parking could be built under only the newly constructed portion of the building” is false. The statement that “ ... there would need to be five levels of parking to meet the requirement and the levels would be extremely

inefficient" is irrelevant to the argument and also not necessarily true since a more dense garage/less deep garage configuration can be achieved by using a lift system.

Based on the above, the OP report fails to show that "providing the required parking will result in significant architectural or structural difficulty in maintaining the historic integrity and appearance of the historic resource." Without satisfying this test, support for the special exception is not justified and the applicant must provide parking as required.

For another example: Parking Variance. Page 7 of 9, on the bottom half of the page, Section 1 on Exceptional Situation and Practical Difficulty. At only 6 lines long, the paragraph has no analysis at all and thus cannot come to a conclusion that there is an Exceptional Situation or Practical Difficulty. The section's only discussion on whether there is an exceptional situation is to merely say that that the "property is quite small and narrow". At over 60 feet wide the lot is one of the larger lots on the entire block. Unlike most lots in DC which are either landlocked or have alley access only in the rear, this lot has alley on both the rear and south sides. Considering the very generous width and alley access from two sides, if anything, this lot is exceptionally well suited to provide the required parking.

The report then introduces the concept of inefficiency by stating "the parking levels would be extremely inefficient". One can assume this refers to the circulation space within a garage being a large proportion of overall floor space per level. The OP should not be concerned with *how* the parking requirement is implemented (efficiently or inefficiently), so long that it is implemented. The analyst literally stops here and there is no deductive argument of how this constitutes Practical Difficulty. In other words, this key prong of the variance test has not been satisfied, so it is unclear how OP can conclude that the variance is warranted.

## **2. No Substantial Detriment to the Public Good**

The OP report accepts the Applicant's position that providing 0 parking for the 9<sup>th</sup> Street property would have no affect on the public good, by referring to the traffic study. The OP report accepts the findings of the traffic study, without question, in a six-sentence analysis on page 7.

The report also states that granting relief for the court variance for the M Street property would allow "adequate light and air to the residents of the proposed building." While it is nice that the Applicant's tenants will have plenty of light and air, this has no bearing on the public good. And in the same paragraph, the report states, "The materials would

vary from red brick to grey brick to aluminum and glass.” One has to ask how this relates to the public good?

### **3. No Substantial Harm to the Zoning Regulations**

This test must prove that the variance causes “*no substantial impairment of the intent, purpose, and integrity of the zoning plans as embodied in the Zoning Regulations and Map.*” The OP report states four times that granting relief would cause no substantial harm to the zoning regulations, but fails to demonstrate this in any meaningful way.

For example, on page 4, the report states, “The regulations intend to provide adequate parking where required.” But then it goes on to state, “...the applicant demonstrated parking on-site would not be necessary.” But how? The report does not explain how the Applicant demonstrated this and how this does no harm to the zoning regulations.

On page 4, the report also states “The regulations intend to provide light and air to the occupants of structures, but do not intend to so severely restrict the buildable area of the lot.” This sentence not only provides no analysis, but is incoherent as well.

Nowhere does the report mention that the C-2-A zoning in the interior of Blagden Alley is closely surrounded by R-4 residential development. Nor does it analyze the possible encroachment of the residential areas by allowing lot occupancy, roof structure, court width, side yard, and parking variances. It does not address the issue of the harm it could do to the integrity of the zoning regulations if the variances are granted and every other developer in the city expects the same relief.

## **CONCLUSION**

The Applicant is expected to meet the burden of proof under Section 3103 in order to be granted a variance. It is our position that the Applicant has not proved the three-part test, nor has it been adequately questioned or analyzed by the Office of Planning in their substandard and superficial review.