

Neighbors of 1351 Georgetown Theater and Carriage House

Christian Mulder, Caesar Junker, Tom Adams and Bill Gallagher

3139, 3141, 3143 Dumbarton, 3142, 3146 O Street

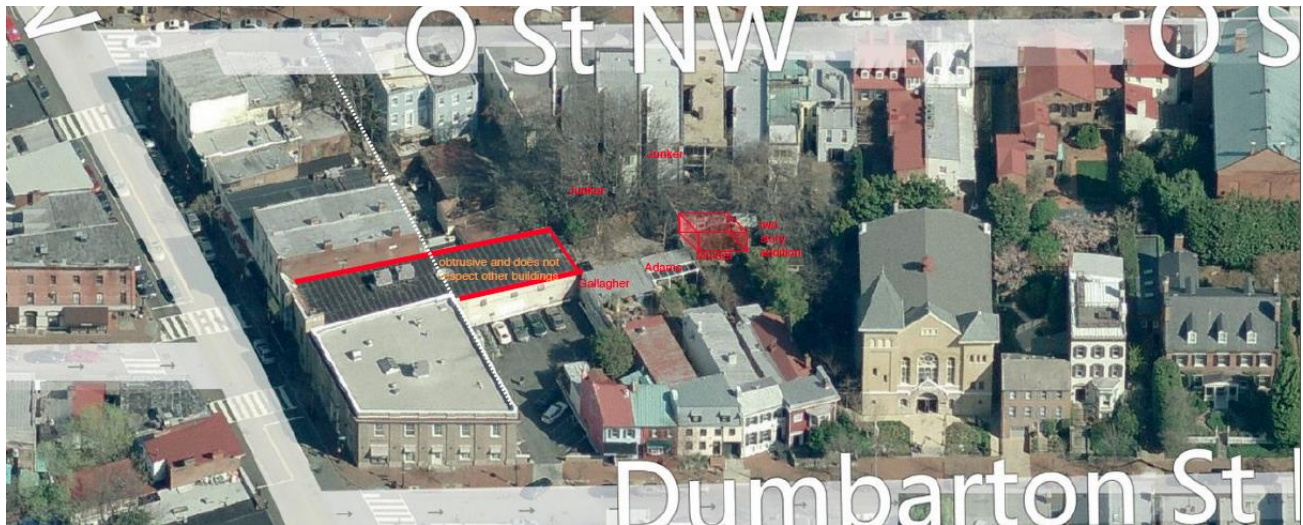
March 31, 2015

Board of Zoning Adjustment

District of Columbia

Reference: BZA concerns from March 3rd hearing of Application 18884

Special Exception and Rear Yard Variance for Addition to 1351 Wisconsin A



Dear Board Members,

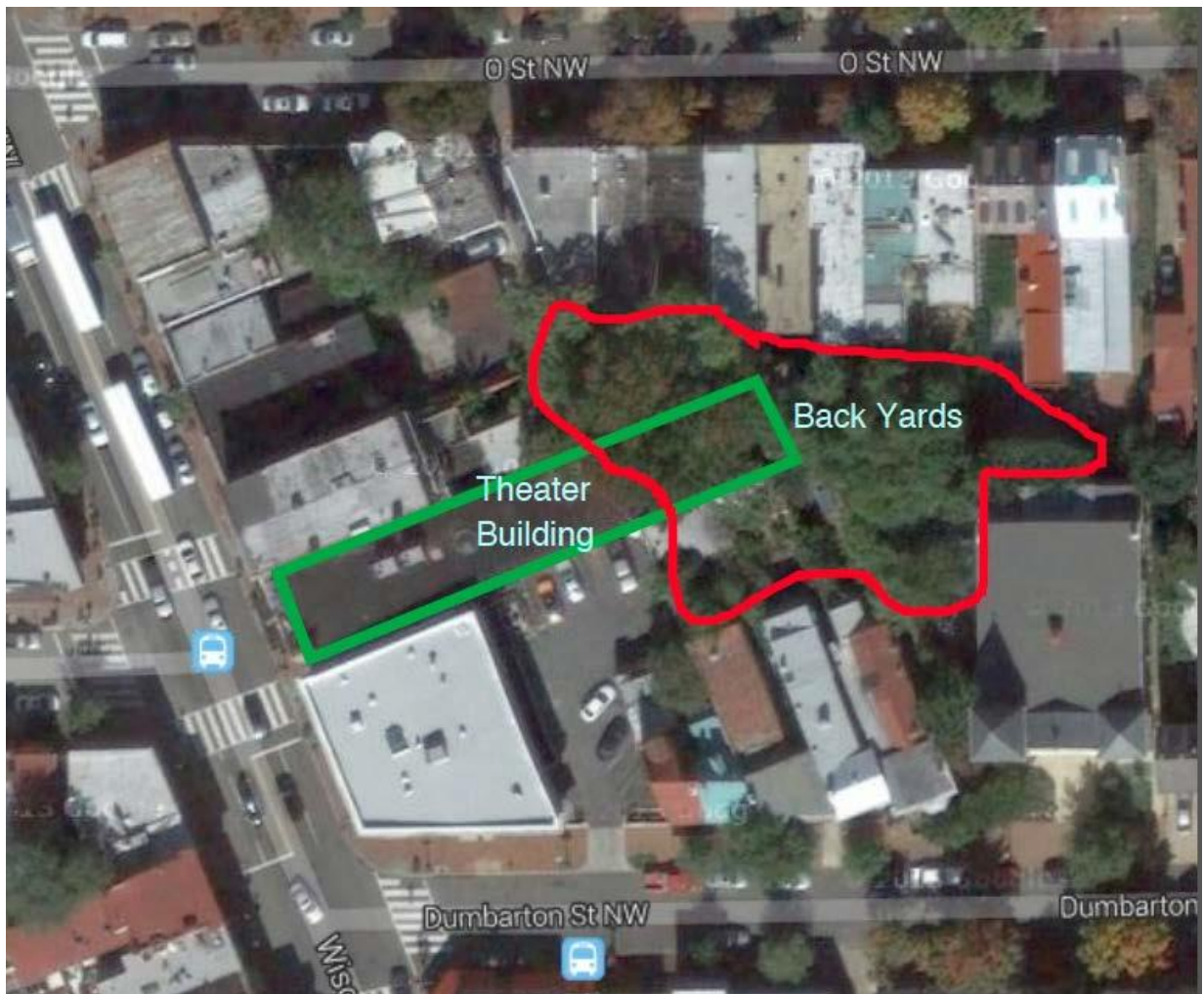
We, the neighbors on Dumbarton and O Streets want to inject some logic into this discussion. There are lots of facts and opinions attached to this document but the bottom line is that this is our neighborhood, we've all lived here between 15 and 25 years and all our back yards surround this lot. We enjoy our yards and one or two of us have some activity at least a few times a week. We never bother each other, because we can all escape into our houses if things get loud. But the person living in the middle of all our back yards is going to hear any and all of us – there will be no buffer. This is not fair to them or to us. Adding a residence in the middle of our yards is exactly why the zoning laws were written – to protect neighborhoods from intrusive developers.

Mr. Bell knows all the rules yet he continues to push past what's allowable. He is building the largest building north of Wisconsin Avenue and he still wants more. The addition to the Theater building is going to be looking directly in all our back yards – and directly into the windows of 3143 Dumbarton and 3146 O Street. No one is talking about this fact. Mr. Bell has not been reasonable all along and started by telling each of us what the violations were with our neighbors' houses. We talked to the neighbors where he has built before and they are all still complaining about his behavior and all the things he did to them.

Please understand this is our neighborhood – we have no intentions of going anywhere. Mr. Bell is a developer, does not live here or in Georgetown and really doesn't care about our lives or our concerns.

The concerns that the BZA had on March 3, 2015 regarding application 18884 are as follows:

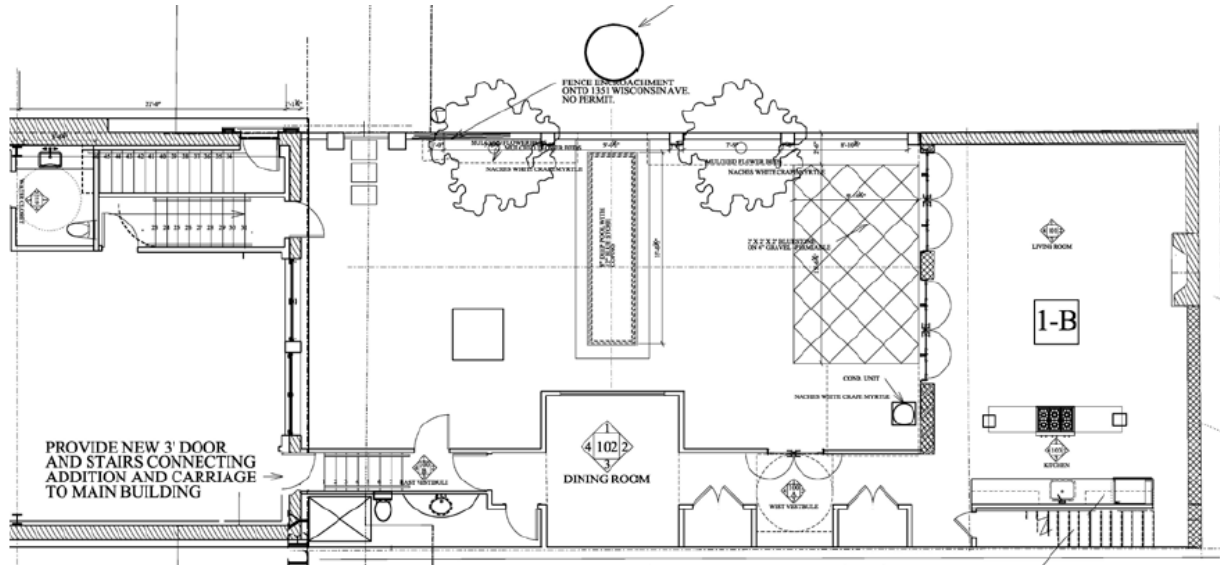
1. **Meaningful Connection** – Mr. Bell claim he has a achieved access but his latest connection only places a doorway into the back of a commercial retail space. There is no passage to Wisconsin Ave. There is no fire rated hallway for separation or any path to walk to the front without going through someone's space? These are all separately rented spaces and there is no guarantee for access. This does not create a "meaningful connection".
2. **Privacy** – his latest drawings are focused on the north buildings and his only solution is trees and they only do so much. Views from both the carriage house and the Theater Building are not discussed. All these new windows are looking directly into everyone back yards.
3. **Fire Protection** – this carriage house still only has access by a 10' alley. There's no meaningful connection to Wisconsin (through someone's retail space?) and the addition to the Theater Building blocks all access from Dumbarton. This is a problem for all the neighbors
4. **FAR Calculations** – Mr. Bell calculates the FAR on the rear lot as 60% of the lot area x 3 floors. This is not a valid calculation. This is in the residential zone and only the 1st 35' of this property can be used in a FAR Calculation, see 2514. He claims allowable Gross Floor is 14,721 SF. On his permit drawings he claims 12,444.5 SF which is the front building only. No more FAR is allowed on the site because he transferred the rear to the front. He is trying to "Double Dip" – Not Allowed.
5. **Zone District Boundary Line – 35' Rule** – Mr. Bell knows the rules – he is an "expert". He made the decision to transfer the FAR from the first 35' of the carriage house lot to the Theater Building to add to the 3rd Floor. By doing this he gave up his right to build in the 35' on the rear lot and on all the rest of the rear lot. Zoning Regulation 1514.



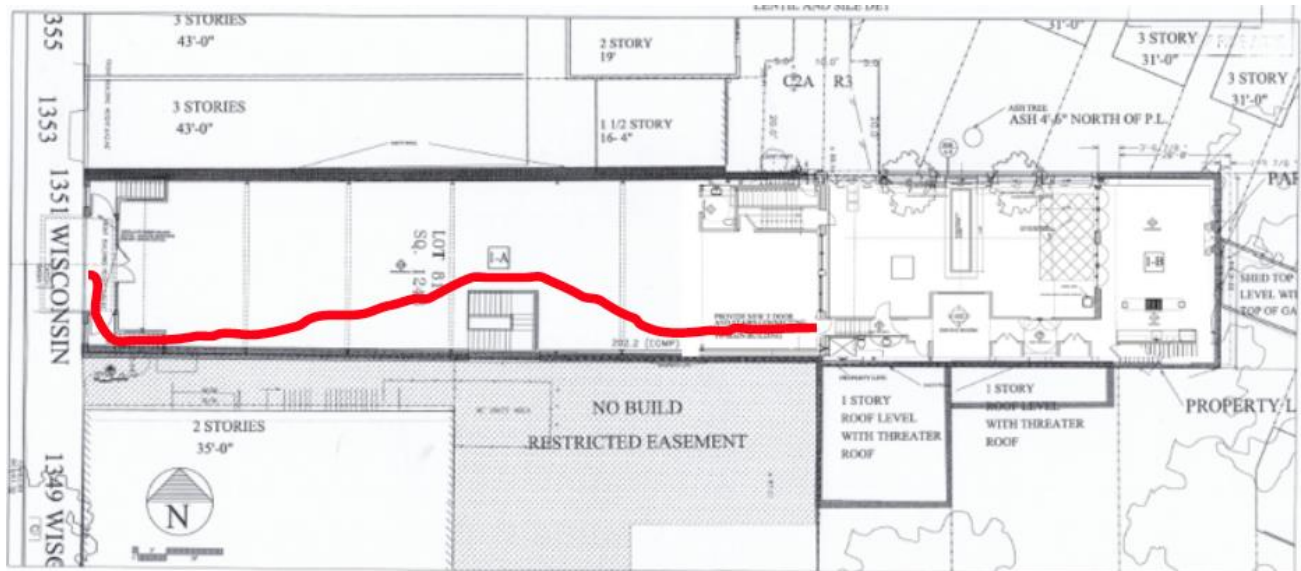
1. Meaningful Connection

The drawing shown below is the drawing being submitted to say there is a meaningful connection. The connection goes from a residential building into a commercial space, presumably through a fire door. This does not lead to a hallway or a way to the front of the building. There must be a fire rated hall to the front of the building to establish the Carriage House Entrance is on Wisconsin Ave. This is still only a jester with no real meaning. How does this person walk in the front door of the building and get to their home?

The carriage house is still located on a 10' alley which if forbidden to be a residence.



MODIFIED SUBMISSION TO CREATE A MEANINGFUL CONNECTION
Direct door and walkway from main building to rear residence with stair connection mixed use building.



130-foot path of travel required to reach Wisconsin Avenue entrance through other tenants space. This is not a "meaningful connection".

Meaningful Connection (if it exists it creates problems of legality)

If the new design and connection as proposed by Bell in his March 17 submission is a meaningful connection as he claims it is, this would create two legal problems that should lead to a rejection of his request for an exemption/variance and underlying building proposals:

1. The proposed building extends well beyond 35 feet into the residential R3 Lot in direct violation of the 35 foot limit 2514.2 imposes on exceptions that the Board can grant.¹ The building would extend the entire length of the residential Lot of exactly 70 foot, of which the loggia part would be about 45 foot.
2. It expands the theater with the loggia, whereas 2001.3 states that a non-conforming building should not be expanded.² Note that Bell proposes to use the rear as a residence which, given the meaningful connection, would make it a mixed use building regulated by 772.1. The theater is then non-conforming because it occupies about 97 percent of the C2A Lot compared to an allowed 60% under 772.1.

In addition:

3. Compared to the current building, the theater is being expanded from about 97% of the lot to cover 100% of the C2A lot. This too violates 2001.3--the theater itself is being used for residence and thus a mixed use building that limits lot-occupancy to 60%, which makes it a non-conforming building that should not be expanded. In essence the theater is not flat in the back but has two rectangles cut out. Which is why current Lot occupancy is 97% and not

¹ 2514.2 If approved by the Board of Zoning Adjustment as a special exception under § 3104, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone district; provided:

(a) The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.);

² 2001.1 The restrictions set forth in this section shall apply to a nonconforming structure devoted to a conforming use.

2001.2 Except as provided in §§ 2001.11 and 2001.12, ordinary repairs, alterations, and modernizations to the structure, including structural alterations, shall be permitted.

2001.3 Enlargements or additions may be made to the structure; provided:

(a) The structure shall conform to percentage of lot occupancy requirements, except as provided in § 2001.13; and

(b) The addition or enlargement itself shall:

(1) Conform to use and structure requirements; and

(2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

100%. We contest the legality of the proposed connection as it relies on a portion of the C2A building that should not be expanded and hence not connected. Bell claims he has a permit for the extension to fill in the rectangles of the building. As the chair said in the first meeting 'we should not take the permit at face value'. If the permit is erroneously provided this should not give the receiver of the permit the right to aggravate the situation further.

2. Privacy

The ANC and OGB have discussed the lack of transparency and frustration with the applicant's submission. In the applicants submission he claims the neighborhood effect was positive despite overwhelming opposition. The applicant also refused to acknowledge any negative impact on privacy with neighbors.

The ANC is required to write a letter to summarize their position after the hearings at the OGB and ANC. The ZONING Board is to give "GREAT WEIGHT" to the ANC letter. The ANC was primarily concerned about the negative impact on privacy and open air. The ANC also summarized the applicant's behavior as misleading and noted that the applicant "**incorrectly described their position**". Chairman Jordan correctly described the ANC's concern with "green" issues but the majority of the letter was about negative impact on neighbors.

"ANC 2E opposes the applicant's request for a zoning exception and variance to allow for the construction of an addition between the main building and the accessory building, and opposes the use of the accessory building as a residence.

*The rear of the **subject lot extends into an already tight residential area**. We are concerned about filling that all-too-rare open space in this residential area".*

*"We also do not favor changing the use of the accessory building into a residential building. In this already-tight residential area, a new residence would risk creating **objectionable impacts so close to the existing residences**.*

We also note that the applicant's filing in this case has not characterized our position accurately. ANC 2E has never indicated support for the zoning exceptions/variance the applicant is requesting. The applicant's filing incorrectly refers to our work on design elements of the proposal as including comments on zoning issues."

*"The inquiry there, for both our ANC and the OGB, is often: If this were zoned to permit it, what should the project look like? That in **no way implies approval for zoning exceptions or variances**."*

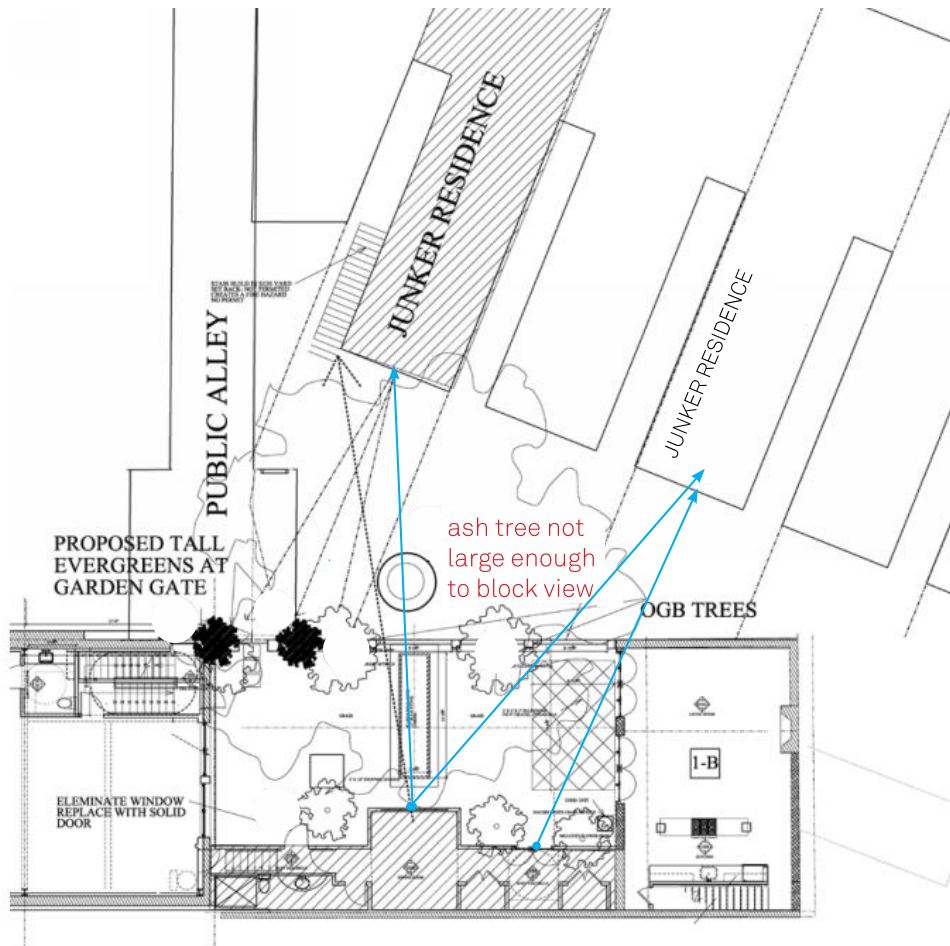
Granting the exception to 2514 clearly will adversely affect the use of neighboring properties. First the transfer itself to the front building creates massive inroads in terms of privacy and light. Second by the proposed loggia and changes to the carriage house.

The following diagrams will illustrate this and the continued attempts by the applicant to mislead the panel. His attempts to step behind a tree to take a photo or write false statements are illustrated with several photos.

view from loggia



view from loggia of Junkers' residence (3142 O St.)



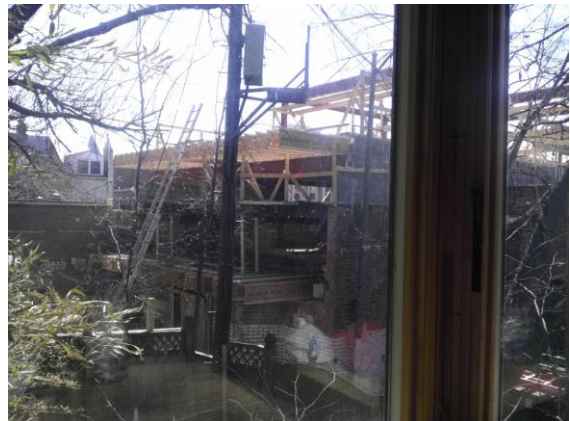
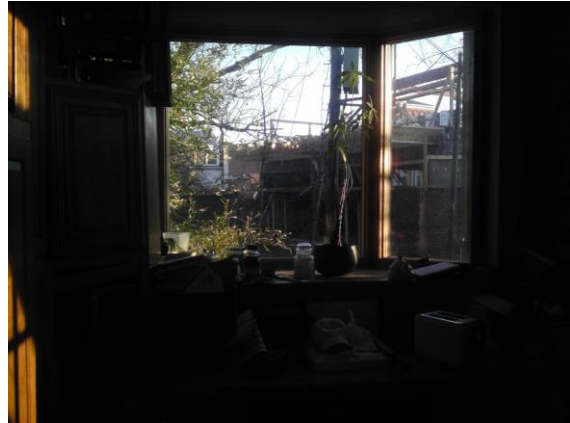
before

Abundance of natural light before addition.



after

Addition blocks natural light from entering Junker residence. Additional trees would only exacerbate this effect.



shadow study



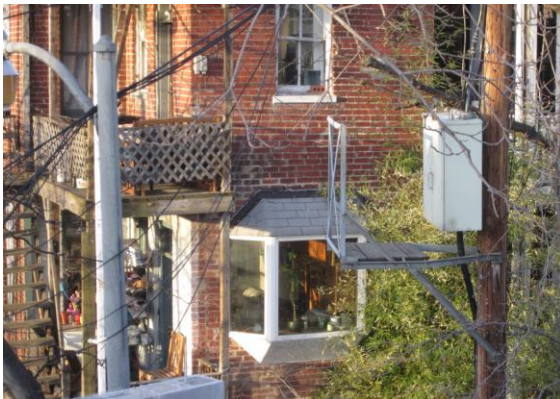
These photos show the shadow formed from the massive addition to the Georgetown Theater. This additional square footage is incorrectly calculated and used to justify the meaningful connection between buildings.

These photos show the formation of shadows during the sun's movement during the day.

views of residences from addition



view from theater addition of Junker residence



view from theater addition of Junker's kitchen window



view from theater addition of Junker residence



Christian Mulder's residence

Tom Adam's residence

Bill Gallagher's residence



view from theater addition

view into Bill Gallagher's bedroom

views of addition



Mr. Bell looking into Junker kitchen



view of addition from Junker residence. Building area exceeds square footage allowance by using prohibited calculations from loggia.

before



after



Tom Adams residence:
New privacy issues created by
removal of tree

green space (tree) removed from Dumbarton residences

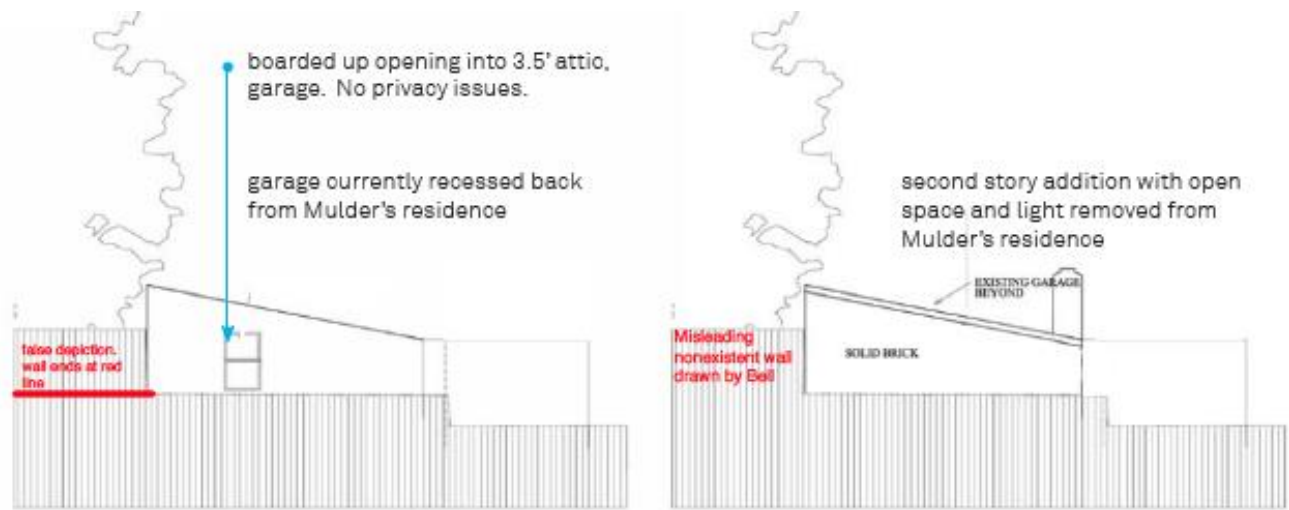


Diagram showing intrusion into Mulder's residence by addition of second story over oar-port structure



views into Mulder, Gallagher and Adams residences



3. Fire Protection

Mr. Bell says: “Further the carriage house is not an alley dwelling and its address is on Wisconsin Avenue and is not controlled by “alley dwelling” requirements”. If that is the case how do you walk from the front door on Wisconsin Avenue to this building? The only connection is through a retail space? There is no emergency egress or access through someone else’s space.

Bell says there is firefighting access: “There is firefighting access on three of the four sides. The west is on Wisconsin, the North is access from the alley that ends against the property and its garden gate to the carriage house, and the South has an easement on the Bank America property that prevents the Bank from ever building on the alley between the two structures which assures access”. The alley has limited access since it is only 10’ wide. There is a telephone pole right where Mr. Bell’s gate is located that apparently will cost \$10,000 to move – is Mr. Bell moving that pole? Through the Bank of America there is no access to the rear. Mr Bell has built the front building past Gallagher’s garage so there is absolutely no way to access the rear property from that direction.

4. FAR Calculations

1. The C2A zoned building (the theater) is nonconforming as it occupies about 97% of the lot instead of 60% allowed under 772.1 as per the design of Bell the theater will include a number of residential units. I.e. even without the meaningful connection it would be non-conforming. Under 2001.3 a non-conforming structure should not be expanded.
2. We request that the BZA review if 2001.3 trumps 2514. Logically 2001.3 should trump: If a building cannot be expanded because it (would) violate(s) the regulations, then the legally desired situation—that of a conforming building should be taken as the starting point for calculating the transfer/the total FAR after the transfer. Not the non-conforming structure.³ The calculations provided by Bell assume 100% occupancy right for the C2A zoned building, compared to 60% under 772.1. I.e. Bell should use $2.5 * 60\% * 4139 = 6208$ square foot as the starting point for the C2A zoned building, instead off $2.5 * 100\% * 4139 = 10347$ square foot as he claims.
3. The calculations by Bell assume that he can have a 3 story building for 60% of the R3 lot (in addition to 100% of the C2A Lot). This raises several issues:

³ 772.1 In a Commercial District, no building or portion of a building devoted to a residential use, including accessory buildings but excluding hotels, shall occupy the lot upon which it is located in excess of the percentage of lot occupancy in the following table:

ZONE DISTRICT	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
C-1	60%
C-2-A	60%
C-3-A	75%
C-2-B, C-2-C	80%
C-3-B, C-3-C, C-4, C-5 (PAD)	100%

- a. From 2514.2.(a) it is clear that Bell could at most transfer the square footage in the 35 foot zone behind the theater to the C2A zoned Lot. In fact Bell in his calculations claims the right to transfer 60% of the entire residential LoT which is about 70 foot deep. This is clearly erroneous. I.e. $60\% \times 35 \times 32 \times 3 = 60\% \times 1120 \times 3 = 2016$ square foot might be transferred instead of $60\% \times 2430 \times 3 = 4374$ square foot as Bell claims. Here 32 feet is the width of the Lot, 35 the maximum depth that could be transferred, which amounts to 1120 square foot instead of the 2430 square foot of the entire area.
- b. I.e., in total the front building should be allowed to have 6208 plus 2016 square foot FAR and not 14.721 as Bell claims. Note that Bell claims as many square feet for his theater building alone with his erroneous calculations as we have in five houses ! This to underscore the disproportionality and grieve and harm that would be done by accepting his calculations.
- c. Indeed, when creating a single building on a single lot of record (through the meaningful connection) Bell should not occupy more than 60% of the entire LoT. This provision/intent of the law (both lots are zoned at maximum 60%) would be clearly violated: $(4139+1000)/(4139+2430)=78\% >> 60\%$, where 1000 is the approximately the surface of the proposed loggia and carriage house. 4139 the footage of the C2A zoned Lot and 2430 the footage of the R3 zoned Lot per Bell's submission.
- d. Bell claims that he can build 3 stories in the R3 zoned Lot, compared to 2.5 in the C2A zoned Lot. We therefore request that the Board should also review if the R* Lot is really less restrictive then the C2A Lot—which, as stipulated under 2514.2, is a requirement for the transfer to the front: note that both have a maximum of 60 percent Lot occupancy under the proposed mix-use.

5. Zone District Boundary Line – 35' Rule

Double dipping

When Mr. Bell started this project he knew the rules and had a choice. He could build the front Theater Building to it's limit. He chose to TRANSFER the rights to the front building. The law clearly states that if he transfers that FAR he is not allowed to build on the rear lot—at least not the first 35 foot; i.e. the theater building should not extend into the restrictive lot:

2514.1 (e) Except for accessory open parking facilities permitted elsewhere in this title, the portion of the lot located in a more restrictive use zone district shall be devoted only to required yards or courts or other open spaces.

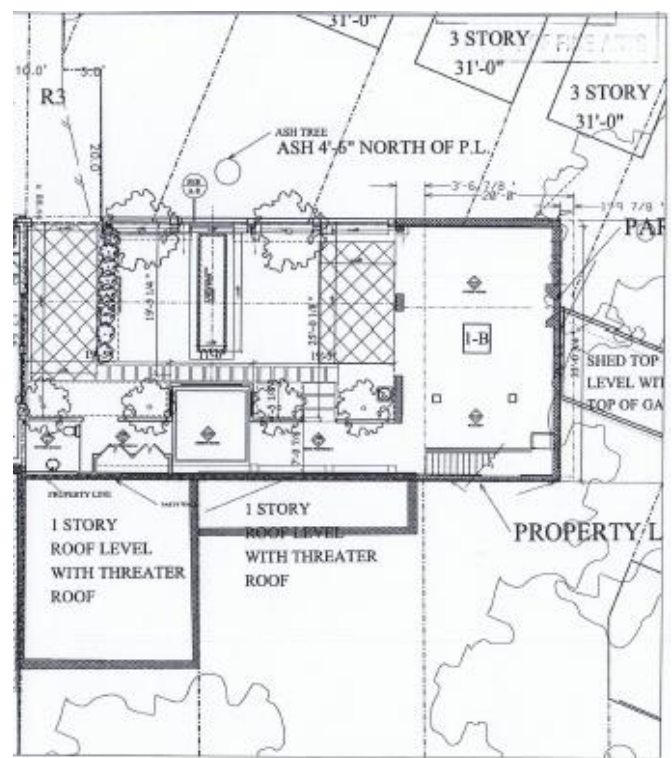
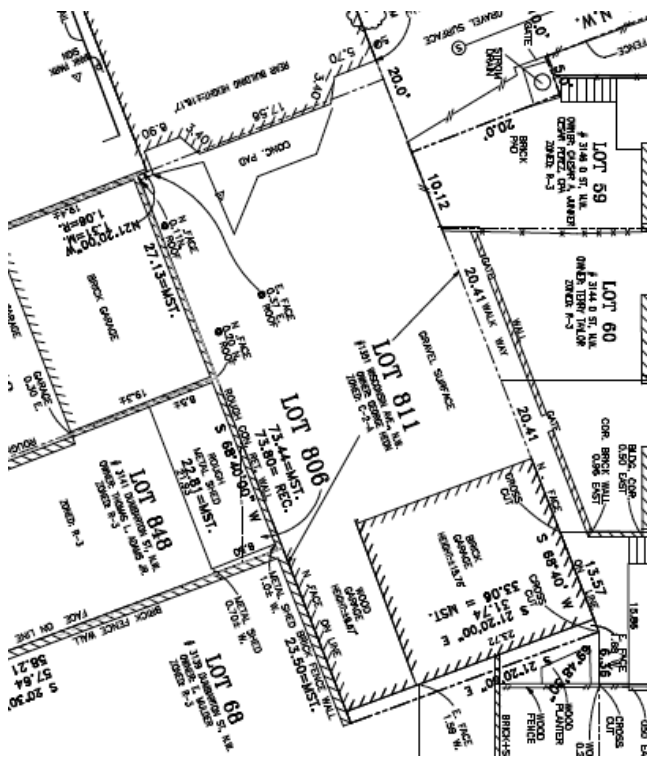
The Board did not request further stipulation of the argument but we attach to submitting it for the record. The intent of 2514.1 is to make whole owners that were impacted by zoning law changes. I.e. they could transfers building rights i.e. FAR from one part of the lot to another zoned part. The conditions are no building in the lesser restrictive lot. And the building should not extend into the

restrictive lot. Both transferring the buildable rights of the residential lot to the commercial zoned part of the lot and then again building on the residential lot violates the letter and intent of 2514.1. the intent of 2514.e is very clear:

6. Other Code Violations

Mr Bell was told by zoning Fire Marshall that he could not attach to the neighbors wall. Statement by Fire Review 08/01/2014 – Mr. Silroy Brown

“2. Please revise design sheets to indicate correct and consistent location of property line. Is there an existing party wall between both lots? or, is the existing wall the neighbor’s exterior wall (which seems to be the case)? If existing wall solely belongs to the neighbor, a structurally independent fire resistance rated wall in accordance with section 705, dc 2013 building code shall be constructed for this addition. **Party wall** – IT IS NOT Provide fire resistance rated construction cross section detail for this wall. List the matching ul number for his detail. Wall should not project beyond the property line. A furred out wall attached to the neighbor’s wall is not permitted”



Survey provided by Mr. Bell – shows Gallagher’s garage wall is entirely on his property and not a party wall. Note: Permit Drawings show no firewall – Bell is attaching to the neighbors building!

Parking (point raised in the hearing)

The increase in use will put tremendous pressure on parking in the neighborhood. Now historic structures/districts are exempt. But 2120.3 clearly stipulates that they are exempt from additional parking spaces: it does not stipulate that current parking can be removed that is needed for current uses. The current lot provides for about 7-9 parking spots, including three in the carriage house and one in the corrugated iron structure.⁴

Hardship (as motivation for variance) is not present (point raised in the hearing)

From the OGB hearings on the proposals by Bell it is clear that the OGB never stipulated that Bell could not use the carriage house as a garage conform its current use. The self-certified submission by Bell was false in this regard.

Note that the exhibition 19 labelled as “OGB approved plans part1.pdf” and has the assertion about the OGB not approving parking is not a print that was stamped by or approved by the OGB.

Therefore we submit to the Board that the hardship Bell is claiming under 3103—to justify the variance under 774.1--namely being forced to use the carriage house as residence and not being able to do so without a variance, is not supported by the facts.⁵

⁴ 2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

(a) The gross floor area of the historic resource is being increased by 50% or more, and

(b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

⁵ 3103.2 With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3)(2001) (formerly codified at D.C. Code § 5-424 (g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map."

Moreover, Bell recently purchased 1351 Wisconsin Avenue and was as architect well aware of zoning restrictions. Therefore we submit to the Board that he purchased knowingly and cannot claim hardship.