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APPLICATION OF:	)	
Gary A. Robinson II	)	
Rear 320 3rd Street, N.E.¹	)	BZA Case No. 19014
Conversion of Alley Structure to a	)	Hearing: June 16, 2015
Single-Family Dwelling in the	)	ANC 6C-02
CAP/R-5-B District (Sq. 756, Lot 826)	)	
	)	

I. INTRODUCTION

II. JURISDICTION OF THE BOARD

III. BACKGROUND

Board of Zoning Adjustment
District of Columbia
CASE NO.19014
EXHIBIT NO.30

lot within the center of the block. It contains approximately 1,633 square feet of land area and is presently improved with a three-story brick building on the north portion of the lot, and a two-and-a-half story addition extending along the south leg of the lot. The Site is surrounded to the north and east by private property, to the south by a 10-foot wide public alley, and to the west by private property (Lot 813) and a 10-foot and 15-foot wide public alley. A 15-foot wide stub alley, running north-south, is located immediately to the south of the Site.

B. The Vicinity

The Site is located on the north side of Capitol Hill, just blocks from Hart Senate Office Building, Union Station and Stanton Park. Square 756 is split-zoned, with the northern properties fronting D Street and Massachusetts Avenue zoned CAP/CHC/C-2-A, and the rest of the square, including the Site, zoned CAP/R-5-B. St. Joseph's Catholic Church is located immediately west of the Site across the alley. Commercial retail and service uses front on Massachusetts Avenue and D Street, including restaurants, a dry-cleaners, a grocery store and food market, and hair salon. The zone boundary line runs east-west along the rear of the commercial properties and alley, as shown on the zoning map attached as Exhibit A. The north property line of the Site abuts the commercial district. Copies of the Baist Atlases depicting the property, as well as early subdivision plats, are attached as Exhibit B-1.

C. Description of Proposal

The Applicant proposes to convert the existing brick building into a single residence for his family. Because the Site abuts alleys that are less than 30 feet in width (see copy of Building Plat attached as Exhibit C), the Applicant must seek an area variance to allow the conversion.

The building is presently vacant but was historically used as a coach factory in the late-nineteenth and early-twentieth centuries, according to historic plats. See copies of Baist Atlases

attached as Exhibit B-1. Later, it was used for storage and more recently as an artist studio, cabinet shop and antiques. These uses, however, no longer generate the income necessary to service the debt on the building and are not viable. Only residential use is feasible on the Site, as discussed below.

IV.

The Applicant Meets the Standard for Variance Relief under the Zoning Regulations

A. Standard of Review

Pursuant to D.C. Code §6-641.07(g)(3) and 11 DCMR §3103.2, the Board is authorized to grant variance relief where it finds that three conditions exist:

- (1) the property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) the owner would encounter practical difficulties or undue hardship if the zoning regulations were strictly applied; and
- (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987).

The purpose of the variance process is to “prevent usable land from remaining idle” and to determine whether there will be a “fair and reasonable return to the owner.” *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541-42 (D.C. 1972). Applicants for an area variance need to demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *Id.* at 540-41 (noting that “area variances have been allowed on proof of practical difficulties only while use variances require

proof of hardship, a somewhat greater burden”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990). As discussed below, the Applicant meets all three prongs of the variance test.

B. The Property Is Affected by an Exceptional Situation or Condition.

The phrase "exceptional situation or condition" may arise from a confluence of factors which affect a single property. *Id.* at 1168. Here, the extremely unusual configuration of the lot, its small size, the existing structure, and its unique location along the multiple alleys of varying widths all affect the Site. The existing structure was constructed in two phases in the early twentieth century on land originally known as Lot 27. The property was held by the same owners of adjoining Lots 28 and 37, which together comprised the northeast corner of the square. Sometime between 1903 and 1909, a three-story brick structure was built on the rear alley portion of former Lot 27 for use as a coach factory, according to historic wall-check plats from the D.C. Surveyor's Office. A brick stable was located immediately to the south on a separate lot at the corner of two intersecting alleys. In 1911, long before any zoning codes were enacted in the city, Lots 27, 28 and 37 were subdivided into five new record lots, including Record Lot 42, which was located at the rear portions of Lots 27 and 28. The subdivision formed the L-shaped configuration of the Site that exists today, which allows access to two of the alleys in the square, one on the west and one on the south. The west lot line of the Site is irregular and angled, to conform to the changing direction of the alley on that side. Sometime between 1913 and 1919, the south leg of the building was constructed, creating the existing footprint that wraps around the former stable at the alley corner. Real estate plats of property within several blocks of the site do not show any similar building configurations where an L-shaped building, fronting

on two different alleys, wraps around another alley structure. See Exhibit B-2. As such, these unique or exceptional situations affect this single property.

C. Strict Application of the Zoning Regulations Would Result in Practical Difficulties to the Owner.

Under section 2507.1 of the Zoning Regulations, the only type of residential use permitted on an alley lot is a single-family dwelling. The Applicant's proposed use is consistent with this provision. However, section 2507.3 does not allow an existing non-residential structure located on an alley less than 30 feet in width to be converted, altered, remodeled or repaired for use as a one-family dwelling, regardless of cost. Although Lot 826 fronts on two different alleys, they do not have the requisite width and thus would prevent the Applicant from converting the outmoded building from being used as a residence.

The strict application of this regulation will impose practical difficulties on the owner, given the exceptional and extraordinary conditions on the Site. The alleys cannot be widened to accommodate the proposed use. It is likewise not feasible to join the property with other lots that have street frontage. Similarly, commercial uses on the site are no longer economically feasible. Other than a single-family dwelling, the only uses permitted as a matter of right for an alley lot in an R-5-B zone where the alleys are less than 30 feet wide are an artist studio (section 2507.5), and a private garage (section 201.1(o)). Storage of wares and goods, a parking lot, a parking garage or a public storage garage are normally permitted by special exception under section 333. However, in the Capitol (CAP) Interest Overlay District, the regulations expressly prohibit the storage of wares and goods on an alley lot or a parking lot. See 11 DCMR § 1201.3.

Here, it is not practical to use the building as artist studios because such a use would not generate enough income to service the debt on the property. Artist studios typically rent for \$1.00 to \$2.00 per square foot, as indicated by the comparable rental rates shown in Exhibit D.

Assuming the highest rental rate of \$2.00 and full occupancy of the building, there would still be a negative annual cash flow of more than \$11,000, or a debt serving ratio (DSR) of 0.79, for artist studio uses the first year. A DSR of 1.0 represents a “break even” cash flow. A DSR of less than 1.0 denotes a negative cash flow. Here, a DSR of 0.79 means that that is only enough net operating income to cover 79 percent of the mortgage payment. This would mean the Applicant would have to fund the remaining 21 percent from his personal budget every month to keep the project afloat, and no lender would finance a project with this type of negative cash flow. The financial analysis for artist studio uses is attached as part of Exhibit D.

Use of the Site as a private garage also creates practical difficulties. First, only the ground level of the building could be used. Second, because of the unusual configuration of the building, only two spaces could potentially be created, but they would be too narrow to accommodate a compact space. Each “wing” of the building is only approximately 16-17 feet wide. If a garage door opening were introduced at each wing, it would only be approximately 14-15 feet wide, which is narrower than the standard 16-foot width of a compact size space. Finally, even if the building could be rented as a garage, two spaces would only generate at best \$600 a month (with most spaces in Capitol Hill renting at \$150 - \$250 a month), which is not sufficient to service the debt on the property.

The Board has previously granted variance relief under section 2507.3 to allow dwellings on alley lots with alleys less than 30 feet in width. See, for example, BZA Order Nos. 18795, 18017, 17989, 17930, and 17487, copies of which are attached as Exhibit E.

C. Relief Can be Granted Without Substantial Detriment to the Public Good and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan.

The conversion of this irregular alley structure to a residential use that is permitted in the R-5-B zone is in character with the surrounding CAP/R-5-B residential community and the

CAP/CHC/C-2-C commercial district. It will not cause a substantial detriment to the public good, nor will it substantially impair the intent, purpose and integrity of the zone plan. The square, like most all of the surrounding area, is zoned R-5 or higher. The proposed residential use of the property is consistent with the adjacent single- and multi-family uses within the rest of the block and is characteristic of the Capitol Hill Historic District in which it is located. Rehabilitation of this contributing building will greatly enhance the historic quality of the neighborhood.

Conversion of this building to residential use will have a positive impact on neighboring property owners. It will be used as a single family dwelling and will not increase density or traffic in the area. In contrast to an artist studio use, the residential use will not produce or repair any goods, will not create any objectionable noise, and will not generate and commercial deliveries or vehicular trips to the property. The existing three-story building lends itself well to residential use. Moreover, access into the alley system through the existing alley system is sufficient for the current uses in the square, and will continue to be sufficient after conversion of this building.

V. EXHIBITS IN SUPPORT OF APPLICATION

<u>Exhibit A:</u>	A portion of the Zoning Map showing the Site
<u>Exhibit B-1:</u>	Baist Atlases and Subdivision Plats of Site, including historic development
<u>Exhibit B-2:</u>	Baist Atlases of Vicinity
<u>Exhibit C:</u>	Building Plat of Site
<u>Exhibit D:</u>	Financial analysis of artist studio uses and rental rates
<u>Exhibit E:</u>	Copies of prior BZA Orders granting similar relief
<u>Exhibit F:</u>	Outlines of witness testimony

VI.
WITNESSES

- A. Gary A. Robinson, II, Applicant
- B. Greg Holeyman, AIA, Barnstar Architects

VII.
CONCLUSION

For the reasons stated above, the proposed relief meets the applicable standards for an area variance under the Zoning Regulations. The Applicant therefore respectfully requests that the Board grant the application.

Respectfully submitted,

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