

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
Rear 318 3rd Street, N.E.**

Preliminary Statement of Compliance with Burden of Proof

This Application is submitted by Gary A. Robinson II, the contract purchaser of the property located at Rear 318 3rd Street, N.E. (Square 756, Lot 826) (the "Site"). Pursuant to 11 DCMR § 3103.2, Mr. Robinson seeks a use variance from 11 DCMR § 2507.3 to allow the alteration and conversion of an existing non-residential building to a one-family dwelling on an alley lot where the alley is less than 30 feet in width in the CAP/R-5-D District at the Site.

I. Background

A. Description of the Site and Surrounding Area

The Site is an alley lot in the center of Square 756. The Site is T-shaped with approximately 1,633 square feet of land area. 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.

Square 756 is bounded by D Street to the north, Massachusetts Avenue to the northeast, 3rd Street to the east, C Street to the south, and 2nd Street to the west, all located in the northeast quadrant of the District. The Square 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 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 of the Site abuts the commercial district.

The Site is accessed through a 10-foot wide public alley from 3rd Street to the east and an alley of varying widths from 2nd Street to the west that narrows to 10 feet as it turns south to the Property. A 15-foot wide stub alley, running north-south, is located immediately to the south of the Site.

B. Description of Proposal

The Applicant proposes to convert this existing two-story brick plus attic structure into a single residence for his family. Because the property abuts alleys that are less than 30 feet in width, the Applicant must seek a use variance to allow the conversion.

Until recently, the property was used as "artist studio, cabinet shop and antiques" pursuant to Certificate of Occupancy No. 172778, a copy of which is attached as Exhibit B. However, an artist studio or similar uses do not generate the income necessary to service the debt on the building and are no longer viable. Only residential use is viable on the site, as discussed below.

II. The Applicant Meets the Burden of Proof for the Requested Variances

Under 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).

In *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972), the Court explained the standard for a use variance. Citing McQuillin, the Law of Municipal Corporations, the Court held that the purposes of the variance procedure include "prevent[ing] usable land from remaining idle." *Id.* at 541. The use variance inquiry focuses on whether "the property can be put to any conforming use with a fair and reasonable return to the owner." *Id.* at 542. The Court has also recognized in a use variance application that approval is justified when the relief requested is minor relative to the nature of the surrounding community. *The Oakland Condominium v. D.C. Board of Zoning Adjustment*, No. 10-AA-536 (June 2, 2011) at 2.

As discussed below, the Applicant meets all three prongs of the variance test.

A. 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. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

This alley property is an irregular T-shaped site that wraps around another square alley structure located at the juncture of two internal alleys. It is improved with a three-story brick building, the north portion of which (former Lot 811) was constructed before 1921. The southern "leg" of the building (former Lot 812) was constructed sometime before 1938. No other building within several blocks of the site shows no T-shaped buildings wrapping around other separate buildings. As such, these unique or exceptional situations affect this single property.

B. Strict Application of the Zoning Regulations Would Result in an Undue Hardship to the Owner

Section 2507.1 of the Zoning Regulations allows a one-family dwelling as the only type of dwelling on an alley lot. However, section 2507.3 does not allow existing nonresidential structures located on alleys less than 30 feet in width to be converted, altered, remodeled or repaired for use as a one-family dwelling, regardless of cost. The strict application of this regulation will impose an undue hardship on the owner.

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, parking lot, parking garage or 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. The Applicant's real estate economic consultant has concluded that the development costs of the permitted uses, when compared with the debt cost and the expected rental income, or sale, of those facilities, is economically unjustifiable. For example, there would be a negative annual cash flow of more than \$11,000, or a debt serving ratio (DSR) of 0.79, for an artist studio the first year. A DSR of 1.0 represents a "break even" cash flow. The net operating income is just enough to cover the mortgage payments (debt service). 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 borrower 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 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, 17487, and 16524.

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 residential community and the CAP/CHC/C-2-C commercial district. It will not cause a substantial detriment to the public good, nor would 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 character 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.

Residential use of this building will have a negligible impact on neighboring property owners. It will be used as a single family dwelling and will not increase density or traffic in the area. Nor will residential use adversely affect the privacy of neighboring property owners. In contrast to the previous artist studio and cabinet shop, there will not be any or goods produced or repaired, or any related commercial deliveries, as a result of the residential use. 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.