

**MEMORANDUM**

TO: District of Columbia Board of Zoning Adjustment

FROM: Matt Jesick, Case Manager
 Joel Lawson, Associate Director Development Review

DATE: December 15, 2015

SUBJECT: BZA #19145 – 1313-23 Linden Court, NE

I. RECOMMENDATION

With regard to this proposal to construct a mixed use project on alley lots, the Office of Planning (OP) recommends **approval** of the following variance relief:

- § 771 FAR (1.5 non-residential max., 1.7 non-residential proposed for Lot 1);
- § 772 Lot Occupancy (60% maximum, 60.4% existing, up to 82% proposed);
- § 774 Rear Yard (15' required, 7'3" minimum proposed).

The Office of Planning **cannot recommend approval** of the following variance relief:

- § 2507.3 Buildings on Alley Lots (On a lot abutting an alley less than 30' in width, a non-residential use shall not be converted to a residential use; On proposed Lot 5 the application proposes a residential use).
- § 2507.4 Height (24' existing, 30' max. permitted for this site, 39' proposed).

While the applicant requested relief from § 2003, OP confirmed with OAG that the appropriate relief necessary for the proposed studio apartment use is a variance from the second clause of § 2507.3.

II. LOCATION AND SITE DESCRIPTION

Address	1313-23 Linden Court, NE
Legal Description	Square 1027, Lots 57-61 and 112
Zoning	C-2-A, moderate density commercial; rowhouses and commercial matter-of-right
Ward and ANC	6, 6A
Historic District	None
Lot Characteristics and Existing Development	Overall site is mostly rectangular (73' wide X 35'3" deep); 35' depth created through a property swap with the adjacent neighbor. See Sheet PT1.08 of Exhibit 24A. Overall site area is 2,573.25 square feet. Originally constructed with six two-story rowhouses in the 19 th century, now

	one consolidated structure housing an auto body shop. Some interior demolition to accommodate the auto body shop use, which has existed since the 1960s.
Adjacent Properties and Neighborhood Character	Linden Court has varied uses on it, included back of house functions for H Street businesses, other non-residential uses fronting on the alley, and alley dwellings. The surrounding square is commercial along H Street and mostly rowhouses along 13 th , G and Maryland Avenue, with one moderately sized apartment building at Maryland and 14 th . The immediately adjacent properties to the west and south are both alley dwellings.

III. PROJECT DESCRIPTION IN BRIEF

The applicant proposes to convert a two story auto body shop to four single family row dwellings as well as a commercial use with an apartment above. The existing six lots would be converted to five lots, and additions are proposed to add to the height of the building and extend the building to the south or rear. The four rowhouses would have three stories plus a mezzanine. The fifth lot, at the corner of the intersecting alleys, would have two stories of commercial and a studio apartment on the third floor.

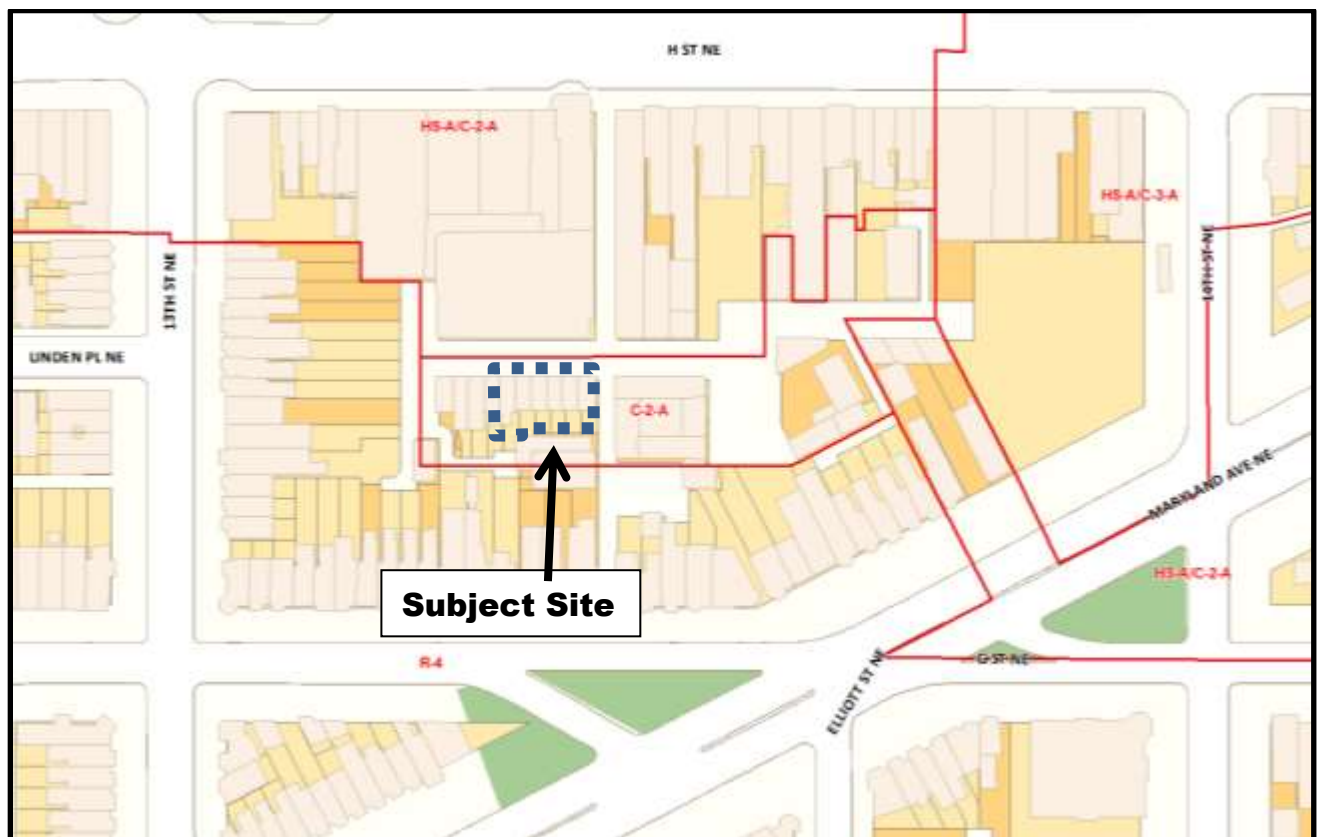
IV. ZONING REQUIREMENTS AND REQUESTED RELIEF

The site is zoned C-2-A (Moderate Density Commercial). In order to develop as proposed, the application seeks zoning relief as noted in the table below.

Item	Requirement	Existing	Proposed	Relief
§ 2507.4 Height	No more than the distance from the opposite side of the alley to the exterior wall of the subject building (30')	24'	39'	Requested
Lot Areas	no requirement	495 – 660 sf	Lot 1 – 605 sf Lots 2 – 4 – 656 sf Lot 5 – 678.6 sf	Conforming
Lot Widths	no requirement	6 lots @ ~12'	Lots 1 – 4 – 14'6" Lot 5 – 15'	Conforming
§ 771 FAR	2.5 Max 1.5 Max Non-Residential	Not Provided	Lot 5 – 1.7 Non-Residential FAR	Requested¹
§ 772 Lot Occupancy	60%	60.4%	Lot 1 – 82% Lots 2 – 4 – 75% Lot 5 – 75% for residential portion	Requested

¹ The application originally requested a residential FAR variance for Lot 1, but the design of the unit on Lot 1 has been modified to remove the need for that variance.

Item	Requirement	Existing	Proposed	Relief
§ 774 Rear Yard	15'	19'2"	Lot 1 – 7'3" Lots 2-4 – 11' Lot 5 – 0'	Requested
§ 775 Side Yard	None required	None	No change	Conforming
§ 2003 Changing Uses Within Structures	Can change from one non-conforming use to another non-conforming use	Existing body shop, not permitted in C-2, first permitted in the C-M zone	Lots 1 – 4 – Single family residential permitted as a matter-of-right Lot 5 – Commercial is matter-of-right, but studio apartment is not permitted; therefore relief is required for the residential use	Requested, but not applicable (per OAG)
§ 2507.3	Non-residential structures abutting alleys less than 30' in width may not be converted to residential uses	Non-residential structure	Convert portion of structure to residential use on Lot 5, which abuts an alley less than 30' in width	Required for Lot 5



V. ANALYSIS OF § 2507.3, BUILDINGS ON ALLEY LOTS

Applicability of § 2507.3 Rather Than § 2003

The applicant has applied for relief pursuant to § 2003, which allows the conversion of one non-conforming use to another non-conforming use. The text of § 2003.1 states:

2003.1 If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions, a nonconforming use may be changed to a use that is ***permitted as a matter of right*** in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section. [Emphasis added.]

The intent of this section is to allow a more non-conforming use to change to a less non-conforming use, and switching from an auto body shop to a studio apartment would typically achieve that intent. However, a studio apartment on the subject site, Lot 5, is not a matter of right, as required by § 2003.1.² By the language of § 2507.3, a residential use on Lot 5, regardless of which zone it is in, would not be a matter of right use:

2507.3 An existing one-family dwelling located on an alley lot that abuts an alley less than thirty feet (30 ft.) in width shall not be converted, altered, remodeled, restored, or repaired for use as a one-family dwelling if the cost of the conversion, alteration, remodeling, restoration, or repair exceeds one-half of the value of the structure immediately prior to the time of the conversion, alteration, remodeling, restoration, or repair. Nonresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost.

Lot 5 would abut an alley less than 30 feet in width – the north-south alley through the square, which is 15 feet wide. And the second sentence of § 2507.3, which prohibits the conversion of non-residential structures on said alleys to residential uses, would apply to the proposed use program on Lot 5. The proposed apartment, therefore, is not a matter of right, and consequently § 2003 could not be used to permit the requested use. A variance is required from the second sentence of § 2507.3 to permit residential. OP has confirmed this opinion with OAG.

² One complicating factor is that an auto body shop is first permitted as a matter of right in the C-M zone, and residential uses are not permitted at all in that zone. Residential uses, however, are of course permitted in more restrictive zones, as listed in § 2003.6, and could therefore be interpreted to conform to the requirements of § 2003.1 – that is, switching from a use first permitted in C-M to a use permitted in most of the zones more restrictive than C-M.

Analysis

The applicant does not believe that § 2507.3 applies to the project, but notes that if it would apply it would be an area variance and Lot 5 would meet the variance test. The argument put forth is that “It would be impractical, wasteful and possibly hazardous to convert Lot [sic] 1-4 to single family dwellings, but leave Lot 5 undeveloped.” (Exhibit 24, p. 9) Lot 5, however, would not be vacant and undeveloped. The commercial use proposed for the first two floors would be a matter-of-right use, and the commercial structure could still create a buffer for the residential and promote safety through increased activity in the alley. The application has not adequately addressed the variance criteria for relief from § 2507.3.

VI. ANALYSIS OF OTHER AREAS OF RELIEF

While as of this writing the application does not adequately address the test for the variance from § 2507.3, if the Board, at the time of the hearing, finds otherwise, OP offers the following analysis of the other areas of required relief. In order to be granted a variance, the applicant must show that they meet the three part test described in § 3103.

FAR, Lot Occupancy and Rear Yard

1. Exceptional Situation Resulting in a Practical Difficulty

The subject property is exceptional in that it is very shallow for a rowhouse lot, and small for a typical commercial use. Comparing the site to other rowhouse lots in the surrounding square, it is clear that the subject lots are some of, if not the most shallow lots in the vicinity, even more shallow than adjacent alley rowhouse lots. Because of this exceptional situation, the applicant would face a practical difficulty in meeting the zoning requirements for lot occupancy and rear yard. The applicant proposes to add some depth to the existing structure in order to accommodate modern living styles, as opposed to the more austere housing typical when the original rowhouses were built over 120 years ago. Similarly, for the commercial use, in order to achieve a viable footprint the applicant proposes to have zero rear yard. The resulting footprints would have lot occupancies and rear yards not meeting zoning requirements, as noted in the table above. Even with this added depth, however, the rowhouses would only be 35 feet deep, not as deep as many of the rowhouses nearby. The commercial use would have a 100% lot occupancy, which is permitted, and which is similar to other commercial buildings in the area. In terms of FAR, the commercial use, at 1,017 gross square feet on two floors would still be unusually small for the surrounding area.

2. No Substantial Detriment to the Public Good

The slightly larger footprints of the proposed structures should not have an undue impact on the public good. While the buildings would be somewhat closer to the building to the south, the windows on that structure should not have the light or air available to them significantly reduced. Those windows face north, so do not get direct sunlight. The area between the buildings would be significantly cleaned up from its present state, so could represent an improved condition for

the resident to the south. See Sheet PT1.07 of Exhibit 24A for a photo of the area between the buildings. The owner of that property, in fact, has submitted a letter to the record indicating their full support of the project. The zero rear yard on proposed Lot 5 would provide a noise and privacy buffer for the rowhouses on the interior of the project. The proposed commercial space, while over the FAR limit for Lot 5, would still be relatively small and could provide an opportunity for a start-up business or a business with smaller space needs than other leasable spaces in the neighborhood provide.

3. No Substantial Harm to the Zoning Regulations

The Zoning Regulations generally support the maintenance of open space on the lot through lot occupancy and rear yard limits, but also support the improvement of properties and the use of properties for viable single family residences. The Regulations also promote complete neighborhoods, and the provision of a commercial space could promote walkability and convenience for nearby residents.

Height

1. Exceptional Situation Resulting in a Practical Difficulty

The application cites the need to place parking and vestibules within the building footprint as exceptional conditions that impact this property, take away otherwise usable living space, and necessitate extra living space above the 30 foot height limit. OP does not concur with that assessment. While detached garages are historically more common in the District, many rowhouses are built today in the city with integral garages on the first floor. In this case the proposed parking spaces would occupy a portion of the ground floor, but that fact is not exceptional and would not require the construction of extra volume beyond what is normally permitted. If the design did not include the proposed mezzanine, the floor area of the house would still constitute a viable single family dwelling, larger than many other alley dwellings seen throughout the city. OP finds that there is no exceptional condition and no practical difficulty in meeting the 30 foot height limit.

2. No Substantial Detriment to the Public Good

The proposed construction above the 30 foot height limit should not have an undue impact on surrounding uses. The application includes a shadow study which indicates that any additional shadow on adjacent properties would be minimal. The application materials also state that the added height would not result in negative impacts to the privacy on adjacent lots. OP cannot reach a conclusion on that subject based on the information submitted, but the impacts may be no greater than the impacts to privacy from already existing development in the densely packed square. OP also notes that several adjacent and nearby neighbors have written letters in support of the project.

3. No Substantial Harm to the Zoning Regulations

Granting height relief without a clear exceptional condition and practical difficulty could impact the intent of the Zoning Regulations, which generally seek to maintain alley development at a lower scale than surrounding uses. Should the Board grant lot occupancy and rear yard relief – which can be justified, as noted above – the applicant should be able to achieve a viable floor area for a single family dwelling.

VII. COMMUNITY COMMENTS

The applicant has met several times with an ANC committee and members of the ANC. The ANC was scheduled to take a formal vote on the project on December 10, but as of this writing OP is unaware of the result of that meeting. As previously noted in this report, several letters of support from adjacent and nearby neighbors have been submitted to the record.