

Application of Nicholas Rubenstein and Jennifer Hsu

1317 Naylor Court, NW

ANC2F

STATEMENT OF THE APPLICANT

I. Nature of the Application

This is the application of Nicholas Rubenstein and Jennifer Hsu (the “Applicants”), the owners of Tax Lot 863 in Square 367, (comprised of Lot 39 and a portion of Lot 40)¹, which has a street address of 1317 Naylor Court, NW (“Property”) and is zoned R-4. This application requests relief variance from the requirements of 11 DCMR § 2001.3 to allow an addition to an existing historic non-conforming structure that exceeds lot occupancy requirements adopted after its construction in 1919. The project will conform to the Zoning Regulations in all other ways.

II. Description of the Property and Surrounding Area

The Property has a land area of approximately 2,525 square feet and is located on the east side of the portion of Naylor Court that runs behind 10th Street. The Property is located in the middle of Square 367 and is zoned R-4. The Property is in the Shaw Historic District as well as the Blagden Alley-Naylor Court Historic District and is improved with a 100%

¹ The Applicants have submitted an application for Subdivision in order to consolidate the tax lot into a record lot.

lot coverage private garage, constructed in 1919, that is a contributing structure within the latter historic district. The Applicants met with Historic Preservation Office (“HPO”) staff regarding the Project, and the Project concept (HPA 15-576) was approved by the Historic Preservation Review Board (“HPRB”) on the consent calendar at the September 24th, 2015 meeting. (See attached exhibits: Exhibit 1, the HPO Staff Report and Exhibit 2, HPRB Actions of September 24 and October 1, 2015).

The Property is the only existing one-story structure in the block of seven connected lots in the center of Square 367. The Property is bounded on three sides by two- and three-story party walls, all of which currently extend along the entire property line except for one property, which as discussed below has received approvals and building permits to construct an addition that will extend its structure to fully enclose the Property. The lot is bounded on the west by the 30-foot wide portion of Naylor Court alley, that runs north-south behind 10th Street from O Street. To the south is a two-story residence, the former EJ Adams Stables originally constructed in 1899 by Guy Carlton, occupying 100% of its lot (1315 Naylor Court, Lot 864 Square 367). On the east lot line is the 40-foot tall wall of the former Tally-Ho Stables, currently the DC Archives (1300 Naylor Court, Lot 821, Square 367), covering 100% of its lot. To the north is a two-story residence, a former stable constructed in 1885, which will shortly extend along 100% of the party wall (1319 Naylor Court, Lot 38, Square 367, Permit Application B1508795, BZA order 19096 finalized 10/26/2015, in effect as of 11/6/2015, building permit issued 11/9/2015). Immediately north of 1319 Naylor Court are three three-story townhouses with two-story garages constructed in 2012 that replaced a series of dilapidated one-story garages and

tenements from 1888. Across Naylor Court from the Property is a surface parking lot, and a two-story converted carriage house residence occupying 100% of its lot (1312 Naylor Court, Lot 839, Square 367.). The neighboring properties in Square 367, as well as the property, are zoned R-4.

III. Description of the Project

The Applicants propose to convert the Property, currently in use as a private garage, to a single-family attached rowhouse to be used as their primary residence by constructing a 1,800 square foot second story on the existing building. Per the guidance of HPO staff, the second story will be set back 12' from the first floor and will be faced in Cor-Ten steel to differentiate the addition from the historic one-story brick façade. Also per HPO guidance, the two pairs of windows on the front of the second story will have separate lintels in order to accentuate the human scale of the second floor in contrast to the larger vehicular scale of the ground floor opening. There will be an open deck at the rear of the second story. In addition, the rear structure of the second story will contain a large percentage of glass, in order to bring needed light into the proposed downstairs living area.

The building entrance on the ground floor will be restored to the original dimensions by removing the existing doors and the inset cinderblock with brick facing. The concrete beam over the garage entrance will be replaced with steel. The first-floor façade will continue to read as a garage, with a frosted glass garage door next to a frosted glass entrance door. The building will be constructed with ground floor enclosed parking for two cars and workshop/studio space. The remainder of the ground floor will contain the

kitchen and living room and will be predominantly open to the second story. Two bedrooms will front Naylor Court in the proposed second-story addition.

IV. Description of Relief Requested

The Applicant seeks an area variance to 11 DCMR § 2001.3 in order to allow an addition to an existing non-conforming structure that exceeds the maximum allowable lot occupancy pursuant to § 403.2 in the R-4 residential zone (§ 3103.2). The Zoning relief requested is as specified in the included memorandum from the Zoning Administrator dated October 23, 2015.

V. Project Meets Standard for Approving Area Variances

The Project requires an area variance from § 2001.3 of the Zoning regulations. Under D.C. Code §6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance 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 if the zoning regulations were strictly applied or exceptional and undue hardship; 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, e.g., *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164 (D.C. 1990).

A. The Property is Affected by an Exceptional Situation or Condition.

The D.C. Court of Appeals held in *Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 230 A.2d 291 (D.C. 1974) that the exceptional situation or condition standard goes to the "property" rather than simply to the "land", and that "property generally includes the permanent structures existing on the land." *Id. at 293-294*.

The Court of Appeals has since confirmed its view that the exceptional situation and practical difficulty standards are not simply tied to the physical aspects of the land. See *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.2d 1091, 1097 D.C.1979).

Many factors combine to create the exceptional situation at this property. First, the Property is improved with a 100% lot coverage garage constructed in 1919, before the existing lot coverage restrictions were enacted. The existing structure is a Contributing Structure within the Blagden Alley / Naylor Court Historic District.

HPO staff in discussion with the Applicants' architect stated that they considered the 100% lot coverage to be one of the significant facets of its historic nature, and they would reject any proposal that involved cutting back the existing structure.

Accordingly, the Applicants are unable to modify the existing structure to conform to the lot coverage requirements that were enacted after its construction.

In addition to the forgoing, the existing building and lot are rectangular, long and narrow compared to length, with an overall length of approximately 95 feet and a width of approximately 26.7 feet. At the same time, all of the adjacent properties along its perimeter (excluding its narrow façade along Naylor Court) either currently

surround the Property with either two- or three-story party walls or, in the case of 1319 Naylor Court, NW, have just received BZA approval and building permits to do so. Thus, 100% of the current historic structure's neighboring structures, totaling approximately 89% of the Property's entire perimeter, either are or soon will be two or three story buildings, severely limiting the light and air of the existing structure on the Property. Although the existing one-story building has 5 skylights, the lack of windows combined with the height of the surrounding two- and three-story buildings means that artificial light is needed at all times inside the existing structure, even when the west-facing current garage and entrance doors are fully open. A second story would allow for multiple bedrooms, outdoor space, and for unobstructed light to be brought into the interior by rear windows and skylights that are far less obstructed by the neighboring buildings.

B. Strict Application of the Zoning Regulations Would Cause Practical Difficulty or Exceptional and Undue Hardship.

According to the D.C. Court of Appeals, an applicant seeking to meet its burden of proof for the "practical difficulty" portion of the variance standard with regard to applications for relief from "area" variances such as the relief being sought herein (i.e.; applicants that seek relief only from the size, shape or area requirements of the Zoning Regulations) must establish that "compliance with the area restriction would be unnecessarily burdensome" and that the practical difficulty is "unique to the particular property." *Gilmartin*, 579 A2d at 1170. Using a facts and circumstances

test, factors for the BZA to consider are "inconvenience to applicants," "the weight of the burden of strict compliance," and "the severity of the variance requested." *Id.*

In this case, Applicants respectfully submit that they have fully met these standards. Applicants purchased the Property with the intention of making it their primary residence which is consistent both with the zoning and the usage of the other properties with facades along Naylor Court, NW. To convert the existing building into a residence within its current envelope would result in several substantial difficulties:

- i) Only one bedroom could be constructed in the building, and in order for it to have any light and air as well as the required windows it would have to be placed directly at the front of the building by the active alleyway, which is undesirable with regard to noise, security, and the layout of the residence. In addition, having a residence of this size and expense limited to a single bedroom renders the project economically impractical and undesirable.
- ii) Placing the bedroom and living spaces at the front of the building for light and egress eliminates any ability to provide accommodation for parking, as the structure is only accessible to vehicles from the fronting alley.
- iii) The existing one-story building has 5 skylights; however, the lack of windows combined with the height of the surrounding two- and three-story buildings means that artificial light is needed at all times inside the

structure, even when the west-facing current garage and entrance doors are fully open. The finished result would be a very dark, 2500+ square foot one-bedroom residence with no parking and no outdoor space, subject to vehicle noise and poor security.

The requested variance would alleviate the substantial hardships that would result from strict compliance with the Zoning Regulations. In addition, given the fact that the non-conforming use involves an historic property that predates the lot coverage requirements, and the fact that surrounding properties also either do or will exceed the lot coverage requirements because of pre-existing construction or special exceptions, strict application of §2001.3 of the Zoning regulations would be burdensome and a variance from its provisions is appropriate and limited.

C. No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.

Finally, Applicants must show that "granting the variance will do no harm to the public good or the zone plan." *Gilmartin*, 579 A.2d at 1167. The requested variance relief can be granted without impairing the intent, purpose and integrity of the Zone Plan. The addition requested is within the existing building footprint, and is compatible with the scale and design of the surrounding structures all of which are or will have two- or three-story structures along their entire adjoining lot line with the

Property, and is consistent with the uses on this section of Naylor Court. The addition would allow the creation of a single-family home with enclosed parking that would be similar in size and scale to the adjacent structures, which are two stories and approximately the same height as the proposed addition. As a residence, the building would contribute positively to the fabric of the neighborhood, generating additional “eyes on the street,” which will enhance the safety of the area by eliminating the dead zone created by a structure that is not lived in and not accessed frequently.

VI. Conclusion

For the reasons stated above, the Application meets the applicable standards for variance relief under the Zoning Regulations. Accordingly, the Applicants respectfully request that the Board grant the application.

Exhibit I

**HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION**

Property Address:	1317 Naylor Court NW	☐ Agenda
Landmark/District:	Blagden Alley-Naylor Court Historic District	☒ Consent Calendar
ANC:	2F	☐ Denial Calendar
		☒ Concept Review
Meeting Date:	September 24, 2015	☒ Alteration
H.P.A. Number:	#15-576	☐ New Construction
Staff Reviewer:	Brendan Meyer	☐ Demolition
		☐ Subdivision

The applicant, Kube Architecture on behalf of owners Nicholas Rubenstein and Kobi Hsu, seeks conceptual design review for a setback 1-story addition on top of a one-story commercial garage that contributes to the character of the Blagden Alley-Naylor Court Historic. Plans were prepared by the applicant.

Property Description and Context

Blagden Alley and Naylor Court Historic District was designated in 1990 as a significant example of 19th century working class housing and for its association with the early 20th century social reform movement. Original dwellings were small and simple—generally unornamented brick, two-stories tall and two bays wide—and built for Washington’s working class. Warehouses and commercial stables were built on larger lots. After the turn of 20th century, alley dwellings were frequently replaced with private garages. 1317 Naylor Court NW is an example of this latter history; the original 1882 two-story brick dwelling was replaced in 1919 by the current one-story garage. To the east, 1317 Naylor is attached to one of the biggest historic buildings in the district, the Tally-Ho stables. Across the alley to the east is a large surface parking lot that allows views of 1317 Naylor from 10th Street.

Proposal

The concept design submission includes multiple options for a set-back one-story addition on top of 1317 Naylor. Setback options are at 6 feet and 12 feet. A variety of fenestration patterns are offered for the second floor ranging from large expanses of glass similar in scale to the vehicular opening on the ground floor front façade to smaller punched openings. Cladding materials include coreten steel or cement board. In every option the partially bricked in vehicle opening at the ground floor will be opened up to its original size.

Evaluation

For additions, proposed work should be judged both for compatibility with the affected building and for its effect on the historic district. Historic properties may merit different levels of treatment or attention depending on their relative historic and architectural significance. For instance, greater flexibility is typically given for alterations to a historic garage than for a prominent historic church. 1317 Naylor is inherently a modest building that does not have architectural distinction or presence. Considering its lack of architectural significance, a one-story addition set back sufficiently from the front façade would allow the original form of the building below to remain discernable. The addition would be visible, but from the alley it would

be bracketed on each side by a 2-story building, and from a distance the addition would be back-dropped by the much larger Tally-Ho stables. No change to the skyline of the alley would be apparent.

Option C shown on page A-119, with one small adjustment, is compatible with the character of the historic district in terms of size, rhythm and scale of its second floor openings and the 12-foot setback preserves the one-story character of the historic building. The small recommended adjustment is that the single lintel that spans over both pairs of windows should be broken into two separate lintels in order to accentuate the human scale of the second floor in contrast to the larger vehicular scale of the ground floor opening.

Recommendation

The HPO recommends that the Review Board find the concept for a setback 1-story addition on top of the 1-story garage at 1317 Naylor Court NW to be compatible with the character of the historic district, consistent with the purpose of the preservation act, and that final approval be delegated to Staff.

Exhibit II

GOVERNMENT OF THE DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD



HPRB ACTIONS
September 24 and October 1, 2015

The Historic Preservation Review Board met and considered the following items on September 24 and October 1, 2015.

SEPTEMBER 24 MEETING

Present: Gretchen Pfaehler (Chair), Rauzia Ally, Andrew Aurbach, Maria Casarella, Graham Davidson, Nancy Metzger, Joseph Taylor and Charles Wilson.

AGENDA

DESIGNATION HEARING

~~Dr. Ernest Hadley House, 4304 Forest Lane NW, Case 15-17 and HPA 15-530, raise [to be heard only if designated]~~ [Application withdrawn by the applicant]

ANACOSTIA HISTORIC DISTRICT

1337 Maple View Place SE, HPA 15-323, concept/new two-story frame house.

The Board removed this item from the Consent Calendar and did not recommend approval, because the applicant had not met all of the conditions the Board had requested in July, namely that a sample of the pattern cast-concrete foundation material was not provided, and the fenestration of the side elevations had not been recomposed. The Board added that the dimensions of the windows should be specified, the applicant should discuss the plans with the ANC and the community, and any significant changes during construction should return for Board review. Vote: 6-0.

2204-2206 Martin Luther King Jr. Avenue SE, HPA 15-463, revised concept/new three-story building including a two-story addition atop a one-story commercial building.

The Board supported the concept, including a one- or two-story addition atop the former garage, assuming that it is properly detailed and materials are revised. The Board appreciated that the EIFS would be removed from the façade of the former garage. The Board asked for: 1) revisions or alternatives to the front balconies; and 2) that the brick of the three-story new building return along the sides; 3) that the cladding material on the addition be of a smaller module (with a sample of the material to be provided at a subsequent hearing; 4) that there be more masonry at the corners of the south side of the three-story new construction; 5) that the upper-story windows and the canopy over the store entrance be further refined and detailed; and 6) that the mechanical penthouse be designed and shown. Vote: 4-3.

~~2001-2027 Martin Luther King Jr. Avenue SE, HPA 15-504, concept/subdivision and new construction of theater, retail and residential building.~~ [Application withdrawn by the applicant]

SHAW HISTORIC DISTRICT

1126 9th Street NW, HPA 15-487, concept/nine-story addition to a two-story building, with a five-story wing fronting M Street.

The Board approved the general concept for new construction and alterations with the conditions that for the new construction, the applicants rethink the use of exterior wood paneling as a material choice, include ~~integral interior shades in the design, remove the horizontal banding from the south elevation, better~~

differentiate the projecting oriels from the mass of the building, and further develop the M Street façade (reducing the amount of glazing and developing the ground level), and for the historic building determine the appropriate restoration details and eliminate the roof top deck and railing. Final approval was delegated to staff. Vote: 6-0 (Davidson abstained).

MOUNT VERNON SQUARE HISTORIC DISTRICT

410 N Street NW, HPA 15-509, three-story rear addition to two-story rowhouse.

The Board advised the Mayor's Agent that a third floor addition to the two-story rowhouse at 410 N Street NW is not consistent with the purposes of the preservation law, because it is not compatible with the character of the historic district. Vote: 7-0.

HISTORIC LANDMARKS

Riggs National Bank, 1503-1505 Pennsylvania Avenue NW, HPA 15-374, revised concept/one-story rooftop addition, accessible street-level entrance.

The Board endorsed the project concept as a reasonable balance between restoration and the adaptation needed to bring about that benefit. In order to secure the restored character of the central banking hall as a permanent benefit, the Board conditioned its approval on the applicant preparing the documentation needed to expand protection of the landmark to include the banking hall. Vote: 6-0 (Pfaehler absent).

2207 Foxhall Road NW [pending landmark], HPA 15-500, concept/building relocation and addition.

The Board recommended increase the setback of the relocated historic house from the street, eliminate the front yard privacy fence, relocate the garage within the mass of the rear addition, and lighten the connecting covered walkway. Vote: 7-0.

OCTOBER 1 MEETING

Present: Gretchen Pfaehler (Chair), Rauzia Ally, Andrew Aurbach, Graham Davidson, Nancy Metzger, Joseph Taylor, Charles Wilson. Absent: Maria Casarella.

AGENDA

CAPITOL HILL HISTORIC DISTRICT

604 A Street SE, HPA 15-492, concept/rooftop addition.

The Board found the concept of a 3rd floor penthouse with the proposed volume to be compatible with the condition that the applicant continue to work with HPO staff on the massing and design to improve the compatibility and to ensure the addition, deck, and any roof appurtenances are not visible from public space. Additionally, the applicant should retain historic material where possible and replicate deteriorated or missing historic elements where necessary for character-defining features including the side porch, windows, and iron stairs. The Board delegated final approval to staff. Vote: 6-0.

MOUNT VERNON TRIANGLE HISTORIC DISTRICT

901 5th Street NW, HPA 15-491, concept/new mixed-use twelve-story building.

The Board found the scale and massing of the building compatible with the District, but recommended that the applicant continue to work on the points outlined in the staff report: (A) the scale of the building's base, (B) providing a stronger top to the building, (C) ensuring that the roof terrace is designed so that roof furniture is not visible from street, (D) that an archeological work plan be developed and carried out in consultation with the DC State Archeologist; as well as Board comments

with attention to: amplifying the details of the building; creating a stronger base; designing the elevations so the base, shaft, and capitol work together; and engaging the pedestrian and green space. HPRB asked that the applicant return to the Board as they develop the design. Vote:6-0.

U STREET HISTORIC DISTRICT

2000-2002 11th Street NW, HPA 15-535, demolition, subdivision, ten-story addition.

The HPRB recommended that the applicants restudy the massing of the proposed addition, particularly in regard to the south cantilever and return to the Board for further design review. The Board's recommendation should not be constructed as endorsement for any necessary zoning relief. Vote: 5-0

ANACOSTIA HISTORIC DISTRICT

1409 V Street SE, HPA 15-577, alterations and additions to school.

The Board supported the subdivision and the general outlines of the project, i.e., flanking wings, but did not approve the concept, requesting revisions suggested in the staff report and recognizing that much greater detail (including rear elevations and proposed rooftop mechanical) will be necessary before the concept can be approved. The Board was particularly concerned about the size and massing of the wings, their height equal to the historic school, and the imposing nature of the whole as it faces surrounding homes. It was suggested that the applicant need not attempt a wholly symmetrical composition but could step down, especially on the west end of the site, to take advantage of the lower grade both to lower the overall height and provide a more natural main entrance at grade. The Board encouraged changes in the height and/or plane of the hyphens as they relate to the school's existing stair towers. The Board discouraged creating a berm on that end of the site and requested more study of the program, of the historic evolution of the site, and of the proposal to strip the paint from the historic building. Vote: 5-0.

WALTER REED HISTORIC DISTRICT

~~Walter Reed Army Medical Center, HPA 15-513, master plan review~~

[Application has been deferred at the request of the ANC]

CONSENT CALENDAR

The Board approved the following items on the consent calendar on September 24 by a vote of 6-0. Add additional comments here or below at the specific case(s) in question.

ANACOSTIA HISTORIC DISTRICT

1350 Valley Place SE, HPA 14-667, revised concept/new two-story frame house and subdivision.

The Board approved the concept and delegated to staff further review with the conditions that: 1) the porch be decked with three-inch-wide tongue-and-groove boards running perpendicular to the front of the house; 2) the applicant should discuss the plans with the ANC and the community; and 3) any significant changes during construction should return for Board review.

BLAGDEN ALLEY/NAYLOR COURT HISTORIC DISTRICT

1317 Naylor Court NW, HPA 15-576, concept/one story addition atop commercial garage.

CAPITOL HILL HISTORIC DISTRICT

209 C Street SE, HPA 15-503, concept/roof addition.

The Board wanted to ensure that the original entry stairs are retained.

160 North Carolina Ave SE, HPA 15-578, concept/attic expansion.

The Board recommended that the cladding material for the side of the addition be a roof-like material rather than clapboards.

705 North Carolina Ave SE, HPA 15-580, concept/rear addition.

525 A Street NE, HPA 15-502, concept/new ramp for accessibility.

The Board asked that the impact of the ramp be lessened, perhaps by a lowering of the slope, if possible, and that the staff discuss the matter further with the applicant, with the chairman to assist with design advice if desired.

401 11th Street SE, HPA 15-498, concept/new carriage house.

The Board requested that the roof be sloped toward the house, even if that means a heightening of a portion of the roof, so that carriage house has a more traditional profile, similar to others nearby.

DUPONT CIRCLE HISTORIC DISTRICT

1315 22nd Street NW, HPA 15-574, two-story rear addition.

14TH STREET HISTORIC DISTRICT

12-Rear Logan Circle, NW, HPA 15-583, new construction/two-story garage and alley dwelling.

U STREET HISTORIC DISTRICT

1913 11th Street NW, HPA 15-516, rear addition.

2233 13th Street NW, HPA 15-483, concept/rear three-story addition.

1508 Caroline Street NW, HPA 15-582, concept/rear addition, roof deck and stair.

WASHINGTON HEIGHTS HISTORIC DISTRICT

2001 18th Street NW, 1771 U Street NW, HPA 15-489, concept/roof and rear additions.

Transcripts of Historic Preservation Review Board Meetings may be purchased from the court reporting agency that covered this hearing – Olender Reporting, Inc. (202) 898-1108, www.olenderreporting.com, or info@OlenderReporting.com. Copies of individual staff reports that are prepared in advance of the hearing are posted on our website at <http://planning.dc.gov>