

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment  
**FROM:** Anne Fothergill, Case Manager  
*JL*  
Joel Lawson, Associate Director Development Review  
**DATE:** February 14, 2018  
**SUBJECT:** BZA Case 19629 to allow the subdivision of an alley tax lot to create a record lot and to allow construction of a two-car garage at 1665 Harvard St NW Rear

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**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) recommends **denial** of the following variances:

- Subtitle C § 303.3 (a) and (b) to allow the creation of an alley record lot that does not have frontage along a 24 foot wide public alley (15 foot existing) and does not meet the minimum lot area standards of the RF-1 zone (1800 SF required; 557 SF proposed); and
- Subtitle E § 5106.1 - alley centerline (12 feet required at north, 7.5 feet proposed; 12 feet required at east, 4.75 feet proposed).

Additionally, OP recommends **denial** of the following Special Exceptions:

- U § 600.1 (d) (3) (B) to allow a parking garage that exceeds 450 SF (460 SF proposed);
- E § 5105.1 from the side yard requirement (5 feet required; 1 foot proposed); and
- E § 5104.1 from the rear yard requirement (5 feet required; 2.5 feet proposed).

**II. BACKGROUND**

In 2008 in BZA Case No. 17833, the Applicant applied for a variance from the lot occupancy requirement and a variance from the alley setback requirement to construct a two-car garage on the subject property (the applicable zoning regulations under the 1958 regulations).

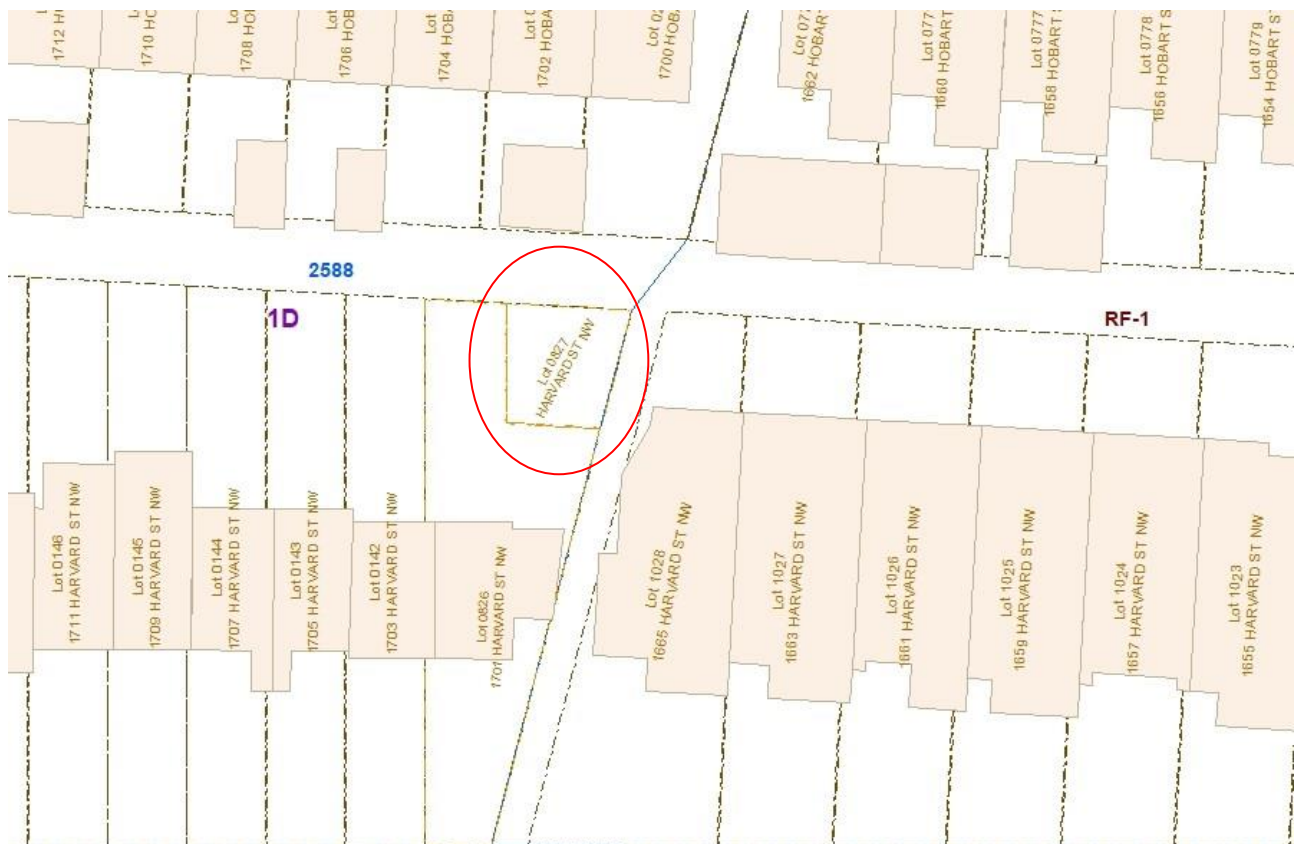
The proposed garage was 10' 6" tall with 100% lot occupancy and sited 17 feet from the rear wall of 1701 Harvard St NW and 7.5 feet from the north alley centerline. OP recommended approval of the relief and the ANC voted to oppose the relief.

The BZA denied the application for relief. In the Order, the BZA found "that the subject property is beset with several exceptional conditions" and "meets the first prong of the variance test" but found that the exceptional circumstances did not result in a practical difficulty because a parking garage is not required by law and "is a matter of convenience to the Applicant." They stated that "inconvenience to an Applicant may be considered by the Board in a variance analysis, but is insufficient to rise to the level of 'peculiar and exceptional practical difficulties.'" The Board considered "some adverse effect on the neighbor's dwelling and rear yard if the proposed garage were constructed, as well as possibly some adverse effect on the public good in that the line of sight from the adjoining walkway would be impeded, but the Board need not discuss the third prong of the variance test at any length because the second prong has not been met."

The Applicant requested a reconsideration of the Board's decision but the Board denied the request in BZA Case No. 17833-A. Both BZA Orders are attached in Attachment 1.

**III. LOCATION AND SITE DESCRIPTION**

Address	1665 Harvard St NW REAR
Legal Description	Square 2588, Lot 827
Ward, ANC	Ward 1, ANC 1D
Zone	RF-1
Historic District	Mount Pleasant Historic District
Lot Characteristics	This 557 square foot alley tax lot is currently used as a parking pad for two cars and garbage can storage. The lot fronts a 15-foot wide alley to the north and it is located directly north of the rear yard of 1701 Harvard Street NW, adjacent to a 7.5 foot wide pedestrian alley to the east, and across the walkway from the Applicant’s property at 1665 Harvard Street NW.
Existing Development	Two-car parking pad
Adjacent Properties	Residential rowhouses along Harvard Street to the south, a 15-foot wide alley to the north, and a 7.5 foot pedestrian alley to the east. To the west of this lot and along the south side of the alley there are numerous similar parking pads
Surrounding Neighborhood Character	Residential



**Lot 827 located behind 1701 Harvard Street along 15 foot wide alley**



**IV. APPLICATION IN BRIEF**

The Applicant proposes to subdivide the subject tax lot to create an alley record lot in order to construct a building on the lot. The record lot would have the same footprint as the dimensions of the tax lot, which is 557 square feet. In order to create the record lot, the Applicant needs relief from the subdivision regulations which require that any new alley record lots be 1,800 square feet to meet the lot area requirement of the zone.

On the proposed record lot, which is trapezoidally shaped, the Applicant proposes to construct a one-car garage with storage above that would be 15 feet tall and 24' 3" along the north alley, 24' 5 1/2" along the east side pedestrian alley, 24' on the west side, and 19' across the south side abutting the rear yard of the property at 1701 Harvard Street NW. The garage would be brick with a rusticated CMU base and asphalt shingle roof with windows on the east and west sides.

The Applicant had initially proposed a two-car garage with a second story apartment but they revised their plans and are no longer proposing a dwelling unit above the garage. The Applicant also reduced the footprint of the building to a one-car plus storage garage and is no longer requesting relief from the pervious surface requirement.

**V. ZONING REQUIREMENTS and RELIEF REQUESTED**

<b>RF-1 Zone</b>	<b>Regulation</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
Subdivision Lot Area C § 303.3 (b) and E §§ 201.1	Minimum lot area for the zone 1800 SF	557 SF tax lot	557 SF record lot	<b>Relief requested</b>
Subdivision Lot Frontage C § 303.3 (a)	24 feet alley minimum width	15 feet alley width	15 feet	<b>Relief requested</b>
Alley Centerline Setback E § 5106.1	12 foot min.	N/A	7.5 feet to north 3.75 feet to east	<b>Relief requested</b>
Height E § 5102.1	20 foot max. and 2 stories	N/A	15 feet and 1.5 stories	Not Required
Lot Occupancy E § 5103.1	N/A for lot less than 1800 SF	N/A	83%	Not required
Rear Yard E § 5104.1	5 foot min.	N/A	2.5 feet	<b>Relief Requested</b>
Side Yard E § 5105.1	5 foot min.	N/A	1 foot	<b>Relief Requested</b>
Parking C § 701.5	One space per principal dwelling	2 spaces on parking pad	2 spaces in garage	Not Required
Parking U 600.1 (d) (3) (B) building size	450 SF footprint maximum	N/A	460 SF	<b>Relief requested</b>

**VI. OFFICE OF PLANNING ANALYSIS**

**A. Variance Relief**

**1. Subdivision - Subtitle C, § 303.3(a) and (b):**

*New alley record lots shall comply with the following:*

- (a) Have frontage along a public alley with a minimum alley width of twenty-four feet (24 ft.) and have from the alley access to a street through an alley or alleys not less than twenty-four feet (24 ft.) in width pursuant to Subtitle X, Chapter 10.*
- (b) Meet the lot area standards applicable under the title of the respective zone and, if no minimum lot area standard is provided, the alley lot shall be a minimum of eighteen hundred square feet (1,800 sq. ft.) of lot area; and*

**Exceptional Situation Resulting in a Practical Difficulty**

The Board found in their decision for Case No. 17833 that the subject property exhibits a combination of exceptional conditions. First, the property is very small. It is 557 square feet in size and is about 24 feet deep by 22 feet wide (25’ at north end and 19’ at the south). Second, the property is unusual in its spatial relationship to other properties. The subject lot is located behind an adjacent residence under separate ownership. However, the Board in Order No. 17833 found that these exceptional conditions did not result in a practical difficulty since a parking garage is not required, the exceptional lot does not create a practical difficulty complying with the zoning regulations.

In terms of the subdivision requirements to create a record lot, OP concurs that there would be no opportunity for the Applicant to increase the lot area or to widen the alley. These situations, however, are

not unique or exceptional; many alley lots throughout the city are in the same circumstance. The statement also says that if variance relief is not granted, it would be a practical difficulty to the owners by not being able to develop the property. However, the application does not demonstrate how adherence to the regulations would be a practical difficulty to the applicant as the current use as surface parking could continue, as the Board discussed in the previous decision in Order No. 17833, and as the property has continued to be used since that case was denied.

### **No Substantial Detriment to the Public Good**

A subdivision to create a record lot from a tax lot that does not meet the zoning requirements is not always detrimental to the public good. Additionally, garages of 450 SF maximum are allowed by right in this zone and a compliant garage would generally not be detrimental to the public good. However, in this specific case, the existing lot area is less than 1/3 of the required lot area in the zoning regulations and the garage needs additional relief, and these tight conditions could impact the public good and others' use of the two alleys. Allowing relief from the minimum alley width requirement of the subdivision would not be detrimental to the public good since that requirement is generally related to access to dwelling units by emergency services and not specifically for garages on alleys.

### **No Substantial Harm to the Zoning Regulations**

With regards to lot area, granting relief to allow the creation of a substandard record lot would be contrary to the intent of the zoning regulations which are intended to ensure the regulation of lot sizes and promote orderly development of the city. In the recently adopted zoning regulations, the intent was to allow future development of **existing** alley record lots even if they were substandard, but to limit the creation of new non-conforming record lots. As such, the regulations require that any new record lot (including new alley lots) meet the requirements for lot size, among other standards (Subtitle C § 302.1).

With regards to alley access width, the alley width requirements intend to provide adequate access for emergency services and as such the required variance to allow a garage should not harm that particular intent of the regulations.

#### **2. Alley Centerline - Subtitle E § 5106.1**

*A required twelve foot (12 ft.) setback from the centerline of all alleys to which the alley lot abuts shall be provided.*

### **Exceptional Situation Resulting in a Practical Difficulty**

As noted above, the Board found in their decision for Case No. 17833 that the subject property exhibits a combination of exceptional conditions. The property is very small at 557 square feet and is trapezoidal in shape, and it is unusual in that it is located behind an adjacent residence under separate ownership. However, the Board in Order No. 17833 found that these exceptional conditions did not result in a practical difficulty. Since a parking garage is not required, the exceptional lot does not create a practical difficulty complying with the zoning regulations.

In this application, the applicant is seeking a variance from the requirement for setback from the centerline of the alley - 12 feet required at north, 7.5 feet proposed; 12 feet required at east, 4.75 feet proposed. However, the Applicant has not adequately demonstrated that should the setback from the alley centerline (from either alley) be increased, a car could not fit in a garage at this location.

### **No Substantial Detriment to the Public Good**

Granting a variance from the alley centerline requirements could be detrimental to the public good. The vehicular alley is narrow and there is a pedestrian walkway immediately adjacent to the site as well as the rear yard of a different property owner, which combined mean that this specific relief could have adverse impacts on the drivers in the alley and the pedestrians on the narrow walkway with a building built right up to the vehicular alley and within one foot of the pedestrian alley.

### **No Substantial Harm to the Zoning Regulations**

Allowing alley centerline relief for this specific case of a one-car garage on a narrow alley would not harm the intent of the zoning regulations, provided that the Applicant documents that this would not impact the use of the alley.

### **B. Special Exception to allow a parking garage that exceeds 450 SF; from the side yard requirement; and from the rear yard requirement**

#### **1. Subtitle U § 600.1 (d) (3) (B)**

*The building may not exceed four hundred fifty square feet (450 sq. ft.);*

#### **pursuant to Subtitle U Section 601.1 (b) (1) and (2):**

*(b) Parking uses not meeting the matter of right standards, provided that a publicly operating parking area use shall be subject to the following conditions:*

*(1) Any use authorized in this section shall not be likely to become objectionable because of noise, traffic, or number of employees; and*

*(2) The hours of active operation shall be arranged so as not to prove disturbing or otherwise objectionable to persons residing around the perimeter of the square in which located;*

The proposal is not for a “publicly operating parking area” and the Special Exception regulations under Subtitle U Section 606.1 (b) (1) & (2) would not apply to this application but the standard review of a special exception under Subtitle X, Chapter 9 would be applicable.

A garage is allowed by right in the RF-1 zone if is 450 square feet or less. The Applicant needs relief because the proposed garage is 460 SF. A garage that is reduced by 10 square feet would comply with this regulation and would seem to be able to provide parking and storage space but the Applicant has not addressed that.

#### **2. Subtitle E § 5104.1 pursuant to Subtitle E § 5204.1 and Subtitle X, Chapter 9 for the rear yard requirement (5 feet required; 2.5 feet proposed);**

The Applicant has proposed a 2.5 foot rear yard with some plantings, but did not indicate whether a garage could comply with the 5 foot requirement and still meet the needed depth dimension to house a car (allowing for the possibility of the need for some alley centerline relief). The garage is on a lot that is directly behind the adjacent residence only 17 feet away, and granting relief from the rear yard requirement puts the garage closer to the rear of that residence which could have an adverse impact on that adjacent building and use of

its yard. Providing a five foot rear yard would increase the distance between the two buildings and help to mitigate negative impacts.

3. **Subtitle E § 5105.1 pursuant to Subtitle E § 5204.1 and Subtitle X, Chapter 9** for the side yard requirement (5 feet required; 1 foot proposed);

The existing parking pad is immediately adjacent to a narrow pedestrian path. It is currently a very tight walkway and the proposal is for a building sited to one foot from the property line. By not complying with the side yard requirements, the garage could impact the use of the neighboring property, which is a public right-of-way. The Applicant has proposed motion detector lights and a mirror for security, which could assist with pedestrians' safety concerns. However, if the building was pulled off the side property line more than the one foot proposed, it could ease the narrowness affecting the use of that path. The Applicant has shown a "by-right" plan but has not indicated if a one-car garage could be built with a larger side yard.

## **VII. COMMENTS OF OTHER DISTRICT AGENCIES**

DDOT filed a report stating they have no objection to the relief requested (Exhibit 51).

The property is located within the Mount Pleasant Historic District. At the time of the OP report the Historic Preservation Office and Historic Preservation Review Board had not yet reviewed this proposal.

## **VIII. COMMUNITY COMMENTS**

The ANC voted to recommend denial of the initial zoning relief request (Exhibit 45). It is OP's understanding that the ANC will be reviewing the revised proposal and filing an additional report prior to the hearing.

There are four requests for party status in opposition in the record. There are numerous letters of opposition in the record. The opposition filed in the record at the time of the staff report was in response to the initial proposal. There are three letters of support in the record.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 17833 of Timothy Lawrence**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the alley setback requirements under subsection 2300.4, to construct a private garage on an alley lot in the R-4 District at premises 1665 Harvard Street, N.W. (Square 2588, Lot 827).

**HEARING DATE:** October 28, 2008  
**DECISION DATE:** December 2, 2008

**DECISION AND ORDER**

This application was filed on May 25, 2008, by Mr. Timothy Lawrence ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The self-certified application requested two variances in order to permit the construction of a garage on an alley lot located at the rear of the lot adjacent to the Applicant's lot.

The Board held a hearing on the application on October 28, 2008. The hearing was completed on October 28<sup>th</sup> and a date of December 2, 2008 was set for decision. The Board held the record open for certain further submissions which were duly received, and on December 2, 2008, the Board deliberated on the application and denied it by a vote of 4-1-0.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated May 30, 2008, the Office of Zoning ("OZ") sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation, Advisory Neighborhood Commission ("ANC") 1D, the ANC within which the subject property is located, the member for Single Member District 1D06, and the Councilmember for Ward 1. Pursuant to 11 DCMR § 3113.13, notice of the hearing was published in the *D.C. Register*, and such notice was sent to the Applicant, ANC 1D, and all owners of property within 200 feet of the subject property.

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Request for Party Status. The neighbor immediately to the west of the subject property was granted party status. The proposed garage would be behind this neighbor's dwelling, but located on a small, legally separate lot that abuts the rear alley and belongs to the Applicant. The garage would be approximately 17 feet from the rear wall of the neighbor's dwelling and the Board determined that he would be more significantly impacted by its presence than other members of the public.

Applicant's Case. The Applicant, his wife, and their architect testified in support of the application. The Applicant and his wife explained why they needed the two-vehicle garage proposed. The architect discussed the construction and addressed the variance test for both variances requested.

Government Reports. The Office of Planning filed a report with the Board on October 21, 2008, recommending approval of both requested variances. OP opined that the subject property is encumbered with a combination of exceptional factors, leading to practical difficulties in complying with the Zoning Regulations. OP also stated that the variance relief could be granted without detriment to the public good or impairment of the intent of the Zoning Regulations. OP further explained that a garage was a matter-of-right use for the property and that it was more practical to construct a two-vehicle, rather than a one-vehicle, garage.

ANC Report. ANC 1D filed two reports with the Board, both recommending denial of the application. The first recommendation of denial, filed on October 18, 2008, was based largely on the fact that the adjacent neighbor to the west, behind whose dwelling the proposed garage would be located, opposed the construction. The second recommendation of denial, filed on November 24, 2008, after the hearing, reiterated that the construction would have "adverse effects" on the neighbor, and elaborated that, in the ANC's opinion, it would also result in a "substantial detriment to the public good."

### **FINDINGS OF FACT**

#### The subject property and its surroundings

1. The subject property is a small, roughly square-shaped lot of 557 square feet in area, with an average lot width of 22.1 feet, located in an R-4 zone district.
2. The subject lot, Lot number 827, is situated in the rear of larger lot number 826, which is not owned by the Applicant, but by the neighbor who is opposing this application.
3. Because Lot 827 is situated behind Lot 826, owned by the neighbor, the proposed garage would be constructed behind the neighbor's dwelling, and would appear to be in his rear yard.

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4. Lot 826 fronts onto Harvard Street, N.W., as does the lot on which the Applicant's own dwelling is situated, Lot 1028. Between these two lots, however, runs a public walkway of approximately 7.5 feet in width.
5. On its north side, lot number 827 abuts a 15-foot wide public alley which runs parallel to Harvard Street, N.W. The eastern side of Lot 827 abuts the public walkway and Lot 827's western and southern sides abut Lot 826.
6. Applicant's dwelling is the end unit of a line of row dwellings ending at the eastern edge of the public walkway and the neighbor's dwelling situated on Lot 826 is the end unit of a line of row dwellings ending at the western edge of the public walkway.
7. Because the public walkway runs between the Applicant's dwelling and Lots 826 and 827, he cannot combine Lot 827 with the lot on which his own dwelling is situated.
8. Lot 827 appears as a carve-out in the northeast corner of Lot 826, but, the 1925 Baist Map shows Lot 827 as existing in its current shape at that time, while Lot 826 did not yet exist.
9. In current computer records, Lot 827 shows up as a tax lot for which the Applicant pays separate property taxes, therefore it is recorded in the records of the Office of Tax and Revenue.
10. Lot 827 existed as a tax lot and was "recorded" on the Baist Map at least as of 1925, and therefore before November 1, 1957, making the proposed private garage a matter-of-right use, subject to the area provisions of the Zoning Regulations, and specifically subject to the provisions of Chapter 23 of the Regulations. *See*, 11 DCMR § 201.1(i). *See also*, 11 DCMR §§ 330.5(a), 320.3(a), and 300.3(a).

The proposed project

11. The Applicant proposes to construct a two-vehicle garage on Lot 827 in which to house his vehicles.
12. The proposed garage will be 10 feet, 6 inches in height, and the south side of the proposed garage, the side closest to the opponent's dwelling, will be approximately 17 feet from that dwelling's rear wall.
13. The proposed garage will occupy 100% of Lot 827, necessitating an area variance from § 403.2, which mandates a maximum lot occupancy of 40% for this type of structure. 11 DCMR § 403.2.
14. The proposed garage will have a length along the alley of 20 feet, leaving a length of 16 feet along the alley to Lot 826.

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15. The wall of the garage facing the alley will abut the southern edge of the alley and will therefore be set back from the centerline of the alley only 7 feet, 6 inches, less than the 12-foot setback required by 11 DCMR § 2300.2(b), necessitating a second area variance.

The variance test

*Exceptional condition*

16. Lot 827 is an exceptionally small alley lot.
17. Lot 827 sits in the rear of a larger lot with different ownership and there are no other similarly situated lots in the neighborhood.
18. The use proposed is a matter-of-right (*see*, Finding of Fact No. 9) and it appears that storage and/or parking are the only practicable uses for the subject lot. *See*, 11 DCMR §§ 2507.1, 2507.5, 2507.6, and 333.

*Practical difficulty*

19. The Applicant's dwelling is a contributing structure to the Mount Vernon Historic District and has no parking requirement. *See*, 11 DCMR § 2100.5.
20. Lot 827 is paved and currently used by the Applicant as a parking pad for two vehicles.
21. Until recently, Lot 827 was enclosed by a wooden fence, approximately six feet high, with a gate facing the alley, in order to secure the two vehicles stored there.
22. At some point in the recent past, the Applicant removed the gate side of the fence, leaving the parking pad area open to the alley.
23. The Applicant proposes to construct the garage in order to ensure the security of his vehicles, which have been vandalized in the past.
24. Although not clear from the record, it appears that the incidents of criminal activity against the Applicant's vehicles occurred after the removal of the gate along the alley.
25. Due to considerations of cost and aesthetics, the Applicant did not seriously consider alternatives to securing his vehicles other than the proposed garage.

*Substantial detriment to the public good*

26. On the lot line between the southern side of Lot 827 and the rear yard of Lot 826 is a six-foot high fence. The proposed garage will stand four and one-half feet over this fence and over the rear yard of the opponent's dwelling.

27. Due to the slope of the rear yard on Lot 826, the floor of the proposed garage will be 3 feet, 6 inches higher than the patio behind the opponent's dwelling, making the garage actually stand 13 feet, 6 inches above the patio.
28. The location of the proposed garage will block the view of the alley and could block light and air to the rear yard and rear windows of the dwelling on Lot 826.
29. The eastern wall of the proposed garage will abut the western edge of the public walkway, blocking the view of a person walking along the walkway, causing potential safety concerns.

### CONCLUSIONS OF LAW

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property...." D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCMR § 3103.2. Relief can be granted only "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." D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

A showing of "practical difficulties" must be made for an area variance, while the more difficult showing of "undue hardship," must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972). The Applicant in this case is requesting area variances, therefore, it had to demonstrate an exceptional situation or condition of the property, that such exceptional condition *results in* "practical difficulties" to the owner, and that the granting of the variances will not impair the public good or the intent or integrity of the Zone Plan and Regulations. All three showings must be made in order to obtain variance relief.

The subject property is beset with several exceptional conditions. It is very small – almost certainly too small to construct an artist's studio on. *See*, 11 DCMR § 2507.5. Other than this use, the only other uses permitted on this alley lot are storage and parking.<sup>1</sup> *See*, 11 DCMR § 2507.6. The subject lot is also exceptional in that it is located behind a dwelling with a different ownership and anything constructed on it would appear as if it were in the rear yard of this dwelling.

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<sup>1</sup>Although § 2507.1 permits a one-family dwelling on an alley lot, such lot must abut an alley at least 30 feet wide, therefore no one-family dwelling can be built on the Applicant's alley lot. *See*, § 2507.2.

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The application meets the first prong of the variance test, but fails on the second prong. The Applicant's dwelling does not have a parking requirement, therefore there is no legal requirement that the Applicant provide off-street parking for his vehicles. The proposed garage use, therefore, although a matter-of-right, is not required by the Zoning Regulations, but is a matter of convenience to the Applicant. Inconvenience to an Applicant may be considered by the Board in a variance analysis, but is insufficient to rise to the level of "peculiar and exceptional practical difficulties." See, e.g., *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326 (D.C. 1976).

The Applicant currently parks both his vehicles on the parking pad which is now on the subject lot, and there was no showing of practical difficulties in parking on the lot. The practical difficulty asserted by the Applicant was the need to provide greater security, but the Board is not convinced that this need rises to the level of "peculiar and exceptional practical difficulties." See, e.g., *Board Order No. 15695 of Jared Fuchs* (1992). Moreover, the claimed practical difficulty does not arise out of the exceptional condition of the small size of the lot or its location behind someone else's dwelling. There also may be ways of providing this security without necessitating variance relief.

There may also be some adverse effect on the neighbor's dwelling and rear yard if the proposed garage were constructed, as well as possibly some adverse effect on the public good in that the line of sight from the adjoining walkway would be impeded, but the Board need not discuss the third prong of the variance test at any length because the second prong has not been met.

The Board is sympathetic to the Applicant's situation, but the granting of a variance requires a high standard of proof which has not been met by the application with respect to the showing of practical difficulties. Therefore, the Board cannot grant the variance relief requested.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. ANC 1D recommended denial of the variances requested and the Board agrees with its recommendation. The Office of Planning recommended granting the variances. The Board agrees with OP's determination that the property is unique, but for the reasons stated above, disagrees with its determination as to the existence of a practical difficulty caused by this uniqueness.

For the reasons stated above, the Board concludes that the Applicant did not satisfy the burden of proof with regard to a variance from §403, for lot occupancy, and from § 2300.4, for minimum alley setback. Accordingly, it is hereby **ORDERED** that the application be **DENIED**.

**BZA APPLICATION NO. 17833**

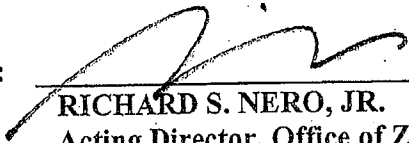
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**VOTE:** 4-1-0 (Shane L. Dettman, Marc D. Loud, Mary Oates Walker,  
and Anthony J. Hood to deny; Ruthanne G. Miller to grant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.**

Each concurring Board member approved the issuance of this order.

**ATTESTED BY:**

  
\_\_\_\_\_  
**RICHARD S. NERO, JR.**  
Acting Director, Office of Zoning

**FINAL DATE OF ORDER:** MAY 04 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT  
UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**BZA APPLICATION NO. 17833**

As Director of the Office of Zoning, I hereby certify and attest that on MAY 04 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Timothy Lawrence  
1665 Harvard Street, N.W.  
Washington, D.C. 20009


Chairperson  
Advisory Neighborhood Commission 1D  
P.O. Box 43529  
Washington, D.C. 20010

Single Member District Commissioner 1D06  
Advisory Neighborhood Commission 1D  
P.O. Box 43529  
Washington, D.C. 20010

Jim Graham, Councilmember  
Ward One  
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Bennett Rushkoff, Esquire  
Acting General Counsel  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street, N.E., Suite 9400  
Washington, D.C. 20002

ATTESTED BY:

  
RICHARD S. NERO, JR.  
Acting Director, Office of Zoning

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 17833-A of Timothy Lawrence**, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the alley setback requirements under subsection 2300.4, to construct a private garage on an alley lot in the R-4 District at premises 1665 Harvard Street, N.W. (Square 2588, Lot 827).

**HEARING DATE:** October 28, 2008  
**DECISION DATE:** December 2, 2008  
**DATE OF DECISION**  
**ON RECONSIDERATION:** June 9, 2009

**ORDER ON RECONSIDERATION**

Procedural Background

This application was filed on May 25, 2008 by Mr. Timothy Lawrence (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The application requested variances in order to permit the construction of a garage on an alley lot belonging to the Applicant. The alley lot is not adjacent to the lot on which the Applicant’s dwelling is located, but to that of his next door neighbor.

The Board held a hearing on the application and decided, at a December 2, 2008 public decision meeting, to deny it. Board Order No. 17833 (“Order”) denying the application was issued on May 4, 2009 (Exhibit No. 43), and on May 14, 2009, the Applicant filed a motion requesting reconsideration of the Board’s decision (“motion”), Exhibit No. 36, and did so within the time period set forth in 11 DCMR § 3126.2. In his motion, the Applicant sets forth seven specific grounds for the reconsideration request. The party who opposed the application filed a response to the motion in which it briefly addressed each of the specific grounds alleged. Exhibit No. 42.

At its public decision meeting on June 9, 2009, the Board took up the Applicant’s request for reconsideration. The Board addressed the grounds alleged as support for the reconsideration and deliberated on them, but was un-persuaded that any change in the decision was necessary. The Board therefore denied the reconsideration by a vote of 3-0-2. An explanation for the Board’s decision follows.

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Discussion

The Applicant first claims that the Board's decision deprives him of the only "improved use permitted by right" on the subject property. Even if true, the Board is not required to grant a variance. The issue is not one of use, but of the structure that houses the use. The Zoning Regulations require that a private garage constructed on an alley lot must be set back at least twelve feet (12 ft.) from the center line of the alley on which the lot abuts. For the purposes of this motion, the Board accepts the Applicant's contention that the alley lot is too small both to construct a usable garage and meet this requirement. This does not deprive the Applicant of all uses of the lot. He may continue to use the space for parking. Nor does it mean that he may not be able to construct an Artist's Studio if approved by the Board per 11 DCMR § 2507.6, since no similar alley set back applies. The Board has therefore not deprived the Applicant of all uses to which the lot may be put, including uses for which improvements are associated.

The Applicant next argues that the Board applied the incorrect standard of relief. He claims that the Board applied the higher use variance standard of "undue hardship" rather than the lower area variance standard of "practical difficulties." It appears from his motion that he thinks the Board erroneously viewed this application as a use change from parking to "secured parking." Exhibit No. 36, at 3. There is, however, no indication in the Order or during its deliberations that the Board viewed the application as requesting a use change or that it applied the more stringent standard of proof applicable to a use variance request. At page 5, the Order states clearly that the Applicant "is requesting area variances." The Order addresses the practical difficulty standard both in the Findings of Fact (Nos. 19-25) and in the Conclusions of Law (at 6), and never discusses the undue hardship standard necessary for a use variance.

The Applicant's next point is that he never had an opportunity to address statements made during deliberations which, according to the Applicant, implied "that the variance request could be granted if unspecified design concerns were met." Exhibit No. 36, at 3, and *see* Transcript of December 2, 2008 decision meeting, at 29-30. The Board disagrees that any such implication was made or intended by the referenced statements. Although there is nothing to preclude a Board member from speculating that a different design approach might have met matter-of-right standards, such a statement is irrelevant to the Board's decision on the merits. And, even if it were, no party may address the Board members during their deliberations. The process for a party to dispute a conclusion reached by the Board is through a motion for reconsideration, which may only seek to refute those facts and conclusions as are stated in the Board's order.

The Applicant next claims that the Order is incorrect in asserting that the Board agreed with the recommendation of denial of Advisory Neighborhood Commission ("ANC") 1D. Apparently the Applicant believes that the Board cannot say it agreed with the ANC's ultimate recommendation of denial because the Order's basis for reaching that conclusion (failure to prove the second prong of the variance test) differed from that relied upon by the ANC (failure to prove the third prong). Despite these differing bases, the ultimate conclusion reached was the same; that the application should be denied. It is not erroneous for an order denying an application to indicate

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agreement with an ANC recommendation that it do so, even if the reasons that led each to the conclusion of denial differed.

The Applicant's fifth ground for reconsideration is that the Board overstated the severity of the variances. The Applicant, however, instead of supplying evidence of such alleged "overstatement," attempts to explain how lot occupancy relief would not be necessary "if this were a minimum size lot" or "if the two lots were combined" or the alley closed. Exhibit No. 36, at 4. The Board fails to see how speculating about various scenarios shows that the Board overstated the severity of the variance relief. The fact of the matter is that this is a small lot of 557 square feet, the proposed garage is limited to a 40% lot occupancy, and it would have had a 100% lot occupancy. These are not overstatements, but facts. *See*, Exhibit No. 43, Findings of Fact Nos. 1 and 13.

The Applicant alleges that he is being denied a "right allowed all other lots in the square without variance" relief. Exhibit No. 36, at 4. He claims that all other lots abutting the alley would be able to construct a garage by right because each of these lots has a row dwelling on it and so, would be allowed a 60% lot coverage, whereas a 40% lot coverage applies for all other structures, including his proposed garage. 11 DCMR § 403.2. It is impossible to know whether each of the other lots abutting the alley could construct a by-right garage, unless the dimensions of each lot, dwelling, and proposed garage were known.<sup>1</sup> Further, the Applicant has the same rights as all other homeowners on his block with respect to construction of a garage at the rear of his dwelling on his own, larger lot. He is being denied no rights granted to others.

The Applicant's last argument is that the Board "in effect approved" the alley setback variance by mentioning during deliberations that a rear fence with a gate may provide security for the Applicant. Exhibit No. 36, at 5 and *see* Transcript of December 2, 2008 decision meeting at 31. The Applicant implies that, with regard to maneuverability of vehicles, there is really no difference between having a fence at the edge of the alley or a garage wall, and that, therefore, by referring to the fence, the Board somehow "approved" the garage wall at that location.

The mentioning of the fence during the Board's deliberations does not imply the granting of any relief. No amount of discussion during deliberations constitutes the granting of relief -- the Board can only approve relief by a motion passed by a majority of its members. 11 DCMR § 3125.2. It cannot *de facto* approve something, nor can it approve something -- the fence -- that is not before it in an application.

For all the reasons stated above, the Board concludes that the Applicant failed to demonstrate an error by the Board in its decision and Order No. 17833. Accordingly, the motion requesting reconsideration is hereby **DENIED**.

**VOTE: 3-0-2** (Marc D. Loud, Shane L. Dettman, and Anthony J. Hood, to DENY. Two Mayoral appointees (vacant) not participating or voting)

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<sup>1</sup>In any event, it is likely that a special exception would be required. *See*, 11 DCMR §223.

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**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of Board members approved the issuance of this order.

ATTESTED BY:



JAMISON L. WEINBAUM  
Director, Office of Zoning

OCT 30 2009

FINAL DATE OF ORDER: \_\_\_\_\_

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on OCT 30 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Timothy Lawrence  
1665 Harvard Street, N.W.  
Washington, D.C. 20009

Chairperson  
Advisory Neighborhood Commission 1D  
P.O. Box 43529  
Washington, D.C. 20010

Single Member District Commissioner 1D06  
Advisory Neighborhood Commission 1D  
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Bennett Rushkoff, Esquire  
Acting General Counsel  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street, N.E., Suite 9400  
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in black ink that reads "Jamison L. Weinbaum".

**JAMISON L. WEINBAUM**  
Director, Office of Zoning

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