



February 15, 2018

**Meridith Moldenhauer**

Direct Phone 202-747-0763  
Direct Fax 202-683-9389  
mmoldenhauer@cozen.com

Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4th Street, NW, Suite 200S  
Washington, DC 20010

**Re: BZA Case No. 19683  
Applicant's Supplemental Statement**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Brian and Carolyn Wise (the "Applicant"), please find enclosed a supplemental statement regarding the subject application, which is attached at **Tab A**.<sup>1</sup> The Applicant recently retained Cozen O'Connor as counsel in connection with this application, and, as such, a letter of authorization is attached at **Tab B**. Accordingly, the Applicant wishes to supplement the record with additional information and material that is relevant to this matter.

The Applicant also seeks to add special exception relief for a residential use on an alley lot pursuant to Subtitle U § 601.1(c). An updated Form 135 with this relief is attached at **Tab C**. As will be described in the supplemental statement, the Applicant meets the special exception standard for the residential use under Subtitle U § 601.1(c).

We look forward to presenting this application before the Board of Zoning Adjustment on February 21, 2018. Thank you for your attention to this matter.

Sincerely,

COZEN O'CONNOR

BY: Meridith H. Moldenhauer

<sup>1</sup> The Applicant requests a waiver of Subtitle Y § 300.15 in order to file the supplemental statement less than 21 days prior to the scheduled hearing date on February 21, 2018.

LEGAL\34509583\1


**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of February, 2018, a copy of the foregoing Supplemental Statement was served, via electronic mail, on the following:

District of Columbia Office of Planning  
c/o Matthew Jesick  
1100 4<sup>th</sup> Street SW, Suite E650  
Washington, DC 20024  
[Matthew.Jesick@dc.gov](mailto:Matthew.Jesick@dc.gov)

Advisory Neighborhood Commission 6B  
c/o Daniel Ridge, Chairperson  
[6B@anc.dc.gov](mailto:6B@anc.dc.gov)

Advisory Neighborhood Commission 1B  
c/o Jennifer E. Samolyk, SMD Commissioner  
[6B01@anc.dc.gov](mailto:6B01@anc.dc.gov)

  
Meridith H. Moldenhauer

Tab A

**BEFORE THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF  
BRIAN AND CAROLYN WISE**

**BZA CASE NO. 19683  
HEARING DATE: FEBRUARY 21, 2018**

**APPLICANT’S SUPPLEMENTAL STATEMENT**

**I. INTRODUCTION AND NATURE OF RELIEF SOUGHT**

This Supplemental Statement is submitted on behalf of Applicant Brian and Carolyn Wise (the “Applicant”), the owners of an alley lot located at 260 Lincoln Court SE<sup>2</sup> (Lot 828, Square 762) (the “Property”), in support of this application for variance relief from the requirements for alley width (Subtitle C § 303.3(a)) and lot area (Subtitle C § 303.3(b); Subtitle E § 201.1) as well as alley centerline setback<sup>3</sup> (Subtitle E § 5106). The Applicant also seeks special exception relief from the alley lot development standards for rear yard (Subtitle E § 5104) and for a residential use<sup>4</sup> on an alley lot (Subtitle U § 601.1(c)). The Applicant seeks the requested relief in order to construct a single-family home on an unimproved alley lot that is currently used for parking in the RF-3 zone (the “Project”). The Applicant’s proposed architectural plans for the Project are filed in the case record at Exhibit 43C, and the plans have not been modified since that filing date.

For the reasons set forth in the initial application, as supplemented here and at the public hearing, the Applicant has satisfied the burden for the relief requested herein.

---

<sup>2</sup> As the result of a recent alley naming, the Property has been assigned the address of 260 Lincoln Court SE. *See* BZA Ex. No. 43, 43A. The lot and square have not changed this the filing of this application.

<sup>3</sup> The Applicant originally requested special exception relief for the alley centerline setback. However, the Office of Planning has determined that this relief should be processed as a variance. Nonetheless, the Office of Planning agrees that the Applicant has met the variance standard for relief from this provision.

<sup>4</sup> This relief has been added because the subject Property sits on a 14-foot-wide alley, whereas a 15-foot-wide alley within 300 feet of the public street would be sufficient for a by-right residential use on an alley lot pursuant to Subtitle U § 600.1(e).

**II. THE PROPERTY MEETS THE ZONING DEFINITION OF AN EXISTING ALLEY LOT AND IS, THEREFORE, NOT A NEW ALLEY RECORD LOT SUBJECT TO SUBDIVISION REQUIREMENTS UNDER SUBTITLE C § 303.3**

While the Applicant requested relief from the subdivision requirements of Subtitle C § 303.3(a-b), and has demonstrated that it meets the variance standard for this relief, the Applicant believes this relief may not, in fact, be necessary as a result of the Property's status as an Assessment and Taxation Lot ("A&T Lot") that existed prior to November 1, 1957. As such, the Property should be "grand-fathered" as an existing alley lot and not be subject to the subdivision requirements of Subtitle C § 303.3(a-b). To better illustrate this point, the distinction between record lots and tax lots will be explored in detail below.

**A. General Background on Record Lots and Tax Lots**

Record lots are defined by the Department of Consumer of Regulatory Affairs ("DCRA") and the Office of the Surveyor ("DC Surveyor"). They are official, platted, recorded subdivision lots created by the DC Surveyor in compliance with the Subdivision Ordinance of the District of Columbia, which generally provides that record lots must meet certain requirements, such as minimum public street frontage width, among others. *See* Subtitle C § 303. Typically, these lots are numbered 1 through 799 with no number being used more than once in a Square, which usually corresponds to one or two city blocks.

Additionally, in most scenarios, a piece of property must be a record lot before a building permit will be issued for that site. Many agencies review new record lots including the DC Surveyor, the Office of Zoning, OP, the Department of Public Works, Historic Preservation, and the District Department of Transportation. The establishment of record lots is prompted only by property owners, normally when they are seeking a building permit, at which time the record lot is recorded in Plat and Subdivision Books in the DC Surveyor's Office. These documents are bound volumes of historical representations of the locations of property lines, and they include

record dimensions, though typically no bearings of lines. According to DC GIS Services, there are approximately 103,138 active record lots in the District.<sup>5</sup>

Once a record lot has had anything added to it or subtracted to it by deed, both it and all its various pieces receive tax assessors A&T lot numbers, thereby becoming a tax lot. Although, a tax lot does not cease being an official record lot when it also becomes a tax lot. Instead, the lot will carry dual lot numbers thereafter. Only when the lot is subdivided into a new record lot will an old record lot cease to exist.

A tax lot is created strictly for real estate taxation purposes under two circumstances:

- 1) when a property owner asks for their real property tax bill to be consolidated, after they have bought several contiguous record lots; this is called a “combine”;
- 2) when part of a record lot is sold, but no new record lot is yet defined; this is called a “split request.”

There are roughly 31,363 tax lots in the District.<sup>6</sup> Tax lots are not determined by survey, and are therefore not official lots like record lots. These lots are normally numbered between 800 and 1999 within a Square to differentiate them from record lots on the property tax maps. When a tax lot is established by the Office of Tax & Revenue (“OTR”), an A&T Plat is generated and forwarded to the DC Surveyor. These A&T Plats are not reviewed but filed by the DC Surveyor.

Up until approximately 1972, A&T lots were only created by the Tax Assessor out of lands that had previously been record lots at some point in their history. For a short period of time in the early-to mid-1970s, a decision was made to start eliminating “parcels” and make them all into tax lots. The intent was to do away with parcels altogether and have all properties in the city be either tax lots or record lots. By doing this, they converted un-subdivided parcels into A&T lots

---

<sup>5</sup>DC GIS: “Record Lots” <http://vpm.dc.gov/Home/record-lots>

<sup>6</sup> DC GIS Services: “Tax Lots” <http://vpm.dc.gov/Home/tax-lots>

where no underlying record lot exists. It is important to note that the Property in this case was created prior to this 1970s change.

### **B. Differing Administrative Treatment of Street-Fronting Tax Lots and Alley Tax Lots**

Tax lots are not normally acceptable when applying for building permits and must be converted to record lots through the normal subdivision process involving the D.C. Surveyor's Office before permits will be issued. On a street-fronting tax lot – that is, a tax lot facing upon an improved public street – the process is administrative and even a non-conforming tax lot will be subdivided and a record lot will be issued. Though both street-fronting tax lots and alley tax lots can be deeded and transferred, receive tax bills, and pay real estate taxes to be collected by the city, only street-fronting tax lots – and *not* alley tax lots – can administratively gain record lot status.

### **C. Definition of “Lot, Alley” in the Zoning Regulations**

The definition of “Lot, Alley” under the current Zoning Regulations (“ZR-16”) includes a distinction between “alley tax lot” and “alley record lot.” The definition currently reads as:

Lot, Alley: Is **either** a lot that is recorded on the records of the Surveyor, District of Columbia, that faces or abuts an alley that does not face or abut a street at any point (alley record lot) **or a lot that is recorded on the records of the D.C Office of Tax and Revenue, on or before November 1, 1957,** that faces or abuts an alley that does not face or abut a street at any point (alley tax lot). [emphasis added] (Subtitle B § 100.1).

By identifying a specific date in the definition of “Lot, Alley,” the clear intention of ZR-16 is to distinguish between historic alley tax lots (to be regulated as *grandfathered* alley record lots), from non-historic alley tax lots (to be required to satisfy the subdivision requirements). Therefore, a historic alley tax lot should enjoy the same administrative consideration and be permitted to forego the subdivision process just as street-fronting tax lot would be processed. To do so would be wholly consistent with the definition of “Lot, Alley,” which groups record and historic alley tax

lots together.<sup>7</sup>

The Property has been its own A&T Lot for well over 100 years. Prior to 1905, the Property was part of former Record Lot 15. A copy of the 1903 Baist Map is attached at **Exhibit A**. However, in February 1905, a recorded Assessment and Taxation Plat (the “A&T Plat”) subdivided former Record Lot 15 to create three A&T Lots<sup>8</sup>, including the Property as A&T Lot 828. A copy of the A&T Plat is attached at **Exhibit B**. Based on the A&T Plat, the Property is an alley A&T Lot created on February 23, 1905. *See* **Exhibit B**. Indeed, the Property as it exists today has the exact same dimensions and area as when it was created in 1905.

The creation of A&T Lot 828 in 1905 is an important distinction for the application of the subdivision regulations under Subtitle C § 303.3. In this sense, the Property could be referred to as a “historic alley tax lot,” a term provided in the case to specifically reference those alley tax lots recorded with OTR on or before either November 1, 1957, as described above, or on or before May 12, 1958, as described in Subtitle C § 303.3(c).

Under ZR-16, any “new alley record lot” must meet the subdivision requirements of Subtitle C § 303.3. The Applicant contends that since the definition of “Lot, Alley” combines alley record lots and historic alley tax lots, then only *non-historic* alley tax lots would be defined as “new” alley record lots and be required to satisfy Subtitle C § 303.3. Therefore, the Property, as an historic alley lot, need not meet the subdivision requirements of Subtitle C § 303.3.<sup>9</sup> In this

---

<sup>7</sup> In addition to supporting this application, ANC 6B voted in support of submitting a letter to the Zoning Commission and Office of Planning endorsing this distinction between “historic” alley tax lots and non-historic alley tax lots. Further, ANC 6B encourages the Zoning Commission and Office of Planning to treat historic alley tax lots the same as tax lots on street-facing properties.

<sup>8</sup> The subdivision also created two street-facing A&T Lots, 826 and 827. *See* **Exhibit B**.

<sup>9</sup> OP does not take a direct position on this distinction between historic and non-historic alley tax lots. However, OP states that “the applicant must first convert the tax lot into a record lot,” in order to construct a single-family dwelling. *See* BZA Ex. No. 45, pg. 3. As such, OP’s report indicates that the Applicant must meet the standard for variance relief from Subtitle C § 303.3(a-b) and Subtitle E § 201.



instance, the requested variance relief for alley width and lot area under Subtitle C § 303.3(a-b) and Subtitle E § 201 could be withdrawn.

#### **D. Alley Lot Regulations in ZR-58**

This interpretation of ZR-16 would be consistent with the interpretation of the Zoning Regulations of 1958 (“ZR-58”). For instance, § 201.1(o) in ZR-58 contained specific language that permitted certain uses on either an “alley lot so recorded on the records of the Surveyor, District of Columbia, or recorded on the records of the D.C. Office of Tax and Revenue, on or before November 1, 1957.” (emphasis added). ZR-58 limited the use of alley lots in residential zones, typically only allowing such uses as parking, artist studios, and storage. Under ZR-58, an alley tax lot could be converted to an alley record lot no matter its alley width or lot size, if the intended use was parking or storage.<sup>10</sup>

#### **E. Evaluation of Alley Lot Regulations by Board**

The Applicant believes that the absence of development potential on historic alley tax lots in ZR-16 is unintended. As part of this Application, we respectfully ask the Board to determine if historic alley tax lots are grandfathered under ZR-16 or subject to variance relief under the subdivision requirements of Subtitle C § 303.3. In so doing, the following question must be addressed: Does the term “alley lot” include alley tax lots recorded with the Office of Tax & Revenue on or before either November 1, 1957, as described in the ZR16 definition of “Lot, Alley” (or on or before May 12, 1958, as described in Subtitle C § 303.3), thus not requiring a “new” record lot to be created? If this question is answered in the affirmative then the Property qualifies as a “Lot, Alley” and does not need to meet the subdivision requirements of Subtitle C § 303.3.

---

<sup>10</sup> Even so, it is worth noting that the Board has approved lot area and lot width relief for the construction of a single-family dwelling on an alley tax lot. In BZA Case No. 18234, the Board approved such relief for Lot 810 in Square 1042, which is a tax lot.

Alternatively, in the event that the Board finds that the requirements of Subtitle C § 303.3 must be met, justification for how the Property satisfies the variance test is provided below.

### **III. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF**

The Applicant has established in the record that the Project meets the standard for area variance relief from the requirements for alley width (Subtitle C § 303.3(a)), lot area (Subtitle C § 303.3(b); Subtitle E § 201.1), and alley centerline setback (Subtitle E § 5106). Nonetheless, the Applicant wishes to provide the Board with additional detail as to the variance factors.

As a preface, the Applicant previously requested special exception relief for an alley centerline setback that is 2-feet less than the required 12 feet. While OP's report indicates no objection to this relief, OP states that relief from Subtitle E § 5106 should be processed as a variance. *See* BZA Ex. No. 45, pg. 1. Nonetheless, OP outlines how the Applicant meets the specific variance factors. *See* BZA Ex. No. 45, pg. 5-6. To that end, the proposed Project design remains the same and the Applicant meets the variance standard for variance relief from the alley centerline setback requirement.

#### **A. The Property Is Affected by an Exceptional Situation or Condition**

The Court of Appeals has held that the purpose of variance procedure is to “prevent usable land from remaining idle.” *See Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972). It has long been held that the “extraordinary or exceptional situation” need not inhere in the land itself, but can be caused by subsequent events extraneous to the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (1974); *see also DeAzcarate v. D.C. Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (1978). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *See Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (1990).

Here, the Property is characterized by an exceptional situation and condition as a result of a confluence of the following six factors: (1) Status as a historic alley tax lot for 112 years; (2) Unimproved lot; (3) Property's lot area cannot be expanded; (4) Zoning history; (5) Split-zoned square; and (6) Property is located in the Capitol Hill historic district.

*i. Status as a historic alley tax lot*

The Property has been an alley tax lot for 112 years. Based on the website of the DC Recorder of Deeds, the Property has been in separate ownership from the abutting street-facing lots since 1971. Even though alley tax lots have the same real property tax rates and obligation as alley record lots, no building permit may be obtained for any structure on a tax lot.

*ii. Unimproved lot*

The Property is the only unimproved lot in Square 762. Of particular note, all other alley lots in Square 762 are improved with structures.

*iii. Property's lot area cannot be expanded*

As noted above, the Property has been its own A&T Lot since 1905 and has had separate ownership from street-facing lots since 1971. As such, the Applicant has no ability to expand the lot area of the Property. These factors coupled with the fact that the Property is unimproved constitute an exceptional circumstance.

*iv. Zoning history*

The Property has been used exclusively as a commercial parking lot since at least October 1958. To wit, past owners of the Property have obtained zoning relief for a parking lot on no fewer than seven occasions dating back to 1958. *See* BZA Case Nos. 5277, 5933, 8286, 10450, 11969, 12417, and 13523. Yet, the most recent approval in BZA Case No. 13523 was valid for only five years and expired in 1986. As such, the Property has been either unused or non-compliant since 1986.

v. *Split-zoned square*

Square 762 is a split-zoned square, with 22 properties either zoned MU-26 or MU-24, or operating commercial uses. *See* BZA Ex. No. 43C, pg. 3; *see also* zoning map attached at **Exhibit C**. Accordingly, there are only 17 residentially zoned properties that also are being used as dwellings. *See* BZA Ex. No. 43C, pg. 3. As will be described below, this exceptional condition makes a parking use at the Property practically difficult for the Applicant.

vi. *Capitol Hill historic district*

The Property is located in the Capitol Hill historic district. Given that the Property is currently unimproved, this exceptional condition severely restricts the proposed design and footprint of the Project.

**B. Strict Application of Zoning Regulations Would Result in Practical Difficulty**

Strict application of the Zoning Regulations with respect to the subdivision requirements of Subtitle C § 303.3 and the alley centerline setback requirements of Subtitle E § 5106.1 would result in a practical difficulty for the Applicant. To that end, in *DeAzcarate*, the D.C. Court of Appeals explicitly stated that a variance “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack...**and prevent usable land from remaining idle.**” (emphasis added) *See DeAzcarate v. D.C. Board of Zoning Adjustment*, 388 A.2d 1233, 1236 (1978) (*quoting, Palmer v. BZA*, 287 A.2d 535, 541 (1972)). Here, the Property cannot be improved or adequately utilized for any by-right uses, including parking, which creates a practical difficulty for the Applicant.

i. *Subdivision*

a. The Applicant cannot meet the requirements of Subtitle C § 303.3

Strict application of the Zoning Regulations would result in practical difficulty for the Applicant because the Property could not be used without meeting the subdivision requirements

under Subtitle C § 303.3. In other words, the Property cannot comply with the requirements of Subtitle C § 303.3, which makes it impossible for the Property to become a record lot.

Specifically, Subtitle C § 303.3 requires that “new alley record lots” 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;
- (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
- (c) Where existing abutting alley record lots or alley tax lots created on or before May 12, 1958 are combined into a larger alley record lot, the subdivision need not comply with paragraphs (a) and (b) of this subsection.<sup>11</sup> See Subtitle C § 303.3(a-c).

Yet, the Applicant has no ability to meet any of these requirements. As to subsection (a), the Property fronts on an alley that is only 20 feet wide where 24 feet is required. It would be practically difficult to expand the alley width, and there is no ability to create a 24 foot-wide alley.

As to subsection (b), the Property contains only 1,120 square feet, which is a deviation of only 37.7% from the required 1,800 square feet. To that end, strict application of the subdivision regulations would result in a practical difficulty because the Applicant cannot increase the lot area of the Property. As noted above, the Property has been under separate ownership from the abutting street-facing lots since 1971. The Property is located to the rear of Lot 826, Lot 827, and Lot 59, but the Property is only contiguous with Lot 826, which is under different ownership.

Further, the Property was publicly offered for sale before the Applicant purchased the Property in 2015. The prior owner, National Alliance of Black School Educators, Inc. (the

---

<sup>11</sup> The Property does not abut any other alley lots and, as such, that subsection is not applicable for this case.

“Prior Owner”), listed the Property on MLS. Despite the fact that the Property was available for any individual to purchase, the owners of the street-facing lots along 3<sup>rd</sup> Street SE did not purchase the Property. Additionally, after the Applicant purchased the Property, the Applicant offered to sell the Property to both property owners that own contiguous lots to the Property; yet, there was no interest in purchasing the Property. Given that the Property has been available for purchase on a number of occasions, but no street-facing owner has sought to purchase the Property, the Applicant faces a practical difficulty due to the implausibility of meeting the 1,800 square-foot requirement.

b. A residential dwelling is the only reasonable use of the Property

A strict application of the Zoning Regulations would create a practical difficulty because the Applicant would be unable to build *any* structure on the Property. For an alley lot in the RF-3 zone, there are only a handful of by-right uses. Pursuant to Subtitle U § 600.1, the by-right uses are as follows:

- Agricultural
- Artist Studio, which requires a structure
- Camping
- Surface Parking, subject to certain conditions
- Residential dwelling, which requires a structure

Even though three of the uses do not require a structure, the Applicant would face a practical difficulty if required to use the Property for agriculture, camping or surface parking. First, agricultural and camping<sup>12</sup> uses are simply not reasonable uses of the Property, which is located

---

<sup>12</sup> The camping use is only permitted for two consecutive weeks, but no more than a month per year. *See* Subtitle U § 600.1(c).

in the center of a densely-populated, transit-rich neighborhood with significant infill development.

Second, surface parking may only be used by “residents of the square.” *See* Subtitle U § 600.1(d)(1). As noted above, Square 762 is a split-zoned square with many commercial uses and commercially-zoned properties. In fact, the square is predominantly commercial, as there are 22 commercial properties and only 17 residential properties in Square 762, with the commercial structures being noticeably larger. Importantly, 8 of the 17 residential properties have their own garage. This means that to operate a by-right “surface parking” use at the Property, only 9 residences, including the Applicant’s residence at 205 3<sup>rd</sup> Street SE, could use the Property for parking. Given close proximity to numerous public transportation options,<sup>13</sup> the need for parking is simply not sufficient. On a related note, if the Applicant sold the residence at 205 3<sup>rd</sup> Street SE, the Applicant could not even use the Property for their own parking needs since they would no longer be residents of the square.

The Property’s zoning history illustrates the practical difficulty in limiting the use to parking. No fewer than seven applications have been filed to obtain zoning relief for a parking use, with the four most recent applications specifically seeking relief for business users. *See* BZA Case Nos. 5277, 5933, 8286, 10450, 11969, 12417, and 13523. This is likely a direct result of the limited need for parking from “residents of the square.”<sup>14</sup> Notably, many of these prior BZA cases were approved, but with onerous conditions. For example, BZA Case No. 13523 was approved on the condition that “[a]ll areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.” The

---

<sup>13</sup> The Property two block from the Capitol South Metrorail Station and four block from the Eastern Market Metrorail Station. The Property is also half a block from priority Metrobus lines along Pennsylvania Avenue SE, including bus lines 30N, 30S, 32, 34, and 36.

<sup>14</sup> From a policy perspective, it is clearly disfavored to have parking for business uses when the Property directly abuts residences. This type of parking use would cause a greater impact to neighboring property owners than if the Property is used as a residence.

Applicant would face a practical difficulty if the Applicant was required to pave the alleyway and parking area just to rent the parking space to a neighbor.

c. The Board has approved cases seeking greater relief from the subdivision requirements

While the Applicant acknowledges that the Board must review each case on its own merits, there have been a myriad of cases under which the Board has approved greater relief from the lot area requirements in comparison to this matter. As noted above, the Applicant only seeks a 37.7% deviation from the lot area requirement. Yet, the Board has approved the following cases seeking relief from the lot area requirements: BZA Case Nos. 16801, 17166, 17213, 17262, 17712, 17762, 17823, 18016, 18088, 18090, 18091, 18204, 18205, 18342, 18355, 18482, 19051.

Many of these cases sought relief from the lot area requirements that were similar to or in excess of the 37.7% relief requested herein. In these cases, the Board found that the applicant would face practical difficulties if the subdivision regulations were strictly applied.

ii. *Alley Centerline Setback*

Under Subtitle E § 5106.1, the alley centerline setback requirement for the RF-3 zone is 12 feet, but the Project will be setback only 10 feet from the centerline of the alley. The need for the alley centerline setback relief requested here is directly related to Property's exceptional conditions, including the Property's location in the Capitol Hill historic district. As illustrated in the proposed plans, the Applicant seeks to align the Project's façade with the two abutting alley structures, both of which are built to the lot line. *See* BZA Ex. No. 43C. Given that the Property is unimproved, these historic preservation principles greatly restricts the Applicant's ability to comply with the alley centerline setback requirements.

The Property's size also restricts the proposed footprint of the building. Strict compliance with the centerline setback would reduce the Project's gross floor area by



approximately 68 square feet per floor, or 6% of the available gross floor area per floor. To build a structure that complies with the alley centerline setback while also complying with Building Code requirements that restrict floorplan layout, such as stairways and hallways, would be practically difficult.

As such, without the requested relief, the strict application of the alley centerline setback requirement creates a practical difficulty for the Applicant.

### **C. No Substantial Detriment to the Public Good or the Zone Plan**

There will not be substantial detriment to the public good by approving the requested relief. Notably, OP agrees with this conclusion for all areas of variance relief requested, stating that “granting variances to alley width and lot area should not have a detrimental impact to the public good.” *See* BZA Ex. No. 45, pg. 4-5.

The Project will improve and replace an unimproved lot that has been historically used for parking. The Project will add a dwelling unit to an area that is transit-rich and amenity-laden, and will function to diversify the nearby housing stock. The Project will not jeopardize the existing light, air and privacy available for neighboring properties because there are existing structures throughout the alley. Additionally, there is a three-foot buffer created by the rear portion of Lot 826. The adjacent properties also have substantial rear yards that will provide separation from the Project. The Project will align with other properties in the neighborhood, which are overwhelmingly residential in nature. The zoning regulations require the Project to provide a parking space, and one parking space will be provided.

Similarly, the relief requested will not be of substantial detriment to the zone plan. As noted above, a residence is a by-right use in the RF-3 zone. The District’s Comprehensive Plan *encourages* dwellings in transit and amenity-rich neighborhoods, such as Capitol Hill, as well as “infill development on vacant land.” *See* L.U.-1.3; L.U.-1.4. Recently, the District has

encouraged the use of alley space for residential dwellings, particularly through the zoning regulations.<sup>15</sup> The importance of having density within an alley was perfectly surmised in the District Alley Dwellers Alliance manifesto, an online community for District alley residents, stated as follows: “[a]dding more residents to alleys will add more people and density in ways that strengthen alley neighborhoods, street-fronting residential areas, and the city at large, by providing more affordable living and work spaces and by putting additional eyes into our alleyways (what Jane Jacobs called “eyes on the street”).”<sup>16</sup> Adding a dwelling to an alley improves neighborhood safety by increasing the number of residents that actively use the alley.

Finally, it must be reiterated that the goal of the zoning regulations is to prevent usable land from remaining undeveloped due to a strict interpretation of the regulations. In *DeAzcarate*, the D.C. Court of Appeals explicitly stated that a variance “is designed to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack... **and prevent usable land from remaining idle.**” See *DeAzcarate v. D.C. Board of Zoning Adjustment*, 388 A.2d 1233, 1236 (1978) (emphasis added) (*quoting, Palmer v. BZA*, 287 A.2d 535, 541 (1972)). As such, the policy of the District and this Board has been to prevent usable land from remaining idle whether a variance or a special exception is sought by an applicant. To that end, it would not be possible to improve the Property with *any* use without obtaining zoning relief. Such an outcome would be against the intent and spirit of the zoning regulations.

#### **IV. THE APPLICATION MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF**

The Applicant requests special exception relief from the rear yard requirements of Subtitle E § 5401 as well for a residential use on an alley lot pursuant to Subtitle U § 601.1(c).

---

<sup>15</sup> See *Washington Post*, “Once Dreaded, D.C. Alleys Become Fun, Even Chic.” [https://www.washingtonpost.com/local/in-darkness-of-dc-alleys-a-new-slice-of-life/2014/09/02/c78e5998-2ef3-11e4-9b98-848790384093\\_story.html?utm\\_term=.f00ef4bff881](https://www.washingtonpost.com/local/in-darkness-of-dc-alleys-a-new-slice-of-life/2014/09/02/c78e5998-2ef3-11e4-9b98-848790384093_story.html?utm_term=.f00ef4bff881)

<sup>16</sup> District Alley Dwellers Alliance Manifesto. H Street NE Alley Tour- Walking Town DC/Cultural Tourism DC. See page 5. [http://xa.yimg.com/kq/groups/16542886/2118089279/name/alley\\_tour\\_h\\_street.pdf](http://xa.yimg.com/kq/groups/16542886/2118089279/name/alley_tour_h_street.pdf). Last accessed August 23, 2016.

The relief for the residential use was recently added, but the Applicant will demonstrate below that the Project meets the special exception conditions. It is also worth reiterating that the Applicant would not require special exception relief for the use if the 14-foot alley had an additional one foot of width.

**A. The proposed relief will be in harmony with the general purpose and intent of the zoning regulations and maps**

The Project will be in harmony with the purpose and intent of the Zoning Regulations and related maps. The RF-3 zone is intended for homes on small lots with no more than two dwelling units. The Project directly aligns with this intent, as the relief will allow the Applicant to create one residential dwelling unit on an alley lot. Indeed, many of the surrounding properties are improved with attached rowhomes on narrow lots. As noted above, there are a number of structures along the same alley as the Property.

Notably, the Project meets four of the five conditions for a by-right alley dwelling as set forth in Subtitle U § 600.1(e). The Property is located in an RF zone (§ 600.1(e)(1)), the Property exceeds the minimum lot area requirement of 450 square feet (§ 600.1(e)(2)), and the Project will meet all building code requirements for a residential structure (§ 600.1(e)(4)). The fifth condition is not applicable, as the Applicant has not previously sought approval from the Zoning Administrator for a building permit (§ 600.1(e)(5)).

The Applicant is requesting special exception relief because the Project does not meet the third condition under Subtitle U § 600.1(e), which requires the Property to have access to an improved street through at least a 24-foot wide alley or, alternatively, a 15-foot wide alley that is within 300-feet of an improved public street. *See* § 600.1(e)(3). The Property meets the spirit of this condition, but not the letter of the regulation. The Property is located approximately 95 feet from 3<sup>rd</sup> Street SE, but the alley is only 14-feet wide. The Property is also located approximately 255 feet from C Street SE, but that public street access is through a *private* alley. As such, the

Project falls just short of meeting this last condition in order to have a by-right residential use at the Property.

**B. The proposed relief will not adversely affect the use of neighboring property**

The requested relief will not have an adverse effect on neighboring property undue adverse impact on the use of neighboring property. The Applicant outlined many of these reasons in Section III(C) *supra*. The proposed single-family dwelling aligns with the generally residential character of the neighborhood. The addition of a dwelling will not create any adverse effects in terms of noise or traffic. Historically, the property has been utilized as parking, so cars and people have travelled to and from the Property on the regular basis. In this respect, the Project will not significantly alter existing conditions in the alley. Further, the Project has been designed so that the only windows are facing the alley, and not the surrounding residences. *See* BZA Ex. No. 43C, pgs. 12-13. This design element will maintain privacy for abutting neighbors.

Similarly, the rear yard relief will not jeopardize the existing light, air, and privacy available for neighboring properties. OP concurs with this conclusion. *See* BZA Ex. No. 45. As noted above, the Project will be buffered from neighboring properties by both existing garages along the alley as well as large rear yards of the abutting properties fronting on 3<sup>rd</sup> Street SE. Additionally, the three-foot rear portion of Lot 826 will maintain light and air for all three neighboring properties.

**C. The proposed relief for a residential use complies with the special conditions set forth in Subtitle U § 601.1(c)**

Under Subtitle U § 601.1(c), when an alley lot does not meet the matter-of-right requirements set forth in Subtitle U § 600.1(e), a dwelling unit on an alley lot is permissible as a special exception, subject to certain conditions. Here, the Project meets these conditions, and the Applicant is entitled to special exception relief for a residential use:

1. *The alley lot is not wholly or partially within the R-1-A, R-1-B, or R-2 zones;*

The Property is located in the RF-3 zone district.

- 2. A building may not be constructed or converted for a dwelling unit unless there is a minimum of four hundred and fifty (450) square feet of lot area;*

The Property is 1,120 square feet, which exceeds the minimum lot area requirement.

- 3. The alley lot connects to an improved public street through an improved alley or system of alleys that provides adequate public safety, and infrastructure availability;*

The Property connects to 3<sup>rd</sup> Street SE through an improved, 14-foot-wide public alley.

The Property is approximately 95 feet from 3<sup>rd</sup> Street SE, which allows for access to that public street. Given the short distance between the street and the Property, the alley will provide adequate public safety and infrastructure availability for the Property.

- 4. The Board of Zoning Adjustment shall consider relevant agency comments concerning: (A) Public safety, including any comments from the Fire and Emergency Medical Service Department and the Metropolitan Police Department; (B) Water and sewer services, including any comments from the Water and Sewer Authority, especially the Department of Permit Operations; (C) Waste management, including any comments from the Department of Public Works; and (D) Traffic and parking, including any comments from the District Department of Transportation;*

If necessary, the Applicant will contact each agency listed as part of subsection four, including Fire and Emergency Medical Service Department, Metropolitan Police Department, DC Water, Department of Public Works and Department of Transportation.

- 5. An applicant shall submit or arrange for the submission of agency comments to the official case record. If no agency submission occurs, an applicant shall instead describe any communications with relevant agencies.*

The applicant will contact each requisite District agency if requested by the Board.

**D. The proposed relief complies with the special exception criteria for the capitol interest zones**

Under Subtitle E § 5202.1, the Project is subject to additional special exception criteria due to its location in the RF-3 zone, which is a “capital interest zone.” In addition to the general special exception test, the Project must meet the following conditions:

1. *The Project is compatible with the present and proposed development of the neighborhood;*

The Project will add a residential dwelling on an unimproved alley lot. The residential nature of the Project will better align the Property with the neighborhood aesthetic because the Property will now have a dwelling. As noted by OP, the alley is densely developed, and the Property is the last remaining unimproved parcel of the land in the square. In this respect, there a number of alley structures in Square 762 and the surrounding squares, many of which have dwelling units as well.

2. *The Project is consistent with the goals and mandates of the United States Congress in Title V of the Legislative Branch Appropriation Act, 1976 (Master Plan for Future Development of the Capitol Grounds and Related Areas);*

The Project will be consistent with the goals and mandates found in Title V of Public Law 94-59 entitled “Master Plan for Future Development of the Capitol Grounds and Related Areas” (the “Act”). The Project will not inhibit future development of the United States Capitol Grounds. As an alley dwelling in a square that is substantially developed, it is unlikely that the Property would be utilized to expand the Capitol Grounds.

3. *The Project is in accordance with the plan promulgated under Title V of the Legislative Branch Appropriation Act, 1976.*

As noted above, the Project is consistent with the goals and mandates of the Act and, therefore, the Project will be in accord with the plan promulgated by the Act.

## **V. COMMUNITY OUTREACH**

On February 13, 2018, ANC 6C voted to support this application by a vote of 4-0-4. At the ANC meeting, three neighbors appeared to speak in opposition to the proposed Project. The Commissioners spent considerable time listening to the objections, but still voted to support the application. Further, the Applicant, through counsel, has engaged these neighbors in an attempt to negotiate a construction management agreement. The Applicant’s counsel has offered to meet

with the neighbors on February 19<sup>th</sup>. The Applicant will update the Board at the February 21<sup>st</sup> hearing as to the progress on a construction management agreement with the neighbors.

**VI. CONCLUSION**

For the reasons stated above, and for the reasons enumerated in the Applicant's prior filings as well as the reasons discussed at the Board's hearing, the Applicant submits that the application meets the requirements for variance and special exception relief in order to construct a single-family residence in the RF-3 zone. Accordingly, the Applicant respectfully requests that the Board approve the application on February 21, 2018.

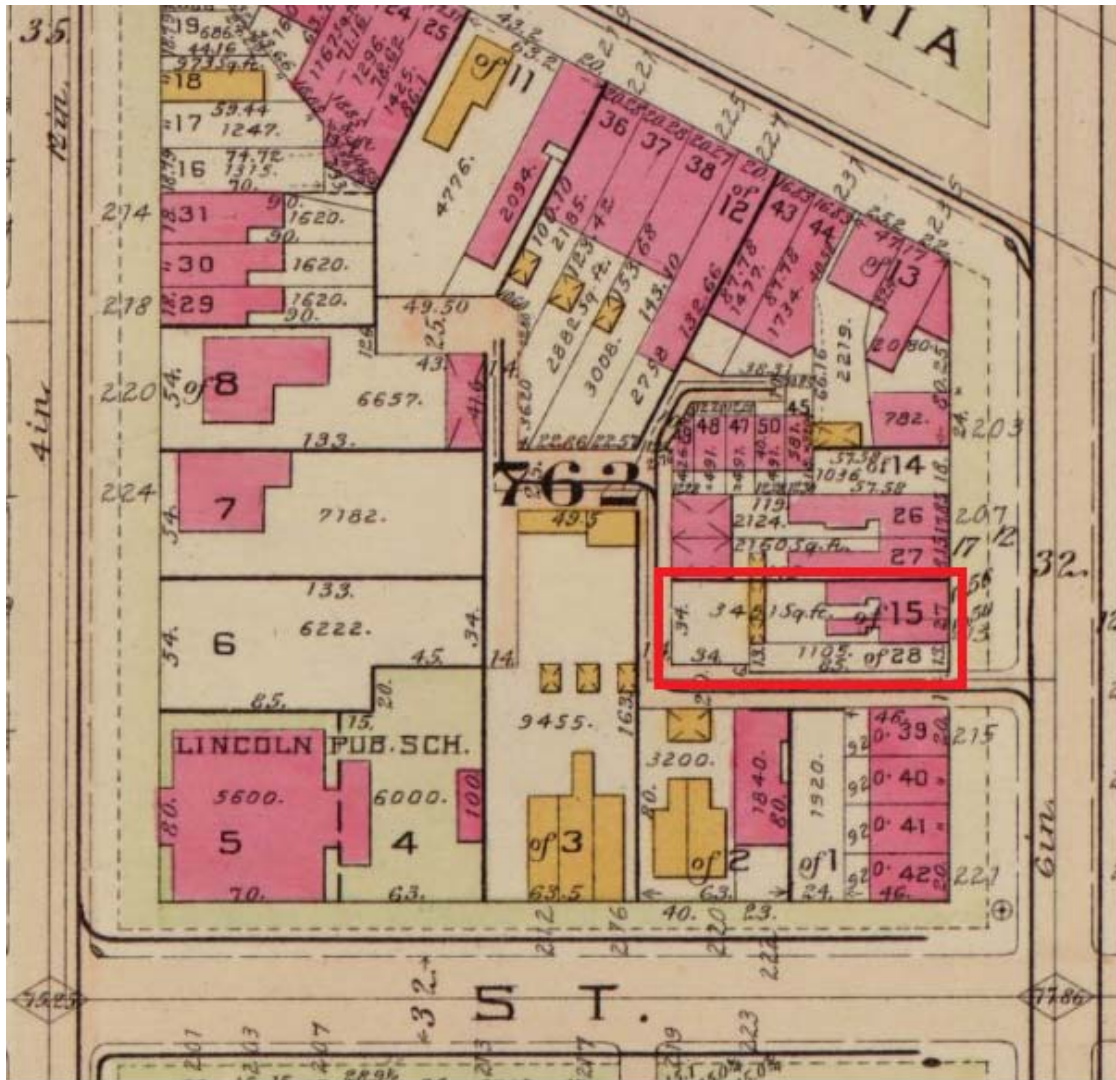
Respectfully submitted,  
COZEN O'CONNOR



Meridith H. Moldenhauer  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
(202) 912-4800

# Exhibit A



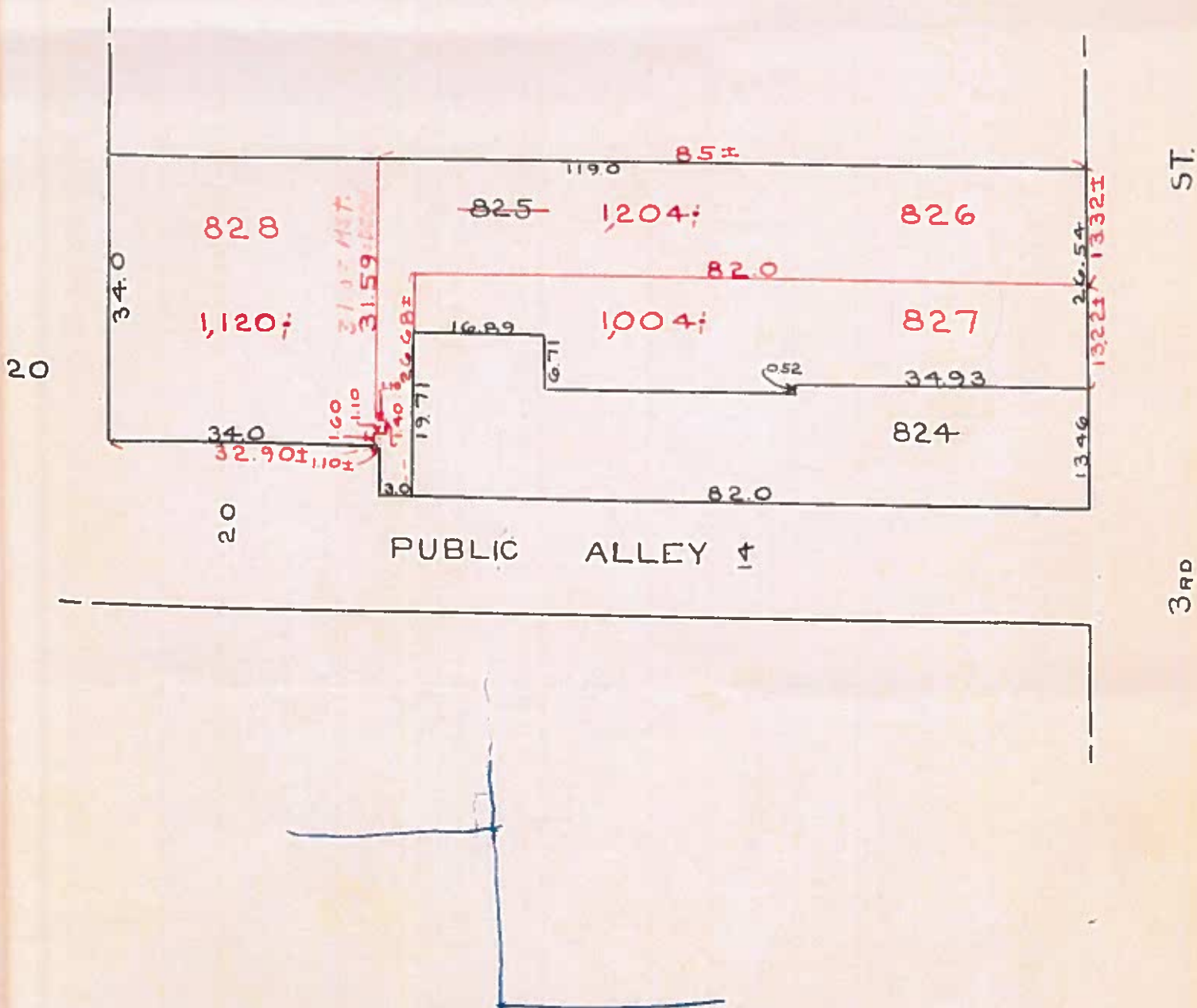


# Exhibit B

ASSESSMENT AND TAXATION PLAT  
SQ. 762

3344 C

W/10  
T/00/M



1952-1529  
To THE COMMISSIONERS, D. C.

Issuance of the following order is recommended:

*C.A. Beard Jr.*  
Deputy Assistant Assessor.

Scale, 1 inch ..... ft.

ORDERED:  
The Surveyor will admit this plat to record in his office under the provisions of the Act of Congress (Public, No. 89) approved February 23, 1905, and entitled, "An Act to designate parcels of land in the District of Columbia for the purpose of assessment and taxation and other purposes."

APPROVED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA SITTING AS A BOARD  
SEP-23-1952

Prepared by  
*W.H.W. 8-20-52*  
Draftsman, Assessor's Office.

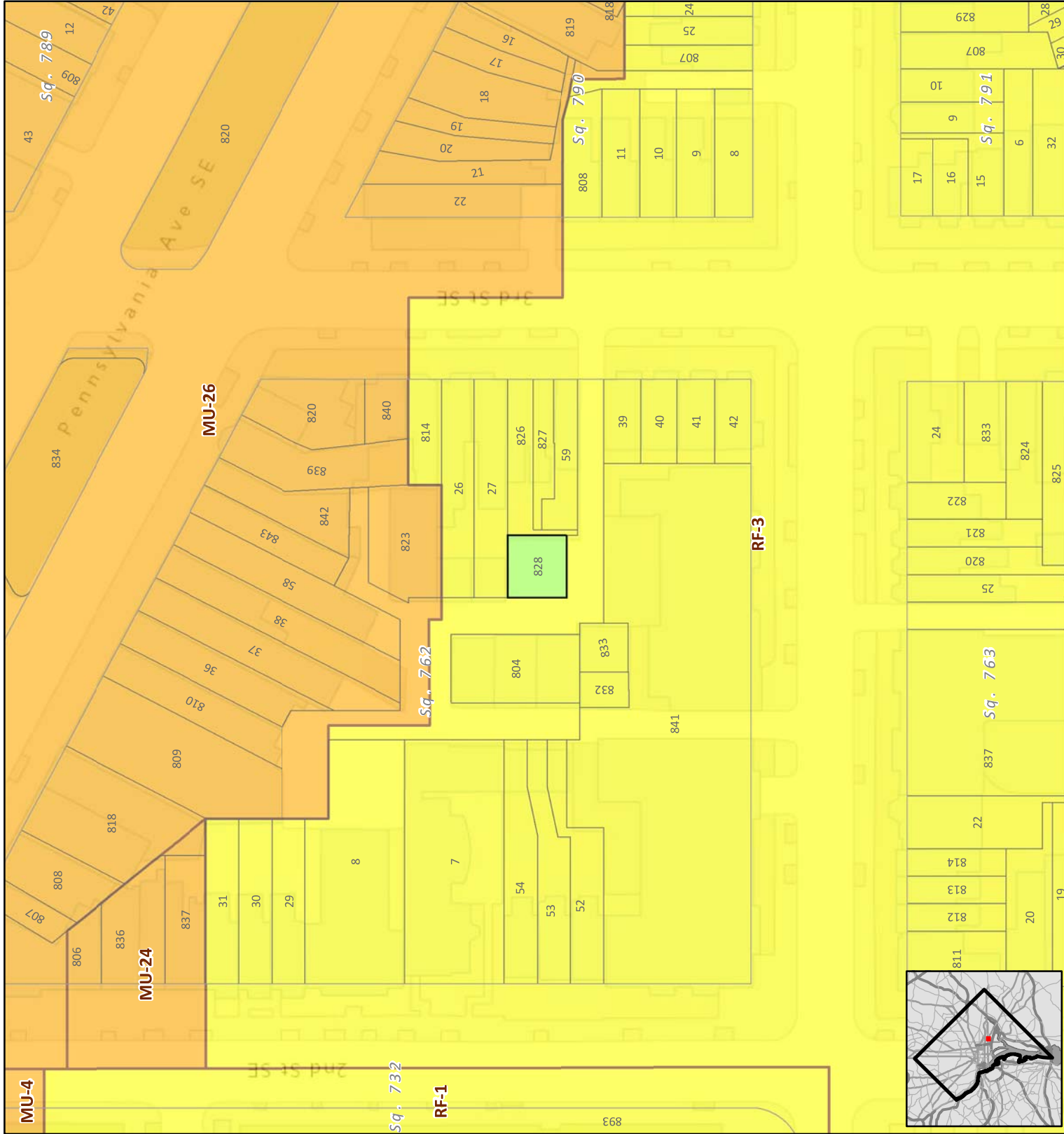
Secretary  
*[Signature]*  
SECRETARY  
Commissioners of the District of Columbia

ENTRERED ON MINUTES

# Exhibit C

**Legend**

- Mixed-Use Zone
- Residential Flat Zone



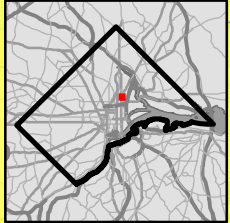
# Zoning Map of the District of Columbia



Extracted from Online Zoning Information published by the District of Columbia Office of Zoning, DCGIS, and Office of the Chief Technology Officer (OCTO) Exported on: 2/15/2018

To certify zoning on any property in order to satisfy a legal requirement, contact the office of Zoning at the address listed below.

District of Columbia Office of Zoning,  
441 4th St NW, Suite 200 South, Washington, DC 20001  
202-727-6311 | dcoz@dc.gov



Tab B

February 14, 2018

Via IZIS


Frederick L. Hill, Chairman  
Board of Zoning Adjustment  
441 4<sup>th</sup> Street, NW, Ste. 200S  
Washington, DC 20001

AGENT AUTHORIZATION FOR 260 LINCOLN COURT SE

Chairperson Hill and Honorable Members of the Board:

This letter serves as notice that Brian and Carolyn Wise and/or their assigns authorize Cozen O'Connor, with Meridith H. Moldenhauer and Eric J. DeBear as counsel, to be the authorized agent in connection with the application before the Board of Zoning Adjustment regarding the property located at 260 Lincoln Court SE (Square 762, Lot 828). Pursuant to Subtitle Y § 200.3 of the Zoning Regulations, this authorization includes the power to bind Brian and Carolyn Wise in the case before this Board.

Sincerely,



Brian Wise



Carolyn Wise

Tab C





**BEFORE THE BOARD OF ZONING ADJUSTMENT  
DISTRICT OF COLUMBIA**



**FORM 135 – ZONING SELF-CERTIFICATION**

<i>Project Address(es)</i>	<i>Square</i>	<i>Lot(s)</i>	<i>Zone District(s)</i>
260 Lincoln Court SE	762	828	RF-3
Single-Member Advisory Neighborhood Commission District(s):	6B01		

**CERTIFICATION**

The undersigned agent hereby certifies that the following zoning relief is requested from the Board of Zoning Adjustment in this matter pursuant to:

<b>Relief Sought</b>	<input type="checkbox"/> X § 1000.1 - Use Variance	<input checked="" type="checkbox"/> X § 1002.1 - Area Variance	<input checked="" type="checkbox"/> X § 901.1-Special Exception
<b>Pursuant to Subsections</b>	C-303.3(a-b); E-201.1; E-5106		E-5104; U-601.1(c)

Pursuant to 11 DCMR Y § 300.6, the undersigned agent certifies that:

- (1) the agent is duly licensed to practice law or architecture in the District of Columbia;
- (2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia; and
- (3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.



The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment (BZA) does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief is a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the BZA.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

**I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this form is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.  
(D.C. Official Code § 22-2405)**

 <i>Owner's Signature</i>	Brian Wise <i>Owner's Name (Please Print)</i>
 <i>Agent's Signature</i>	Meridith H. Moldenhauer <i>Agent's Name (Please Print)</i>

<b>Date</b>	2/15/18	<b>D.C. Bar No.</b>	494695	or	<b>Architect Registration No.</b>	
-------------	---------	---------------------	--------	----	-----------------------------------	--

**INSTRUCTIONS**

**Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.**

1. All self-certification applications shall be made on this form. All certification forms must be completely filled out (front and back) and be typewritten or printed legibly. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of 8 1/2" x 11" paper to complete the form.
2. Complete one self-certification form for each application filed. Present this form with the Form 120 - Application for Variance/Special - Exception to the Office of Zoning, 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001.

ITEM	EXISTING CONDITIONS	MINIMUM REQUIRED	MAXIMUM ALLOWED	PROVIDED BY PROPOSED CONSTRUCTION	VARIANCE Deviation/Percent
Lot Area (sq. ft.)	1120sf.	1800sf.	N/A	1120sf.	680SF. / 38%
Lot Width (ft. to the tenth)	32.9' x 34.0'	18ft.	N/A	32.9' x 34.0'	(NO CHANGE)
Lot Occupancy (building area/lot area)	0% (VACANT)	N/A	100%	87.3%	N/A
Floor Area Ratio (FAR) (floor area/lot area)	N/A	N/A	N/A	N/A	N/A
Parking Spaces (number)	0 (VACANT)	1	N/A	1	(NO DEVIATION)
Loading Berths (number and size in ft.)	0	N/A	N/A	0	N/A
Front Yard (ft. to the tenth)	0.0' (VACANT)	N/A	N/A	0.0'	N/A
Rear Yard (ft. to the tenth)	0.0' (VACANT)	5.0'	N/A	0.0'	5.0' (DEVIATION)
Side Yard (ft. to the tenth)	0.0' (VACANT)	5.0'	N/A	5.0'	(NO DEVIATION)
Court, Open (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Court, Closed (width by depth in ft.)	N/A	N/A	N/A	N/A	N/A
Height (ft. to the tenth)	0.0' (VACANT)	N/A	20.0'	20.0'	(NO DEVIATION)



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.