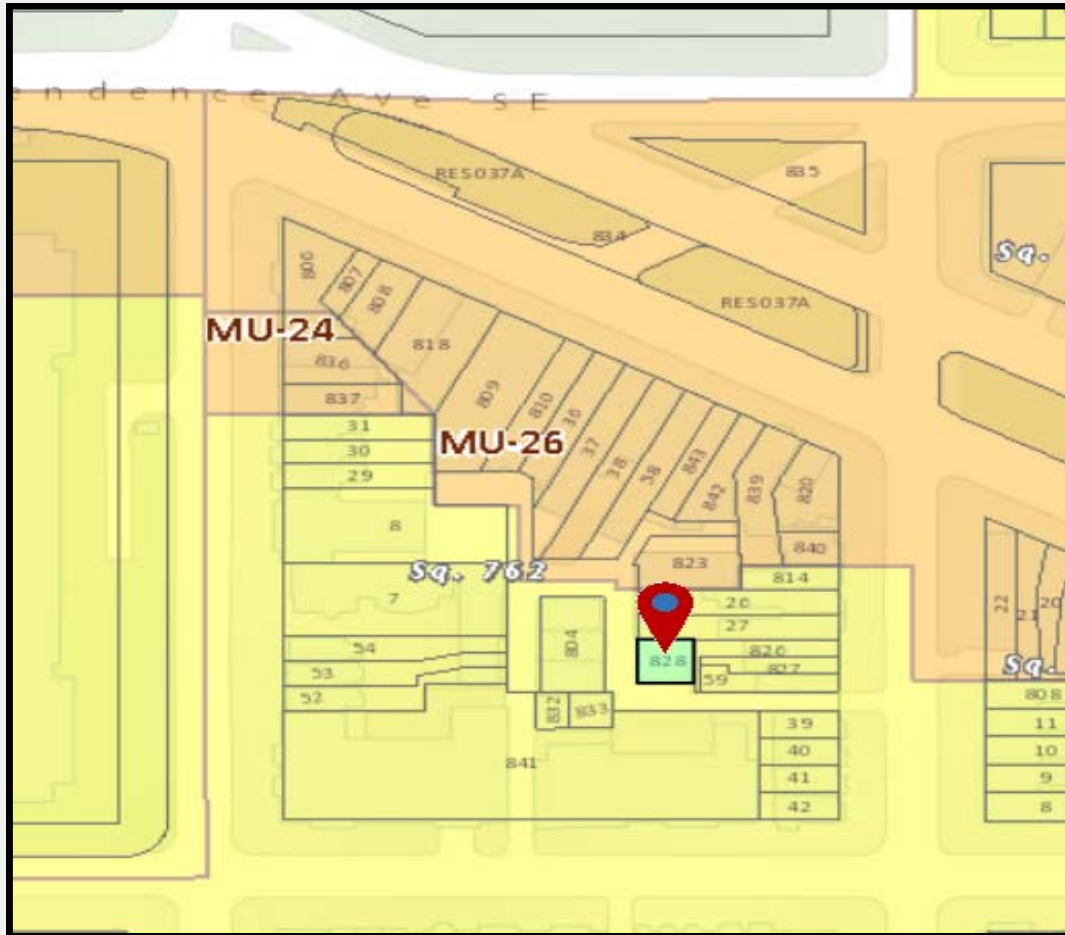


BZA Application #19683
260 Lincoln Court SE
Brian and Carolyn Wise

Presented by:
Meridith H. Moldenhauer
Cozen O'Connor

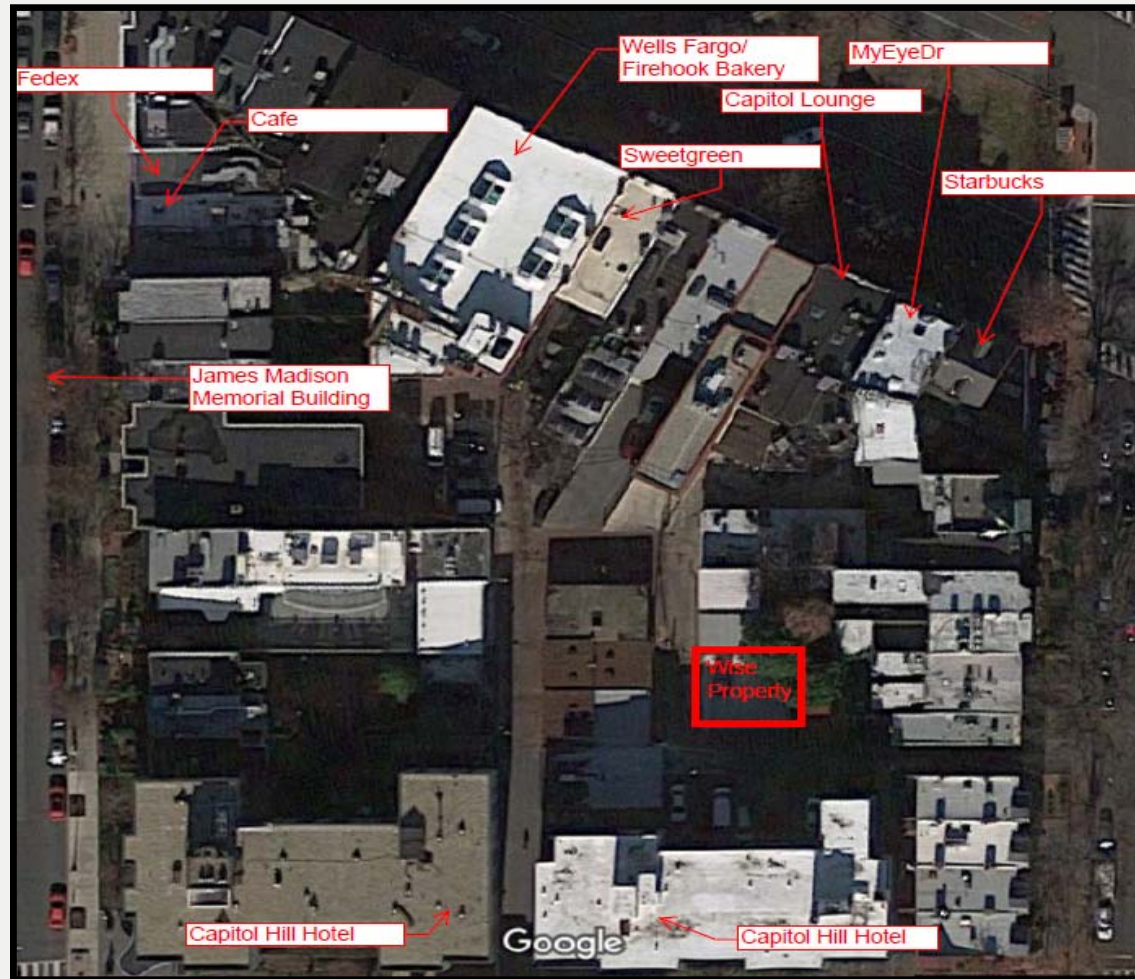


The Property – 260 Lincoln Court SE



Square 762
Lot 828
RF-3 Zone

The Property – 260 Lincoln Court SE



The Project

- Construct a single-family residence on an unimproved alley lot
- Provide one parking space for residence

The Existing Lot



The Alley



The Alley



- 14-foot-wide alley
- 95-feet from 3rd Street SE
- Only 14-feet-wide for a short distance, then opens up to 20-foot-wide

Community Outreach and Agency Input

- Support from ANC 6B (4-0-4)
- Letter of support from neighbors at 209 3rd Street SE and 203 Rear 3rd Street SE
- Capitol Hill Restoration Society unanimously supports
- District Department of Transportation has no objection
- Office of Planning has no objection to two of the four requested areas of relief:
 - Variance from the Alley Centerline Setback requirement
 - Special Exception for the Rear Yard requirement

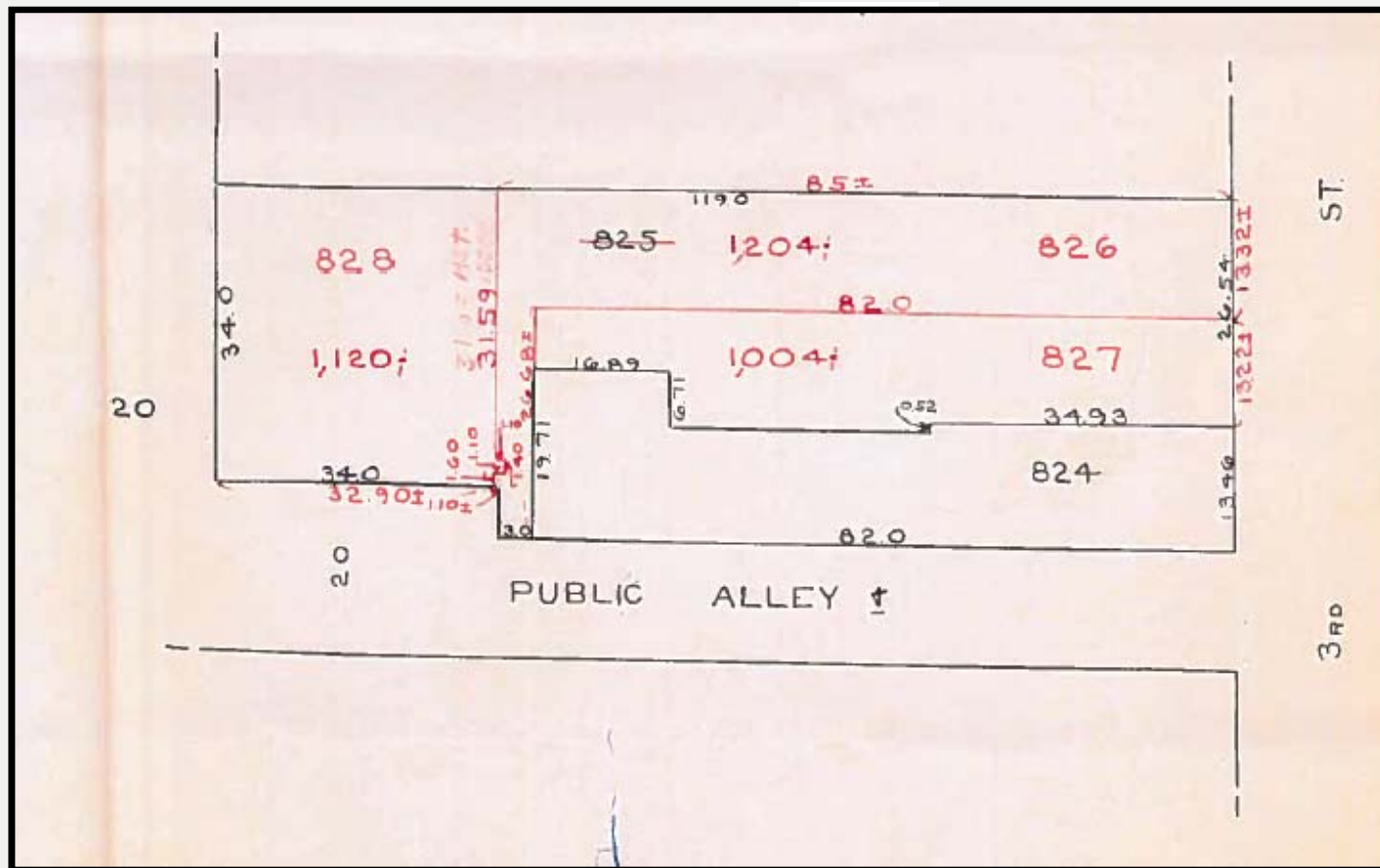
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- During first application for a two-unit flat, Applicant was not clear whether relief from subdivision requirements was needed
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The Property is an existing “Alley Lot” since 1905

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- Discrepancy between “historic” alley tax lots created prior to November 1, 1957 and non-historic alley tax lots was clarified by the Office of Planning Report in July 2017 after Applicant had already hired an architect, embarked on first zoning application and alley naming process

Subdivision Plat – February 23, 1905



The Property is an existing “Alley Lot” since 1905

- The Property is an “historic alley tax lot”
 - Created by subdivision on February 23, 1905
- Zoning Regulations and DCRA administrative process place no burden of street-facing alley lots
- Area variance for subdivision (not use variance)
- BZA Case No. 18234
 - The Board approved lot area and lot width relief for a single family dwelling on an alley tax lot.

Past BZA Approvals – Lot Area Relief

| <u>BZA Number</u> | <u>Property Address</u> | <u>Zone</u> | <u>Lot Size</u> | <u>Required Lot Size</u> | <u>% Deviation</u> |
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| 19479 | 1 Library Court SE | RF-3 | 521 | 1,800 | -0.71 |
| 18090 | 3158 Monroe Street NE | R-1-B | 2,000 | 5,000 | -0.60 |
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| 17989 | 4615 42nd Street Rear NW | R-2 | 2,700 | 4,000 | -0.33 |
| 17213 | 1408 1/2 Kearney Street NE | R-1-B | 3,450 | 5,000 | -0.31 |
| 17262 | 1528 W Street SE | R-3 | 2,760 | 4,000 | -0.31 |
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| 18342 | 2425 Franklin Street NE | R-1-B | 3,574 | 5,000 | -0.29 |

Past BZA Approvals – Lot Area Relief for Tax Lots

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Past BZA Approvals – Lot Area Relief for Alley Tax Lots

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| 18511 | 1018 Irving Street Rear NW | R-4 | 1,800 | 4,000 | -0.55 |
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Consistency with Prior Decisions

- Consistency in the Board’s interpretation of the Zoning Regulations is important to zoning applicants and the public
- *Stare Decisis*
 - “Promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”
 - *Randall v. Sorrell*, 548 U.S. 230, 243 (2006)
 - Administrative agencies, like courts, must favor a policy of *stare decisis* unless unusual circumstances intervene
 - *Reichley v. D.C. Dep’t of Empl. Servs.*, 531 A.2d 244, 247 (1987)
- Failure to follow precedent can be considered arbitrary and capricious
 - “Unexplained inconsistency in an agency’s interpretation of its governing statute can be ‘a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.’”
 - *Hensley v. D.C. Dep’t of Empl. Servs.*, 49 A.3d 1195, 1203 (2012)

Proposed Design in Character of Surrounding Alley Dwellings



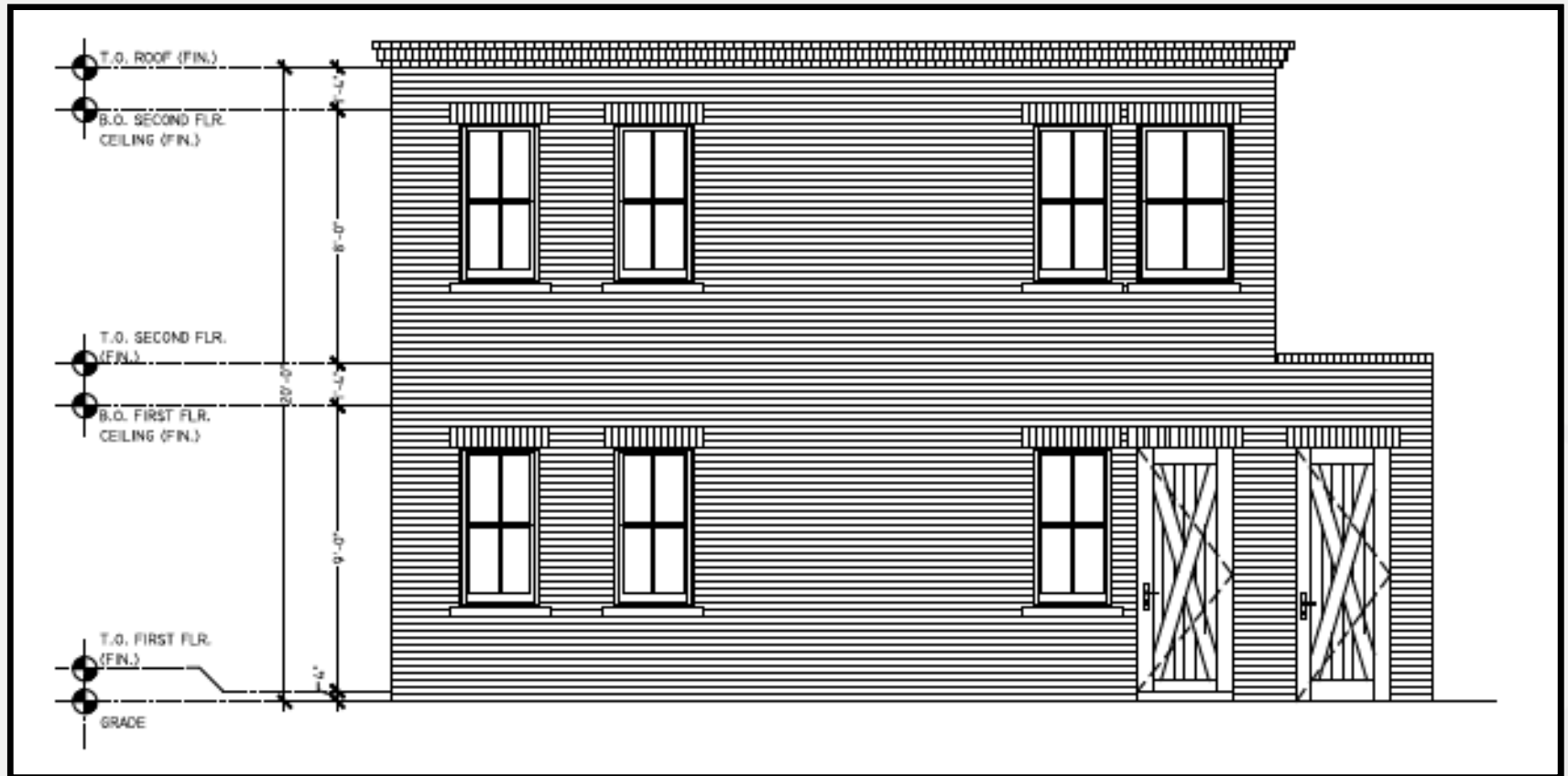
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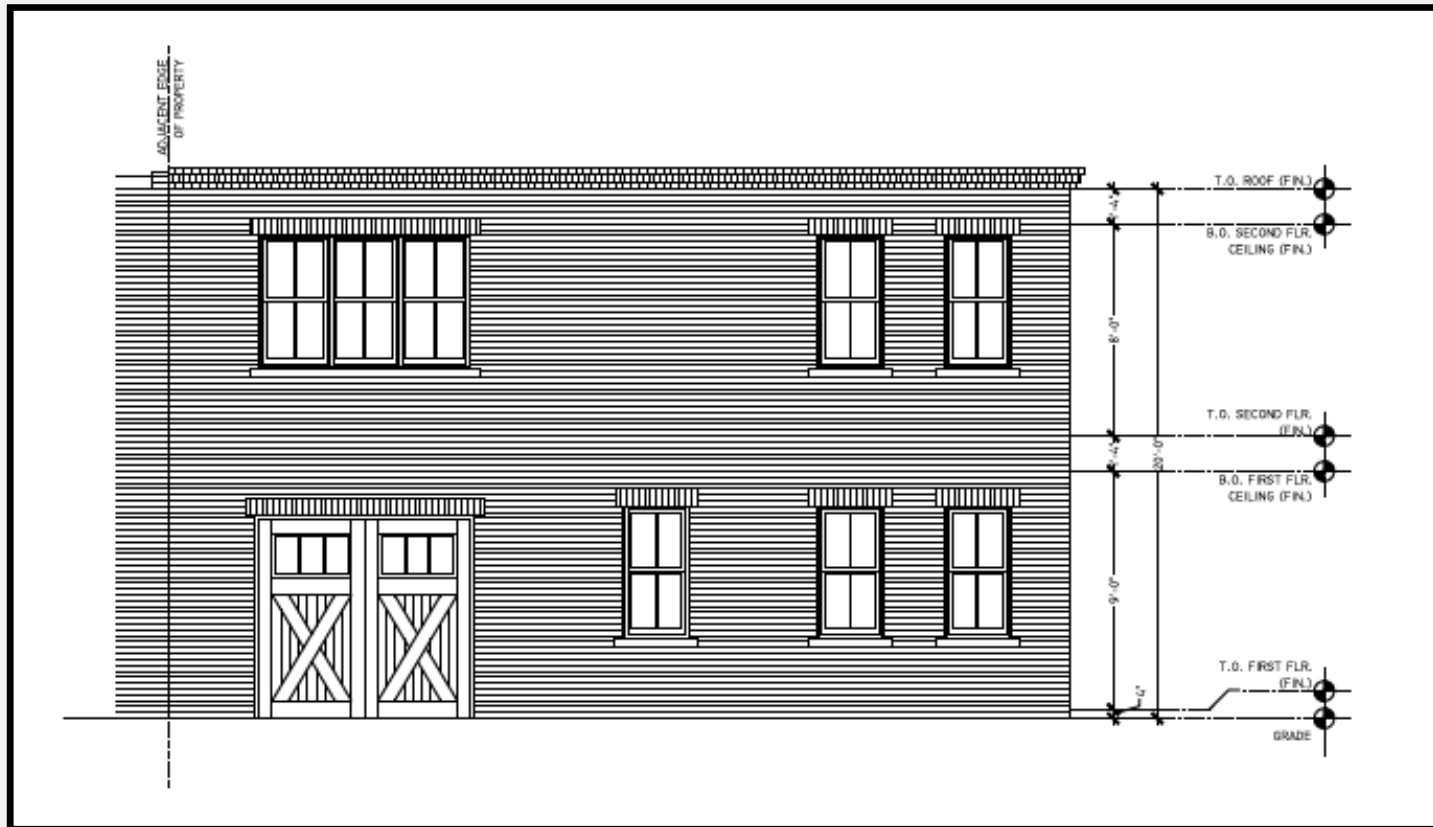
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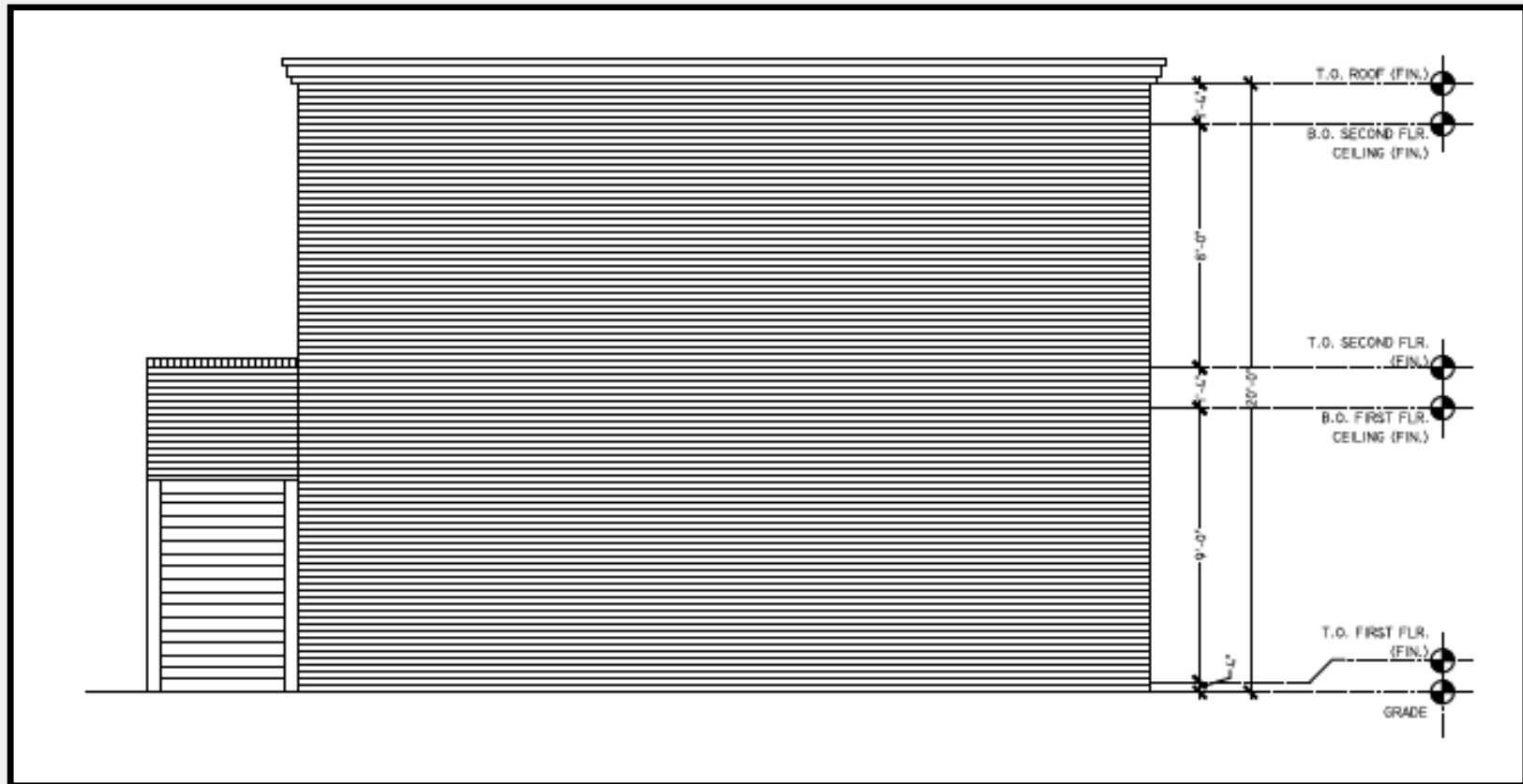
Architectural Plans – Alley-facing South Facade



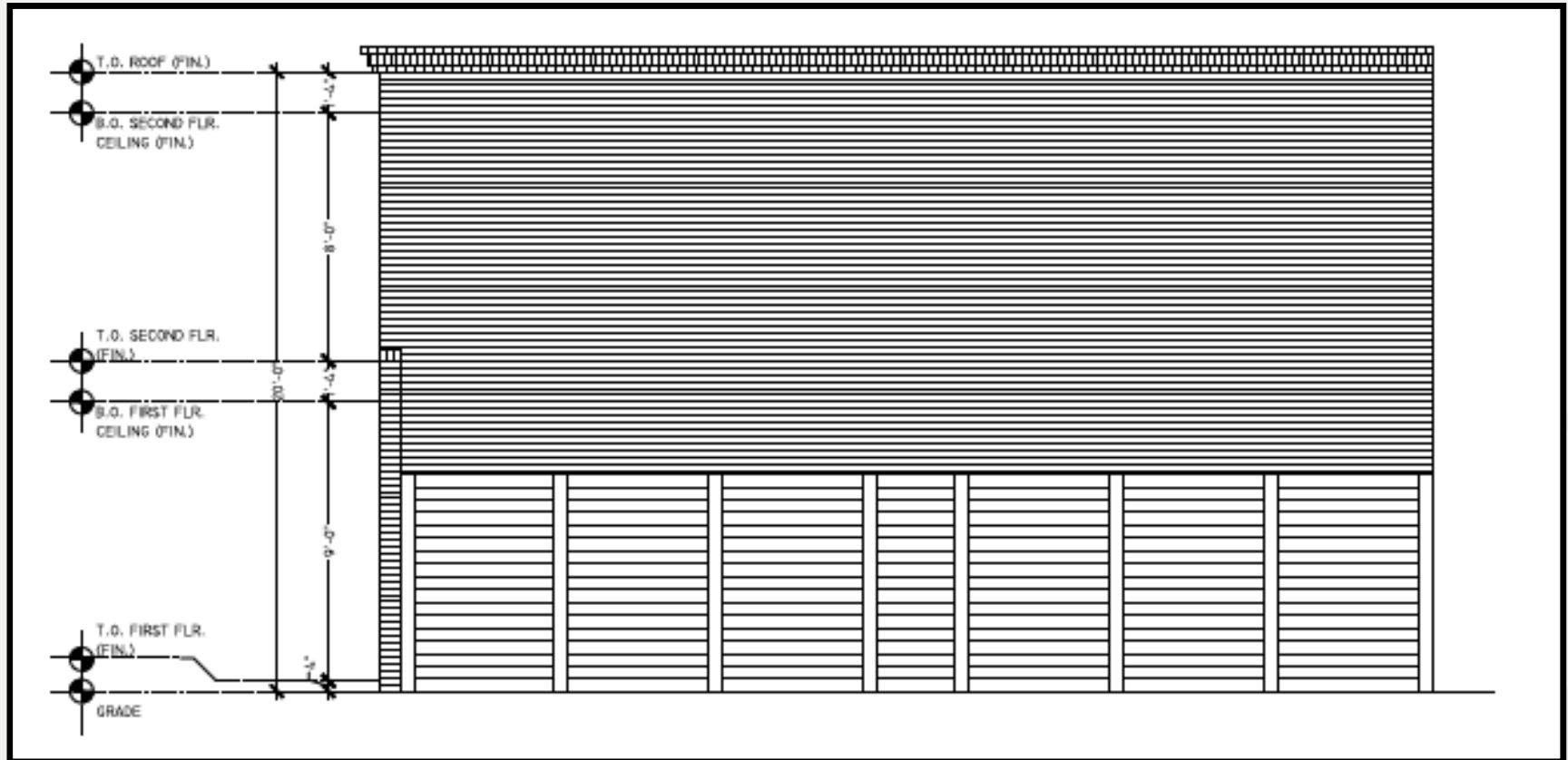
Architectural Plans – Alley-facing West Facade



Architectural Plans – North Exterior



Architectural Plans – East Exterior



Variance Relief Requested

Alley Width - Subtitle C § 303.3(a)

- Requires frontage along public alley with minimum width of 24 feet
 - The Property fronts on an alley that is 20 feet wide

Lot Area - Subtitle C § 303.3(b)/Subtitle E § 201.1

- Requires minimum lot area of 1,800 square feet
 - The Property is 1,120 square feet

Alley Centerline Setback - Subtitle E § 5106

- Requires setback of 12 feet from centerline of alley
 - The proposed design is setback 10 feet from the centerline of the alley

The Property Faces Exceptional Conditions

- Zoning history/historic alley tax lot
 - Property subdivided 112 years ago
- Unimproved lot
 - Only unimproved lot in Square 762
- Property's lot area cannot be expanded
 - Separate ownership from street-facing lots
- Zoning history as a parking lot
 - Seven BZA cases seeking parking relief for this Property
- Split-zoned square
 - 22 properties are zoned MU-26/MU-24 or operating commercial uses
 - 17 residentially zoned properties
- Capitol Hill historic district

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

1. Applicant cannot meet the requirements of Subtitle C § 303.3

❑ 24-foot-alley (Subtitle C § 303.3(a))

- Applicant's alley is 20 feet wide, but there is no ability to expand the alley

❑ 1,800 square foot lot area (Subtitle C § 303.3(b))

- No ability to increase lot area as there is separate ownership from street-facing lots

- Public sale in 2015, but none of street-facing owners along 3rd Street SE purchased the property
- Applicant also offered to sell the alley lot to those street-facing owners, but none were interested

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

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

By-right uses for an alley lot in the RF-3 zone include:

- Agricultural
- Artist Studio (requires a structure)
- Camping
- Surface parking, but only for residents of the square
- Residential dwelling (requires a structure)

Strict Application of Zoning Regulations Creates Practical Difficulties – Subdivision

- Agricultural and camping are simply not reasonable uses for the Property
- Surface parking is only for residents of the square and there is not a sufficient need in Square 762
 - Split-zoned square that is predominantly commercial
 - 22 commercial properties
 - 17 residential properties, but 8 of those properties have garages
 - Close proximity to public transportation options
 - If Applicant moved away from 205 3rd Street then they could not even use the Property as their own parking
- Property's zoning history – seven BZA applications for parking use, with four most recent for businesses
 - Several of the cases were approved with conditions including paving the driveway and access lanes to the Property

Comparing Past BZA Approvals for Lot Area Relief to Property

| BZA Number | Property Address | Zone | Lot Size | Required Lot Size | % Deviation |
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Strict Application of Zoning Regulations Creates Practical Difficulties – Alley Centerline Setback

- Historic preservation
 - Align Project façade with two abutting alley structures
- Size of property
 - Complaint would reduce gross floor area by 68 square feet per floor, or 6% of available square footage
- Difficulty complying with Building Code requirements restricting floorplan, including stairways and hallways

No Substantial Detriment to the public good or the Zone Plan

- Public good
 - Existing structures on alley, including parking garages on neighboring two properties
 - Three-foot buffer between street-facing residences and Property
 - Substantial rear yards on street-facing residences
- Zone plan
 - District-wide policy in favor of alley dwellings
 - Adds dwelling to area that is transit and amenity-rich
 - Diversifies housing stock with single-family home
 - Comprehensive Plan
 - Encourages dwellings in transit and amenity-rich neighborhoods
 - Encourages “infill development on vacant land”

Special Exception Relief Requested

- Subtitle E § 5104 – Rear Yard

- Requires rear yard of 5 feet

- Applicant proposes a structure with no rear yard

- Subtitle U § 601.1(c) – Residential Dwelling on Alley Lot

- The Property meets four of five by-right requirements for an alley dwelling

- Only exception is Property does not have access to a public street from an improved alley that is 15 feet in width and within 300 feet of a public street

- The Property is on an alley that is 14 feet in width, but within 95 feet of 3rd Street SE

Special Exception Standard (§ X-901.2)

- Special exception relief is presumed to be appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (1981).

Harmonious with Purpose & Intent of Zoning Regulations and Maps

- RF-3 is primarily intended for homes on small lots
 - Many surrounding properties are single-family rowhomes
- Project meets four of five conditions for by-right alley dwelling under § U-600.1(e)
 - Alley access through two points:
 - 14-foot wide alley that is 95 feet from 3rd Street SE (one foot short)
 - 20-foot wide alley that is 255 from C Street SE (private alley)

No Adversely Effect on Use of Neighboring Properties

- OP Report concurs that there will be no adverse effect on neighboring properties
- Single-family home aligns with residential nature of neighborhood
- No additional noise or traffic
 - Historic parking lot use means that cars and people were travelling to and from Property
- Windows face the alley only
- Project will be buffered from neighboring properties
 - Large rear yards
 - Existing garages

Special Conditions for Residential Use Under § U-601.1(c)

- Alley lot is not wholly or partially within R-1-A, R-1-B or R-2 zone
 - RF-3 zone
- Building may not be constructed or converted for a dwelling unit unless there is a minimum of 450 square feet of land area
 - 1,120 square feet
- 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
 - Property is 95 feet from 3rd Street SE, which will provide adequate public safety and infrastructure
- District agency comments
 - Applicant will contact agencies

Special Conditions for Residential Use Under § U-601.1(c)

- District agency comments
 - DC FEMS stated no objection
 - In prior case for this property - BZA Case 19536 (OP Report – Ex. 39)
 - DDOT stated no objection (Ex. 38)
 - MPD
 - Called but no response
 - Emailed but no response
 - DC Water
 - Emailed but no response
 - DPW
 - Called but no response

Capitol Interest Zone Conditions under § E-5202.1

- Architect of the Capitol has no objection to relief (Ex. No. 51)
- The Project is compatible with the present and proposed development of the neighborhood
 - Residence better aligns with neighborhood aesthetic
 - Alley is already densely developed
 - Many alley structures in Square 762
- 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 not inhibit future development of the U.S. Capitol Grounds
 - Square 762 is substantially developed and unlikely that Capitol Grounds would expand to this square
- The Project is in accordance with the plan promulgated under Title V of the Legislative Branch Appropriation Act, 1976.
 - The Project will comply with the goals and mandates of the Act

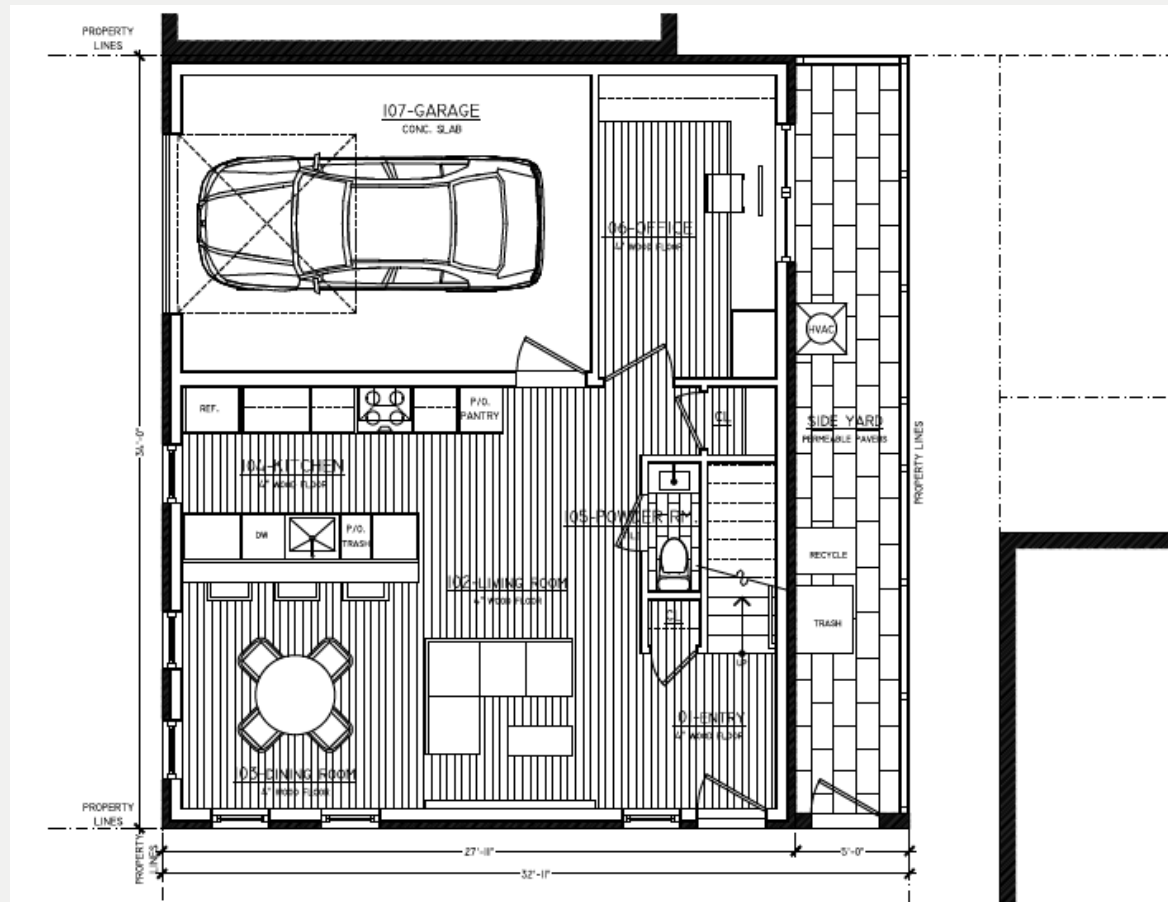
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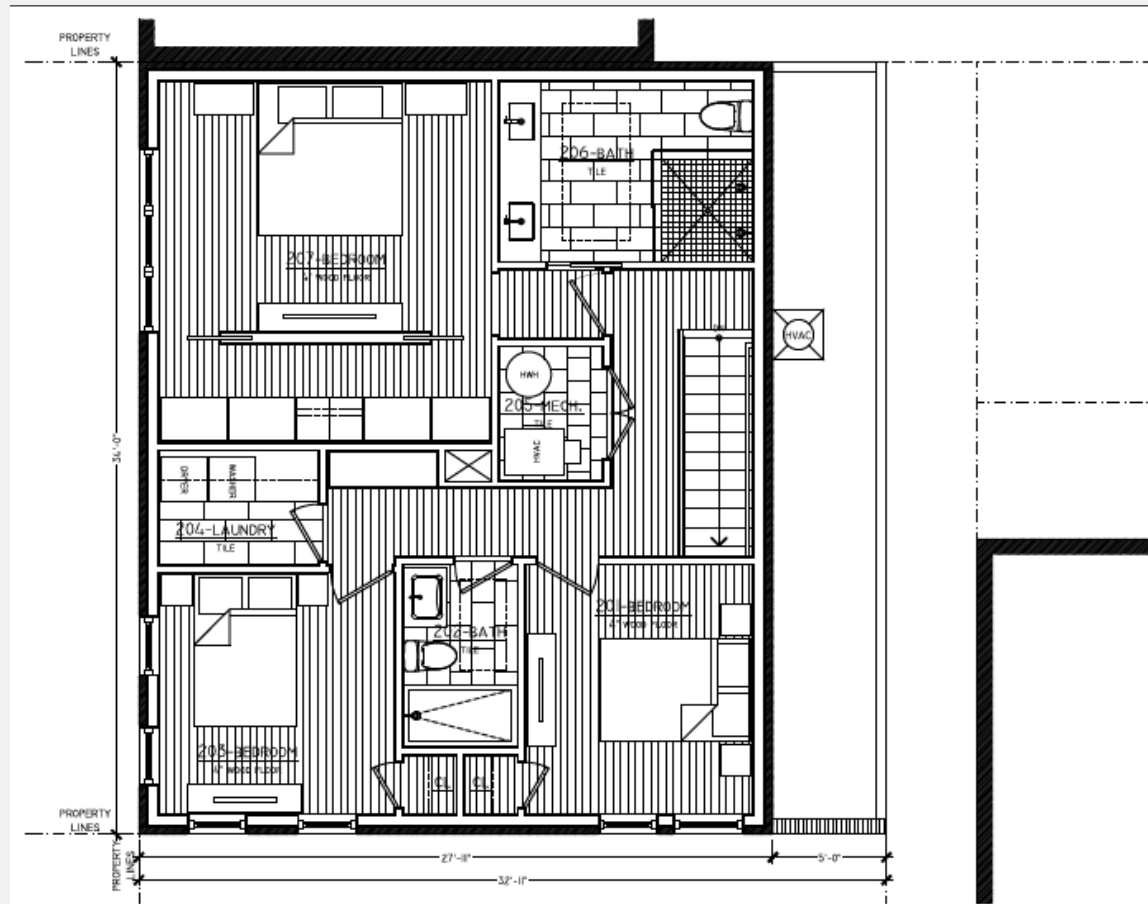
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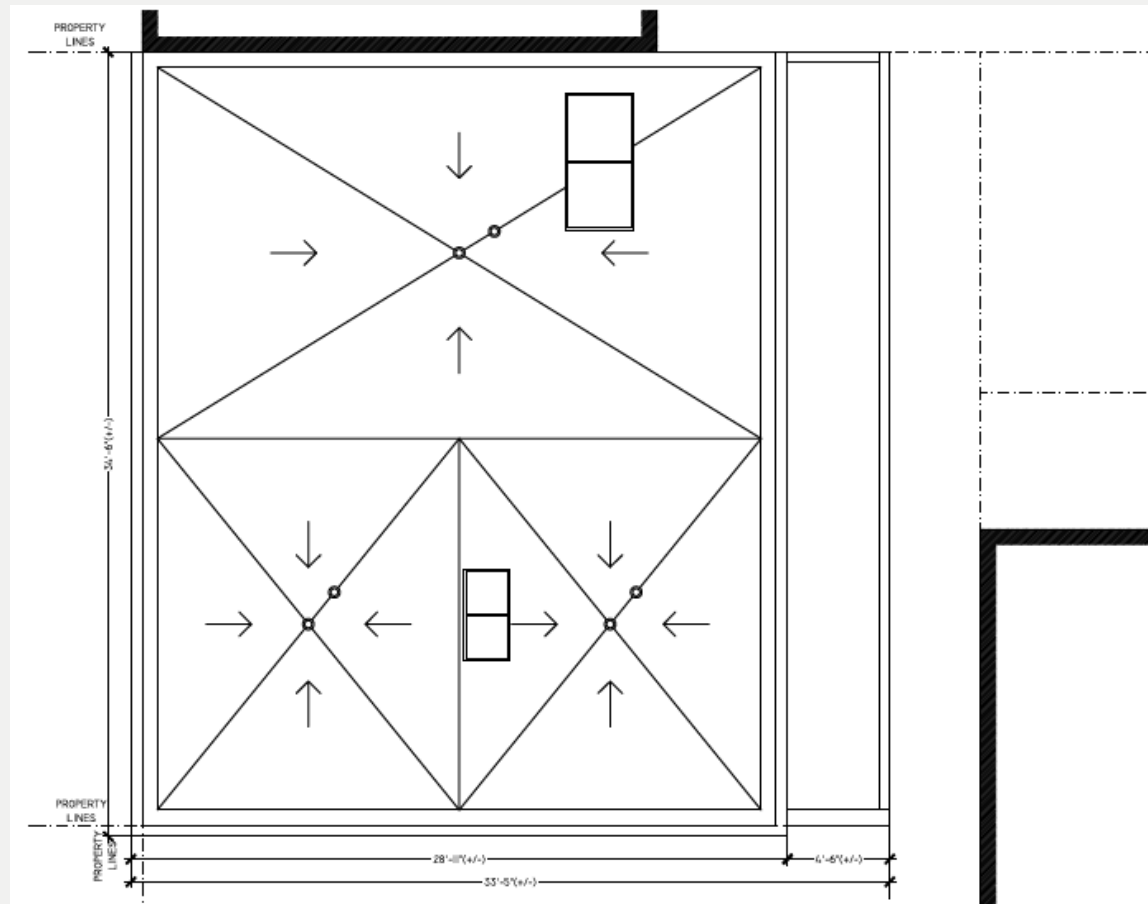
Internal Floor Plan – First Floor



Internal Floor Plan – Second Floor



External Plan – Roof

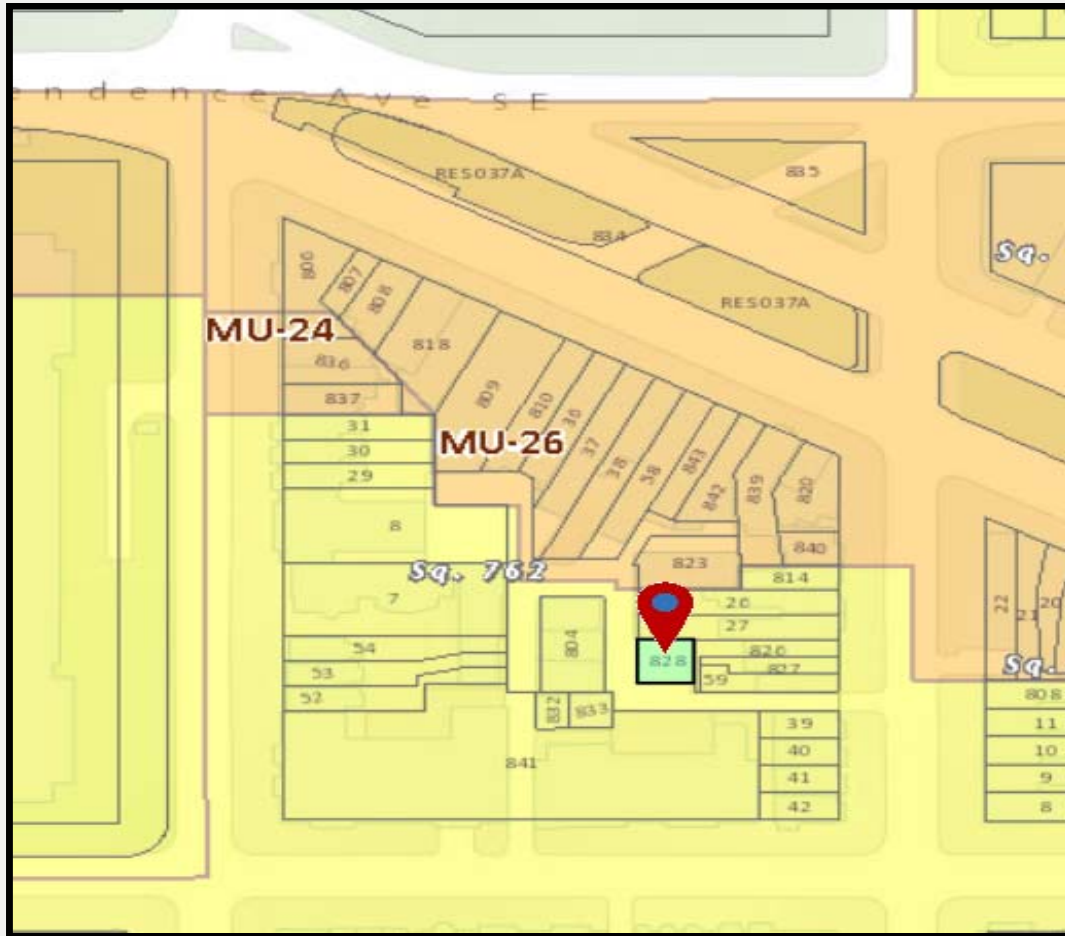


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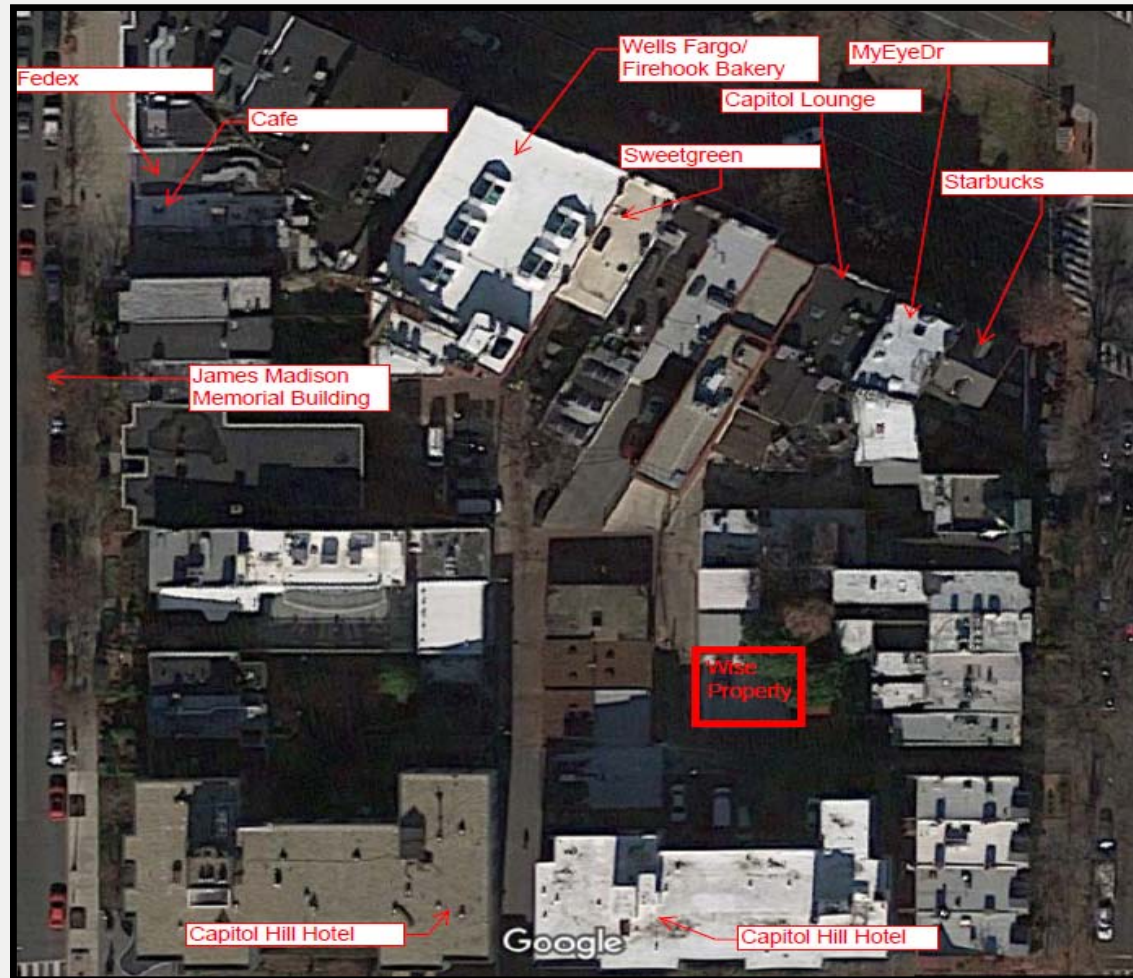


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Square 762
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The Property – 260 Lincoln Court SE



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- Construct a single-family residence on an unimproved alley lot
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- 14-foot-wide alley
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Community Outreach and Agency Input

- Support from ANC 6B (4-0-4)
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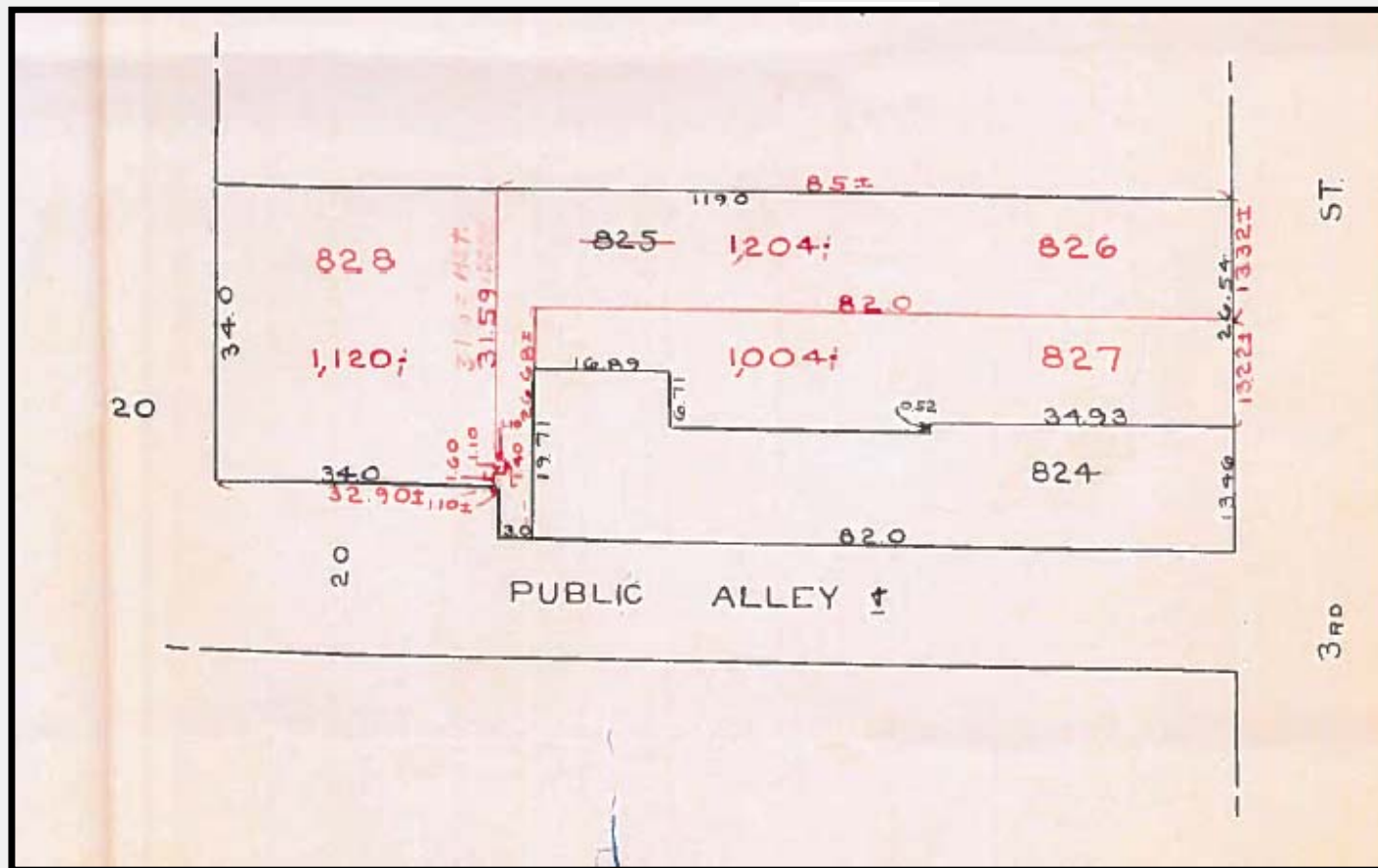
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Past BZA Approvals – Lot Area Relief for Tax Lots

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Proposed Design in Character of Surrounding Alley Dwellings



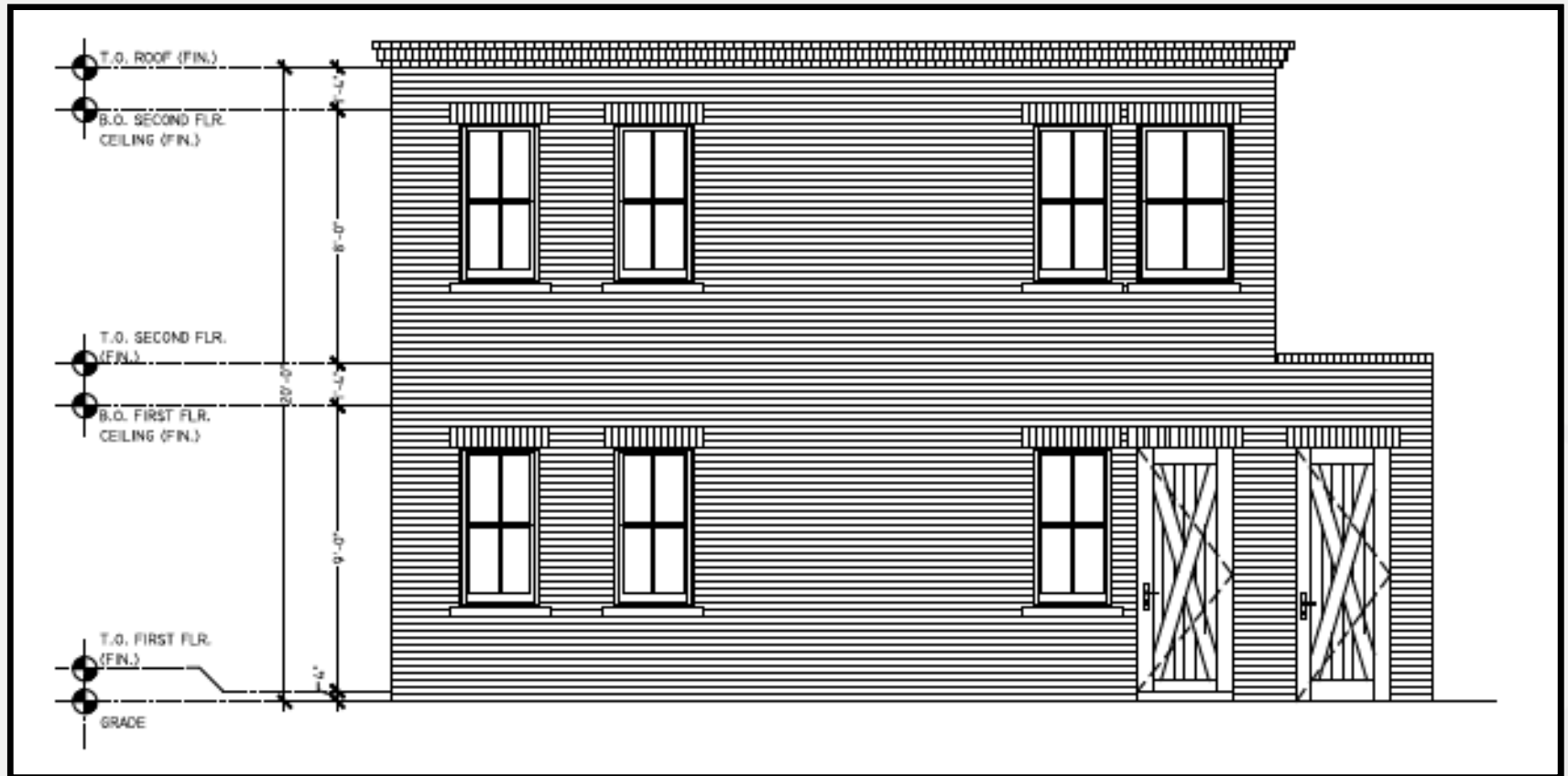
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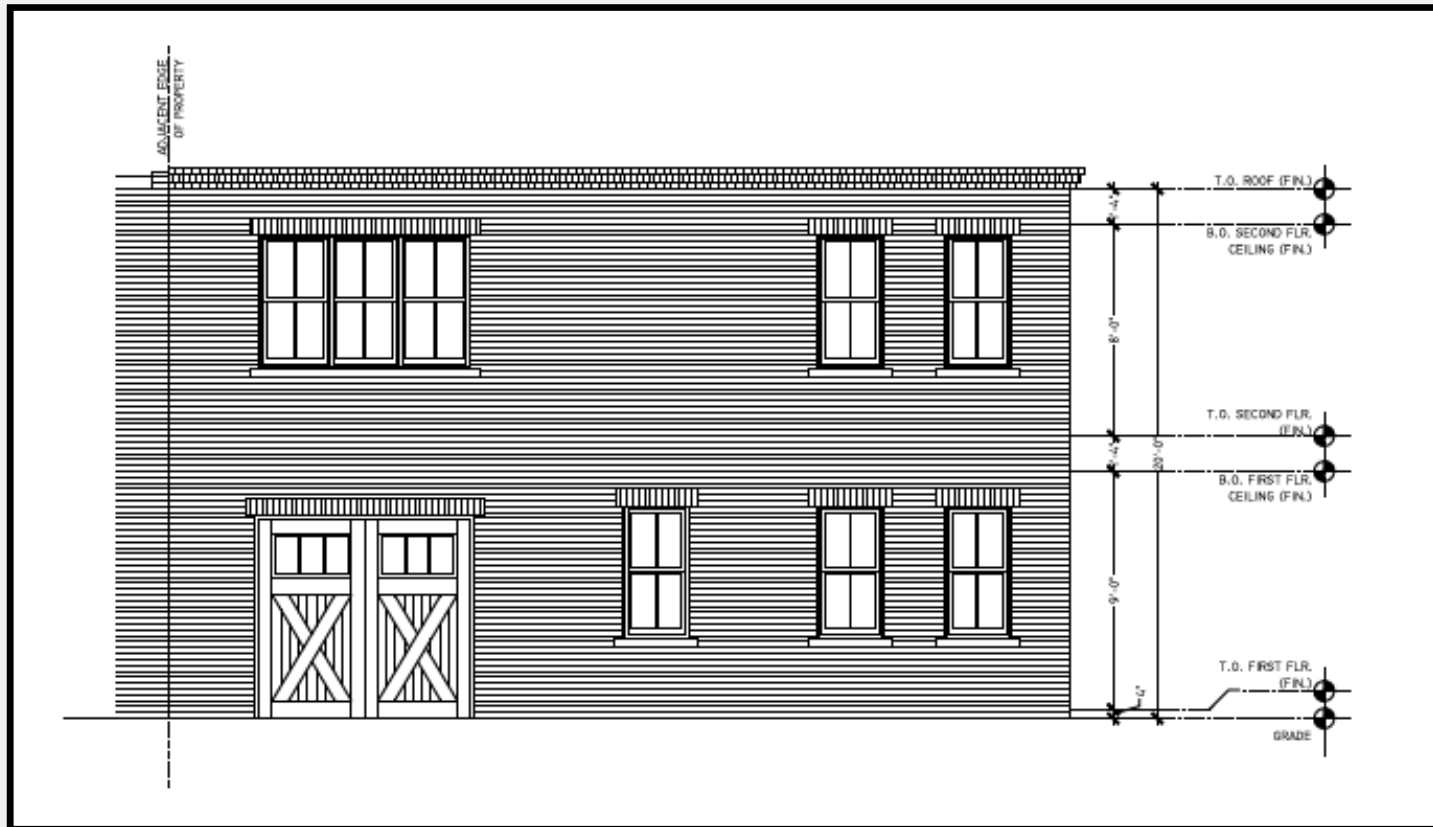
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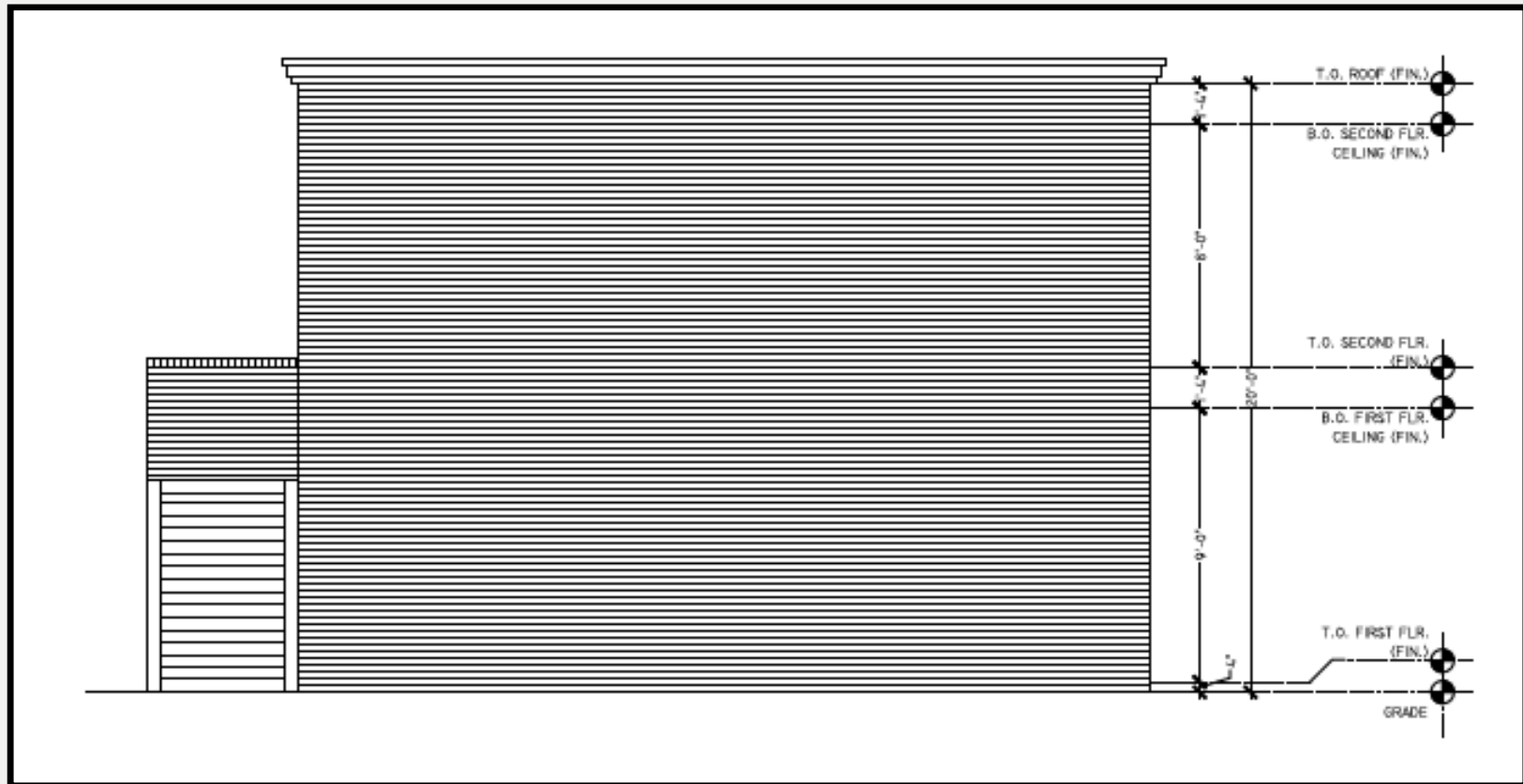
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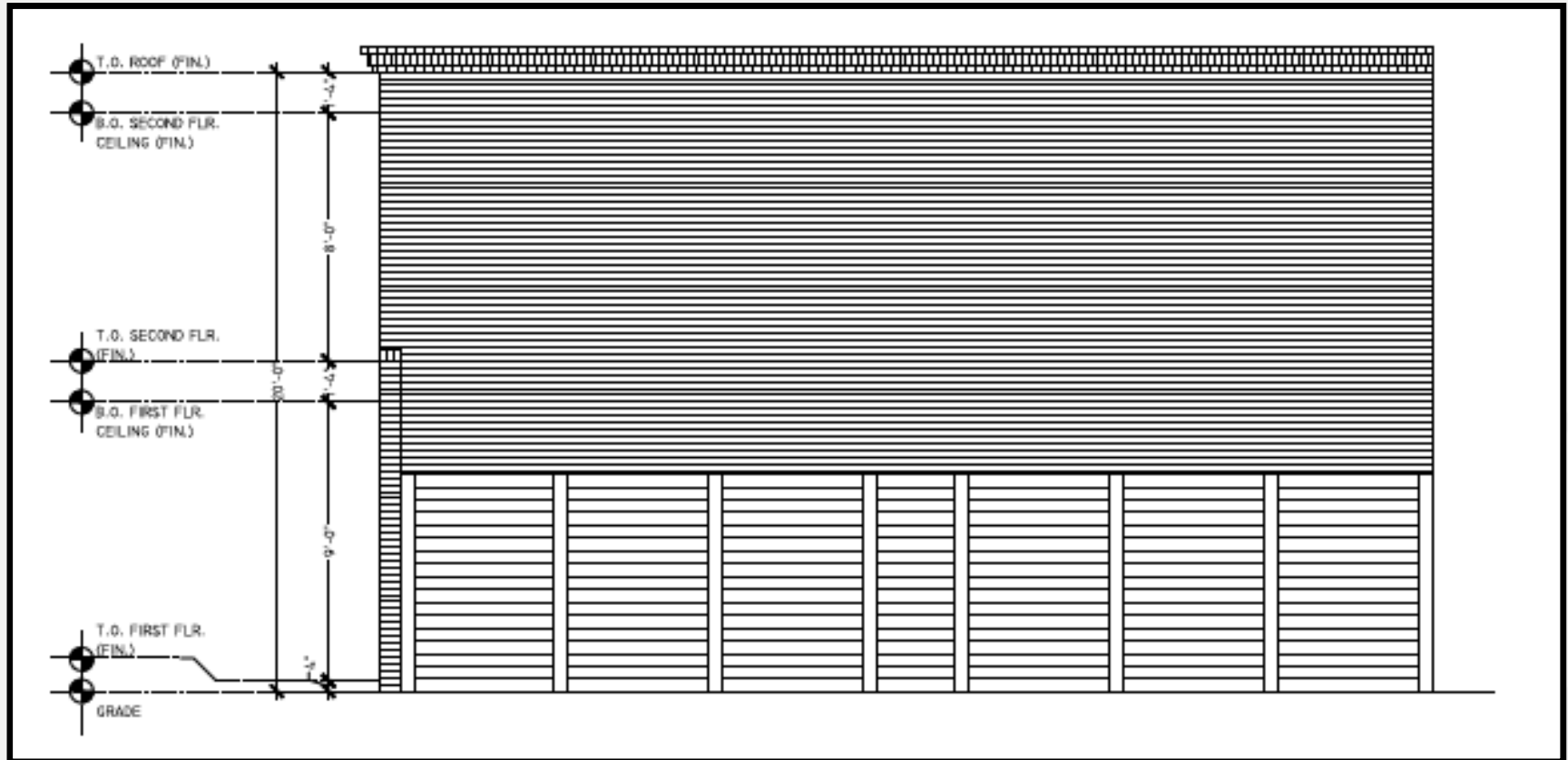
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Architectural Plans – North Exterior



Architectural Plans – East Exterior



Variance Relief Requested

Alley Width - Subtitle C § 303.3(a)

- Requires frontage along public alley with minimum width of 24 feet
 - The Property fronts on an alley that is 20 feet wide

Lot Area - Subtitle C § 303.3(b)/Subtitle E § 201.1

- Requires minimum lot area of 1,800 square feet
 - The Property is 1,120 square feet

Alley Centerline Setback - Subtitle E § 5106

- Requires setback of 12 feet from centerline of alley
 - The proposed design is setback 10 feet from the centerline of the alley

The Property Faces Exceptional Conditions

- Zoning history/historic alley tax lot
 - Property subdivided 112 years ago
- Unimproved lot
 - Only unimproved lot in Square 762
- Property's lot area cannot be expanded
 - Separate ownership from street-facing lots
- Zoning history as a parking lot
 - Seven BZA cases seeking parking relief for this Property
- Split-zoned square
 - 22 properties are zoned MU-26/MU-24 or operating commercial uses
 - 17 residentially zoned properties
- Capitol Hill historic district

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

1. Applicant cannot meet the requirements of Subtitle C § 303.3

❑ 24-foot-alley (Subtitle C § 303.3(a))

- Applicant's alley is 20 feet wide, but there is no ability to expand the alley

❑ 1,800 square foot lot area (Subtitle C § 303.3(b))

- No ability to increase lot area as there is separate ownership from street-facing lots

- Public sale in 2015, but none of street-facing owners along 3rd Street SE purchased the property
- Applicant also offered to sell the alley lot to those street-facing owners, but none were interested

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

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

By-right uses for an alley lot in the RF-3 zone include:

- Agricultural
- Artist Studio (requires a structure)
- Camping
- Surface parking, but only for residents of the square
- Residential dwelling (requires a structure)

Strict Application of Zoning Regulations Creates Practical Difficulties – Subdivision

- Agricultural and camping are simply not reasonable uses for the Property
- Surface parking is only for residents of the square and there is not a sufficient need in Square 762
 - Split-zoned square that is predominantly commercial
 - 22 commercial properties
 - 17 residential properties, but 8 of those properties have garages
 - Close proximity to public transportation options
 - If Applicant moved away from 205 3rd Street then they could not even use the Property as their own parking
- Property's zoning history – seven BZA applications for parking use, with four most recent for businesses
 - Several of the cases were approved with conditions including paving the driveway and access lanes to the Property

Comparing Past BZA Approvals for Lot Area Relief to Property

| BZA Number | Property Address | Zone | Lot Size | Required Lot Size | % Deviation |
|--------------|-----------------------------|-------------|--------------|-------------------|--------------|
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| 19683 | 260 Lincoln Court SE | RF-3 | 1,210 | 1,800 | -0.33 |
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| 18342 | 2425 Franklin Street NE | R-1-B | 3,574 | 5,000 | -0.29 |

Strict Application of Zoning Regulations Creates Practical Difficulties – Alley Centerline Setback

- Historic preservation
 - Align Project façade with two abutting alley structures
- Size of property
 - Complaint would reduce gross floor area by 68 square feet per floor, or 6% of available square footage
- Difficulty complying with Building Code requirements restricting floorplan, including stairways and hallways

No Substantial Detriment to the public good or the Zone Plan

- Public good
 - Existing structures on alley, including parking garages on neighboring two properties
 - Three-foot buffer between street-facing residences and Property
 - Substantial rear yards on street-facing residences
- Zone plan
 - District-wide policy in favor of alley dwellings
 - Adds dwelling to area that is transit and amenity-rich
 - Diversifies housing stock with single-family home
 - Comprehensive Plan
 - Encourages dwellings in transit and amenity-rich neighborhoods
 - Encourages “infill development on vacant land”

Special Exception Relief Requested

- Subtitle E § 5104 – Rear Yard

- Requires rear yard of 5 feet

- Applicant proposes a structure with no rear yard

- Subtitle U § 601.1(c) – Residential Dwelling on Alley Lot

- The Property meets four of five by-right requirements for an alley dwelling
 - Only exception is Property does not have access to a public street from an improved alley that is 15 feet in width and within 300 feet of a public street
 - The Property is on an alley that is 14 feet in width, but within 95 feet of 3rd Street SE

Special Exception Standard (§ X-901.2)

- Special exception relief is presumed to be appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (1981).

Harmonious with Purpose & Intent of Zoning Regulations and Maps

- RF-3 is primarily intended for homes on small lots
 - Many surrounding properties are single-family rowhomes
- Project meets four of five conditions for by-right alley dwelling under § U-600.1(e)
 - Alley access through two points:
 - 14-foot wide alley that is 95 feet from 3rd Street SE (one foot short)
 - 20-foot wide alley that is 255 from C Street SE (private alley)

No Adversely Effect on Use of Neighboring Properties

- OP Report concurs that there will be no adverse effect on neighboring properties
- Single-family home aligns with residential nature of neighborhood
- No additional noise or traffic
 - Historic parking lot use means that cars and people were travelling to and from Property
- Windows face the alley only
- Project will be buffered from neighboring properties
 - Large rear yards
 - Existing garages

Special Conditions for Residential Use Under § U-601.1(c)

- Alley lot is not wholly or partially within R-1-A, R-1-B or R-2 zone
 - RF-3 zone
- Building may not be constructed or converted for a dwelling unit unless there is a minimum of 450 square feet of land area
 - 1,120 square feet
- 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
 - Property is 95 feet from 3rd Street SE, which will provide adequate public safety and infrastructure
- District agency comments
 - Applicant will contact agencies

Special Conditions for Residential Use Under § U-601.1(c)

- District agency comments
 - DC FEMS stated no objection
 - In prior case for this property - BZA Case 19536 (OP Report – Ex. 39)
 - DDOT stated no objection (Ex. 38)
 - MPD
 - Called but no response
 - Emailed but no response
 - DC Water
 - Emailed but no response
 - DPW
 - Called but no response

Capitol Interest Zone Conditions under § E-5202.1

- Architect of the Capitol has no objection to relief (Ex. No. 51)
- The Project is compatible with the present and proposed development of the neighborhood
 - Residence better aligns with neighborhood aesthetic
 - Alley is already densely developed
 - Many alley structures in Square 762
- 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 not inhibit future development of the U.S. Capitol Grounds
 - Square 762 is substantially developed and unlikely that Capitol Grounds would expand to this square
- The Project is in accordance with the plan promulgated under Title V of the Legislative Branch Appropriation Act, 1976.
 - The Project will comply with the goals and mandates of the Act

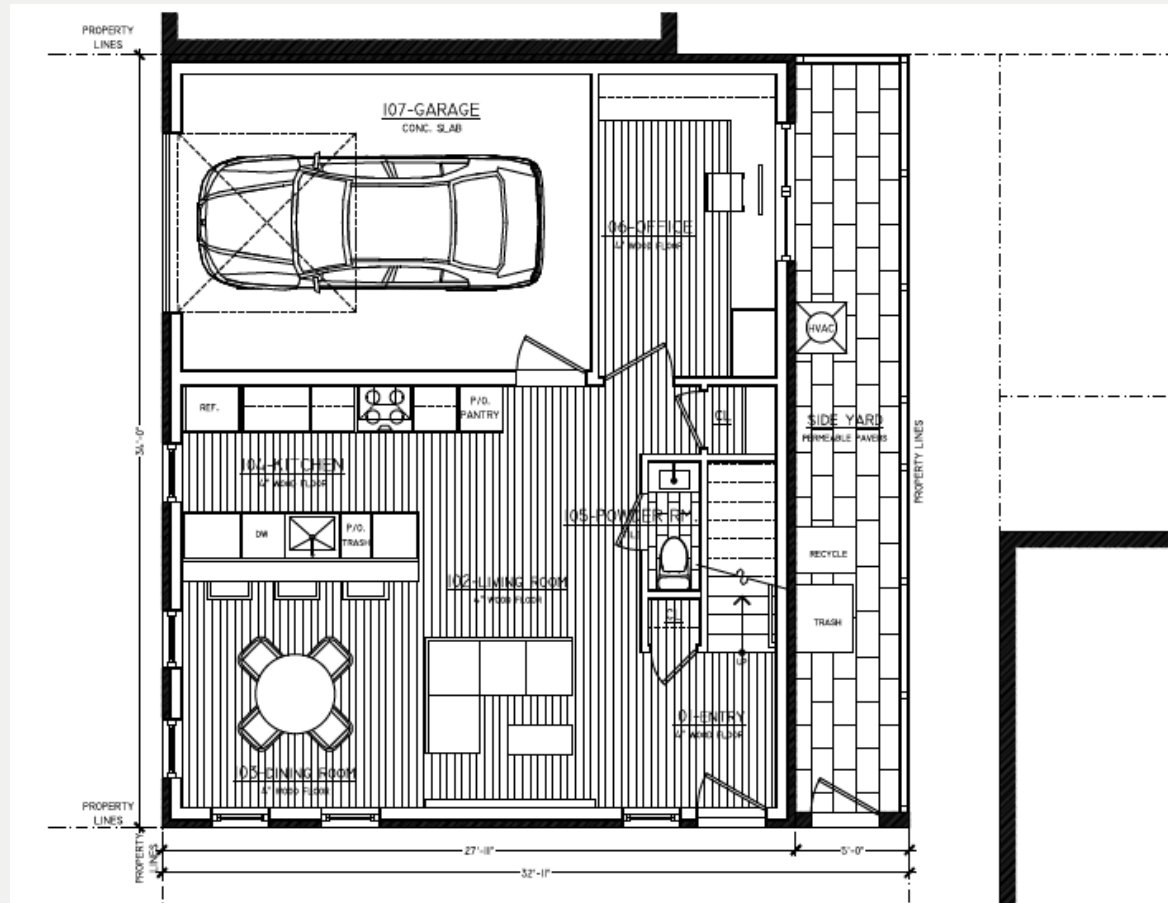
BZA Application #19683

260 Lincoln Court SE
Brian and Carolyn Wise

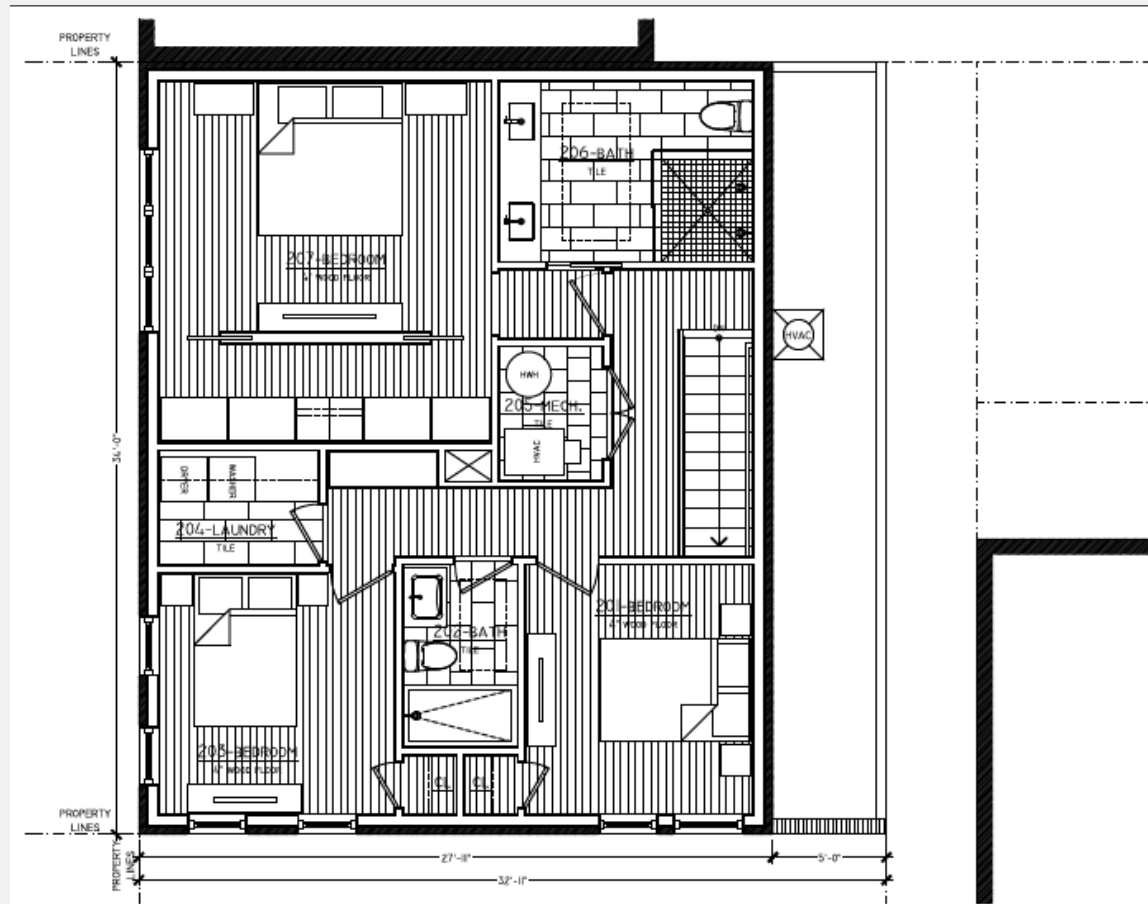
Presented by:
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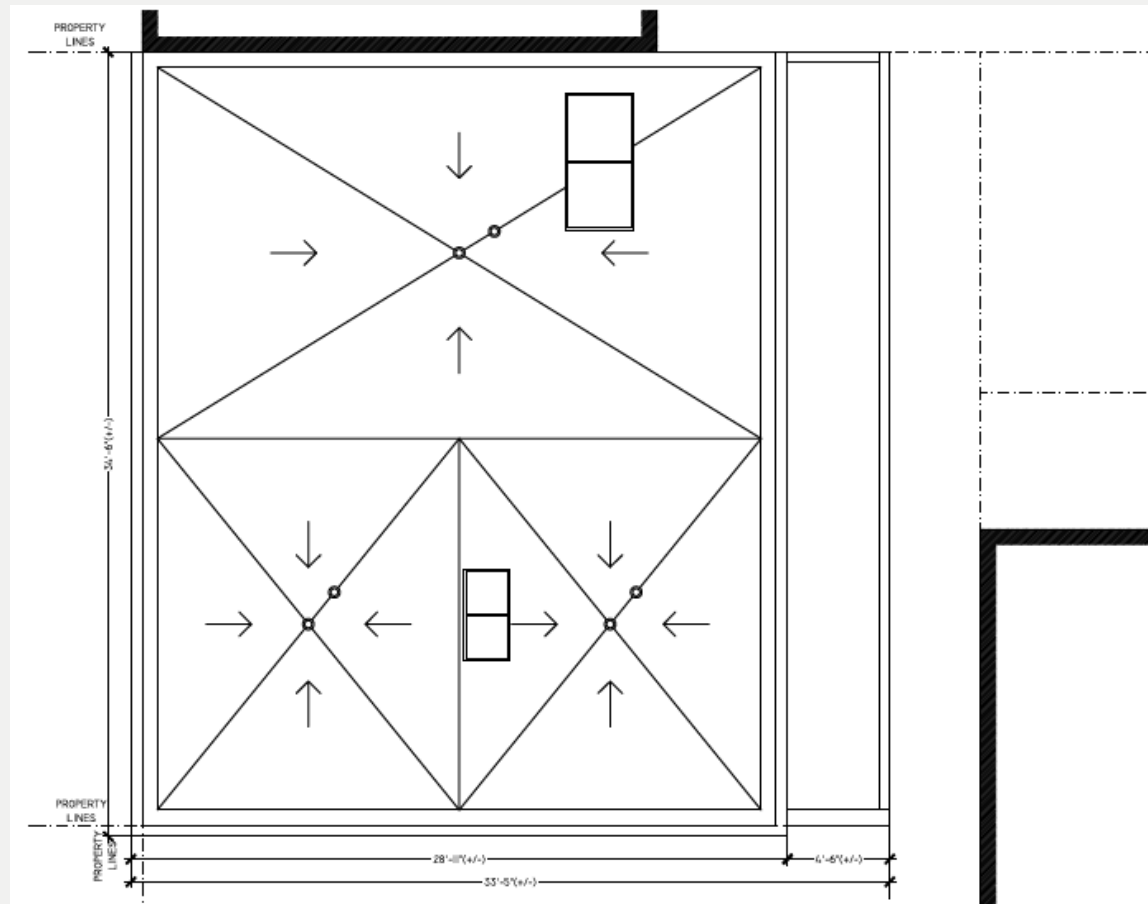
Internal Floor Plan – First Floor



Internal Floor Plan – Second Floor



External Plan – Roof



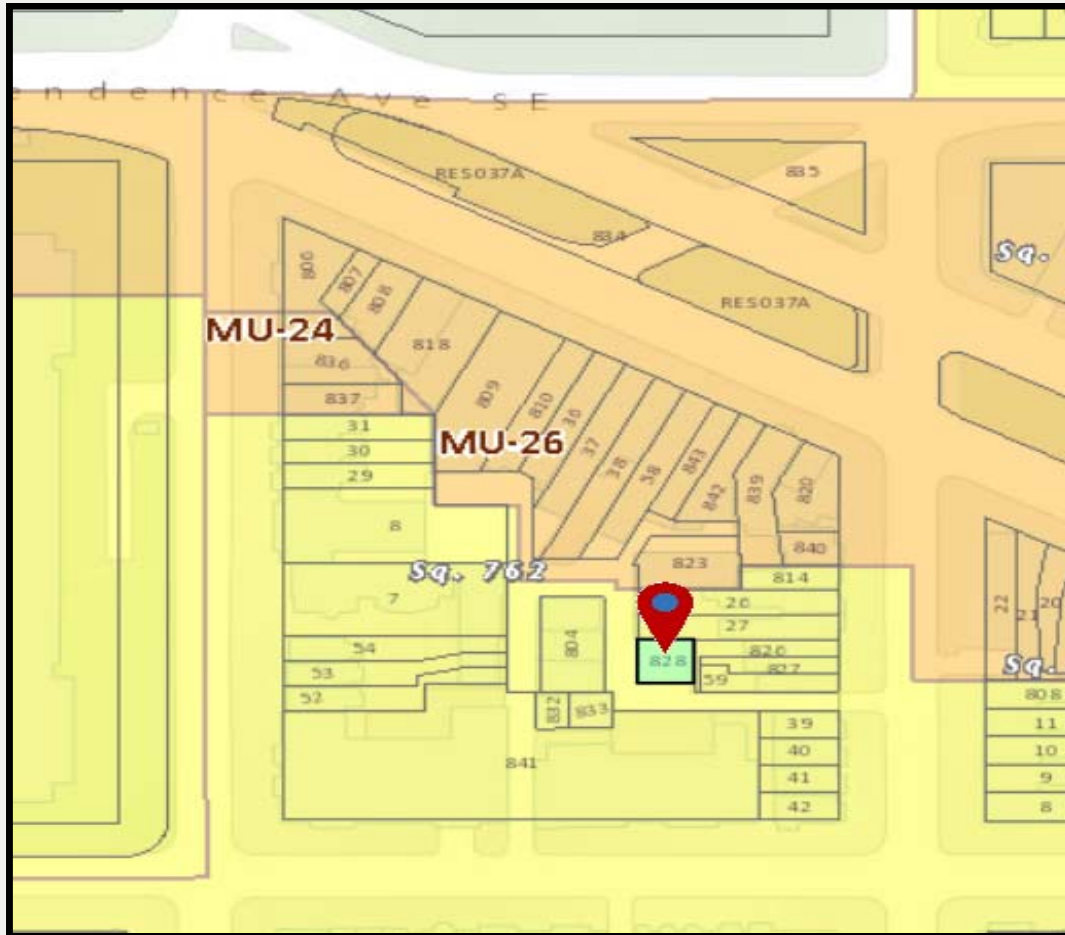
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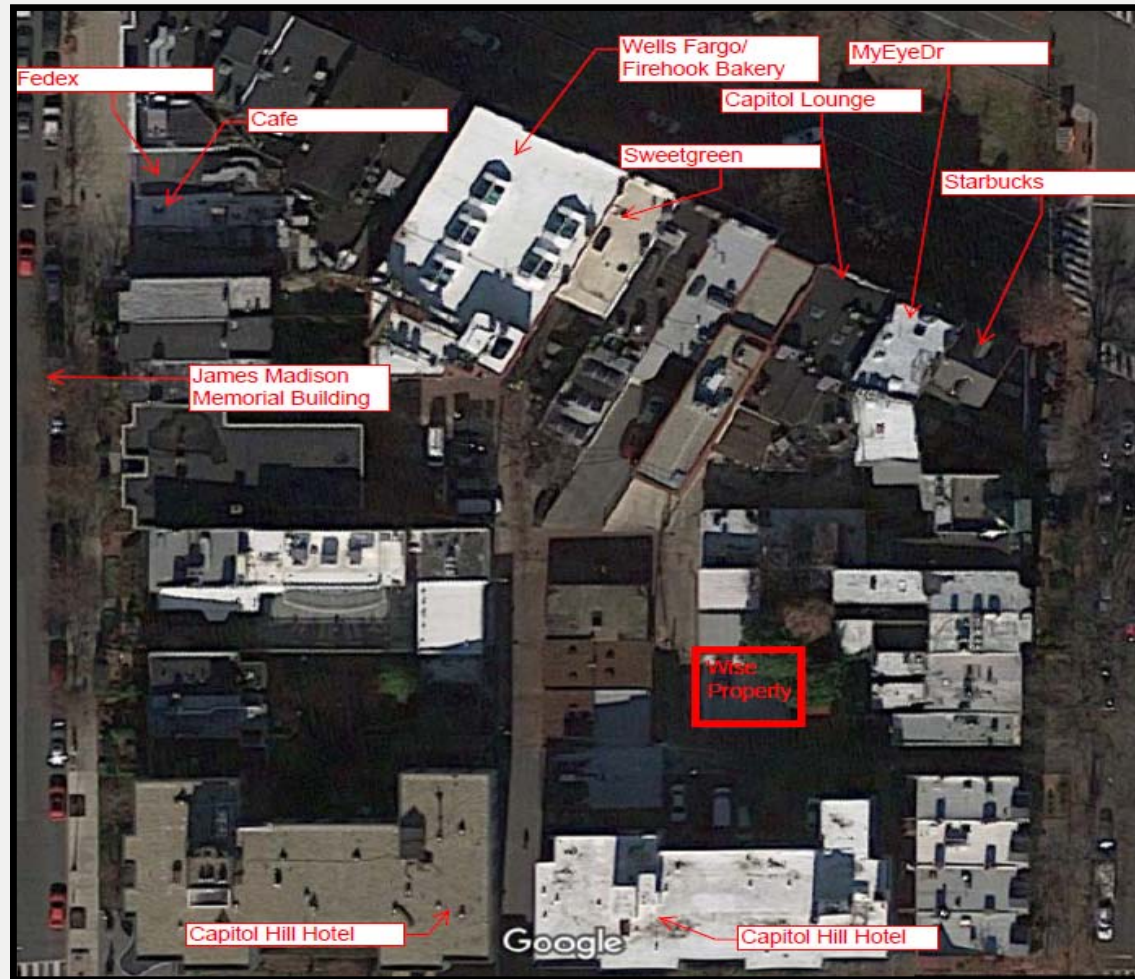
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The Property – 260 Lincoln Court SE



Square 762
Lot 828
RF-3 Zone

The Property – 260 Lincoln Court SE



The Project

- Construct a single-family residence on an unimproved alley lot
- Provide one parking space for residence

The Existing Lot



The Alley



The Alley



- 14-foot-wide alley
- 95-feet from 3rd Street SE
- Only 14-feet-wide for a short distance, then opens up to 20-foot-wide

Community Outreach and Agency Input

- Support from ANC 6B (4-0-4)
- Letter of support from neighbors at 209 3rd Street SE and 203 Rear 3rd Street SE
- Capitol Hill Restoration Society unanimously supports
- District Department of Transportation has no objection
- Office of Planning has no objection to two of the four requested areas of relief:
 - Variance from the Alley Centerline Setback requirement
 - Special Exception for the Rear Yard requirement

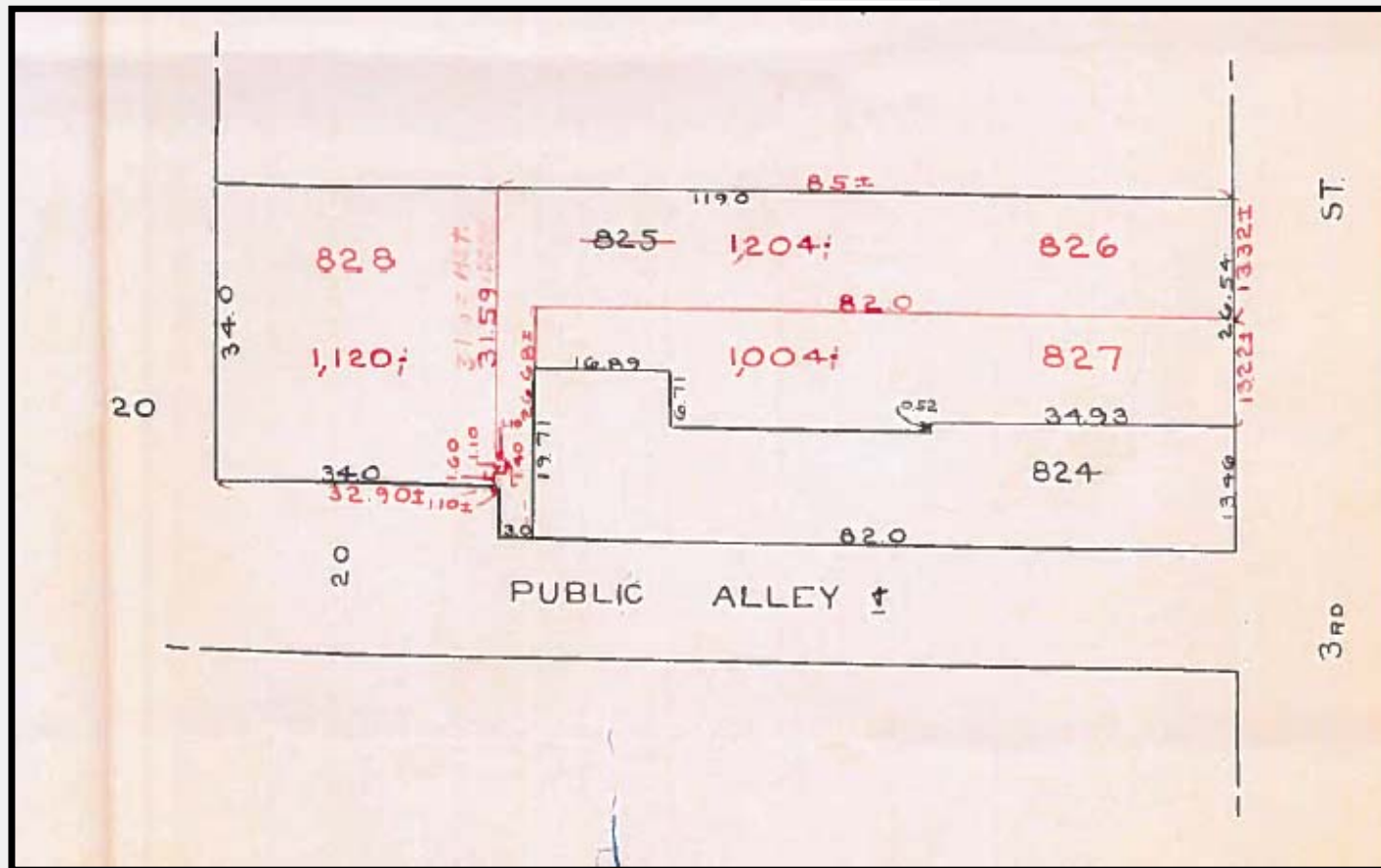
Uniqueness Due to Zoning History

- Do the subdivision requirements of Subtitle C § 303.3(a-b) apply to this Property?
 - The Applicant has requested variance relief from the alley subdivision requirements of Subtitle C § 303.3(a-b) for alley width and lot area, but this relief may not be necessary
- During first application for a two-unit flat, Applicant was not clear whether relief from subdivision requirements was needed
 - BZA Case No. 19536 was filed in May 2017 with no variance relief from subdivision requirements
 - Applicant began alley naming process through Councilmember Allen's office in June 2017
 - Subdivision variance relief was not added to first application until July 2017
 - Zoning Administrator's office did not provide guidance until Fall 2017

The Property is an existing “Alley Lot” since 1905

- Subdivision requirements of Subtitle C § 303.3 only apply to “new alley record lots”
- The Zoning Regulations define “Lot, Alley” as:
 - 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). (Subtitle B § 100.1).
- Discrepancy between “historic” alley tax lots created prior to November 1, 1957 and non-historic alley tax lots was clarified by the Office of Planning Report in July 2017 after Applicant had already hired an architect, embarked on first zoning application and alley naming process

Subdivision Plat – February 23, 1905



The Property is an existing “Alley Lot” since 1905

- The Property is an “historic alley tax lot”
 - Created by subdivision on February 23, 1905
- Zoning Regulations and DCRA administrative process place no burden of street-facing alley lots
- Area variance for subdivision (not use variance)
- BZA Case No. 18234
 - The Board approved lot area and lot width relief for a single family dwelling on an alley tax lot.

Past BZA Approvals – Lot Area Relief

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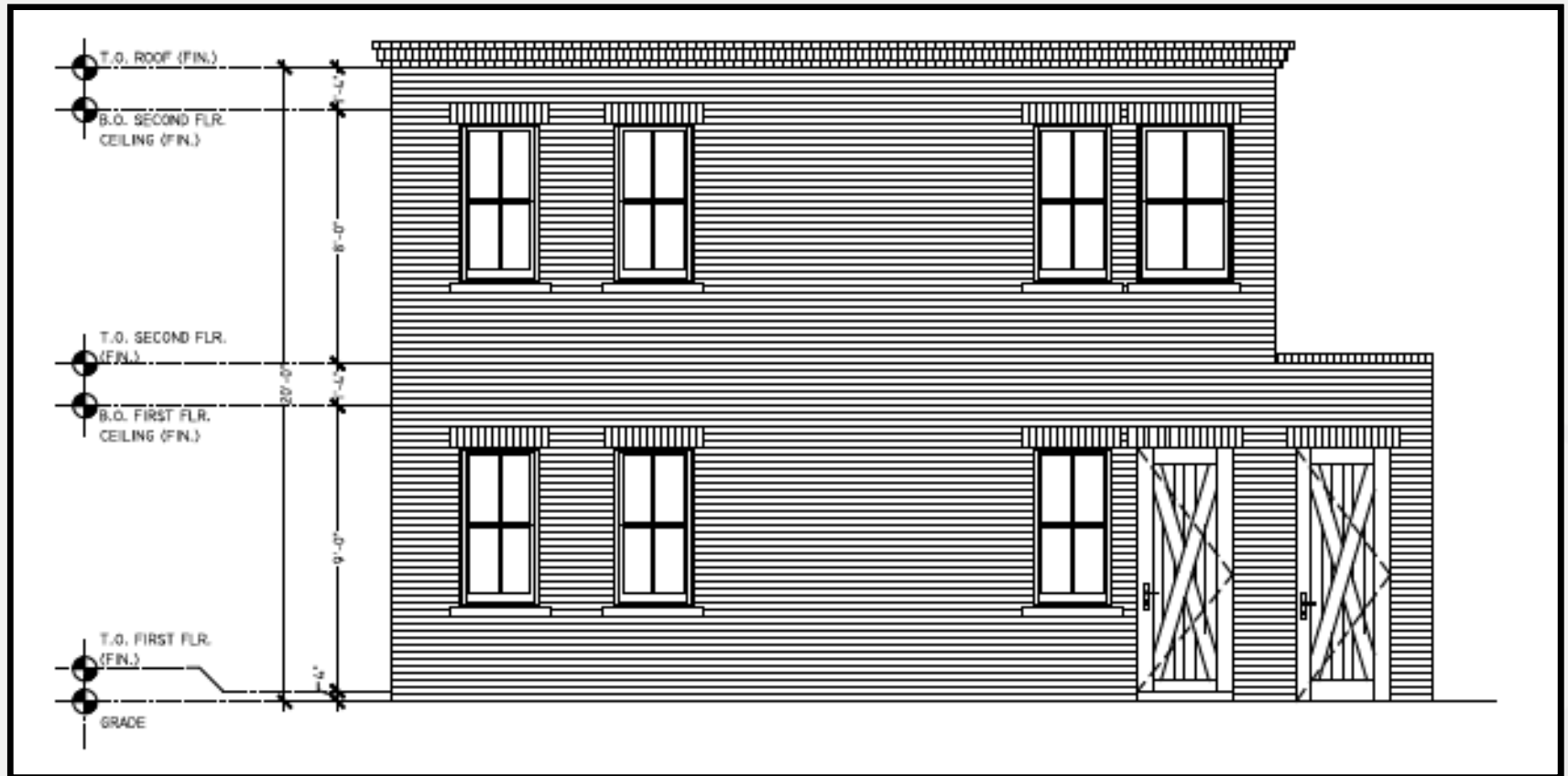
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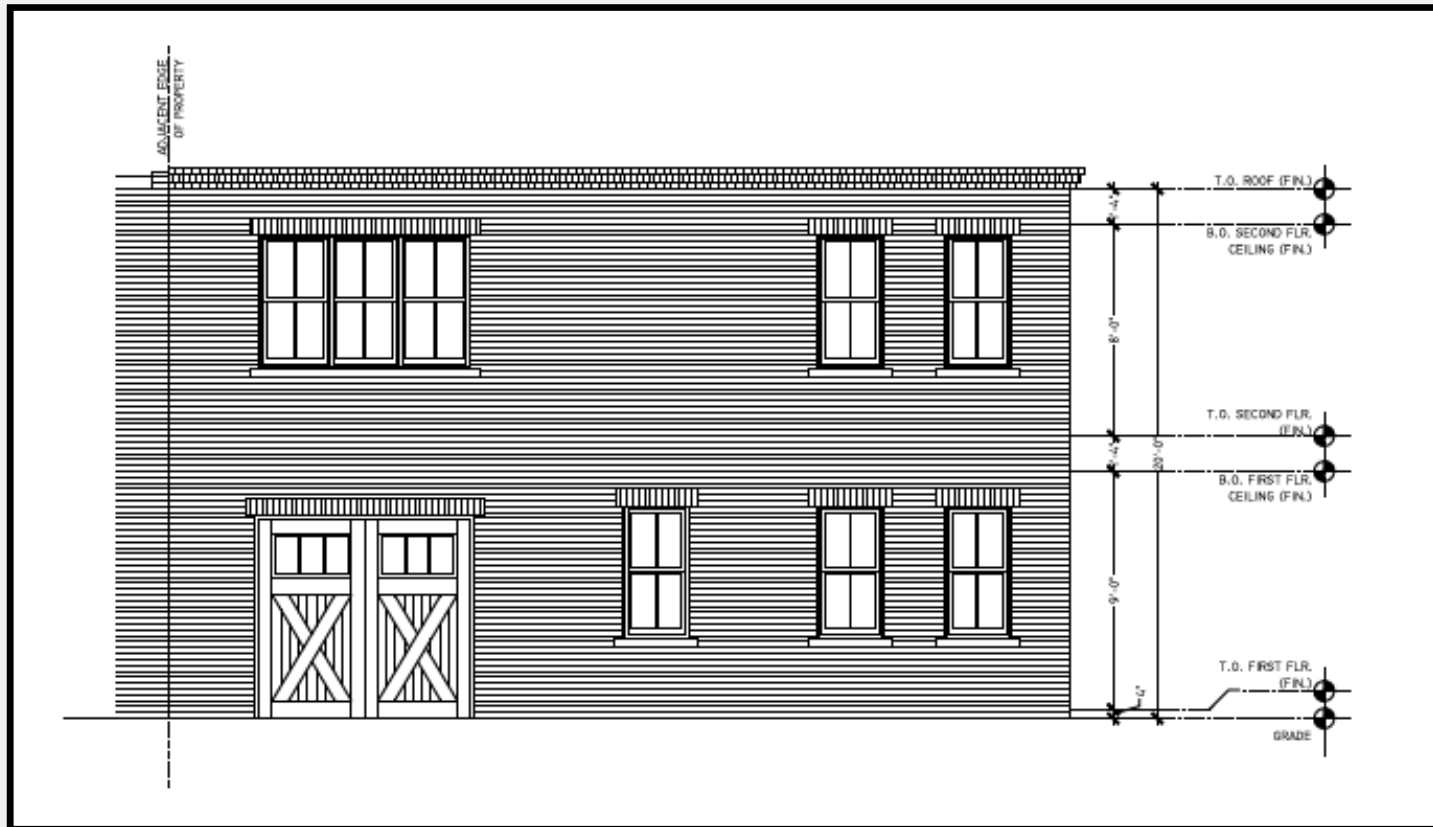
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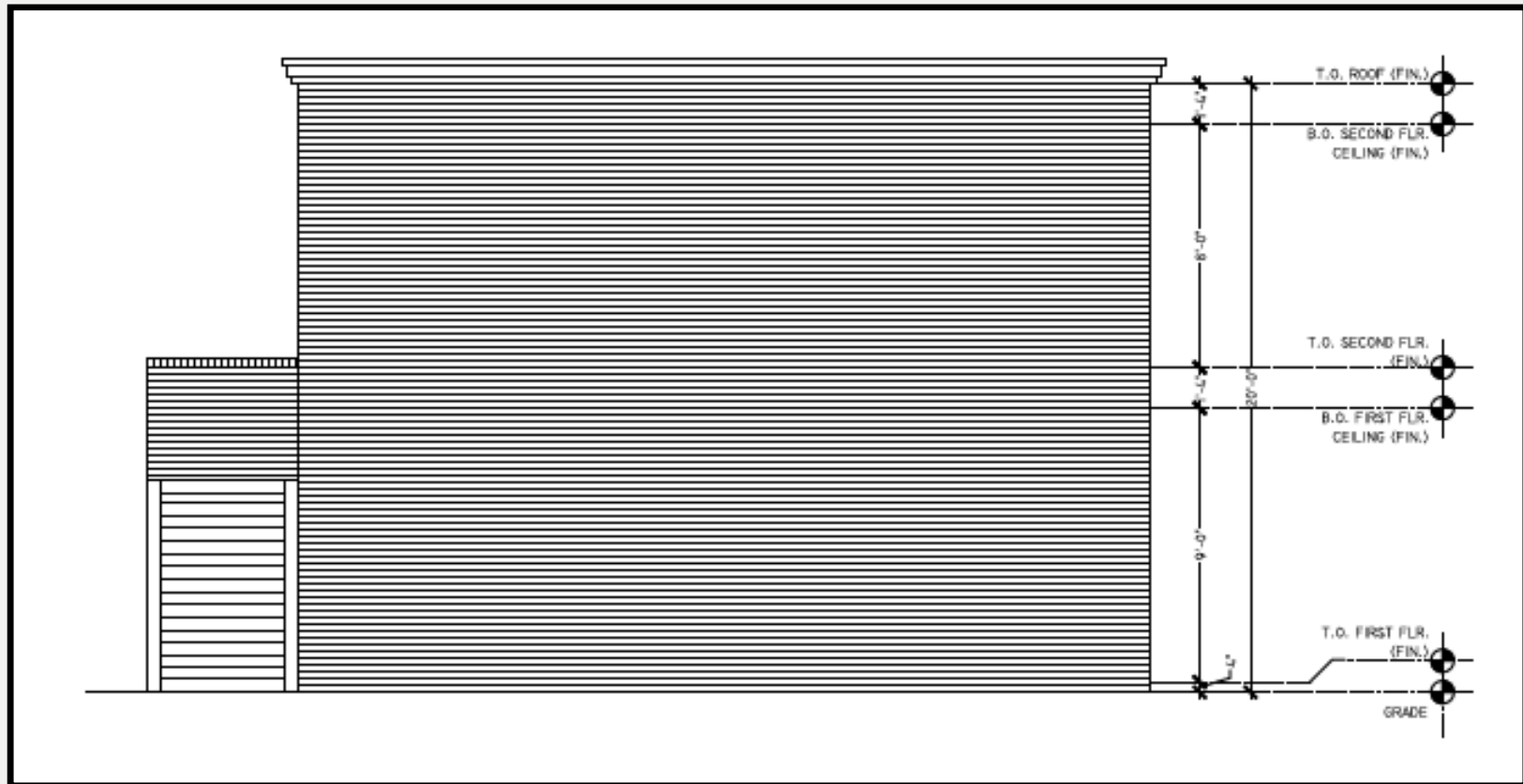
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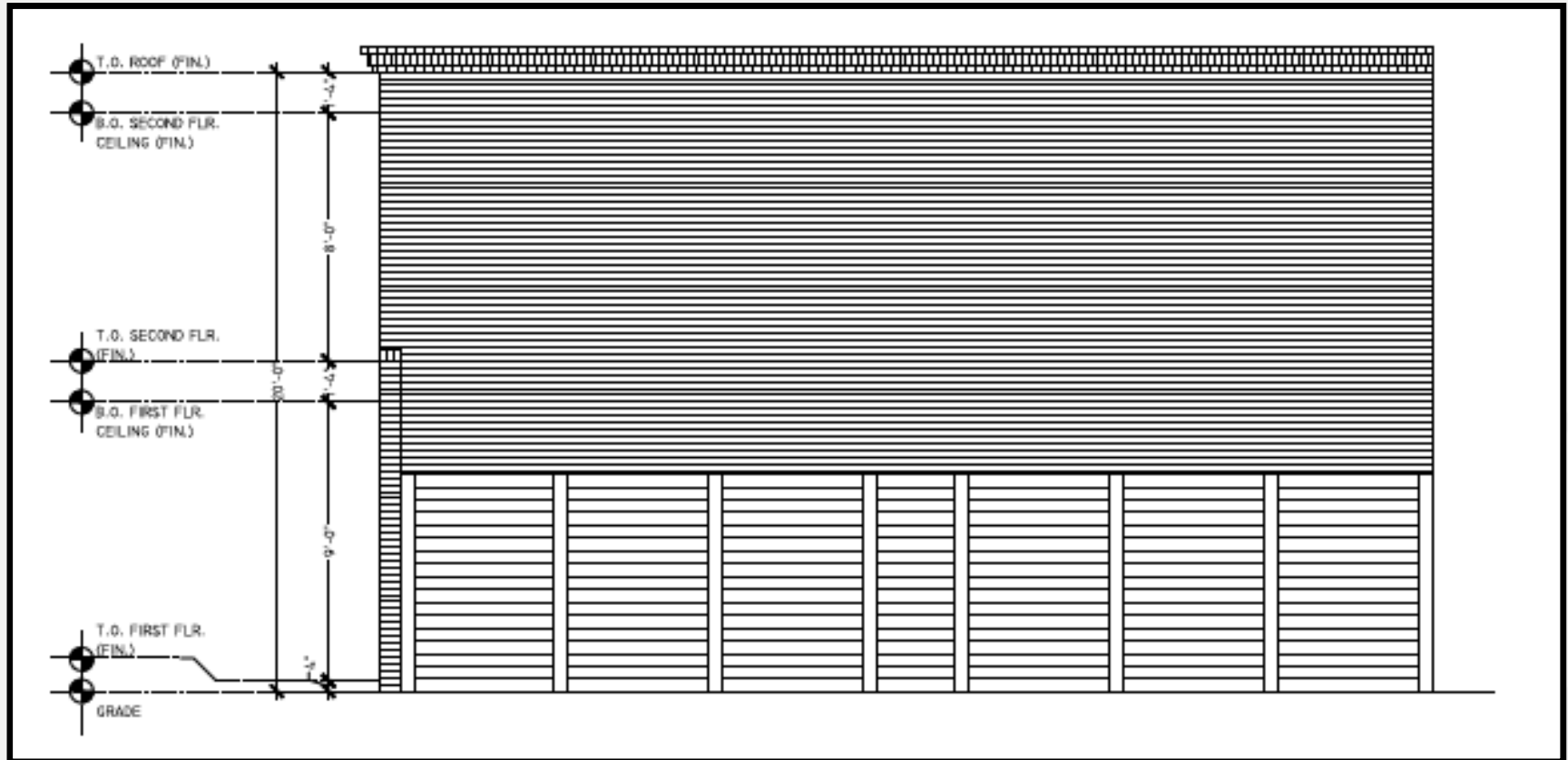
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Lot Area - Subtitle C § 303.3(b)/Subtitle E § 201.1

- Requires minimum lot area of 1,800 square feet
 - The Property is 1,120 square feet

Alley Centerline Setback - Subtitle E § 5106

- Requires setback of 12 feet from centerline of alley
 - The proposed design is setback 10 feet from the centerline of the alley

The Property Faces Exceptional Conditions

- Zoning history/historic alley tax lot
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Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

1. Applicant cannot meet the requirements of Subtitle C § 303.3

❑ 24-foot-alley (Subtitle C § 303.3(a))

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- Camping
- Surface parking, but only for residents of the square
- Residential dwelling (requires a structure)

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- Public good
 - Existing structures on alley, including parking garages on neighboring two properties
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 - Encourages dwellings in transit and amenity-rich neighborhoods
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- Requires rear yard of 5 feet

- Applicant proposes a structure with no rear yard

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 - Many surrounding properties are single-family rowhomes
- Project meets four of five conditions for by-right alley dwelling under § U-600.1(e)
 - Alley access through two points:
 - 14-foot wide alley that is 95 feet from 3rd Street SE (one foot short)
 - 20-foot wide alley that is 255 from C Street SE (private alley)

No Adversely Effect on Use of Neighboring Properties

- OP Report concurs that there will be no adverse effect on neighboring properties
- Single-family home aligns with residential nature of neighborhood
- No additional noise or traffic
 - Historic parking lot use means that cars and people were travelling to and from Property
- Windows face the alley only
- Project will be buffered from neighboring properties
 - Large rear yards
 - Existing garages

Special Conditions for Residential Use Under § U-601.1(c)

- Alley lot is not wholly or partially within R-1-A, R-1-B or R-2 zone
 - RF-3 zone
- Building may not be constructed or converted for a dwelling unit unless there is a minimum of 450 square feet of land area
 - 1,120 square feet
- 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
 - Property is 95 feet from 3rd Street SE, which will provide adequate public safety and infrastructure
- District agency comments
 - Applicant will contact agencies

Special Conditions for Residential Use Under § U-601.1(c)

- District agency comments
 - DC FEMS stated no objection
 - In prior case for this property - BZA Case 19536 (OP Report – Ex. 39)
 - DDOT stated no objection (Ex. 38)
 - MPD
 - Called but no response
 - Emailed but no response
 - DC Water
 - Emailed but no response
 - DPW
 - Called but no response

Capitol Interest Zone Conditions under § E-5202.1

- Architect of the Capitol has no objection to relief (Ex. No. 51)
- The Project is compatible with the present and proposed development of the neighborhood
 - Residence better aligns with neighborhood aesthetic
 - Alley is already densely developed
 - Many alley structures in Square 762
- 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 not inhibit future development of the U.S. Capitol Grounds
 - Square 762 is substantially developed and unlikely that Capitol Grounds would expand to this square
- The Project is in accordance with the plan promulgated under Title V of the Legislative Branch Appropriation Act, 1976.
 - The Project will comply with the goals and mandates of the Act

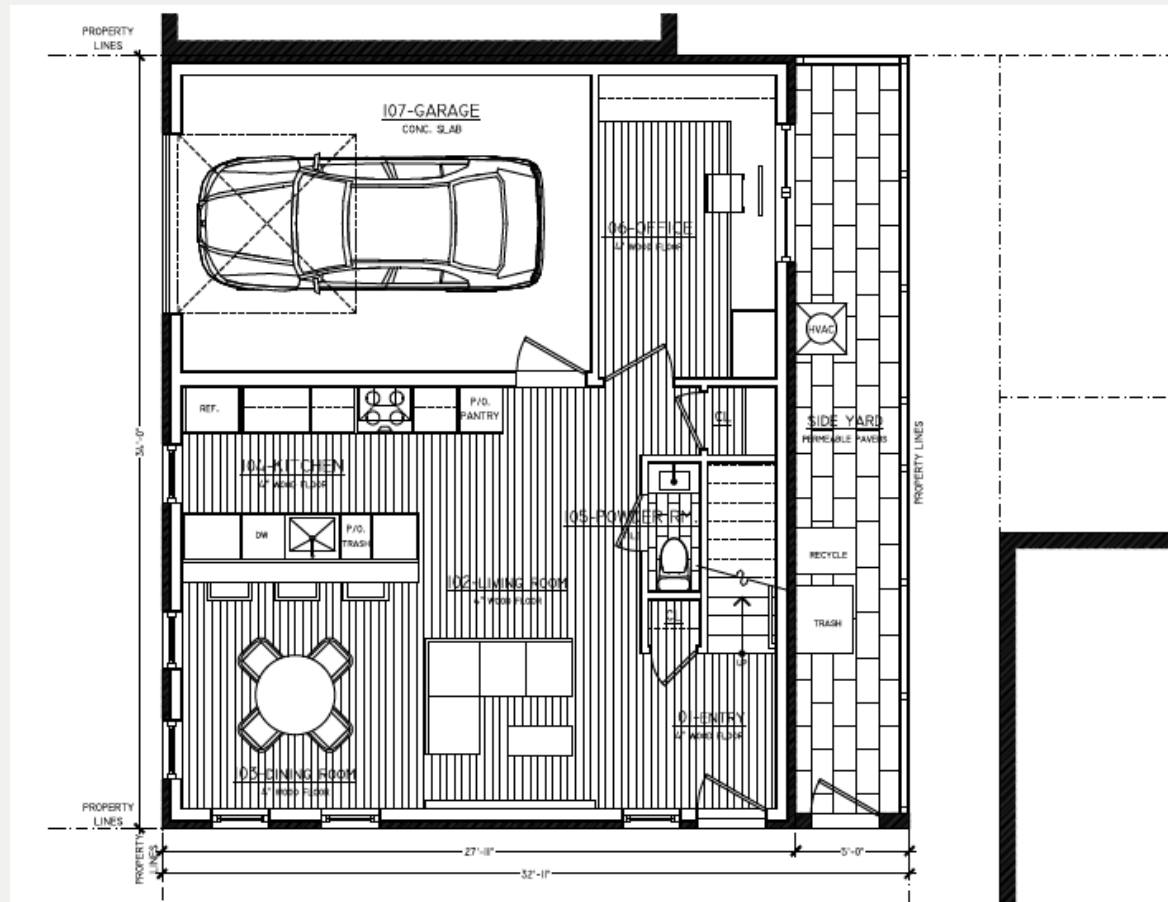
BZA Application #19683

260 Lincoln Court SE
Brian and Carolyn Wise

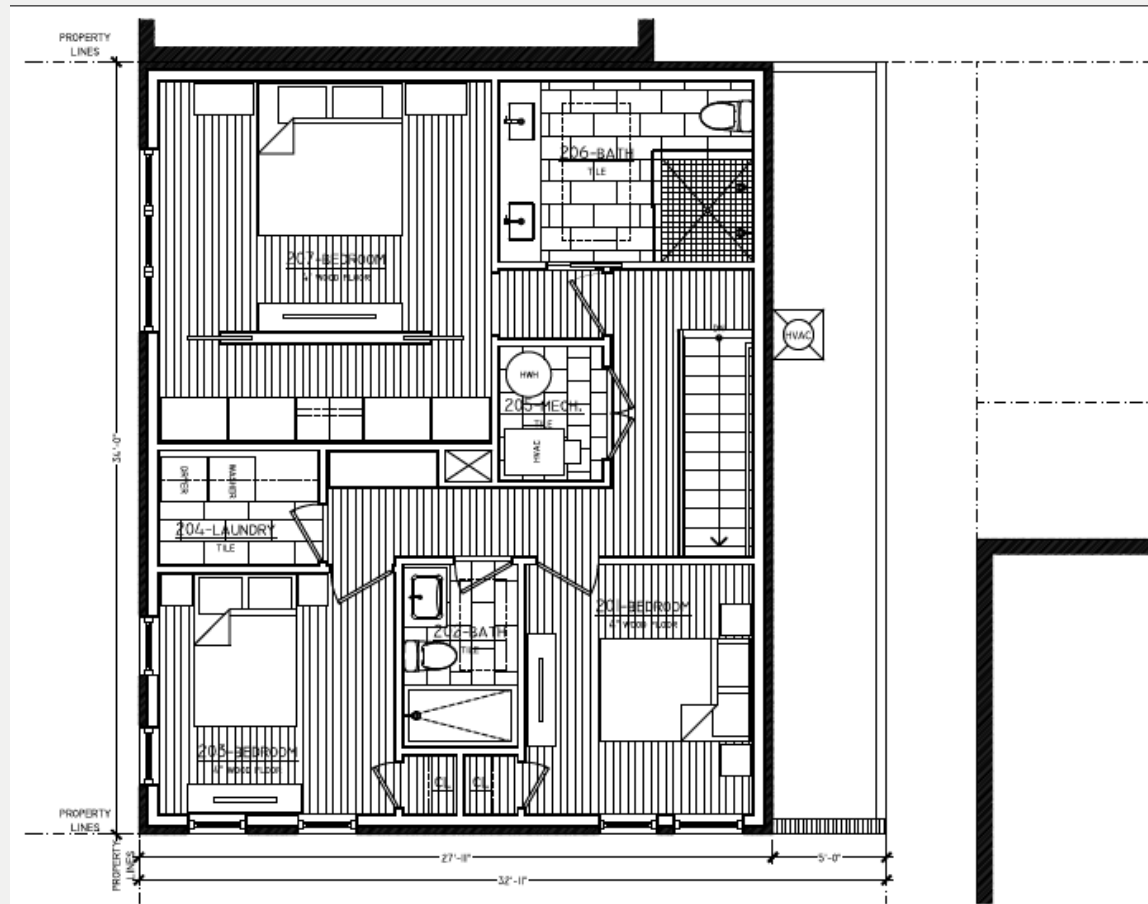
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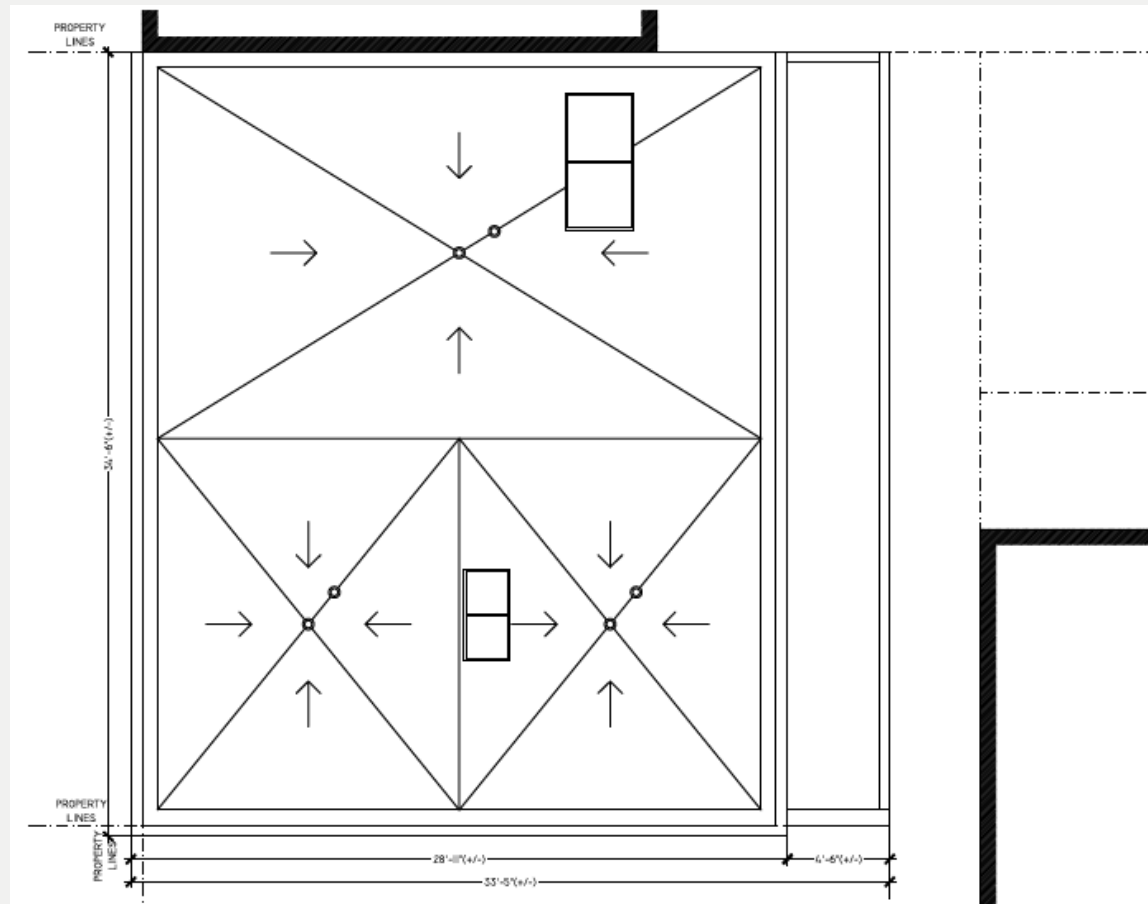
Internal Floor Plan – First Floor



Internal Floor Plan – Second Floor



External Plan – Roof

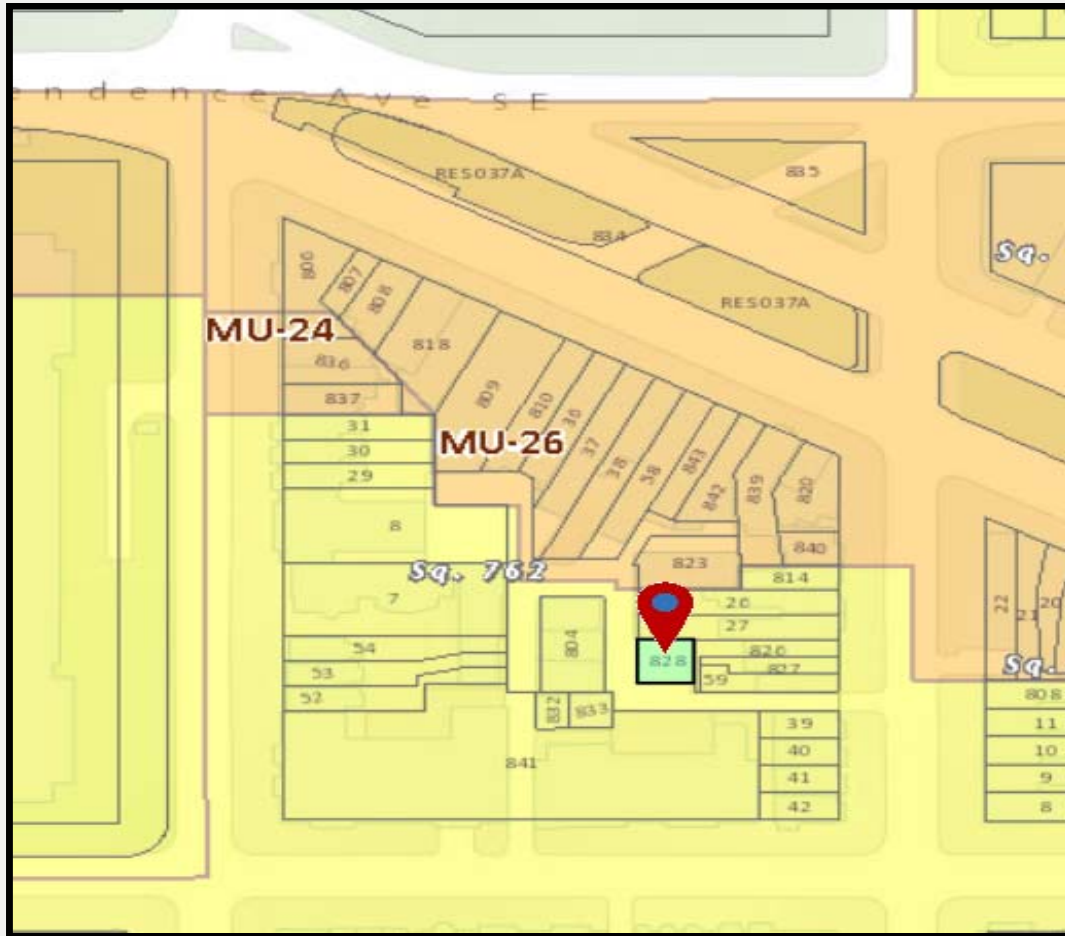


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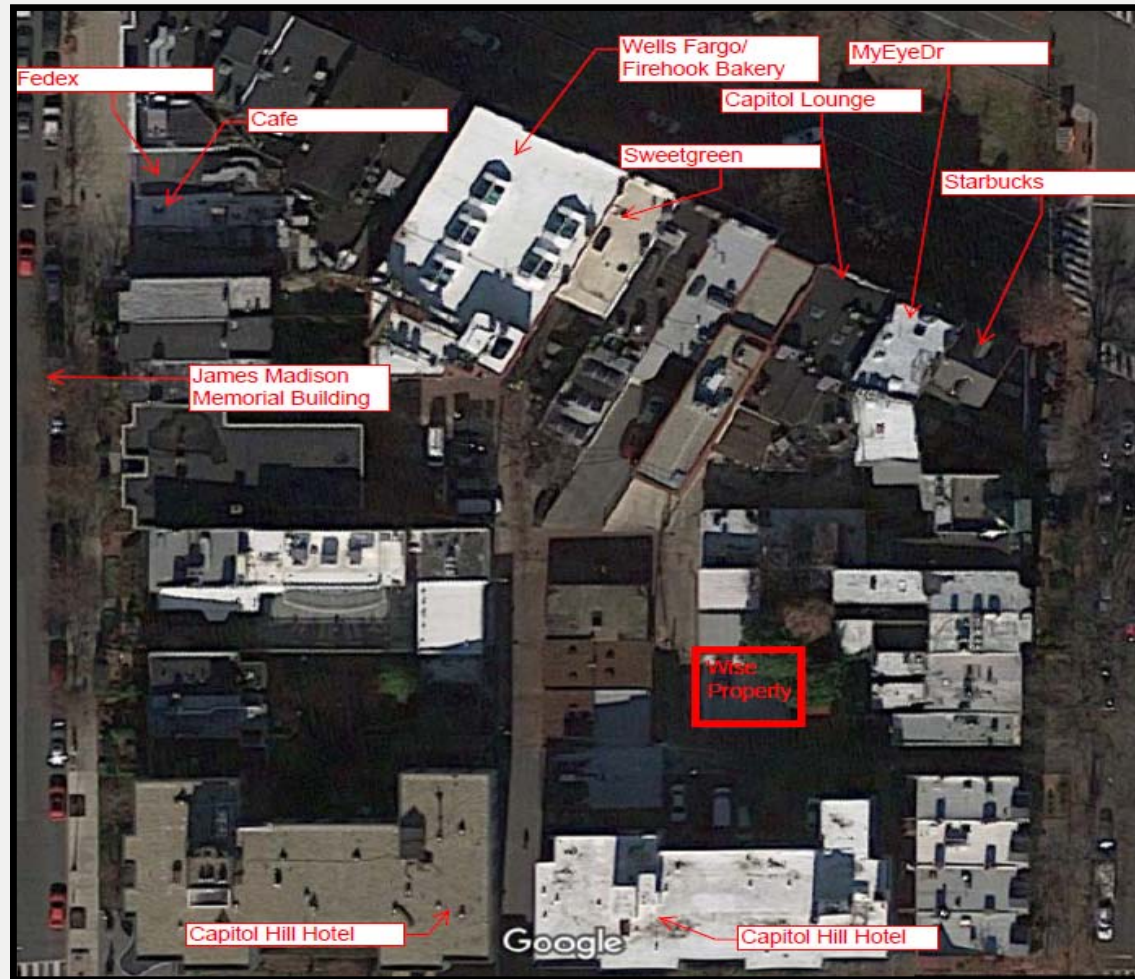


The Property – 260 Lincoln Court SE



Square 762
Lot 828
RF-3 Zone

The Property – 260 Lincoln Court SE



The Project

- Construct a single-family residence on an unimproved alley lot
- Provide one parking space for residence

The Existing Lot



The Alley



The Alley



- 14-foot-wide alley
- 95-feet from 3rd Street SE
- Only 14-feet-wide for a short distance, then opens up to 20-foot-wide

Community Outreach and Agency Input

- Support from ANC 6B (4-0-4)
- Letter of support from neighbors at 209 3rd Street SE and 203 Rear 3rd Street SE
- Capitol Hill Restoration Society unanimously supports
- District Department of Transportation has no objection
- Office of Planning has no objection to two of the four requested areas of relief:
 - Variance from the Alley Centerline Setback requirement
 - Special Exception for the Rear Yard requirement

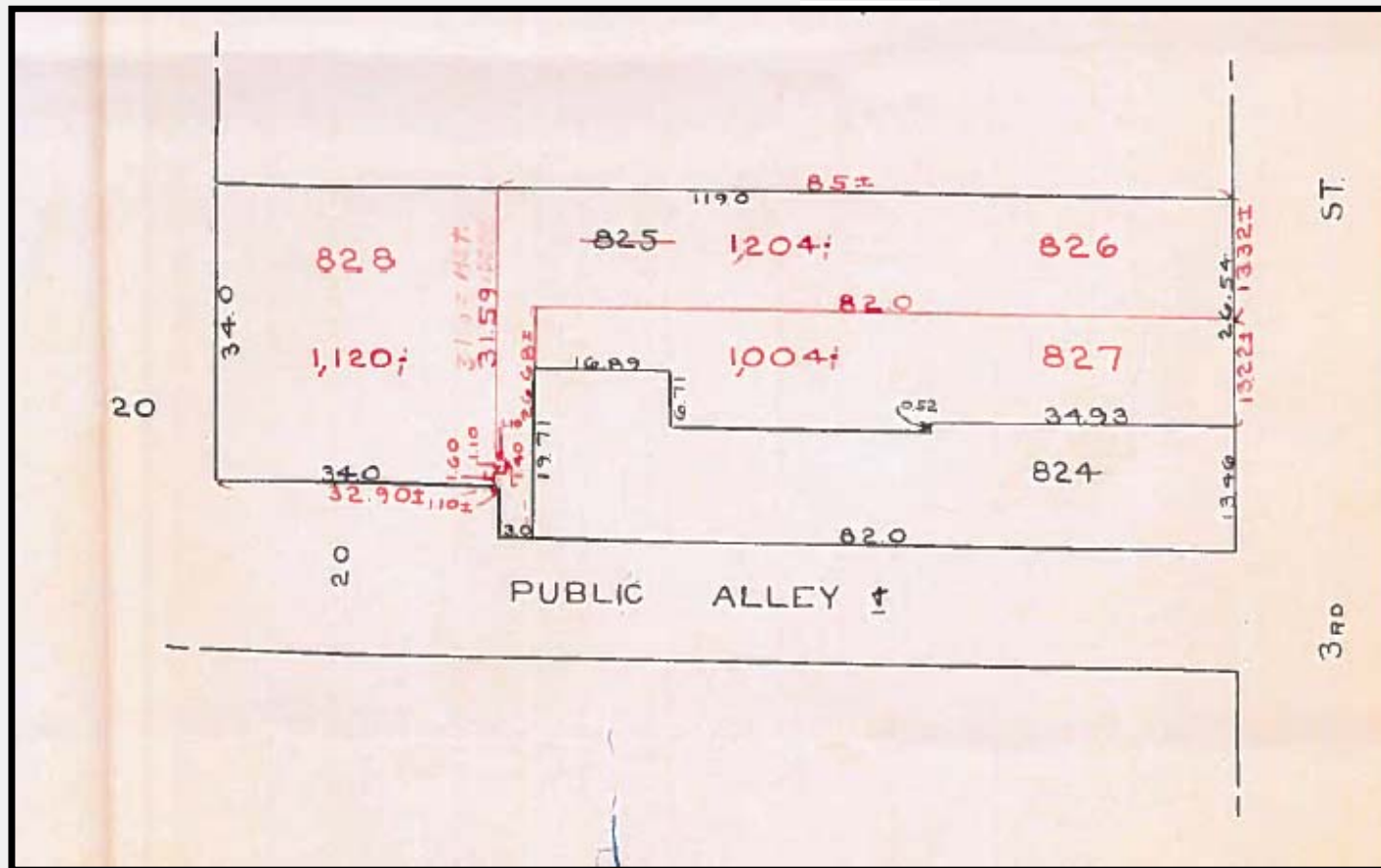
Uniqueness Due to Zoning History

- Do the subdivision requirements of Subtitle C § 303.3(a-b) apply to this Property?
 - The Applicant has requested variance relief from the alley subdivision requirements of Subtitle C § 303.3(a-b) for alley width and lot area, but this relief may not be necessary
- During first application for a two-unit flat, Applicant was not clear whether relief from subdivision requirements was needed
 - BZA Case No. 19536 was filed in May 2017 with no variance relief from subdivision requirements
 - Applicant began alley naming process through Councilmember Allen's office in June 2017
 - Subdivision variance relief was not added to first application until July 2017
 - Zoning Administrator's office did not provide guidance until Fall 2017

The Property is an existing “Alley Lot” since 1905

- Subdivision requirements of Subtitle C § 303.3 only apply to “new alley record lots”
- The Zoning Regulations define “Lot, Alley” as:
 - 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). (Subtitle B § 100.1).
- Discrepancy between “historic” alley tax lots created prior to November 1, 1957 and non-historic alley tax lots was clarified by the Office of Planning Report in July 2017 after Applicant had already hired an architect, embarked on first zoning application and alley naming process

Subdivision Plat – February 23, 1905



The Property is an existing “Alley Lot” since 1905

- The Property is an “historic alley tax lot”
 - Created by subdivision on February 23, 1905
- Zoning Regulations and DCRA administrative process place no burden of street-facing alley lots
- Area variance for subdivision (not use variance)
- BZA Case No. 18234
 - The Board approved lot area and lot width relief for a single family dwelling on an alley tax lot.

Past BZA Approvals – Lot Area Relief

| <u>BZA Number</u> | <u>Property Address</u> | <u>Zone</u> | <u>Lot Size</u> | <u>Required Lot Size</u> | <u>% Deviation</u> |
|-------------------|-----------------------------|-------------|-----------------|--------------------------|--------------------|
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Past BZA Approvals – Lot Area Relief for Tax Lots

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Consistency with Prior Decisions

- Consistency in the Board’s interpretation of the Zoning Regulations is important to zoning applicants and the public
- *Stare Decisis*
 - “Promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”
 - *Randall v. Sorrell*, 548 U.S. 230, 243 (2006)
 - Administrative agencies, like courts, must favor a policy of *stare decisis* unless unusual circumstances intervene
 - *Reichley v. D.C. Dep’t of Empl. Servs.*, 531 A.2d 244, 247 (1987)
- Failure to follow precedent can be considered arbitrary and capricious
 - “Unexplained inconsistency in an agency’s interpretation of its governing statute can be ‘a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.’”
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Proposed Design in Character of Surrounding Alley Dwellings



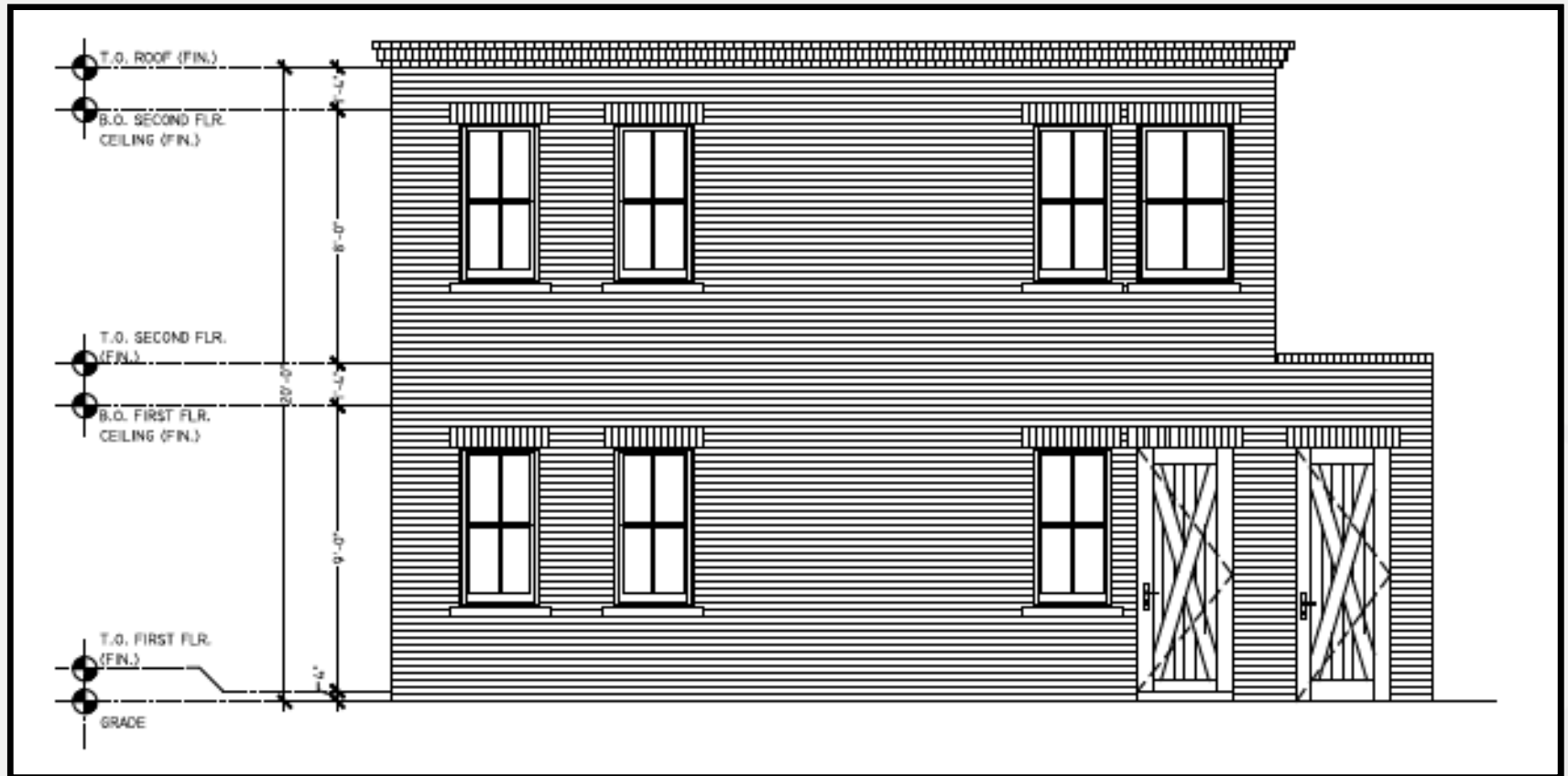
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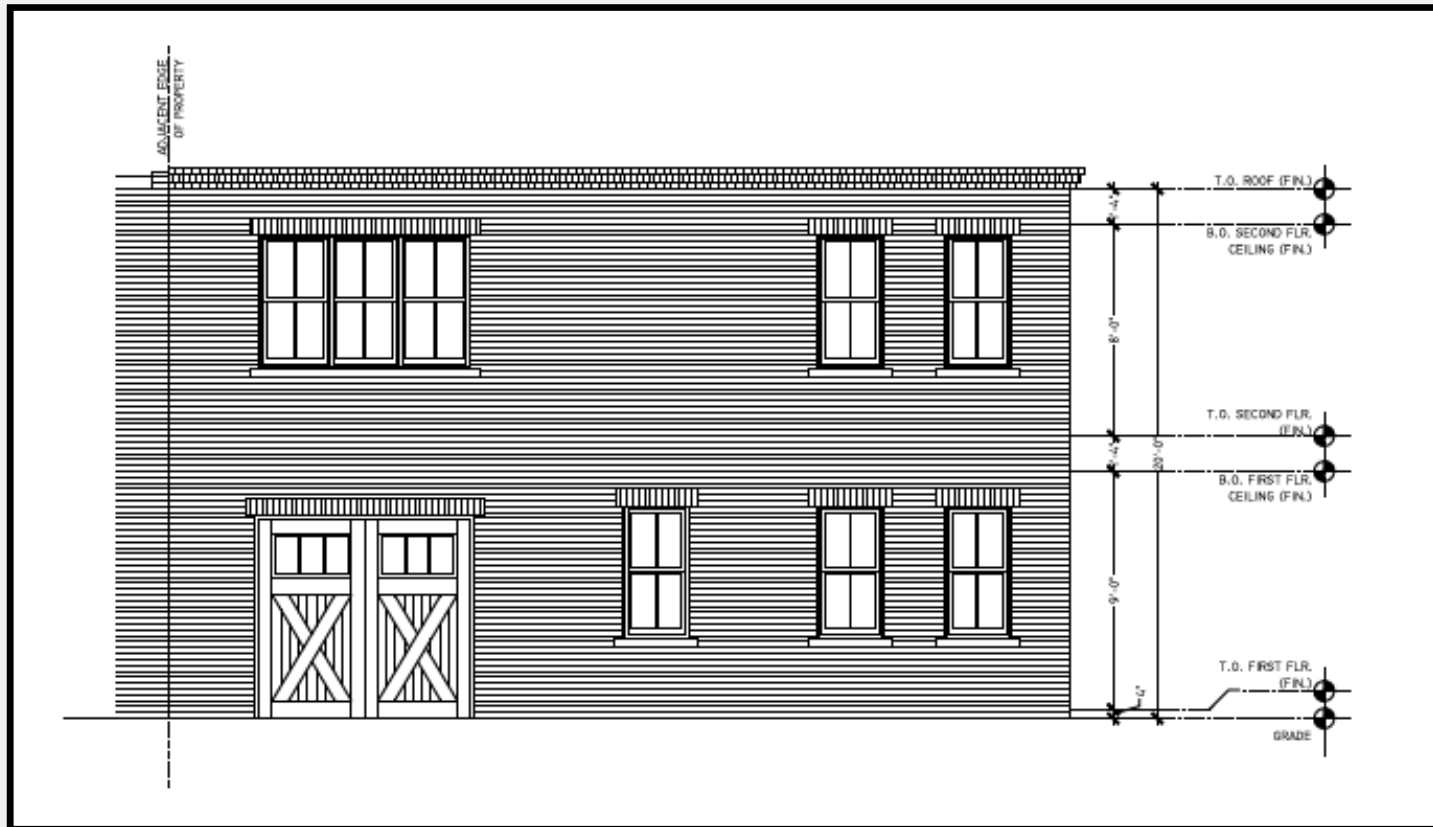
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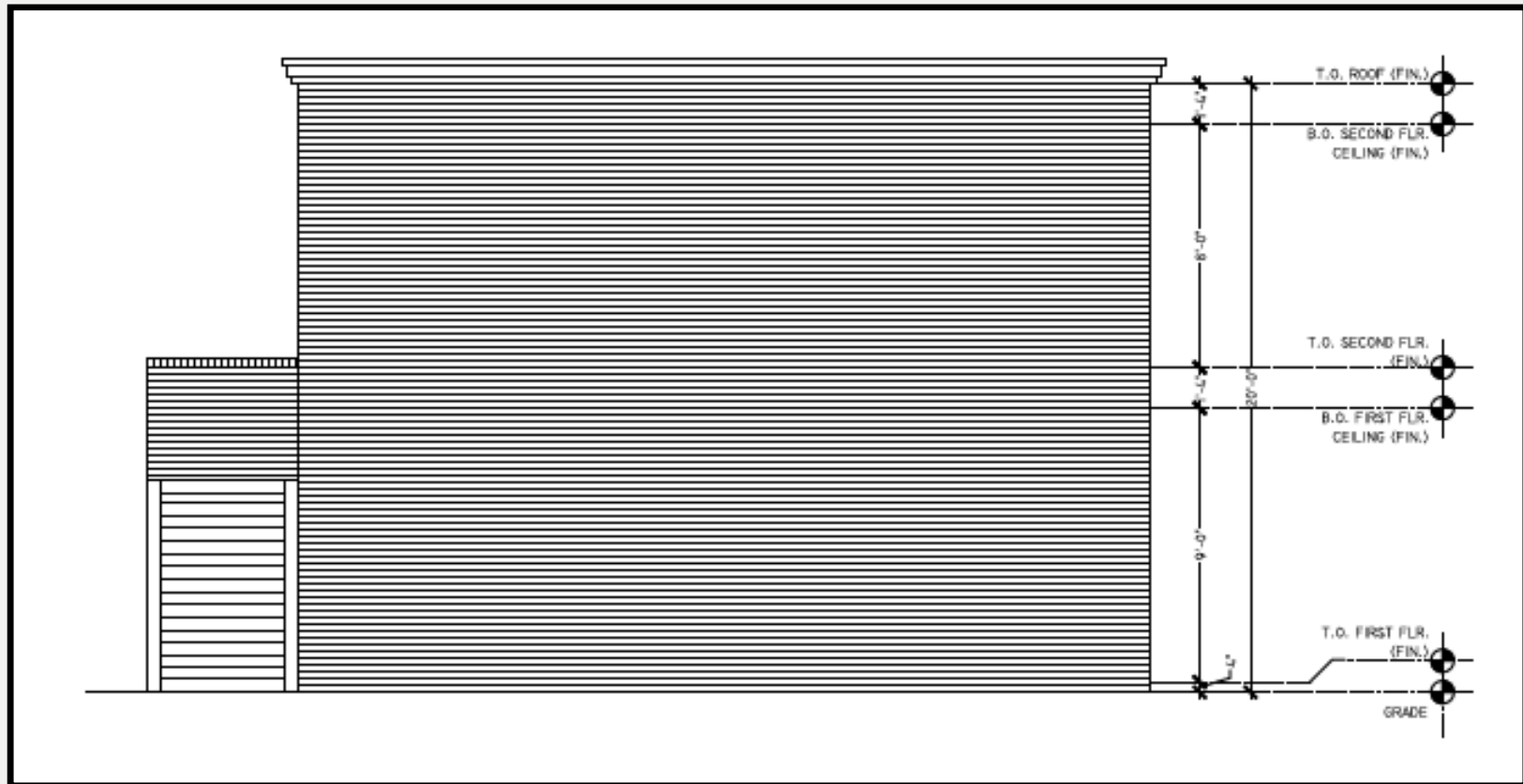
Architectural Plans – Alley-facing South Facade



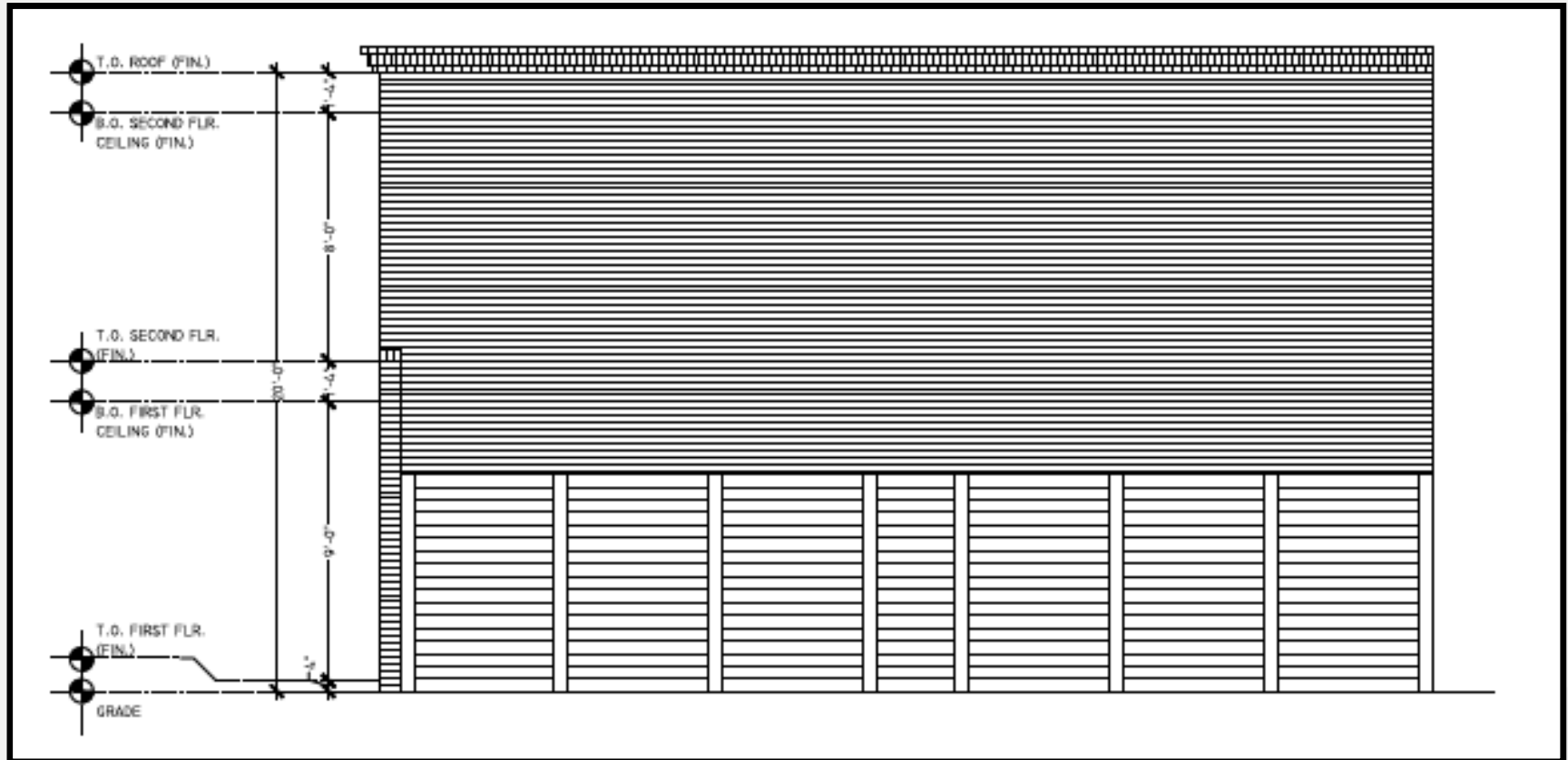
Architectural Plans – Alley-facing West Facade



Architectural Plans – North Exterior



Architectural Plans – East Exterior



Variance Relief Requested

Alley Width - Subtitle C § 303.3(a)

- Requires frontage along public alley with minimum width of 24 feet
 - The Property fronts on an alley that is 20 feet wide

Lot Area - Subtitle C § 303.3(b)/Subtitle E § 201.1

- Requires minimum lot area of 1,800 square feet
 - The Property is 1,120 square feet

Alley Centerline Setback - Subtitle E § 5106

- Requires setback of 12 feet from centerline of alley
 - The proposed design is setback 10 feet from the centerline of the alley

The Property Faces Exceptional Conditions

- Zoning history/historic alley tax lot
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 - Only unimproved lot in Square 762
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 - Large rear yards
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- Alley lot is not wholly or partially within R-1-A, R-1-B or R-2 zone
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 - 1,120 square feet
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- Architect of the Capitol has no objection to relief (Ex. No. 51)
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 - Residence better aligns with neighborhood aesthetic
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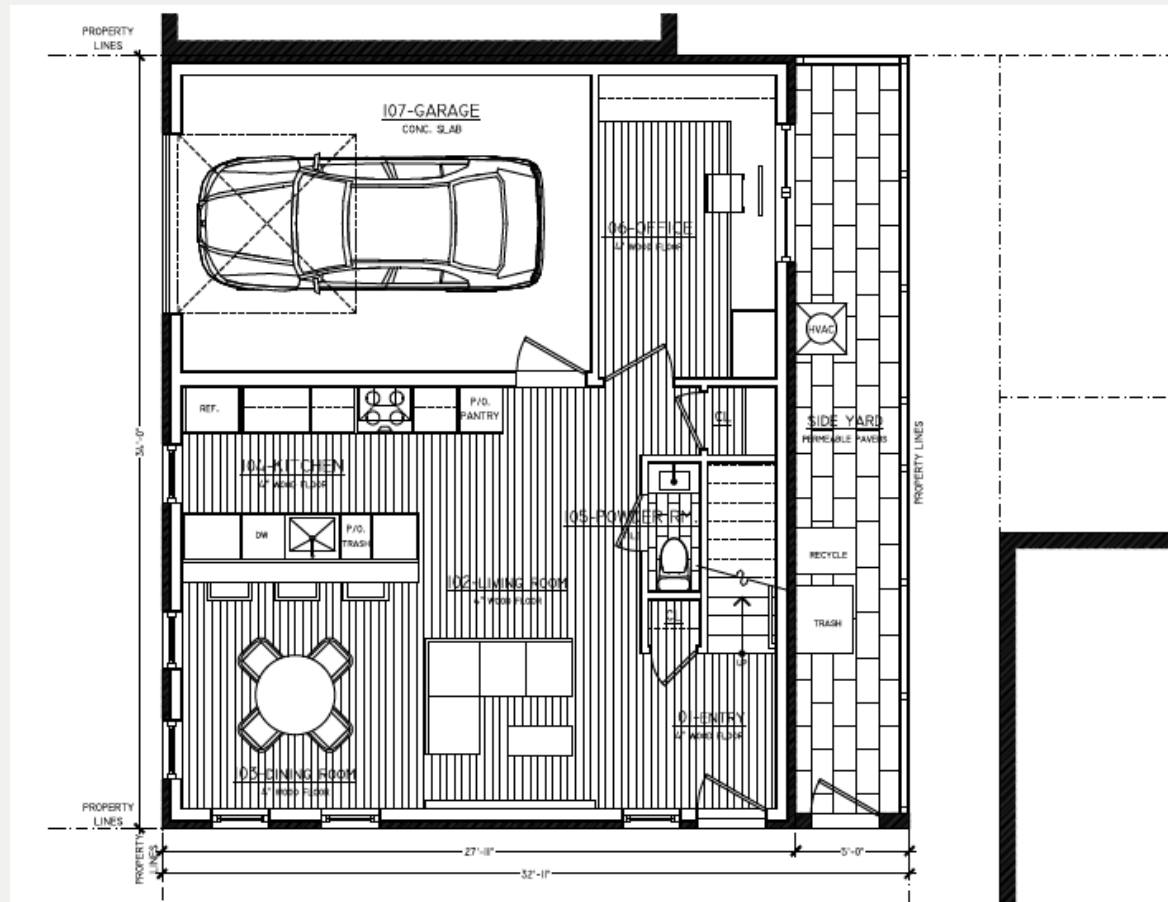
BZA Application #19683

260 Lincoln Court SE
Brian and Carolyn Wise

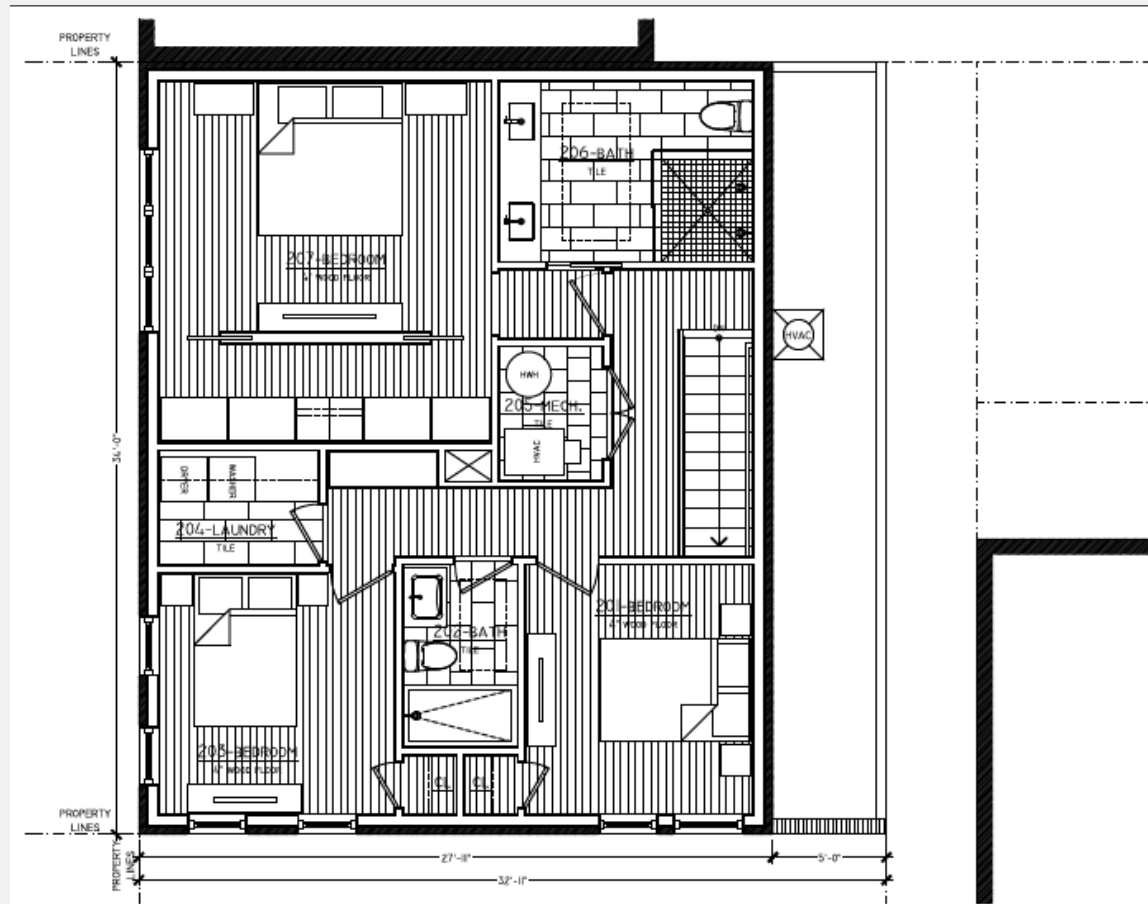
Presented by:
Meridith H. Moldenhauer
Cozen O'Connor



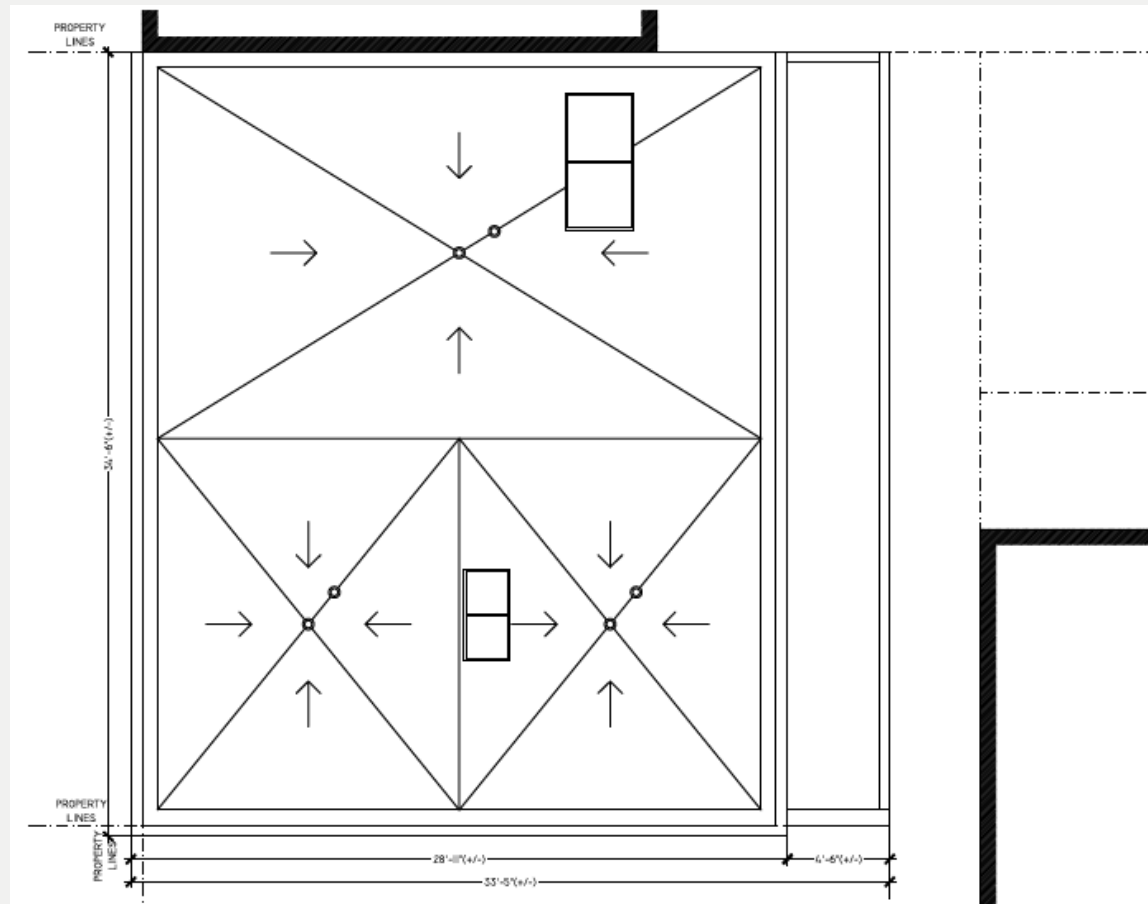
Internal Floor Plan – First Floor



Internal Floor Plan – Second Floor



External Plan – Roof



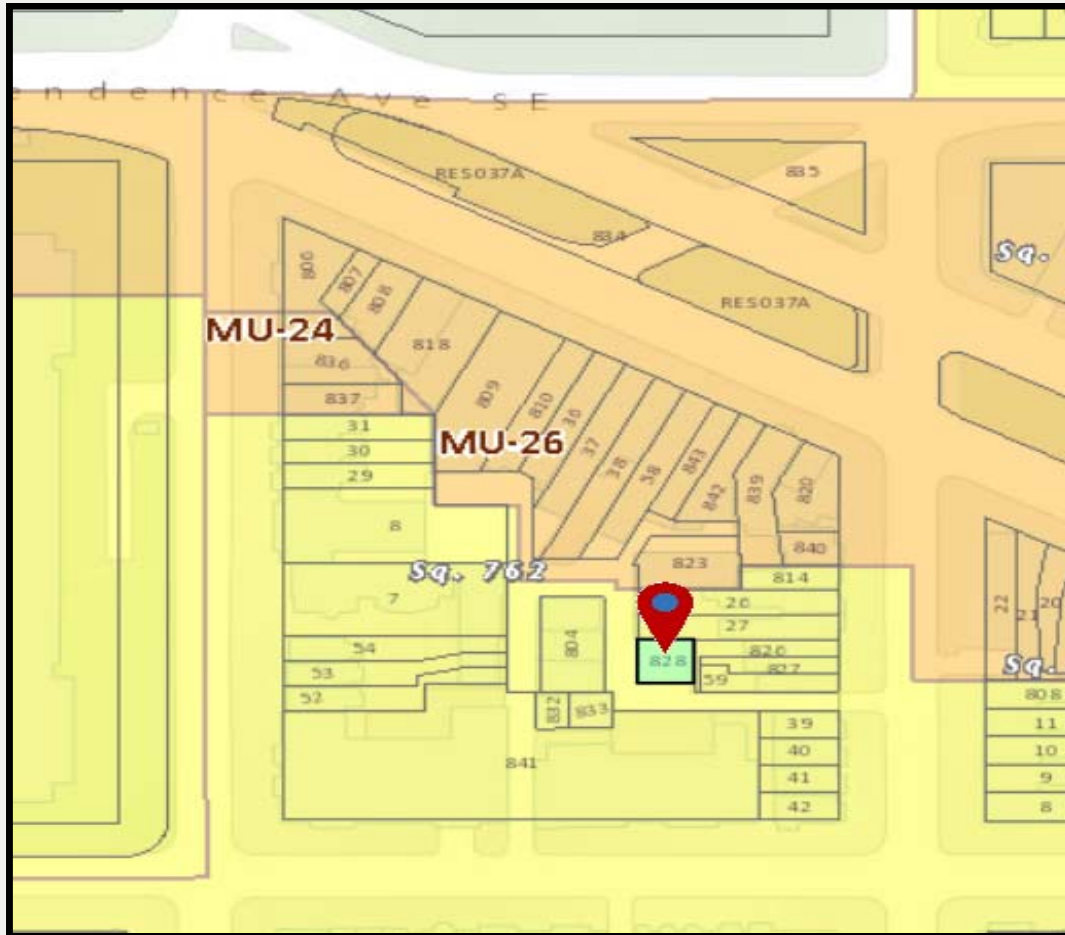
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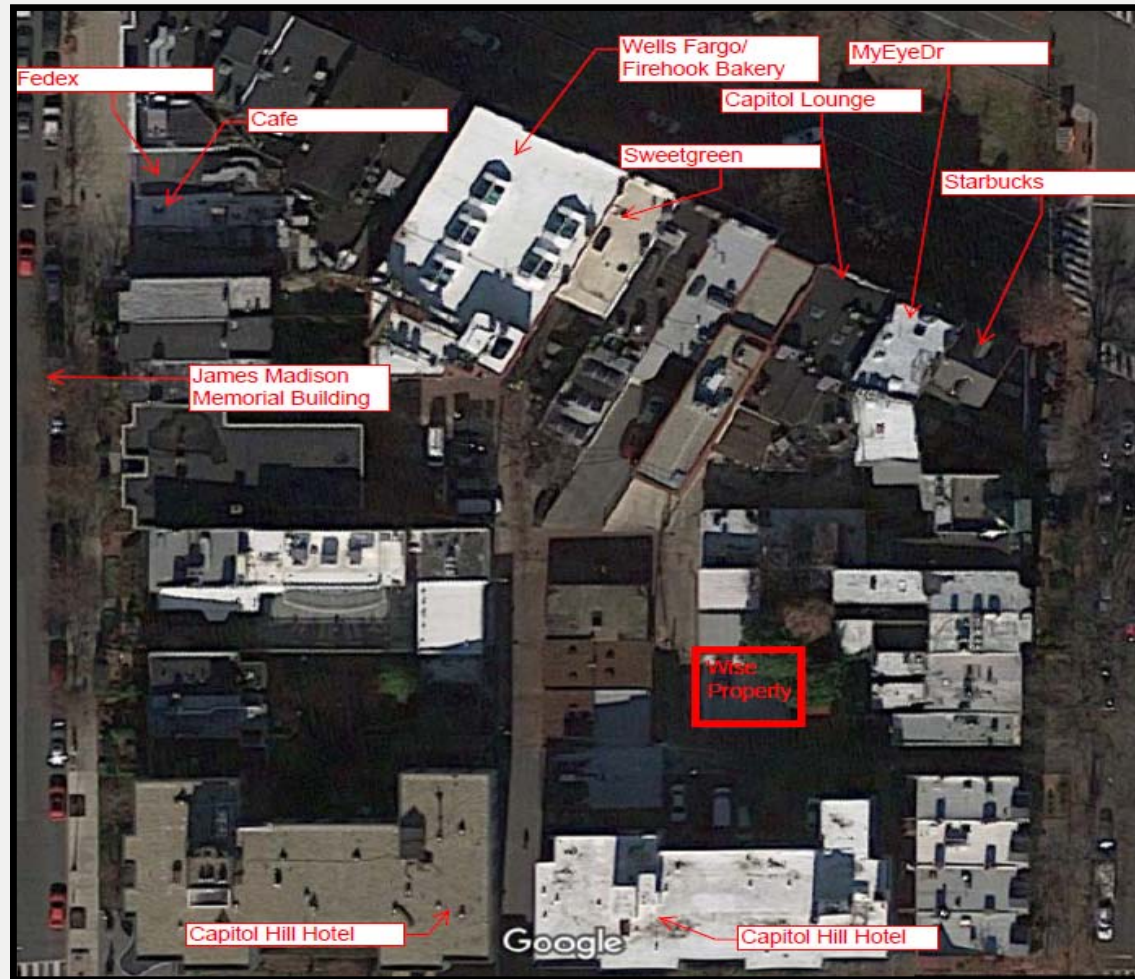
Department of Planning
Division of Community
and Economic Development
BZA#19683

The Property – 260 Lincoln Court SE



Square 762
Lot 828
RF-3 Zone

The Property – 260 Lincoln Court SE



The Project

- Construct a single-family residence on an unimproved alley lot
- Provide one parking space for residence

The Existing Lot



The Alley



The Alley



- 14-foot-wide alley
- 95-feet from 3rd Street SE
- Only 14-feet-wide for a short distance, then opens up to 20-foot-wide

Community Outreach and Agency Input

- Support from ANC 6B (4-0-4)
- Letter of support from neighbors at 209 3rd Street SE and 203 Rear 3rd Street SE
- Capitol Hill Restoration Society unanimously supports
- District Department of Transportation has no objection
- Office of Planning has no objection to two of the four requested areas of relief:
 - Variance from the Alley Centerline Setback requirement
 - Special Exception for the Rear Yard requirement

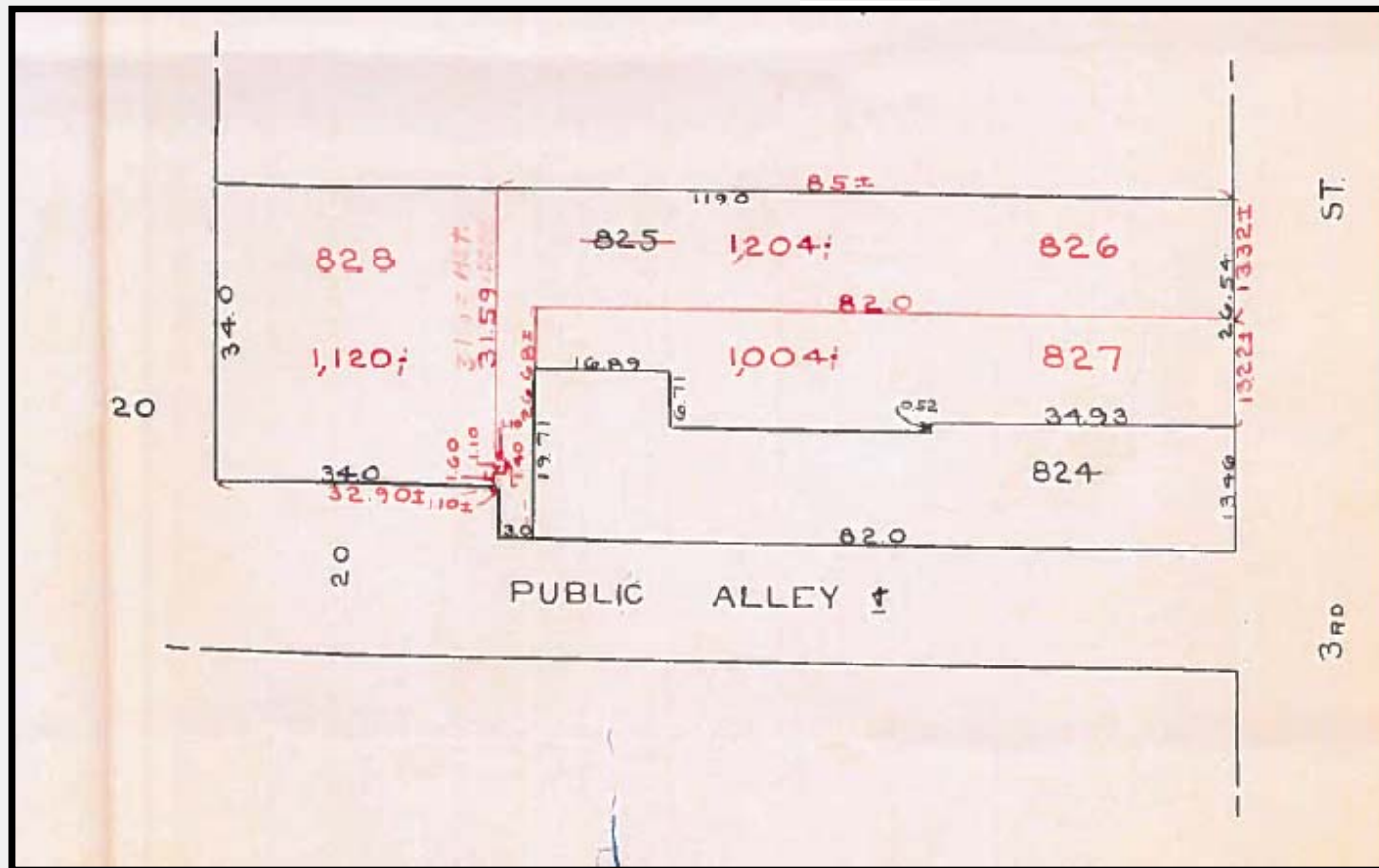
Uniqueness Due to Zoning History

- Do the subdivision requirements of Subtitle C § 303.3(a-b) apply to this Property?
 - The Applicant has requested variance relief from the alley subdivision requirements of Subtitle C § 303.3(a-b) for alley width and lot area, but this relief may not be necessary
- During first application for a two-unit flat, Applicant was not clear whether relief from subdivision requirements was needed
 - BZA Case No. 19536 was filed in May 2017 with no variance relief from subdivision requirements
 - Applicant began alley naming process through Councilmember Allen's office in June 2017
 - Subdivision variance relief was not added to first application until July 2017
 - Zoning Administrator's office did not provide guidance until Fall 2017

The Property is an existing “Alley Lot” since 1905

- Subdivision requirements of Subtitle C § 303.3 only apply to “new alley record lots”
- The Zoning Regulations define “Lot, Alley” as:
 - 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). (Subtitle B § 100.1).
- Discrepancy between “historic” alley tax lots created prior to November 1, 1957 and non-historic alley tax lots was clarified by the Office of Planning Report in July 2017 after Applicant had already hired an architect, embarked on first zoning application and alley naming process

Subdivision Plat – February 23, 1905



The Property is an existing “Alley Lot” since 1905

- The Property is an “historic alley tax lot”
 - Created by subdivision on February 23, 1905
- Zoning Regulations and DCRA administrative process place no burden of street-facing alley lots
- Area variance for subdivision (not use variance)
- BZA Case No. 18234
 - The Board approved lot area and lot width relief for a single family dwelling on an alley tax lot.

Past BZA Approvals – Lot Area Relief

| <u>BZA Number</u> | <u>Property Address</u> | <u>Zone</u> | <u>Lot Size</u> | <u>Required Lot Size</u> | <u>% Deviation</u> |
|-------------------|-----------------------------|-------------|-----------------|--------------------------|--------------------|
| 19479 | 1 Library Court SE | RF-3 | 521 | 1,800 | -0.71 |
| 18090 | 3158 Monroe Street NE | R-1-B | 2,000 | 5,000 | -0.60 |
| 18205 | 4209 Grant Street NE | R-2 | 1,752 | 4,000 | -0.56 |
| 18511 | 1018 Irving Street Rear NW | R-4 | 1,800 | 4,000 | -0.55 |
| 17762 | 2237 Ridge Place SE | R-2 | 1,841 | 4,000 | -0.54 |
| 18355 | 1400 3rd Street NW | R-4 | 862.54 | 1,800 | -0.52 |
| 16801 | 1000 Rhode Island Avenue NW | R-4 | 995 | 1,800 | -0.45 |
| 17823 | 4938 Eads Place NE | R-2 | 2,250 | 4,000 | -0.44 |
| 18234 | 1331 Rear D Street SE | R-4 | 2,448 | 4,000 | -0.39 |
| 13619 | 629-635 11th Street NE | R-4 | 2,475 | 4,000 | -0.38 |
| 18091 | 5328 Gay Street NE | R-2 | 2,500 | 4,000 | -0.38 |
| 18204 | 5815 Foote Street NE | R-2 | 2,500 | 4,000 | -0.38 |
| 18088 | 4411 Grant Street NE | R-2 | 2,513 | 4,000 | -0.37 |
| 17763 | 4602 Lee Street NE | R-2 | 2,545 | 4,000 | -0.36 |
| 19055 | 4409 Minnesota Avenue NE | R-2 | 1,596 | 2,500 | -0.36 |
| 18016 | 1514 23rd Street SE | R-2 | 2,000 | 3,000 | -0.33 |
| 17989 | 4615 42nd Street Rear NW | R-2 | 2,700 | 4,000 | -0.33 |
| 17213 | 1408 1/2 Kearney Street NE | R-1-B | 3,450 | 5,000 | -0.31 |
| 17262 | 1528 W Street SE | R-3 | 2,760 | 4,000 | -0.31 |
| 18482 | 5008 13th Street NW | R-1-B | 3,500 | 5,000 | -0.30 |
| 19051 | 1609 Levis Street NE | R-4 | 1,269 | 1,800 | -0.30 |
| 18342 | 2425 Franklin Street NE | R-1-B | 3,574 | 5,000 | -0.29 |

Past BZA Approvals – Lot Area Relief for Tax Lots

| <u>BZA Number</u> | <u>Property Address</u> | <u>Zone</u> | <u>Lot Size</u> | <u>Required Lot Size</u> | <u>% Deviation</u> |
|-------------------|-----------------------------------|--------------|-----------------|--------------------------|--------------------|
| 19479 | 1 Library Court SE | RF-3 | 521 | 1,800 | -0.71 |
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Past BZA Approvals – Lot Area Relief for Alley Tax Lots

| <u>BZA Number</u> | <u>Property Address</u> | <u>Zone</u> | <u>Lot Size</u> | <u>Required Lot Size</u> | <u>% Deviation</u> |
|-------------------|----------------------------|-------------|-----------------|--------------------------|--------------------|
| 19479 | 1 Library Court SE | RF-3 | 521 | 1,800 | -0.71 |
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Consistency with Prior Decisions

- Consistency in the Board’s interpretation of the Zoning Regulations is important to zoning applicants and the public
- *Stare Decisis*
 - “Promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”
 - *Randall v. Sorrell*, 548 U.S. 230, 243 (2006)
 - Administrative agencies, like courts, must favor a policy of *stare decisis* unless unusual circumstances intervene
 - *Reichley v. D.C. Dep’t of Empl. Servs.*, 531 A.2d 244, 247 (1987)
- Failure to follow precedent can be considered arbitrary and capricious
 - “Unexplained inconsistency in an agency’s interpretation of its governing statute can be ‘a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.’”
 - *Hensley v. D.C. Dep’t of Empl. Servs.*, 49 A.3d 1195, 1203 (2012)

Proposed Design in Character of Surrounding Alley Dwellings



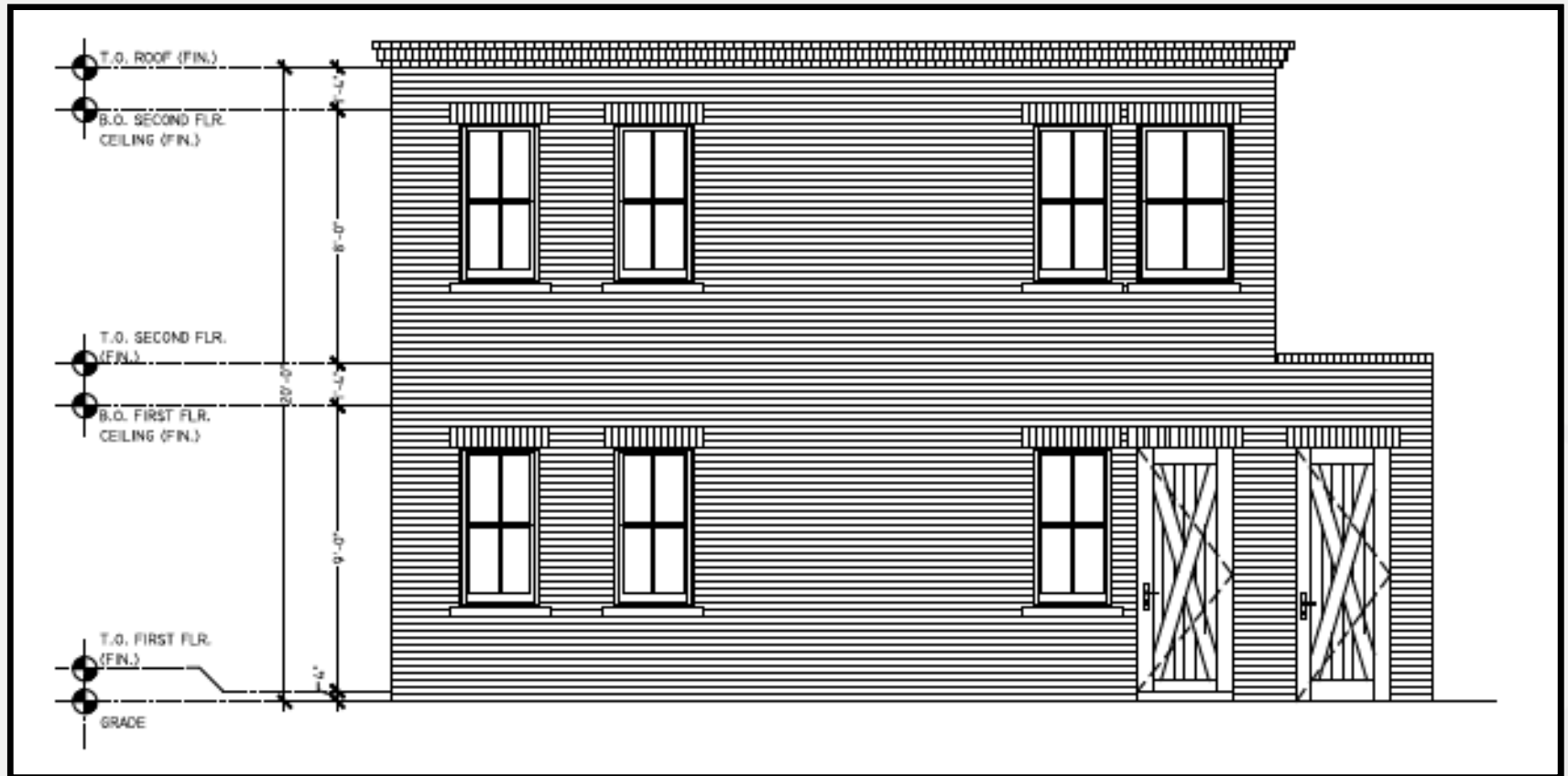
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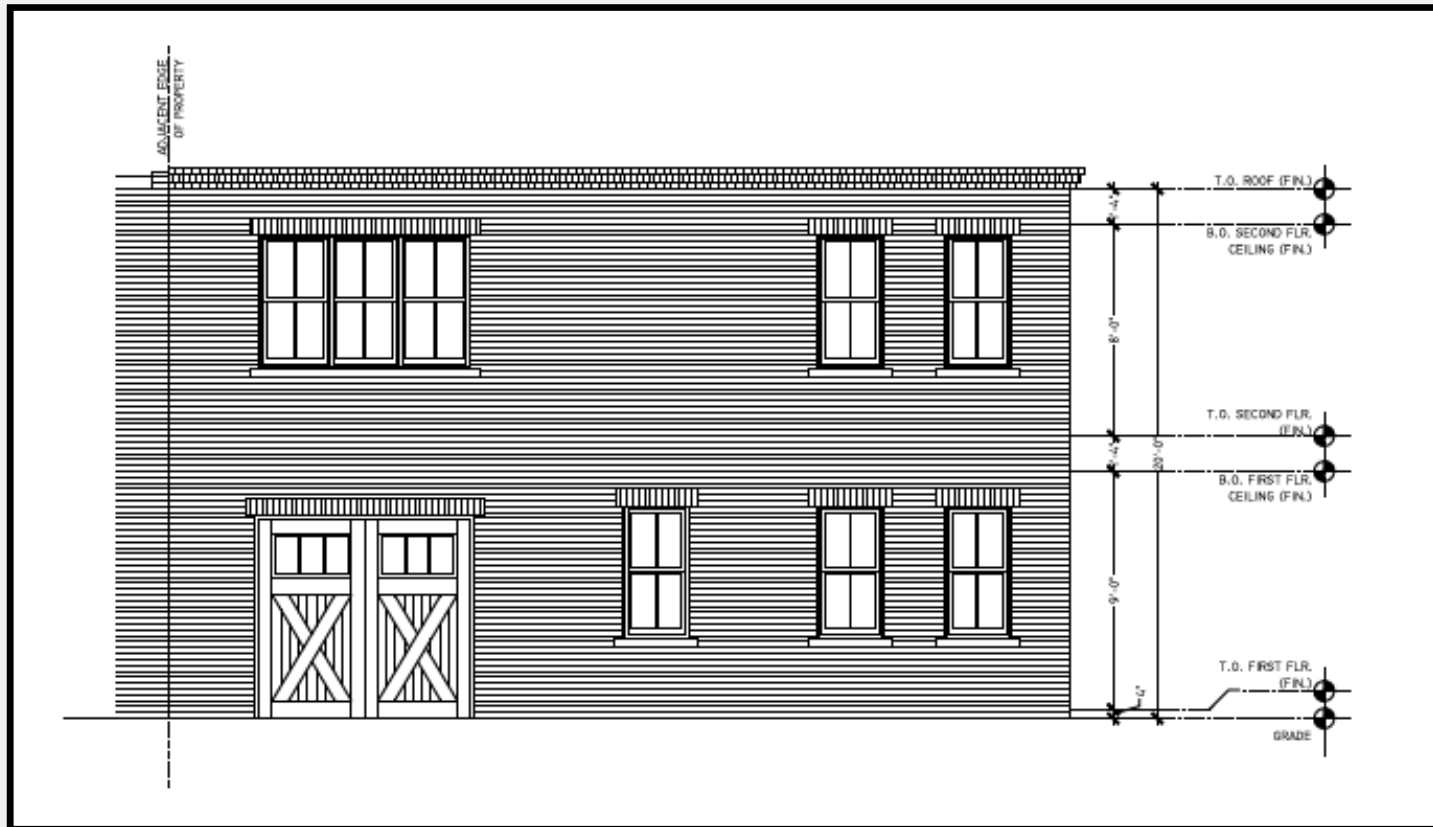
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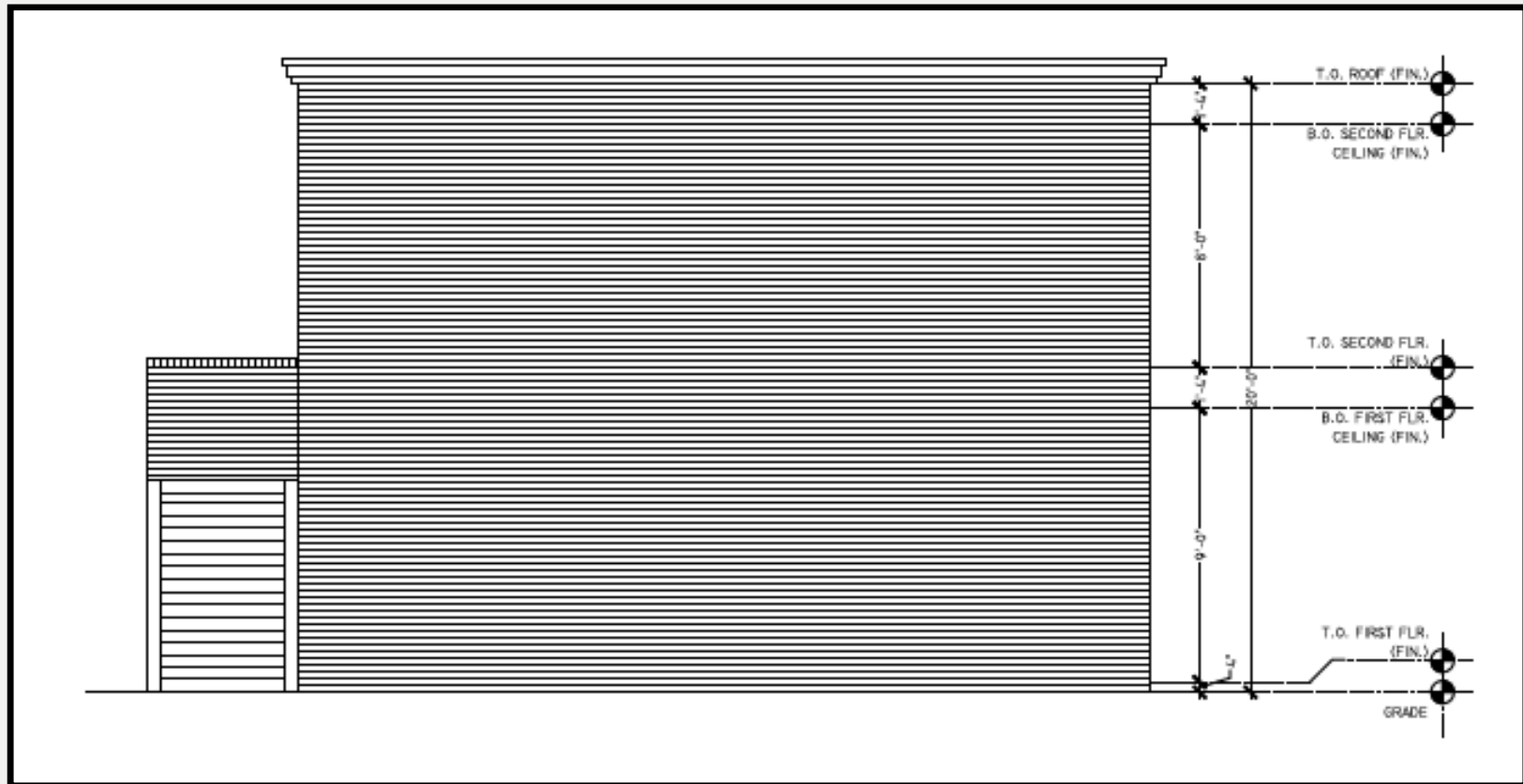
Architectural Plans – Alley-facing South Facade



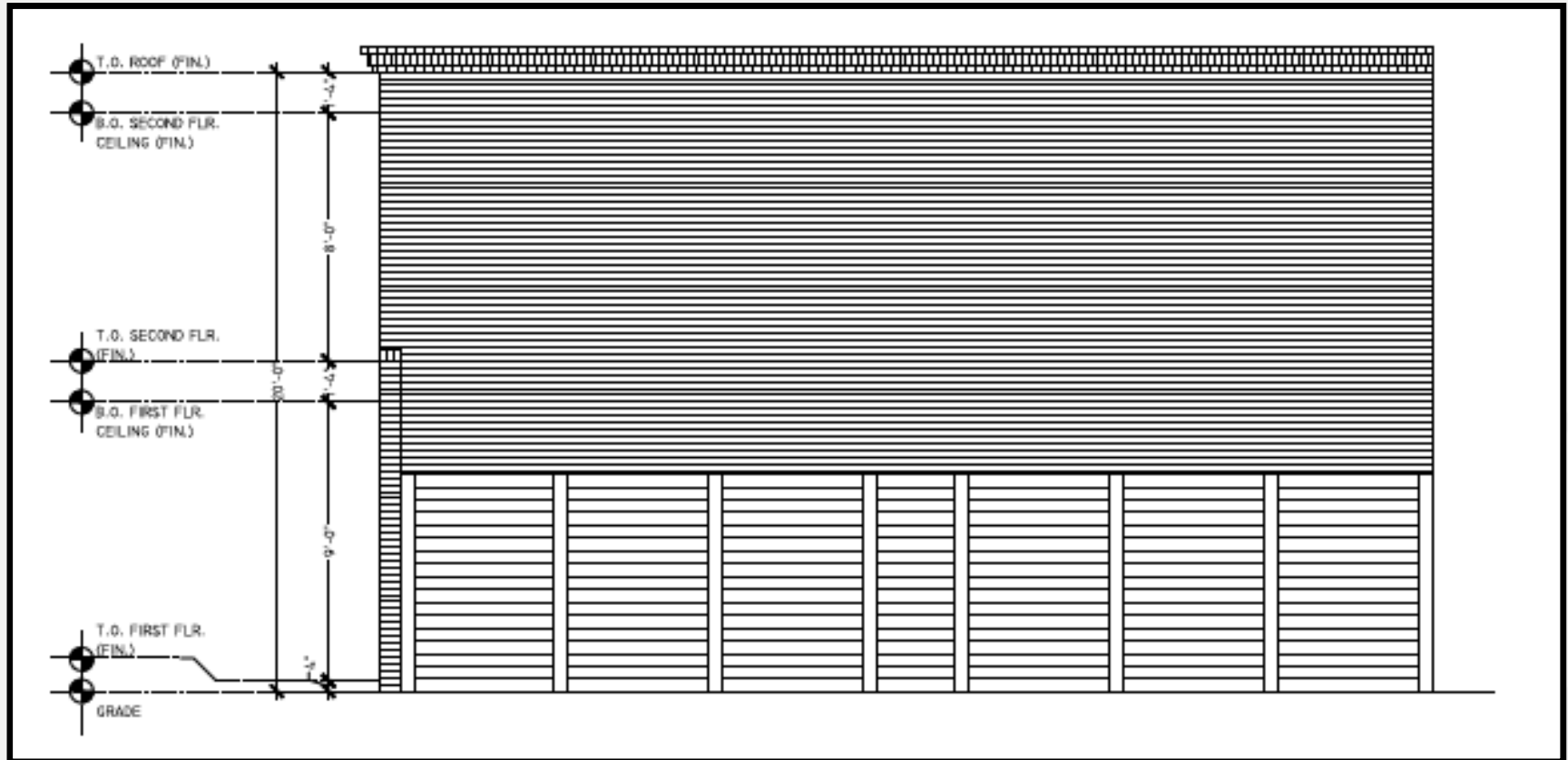
Architectural Plans – Alley-facing West Facade



Architectural Plans – North Exterior



Architectural Plans – East Exterior



Variance Relief Requested

Alley Width - Subtitle C § 303.3(a)

- Requires frontage along public alley with minimum width of 24 feet
 - The Property fronts on an alley that is 20 feet wide

Lot Area - Subtitle C § 303.3(b)/Subtitle E § 201.1

- Requires minimum lot area of 1,800 square feet
 - The Property is 1,120 square feet

Alley Centerline Setback - Subtitle E § 5106

- Requires setback of 12 feet from centerline of alley
 - The proposed design is setback 10 feet from the centerline of the alley

The Property Faces Exceptional Conditions

- Zoning history/historic alley tax lot
 - Property subdivided 112 years ago
- Unimproved lot
 - Only unimproved lot in Square 762
- Property's lot area cannot be expanded
 - Separate ownership from street-facing lots
- Zoning history as a parking lot
 - Seven BZA cases seeking parking relief for this Property
- Split-zoned square
 - 22 properties are zoned MU-26/MU-24 or operating commercial uses
 - 17 residentially zoned properties
- Capitol Hill historic district

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

1. Applicant cannot meet the requirements of Subtitle C § 303.3

❑ 24-foot-alley (Subtitle C § 303.3(a))

- Applicant's alley is 20 feet wide, but there is no ability to expand the alley

❑ 1,800 square foot lot area (Subtitle C § 303.3(b))

- No ability to increase lot area as there is separate ownership from street-facing lots

- Public sale in 2015, but none of street-facing owners along 3rd Street SE purchased the property
- Applicant also offered to sell the alley lot to those street-facing owners, but none were interested

Strict Application of Zoning Regulations Creates Practical Difficulties - Subdivision

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

By-right uses for an alley lot in the RF-3 zone include:

- Agricultural
- Artist Studio (requires a structure)
- Camping
- Surface parking, but only for residents of the square
- Residential dwelling (requires a structure)

Strict Application of Zoning Regulations Creates Practical Difficulties – Subdivision

- Agricultural and camping are simply not reasonable uses for the Property
- Surface parking is only for residents of the square and there is not a sufficient need in Square 762
 - Split-zoned square that is predominantly commercial
 - 22 commercial properties
 - 17 residential properties, but 8 of those properties have garages
 - Close proximity to public transportation options
 - If Applicant moved away from 205 3rd Street then they could not even use the Property as their own parking
- Property's zoning history – seven BZA applications for parking use, with four most recent for businesses
 - Several of the cases were approved with conditions including paving the driveway and access lanes to the Property

Comparing Past BZA Approvals for Lot Area Relief to Property

| BZA Number | Property Address | Zone | Lot Size | Required Lot Size | % Deviation |
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Strict Application of Zoning Regulations Creates Practical Difficulties – Alley Centerline Setback

- Historic preservation
 - Align Project façade with two abutting alley structures
- Size of property
 - Complaint would reduce gross floor area by 68 square feet per floor, or 6% of available square footage
- Difficulty complying with Building Code requirements restricting floorplan, including stairways and hallways

No Substantial Detriment to the public good or the Zone Plan

- Public good
 - Existing structures on alley, including parking garages on neighboring two properties
 - Three-foot buffer between street-facing residences and Property
 - Substantial rear yards on street-facing residences
- Zone plan
 - District-wide policy in favor of alley dwellings
 - Adds dwelling to area that is transit and amenity-rich
 - Diversifies housing stock with single-family home
 - Comprehensive Plan
 - Encourages dwellings in transit and amenity-rich neighborhoods
 - Encourages “infill development on vacant land”

Special Exception Relief Requested

- Subtitle E § 5104 – Rear Yard

- Requires rear yard of 5 feet

- Applicant proposes a structure with no rear yard

- Subtitle U § 601.1(c) – Residential Dwelling on Alley Lot

- The Property meets four of five by-right requirements for an alley dwelling

- Only exception is Property does not have access to a public street from an improved alley that is 15 feet in width and within 300 feet of a public street

- The Property is on an alley that is 14 feet in width, but within 95 feet of 3rd Street SE

Special Exception Standard (§ X-901.2)

- Special exception relief is presumed to be appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific requirements for the relief are met. *First Baptist Church of Wash. v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (1981).

Harmonious with Purpose & Intent of Zoning Regulations and Maps

- RF-3 is primarily intended for homes on small lots
 - Many surrounding properties are single-family rowhomes
- Project meets four of five conditions for by-right alley dwelling under § U-600.1(e)
 - Alley access through two points:
 - 14-foot wide alley that is 95 feet from 3rd Street SE (one foot short)
 - 20-foot wide alley that is 255 from C Street SE (private alley)

No Adversely Effect on Use of Neighboring Properties

- OP Report concurs that there will be no adverse effect on neighboring properties
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 - The project will not inhibit future development of the U.S. Capitol Grounds
 - Square 762 is substantially developed and unlikely that Capitol Grounds would expand to this square
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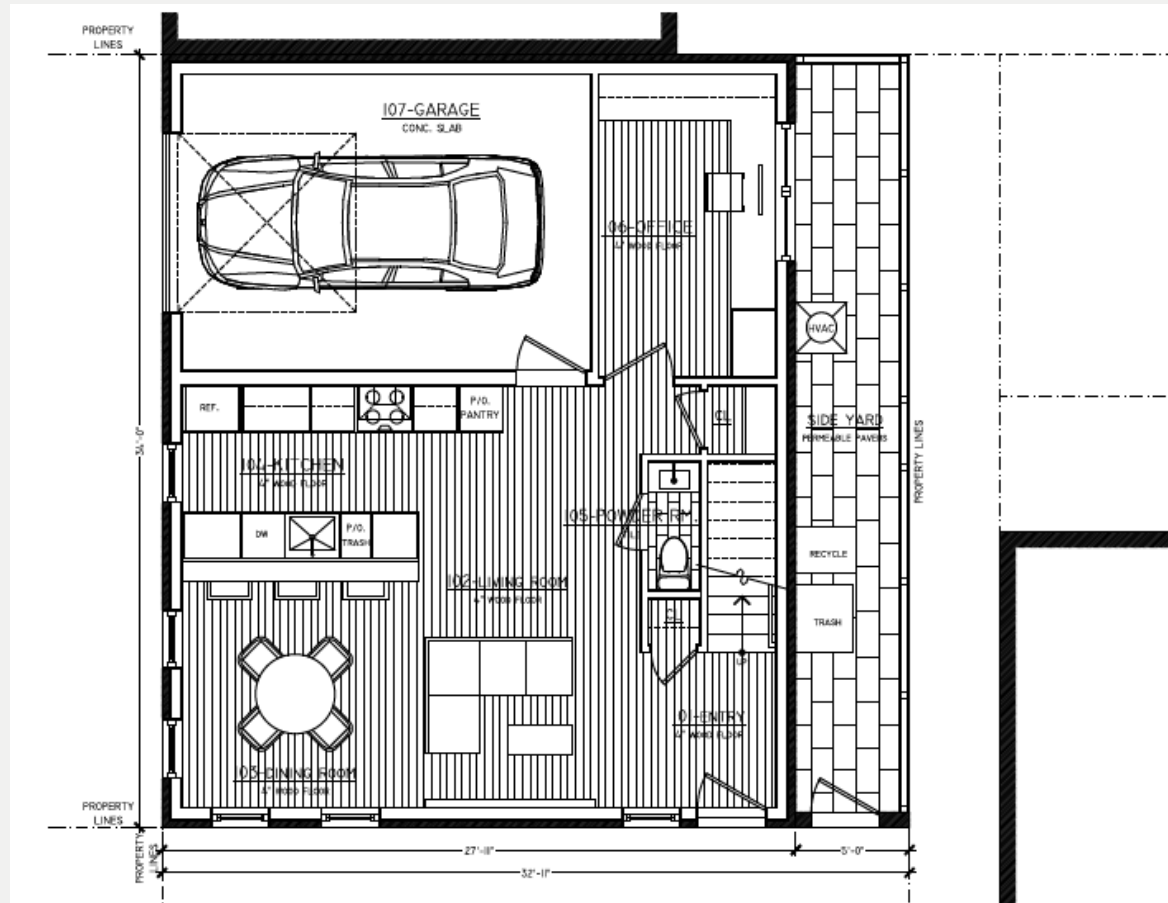
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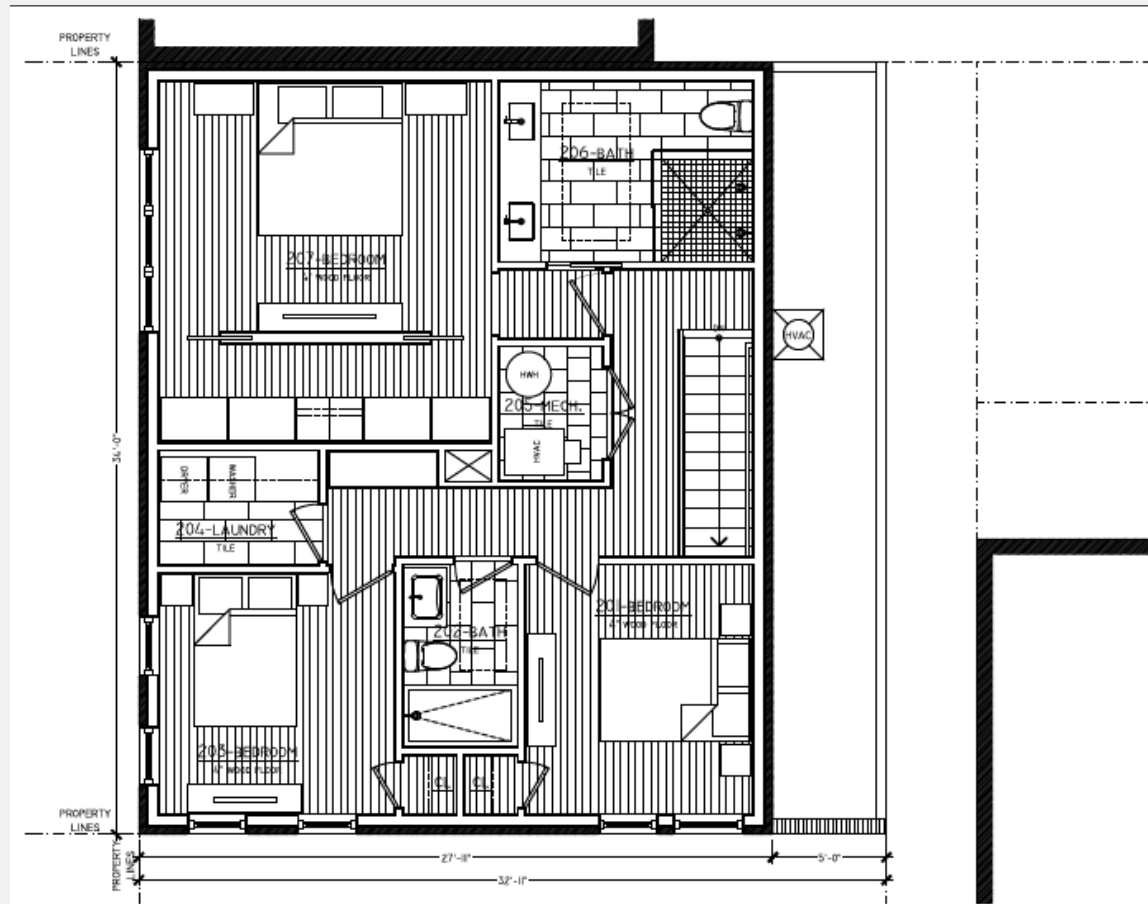
Presented by:
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Cozen O'Connor



Internal Floor Plan – First Floor



Internal Floor Plan – Second Floor



External Plan – Roof

