

Prehearing Statement of Alleyoop LLC

BZA Application # 18511B

1018 Irving Street, N.W.; Square 2851, Lot 219, 220, and 221

I.

Introduction

This Prehearing Statement is hereby submitted on behalf of Alleyoop LLC (the “Applicant”), the owner of the property located at 1018 Irving Street (Square 2851, Lot 219, 220, and 221) (the “Property”). The Property is located in the R-4 zone (see the Zoning map attached with the Application). The Property consists of three separate alley record lots located in the middle of Square 2851. It is surrounded by public alley on three sides – east, south, and west – and on the north side it is adjacent to two properties located on Irving Street, NW, including 1012 Irving Street, the owner of which is in support of this Application. The original application requested area variance relief from Section 2507.3, to modify the application approved by the Board two years ago to consist of two residential units rather than artist studio space. The Applicant is hereby also requesting amendment of the Application to include area variance relief from the height requirement for structures on alley lots. This relief was included on the Notice Poster posted on and was discussed at the ANC meetings for this Application, so interested parties have been aware of the need for additional relief. Also, the plans submitted originally are not changing in this aspect, although the Applicant has made changes to the roof structures in response to concerns from one of the neighbors with concerns about the project.

The Applicant is also requesting amendment to include relief from the new penthouse regulations adopted after this Application was filed. Specifically, the Applicant is requesting

special exception relief pursuant to 11 DCMR § 411.5 in order to provide a stairway penthouse which is no more than ten (10) feet in height, contains no more than one (1) story, and contains only stair access to the roof and less than thirty (30) square feet of storage space.

The Applicant proposes to convert an automotive garage (the “Building”) into two row dwellings a 2-unit apartment house with an office space (the “Proposed Addition”). Therefore, the Applicant is seeking area variance relief from Section 2507.3, the prohibition against conversion of non-residential structures located on alley lots. This Application is effectively a request for a revision of BZA Order No. 18511.

II.

Description of Subject Property and BZA History

A. The Subject Property and Surrounding Area.

The Property is a large alley lot, approximately 5,901 square feet of land area and a width of roughly 52.7 feet. Pursuant to BZA Order No. 18511 (discussed below), the lot has been subdivided into three lots (Lots 219, 220, and 221). The Property is located in the Columbia Heights neighborhood of Northwest D.C., and is zoned R-4. The Property is currently improved by an automotive garage that is no longer in use. It is bounded to the east, west, and south, by public alleys. The north side of the Property was historically abutted by a public alley as well. However, that segment of the public alley was subsequently deeded to the properties abutting Irving Street.

The square is mostly characterized by two to 2.5-story row dwellings, as well as a few three-story row dwellings. A three-story multi-family apartment building fronts on Sherman Avenue on the Square’s east side. The neighborhood is comprised of row dwellings, low density commercial uses, and some garden apartment houses.

The Property is improved with a one-story, 18.5 foot tall, automotive repair shop that has been in use since at least 1928 and remained in use until September 2012. The automotive repair shop is considered a nonconforming structure and use. The Applicant was granted relief from the nonconforming structure requirements, and from the height limitations on alley lots in BZA Case No. 18511, as discussed below.

B. BZA History

The Property was previously the subject of BZA Case No. 18511. In that case, the Board granted approval for a subdivision of the alley lot into three separate lots and the conversion of the existing automotive garage to an office use and two artist studios. The Applicant originally requested area variance relief from limitations on height for buildings on alley lots, nonconforming structure requirements, and a use variance to convert the garage into office and two residential units. On May 7, 2013, the Applicant filed an Amended and Restated Application, which among other things called for elimination of the residential use and a reduction in height. The Board approved the Application on July 23, 2013, granting relief from the alley height requirements, the use requirements, nonconforming structure requirements, lot area and width requirements, and side yard requirements, to allow the applicant to subdivide the alley and convert the garage.

The Order took effect on January 23, 2014. On January 6, 2016, the Applicant filed a request to extend the BZA Order No. 18511, as the Applicant has been unable to find tenants for the artist studio space, and has otherwise been prevented from proceeding with the project because the alley is not yet named (see corresponding extension request for details).

C. Description of Project

Pursuant to BZA Order No. 18511, the Applicant has subdivided the lot into lots 219, 220, and 221. Each subdivided lot is occupied by a portion of the existing structure. The portion of the

structure on lot 221 will be occupied by an office use as approved by Order No. 18511. The portions of the structure on lots 219 and 220 are proposed to be devoted to residential use. Accordingly, the Applicant is requesting relief from the prohibition against conversion of non-residential structures located on alley lots of Section 2507.3, so that it may now use the space previously approved for artist studio use as residential use. Relief under Section 2507.3 was, at the time of the original application, considered to be use variance relief. Due to a text amendment to the Zoning Regulations, such relief is now considered area variance relief, pursuant to Section 3103.5(d).

Relief is also requested from Section 2507.4 relating to the height requirements for the subject buildings. That maximum height is only 12.4', due to the narrow alley width. The Applicant would like to slightly extend the height of the building to twenty-three (23) feet, from the previously approved 19.5 feet. The increase in height also triggers the need for relief from Section 2001.3, since the existing Building exceeds the permitted lot occupancy, and also because extending the height will be extending a nonconforming situation.

III.

Burden of Proof

The burden of proof for variance relief is well established. The Applicant must demonstrate that the Property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. *Palmer v. BZA* 287 A.2d 535, 541 (D.C. 1972). As summarized below, the application meets the three-part test for area variance relief.

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

The Property meets the “exceptional condition” element of the variance test due to a confluence of factors. The lot is the largest on the Square, roughly three times larger than some of the biggest lots and 8.5 times larger than the lots in the southeast corner. The lot is also an irregular octagonal-like shape and the existing structure follows this awkward shape of the lot, creating a bay and many angular walls. The Property is contaminated by oils, solvents, and chemicals due to its extended use as an automotive repair shop. Environmental remediation may be required, including excavation and removal of contaminated soil, as well as hauling and dumping fees. At the time of purchase, the Applicant neither knew, nor had reason to know, the extent of environmental contamination. The existing structure is in poor condition due to a damaged roof structure, deteriorating exterior walls, water damage, and fire damage. The roof structure on the Property suffers from substantial fire and water damage. The roof structure will need to be removed and replaced. The existing masonry walls have been compromised due to the damaged roof structure and the structure is exceptionally tall considering it is only one story. These factors create an exceptional condition and because of this condition, a strict application of the Zoning Regulations would result in a practical difficulty.

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

To satisfy the second element for an area variance standard, the Applicant must demonstrate “practical difficulty.” In this case, a strict application of the zoning regulations would result in a practical difficulty because despite the Applicant’s efforts, there is little demand for

artist studio space. Section 2507.3 states that non-residential structures located on alley lots shall not be converted, altered, remodeled, restored, or repaired for human habitation. The Applicant is requesting relief from this strict prohibition because the costs associated with the environmental remediation and substantial structural repairs make it so that the only way the Applicant can do a viable project is through a conversion of the garage to residential/office use.¹

C. Relief can be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.

Finally, the applicant must demonstrate that “granting the variance will do no harm to the public good or to the zone plan.” *Gilmartin*, 579 A,2d at 1167. The granting of a variance from the non-residential alley lot requirements can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zone Plan.

IV.

Revisions

The Applicant has revised the plans in response to discussions with the neighbor in opposition by removing one of the two proposed penthouses. The remaining penthouse requires special exception relief, pursuant to Section 411.5. Section 411.5 has three conditions for approval, all of which are met by the Application. The penthouse is only seven (7) feet high, has only one story, and contains only stair access to the roof. For these reasons, it meets the special exception

¹ At the time of consideration of Application No. 18511, relief from Section 2507.3 was considered use variance relief. Subsequent to that decision, the Zoning Commission adopted Section 3103.5(d), which specifically identifies relief from Section 2507.3 as area variance relief.

criteria under Section 411.5. Revised plans and a revised Form 135 are being filed along with this Statement.

IV.

Conclusion

For the aforementioned reasons, the Applicant requests that the Board approve this application as submitted and revised.

Respectfully,

A handwritten signature in black ink, reading "Martin P. Sullivan". The signature is written in a cursive, slightly stylized font.

Martin P. Sullivan
Sullivan & Barros, LLP