



January 31, 2018

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

RE: BZA Case No. 19629 (Tim and Charlotte Lawrence) - Pre-hearing Statement

Chairperson Hill and Honorable Members of the Board:

On behalf of Tim and Charlotte Lawrence (the "Applicant"), please find enclosed an executive summary and pre-hearing statement in advance of the public hearing scheduled for February 21, 2018. In response to community concerns, the Applicant has revised the plans for the Project and will no longer seek to construct a two-story, single-family alley dwelling. The Applicant will now seek to construct a one-story private parking garage.

Though this request is significantly less-intensive than the original application, the change requires an additional area of special exception relief, namely from the parking use requirements of Subtitle U § 601.1.

The Applicant reserves the right to present witnesses and expert witnesses at the hearing.

Thank you for your attention to this matter and we look forward to presenting to the Board on February 21, 2018.

Sincerely,

COZEN O'CONNOR

By: Meridith H. Moldenhauer

MHM

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Certificate of Service

I certify that on January 31, 2018, a copy of this pre-hearing statement was served, via email, as follows:

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Executive Summary

Case No. 19629

Site Description

Address: 1665 (rear) Harvard Street NW

Square/Lot: Sq. 2588, Lot 0827

Zoning: RF-1

Existing: Unimproved

Historic District: Mount Pleasant Historic District

Public Transportation:

- Metro:
 - Columbia Heights
- Metrobus:
 - 42, 43, S1, S2, S4, and S9, H2
- Capital Bikeshare:
 - Within 0.4 mi
- Car Sharing:
 - Zipcar: 3 vehicles within .25 mi

Community Outreach:

- Three letters of support in the record
- Input from neighbors led to a less-intensive proposed use of the Property

Project Description

Applicant	Timothy & Charlotte Lawrence
Proposal (revised)	Construct a one-story garage on an unimproved alley lot
Relief Sought (revised)	<p><u>Variance:</u> Subtitle C § 303.3 (subdivision), Subtitle E § 5106.1 (alley centerline), and Subtitle E § 5107.1 (pervious surface)</p> <p><u>Special exception:</u> Subtitle U § 601.1 (parking use), Subtitle E § 5104.1 (rear yard), and Subtitle E § 5105.1 (side yard)</p>
Variance Relief	<p>Property Is Affected by an Exceptional Situation or Condition</p> <ul style="list-style-type: none"> • Status as a historic alley tax lot created in 1948 • Small size of the alley lot at 557 square feet • Shape of the alley lot is trapezoidal and tapers down to only 19' • Alley lot abuts two public alleys <p>Strict Application of Zoning Regulations Would Result in Practical Difficulty</p> <ul style="list-style-type: none"> • Dimensions of the alley network and separation of the Property from the Applicant's street-fronting lot creates a practical difficulty that results in unnecessary hardship <p>No Substantial Detriment to the Public Good and Consistent with the Zone Plan</p> <ul style="list-style-type: none"> • Use of Property for parking will not change • Provides safety features such as motion-activated floodlights along two sides of the structure and a fisheye safety mirror • Modest brick design
Special Exception Relief	<p>Project is Harmonious with the General Purpose and Intent of the Zoning Regulations:</p> <ul style="list-style-type: none"> • Garage use on alley lots permitted as matter-of-right in RF-1 Zone <p>Project Will Not Tend to Adversely Affect the Use of Neighboring Property:</p> <ul style="list-style-type: none"> • Project's parking use is identical to its current use, including more security and safety features for pedestrians • Revised plans now feature a garage with a 2.5' wide rear yard instead of a one-family dwelling, so as to address the potential for privacy and noise impacts. <p>No Detriment to Public Good:</p> <ul style="list-style-type: none"> • Currently unimproved alley lot will be used for parking, as it is currently • Garage will be screened by foliage to neighbors

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

**APPLICATION OF TIMOTHY
AND CHARLOTTE LAWRENCE**

**1665 (rear) HARVARD ST. NW
ANC 1D**

PREHEARING STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This Prehearing Statement is submitted on behalf of the Applicant, Timothy and Charlotte Lawrence (the “Applicant”), the owners of the property located at 1665 (rear) Harvard Street NW, Square 2588, Lot 827 (the “Property”). As part of this prehearing statement the Applicant is modifying the relief to now request variance relief pursuant to 11 DCMR § Subtitle C § 303.3 (subdivision), Subtitle X § 1002.1, and Subtitle E § 5106.1 (alley centerline), and Subtitle E § 5107.1 (pervious surface), and special exception relief pursuant to 11 DCMR § Subtitle X § 901.2, Subtitle U § 601.1 (parking use), Subtitle E § 5108.1, Subtitle E § 5204.1, Subtitle E § 5104.1 (rear yard), and Subtitle E § 5105.1 (side yard), to permit construction of a new one-story garage on an alley lot in the RF-1 zone (the “Project”).

In response to community concerns, the Applicant has revised the plans for the Project and will no longer seek to construct a two-story, single-family alley dwelling. The Applicant will now seek to construct a one-story private parking garage. Though this request is significantly less-intensive than the original application, curiously the change requires an additional area of special exception relief, namely from the parking use requirements of Subtitle U § 601.1.

Further, after dialogue with the Office of Planning (“OP”) and having performed substantial research – both on the Property and on alley lot regulations – the Applicant has discovered that area variance relief may be necessary from the subdivision requirements of Subtitle

C § 303.3. Though the Applicant believes this relief is not necessary for reasons that will be described in detail, justification for it has been provided below, should the Board find such relief necessary here.

For the reasons stated herein, and as will be addressed at the hearing, the Project meets the burden of proof for the requested variance and special exception relief.

II. REVISED ARCHITECTURAL PLANS

The initial application featured a two-story, one-family alley dwelling measuring 20 feet in height and 100% lot occupancy. The Applicant has now revised the plans to construct a one-story, two-car garage of red brick measuring 15 feet in height. Additionally, the structure's footprint has been reduced along the rear property line to provide a 2.5 foot-wide rear yard. Further, the Project now features motion-activated floodlights along the public alley and the public pedestrian alley, as well as the installation of a fish-eye safety mirror at the corner of the building between the public alley and public pedestrian alley. *See* revised architectural plans, **Exhibit A**. These updates are intended to reduce the bulk of the proposed structure, provide an area in which screening can be planted to address neighbor concerns about visibility and privacy, and provide safety measures for those traveling through the alley and along the public pedestrian alley.

Lastly, a turning radius diagram has been provided to demonstrate that cars may safely enter and exit the garage without impacting access for the existing garages across the alley.

III. DISCUSSION OF TECHNICAL CONSIDERATIONS

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.

Note also that 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.¹

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 Assessment and Taxation ("A&T") lot numbers, thereby becoming a tax lot. Note that a tax lot does not cease being an official record lot when it also becomes a tax lot. It will carry dual lot numbers thereafter. Only when it 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";

¹DC GIS: "Record Lots" <http://vpm.dc.gov/Home/record-lots>

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.² 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 unsubdivided parcels into A&T 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

² DC GIS Services: “Tax Lots” <http://vpm.dc.gov/Home/tax-lots>

city, only street-fronting tax lots – and *not* alley tax lots – can administratively gain record lot status.

C. Definition of “Lot, Alley” in ZR16

The definition of “Lot, Alley” under the current Zoning Regulations (“ZR16”) 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)

Based on an A&T Plat, the Property is an alley tax lot created on July 15, 1948, and so satisfies the definition of “Lot, Alley.” See **Exhibit B**. In this way, 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.

It is our position that, by calling out a specific date in the definition, the clear intention 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). In short, the Zoning Regulations seem to carve out a difference between historic and non-historic alley tax lots. It is our contention that a street-fronting tax lot and a historic alley tax lot should enjoy the same administrative consideration and be permitted to forego the subdivision process and be granted a record lot. This is consistent with the definition, which groups record and historic alley tax lots together.

Even though this seems to be a plain meaning of the definition, OP applies no special

standard or grandfathered status to historic alley tax lots, as the Applicant believes it should. Determining the appropriate relief for this application will stem from this definition and whether or not the Board finds any distinction between a historic alley tax lot compared to a non-historic alley tax lot that would *not* qualify for the grandfathering language.

Correspondence received from OP on October 5, 2017, suggests that an area variance from the subdivision requirements of Subtitle C § 303.3 would be necessary. *See **Exhibit C***. OP's interpretation of this section is that *all* alley tax lots, regardless of their date of conception, must meet all new zoning standards in order to be converted to alley record lots as a matter of right, prior to being developed.

The Zoning Regulations state that any “new” alley record lot must meet the requirements of Subtitle C § 303.3.³ The Applicant contends that since the definition 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.

D. Alley Lot Regulations in ZR58

Our interpretation of the regulations seems to be more in-line with the permissions of the Zoning Regulations of 1958 (“ZR58”). For instance, § 201.1(o) in ZR58 contained specific language which 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]

ZR58 limited the use of alley lots in residential zones, typically only allowing such uses as

³Subtitle C § 303.3: “**New** alley record lots shall comply with the following:

- (a) Have frontage along a public alley with a minimum alley width of twenty-four feet (24 ft.) and have from the alley access to a street through an alley or alleys not less than twenty-four feet (24 ft.) in width;
- (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.” [emphasis added]

parking, artist studios, and storage. Under ZR58, 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.

E. Zoning Commission Intent During ZRR

It was believed that updates to the Zoning Regulations proposed as part of the Zoning Regulations Rewrite or “ZRR” would make development on alley lots easier in many ways in ZR16, but in some cases the regulations became more restrictive. Now, certain uses permitted under ZR58 are no longer permitted in ZR16 for alley lots. For instance, storage of wares and private parking were matter-of-right uses on alley lots in ZR58 (§ 201.1(o)), but are absent now from both the matter-of-right uses and the special exception uses in ZR16.

The Applicant does not believe this was the intended outcome, especially considering that a specific goal of the ZRR was to ease in-fill development, particularly for alleys. On October 7, 2014, at a Zoning Commission hearing, Deputy Director of Development Review and Historic Preservation Jennifer Steingasser noted on the intent of the proposed changes to the alley lot provisions as follows: “It’s not for residential purposes. So you could have storage. You could have the artist studio. **You could have parking.**” [emphasis added] See **Exhibit D**. Despite these clear statements, ZR16 has omitted this language and now it is the Board’s determination to clarify the issue.

F. Evaluation of Alley Lot Regulations by Board

The Applicant believes that both the absence of development potential on historic alley tax lots *and* the absence of parking as a permitted use on alley lots in the RF-1 zone in ZR16 are unintended. We urge the Board to find that the Property qualifies as a *grandfathered*, historic alley tax lot under ZR16 based on these three points: first, it satisfies the ZR16 definition of “Lot, Alley” identified above; second, historic alley tax lots were specifically permitted to be developed upon

for parking in ZR58; and third, the OP Deputy Director of Development Review affirmed “parking” as an intended permitted use on alley lots before the Zoning Commission as part of the ZRR.

As part of this Application, we respectfully ask the Board to determine if historic alley tax lots are grandfathered under the Regulations 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), and thus not require a “new” record lot to be created?

Alternatively, in the event that the Board finds that the requirements of Subtitle C § 303.3 must be met, justification for how the lot satisfies the variance test and how the parking use meets the special exception standards are provided below.

IV. THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

As stated previously, the Applicant will now seek to construct a one-story parking garage requiring variance relief pursuant to 11 DCMR § Subtitle C § 303.3 (subdivision), Subtitle X § 1002.1, and Subtitle E § 5106.1 (alley centerline), and Subtitle E § 5107.1 (pervious surface). The Applicant provides evidence of how the Property satisfies the variance test.

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

The unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (DC 1990) (quoting *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 539 (DC 1972)). The Property is characterized by an exceptional situation and condition as a result of a confluence of the following four facts: (1) Status as a historic alley tax lot for 69 years; (2) Small

size of the alley lot; (3) Shape of the alley lot; and (4) Adjacency to a public pedestrian alley 7.5 feet in width.

1. Status as a historic alley tax lot

The Property has been an alley tax lot for 69 years. Based on the website of the DC Recorder of Deeds, the Property has always been in separate ownership from the abutting lots since its creation in 1948. 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.

2. Small size of the alley lot

The Property is an exceptionally small alley lot. At 557 square feet, it is the smallest lot and only alley lot (either tax or record) in either Square 2588 or 2591, and smaller than upwards of 96%⁴ of all the lots in the Mount Pleasant neighborhood.⁵ Further, it is one of only four alley lots in the Mount Pleasant neighborhood. See **Exhibit E**.

3. Shape of the alley lot

The trapezoidal shape of the lot is unusual in that the width along the alley is 25 feet, 3 inches and the width to the rear tapers down to 19 feet.

4. Adjacent to two public alleys

The Property abuts a 15 foot-wide public alley to the north and is separated by a 7.5 foot-wide public pedestrian alley from Lot 1028, which is owned by the Applicant. The narrow public pedestrian alley is the only one in the Square since the sister pedestrian alley, which connected the alley to Hobart Street NW, was closed many years ago. Further, the Property is the only alley lot in the Mount Pleasant neighborhood that is “cut-off” from a street-fronting lot.

⁴Square 2621, Lots 810 and 811; Square 2596, Lots 808, 849, 851, 855-56, 868; and Square 2607, Lots 816-817 are smaller than 557 square feet.

⁵As bounded by 16th St. NW, Harvard St. NW, Adams Mill Rd. NW, and Rock Creek Park.

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, the alley centerline setback requirements of Subtitle E § 5106.1, and the pervious surface requirements of Subtitle E § 5107.1 would result in a practical difficulty to the Applicant.

In short, the dimensions of the alley network and separation of the Property from the Applicant's street-fronting lot creates a practical difficulty that results in unnecessary hardship to the Applicant. The goal of the Zoning Regulations is to prevent usable land from remaining undeveloped due to a strict interpretation of the regulations. In *DeAzcarate, et al. v. Board of Zoning Adjustment*, 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) (quoting, *Palmer v. BZA*, 287 A.2d 535, 541 (1972)) [emphasis added]. The policy of the District and this Board has been to prevent usable land from remaining idle, and in this case, the inability to develop the Property has burdened the Applicant with the responsibility of maintaining the Property, upon which litter and trash frequently accumulates.

1. Subdivision

Strict application of the subdivision requirements of Subtitle C § 303.3 would result in a practical difficulty. 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.

There is no opportunity for the Property to meet any of the three requirements. First, it fronts upon an alley only 15 feet in width 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. Second, it contains only 557 square feet, which is short of the 1,800 square foot requirement. Third, the Property is separated from the Applicant's street-fronting Lot 1028 by a public pedestrian alley. Therefore, the Property cannot be enlarged or subdivided into Lot 1028, nor would it be plausible to close the public pedestrian alley, as a sewer pipe is located beneath it. The Property is located to the rear of Lot 826, which is under different ownership. Though Lot 826's ownership has changed five times since 1948 and the Property's has been changed four times over the same period⁶, the Property has never been incorporated into the street-fronting lot nor owned by the same person. For all these reasons, the Property cannot meet the subdivision requirements.

To that end, there is *no* plausible regulatory path open to the Applicant to improve the Property with any reasonable use without obtaining zoning relief from the subdivision requirements. Accordingly, without variance relief, the Property would remain an open uncovered parking pad within 300 feet of a public street in a zone that permits one-family

⁶DC Recorder of Deeds search database.

dwellings on alley lots as a matter-of-right. As such, permitting the relief for a modest garage would not have a substantial adverse impact to the zone plan or the public good.

2. Alley Centerline Setback

The alley centerline setback requirement for the RF-1 zone is 12 feet. Subtitle E § 5106.1. The alley to the north is 15 feet in width, so 4.5 feet of relief is requested. The requirements of this section also apply to the eastern side of the Property, where it abuts the 7.5 foot-wide public pedestrian alley. The width of this alley necessitates 8.25 feet of relief.

The need for the alley centerline setback relief requested here is directly related to the exceptional conditions. The small size and unusual shape of the lot, paired with the fact that it abuts two alleys, makes the construction of a garage within the zone's maximum allowed lot occupancy practically difficult. As noted, the Property comprises only 557 square feet. Providing for both alley setbacks would result in the reduction of approximately 278 square feet of building footprint, or only half of the Property's total square footage.

The Property being situated along the corner of two alleys – one of which comprises the only public pedestrian alley in the neighborhood – creates an additional challenge, especially given the lot's odd shape. Providing the setback requirement along the public pedestrian alley would eliminate the potential for developing along the widest two lot lines of the trapezoidal lot. Complying with zoning would result in a practically-difficult structure that would be too small for storage of a vehicle. Without the requested relief, the reduction in the footprint of the proposed building would make the construction of a garage impractical and create a practical difficulty that results in unnecessary hardship to the Applicant.

3. Pervious Surface

The pervious surface requirement for the RF-1 zone is 10%. Subtitle E § 5107.1. The Property currently is used as a parking pad and generally is not pervious. The Applicant's initial proposal requested 55.7 square feet of relief, or 100% of the requirement. The revised plans provide for a 2.5 foot-wide rear yard. This area will contain landscaping elements including shrubs and other greenery, thereby contributing approximately 42 square feet of pervious surface, or 76% of the requirement. The small size of the lot, coupled with its shape and adjacency to two alleys makes the full provision of this requirement impractical. At 557 square feet, any further reduction to the Applicant's modestly-sized proposal would make the construction of a modest garage practically difficult and result in unnecessary hardship to the Applicant without the requested relief.

For these reasons, without the requested subdivision, alley centerline setback, and pervious surface variance relief, the Applicant would face severe practical difficulties due to the exceptional conditions.

C. No Substantial Detriment to the Public Good and Consistent with the Zone Plan

There will not be substantial detriment to the public good by approving the requested relief. As noted, the Property is currently unimproved and used for off-street parking, which will not change with this request. To the contrary, use of the property as a garage will add to the public good by providing safety features such as motion-activated floodlights along two sides of the structure and a fisheye safety mirror. Further, there are many other garages on the alley and this modest brick design will not serve to upset that balance.

There will not be substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief because parking on an alley lot is a use permitted in the zone. In fact, this was confirmed by the Deputy Director of OP, who spoke of parking uses

specifically for alley lots along alleys with a narrow right-of-way, as is the case here. *See*

Exhibit D.

V. APPLICANT MEETS THE BURDEN OF PROOF FOR SPECIAL EXCEPTION RELIEF

The Board is authorized to grant a special exception where it finds the special exception:

- (1) Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- (2) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- (3) Subject in specific cases to special conditions specified in the Zoning Regulations.

11 DCMR Subtitle X § 901.2.

As outlined below, the Project meets these requirements.

A. The relief is harmonious 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-1 zone permits parking on alley lots as a matter-of-right and by special exception. The Project directly aligns with this intent, as the relief will allow the Applicant to build a modest one-story garage on a small alley lot. Pursuant to Subtitle U § 601.1, parking is permitted as a special exception, and pursuant to Subtitle E §§ 5108.1 and 5204.1 alley lot yards relief is also permitted as a special exception.

As noted above, parking use relief, as well as rear and side yard relief, are in harmony with the general purpose and intent of the Zoning Regulations, and provide a prime opportunity for the Applicant to fulfill an important planning goal – namely, constructing a low-impact, in-fill structure upon a vacant lot. As discussed earlier, the goal of the Zoning Regulations is to prevent usable land from remaining undeveloped due to a strict interpretation of the regulations.

In this case, the inability to develop the Property has resulted in the Applicant maintaining a property that only accumulates litter and trash. Such an outcome would not be in harmony with the intent and purpose of the Zoning Regulations.

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

The requested relief will have no undue adverse impact on the use of neighboring property. The Project's parking use is identical to its current use as a parking pad, only with more security and safety features for pedestrians, and an attractive design. Importantly, the Project will not jeopardize the existing light, air, and privacy available for neighboring properties. As stated earlier, the revised plans now feature a garage with a 2.5 foot-wide rear yard, instead of a one-family dwelling, so as to address the potential for privacy and noise impacts. This change also reduces the degree of rear yard relief being sought by 50% and provides an area for the planting of screening trees, thereby further diminishing privacy and noise concerns. The redesigned structure will feature a limited number of windows. Moreover, the proposed garage is located over 17 feet from the nearest neighboring dwelling unit (on Lot 826) and will only be 15 feet in height. As structures located to the rear of the Property across the alley are significantly taller due to topographical differences, no shadow impacts are possible. Consequently, these conditions will not be unduly affected.

Additionally, the Project will align with other structures located along the alley, including numerous other garages. See **Exhibit F**. Since the parking pad is currently used for parking, the Project will not contribute to an increase in vehicular traffic through the alley. A turning radius diagram shows that vehicle movements into and out of the garage will not affect garages across the alley. Finally, special attention has been given so that the garage blends in with the architectural fabric of the block, as the garage will feature red-brick construction.

Accordingly, the Application satisfies the requirements for special exception relief from the parking use and yards requirements pursuant to Subtitle U § 601.1, and Subtitle E §§ 5108.1 and 5204.1.

C. The Proposed Project Will Meet Special Conditions As May Be Specified in this Title

Subtitle U § 600.1(d) provides the requirements for includes three conditions regulating parking as a matter-of-right use on alley lots in the RF-1 zone.

(d) Parking subject to the following conditions:

- (1) Surface parking spaces for use by residents of the square;
- (2) Not more than two (2) car-sharing spaces; and
- (3) Parking garage on a lot not containing another use shall meet the following conditions:

- (A) No more than two (2) motor vehicles may be housed on the lot;
- (B) The building may not exceed four hundred fifty square feet (450 sq. ft.); and
- (C) The building shall open directly onto an alley;

The Project will house two automobiles and will open directly upon an alley. However, condition (B) is not satisfied, as parking uses are limited to no more than 450 square feet. The Applicant proposes to construct an approximately 515 square foot garage, and so is required to seek special exception relief from the parking use regulations under Subtitle U § 601.1(b), which includes two conditions regulating commercial use of a proposed parking garage:

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

- (1) Any use authorized in this section shall not be likely to become objectionable because of noise, traffic, or number of employees; and
- (2) the hours of active operation shall be arranged so as not to prove disturbing or otherwise objectionable to persons residing around the perimeter of the square in which located;

The garage will be used exclusively for private purposes and so the conditions relating to number of employees or hours of active operation do not apply. The proposed garage will satisfy the other requirements. Traffic conditions will not be impacted, as the site is currently used for parking. The original application proposed to use the Property as a one-family dwelling and has since changed the proposed use of parking, thereby reducing the likelihood of noise impacts, as feared by neighbors. Further, the reduction in the proposed scale of the structure reduces the degree of rear yard relief being sought by 50% and provides an area for the planting of screening trees, thereby further diminishing privacy and noise concerns. In short, the existing light, air, and privacy available for neighboring properties will not be negatively impacted.

VI. RESPONSE TO OBJECTION LETTERS

The Applicant conducted extensive community outreach in connection with the initial application and received four letters of support from surrounding neighbors. *See BZA Exhibits 37-39, and 42.* The Applicant attended the ANC meeting on October 24, 2017, at which time a number of community members expressed vehement opposition to the one-family dwelling proposal. The Applicant reflected upon these concerns and amended the application substantially. The Applicant did not simply reduce the proposed one-family dwelling by a floor, but changed the use to one that was less intensive. As a result, the Applicant proposes the construction of a less-substantial one-story garage with screening and safety features in lieu of a single-family dwelling, which the Applicant believes will address neighbors' concerns relating to safety, privacy, and noise.

VII. CONCLUSION

For all of the reasons stated above, the Project meets the applicable standards for variance and special exception relief under the Zoning Regulations. Accordingly, the Applicant respectfully

requests that the Board grant the application.

Respectfully Submitted,

Cozen O'Connor

A handwritten signature in blue ink, appearing to read 'M. Moldenhauer', is written over a light blue horizontal line.

Meridith H. Moldenhauer
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