

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 19683 of Brian and Carolyn Wise**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 601.1(c) to allow a residential use on an alley lot not meeting the matter-of-right requirements of Subtitle U § 600.1(e) and under Subtitle E § 5204 from the rear yard requirements of Subtitle E § 5104, and pursuant to Subtitle X, Chapter 10, for area variances from the lot area requirements of Subtitle E § 201.1, the alley centerline setback requirements of Subtitle E § 5106, and the lot frontage and lot area requirements of Subtitle C § 303.3(a) and (b) to construct a two-story one-family dwelling on an existing alley lot in the RF-3 Zone at premises 260 Lincoln Court, S.E. (Square 762, Lot 828).<sup>1</sup>

**HEARING DATES:** February 21 and April 10, 2018  
**DECISION DATES:** May 9, 2018 and May 27, 2020<sup>2</sup>

**DECISION AND ORDER**

This self-certified application was submitted on November 22, 2017 on behalf of Brian and Carolyn Wise, the owners of the property that is the subject of the application (the “Applicants”). After a public hearing, the Board voted to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated December 21, 2017, the Office of Zoning provided notice of the application and of the public hearing to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 6; the chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission

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<sup>1</sup> The caption has been revised to reflect the relief ultimately requested by the Applicants. The application originally sought special exceptions under Subtitle E § 5204 from the rear yard requirements of Subtitle E § 5104 and from the alley centerline setback requirements of Subtitle E § 5106, and, pursuant to Subtitle X, Chapter 10, requested area variances from the lot area requirements of Subtitle E § 201.1 and from the lot frontage and lot area requirements of Subtitle C § 303.3(a)-(b) to construct a two-story principal dwelling on an existing alley lot in the RF-3 zone at premises 213 3rd Street, S.E. (Square 762, Lot 828) (*see* Exhibit 6.) The application was subsequently amended to correct the address of the subject property and to amend the relief requested by seeking a variance from the requirements for a setback from the alley center line, rather than a special exception, and adding a request for a special exception under Subtitle U § 601.1(c) to allow a dwelling on an alley lot not meeting the matter-of-right requirements of Subtitle U § 600.1(e). (*See* Exhibits 13, 48.)

<sup>2</sup> On May 27, 2020, the Board voted to rescind its initial vote to deny the application from May 9, 2018 in order to clarify the relief at issue and to again vote to deny the application.

(“ANC”) 6B, the ANC in which the subject property is located; Single Member District/ANC 6B01; and the Architect of the Capitol. Pursuant to 11 DCMR Subtitle Y § 402.1, on December 21, 2017, the Office of Zoning also mailed letters providing notice of the hearing to the Applicants and to the owners of all property within 200 feet of the subject property.<sup>3</sup> Notice was published in the *D.C. Register* on December 22, 2017. (64 DCR 12938.)

Party Status. In accordance with Subtitle Y § 403.5, the Applicants and ANC 6B were automatically parties in this proceeding. Untimely requests for party status in opposition to the application were filed by owners of residences near the subject property: Thomas Coleman and Lauren Friedman (submitted March 6, 2018), Quynh Vu Bain, and Clayton Chilcoat (both submitted on March 8, 2018). The Board denied the request of Thomas Coleman and Lauren Friedman at the public hearing on April 17, 2018. The requests of Quynh Vu Bain and Clayton Chilcoat were deemed withdrawn because they were not present at the public hearing when their requests were considered. (*See* Subtitle Y § 404.10.)

Applicants’ Case. The Applicants provided evidence and testimony from Mateusz Dzierzanowski, the project architect, and from Steven Varga, an expert in planning, in support of their application to build a principal dwelling at the subject property.

OP Report. In its initial report, dated February 9, 2018, the Office of Planning recommended denial of the variances requested from requirements for creation of a new alley record lot at the subject property: public alley width at the lot (Subtitle C § 303.3(a)), public or private alley access to a street (Subtitle C § 303.3(a)), and lot area (Subtitle C § 303.3(b) and Subtitle E § 201). OP had no objection to approval of the requested special exception relief from rear yard requirements. OP also had no objection to relief from requirements for alley centerline setback, but considered the necessary relief an area variance rather than the special exception originally requested by the Applicants. (Exhibit 45.) In supplemental reports, the Office of Planning provided additional information requested by the Board on issues pertaining to the use and development of alley lots. (Exhibits 64 and 74.)

DDOT. By memorandum dated January 23, 2018, the District Department of Transportation indicated no objection to approval of the zoning relief requested to allow construction of a two-story dwelling providing one parking space at the subject property. (Exhibit 38.)

ANC Report. At a public meeting on February 13, 2018, with a quorum present, ANC 6B voted to adopt a resolution in support of the application for relief from Subtitle C § 303.3(a)-(b), concerning requirements for alley width and lot area; Subtitle E § 5106, concerning the alley centerline setback requirement; Subtitle E § 5104, rear yard requirements; and Subtitle U § 601.1, requirements for new dwellings on alley lots. The ANC did not state any issues or concerns about the requested zoning relief but urged the Applicants to engage in “ongoing communications with neighbors, including throughout the construction process and including a construction management agreement.” (Exhibit 52.)

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<sup>3</sup> The public hearing was originally scheduled for February 7, 2018 and was rescheduled to February 21, 2018 at the request of ANC 6B. (*See* Exhibits 37, 41.)

Architect of the Capitol. By memorandum dated February 20, 2018, the Architect of the Capitol stated no objection to approval of the application for special exception relief from rear yard requirements. The memorandum stated that the requested relief would not adversely affect the health, safety, and general welfare of the U.S. Capitol precinct and adjacent area and would not be inconsistent with the goals and mandates of the U.S. Congress as stated in Subtitle E § 5202.1.<sup>4</sup> (Exhibit 51.)

Persons in support. The Board received letters in support of the application from the owners of two properties close to the Applicants' lot. The letters stated that the Applicants' project would "positively contribute to the neighborhood." (Exhibits 46 and 48 [second].) The Board also received letters in support of the application from the Capitol Hill Restoration Society and the Coalition for Smarter Growth.

Persons in opposition. The Board received a letter and heard testimony in opposition to the application from the owners of two other properties near the subject property. The persons in opposition contended that the Applicants' proposal would adversely affect nearby properties especially with respect to light and air, including impacts on planned solar panels and special trees, and would create objectionable conditions associated with vermin; trash storage and collection; vehicular traffic in the alley, including access for emergency vehicles; noise; and pedestrian access to an easement abutting the subject property.

## **FINDINGS OF FACT**

1. The property that is the subject of this application is a parcel known as 260 Lincoln Court, S.E. (Square 762, Lot 828), an alley lot in a square in the Southeast quadrant bounded by Pennsylvania Avenue to the north, Third Street to the east, C Street to the south, and Second Street to the west.
2. The subject property is approximately square, with a lot area of 1,120 square feet. The eastern and western property lines extend 34 feet, while the northern and southern property lines extend 32 feet, 9 inches.
3. The subject property is bounded on the south and west by a public alley that has been designated Lincoln Court. The public alley is 20 feet wide in the vicinity of the subject property. To the east of the subject property, Lincoln Court extends 93 feet east to Third Street; that segment of the alley is 14 feet wide. The western portion of Lincoln Court, 20 feet wide, extends into the interior of the square to the northwest, without providing access to a street. The western portion also extends in an inverse U-shape to the southern portion of the square, bordering an alley lot (Lot 804, directly west of the subject property) on three

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<sup>4</sup> Pursuant to Subtitle E § 5202.1, any application for a special exception for property located in the RF-3 zone is subject to consideration by the Board as to whether the proposed development is: (a) compatible with the present and proposed development of the neighborhood; (b) 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), approved July 25, 1975 (Pub.L. No. 94-59, 89 Stat. 288); and (c) in accordance with the plan promulgated under the Act.

sides and connecting with a private alley, also 20 feet wide, that extends north from C Street.

4. The subject property abuts Lot 27 on its northern lot line. An existing two-story structure occupies the rear portion of Lot 27, without a side or rear yard setback near the subject property. The structure has a garage door and windows on the second floor, facing west, but does not have windows on its southern façade, facing the subject property. A wooden fence extends to the east of the accessory structure along the southern property line of Lot 27, which is shared with the subject property on the west and an abutting parcel, Lot 826, on the east.
5. The subject property abuts Lot 826 to the east and is separated from two other lots to the east (Lots 827 and 59, located directly south of Lot 826) by a walkway, three feet wide, that extends south from Lot 826 to the southern portion of the alley.
6. Lot 59 (formerly known as Lot 824) contains an attached dwelling fronting on Third Street (215 Third Street, S.E.) and a one-story accessory structure that was built to the lot lines in the rear yard. The accessory structure has a sloping roof between 10 and 14 feet in height. Its southern façade contains a garage door providing access from the abutting alley; its western façade has no windows facing the subject property. The accessory structure is separated from the subject property by the walkway extending from Lot 826. The walkway is subject to an easement allowing its use by the owners of Lot 59.
7. The Applicants' property, part of Lot 15 (a record lot), was designated Assessment and Taxation Lot 828 on February 23, 1905.<sup>5</sup>
8. The subject property is undeveloped but is paved and has been used for vehicular parking for as many as eight vehicles at least since 1958.<sup>6</sup> The parking area is accessible from the southern portion of the alley. Vehicular access across the lot is prevented by pylons linked by a metal chain installed along the western lot line.
9. The Applicants acquired the subject property in March 2015.<sup>7</sup>
10. The Applicants proposed to build a two-story principal dwelling on the subject property, with one parking space provided in a garage on the ground level. The dwelling would have a lot occupancy of 87.3%.

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<sup>5</sup> The subject property (Lot 828) and the three neighboring lots fronting on Third Street to the east (Lot 824, which is now Lot 59, as well as Lots 826 and 827) were all created as Assessment and Taxation Lots on February 23, 1905.

<sup>6</sup> See Orders in BZA Appeal No. 8286 (Howison, 1965), Appeal No. 10450 (Howison, 1970), Application No. 11969 (American Federal Savings and Loan Association, November 13, 1975), Application No. 12417 (American Federal Saving and Loan Association, July 25, 1977), and Application No. 13523 (American Federal, October 15, 1981).

<sup>7</sup> The Applicants previously requested zoning relief from requirements for parking, rear and side yard, lot frontage, lot area, lot width, alley centerline setback, and use to allow a two-story flat at the subject property. That application was withdrawn by letter dated September 19, 2017. (See Application No. 19536.)

11. The Applicants testified that the height and massing of the proposed dwelling were designed to maintain the continuity of facades along the alley, consistent with architectural and historic preservation principles. The proposed dwelling would be built to the property lines on the southern, western, and northern edges; a side yard, five feet wide, would be provided on the eastern side. The side yard would be bordered by a wooden fence installed on the eastern lot line, with a gate providing access from the alley. The entrance to the dwelling would also be from the south, with a garage entrance provided on the western façade.
12. The proposed dwelling would have windows on its western and southern façades, facing the public alley. No windows would be installed on the northern façade, facing the two-story accessory building on the abutting lot, or on the eastern façade, facing the rear yards of the dwellings fronting on Third Street.
13. The subject property, like the majority of Square 762, is located in the Capitol Precinct Residential Flat (RF-3) zone.
14. The RF zones are designed to be mapped in areas identified as low-, moderate-, or medium-density residential areas suitable for residential life and supporting uses. (Subtitle E § 100.2.) The provisions of the RF zones are intended to: (a) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (b) allow for limited compatible non-residential uses; (c) allow for the matter-of-right development of existing lots of record; (d) establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones; (e) allow for the limited conversion of rowhouse and other structures for flats; and (f) prohibit the conversion of flats and row houses for apartment buildings as anticipated in the RA zone. (Subtitle E § 100.3.)
15. The purpose of the RF-3 zone is to provide for areas adjacent to the U.S. Capitol precinct predominantly developed with row houses on small lots on which no more than two dwelling units are permitted. (Subtitle E § 500.1.) The RF-3 zone is intended to: (a) promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction in a manner 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), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288) and in accordance with the plan submitted to the Congress pursuant to the Act; (b) reflect the importance of and provide sufficient controls for the area adjacent to the U.S. Capitol; (c) provide particular controls for properties adjacent to the U.S. Capitol precinct and the area adjacent to this jurisdiction, having a well-recognized general public interest; and (d) restrict some of the permitted uses to reduce the possibility of harming the U.S. Capitol precinct and the area adjacent to this jurisdiction. (Subtitle E § 500.2.)

16. Alley lots to the west of the subject property are developed with garages. One other residence is located in the alley near the subject property.
17. Properties to the east of the subject property, facing Third Street, contain attached buildings used as principal dwellings. Other residential buildings, including several multi-family buildings, are located along Second and Third Streets. A multi-story hotel is located across the public alley to the south of the subject property, facing C Street.
18. The surrounding neighborhood character features a mix of residential, commercial, and institutional uses. Properties in the northern portion of Square 762, especially parcels fronting on Pennsylvania Avenue, are located in the Capitol Interest Mixed-Use zones (MU-24 and MU-26) in an area characterized by a variety of commercial uses in attached buildings.

## **CONCLUSIONS OF LAW AND OPINION**

**Variations.** The Applicants seek area variances from the lot frontage requirements of Subtitle C § 303.3(a), the lot area requirements of Subtitle E § 201.1 and Subtitle C § 303.3(b), and the alley centerline setback requirements of Subtitle E § 5106.1.<sup>8</sup> The Board concludes that a variance from Subtitle E § 201.1 is not necessary because that provision does not apply to this application, which concerns an alley lot. Development standards for alley lots in the RF zone are set forth in Subtitle E, Chapter 51. Because the subject property is not a record lot, and therefore requires subdivision to create a record lot, the minimum lot area required in this case is governed by Subtitle C § 303.3(b). Accordingly, the Board dismisses the request for a variance from the lot area requirements of Subtitle E § 201.1 as inapplicable to this application.

Notwithstanding their variance request, the Applicants also argued that Subtitle C § 303.3 is inapplicable to this application on the ground that the subject property meets the zoning definition of an “alley lot” and therefore does not require subdivision to create a new record lot. (*See* Exhibit 48.) The Board has previously considered and rejected this argument and finds no reason here to depart from the prior holding that the requirements of Subtitle C § 303.3 are applicable to alley

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<sup>8</sup> Consistent with the self-certified application, the Board considered the Applicants’ request for relief from the alley centerline setback requirements as an area variance. However, that relief is available as a special exception: the alley centerline setback requirement is stated in Subtitle E § 5106 as one of the development standards applicable to an alley lot, and the Board is authorized under Subtitle E § 5108 to approve an exception to those development standards as a special exception “subject to the provisions and limitations of Subtitle E § 5204.” The latter provision authorizes the Board to approve, as a special exception, a reduction in the minimum yard requirements of an alley lot in an RF zone. Under the Zoning Regulations, the alley centerline setback requirement is considered an aspect of the rear yard requirement (*see, e.g.* Subtitle E § 5004.1, “No minimum rear yard is required for an accessory building in an RF zone except when abutting an alley, where it shall be set back at least twelve feet (12 ft.) from the center line of the alley.” and Subtitle E § 5004.3, “If the required rear yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve feet (12 ft.) from the center line of the alley.”) However, even if the request had been considered under the more lenient special exception standard, the Board would have voted to deny relief from the alley centerline setback requirements for the same reasons discussed in this Order with respect to the special exceptions requested by the Applicants; that is, because the relief would not have been in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required by Subtitle X § 901.2(a).

lots designated Assessment and Taxation lots on or before November 1, 1957. (See BZA Application No. 19629 of Timothy and Charlotte Lawrence (order issued June 1, 2020).)

Under Subtitle C § 303.3(a), a new alley record lot must have frontage along a public alley with a minimum alley width of 24 feet and have access to a street through an alley or alleys not less than 24 feet in width. The subject property has frontage along and access to a street through a public alley that ranges from 14 to 20 feet wide.

Under Subtitle C § 303.3(b), a new alley record lot must meet the lot area standards applicable in its zone. If no minimum lot area standard is provided – and none is provide in the RF-3 zone<sup>9</sup> – the alley lot must have a minimum of 1,800 square feet of lot area. The Applicants’ property has a lot area of 1,120 square feet, giving rise to a request for a variance of 38% to allow the creation of a new alley record lot at the subject property.

In accordance with Subtitle E § 5106.1, a setback of 12 feet must be provided from the centerline of all alleys to which an alley lot abuts. The Applicants’ planned dwelling would be built to the southern and western lot lines, which abut an alley 20 feet wide, resulting in proposed centerline setbacks of 10 feet and giving rise to a need for variances of two feet (17%) on both the southern and western sides of the subject property.

The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See Subtitle X § 1000.1.)

Extraordinary or exceptional situation. For purposes of variance relief, the “extraordinary or exceptional situation” need not inhere in the land itself. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Rather, the extraordinary or exceptional conditions that justify a finding of uniqueness can be caused by subsequent events extraneous to the land at issue, provided that the condition uniquely affects a single property. *Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 942 (D.C. 1987). The extraordinary or exceptional conditions affecting a property can arise from a confluence of factors; the critical requirement is that the extraordinary condition must affect a single property. *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-1083 (D.C. 2016), citing *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

The Applicants contended that the subject property is characterized by an exceptional situation

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<sup>9</sup> The development standards set forth in Subtitle E § 5101, applicable to alley lots in the RF zones, do not specify a minimum lot area.

and condition as a result of a confluence of six factors: (1) its status as a historic alley tax lot for more than 100 years, and in separate ownership from the abutting street-facing lots since 1971, (2) its status as the only unimproved alley lot in its square, (3) its status as an existing lot that cannot be expanded in size or consolidated with another lot to create street frontage, (4) its zoning history, including use of the property as a commercial parking lot, with the most recent approval of that use expiring in 1986, (5) its location in a split-zoned square, reducing the number of residentially zoned properties used for residential purposes, thereby diminishing the potential use of the subject property as parking for nearby residents, and (6) the location of the subject property in the Capitol Hill historic district, which “severely restricts the proposed design and footprint” of the proposed dwelling. The Office of Planning disputed the Applicant’s claim that the subject property faced an exceptional situation in that “there is no opportunity for the lot to increase in area, and no way to widen the alley.” According to OP, “[t]hese situations ... are not unique or exceptional; many alley lots throughout the city are in the same circumstance.”

The Board does not find that the confluence of factors cited by the Applicants creates an exceptional situation at the subject property sufficient to justify the grant of the requested variance relief. As an alley lot, the subject property is not exceptional with respect to its size or shape, or its status as a tax lot. Nor is the separate ownership of an alley lot, different from abutting street-facing lots, an unusual occurrence. The Applicants’ inability to enlarge the subject property or to widen the abutting alley, so as to meet the frontage and lot area requirements for creation of a new record lot, are not unusual circumstances. For approval of a variance, the “extraordinary condition must affect a single property,” and the Applicants’ property, while different from nearby properties, is not unusual relative to other alley lots. Nor does the property’s location in a historic district warrant variance relief. *See Capitol Hill Restoration Society* at 942 (property’s location in a historic district imposed certain limitations on the manner in which the owner could modify structures on the lot but is not a condition that uniquely affects that lot); *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 539 (to support a variance it is fundamental that the difficulties ... be due to unique circumstances peculiar to the applicant’s property and not to general conditions in the neighborhood).

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome.” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board’s consideration include the inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

With respect to practical difficulties resulting from the strict application of the Zoning Regulations, the Applicants argued that they could not feasibly use the property absent variance relief because the site could not “be improved or adequately utilized” without a subdivision to create a record lot.



The Applicants contended that the uses permitted at the subject property as a matter of right<sup>10</sup> require a structure or are impractical at that location, and the subject property's "zoning history illustrates the practical difficulty in limiting the use to parking." With respect to the alley centerline setbacks, the Applicants claimed that practical difficulty would result from the requirement of 12-foot setbacks in a location where the façades of the proposed dwelling should be aligned with the two abutting alley structures, both of which are built to their lot lines, consistent with historic preservation principles, and where the small size of the lot, coupled with 12-foot setbacks, would limit the gross floor area of the planned dwelling and hinder compliance with applicable requirements of the Construction Code.

The Board concludes that the Applicants did not demonstrate practical difficulties arising from the strict application of the Zoning Regulations to the subject property sufficient to warrant the significant degree of variance relief required to allow the subdivision of the property to achieve a record lot. *See Gilmartin* at 1171 (when considering an application for variances, the Board has the flexibility to consider a number of factors, among them the weight of the burden of strict compliance, the severity of the variances requested, and the effect those variances would have on the overall zone plan).

The Zoning Regulations specify the minimum lot area required for the creation of a new record alley lot, and the Applicants' property is significantly smaller than the required minimum. The public alley abutting the subject property on two sides does not meet the minimum width specified in the Zoning Regulations either for lot frontage or for the purpose of providing access to the nearest street. Access to the nearest public street would be by means of an alley little more than half the required minimum width. The lot area of the subject property is less than two-thirds of the required minimum size. Especially in light of the degree of variance relief necessitated by the application, the Board does not find that compliance with the area restrictions would be unnecessarily burdensome.

The Office of Planning concluded that "the application does not demonstrate how adherence to the [Zoning] Regulations would be a practical difficulty to the applicant. The current use as surface parking could continue." (Exhibit 45.) The Applicants objected to OP's emphasis on use, arguing that use was not at issue because a principal dwelling is allowed as a matter of right in the RF-3 zone and that the application requests only area variance relief, and not a use variance, so that other potential uses of the property were not relevant or at issue. In fact residential use is permitted on an alley lot as a matter of right only where the alley lot is a record lot and can meet other specified requirements. The subject property is not a record lot and cannot satisfy those requirements, as the Applicants recognized by seeking special exception relief in addition to area variances to allow the planned dwelling. Moreover, the Applicants also emphasized use, contending that "a residential dwelling is the only reasonable use for the property" while describing other uses

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<sup>10</sup> Pursuant to Subtitle U § 600.1, the following uses are permitted as a matter of right on an alley lot in the RF zones: (a) agriculture, both residential and large, (b) artist studio, subject to certain conditions, (c) camping by the owner, subject to certain conditions, (d) community solar facility, subject to certain conditions, (e) parking spaces for use by residents of the square, not more than two car-sharing spaces, or a parking garage, not exceeding 450 square feet, for two vehicles, and (f) a residential dwelling, subject to specified limitations.

permitted at that location as a matter of right as also requiring a structure, and therefore impossible without variance relief, or impractical.

The Board does not agree with the Applicants that OP's recommendation with respect to practical difficulty is inapposite. The relevant issue is not the use of the property, but rather the proposed subdivision of the tax lot to a record lot so as to permit the construction of a structure. The Applicants have not demonstrated that the absence of a structure would be unnecessarily burdensome to a degree that would warrant the significant variance relief requested, or that continuing to use the subject property for parking, or other alternative uses available without variance relief, would be unduly inconvenient to the Applicants.

The Board was not persuaded by the Applicants' contention that use as a parking lot would be unreasonable in light of limits restricting use of the spaces to residents of the square,<sup>11</sup> or by their unsubstantiated claims that the surrounding residential uses would not generate sufficient demand for parking and that a commercial parking lot use would be more disruptive and cause greater impacts than the planned residential use, notwithstanding the prior use of the property as a commercial parking lot. Nor was the Board persuaded by the Applicants that practical difficulties would arise even with parking use of the lot because the Department of Consumer and Regulatory Affairs would refuse to issue the permits necessary to pave the subject property due to its lack of record lot status. The Office of Planning, after discussion with the Zoning Administrator, reported that a building permit would be necessary for paving and other improvements undertaken to support use as a parking lot, but the issuance of a building permit for a parking lot would not require conversion of a tax lot to a record lot absent the construction of a principal structure. Similarly, the issuance of a certificate of occupancy, needed to obtain a business license for a parking lot, also would not require conversion of a tax lot to a record lot. (*See Exhibit 74.*)

No substantial detriment or impairment. The Applicants asserted that approval of the requested variances would not cause substantial detriment to the public good. The Office of Planning testified that approval of the requested variances would likely not have a substantially detrimental impact on the public good but noted that the Department of Fire and Emergency Services had not commented on this application. The persons in opposition disagreed, asserting that the planned construction would limit the light and air available to neighboring properties.<sup>12</sup>

The Applicants also asserted that approval of the requested variances would not cause a substantial impairment of the intent, purpose, and integrity of the zone plan. The Office of Planning disagreed, stating that "granting relief to allow the creation of a substandard record lot would be contrary to the intent of the zoning regulations which are intended to ensure the regulation of lot sizes and promote the orderly development of the city." According to OP, the intent of the Zoning Regulations is "to allow future development of **existing** alley record lots even if they were substandard, but to limit the creation of new non-conforming record lots" and therefore "the

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<sup>11</sup> The permitted parking use also allows up to two car-sharing spaces in addition to parking for use by residents of the square. (*See Subtitle U § 600.1(e).*)

<sup>12</sup> The persons in opposition also complained about the Applicants' failure to propose a construction management plan and other matters unrelated to zoning, and therefore outside the Board's purview in this proceeding.

regulations require that any new record lot (including new alley lots) meet the requirements for lot size, among other standards” such as alley access width. (Exhibit 45; emphasis in original.)

The Board was not persuaded that the proposed dwelling would cause substantial detriment to the public good but concurs with OP in concluding that approval of the requested variances would cause substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Because the Applicants’ property is a tax lot, a subdivision is required to convert the subject property into a record lot before a building permit can be issued for a principal structure. The Zoning Regulations state the requirements for that subdivision; specifically, lot frontage along an alley of a specified minimum width, access to a street through an alley of the specified minimum width, and a minimum lot area. The Applicants’ property is deficient in each of those areas. The Applicants also requested relief from the alley centerline setback requirement, because the proposed dwelling would not comply with the minimum requirement along the southern and western lot lines. Especially in light of the magnitude of the requested relief, approval of the requested variances from the applicable requirements, absent a demonstration of an exceptional situation or practical difficulty, would not be consistent with the intent, purpose, and integrity of the zone plan. In reaching this conclusion, the Board notes especially that the purposes of the RF zones include to establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones. (*See* Subtitle E § 100.3(d).)

**Special exceptions.** As finally amended, the application seeks special exceptions under Subtitle U § 601.1(c) to allow a residential use on an alley lot not meeting the matter-of-right requirements of Subtitle U § 600.1(e) and under Subtitle E § 5204 from the rear yard requirements of Subtitle E § 5104. Pursuant to Subtitle E § 5104.1, a required rear yard must be provided with a minimum depth of five feet from any lot line of all abutting non-alley lots. The Applicants’ proposal would not provide a rear yard from the northern lot line, abutting a non-alley lot. Pursuant to Subtitle U § 600.1(e), a dwelling unit is permitted as a matter of right on an alley lot in an RF zone subject to certain limitations, including that the alley lot must have access to an improved public street through an improved alley: (a) at least 24 feet in width, or (b) not less than 15 feet in width and within 300 linear feet of an improved public street.<sup>13</sup> (Subtitle U § 600.1(e)(3).) In this case, the Applicants’ alley lot is located within 300 feet of an improved public street but would have access to that street through an improved alley that does not meet the 15-foot minimum width requirement for the entire distance. In accordance with Subtitle U § 601.1(c), residential uses not meeting the matter-of-right requirements may be permitted by special exception subject to certain requirements, including that the alley lot in question must connect to an improved public street through an improved alley or system of alleys that provides adequate public safety and infrastructure availability.<sup>14</sup>

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<sup>13</sup> The other requirements are that the alley lot must be wholly within an RF zone or other specified zone; a dwelling may not be constructed, or a building may not be converted to a dwelling, unless the alley lot has at least 450 square feet of lot area; the dwelling must meet all building code requirements for a permanent residential structure; and access from a proposed dwelling on an alley lot must be sufficient to provide the intended public safety, hygiene or other building code requirement, as determined by the Zoning Administrator or other authorized building official.

<sup>14</sup> The other requirements include that the residential use must be limited to one dwelling unit on an alley lot, that alley lot must not be wholly or partially located within the R-1-A, R-1-B, or R-2 zones, and a building may not be constructed or converted for use as a dwelling unless the lot area is at least 450 square feet.

The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

The Applicants contended that approval of the requested special exceptions would not adversely affect the use of neighboring property. The Office of Planning agreed that the absence of a rear yard met the requirements for approval, and commented favorably on the building design and proposed massing.<sup>15</sup> OP also concluded that approval of the requested rear yard relief would likely “not add significantly to shadow or air impacts beyond what a matter of right development would produce.” The persons in opposition disagreed, asserting that the planned construction would adversely affect the light and air available to neighboring properties.

The Board did not find the claims of adverse impacts on the use of neighboring properties raised by the persons in opposition to rear yard relief compelling, especially in light of the density of development permitted in the RF-3 zone and the scale of development already existing in the vicinity of the subject property. As the Applicants noted, the provision of a rear yard would result in “the creation of an undesirable...space,” a gap five feet wide between the proposed dwelling and the existing accessory structure to the north, “instead of providing a continuous connection to the façade of the adjacent building” consistent with historic preservation principles.

The Board finds the record inadequate to support a conclusion that relief from the alley width requirement of Subtitle U § 600.1(e) would not adversely affect the use of neighboring property. The Board notes that DDOT indicated no objection to approval of the application and finds that the proposed dwelling would not likely create objectionable conditions in the alley with respect to vehicular circulation, especially considering that both accessory structures closest to the subject property (on Lot 27, the abutting property to the north, and on Lot 59, the property to the east, separated from the subject property by the walkway) are built to the side and rear lot lines abutting the alley. However, the Applicants failed to provide information required by Subtitle U § 601.1(c)(4) and (5), which directs the Board, when considering a request for a special exception to allow a residential use on an alley lot, to consider relevant agency comments concerning: (A) public safety, including any comments from the Fire and Emergency Medical Service Department and the Metropolitan Police Department, (B) water and sewer services, including any comments from D.C. Water, especially the Department of Permit Operations, (C) waste management, including any comments from the Department of Public Works; and (D) traffic and parking, including any comments from DDOT. The Applicants were required to submit or arrange for the submission of agency comments to the official case record; if no agency submission occurred, the Applicants were required instead to describe any communications with relevant agencies. In this

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<sup>15</sup> The Office of Planning report was written before the application was amended to add the request for a special exception under Subtitle U § 601.1(c) to allow a residential use on an alley lot not meeting the matter-of-right requirements of Subtitle U § 600.1(e).

case, the Applicants stated only that they “will contact each agency listed” “if necessary” or “if requested by the Board.” (*See* Exhibit 48.)

Pursuant to Subtitle E § 5202.1, with respect to a special exception application for a property located in the RF-3 zone, the Board must consider whether the proposed development is: (a) compatible with the present and proposed development of the neighborhood; (b) 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), approved July 25, 1975 (Pub.L. No. 94-59, 89 Stat. 288); and (c) in accordance with the plan promulgated under the Act. The Board is unable to conclude that approval of the requested special exception relief would be consistent with the criteria applicable in the Capitol Interest zone. The Board notes that the Applicants’ proposal to construct a principal dwelling at the subject property was at least partially supported by the Office of Planning, DDOT, and ANC 6B, and that the Architect of the Capitol had no objection to approval of the requested special exception relief from rear yard requirements. However, the Board cannot find that the proposed development is compatible with the present and proposed development of the neighborhood, having concluded that the requirements for subdivision of the property have not been met and in light of the absence of information required by Subtitle U § 601.1(c)(4) and (5).

The Board also concludes that approval of the requested special exceptions would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required for approval by Subtitle X § 901.2. As previously discussed, the Zoning Regulations prohibit construction of the dwelling proposed by the Applicants unless the alley tax lot is first subdivided to create a record lot, and the subject property does not meet the requirements for that subdivision. Approval of the requested special exceptions, necessary for the construction of a new dwelling on an alley tax lot that would otherwise be inconsistent with zoning requirements, would not be in harmony with the general purpose and intent of the Zoning Regulations.

The Board is required to give “great weight” to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04 (2012 Repl.). For the reasons discussed above, the Board concurs with OP’s recommendation that the application should be denied.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case ANC 6B adopted a resolution in support of the application without stating any issues or concerns about the requested zoning relief to which the Board can accord great weight. For the reasons discussed in this order, the Board concludes that the application does not meet the requirements for approval of the requested relief.


Based on the findings of fact and conclusion of law, the Board concludes that the Applicants have not satisfied the burden of proof with respect to their application for area variances and special exceptions to allow a new principal dwelling on an existing alley tax lot in the RF-3 zone at 260 Lincoln Court, S.E. (Square 762, Lot 828). Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE (May 27, 2020): 4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May voting to DENY; one Board seat vacant.)

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

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

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** June 2, 2020

PURSUANT TO SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.