

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



Application No. 20716 of 15th Street Alley, LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the new alley record lot requirements of Subtitle C § 306.1 to allow a subdivision of an existing alley record lot into six new alley record lots, for a new two-story attached principal dwelling on each new lot, in the RF-1 Zone at Square 4564, Lot 95.¹

HEARING DATES: May 18, 2022

DECISION DATE: June 15, 2022

DECISION AND ORDER

This self-certified application was filed on February 17, 2022 on behalf of 15th Street Alley, LLC (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated March 3, 2022, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Consumer and Regulatory Affairs,² the Office of the Attorney General, the Department of Public Works (“DPW”), the D.C. Water and Sewer Authority (“DC Water”), the Fire and Emergency Medical Services Department (“DC FEMS”), the Metropolitan Police Department (“MPD”), the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 6A, the ANC in which the subject property is located, the Single Member District ANC 6A08, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on March 11, 2022 (69 DCR 001855).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 6A were automatically parties in this proceeding. The Board granted requests for party status in opposition to the application submitted by Mary Johnson (Exhibit 33), David Dixon (Exhibit 34), Martha Byers (Exhibit 35),

¹ By orders issued August 25, 2023, the Zoning Commission approved text amendments changing the names of some zone district and renumbering some provisions. (See Zoning Commission Orders 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

² As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*

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James Harris (Exhibit 36), and Kathy Anderson (Exhibits 37 and 74), who were residents of D Street or 16th Street near the subject property. The Board also granted a request for party status in opposition to the application submitted by Ashley Mild, who later withdrew her party status (Exhibits 32 and 54). Requests for party status in opposition to the application submitted by Ronnie Gray (Exhibit 38) and Todd Spears (Exhibit 39) were deemed withdrawn because they did not appear at the public hearing (see Subtitle Y § 404.10).

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Fritz Hubig and Evan Muchai on behalf of the Applicant, and Michael Cross, the project architect. The Applicant proposed a subdivision of an existing alley record lot into six new alley record lots for the construction of six new two-story, attached principal dwellings.

OP Report. By reports dated May 6 and June 8, 2022, the Office of Planning recommended denial of the application unless the Applicant was able to resolve a potential public safety issue with DC FEMS. (Exhibits 42 and 73.)

DDOT. By report dated May 6, 2022, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 41.)

ANC 6A. ANC 6A submitted a letter, dated May 14, 2022, stating that, at a public meeting on May 12, 2022, with a quorum present, the ANC voted to support the application. (Exhibit 48.)

Parties in Opposition. The parties in opposition expressed concerns about aspects of the Applicant's proposal, including with respect to visibility in the alleys, impacts on public safety and services such as trash collection, stormwater management, traffic and parking, density, and noise.

Persons in Support. The Board received letters and heard testimony from persons in support of the application who indicated no objection to the Applicant's proposal. The zoning committee of the Capitol Hill Restoration Society voted to support the application contingent on the Applicant's commitment "to address objecting neighbors' concerns," especially with respect to construction management. (Exhibit 44.)

Persons in Opposition. The Board received letters and heard testimony from persons in opposition to the application, who generally objected that the site was insufficient for the Applicant's proposal and should be preserved as green space.

FINDINGS OF FACT

1. The property that is the subject of this application is an alley lot (Lot 95) located in the interior of Square 4564, which is bounded by D Street N.E. to the north, 16th Street N.E. to the east, C Street N.E. to the south, and 15th Street N.E. to the west.

2. The subject property is generally rectangular, approximately 40 feet wide and 216 feet deep, with a lot area of 10,750 square feet.
3. The subject property is bounded on all four sides by public alleys. The alleys to the north and south are 16 feet in width. The alley to the west is 18 feet wide. The alley to the east is 20 feet wide adjacent to the subject property and narrows to 16 feet at the entrance to the alley at C Street.
4. The north alley extends across Square 4564 between 15th and 16th Streets. The east and west alleys both extend south to C Street. The south alley extends between the east and west alleys for the width of the subject property.
5. The Applicant proposed to subdivide the subject property, which is currently configured as an alley record lot, into six new alley record lots, designated as Lots A through F. Each of the new lots will be approximately 36 feet wide and 40 feet deep, with lot areas of 1,800 square feet (Lots B through E) or 1,775 square feet (Lots A and F).³
6. The Applicant proposed to construct a new attached principal dwelling on each new lot. Each dwelling will contain five bedrooms.
7. Each new dwelling will be two stories and 20 feet in height. The attached dwellings will not have side or rear yards, and will result in 75 percent lot occupancy on each new lot.⁴
8. The dwellings will be oriented so that the front doors will be on the west façades. The rear (east) façades will contain an entrance to a parking garage on the lowest level of each dwelling.
9. The garages will accommodate two vehicle parking spaces each on Lots A through E, and one parking space on Lot F. The Applicant provided a turn radius diagram to illustrate that the garages will be located so as to create 24 feet of open space (in the alley or on the Applicant's lot), thereby providing sufficient room for cars to enter and exit the garages onto the alley. (Exhibits 70, 70D.)

³ The difference in lot areas is attributable to the slightly irregular shape of the subject property at each corner of the lot. By email sent March 21, 2022, the Zoning Administrator approved the Applicant's request for a deviation pursuant to Subtitle A § 304 to allow a reduction of 1.39 percent in the minimum lot area required for an alley lot, from 1,800 square feet to 1,775 square feet, for Lots A and F. (Exhibit 31C.)

⁴ The new dwellings on Lots A and F will be slightly smaller (1,515 square feet) than the dwellings on Lots B through E (1,528 square feet).

10. On May 25, 2022, the Fifth Police District of the Metropolitan Police Department submitted a letter stating “no concerns or areas of interest regarding the project that require further clarification at this time.” (Exhibit 65.)
11. By letter dated June 15, 2022, DPW submitted comments based on an inspection of the site by DPW’s Solid Waste Collections division to assess whether the construction proposed by the Applicant “would have any impact on the agency’s solid waste collection operations.” DWP concluded that the construction would not create any significant impact on DPW’s ability to perform its operations “[a]s long as construction and development of the site is confined to the parcels being developed.” (Exhibit 68.)
12. By letter dated May 24, 2022, DC Water stated no objection to approval of the application. The letter noted that the subject property did not currently have water or sewer service and that DC Water’s capital improvement program did not currently include plans to install water or sewer service in the alleys. DC Water stated that “proposed development would likely include the construction of adequate water and sewer facilities” and advised on standards for appropriate facilities. (Exhibit 66.)
13. By memorandum dated June 14, 2022, DC FEMS, Office of the Fire Marshal indicated “no objection to the proposed alley lot development,” noting that “after an in-person evaluation of the alleys surrounding the lot, it was verified that they meet [International Fire Code] code for fire apparatus access.” (Exhibit 77.)
14. The Applicant submitted a report prepared by a firm of fire protection engineers retained “to provide fire protection consulting services” in connection with the proposed development. The report evaluated the existing fire hydrants and fire lanes that would serve the new dwellings to confirm compliance with applicable codes, and noted that a sprinkler system would be provided in each new dwelling. The report concluded that “the existing fire department access and fire hydrants for this alley meet the District of Columbia [International Fire Code] code requirements.” (Exhibit 51.)
15. The subject lot is currently unimproved and lacks utility services. The site has a varied topography and uneven grading.
16. The subject property contains some trees. The Applicant provided a survey demonstrating that a large tree at the site was not a heritage tree and a permit issued by the Urban Forestry Administration authorizing removal of the tree. (Exhibits 70, 70C.)
17. The subject property is the only alley lot in Square 4564.
18. The subject property is the only unimproved lot in Square 4564. The subject property has been configured as a record lot since at least 1927 but has not been improved since then.

19. The street-facing lots in Square 4564 are generally improved with residential buildings, primarily row buildings as well as some apartment houses.
20. The immediate neighborhood contains a mix of rowhouses and apartment houses.
21. The subject property is located in a Residential Flat (RF) zone, RF-1. The RF zones are residential zones, which provide for areas developed primarily with row dwellings, but within which there have been limited conversions of dwellings or other buildings into more than two dwelling units. (Subtitle E § 100.1.) In addition to the purpose statements of individual chapters, 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.)
22. The purpose of the RF-1 zone is to provide for areas predominantly developed with row houses on small lots within which no more than two dwelling units are permitted. (Subtitle E § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks an area variance from the requirements for the creation of a new alley record lot under Subtitle C § 306.1 to allow the subdivision of an existing alley record lot into six new alley record lots for the construction of a new two-story attached principal dwelling on each new lot in the RF-1 zone at Square 4564, Lot 95. 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 11 DCMR Subtitle X § 1000.1.)

Under Subtitle C § 306.1, the requirements for a subdivision to create a new alley record lot include that the new lot must (a) have frontage along a public alley with a minimum alley width of 24 feet, with the alley frontage being no less than 14 feet, and (b) have access to a public street through a public alley with an alley width of not less than 24 feet at any point between the new alley record lot and a street. The Applicant proposed a subdivision that will create six new alley record lots that will front on and have access to a public street through a public alley less than 24 feet in width.

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Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 6A, the Board concludes that the application has met the requirements for approval of the requested area variance.

The subject property exhibits an extraordinary or exceptional situation or condition as a result of a confluence of factors. For purposes of variance relief, 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 Board agrees with the Applicant that an exceptional condition exists at the subject property because of its shape, size, and unimproved state. The subject property – the only alley lot and the only unimproved lot in its square – is sufficiently large to meet the minimum lot dimension requirements for subdivision into six lots. The Board credits the Applicant's assertion that the subject property is nearly 3,000 square feet larger than any other lot in the same square. The subject property also exhibits an exceptional situation as an existing alley lot that is bounded by alleys less than 24 feet wide, where the existing widths of the alleys cannot be increased because of existing developments on other properties in the square.

An application 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 *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011).

The Board concludes that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property. Absent variance relief, the alley width requirements would preclude the subdivision of a very large alley lot. The Board credits the Applicant's testimony that development of the subject property with a single principal dwelling would not be financially feasible, considering especially the costs associated with extending utility services to the site (see Exhibits 31A, 31B).

Approval of the requested area variance will not result in a substantial detriment to the public good. The planned subdivision will permit six new attached dwellings, a use permitted in the RF-1 zone as a matter of right, in buildings that will comply with applicable development standards with respect to height, yards, and parking. The Applicant submitted a shadow study (Exhibit 40A) illustrating the lack of undue shadow impacts associated with the planned development. Accordingly, the Board concludes that approval of the requested variance relief will not adversely affect nearby dwellings with respect to light, air, or privacy. The Board was not persuaded by the parties in opposition that approval of the application would create substantial detriment to the public good due to concerns about stormwater runoff and the loss of open space. The parties in

opposition did not demonstrate that the Applicant's proposal was inconsistent with respect to any zoning provision related to stormwater management, trees, or yards. Instead, the Board agrees with the Applicant that approval of the requested zoning relief will facilitate the development of six new attached dwellings, a use and building type that is consistent with existing developments on nearby street-facing lots in the same square.

The Board was not persuaded by the parties in opposition that approval of the application would adversely affect conditions in the public alleys near the subject property. DDOT concluded that "the proposed action may lead to a minor increase in vehicle, transit, pedestrian, and bicycle trips on the localized transportation network," but concluded that any impacts would be "minor." (Exhibit 41.) Other agencies, including the Office of the Fire Marshal and DPW, indicated that approval of the application would not adversely affect their operations.

Approval of the requested variance relief will not substantially impair the intent, purpose and integrity of the zone plan. The Applicant's proposal is consistent with the intent of the RF zone to 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 and to establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones. Approval of the application will also be consistent with the purposes of the RF-1 zone by allowing the planned development, six new row houses, that will meet the development standards of the RF-1 zone other than with respect to the width of the abutting alleys.

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 agrees with OP's final recommendation that, in this case the application should be approved so long as DC FEMS did not object.

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 6A submitted a report in support of the application without stating any issues or concerns about the requested relief. The Board agrees with ANC 6A that the requested relief is needed to develop the subject property, an alley lot, and that the Applicant's design will protect the privacy, air, and light available to neighboring properties. (Exhibit 48.)


Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for an area variance from the alley width requirements of Subtitle C § 306.1 to allow a subdivision of an existing alley record lot into six new alley record lots, for a new two-story attached principal dwelling on each new lot, in the RF-1 zone at Square 4564, Lot 95. Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibit 40A in the record.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller to APPROVE, Lorna L. John not present or participating)

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

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

ATTESTED BY:


SARA A. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 23, 2024

PURSUANT TO 11 DCMR 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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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.