

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Prehearing Statement of Eric and Elizabeth Paisner
117 12th Street, SE (Square 989, Lot 807)

I. INTRODUCTION AND NATURE OF RELIEF SOUGHT.

This Prehearing Statement is submitted on behalf of Eric and Elizabeth Paisner (collectively referred to as the “**Applicant**”), owners of the property located at 117 12th Street, SE (Square 989, Lot 807) (the “**Subject Property**”). The Subject Property is an alley lot improved with a small structure currently used as a shed. The Applicant is proposing to demolish the existing shed and construct a new two-story, single-family dwelling with a green roof (the “**Building**”). The Applicant intends to use the first floor of the Building as a two-car garage and the second floor as a residential dwelling unit. In order to complete the Building, the following areas of relief are required:

1. Special Exception Relief Pursuant to C-306.4 (Record Lot)

The Applicant is proposing to construct a new single-family dwelling, a matter-of-right use in the RF-1 Zone. Subtitle A § 301.3 states: a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record. Accordingly, because the Applicant is proposing to construct a new building on the Subject Property, it requires a record lot. Subtitle C § 306.3 permits, as a matter-of-right, the conversion of a tax lot to a record lot, so long as it has 450 square feet of land area and was created before May 12, 1958. While the Subject Property has the requisite square footage, it was created in 1959, just after the May 12, 1958 date. Subtitle C § 306.4 permits special exception relief for the conversion of a tax lot to a record lot not meeting the requirements of C § 306.1-306.3. Accordingly, the Applicant is requesting special exception relief in order to convert the tax lot to a record lot pursuant to C § 306.4.

2. Special Exception Relief Pursuant to E-5201.3

Rear and Side Setbacks (E-5100.1(c) and (d)).

The Applicant is proposing to construct a new two-story, single-family dwelling. Buildings on alley lots in the RF-1 Zone are required to provide a five-foot (5 ft.) setback from any lot line

abutting a non-alley lot.¹ For zoning purposes, the southern lot line is considered the front. The Subject Property's north lot line, or rear lot line, directly abuts 115 12th Street, SE—a non-alley lot. The east lot line, or side lot line, also abuts a non-alley lot, which is a separate lot but also has the address 117 12th Street, SE. The proposed Building will extend lot line to lot line and will not be set back. Accordingly, the Applicant must request relief from the side yard and rear yard requirements.

Alley Centerline Setback (E-5100.1(e)).

In the RF-1 Zone, buildings on alley lots must also be set back seven and a half feet (7.5 ft.) from the centerline of any abutting alley (E-5100.1(e)). The alley to the west of the Subject Property is, for all intents and purposes, a 15-foot-wide alley. As shown in the photo exhibit, being filed along with this Prehearing Statement, Sladen's Park is set back 5 feet from its eastern property line. This setback is marked by a curb and there is finished brick alley between the curb and the Applicant's property line which measures 15 feet in width. The curb delineating the edge of the park and the beginning of the actual alley, was originally constructed in 1916 and is considered a historic element of Sladen's Park.² The Subject Property has frontage on a ten-foot (10 ft) wide alley to its west and therefore would be required to setback the house two and a half feet (2.5 ft.) from the western lot line to meet this requirement. However, the Building will not be setback from the centerline of the alley because it will have 100% lot occupancy. Accordingly, the Applicant must request relief for the centerline setback for the western alley. The southern alley is thirty feet (30 ft.) wide, so no setback relief is required.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the special exception relief requested pursuant to Subtitle C § 306.4 and pursuant to Subtitle E § 5201.3 from the requirements of E § 5100.1.

III. BACKGROUND.

A. Description of the Subject Property and Surrounding Area.

The Subject Property is located at 117 12th Street, SE, is in the RF-1 zone district, and the Capitol Hill Historic District. The Subject Property is an alley lot with 532 square feet of land area.

¹ E-5100.1(c) for rear yards; E-5100.1(d) for side yards.

² This information attributed to a letter filed by neighbor Margaret Mook in the Historic Preservation case for this project.

Abutting the Subject Property to the north is the rear of 115 12th Street, SE—a non-alley lot—which is improved with a multi-family dwelling. Abutting the Subject Property to the east is a large apartment building fronting on 12th Street, SE, also with the address 117 12th Street, SE. Abutting the Subject Property to the south is a thirty-foot (30 ft.) wide public alley called Sladen’s Walk. Abutting the Subject Property to the west is an alley officially measuring ten feet (10 ft.) in width. There is only one other alley lot with frontage on the west side of that alley, Sladen’s Park, a park owned by the District of Columbia and cared for and used by neighbors. Sladen’s Park is set back 5 feet from its property line on the west side of the alley from the Subject Property. There is a finished curb at that point and the alley surface in that 5-foot setback area is the same brick surface as the rest of the alley. So, the alley is effectively 15 feet wide. There are a number of other structures abutting that alley and the thirty-foot (30 ft.) alley to the south, including accessory buildings on lots facing 11th and 12th Street, SE, and the rear of 121 12th Street, SE, a large apartment building.

B. Proposed Building.

The Applicant is proposing to construct a new two-story, single-family dwelling. The Applicant intends to use the first floor as a two-car garage and the entire second floor as a one-bedroom residential dwelling. The Building design is subject to review by the Historic Preservation Review Board (“HPRB”). The Building will comply with the height, stories, and lot occupancy requirements for alley lots in the RF-1 Zone. The Building will also provide one (1) additional parking space than is required, for a total of two (2) parking spaces.

IV. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF.

A. Overview.

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief 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, subject also, in this case, to the specific requirements for relief under C § 306.4 and E § 5201.3 of the Zoning Regulations.

In reviewing applications for a special exception under the Zoning Regulations, the Board’s discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application.

See, e.g., *Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment*, 753 A.2d 984, 986 (D.C. 2000).

B. General Special Exception Requirements of Subtitle X § 901.2.

The granting of a special exception in this case “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 Maps ...” (11 DCMR Subtitle X § 901.2).

1. Building will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Building will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Subject Property is located in the RF-1 zone and is an alley tax lot; the RF zones “are distinguished by a maximum number of principal dwelling units per lot of either two (2), three (3), or four (4) units.” (E § 100.4). The Zoning Regulations also permit the use of alley buildings as single-family dwelling either as a matter-of-right or special exception. Therefore, the proposed use is permitted as matter of right and was contemplated by the Zoning Commission and enumerated in the 2016 Zoning Regulations. Accordingly, the proposed Building and use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Addition will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Addition will also not adversely affect the use of neighboring properties as the proposed Addition limits impacts on light, air, and privacy.

C. Requirements of Subtitle C § 306.4.

In order to convert the alley tax lot to an alley record lot via special exception, the Applicant must meet the requirements of C § 306.4, and the lot must have been created prior to September 6, 2016. According to a deed, included with this Application, the tax lot has existed since at least 1959. The proposal in this Application satisfies the requirements of 11 DCMR Subtitle C § 306.4(a) and (b) as follows:

Section 306.4(a): The Alley Tax Lot connects to an improved public street through an improved alley or system of alleys that provides adequate public safety, and infrastructure availability; and;

The Subject Property connects to improved public streets (12th Street and 11th Street, SE) through a system of alleys. The alley network of this square provides adequate public safety and infrastructure availability, as demonstrated by the accessory buildings and residential dwellings on the alley, and the fact that the alleys are also relatively large for the District—ranging from 10 feet to 30 feet.

Section 306.4 (b): The Office of Zoning shall refer the application to the following agencies for their review and recommendation, if filed to the case record within the forty (40) day period established by Subtitle A § 211:

- (1) Department of Transportation (DDOT);**
- (2) Department of Public Works (DPW);**
- (3) Metropolitan Police Department (MPD);**
- (4) Fire and Emergency Medical Services Department (FEMS);**
- (5) DC Water (WASA); and**
- (6) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).**

The Applicant will cooperate with the Office of Zoning and various agencies in answering questions and providing information needed for the agencies to review and make a recommendation.

D. Requirements of Subtitle E § 5201.

In order to obtain relief from the rear yard setback, side yard setback, and alley centerline setback, the Application must meet the criteria for relief under E § 5201.4-7:

E § 5201.4: An application for special exception relief under this section shall demonstrate that the proposed addition, new building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

- (a) The light and air available to neighboring properties shall not be unduly affected;**

The light and air available to neighboring properties shall not be unduly affected by the proposed Building. The Subject Property is a small, 532 square-foot lot that abuts a large apartment building to the east and north. The Applicant is requesting relief to build a single-family dwelling that extends lot line to lot line, rather than be set back five feet (5 ft.) from the northern lot line and two and half feet (2.5 ft.) from the alley. The proposed Building will comply with the height,

stories, and lot occupancy requirements for alley lots in the RF-1 Zone. The Building will also provide one (1) additional parking space than is required, for a total of two (2) parking spaces.

The Applicant has provided a shadow study, showing that any impacts are limited and do not rise to the level of undue.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The Applicant is proposing windows on the south and west-side of the Building. There are no windows proposed on the north or east side of the Building. The proposed west-facing windows will face the ten-foot (10 ft.) wide alley and Sladen's Park. Accordingly, the windows will not provide any direct sightlines into any windows on neighboring properties across the alley. The proposed window on the south-side of the Building is facing the thirty-foot (30 ft.) wide alley and has been designed to let light in without compromising privacy. Moreover, there are no windows on the portion of the accessory building across the thirty-foot (30 ft.) alley (119 12th Street, SE). Accordingly, the privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

(c) The addition or accessory structure, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage; and

The design of the proposed Building is subject to review and approval by HPRB. Regardless, the Building shall not substantially visually intrude upon the character, scale, and pattern of houses along the alley as it is similar in size, massing, and style to accessory units on the alley. The proposed renovation should improve the view of the alley.

(d) In demonstrating compliance with paragraphs (a), (b) and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.

The Applicant has provided plans, photographs, elevations, and section drawings sufficient to represent the relationship of the proposed Building to adjacent buildings and views from public ways.

Section 5201.5: The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.

If necessary, the Applicant will comply with any special treatment.

Section 5201.6: This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

This section is not being used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty- (40) day period established by Subtitle A § 211:

- (a) District Department of Transportation (DDOT);**
- (a) Department of Public Works (DPW);**
- (b) Metropolitan Police Department (MPD);**
- (c) Fire and Emergency Medical Services Department (FEMS);**
- (d) DC Water (WASA); and**
- (e) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).**

The Application is requesting relief from the alley centerline setback. Accordingly, the Office of Planning will refer the Application to the above-referenced agencies. The Applicant welcomes feedback from those agencies.

V. CONCLUSION.

For the reasons stated above, this Application meets the requirements for special exception relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

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