

BZA Application No. 21098

**633 Rear E Street, SE
Alta Laquearia LLC
July 3, 2024**

Board of Zoning Adjustment
District of Columbia
CASE NO.21098
EXHIBIT NO.48

Sullivan & Barros, LLP



Summary of Relief

- The Subject Property is an alley lot located in the RF-1 Zone. It is improved with a one-story Building most recently used as a warehouse. The Building is a contributing Building in the Capitol Hill Historic District. The Applicant is proposing to use the building as a single-family dwelling, which is permitted by right for this alley property.
- Even without HPO restrictions which prevent the Applicant from demolishing the building is unique as it is a 100 year old building with a massive concrete roof, beams, and existing historic openings. The openings are not set back from the alley and using those openings for bedroom windows creates safety issues as they will be at grade on the alley and cannot have any bars for egress purposes.
- Every other home on the alley either has a second story, the ability to construct a second story, and/or walls that abut private space. The subject property abuts three lots to its north, south, and west, and cannot change this condition (shares a wall with the building to the east). So the only option for bedroom egress windows if limited to the first floor is large at-grade windows with no privacy.
- Accordingly, the Applicant is proposing a solution which minimizes impact on surrounding properties and is compatible with the historic district– a second story addition set back from all sides which will house the bedrooms. It will not be visible from the street and will have limited views from the alley level, if any– meeting the presumed intent of the alley lot requirements.
- Accordingly, the Addition requires relief from the alley lot height limit of 20 feet (E-5100.1(a)) to increase the overall height from 17.5 feet to 28 feet. The Addition will still be within the story limit (two stories) and meet all other development standards for alley lots in the RF-1 Zone.

Changes to Plans based on Neighbor Concerns

- Presented to ANC three times (twice to the committee, once to full ANC).
- ANC supported both BZA and HPRB.
- Postponed BZA hearing to address neighbors' concerns related to relief, including privacy, light and air.
- A main concern from the neighbor at 518 Archibald Walk was reduced light. Applicant reduced the second-floor footprint and set it back even further from the north wall. This reduction, coupled with the existing trees shading that yard means there is now no impact on light and air.
- For the neighbor to the east, concern was primarily privacy related. Now no windows facing neighbor to the east (they have no windows facing subject property either, it's a blank wall).
- These changes have resulted in neighbor support from other neighbors– one of whom was originally listed in the neighbor petition (listed, not signed).

Area Variance Requirements

1000.1

With respect to variances, the Board of Zoning Adjustment has the power under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3) (formerly codified at D.C. Official Code § 5-424(g)(3) (2012 Repl.)), "[w]here, 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 any regulation adopted under D.C. Official Code §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the 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."

1002.1

The standard for granting a variance, as stated in Subtitle X § 1000.1 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property; and
- (b) An applicant for a use variance must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property.

Court of Appeals

Prong 1: Exceptional Situation or Conditions Unique to a Specific Piece of Property

Confluence of Factors and Improvements on the Property:

The phrase “other extraordinary or exceptional situation or conditions” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. See Clerics of St. Viator, Inc. v. D.C. Board of Zoning Adjustment, 320 A.2nd 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. Gilmartin v. D.C. Board of Zoning Adjustment, 579A.2d 1164, 1168 (D.C. 1990).

Area Variance for Height

Prong One: Exceptional Conditions affecting Only the Property

- Historic considerations provide an overall challenge in that the building cannot be razed and the Applicant has to work within the existing structure, but aside from that, the exceptional conditions and practical difficulty exists independent of the HPO.
- The Subject Property is unique due to a confluence of factors related to the improvements on the property including: age, historic use, historic openings, location of beams and columns, lack of setbacks, size, location on three alleys, and existing height.
- Other factors: Location within alley is also unique, alley itself is unique and location near RA-2 zone and MU-4 comes into play, too. Structure is unique without these 'other factors' but they reinforce the practical difficulties faced and go to the third prong as well, which speaks to the intent of the regulations and impact on the public good.

Age and History of Use

- It is one single story building which occupies the entire lot. It was designed by noted DC African American architect Lewis W. Giles and was built in 1925 as part of the distribution network of nearby milk producer W. A. Simpson.
- It was used by Walker Hill Dairy as a dairy bottling plant until the Dairy went out of business in the 1930s.
- The building is a utilitarian brick masonry structure with linteled openings, with little detailing. Its defining architectural characteristic is the existing low-slope roof structure, originally designed to provide a large unencumbered functional interior space.
- This reinforced concrete system consists of an innovative, for its time, grid of massive intersecting concrete beams and purlins bearing on only two interior columns. The employment of reinforced concrete at this scale was unusual in its era for such a small-scale building.

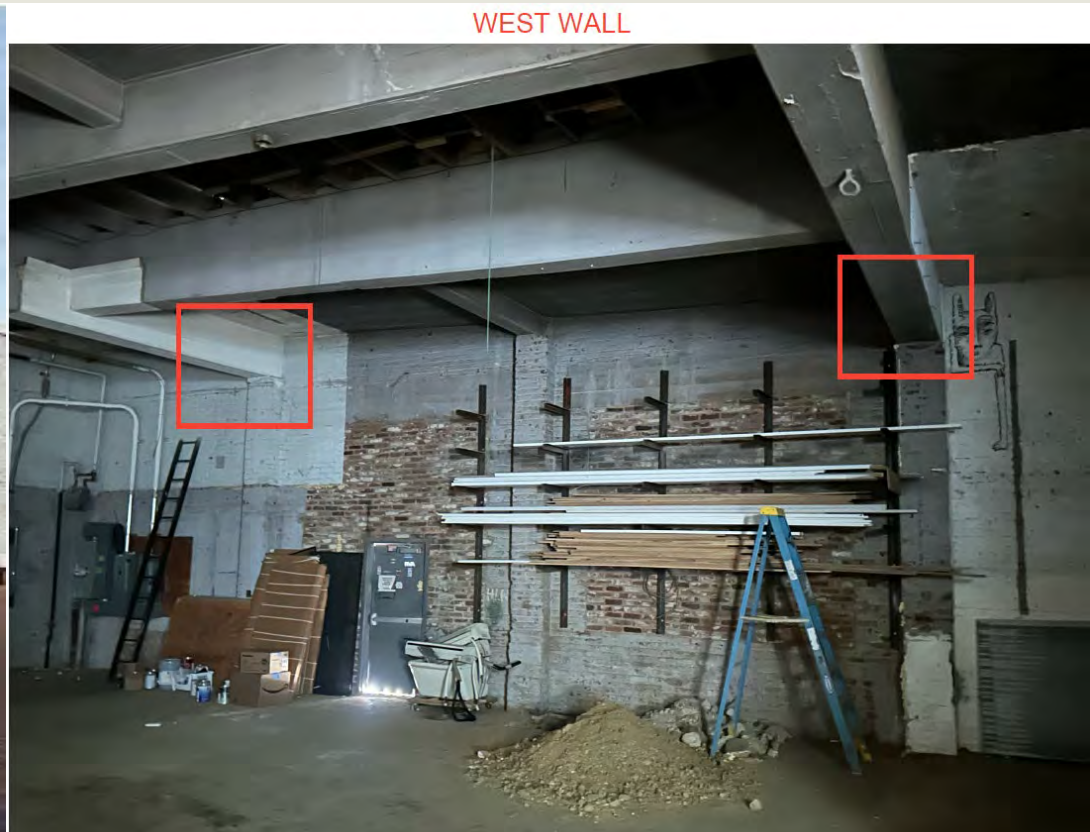


Historic Openings

South Elevation- Existing Garage Openings



West Elevation- Bricked Over, but Historic Openings



North Elevation



Location of Beams and Columns

**Beams
intersecting
with wall
between
historic
openings**

SOUTH WALL



West and North-Facing Historic Openings (bricked over currently)

Openings are located between intersection of beams and wall



**Closer look at
beams on the
north wall**

**Located between
large historic
openings (which
have been partially
covered, but you
can still see,
outlined in orange)**



**Closer look at
the west wall**

**Large bricked
over historic
openings,
beams
adjacent to
openings**



Roof Structure

Roof Structure

- Complex, substantial reinforced concrete roof structure (more about the cost and complexity of removal in PD section).
- Very unusual for its time and is one of the historic character defining elements of the Building.
- HPO Report quote: “The proposal also includes preservation of the distinctive roof system of reinforced concrete beams and decks, which was part of Lewis W. Giles’s original design and is among the building’s most unique features.”
- The roof also creates a situation where the existing Building is already 17.5 feet at its highest and slopes to 14.5 feet at its lowest, even though it is only one story. As described herein, to remove and rebuild the existing roof structure would be costly, but more than anything it would be prohibitively complex and disruptive.



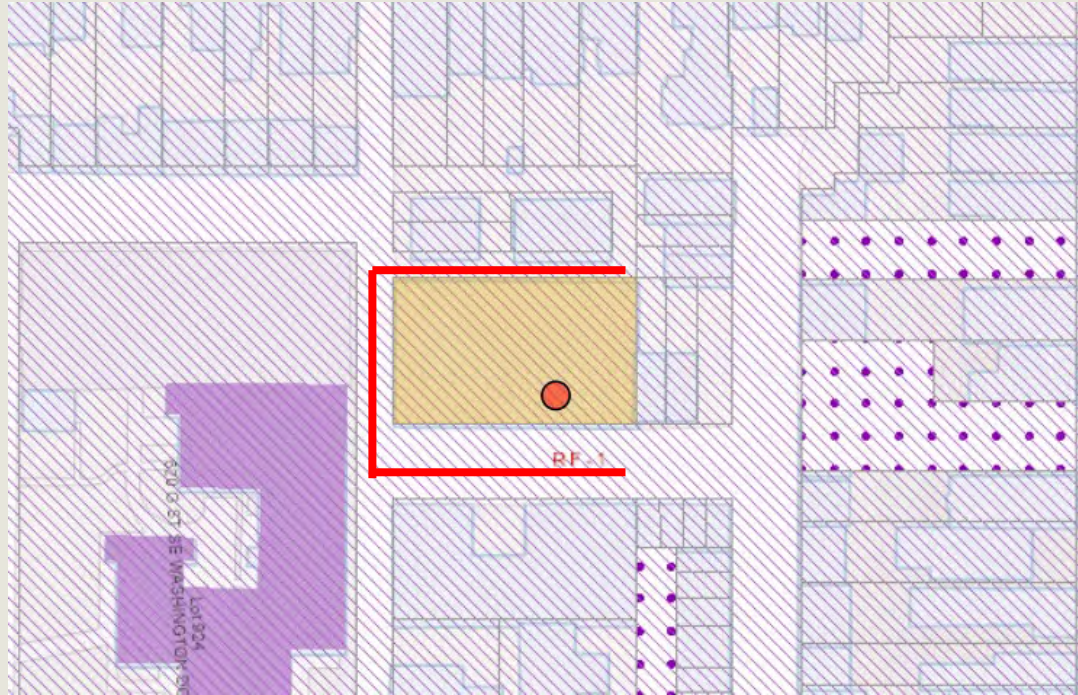
Subject Property



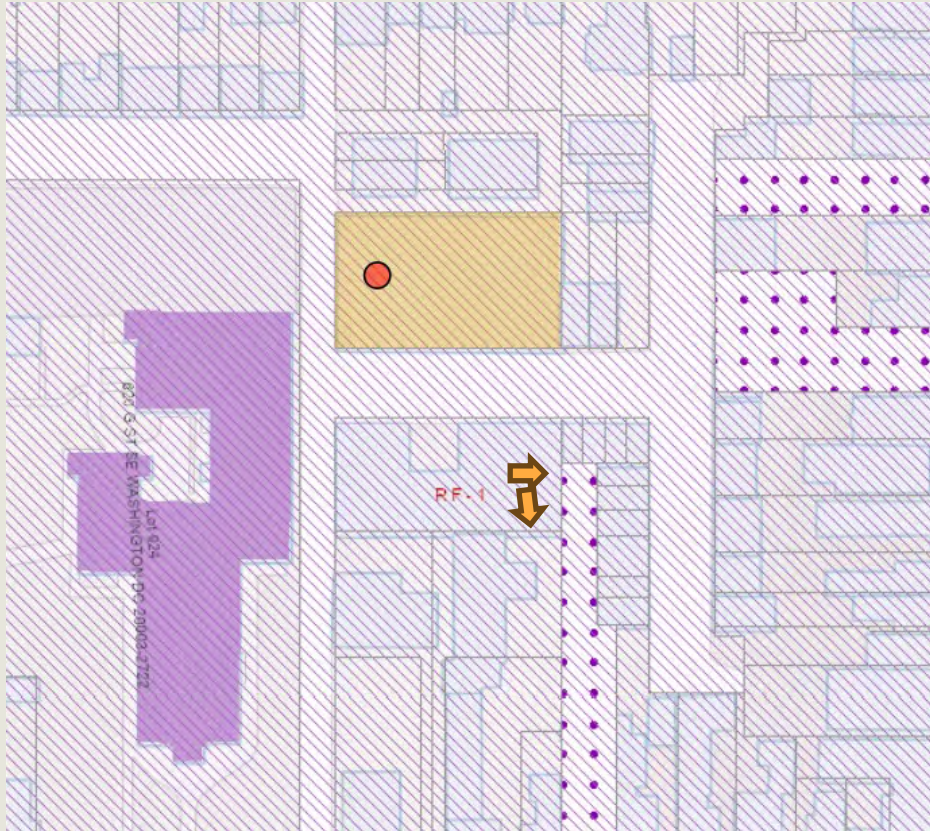


Location on Three Alleys

Bounded by Three Public Alleys



Property Across the Street has Two Sides Facing Private Space, Secure Windows are Possible for that Building

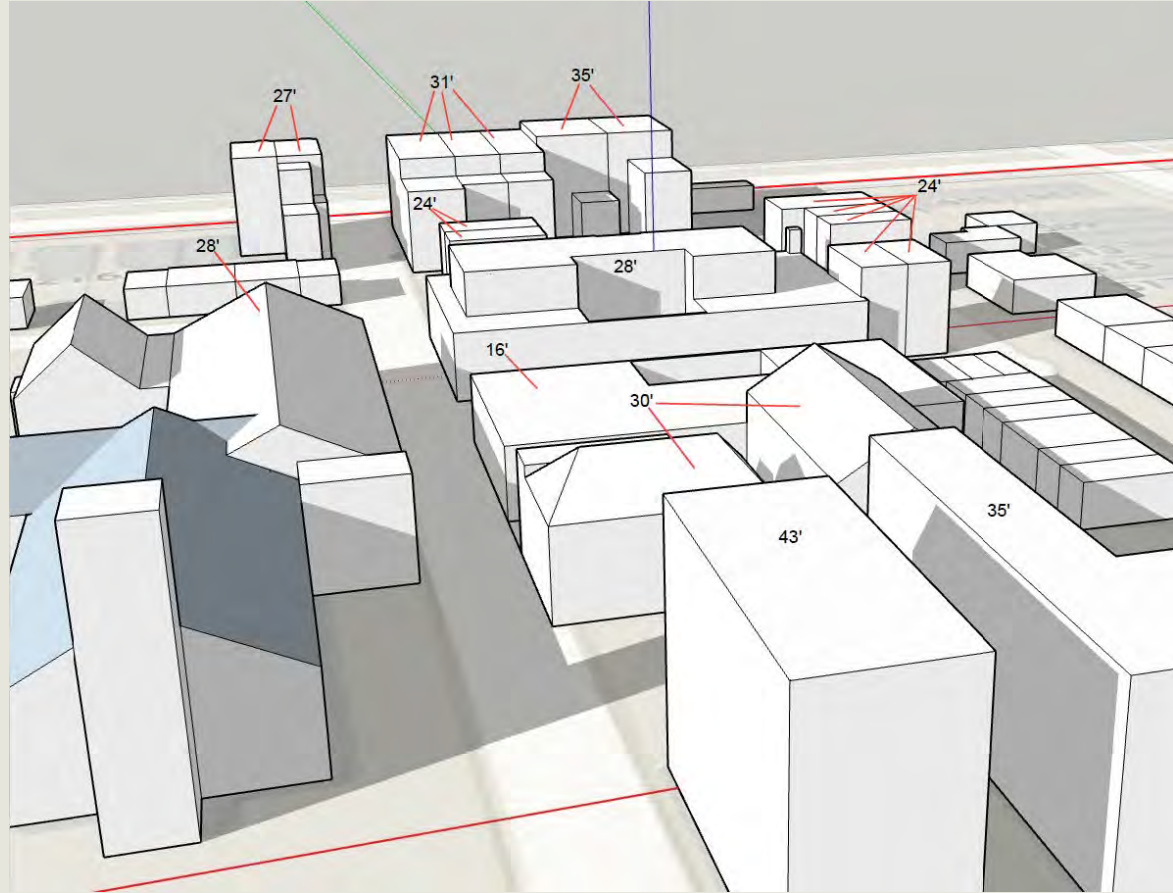


Historic
Easement to
the east,
neighbor's
yard to the
south

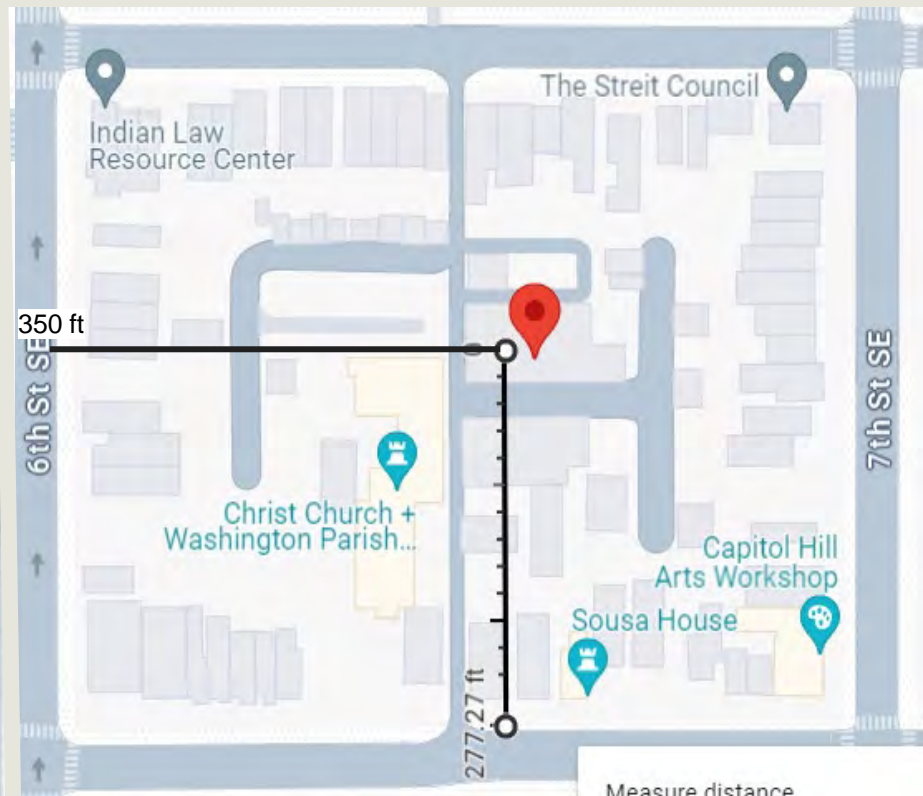
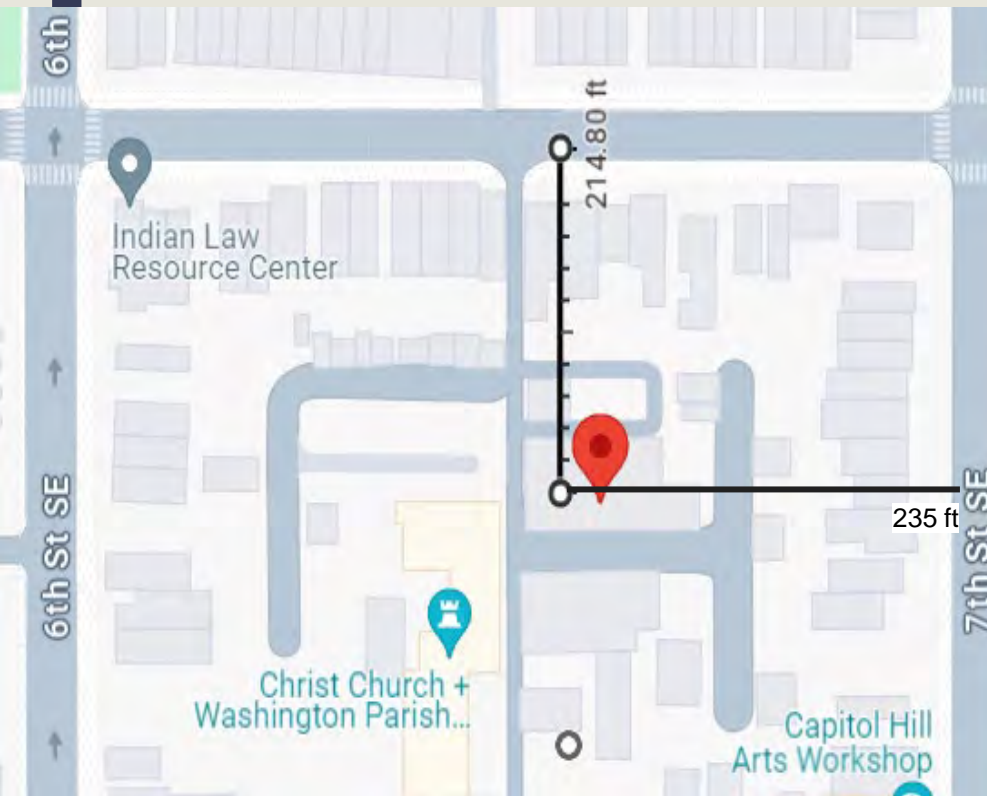
Alley Context: Heights of Buildings Surrounding the Alley, Location Within the Alley

Unique Alley System

Heights are above
20 feet, taller street
facing buildings-
many are over 35 feet



215-350 feet from each street, will be blocked by 2-3 story street facing buildings



A Tour Of The Alley



Entering from E Street– Facing South on F Street Terrace



Entering from E Street– Facing South on F Street Terrace



Facing 512 and 514 F Street Terrace Buildings (facing east)



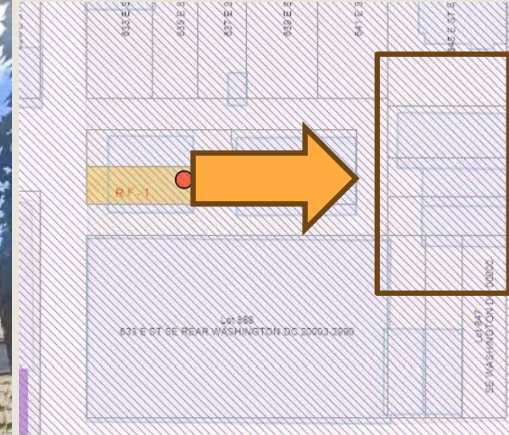
Archibald Walk Properties



518 Archibald



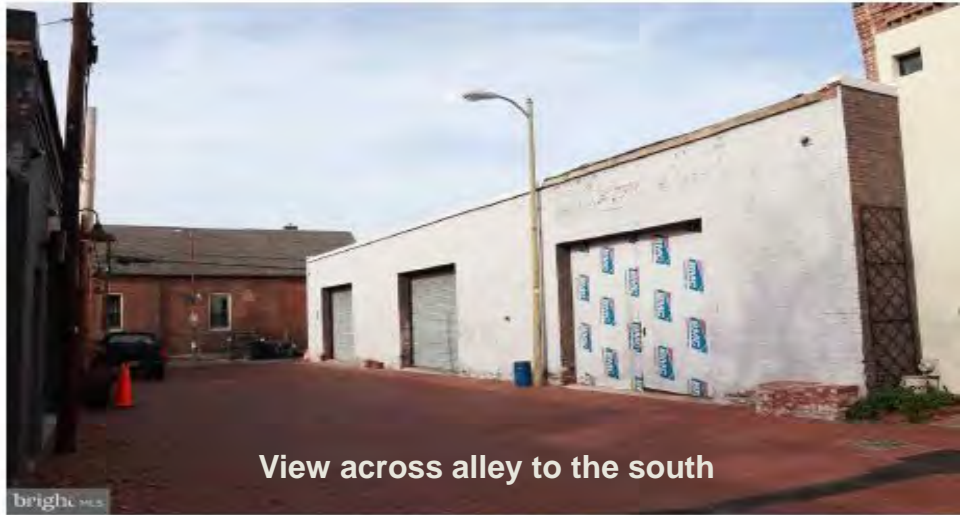
518 Archibald



Sullivan & Barros, LLP



View from SW corner



View across alley to the south



Subject Property

Facing down the alley to the north, towards 518



Subject Property

Subject Property

Church

F St Terrace St





Church



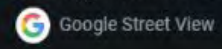
Subject Property

Facing north (view from alley to the south)

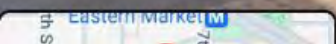


View from Corner of Alley to South

Washington, District of Columbia



Oct 2018 [See more dates](#)





Rear of 520

Rear of 518





Rear of 518



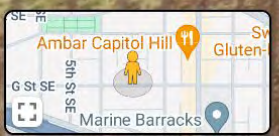
Entrance to alley from the south





Search Google Maps

← 598 F St Terrace SE
Washington, District of Columbia
Google Street View
Oct 2018 See more dates



Alley lots



599 F St Terrace SE
Washington, District of Columbia

Google Street View

Oct 2018 See more dates

Search Google Maps



525 F St Terrace SE

Washington, District of Columbia



Google Street View

Oct 2018

[See more dates](#)



Christ Church Vestry
Washington Parish
620 G St., SE


Subject Property



520 Archibald Walk, SE


Subject Property





518 Archibald Walk, SE

Subject Property

A photograph of a residential property. On the left, a red brick chimney is visible, partially covered by green ivy. To the right, a dense thicket of green trees and bushes obscures much of the view. In the background, a white house with a blue door and windows is visible. A red arrow points from a text box at the top to the foliage. Another text box is at the bottom left.

518 Archibald Walk, SE

Subject Property

530 F St. Terrace, SE

532 F St. Terrace, SE

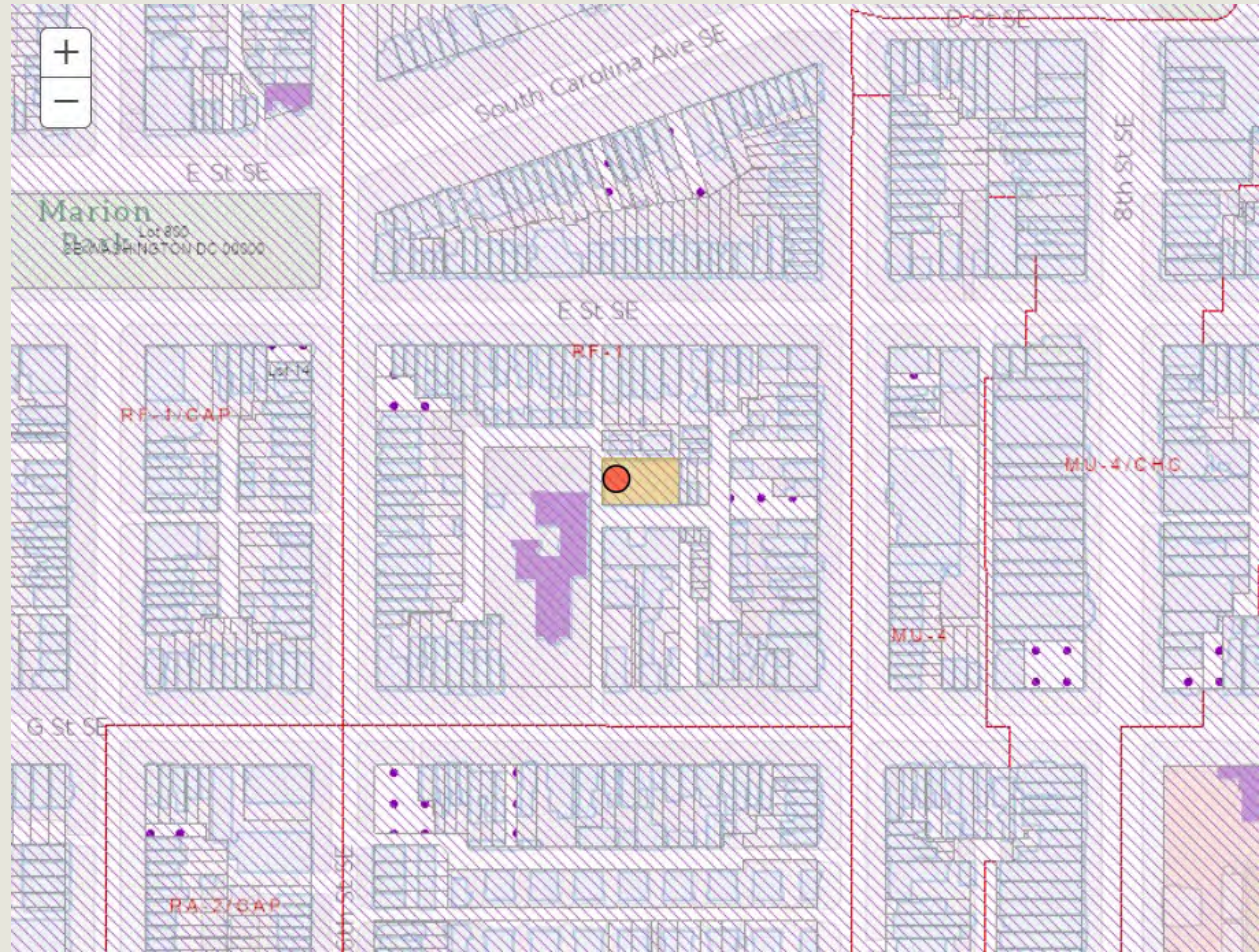
528 F St. Terrace, SE

Christ Church Vestry
Washington Parish
620 G St., SE



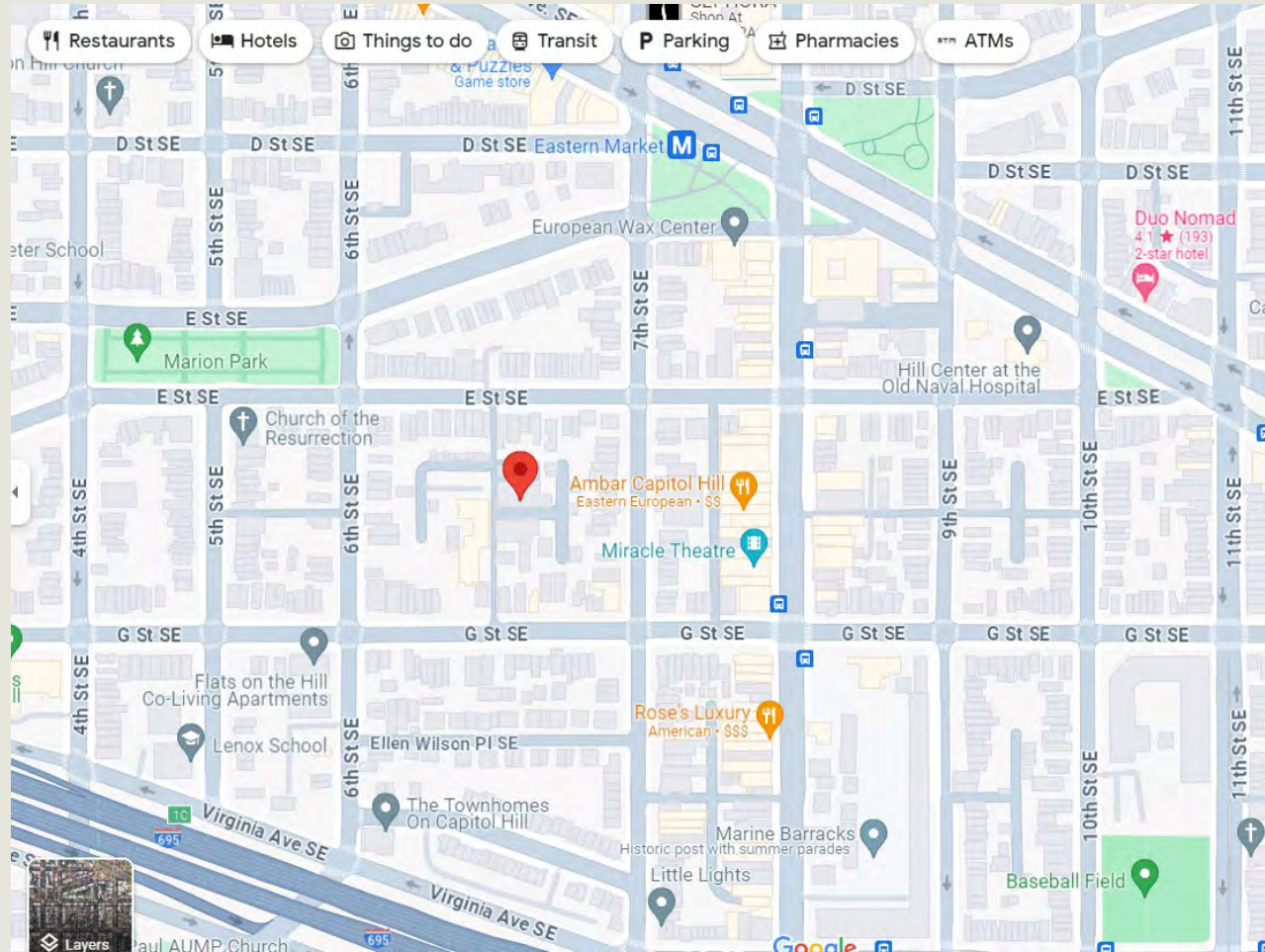
Location

- Adjacent to MU-4 commercial zone to the east, RA-2 apartment zone to the south.
 - Near public parks.
- Adjacent to parking lot of a church.
- Relatively busy area with higher foot traffic than an RF-1 zone surrounded by blocks of RF-1 properties.



Eastern market metro is nearby.

Proximity to commercial corridor, relatively high-traffic block directly adjacent.



Practical Difficulties

Without the relief, the Applicant cannot feasibly create a second story without removing the roof, which would lead to a practical difficulty. Without a second story, the applicant would face practical difficulties related to providing private and code-compliant bedrooms on the first floor.

The Board and Office of Planning have considered similar challenges to rise to the level of practical difficulties in other cases (note that practical difficulties is a lower bar than for a use variance).

Practical difficulties does NOT = impossible, just unnecessarily burdensome.

Per the Court of Appeals, the Board can review the alternative matter-of-right options as it relates to the request – e.g. is the alternative by-right option a practical difficulty. That is the standard--- does not relate to the use, which in this case is permitted by right.

In determining whether “practical difficulties” precluded grant of zoning variance permitting parking space that did not comply with minimum length requirement next to carriage house that owner wished to convert to single family residence, board of zoning adjustment was required to determine whether locating parking space within structure of carriage house was feasible and whether such alternative was, under circumstances, itself a practical difficulty. D.C.Code 1981, § 5-424(g)(3) . Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 1990, 579 A.2d 1164 . Zoning And Planning 1502.

What are Practical Difficulties?

Presently, the by right alternatives would be practically difficult with respect to security concerns, structural issues, and/or design challenges.

These have been considered PDs by both the Board and OP. And in fact, OP's report agrees the structural issues are a factor, but does not address the security concerns nor specific design challenges cited.

OP Report BZA Case No 20527: *“Other potential development scenarios – including a matter of right project or a project requiring only special exception relief for lot occupancy – would be less practical and more difficult to develop than the proposed project. Reasons given for this include locating bedrooms along the ground level with high visibility due to bay windows, and odd configurations of units and stairwells, and a lack of economic viability of a more conforming solution. In this instance, other designs that would not require a lot occupancy variance may be possible, but would represent a practical difficulty to the owner.*

BZA Case No. 20827: Office of Planning report noted that alternative solutions *“would present design challenges that could be difficult to address in a meaningful and acceptable way.”*

What are the By-Right Options for Comparison?

- (1) No second story.
- (2) By-right 20 ft. second story.

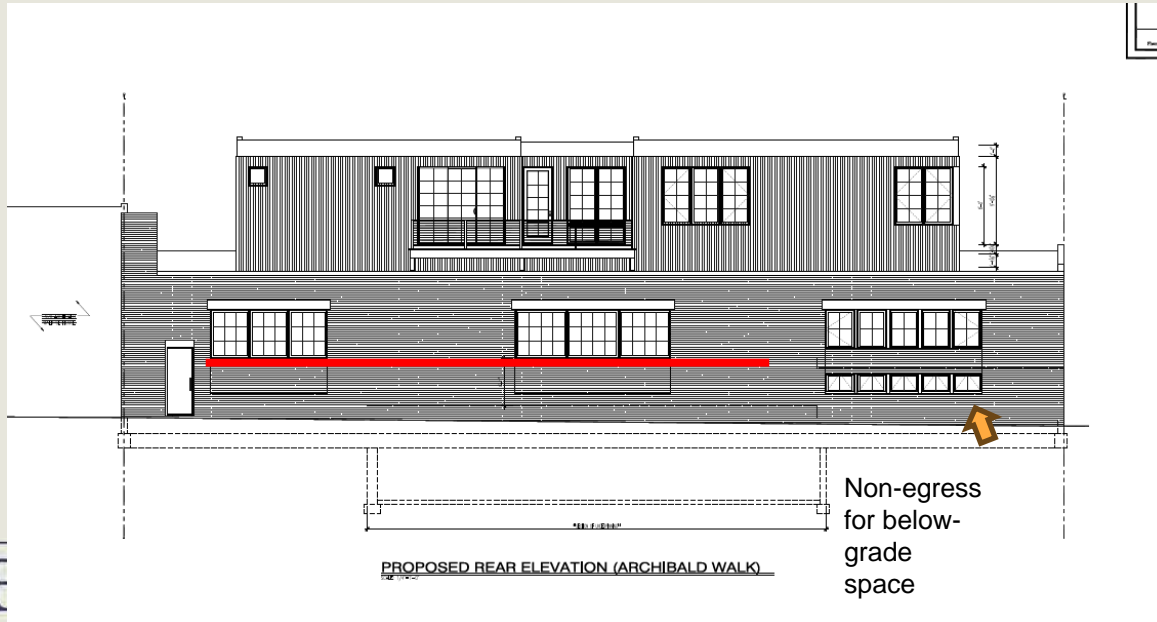
First Floor Only Program

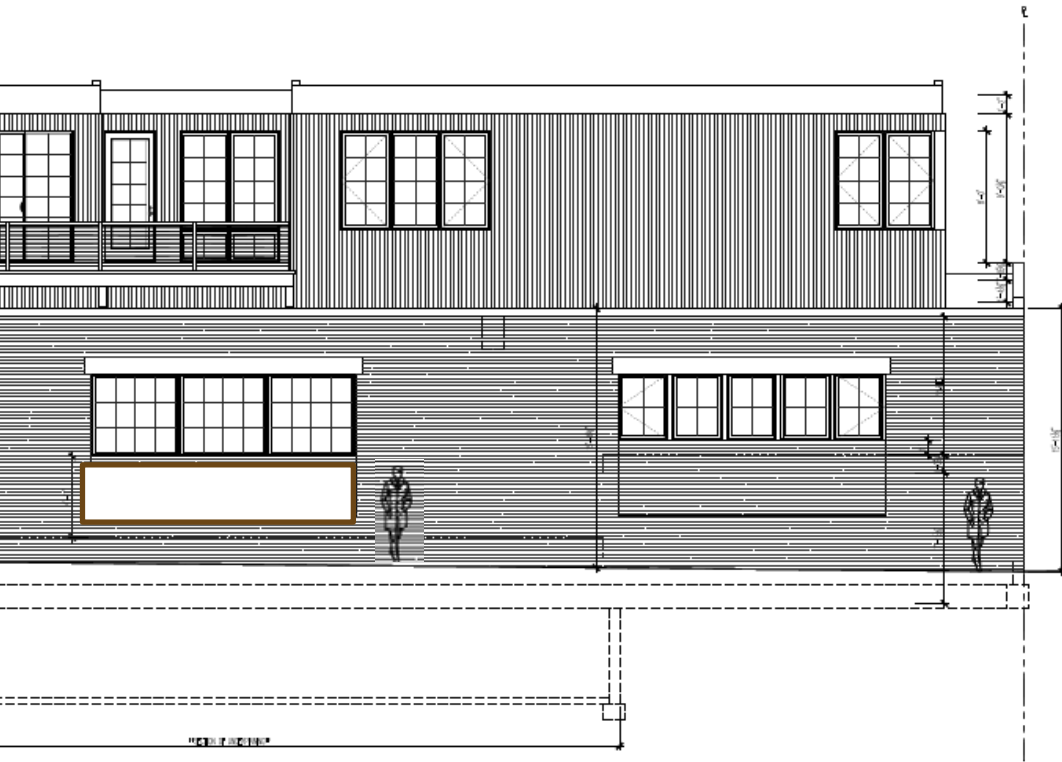
Primary Challenge: Egress and Structural Issues vs. Privacy

- Building Code requires that bedroom windowsills be located no more than 44 in. above floor, bars are not permitted for egress windows.
- The current proposal intends to use the upper portion of the existing openings for windows for living spaces (not bedroom spaces). The proposed use of this upper portion keeps those private living spaces safe, because the windowsills sit well above the alley, and above the floor. But because they sit well above the alley and floor, they cannot be used for egress windows for bedrooms.

North Elevation

- To use the existing openings for windows for bedrooms that meet egress, the Applicant would have to use the portion of the windows that is at eye-level at the alley.
- This is a clear privacy issue and again, not controversial to agree that bedroom windows at eye level on an alley with no ability to secure them AND meet egress requirements is a practical difficulty, especially considering its proximity to the MU-4 zone and proximity to a parking lot.



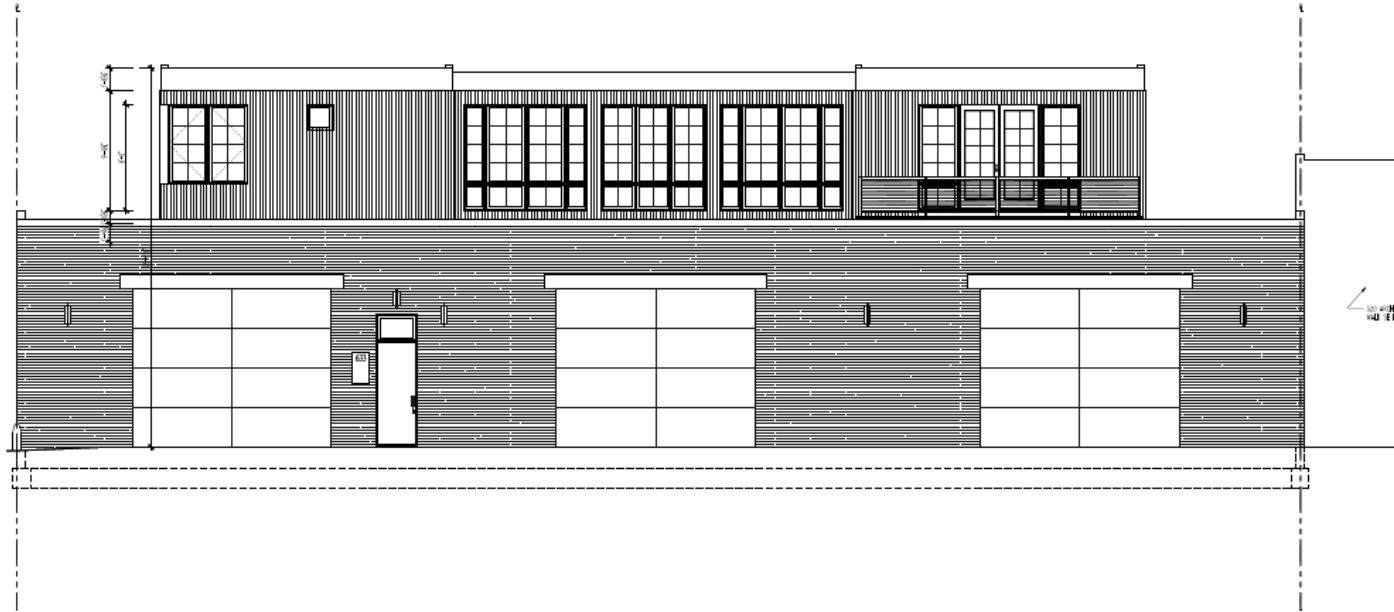


REAR ELEVATION (ARCHIBALD WALK)



Eye level bedroom windows directly on the alley

South Elevation



PROPOSED FRONT ELEVATION (ARCHIBALD WALK)

Would face similar
issues related to
windowsill height vs.
privacy

West Elevation

The Applicant is raising up the floor northwest corner of the building and using existing openings for windows. Raising floor in this section only to put mechanical space underneath.

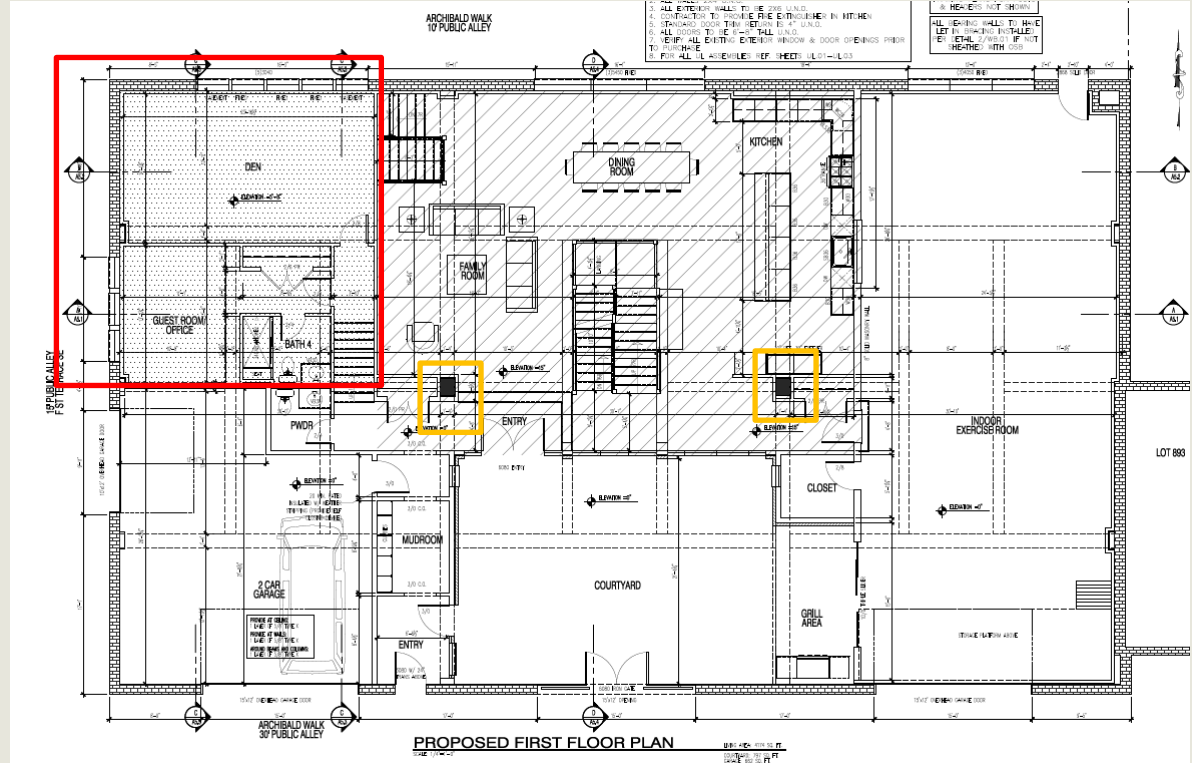
These windows shown are going to be on the floor of that room and the clear head height is extremely low because of the 2-3 ft. beams.

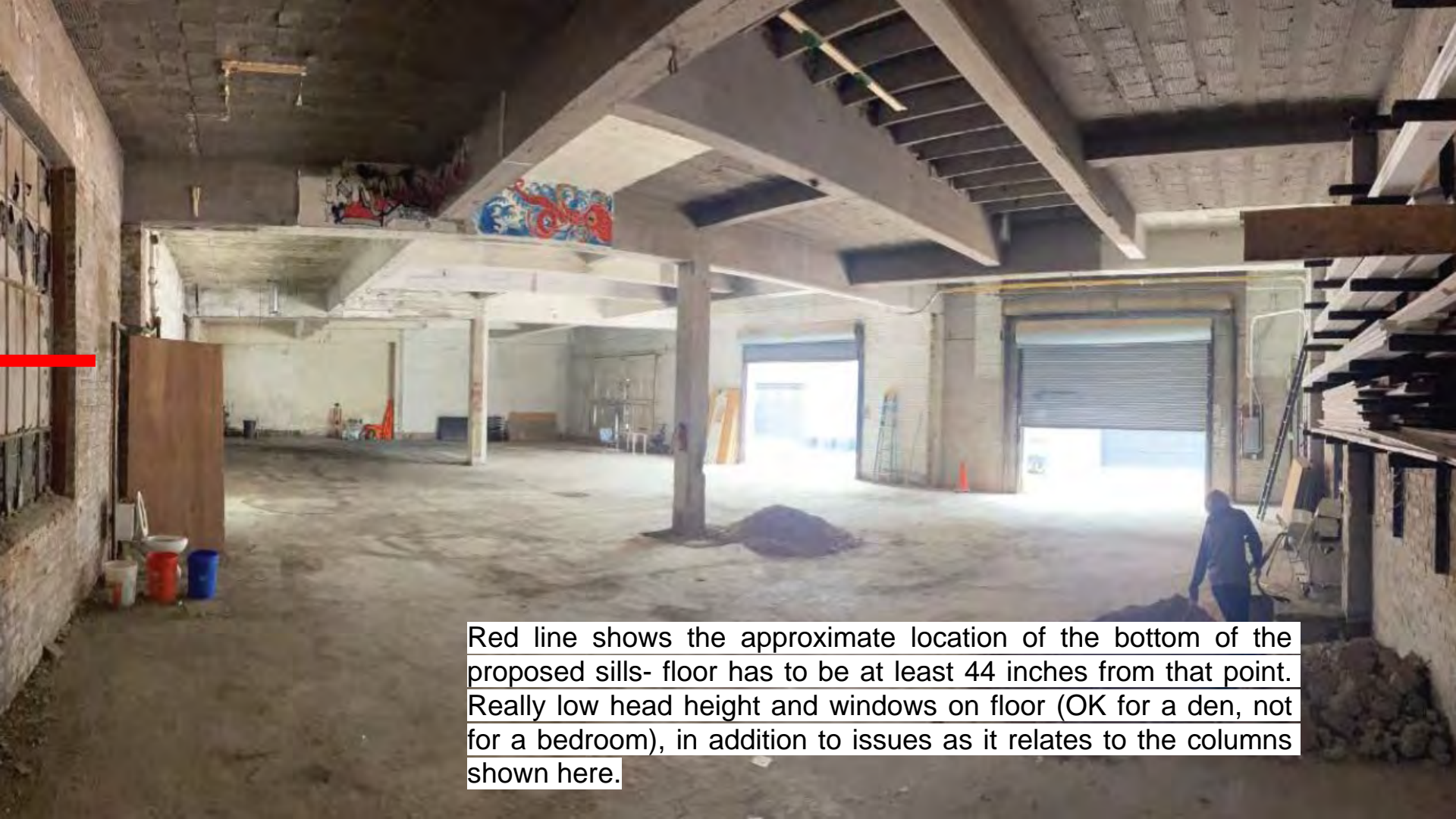
This works in this specific location of the building because it's a den/office space, potential guest room. No structural impacts in this location. But this would not be the case everywhere else, as you can imagine, for both structural and practical reasons.



Not a viable alternative or marketable alternative for all windows to be on the floor of a bedroom, additional privacy concerns with views.

- Egress windows, can't be barred or blocked for safety, security privacy.
- Structural considerations and risks closer to the columns (orange).
- Large overhead beams create low head heights, issues with clear height, especially on the north side where the roof slopes.





Red line shows the approximate location of the bottom of the proposed sills- floor has to be at least 44 inches from that point. Really low head height and windows on floor (OK for a den, not for a bedroom), in addition to issues as it relates to the columns shown here.

By right Option 2: 20-ft Second Story

- Historic considerations aside, removing the roof would be extremely costly, wasteful, and result in the destruction of a 100-year piece of architecture.
- Cost of removal would be ~\$225k.
- Logistical effort of demolishing the structure would also be substantial as it is akin to removing a 100-foot section of an overpass. The demolition would require the removal of many tons of material.
- Extremely wasteful as the roof is a unique and perfectly usable element of this historic Building that could otherwise be integrated into and adaptively reused by the proposed project. As opposed to being thrown in the land fill as trash since there would be no way to salvage the structure or reuse it elsewhere through the demolition process.
- A replacement structure would be required to support the new second story—this would sit lower than the height of the existing walls and require additional structural support, and structural risk.
- So in addition to wasting an existing defining element of the Building, new materials and structural support would be required, adding to further waste and a longer and therefore naturally more costly construction scope.

And what is the result?

- Applicant would have to retain the existing 17.5 ft. perimeter walls as it cannot substantially demolish the existing contributing structure.
- While it could construct a second floor measuring 20 feet in height, it would effectively be blocked by the existing 17.5 ft. walls.
- This scenario would still fail to provide adequate light due to the need for a second floor that is recessed behind the existing façade. The result is a dark walled space.
- Additionally, this would introduce egress issues with code requirements and potentially require ladders or uncommon egress mechanisms to get over the perimeter walls.
- It would also make it very difficult to maintain water-tight integrity and manage trapped water in an effective way. This approach is technically more private and would be a better option than bedrooms on the first floor—but it is extremely costly, wasteful, compromises the architectural integrity and marketability of the Building.



These Difficulties are Unique to the Subject Property

All other properties have either:

- A second story; and/or have some first floor windows facing private space, and fenced private space; or the ability to provide a second story.
- No other property faces these issues.

OP Report regarding EC/PD

Agrees regarding the structural issues, but still states: “a two story building is not “required” in the zoning, and the existing building, at over 5,600 sq. ft. in area, is large, particularly for this area. Instead, the argument for a practical difficulty appears to rest in the desired interior programming which would require additional residential bedroom windows to be added on the first floor.”

To be clear: The Applicant is not arguing nor ever argued a two-story building is required nor that the space is too small. It's disingenuous to frame it as if it is a response to one of our arguments. The Applicant agrees the space is large and is not motivated by a desire for more space nor a second story nor a specific interior program. The only interior program that it is trying to meet is a baseline livable home. It is not controversial that homes should have secure living spaces, bedroom windows that meet egress, light and air building code requirements, common access to the entrance of the home, and a physically safe structure in which to live. That is the Applicant's 'desire.'

If this were achievable within this space, the Applicant would not be at BZA. The Applicant postponed to further evaluate a by-right project, specifically the 20 ft. option, and also to modify the project to eliminate all impacts to neighbors. The by right alternatives do not provide secure living spaces, bedroom windows that are both secure AND meet egress, and would not provide a physically safe structure to live in.

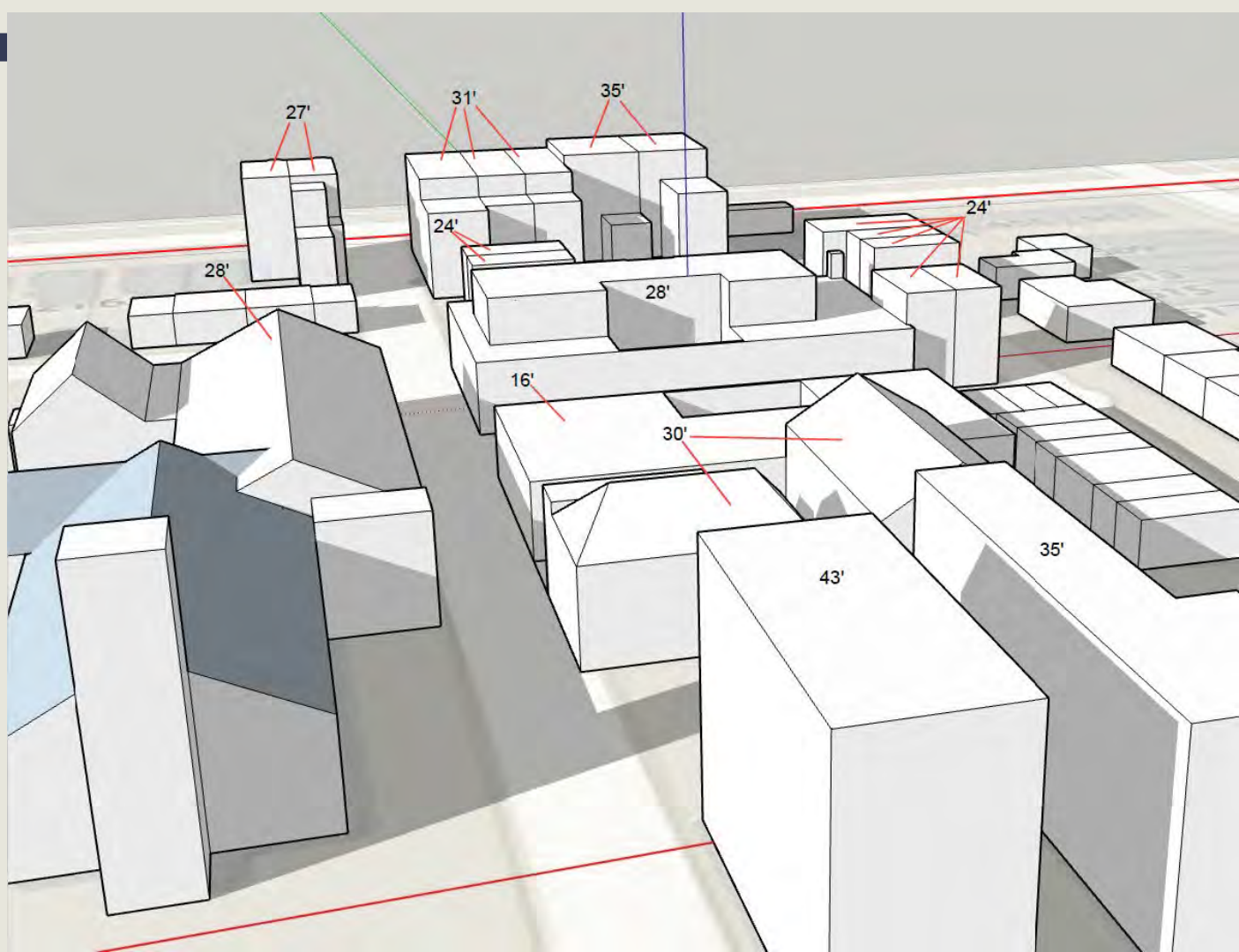


Intent of the Regs

What is the intent of Variances?

Statutory language allowing the Board of Zoning Adjustment to issue variance from zoning regulations for “other extraordinary or exceptional situation or condition of a specific property” served as a grant of authority to Board empowering it to provide variance relief, in appropriate cases, to extraordinary or exceptional conditions brought about after the original adoption of the zoning regulations. D.C.C.E. § 5-420(3) . De Azcarate v. District of Columbia Bd. of Zoning Adjustment, 1978, 388 A.2d 1233.

The term “extraordinary or exceptional situation or condition” in statute providing for variances from zoning regulations was designed to serve as an additional source of authority enabling the Board of Zoning Adjustment to temper the strict application of the zoning regulations in appropriate cases, subject to limitations set forth in the statute. D.C.C.E. § 5-420 . De Azcarate v. District of Columbia Bd. of Zoning Adjustment, 1978, 388 A.2d 1233 . Zoning And Planning 1481.



Integrity of the Regs and Zone Plan According to Ct. App.

Difference between variance's impacts vs. by right impacts:

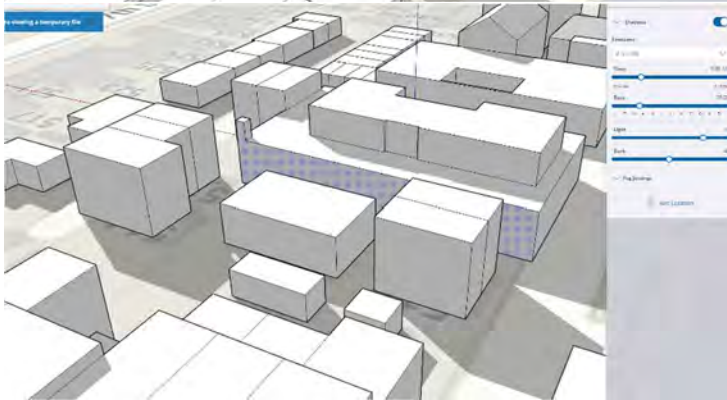
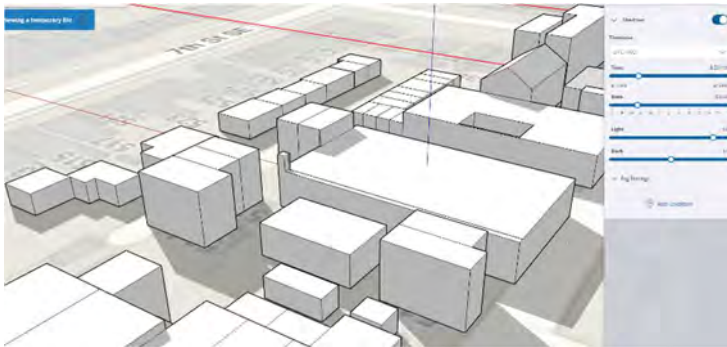
In Oakland Condo. v. D.C. Bd. of Zoning Adjustment, 22 A.3d 748 (D.C. 2011), the Court determined that a grant of use variance permitting additional rooms on property for transient occupancy, rather than limiting operation to eight rooms, with minimum length of occupancy of 90 days, would not impair integrity of zone plan, where there would be little difference between external traffic and noise produced by 12 rooms and those produced by eight.

Intent of the Regs

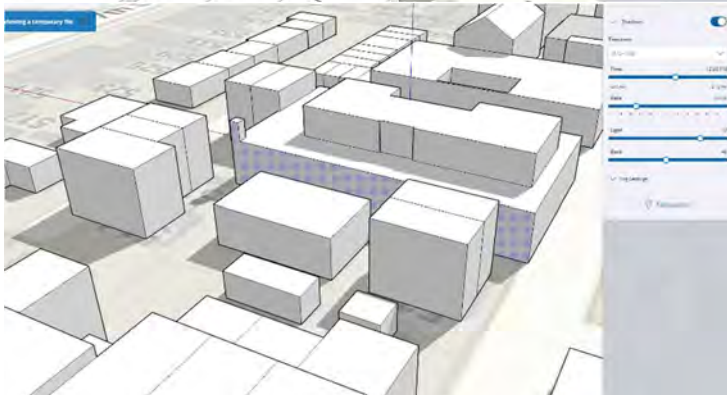
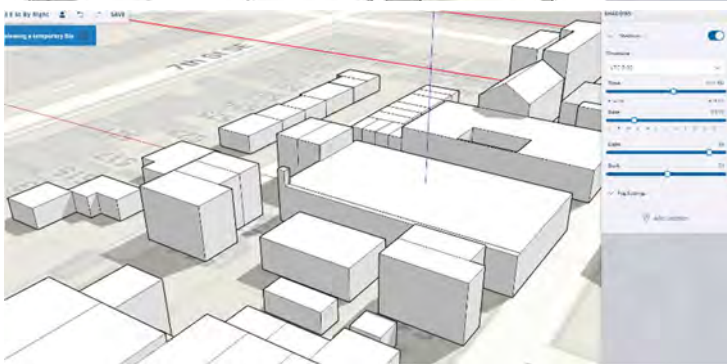
Where is the stated intent of the alley lot height regulations? (no stated intent in the regs)

- If the intent is to be secondary in scale to street-facing properties, as argued by OP, then the proposal certainly meets that intent. It will not be visible from the street and have extremely limited visibility even from the alley. It is in the Capitol Hill Historic District and received unanimous approval, and the HPRB had really wonderful things to say about its compatibility, which in this particular case would go to what OP stated was the intent of the alley lot height regulations, too. HPRB arguably has stricter limits than the zoning regulations in most cases and in many cases, will not permit street facing lots to have even a third story.
- In any case where an applicant seeks relief from height (via special exception) the standard is that it will not 'substantially visually intrude' upon the character, scale, and pattern of houses along the street or alley. This certainly meets that. And in cases related to architectural elements, the Board defers to HPRB (E-204.1 "Except for properties subject to review by the Historic Preservation Review Board...").
- So it would stand to reason that secondary in nature, compatibility and no substantial visual intrusion are the purpose and intent of the height regulations, and the proposal clearly meets that intent.

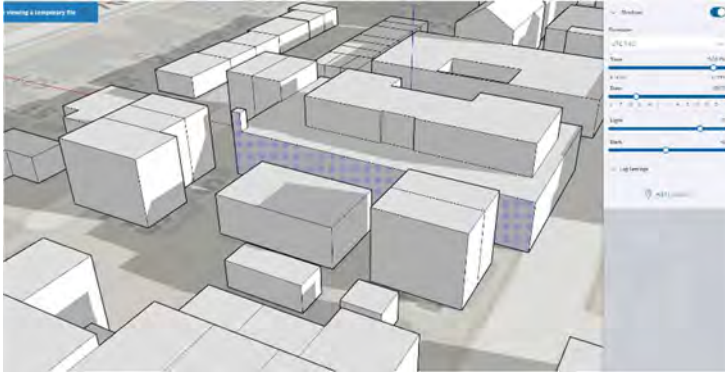
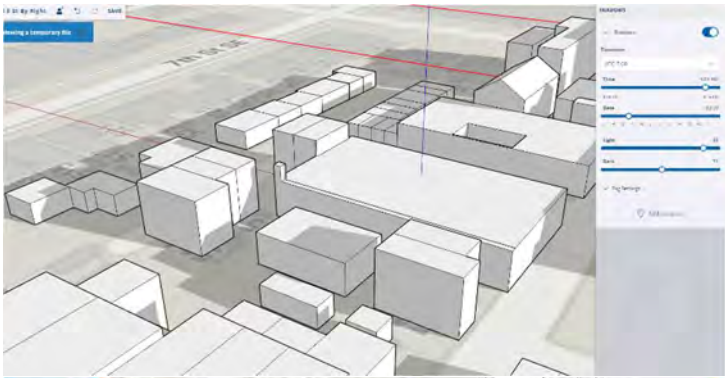
Proposed Second Story Addition vs Existing



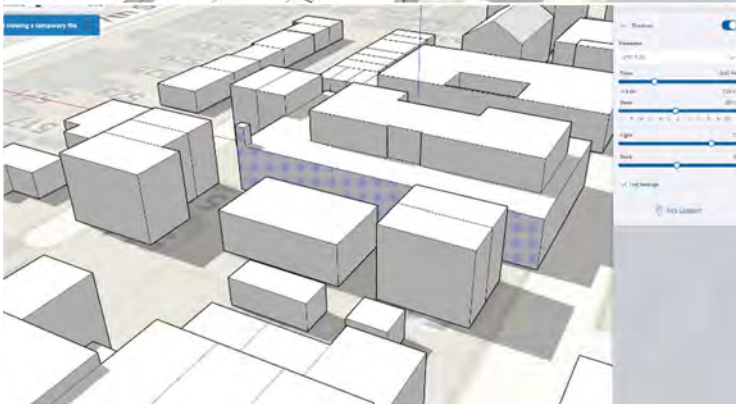
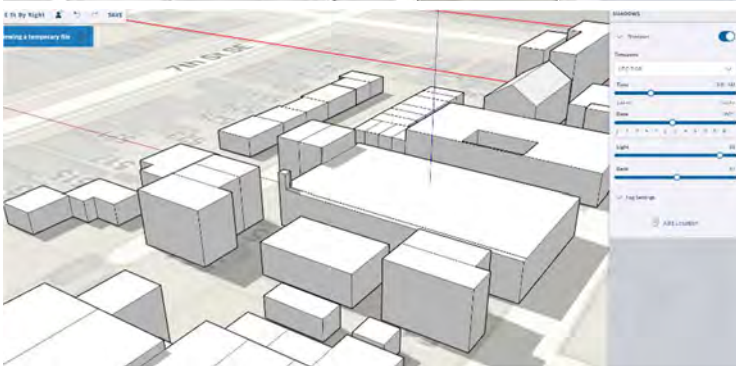
March 20th 9:00am



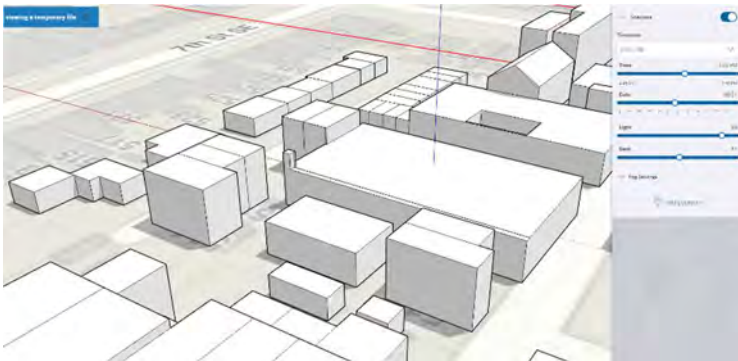
March 20th 1:00pm



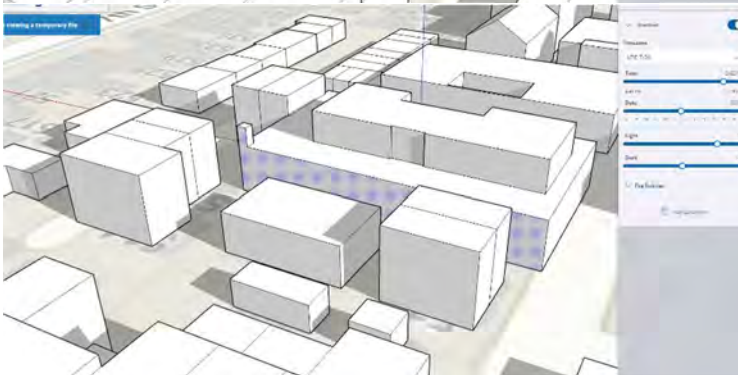
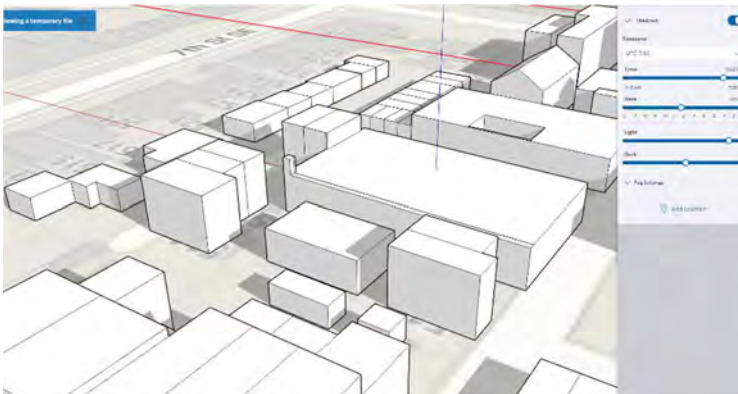
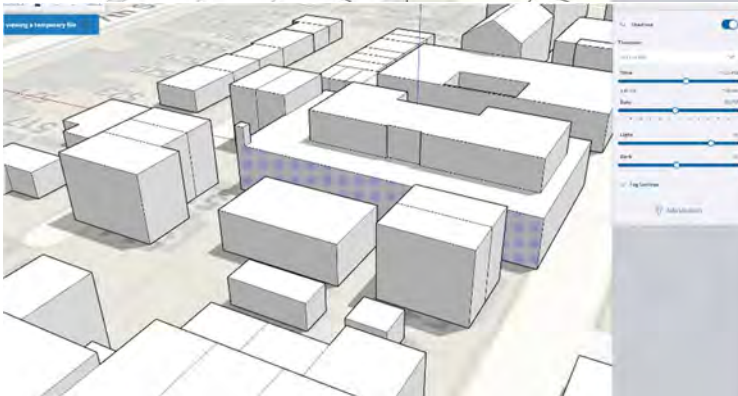
March 20th 5:00pm



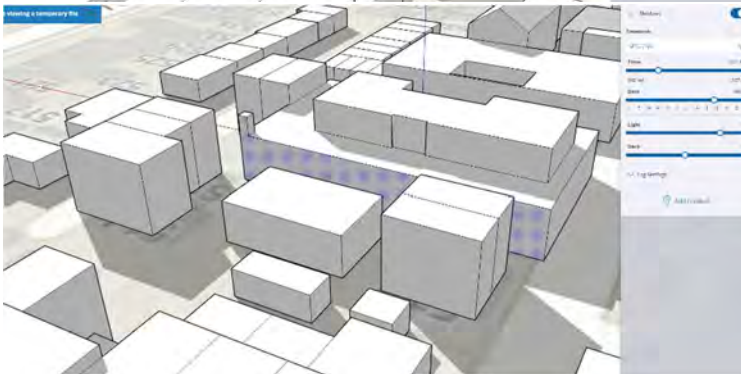
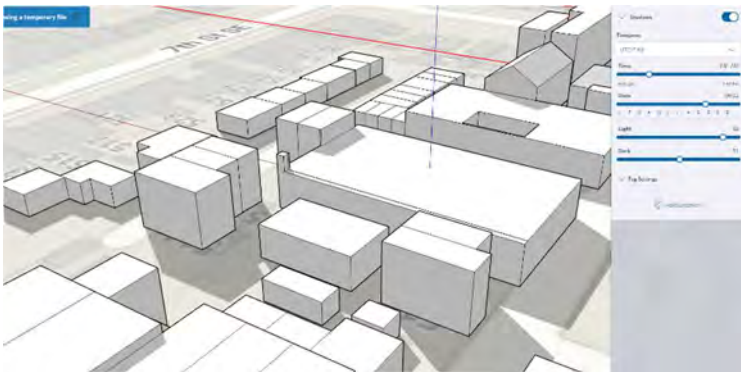
June 20th 9:00am



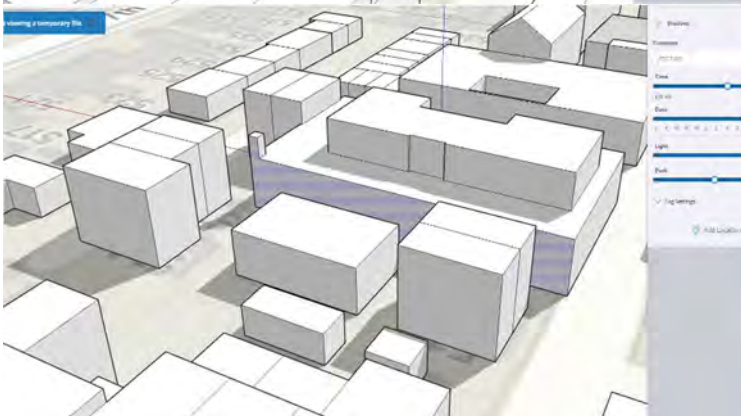
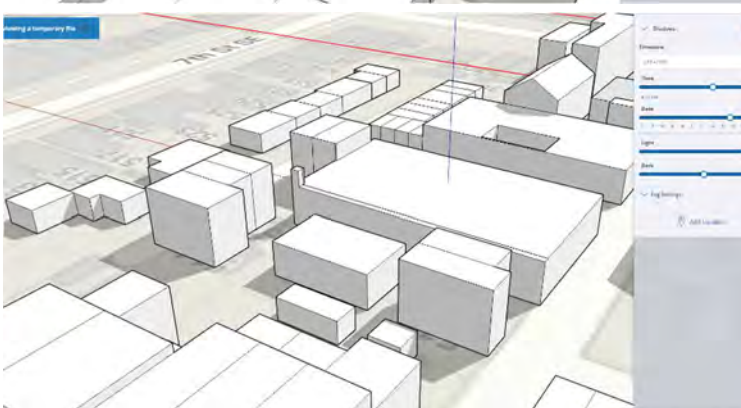
June 20th 1:00pm



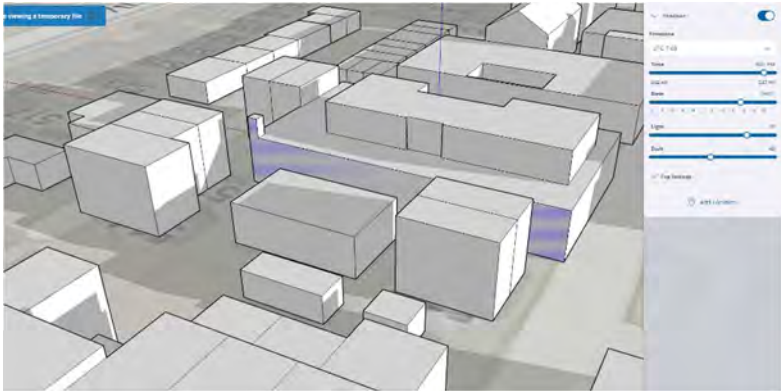
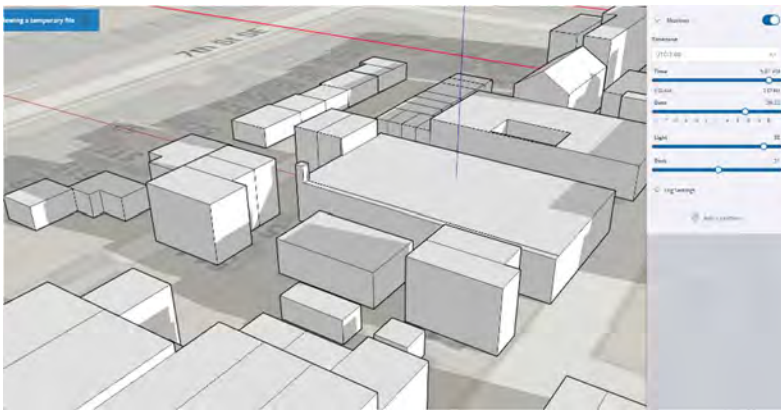
June 20th 5:00pm



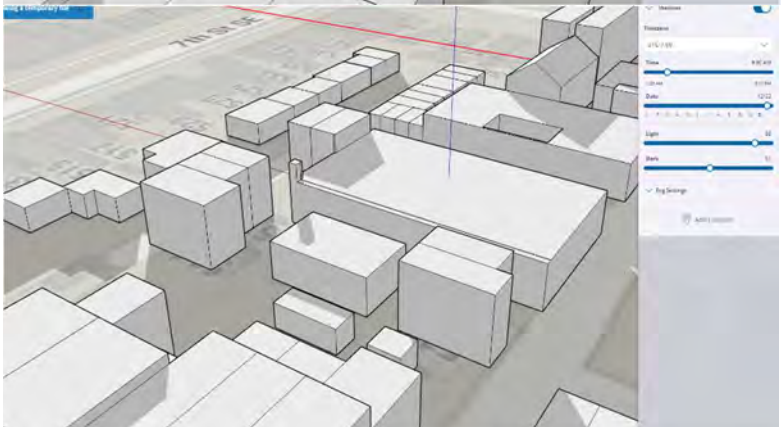
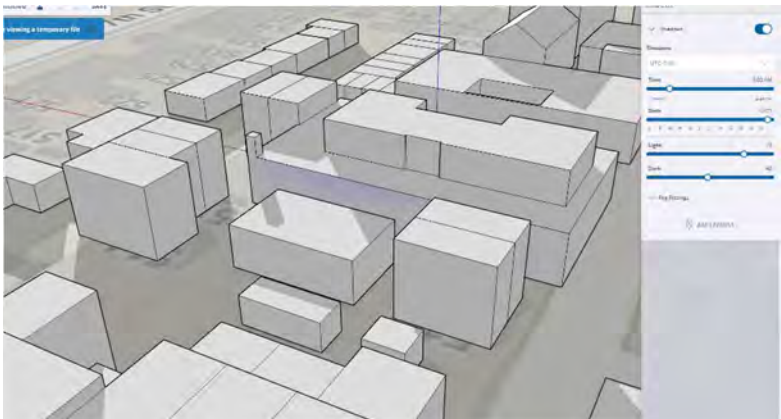
September 22nd 9:00am



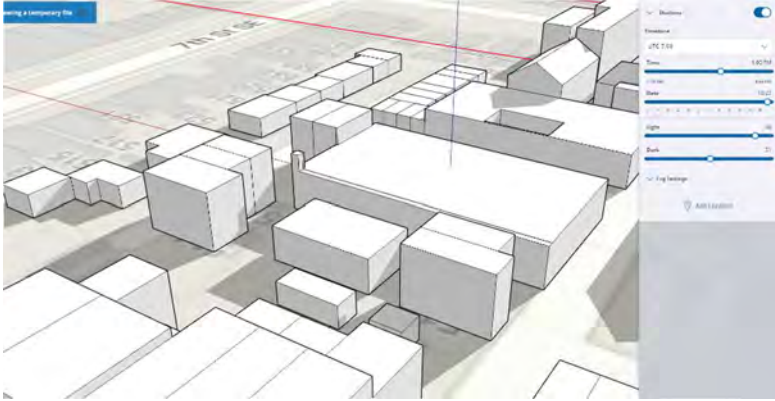
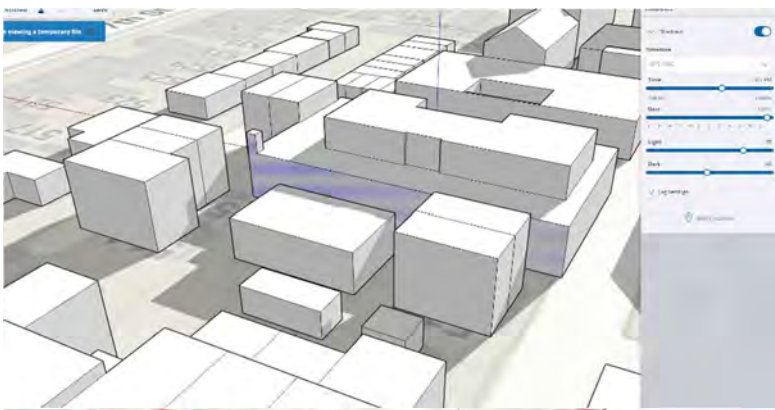
September 22nd 1:00pm



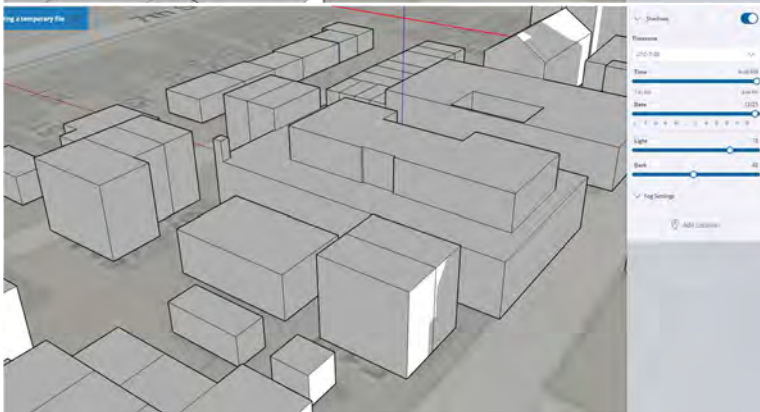
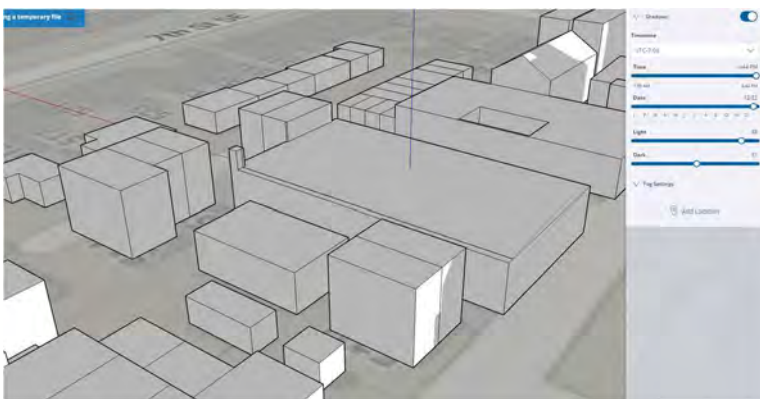
September 22nd 5:00pm



December 21st 9:00am

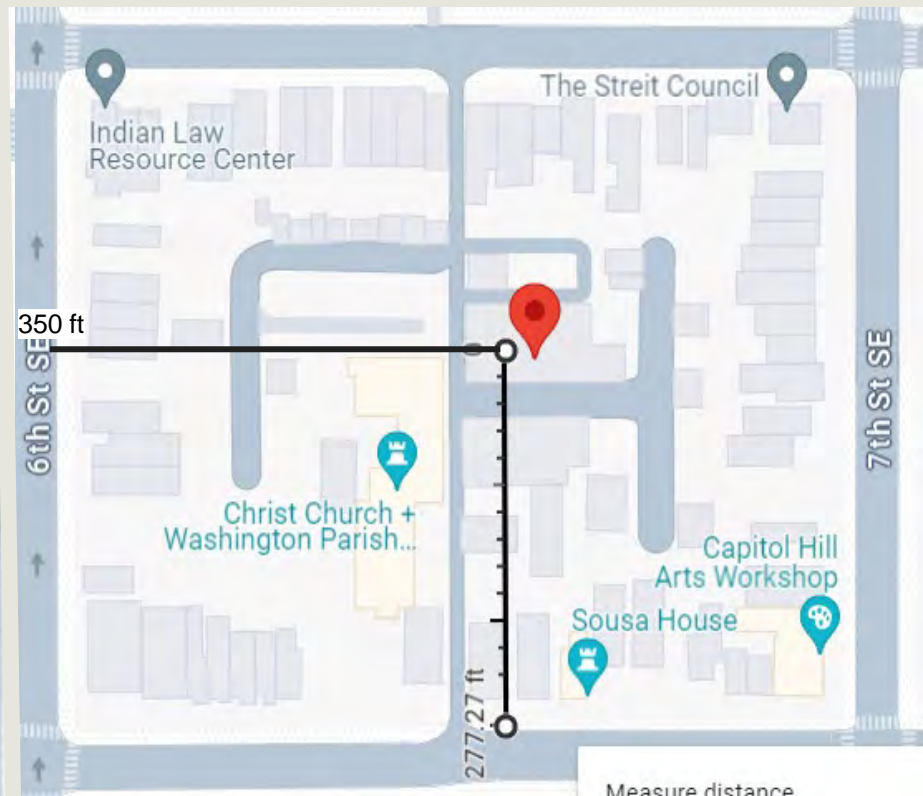
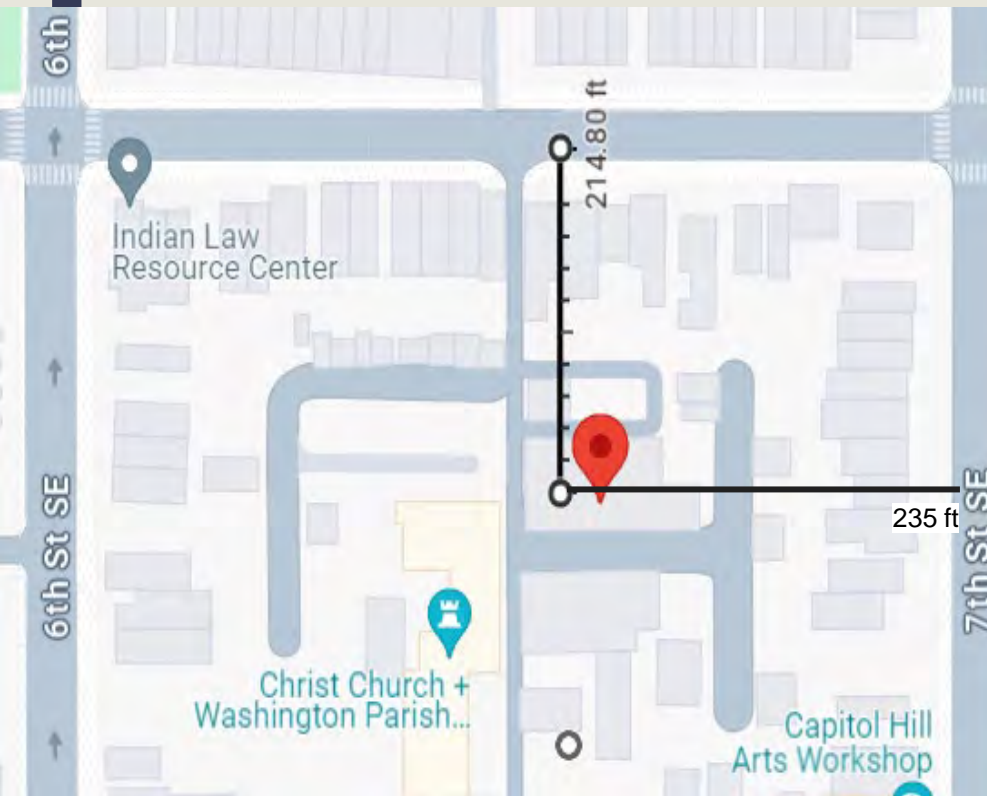


December 21st 1:00pm



December 21st - 4:46pm

215-350 feet from each street, will be blocked by 2-3 story street facing buildings- not visible from the street



Summary

- Not controversial to assert that the property is unique with respect to both the existing structure and its location within a relatively unique alley system, in an area which has a mixture of commercial, institutional, and residential uses.
- By right options create practical difficulties in that the applicant cannot provide safe, secure, private spaces without compromising code requirements and structural safety of the building; these issues have been considered PDs before; and these difficulties are directly related to the unique aspects of the existing structure (roof, age, location etc.).
- These practical difficulties are unique to the property even relative to the property across the street, which was built at the same time but faces private space and does not have the same roof.
- And finally, if the intent is to make sure that alley lots cannot be seen from the street and fit in appropriately with the context, the intent is being met and its compatibility with the surrounding historic district (as approved by HPRB) reinforces this. And the intent of the variance procedure, as stated in the regulations AND court of appeals case law, is to address this unique type of circumstances. Neighbors testified to the long-standing issues with this property, it goes to the difficulty of developing it as a housing unit, and without the relief, it will remain vacant as no one would reasonably develop a home with this level of difficulty/adaptive reuse just to have floor level windows, bare minimum clear height, or alternatively no legal bedrooms/secure bedrooms.

Questions?