

Feb 6, 2014

Jamal Kadri
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Washington, DC

Anthony Hood
Chairman
DC Zoning Commission
One Judiciary Square
441 4th Street NW, Suite 200 South
Washington, DC 20001

Re: Zoning Case No. 08-06A, Subtitle D

Dear Chairman Hood and the D.C. Zoning Commission:

Thank you for the opportunity to comment.

I live in DC and have become familiar with some zoning issues in the past having to do with an Accessory Dwelling Unit. My plans to rebuild a carriage house that had historically been on my property could not be permitted as an ADU under current zoning, despite the support of both adjacent neighbors and the ANC – as well as the Historic Preservation Review Board.

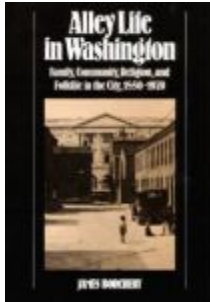
My plans were opposed by the Office of Planning, so we had to reconfigure them to meet the requirements of existing zoning, which resulted in a very expensive permit process for a “rear addition” that would have been both less affordable and less useful.

In addition to the cost of the additional architecture and drawings for the hearings, the revised plans required that the ADU be “connected” to the house with a walkway that would have been very costly to build, and would have used valuable lot occupancy that took away volume from an already small structure.

Nothing in the new Zoning would change the process for folks in R-4. My experience with the Special Exemption process was that it was very costly and time consuming, with no predictable path to a permit. In my case, my architect urged me to hire a land use attorney. The professionals who are familiar with the process require tens of thousands to navigate the process, which adds no value but has tremendous costs .

It was not always this way. The district still has many charming alley dwellings that attest to a time when housing was more affordable and government was less intrusive. Very few of the alley dwellings people most admire in R-4 zones can be built under existing or the proposed zoning.

I think one way forward is suggested by restoring choices people used to have in the past that our government has taken away from district homeowners.



Alley Life in Washington is one of my favorite books. Not just because of the story it tells about the history of a hidden part of Washington DC, but because I believe it also suggests a way forward — in terms of compact, more affordable urban living – if DC residents were allowed to build in places where the city housed 20,000 people in its past.

In this impressive study, the author, Jame Borchert, traces the formation of occupied alleys populated mostly by African-Americans who migrated from rural areas to Washington, DC starting in the Civil War era. He argues that they created strategies to survive the often harsh and difficult urban experience by remaking the urban environment physically and cognitively to fit their physical, social and spiritual needs—essentially adapting their rural folk culture to the urban landscape.

He also challenges earlier studies that were used to justify outlawing alley dwellings and accessory dwelling units on DC’s occupied alleys.

On the eve of the Civil War, Washington had still been relatively small, with only 60,000 residents. The population of Washington City nearly doubled to 110,000 a decade later. Nearly half of the new migrants were black.

In many of the larger blocks that were distributed throughout the Federal City, developers responded to population growth by building on both a street and its alley—often nearly simultaneously. The assumption seemed to be that the middle classes would live on the streets, while working-class people would reside in the alleys.

The vast majority of residents living in these alley communities within the blocks were black. But unlike the segregated residential patterns that were to follow, the alleys and their residents were dispersed throughout the city, often in close proximity to the most expensive and elegant houses. This may help explain the description of the black community as “*The Secret City*,” which Constance McLaughlin Green called her 1967 account of race relations in Washington.

In the 1870’s Washington possessed neither sufficient buildings to house the newcomers or any efficient means of moving them daily from one part of the city to another. For those with enough money or leisure time, horse-drawn cars did offer the rudiments of a transportation system. But because most peoples journeys about the city remained pedestrian ones, there was a substantial impetus for the continuing and expanding alley

dwelling construction, an intuitive strategy to provide more housing near the urban core of the city.

The boom in building permits in “inhabited Alleys” stopped in 1892, when Congress approved legislation that effectively stopped further building. The 1892 Legislation prohibited further housing construction on alleys less than thirty feet wide and not provided with sewers, water mains, and lights.

Reform-minded citizen groups began agitating for the abolition of alley housing around the turn of the century. Roosevelt urged Congress to conduct a systematic study of the alleys. The Board for Condemnation of Insanitary buildings, reported 375 houses destroyed and 315 repaired from 1906 to 1911. By 1914 the First Lady, Ellen Wilson, led “grand tours” of the alley with the Cream of Washington Society and actively sought passage of legislation to end alley dwelling. World War I and the accompanying housing shortages led to postponement, and the legislation that eventually went into effect was emasculated in 1927 by an adverse court ruling.

But where the reform movement failed to bring about much change, economic factors were transforming the land use of alleys. Warehouses, shops, and businesses replaced some houses. By 1928, automobiles had become a major factor, as a substantial number of former alley residences were converted into garages. The city trolley was also providing an inexpensive and efficient means of transportation, permitting population dispersal, and diminishing the pressure that helped create alley housing.



Carl Mydans: Outside water supply, Washington, D.C. Only source of water supply winter and summer for many houses in slum areas. In some places drainage is so poor that surplus water backs up in huge puddles. 1935.

By the time that Mydans was photographing Washington's alleys and the people who lived in them – during the great depression – Washington's "mini-ghettos" had been a matter of public concern for at least two generations prior to the great depression. Outsiders, especially middle- and upper-class outsiders, increasingly saw alleys as little more than incubators of crime and disease.

Congress, which had the final say in governing Washington, passed the Alley Dwelling Act, "to provide for the discontinuance of the use as dwellings of the buildings situated in alleys in the District of Columbia." No alley houses were to be inhabited after July 1, 1944.

But as with the former reform movement, a world war and the resulting housing shortage postponed enforcement of the ban – this time until 1955.

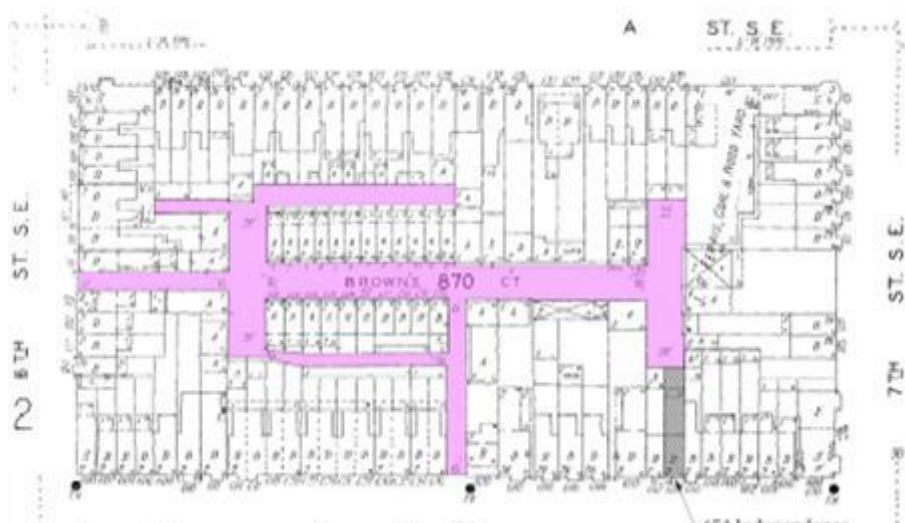
Suburban tracts spread farther and farther from the city during the late 1940s and 1950s, while a small counter movement of citizen groups involved with the restoration of Georgetown, Foggy Bottom, and Capitol Hill was growing. In 1954 citizen's groups involved in the restoration movement successfully engineered a repeal of the ban on alley dwellings that was to go into effect the following year. By 1970 at least 20 inhabited alleys remained with 192 heads of household reported in the city directory.

Browns Court is 6 blocks East of the Capitol Building. It includes a number of continually occupied alley dwellings that the restoration movement helped to save. Brown's Court still has a mix of rowhouse alley dwellings that date back to the 1860's, as well as one-story garages and two-story carriage houses, some of which have been converted for residential use.



PHOTOGRAPH 3.
"Restored Alley Dwellings" in Brown's Court, S.E., 1970. Photograph by author.

Borchert's book includes a photograph he took of "restored Alley Dwellings" in Brown's Court, S.E.



Historic Plat drawing of Brown's Court

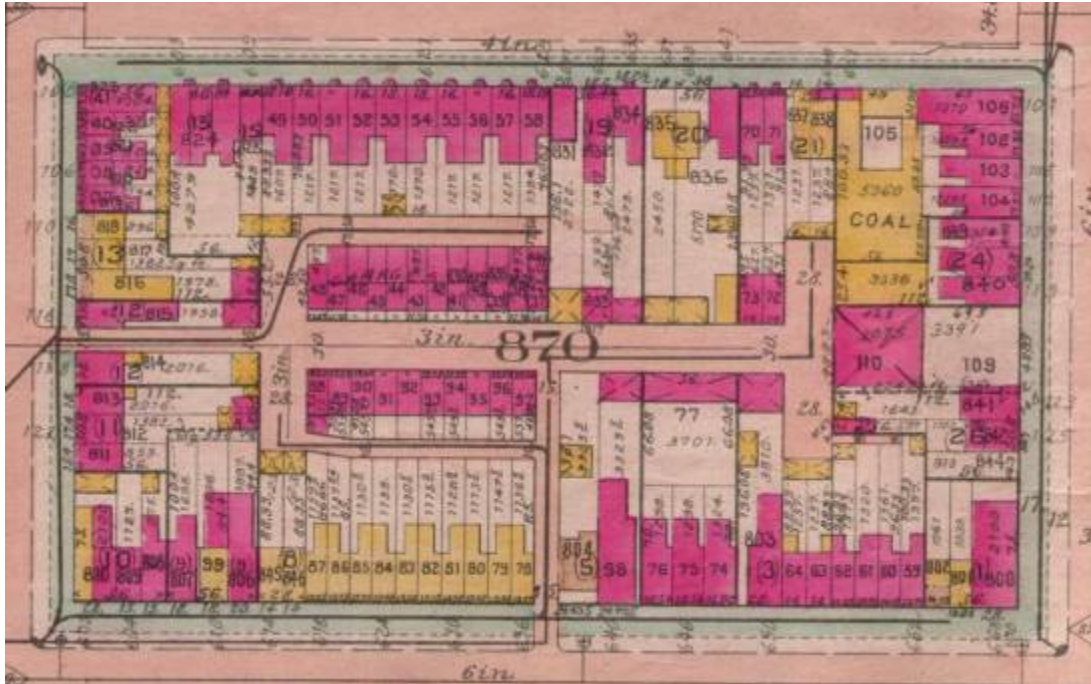
But the historic alley dwellings are now hardly affordable housing. One of the 14' by 24' two bedroom, one bathroom homes recently sold for nearly \$500,000. The alley dwellings which became “mini-ghettos” for black residents during the civil war are now expensive and highly sought-after residences for affluent Washingtonians.



A closer look at Browns Court shows the potential for Accessory Dwelling Units that could replace many of the existing garages – if owners were allowed to build ADU.

One of the general provisions of DC’s current zoning is that any nonconforming structure lawfully existing on May 12, 1958, that remains nonconforming, and any use or structure lawfully existing that became nonconforming on May 12, 1958, may be continued, operated, occupied, or maintained.

Brown’s Court has many Alley Dwellings could not be built today, but because their “nonconforming uses” pre-date 1958, they are still legal.



1925 Baist Atlas for Brown's Court, which shows many of the pre-existing dwellings that faced the Alley.



The property I own is the one you can see with the truck parked in the driveway where I had hoped to build my ADU.

I was confident that I'd be able to build an ADU there in part because of what other owners had been permitted to do with their properties in Browns Court.



In 1983 one resident was granted a variance to transform a single story non-residential building originally built as a warehouse – into the two story residence shown here.

In 1991, other residents were granted the variances they needed to build on two 14' wide lots that had been subdivided when the original alley dwellings were built further down the court. Though the applicants faced some challenges in the local oversight committee, the Office of Planning and the Historic Preservation Review Board eventually recommended approval of the application, and the Board Granted it. This is what those Alley Dwellings look like today.



This is what those Alley Dwellings look like today.

Fast forward to the 2000s — the property I owned had approved plans that had gone through DC’s Board of Zoning Adjudication and received a special exception that would have permitted the former owner to more than double the size of the existing home with a rear addition. These plans involved demolishing most of the historic structure, preserving only the front façade of the historic home.

After living in the house for a year, I began working with the same architect who had drawn up those home expansion plans, to instead draw up new plans that would keep the existing historic home just as it was, and build a detached dwelling with living quarters where there had been one historically.

The design was smaller than the previously approved rear addition, and it kept the existing 1860 home totally intact. It had support of the adjacent neighbors and our local Advisory Neighborhood Commission and I even received a nice letter of support from the Historic Preservation Review Board.

But the Office of Policy indicated in a draft letter that they would oppose our application, and the Capital Hill Restoration Society said the same thing. They would not support a variance.

The opposition from the City's Office of Planning surprised me, since their director is a great champion of the Smart Growth and New Urbanism movement. These movements have advocated limiting automobile dependency and improving the quality of life by creating inclusive communities that provide a wide range of housing choices. I thought this would translate to an interpretation of the flexibility inherent in the zoning, consistent with the history of Brown's Court.

But in Washington, DC, it appears as if smart growth advocates tend to prefer a high density, transit-oriented, mixed use (if not mixed income) housing approach, with most of their work going into large planned unit development and infill projects, like these pictured below. I am all for these projects, but I am concerned about what the lack of options for ADUs means for places like Brown's Court.



High density, transit-oriented, mixed use housing project in Washington DC.

In the face of the opposition from the Office of Policy, my architect persuaded me to hire a land use attorney. She worked helped us develop the following plan, which could be permitted because – with the connection walkway to the existing house — the ADU is now technically a “rear addition”. If there was a predictable path to a permit for an ADU, I would have saved \$30,000 in architecture and legal fees.



With a connection walkway to the existing house, it no longer made sense to build the permitted plans. The connector, which – while useful as a legal loophole, also would have cost tens of thousands to build in accordance to what the Office of Planning would count as a house. It could not be a pergola, it had to have HVAC and be conditioned space. The connector also counts against the allowable ‘lot occupancy’, which effectively reduces the size of the ADU from 14’ by 30’ to 14’ by 23’.

Over time, with no changes in zoning to accommodate ADU’s, and rear additions being permitted by right, it is safe to anticipate that existing homes adjacent to the alley will get larger and more expensive. That trend can already be seen in Browns Court, where large rear additions are increasingly common.



The owner of this property had hoped to build a guest room over his garage, but was opposed, so he built the rear addition with a new third floor, which was approved.



The only accessory buildings that are allowed in this residential district are private garages and artists studios, so we are starting to see fancier garages that are built up to the maximum height of 15', which effectively prohibits a second story



No one is allowed to live in this place because it's not zoned for residential.



Nor may the owners of these alley structures renovate these into apartments

Thousands of people in DC rent out their basements illegally, without getting a Certificate of Occupancy, because they can do the renovations on the sly. But building an ADU is not something that can fly under the radar.

So without changes in zoning, we are unlikely to see a lot of ADUs in the Nations Capitol. What we will have, in all of the alleys that once housed the Districts working class, are garages that will provide fancier habitat for cars behind larger homes with less historic fabric.

On the other hand, if DC invested a fraction of the level of effort that goes into approving new planned unit developments, and identified alleys where ADUs could be built in place of – or on top of – garages, many people would choose to build in the same occupied Alleys that James Borchert wrote about.

If anyone wants to take advantage of the investment I have already made in that nice little piece of property and build a little Accessory Dwelling six blocks from the capitol – right across from DC's Eastern Market – email me a proposal. I'd love to support a project that can help promote a growing awareness and acceptance of re-building a residential pattern that once existed in DC – before the automobile, as an inexpensive way to increase the affordable housing supply.



A recent photograph of Browns Court

Many of the conditions set forth in the draft re-write of zoning are still onerous, and maintain existing barriers to affordable housing choices that District residents should be allowed to exercise by right.

I strongly **oppose** several of the draft language conditions under sections:

1606.4(a): Minimum lot areas. The current minimum lot area requirements (4,000-7500 ft²) are excessive and would unduly impact the development of affordable ADU's across the city. A perfectly livable accessory dwelling unit may be built in a 300ft² footprint, on a 1600ft² lot with an existing two floor, 1500ft² row house, even with proscribed setbacks. Minimum lot areas should be reduced to 1600ft² under this section for all R zones.

1606.4(e): *If the (accessory dwelling) apartment is located in the principal dwelling the following conditions shall apply: (1) The house shall have at least two thousand square feet (2,000 sq. ft.) of gross floor area, exclusive of garage space.* The current rule is discriminatory against those who have smaller homes who wish to have an ADU. I believe this minimum house size requirement should be reduced to 1000 ft². There are many row houses in DC with 1200-1500 ft² of living space that have basement units that can easily be used as an ADU. Furthermore, there are micro units currently allowed under DC code (and being developed by PN Hoffman at the Wharf project) of 300 ft², thus a small house with interior ADU that totals 1000ft² seems entirely reasonable.

1606.4(f) (*An accessory building that houses an accessory apartment shall comply with the*

following conditions...).

(1) The accessory building was in existence on January 1, 2013; Newer accessory buildings should be allowed an accessory apartment without a specific Board waiver (per 1606.4.g) if other conditions are complied with.

(5) Easement for permanent passage of 10 ft in width from front of house, or through an alley in back with a alley width minimum 24ft. The easement language appears to effectively preclude ADU's at all row houses in DC with shared walls. In addition, the majority of DC alleys are less than 24 ft2 (average 10-15 feet wide), so here too. I support eliminating the 1606.4.f.5.A, and reducing 1606.4.f.5.B to 15 feet.

(8) An accessory building constructed as a by right accessory building after January 1, 2013 shall not be used as, or converted to, an accessory apartment except by special exception for a period of five years after the approval of the building permit for the accessory building. I oppose any time limitations on use of private property as an accessory dwelling, and recommend deletion of 1606.4.f.8.

1608 Alley Lot By-Right Uses Zones A/B/C

1608.1: Alley lot uses. I support allowing residential use of alleys all R zones.

1608.2(c): Residential conditions for alley lots. For residential uses, I believe there should be no limits on R zones, and minimum alley width should be 15 feet, or less than 24 feet. The current 24 foot standard effectively precludes the vast majority of alleys in the District.

1609.1: Alley Lot Special Exception Uses; I believe alley lots should be afforded residential use by right, not by special exception.

1609.2: Alley lot special exemptions. I believe alley width should be 15 feet, not 24 feet

I would like to see the District of Columbia adapt the approach that the city of Santa Cruz adopted when it found too many children wanting to return home to the town they grew up in but not finding a place they could afford to live:

<http://www.cityofsantacruz.com/index.aspx?page=1150>

The city held a contest for a pre-approved set of design drawings that could be used to transform car habitat in garages to accessory dwellings. The program provided choices for people ready to downsize, or needing to have an at-grade, accessible dwelling on one floor.

Why can't we pick a block where ADUs seem appropriate – like square 857, bounded by 6th and I and 7th and K streets NE, where the B& O Railroad ran until the turn of the 20th Century, and try a pilot program that would only provide existing residents with more choices than they have now. Provide residents with an option to convert the footprint of an existing single story garage into a two story carriage house, with the commit that they provide it as workforce housing and rent it out at an affordable rate for 5 years. Just as a pilot project. Then we will have something to talk about regarding ADUs, instead of worrying about unintended consequences of changes. Because things are the way they are, things will not stay the way they are. The kind of development we seem to see a lot of, through zoning and overlays that are changed for applicants with enough

money, do not seem characterized by ethics that promote earth care, people care, and fair share. As a city, we can move in that direction by simply providing people with more choices that current zoning allows.

Thank you for considering my testimony.

Respectfully,

Jamal Kadri