

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



**Application No. 19629 of Timothy and Charlotte Lawrence**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 5108.1 and 5204 from the rear yard requirements of Subtitle E § 5104.1 and the side yard requirements of Subtitle E § 5105.1, and pursuant to Subtitle X, Chapter 10, for variances from the lot frontage requirements of Subtitle C § 303.3(a), the lot area requirements of Subtitle C § 303.3(b), and the alley centerline setback requirements of Subtitle E § 5106.1 to construct a garage structure on an alley lot in the RF-1 zone at premises 1665 Harvard Street, N.W. (Rear). (Square 2588, Lot 827).<sup>1</sup>

**HEARING DATES:** February 21 and April 17, 2018  
**DECISION DATE:** May 9, 2018 and May 27, 2020<sup>2</sup>

**DECISION AND ORDER**

This self-certified application was submitted on September 8, 2017 on behalf of Timothy and Charlotte Lawrence, the owners of the property that is the subject of the application (the “Applicants”). After a public hearing, the Board voted to deny the application.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated October 16, 2017, the Office of Zoning provided notice of the application and of the public hearing to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 1; the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 1D,

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<sup>1</sup> The caption has been revised to reflect changes to the self-certified application. The Applicants originally proposed to build a two-story principal dwelling on the subject property and requested special exceptions from the requirements for rear yard (south) under Subtitle E § 5104.1 and for side yard (west) under Subtitle E § 5105.1 as well as variances from the requirements for alley centerline setbacks (north and east) under Subtitle E § 5106.1 and the pervious surface requirements of Subtitle E § 5107.1. (*See Exhibits 1 and 5.*) The Applicants subsequently modified their proposed building from a dwelling to a one-story, two-car private garage, and amended the application to add a request for a special exception under Subtitle U § 601.1(b) to allow a parking use on an alley lot; the Applicants also added a request for an area variance from the subdivision requirements of Subtitle C § 303.3. (*See Exhibit 55.*) Later, the Applicants modified the design of the proposed garage, thereby eliminating the need for relief from the pervious surface requirements of Subtitle E § 5107.1. (*See Exhibit 60.*) Another modification eliminated the need for relief from Subtitle U § 601.1(b) and from the alley centerline setback requirement on the east side of the property, while increasing the degree of side yard relief needed on the west side. (*See Exhibit 77.*)

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

the ANC in which the subject property is located; Single Member District/ANC 1D05; and ANC 1C. Pursuant to 11 DCMR Subtitle Y § 402.1, on October 16, 2017 the Office of Zoning also mailed letters providing notice of the hearing to the Applicants and to the owners of all property within 200 feet of the subject property. Notice was published in the District of Columbia Register on September 22, 2017 (64 DCR 9362) and on October 22, 2017 (64 DCR 10521).

Party Status. In accordance with Subtitle Y § 403.5, the Applicant, ANC 1D, and ANC 1C were automatically parties in this proceeding.<sup>3</sup> The Board received requests for party status in opposition to the application from Christiane Frischmuth, Geoffrey Dow and Christina Werth, Carl Balit and Emily Wei, and Cynthia Kay Stevens, who are all residents of the 1700 block of Hobart Street, as well as from Victor Tineo and Lauren Yamagata, whose property on Harvard Street abuts the subject property, and from Barbara Stauffer, Brian Maney, and Loic Pritchett on behalf of Concerned Residents of Harvard and Hobart Streets. At the public meeting on February 21, 2018 the Board granted the requests of Victor Tineo and Lauren Yamagata and of Geoffrey Dow and Cynthia Stevens. The other requests were deemed withdrawn because those individuals were not present at the hearing. (*See* Subtitle Y §§ 404.2, 404.10.) At the public hearing on April 17, 2018, the Board denied a renewed request for party status in opposition to the application from Christiane Frischmuth.

Applicants' Case. The Applicants provided evidence and testimony from Joel Heisey, an architect, and Steven Varga, an expert in planning, in support of their revised application to build a private garage structure at the subject property.

OP Report. By memorandum dated February 14, 2018, the Office of Planning recommended denial of the variances and special exceptions requested by the Applicants to allow the subdivision of the subject property, an alley tax lot, into a record lot and the construction of a two-car garage.<sup>4</sup> (Exhibit 61.) In a supplemental report dated March 19, 2018, OP also recommended denial of most of the zoning relief requested for the Applicants' final proposal, a one-car garage with a building height of 12 feet. OP was not opposed to approval of a special exception from the rear yard requirement, as the proposed 2.5-foot rear yard "would not appear to result in an undue impact on the adjacent properties." (Exhibit 87.) The Office of Planning reiterated its recommendation in a second supplemental report. (Exhibit 103.)

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<sup>3</sup> In the Zoning Regulations, the terms "affected Advisory Neighborhood Commission" and "affected ANC" refer to the ANC within which the property that is the subject of an application is located, except that if an area represented by another ANC is directly across the street from the subject property, the terms also refers to that ANC. (Subtitle Y § 101.8.) ANC 1C did not submit a written report or otherwise participate in this proceeding.

<sup>4</sup> The relief initially reviewed by the Office of Planning was: (i) an area variance from Subtitle C § 303.3(a) to allow the creation of an alley record lot that does not have frontage along a 24-foot-wide public alley (15-foot width existing), (ii) an area variance from Subtitle C § 303.3(b) to allow the creation of an alley record lot that does not meet the minimum lot area standards of the RF-1 zone (1,800 square feet required; 557 square feet proposed), (iii) an area variance from the alley centerline setback requirement under Subtitle E § 5106.1 (12 feet required at north, 7.5 feet proposed; 12 feet required at east, 4.75 feet proposed), (iv) a special exception under Subtitle U § 600.1(d)(3)(B) to allow a parking garage that exceeds 450 SF (460 SF proposed), (v) a special exception under Subtitle E § 5204 from the side yard requirement of Subtitle E § 5105.1 (5 feet required; 1 foot proposed), and (vi) a special exception under Subtitle E § 5204 from the rear yard requirement of Subtitle E § 5104.1 (5 feet required; 2.5 feet proposed).

DDOT. By memorandum dated November 22, 2017, the District Department of Transportation indicated no objection to approval of the initial application. (Exhibit 51.)

ANC Report. At a public meeting on October 24, 2017, with a quorum present, ANC 1D voted to adopt a resolution in opposition to the Applicants' initial proposal to build a two-story residence at the subject property. (Exhibit 45.) At a public meeting on February 20, 2018, ANC 1D adopted a resolution acknowledging the reduction in size of the Applicants' proposal, from a two-story dwelling to a garage 15 feet in height but reiterating the ANC's opposition to the application. (Exhibit 79.) At a third public meeting, on March 20, 2018, ANC 1D adopted a third resolution, again recommending denial of the application. (Exhibit 97.)

Person in support. The Board received a letter stating no objection to the application from a resident of the 1600 block of Harvard Street near the subject property.<sup>5</sup>

Persons in opposition. The Board received letters and heard testimony in opposition to Applicants' revised proposal to build a one-car garage on the subject property from the owners of nearby residences. The persons in opposition contended that the Applicants' proposal would adversely affect nearby properties especially with respect to the use of the alleys, the light, air and privacy available to existing residences, density, and neighborhood character. The objections raised by persons in opposition included that the garage structure, especially the solid wall along the edges of the abutting alleys, would block sightlines, thereby endangering pedestrians, and would hinder automobile traffic.

#### FINDINGS OF FACT

1. The property that is the subject of this application is a parcel known as 1665 Harvard Street, N.W. (Rear) (Square 2588, Lot 827) (the "Property"), located in the interior of a square in the Northwest quadrant bounded by Harvard Street to the south and Hobart Street to the north.
2. A public alley (the "alley"), 15 feet wide, extends across Square 2588 and the abutting square to the east, Square 2591, in an east-west direction roughly parallel to Harvard and Hobart Streets.
3. Another public alley, a paved walkway 7.5 feet wide (the "walkway"), extends 87 feet northeast from Harvard Street to its intersection with the alley.
4. The Property is a trapezoidal parcel located at the southwestern corner of the intersection of the alley and the walkway. Its northern lot line abuts the larger east-west alley for 25.26 feet. The eastern lot line abuts the walkway for 24.25 feet. The southern and western lot lines of the Property abut the rear yard of an adjoining property, Lot 826, extending 19 feet and 24 feet respectively.
5. The lot area of the Property is 557 square feet.

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<sup>5</sup> The Applicants also submitted copies of emails sent to them by neighbors who responded favorably to the Applicants' request for support for plans to build a "Carriage house type structure" on the subject property. That proposal is not now before the Board.

6. Lot 826 is improved with a row dwelling, 1701 Harvard Street, which has been owned since 2017 by a party in opposition to the application, Victor Tineo and Lauren Yamagata. The Applicants own a neighboring row dwelling located at 1665 Harvard Street, N.W. (Square 2591, Lot 1028). The two row dwellings are separated by the walkway. The Property is located adjacent to the rear yard of the dwelling at 1701 Harvard Street, N.W., adjoining Lot 826 to the south and west. The Property is located directly west of the rear portion of Lot 1028, separated by the walkway.
7. The Applicants' parcel was designated as Assessment and Taxation Lot 827 on July 15, 1948. The parcel has been owned separately from the abutting property (Lot 826) since its creation as a tax lot. The Applicants acquired the Property in 2006.<sup>6</sup>
8. The Property is unimproved with any structure. The site is currently used as a parking pad for two vehicles and for the storage of trash containers.
9. A fence delineates the perimeter of the rear yard of Lot 826, including along the lot lines abutting the Property, and separates Lot 826 from the western edge of the walkway, which extends south along the eastern property line of Lot 826. A few poles have been installed on the eastern edge of the Property to denote the boundary between the Applicants' parcel and the walkway.
10. The eastern edge of the walkway is bordered by the dwelling on Lot 1028, a wooden fence, and plantings, some of which extend into the walkway.
11. As finally revised, the application sought zoning relief necessary to allow a one-story garage on the Property. The building would be approximately 12 feet wide and 21 feet deep, with a sloping roof 12 feet high at the entrance (from the abutting alley to the north) and 10 feet, three inches at the rear (facing Lot 826 to the south). The garage would be accessible via an overhead door on the northern façade. A smaller door would provide access on the eastern side. Windows would be provided on the eastern and western façades.
12. The garage was designed to provide space for a vehicle and for storage, including storage areas above a parked vehicle. A roll-up gate would be installed along the alley to the east of the garage, providing access to an area where another vehicle could be parked.
13. The garage structure would extend to the lot lines on the northern and western sides. A setback of two feet, six inches would be provided from the rear (south) lot line, while the setback from the eastern lot line, adjacent to the walkway, would range from 11 feet at the north to nine feet, eight inches to the south.

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<sup>6</sup> The Applicants previously applied for area variances from the lot occupancy requirements under § 403 and from the alley setback requirements under § 2300.4 of the then-applicable 1958 Zoning Regulations to allow a private garage on the Property, then zoned R-4. That application was denied. *See* Application No. 17833 (order issued May 4, 2009); reconsideration denied (17833-A; order issued October 30, 2009.)

14. A fence, six feet in height, would be installed along the eastern property line, abutting the walkway.
15. At 266 square feet, the garage would occupy 48% of the Property. The remainder of the lot would be paved with permeable pavers, except for the area at the rear of the lot where landscaping could be planted to screen the view of the garage. (Exhibit 77.)
16. The dwelling on Lot 826 has a rear yard extending 17 feet, a portion of which is improved with a recessed patio situated approximately three feet, six inches below the surrounding grade. The southern façade (the back wall) of the proposed garage structure would be located a distance of 19 feet, six inches from the rear of the dwelling on Lot 826.
17. The siting of the proposed garage along the northern lot line would result in a setback from the centerline of the abutting alley of seven feet, six inches. On the east side, the garage would provide a setback from the centerline of the abutting alley (the walkway) in excess of 12 feet.
18. The Property is the only alley lot in either Square 2588 or Square 2591.
19. Nearby properties fronting on Harvard Street are improved with attached dwellings, many of which have parking pads at the rear of the lots. No structure on the Harvard Street side of the alley extends to the rear lot line without any setback from the alley. (Exhibits 68, 81; Dow, transcript of April 17, 2018 at 176, 178.)
20. Hobart Street is at a higher elevation than Harvard Street. Some of the attached dwellings that front on Hobart Street contain one-story attached garages accessible from the alley, made possible by the change in grade. Some of the garages are topped by fences as high as six feet.
21. The Property and the surrounding area are zoned RF-1.
22. The Residential Flat (RF) zones are residential zones that 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.) The RF zones are designed to be mapped in areas identified as low-, moderate- or medium-density residential areas suitable for residential life and supporting uses. (Subtitle E § 100.2.)
23. The provisions of the Residential Flat (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.)

24. 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**

**Variances.** The Applicants seek area variances from the lot frontage requirements of Subtitle C § 303.3(a), the lot area requirements of Subtitle C § 303.3(b), and the alley centerline setback requirements of Subtitle E § 5106.1.<sup>7</sup> Notwithstanding their variance request, the Applicants also argued that Subtitle C § 303.3 was inapplicable to this application on the ground that the Property met the zoning definition of an “alley lot” and therefore did not require subdivision to create a new record lot.<sup>8</sup> According to the Applicants, because the zoning definition of “alley lot” encompasses both alley record lots and historic alley tax lots, then only non-historic alley tax lots would be defined as “new” alley record lots required to satisfy Subtitle C § 303.3. The Applicants urged the Board to find that the Property “qualifies as a grandfathered, historic alley tax lot” on the grounds that (1) the Property satisfies the zoning definition of “alley lot,” (2) parking garages were specifically permitted on historic alley tax lots under the 1958 Zoning Regulations, and (3) the Office of Planning testified before the Zoning Commission that “parking” was intended as a permitted use on alley lots in the proceeding that culminated in the 2016 Zoning Regulations.<sup>9</sup> (Exhibit 56.)

The Board does not agree and concludes instead that the requirements of Subtitle C § 303.3 are applicable to the Property. The 2016 Zoning Regulations define an “alley lot” as: “...either a lot

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<sup>7</sup> Consistent with the self-certified application, the Board considered the Applicants’ request for relief from the alley centerline setback requirements as an area variance. However, that relief is available as a special exception: the alley centerline setback requirement is stated in Subtitle E § 5106 as one of the development standards applicable to an alley lot, and the Board is authorized under Subtitle E § 5108 to approve an exception to those development standards as a special exception “subject to the provisions and limitations of Subtitle E § 5204.” The latter provision authorizes the Board to approve, as a special exception, a reduction in the minimum yard requirements of an alley lot in an RF zone. However, even if the request had been considered under the more lenient special exception standard, the Board would have voted to deny relief from the alley centerline setback requirements for the same reasons discussed in this Order with respect to the special exceptions requested by the Applicant; that is, because the relief would not have been in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required by Subtitle X § 901.2(a).

<sup>8</sup> The Applicants nonetheless recognized that the 2016 Zoning Regulations “require new record lots to comply with the lot size and alley width limitations” in urging the Board to grant variance relief from the subdivision requirements. (Exhibit 77.)

<sup>9</sup> The Applicants also argued that the reference in Subtitle C § 303.3(c) to alley tax lots created on or before May 12, 1958 meant that creation of a “new” record lot was not necessary in this case since the Applicants’ property was created as a tax lot in 1948. However, Subtitle C § 303.3(c) applies when “existing abutting alley record lots or alley tax lots created on or before May 12, 1958 are combined into a larger alley record lot.” The Applicants have not proposed combining their alley tax lot with any other property and thus Subtitle C § 303.3(c) is inapplicable in this case.

that is recorded on the records of the Surveyor, District of Columbia, that faces or abuts an alley that does not face or abut a street at any point (alley record lot) or a lot that is recorded on the records of the D.C. Office of Tax and Revenue, on or before November 1, 1957, that faces or abuts an alley that does not face or abut a street at any point (alley tax lot).” (Subtitle B § 100.2.) By that definition, an “alley tax lot” that was created as a tax lot before November 1, 1957 might appear the same, for zoning purposes, as an “alley record lot.” The Applicants’ property is not a lot recorded on the records of the Surveyor but was designated an Assessment and Taxation Lot before November 1, 1957 (on July 15, 1948).

However, other provisions of the 2016 Zoning Regulations also apply to this application and clearly do require creation of a lot of record for the construction of a new garage structure as proposed by the Applicants. These provisions include Subtitle A § 301.3 (“a building permit shall not be issued for the proposed erection [or] construction ... of any principal structure ... unless the land for the proposed erection [or] construction ... has been divided so that each structure will be on a separate lot of record,” subject to exceptions not applicable specifically to alley lots); Subtitle C § 302.2 (each new primary building in an RF zone must be erected on a separate lot of record, with certain exceptions not relating to alley lots); and Subtitle E § 5100 (alley lot regulations applicable in RF zones provide that all alley lots must be recorded in the records of the Office of the Surveyor as a record lot, and new alley lots may be created as provided in Subtitle C, Chapter 3). The Board concludes that the Applicants’ alley tax lot must be subdivided into a record lot before a building permit can be issued for the proposed garage, subject to the requirements of Subtitle C § 303.3 for the creation of a “new record alley lot.”

Under Subtitle C § 303.3(a), a new alley record lot must have frontage along a public alley with a minimum alley width of 24 feet and have access to a street through an alley or alleys not less than 24 feet in width. The Property has frontage along, and access to streets through, two public alleys that are 15 feet and 7.5 feet wide.

Under Subtitle C § 303.3(b), a new alley record lot must meet the lot area standards applicable under the title of the respective zone. If no minimum lot area standard is provided – and none is provided in the RF-1 zone<sup>10</sup> – the alley lot must have a minimum of 1,800 square feet of lot area. The Applicants’ property has a lot area of 557 square feet, giving rise to a request for a variance of 69% to allow the creation of a new alley record lot at the Property.

The Applicants also requested an area variance from Subtitle E § 5106.1, under which a setback of 12 feet must be provided from the centerline of all alleys to which an alley lot abuts. The Applicants’ planned garage would be built to the northern lot line, which abuts an alley 15 feet wide, resulting in a proposed centerline setback of 7.5 feet and giving rise to a need for a variance of 4.5 feet (37.5%).

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

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<sup>10</sup> The development standards set forth in Subtitle E § 5101, applicable to alley lots in the RF zones, do not specify a minimum lot area.

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.)

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

The Applicants contended that the Property was characterized by an exceptional situation as a result of several factors: its small size, the smallest lot in either Square 2588 or Square 2591; the shape of the parcel, which affected the potential design of a structure; its location adjacent to two alleys, subject to setback requirements on both sides; its status as a tax lot created before the 1958 Zoning Regulations went into effect; and its “fragmented ownership” separate from abutting parcels, which the Applicants could not acquire to increase the size of their property or of the abutting alleys, or to combine the Property with their nearby street-facing property. The Applicants stated that no building was permissible on the Property without zoning relief and asserted that the parcel would “remain open and subject to public access” with “encroachment by the pedestrian alleyway.” (Transcript of February 21, 2018 at 191; *see also* Exhibits 9, 56, 77.) The Office of Planning noted that the Property had some unusual characteristics, in particular its small size and its spatial relationship to other properties, located behind an adjacent residence under separate ownership.

The Board acknowledges that the Property is the only alley lot in its vicinity but does not find that the property faces an exceptional situation sufficient to justify a grant of variance relief. As an alley lot, the Property is not exceptional with respect to its size or shape, or its status as a tax lot. Nor is the “fragmented ownership” of an alley lot, separate from street-facing lots, an unusual occurrence. As noted by the Office of Planning, the Applicants’ inability to enlarge the Property or to widen the abutting alleys, so as to meet the frontage and lot area requirements for creation of a new record lot, is not an unusual circumstance. For approval of a variance, the “extraordinary condition must affect a single property,” and the Applicants’ property, while different from neighboring properties, is not unusual relative to other alley lots.

Practical difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical



difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome....” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011). In assessing a claim of practical difficulty, proper factors for the Board’s consideration include the inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. *Barbour v. District of Columbia Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

The Applicants assert that strict application of the Zoning Regulations would result in a practical difficulty because, without variance relief, no “reasonable structure,” including even “a small shed,” would be permitted on the Property, thereby diminishing its value. (Exhibit 77.) The Office of Planning concluded that no practical difficulty existed, because the current use as surface parking could continue. The Applicant responded that OP’s position was inappropriate as it applied the stricter use variance standard to the request for area variances.

The Board concludes that the Applicants did not demonstrate practical difficulties arising from the strict application of the Zoning Regulations to the Property sufficient to warrant the significant degree of variance relief required to allow the proposed garage. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990) (when considering an application for variances, the Board has the flexibility to consider a number of factors, among them the weight of the burden of strict compliance, the severity of the variances requested, and the effect those variances would have on the overall zone plan).

The Zoning Regulations specify the minimum lot area required for the creation of a new record alley lot, and the Applicants’ property is substantially smaller than the required minimum. Both alleys abutting the Property are significantly narrower than the minimum width specified in the Zoning Regulations, both for lot frontage and for the purpose of providing access to the nearest street. Especially in light of the degree of variance relief necessitated by the application, the Board does not find that compliance with the area restrictions would be unnecessarily burdensome because the existing parking use can continue at the Property.

The Board does not agree with the Applicant that OP’s recommendation with respect to practical difficulty is inapposite. The relevant issue is not the use of the property, but rather the proposed construction of a garage structure. The use of the property is not at issue in this application because the parking use does not depend on the existence of a garage. The Applicants have not demonstrated that the absence of a garage would be unnecessarily burdensome to a degree that would warrant the significant variance relief requested, or that continuing to use the Property for parking – an alternative available without variance relief – would be unduly inconvenient to the Applicants.

No substantial detriment or impairment. The Applicants asserted that approval of the requested variances would not cause substantial detriment to the public good or substantial impairment of the intent, purpose, and integrity of the zone plan. The ANC and the parties in opposition disagreed, citing factors such as the anomaly of a structure in the alley, where currently none exist; the proximity of the planned garage to residences on the adjoining and other nearby properties; potential adverse impacts on vehicular and pedestrian traffic in the alleys, such as decreased

visibility due to impaired sight lines; and accumulations of snow and ice in the alley since the structure would block sunlight.

The Board was not persuaded that the proposed garage structure would cause substantial detriment to the public good but concludes that approval of the requested variances would cause substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Because the Applicants' property is a tax lot, a subdivision is required to convert the Property into a record lot before a building permit can be issued. The Zoning Regulations state the requirements for that subdivision; specifically, lot frontage along an alley of a specified minimum width, access to a street through an alley of the specified minimum width, and a minimum lot area. The Applicants' property is significantly deficient in each of those areas. The Applicants also requested relief from the alley centerline setback requirement, because the proposed garage would not comply with the minimum requirement along the northern property line. Especially in light of the magnitude of the requested relief, approval of the requested variances from the applicable requirements, absent a demonstration of an exceptional situation or practical difficulty, would not be consistent with the intent, purpose, and integrity of the zone plan. In reaching this conclusion, the Board notes especially that the purposes of the RF zones include to establish minimum lot area and dimensions for the subdivision and creation of new lots of record in RF zones. (*See* Subtitle E § 100.3(d).) The Board also notes the testimony of the Office of Planning that "granting relief to allow the creation of a substandard record lot would be contrary to the intent of the zoning regulations which are intended to ensure the regulation of lot sizes and promote orderly development of the city. In the recently adopted zoning regulations, the intent was to allow future development of existing alley record lots even if they were substandard, but to limit the creation of new nonconforming record lots." (Exhibit 61.)

**Special exceptions.** As finally amended, the application seeks special exceptions under Subtitle E §§ 5108.1 and 5204 from the requirements for rear and side yards. Pursuant to Subtitle E § 5104.1, a required rear yard must be provided with a minimum depth of five feet from any lot line of all abutting non-alley lots. The Applicants' proposal would provide a rear yard of two feet, six inches. Pursuant to Subtitle E § 5105.1, a required side yard must be provided with a minimum depth of five feet from any lot line of all abutting non-alley lots. The Applicants' proposal would not provide a side yard on the western side of the lot.

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

The Applicants contended that approval of the requested special exceptions would not adversely affect the use of neighboring property given the relatively small size of the proposed garage structure. Again, ANC 1D and the parties in opposition disagreed, citing especially the proximity of the planned garage to nearby residences and potential adverse impacts on vehicular and pedestrian traffic in the alleys.

The Board did not find the claims of adverse impact raised by the ANC and the parties in opposition compelling. The opponents objected generally to the construction of a structure on the Applicants' alley lot but did not demonstrate specifically how the provision of a rear yard of two feet, six inches, instead of the minimum requirement of five feet, or the absence of a side yard where a minimum of five feet is required, would tend to cause adverse impacts on the use of neighboring properties. The Office of Planning testified that the Applicants' proposal, as finally revised, "would not appear to result in an undue impact on the adjacent properties." (Exhibit 87.)

However, the Board concludes that approval of the requested special exceptions would not be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, as required for approval by Subtitle X § 901.2. As previously discussed, the Zoning Regulations prohibit construction of the garage structure proposed by the Applicants unless the alley tax lot is first subdivided to create a record lot, and the Property does not meet the requirements for that subdivision. Approval of special exception relief to decrease yard setbacks, so as to facilitate the construction of a structure on an alley tax lot that would otherwise be significantly inconsistent with zoning requirements, would not be in harmony with the general purpose and intent of the Zoning Regulations.

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

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case ANC 1D adopted three resolutions recommending denial of the zoning relief requested. With respect to the Applicants' original proposal, ANC 1D asserted that approval of the requested zoning relief would "cause significant degradation of the use of the neighboring property." The ANC expressed concerns about the proposed construction, including the location of the alley lot at the end of a lot owned not by the Applicants but by a neighbor "with no interest in this alley apartment" such that the proposed dwelling "will be so close to their rear wall, and ... will tower over their back yard." (Exhibit 45.)

In their second resolution, ANC 1D advised the Board to deny the special exceptions and variances requested in the Applicants' initial revision, again stressing "the location of this tiny lot ... directly behind the dwelling at 1701 Harvard Street, which is home to a different owner than the owner of the alley lot in question." According to the ANC, the reduction in size of the Applicants' proposal – a garage 15 feet tall and 19' from the rear wall of the neighboring dwelling – was "not sufficient to overcome the clear fact that this construction would 'box in' the backyard of 1701 Harvard and would obstruct all view from the topfloor windows of that home." The ANC also contended that the garage "would obstruct pedestrian sightlines" between the walkway and the alley where currently "the lack of any structure in this lot allows pedestrians a clear view of oncoming alley traffic from the west." (Exhibit 79.)

In its third resolution, ANC 1D reiterated its concerns about construction of a garage on an alley lot located directly behind a residence under different ownership and asserted that the Applicants

had not met their burden of proof for the requested zoning relief. According to ANC 1D, the Applicants had not shown (i) that the proposed garage would not cause substantial detriment to the public good, considering its height and proximity to nearby residences, by blocking light and air flow to those residences and by obstructing pedestrian sightlines between the alley and the walkway (ii) that the garage “would be consistent with the Zoning Regulation intent of controlling building bulk,” considering that the RF-1 zone was intended “to avoid proximate obstructions and prevent disorderly development,” both of which would result from approval of this application, or (iii) that failing to grant relief would result in a practical difficulty, given that “even a small by-right garage could house a normal-size car.” (Exhibit 97.)

The Board has accorded the issues and concerns raised by ANC 1D the “great weight” to which they are entitled, but was not persuaded that the Applicants’ proposal should be denied for the reasons stated by ANC 1D. The Board acknowledges the arguments raised by the ANC and the parties in opposition, especially with respect to the proximity of a structure on the Property to nearby residences and the potential impacts on sightlines in the abutting alleys. The Board did not find those arguments persuasive under the circumstances of this case, which depended especially on the status of the Property as a tax lot rather than a record lot. ANC 1D itself recognized that “if this lot were part of the lot at 1701 Harvard Street, it is unlikely that building a garage would require any zoning relief at all.” However, the Board agrees with ANC 1D that the application should be denied, for the reasons discussed in this Order.


Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the request for variances and special exceptions needed to allow a garage structure on an alley lot in the RF-1 zone at 1665 Harvard Street, N.W. (Rear). (Square 2588, Lot 827). Accordingly, it is **ORDERED** that the application is **DENIED**.

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

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

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

ATTESTED BY:

  
SARA A. BARBIN  
Director, Office of Zoning

**FINAL DATE OF ORDER:** June 1, 2020

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT

DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.