



March 16, 2018

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20010

**RE: BZA Case No. 19683
Applicant's Supplemental Submission**

Chairperson Hill and Honorable Members of the Board:

On behalf of Applicant Brian and Carolyn Wise (the "Applicant"), please find enclosed a supplemental submission ahead of the Board's limited scope hearing on March 21, 2018. As requested by the Board during the initial hearing on this application, the Applicant has enclosed an executive summary detailing how the Applicant meets the area variance standard for relief from the subdivision requirements, which is attached at **Tab A**. At the request of the Board, the Applicant has also enclosed a summary and timeline of neighbor outreach, which is attached at **Tab B**.

Thank you for your attention to this matter and we look forward to presenting to the Board at the limited scope hearing on March 21, 2018.

Sincerely,
COZEN O'CONNOR

By: Meridith Moldenhauer

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Certificate of Service

I hereby certify that on this 16th day of March, 2018, a copy of the foregoing Letter with Attachments was served, via electronic mail, on the following:

District of Columbia Office of Planning
c/o Matt Jesick, Development Review Specialist
1100 4th Street SW, Suite E650
Washington, DC 20024
matthew.jesick@dc.gov

Advisory Neighborhood Commission 6B
c/o Daniel Ridge, Chairperson
1504 Potomac Avenue SE
Washington, DC 20003
6B09@anc.dc.gov

Advisory Neighborhood Commission 6B01
c/o Jennifer E. Samolyk, SMD Commissioner
407 2nd Street SE
Washington, DC 20003
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Meridith Moldenhauer

Tab A

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

**APPLICATION OF
BRIAN AND CAROLYN WISE**

**BZA APPLICATION NO. 19683
CONTINUED HEARING DATE: MARCH 21, 2018**

EXECUTIVE SUMMARY

At the request of the Board, the Applicants Brian and Carolyn Wise (the “Applicant”) submit this executive summary outlining the following three key points concerning the area variance standard for relief from the subdivision requirements for alley width (Subtitle C § 303.3(a)) and lot area (Subtitle C § 303.3(b))¹:

- The Board is authorized to grant relief from the subdivision requirements when it finds the area variance test has been met.
- Absent variance relief there is no plausible regulatory path for the Applicant to have any improved use at the Property, which is a practical difficulty.
- The variance relief from the alley width and lot area requirements will not cause any detriment to the public good or the zone plan.

The Board is authorized to grant relief from the subdivision requirements when it finds the area variance test has been met

- The ZC did not limit the Board’s authority to grant this type of variance relief
- The ZC did not bar the Board from ever granting subdivision relief
- The Board has granted subdivision relief for tax lots, including alley tax lots, on at least five occasions. A chart of cases presented to the Board during the initial hearing is attached at **Exhibit A**, and contains additional information as to justification for granting relief in those cases.
 - BZA Case 19479 (1 Library Court SE): OP supported the subdivision relief stating that “no new land is immediately available” to make a conforming lot and, as such, the applicant faced a practical difficulty even “in attaining a building permit for any home renovations.”
 - In all five cases, OP has stated that a nonconforming lot faces a practical difficulty when it cannot acquire additional property²

¹ The Applicant also requests variance relief from the alley centerline setback provisions (Subtitle E § 5106) as well as special exception relief for rear yard (Subtitle E § 5104) and a dwelling use on an alley lot (Subtitle U § 601.1(c)). However, the Office of Planning is supportive and/or has indicated no objection to this relief. As such, this executive summary focuses on the subdivision requirements of Subtitle C § 303.3.

² In these cases, it is the applicant who cannot expand its property, not that the applicant can be forced to sell its

Without approval there is no plausible regulatory path for the Applicant to have any improved and/or reasonable use at the Property, which is a practical difficulty³

- Inability to expand the Property and create a conforming lot
 - The street-facing lots abutting the Property are under separate ownership.⁴
 - Public alley on two sides of the lot limit ability to enlarge the Property
 - The Property abuts a two-story garage to the north
 - The Property is effectively a “corner lot” that abuts the alley but only three other properties; whereas, a normal alley lot could abut four or more properties
- No alternative improved use without subdivision variance relief
- To build any structure requires approval for a new record lot to be permitted
- No by-right reasonable use of the Property without subdivision relief
 - Agricultural (not reasonable)
 - Camping (not reasonable)
 - Artist Studio (requires a structure/subdivision)
 - Residential dwelling (requires a structure/subdivision)
 - Surface parking only for residents of the square
 - Split-zoned square with many existing garages means there are only 9 residential properties without parking
 - Zoning history – Seven (7) prior BZA cases for relief to have commercial parking at the Property
 - Close proximity to public transportation decreases likelihood of vehicular parking need
 - If Applicant moved away from their residence at 205 3rd Street SE, they could not even park on their own Property
 - Without having a record lot, Applicant may not be able to obtain a Basic Business License and Certificate of Occupancy for parking

Granting subdivision relief will not cause any detriment to the public good or the zone plan

- OP states that the “proposed massing” of the Project will not adversely affect the use of neighboring property
- Limited, if any, impact on light and air of neighboring properties
 - Existing structures on alley, including parking garages on two neighboring properties

property.

³ For brevity’s sake, the Applicant does not re-state all six exceptional conditions faced by the Property, which can be found in the Applicant’s Supplemental Statement (Ex. No. 48) at pg. 10-11 and the Applicant’s powerpoint presentation (Ex. No. 54) at pg. 26.

⁴ Mr. Coleman and Ms. Friedman, who offered to purchase the Property, do not abut the Property and could not subdivide to create a street-facing lot. There is an approximate three-foot strip of land belonging to the owners of 211 3rd Street SE that separates the Property from the property belonging to the neighbors that offered to purchase the Property. If anything, this shows the practical difficulty faced by the Applicant because it is simply highly unlikely that the Property could become a street-facing lot.

- Large trees already shade portions of neighboring properties and block certain viewpoints
 - No right to install solar panels and no solar panels currently exist on any adjacent properties
 - FEMS stated no objection to Applicant's previous case for the Property
 - DDOT has no objection
 - No additional noise or traffic as Property has historically been used for parking
 - Four-foot walkway, which expands to five feet, next to Property will remain, and neighboring properties have large rear yards to maintain light, air and privacy
 - Neighbors have failed to respond to and engage with Applicants regarding proposed Construction Management Agreement
- No detriment to zone plan as ZR16 and Comp Plan encourages new residential homes
 - Relatively large alley lot conducive to dwelling
 - Lot Area similar size to many street fronting record lots
 - By-right dwelling use on an existing record alley lot only requires 450 sq. ft.
 - Meets four of five conditions for by-right dwelling (alley is 1-foot short of all five conditions being met)
 - Several existing structures on alley, including dwellings
 - Adds dwelling to transit/amenity-rich neighborhood
 - Compatible infill development and diversifies housing stock
 - Maintains nature of RF-3 zone with dwellings on smaller lots
 - Keeps usable land from remaining idle

CONCLUSION

In summation, the Applicant has met the standard for relief from the subdivision requirements of Subtitle C § 303.3(a-b), as well as the additional relief requested by the Applicant, which are supported by the Office of Planning. As such, the Applicant respectfully requests that the Board grant the application and authorized the Applicant to construct a single-family home at the Property. We look forward to discussing the points in this executive summary in further detail as part of the Board's limited scope hearing on March 21, 2018.

Respectfully Submitted,
COZEN O'CONNOR



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Exhibit A

<u>BZA Number</u>	<u>Property Address</u>	<u>Tax Lot Number</u>	<u>OP Support</u>	<u>OP Justification</u>	<u>Board Decision</u>
19479	1 Library Court SE	826	Lot area and width	<ul style="list-style-type: none"> • Predating Zoning Regulations • No options to acquire property/assemble lots* 	Approved
19051	1609 Levis Street NE	804	Lot area and width	<ul style="list-style-type: none"> • Predating Zoning Regulations • No options to acquire property/assemble lots* 	Approved
18355	1400 3rd Street NW	804	Lot area and width	<ul style="list-style-type: none"> • Predating Zoning Regulations • No options to acquire property/assemble lots* 	Approved
18342	2425 Franklin Street NE	821	Lot area and width	<ul style="list-style-type: none"> • No options to acquire property/assemble lots* 	Approved
17989	4615 42nd Street Rear NW	816	Lot area and width	<ul style="list-style-type: none"> • No options to acquire property/assemble lots* • No ability to obtain building permit, based on direction from Zoning Administrator 	Approved

*Lack of common ownership with adjacent lots, or adjacent lots not available for purchase

Tab B

Applicant's Summary of Neighbor Outreach

The Applicant has attempted to engage with neighboring property owners – Thomas Coleman, Lauren Friedman, Quynh Vu Bain, and Clayton Chilcoat (the “Neighbors”), but, unfortunately, the Neighbors have proved unwilling to reciprocate. The following is a timeline of neighbor outreach since mid-February 2018¹, when the Applicant retained counsel for this matter:

Tuesday, February 13, 2018 – Applicant presents to full ANC 6B, with the Neighbors in attendance. The ANC votes to support the Project. After the conclusion of the ANC meeting, the Applicant’s counsel approached Ms. Friedman and Ms. Vu Bain² regarding a potential meeting to resolve the outstanding matters.

Wednesday, February 14, 2018 – Applicant’s counsel emails Ms. Friedman, Ms. Vu Bain, and Mr. Chilcoat and proposes an in-person meeting the following Monday, February 19th. The Applicant’s counsel receives no response.

Monday, February 19, 2018 – Having received no response, the Applicant’s counsel again emails Ms. Friedman, Ms. Vu Bain, and Mr. Chilcoat requesting an in-person meeting. The Applicant receives a response from Dan Koffman on behalf of Ms. Friedman and Mr. Coleman, but Mr. Koffman does not agree to schedule a meeting.

Wednesday, February 21, 2018 – Applicant presents to the Board. The Neighbors appear to speak in opposition. The Board requests that the Applicant and Neighbors get together to resolve the outstanding issues before the continued hearing.

Friday, March 2, 2018 – Applicant’s counsel speaks with Mr. Koffman. Applicant then emails a proposed Construction Management Agreement (the “CMA”) to Mr. Koffman. The CMA addresses three of the four points requested by Ms. Friedman and Mr. Coleman as indicated by Mr. Koffman.

Tuesday, March 6, 2018 – Without responding to the Applicant’s proposed CMA, Ms. Friedman and Mr. Coleman file to request party status.

Thursday, March 8, 2018 – Ms. Vu Bain and Mr. Chilcoat file to request party status.

Friday, March 9, 2018 – Without responding to the Applicant’s proposed CMA, Mr. Koffman sends to the Applicant’s counsel a written offer letter to purchase the Property on behalf of Ms. Friedman and Mr. Coleman.

Friday March 9, 2018 – Ms. Friedman and Mr. Coleman immediately file an “update” in the BZA record claiming that the CMA “did not fully address” their concerns, but admitting they

¹ Prior to engaging counsel, the Applicant and the project architect conducted significant community outreach as well.

² Mr. Chilcoat left immediately after the meeting and did not speak with Applicant’s counsel.

had not proposed any changes to the CMA. Ms. Friedman and Mr. Coleman also tout their “offer to purchase the lot.”

As of the date of this filing – March 16, 2018 – the Applicant has not received a response to the proposed CMA, nor any further communication from the Neighbors regarding the CMA.