

FROM: Chetan Chandra & Meghann Teague
Owners of 417 T St NW
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TO: Board of Zoning Adjustment

Date: May 14, 2020

RE: Comments in Opposition: Case Number 20290, Application of Vitis Investments LLC

Dear Members of the Board of Zoning Adjustment:

Thank you for the opportunity to respond to the Statement of Vitis Investments LLC (the “Applicant”) with respect to the application (the “Application”) for the proposed development of 421 T Street NW (the “Subject Property”). We write to you as both the owners of the immediately adjacent property (417 T Street NW) and as part of a group of the impacted neighbors with whom we share similar views regarding the proposed development.

With regard to the proposed development, we wish to first state our support for development of the site – sometimes known as the historic Butterworth mansion – within the established rules, guidelines, and Zoning Regulations. For example, we support redevelopment of the property into an apartment building that includes multiple inclusionary zoning units. However, we are strongly against the Applicant’s requested lot combination and variances that run contrary to the characteristics of the historic neighborhood and which are unnecessary to create a large multi-unit building on the lot.

Below we wish to highlight for your consideration specific deficiencies in the Application as well as our concerns regarding the downstream effects of such a large deviation from established rules, guidelines, and Zoning Regulations (with specific regard for RF-1 Zoning, for which the Subject Property is currently zoned). Further, in this letter, we wish to tell our personal story of moving to the neighborhood and how, as owners of the immediately adjacent property, the enjoyment of our own home will be negatively affected by the scale of the proposed development.

I. Overview of Issues

Our basic argument, explained in more detail below, is that significant expansion and development opportunities already exist at the Subject Property within the *matter-of-right* zoning limitations that apply in an RF-1 zone. Specifically, upon receipt of a special exception to allow for more than two dwellings on the property, the existing 3-unit mansion could easily be redeveloped into a 6-unit apartment building without combining the three existing lots into a

single super-lot, without needing a variance to construct more than one unit per 900 sqft of land area, and without needing a variance to construct an addition that is taller than 40 ft. Furthermore, this potential 6-unit apartment building would be large enough to provide multiple family-size inclusionary zoning units.

In light of the fact that a 6-unit apartment building could be built without requesting any variances, it is clear that the hardships on which the developer is basing its claims for relief are entirely the result of their desire to construct a project that is too big for the site, too big for the neighborhood, and too big for the legislatively established zoning rules.

To reiterate, we are not against increasing the housing density of LeDroit Park or the housing density of this particular site. Indeed, we support the redevelopment of the Subject Property into a larger apartment building, particularly one that includes multiple family-size inclusionary zoning units. However, we do not believe the Applicant needs the requested relief in order to responsibly develop the Subject Property. Therefore, we strongly urge the Board to reject the Application in its current form so that it may be amended to stay within the limitations prescribed by the Zoning Regulations, which have been equitably (if not stringently) applied to the other properties in our neighborhood.

II. Combining Lots

The Application is premised on combining three existing lots (Lots 804, 805, and 807) into a single new record lot. For the reasons set forth below, we believe the proposed combination of lots would not be in harmony with the characteristics of an RF-1 zone or with the particular historic block on which the Subject Property sits.

Lot 804 is the 5,400 sqft main lot on which the existing house sits. Lot 805 is an unimproved 1,600 sqft alley lot adjoined at the rear of the main lot. Lot 807, which adjoins the rear of Lot 805, is an unimproved 870 sqft lot that was carved out of the rear neighbor's (410 U Street NW) backyard and conveyed to the previous owner of Lots 804 and 805 under questionable circumstances in 1996 and/or in 2019.

A. The Super Lot

At 7,870 sqft, the combined lot sought by the Applicant would be bigger than all but 10¹ of the approximately 450 residential lots in LeDroit Park. These larger lots are outlined in blue on the map of the neighborhood attached to this letter as Exhibit A.

The combination of these lots into one super-lot would allow the Applicant to confer the rights associated with the additional lots (alley Lot 805 and Lot 807) to the main Lot 804 such that

¹ It is not particularly easy to determine the exact sizes of each lot. We performed a visual inspection based on zoning maps and it appears that about only about 10 lots (~2% of the lots in LeDroit Park) are as large as or larger than the proposed combination of Lots 804, 805, and 807.

the “square footage” of these additional lots would essentially be conveyed to the main Lot 804. In other words, the Applicant is only looking to transfer development rights so that he can overdevelop the site. However, even with the combination of lots, the Applicant’s requests are so out-of-sync with the established Zoning Regulations, that additional relief through variances is still required to complete the proposed development.

Such super-lots, particularly when created for the purpose of conferring additional development rights (as the Applicant is seeking to do here), are antithetical to the idea that RF-1 zones should be “low-, moderate- or medium-density residential areas” (E § 100.2). Accordingly, allowing the Applicant to combine lots and then base an argument for development rights on the combined lot size (ignoring that even then the Applicant is seeking additional density approvals) would fundamentally upset the zoning plan for LeDroit Park.

B. Specific Circumstances of Lots 805 and 807

Lot 805 is an alley lot – a separate lot that abuts an alley but does not abut or face a street. E §§ 5100 through 5108 and U §§ 600 through 601 prescribe special rules and restrictions for what can be constructed on an alley lot.

Notably, the rules for construction on alley lots are generally more restrictive than they are for main lots. For example, use of an alley lot for a dwelling is, in all events, restricted to a single dwelling unit, and even then it must be demonstrated that the alley provides reasonable access for public safety (U §§ 600 through 601). Similarly, building height on an alley lot is limited to 20’ and two stories (E § 5102.1). In a neighborhood like LeDroit Park, with its already large main lots, these special rules are *especially* important in preventing the over-development of dwelling units.

Combining Lot 805 with Lot 804 effectively converts the limited development rights associated with Lot 805 (the alley lot) into the matter-of-right development rights associated with Lot 804 (the main lot), disrupting the balance promoted by existence of the special alley lot rules. In addition, the special alley lot rules promote the construction of carriage houses, which are an important part of LeDroit Park’s architectural history. In other words, the combination of alley Lot 805 with Lot 804 would essentially subvert the prescriptions laid out for alley Lot 805.

Lot 807 was only created by the Office of the Surveyor in October of 2019 despite having been conveyed to the previous owner of Lots 804 and 805 in 1996.² This lot was carved out of the back of the record lot at 410 U Street NW, as shown on the assessment and taxation plat attached to this letter as Exhibit B. As can be seen on the map attached here as Exhibit A, this conveyance broke the rear continuity of the lots on the south side of the 400 block of U Street NW and created a peninsula around the backyard at 412 U Street NW, effectively making Lot 807 an encroachment.

² A corrective deed was recorded in November of 2019 to ratify the original deed from 1996, but as Lot 807 was not independently conveyable until the assessment and taxation plat was recorded in October of 2019, it is hard to see how ratifying a deed of the property from 1996 fixes the problem. It is also unclear how the seller of Lot 807 had the authority, whether in 1996 or 2019, to subdivide (and therefore sell) a portion of her overall lot.

Lot 807 is an outlier, geographically and architecturally dissimilar to the lots around it, and an argument can be made that it should never have been conveyed to the previous owner of the Subject Property. Further, its small dimensions make it unsuitable for improvements – being only 29 x 30 feet in area, set back rules are virtually impossible to meet. The Applicant’s plans show Lot 807 being used as three parking spaces – meaning combining Lot 807 with Lots 804 and 805 is effectively a transfer of development rights to those lots. The potential problems created by Lot 807 can be minimized by keeping it a separate record lot from Lots 804 and 805.

III. Building Occupancy of Lot

Before getting to the specifics of the special exceptions and variances that the Applicant is requesting, it is worth noting that the overall footprint of the proposed new structure is significantly larger than what is customary for similarly sized buildings and properties in LeDroit Park.

A visual comparison, as can be seen at the bottom of the neighborhood map attached to this letter as Exhibit A, and reproduced below, highlights this point. As a specific comparison, the condo building at 531 T Street NW – the closest architectural analog to what is proposed at the Subject Property – has the same number of units (eleven), but sits on a lot that is *more than twice as large* as the Subject Property (16,233 sqft vs. 7,870 sqft), with a lot coverage that does not, by visual estimation, exceed 35%; whereas the proposed project would appear to use nearly 50% of the Subject Property.



Similarly sized residential lots in LeDroit Park – even condos and apartment buildings, such as 531 T Street NW, 1881 3rd Street NW, and 201 2nd Street – nearly always have an apron of landscaped yard around the outside of the building structure. This open space is a hallmark of

LeDroit Park and is in fact one of the fundamental design elements embraced by McGill for the neighborhood. In contrast, the plan for the Subject Property, which is already constrained by small existing side yards (less than 5' on each side), is to convert the ample rear yard into a dwelling structure.

As an attempt to maintain the open light and air characteristics of LeDroit Park, the Applicant points to the "courtyard" they plan to include with their development. However, this "courtyard" is shown on the project plans as an *internal* 16' square surrounded on three sides by 40' walls. Far from exemplifying the open spaces LeDroit Park is known for, this courtyard was designed to be hidden from view. Clearly, a courtyard that is hidden from view from the entire neighborhood cannot contribute to its open-air characteristics.

Additionally, the minimum required rear yard setback is 20 feet, as acknowledged by the Applicant. Because the Applicant is proposing to combine a small lot carved out of the record lot of 410 U Street to the north with Lots 804 and 805 as described above, the resulting proposed super-lot is not rectangular in shape. Rather, it has a notch at the back end. The Application alleges that the minimum requirement for the rear yard setback has been met and is 49 feet or is 47 feet³, but this is *only* true for the portion of the lot that extends into the peninsula. For a full 40% of the width of the lot, the rear setback is much smaller at only 18 feet, depending on which chart of the Applicant's applications are relied upon.

IV. Special Exception for Conversion

The Applicant seeks special exception relief from U § 320.2, to convert a single-family dwelling into an apartment building. As the existing building has already been used as a 3-unit rental and is large enough to support even more units, we have no objection to a conversion to a reasonably sized apartment building within the existing building. However, the proposed addition and conversion to an 11-unit apartment building are unreasonable and should be denied.

A review of the applications made to the Board for this type of relief in an RF-1 zone supports this assertion. The overwhelming majority of such applications are to convert 1- or 2-unit single family dwellings into 3-unit apartment buildings. Applications to convert single family dwellings in an RF-1 zone to 11-unit apartment buildings are basically unheard of, and the need for the additional exceptions and variances that the Applicant is seeking strongly suggest that the proposed project is not in harmony with the overall zoning intent for an RF-1 area nor is it with the consistent application of the Zoning Regulations for RF-1.

³ The application materials are inconsistent with respect to the rear yard setback. The Zoning Analysis in some of the Application materials indicate that the proposed yard is 49 feet 2 inches, and the same analysis in other Application materials indicate that the proposed yard is 47 feet.

V. Variance for Building Density

The Applicant also seeks variance relief from U § 320.2(d), to build beyond the 900 sqft of land per unit density limitation. Even after the proposed combination of the square footage of Lots 804, 805 and 807, the ratio of land area to proposed units (7,870sqft / 11 = 715 sqft per unit) still falls over 20% short of what the Zoning Regulations require (900 sf).

The 900 sqft rule is one of the most important requirements for a conversion in an RF-1 zone, as it is crucial to how the density limitations of the zoning plan are translated into building limitations. Indeed, unit density of the neighborhood is, by definition, a calculation of units per square foot. The Board has expressly affirmed the importance of this rule in numerous public hearings.

A review of the Board's decisions, and the Office of Planning's recommendations, for requests for relief from this requirement show that they are historically hesitant to grant such relief. In the handful of situations where variances have been granted, they usually do so to allow an existing use, without additional construction, to continue so as not to unduly burden the property owner.

For example, in Application No. 20002 of Mattie and Sallie Johnson for 21 Seaton Place, N.E., a building was being used as a 3-unit apartment building despite having a certificate of occupancy for only two units. As the land area of the lot on which the building was situated was less than 2,700 sqft, a variance from the 900 sqft rule was needed in order for the property owner to get a certificate of occupancy for the third unit. Realizing that the non-conforming use was inadvertent and that forcing one of the three tenants to vacate the building would constitute an undue burden, the Board, on the Office of Planning's advice, approved the variance.

Similarly, in Application No. 20116 of Elee and Joseph Wakim for 2705 11th Street, N.W., the Board (again, with support from the Office of Planning) granted a variance for the 900 sqft rule where a dilapidated building, which had previously been used as a 3-unit apartment, needed to remain a 3-unit apartment in order for the rehabilitation of the building to make financial sense. Again, the rehabilitation did not include any expansion of the existing building.

Contrary to these examples, the hardship that the Applicant is claiming is entirely the result of the voluntary decision to attempt to upsize to an 11-unit apartment building. Were the Applicant to stick with the current use of 3-units, or even double the number of units to 6, *no variance would be needed even without combining lots*. To be clear, the existing conditions at the site allow for substantial new development without needing relief from the 900 sqft rule.

In terms of the three elements to satisfy the burden of proof for an area variance as established in *Gilmartin v. D.C. Board of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990), the Applicant's request fails as to each element. **First**, the unique physical aspect of the property (i.e., its large size and inherent matter-of-right development potential) runs directly counter to any

alleged need to grant the Applicant even more density rights. **Second**, the only difficulty caused by a strict application of the Zoning Regulations is that they prevent the Applicant from constructing a project that the Applicant has chosen to make twice as large as what the regulations allow for – this is not a practical difficulty, it is an entirely self-made one. And **third**, the granting of a variance to the density limitation absent a real and meaningful hardship (not simply “I want to build more units here”) inherently undermines the zoning plan and should be rejected on the basis that, all other things being equal, the legislated rules are the rules.

The lengthy discussion in the Applicant’s Statement about the financial and architectural hardships that would result from not granting the requested relief is unpersuasive. If normal homeowners have found a way to add dwelling units and additions to their homes within the requirements of the Zoning Regulations – as many, many homeowners in LeDroit Park have done over the past decade – then a professional developer should be able to reconfigure a historic 3-unit mansion into a historic 6-unit apartment building in one of the most sought after neighborhoods in the District in a profitable manner.

VI. Variance for Height

The Applicant also seeks variance relief from E § 303.1, to build above the 35’ height limitation prescribed by the Zoning Regulations.⁴ In his Statement, the Applicant premises his need for this variance on the alleged requirement of the Historic Preservation Review Board (“HPRB”) that the addition be similar to the 46’-4.5” height of the existing structure. While it is true that HPRB often requires contemporary additions to be *subservient* in size to original structures, the Applicant has somehow construed this as a requirement of a *minimum* building height – as opposed to a *maximum* building height.

We are dubious that this is what HPRB meant to convey to the Applicant. More likely, it seems HPRB would accept a range of heights so long as they do not exceed some maximum height that is less than the height of the existing structure – perhaps that that means 41’ or 39’ or even 34’. HPRB should clarify this for the Board, since if HPRB is willing to accept a lower addition height, a variance – and perhaps even a special exception – would be unnecessary.

Further, the Applicant’s Statement does not specify what building height they are actually seeking relief to build to, only that it is more than 40’. We do not believe the Board should grant – let alone can it evaluate – what is essentially an unlimited request for height restriction relief.

⁴ Under E § 303.1, construction to a height of 35’ is allowed as a matter of right, while above 35’ but at or below 40’ requires a special exception, and above 40’ requires a variance.

VII. Failure to Seek Relief for Parking Requirements

The Applicant's proposed plan provides for both fewer and smaller parking spaces than required by the Zoning Regulations, but the Applicant fails to seek relief from such requirements. It appears that the Applicant has erroneously interpreted the Zoning Regulations and ultimately miscalculated the required number of parking spaces.

Section III.B of the Applicant's Statement states that due to the Subject Property's location within a half mile of the Shaw-Howard Metro state, the Applicant is required to provide only 3 parking spaces. The Applicant has misinterpreted the Zoning Regulations.

C § 701.5 requires that multi-unit residential buildings in an R or RF zone have at least 1 parking space per 2 dwelling units. The 11 units in the proposed project would therefore require 6 parking spaces to be code compliant.⁵

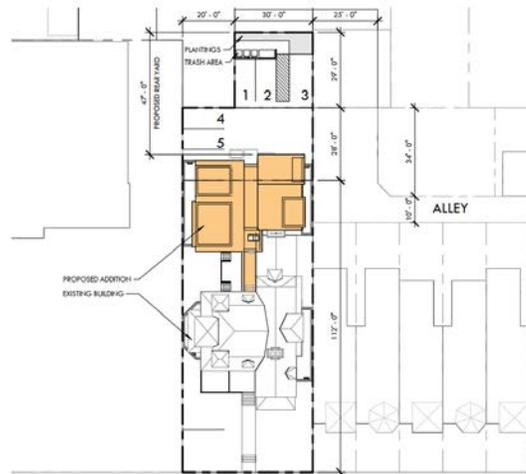
To get to 3 parking spaces, Applicant appears to be relying on C § 702.1(a), which states:

Except as provided in Subtitle C § 702.2, within any zone other than an R or RF zone, the minimum vehicle parking requirement identified in the table of Subtitle C § 701.5 shall be reduced by fifty percent (50%) for any site which is located: . . . (a) Within one-half mile (0.5 mi.) of a Metrorail station that is currently in operation or is one for which a construction contract has been awarded . . ." (emphasis added).

As indicated by the underlined language, the reduction does not apply to R or RF zones. Accordingly, 6 parking spaces are required, meaning the 5 spaces proposed by Applicant are insufficient.

While the difference of only one parking space may not *seem* like a large problem, a review of Applicant's proposed development illustrates a significant issue. Stated simply: there does not appear to be any room for the required sixth parking space. Applicant's proposed plans (reproduced below) show that five spots are tightly placed into the alley Lot 805 and Lot 807 without room for any additional parking spaces.

⁵ $11/2 = 5.5$, rounded up to 6, per A §709.3 – "Calculations of parking spaces that result in a fractional number of one-half (0.5) or more shall be rounded up to the next whole number. Any fractional result of less than one-half (0.5) shall be rounded down to the previous whole number."



Applicant also appears to have misinterpreted the requirements of the Zoning Regulations as to parking space size and access. C § 712.3 requires that at least 50% of the required parking spaces meet the *full-size requirements* of C § 712.5, while the remainder meet the compact-size requirements of C § 712.6. Accordingly, at least three of the parking spaces at the Subject Property must be at least 9' wide by 18' long with a drive aisle width of at least 20', and the remainder of the parking spaces must be at least 8' wide by 16' long with a drive aisle width of at least 20'.

Applicant's plans provide for only one parking space that is 9' wide by 18' long and 4 spaces that are 8' wide by 18' long. Accordingly, the Applicant is short 2 full-sized parking spaces. Additionally, three of the parking spaces on the Applicant's plans are served by a drive aisle that is only 16' wide, which is 4' narrower than permitted by the Zoning Regulations.

IX. Health and Safety Impacts

The extremely large size of the proposed project raises other follow-on health and safety concerns. The public alley that connects to the back of the Subject Property is a 165' long dead-end whose only entrance / exit is a blind turn off of 4th Street NW.

The alley is a mere 8'-0" wide at its narrowest, flanked on either side by a masonry house wall and a masonry retaining wall. At this width, a Ford Explorer would only have 8 inches of space on either side to navigate the alley way. Clearly, construction vehicles, trash trucks, ambulances, fire trucks, and moving trucks are unable to enter the alleyway.

Further, the addition of eight new units will almost double the number of units that currently actively use the alley. The alley is barely suitable for the handful of personal vehicles that currently use it, so the increased traffic, not to mention trash vehicles, resulting from the additional units will result in a substantial disruption of the daily activities of all of the residences

who currently use the alley way, and the increased traffic will cause additional congestion on 4th Street NW with so many more vehicles entering and exiting the alleyway.

But not only the alleyway will be affected. Indeed, almost tripling the density of this one property would lead to significantly increased difficulty in obtaining parking for residents and visitors of the surrounding homes. As most residents of LeDroit Park know, available parking is already an issue. With only one-way parking available on 4th Street NW (east of the Subject Property) and U Street NW (north of the Subject Property), the limited parking proposed at the Subject Property will only exacerbate the existing parking shortage.

Additionally, as discussed in regard to the parking requirements above, the drive aisles provided in Applicant's plans are 4' too narrow to meet the requirements of the Zoning Regulations. As we know, these requirements are provided for safe access to and from the parking spaces. With such a narrow drive aisle maneuvering cars within the drive aisle and without damaging to property or persons becomes increasingly difficult.

X. Effect on the Enjoyment of our Home

Aside from the deficiencies noted above, as the owners of the immediately adjacent property, we are very anxious over the proposed development and wish to share our concerns.

We moved to LeDroit Park in February 2019 after visiting an open house at 421 T Street NW on a whim. While we loved the house itself, one of the most important factors in moving to LeDroit Park was that the neighborhood is a charming residential neighborhood full of open spaces and detached or semi-detached homes despite being just blocks away from so many restaurants and bars.

Our home has a small back yard (approximately 16 x 16 ft square) and an even smaller front yard. Our backyard is configured as a parking lot, so the second-floor balcony at the rear of our house functions as, essentially, our only outdoor space. During the summers, some light shines through the buildings to reach our backyard and balcony, and our two dogs sun-bathe at every opportunity.

Based on the Applicant's sun study, the proposed development not only blocks out most of what little sunlight we have in our backyard, but it will also very obtrusively obscure any feeling of open space that our small backyard grants. While the Applicant has provided some architectural renderings for their proposed addition, these renderings do not paint an accurate picture. The renderings are drawn without any color, with thin lines, and omitting cars, fences, and any details from the surrounding buildings.

In an attempt to illustrate the impact that the proposed addition will have on what little outdoor space we have, we have created a few images to show the proposed addition in a more realistic setting, attached as Exhibit C. As one can see, the attached renderings show that the

proposed addition has a much greater impact than what is shown in the Applicant's renderings. We are sincerely concerned that the use of what little outdoor space we have will be essentially eliminated by the proposed addition. Moreover, the renderings in Exhibit C illustrate the impact on light and air that the proposed development would have not only on ourselves, but on our neighbors to the north, south, east, and west (as shown in pictures from the alleyway, from neighboring houses, and from 4th Street NW as well).

XI. Conclusion

Based on at least the above, we respectfully request that the Applicant's current proposed development be denied so that it can be adjusted to conform to the established rules, guidelines, and regulations.

We thank you for the opportunity to submit our response and for taking the time to carefully consider our arguments. We look forward to any additional opportunities to share our voices.

Sincerely,



Chetan Chandra, Esq.
Owner 421 T St. NW



Meghann Teague, PhD, Esq.
Owner 421 T St NW.

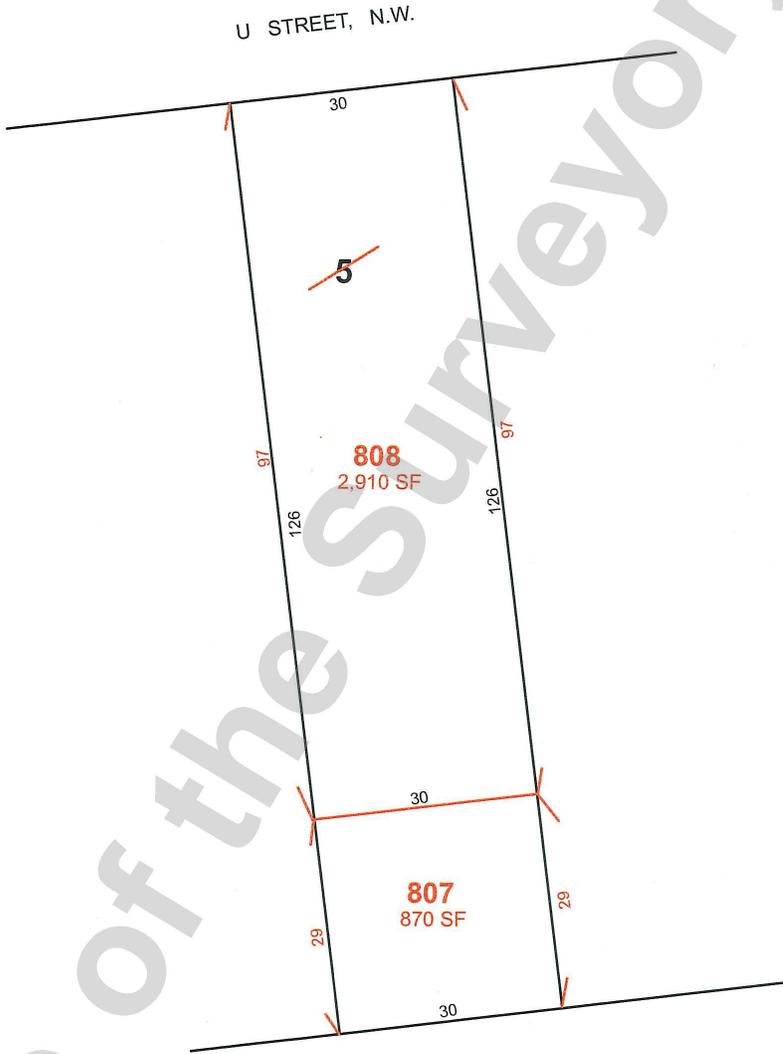
EXHIBIT B -Assessment and Taxation Plat - 410 U St NW

OFFICE OF TAX AND REVENUE
ASSESSMENT DIVISION



ASSESSMENT AND TAXATION PLAT
Square 3090

3884-V



David Smith
Draftsman

Deed # 960041766
6/28/1996
Reference

10-11-19
Date

Scale, 1 inch = 20 ft.

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.

Thomas Lewis 10/29/19
Chief Assessor, Office of Tax and Revenue

EXHIBIT C - Photo Renderings of Proposed Addition

Renderings made using Applicant's architectural drawings. Estimated sizes were determined using fix points of reference (i.e. fence is 6 ft tall; electrical pole is 29 ft from rear property line of 417 T Street NW, etc.)

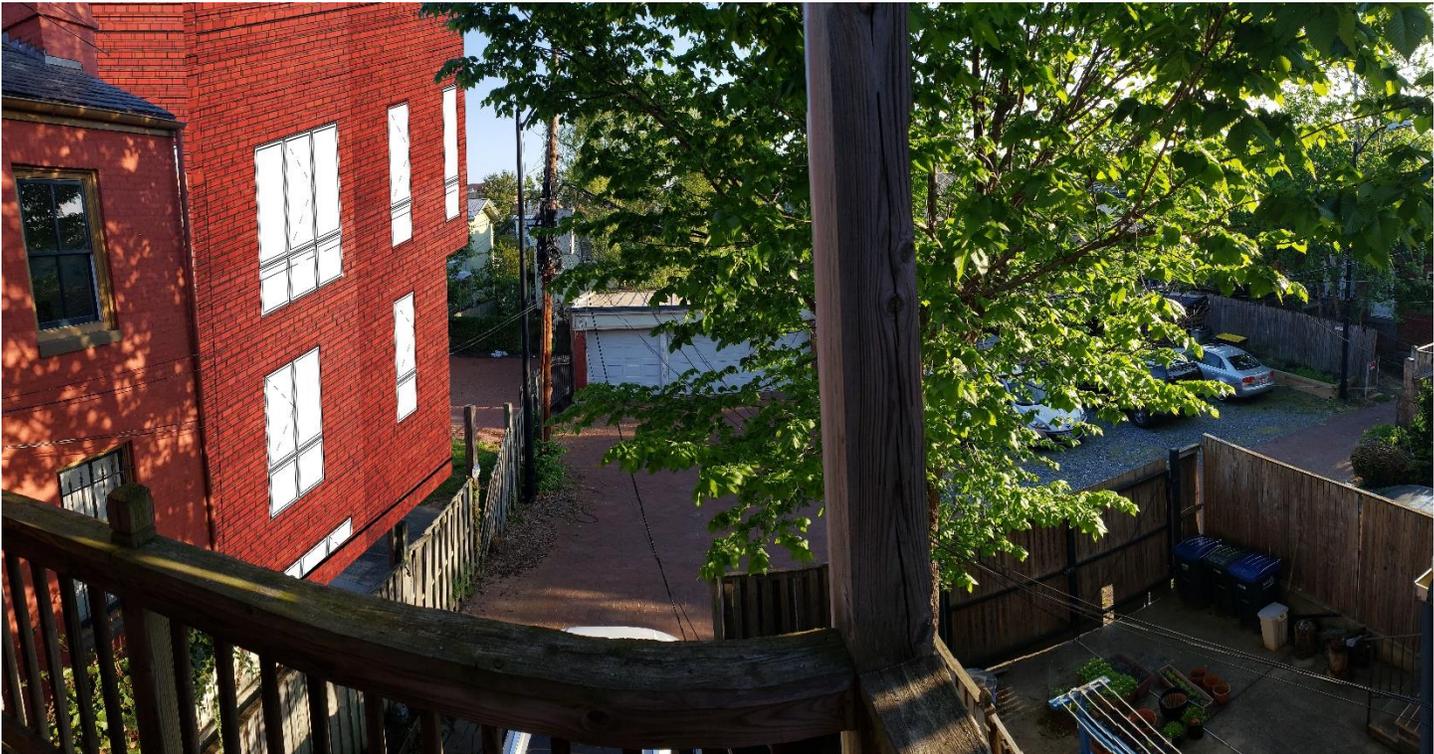
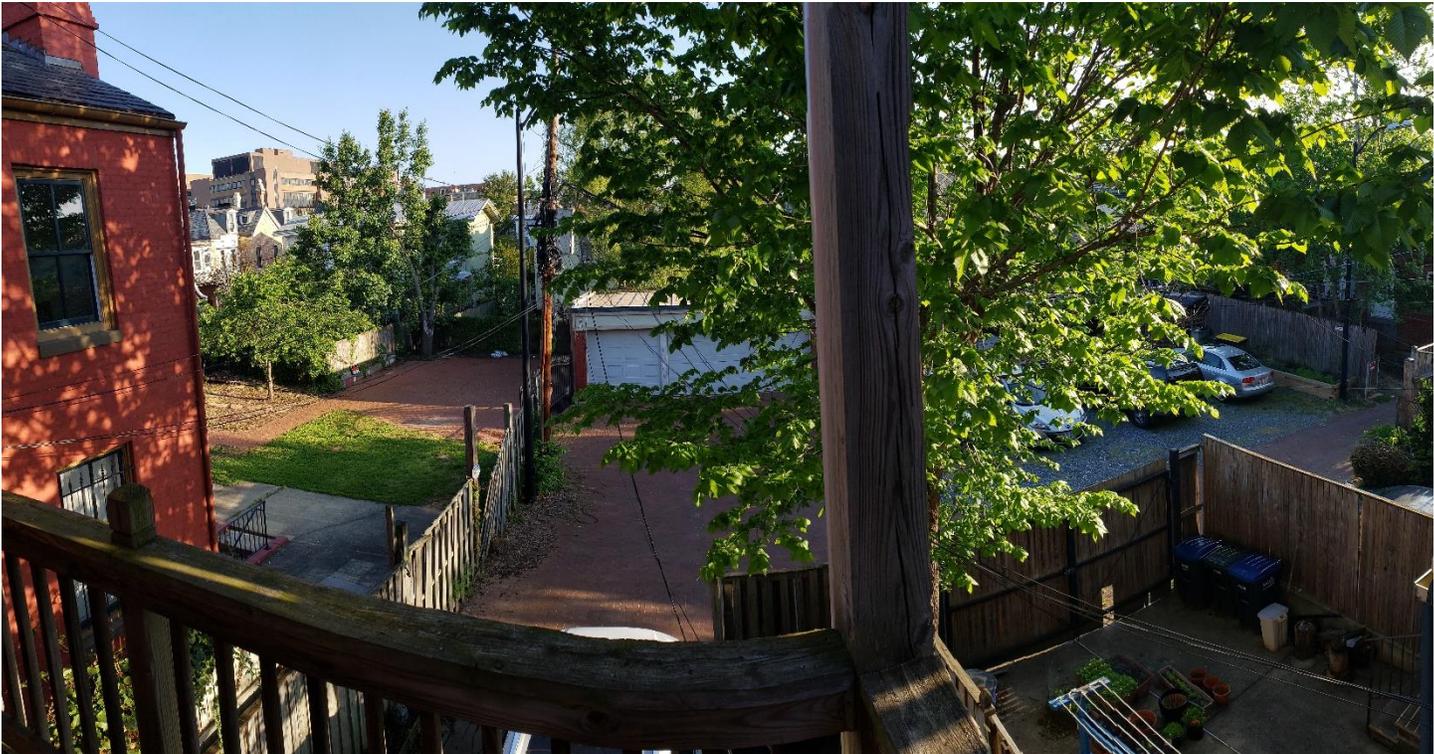
View from Kitchen Window of 417 T Street NW



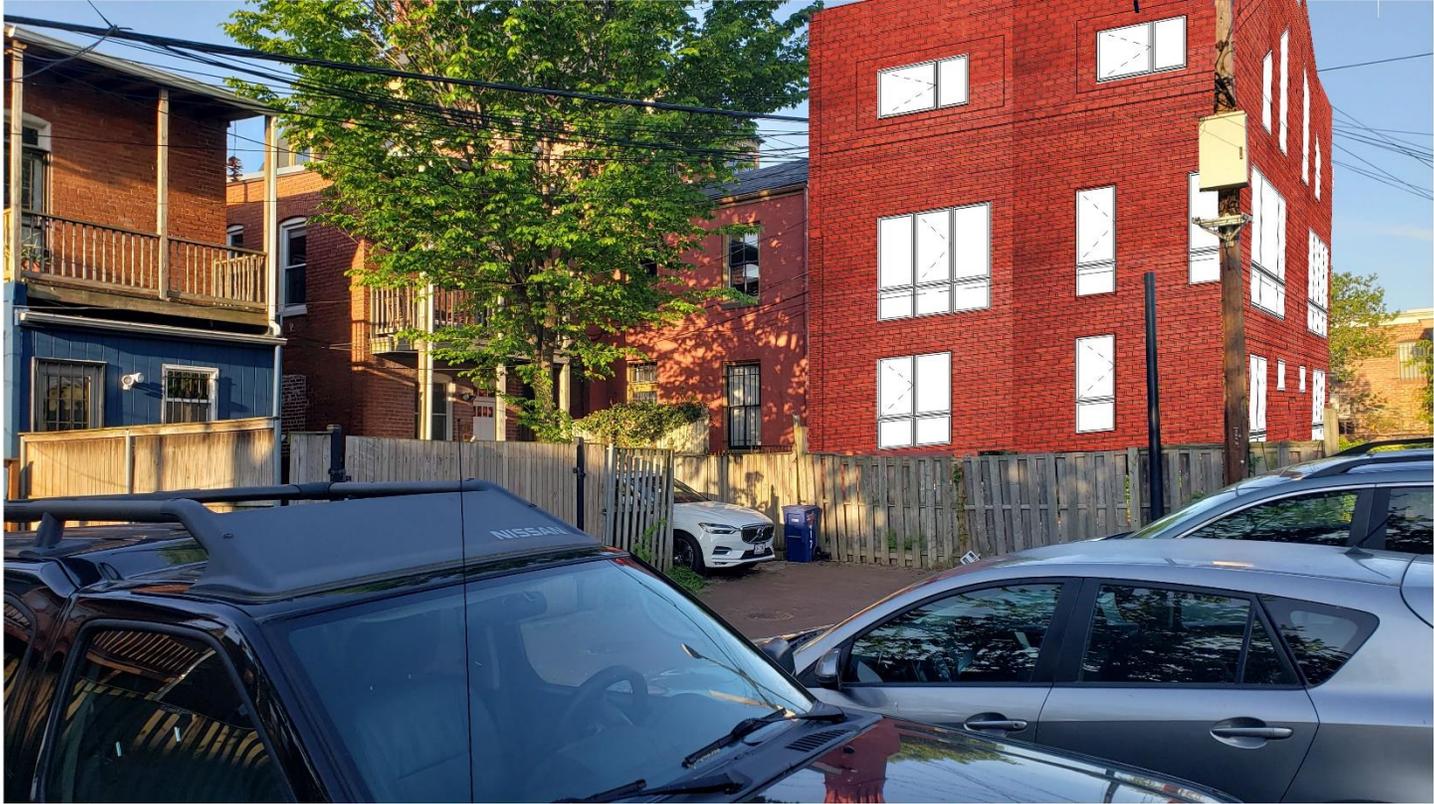
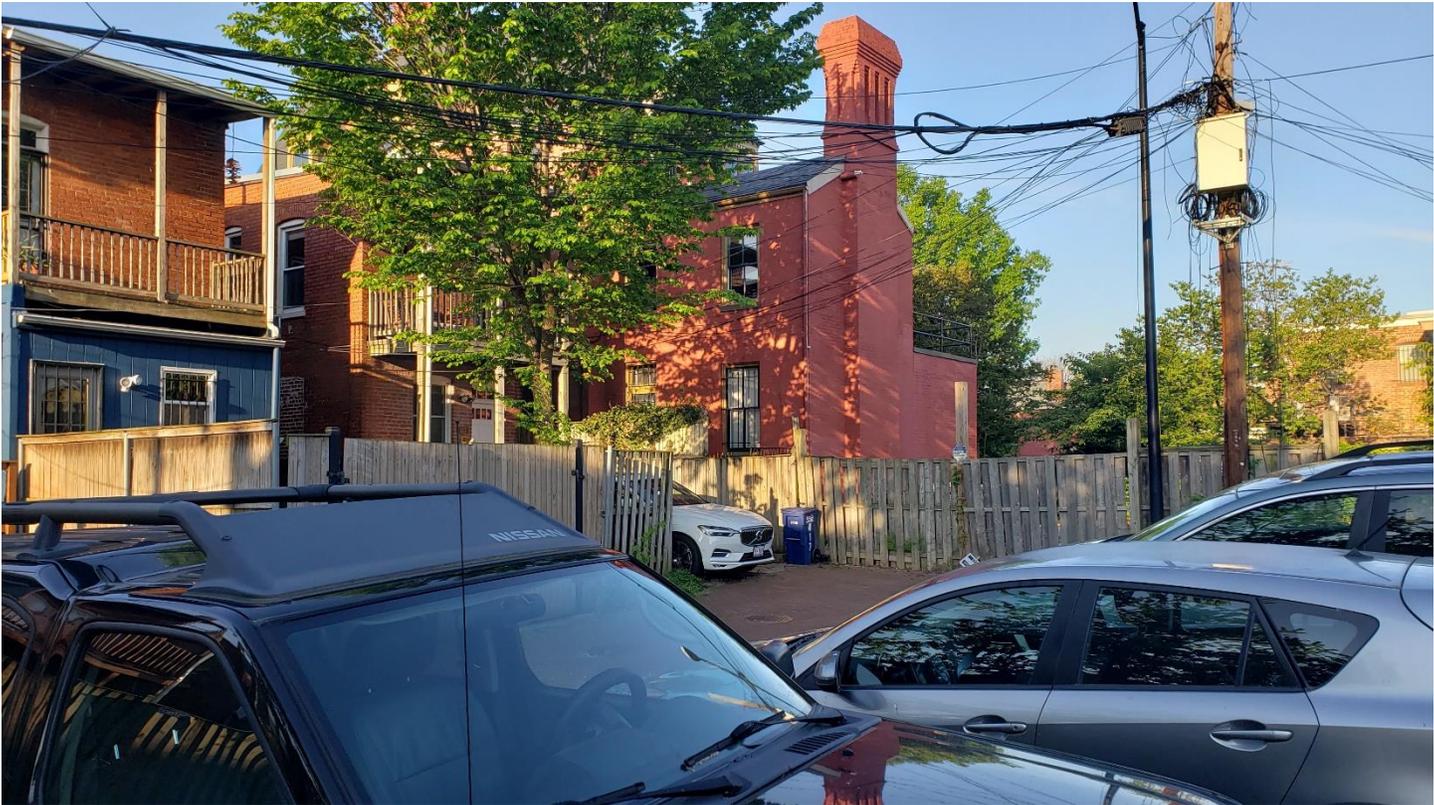
VIEW FROM ALLEYWAY, LOOKING WEST



VIEW FROM SECOND FLOOR BALCONY of 417 T Street NW (PANORAMIC PHOTO TAKEN)



VIEW FROM NORTH EAST CORNER OF ALLEY/PARKING AREA



VIEW FROM BACK WINDOW OF 406 U Street NW

