MEMORANDUM

TO: District Board of Zoning Adjustment

FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

DATE: January 26, 2010

SUBJECT: BZA No. 17989 - Request for a use variance under § 2507.3, and an area variance under § 401.3, to convert an existing carriage house to a single family residence on an alley lot at 4615 Rear 42nd Street NW.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **cannot support** the proposed conversion of an existing building on an alley lot to residential use. The burden of proof was not met for a use variance, in that the application did not adequately demonstrate that due to an exceptional condition or situation of the property strict compliance with § 2507.3 would cause the owner an undue hardship, or that the proposal would not harm the intent of the current regulations.

However, should the Board determine that human habitation is appropriate, OP would support the Applicant's request for lot area relief to facilitate the conversion of a tax lot to a record lot.

II. APPLICATION IN BRIEF AND BACKGROUND

The application requests use variance relief from § 2507.3 and area variance relief from § 401.3 to allow the conversion of an existing vacant carriage house on an alley lot to a single family residence in the R-2 district. The application originally was scheduled to be heard on November 3, 2009, but was postponed at the request of the Applicant and ANC 3E.

III. SITE DESCRIPTION

The subject site is Lot 816 in Square 1732 (hereinafter, the "Property"). The Property is an alley lot[1] that contains an approximately 1,300 square foot 2-story carriage house plus cellar. The application indicates that the carriage house dates to around 1900; based on a cursory review of historic maps, OP was able to determine that the carriage house appears to have been constructed between 1916 and 1927. The building was renovated for a conforming artist studio use pursuant to a 2003 building permit. It contains a kitchen and bathroom facilities, and there is parking behind the building. The Property measures 45' along the alley by 60' deep, totaling 2,700 square feet. To the north, west, and south of the Property are the rear yards of predominately residential dwellings. To the east, across the alley, is the back of a multi-story commercial building that is zoned C-2-A. The alley is improved and 20' in width. The carriage house is set back from the alley approximately 6.5'. The Property is approximately two blocks from the Tenleytown metro station.

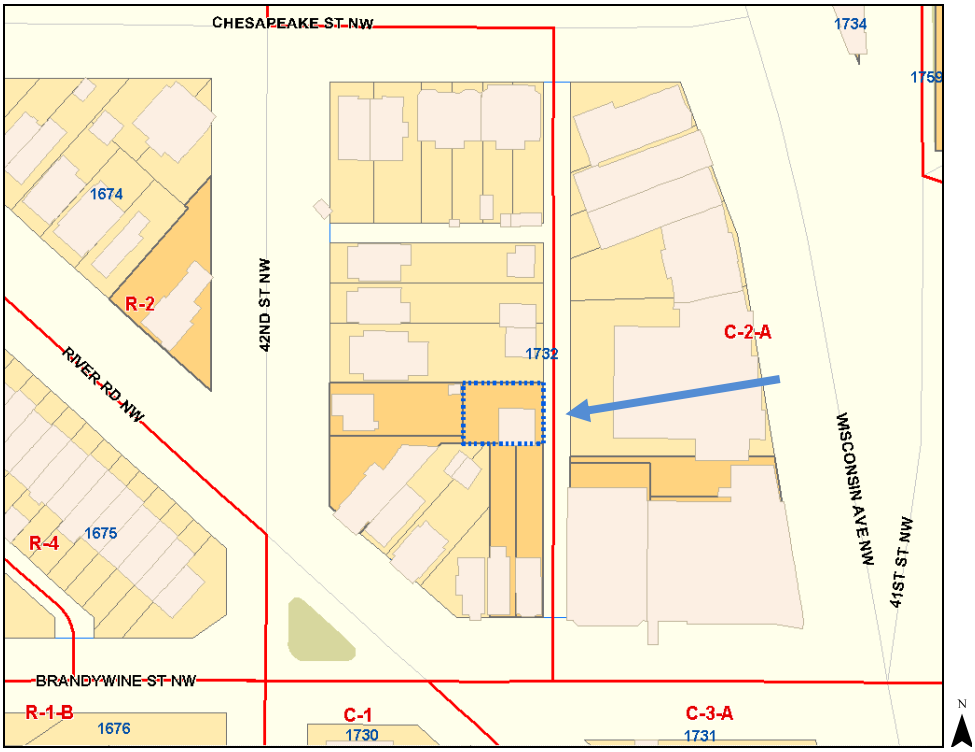
Square:	1732	**Lot:**	816	**Location:**	4615 Rear 42nd Street
Dimensions:	Rectangle	**Area:**	2,700 sq. ft.	**Quadrant:**	Northwest
Zone:	R-2	**Alley:**	1 side	**ANC:**	3E
Current use:	Vacant	**Historic District:**		N/A	

IV. AREA DESCRIPTION

Square 1732, which includes the Property, is bordered by Chesapeake Street to the north, Wisconsin Avenue to the east, Brandywine Street and River Road to the south, and 42nd Street to the west. Roughly the west half of

[1] "Lot, alley" is defined as "a lot facing or abutting an alley and at no point facing or abutting a street." 11 DCMR § 199.

the Square contains mostly residential uses and is zoned R-2, while the Square's east side consists of commercial uses and is zoned C-2-A.[2] There are several detached accessory garages in the Square.



Aerial view of the site (subject Property outlined in blue)

View looking south toward Brandywine Street NW

[2] A dentist office occupies 4123 River Road N.W., which abuts the Property to the southwest.

View of the subject carriage house

View looking north up the alley from the subject carriage house

V. EXISTING ZONING

The subject site is zoned R-2, which allows single-family detached and semi-detached dwellings as a matter of right. However, no single-family dwellings are permitted to be "erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet (30 ft.) or more in width and has from the alley access to a street through an alley or alleys not less than thirty feet (30 ft.) in width" (§ 2507.2). Further, "[n]onresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost" (§ 2507.3). In contrast, artist studios[3] are permitted by right on alley lots, while "storage of wares and goods[4], parking lot, parking garage[5], or public storage garage" are permitted subject to special exception relief and are not subject to a defined minimum alley width.

R-2 Zone	Regulation	Existing	Proposed [6]	Relief
Height (ft.) § 2507.4	30' max.	20'	20'	Conforms
Parking spaces (number) § 2101	1 min.	1	1	Conforms
Lot occupancy (building area/lot area) § 403	40% max.	<40%	<40%	Conforms
Lot width (ft.) § 401	30' min.	45'	45'	Conforms
Lot area (sq. ft.) § 401	3,000 sq. ft. min.	2,700 sq. ft.	2,700 sq. ft.	Deficient: 300 sq. ft.

VI. RELIEF REQUESTED

The Applicant is not proposing any building expansion, rather to use the existing building as a residence. As such, the Applicant requests use variance relief from § 2507.3 to permit the conversion of a non-residential building to a single family residential dwelling with access to the street via an alley narrower than 30' in

[3] "Artist studio" is defined as "a place of work of one or more persons who are engaged actively, and either gainfully or as a vocation in the following: (a) The fine arts, including but not limited to, painting, printmaking, or sculpturing: (b) The performing and visual arts, including but not limited to, dance, choreography, photography, or filmmaking; (c) Ceramics; or (d) The composition of music." 11 DCMR § 199.1.

[4] See § 333 "Storage and parking on alley lots (R-4)."

[5] "Garage, parking" is defined as "a building or other structure, or part of a building or structure, over nine hundred square feet (900 ft.^{2}) in area, used for the parking of motor vehicles without repair or service facilities. The term parking garage may include a parking garage accessory to the principal use, but shall not include a mechanical parking garage." 11 DCMR § 199.1. As a comparison, a "Garage, private" is defined as "a building or other structure, or part of a building or structure, not exceeding nine hundred square feet (900 ft.^{2}) in area, used for the parking of one (1) or more motor vehicles and having no repair or service facilities." 11 DCMR § 199.1.

[6] Based, in part, on information provided in the application.

width.[7] Additionally, the Applicant is applying for lot area relief under § 401.3 to facilitate the conversion of a tax lot to a record lot.

Use Variance (§ 2507.3)

The use variance requirements pursuant to § 3103 to be met are as follows:

1. **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The Property is rectangular-shaped and abuts an improved 20' wide alley. It is the only alley lot within the Square and it is located behind several lots under separate ownership. In spite of its lack of street frontage, the site's size of 2,700 square feet is actually larger than several neighboring residential lots in the Square. The application indicates that the carriage house significantly predates current regulations and measures approximately 1,300 square feet of gross floor area.

2. **By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or an exceptional and undue hardship upon the owner of the property.**

Despite the presence of unique features affecting the site, the Applicant has not demonstrated that they rise to the level of an undue hardship, which would preclude any reasonable use of the property for permitted uses in an R-2 District. The carriage house has been renovated for artist studio use, a permitted use in this zone, and the Applicant has not demonstrated how such a use could not reasonably operate. There is also no indication that the Property has been used for residential purposes in the past. An inability to put the Property to a more profitable use is not sufficient to constitute an undue hardship.

3. **The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

Although no new construction and parking would be provided, the Applicant has not sufficiently demonstrated that there would be no undue impact on the public good. As provided below, there is a neighbor in opposition while some other neighbors and the ANC have indicated support. The conversion of residentially zoned carriage houses to human habitation along alleys measuring less than 30' in width raises concerns regarding the impact on the current zone plan. The language of § 2507.3 currently states that "[n]onresidential structures located on these alleys shall not be converted, altered, remodeled, restored, or repaired for human habitation, regardless of cost."

Area Variance (§ 401.3)

The area variance requirements pursuant to § 3103 to be met are as follows:

1. **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

[7] See Application No. 17656 Alley Cat Mews, L.L.C., pp. 5-6, for a determination that the proposed use of an alley lot building for human habitation requires use variance, rather than area variance, relief.

If the Board determines that a use variance is justified to allow the proposed residential use on the site, OP finds that the Property exhibits a specific uniqueness for the remaining lot area relief request. The Property was created on May 17, 1945, prior to the adoption of the 1958 zoning regulations, with a substandard lot area of 2,700 square feet. R-2 zones require a minimum of 3,000 square feet for a single family semi-detached dwelling. The owner of the lot does not also own other adjacent property.

2. **By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or an exceptional and undue hardship upon the owner of the property.**

The Property's uniqueness with regards to its lot area creates a practical difficulty for the Applicant. The Property, which is identified with a tax lot, shares two record lots with the property to the west which is improved with a single family dwelling under separate ownership. The Applicant is unable to make the Property conform to the minimum lot dimensions and, without lot area relief, would not be able to use the Property as a principal building for residential use.

3. **The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.**

If the Board determines that the use of the Property for human habitation is appropriate, then granting lot area relief would not cause substantial detriment to the public good or impair the intent, purpose and integrity of the zone plan. Such relief is necessary for the technical creation of a lot of record.

VII. AGENCY COMMENTS

The District of Columbia Fire and Emergency Medical Service (DCFEMS) reviewed the proposal and submitted its comments to OP in an October 2, 2009 letter. According to DCFEMS:

> "Based on the site plans submitted, the D.C Fire and EMS Department has no objection to this request as long as construction is in compliance with the International Fire Code (2006 Edition) and all applicable D.C. Laws."

VIII. COMMUNITY COMMENTS/ANC

Prior to the originally scheduled hearing, an abutting neighbor (4117 Brandywine Street NW) filed a party status application in opposition to the proposal. Four letters from neighbors, including the abutting neighbor to the north (4617 42nd Street NW), have been submitted in support of the proposal.

ANC 3E has submitted a letter reflecting a unanimous vote in support, with a condition, for the proposal.

IX. RECOMMENDATION

The Office of Planning is supportive of adaptive reuse of structures in the District, in particular for the provision of housing where appropriate. OP is currently undertaking a review of the Zoning Regulations, including alley dwelling regulations. However, at this time OP cannot support the subject application based on the current Zoning Regulations.

JS/pg
Paul Goldstein, case manager