

SUPPLEMENTAL MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment
FROM: Elisa Vitale, Case Manager
JL Joel Lawson, Associate Director Development Review
DATE: November 9, 2016
SUBJECT: BZA Case 19298 - 1901, 1903, and 1905 9 ½ Street NW

I. BACKGROUND

The Applicant submitted a pre-hearing statement, including a revised relief request that eliminates the use variance for flats (U §600.1), on September 9, 2016. OP supported the removal of that relief. The Applicant requested that the hearing be postponed and rescheduled, at which time a new hearing date of November 16th was established. The Applicant submitted a letter opposing the part status request and laying out its due diligence on October 26, 2016.

II. OFFICE OF PLANNING RECOMMENDATION

Based on the pre-hearing statement, revised plans, and additional information submitted to date for the Applicant's request for the following relief to allow the renovation and addition to the two existing alley dwellings at 1901 and 1905 9 ½ Street NW and the construction of a new alley dwelling at 1903 9 ½ Street NW (Square 0361, Lots 124, 125, and 126):

OP is not persuaded by the Applicant's submittal regarding its due diligence and continues to recommend **denial** of the following:

Area Variance pursuant to X § 1002

- E § 5102.1, height (Lot 125); and
- C § 202.2, expansion with regards to height of a nonconforming structure (Lots 124 and 126).

OP continues to recommend **approval** of the following for a proposal that would not increase the height non-conformity:

Special Exception pursuant to X § 901.2 and E § 5108

- E § 5105.1, side yard for an alley lot abutting a non-alley lot (Lots 124 and 126);

Area Variance pursuant to X § 1002

- C § 701.5, parking (Lot 125)¹; and
- E § 5106.1, alley centerline setback.

¹ Pursuant to C § 703.4, "Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval."

OP stands by the earlier analysis for the side yard, parking, and alley setback provided in the report dated September 9, 2016 (Exhibit 45). Additional analysis of the requested height relief is provided below, based on the new information filed recently by the applicant.

III. OFFICE OF PLANNING ANALYSIS

a. Variance Relief for Height from § E 5102.1 and C § 202.2

The Applicant must prove that, as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property.

i. Exceptional Situation Resulting in a Practical Difficulty

The confluence of factors referenced by the Applicant, (small and narrow lots constrained by Historic Preservation Review Board [HPRB] cost and setback requirements, as well as structural inefficiencies), do not impose an undue hardship upon the owner of the Property related to the proposed additional height, nor are they an exceptional condition. Furthermore, the Applicant's belief that the properties could be developed as street lots does not justify the additional height requested and is not relevant to this review for alley lots, which have distinct regulations and requirements from street fronting lots.

The 740 square foot lot size is not unique for alley lots in the RF-1 zone. While Lots 124 and 126 are developed with existing alley buildings that exceed the permitted 20-foot height by a small amount, the extent to which they exceed the maximum permitted height is minimal (approximately 1-foot) and should not provide justification for the proposed extensive further extension of the existing nonconformity. Finally, variance relief is not intended to relieve a property owner from conducting necessary due diligence, nor is it intended to make a property owner financially whole.

ii. No Substantial Detriment to the Public Good

The portion of the alley on which the subject lots front measures 15 feet in width. The prevailing two-story character and approximate 20-foot height of the existing dwellings on 9 ½ Street NW is appropriate for structures fronting on a narrow alley. HPRB recognized the two-story character of the alley in its decision to require that any proposed addition be set back so that it would not be visible from the alley.

The proposed construction (approximately 30 feet 5 inches) would exceed the maximum permitted height of 20 feet and could have an undue impact on surrounding uses, in terms of light access and privacy. The applicant has not provided a shadow study demonstrating how the proposed height would not pose a substantial detriment to the public good.

iii. No Substantial Harm to the Zoning Regulations

Granting relief for additional height on an alley lot without a clear exceptional condition and practical difficulty would substantially harm the intent of the recently adopted Zoning Regulations, which specifically seek to maintain alley development at a lower scale and intensity than surrounding uses.