



MEMORANDUM

TO: District Board of Zoning Adjustment
FROM: Jennifer Steingasser, Deputy Director
DATE: September 20, 2011
SUBJECT: BZA No. 18254 - Request for several variances and a special exception to construct a single family residence on an alley lot at 1303 Linden Court NE.

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **cannot support** the proposed conversion and construction of a single family dwelling on a split-zoned alley lot at 1303 Linden Court NE. The Zoning Regulations set a high standard for residential use for buildings on alley lots with connections to the street of less than thirty feet wide, and OP and the Board has regularly reviewed relief from the alley width requirements as requiring a use variance.¹ The burden of proof was not met for a use variance, in that the application did not demonstrate that due to an exceptional condition or situation of the property strict compliance with § 2507.2 would cause the owner an undue hardship, nor has the Applicant demonstrated that the requested relief would not pose substantial harm to the zone plan.

Should the Board find that the residential use is appropriate for this site, OP generally does not object to the area variance and special exception relief related to the remaining project features subject to a clarification of the appropriate relief.

Pursuant to a referral from the Zoning Administrator dated May 25, 2011, the Applicant requested the following areas of relief based on the original proposal to remove the existing structure and to construct a new three-story building²:

- Use variance from § 2507.2 to permit the erection of a single family dwelling on an alley lot that abuts an alley less than 30' in width;
- Area variance from §§ 403.2 and 772.1 to permit the erection of a single family dwelling detached structure that does not comply with maximum lot occupancy requirements in R-4 and C-2-A;
- Area variance from §§ 404.1 and 774.1 to permit the erection of a single family dwelling detached structure that does not comply with minimum rear yard requirements in R-4 and C-2-A;
- Area variance from §§ 405.1 and 775.2 to permit the erection of a single family dwelling detached structure that does not comply with minimum side yard requirements in R-4 and C-2-A;
- Area variance from § 2514.1(d) to allow the required FAR to be exceeded for a single family dwelling detached structure located on a lot divided by a zone district boundary line;
- Special exception pursuant to § 2514.2 to allow a transfer of density from the lesser restrictive use zone to the more restrict zone district.

The Applicant made changes to the project after the ZA review and submitted new plans to the Board shortly before the filing of this OP report, specifically to retain the existing structure and construct a second-story addition. Based on its short time for review of the newly altered plans and the already complicated nature of relief requested, OP now questions the extent to which the ZA referral appropriately captures the needed relief.

¹ OP understands that the Board recently raised the issue of whether the appropriate standard of relief in a different alley lot case could be considered an area variance from § 2507.2. Nevertheless, OP will evaluate the present case under use variance standards as is consistent with past practice. For related past cases employing a use variance standard, see Application No. 17656 of Alley Cat Mews, L.L.C. (2008) (includes extensive discussion of the use versus area variance standard for § 2507.2 relief in alley lot cases); Application No. 17930 of Future Studios, LLC (2009); Application No. 17989 Stephen A. W. McKinney (2010); and Application No. 18017 of Carl and Udine Nash (2010).

² The ZA referral letter did not specifically identify “use” or “area” variance relief.



For instance, it is unclear whether rear yard and side yard relief would still be necessary given that the Applicant now proposes a vertical addition above and in-line with the preserved garage. OP also is unsure whether additional relief from § 2001.3 (addition to a non-conforming structure) and § 2507.3 (either instead of or in addition to § 2507.2) are now necessary. More specifically, the preservation of the existing garage, and its conversion to residential use, may trigger the need for § 2507.3 relief. **OP encourages the Applicant to clarify their relief requests at or prior to the BZA hearing.**

I. AREA AND SITE DESCRIPTION

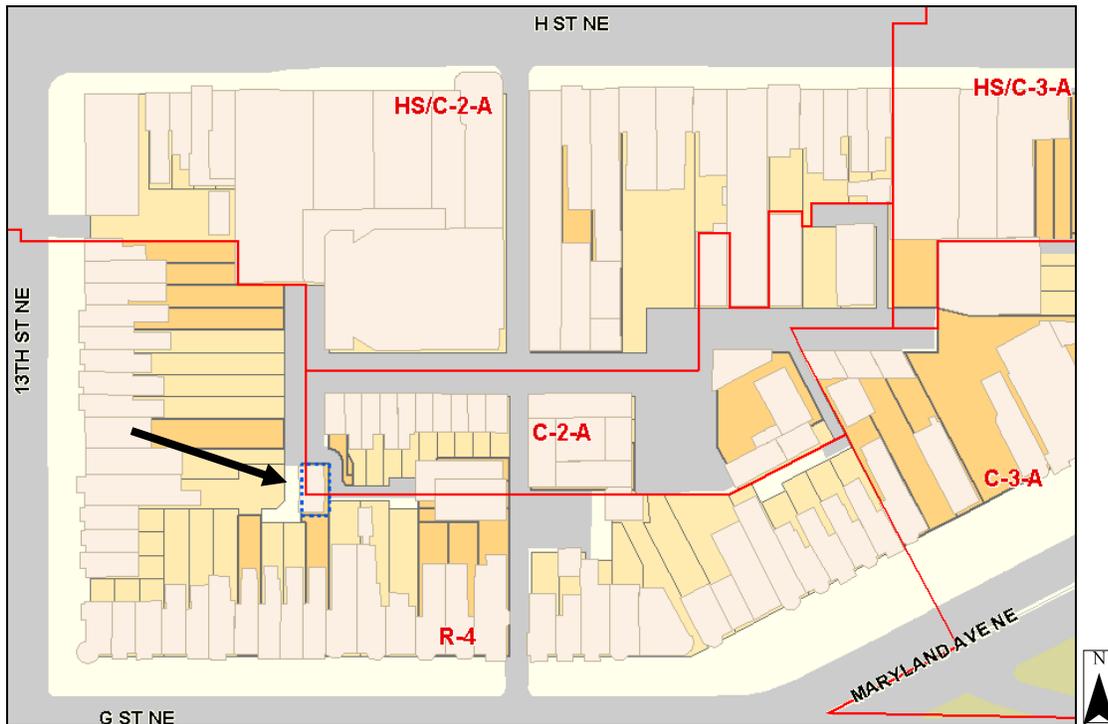
Address:	1303 Linden Court NE
Legal Description:	Square 1027, Lot 814 (hereinafter, the “Property”)
Ward/ANC:	6/6A
Lot Characteristics:	The lot is rectangular in shape and measures approximately 18' by 35' in length, totaling 630 square feet in lot area. The Property borders a public alley to the north, west, and east. The alley ranges in width between 10' and 30', and the alley network connects to H Street NE and G Street NE at 15' and 17' widths. The lot borders the rear yards of residential properties to the south and southeast.
Zoning:	Split zoned R-4 and C-2-A R-4: row dwellings and flats C-2-A: mixed-use development of medium proportions
Existing Development:	The Property is developed with a one-story private garage
Historic District:	N/A
Adjacent Properties:	To the Property’s immediate south is a two-story row dwelling and to the southeast of the Property is a three-story apartment building also owned by the Applicant. To the northeast of the Property are the rear yards of what appear to be three alley dwellings in addition to commercial uses.
Surrounding Neighborhood Character:	Square 1027, and the immediate area more generally, is characterized by a mix of uses. More specifically, the north side of the Square is composed of arts uses and two to three-story buildings with ground floor retail uses. The west and south side of the Square predominately contain two and three-story row dwellings. The interior of the alley is a mixture of two-story alley dwellings and commercial, industrial, and automotive uses.

II. PROJECT DESCRIPTION IN BRIEF

Applicant:	Brian O Hora
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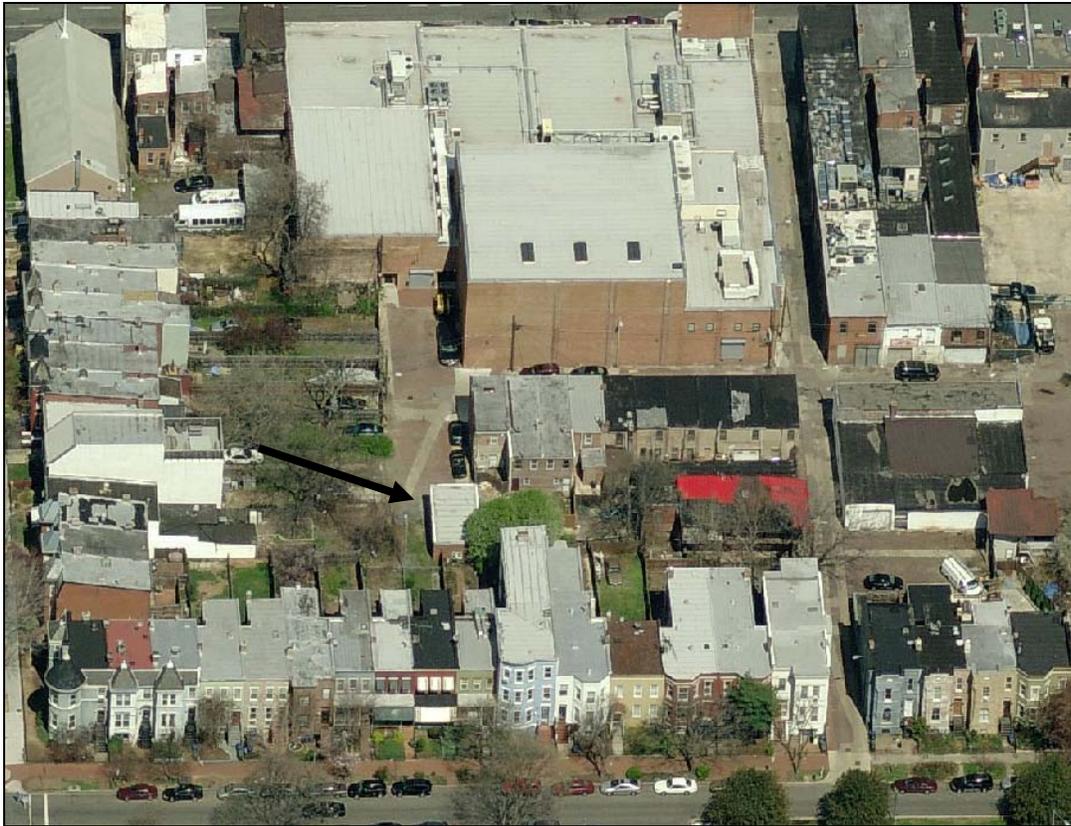
<p>Proposal:</p>	<p>The Applicant’s supplemental submission (dated September 9, 2011) proposes to build a second-story addition above an existing private garage and convert the entire building to single family residential use.³ The ground floor would continue to accommodate a vehicular parking space which opens to the north, and the front door to the residence would be on the building’s east side. The dwelling would rise approximately 18' and have a sloping roof on the dwelling’s south side and a roof deck on the dwelling’s north side. A second floor balcony would extend within side yard space to the north. The dwelling would maintain an existing approximately 1.1' wide separation from the rear property line of the dwelling to the south.</p> <p>The September 9th submission reflects changes from the original application submitted on or about May 12, 2011. Changes include a reduction in height and stories of the proposed dwelling; the retention of the existing garage as the ground floor for the second-story addition; and the shift of a balcony from the northeast to northwest portion of the dwelling.</p>
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III. IMAGES AND MAPS

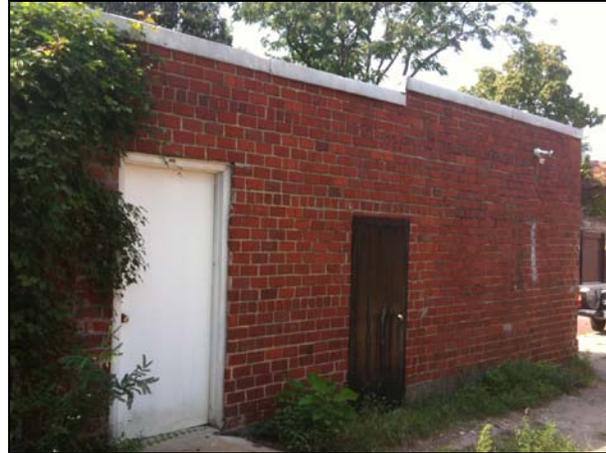


Aerial view of the site (highlighted and identified with arrow)

³ While the façade of the existing garage shows considerable decline, the Applicant has indicated that an “interior post and beam system on interior footings would carry the load of the second floor.”



View of the Property (identified with arrow) looking north across G Street



View of the north and west side of the existing garage View of the east side of the existing garage

IV. ZONING REQUIREMENTS

The following table, which reflects information supplied by the Applicant, summarizes certain zoning requirements for the project.

<i>R-4 Zoning</i>	<i>Restriction</i>	<i>Existing</i>	<i>Proposed</i>	<i>Relief</i>
Floor area ratio §§ 2514.1(d) & 2514.2	.9 (R-4) 2.5 res. (C-2-A)	< 1.0	~ 2.0	Exceeds maximum FAR by ~ 1.1 FAR (R-4) Conforms to C-2-A

Lot occupancy (building area/lot area) §§ 403 & 772.1	40% max. (R-4) 60% max. (C-2-A)	100% ⁴	100%	Exceeds maximum lot occupancy
Rear yard (ft.) §§ 404 & 774.1	20' min. (R-4) ⁵ 15' min. (C-2-A)	0'	0'	Deficient by 20' and 15'
Side yard (ft.) §§ 405.1 and 775.2	8' min.	1.1' and 2.9'	1.1' and 2.9'	Deficient by 6.9' and 5.1'
Height (ft.) § 2507.4	Not to exceed distance to opposite side of alley.	12.25'	18.3'	Conforming

V. RELIEF REQUESTED:

The proposal aims to convert to residential use an existing private garage and to construct an additional floor to accommodate the use. The Property is presently non-conforming to alley setback requirements (§ 2300.4) and maximum lot occupancy.⁶ The application requests several areas of relief, including a use variance from § 2507.2. As a result of the Applicant’s recent supplemental submission which altered the project’s design, OP now raises that relief from §§ 2507.3 and 2001.3 may be necessary, whereas the requested side yard (§§ 405.1 & 775.2) and rear yard (§§ 404 & 774.1) relief may no longer be needed. Nonetheless, OP will here evaluate the relief requested in the application.

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 exhibits several distinct features. It is a pre-1958 tax lot with a rectangular shape. While there are several other alley lots in the subject alley network, the subject lot is one of the smallest at 630 square feet and has shallow dimensions at 35' by 18'. It is improved with a one-story garage which the Applicant indicates may date from before 1947. The Property borders a public alley of differing widths on three sides, and abuts the rear yards of adjacent properties to the south and southeast. A fence framing the rear yard of the neighbor’s dwelling to the south encroaches onto the subject lot by about a foot. The Property also is split-zoned between residential and commercial zones which is uncommon in the Square.

- 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.**

OP does not find that the Property exhibits a specific uniqueness from which any undue hardship would arise. In spite of the distinct features of the site, the Property operates as a private garage which is a by-right use under the applicable zones. Additionally, the Property could function as an artist studio or a range of commercial uses subject to special exception relief pursuant to § 2514.2 (due to the split zoned condition). The Applicant has not demonstrated how the owner of the Property would suffer an undue hardship if the

⁴ OP interprets the lot occupancy to include the area of the non-conforming side yards.

⁵ OP understands that the ZA interpreted the proposed dwelling to be a “detached dwelling” with a front on the building’s east side, the rear yard on the west side, and the side yards on the north and south of the proposed dwelling.

⁶ Section § 2300.4 requires that “a private garage constructed on an alley lot shall be set back at least twelve feet (12 ft.) from the center line of the alley on which the lot abuts. Also see § 2300.5 for maximum lot occupancy rules for private garages on alley lots.

Property was not converted to a residential use rather than a permitted use. An inability to put the property to a more profitable use or loss of economic advantage is not sufficient to constitute 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.

Granting a variance may not cause substantial detriment to the public good because there are other nearby existing alley dwellings and residential uses. However, a new single-family dwelling located in an alley system that connects to the street at less than 30' widths could impair the intent of the zone plan because the construction and conversion of structures to human habitation is specifically prohibited under such circumstances in all zones.

Area Variances (§§ 403.2 and 772.1 maximum lot occupancy; §§ 404.1 and 774.1 minimum rear yard; §§ 405.1 and 775.2 minimum side yard; and § 2514.1(d) maximum FAR)

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?

If the Board determines that a use variance is justified to allow the proposed residential use, OP finds that the Property exhibits a specific uniqueness for the remaining areas of dimensional relief requested to allow the conversion and expansion of the existing building. The Property already is improved with what the Applicant indicates is a pre-1947 non-conforming single-story garage which effectively occupies 100% of the lot. The site is split-zoned and is one of the smallest and shallowest lots in the Square. It borders a public alley of differing widths on three sides and a neighbor's fence encroaches onto the Property which constrains the Applicant's use of the site.

2. Does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?

Strict application of the Zoning Regulations would result in an exceptional practical difficulty as follows:

- Lot occupancy, side and rear yards (§§ 403.2 and 772.1 maximum lot occupancy; §§ 404.1 and 774.1 minimum rear yard; §§ 405.1 and 775.2 minimum side yard)

Due to the small lot size and the existing building footprint, constructing a second floor that complies with all of the dimensional standards is practically difficult. The proposal would convert and build vertically above an existing non-conforming garage, thereby maintaining and extending the current building dimensions. The new second floor would provide needed living space while also retaining a required parking space on the ground floor. The proposed dwelling would rise only two-stories and approximately 18' in height, and the nonconforming lot occupancy, rear yard, and side yards would not change under the proposal. Strictly complying with side yard minimum widths of 8', a rear yard minimum width of 20', and the restricted lot occupancy standards would impede the construction of a second floor.

- FAR (§ 2514.1(d) maximum FAR)

The strict application of § 2514.1(d) would restrict the residential portion of the site to .9 FAR, whereas the commercially zoned portion of the site permits a maximum of 2.5 FAR. For the

proposal to concentrate the FAR generated by a new second floor solely on the commercial portion of the site would be practically difficult due to the small lot size among other constraints.

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.

Granting the variance should not cause substantial detriment to the public good. The proposal would maintain the existing building footprint and have a restrained two-story height. A deck and balcony would be oriented toward the alley and no windows would face the abutting neighbor to the south. OP does not anticipate that the limited building expansion would substantially infringe on neighbor light and air. Should the Board determine that the residential use is appropriate at this site, the requested dimensional relief should not impair the intent, purpose and integrity of the zone plan because the dwelling would be of an appropriate intensity and scale for the context.

Special Exception (§ 2514.2 transfer of density)

The Applicant has met the special exception standards of § 2514.2 and § 3104, subject to satisfying the area variance standards for § 2514.1(d). Section 2514.2 provides that:

“If approved by the Board of Zoning Adjustment as a special exception under § 3104, the regulations applicable to that portion of a lot located in a lesser restrictive use zone district that control the use, height, and bulk of structures and the use of land may be extended to that portion of the lot in a more restrictive use zone district; provided:

- (a) The extension shall be limited to that portion of the lot in the more restrictive use zone district but not exceeding thirty-five feet (35 ft.);*
- (b) In authorizing an extension, the Board shall require compliance with § 2514.1(d);*
- (c) The extension shall have no adverse effect upon the present character and future development of the neighborhood; and*
- (d) The Board may impose requirements pertaining to design, appearance, screening, location of structures, lighting, or any other requirements it deems necessary to protect adjacent or nearby property.”*

The general standards by which the BZA should review special exceptions are set forth in Section 3104.1 and listed below:

- (a) Will the special exception be in harmony with the general purpose and intent of the Zoning Regulations and Maps?*

Should the Board determine that the residential use is appropriate, granting the special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Map as it would accommodate a single family residential use proximate to similar uses.

- (b) Will the special exception tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?*

A special exception should not adversely affect the use of neighboring property. The dwelling would be restrained in height and intensity, constructed within the existing building footprint, and abut a public alley on three sides. The project should not substantially adversely impact the light and air of neighboring properties.

II. AGENCY COMMENTS

The District of Columbia Fire and Emergency Medical Service (DCFEMS) wrote an email to the Applicant which has been submitted to the record. DCFEMS expressed no objection to the Applicant's original proposal.

III. COMMUNITY COMMENTS/ANC

Several neighbors have submitted letters in support of the proposal. To date, OP has not received any letters from neighbors in opposition. OP also has not received a submission from the abutting neighbor to the south (Square 1027, Lot 813) although the Applicant has indicated that there have been discussions about the project.

ANC 6A submitted a letter to the Office of Zoning, dated September 9, 2011, reflecting a vote in unanimous opposition to the Applicant's relief requests as they related to the Applicant's original submission. The ANC expects to review the revised submission although it would not be considered by the full commission prior to the hearing date.

IV. RECOMMENDATION

The Office of Planning is supportive of adaptive reuse of structures in the District, in particular for the provision of housing where appropriate. However, OP cannot support the subject application because the burden of proof for a use variance has not been met.

JS/pg
Paul Goldstein, case manager