

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17656 of Alley Cat Mews, L.L.C.**, pursuant to 11 DCMR § 3103.2, for a variance to allow the construction of a detached one-family dwelling on an alley lot that does not directly abut an alley that is at least 30 feet in width and is not directly accessible from a public street along an alley or alleys of not less than thirty (30) feet in width, under subsection 2507.2, in the R-1-B District on an alley lot at the rear of Reno Road, Chevy Chase Parkway and Harrison Street, N.W. (Square 1877, Lot 37).

**HEARING DATES:** September 25, 2007, December 11, 2007, February 26, 2008,  
April 8, 2008

**DECISION DATES:** October 2, 2007 and June 3, 2008

**DECISION AND ORDER**

This application was filed with the Board of Zoning Adjustment (“BZA” or “Board”) on April 11, 2007 by Mr. Kenneth Woodring, the contract purchaser of the property that is the subject of this application (“subject property”), on behalf of Alley Cat Mews, LLC, (“Applicant”), the current owner of the subject property. The Applicant authorized Mr. Woodring’s filing of the application. The self-certified application requested a variance from the minimum alley width of 30 feet mandated by 11 DCMR § 2507.2 in order to construct a one-family detached dwelling on an alley lot in an R-1-B zone district.

Although the Applicant initially characterized the relief it was seeking as an area variance, opponents to the application challenged that characterization and argued that the variance needed is properly a use variance. After providing the parties the opportunity to brief and argue the question, the Board decided at a public meeting on October 2, 2007 that the necessary relief is a use variance, and proceeded to consider the application under the more stringent use variance standard.

After two postponements, a public hearing on the merits of the application was held on April 8, 2008, and a decision scheduled for June 3, 2008. At the public meeting on June 3, 2008, the Board denied the application by a vote of 5-0-0.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. By memoranda dated April 18, 2007, the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 3/4G, the ANC within which the subject property is located, Single Member District 3G07, and the Councilmember for Ward 3. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing date in the *D.C. Register* and sent such notice to the Applicant, ANC 3/4G, and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 3/4G was automatically a party to this case. GreenPiece Park, LLC, a group comprised of surrounding property owners, and George and Margaret Eads, owners and residents of 3718 Harrison St., N.W., were granted party status in opposition to the application. The Eads were granted individual party status because, unlike the other neighbors, their property is contiguous to the subject property, separated only by an unimproved alley.

Applicant’s Case. The contract purchaser, Mr. Woodring, testified as to his research into the subject property and the need for variance relief. The project architect and a zoning expert also testified on the Applicant’s behalf.

Government Reports. The Office of Planning filed a report with the Board dated September 10, 2007, recommending denial of the application. OP determined that the application failed to satisfy the second and third prongs of the use variance test. OP found that the application did not meet the “undue hardship” test because there are other reasonable uses for the subject property. OP also indicated that construction of the proposed dwelling would impact the privacy and enjoyment of neighboring dwellings and rear yards, and that granting the variance would impair the intent, purpose, and integrity of the zone plan.

The D.C. Fire and Emergency Medical Services Department (“EMS”) provided the Applicant with a brief letter dated August 24, 2007, stating that, after reviewing the plans for the proposed construction, it had “no objection” to the application. Exhibit No. 28, Attachment C. Several months later, on April 28, 2008, at the request of the Board, and through OP, EMS filed a second, more detailed letter with the Board, stating that it “will not contest the construction based on fire department access roads as a (sic) life safety issues.” Exhibit No. 52. The second letter explains that random measurements were taken of the alleys surrounding the subject property, which were found to be 20 feet wide, and that a fire truck, from the company which would respond at the subject property, was ordered to drive the alleys to test safe access to the property. The letter states that the driver did “not have any trouble navigating the alleys.” *Id.* The letter goes on to state, however, that obstructions in the alleys, such as parked cars, would have to be dealt with as enforcement issues.

The Board did not receive any other government reports, but the OP report states that OP received responses from both the D.C. Department of Public Works and the Metropolitan Police

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Department, neither of which expressed any concerns with the application.

ANC Report. ANC 3/4G filed a report with the Board dated June 22, 2007, stating that at a regularly-scheduled, properly-noticed meeting, with a quorum present, held on June 11, 2007, it voted 5-2 not to support the application. The report analyzed the three prongs of the variance test and concluded that none of them were met by the application.<sup>1</sup>

Persons in Support or in Opposition. There were no letters of support for the application, but there was a petition with approximately 100 signatures in opposition to the application. The D.C. Councilmember for Ward 3 filed two letters in opposition, stressing that, in her opinion, granting the variance requested would “harm the public good.” Exhibits Nos. 27 and 40. The Mayor’s Office of Community Relations and Services also filed a letter in opposition to the granting of the variance, stating that approval of the application would be “detrimental to the quality of life in the neighborhood.” Exhibit No. 33.

**FINDINGS OF FACT**

The subject property and the surrounding neighborhood

1. The subject property is designated Lot 37 in Square 1877, and is located in an R-1-B zone district.
2. Square 1877 is bounded by Reno Road, N.W., to the west, Chevy Chase Parkway, N.W., to the east, and Harrison Street, N.W., to the north.
3. Square 1877 is shaped like an equilateral triangle, with Lot 37 at its center, and echoing its shape. Lot 37 therefore appears as a small triangle at the heart of the larger triangle of Square 1877.
4. The subject property is an undeveloped lot with an area of approximately 7,302 square feet, or 0.17 of an acre.
5. Lot 37 does not have street frontage, but is bounded to both east and west by alleys platted at 20-feet wide, which are in use as public alleys<sup>2</sup>. On the other side of these alleys are the rear yards of homes that front on Chevy Chase Parkway or Reno Road.

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<sup>1</sup>Two of the ANC Commissioners filed a minority report in favor of granting the variance. Consistent with the ANC Act, subsection 3115.2 of the Zoning Regulations directs the Board to give “great weight” to the “written report of the ANC.” The Board concludes that this direction goes to the written report adopted by the ANC in accordance with its bylaws. Nevertheless the Board read and considered the minority report as it would all evidence before it.

<sup>2</sup> An “alley” is defined in the D.C. Code as “any public alley, as recorded in the records of the Office of the Surveyor, from its intersection with a street or another alley to its next intersection with a street or alley, or where it dead-ends,” D.C. Official Code § 9-201.01.

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6. Immediately to the north of the subject lot and separated only by unimproved alley, is another undeveloped lot, Lot 38.
7. The subject property is triangularly-shaped and alley-bound.
8. There are five similarly-shaped and similarly alley-bound lots in the vicinity of the subject property

The proposed project

9. The Applicant purchased the property on August 7, 2006, for \$36,000 plus \$15,300 in closing costs for a total of \$51,300.
10. On December 13, 2006, the Applicant entered into a contract for the sale of the property with the contract purchaser, Mr. Woodring (“Contract Purchaser”), the terms of which do not bind Mr. Woodring to purchase the property if variance relief is not granted. See, April 8, 2008 Public Hearing Transcript (Tr.) at 220, lines 9-13. If variance relief is granted, Mr. Woodring will pay Applicant \$125,000 for the property.
11. The opposing parties have offered to purchase the property from Applicant for \$50,000, which would render a 39% profit over Applicant’s purchase price and would be comparable to Applicant’s purchase costs.
12. While Greenpiece’s offer expired August 7, 2007, Mr. Eads, owner of lot 38, committed at the hearing to offer the Applicant at least the same amount as Greenpiece’s last offer, even if the variance is denied. (Tr. at 437).
13. The Contract Purchaser proposes to construct a two-story detached one-family dwelling on the property, the front and side yards of which will face the rear yards of the homes on the other side of the improved alleys.
14. The property may be reasonably adapted for other uses permitted as of right or by special exception on this lot, such as an artist studio, storage, or parking. See, 11 DCMR §§ 2705.5 and 2705.6.<sup>3</sup>
15. The opposing parties would preserve the property as open land and use it for either a garden or community park, uses allowed by the Zoning Regulations.

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<sup>3</sup> These latter uses do not require access through alleys at least 30 feet wide. *See also*, 11 DCMR § 201.1, *and see* Exhibit No. 41, at 4. (Table of uses permitted at the subject property.)

## **CONCLUSIONS OF LAW**

The Board is authorized to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property ... or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition” of the property, the strict application of the Zoning Regulations would “result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property....” D.C. Official Code § 6-641.07(g) (3) (2001), 11 DCMR § 3103.2. Relief can be granted only “without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” D.C. Official Code § 6-641.07(g)(3), 11 DCMR § 3103.2.

Title 11 DCMR § 2507.2 mandates that a one-family dwelling erected on an alley lot must abut an alley of at least 30 feet in width and must have street access through alleys of at least 30 feet in width.<sup>4</sup> Variance relief is needed because the Applicant proposes to construct a one-family dwelling bounded by alleys that are only 20 feet in width.

The threshold question for the Board in this case was whether the proper relief request was for an area variance or a use variance. The Applicant argued that area variance relief was required because it could not meet the area dimensions of the alley width. Opponents argued that a use variance was required because the use of a one-family dwelling is a prohibited use on an alley less than 30 feet in width. A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship” must be made for a use variance. *Palmer v. D.C. Board of Zoning Adjustment*, 287 A.2d 535, 541 (D.C. 1972).

As noted by the District of Columbia Court of Appeals (“DCCA”) “[s]ome variances resist easy classification” and therefore, “[d]eterminations with respect to the treatment and classification of proposed variances are best made ... on an ad hoc basis, by the agency from whose regulations those variances are sought.” *Wolf, v. D.C. Bd. of Zoning Adjustment*, 397 A.2d 936 at 941 and 942. (D.C. 1979) While cases involving elements of both use and dimension have been treated both ways by the Board and the Court of Appeals, the Board concludes that the relief needed in this case is clearly a use variance.

While a determination of whether a variance is a use variance or an area variance may turn on whether the relief granted would “change the character of the zoned district,” (*See, Wolf* at 942 and *Taylor v. D.C. Bd. of Zoning Adjustment*, 308 A.2d 230, 233 (D.C. 1973), respectively), that analysis is not appropriate in this case because pursuant to § 2507.2, the use is specifically

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<sup>4</sup> An alley lot is defined as “a lot facing or abutting an alley and at no point facing or abutting a street.” 11 DCMR § 199.1, definition of “Lot, alley.”

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prohibited in *all* zone districts. Accordingly, the Board looks to the nature of the restriction. This case involves an affirmatively prohibited use. The Zoning Regulation allows a structure of the same dimensions taking up the same area if it is used in a different way; i.e. artist studio, garage. Further, no variance is sought from any area dimension of the Applicant's lot, only how the lot may be used. Accordingly, it is not the area, but the use that is at issue and relief from the prohibition set forth in 11 DCMR § 2507.2 requires a use variance.

To meet the burden of proof for a use variance, the Applicant had to first demonstrate an exceptional situation or condition of the property. The Applicant also had to demonstrate that, "by reason" of such exceptional condition, strict compliance with § 2507.2 would result in an "undue hardship" to the property owner. Lastly, the Applicant had to show that the granting of the variance will not impair the public good or the intent or integrity of the Zone Plan and Regulations.

The subject property is not beset by an exceptional condition that results in an undue hardship upon the owner. There are at least five similarly-situated triangularly-shaped and alley-bound lots in the vicinity, *See*, April 8, 2008 Hearing Transcript, at 250, lines 2-4, and at 356-358. While the Applicant argues that the subject lot is the only triangular lot, other than lot 38, that is surrounded by public alleys on all sides that complies with the D.C. Fire Code, and that complies with all other zoning requirements in the R-1-B District, none of these conditions lead to an undue hardship upon the owner. As stated above, the exceptional condition of the property must be *the reason* for the undue hardship, but this is not the case here. None of these conditions causes the need for zoning relief.

The DCCA has interpreted "undue hardship." to mean that a property cannot be put to any use for which it can be reasonably adapted. *See, Palmer v. D.C. Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972). ("A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations.") *See also, Monaco v. D.C. Bd. of Zoning Adjustment*, 461 A.2d 1049, 1052 (D.C. 1983) ("An applicant for a use variance bears the heavy burden of showing that the property cannot be used for *any* purpose consistent with the zoning district.") (Emphasis in original); *Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) ("[I]t must be shown that strict application of the Zoning Regulations would preclude the use of the property for any purpose to which it may be reasonably adapted.") In this case, there are other uses, both matter-of-right and special exception, to which the property could be put. *See* Exhibit No. 41 at 4, Finding of Fact Nos. 14 and 15.

Not only are there other reasonable uses for the property that would not require a variance, there is a commitment under oath by one of the parties in opposition, Mr. Eads, to offer to purchase the property at a price in excess of the Applicant's purchase price. While the record reflects, that the Applicant/owner will make a greater profit by sale of the subject property to the contract purchaser, if the variance is granted, a variance cannot be granted "to put property to a more profitable use." *See, Palmer supra* at 542. Since the contract purchaser does not yet own the

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property, any hardship caused to him is irrelevant. In any event, the contract purchaser may now opt out of the purchase contract under such terms as he had bargained for.

Because the Board finds that the Applicant has not met the first two prongs of the variance test and therefore is not entitled to variance relief, it need not consider the third prong of the variance and determine whether the construction of the proposed dwelling would result in a substantial detriment to the public good or would substantially impair the intent, purpose and integrity of the zone plan.

However, the Board is required to give great weight to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-523.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning recommended denial of the application, and ANC 3/4G voted 5-2 not to support the application. The Board has addressed the issues and concerns of the ANC and OP with respect to the first two prongs of the variance test as indicated above. With respect to the third prong, the Board concurs that the location of the dwelling would negatively affect the privacy and enjoyment of the homes and yards surrounding the subject lot and would be contrary to the standards of good urban design. Moreover, development of a one-family dwelling on the subject lot would impair the intent and integrity of the zone plan, as embodied in the Zoning Regulations, which severely limits residential uses on alley lots.

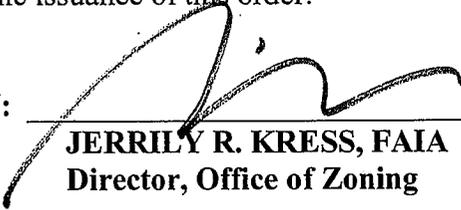
For the reasons stated above, the Board concludes that the Applicant has not satisfied the burden of proof under § 3103.2 with respect to an application for a use variance from the alley-width restriction of § 2507.2. Accordingly, it is **ORDERED** that the application be **DENIED**.

**VOTE:**       **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman,  
Mary Oates Walker and Gregory N. Jeffries to deny.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member has approved the issuance of this order.

ATTESTED BY: \_\_\_\_\_

  
**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning 

**FINAL DATE OF ORDER:** DEC 15 2008

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PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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**Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 15, 2008**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Dennis R. Hughes, Esq.  
Holland and Knight, LLP  
2099 Pennsylvania Avenue, N.W., Suite 100  
Washington, D.C. 20006

Kenneth S. Woodring  
Alley Cat Mews, LLC  
3206 Stephenson Place, N.W.  
Washington, D.C. 20015

Chairperson  
Advisory Neighborhood Commission 3/4G  
P.O. Box 6252, Northwest Station  
Washington, D.C. 20015

Single Member District Commissioner 3/4G07  
Advisory Neighborhood Commission 3/4G  
P.O. Box 6252, Northwest Station  
Washington, D.C. 20015

Kinley R. Dumas Esq.  
Jim Shipe, Esq.  
Arent Fox, LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036

George & Margaret Eads  
3718 Harrison Street, N.W.  
Washington, D.C. 20015

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

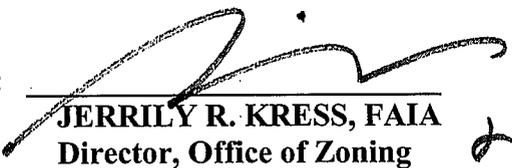
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Matthew LeGrant, Zoning Administrator  
Dept. of Consumer and Regulatory Affairs  
Building and Land Regulation Administration  
941 North Capitol Street, N.E., Suite 2000  
Washington, D.C. 20002

Mary Cheh, City Councilmember  
Ward Three  
1350 Pennsylvania Avenue, N.W., Suite 108  
Washington, D.C. 20004

Bennett Rushkoff, Esquire  
Acting General Counsel  
Department of Consumer and Regulatory Affairs  
941 North Capitol Street, N.E., Suite 9400  
Washington, D.C. 20002

**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**  
**Director, Office of Zoning**

TWR