



Testimony of Stephen Varga

BZA Case No. 19683 of Brian and Carolyn Wise

260 Lincoln Ct. SE; Square 762; Lot 828

April 17, 2018

Good Morning, Chairman Hill and members of the Board. My name is Stephen Varga, Director of Planning Services at Cozen O'Connor. As you have heard in previous testimony, this case involves a simple request to locate a modest one-family dwelling on an alley lot. Unfortunately, it has become complicated due to the varying levels of regulatory and administrative requirements that have been placed on alley lots.

In preparation of my testimony today, I have performed research on the administration of lot recordation in other jurisdictions, consulted the American Planning Association's Knowledge Center Database, contacted the DC Surveyor's office, and contacted other cities' planning agencies for insight into this issue.

I have found that properties in similar circumstances to the subject Property may be developed to varying extents within numerous other jurisdictions. This suggests that other jurisdictions all over the country do not find that development upon non-conforming lots causes detriment to the public good on its face, and should provide the Board with some comfort that the granting of relief for the lot subdivision requirements of Subtitle C-303 in this case and will not cause a detriment to the public good and does not impair the intent, purpose and integrity of the zone plan.

My research shows that, in all instances, plats may become legally valid lots of record for which a building permit may be issued by being reviewed and approved by a local governing body.

After this point I discovered very quickly that differing terminology for lots (record lot, tax lot, parcel, tract, plot, outblock, etc.) – as well as differing administrative processes and procedures - do not lend themselves to an apples-to-apples comparison. However, despite this challenge I was able to arrive at some conclusions about the treatment of properties like this Property under similar circumstances within other jurisdictions.

DC appears to be unique regarding the process by which lots are recorded. Most jurisdictions have one agency that administers all plats, however the District has two: the Office of Tax & Revenue ("OTR") and the Office of the Surveyor ("DC Surveyor"). As discussed in our previous filings, record lots are defined by the DC Surveyor. They are official, platted, recorded subdivision lots found to be in compliance with the Subdivision Ordinance of the District of

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Columbia, which generally provides that record lots must meet certain requirements, such as minimum public street frontage width, among others. Tax lots on the other hand are established by OTR, and A&T Plats are generated and forwarded to the DC Surveyor. Crucially, the A&T Plats are not reviewed but simply filed by the DC Surveyor. I found this to be the single important distinction between tax lots and record lots.

Upon consultation with the DC Surveyor's Office, I discovered that there is nothing special about subdivision plats necessarily. A&T plats may be as accurate and detailed as subdivision plats. For instance, the subject Property's plat, created in 1905, contains bearings and distances in the format of degrees, minutes, and seconds with compass point letters before and afterward to indicate the compass quadrant – just as a subdivision plat would feature.

Further, it should be noted that the DC Surveyor does not go out into the field and prepare a survey for each new subdivision lot. Instead, they often refer to existing plats of surrounding properties, including A&T plats, to ascertain the boundaries of the new subdivided lot. Again, I want to emphasize that the only difference between the A&T plat and a subdivision plat is that it has not yet been reviewed by the DC Surveyor.

By granting the subdivision relief, the Board would ensure that the Property's surveyed plat would be reviewed by the DC Surveyor for accuracy, and provided a path to obtaining a building permit - the same process that exists for street-facing tax lots.

By maintaining a system of multiple types of plat recordation, the District has made it confusing for property owners to reliably know how their property may be utilized. The adoption of ZR16 was debilitating for historic alley tax owners like the Applicant, who could no longer secure a building permit for their now non-conforming tax lots.

I have found that, in the vast majority of other jurisdictions, if a property is platted, it can be developed. In this case, the A&T plat for the Property would be reviewed by that jurisdiction's equivalent to our Surveyor's Office, and it would prove to be sufficient for the purposes of granting a building permit.

Generally speaking, local ordinances extend use to non-conforming lots that came into existence at a pre-determined time, usually marked by the adoption of a new ordinance. Usually these non-conforming lots may be developed so long as they can satisfy the development standards on the property. Some jurisdictions permit development on non-conforming lots, subject to additional design requirements.

The main point is that the question of if any construction may take place at all is a non-issue in most other jurisdictions. The one universal limiting factor amongst jurisdictions is the prohibition on the creation of new non-conforming lots, which is the mistaken path this Applicant is being asked to take. There is nothing new about the Property – it was platted in 1905; well before the adoption of ZR58 which contained no language prohibiting development on the Property.

In closing, if the treatment of properties within numerous other jurisdictions is any guide, the Board can rest assured that the granting of relief for the lot subdivision requirements will not

cause any detriment to the public good and does not impair the intent, purpose and integrity of the zone plan.