

MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Anne Fothergill, Case Manager
J Joel Lawson, Associate Director Development Review

DATE: May 1, 2018

SUBJECT: BZA Case 19629, 1665 Harvard Street, N.W **SUPPLEMENTAL REPORT 2**

At the April 17, 2018 public hearings for BZA cases 19629 and 19683, the Board asked OP to request information from DCRA regarding building permits and tax lots, and what work and/or uses could be enacted on alley tax lots. OP met with the Zoning Administrator (ZA) and discussed a number of questions around this topic. OP has restated the ZA's responses below, and the ZA has reviewed this memo and confirmed that OP's summary is accurate. In this case, based on DCRA's response, the property owner could maintain the alley tax lot and continue to use it as a parking pad and could install fencing or bollards without needing to convert the alley lot to a record lot.

- 1) Can the owner of an unpaved alley tax lot, without a building permit, do general maintenance of the parking pad, such as adding gravel to the surface?

Yes. It was the opinion of the ZA that general maintenance of an unpaved parking pad, such as adding gravel, would not require a building permit.

- 2) Can the owner of an unpaved alley tax lot pave the parking pad – e.g, grading, prepare sub base, apply asphalt – without a building permit?
- 3) Can the owner of a paved alley tax lot maintain and re-pave the parking pad (in kind replacement), including replacing in-kind existing bollards – without a building permit?

No. It was the opinion of the ZA that any sort of paving or re-paving of a parking pad or parking lot would require a building permit. A permit would also be required for things like installing or replacing bollards, fences or light poles.

However, in such circumstances, the ZA explained that the required building permit would not require the conversion of a tax lot to a record lot. Subtitle A § 301.3 (attached in full) states that “a separate lot of record” is required for permits “issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure”. The examples like paving and installing or replacing bollards, fences, or light poles would not involve a principal structure. Permits, therefore, could be issued even if the subject lot is a tax lot. As such, unimproved alley tax lots that are used for parking could continue to be used for parking and would only need to be converted to a record lot to allow for construction of a principal structure.

- 4) Does a property owner need a business license to rent their alley tax lot parking pad?
- 5) If so, to get a business license would that owner need to have a Certificate of Occupancy (C of O)?

Yes. The ZA believes that if any income is generated for a commercial business then a business license would be required, and a C of O would also be required.

- 6) If so, would the owner need a record lot to obtain a C of O?

No. It was the opinion of the ZA that an owner would not need to convert a tax lot to a record lot in order to obtain a C of O.

The Board also requested that OP restate the recommendation in this supplemental report. The Applicant reduced the size of the garage which reduces the extent of relief that is needed, but the changes to the proposed development do not impact the requested subdivision relief, or impact the OP analysis or recommendation on this matter. As such, OP continues to recommend denial of the requested variances from the subdivision regulations and from the alley centerline requirement.

The Office of Planning (OP) recommends **denial** of the following variances:

- Subtitle C § 303.3 (a) and (b) to allow the creation of an alley record lot that does not have frontage along a 24 foot wide public alley (15 foot existing) and does not meet the minimum lot area standards of the RF-1 zone (1800 SF required; 557 SF proposed); and
- Subtitle E § 5106.1 - alley centerline (12 feet required at north, 7.5 feet proposed).

However, if the significant variance relief were to be approved by the BZA, OP would not be opposed to the requested special exception from the rear yard requirement, as the changes to the proposed development lessen the potential impacts and the 2.5 foot rear yard requested would not appear to result in an undue impact on the adjacent properties.

A more detailed analysis can be found in the original OP report dated February 14, 2018 (Exhibit 59).

Attachment – Text of Subtitle A § 301.3

301.3 *Except as provided in the building lot control regulations for Residence Districts in Subtitle C and § 5 of An Act to amend an Act of Congress approved March 2, 1893, entitled “An Act to provide a permanent system of highways in that part of the District of Columbia lying outside of cities,” and for other purposes, approved June 28, 1898 (30 Stat. 519, 520, as amended; D.C. Official Code § 9-101.05, a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record;*
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