



Bello, Bello & Associates, LLC

August 14, 2019

Frederick L. Hill
Chairperson
Board of Zoning Adjustment
441 4th Street NW
Suite 210 South
Washington DC 20001

Re: 775 (Rear) Fairmont Street NW BZA No. 19978

This supplement to the filings briefs the following matters as outlined in bullet points in Office of Planning's (OP) report dated June 21, 2019 (Exhibit # 47) in accordance with the Board's directive at the last hearing for the referenced case held on July 24, 2019.

Subdivision

The applicant does not intend to "subdivide and create a new record lot" to the extent that it is misunderstood to imply intent to subdivide an existing alley lot to create more than one single lot.

Applicant intends to comply with the provisions set forth under Subtitle A, Chapter 3, §301.3 (a) through (g), which mandates in summary that all Assessment and Tax lots ("A&T" or "Tax lots"), except for the exceptions noted and itemized in (a) through (g), shall not be issued building permits for new construction or an addition unless the lot shall be so recorded so each building shall be on a separate lot of record.

Applicant submits that Subtitle A, 301.3 does not specifically distinguish whether such lot shall be a lot with Street frontage or an alley lot; that alley lots are not listed amongst properties or situations of exception; and further submits that because applicant proposes an addition to an existing one-story structure, the provision is applicable.

Subtitle E, Chapter 51, §5100.1 is unequivocal in its mandate that alley lots must be recorded in the records of the DC Surveyor as a record lot.

"Lot: The land bounded by definite lines that, when occupied or to be occupied by a building or structure and accessory buildings, includes the open spaces required under this title. A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia."



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“Lot, Alley: Is either a lot that is recorded on the records of the Surveyor, District of Columbia, that faces or abuts an alley that does not face or abut a street at any point (alley record lot) or a lot that is recorded on the records of the D.C Office of Tax and Revenue, on or before November 1, 1957, that faces or abuts an alley that does not face or abut a street at any point (alley tax lot)”

Applicant contends that read in tandem, the provisions set forth in the foregoing, including the definitions provides for “Lot” and “Alley lot” that the notion that an existing alley tax lot may not be recorded as a record lot is not supported by the relevant provisions set forth herein.

The subject alley tax lot

Applicant is currently processing the record lot subdivision application and hopes that the approval by the time of the next scheduled hearing on September 11, 2019 such that this matter is rendered moot.

Address of Record

Applicant refers the Board to Exhibit 39 dated April 24, 2019. The Exhibit include Office of Tax & Revenue (OTR) public record showing information consistent with the Square and lot numbers unique to the subject property and a copy of the Certificate of Occupancy for the last known use of the subject property.

The subject property has been the subject of relief before the BZA in Order No. 17892 under the same address as provided in the instant application.

Applicant refers the Board to Exhibit # 40 submitted to the record April 24, 2019.

Applicant contends that the matter of whether an alley is required to be named prior to an address assignment is outside the purview of the Zoning Regulations and consequently the Board because it is within the jurisdiction of the Construction Codes.

Applicant contends that the suggestion that an alley lot must be assigned a name prior to address assignment is a misinterpretation of the applicable provisions of the Constructions, 12A DCMR. Read in tandem, 12A DCMR, §118.6.6 and the referenced section, §118.11 (Excerpts attached) are applicable to the assignment of street names to “Private Thoroughfares” not public thoroughfares.

A public alley is a public thoroughfare by definition.

In an event if the Board approves the instant application, the Board’s Order is valid for two years, period within which applicant is confident that any misunderstanding with respect to this matter will be resolved in time the vest the applicant’s right to rely on the order.



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Relief Requested

Applicant revised Form 135 for relief requested to be consistent with OP's recommendation. See Exhibit 45

Existing Variance

Applicant refers the Board to Exhibit 40 dated April 24, 2019 stating to the effect that the establishment of a matter of right use after the fact supersedes use permitted on subject premises by virtue of use variance granted by the BZA in Order No. 17892

Burden of Proof

Applicant submits a revised Burden of Proof Statement but contends that the arguments for how the application complies with both the standards of Special Exception and Area Variance were contained in the Burden of Proof submitted in Exhibit 31 filed in the case records since April 8, 2019

Respectfully Submitted

Toye Bello