

Memorandum • Government of the District of Columbia

TO: James J. Fahey, Acting Chief
Zoning Regulation Division
Department of Housing and
Community Development

Department,
Agency, Office: Corporation Counsel

FROM: Louis P. Robbins *LPR*
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Date: April 6, 1977

SUBJECT: Creation of assessment and taxation lots within recorded lots.

This is to confirm my oral advice to you that it is legally permissible to create assessment and taxation lots (A & T lots) within a recorded lot. The issue has arisen because you have questioned whether Section 1302.2 of the Zoning Regulations precludes such action, unless the A & T lots so created meet all of the criteria set forth in said section. Section 1302.2 provides:

Where a lot is hereafter divided, the division shall be effected in such manner as not to violate provision of these regulations for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to said lot or any lot created.

As defined in the Zoning Regulations (Sec. 1202) a lot is

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

The problem, simply stated, is whether the creation of an A & T lot is a "division" within the meaning and reach of Sec. 1302.2. My opinion that A & T lots are not controlled by Sec. 1302.2 is based, in the first instance, on review and consideration of the statutory and regulatory bases for the several descriptions of land in the District of Columbia.

The two land description systems relevant hereto are "lots of record" (or "record lots") and "A & T lots." Each has its own purpose and function; each has its own basis in law. A record lot is a particular piece of real property recorded and designated by lot and square in the official records of the District of Columbia Surveyor. The designation of record lots is controlled by the provisions of Sec. 1-601, et seq., D.C. Code, 1973 ed., and the District of Columbia Subdivision Regulations which were promulgated pursuant to Sec. 6-613 of the Code. A record lot is created by subdivision and each such lot must meet certain criteria, including compliance with the Zoning Regulations (Art. II, Sec. 5 (d), Subdivision Regulations), in order to be so designated and recorded. The purpose and intent of the record lot system is to implement the orderly development of land by providing for specific subdivision controls. This system is the ground floor on which the specific land use controls of the Zoning Regulations are built. Therefore, the Zoning Regulations provide that (with exceptions not relevant hereto) building permits for erection, construction or alteration of structures will not be issued unless such structures are located on record lots (Sec. 8103.3). Thus, it is clear that the record lot system and the Zoning Regulations are integral parts of a regulatory scheme to control development in the District of Columbia and ownership of land plays no part in this scheme.

A & T lots, on the other hand, serve no land control purpose, but are merely ownership descriptions for assessment and taxation purposes. The designation of A & T lots is governed by Secs. 47-701 and 47-703, D.C. Code, 1973 ed., which provide as follows:

§ 47-701. Assessments to be made in the name of the owner.

All real property in the District of Columbia, except as hereinafter provided, shall be assessed in the name of the owner, or trustee or trustees of the owner thereof. All undivided real property of a deceased person may be assessed in the name of such deceased person until the same is divided, according to law, or has otherwise passed into the possession of some other person or persons; and all real property, the ownership of which is unknown, shall be assessed "owner unknown."

§ 47-703. Assessments to be by lot and square.

Real estate in the city of Washington, except such as may be exempt by law from taxation, shall be assessed according to the number of the squares and lots thereof, or parts of lots, and upon the number of the square or superficial feet in each square or lot, or parts of a lot, and in the county the agricultural lands shall be assessed by the acre, and suburban lots by the square foot, as in the city of Washington.

Section 1302.2 must be viewed in the context of the two lot designation systems; the A & T lot which is created for assessment and taxation purposes and only serves that function and the record lot which is created as the cornerstone of land development control. The key words in Sec. 1302.2 are "lot" and "divided" in the first phrase thereof. "Lot" in that phrase includes record lots and A & T lots. But, "divided" only refers to the subdivision process by which record lots are created. The creation of an A & T lot is not a "division," it is merely the recognition of ownership of a particular piece of real property for assessment and taxation purposes as required by law.

Further support for this construction of Sec. 1302.2 is found in Secs. 4 (a), 4 (b) and 4 (c), Art. I, Subdivision Regulations, which read as follows:

(a) No land or ground in the District of Columbia shall be subdivided for purpose of creating a lot of record, except in conformity with these regulations.

(b) Where a lot of record is subdivided for the purpose of creating another lot of record, such shall be effected in a manner as not to violate the provisions of these regulations or any other District of Columbia regulations.

(c) No part of a lot of record shall be sold or transferred unless, prior thereto, such lot shall be subdivided in conformity with these regulations nor shall any subdivision containing any part of such lot be admitted to record unless the requirements of this paragraph have been complied with.

These sections provide the same result as Sec. 1302.2, i.e., a subdivision creates a record lot and such must be in compliance with the Subdivision and Zoning Regulations, and distinguish the subdivision (or division) action from a sale. * * *

Finally, consideration of Sec. 8103.3 of the Zoning Regulations and its legislative history demonstrates that the ownership system of lot designation is completely consonant with the record lot system and that there is no reason to prohibit the creation of A & T lots within a recorded lot.

Sec. 8103.3 provides:

Hereafter except as provided in Section 7516 and the Act of Congress of June 28, 1898 (30 Stat. 520, Chapter 519, Section 5), a building permit shall not be issued for the proposed erection, construction or conversion of any principal structure, unless the land therefor has been subdivided so that each structure shall be on a separate lot of record."

Section 8103.3 was added to the Zoning Regulations in 1964 together with Section 7615 which permits two or more principal buildings to be located on a recorded lot. These amendments had been recommended to the Zoning Commission by a special committee appointed by the Board of Commissioners in 1959 to study modifications to the Building and Zoning Regulations. In its report dated September 3, 1963 to the Zoning Commission recommending adoption of these amendments, the Zoning Advisory Council described Sec. 8103.3 as "the most drastic policy change during the more than four decades of zoning control in the District of Columbia." The Advisory Council observed that under Section 1302.2 of the Regulations effective controls could not be implemented. The Advisory Council observed that under that section anyone could legally file a building plat reflecting an outline survey of the land to be improved and include within the outline land which had already been used as required area for another building. It further observed that an applicant might not even own the land he proposed to use. By requiring that building permits for future construction would not be issued unless the proposed construction was to be on land which had been subdivided and recorded in the Office of the Surveyor, the abuses associated with the outline surveys would be eliminated and effective controls could be implemented. Thus, under this new approach future developments would be examined for compliance with the Zoning Regulations completely in refer-

ence to a recorded lot. In this manner, land, which had been used in order to meet various zoning requirements for improvements on a recorded lot (rear yards, side yards, floor area ratio, etc.) could not thereafter be used for other improvements. Additional improvements, other than those permitted on the recorded lot, must be located on a separate recorded lot. If the subdivision contains land already required under the Zoning Regulations for a prior improvement, it cannot be approved.

This procedure contrasts dramatically with the situation existing in connection with outline surveys where there was no adequate means of checking whether the land had previously been used to meet zoning requirements. In its report, the Zoning Advisory Council significantly noted that through the recorded lot control the "creation or sale of properties by outline survey in circumvention of yard, coverage, bulk and minimum lot size requirements as provided by the zoning rules would be effectively prohibited by direct regulation;***"

The addition of Section 8103.3 to the Zoning Regulations clearly provides for implementation of the Zoning Regulations solely in relation to a lot of record for new construction which requires a building permit. The nature of ownership of the land comprising the lot of record is not germane. The Zoning Advisory Council made this distinction abundantly clear when it stated in its report, "At this point it should be stressed that metes and bounds sales will not be prohibited by the proposed change; but only that such transactions may not be made the basis for permits to improve the land with the building." (Emphasis supplied.) Thus, if the owner of a lot of record were to sell a portion of that lot under circumstances where the portion sold was required under the Zoning Regulations for the improvement on that lot, the part sold could not be used in connection with any future development on another lot. The future development would require its own lot of record and the part of the prior lot could not be incorporated in any other lot of record unless the remaining existing lot of record complied with applicable zoning requirements.

In construing Sec. 1302.2 in light of Sec. 8103.3, it is clear that, with the limited exception of land subject to the Permanent Highway Plan, ^{1/}

^{1/} Sec. 7-109 of the D.C. Code prohibits subdivision of land included in the Permanent Highway Plan. Sec. 7-114 of the D.C. Code preserves to the owner of such property the right to build on his land. Thus, outline survey may still be used in these limited instances where land falls within a part of the Permanent Highway Plan which has not been acquired.

the lots referred to are recorded lots. Land which is not the subject of a recorded lot can no longer be used as a basis for a building permit. Thus, in essence, the only lot cognizable at the present time for building purposes under the Zoning Regulations is a lot recorded in the Office of the Surveyor. Sec. 1302.2 prohibits the division of that lot in a manner violative of zoning requirements. Since Sec. 8103.3 requires a recorded lot for building purposes, the only way a recorded lot can be divided in a manner significant for zoning requirements is by a resubdivision. The creation of A & T lots within a recorded lot has no relation to zoning controls and does not constitute a "division" of the recorded lot within the meaning of Sec. 1302.2.

To construe Sec. 1302.2 as precluding the creation of A & T lots within the recorded lot would plainly clash with the legislative history of Sec. 8103.3 and would not effect any purposeful result. A & T lots cannot be used for building purposes. Effective control of development is by the recorded lot and since a part of an existing recorded lot cannot be subdivided and incorporated into a new lot in violation of the Zoning Regulations, the fact that an A & T lot exists in no way affects zoning controls.

LPR