

**Board of Zoning Adjustment**

**441 4<sup>th</sup> St NW, Ste 200S**

**Washington DC, 20001**

**February 17, 2018**

**RE:**

BZA Case 19629/Request for Zoning Relief at 1665 Harvard St NW

Letter in Opposition to Granting of Zoning Relief

**Honorable Chairman and Board Members,**

The Applicants in this case previously proposed a two-story residence and garage, a proposal to which I wrote in opposition and requested party status. Broadly, the reasons for my opposition were (i) the potential impingement on the safety of pedestrians using the north-south public access to the east of the proposed development, and (ii) the precedent that would have been set by allowing residential structures in our neighborhood to not be subject to the 12ft alley centerline setback requirement. We have now learnt that the Applicants have retreated from the proposed two-story dwelling to build a one-story garage. However, the revised proposal does not fundamentally change my objections, restated herein.

However, I would first like to point out that, ten years ago, the Applicants requested relief from the BZA for a one-story garage similar to that proposed now. The BZA denied this request on the following grounds: (i) that the exceptional circumstances of the lot did not impose a practical difficulty complying with zoning regulations and (ii) that a garage would be a convenience for the Applicants but was not required to allow the primary use of the property, parking, to continue unabated. Although the BZA is within its right to not consider past decisions to be precedent-setting, the passage of 10 years has not changed these basic findings of fact in the case.

In their revised burden of proof statement, the Applicants make the novel argument that the proposed development requires no variance or exception relief. They assert that because the property in question is a 'historic alley tax lot', it is not required to be subdivided to form a 'new record lot' prior to permitting. Even if this were a reasonable plain language interpretation of ZR16, it is unlikely to prevail in litigation because (i) this alley lot is not unique in Washington DC and (ii) it is harmful to the intent of the zoning laws which dictate that new record lots generally be subject to the zoning regulations. It is likely that protracted litigation will ensue if the BZA sets the precedent that would result from granting the Applicant's requested relief in relation to this matter.

The reduction in height and marginally increased side alley setback of the revised structure do not assuage my concerns in relation to safety and hygiene. The revised structure will continue to impede lines of sight. The proposed mirrors will have no benefit at night. Shadows imposed by the revised structure will continue to facilitate the build up of ice and snow in the side alley. The proposed motion-activated lights

must continually work. In theory these latter two concerns could be mitigated by a commitment to shoveling and maintenance respectively. However, respectfully, it is not certain the Applicants would be committed to such a course of action: They do not live in the neighborhood and their property has been the target of numerous DC government actions over the years due to the failure to control rodents and eliminate trash.

The BZA is obligated by law to consider issues of managing urban density and maintaining the unique character of neighborhoods in adjustment decisions. In my original letter, I opposed granting of a 12 ft alley centerline setback on these grounds. It is worth briefly restating these issues here, because they form the heart of why, generally, I believe the community has opposed the applicants' plans now and in the past. One of the defining features of Mt Pleasant is the parallel proximity of single family homes without perpendicular encroachment (see Figure 1). The former fosters close inter family and community bonds while the latter ensure some level of privacy for individual families. Granting the relief from the 12ft alley centerline setback would have impinged on the privacy of immediate neighbors by decreasing distances between the windows of residences (Figure 2). While the BZA may not consider itself bound by precedent, it is common for property owners to cite the presence of otherwise-variance violating structures in their neighborhood as justification for more of the same (e.g. as in Figure 3). I believe that such continuing development is corrosive to our quality of life.

I am pleased that the Applicants stated that they are no longer pursuing a two-story residence due to the concerns of neighbors. However, respectfully, I would be naïve to accept those assertions at face value given past actions. The Applicants have returned to the idea of a one-story garage despite a very similar proposal being rejected by a prior BZA on common sense grounds ten years ago. The application of a novel lot status argument naturally arouses the concern that the Applicants will attempt to use any legal maneuver to ensure they are ultimately able build a two-story residence. It may be easier for the Applicants to argue to a future BZA that does not consider itself bound by precedent, that the 12 ft centerline setback requirement should be waived for a residence because relief was previously granted in relation to a garage. For these reasons, I respectfully request that relief in relation to the 12ft alley centerline setback not be granted.

Thank you for considering these issues in your deliberations.

Very respectfully,

Geoffrey S. Dow



1714 Hobart St NW

**FIGURE 1: NONE of the houses within 200ft of 1665 Harvard St have residential structures with 5.5ft of the alley property line. Since the alley is 15ft wide, and under existing zoning laws all alley dwellings must be set at least 12ft back from the alley center line, all residential structures must be set back at least 5.5ft from the property line.**



**FIGURE 2:** The shortest distance between windows in residential structures across the alley is approximately 72ft (green arrow). The distance between windows at 1714 Hobart St and the nearest residential structure across the alley is approximately 110ft (pink arrow). 12ft setback lines from the center of the alley are indicated as dashed red lines.



**FIGURE 3: Granting of zoning relief in relation to the 12ft alley center line set-back requirement would allow the owners of 1665 Harvard St to build a residential structure out to the alley property line (red oblong). This would reduce the current distance between residential structure windows at 1702 Hobart St and the nearest residential structure from ~ 100ft (yellow) to ~ 50ft (green). Furthermore, the precedent would allow other Harvard St property owners to build all the way to the alley line. In the hypothetical case of such a structure at 1715 Harvard St (brown), the distance between residential structure windows at 1715 Harvard St and 1714 Hobart St would be drastically reduced from from ~ 110ft (pink) to ~ 50ft (blue).**

