



March 15, 2018

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: BZA Case 19629 to allow the subdivision of an alley tax lot to create a record lot for construction of a garage behind 1701 Harvard Street NW

Dear Mr. Hill:

Historic Mount Pleasant is a nonprofit organization formed in 1985 to obtain historic designation for our neighborhood, which was achieved the following year. One of our principal functions is to review proposed alterations to buildings or properties to ensure that changes are compatible with the character of the historic district. In 2008, we opposed the proposal to build a garage on the alley lot at issue here, and we oppose the current proposal. We ask the Board to deny the zoning relief requested, in particular the variance required to convert the alley tax lot to a record lot. Without such a conversion, the project cannot proceed. We express no opinion on the different plans that have been presented. We oppose them all.

1700 Harvard Row

The row houses in the 1700 block of Harvard Street, NW, are unique within the Mount Pleasant Historic District. Designed in 1943 in a distinctly modernist style by Joseph Abel, known today primarily for his luxury apartment buildings along Connecticut and Wisconsin Avenues, this row of 27 houses is set into a high hillside significantly away from the street. The design is simple and lacks features characteristic of earlier row houses in the neighborhood, including front and rear porches and garages. While an increasing number of owners in the row are now seeking to expand their houses to the rear, none has suggested building a garage. Indeed, a garage structure anywhere behind this row would be physically intrusive and visually jarring.

In contrast to most other houses in Mount Pleasant, whose lots are measured at or near the front building line, these houses sit back not only from the street but within their individual lots. In the case of 1701 Harvard, the front yard measures 41 feet front to back, the house itself 26.4 feet, and the back yard just over 43 feet. While the lot lengths along the row vary due to the topography, the houses are generally aligned at the crest of the hill. The introduction of any new structure along the alley behind them would interrupt what was intentionally left as open space to complement these modest structures. The open space benefits all houses in the row, as well as all users of this narrow, heavily-traveled alley.

Board of Zoning Adjustment
District of Columbia
CASE NO. 19629
EXHIBIT NO. 80

The Alley Lot

The Applicant, who owns 1665 Harvard, first applied in 2008 for relief under the 1958 regulations to construct a two-car garage on the alley lot behind 1701 Harvard. BZA denied the request in Case No. 17833. Finding of Fact No. 10 stated: “Lot 827 existed as a tax lot and was ‘recorded’ on the Baist Map at least as of 1925. . . .” However, that is simply not true. Lot 827 does not appear on the 1925 Baist map, or the 1945 one either. We wonder why the BZA would ever have accepted such evidence of “recordation.”

What is today Lot 827 began as Lot 825, which covered 717 square feet in the northeast corner of record lot 141. Lot 825 was recorded in the Office of the Surveyor as an assessment and taxation (A&T) lot on December 31, 1947, a few weeks after the developer of the 1700 block (Shapiro, Inc.) sold the remainder of record lot 141 as 1701 Harvard. In June 1948, a new A&T plat was recorded reducing the size of the lot from 771 to 557 square feet. This is tax lot 827. The approximately ten foot strip that was removed along the southern edge of Lot 825 then became part of Lot 826 for 1701 Harvard. Exhibits 1-2.

In July 1950, Shapiro, Inc., sold Lot 827 to the owners of 1705 Harvard. It is not known whether the owners of 1701 expressed interest. The timing of the sale suggests that the alley lot may have been used as a staging area during construction of the 1700 block. In 1963, the lot was purchased by the owner of 1665 Harvard, and it was sold along with 1665 Harvard in 1966 and again in 2006, when it was purchased by the Applicant in this case. The then owners of 1701 Harvard attempted to buy the alley lot in 2006, but their offer was refused. They sold 1701 Harvard to the current owners in May 2017. Exhibit 3.

2016 Zoning Regulations

On September 8, 2017, Applicant filed a new application for zoning relief under the 2016 regulations (ZR 16) to build a two-story single family dwelling with garage on the alley lot. The plans have changed repeatedly since then. However, to proceed with construction, “a Subdivision would be required to convert the existing Alley Tax Lot into a Separate Lot of Record pursuant to Subtitle C-303.” See Zoning Administrator’s Determination Letter Re: 1665 Harvard St., Washington, D.C. – Lot 827, Square 2588, May 25, 2017. Exhibit 4. Instead, Applicant has chosen to “urge the Board to find that the Property qualifies as a *grandfathered*, historic alley tax lot in ZR 16” exempt from this very requirement. Applicants’ Pre-hearing Statement, January 31, 2018, p. 7. However, no such right existed under prior zoning regulations, so how could one be recognized today, or be “grandfathered?” This line of argument is pure invention on the part of counsel for the Applicant and must be rejected.

In developing the 2016 regulations, the Office of Planning (OP) initially proposed exempting some lots from the subdivision requirement, but the Zoning Commission rejected that idea in 2013. The July 29, 2013, draft of the new regulations contained a section entitled “Lots Exempted from Subdivision Regulations.” Section C-401.1 would have exempted record lots existing before the effective date of the new legislation. Section 401.2 provided that “[t]ax lots existing on or before [INSERT DATE HERE] that contain a building constructed prior to that date and do not have any underlying record lot may be recorded without regard to frontage, lot width or lot area requirements.” ZC Case No. 08-06A, Exhibit 1C, p. 13. On October 28, 2013,

the Zoning Commission advised OP to “[c]larify that a record lot is required to obtain a building permit for a new building on an alley lot and that if the lot does not meet minimum dimension standards that a variance is required.” ZC Case No. 08-06A, Exhibit 160, p. 11.

Notwithstanding this 2013 “ZC Guidance,” it was not until November 6, 2015, that OP corrected the ZR 16 draft to delete any reference to the possible conversion of alley lots to record lots as a matter of right. The OP memorandum explained the change as follows:

- Current Code does not allow the recordation of non-conforming lots as a matter of right;
- OP had proposed permitting Alley [sic] and Tax (aka “A and T” lots) existing before a certain date to be converted to a record lot as a matter of right;
- Several situations occurred in the last six months that reinforced the need for these situations to go through a public hearing process because of the potential adverse impact of creating lots that become eligible for a building permit in atypical locations without street frontage or the knowledge of the owner of the underlying record lot; and
- OP recommends the Commission not include these provisions in final action.

ZC Case No. 08-06A, Exhibit No. 1097, p. 2.

On page 5 of its case memorandum of February 14, 2018, OP correctly states that it was “the intent [of the recently enacted zoning regulations] to allow future development of existing alley record lots even if they were substandard, but to limit the creation of new nonconforming record lots.” The alley lot in the present case is only 31% the required size for a lot in the RF-1 zone and should not be allowed to be converted to a record lot that could enable construction of a garage of any size thereon.

Historic Mount Pleasant asks the Board to deny the present application for zoning relief that would allow the possible issuance of a building permit for any structure on this site.

Sincerely,

Fay Armstrong

President

Attachments:

Exhibit 1: Plat for Lots 824-825, 12/31/1947

Exhibit 2: Plat for Lots 826-827, 7/15/1948

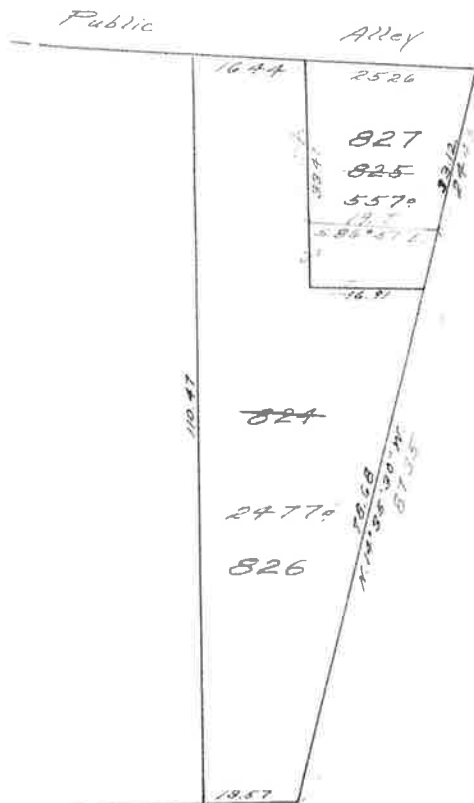
Exhibit 3: DC Recorder of Deeds, Selected Sales on Harvard Street

Exhibit 4: ZA Determination Letter, 5/25/2017

ASSESSMENT AND TAXATION PLAT

59,2588

3266Y



HARVARD ST.

To THE COMMISSIONERS, D. C.

Issuance of the following order is recommended:

[Signature]
 Assessor.

Scale, 1 inch ft.

ORDERED:

The Surveyor will admit this plat to record in his office under the provisions of the Act of Congress (Public, No. 89) approved February 23, 1905, and entitled, "An Act to designate parcels of land in the District of Columbia for the purpose of assessment and taxation and other purposes."

Secretary.

Prepared by

W.L.S. 7/2/48
 Draftsman, Assessor's Office.

APPROVED BY THE COM-
 MISSIONERS OF THE DISTRICT OF
 COLUMBIA SITTING AS A BOARD.

JUL 15 1948
 Commissioners of the District of Columbia.

[Signature]
 SECRETARY

ASSESSMENT AND TAXATION PLAT

Sg 2588

3255Y



To THE COMMISSIONERS, D. C.

Issuance of the following order is recommended:

[Signature]
 Assistant Assessor.

Scale, 1 inch ft.

ORDERED:

The Surveyor will admit this plat to record in his office under the provisions of the Act of Congress (Public, No. 89) approved February 23, 1905, and entitled, "An Act to designate parcels of land in the District of Columbia for the purpose of assessment and taxation and other purposes."

APPROVED

MISSOURI

COMMISSIONERS

DEC 31 1947

Commissioners of the District of Columbia.

Prepared by

Secretary.

[Signature] 12/10/47
 Draftsman, Assessor's Office.

#108470

[Signature]
 SECRETARY

DC RECORDER OF DEEDS
SELECTED SALES ON HARVARD STREET NW

Date of Recordation – Instrument Number Grantor-Grantee	Property Conveyed
12/10/1947 – 1947053610 Shapiro, Inc. – Frances Lewis/Virginia Thorne	1701 Harvard Square 2588, Part of Lot 141, Lot 824
6/23/1948 – 1948025199 Shapiro, Inc. – Frances Lewis/Virginia Thorne	1701 Harvard Square 2588, Part of Lot 141, Lot 826
5/10/2017 – 2017052091 Edward Schneider/Rita Kempley – Victor Tineo/ Lauren Yamagata	1701 Harvard Square 2588, Part of Lot 141, Lot 826
12/2/1946 – 1946053821 Shapiro, Inc. – Andrew and Helene Gazella	1703 Harvard Square 2588, Part of Lot 141, Lot 143
8/25/1950 – 1950035650 Shapiro, Inc. – Andrew and Helene Gazella	Square 2588, Part of Lot 141, Lot 827
10/14/1963 – 1963033478 Andrew and Helene Gazella – Victor Abdow	Square 2588, Part of Lot 141, Lot 827
7/26/1967 – 1967016250 Victor Abdow – Joseph Wells	Square 2588, Part of Lot 141, Lot 827
10/02/2006 – 2006134505 Estate of Joseph Wells – Timothy and Charlotte Lawrence	Square 2588, Part of Lot 141, Lot 827
6/1/1961 – 1961015196 Nelle Jones – Victor Abdow	1665 Harvard Square 2591, Lot 1028
5/31/1966 – 1966018350 Victor Abdow -- Nellie Reichard/Joseph Wells	1665 Harvard Square 2591, Lot 1028
10/02/2006 – 2006134505 Estate of Joseph Wells – Timothy and Charlotte Lawrence	1665 Harvard Square 2591, Lot 1028

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

May 25, 2017

Joel Heisey
1516 12th St. NW
Washington, DC 20005



Re: 1665 Harvard St. NW Washington, D.C. - Lot 0827, Square 2588

Dear Mr. Heisey

This letter will confirm the substance of our PDRM on February 23, 2017. As presented during our meeting, the site currently is a vacant alley tax lot, located in the RF-1 district. The proposal is to construct a new two-story single family dwelling with garage on this lot. The subject property is not within any overlay districts. As discussed, I confirm the project's compliance with respect to the zoning criteria under 2016 Zoning Regulations as noted below.

Applicable Zoning Criteria Analysis

Criteria	DCMR Reference	<u>Allow./Req.</u>	<u>Provided</u>
Bldg. Height	Subtitle E § 5102.1	20 feet	will be 20 feet or less
Bldg. Stories	Subtitle E § 5102.1	2 Stories	2 Stories
Lot Occ.	Subtitle E § 5103.1	100% (557sf)	100% (557sf)
Rear Yard	Subtitle E § 2104.1	5 ft.	0 ft (Special Exception Required)
Side Yard	Subtitle E § 5105.1	5 ft.	5 ft (Special Exception Required)
Alley C.L. Setback	Subtitle E §5106.1	12ft	0 ft (Special Exception Required)

Pervious Surface Subtitle E § 5107.1

10% (55.7 sf)

0 ft (Special Exception
Required)

During our Plan Design Review Meeting (PDRM), it was discussed that a Subdivision would be required to convert the existing Tax Alley Lot into a Separate Lot of Record pursuant to Subtitle C-303, and that because the width of the alleys surrounding the lot are only 15ft, and 7.6ft respectively, therefore Board of Zoning Adjustment (BZA) relief would also be required in addition to the relief noted above.

Please let me know if I can be of further assistance in regards to the above referenced property.

Sincerely,



Matthew Le Grant
Matthew Le Grant
Zoning Administrator

Attachment:

- 1) PDRM Summary

File: Det Let re 1665 Harvard Street, NW to Heisey on 5-25-2017