

Board of Zoning Adjustment

441 4th St NW, Ste 200S

Washington DC, 20001

March 17th, 2018

RE:

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

Letter in Opposition to Granting of Zoning Relief and Reaffirmation of Request for Party status

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. They then retreated from a proposed two-story dwelling to a one-story garage against which I also wrote in opposition and reaffirmed my request for party status. At the BZA hearing they surprised and wasted the time of the BZA and parties in opposition by revealing a Hail Mary one car garage proposal at the end of the hearing in order to force a continuance in the case. I am again writing in opposition because the newest proposal (Exhibit 77) does not eliminate (i) the requirement for a variance with respect to the alley center setback requirement and (ii) the requirement for variances in relation to conversion of the lot to a record lot. Granting of either of these variances is not in the public interest and harms the intent and/or is contrary to the zoning regulations as outlined below. For the avoidance of doubt, I am reaffirming my request for party status.

DESIGN CHANGES AND RELIEF REQUESTED BY THE APPLICANTS:

According to the Supplementary OP report (Exhibit 61), the previously proposed two car garage required the relief indicated in the table at the start of the next page. While the revised OP report was not available at the time of writing this letter, I have conveyed below my understanding of what relief might be required with reference to the designs circulated informally prior to the March 14th submission deadline. The relief required for the original two-story dwelling is also referenced in the next section. By my reckoning the proposed one-story garage eliminates only the requirement for special exceptions in relation to the side alley setback and the footprint of the garage. Variances for lot conversion and an alley center-line setback are required regardless of the intended height of any structure built on the lot.

Relief Required	One Car Garage	Two Car Garage	Two Story Residence
Variance – Lot frontage < 24 ft	Yes	Yes	Yes
Variance – Lot area < 1800 sqft	Yes	Yes	Yes
Variance – Alley Centerline	Yes	Yes	Yes
Special Exception – Parking Area > 450 sqft	No	Yes	Yes
Special Exception – Side yard setback	No	Yes	Yes
Special Exception – Rear yard Setback	Yes	Yes	Yes
Height	If other relief granted can build to any height less than 20 ft without additional relief		

GRANTING ZONING RELIEF FOR A ONE CAR GARAGE OPENS THE DOOR TO BUILDING A TWO-STORY RESIDENCE:

As is outlined in the table above, the same variances required to build a one car garage are required to build a two-story height. If the BZA were to grant these variances in the context of a one car garage, no additional relief would be required to build to the two-story height originally envisaged by the Applicant. Thus, it would only be the good will of the Applicants that stopping the construction of a two-story structure that is implacably opposed by all the neighbors within 200ft of the Applicant’s property (reasons outlined later in the letter), and the proposed one car garage which may be moderately less objectionable to some neighbors (but not to me).

The manner in which the Applicants have conducted themselves does not suggest they will act with good will in the future. A few examples are outlined below:

- (i) At the first ANC meeting the Applicants claimed that they maintain the property and side alley, but this cleaning was conducted just prior to the meeting (not on a routine basis as was implied by their testimony)
- (ii) After the first ANC meeting, the Applicants left a bunch of trash all over the lot following maintenance efforts, but at the BZA hearing testified that the property was a magnet for trash not left there by the Applicants.
- (iii) The Applicants did not give the ANC sufficient time at the second ANC meeting to review the new designs (when the two-story residence was changed two a two-car garage)
- (iv) The Applicants wasted the BZA and opposition parties’ time by proposing a last-minute design change at the end of BZA hearing. This was not discussed with the ANC or opposition parties beforehand.

The Applicants are absentee landlords and are not asking for the variances to enhance their own quality of life. No relief is needed for their tenants to continue to use the parking pad, and property has been continually used for this purpose at least as far back as I have lived in the neighborhood (since 2005). The Applicants cite the need for greater security but none of their neighbors on Harvard St seem to feel this fear despite living here. Instead, neighbors feel that any structure or solid fencing will decrease security by blocking site lines to the north-south public alley. Finally, as discussed at length in the BZA hearing, the Applicants could simply build a fence and don’t need zoning relief to do so.

For these reasons it is my belief that the Applicant’s ambitions do not extend merely to the one car garage they now claim to be their goal. Since the same zoning relief is required whether the structure built is a one car garage or a two-story structure, I am confident that their ultimate intent is to build a two-story residence to the maximum by right height (20ft) in this zoning district.

GRANTING OF ZONING RELIEF WILL HAVE A MAJOR IMPACT RELATIVE TO A BY RIGHT STRUCTURE:

There seems to be a trend in BZA hearings that it may be reasonable to grant variances or special exceptions if the impact of the structure proposed (i.e. allowed if the requested relief is granted) is minimal relative to the impact of a by-right structure.

The Applicants present a by right footprint in Exhibit 56A p9. This footprint has sufficient width to park a vehicle. However, the length of the by right area (14 ft 6 inches) is insufficient to park even a modestly sized vehicle (a Honda Civic is 14ft 9 inches). Therefore, from a practical stand point, the by right usage of this lot is as a two-car parking pad. A structure is not required for the Applicants to enjoy the by right use of the property in this regard.

For a single car garage to be practical it would require both a special exception from the rear yard setback requirement and a variance from the alley centerline setback requirement to be of sufficient depth to host a car. Building permitting would also require variances from the lot frontage and footprint requirements for lot conversion. Since the granting of these variances may set precedents that are not in the public interest, they will have significantly more impact than the by right status quo.

GRANTING OF ZONING RELIEF IN RELATION TO THE ALLEY CENTERLINE SETBACK REQUIREMENT IS NOT IN THE PUBLIC INTEREST:

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 relief from the 12 ft alley centerline setback on these grounds (Exhibit 16). It is worth briefly restating these issues here, because they remain the same even with the new design, and 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 this part 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 ensures some level of privacy for individual families.

There are currently no garages or residences within 12ft of the alley center line on any of the Harvard Street properties within 200 ft of the Applicants' property (Figure 1). As outlined earlier, granting of the proposed relief in relation to the alley centerline setback for a garage would effectively allow the Applicants to construct a two-story structure without further zoning relief. The zoning limits for expansion to a two-story residence occupying a greater foot print would be few since the lot would have been converted and a precedent set for granting variance relief in relation to the 12ft alley center-let setback requirement. The building of a two-story structure on the Applicant's lot would impinge 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 have stated that they are no longer pursuing a two-story residence or a two-car garage due to the concerns of neighbors. However, respectfully, I would be naïve to accept those assertions at face value given past actions as outlined above. The Applicants keep proposing structures for this lot that go beyond the by-right buildable area of the lot, that aren't necessary to enjoy the by-right use of the lot, and which the BZA rejected on common sense grounds ten years ago. The application of a novel lot status argument (see next section) 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.

“GRANDFATHERING” THE APPLICANTS’ LOT AS A “HISTORIC ALLEY RECORD LOT” IS “ABSURD” AND CONTRARY TO THE INTENT OF THE ZONING LAWS:

The Applicants argue that a plain reading of the ZR16 regulations means that the Zoning Commission intended a distinction to be made between “alley tax lots” and “historic alley tax lots”, and, therefore that the BZA had the authority to “grandfather” the lot in question as a record lot, in effect making it not subject to the normal zoning approval process prior to permitting.

While it is an established principle that administrative bodies should apply the plain meaning of a statute if its application does not cause inconsistencies, this does not extend to application where the outcome would be “absurd¹” and/or contrary to the intention of the statutory body that drafted the provisions. In this case, a plain reading of the law as advocated by the Applicant would be absurd and inconsistent with the intent the Zoning Commission expressed in relation to administration of ZR16 as outlined below.

“Grandfathering” of the lot would be absurd. “Grandfathering” would make an alley lot that does not meet the zoning standards’ requirements in many profound ways not subject to those same zoning restrictions! This is not merely an argument over a foot of frontage here, or 50 square feet here. The Applicants have applied for variance relief because its lot frontage is 15 ft not 24ft, and its lot area is 557 sqft not the required 1800 sqft. While acknowledging that the BZA does not necessarily consider itself bound by precedent because every situation is different, the circumstances here are very different from what the regulations seem to ordinarily allow. It is therefore difficult to see how a reasonable owner of a similar lot in the District wouldn’t consider granting of the grandfathering request by the BZA to be precedent setting. But it was not the intent of the Zoning Commission to make alley tax lots generally exempt from Zoning Regulations as discussed below.

Prior to the recent implementation of ZR16, it was clear from legal opinions cited in prior BZA cases (e.g. Appeal #14621, July 8, 1987), that it was the intent of the zoning regulations that the only purpose served by “tax lots” was to address ownership and taxation issues and that the only purpose to be served by “record lots” was to allow efficient application of the zoning regulations.

As the ZR16 regulations were drafted, OP initially proposed allowing tax lots existing before May 12, 1958, to be converted to record lots as a matter of right. However, it recommended against it in November 2015. The reasons stated were (1)“Current Code does not allow the recordation of non-conforming lots as a matter of right.” and (2)“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.” (OP Memo of November 6, 2015, Attachment 1, p. 2, Exhibit No. 1097, ZC Case No. 08-06A.)

Furthermore, the Zoning Commission expressed its intent that entire categories of lots should not be exempt from the zoning rules, in a 10/28/2013 OP Hearing Report on Subtitles E and F, at p. 11:

“ZC Guidance: Alley Lots

Clarify 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.

¹ A formal legal term in this context.

Modify existing §401.6 to state that any record lot created on an alley must meet minimum frontage standards on the alley.”

GRANTING OF THE LOT FRONTAGE/AREA RELIEF AND CONVERSION TO A RECORD LOT IS CONTRARY TO THE PUBLIC INTEREST:

The final version of C-301.1 in ZR16 is as follows: “A record lot existing prior to the effective date of this title that does not conform with the lot dimension and lot area requirements of the zone in which it is located may be considered a conforming lot for the purposes of building permits and uses provided any building or structure thereon shall meet the development standards of the relevant zone and provided the non-conformity shall not be increased.”

Since its creation in 1948, the Applicant’s lot has been recorded only as an assessment and taxation lot (tax lot). It has never been a record lot. Therefore, it must be converted to a record lot prior to permitting. ZR-16 provides no flexibility in this regard and only the limited flexibility stated in C-301.1 with respect to nonconforming record lots.

The structures that the Applicant proposes to build on the lot require a special exception (rear yard setback) and a variance (alley center-line setback). This relief is not required for the Applicants to continue to enjoy their “by right” use of the property (i.e. as a two-car parking pad). Furthermore, it will have the unintended effect of potentially allowing the construction of a more significant structure in the future without further zoning relief, thereby setting a precedent for the construction of additional structures on other properties in a part of Mount Pleasant that is already densely populated but has no such structures.

I, and all of the neighbors on Hobart and Harvard streets I have spoken to about this, do not believe this is in our interest. The Applicants have the luxury of not living in the neighborhood and dealing with the future consequences of their continuing efforts to avoid following the rules.

Thank you for considering these issues in your deliberations.

Very respectfully,



Geoff 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.



Parallel lines indicate approximate 12 ft setback from alley center line

Circle delineates properties within 200 ft of 1665 Harvard St

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).

