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RECEIVED
Office of Planning

MEMORANDUM

TO: **Board of Zoning Adjustment**

SUBJECT: **V-13-244 302 Connecticut Avenue, N.E.**

DATE: **January 2, 2014**

Response to appeal of denial of application REP-13-094 requesting a replat of one-half of an adjacent alley into property located at 302 Connecticut Avenue.

The appellant filed REP-13-094 with the Office of Planning on September 16, 2013 requesting that one-half of the abutting alley on the south side of 302 Connecticut Avenue be replated to become a part of (i.e. incorporated into) the property boundary for 302 Connecticut Avenue.

City's Replat Process

While the subdivision of land creates one or more additional lots, the replat of land does not. Instead, the replat of land has the effect of changing the lot dimensions from one configuration into another on the City's official lot boundary map. For example, two lot owners, each with a 50 x 100 lots may agree to sell land between themselves in a manner that one lot becomes larger and necessarily the other becomes smaller. So long, as the resulting lot configurations meet the minimum zoning lot requirement, the City will generally approve the replat. Once approved, the City recognizes the new lot configuration for development purposes, such as for new construction, renovation, etc. The replat of land is controlled by the City Code Sec. 15-007.005(i), part of the subdivision ordinance. It provides:

> *Sale or Exchange of Land Between Adjoining Owners*. The director shall approve the replatting of land that is proposed to be sold or exchanged between adjoining property owners provided each of the following conditions are met:
>
> > (1) A written request, accompanied by one original mylar plat showing existing and proposed property boundaries and all other applicable information specified in section 15-07.003, is submitted to the director.
> > (2) No additional lot is created.

> (3) Each newly platted lot conforms to all requirements of part 16 of the Code of Ordinances; and
> (4) Each newly platted lot conforms to all requirements of this part 15 of the Code of Ordinances, provided that if either lot, as platted prior to the proposed replatting, does not conform to said part 15, this condition shall nevertheless be deemed to have been met, if said lot(s) are replatted in a manner that equals or reduces the degree of nonconformity.

As the above-cited replatting provision is premised on the private sale or exchange of land between adjoining neighbors. As part of that private transaction, each adjoining owner requests, through a replat application, the City officially recognize the new lot configurations by placing same on the City's official lot boundary map, used for development purposes.

REP-13-094

In the instant Application, the appellant did not enter into a private sale or exchange of land between adjoining neighbors. Instead, appellant requests that the portion of the alley next to her lot be replated to become a part of (i.e. incorporated into) her existing lot. The plain language of the above-cited replatting ordinance does not expressly cover such a scenario. More importantly, were the City to approve the replat, the alley, at least according to City records, would now be private property and might interfere with the rights of other adjoining property owners to use the alley for ingress and egress to their property. In simple terms, the Office of Planning must review and make decisions on applications that are not only consistent with the rights of the applicant but also protect the rights of other adjoining owners.

The City Code and its application to alleys.

A review of the documentation submitted with the replat application indicated only a summary of why the applicant, Ms. Ross, wished to replat one-half of the width of the alley. No other documentation was presented showing consent of property owners with access to the alley.

In 2001, Sec. 138-5 of the 1996 City Code put all property owners abutting alleys on notice that the City claimed no interest in any alley except for the three specifically designated therein. The alley in question is not one the three alleys in which the City claims a right of way interest.

Sec. 138-5 also stated that the City considered the abutting property owners to have an undivided common interest in the alley with their neighbors if the property owner did not have a deed which reflects ownership of the alley. When an adjoining property owner sought permission from the City to exclusively use an undivided alley, or a portion thereof, a policy was developed to respond to the request. Under this policy, a property owner wishing to include a portion of an alley (as opposed to a street in which the City claimed a right of way interest) into their property boundaries and have the new lot boundary recognized by the City would have to make a specific showing. The requesting property owner must provide proof of permission of all adjacent property owners to exercise dominion and control over that portion of the alley. Typically, this has been in the form of a document showing the written consent of all property owners abutting the alley to enable the City to approve the new lot configuration.

In the request for replat the applicant stated the request was "pursuant to Municipal Code Section 138-5, which provides in pertinent part the "the city has and will, barring evidence to the contrary, assume the centerline of the alley to be the property line between abutting private properties, and shall consider the area within the alley to belong in equal proportions to the abutting property owners." However, Section 138-5(d) only presumes the centerline when the City might acquire the alley to become a City property (usually but not always for right of way). This has no bearing on the allocation of the property rights of the adjoining owners as to what interest each claims against the other.

The City's interpretation of the law relating to abandoned alleys is that property owners abutting these alleys have an undivided common interest in the adjoining alley which is similar to an easement although it is not recorded. The City has no interest in these alleys and will not take any action that can decide the allocation of whatever rights each adjoining property owner may have in the alley. To specifically claim a divided interest and divest others with possible claims to use of the alley as a part of their undivided interest, the City requires a property owner to present documentation of consent from all property owners abutting an alley. This consent from the others who hold an undivided interest will allow a property owner to replat a portion of the alley into their property boundaries, an act which divides the interest and divests the other adjoining property owners of their undivided interest. The applicant did not provide written consent from the abutting property owners with an undivided interest in the alley that they were surrendering their right to that undivided interest.

Conclusion

The denial of REP-13-094 was not based on an erroneous finding of material fact nor was the action taken in an arbitrary manner. The decision that was made is based on a policy that represents the City's interpretation of the rights of private property holders who are presumed by the City to have an undivided interest in an abutting alley.

The issue on which this replat was decided is both a zoning issue under Chapter 16 and a subdivision issue under Chapter 15 as well as one of property ownership. The threshold issue is that the permission to close the alley is a private civil matter between property owners and not one that is decided by the City. The Applicant did not provide documentation that would allow the Office of Planning to evaluate the replat as affecting property that is within the Applicant's right to control in the same way that the Office of Buildings requires a survey that matches the City's records of how each lot is configured before a building permit can be issued.

The Office of Planning is not allowed to adjust the property boundaries in the situation applicable to this application except by closure of the alley (City Code Sec. 16-02.011). Because the replat will in effect close the alley, it cannot be accomplished unless all who have the right to use the alley consent to its closure. Because the provisions of Sec. 15-07.005(i)(3) do not allow a replat that does not conform to the requirements of Chapter 16, the application was denied.

cc: James Shelby, Commissioner, DPCD
Charletta Wilson Jacks, Director and Zoning Administrator, Office of Planning