
**HISTORIC PRESERVATION REVIEW BOARD
STAFF REPORT AND RECOMMENDATION**

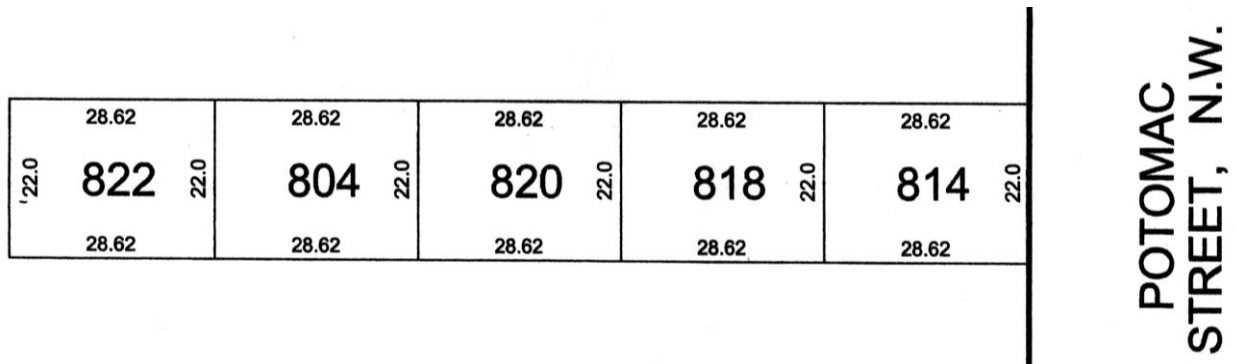
Landmark/District: **Georgetown Historic District** (x) Agenda
Lots 804, 814, 818, 820 and 822 in Square 1230
(private alley between N, O, 33rd and Potomac Streets NW)

Meeting Date: **October 29, 2015**
Case Number: **15-529** (x) Subdivision

Staff Reviewer: **Tim Dennée**

The applicant, property owner Kebreab Zere, requests the Board’s review of an application to subdivide in order to consolidate five assessment and taxation lots into one lot of record. As no project has been brought forward, it is unclear whether the property owner intends to construct a building or convey the right to do so to another party. The potential to build would be the only motivation for such a consolidation.¹ The applicant did previously apply for a permit to fence off the alley but did not pursue it.

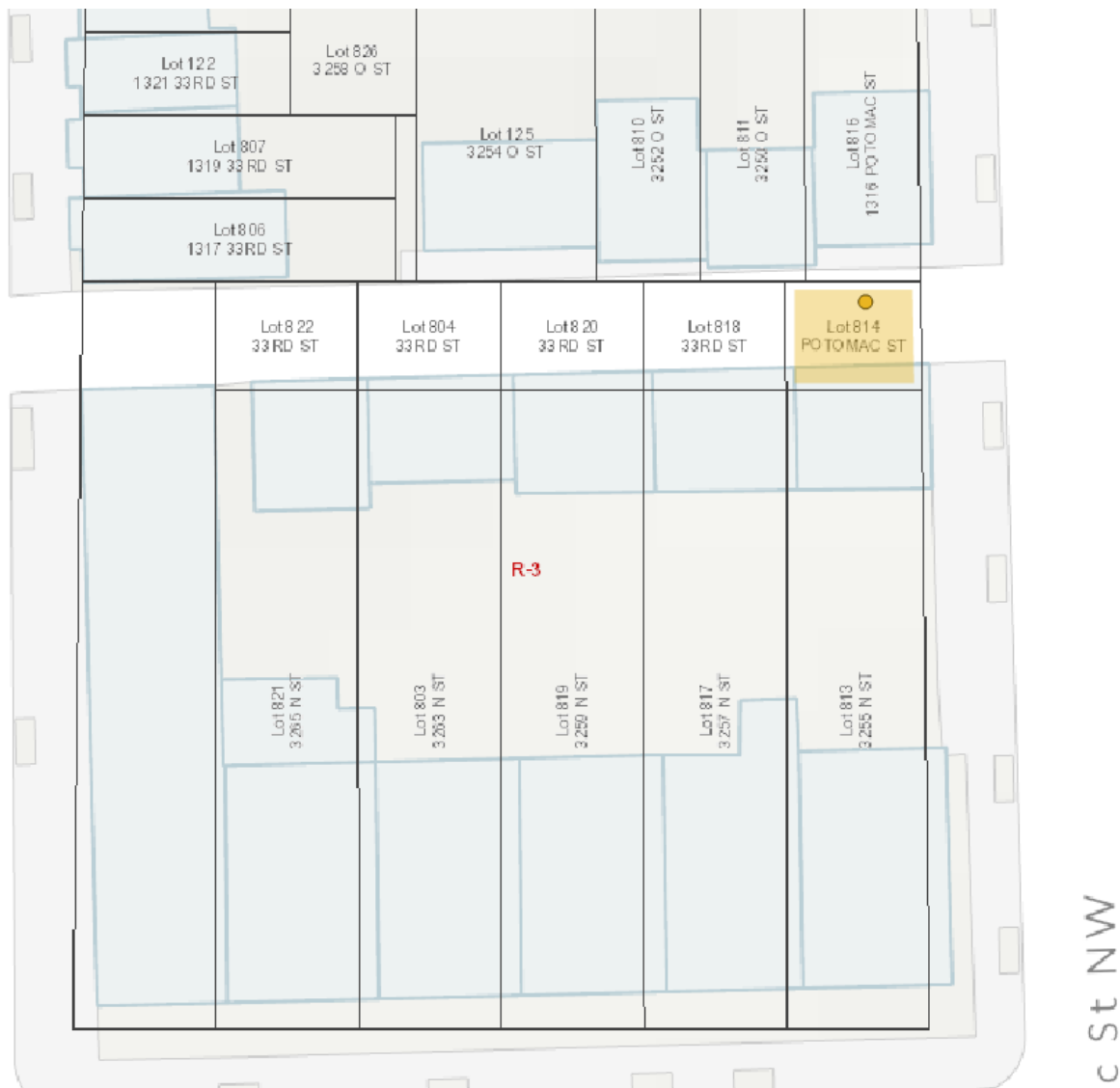
For the sake of convenience, the applicant is at liberty to combine these five tax lots into a single tax lot, but the creation of a lot of record is a more complicated matter. If the tax lots were combined and converted to a lot of record, such a lot would be of sufficient extent and width to erect a “row dwelling,” a house that would face Potomac Street (the east side of the square) and stretch entirely across the alley.²



A plat of the applicant’s properties, submitted with this application.

¹ If the intention were to leave the property unimproved, then no subdivision or consolidation is necessary. And a combination of the lots for tax purposes could be achieved much more quickly through the Office of Taxation and Revenue, without the creation of a lot of record.

² In an R-3 zone, the minimum lot area required for a single-family row dwelling is 2,000 square feet. The aggregate area of these tax lots is 3,077. The zoning regulations allow a semidetached house at a lot area of 3,000, but the alley is of insufficient width to allow for an eight-foot side yard and leave space for a usable building. All other uses require a larger lot area.



*The southern portion of Square 1230, showing the lots and alley.
Courtesy of DC PropertyQuest.*

Historical background

This is an extremely unusual and possibly unprecedented case, especially for the fact that the lots in question have been used as a private alley for more than a century. The alley is depicted in G.M. Hopkins's 1887 *A Complete Set of Surveys and Plats of Properties in the City of Washington, District of Columbia* (a detail of which appears on the next page). The Hopkins and Baist real estate atlases published from 1894 through 1968 label it as "private alley." The alley is also referenced in a number of deeds as bounding several of the surrounding properties.

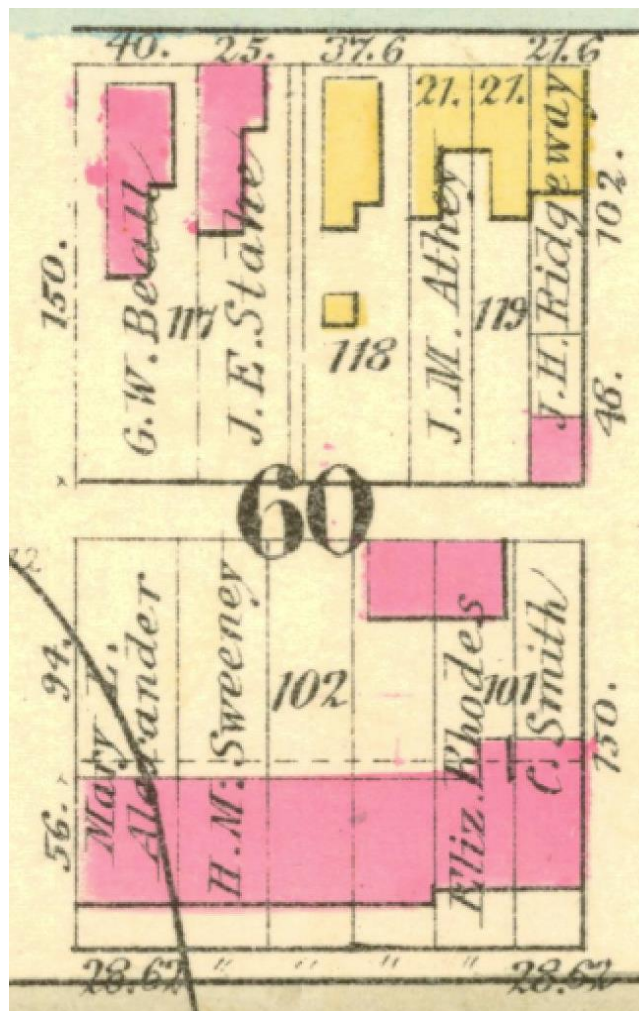
There is no reason to conclude that the alley's creation took place as recently as the 1880s, however, as the Boschke map of 1861 (based on surveys of 1857 to 1859) depicts what appears to be the same accessory structures shown on the south side of the alley in the 1887 atlas. Given that only one house, 1327 33rd Street, stood on the north half of the square during the 1850s, the alley almost certainly originated to serve the rear of the circa 1815 houses facing N Street, in the

southern half. Known as Smith Row, this is one of the finest federal-period speculative rows in Georgetown. It was upon the rear of these lots that the alley was created.

Assessment and taxation lots

In 1899, Congress passed a law permitting the District of Columbia to create a special type of lot for the purposes of property assessment and taxation. Assessment and taxation lots (“A&T lots” or “tax lots”) were in addition to, and frequently overlay, pre-existing parcels and lots of record. They were established at a time when the Highway Act was being implemented, and within the former Washington County the designations of the various parcels and lots were confused; two lots might have the number or none at all. Elsewhere in the city, newer lots within established subdivisions frequently lacked numbers as well, carved out of larger lots. One might have a designation such as “of 12” i.e., subdivided from an original, larger Lot 12, rather than its own number. A consistent system for providing clear and unique designation for each existing lot or parcel was needed for the sake of the assessors and taxation authorities, and it had to be available rapidly, without requiring that all of them be resurveyed immediately.

While this was the principal purpose for A&T lots, owners were subsequently allowed to initiate the creation of such lots for just about any purpose. The District allows owners to create such lots for the purpose of taxation only, typically for their own convenience, as when they wish to consolidate their tax bills for multiple contiguous lots.³ The Office of Tax and Revenue creates A&T lots based upon a plat provided by the applicant. “These A&T Plats are not reviewed but simply filed by the Surveyor; they do not comply with the standards required of subdivision plats, and are not recorded.” (see OCTO website at <http://vpm.dc.gov/home/tax-lots>)



A detail of the 1887 Hopkins atlas.

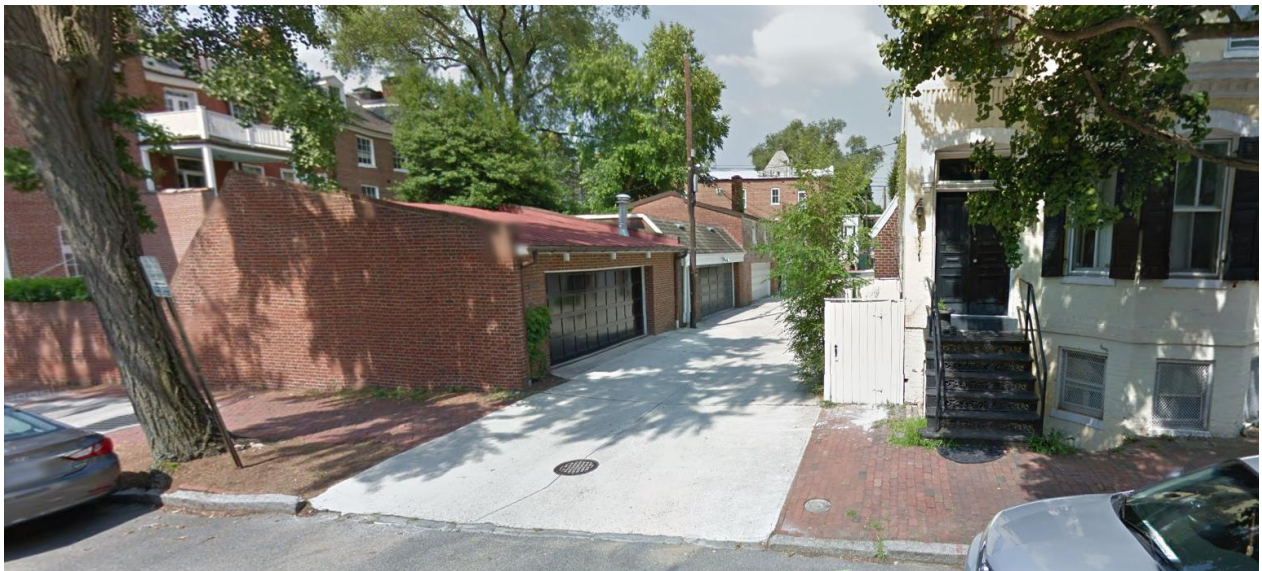
But the system now also allows the division of property, as well as combination. Property need not be a lot of record in order to be sold, so A&T lots have been created when a portion of a property is sold off without being properly subdivided first. Owners have been permitted to create A&T lots in anticipation of such a sale. And since it can be done before an anticipated sale, it can also be done without such a sale transpiring. In addition, A&T lots have become a

³ The Office of Tax and Revenue application for the creation of A&T lots formerly required an applicant to attest that the designation would be used only for assessment and taxation purposes. The application no longer contains that statement.

method for managing tax payments. One scenario is two owners who split the responsibility for payment by artificially splitting the lot. This happens frequently in cases where, for zoning purposes, two buildings are considered one because of a vestigial connection, but they have different occupants. But it could also be used to manage tax liability.

In the present case, it may be that former owners of Smith Row, realizing that the alley was *de facto* unbuildable, separated most of it from the N Street lots, reducing the latter's tax assessments by reducing their putative development envelopes and resulting in nominal charges for the alley lots themselves. It makes sense that this occurred in the period 1923 to 1937, shortly after the adoption of the city's first zoning ordinance.⁴ Although the alley traverses the rear of 3267 N Street, that westernmost sixth-part of the alley was not divided into its own A&T lot, and it remains in ownership apart from the applicant's.

The alley A&T lots were consolidated into single ownership in 1963, acquired by tax sale. In time, their owner also failed to pay the taxes on them. The applicant acquired the liens at tax sale and quieted title to the properties between 2006 and 2012.



The alley seen from the east. Courtesy of Google.

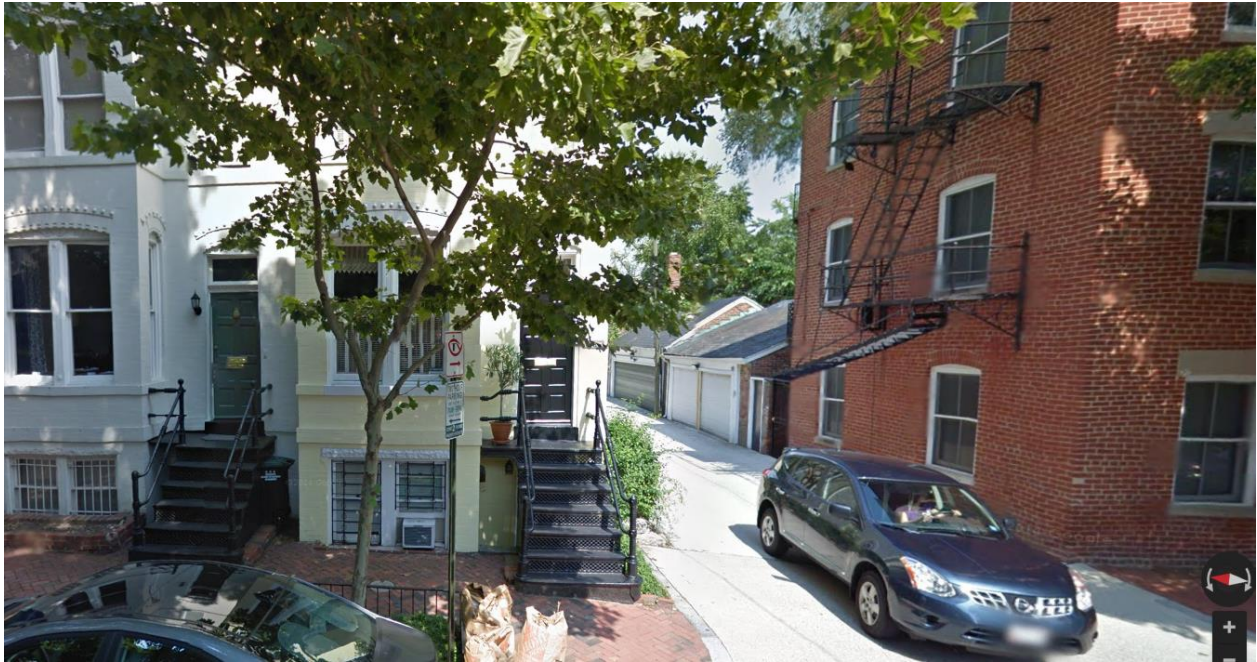
Evaluation

At this remove, we cannot know the exact origins of the alley or of any informal agreements about its use, but without tracing the land records back to the construction of Smith Row, the deed evidence suggests that there was some formal agreement to the common use of the alley, at least among the owners of the N Street properties. There are express easements contained within several deeds.⁵ On the other hand, a lack of permission to use the alley could support an

⁴ The historic maps suggest that most of the row was owned by a single party at the time. Just as the current zoning regulations, the 1920 ordinance limited lot occupancy, so a larger lot would have more development potential.

⁵ The 2005 deed to 3265 N Street, for instance, includes "the free use and general right of way over a private alley in the rear of said property for the entire length thereof, between 23rd [sic, i.e., 33rd] 'Market and Potomac Street, N.W.'" A 1973 deed to 3263 N similarly states "a free and general right of way over an alley 20 feet wide in rear, for the entire length thereof between Potomac Street and Market Street." A 2008 deed to 3255 N Street also claims the "free and general way and right of passage over the aforesaid alley, in common with all others having or to have a front on said alley."

argument for a prescriptive easement, i.e., adverse possession, based on long, open and continuous use of the alley. And at the time of writing, a bill to condemn the alley for public use is pending before the Council of the District of Columbia (B21-818, “Lots 804, 814, 818, 820, 822 in Square 1230 Eminent Domain Authorization Act of 2015”). So, there may be legal impediments to making other use of the property.⁶ There is also said to be a sewer main beneath the paving.



The alley seen from the west. Courtesy of Google.

One could argue that the applicant, for the sum of \$25,204.67, received exactly what was offered: five small, unbuildable lots with various encumbrances. But there is a legitimate question before the Board as to whether a combination of the lots is possible, i.e., whether it would be compatible with the character of this historic district.

On the face of it, it does not sound compatible to close or build upon an alley that has existed for well over a century. After all, it surely contributes on some level to the character of the block and its pattern of development. On the other hand, many alleys have been closed in historic

⁶ There are also a couple of discrepancies between the records of the historic alley and the lots thereon, existing and proposed. Deeds refer to a 20-foot alley, yet most of the A&T lots are 22 feet wide. But the widths of the lots are not as uniform as the applicant’s proposed plat would suggest. While the tax assessment database indicates that four are each 630 square feet in area, Lot 818, the second in from Potomac Street, is said to be only 557 square feet, meaning that it is slightly less than 20 feet wide. The reason for this is fairly obvious; the easternmost garage encroaches into the alley space about two feet. Which is not to say that it necessarily encroaches onto the applicant’s property; the tax description of the lot suggests that this encroachment is excluded, i.e., that the garage bounds but does not stand upon the lot. When platted in 1930, the lot was said to be 22 feet wide. Yet, the applicant’s deed to the property includes no metes and bounds description. This may reflect a past adjustment by the assessor at the request of a former owner not content to be paying taxes on a portion of a neighbor’s garage. But this kind of discrepancy, and the practical difficulties this condition may cause for the present or a future owner, point to the perils of trading in unsurveyed A&T lots. It means that the extent of the lot may be what the Office of Tax and Revenue says it is, rather than as it was platted in 1930 (but if it remains as large as platted, it presumably has a higher tax liability). That could mean that the proposed subdivision might encroach on the front of the garage, rather than vice versa.

districts, although most often downtown. As with most preservation questions, there is no absolute; it depends on the situation. One test might be to consider the character and materials of the paving itself, whether it is historic. Like most alleys, this one does not retain its early materials. Instead, it has a fairly recent DDOT-laid concrete surface.

The real test is to consider the alley space in relationship to its context, the surrounding buildings. Secondary to its continuous circulation function is the fact that that circulation promoted the construction of buildings for stationing horses and carriages and then automobiles along its edge. Some of the remaining structures are quite recent. Others fall within the historic district's period of significance, i.e., pre-1951. As accessory buildings go, one-story auto garages constructed within the period of significance generally fall into a category somewhere between contributing and noncontributing. The status of garages depends on the character of the particular structure and its relationship to the primary structure it serves. When neighborhoods were surveyed for the purpose of historic district nominations, determinations of "contributing" status were usually not made for accessory buildings, despite many being obviously significant. The Board and staff have supported the demolition of many nondescript garages, yet defended others as more significant.

A couple years ago, the Historic Preservation Office conducted a specific survey of alley structures as something of a corrective, to flesh out our knowledge of the stables, garages, warehouses and dwellings that populate the alleys. The survey offered some evaluations of "outstanding" buildings, i.e., buildings that are definitely thought to contribute to the character of their historic districts, without necessarily consigning the others to noncontributing status. The one garage on this alley cited as an outstanding example of a mid-twentieth-century garage is the slate-roofed one at the rear of 3263 N Street, constructed in 1930 (see below).



The garage at 3263 N Street. Courtesy of Kimberly Prothro-Williams.

Unlike garages, stables and carriage houses are always considered to be contributing buildings if they have sufficient physical integrity. The reason they are more significant than garages, on average, is that they have greater age and represent a mode of transport that has passed. They also tend to be more imposing structures because of their typical loft stories, and many possess more physical character. Along this alley one stable remains, standing behind 3259 N Street, alongside the center of the applicant's property. It stands next to the aforementioned garage, and it was naturally identified as outstanding in the alley survey. It is certainly a standout within this block. Its vehicle opening has been widened to accept automobiles, but it retains its essential character. D.C. permit records suggest that it was constructed in 1897-1898, although there was a stable of about the same size in that location at least as early as 1861.⁷



The stable at 3259 N Street. Courtesy of Kimberly Prothro-Williams.

Building across the front of contributing buildings is almost never compatible with their character. The historic preservation design guidelines for additions state that “[Because] in almost all cases the new addition will cover all, or a major portion of, the character-defining facade and thus will significantly alter the appearance of the historic building.... [l]ocating a new addition on the front of an existing building should usually not be considered.” In this case, a building constructed against the stable (or the adjacent garage) would block its vehicle door, loft door and window—its proper façade—and cut off access to the alley. This would affect too adversely the integrity of setting, feeling and association of both of these alley structures. But it would also require significant physical changes, such as the sealing of their openings and alterations to the roofs for proper drainage. As a consequence, a subdivision that enables such construction is incompatible as well.

⁷ According to the October 7, 1897 building permit, the owner of the property was Louis W. Ritchie. Jim Young was the builder.

Recommendation

The HPO recommends that the Board recommend denial of the proposed subdivision as incompatible with the character of the historic district and thus inconsistent with the purposes of the preservation law.