

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**



**Appeal No. 20782 of Carol Howell**, pursuant to 11 DCMR Subtitle Y § 302, from the decision made August 9, 2021 by the Zoning Administrator, Department of Consumer and Regulatory Affairs to grant a request for a minor deviation for lot occupancy under Subtitle A § 304.2 related to Building Permit No. B2011821 allowing an addition to an existing building in the RF-3 Zone at 316 2<sup>nd</sup> Street, S.E. (Square 763, Lot 21).<sup>1</sup>

**HEARING DATES:** April 26 and July 12, 2023

**DECISION DATE:** July 12, 2023

**ORDER DISMISSING APPEAL**

This appeal was submitted on May 4, 2022 by Carol Howell (the “Appellant”) to challenge the Zoning Administrator’s decision to approve a deviation allowing an increase in lot occupancy in connection with a building permit that authorized an addition to a residential building in the RF-3 zone owned by Jeffrey and Crystal Cargill (the “Property Owners”) at 316 2<sup>nd</sup> Street, S.E. (Square 763, Lot 21). Following a public hearing, the Board voted to dismiss the appeal as moot.

**PRELIMINARY MATTERS**

Notice of Appeal and Notice of Hearing. By memoranda and letters dated May 19, 2022 and April 26, 2023, the Office of Zoning provided notice of the appeal and of the public hearing to the Appellant, the Zoning Administrator, at the Department of Consumer and Regulatory Affairs<sup>2</sup> (“DCRA”) and, later the Department of Buildings, the Property Owners, Advisory Neighborhood Commission (“ANC”) 6B, the ANC in which the subject property is located, and Single Member District ANC 6B06, the Office of Planning, the District Department of Transportation, the Office of Advisory Neighborhood Commissions, and the Chairman and the at-large members of the D.C.

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<sup>1</sup> By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable to the Applicant’s proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

<sup>2</sup> As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. See D.C. Official Code § 10-561.01 *et seq.*

## **BZA APPEAL NO. 20782**

### **PAGE 2**

Council as well as the Councilmember for Ward 6, the ward in which the subject property is located.<sup>3</sup> Notice was published in the *D.C. Register* on May 27, 2022 (69 DCR 5899).

Party Status. Pursuant to Subtitle Y § 501.1, the Appellant, DCRA/DOB, the Property Owners, and ANC 6B were automatically parties in this proceeding. There were no requests for intervenor status.

Appellant's Case. The appeal challenged the Zoning Administrator's approval of a request by the Property Owners for a deviation, pursuant to Subtitle A § 304, to allow lot occupancy in excess of the matter-of-right limit. The deviation was approved in connection with a building permit that authorized an addition to the Property Owners' row building, which was located on a lot abutting the Appellant's property. The Appellant later indicated that she did not oppose DCRA's motion to dismiss the appeal as moot. (Exhibits 33, 42.)

DCRA. The Department of Consumer and Regulatory Affairs asked the Board to dismiss the appeal as moot because (a) the minor deviation approved by the Zoning Administrator was revoked, (b) the building permit had expired and a requested extension of the building permit was denied, and (c) the Property Owners were no longer seeking the minor modification. (Exhibit 32.)

Property Owners. The Property Owners, Crystal and Jeffrey Cargill, indicated their agreement with DCRA's motion to dismiss the appeal as moot and confirmed their intention "to file revised plans which no longer reflect the need for a minor deviation grant from the Zoning Administrator." (Exhibits 31, 34.)

### **FINDINGS OF FACT**

1. The property that is the subject of this appeal is an interior lot on the east side of 2<sup>nd</sup> Street S.E. with the address 316 2<sup>nd</sup> Street, S.E. (Square 0763, Lot 0021.)
2. The subject property is generally rectangular, approximately 18.25 feet wide and 100 feet deep. Its lot area is 1,814 square feet.
3. The subject property is improved with an attached building that has three stories at the front of the lot and has two- and one-story segments that extend toward the rear of the lot. A two-story accessory structure is located in the rear yard.
4. The Property Owners undertook a project to renovate and enlarge the principal building at the subject property. The project included expansion of the second floor, adding a roof deck with pergola over the existing first floor at the rear, and expansion of the third floor over the second floor.

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<sup>3</sup> The public hearing was originally scheduled on September 21, 2022 and was postponed at the Appellant's request (see Exhibits 27, 37, 38) and administratively.

5. The subject property is zoned RF-3, a Residential Flat (“RF”) zone designated the Capitol Interest Zone. The maximum lot occupancy permitted as a matter of right in the RF-3 zone is 60 percent. (Subtitle E § 504.)
6. The Property Owners believed that a portion of the planned addition would increase lot occupancy to an amount greater than 60 percent but less than 62 percent. The Property Owners asked the Zoning Administrator to approve the increase in lot occupancy as a “minor deviation” in accordance with Subtitle A § 304.
7. Pursuant to Subtitle A § 304.2, the Zoning Administrator is authorized to permit certain “deviations from the Zoning Regulations for building permits that are not otherwise authorized by an approved order of the Zoning Commission or the Board of Zoning Adjustment, if the Zoning Administrator, pursuant to Subtitle A § 304.3, determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations.” The permitted flexibility encompasses “Deviations not to exceed two percent (2%) of the area requirements governing ... maximum percentage of lot occupancy....” (Subtitle A § 304.2(a).)
8. In determining whether a given deviation would impair the purpose of the applicable regulations for purposes of deciding whether to approve a request for a deviation, the Zoning Administrator is directed to consider that (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of neighboring properties must not be unduly compromised; (c) the level of noise in the neighborhood must not be unduly increased; (d) the use and enjoyment of neighboring properties must not be unduly compromised; (e) no trees that would otherwise be protected by District of Columbia regulation may be damaged or removed; and (f) the general scale and pattern of buildings on the subject street frontage and the neighborhood must be maintained consistent with the development standards of the Zoning Regulations. (Subtitle A § 304.3.)
9. On January 25, 2021, DCRA issued Building Permit No. B2011821 to the Property Owners. The description of work reflected that “the Owner is seeking to renovate the interior of all three floors, expand the second floor, and expand the third floor over the second floor....” (Exhibit 20.)
10. By email dated August 9, 2021, the Zoning Administrator granted the Property Owners’ request for flexibility with respect to lot occupancy after reviewing the information provided by the Property Owners in support of the request. (Exhibit 32A.)
11. The Appellant did not become aware of the Zoning Administrator’s decision to grant the request for a deviation until around April 18, 2022, when the Appellant made inquiries in

connection with Application No. 20543, which was filed by the Property Owners on March 25, 2022.<sup>4</sup> (Exhibit 3.)

12. After review of materials provided by the Appellant, DCRA determined that the Property Owners' request for a deviation would result in a lot occupancy at the subject property in excess of the 62 percent permissible at the Zoning Administrator's discretion. DCRA then revoked its approval of the deviation request.
13. The building permit expired on January 25, 2022. The Property Owners requested an extension of the permit but DCRA denied that request on August 4, 2022. (Exhibit 32A at 8.)

### **CONCLUSIONS OF LAW AND OPINION**

The Board is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.)) Appeals to the Board of Zoning Adjustment “may be taken by any person aggrieved, or organization authorized to represent that person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of [an administrative officer] granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or part upon any zoning regulations or map” adopted pursuant to the Zoning Act. D.C. Official Code § 6-641.07(f) (2008 Repl.). *See also* Subtitle X § 1100.2, Subtitle Y § 302.1.

The Appellant challenged a decision by the Zoning Administrator to grant a request by the Property Owners for a deviation, pursuant to Subtitle A § 304, allowing an increase in lot occupancy in connection with an addition to the Property Owners' dwelling authorized by Building Permit No. B2011821. The decision challenged in this appeal is no longer viable because the Zoning Administrator revoked the approval of the deviation request, and the building permit has expired. The Property Owners consented to dismissal of the appeal, citing an intention to seek a new permit based on revised plans that would meet applicable development standards, including lot occupancy. The Appellant did not oppose dismissal of the appeal as moot. The Board may not consider informal requests for advice or moot questions. (Subtitle Y § 101.6.)

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). The affected ANC, ANC 6B, did not submit a report or otherwise participate in this appeal; accordingly, there is nothing to which the Board can accord the requisite “great weight” in this proceeding.

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<sup>4</sup> By order issued July 10, 2024, the Board granted an application submitted by the Property Owners for a special exception under Subtitle U § 320.2 and an area variance from the land area requirement of Subtitle U § 320.2.(c) to allow three dwelling units at the subject property. See Application No. 20543 (Crystal and Jeffrey Cargill).

**BZA APPEAL NO. 20782**  
**PAGE 5**


Based on the findings of fact and conclusion of law, the Board finds that the claim of error with respect to the decision made August 9, 2021 by the Zoning Administrator, which granted a deviation for lot occupancy under Subtitle A § 304.2 related to Building Permit No. B2011821 allowing an addition to an existing building in the RF-3 Zone at 316 2<sup>nd</sup> Street, S.E. (Square 763, Lot 21), is moot. Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DISMISSED**.

**VOTE:**     **4-0-1**     (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Robert E. Miller to DISMISS the appeal; one Board seat vacant)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** July 11, 2024

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.