

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

Appeal of ANC 8E

Appeal No. 18103

DISTRICT OF COLUMBIA'S CLOSING STATMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, hereby submits its written closing statement as requested by the Board at the September 28, 2010 hearing. At the hearing, the Board asked the parties to submit a written closing statement addressing two issues. The first issue is whether the lack of review by the Office of the Zoning Administrator during the permit review process affects the Board's review of this appeal. The second issue is whether the regulations (Title 29 DCMR, Chapter 63) referenced in the contract between Peaceoholics, Inc. and the District of Columbia Department of Housing and Community Development ("DHCD Contract") have any affect on this case.

Lack of Zoning Administrator Review

As to the first issue, the lack of review by the Office of the Zoning Administrator during the permit review process does not affect the Board's ability to address the question of whether or not the building permit (permit no. B1002975) was issued in error. The Board has jurisdiction to hear appeals of decisions by "any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations[.]" See 11 DCMR § 3100.2. While

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there was no review of this building permit application by the Office of the Zoning Administrator, a decision was made by DCRA's permit staff that is reviewable by the Board.

When a building permit application is received, a member of DCRA's permit center staff makes a determination as to which types of review are required before the permit can be issued. Reviewers of numerous disciplines can review a permit application, but not every discipline reviews every permit application. For example, if the permit center staff sees that there is no plumbing work being done, then the application is not routed to a plumbing reviewer. The building permit application reflects the different disciplines that review permit applications and contains space for the reviewers to sign off on the permit. *See Exhibit C of District of Columbia's Pre-Hearing Statement at p.4.* As the Zoning Administrator testified at the hearing, DCRA has internal operating procedures that do not require review by the Office of the Zoning Administrator where the work being done is limited to interior renovations that do not change the use of the building. *See Transcript ("Tr.") at p. 296.*

Here, DCRA properly followed its procedures. The existing certificate of occupancy for 1300 Congress St, SE ("the Property") permitted the use of the Property as an apartment building with 13 units. *See Exhibit D of District of Columbia's Pre-Hearing Statement.* Further, neither the application nor building plans reflect that there will be any change in use or that the renovations will exceed interior work. The building permit DCRA issued specifically prohibits any expansion or addition of the building or any structural changes. *See Exhibit B of District of Columbia's Pre-Hearing Statement.* Accordingly, the permit center staff did not route the permit application to the Office of the Zoning Administrator for review.

Implicit in the permit center staff's decision to not forward the application to the Office of the Zoning Administrator for review are decisions that implicate the Zoning Regulations.

Specifically, in order for DCRA's permit center staff to determine that this application did not require review by the Zoning Administrator, it had to conclude that the application did not show a change in use and that the work was limited to interior renovations. It is possible for DCRA to err on either of these points. For example, DCRA could misread a plan and come to the conclusion that the work is only interior work, but in actuality the work involves expanding the building into a required rear yard in violation of the Zoning Regulations. Therefore, although the Office of the Zoning Administrator did not review this permit application, the Board has jurisdiction to hear this appeal.

The DHCD Contract

The regulations (Title 29 DCMR, Chapter 63) referenced in the contract between Peaceoholics, Inc. and DHCD are not relevant to the issues before the Board. The issue before the Board is whether DCRA erred with respect to the Zoning Regulations in issuing the building permit.

First, Appellant provided no evidence that anyone at DCRA was aware of this contract or the Peaceoholics SHIP program during the permit review process. *See* Tr. at p. 229, 260-2, and 269. Further, the Zoning Administrator testified that DCRA's permit file did not contain a copy of the DHCD Contract or any information about the SHIP program. *See* Tr. at p. 238-9, 260-2.

Second, even if DCRA had a copy of the contract, it would not have provided DCRA a basis to conclude that the Property was going to be used as a community based residential facility ("CBRF"). The terms of the contract do not require Peaceoholics to use the Property as a CBRF. Instead, the contract requires that Peaceoholics use the Property as low-income, rental housing for 40 years. Paragraph 3(b) of the contract provides that priority consideration in renting the units should be given first to "extremely low-income at-risk youths referred by the

District of Columbia Child and Family Services Agency” and next priority should be given to “Low Income households referred by the District of Columbia Housing Authority.” Renting the units to low-income youth and low-income families by itself does not constitute a CBRF as defined in the Zoning Regulations. In fact, the term CBRF is found nowhere in the DHCD Contract.

Paragraph 10 of the DHCD Contract requires that Peaceoholics comply with several District of Columbia and federal laws in its operation of the Property. Among these is Title 29 DCMR, Chapter 63. That chapter “establish[es] criteria and procedures for licensing by CFSA of certain independent living programs for adolescents and young adults.” *See* 29 DCMR § 6301.1. Those regulations define “Adolescents and young adults” as “Persons age sixteen (16) to twenty-one (21) years of age.” *See* 29 DCMR § 6399.1. The language of Paragraph 10 requires Peaceoholics to comply with the licensing requirements of Title 29 DCMR, Chapter 63 only if it is going to operate one of the “certain independent living programs” defined in those regulations. On its face, that language does not imply that the Property will be used as a CBRF. If the contract requires Peaceoholics to rent the units to both low-income youth and low-income families, DCRA could not reasonably infer from this language that the Property will be used to operate an independent living program for adolescents and young adults.

DCRA Did Not Err

To be absolutely clear, the work approved by building permit no. B1002975 did not violate any provision of the Zoning Regulations nor did it permit Peaceoholics to use the Property in violation of any provision of the Zoning Regulations. The description of work on the permit plainly states “interior renovation of apartment building.” The building permit plans confirm that. The plans show that there will be four identical, two bedroom apartment units on

the 1st, 2nd, and 3rd floors and a one bedroom unit located in the basement. The plans also depict that the basement will have a maintenance office, storage space, and other amenities for use by the residents. At the hearing, the Zoning Administrator testified as an expert that the renovations depicted on the plans were consistent with the building being used as an apartment building. *See* Tr. at p. 253. He further testified that neither the management office nor the amenities located in the basement were inconsistent with the apartment building use. *See* Tr. at p. 255-56.

For these reasons, DCRA did not err in the issuance of the building permit no. B1002975 and this appeal must be dismissed.

Respectfully Submitted,

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October ~~27~~²⁹, 2010



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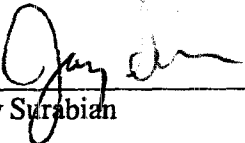
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by email this 29th day
of October 2010, to the following:

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