

Appeal Before the Board of Zoning Adjustment of the District of Columbia

The Appellants

Appellant ANC3C is a District of Columbia Advisory Neighborhood Commission, established under provisions of Section 1-207.38 of the District of Columbia Code. The subject property is located within the established boundaries of ANC3C. ANC3C was given no notice of the subdivision request that resulted in the decision of the Zoning Administrator being appealed from. By Resolution Number 2010-014, adopted at a regular public meeting on May 17, 2010, the ANC formally and unanimously expressed its disagreement with the decision of the Zoning Administrator under review and resolved to prosecute this appeal. Under the provisions of Section 1-309.10 (d)(3)(A), the Zoning Administrator and this Board are required to give "great weight" to the "issues and concerns" expressed by ANC3C.

Richard DeKaser and Rebecca Rhames reside at 2914 Garfield Street, NW, adjacent to 2910 Garfield Street. Their rear garden, which now abuts lot 135, enjoys the leafy green canopy with an open-air mid-story. In place of this open, green expanse, the subdivision would result in the construction of a tall, narrow building that would loom over the rear of their property. Additionally, DeKaser and Rhames are confident that the extensive excavation required for the building of a house on this steeply sloped lot would adversely affect drainage conditions and result in extensive and irreparable damage to mature trees, shrubs and other greenscape on their property. They also believe that the tall, crowded properties to be built on lots 134 and 135 are dramatically inconsistent with the character of the neighborhood. In sum, the subdivision would impair their privacy, light, landscaping and neighborhood character.

Margaret Ernst and Frederick Jenney reside at 2909 Garfield Terrace, NW, adjacent to 2910 Garfield Street. Their rear garden, which now abuts lots 134 and 135, enjoys the leafy green canopy with an open-air mid-story. In place of this open, green expanse, the subdivision would result in the construction of tall, narrow buildings that would loom over the rear of their property. Additionally, Ernst and Jenney believe that the extensive excavation required for the building of two houses on this steeply sloped lot would adversely affect drainage conditions and result in extensive and irreparable damage to mature trees, shrubs and other greenscape on their property. They also believe that the tall, crowded houses to be built on lots 134 and 135 are dramatically inconsistent with the character of the neighborhood. In sum, the subdivision would impair their privacy, light, landscaping and neighborhood character.

Sarosh Sattar resides at 2857 29th Place, NW, across the street from 2910 Garfield Street. Her front yard enjoys the leafy green canopy with an open-air mid-story. In place of this open, green expanse, the subdivision would result in the construction of two tall, narrow buildings with virtually no greenery. Additionally, Sattar notes that the curb cuts required to accommodate Lot 134 and Lot 135 would result in increased traffic and reduced parking availability. In sum, the subdivision would impair her privacy, light, neighborhood character, traffic conditions and parking availability.

The Woodley Park Community Association is a citizens association, organized as a DC not-for-profit membership corporation. Its purpose is to maintain and advance the quality of the Woodley Park area.

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EXHIBIT NO. 2

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The property in question is located in the Woodley Park neighborhood. WPCA has approximately 600 individual members, all residing in the immediate neighborhood of the property, many of whom will be directly affected by the subdivision of this lot. In particular, WPCA's membership includes neighbors who live directly next to and across from the property and who are uniquely affected by the development on it.

Factual Background

Some time in 2009, an application was filed to subdivide the property at 2910 Garfield St, NW (Square 2113 Lot 828). Neither ANC3C nor the public generally was given notice of the application.

Lot 828 was 9946 square feet in area and was in zoned R-1-B, which requires a minimum lot size of 5000 square feet. The requested subdivision, therefore, was not matter of right. Rather than seeking an area variance, the applicant apparently asked the Zoning Administrator to approve a "minor deviation" under section 407.1 of the Zoning Regulations. On November 19, 2009, the Zoning Administrator sent a decision letter approving the deviation to an attorney at Pillsbury Winthrop Shaw Pittman LLP (Attachment 1). There is no indication that the letter was sent to anyone else, and it was not publicly disseminated.

According to the District's online property sales database, the property was sold on January 11, 2010, to ZP 29TH PLACE LLC.

On February 23, 2010, the subdivision was recorded at the Office of the Surveyor (Attachment 2). One new lot (Lot 134) is shown as 4908 square feet; Lot 135 is 5039 square feet.¹ These lot sizes are different from those in the Zoning Administrator's decision letter. To the best of our knowledge, no public notice is given of the recording of subdivisions of record lots. In fact, District Government records available to the public still show the original, undivided Lot 828 (Attachment 3).

While the individual appellants were waiting for the arrival of their new neighbors, they learned from a notice posted on the garage door that the owner of the property had applied for permission to raze the existing structure. Appellants assumed that the new owner was going to build a new house on the lot. Nothing in the notice suggested that the lot had been subdivided — in fact, the posting on the property shows the original lot number, not the number of the new subdivided lot (Attachment 4). In fact, both the raze application (Attachment 5) and the raze permit issued on May 6, 2010 (Attachment 6), continue to describe the property as Lot 828.

It was not until approximately April 15th, 2010, that appellants had any reason to believe that there had been a subdivision of Lot 828. This was not through any notice provided by the Zoning Administrator, Surveyor or DCRA, but because a neighbor saw online marketing materials for two houses to be built on this property. They emailed the Zoning Administrator on April 17th to ask to meet with him about this

¹ 4908 plus 5039, of course, is 9947, and the original Lot 828 was shown as 9946 square feet. Appellants do not know where the extra square foot came from.

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property. Messages left for DCRA employees were not returned. Eventually, at a meeting on April 29th, the Zoning Administrator advised appellants that the subdivision had taken place and provided them with a copy of his decision letter.

The Zoning Administrator's Errors

Section 101.6 of the Zoning Regulations authorizes the subdivision of lots, but only if "the division shall be effected in a manner that will not violate the provisions of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created." The Zoning Administrator gave his approval of the subdivision of Lot 828, in spite of the numerous violations of applicable zoning regulations. While the Zoning Administrator recognized one of these violations — that one of the resulting lots was below the minimum lot area in this zone prescribed in § 403.1 — he nonetheless approved it pursuant to a provision of the Zoning Regulations which gives him the authority to permit minor deviations from the requirements of the rules, but only if those deviations do not "impair the purpose of the otherwise applicable regulations." ZR § 407.1.

We are appealing the Zoning Administrator's approval of the subdivision of Lot 828 for three reasons, as elaborated below.

1. The subdivision violates section 101.6 of the Zoning Regulations by creating lots that do not conform to the rear yard, lot width and lot occupancy requirements applicable in this zoning district.
2. The subdivision of this lot "impair[s] the purpose of the otherwise applicable regulations" and, therefore, should not have been approved by the Zoning Administrator under section 407.1 of the Zoning Regulations.
3. DCRA failed to provide notification to ANC3C, as required by DC Code § 1-309.10(b).

1. The Subdivision Violates Section 101.6 of the Zoning Regulations

Section 101.6 of the Zoning Regulations provides:

"Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created."

The Zoning Administrator recognized that this subdivision would violate the minimum lot area requirement, but, as shown below, incorrectly approved it under his "minor deviation" authority.

There were two other violations, however, which the Zoning Administrator apparently ignored. Both result from the fact that there was an existing house on Lot 828, which is now on the smaller of the two

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new lots, Lot 134. The house is not shown on the map attached to the Zoning Administrator's decision letter (Attachment 1, page 3). However, the house on this smaller lot violates the 25-foot rear yard requirement of section 404.1 and the percentage of lot occupancy requirement of section 403.2.

Finally, Lot 135 is irregularly shaped — almost a parallelogram, but with a corner missing. The methodology used by the Zoning Administrator in determining the width of this lot was inappropriate for a lot of this shape. Using an appropriate methodology, the lot does violate the 50-foot lot width requirement of section 401.3 of the Zoning Regulations.

2. The Subdivision Impairs the Purpose of Zoning Regulations

This property is in an R-1-B zone, which requires a minimum lot size of 5000 square feet. The surrounding community of which it is a part is made up of 73 lots, the average size of which is 7,552 square feet.²

Only part of Lot 828 is developed today. Most of it is densely wooded, with several large mature trees, which provide shade and privacy to neighboring properties, as shown in Attachment 7. Since the property is built on a steep slope, the root systems of the trees also prevent erosion and help provide lateral and subjacent support to abutting properties. This is typical of properties in the surrounding community.

Although the Zoning Administrator's decision letter recites the standard established by the regulation — that the deviation not "impair the purpose of the otherwise applicable regulations" — the letter contains no discussion or analysis of why this is the case. On April 29, the Zoning Administrator told us that he had not visited the property, nor did he indicate that any member of his staff had done so. The Zoning Administrator's files on this application contain no photographs or description of the property or the surrounding area or any analysis of how the proposed substandard lot would affect neighboring properties. This lack of analysis is, by itself, reason to grant this appeal.

Had the appropriate analysis been done, it would have shown that the subdivision — and putting two houses on this property — would impair the purpose of the applicable regulations.

Section 6-641.01-.02 of the DC Code set forth the general requirements, one of which is

"to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities...."

² There are 74 lots zoned R-1-B closest to, and including, lot 828. They are on Garfield Street, 29th Place, Garfield Terrace, Cleveland Avenue and 31st Street. One of these properties, 2911 Garfield Street, was excluded from this analysis because it is a non-conforming lot (only 2175 square feet) with a non-conforming use (row house). See Attachments 8 and 9 for detailed maps and analysis.

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Section 101 of the Zoning Regulations stipulates that the following considerations be adhered to in the application of zoning regulations:

"§ 101.1 In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

- "(a) Provide adequate light and air;
- "(b) Prevent undue concentration of population and the overcrowding of land; and
- "(c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.

"§ 101.2 The regulations in this title and the Zoning Maps are designed with consideration of the:

- "(a) Character of the respective districts;
- "(b) Suitability of each district for the uses permitted in each district under this title; and
- "(c) Encouragement of the stability of districts and of land values in those districts."

Similarly, section 200 of the Zoning Regulations specifies that an R-1 district is intended to "protect quiet residential areas" and to "stabilize the residential areas and to promote a suitable environment for family life."

It is clear, however, that the "minor deviation" and subdivision impairs the purpose of these regulations. Specifically:

The substandard lot (Lot 134) is, not unexpectedly, the smallest lot in the surrounding community. The other new lot (Lot 135) is the fifth smallest. The average lot size within the surrounding community is more than 7,552 square feet, more than 50% larger than the two new lots.

The addition of another house in this location and the accompanying removal of trees, will adversely affect the privacy of its neighbors, in particular 2914 Garfield Street, 2909 Garfield Terrace, 2857 29th Place and 2853 29th Place.

It axiomatically follows that increased density and reduced lot sizes will reduce light to the immediately surrounding residences, especially 2914 Garfield St.

The two proposed properties resulting from the subdivision will achieve an extreme degree of density and "over-crowding of land". Within the surrounding community, no two properties share this level of density when measured on the basis of house size per square foot of lot space. If one accepts that lower density development is more desirable and valuable in an urban setting such as this, then one must conclude that the subdivision would adversely affect

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the “character of the respective district”. Our density analysis is summarized below and shown in detail as Attachments 8 and 9.

- a. Population density was determined by the ratio of house size (in square feet) to lot size (also in square feet). For example, a 3,000 square foot house on a 9,000 square foot lot would have a density measure of 33%.
- b. The house/lot ratios for the proposed structures are 91% (2858 29th Place) and 115% (2854 Place).
- c. The mean (i.e., average) house/lot ratio in the surrounding community is 33%, with a standard deviation of 10%. Statistically, that means the normal house/lot ratio for the community is within a range of 23% to 43%.

Simply put, the proposed properties will be the largest in the surrounding community by a wide margin, reside on some of the smallest lots, and result in population/building density which must be interpreted as extreme.

3. ANC3C Did Not Receive the Required Notification

ANC3C was not given notice of the application to subdivide this lot. Notification is required by the DC Code. Section 1-309.10(a) allows ANCs to advise District Government bodies “with respect to all proposed matters of District government policy.” To make that possible, section 1-309.10(c) requires that an ANC be given notice of “requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area....” Notice must be given 30 days in advance of the proposed action. DC Code § 1-309.10(b).

This lack of notification made it impossible for ANC3C or neighbors of the property who would be adversely affected by the application to explain to the Zoning Administrator why the subdivision would impair the purposes of the zoning regulations. It also deprived the Zoning Administrator of the benefit of the recommendations of ANC3C, to which he would have been required to give great weight.

Summary and Conclusion

The subdivision impairs the purposes of the zoning regulations concerning this R-1-B district and will adversely affect the privacy of neighboring properties. It results in a density that is extraordinary for the surrounding community. When compared to 73 lots in the surrounding community, the subdivided properties will be the most densely clustered properties and the lots are among the smallest. The houses proposed for those lots are literally the two largest in the surrounding community. In the strictest statistical sense, their density and size is abnormal. Because low population density is desirable in this general location, one must conclude that this adversely affects the character of the community,

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with correspondingly impacts to privacy, traffic and light. A petition will be presented demonstrating the breadth of this opinion in the community.

The subdivision of 2910 Garfield St was done without any notification to members of the community or community organizations, though the law requires it.

Appellants intend to prove their case by through testimony, expert testimony and photographic evidence.

The individual appellants will be represented at the hearing by legal counsel, Cornish F. Hitchcock, Hitchcock Law Firm PLLC, 1200 G Street, NW, Suite 800, Washington, DC 20005.

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