

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

2010 SEP 30 AM 8:33

Appeal of ANC 3C

Appeal No. 18108

DISTRICT OF COLUMBIA'S PRE-HEARING STATEMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits its pre-hearing statement in opposition to the June 3, 2010 appeal filed by the Appellant, ANC 3C. The appeal alleges that DCRA's Zoning Administrator erred in his November 19, 2009 determination letter ("November 19th letter") approving a plan to subdivide Square 2113, Lot 828. The appeal must be dismissed as the November 19th letter constituted a proper use of the Zoning Administrator's discretion under 11 DCMR § 407.1 and did not violate any other provision of the Zoning Regulations.

BACKGROUND

On November 19, 2009, the Zoning Administrator provided an attorney representing ZP 29 PI LLC ("ZP") with a letter permitting the subdivision of Square 2113, Lot 828 (also known as 2910 Garfield St, NW). See Exhibit A attached hereto. The letter confirms that the Zoning Administrator will use his authority under 11 DCMR § 407.1, to permit a minor deviation of the lot size requirement of § 401.3, to allow one of the lots to be of substandard size. *Id.*

Under 11 DCMR § 407.1, the Zoning Administrator may permit a minor deviation of the lot size requirement of § 401.3, provided 1) that the deviation does not exceed 2%, 2) that no

BOARD OF ZONING ADJUSTMENT
District of Columbia
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EXHIBIT NO. 20

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more than 2 deviations from the Zoning Regulations can be granted, and 3) that the Zoning Administrator deems that the deviation will not impair the purpose of the Zoning Regulations. *See* 11 DCMR § 407.1. Prior to writing the letter, the Zoning Administrator reviewed the subdivision plan for Square 2113, Lot 828 and found that request to use his minor deviation authority complied with all of the elements of § 407.1.

On February 23, 2010, the subdivision plat for the property was recorded, which reflects that the property was subdivided into Square 2113, Lots 134 and 135. *See Exhibit B* attached hereto. The plat shows that Lot 134 (also known as 2858 29th Pl, NW) is 4908 sq. ft. and Lot 135 (also known as 2854 29th Pl, NW) is 5039 sq. ft. The minimum required lot size for a lot in an R-1-B zone is 5000 sq. ft. *See* 11 DCMR § 401.3. Thus, the Zoning Administrator permitted a deviation from the size requirement for Lot 134 of 92 sq. ft. or 1.8%.

Immediately after subdividing the property, ZP applied to DCRA for a raze permit, on February 24, to demolish the existing house. *See Exhibit C* attached hereto. DCRA issued the raze permit on May 6, 2010. *See Exhibit D* attached hereto. ZP then obtained two building permits to construct two single family homes on Lots 134 and 135. *See Exhibit E* attached hereto. A graphic depicting the subdivision and the surrounding area is attached as *Exhibit F*.

In addition to filing this appeal, four individuals claiming party status, Margaret Ernst, Frederick Jenny, Richard DeKaser, and Rebecca Rhames also filed a lawsuit in Superior Court against the District and sought injunctive relief concerning the approval of this subdivision and the issuance of the building permits. That lawsuit and request for injunctive relief were summarily dismissed by Judge Zeldon on August 20, 2010. *See Order of Judge Zeldon* attached hereto as *Exhibit G*.

SUMMARY OF THE ISSUES

In its appeal, Appellant asks the Board to find error in the Zoning Administrator's use of his authority under 11 DCMR § 407.1 to permit a minor deviation for Lot 134, because that deviation impaired the purpose of the Zoning Regulations. As to this question, it is the burden of the Appellant to prove that the subdivision creating one compliant lot and one substandard lot impaired the purpose of the Zoning Regulations and that the Zoning Administrator erred in his use of his discretion to find that the deviation did not impair the purpose of the Zoning Regulations.

In large part, Appellant argues that the houses ZP plans to build on those lots will be out of character with the neighborhood or that the houses themselves will impair the purpose of the Zoning Regulations, but this is not the issue before the Board. If the Zoning Regulations would permit the same construction as a matter of right if both lots were 5000 sq. ft., then the Appellant must demonstrate how the fact that Lot 134 is 92 sq. ft. undersize impairs the purpose of the Zoning Regulations. In other words, there must be a causal nexus between the missing 92 sq. ft. and the impairment of the purpose of the Zoning Regulations.

Appellant also argues that the approval of the subdivision violates 11 DCMR § 101.6. Specifically, Appellant believes that the subdivision is in violation of the rear yard (§ 404.1), lot occupancy (§ 403.2), and lot width (§ 401.3) requirements of the R-1-B zone.

ARGUMENT

1) The Zoning Administrator Did Not Err in His Application of Section 407.1

Appellant alleges that the Zoning Administrator's use of his discretion under § 407.1 to allow a minor deviation to create the subdivision was in error. The full text of 11 DCMR § 407.1 states:

The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirements of §§ 401 and 403 (minimum lot dimensions and maximum percentage of lot occupancy); and a deviation not to exceed ten percent (10%) of the linear requirements of §§ 404 and 405 (minimum rear yard and minimum side yard requirements); and a deviation from the requirements of § 406 (minimum court dimensions), not to exceed either two percent (2%) of the area standard or ten percent (10%) of the width standard; provided, that:

(a) A building shall be allowed to deviate from the requirements of no more than two (2) of the sections identified in this subsection; and

(b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.

See 11 DCMR § 407.1.

In creating § 407.1, the Zoning Commission gave the Zoning Administrator authority to permit minor or “de minimus” deviations from certain provisions of the Zoning Regulations. *See Zoning Commission Order no. 840* (February 23, 1998) at p. 1. The purpose of this rule was to alleviate the need for homeowners to seek a special exception or variance relief from the Board where requested relief was de minimus. After some deliberation, both the Office of Planning and the Zoning Commission determined that a 2% deviation from the lot area requirement of § 401 would be a de minimus deviation. *Id.* at p. 5, 8. The Commission entrusted the decision as to when such a de minimus deviation would be allowed to the Zoning Administrator’s discretion. *Id.* at 8. The Commission further stated that the creation of this provision was “in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act and is not inconsistent with the Comprehensive Plan for the National Capital.” *Id.* at p. 9.

Appellant first argues that the Zoning Administrator erred by failing to conduct an analysis as to whether the deviation would “impair the purpose of the otherwise applicable regulations.” This is simply not true. The Zoning Administrator did conduct an analysis and

considered several factors in approving the modification such as the existence of a building restriction line, the proximity to neighboring structures, that one lot would be compliant, that the substandard lot would be a corner lot, and the de minimus nature of the request. The Zoning Administrator did deem the request appropriate and that is all that the regulation requires. *See* 11 DCMR § 407.1(b).

While Appellant acknowledges that the law does not set forth any requirements as to what the Zoning Administrator must find or what steps he must take to approve a minor deviation, it nevertheless insists that he erred in doing so. That just does not make sense. Appellant also offers no explanation as to what “deemed by the Zoning Administrator” could mean if it does not mean that the matter is within his discretion to decide. If the Zoning Administrator has the sole discretion in making that determination, it cannot be said that he erred in applying the rule. Appellant’s dissatisfaction with the result of the Zoning Administrator’s determination does not constitute error.

Additionally, a review of the Board’s cases where the Zoning Administrator permitted a minor deviation shows that the Board has consistently deferred to the Zoning Administrator’s discretion. *See* Appeal No. 16679-A of Spring Valley Wesley Heights Citizen’s Association (2003) (side yard deviation); Application No. 16833 of TP2 LLC (2002) (deviation permitting roof top structure); Appeal No. 16764 of Darrel J. Grinstead (2001) (deviation from rear yard requirement); Application No. 16521 of Charles A. Sisson (2001) (side yard requirement deviation); Application No. 16472 of the Holy Christian Missionary Baptist Church for all People (1999) (rear yard set back requirement). Similarly, the Board has never demanded that the Zoning Administrator’s analysis be in any particular form or include consideration of any particular factors. In the one case where the Board found that the Zoning Administrator erred in

applying § 407.1, his error was that he exceeded his discretion. *See Appeal No. 16764 of Darrel J. Grinstead* at p. 16. In that case, the Zoning Administrator permitted an encroachment into the rear yard that exceeded the 10% that was in his discretion to allow. *Id.* That is not the case here.

Appellant also argues that the Zoning Administrator erred because his approval of the subdivision will in fact impair the purpose of the Zoning Regulations. Appellant states that this subdivision results in “extreme” overcrowding, that it “threatens the stability” of the area, and that it is “inconsistent with the comprehensive plan for the nation’s capital.” *See Appellant’s filing of September 21, 2010 (“App. 9/21”)* at p. 5, 8. These arguments are nothing more than a series of unfounded, hyperbolic statements. Appellant has not cited any case law or provided factual support for these allegations.

The proposed use of Lots 134 and 135 is for single-family dwellings. This use is permitted in and compatible with the R-1-B zone. *See 11 DCMR § 201.1.* Further, the proposed construction is entirely matter of right and complies with every requirement of the Zoning Regulations, including all set backs, lot occupancy, height, and parking. To that end, it is unclear how it could be said in good faith that this project impairs the purpose of the Zoning Regulations.

Additionally, Appellant’s attempt to connect the cutting down of trees or the construction of the homes to the subdivision approval is misplaced. First, ZP’s ability to remove trees from the site is in no way dependant on the approval of the subdivision. Second, when the Zoning Administrator wrote the November 19th letter, ZP had not yet submitted a building permit application or plans to build on those lots. As Appellant points out, ZP did not even own the property at the time. *See App. 9/21* at p. 10. Even after the building permit applications were submitted, the plans went through numerous reviews and revisions. Of course, the Zoning Administrator assumed that two single-family houses would be built on the site, but his decision

at the time was limited as to whether permitting Lot 134 to be of slightly substandard size would impair the purpose of the Zoning Regulations. When the plans to build on the subdivided lots were received by DCRA, it conducted a thorough review to ensure that the plans were fully compliant with the Zoning Regulations (and they are). Accordingly, ZP's plans to develop two single-family homes on Lots 134 and 135 are irrelevant to the question of whether the Zoning Administrator erred in approving the subdivision.

Further, Appellant's study of density in the neighborhood, is similarly irrelevant and without a legal basis. There is no limitation on density, or floor area ratio (FAR), for single-family dwellings in an R-1-B zone. *See* 11 DCMR § 402.4. Density is primarily only considered in zones where there is multi-family, commercial, or industrial development. *See* 11 DCMR §§ 402.4, 771.2, 841.1. The reason for that is in multi-family and commercial developments, an increase in the size of the building directly relates to the number people who will likely live or work in the building. Thus, regulating density for those uses is an effective way of regulating population overcrowding and all of its associated externalities (i.e. parking, traffic, etc.). None of that is true for a single family home, because the home, whether big or small, will only be used by one family. For that reason, the Zoning Commission has chosen to regulate single family homes by requiring set backs, limiting lot occupancy, limiting height, and requiring off street parking. *See* 11 DCMR §§ 400-406, 2101.1. The proposed development of Lots 134 and 135 complies with all of those provisions. Therefore, any consideration of density is irrelevant to this case.

Appellant also fails to connect the density calculations to any impairment to the purpose of the Zoning Regulations. Appellant calculates the proposed density of Lot 135 to be .78 FAR (or 78%) and the proposed density of Lot 134 to be .70 FAR (or 70%). *See* App. 9/21 at

Attachment 12. First, the Appellant ignores the obvious point that Lot 135 is a lot that exceeds the required lot size. Thus, it cannot explain how a lot with a density of .78 FAR is permitted as a matter of right, but a lot with a density of .70 FAR impairs the purpose of the Zoning Regulations. Additionally, the FAR calculations demonstrate exactly how de minimus the deviation actually is. If you recalculate the FAR of Lot 134 as a fully compliant, 5000 sq. ft. lot rather than a 4908 sq. ft. lot, the FAR drops only 1% from .70 to .69 FAR.

Appellant may object to the proposed houses having a third floor; however, a third story is entirely permitted as a matter of right in this zone. Under the regulations, any homeowner in an R-1-B zone can add a third floor a house without obtaining Board approval. See 11 DCMR § 400.1. This is even true for existing homes that sit on substandard sized lots, provided that home is under the maximum lot occupancy requirement. Perhaps Appellant feels that the houses with three stories undermine the purpose of the Zoning Regulations, but they are nevertheless permitted as a matter of right by those same regulations.

Accordingly, the Board cannot find that the Zoning Administrator erred in his application of § 407.1.

2) The Subdivision Does Not Violate Section 101.6

Appellant also argues that the approval of the subdivision violates 11 DCMR § 101.6, which states:

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.

See 11 DCMR § 101.6.

Essentially, Appellant argues that the Zoning Administrator should not have written his November 19th letter because there was an existing house located at 2910 Garfield Street, which

after the property is subdivided would sit in violation of the rear yard (§ 404.1) and lot occupancy (§ 403.2) requirements of the R-1-B zone.

First, it is important to clarify that the November 19th letter is a zoning determination letter. It did not create the subdivision, but rather indicated that the Zoning Administrator would approve such a subdivision if an application were presented to him. The lots were not subdivided until February 23, 2010, which is the date the plat was recorded.

It is common practice for the Zoning Administrator to write such letters, as they are a necessity to conduct business in the District. Without such letters, it would be nearly impossible for citizens of the District to buy, sell, or develop land, secure financing, obtain title insurance, or start a business. It is certainly reasonable and within the Zoning Administrator's discretion to give his assurance to a property owner that a project conforms to the Zoning Regulations before the owner proceeds to tear down his house. For the Board to find otherwise would create a very unpredictable and uncertain environment for land and business owners in the District.

Secondly, this argument is rather dubious as even Appellant admits that the razing of the existing house would remedy any alleged violations. *See* App. 9/21 at p.10. Further, it clear that ZP intends to raze the existing house and its actions since obtaining the November 19th letter confirm that. In the time since the subdivision was approved, ZP has obtained a raze permit, obtained building permits to construct the two new homes, and begun work.

Appellant also believes that Lot 135 violates the 50 foot lot width requirement of § 401.3. Appellant points out that a portion of the lot has a corner missing, which results in a width less than 50 feet. Appellant further states, "Using an appropriate methodology, the lot does violates [sic] the 50-foot lot width requirement of section 401.3 of the Zoning Regulations." *See Appellant's Appeal of June 3, 2010* ("App. 6/3") at p.4.

In this case, the Zoning Administrator, as explained in the November 19th letter, used the 10-foot interval method. Using this method, the Zoning Administrator found lot 135 to comply with § 401.3. *See Exhibit A.* The Appellant takes issue with the Zoning Administrator's methodology, but does not suggest an alternative or explain why the Zoning Administrator's methodology was inappropriate.¹

The Zoning Regulations do not dictate the method that the Zoning Administrator must use to calculate lot width. Accordingly, the Board has consistently held that, where multiple methods of calculation exist, it is within the Zoning Administrator's discretion to select a method so long as it is reasonable. *See Appeal nos. 15129 and 15136 of Richard B. Nettler on behalf of the Woodland Normanstone Neighborhood Association and Phil Mendelson on behalf of Advisory Neighborhood Commission 3C (1989)(consolidated); Appeal no. 17109 of Kalorama Citizens Association (2005).* Further, the use of the 10-foot interval method has been previously found by the Board to be "reasonable and consistent with the Zoning Regulations." *See Appeal no. 14649 of Advisory Neighborhood Commission 3G at p. 4 (1987).* Accordingly, the Zoning Administrator's decision to use the 10-foot interval method in this case was an appropriate and valid exercise of his discretion.

There is no doubt that the Appellant has articulated a sincere displeasure with the subdivision; however, where Appellant fails is in its attempt to connect that displeasure with a legal basis in the Zoning Regulations. For that reason, the Board must deny this appeal.

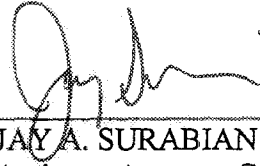
Respectfully Submitted,

PETER J. NICKLES
Attorney General
for the District of Columbia

¹ Ironically, in BZA Appeal no. 15136, Appellant (ANC 3C) argued that the Zoning Administrator erred because he *did not* apply the ten-foot interval method, the very method with which they now take issue. Appellant has offered no explanation for this inconsistency.

MELINDA M. BOLLING
General Counsel

September 29th, 2010



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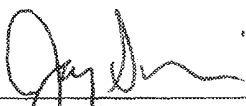
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Hearing Statement was served by first class mail and email, this 29th day of September 2010, to the following:

ANC 3C
c/o Richard DeKaser
2914 Garfield St., NW
Washington, DC 20008
rjdekasr@comcast.net

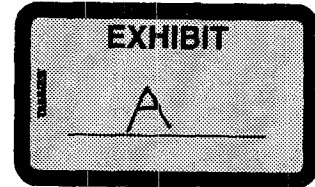
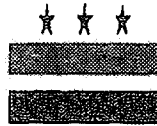
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Jay Surabian

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



November 19, 2009

By US Mail and Email PDF

Jeffrey Utz
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037

Re: Subdivision of 2910 Garfield Street, NW, Washington, DC (Square 2113, Lot 828) – Approval of Subdivision and Granting of Zoning Administrator Flexibility Provided Under Section 407.1 of the Zoning Regulations

Dear Mr. Utz:

The purpose of this letter is to confirm the matters discussed in our meeting on Friday, November 13, 2009, concerning the above-referenced subject. Specifically, the issues discussed were whether the Property can be subdivided into two (2) record lots and if the Zoning Administrator's flexibility described in Section 407.1 of the Zoning Regulations can be granted for lots within two percent (2%) of the minimum lot area threshold under Section 401.3 of the Zoning Regulations.

As you know, the R-1-B Zone District requires a lot area of 5,000 square feet and a minimum lot width of 50 feet. Your proposal shown on Exhibit A is comprised of Lot A which contains 5,045 square feet and a lot width of 51.9 feet and Lot B which contains 4,901 square feet and a lot width of no less than 65.31 feet.

The Zoning Administrator is authorized to permit a deviation not to exceed two percent (2%) of the area requirement of Section 401.3 provided that (a) a building shall be allowed to deviate from the requirements of not more than two (2) of Sections 401, 403, 404, 405 and 406 and (b) the deviation shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations. The configuration shown on Exhibit A satisfies both of these elements of Section 407.1 since you are not requesting any other area of deviation from the Zoning Regulations and since your request will not impair the purpose of the otherwise applicable Zoning Regulations. Therefore, the configuration shown on Exhibit A is approved as shown.

Further, the method of calculation of the width of Lot A on Exhibit A is approved. As you know, the required lot width may be met, in the case of an irregularly shaped lot such as Lot A, by an average width of lot calculation, as further described in this letter. Section 199.1 of the Zoning Regulations defines "lot width" as follows:

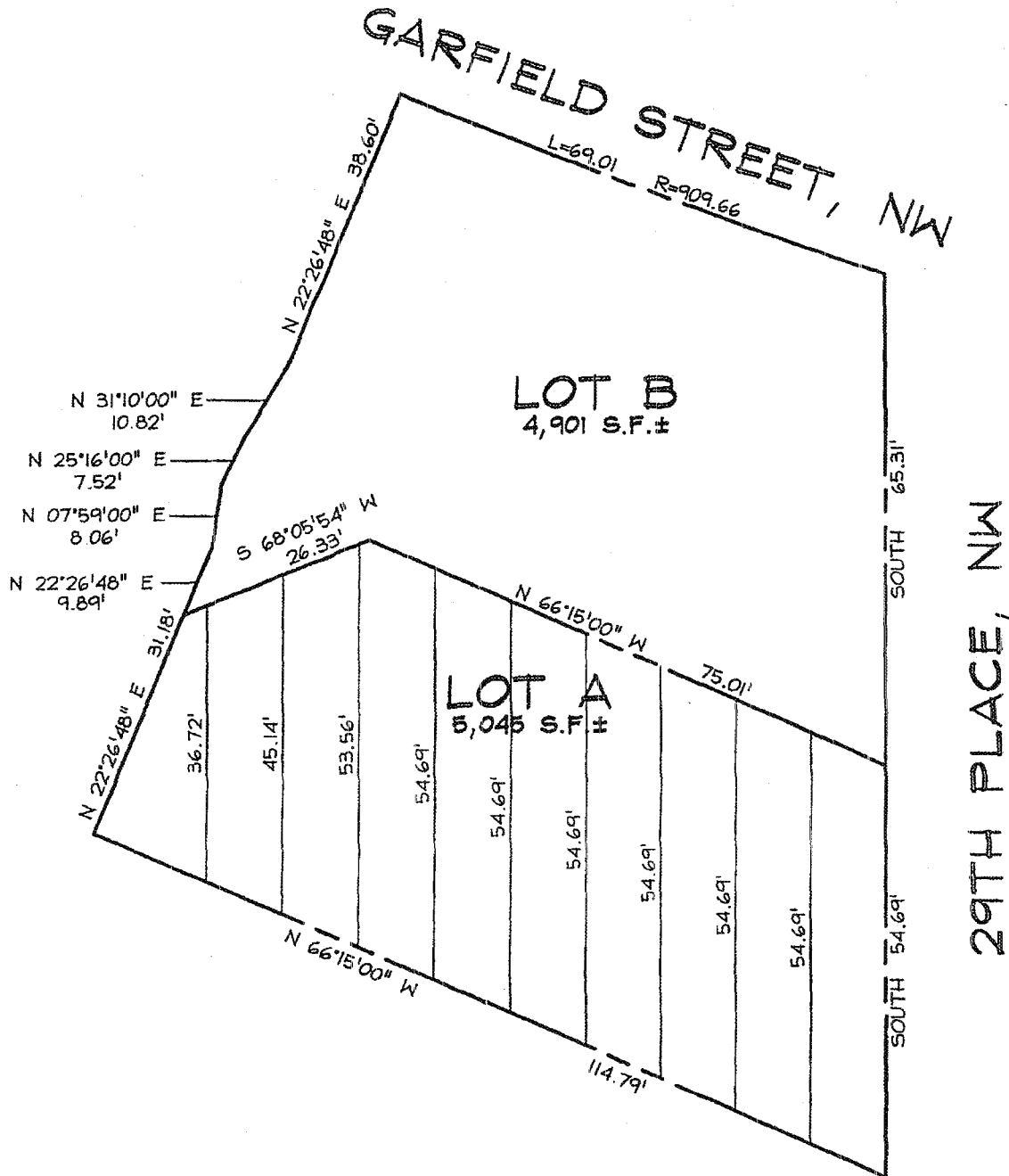
"the distance between the side lot lines, measured along the building line; except that, in the case of an irregularly shaped lot, the width of the lot shall be the average distance between the side lot lines...."

As a matter of standard interpretative practice, the Zoning Administrator has determined average width of lot by a method which (a) draws lines perpendicular to and intersecting the side property lines at ten (10) foot intervals, starting from and parallel to the front property lot line, (b) sums up the linear distance of drawn lines, and (c) divides the total linear distance by the number of lines drawn to arrive at the average width of lot. Further, the definition of lot width under Section 199.1 of the Zoning Regulations clearly defines lot width as "the distance between the *side* lot lines" (emphasis added). Therefore, additional ten (10) foot distance measurements are not required for portions of the lot that do not include side lot lines, such as the rear portion of Lot A.

If you have any questions about this matter, please do not hesitate to contact me.

Sincerely, Matthew Le Grant
Matthew Le Grant
Zoning Administrator

Exhibit A



AVERAGE INTERVAL METHOD

$$36.72' + 45.14' + 53.56' + 54.69' + 54.69' + 54.69' + 54.69' + 54.69' + 54.69' + 54.69' = 518.25$$

$$518.25 / 10 = 51.825$$

51.9 > 50 - THEREFORE, GOOD



ENGINEERING

CIVIL • SURVEYING • LAND PLANNING
 A DIVISION OF CAS ENTERPRISES, INC.
 108 West Ridgeville Blvd. Mount Airy, MD. 21771
 DC Metro (301) 607-8031 FAX (301) 607-8045

2910 GARFIELD STREET, NW
 LOT 828, SQUARE 2113
 SUBDIVISION CONCEPT SKETCH "A"

SCALE: N.T.S.
 DRAWN BY: DCL
 JOB NO.: 09-174

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful possession thereof, that there are no pending suits or actions that pertain to the property that pertain to any debts of said owner herein indicated their assets; and that there are no interests or claims affecting title to the property other than such debts of trust. The undersigned hereby subdivides Lot 103 and part of Lot 102, Square 2113 (Book 137 Page 170) into two lots and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

ZP 29th PLACE, LLC

STEVEN M. ZUCKERMAN, MANAGING MEMBER

[Signature]
[Signature]

Subscribed and sworn before me this 18 day of JANUARY 2010

[Signature]
Notary Public

7-14-2010
My Commission Expires

NUMBER OF TRUSTS: 2

ASSENT BY TRUSTEES:

[Signature]
[Signature]

SURVEYOR'S OFFICE, D.C.

Made for: KAREN MARTINO

Drawn by: L.E.S. Checked by: *[Signature]*

Record and computations by: B. MYERS

Recorded at: REC'D on FEBRUARY 23, 2010

Recorded in BOOK 204 Page 117 S.O. 05755

Scale: 1 inch = 30 feet

File No. 09-12672

OFFICE OF TAX AND REVENUE

I certify that the following statements relating to this subdivision are correct.

1. Ownership agrees with our records: 2/19/10

2. Real estate taxes are paid to: 3/31/10

3. There are no unpaid assessments: 2/19/10

[Signature]
Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-105.

[Signature]

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: R-1-B
Plan Granted 407.1 *[Signature]*
Zoning Administrator

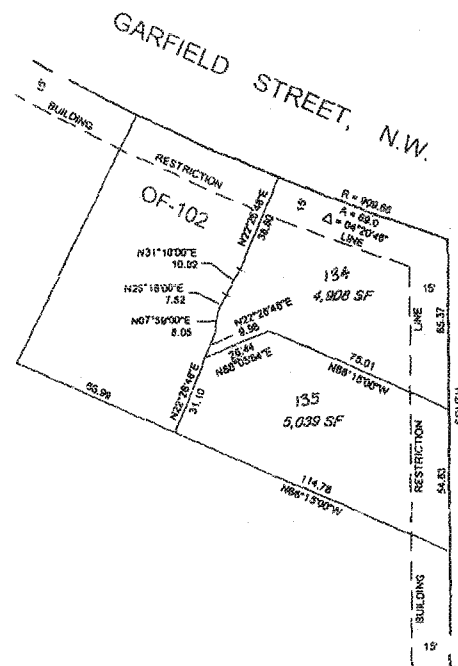
[Signature]
HISTORIC PRESERVATION

OFFICE OF THE SURVEYOR

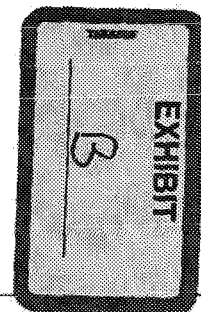
I certify that this plan is correct and is hereby recorded.

[Signature]
Surveyor, D.C.

SUBDIVISION SQUARE 2113



29th PLACE, N.W.





GOVERNMENT OF THE DISTRICT OF COLUMBIA

APPLICATION FOR RAZE PERMIT

Print Name

EXHIBIT

Application can be downloaded and is fillable except for signature area. If not filling out on computer, please print in ink. Please provide detailed information. Write N/A (non-applicable) for items that do not apply. Erase, white out, or otherwise altering any entered information will void this application. The owner of record must submit this application with an original signature.

Applicable code sections are in the 2008 DC Building Code Supplement Chapter 1 § 105.1.7, 105.1.7.1, 105.1.7.1.1, 105.1.7.1.2, 105.1.7.2, and Section 155A.

R10 000 54

Application Date: 2/24/10

1. INFORMATION ON PROPERTY					
1. Address of Proposed Work	2. Quad	3. Ward	4a. Square	4b. Suffix	5. Lot
2910 Garfield Street	NW	Three	2113		828

2. APPLICANT INFORMATION			
6. Property Owner	7. Complete mailing address (include zip)	8. Phone Number(s)	9. Email
ZP 29th Place LLC	6603 Glenbrook Rd. - Chevy Chase 20015	301-351-3552	
10. Agent/Contractor for Owner (if applicable)	11. Complete mailing address (include zip)	12. Phone Number(s)	13. Email
Mary Clute	4817 Bending Ln, NW - 20007	202-342-8222	maryclute@aol.com

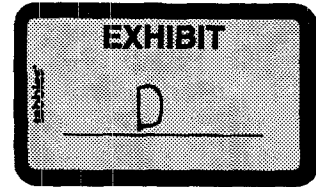
3. TYPE OF PERMIT	
14. Check all that apply: ☒ Raze Permit	

4. DESCRIPTION OF BUILDING			
15. Description of Building to be Razed (e.g., two story brick single family dwelling)	16. Existing Number of Stories of Bldg:		
3-story brick single family dwelling	3		
17. Use(s) of Property (specifically indicate if any use is residential.)	18. Materials of Building (brick, wood, etc.)		
Residential - SFD	brick and frame		
19. Bldg Length (ft)	20. Bldg Width (ft)	21. Bldg Height (ft)	22. Bldg Volume (cu ft) (L x W x H)
35'	40'	30'	42,000 cu ft

OFFICIAL USE ONLY	
CONDITIONS/COMMENTS:	

Department of Consumer and Regulatory Affairs

Permit Operations Division
1100 4th Street SW
Washington DC 20024
Tel. (202) 442 - 4589 Fax (202) 442 - 4862



R

RAZE PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO. R1000054

Date: 05/06/2010

Address of Project: 2910 GARFIELD ST NW				Zone: R-1-B	Ward: 3	Square: 2113	Suffix:	Lot: 0828
Description of Work: raze brick building				Bldg Vacant: Yes	No. of Bldg(s) 1	Raze entire Bldg.: Yes		
Permission Is Hereby Granted To Benjamin D Wood		Owner Address: 2910 GARFIELD ST NW WASHINGTON, DC 20008-3536		Length: 35 FT	Width: 40 FT	Height: 30 FT	Vol of Bldg.: 42000 CU.FT	PERMIT FEE: \$873.00
Building Material: Brick	Party Wall: No	Existing Use: Single Family Dwelling - R-3		Insurance Co		Insurance Policy No.:		Existing Units: 1
Raze Contractor:			Address:			Tel No.: 0 -		Lic No.:
Conditions/ Restrictions: Bldg inspection branch to be notified 24-hours before raze operation. Tel: (202) 442-4641. CONDITIONS: As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under the Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.								
Director: Linda K. Argo			Permit Clerk: Stacie Williams			Expiration Date: 05/06/2011		
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-4460 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557								

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

EXHIBIT

E

B

BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 08/12/2010

PERMIT NO. B1003591

Expiration Date: 08/12/2011

Address of Project: 2854 29TH PL NW		Zone: R-1-B	Ward:	Square: 2113	Suffix:	Lot: 0135
Description Of Work: NEW S.F.D, RETAINING WALLS AND PROJECTION.						
Permission Is Hereby Granted To: Zp 29th Place Llc		Owner Address: 6603 GLENBROOK ROAD CHEVY CHASE, MD 20815		PERMIT FEE: \$3,284.20		
Permit Type: New Building	Existing Use: Single Family Dwelling - R-3		Proposed Use: Single Family Dwelling - R-3		Plans: Yes	
Agent Name: Mary Clute	Agent Address: 4817 BENDING LANE N.W WASHINGTON, DC	Existing Dwell Units: 0	Proposed Dwell Units: 1	No. of Stories: 3	Floor(s) Involved:	
Conditions/ Restrictions: JOE SAID IT'S OKAY TO PUT ADDRESSES IN. This Permit Expires if no Construction Is Started Within 1 Year or if the Inspection Is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo		Permit Clerk: Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589 Fax (202) 442 - 4862

B

BUILDING PERMIT

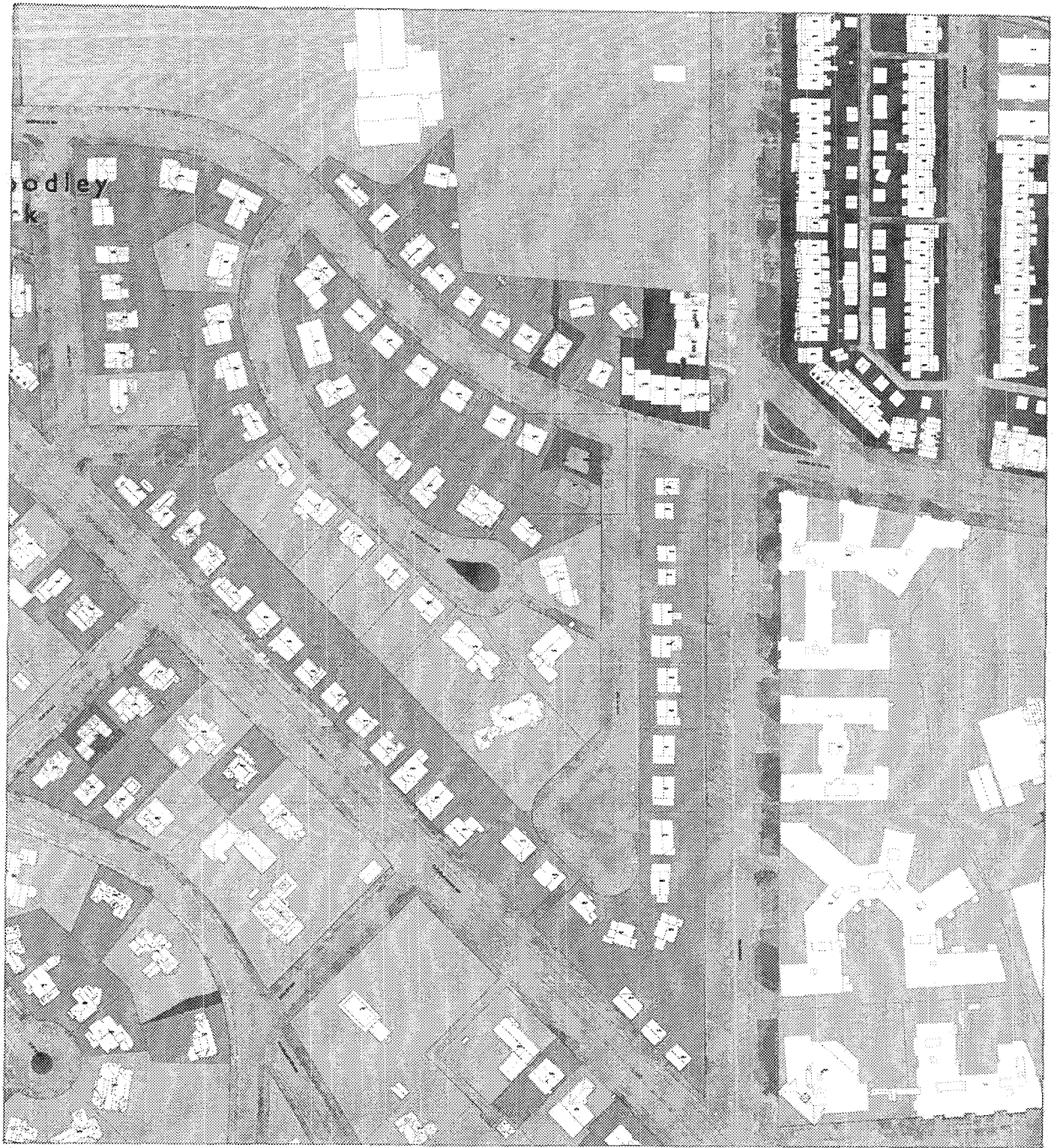
THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 08/12/2010

PERMIT NO. B1003592

Expiration Date: 08/12/2011

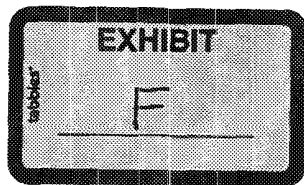
Address of Project: 2858 29TH PL NW		Zone: R-1-B	Ward:	Square: 2113	Suffix:	Lot: 0134
Description Of Work: NEW S.F.D, RETAINING WALLS AND PROJECTION.						
Permission is Hereby Granted To: Zp 29th Place Llc		Owner Address: 6603 GLENBROOK ROAD CHEVY CHASE, MD 20815		PERMIT FEE: \$2,099.11		
Permit Type: New Building	Existing Use: Single Family Dwelling - R-3		Proposed Use: Single Family Dwelling - R-3		Plans: Yes	
Agent Name: Mary Clute	Agent Address: 4817 BENDING LANE N.W WASHINGTON, DC	Existing Dwell Units: 0	Proposed Dwell Units: 1	No. of Stories: 0	Floor(s) Involved:	
Conditions/ Restrictions: This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.						
Director: Linda K. Argo		Permit Clerk: Stacie Williams				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						



Legend
Lots

COMPUTED_AREA_SF

- 0-4,000
- 4,000-5,000
- 5,000-6,000
- 6,000-10,000
- 10,000-50,000



Government of the District of Columbia
Adrian M. Fenty, Mayor

Department of Consumer and Regulatory Affairs
Linda K. Argo, Director



matthew.williams@dc.gov

2910 Garfield St NW

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

MARGARET M. ERNST, et al.,

Plaintiffs,

v.

DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS, et al.,

Defendants.

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Case No. 2010 CA 005006 B
Judge Zeldon



**ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
DISMISSING THE CASE ON THE MERITS**

On August 5, 2010, Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief containing two counts. In their first count, Plaintiffs allege that Defendants "have violated Chapter 27 of Title 10 of the District of Columbia Municipal Regulations ['Office of the Surveyor: Subdivision Regulations'¹] by approving a subdivision that violated the requirements of the Zoning Regulations without having followed the required variance procedures in those Subdivision Regulations." Pl.'s Amended Compl. ¶ 38. In their second count, Plaintiffs allege that Defendants "violated D.C. Code §§ 1-207.38 (d) and 1-309.10 by failing to provide Advisory Neighborhood Commission ['ANC'] 3C with notice of the proposed actions regarding the subdivision of the [p]roperty. . ." Pl.'s Amended Compl. ¶ 40. Plaintiffs also filed a Motion for Preliminary Injunction seeking relief in the form of a stay of any actions by Defendants that could result in the subdivision and development of the property pending entry of judgment in this case, including the issuance of building, razing, and tree removal permits.

During a hearing on the Motion for Preliminary Injunction on August 19, 2010, the District asserted that the Motion is moot because the building, razing, and tree removal permits

¹ Referred to hereinafter as "Subdivision Regulations."

all have been issued. Consequently, the District suggested that the case should be adjudicated on the merits. Agreeing with the District, Plaintiffs and Intervenor ZP 29th Place, LLC also asked the Court to resolve the dispute on the merits and not proceed with a preliminary injunction in light of the fact that the above-described permits have been issued. After discussion on the record, the Court agreed to resolve the dispute on the merits.

As for Count One of the Amended Complaint, the Court finds that the Subdivision Regulations do not supersede the Zoning Regulations in this case. The Subdivision Regulations specifically refer the reader to and incorporate the Zoning Regulations on lots as follows:

The size and shape of all lots on a plat of subdivision shall be appropriate as regards the location of the subdivision, and be the size and shape as to permit compliance with all requirements of the Zoning Regulations.

10 DCMR § 2716.1.

Defendants did not violate the Subdivision Regulations because the size of the lot is in compliance with the requirements of the Zoning Regulations, which expressly authorize the Zoning Administrator to permit a minor deviation, as defined in the Zoning Regulations. *See* 11 DCMR § 407.1. In this case, the Zoning Administrator, acting under 11 DCMR § 407.1, allowed the Intervenor to have what the Zoning Regulations characterize as a “minor flexibility” ruling.

With respect to Count Two of the Amended Complaint, the Court holds that D.C. Code § 1-309.10 (c) does not require notice to the ANC of a request for a deviation from the minimum lot area requirements of the Zoning Regulations pursuant to 11 DCMR § 407.1. Significantly, Plaintiffs’ counsel conceded that custom and practice under D.C. Code § 1-309.10(c) has been to

not give the ANC Commissions notice of a request to the Zoning Administrator for a minor flexibility ruling.²

Accordingly, it is this 20th day of August, 2010, hereby

ORDERED, that Plaintiffs' Motion for Preliminary Injunction is **DENIED AS MOOT**;
and it is

FURTHER ORDERED, that the case is **DISMISSED** for the reasons stated above.

Joan Zeldon 

Joan Zeldon
Associate Judge
(Signed in Chambers)

Copies by e-service to:

Cornish F. Hitchcock, Esq.
Attorney for Plaintiffs

Robert L. Dillard, Jr., Esq.
Attorney for Defendants

Leonard H. Freiman, Esq.
John T. Epting, Esq.
Attorneys for Intervenor ZP 29th Place, LLC

² William Kummings, an ANC Commissioner for the district in which the disputed property lies was present at the hearing, but was unable to cite to any authority that would require notice to the ANC of the request for a minor flexibility ruling. He also described how he was aware of the concern over the subdivision of the lot at issue in this case since April 2010 and that the ANC is now involved in the proceeding related to this case before the Board of Zoning Adjustment.