

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

Appeal of Van Ness South Tenants'
Association

Appeal No. 18151

DCRA'S POST-HEARING BRIEF

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits its post-hearing brief in response to Appellant's filing of March 28, 2011.

In its Post-Hearing Statement, Appellant attempts to reframe the issues of this appeal by stating that it need only show that units leased by the University of the District of Columbia ("UDC") are not being used as apartments. Appellant makes this argument after having failed to establish at the hearing that UDC is operating a rooming house or a dormitory as it had previously alleged. Appellant now seems to say that it does not know how the units are being used, but that it is sure that they are not apartments. The Board must reject all these arguments.

This appeal arises from Appellant's challenge to the August 13th building permit (B1009105) which permitted the construction of partition walls in 21 apartment units. These non-load bearing, partition walls were added to create an additional bedroom inside of each unit. Thus, in order for the Board to grant this appeal, the Appellant must establish that, in issuing the building permit, DCRA erred with respect to the Zoning Regulations.

The units leased by UDC were apartments both before and after the partition walls were installed. The construction of the partition walls did not change the use of the units. Further,

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even if UDC is operating a “rooming house” or a “dormitory,” those uses are permitted as a matter of right in an R-5-D zone. These facts have been clear since the outset of the appeal. Thus, despite its legalistic pretext, this appeal is at its essence a public airing of Appellant’s gripes about their new neighbors and their use of the building’s amenities. While these complaints may not be imagined, they are irrelevant to the question of whether DCRA erred in issuing the August 13th permit.

The fact is, Appellant has not and cannot meet its burden in this case. The addition of the partition walls did not change the size of the units, the exterior of the building, the total number of units, or the use of the units. Each unit remains a self-contained dwelling unit with its own kitchen and bathroom facilities for the use of the occupants of that unit only.¹ The only change is that the units now have an extra bedroom. Accordingly, the construction authorized by the August 13th permit has no impact on the Zoning Regulations. If the construction authorized under the building permit does not impact the Zoning Regulations, there can be no error. *See e.g. Appeal no. 18103 of ANC 8E*, Transcript of November 2, 2010 at p. 8.

Fatal to its own case, Appellant does not even argue that the construction is in violation of the Zoning Regulations. Rather, it focuses on the terms of UDC’s occupancy agreement. The Board should not consider the occupancy agreement as it is entirely irrelevant to the question of whether DCRA erred in issuing the building permit. The construction itself did not change the use of the Property. If under the occupancy agreement, the Property is now being used in violation of the Zoning Regulations, the partition walls are not a factor in that analysis.

¹ The Zoning Regulations define “Apartment” as, “one or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.” *See* 11 DCMR § 199.1.

That being said, the level of "control" Appellant demands the students must have over their units is not required by the Zoning Regulations. Rather, the Zoning Regulations use the phrase "exclusively for the use of and under the control of the occupants" to distinguish an apartment from a rooming house or a dormitory where the bathrooms and kitchens are shared. While the students living in UDC's apartments agree to various conditions of occupancy, the bathroom and kitchen of each unit is designed for the use of the occupants of that unit only. This is evidenced by the fact that the occupants of each unit can lock the door to the hallway, thereby excluding other residents of the building from using their bathrooms and kitchen. Again, the addition of the partition walls did not change that. Thus under the Zoning Regulations, UDC's apartments are no different than any other unit in the building.

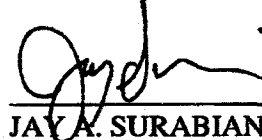
Accordingly, the Board must deny this appeal.

Respectfully Submitted,

IRVIN B. NATHAN
Acting Attorney General

MELINDA M. BOLLING
General Counsel

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JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department Of Consumer And
Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington, DC 20024
(202) 442-8403 (office)
(202) 442-9447 (fax)
jay.surabian@dc.gov

CERTIFICATE OF SERVICE

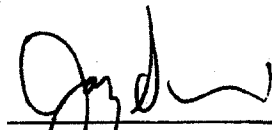
I hereby certify that a copy of the foregoing document was served by email, this 31st day of March, to the following:

Van Ness South Tenants' Association
c/o Karen Perry
3003 Van Ness St., NW, W-228
Washington, DC 20008
Karenperry2@juno.com

Allison Prince, Esq.
David Avitabile, Esq.
Goulston & Storrs, PC
2001 K Street, NW, Suite 1100
Washington, DC 20006
APrince@goulstonstorrs.com
Davitabile@goulstonstorrs.com

John P. Brown, Jr., Esq.
Greenstein DeLorme & Luchs, P.C.
1620 L Street, NW, Suite 900
Washington, DC 20036
jpb@gdllaw.com

Advisory Neighborhood Commission 3F
Anc3f@juno.com



Jay Surabian