

Exceptions and Detailed Statement

Background

At its March 22, 2010 public meeting, the Commission adopted technical corrections to Order No. 08-12A, originally issued on October 20, 2008 in a proceeding that approved a map amendment which rezoned Square 6239S, Lot 0021 from R-5-A zone which permits a 3 unit apartment use of 34 Galveston Place, S.W. to R-2 which does not permit a 3 unit apartment use of 34 Galveston Place, S.W.

As the Applicant in this Appeal, to the best of my knowledge the following facts support my request for a modification to the order dated April 19, 2013 that revokes the Certificate of Occupancy for my property.

On September 21, 2009, a deed was recorded on Square 6239S, Lot 0021 to Sameh Azzam.

Mr. Azzam purchased an "as-is" property in ill-repair and not inhabited from a bank. The property was not inhabited at the time of purchase although there may have been a Certificate of Occupancy No. CO68002 related to the property. It is not clear that the previous owners had completed all renovations required to change the building from the four unit apartment building to the two unit building for which Certificate of Occupancy CO68002 was granted. I am unaware of anyone actually lawfully living in the property at the time of purchase.

Mr. Azzam received approval of building permits to renovate the property at 34 Galveston Place, S.W. and in reliance on the approvals to renovate the property Mr. Azzam undertook to make substantial investments in bringing the property to a habitable condition.

Mr. Azzam has made substantial investments in renovating the property without altering the exterior structure or increasing the use of the property beyond its initially constructed use of 4 units.

Having relied on the approved building permits, which state the property is three units and permitted to renovate it to three units, he did not seek a determination of the Zoning Administrator as to the requirements for occupying and or renting the three units he has completely renovated at 34 Galveston Place, S.W.

Mr. Azzam was notified by letter dated April 19, 2013 that the Certificate of Occupancy CO1301521 was revoked effective sixty days of the date of service of the notice. This is his first actual notice of a change in the zoning of his property from R-5-A to R-2.

Under a separate letter Mr. Azzam will request a determination of the Zoning Administrator as to the requirements for using his property as a three unit apartment building. Pending such a determination of what is required to bring the property to market, Mr. Azzam requests that the Board of Zoning Adjustment grant all such relief that will permit him to occupy and rent the three units.

Specific Exceptions and notes

The Zoning Administrator's decision to revoke the Certificate of Occupancy for 34 Galveston Place, S.W., Square 6239S, Lot 0021, is an appealable decision, DC Code 6-641.07(f), Bannum, Inc. v. D.C. Bd. Of Zoning Adjustment, 894 A.2d 423(D.C. 2006) ("Bannum").

The Zoning Administrator erred in not recognizing that Mr. Azzam's may be a lawful nonconforming use of the property at 34 Galveston Place, S.W., Square 6239S, Lot 0021, D.C. Code §6-641.06a (2013).

Mr. Azzam is aggrieved by the notice to revoke certificate of occupancy dated April 19, 2013 and files this timely appeal on June 18, 2013, 11 DCMR §3112.2. Mr. Azzam is aggrieved by the revocation because it is unlawful to use any building, structure, or land until such certificate or permit be first obtained, DC Code §6-641.09(a).

Mr. Azzam recognizes, under 11 DCMR §3100.1 that the BZA has original jurisdiction to grant variances, special exceptions and exercise all other powers authorized by the Zoning Act. Therefore he requests that in response to his appeal the BZA, under 11 DCMR §3100.4 and D.C. Code §6-641.07(g)(4) , grant the appropriate relief for him to occupy one and/or rent no more than four-- and at the present time three apartments at 34 Galveston Place, S.W., Square 6239 Lot 0021.

Mr. Azzam alleges that the Zoning Administrator should be stopped from revoking the Certificate of Occupancy and asserts that he will provide evidence to support his estoppels argument at the hearing, *Bannum*.

Mr. Assam alleges that he will provide evidence to support the argument based on Laches that it is unfair to deny him the use of his property based on the recognition of a zoning change that occurred in 2008, at the time of his application for a Certificate of Occupancy in 2013, which zoning change was not recognized when he applied for a Building Permit in 2012.

Mr. Azzam seeks in the first instance the reversal of the Zoning Administrator's unjust and erroneous decision to revoke the issuance of a C of O by the letter of April 19, 2013. Alternatively, he seeks modification of the order to revoke such that he can rent and/or lawfully occupy the premises and secure his property pending additional administrative review of his proposed use--whether it be a use variance, a special exception, or a decision to overturn the Zoning Administrator's revocation of CO1301521.

Mr. Azzam notes that the Board shall hear and decide all appeals upon certain allegations, 11 DCMR §3100.2. Mr. Azzam alleges, under 11 DCMR §3100.2, that the Zoning Administrator's reliance on the Certificate of Occupancy No.CO68002 which was issued on December 30, 2003 is in error as a basis for denying the present Certificate of Occupancy because the Certificate of Occupancy issued in December 2003 was under a matter of right use for the R-5-A zone which attached to Square 6239S, Lot 0021. The property was not habitable upon purchase, having been purchase in an as-is condition.

To his knowledge, there were no zoning changes uniquely applied to his property at the time of purchase. He alleges that since the building permits were issued, if the Zoning Administrator seeks to

deny him the C of O as a matter of right, that the Zoning Administrator's Order on Revocation should be modified to grant Mr. Azzam a conditional Certificate of Occupancy, or a special exception or an appropriate variance or other relief such that he can bring to rent and or occupy the property.

Mr. Azzam alleges that it was in error to revoke CO1301521 when he substantially relied upon and complied with the Building Permits issued in 2012 which stated the property was three units and permitted the renovation of three units.

Mr. Azzam purchased the property from the Bank which took the property from the prior owners, in an as-is, condition. This is Mr. Azzam's first request for a Certificate of Occupancy for the property.

The Zoning Administrator erred in interpreting the Zoning Regulations to mean that a Certificate of Occupancy can be denied after a property owner properly and detrimentally relies on a Building Permit issued by the Department of Consumer and Regulatory Affairs. The equitable doctrine of estoppels requires that the revocation should not occur, even if the investment in three units, by this owner who intends to occupy one of the units, is not permitted as a matter of right.

The Zoning Administrator erred in not providing Mr. Azzam with the protections of an offer to modify the revocation, pending his request for alternative administrative relief.

The Zoning Administrator erred in not addressing the nexus between the building permits and the certificate of occupancy. The decision should be modified to remove the injustice of denying Mr. Azzam the ability to recoup his investment.

The Zoning Administrator erred in not grandfathering the Zoning designation with the result that a Zoning Change to a property in foreclosure works to the detriment of the purchaser. Mr. Azzam's property held an R-5-A zoning designation that attached to the property, from the time it was built through to the grant of the two unit Certificate of Occupancy that states the property is in an R-5-A Zone, through to the October 2008 Order in Z.C. 08-12 which was corrected in March 2010. The Zoning Commission decided to reduce the Zoning from R-5-A to R-2. To rely merely on the C of O as a basis for grandfathering as a matter of right after transfer of title. Under that logic, no more than 5 units are permitted and Mr. Azzam meets that standard in seeking to establish three units. To revoke Mr. Azzam's ability to develop his property into a three unit apartment, when the building permits in 2012 and the prior C of O were issued in an R-5-A zone in 2003, is an erroneous and capricious reduction in the value of the property Mr. Azzam purchased from foreclosure in 2009. Mr. Azzam seeks appellate review of the erroneous decision that Building Permits that provide for renovation of a property in an R-5-A zone are made worthless by a recent change to reduce the density of the use of the Housing stock to R-2 in a blighted 4 unit apartment building neighborhood where the housing stock has not changed structurally since the neighborhood was constructed in the 1940s.

Furthermore, under 11 DCMR §3100.2, Mr. Azzam alleges that it is unjust for the Zoning Administrator to revoke CO1301521 and penalize Mr. Azzam for detrimentally relying upon the grant of a Building Permit to install three units at 34 Galveston Place, S.W. Revocation of the C of O prevents Mr. Azzam

from recovering his investment in upgrading and improving the housing opportunities on Galveston Place, in Ward 8. Actually upgrading and improving the housing opportunities along Galveston Place is consistent with the Comprehensive Plan, where few, if any are investing in neighborhood stabilizing use of the existing structures.

Mr. Azzam purchased Square 6239, Lot 0021 in 2009. He notes that many of the properties surrounding his Apartment Building are of similar structure, and age, albeit in less than pristine condition. In addition, he notes that many of the apartment buildings are vacant and boarded up, and uninhabited. Mr. Azzam has spent a considerable sum to make his property habitable and rentable. He alleges that strict application of the D.C. Official Code to deny him the Certificate of Occupancy initially approved, or to deny him a Conditional Certificate of Occupancy, or to deny him a variance or to deny him a special exception would result in a peculiar and exceptional practical difficulty and an exceptional and undue hardship on him, 11 DCMR §3103.2. He is not a developer with deep pockets and cannot economically sustain the expenses of a building he cannot inhabit or rent. The variance for using the property as three apartments, provides Mr. Azzam with the ability to live in and protect his property from those occurrences that diminish the value of vacant properties. Mr. Azzam would like to avoid the hardship of having to make vandalism based repairs to a property that already has initial interest from renters seeking housing. Mr. Azzam seeks any and all expedited relief and modification of the Zoning Administrator's April 19, 2013 Notice so that he can protect his property and gain financial assistance in paying his making mortgage payments.

Mr. Azzam states that the Board may provide, under 11 DCMR §3103.2, the relief of permitting a permanent or conditional Certificate of Occupancy, or a use Variance or a special exception can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. As stated earlier, Mr. Azzam's investment is turning around a blighted neighborhood. Through his sweat and financial equity he is substantially improving, rather than impairing the intent, purpose and integrity of the zone plan. The requested relief can be granted without substantial detriment to the public good, because his street light and presence of additional renters substantially improves the neighborhood.

Mr. Azzam understands that under 11 DCMR §3180.1(f) the fee for filing an appeal of a decision of the Zoning Administrator is \$1040.

Mr. Azzam has authorized Mrs. Amal Azzam to represent him under 11 DCMR §3106.1 (see attached letter).

Finally, under 11 DCMR §§3100.5 and 3100.6, Mr. Azzam requests that the Board waive any of the provisions which he may have missed, and provide him an opportunity to correct or amend this timely filed appeal.

Earlier today, I have requested (1) a Conditional Certificate of Occupancy and (2) a determination on the use of 34 Galveston Place, S.W., Square 6239, and Lot 0021 as a three (3) unit apartment building.