

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

Appeal of John Stokes

BZA Appeal 18991

DCRA'S MOTION TO ACCEPT DCRA'S SEPTEMBER 9 FILING AS TIMELY FILED

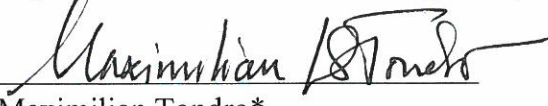
DCRA apologizes for the late filing of its proposed Findings of Fact and Conclusions of Law on September 9, 2015, required to be submitted by September 8, 2015. This was due to a health emergency in the family of the DCRA Counsel.

Therefore, DCRA respectfully requests that the Board grant this motion to accept DCRA's September 9, 2015 filing of its proposed Findings of Fact and Conclusions of Law as timely filed.

Respectfully submitted,
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General Counsel
Department of Consumer and Regulatory Affairs

Date:

9/9/15


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DCRA'S 3rd PRE-HEARING STATEMENT

Appellant alleges that the Zoning Administrator (the “**ZA**”) erred in approving Building Permit B1411058 (issued on December 23, 2014) as revised by (i) Building Permit B1503050 (issued on December 31, 2014) to correct an error in the scope of work and (ii) Building Permit B1506179 (issued on June 25, 2015) to correct several minor errors - the setback of the rooftop stairway penthouse; the calculation of the pervious surface provided; and an extension of an existing party wall by ten feet that created an encroachment on Appellant’s property - (collectively with B1411058 and B1503050, the “**Permit**”) for the conversion of 1521 Varnum Street, N.W. (the “**Property**”), located in a R-4 zone district, from a single family dwelling to a seven (7) unit apartment building.

DCRA asserts that the ZA properly reviewed the building permit application and correctly approved the Permit. When the ZA determined that the issued permit appeared to authorize a minor violation of the Zoning Regulations, the ZA imposed a Stop Work Order (“**SWO**”) until the owner of the property (the “**Owner**”) submitted plans that complied with the requirements of the Zoning Regulations and received a revised building permit for those plans. Therefore, DCRA respectfully requests the Board of Zoning Adjustment (the “**Board**”) to affirm the ZA’s approval as correct and deny this Appeal.

ARGUMENT

The Appeal is without merit as the Permit complies with the Zoning Regulations

DCRA asserts that the plans approved by the Permit (the “**Approved Plans**”) comply with each of the provisions of the Zoning Regulations that Appellant has alleged are violated. DCRA has attempted to address what it believes are Appellant’s allegations, as follows:

1) “Minor flexibility” (Appellant’s titles 1 and 2)

Under Section 330.5(e), the Owner as a matter of right can convert the existing house to a six-unit apartment house, since the Property is 6,279 square feet¹, well over the 5,400 square feet required by Section 401.3’s minimum 900 square feet per unit. Since the Property is just 21 square feet shy of meeting the minimum lot requirement for a seventh unit, the Owner requested that the ZA grant minor flexibility under Section 407.1, which permits a deviation of up to two percent (2%) from the lot requirements of Section 401.3.

In reviewing the Owner’s request for minor flexibility, the ZA recognized that the request would not change the overall size or scale of the conversion, which is not determined by the number of units but by other standards, including lot occupancy, building height, required yards, etc. Instead, the ZA considered the effect of the addition only of the seventh unit. In his August 11, 2014 letter (“**ZA Letter**”) granting the requested flexibility, the ZA specifically recognized that the

“primary purpose of the R-4 District shall be the stabilization of remaining one-family dwellings. The granting of the deviation in this case will not impair the purpose of the R-4 District, since an addition and a conversion to a six-unit apartment house is already permitted as a matter-of-right on the Property.”

BZA Appeal 18991, Exhibit 24, at 3.

The ZA determined that in light of the extremely small deviation requested (0.33% of a possible 2%) and given that it would not impact the building size or mass and would only add one additional unit, that granting minor flexibility would not “impair the purpose of the *otherwise applicable regulations*”, as required by Section 407.1(b) (emphasis added). The italicized words make it clear that the regulations referred to are not the entire Zoning Regulations, but rather to the specific sections from which requirements Section 407.1 authorizes the ZA to permit deviations – in this case, Section 401’s minimum lot size.

¹ Although the District Office of the Surveyor (“**Surveyor**”), charged with creating and measuring lots of record used by the Zoning Regulations, calculated the Property as consisting of 6,284 square feet in the subdivision that created this record lot (S.R. 14-07817, recorded at Book 209 at Page 48 in the Surveyor’s records), the Owner opted to use the slightly smaller 6,279 square feet calculated by the District Office of Tax and Revenue (“**OTR**”) (recorded at A&T Book 50 at Page 3849-J in the Surveyor’s records). Since OTR’s smaller number was used by the ZA in reviewing the building application and request for minor flexibility, this brief will use the 6,279 square foot number.

Appellant alleges that the ZA's grant of minor flexibility impaired diverse sections of the Zoning Regulations, but not that it impaired the purpose of the minimum lot size requirements of Section 401. Even if Section 407.1(b) was rewritten to apply to the entire Zoning Regulations, the ZA's granting of minor flexibility did not impair their purpose. Appellant's assertion that the grant of minor flexibility impaired the purpose of the R-4 zone as expressed in Section 330 overlooks the fact stated in the ZA Letter that the Owner had the right to convert the Property to a six-unit apartment house even if the ZA denied the minor flexibility request.

2) Second Building (Appellant's title 2a)

There is only one building on the Property, which shares the same stairwell, walls and roof as shown by the Approved Plans as is clearly illustrated by Sheets A202-205 of the Approved Plans.² The Zoning Regulations define a building as not "separated [*i.e.*, connected] from the ground up or from the lowest floor up". 11 DCMR 199.1, "Building". The Board has held that

"the definition of "building" under § 199.1 permit separate portions of a structure to be considered as a single building for zoning purpose provided that a communication exists between those separate portions at or above the main floor."

BZA Application No. 18263-B of Stephanie and John Lester (2011).

The building as shown on the Approved Plans clearly meets this definition of a single building. Therefore there is no merit to this allegation by the Appellant.

3) Response to Appellant's Submission of "Peer Review Findings" ("PR")

DCRA was not served or notified of the filing of this exhibit. DCRA asserts that the allegations contained in this PR are without merit for the following reasons:

PR Note 1 – "Plat includes extraneous information" because it is a "roof view" and so not the "development footprint"

DCRA – Section 3202.2(b) only requires that a plat show the structures on the lot, the parking spaces and any "other information necessary to determine compliance." This is the only provision in the Zoning Regulations governing the submission of plats for

² BZA Appeal 18991, Exhibit 43A, at 10-13 (A202-205).

a permit application. Any asserted violation of a Building Code requirement is outside the jurisdiction of the Board, with appeals of alleged Building Code violations required to be made to the Office of Administrative Hearings.

PR Note 2 – extension of party wall by Project creates an encroachment of 5.625 inches by 10.3 feet on Appellant’s property

DCRA – This inadvertent encroachment of 4.8 square feet was corrected in the Approved Plans, and Appellant was notified of that correction. BZA Appeal 18991, Exhibit 50 (A001, A201, A202, A203).

PR Notes 3 & 7 – insufficient dimensions for confirmation of compliance with the Pervious Surface requirements of Section 412

DCRA – the Approved Plans specifically call out the areas that are pervious surface as landscape and pervious pavers. The ZA confirmed the stated previous surface by calculating the square footage based on the scale of the Approved Plans, just as the ZA confirms the gross floor area and other requirements on applications. BZA Appeal 18991, Exhibit 43A, at 2 (A001).

PR Note 4 – eastern and western walls of rooftop stairway penthouse are insufficiently set back and should be set back at least eighteen feet, six inches (18 ft., 6 in.) per Section 400.7

DCRA – Section 400.7(b) only requires that rooftop stairway penthouses be set back at least the height of the penthouse above the roof, not eighteen feet, six inches (18 ft., 6 in.) which is the maximum height allowed for a rooftop penthouse. The Project’s rooftop stairway penthouse is eight feet, six inches (8 ft., 6 in.), and the Approved Plans show that the penthouse is set back that same distance from the western wall of the building. BZA Appeal 18991, Exhibit 50 at 4 (A203).

Section 400.7(b) does not apply to the eastern wall of the rooftop stairway penthouse because the eastern wall is not an “exterior wall” as it does not face onto a required yard or street or alley, but is a lot-line wall.

PR Note 5 – granting of “minor flexibility”

DCRA – see discussion at page 2 above.

PR Note 6 – rooftop mechanical equipment is located outside of the rooftop penthouse structure and in two locations

DCRA – by long standing practice rooftop mechanical equipment that is below four feet high has not been required to be included in the single rooftop penthouse under Section 411.17's exclusion of rooftop structures less than four feet above a roof or parapet wall from the other requirements of Section 411.

PR Note 8 – Project fails to comply with the Green Area Ratio (“GAR”) requirements of Section 3400

DCRA – Section 3401.2 explicitly excludes the R-4 zone district, and all lower-density zone districts, from the GAR requirements, because these lower-density residential zone districts are instead subject to the Pervious Surface requirements of Section 412.

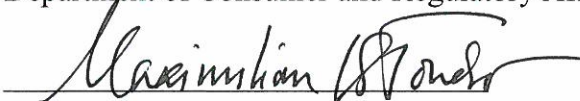
DCRA therefore asserts that none of the PR allegations have merit.

CONCLUSION

For the reasons stated above, DCRA asserts that the allegations stated in the Appeal are without basis and that the Appeal therefore fails to establish a valid reason to overrule the ZA's approval of the Permit. DCRA therefore respectfully requests that the Board affirm that the Zoning Administrator correctly applied the Zoning Regulations to evaluate and approve the Permit and so deny the Appeal.

Respectfully submitted,
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Date: 9/9/15


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CERTIFICATE OF SERVICE

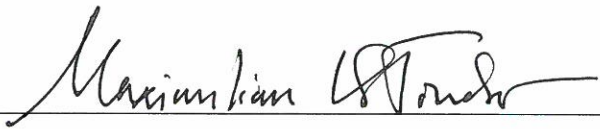
I hereby certify that on this 9th day of September, 2015, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

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