

April 24, 2015

Dear BZA members;

We hereby appeal to the BZA to review building permit B1400387 and issue an order to revise the permit to ensure compliance with DC zoning regulations, per title 11 DCMR Zoning Regulations, 3001.2. This building permit was issued on 12/10/2014 for the following scope of work:

Convert from Assembly to Retail/Office/Residential (4) Units and small 2nd story/partial carriage house addition for "Home Office". Renovate interior of existing building raising ceiling to height of front facade, restore exterior front facade, remove dura stone covering masonry facade and restore stucco, restore theater sign and kiosk, extend existing roof to rear of building, remodel rear garage, new masonry wall on north rear of property. [source ZA website <http://pivs.dcrd.dc.gov/OBPAT/Default.aspx>; see exhibit 2]

In our argument below we:

- First highlight the impact of the grief caused;
- Second, we make the case for appealing after the deadline of 60 days; and
- Third, we detail the allegations of errors in the decision.

I. Grief

The grieved permit is resulting in a three story building that is much larger than the zoning regulations intended and exceeds anything that is being built around it; overwhelms the back gardens of the neighbors; invades their privacy; reduces their light; causes a fire hazard due to the size and proximity. See pictures below and exhibit 76 of March 30 2015 filed by the neighbors in ZA case 18884. The building is now larger than the 5 houses of the protesting neighbors combined !





- II. Appeal deadline; Please see Title 11 DCMR 3112.2 (d) “The Board may extend the sixty- (60) day deadline for the filing of an appeal only if the appellant demonstrates that:(1) There are exceptional circumstances”

3112. (d) (1) refers to an “exceptional circumstances that are outside of the appellants control”. The most important of these circumstances is the issuance of the Memorandum from the ZA on April 10th, 2015 to the Office of Planning request for clarification of the permit. In this Memorandum the error in calculation of FAR was finally clarified by the ZA. Since the appellants have already asked for review and denial of the permit several times before the 60 day deadline, (SEE EXHIBIT #3), this exceptional new information outside of our control justifies an extension to the 60 day deadline in our opinion. 3112.(d)(2) notes that “extension of time will not prejudice the parties to the appeal” which this item does not.

Furthermore the above permit summary description is part of a complex set of permits that is very ambiguous and confusing to the neighbors. See exhibits 1 and 2. The permit summary describes the work as **extending the roof**. The permit summary also describes the work as **raising ceilings to the height of front façade**. The roof in place before the rebuilding commenced was two stories high in the front—in line with the front façade as mentioned in the permit— but downward sloping. In the picture above this is the wall made of grey blocks. The original building is the brick wall.

It was logical to interpret this summary to imply a permit to raise the building from one-two stories to two stories, i.e. to flatten out the roof.

Indeed all the initial work implied that the roof was only raised to that level.

Only after an inspector of DCRA—Mr. Reuben Legaspie was called in to address our concerns that the building was being expanded to the third floor, and met with Mr. Mulder and went on to inspect the building on February 27 at about 1 pm, did it become clear that the permit was more extensive. Immediately thereafter and after consulting with neighbors over the weekend, Mr. Mulder wrote on March 2 to DCRA to request a review of the permit—see exhibit 3. The review was immediately assigned to Mr. Reid, but we were never contacted with the results of the review—if any—despite repeated phone calls. We are still awaiting a response to the review. It is also important to note that on previous occasion the neighbors wrote to Mr. Le Grant requesting a thorough review of the FAR calculations.

However, only on April 10 did Mr. Le Grant issue a Memorandum to Mr. Lawson associate director DC Office of planning, posted on the BZA website for case 18884, where he admits in essence that the permit was granted in error (not in line with zoning regulations)—see in section III.

Upon learning this NEW information, we file for this appeal. At present the third floor is naught but a simple plywood structure over metal beams that are bolted in place on top of the second floor. We therefore call on the BZA to urgently hear the case to rescind the permit.

III. Errors made in issuing the permit

1. The permit includes a large scale increase in square footage that is in excess of what is allowable. In his letter of April 10 Matthew LeGrant (ZA case 18884 exhibit 78; attached as Exhibit 3), he states that “the provision does not allow for additional floor are by multiplying 672 square feet by the permitted 2.5 FAR in the C-2-A zone, as has been done by the applicant”. 2514.1.(d) only allows for the transfer by right of 672 square foot from the back lot (the square footage in the 35 foot area behind the building). The permit plans are based on transferring 2.5 times 672 square foot and is thus clearly issued in error.
2. The current building could be regarded as conforming (as it is not mix use, but only a store/misc.) but the proposed mixed use would make it non-conforming--the theater will be used for residence/office/retail. Such mixed use building are regulated by 772.1 which limits lot-occupancy to 60%, whereas it currently is about 97% of the Lot. The building should be partly demolished and reduced in size to 60% of the lot to permit mixed use. The permit allows the expansion of the current building, from 97% of lot coverage to over 100% of the C-2-A lot and the square footage is significantly being expanded. Both violates 2001.3-- which makes it a non-conforming building that should not be expanded. The permit is thus clearly issued in error on these ground as well. ²In legal terms we argue here that 2001.3 trumps 2514. Logically 2001.3 should trump: If a building cannot be expanded because it (would) violate(s) the regulations, then the legally desired situation—that of a conforming building should be taken as the starting point for calculating the transfer/the total FAR after the transfer. Not the non-conforming structure. ¹

¹ 772.1 In a Commercial District, no building or portion of a building devoted to a residential use, including accessory buildings but excluding hotels, shall occupy the lot upon which it is located in excess of the percentage of lot occupancy in the following table:

ZONE DISTRICT	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
C-1	60%
C-2-A	60%
C-3-A	75%
C-2-B, C-2-C	80%
C-3-B, C-3-C, C-4, C-5 (PAD)	100%

3. If the building is treated as a single building—which is under discussion as part of BZ case 18884—including both the residential and the commercial lot, the proposal would still be in excess of the allowable square footage.
4. Note that the front building allows for 4 residences ! In addition Bell proposes to use the rear as a residence. Bell claims that he is exempt from creating parking spaces. The relevant regulation 2120.3 clearly stipulates that building in historic districts are exempt from **additional** parking spaces: it does not stipulate that current parking can be removed that is needed for current uses. The current lot was used as a parking lot for decades until recently when the building was vacated for the renovation. The lot provides for about 7-9 parking spots, including three in the carriage house and one in the corrugated iron structure. ⁴
5. The permit assumes that the current party wall is partially owned by Bell/LLC 1351 which is not correct. The building should not be allowed to attach to the neighbor's wall for fire reasons.

⁴ 2120.3 A historic resource and any additions thereto are exempt from the requirement of § 2100.4 to provide additional parking as a result of a change of use and from the requirement of § 2100.6 to provide additional parking as a result of an increase of intensity of use, except that parking shall be required for any addition where:

(a) The gross floor area of the historic resource is being increased by 50% or more, and

(b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

Exhibit 1. Screen shot of permit request for Wisconsin Avenue 1351

Note that there are a confusing large set of permits requested for Wisconsin Avenue 1351; extremely confusing for the neighbors.

Search By:

Application ID
Property Address

Enter the Property Address to review Application Status:

St. No.*
1351

St. Name*
Wisconsin

St. Suffix*
Avenue

Quad*
NW

Find

Application Status by Property Address:

Please see the table below for review statuses. The table is not shown if the reviews have not been identified. A blank Status date means that the initial review has not been completed.

ApplicationID	Date Filed	Full Address	Agent Name	Phone Number
B1506452	4/14/2015	1351 WISCONSIN AVE NW	KAREN TRIMM	202-333-8412
F1500200	3/10/2015	1351 WISCONSIN AVE NW	KAREN TRIMM	202-333-8412
F1500165	1/29/2015	1351 WISCONSIN AVE NW	1351 LLC ROBERT BELL	202-333-8412
SH1500024	1/29/2015	1351 WISCONSIN AVE NW	1351 LLC ROBERT BELL	202-333-8412
B1501575	11/13/2014	1351 WISCONSIN AVE NW	1351 LLC ROBERT BELL	202-333-8412
SC1400157	9/8/2014	1351 WISCONSIN AVE NW	1351 LLC ROBERT BELL	202-333-8412
B1410922	8/13/2014	1351 WISCONSIN AVE NW	MICHELE MILLER	703-946-9512
B1409141	6/30/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
B1409146	6/30/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
FD1400121	6/30/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
D1400567	6/12/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
F1400430	6/12/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
RW1400082	4/9/2014	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
B1400387	10/10/2013	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412
B1001222	11/16/2009	1351 WISCONSIN AVE NW	K.C. PRICE	202-333-5150
SG1000039	11/16/2009	1351 WISCONSIN AVE NW	K.C. PRICE	202-333-5150
B1001221	11/16/2009	1351 WISCONSIN AVE NW	K.C. PRICE	202-333-5150
SG1000038	11/16/2009	1351 WISCONSIN AVE NW	K.C. PRICE	202-333-5150
B1000000	8/4/2004	1351 WISCONSIN AVE NW	ROBERT BELL	202-333-8412

Exhibit 2. Description of permit B1400387 is very complex and confusing

Discipline	Review Status	Status Date	Review Comment	Reviewer Name	Reviewer Email
Zoning Review	Zoning Review - HFC	12/06/2013	plans not submitted to file room for routing and review.	Kathleen Beeton	kathleen.beeton@do.gov
Zoning Review	Zoning Review - HFC	10/02/2014	[1] please apply for a record lot number for tax no. 311 at the dora surveyor's office. this is a process of changing from a tax lot to a record lot. provide the "ordered lot of record" stamp on all plats that were originally submitted, [2] complete a zoning data summary form, [3] provide exact use for cellar and first level, [4] label exact are for the new 3rd floor on dora plat and site plan, [5] provide section showing roof top rtu's height of no higher than 3'11" or compliance pursuant to chapter 4, section 411 will be required, [6] the 2-story garage may not be expanded pursuant to 2600.6 or use as a residential unit without relief from the board of zoning adjustment. please address the comments and return submission to aaron easterling, 3rd party coordinator.	Jeannette Anderson	jeannetteb.anderson@do.gov
Zoning Review	Zoning Review - HFC	10/03/2014	two whom it may concern, one additional comment added, and do have a determination letter. [1] please apply for a record lot number for tax no. 311 at the dora surveyor's office. this is a process of changing from a tax lot to a record lot. provide the "ordered lot of record" stamp on all plats that were originally submitted, [2] complete a zoning data summary form, [3] provide exact use for cellar and first level, [4] label exact are for the new 3rd floor on dora plat and site plan, [5] provide section showing roof top rtu's height of no higher than 3'11" or compliance pursuant to chapter 4, section 411 will be required, [6] the 2-story garage may not be expanded pursuant to 2600.6 or use as a residential unit without relief from the board of zoning adjustment, [7] residential lot occupancy is limited to sixty (60) percent in the o-2-a/r-3 zone, and [8] please address the comments and return submission to aaron easterling, 3rd party coordinator.	Jeannette Anderson	jeannetteb.anderson@do.gov
Zoning Review	Zoning Review - HFC	10/20/2014	previous comment not addressed: [1] apply for a subdivision to convert (a) tax lot no. 311 to a record lot, do not forget to provide the "lot of record ordered" by the surveyor's office on all existing plats, and [2] provide historic parking waiver.	Jeannette Anderson	jeannetteb.anderson@do.gov
Zoning Review	Zoning Review Approved	10/22/2014	(o-2-2/r-3/georgetown/historic) convert from assembly to retail/office/residential (4) units and small 2nd story/partial carriage house addition for "home office". renovate interior of existing building raising ceiling to height of front facade, restore exterior front facade, remove dura stone covering masonry facade and restore stucco, restore theater sign and clock, extend existing roof to rear of building, remodel soanned plats/za letter. no additional parking required.	Jeannette Anderson	jeannetteb.anderson@do.gov

Electrical Review	Electrical Review - HFC	11/26/2013	application and plans not submitted for routing and review.	Michel Mba	Michel.mba@do.gov
Structural Review	Structural Review - HFC	06/27/2014	this project was submitted for zoning early review only. tpr agency has not finished the review.	Ernesto Warren	ernesto.warren@do.gov
Structural Review	Structural Review - HFC	11/06/2014	respond to the following comments in compliance with the domr title 12 supplement of 2008 and the international building code (ibo) 2008. 1) notification letter and a set of the proposed third story addition plans sent via us postal registered mail system to the adjoining property owner per domr title 12 section 3307a. submit copy of the notification letter and the us postal certified mail delivery receipt to the code official. see attached a notification sample letter. domr 12 3307a 2) the proposed project is a third story addition; whereas, the building underpinning (b1408148) was approved for two-story. provide structural calculations and verify the approved underpinning can adequately support the proposed third story addition. incorporate findings in the geotechnical report the calculations shall be original seal and signature of a professional engineer licensed in d.o. domr 108.1.4.1. 3) remove all openings, door and window, on the south wall, as they are on the party line, or less than five feet from the party line. ibo 704.3 note: submit a comment/ response letter along with the revised plans.	Benjamin Johnson	benjaminf.johnson@do.gov
Structural Review	Structural Review Approved	12/10/2014		Benjamin Johnson	benjaminf.johnson@do.gov
DDOE Review	DDOE Review Approved	12/10/2014			
DDOT Review	DDOT Review N/A	08/28/2014	all work in public space requires a separate public space permit	Bill Bohoon	Bill.Bohoon@do.gov
WA&A Review	WA&A Review Approved	12/10/2014	complete	Justin Bellow	Justin.Bellow@do.gov
HPRB Review	HPRB Review Approved	04/18/2014		Tim Dennee	timothy.dennee@do.gov
CFA Review	CFA Review Approved	04/18/2014		Tim Dennee	timothy.dennee@do.gov
Green Review	Green Review Approved	06/08/2014	geo does not apply transition	Kimberly Newoomer	Kimberly.newoomer@do.gov
DDOE W&P Review	DDOE W&P Review Approved	12/10/2014	gar exempt- historic landmark (exemption form completed)		
Issue Permit	Permit issued	12/10/2014		Justin Bellow	Justin.Bellow@do.gov

Exhibit #3

Print Email correspondence to ZA May 2014 before deadline to appeal permit

Zoning issues at 1351 Wisconsin Ave; Application ID: B1400387

1 message

caesar junker <caesar.junker@gmail.com>

Mon, May 5, 2014 at 6:31 PM

To: "Beeton, Kathleen A. , (DCRA)" <kathleen.beeton@dc.gov>

Cc: "LeGrant, Matt (DCRA)" <matthew.legrant@dc.gov>, randolhh <tadams563@aol.com>, Christian Mulder <cmulder@worldbank.org>, Bill Gallagher <bgallagher@kgpds.com>, Andrea Ferster <aferster@railstotrails.org>

Dear Kathleen Beeton,

Deputy Zoning Administrator

Dept of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th St SW - Room 3100

Washington, DC 20024

Phone: [202 442-4576](tel:2024424576)

CC

Matthew Le Grant

Zoning Administrator

Phone: [202 442-4652](tel:2024424652)

FAX: [202 442-4871](tel:2024424871)

I am writing this letter on the behalf several neighbors in the Georgetown who are very concerned about the permit application B1400387 for the development of 1351 Wisconsin Ave. It my understanding from DCRA that the permit B1400387 has been assigned to you for review. We have been advised that the project plans approved by the CFA on the 18th of April are not a matter of right. There are several zoning issues that we would like to discuss with you before a permit is issued. We urge your careful consideration of the permit and would like an opportunity to talk with you before the permit is issued. Below is a short list and brief description of the some of the more obvious issues.

1. The Theater address 1351 Wisconsin Ave is currently one record lot. The Sq 1243 Lot 811 is a single, split-zoned lot with two zoning regulations applicable (R3 and C2A). The lot contains two structures: a commercial building, on the commercially-zoned portion of the lot and a carriage house (currently vacant) on the residentially-zoned portion. A single record lot must have only one main or "principal" structure (Title 11 DCZR). However, the permit proposes to renovate the carriage house as a residence. The proposed renovations cannot make a

residence out of the carriage house, because it would then contain two principal structures on a single lot of record.

2. The application does not meet the zoning requirement of 2.5 FAR. The commercial structure C2A has 4,245 sq ft x 2.5 = 10,612 sq feet limit. The applicant's plans state he has 12,345 allowable because of zoning section 2514 ("when a zone district boundary line crosses a lot") that allows for additional FAR by adding the residential lot into the equation. His calculations are incorrect and the current plans clearly have more than 2.5 FAR. If he is allowed to use the rear residential lot as a tool to increase his FAR for the commercial space it is much less.

3. The plans call for windows along the South party line which is not permitted by zoning regulations. The no build easement on the adjacent lot that is referred to in the permit application is not correct. Even with the easement the Lot line windows are "at risk windows" requiring a code waiver.

4. The proposed addition creates a non-conformity of the rear yard not currently in existence. The carriage house is an accessory structure that would become a residential building and there is a 20 foot rear yard set back requirement for residential buildings.

5. The carriage house in the rear of the lot is attached to the main commercial structure merely by having adjacent walls touch each other though the connection in the plans labeled a loggia. Therefore there is "no meaningful connection" between the front and rear buildings (no access).

Thank You,

Caesar Junker

Applica tionID	Date Filed	Full Address	Agent Name	Phone Number	
	B140038 7	10/10/20 13	1351 WISCONSIN AVE NW	ROBERT BELL	202-333- 8412
	Discipline		Review Status		Status Date
	Mechanical Review		Mechanical Review Pending		
	Plumbing Review		Plumbing Review Pending		
	Fire Review		Fire Review Pending		10/11/2013
	Structural Review		Structural Review Pending		10/11/2013
	DDOE Review		DDOE Review Pending		10/11/2013
	Electrical Review		Electrical Review - HFC		11/25/2013
	Zoning Review		Zoning Review - HFC		12/05/2013
	HPRB Review		HPRB Review Approved		04/18/2014
	CFA Review		CFA Review Approved		04/18/2014

