

**BOARD OF ZONING ADJUSTMENT
441 4th STREET N.W., SUITE 200S
WASHINGTON, DC 20011**

In Re Appeal of:

ADVISORY NEIGHBORHOOD COMMISSION 4C,

Appellant,

DEPARTMENT OF CONSUMER & REGULATORY
AFFAIRS

Respondent.

BZA No. 19067

AMENDED STATEMENT IN SUPPORT OF APPEAL

I. Introduction

Appellant Advisory Neighborhood Commission (“ANC”) 4C files this written submission in support of the appeal of Building Permit B1505734 (“the Permit”). The Department of Consumer and Regulatory Affairs (“DCRA”) issued the Permit on May 27, 2015. ANC 4C filed this appeal on June 12, 2015 alleging that the Zoning Administrator erred in applying the zoning regulations. Thus, this appeal was timely filed. ANC 4C respectfully requests that the Board of Zoning Adjustment (“BZA” or “the Board”) grant this appeal and revoke the permit.

II. Statement of Facts

The property that is the subject of this appeal is located at 1117 Allison Street NW, Washington, DC 20011. It is in an R-4 district in the Sixteenth Street Heights neighborhood of Ward 4. The subject lot is rectangular in shape, 20 feet wide and 156.30 feet deep with a total lot

area of 3126 square feet.¹ The lot is improved with a two-story row dwelling constructed in 1915. The footprint of the existing row dwelling is 920 square feet, and it occupies approximately 29 percent of the lot.² The row dwelling is in the middle of a contiguous row of homes and is located on the north side of Allison Street NW. Its present use is a one-family dwelling. The row dwelling shares a party wall with row dwellings on the adjacent lots to the east and to the west. The rear lot line abuts a 15-foot wide alley. The other side of the alley abuts the rear lot lines of other lots improved with row dwellings. These row dwellings front the southern side of Buchanan Street NW.

On May 27, 2015, the Department of Consumer and Regulatory Affairs (“DCRA”) issued a building permit to convert the subject one-family row dwelling into a three-unit apartment building consisting of a basement, first floor and second floor. This will be accomplished, in part, by constructing a rear two-story addition measuring 45.5 feet long.³ The existing basement will be excavated to raise the ceiling height and to extend the basement an additional 45.5 feet into the rear yard. The new rear addition will span the entire width of the lot. Each unit of the subject property will consist of two bedrooms and 2.5 bathrooms (nine toilets, nine sinks and six bathtubs/showers). Each unit will be 1463 square feet in size,⁴ will have rear balconies nine (or ten) feet long⁵ and 14 feet wide, and will have rear stairs for egress. The rear balconies and stairs will be over and above the 45.5 foot rear addition. In total the rear addition, rear balconies and rear stairs will add over 60 feet in length to the existing row dwelling. There is an unenclosed

¹ See the Plat from the building drawings.

² See sheet A1 of the building drawings.

³ The description of the proposed building is illustrated on sheets A4 and A6 of the building drawings.

⁴ See sheet A1 of the building drawings.

⁵ The rear balcony/deck indicated on the Plat and on sheet A4 of the building drawings are inconsistent. The Plat shows a balcony/deck of 10 feet long, and sheet A4 shows balconies/decks of nine feet long.

covered area about six feet wide and 30 feet deep on the western lot line adjacent to the rear wall of the proposed addition. Two parking spaces will be provided at the rear of the lot.

The footprint of the proposed apartment building will increase to 1936 square feet and will occupy 61.9 percent of the lot.⁶ The increase in size will more than double the footprint and lot occupancy of the existing row dwelling.

The surrounding properties in the neighborhood consist primarily of modestly sized one-family row dwellings. The homes on the 1100 block of Allison and Buchanan Streets NW generally occupy less than 40 percent of the lot. The three lots directly to the east of the subject property (1111, 1113 and 1115 Allison Street) are identical to the lot of the subject property and are improved with row dwellings identical to the subject row dwelling.⁷ These lots have approximately the same percentage of lot occupancy (29 percent) as the subject lot. The three lots to the west of the subject property (1119, 1121 and 1123 Allison Street) are smaller and improved with row dwellings. These three lots are identical in size and have land areas of approximately 2600 square feet.⁸ The percentage of lot occupancy is approximately 40 percent for each.

Construction has not begun on the subject property. On July 24, 2015, a complaint was filed in D.C. Superior Court for breach of contract against the LLC that owns the subject property and three other individuals associated with the property (collectively, “defendants”). The plaintiff alleges that the defendants committed fraud and breach of contract related to the negotiations and proposed contract for the sale of the subject property to the plaintiff. The complaint alleges that the defendants concealed that the first permit to convert the subject property into an apartment building had been revoked and replaced with a new permit. The

⁶ See sheet A1 of the building drawings.

⁷ See exhibit titled “Allison Street Original Lot Details.”

⁸ *Id.*

plaintiff is seeking damages and has filed a written notice with the Recorder of Deeds that a lawsuit has been filed concerning the subject property. As of early September, the owners of the subject property have continued to market the property for sale with the approved permit included.

III. Legal Arguments

A. The Zoning Administrator erred in allowing a deviation from the lot occupancy requirements.

Row dwellings and conversions to an apartment building in the R-4 district are limited to 60 percent of lot occupancy.⁹ The Zoning Administrator is authorized to permit a deviation of up to 2 percent from the maximum percentage of lot occupancy provided that:

...

(b) The deviation or deviations shall be deemed by the Zoning Administrator not to impair the purpose of the otherwise applicable regulations.¹⁰

1. The deviation from the lot occupancy requirements impairs the purpose of the otherwise applicable zoning regulations.

The Zoning Administrator's decision to allow the proposed apartment building to deviate from the maximum lot occupancy requirement of 60 percent impairs the purpose of the zoning regulations. Further, his decision was arbitrary and capricious. Section 101.1 provides that in interpreting and applying the Zoning Regulations, "the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to:

(a) Provide adequate light and air;

⁹ 11 DCMR § 403.2.

¹⁰ 11 DCMR § 407.1.

(b) Prevent undue concentration of population and the overcrowding of land.”¹¹

....

Section 330 of the Zoning Regulations clearly states that the primary purpose of the R-4 district “shall be the stabilization of remaining one-family dwellings.”¹² “The R-4 district shall not be an apartment house district.”¹³

There is no evidence that the Zoning Administrator considered the other provisions of the Zoning Regulations or the impact of his decision on the surrounding properties. His decision to allow a deviation conflicts with the minimum requirements articulated in Section 101 to provide adequate light and air and to prevent undue concentration of population and the overcrowding of land.¹⁴ The larger building will reduce natural light and air to neighboring properties and will crowd the lot. As stated above, the proposed apartment building will expand beyond the maximum lot occupancy of 60 percent to 61.9 percent, more than doubling the footprint of the existing building. This increases the mass and density on the lot and will create undue overcrowding of the lot.

The rear windows and balconies of the apartment units will be even closer to the rear lot line of the subject property than they would have been at 60 percent lot occupancy. Occupants of the apartments will have an unobstructed view into the rear yards and windows of the homes behind it. Naturally, this will result in a loss of privacy for those homeowners, which is contrary to the provisions in Section 101.1.¹⁵

¹¹ 11 DCMR § 101.1.

¹² 11 DCMR § 330.2.

¹³ 11 DCMR § 330.3.

¹⁴ 11 DCMR § 101.1.

¹⁵ *Id.*

The deviation directly conflicts with the purpose of the R-4 district to stabilize remaining one-family dwellings.¹⁶ The proposed apartment building will be out of character with the other homes in the neighborhood. Every home on Allison Street is a one-family row dwelling. Every home on Buchanan Street that shares the alley with the subject property is a one-family row dwelling. These row dwellings generally occupy no more than 40 percent of the lot. R-4 neighborhoods must be protected from the practice of converting row dwellings into massive apartment buildings that do not fit within the character of the neighborhood and the purpose of the R-4 district. The Zoning Administrator did not consider the purpose of the R-4 district when he permitted the deviation.

2. The deviation adversely impacts nearby homeowners.

The existing one-family row dwelling is located on a lot with an area of 3,126 square feet. It occupies approximately 29 percent of the lot and is similar in size to nearby homes. The new rear addition will include a basement and two additional levels and will be over 45 feet in length. It will span the entire width of the modest 20-foot wide lot. The footprint of the new proposed apartment building will occupy 61.9 percent of the lot, which is more than double the footprint of the existing row dwelling.

The proposed apartment building at 60 percent lot occupancy would have been significantly larger than any of the nearby row dwellings. The increase in the size to 61.9 percent lot occupancy is without basis. There is nothing unusual about the lot or the proposed apartment building that would warrant approval of lot occupancy above 60 percent. The lot is not shaped abnormally. The larger building simply increases the square footage of the proposed building and creates larger units to maximize profit for the developer. Each condominium unit in the proposed building will be 1463 square feet, which is enormous compared to the size of the

¹⁶ 11 DCMR § 330.2.

lot. The Zoning Administrator's granting of the deviation from the lot occupancy requirements adversely affects the surrounding properties and the neighborhood. His decision was arbitrary and capricious and benefits only the developer of the subject property.

3. The Zoning Administrator failed to undertake a qualitative analysis before granting the deviation.

In Appeal No. 18108 of Advisory Neighborhood Commission 3C, the appellants challenged the Zoning Administrator's use of minor flexibility to allow subdivision of a lot into two lots. One of the new lots did not comply with the minimum lot dimensions, and the Zoning Administrator used his minor flexibility authority to allow a deviation from the area requirements. The Board determined that the Zoning Administrator should undertake a quantitative and qualitative analysis regarding whether a deviation would impair the purpose of the otherwise applicable regulations. The Board found that the Zoning Administrator undertook such an analysis when he considered factors such as the purpose of the residential district, the orientation of the lots relative to existing residences and the other zoning requirements. Accordingly, the Board denied the appeal.

The facts in Appeal No. 18108 are distinguishable from the facts in this case. The appellants in that case did not appeal anything related to the permit. The appeal was of a subdivision of a lot resulting in two lots, one of which did not meet the minimum lot dimensions. In that case it was not possible to subdivide the lot into two conforming lots.

In the instant case, the challenge is to the building permit which allows a larger building on the lot relative to the size of the lot. The Zoning Administrator used his minor flexibility authority to allow a building, that at 60 percent lot occupancy, already would have been significantly larger and out of scale with nearby homes, to be constructed even larger. The lot is not unique, and there is no practical difficulty related to the property that warrants a deviation

from the lot occupancy requirements. The developer of the subject property would not have encountered any difficulties with the property if the Zoning Administrator did not allow the deviation. It purely was for the convenience and profit margin of the developer.

In our case, the Zoning Administrator did not conduct a qualitative analysis to determine if his decision would impair the purpose of the otherwise applicable zoning regulations. He did not consider the effect of his decision on other lots and other homeowners. He did not consider the intrusion of the building on adjacent properties. He did not consider the loss of light, air and privacy to nearby homeowners. It is difficult to fathom that if he had considered these factors, he would have concluded that the increase in lot occupancy would not impair the purpose of the otherwise applicable zoning regulations.

Moreover, the permit application was submitted on March 26, 2015, and the zoning review was approved one day later on March 27, 2015. This is further evidence that the Zoning Administrator did not perform a qualitative analysis before granting the deviation. It is doubtful that a comprehensive analysis of the effect of allowing a building that exceeded the percentage of lot occupancy could have occurred in one day. The Zoning Administrator's actions were arbitrary and capricious, and he abused his discretion to the detriment of the surrounding homeowners and the neighborhood.

B. The proposed apartment building is not a conversion as contemplated under § 330.5. It is new construction.

New apartment buildings are not permitted as a matter of right in the R-4 district.¹⁷ A building existing before May 12, 1958 may be converted to an apartment building if it meets the relevant provisions of the Zoning Regulations. As part of the “conversion” of the subject property, an enormous rear addition will be constructed. A new foundation will be created for

¹⁷ 11 DCMR § 330.

the new 45.5 foot basement unit and two-story rear addition. This is new construction of an apartment building and is impermissible in the R-4 district.

In Application No. 18598 of 3612 Park Place, LLC, which was a request to convert a rowhome to a six-unit apartment building, the Office of Planning stated that the intent of the Zoning Regulations is “to allow for the reasonable conversion of existing large structures in the R-4 zone that are considered too large for current living standards,” but it is “not to allow for speculative conversions of typically sized row houses into apartment buildings, or to rectify a bad business decision based on a lack of due diligence.” Likewise, in the instant case the conversion provision should not be used to transform the subject property, a typically sized rowhouse, into an impermissible newly constructed apartment building in the R-4 district.

C. The plat DCRA used to approve the permit was inaccurate and had obvious errors.

When erecting a new building or structure or constructing an addition to an existing structure, the District of Columbia’s Building Code requires a building plat showing in detail the improvements to the property and other data.¹⁸ This building plat is used to determine compliance with relevant sections of the Zoning Regulations.¹⁹

The developer/applicant provided an inaccurate building plat with the permit application. The dimension line drawn along the western lot boundary indicating the length of the proposed apartment building’s footprint is inaccurate. The length of the western lot boundary is 156.30 feet as indicated by the Surveyor. However, when the western boundary dimensions indicated on the plat are calculated with the 15-foot building restriction line setback, the total is 171.3 feet. It is apparent that the 63.8 feet dimension shown at the rear of the lot is not correct. Therefore, DCRA used an inaccurate plat to approve the zoning application.

¹⁸ 12A DCMR § 107.16.

¹⁹ 12A DCMR § 107.15.

D. The inaccurate plat resulted in flawed calculations for pervious surfaces.

When a new principal structure is constructed or an addition is made to a principal structure that increases the existing lot occupancy at the time of application for the building permit by 10 percent or more, the structure must have a minimum percentage of pervious surfaces.²⁰ For a lot 2,000 square feet or larger in the R-4 district, the minimum percentage of pervious surface is 20 percent. As indicated in the plat discussion above, the calculations on the plat are incorrect. Therefore, DCRA used flawed data to calculate compliance with the pervious surface requirement. It is unclear whether this property complies with the pervious surface requirement of 20 percent.

E. Because the proposed apartment building would be too large for an R-5 apartment house district and would not be permitted under the Zoning Regulations it should not be permitted in an R-4 district.

The Zoning Regulations clearly and definitively state that the R-4 district shall not be an apartment house district as envisioned for the R-5 districts.²¹ In R-5 districts, all structures must comply with a maximum permitted floor area ratio (“FAR”).²² The maximum permitted FAR in R-5-A for all structures, except public libraries, is 0.9.²³ The FAR of the proposed apartment building is approximately 1.54, almost twice the allowable FAR in R-5-A.

Although FAR is not applicable in R-4 districts, the ratio illustrates the absurdity of allowing such an enormous building in an R-4 zone despite it not being allowed in the higher density R-5 zone. The proposed apartment building would exceed significantly the allowable FAR of 0.9 and would be too massive even for an apartment house district. Thus, the proposed building would not be allowed in R-5-A because it would violate the Zoning Regulations. How

²⁰ 11 DCMR § 412.1.

²¹ 11 DCMR § 330.3.

²² 11 DCMR § 402.4.

²³ *Id.*

then can this same building be allowed in the lower density rowhouse district of R-4, a zone that is not intended to be an apartment house district? Evaluating the size of this building using FAR and whether it would be allowed in an apartment house district further illustrates that this colossal building conflicts with the intent and purpose of the R-4 district and is out of scale with the other homes in the community. Because the proposed building would not be allowed in an apartment house district due to its size, it should not be allowed in an R-4 district.

IV. Conclusion

The Zoning Regulations must be read as a whole and in context. In their interpretation and application, the provisions of the regulations “shall be held to be the *minimum requirements* adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to provide adequate light and air and to prevent undue concentration of population and the overcrowding of land.”²⁴ (Emphasis added). The use of the phrase “minimum requirements” cannot be superfluous. ANC 4C submits that the Zoning Administrator was required to consider these and other provisions of the regulations and make a qualitative analysis before allowing the deviation from lot occupancy. Certainly, the Zoning Administrator was cognizant of the outcry from R-4 homeowners plagued with pop-ups and pop-backs when he reviewed and approved the application. His decision will cause substantial detriment to the neighborhood.

It is imperative that DCRA employees and officials carefully review permit applications and consider the effect of their decisions, especially when it involves construction that could have a negative impact on neighbors and the community. Rowhouse districts have been inundated with speculative developers who desire to take advantage of the burgeoning real estate market in Washington, DC. The District has been plagued with monstrous “pop-ups” and “pop-

²⁴ 11 DCMR § 101.1.

backs” that are out of scale and character with our neighborhoods. Many of these pop-ups and pop-backs are located within the boundaries of ANC 4C. Adjoining homeowners are being adversely affected and are losing the use and enjoyment of their properties. Homeowners are being barricaded in their backyards by two, three and four story high walls of siding that obscure the space where sunshine and fresh air once permeated.

DCRA did not correctly apply the Zoning Regulations and thus issued the permit in error. For the reasons articulated in this Statement of Support, ANC 4C respectfully requests that the Board grant the appeal and revoke the permit.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Lyn Abrams".

Lyn Abrams
Representative for ANC 4C

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2015, a copy of this Amended Statement in Support of Appeal was delivered to the following, via e-mail or first class mail:

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