

**BOARD OF ZONING ADJUSTMENT**  
**441 4<sup>th</sup> 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

**APPELLANT’S OPPOSITION TO RESPONDENT’S MOTION FOR CONTINUANCE**

Appellant, ANC 4C, respectfully submits this response to oppose Respondent’s, the Department of Consumer and Regulatory Affairs (“DCRA”), motion for a continuance. Appellant respectfully requests that the Board of Zoning Adjustment (“Board”) deny the motion.

**1. The drawings used to approve the permit were legible and clear; the developer must not be allowed to modify the drawings.**

In its motion, DCRA requested a continuance to give the permit holder time to submit more detailed plans requested by the Zoning Administrator to “facilitate the resolution of this appeal.” However, DCRA contends the permit was issued properly. Based on DCRA’s representation that the permit was properly issued, no new drawings are necessary to resolve the issues.

In our Statement in Support of Appeal (“Statement”), Appellant, ANC 4C, requested that the Board revoke the permit because DCRA incorrectly applied the Zoning Regulations. Appellant’s Statement presents several reasons why the permit was issued in error, the most significant being that the Zoning Administrator acted arbitrarily and capriciously when he used his minor flexibility authority to allow a deviation from the maximum percentage of lot occupancy. After Appellant

filed its Statement, the Zoning Administrator requested revised drawings from the developer. Appellant can only conclude that the Zoning Administrator intends to allow the developer to change the drawings to reduce the lot occupancy to 60% and make other changes to comply with the Zoning Regulations. This would circumvent the Board's authority and the Zoning Regulations. The Zoning Administrator's request for additional information goes to the heart of Appellant's argument and proves that the Zoning Administrator's minor flexibility decision was arbitrary and capricious.

The Zoning Administrator approved the zoning application on March 27, 2015, one day after the permit application was filed on March 26, 2015. DCRA issued the permit on May 27, 2015. The Zoning Administrator's decision to approve the zoning application was based on the information submitted with the permit application. If the Zoning Administrator required any additional information from the permit holder he should have requested and reviewed it before the permit was issued.

ANC 4C appealed the permit on June 12, 2015. The hearing date was scheduled in June. The Zoning Administrator has had ample time to clarify any issues related to the drawings. In our Statement, ANC 4C contends that the Zoning Administrator did not conduct a qualitative analysis of the effect of his decision to allow minor flexibility prior to approving the permit. Revised drawings will not substitute for that lack of analysis.

**2. Any amendments to the permit must be evaluated under the current Zoning Regulations.**

The Zoning Regulations clearly state that "any amendment of the permit shall comply with the provisions of [the Zoning Regulations] in effect on the date the permit is amended."<sup>1</sup> The law currently in effect prohibits conversions of residential buildings to apartment buildings in R-4

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<sup>1</sup> 11 DCMR § 3202.4(b).

districts except by special exception.<sup>2</sup> On June 26, 2015, new regulations became effective that removed the matter-of-right for conversions of residential buildings to apartment houses in R-4 districts. The Zoning Commission voted to make the amendments effective immediately.<sup>3</sup> Further, at the Zoning Administrator's request, he no longer has the authority to grant minor flexibility for conversions.<sup>4</sup> Thus, any amendments to the permit must be evaluated under the regulations currently in effect.

The law is clear and unambiguous that the Zoning Administrator cannot allow amendments to the drawings because he no longer has the authority to approve a single-family conversion to an apartment building in the R-4 district. He cannot apply the law in effect prior to June 26, 2015 to amendments to the drawings. To do so would be an illegal act and an abuse of his authority because he does not have the authority to enact zoning laws. That is the exclusive authority of the Zoning Commission who has made it abundantly clear that conversions to apartment buildings no longer are permitted as a matter of right in R-4 districts.

**3. Granting respondent's motion will undermine the Board's authority to review DCRA's zoning decisions.**

This appeal is an adjudication of the Zoning Administrator's decision to issue the zoning permit approved on May 27, 2015. By the time this appeal was filed, the Zoning Administrator's rationale for issuing the permit was fixed in time. Any amendments that the owner or the Zoning Administrator wishes to make to the permit are irrelevant to this adjudication and are not cause for further delay of the hearing. Although this appeal does not preclude DCRA from accepting amendments to the permit, subject to applying the law in effect, the Board cannot accept such amendments as evidence in this matter. Adjudicating a moving target is not prudent or appropriate.

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<sup>2</sup> 11 DCMR § 336.1.

<sup>3</sup> The only exception for conversions are for permit applications filed and accepted as complete by DCRA prior to July 17, 2014 and for projects with special exception or variance relief or matters related to Historic Preservation. 11 DCMR § 3202.9. None of those exceptions apply to this permit.

<sup>4</sup> 11 DCMR § 407.1(c); See ZC-14-11, OP's Supplemental Report 2 (June 1, 2015).

**4. A delay would prejudice Appellant and the community.**

Additional delay in the hearing would prejudice Appellant and the community. The developer actively has been marketing the subject property for sale with the approved permit. Several months ago, the developer had a buyer for the subject property. The sale did not close because of alleged fraud by the developer, and the prospective buyer has filed a complaint in D.C. Superior Court against the developer. Nevertheless, the developer continues to try to sell the subject property. If he is successful, a new buyer likely will begin work immediately on the subject property pursuant to the permit.

**5. Conclusion**

A continuance to allow the developer to submit revised drawings would prejudice Appellant's core argument that the Zoning Administrator's grant of minor flexibility was arbitrary and capricious. The request effectively admits that the Zoning Administrator's decision lacked sufficient basis. Further, any amendments to the drawings must be evaluated under current law which does not allow conversions to apartment buildings without seeking relief from the Board. To do otherwise would be illegal and an abuse of the Zoning Administrator's authority. The Zoning Commission changed the law to address the explosion of rowhouse conversions in R-4 districts. If the Board grants DCRA's motion, it will undermine the new Zoning Regulations and the protections it provides to R-4 districts and homeowners. It is unconscionable that the government would attempt to change the evidence to justify its decision. Fair play and justice requires the denial of this motion.

Respectfully Submitted,



Lyn Abrams  
Representative for ANC 4C

## CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2015, a copy of Appellant's Opposition to Respondent's Motion for Continuance was delivered to the following, via e-mail or first class mail:

Musa Aslanturk, Registered Agent  
1117 Allison, LLC  
1242 Pennsylvania Ave., SE  
Washington, DC 20003

Maximilian Tondro  
Assistant General Counsel  
Office of the General Counsel  
Department of Consumer & Regulatory Affairs  
1100 4<sup>th</sup> Street, SW, 5<sup>th</sup> Floor  
Washington, DC 20024



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Lyn Abrams  
Representative for ANC 4C  
lynster3@gmail.com