

SULLIVAN & BARROS, LLP

Real Estate | Zoning | Land Use

Martin P. Sullivan, Partner
Direct: (202) 503-1704
Fax: (888) 318-2443
msullivan@sullivanbarros.com

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via IZIS

Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: BZA Application No. 19067- Draft Findings of Fact and Conclusions of Law

Dear Chairperson Heath and Members of the Board:

Pursuant to the Board's request, enclosed is a Draft Findings of Fact and Conclusions of Law.

Sincerely,



Alexandra Garcia

Board of Zoning Adjustment
District of Columbia
CASE NO.19067
EXHIBIT NO.68

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



Appeal No. 19067 of ANC 4C, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Department of Consumer and Regulatory Affairs in the issuance of Building Permit No. B1505734, (the “Permit”) for the construction of a rear two-story addition, and conversion of a one-family dwelling into a three-unit apartment house in the R-4 District at premises 1117 Allison Street N.W. (Square 2918, Lot 59) (the “Subject Property”).

HEARING DATE: December 1, 2015
DECISION DATE:

DECISION AND ORDER

This appeal was filed on June 11, 2015 with the Board of Zoning Adjustment (the “Board”) by ANC 4C (“Appellant”). The appeal challenged the decision of the Department of Consumer and Regulatory Affairs (“DCRA”) to issue a building permit that authorized Allison Street LLC (“Property Owner”), to construct a rear two-story addition and to allow for a conversion into a three-unit apartment house at the Subject Property. The Appellant alleged the Permit was issued in violation of the lot occupancy requirements of 403.2 and the pervious surface requirements of 412.4, as well as several other errors, which were not based on any specific Zoning Regulations. After allowing the parties an opportunity to be heard, the Board found that the permit had been properly issued and that the appeal should be denied. A full discussion of the facts and law supporting this conclusion follows.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning (“OZ”) scheduled a hearing on December 1, 2015. In accordance with 11 DCMR § 3112.13 and 3112.14, OZ mailed notice of the hearing to the Appellant, Advisory Neighborhood Commission (“ANC”) 4C (the ANC in which the subject property is located), the Property Owner, and DCRA.

Parties

The Appellant in this case is ANC 4C (the “ANC” or the “Appellant”). The ANC was represented by Lyn Abrams.

DCRA appeared during the proceedings and was represented by Maximilian Tondro, Esq. and Derek Hora.

As the owner of the Subject Property, Allison LLC is automatically a party under 11 DCMR § 3199.1, and was represented by Martin P. Sullivan, Esq. of Sullivan & Barros, LLP.

FINDINGS OF FACT

The Property

1. The Subject Property is a two-story row dwelling located at 1117 Allison Street N.W. (Square 2918, Lot 59), in the R-4 Zone District.
2. On or about May 27, 2015, DCRA issued Building Permit B1505734, revised to correct scrivener’s errors in the plans by Building Permit B1600488 (the “Permit”), for a renovation and addition work to be conducted on the existing building at 1117 Allison Street NW.
3. Pursuant to 11 DCMR § 403.2, a building that is converted into an apartment house is subject to a maximum permitted lot occupancy of sixty percent (60%).
4. Prior to issuing the permit, the Zoning Administrator reviewed the plans, and determined that the Approved Plans reflect a lot occupancy of 56.56%, satisfying the lot occupancy requirements of 11 DCMR § 403.2.
5. Pursuant to 11 DCMR § 412, the Building must provide a pervious surface area of twenty percent (20%) of the lot size.
6. Prior to issuing the permit, the Zoning Administrator reviewed the plans, and determined that the Approved Plans reflect a pervious surface area of at least 22%, satisfying the pervious surface requirements of 11 DCMR § 412.
7. On June 11, 2015, ANC 4C, represented by Lyn Abrams, filed an appeal of the Building Permit.
8. On October 22, 2015 the Appellant submitted its Supplemental Statement in Support of the Appeal (Exhibit 45), alleging: (1) the Permit approved a lot occupancy that exceeded sixty percent (60%) required by Section 403.2; (2) the Permit approved a pervious surface area below the twenty percent (20%) required by Section 412.2; (3) the plat associated with the permit was inaccurate; (4) the Permit incorrectly approved the project as a conversion under Section 330.5(e) instead of as new construction; (5) the Permit approved work in an R-4 zone district that did not comply with the floor area ratio requirements of an R-5-A zone district under Section 402.4; and (6) the front porch of the Project was removed in the revision to correct scrivener’s errors.

9. In the October 22, 2015 Supplemental Statement, the Appellant provides a Zoning Peer Review Report (Exhibit 45, Supplemental Statement Exhibit 12) dated October 21, 2015.
10. The Zoning Peer Review Report states, "In the revised Permit Set drawings (October 2015), the calculated lot occupancy, which includes the primary structure, covered rear deck, covered rear stairway and covered atrium is 1781.14 square feet or 56.97 percent of the lot area." (Exhibit 45, Supplemental Statement Exhibit 12, page 3).
11. The Zoning Peer Review Report states, "In the revised Permit Set drawings (October 2015), the calculated percentage of pervious surface as proposed is 34.74%." (Exhibit 45, Supplemental Statement Exhibit 12, page 4).

CONCLUSIONS OF LAW

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2008 Repl.), to hear and decide appeals where it is alleged that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations (the "Regulations"). The Board's review of such decisions is not limited to the documents presented to the administrative decision-maker. Rather, as it did in this appeal, the Board conducts a full evidentiary hearing. Parties were permitted to present and cross examine witnesses and introduce evidence, and the Board has carefully considered the testimony and evidence that was presented.

As directed by 11 DCMR 3119.2, the Board has required the Appellant to satisfy the burden of proving that the Zoning Administrator erred in issuing the Permit.

The Appellant alleges the Zoning Administrator erred in issuing the Permit because the lot occupancy exceeds sixty percent (60%), and the pervious surface areas are less than the required twenty percent (20%). The Appellant's allegations are without merit, as it has provided no evidence that the Zoning Administrator erred in his calculations of lot occupancy and pervious surface area. In fact, the Appellant's own Peer Review Report, submitted as an exhibit to the October 22, 2015 Supplemental Statement, addressed these issues with lot occupancy and pervious surface. The Appellant's Peer Reviewer determined that the lot occupancy did not exceed sixty percent (60%) and pervious surface exceeded the required twenty percent (20%).

The Appellant also maintains that allowing a revision of the plans due to a scrivener's error is an admission that the plans should not have been initially approved. (See Appellant's Supplemental Statement, Exhibit 45, p. 4). The Board disagrees with this contention, as the Property Owner is allowed to work with the Zoning Administrator and the Office of Zoning to correct minor errors. Allowing the Property Owner to correct minor errors and revise plans is part of the Zoning process, and not an admission that the plans should have not been initially approved, nor is it an error by the Zoning Administrator that would require the Permit to be revoked. To find otherwise would mean that any revision of an existing permit effectively revokes such permit and requires a completely new application.

The Board rejects the Appellant's argument that the plat associated with the Permit was inaccurate, as the Appellant erroneously provided an incorrect plat (Exhibit 45, Appellant's Supplemental Statement, Exhibit 12, page 4), instead of referring to the accurate Approved Plat (Exhibit 51, DCRA's Prehearing Statement, Exhibit C), which the Zoning Administrator used in his decision to issue the Permit.

The Board disagrees with the Appellant's assertions that the Permit incorrectly approved the Project as a conversion under 11 DCMR 330.5(e), instead of new construction, that the Permit approved work in an R-4 Zone that did not comply with the floor area ratio requirements of an R-5-A Zone District, and that the front porch was removed in the revision. These allegations are without merit, as a significant portion of the building was kept and the Zoning Administrator correctly approved the project as a conversion. Additionally, the floor area ratio requirements of the R-5-A Zone are not applicable to a Permit for construction in the R-4 Zone. Finally, Sheet A6 in the plans submitted in the application for Building Permit B1505734 shows that the existing front porch was to be removed and replaced by an uncovered deck that is six (6) feet deep, not (8) feet deep, as is the existing porch.

The Board rejects Appellant's contentions and determines that no conclusive evidence was presented by the Appellant which would compel a finding that the Zoning Administrator erred in approving the plans and issuing the Permit.

For reasons discussed above, it is hereby ORDERED that the APPEAL is DENIED.

Vote taken on _____.