

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

Appeal of Advisory Neighborhood Commission 4C

BZA Appeal 19067

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department of Consumer and Regulatory Affairs (“**DCRA**”) hereby submits the following proposed Findings of Fact and Conclusions of Law as requested by the Board of Zoning Adjustment (“**Board**”) at its December 1, 2015 public meeting.

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1117 Allison Street, NW (“**Property**”).
2. The Property is zoned R-4.
3. The Property is in the process of being improved with the renovation of an addition to an existing two-story residential building (“**Project**”).
4. On March 27, 2015, the Zoning Administrator (“**ZA**”) approved the plans for Building Permit No. B1505734 (“**Original Permit**”).
5. On May 18, 2015, the Original Permit was issued to 1117 Allison LLC (“**Permit Holder**”).
6. On June 11, 2015, Advisory Neighborhood Commission 4C (“**Appellant**”) filed this appeal with the Board of Zoning Adjustment (“**Board**”) challenging the issuance of the Original Permit.
7. On August 21, 2015, Appellant requested a one-week continuance due to a scheduling conflict. The Board granted the continuance request on September 25, 2015.
8. On September 15, 2015, the Concerned Citizens of Allison & Buchanan Streets, an unincorporated nonprofit association, requested party status in this appeal (together with the Appellant, the “**Appellants**”). This request was granted at the December 1, 2015 public meeting of the Board.

9. On September 23, 2015, DCRA requested a three week continuance to provide the Board and Appellants with a clarified set of plans that did not materially change the plans approved with the Original Permit (“**Approved Plans for the Original Permit**”), but corrected dimensional and labeling errors in the Approved Plans for the Original Permit.
10. On October 13, 2015, Lyn Abrams requested intervenor status in this appeal. This request was withdrawn at the December 1, 2015 public meeting of the Board.
11. On October 23, 2015, the ZA approved Building Permit No. B1600488 (“**Revised Permit**”), which revised the Original Permit by incorporating the clarified plans correcting the dimensional and labeling errors in the Approved Plans for the Original Permit.
12. On October 26, 2015, DCRA issued the Revised Permit to the Permit Holder.
13. Appellants allege the following errors by the ZA in approving the Original Permit:
 - a. the Approved Plans for the Original Permit depicted construction that exceeded the applicable lot occupancy limit, specifically by including the existing front porch on the plans but not counting this existing front porch in lot occupancy calculations;
 - b. the Approved Plans for the Original Permit depicted insufficient pervious surface area;
 - c. the Original Permit relied on an inaccurate plat;
 - d. the Original Permit authorized new construction where only an addition is permissible;
 - e. the Original Permit authorized work to be conducted in an R-4 zone district that does not comply with the floor area requirements of an R-5-A zone district.
14. Appellants allege the following errors in the Revised Permit:
 - a. the plans approved by the Revised Permit (“**Approved Plans for the Revised Permit**”) contained substantive revisions that triggered the application of the new R-4 rules of the Zoning Regulations which took effect in the interim between the Original and Revised Permits in effect at the time that the Revised Permit was issued.

15. On December 1, 2015, the Board held a public hearing on the Appeal at which the Board heard testimony and arguments from the parties and scheduled a decision to be made at the Board's January 19, 2016 public meeting.
16. At the conclusion of the hearing, DCRA requested the Board keep the record open for DCRA to provide the Approved Plans for the Original Permit since Appellants had relied on the preliminary plans provided by the Permit Holder as part of the neighbor notification requirement of the Building Code which Appellant had entered into the record (BZA Exhibits 33-34). DCRA believed that the Approved Plans for the Original Permit differed and would provide clarity on what basis the ZA acted in approving the Original Permit. The Board granted DCRA's request.
17. On December 3, 2015, DCRA submitted the Approved Plans for the Original Permit (BZA Exhibits 65A and B), noting that the ZA's review and approval was limited to Sheets A-1, A-4, and A-6, together with the Approved Plat (BZA Exhibit 51C), as indicated by the ZA's stamp and signature on those pages. Sheet C-1 cited by Appellants was not part of the ZA's review because Sheet C-1, entitled "Erosion and Sediment Control Plan", was required by the District Department of the Environment ("DDOE" (since renamed the District Department of Energy and Environment)) solely for determination of compliance with DDOE's regulations.

CONCLUSIONS OF LAW

Under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(1) (2012 Repl.), the Board is authorized to hear and decide appeals based on an allegation that an administrative officer erred in rendering a decision or determination in administering the Zoning Regulations. (*See also* 11 DCMR § 3100.2.) Appellants seek review of the ZA's decision to approve the Original and Revised Permits. Appellants allege that the ZA erred in approving the Original Permit because (i) the Approved Plans for the Original Permit depicted construction exceeding the 60% lot occupancy limit of 11 DCMR § 403.2, (ii) the Approved Plans for the Original Permit depicted provision of less than the minimum pervious surface area prescribed by 11 DCMR § 412, (iii) the Original Permit relied upon an inaccurate plat, (iv) the Original Permit authorized new construction rather than a conversion that was allowed as a matter of right, and (v) the Original Permit authorized construction to take place in an R-4 zone district that does not

comply with the floor area ratio requirements of an R-5-A zone district under 11 DCMR § 402.4. Appellants allege that the ZA erred in approving the Revised Permit because the Approved Plans for the Revised Permit contain substantive revisions that triggered the application of the new R-4 rules of the Zoning Regulations which took effect in the interim between the Original and Revised Permits in effect at the time that the Revised Permit was issued.

11 DCMR § 403.2 restricts lot occupancy for construction in an R-4 zone district to 60 percent of the total lot area. If the lot occupancy of the project depicted in the Approved Plans for the Original Permit exceeded 60 percent of the total lot area, his approval of the Original Permit was in error.

Here, Appellants have failed to meet their burden of proof in showing that the ZA erred in approving the Approved Plans for the Original Permit. Appellants referenced a courtesy cover/summary sheet (Sheet A-1), a depiction of the clearly-labeled Existing First Floor Plan (Sheet A-3), and an Erosion and Sediment Control Plan (Sheet C-1) for the proposition that the ZA erroneously approved plans for construction exceeding the maximum lot occupancy allowance for the R-4 zone district. The plans referenced by Appellants were not the plans approved by DCRA. Even in the Approved Plans for the Original Permit (BZA Exhibits 65A and B), neither Sheet A-3 (“Existing Floor Plans”), nor Sheet C-1 (“Erosion and Sediment Control Plan”), bear the ZA's stamp and signature – and there is no reason to suppose that they should, as the content of these pages appears to have no bearing on an evaluation of the planned construction for compliance with the Zoning Regulations. The ZA did not review or approve Sheet C-1, which Appellants cite because Sheet C-1 is solely for DDOE review, whereas the ZA reviewed and approved the Original Permit for lot occupancy based on the Approved Plat (BZA Exhibit 51C). Sheet A-4 (“Proposed Floor Plans”) and Sheet A-6 (“Cross-Section and Elevations”) of the Approved Plans for the Original Permit both bear the ZA's stamp and signature; this is to be expected, as these pages clearly bear on the evaluation of the planned construction for compliance with the Zoning Regulations because they contain relevant measurements for the final construction for which the permit is sought. Sheets A-4 and A-6 of the Approved Plans for the Original Permit both show that the existing front porch was to be replaced by an uncovered deck that does not count toward lot occupancy. Appellants provided Sheet A-4 of the Approved Plans for the Original Permit as Exhibit 4 to their Supplemental

Statement (BZA Exhibit 45 at page 16), but appear to have relied instead upon Sheet A-4 for a completely different permit, B1409828 (BZA Exhibit 45 at page 22), which has been revoked. Appellants' consultant recognized that without the existing front porch, the Project would comply with the lot occupancy requirement of 11 DCMR § 403.2. BZA Exhibit 67 at pages 7-8. As Appellants relied upon preliminary plans rather than the Approved Plans for the Original Permit, Sheet A-1 ("Cover/Summary Sheet") also bears the ZA's stamp and signature, indicating on the front page of the plans that he has approved the plans based on his review and approval of those sheets in the body of the plans bearing his stamp and signature. As the ZA indicated with specificity which sheets he relied upon in determining that the plans complied with the Zoning Regulations by affixing his stamp and signature, Appellants have failed to prove this allegation.

The Approved Plans for the Original Permit and the Approved Plat clearly provide for a pervious surface area in excess of the 20 percent required by 11 DCMR § 412, as recognized by Appellants' consultant. BZA Exhibit 67 at page 9. As Appellants failed to offer support at the December 1, 2015 public hearing for their allegation that the ZA had erred in approving plans that did not provide for the required pervious surface area and their own consultant's analysis found that the plans provided for adequate pervious surface area, Appellants have failed to prove this allegation.

Appellants' allegation that the ZA made his determination on the basis of an inaccurate plat or could not have properly ascertained compliance with the Zoning Regulations from the plat appears to be based on their misidentification of the Erosion and Sediment Control Plan (Sheet C-1) as the plat reviewed and approved by the ZA. BZA Case No. 19067, Transcript of December 1, 2015 public meeting, p. 128, line 7. In fact, the ZA reviewed and approved the Approved Plat, as indicated by his stamp and signature (BZA Exhibit 51C). The Approved Plat is drawn to scale, which allowed the ZA to determine the actual dimensions of the lot occupancy proposed by the Permit Holder. In the Approved Plat, the erroneous 63.8' measurement had been crossed out and clearly did not reflect the actual dimensions, as the new addition immediately next to the erroneous rear yard measurement is clearly drawn to be longer in the figure and yet is labeled as 45.5'. As the scaled drawing allowed the ZA to properly determine compliance on the basis of the Approved Plat, Appellants have failed to prove this allegation.

Appellants' allegation that the ZA erred in approving a new construction project as a conversion was not raised at the December 1, 2015 public hearing. In addition, Appellants have

offered no proof in their filings in support of their allegation that the Project constitutes new construction rather than a conversion as a matter of right under 11 DCMR § 330.5(e). The Approved Plans for the Original Permit and the Approved Plans for the Revised Permit clearly indicate that a significant portion of the original building is to be kept and an addition is to be added to the rear. Therefore, Appellants have failed to prove this allegation.

Appellants' allegation that the ZA erred in approving construction in an R-4 zone district that does not comply with the requirements of an R-5-A zone district is inapposite. Appellants did not raise this allegation at the December 1, 2015 public hearing and have provided no support in their filings for the apparent assertion in ANC 4C's Amended Statement in Support of Appeal that construction in an R-4 zone district must comply with regulations for an R-5-A zone district. Appellants have therefore failed to prove this allegation.

Appellants' allegation that the ZA erred in approving the Revised Permit because the Approved Plans for the Revised Permit contain substantive changes to the Approved Plans for the Original Permit and so the entire Project must be subject to the new R-4 rules of the Zoning Regulations which took effect in the interim between the Original and Revised Permits in effect at the time that the Revised Permit was issued is groundless. Section 3202.4(b) of the Zoning Regulations provides that only the changes to the Original Permit should be subject to the new R-4 rules. However, in this case, the changes alleged by Appellants – that the front porch was not shown to be removed on the Approved Plans for the Original Permit but was shown to be removed on the Approved Plans for the Revised Permit – did not occur and appear to be based on a misplaced reliance on preliminary plans and/or plans for a completely different permit, instead of the Approved Plans for the Original Permit. Sheets A-4 and A-6 of the Approved Plans for the Original Permit (BZA Exhibit 65A and B) clearly show that the existing porch was to be removed. Sheet C-1, the Erosion and Sediment Control Plan, of the Approved Plans for the Original Permit was not reviewed or approved by the ZA, and was only relevant to the compliance review of DDOE, as noted above. The ZA indicated with specificity which pages he relied upon in determining that the plans complied with the Zoning Regulations by affixing his stamp and signature; no stamp or signature from the ZA is to be found on sheets A-3 or C-1 of the Approved Plans for the Original Permit (BZA Exhibit 65A and B), while it is displayed prominently on sheets A-4 and A-6, which clearly show that the existing porch will not be retained and that only a deck will remain above grade in both the Approved Plans for the

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Original Permit and the Approved Plans for the Revised Permit. The revisions to sheet C-1 in the Revised Permit were also not stamped or signed by the ZA, but provided by the Permit Holder to provide clarity. Appellants have, therefore, failed to prove this allegation.

Accordingly, it is **ORDERED** that the appeal is **DISMISSED** for failure to prove any error by the ZA in approving Building Permit No. B1505734, the Original Permit, or Building Permit No. B1600488, the Revised Permit.

Respectfully submitted,
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Date: 1/12/16



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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January 2016, a copy of the foregoing DCRA's Submission of Approved Plans was served via electronic mail to:

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