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

Appeal of Advisory Neighborhood Commission 1C & Michael Rafferty — BZA Appeal 19081

DCRA'S MOTION TO ACCEPT LATE FILING,
2nd PRE-HEARING STATEMENT, AND MOTION TO DISMISS

Respondent, the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**"), respectfully requests that the Board of Zoning Adjustment (the "**Board**") accept DCRA's late filing of this Pre-Hearing Statement. DCRA sincerely apologizes for this mistake.

Appellants allege that the Zoning Administrator (the "**ZA**") erred in approving Building Permit B1412288, issued on July 20, 2015 (the "**Permit**"), as revised by permit B1601746, issued on November 12, 2015 (the "1st **Revised Permit**"), which was replaced as a revision to the Permit by permit B1602713, issued on December 11, 2015 (the "**2nd Revised Permit**" and collectively with the Permit and 1st Revised Permit, the "**Permits**"), to convert a single family dwelling into a four unit residential building (the "**Project**") at 1828 Ontario Place, N.W. (the "**Property**"), in the R-5-B Zone District, because the proposed parking provided did not comply with the Zoning Regulations.

DCRA asserts that the ZA properly reviewed and approved the Permits as in compliance with the Zoning Regulations. The ZA required the Permit Holder to correct deficiencies in the Permit, which resulted in the 1st Revised Permit that provided parking in compliance with the Zoning Regulations. When DCRA realized that a full structural review of the 1st Revised Permit had not occurred because of an incorrect understanding that it was limited to parking, DCRA required the Permit Holder to submit a revised permit application, which became the 2nd Revised Permit This 2nd Revised Permit replaced the 1st Revised Permit as a revision to the Permit, with the 2nd Revised Permit including the revisions in the 1st Revised Permit with additional clarity and structural review and approval. Therefore DCRA asserts that the Permits as a complete whole were correctly reviewed and approved by the ZA, and moves that the 2nd Revised Permit be incorporated into this Appeal as an integral part of the Permit.

DCRA therefore respectfully requests the Board affirm the ZA's approval as correct and deny this Appeal.

APPELLANT'S ALLEGATIONS

Appellants allege in their December 8, 2015 filing that the ZA erred in approving the Permit only because the parking layout proposed in the 1st Revised Permit required the removal of a part of the Permit Holder's portion of party walls shared with Appellants' garages and that this shaving of the bricks would render the party walls structurally unsound.

ARGUMENT

A permit holder has the right to revise a permit, with the revisions incorporated into the original permit

A permit holder is authorized to revise an issued permit, with an issued revision amending and incorporated into the original permit, by Section 105.3.8 of the Building Code. This provision is outside the jurisdiction of the Board, but nonetheless authorizes a permit holder to revise a permit where necessary.

The only difference between the 1st and 2nd Revised Permits is the provision of cross beams bracing the party walls

The only difference between the 1st and 2nd Revised Permit is the inclusion of ten (10) bracing beams, twenty-four inches (24") on-center, that support the shaved party walls, as can be seen by comparing page 5 of the 1st Revised Permit[1] and of the 2nd Revised Permit.[2] This proposed bracing was approved by a professional engineer licensed in the District of Columbia and by DCRA's structural review team.[3]

DCRA joins Permit Holder's Motion to Dismiss Appellant's alleged violations of the Construction Codes as out of the Board's jurisdiction

Appellants' allegation, as stated in the report of their engineer[4], that the proposed removal of one "wythe" of brick from the Permit Holder's portion of each party wall of the former garage is structurally unsound appears to be a violation of the Building Code, not of the Zoning Regulations and so not within the jurisdiction of the Board. Appellants confirm this

[1] BZA Appeal 19081, Exhibit 35, at 5.
[2] BZA Appeal 19081, Exhibit 41B (Exhibit B to Permit Holder's Motion to Dismiss), at 5.
[3] BZA Appeal 19081, Exhibit 41B (Exhibit B to Permit Holder's Motion to Dismiss).
[4] BZA Appeal 19081, Exhibit 38 (Exhibit D to Appellant's December 8 Pre-Hearing Statement).

understanding in their filing of an appeal of the 1st Revised Permit as an alleged violation of the Building Code with the Office of Administrative Hearings ("**OAH**").[5] As any violation of the Building Code is not within the jurisdiction of the Board, and as Appellants have exercised their appeal rights under the Building Code in their OAH appeal, DCRA joins the Permit Holder in respectfully requesting the Board to rule that Appellant's allegations under the Building Code are not within the jurisdiction of the Board to review.

Moreover, the 2nd Revised Permit addressed the alleged deficiencies in the 1st Revised Permit – it was based upon the report of a professional engineer licensed by the District of Columbia that proposed a solution to ensure the stability of the party walls after the removal of the one with of brick from the Permit Holder's portion of the party walls.[6] On the basis of this report and review by the DCRA structural reviewers, the 2nd Revised Permit was issued by DCRA, affirming that the Permits complied with the Building Code as well as the Zoning Regulations. Thus, even if the Board had jurisdiction over the Building Code, the 2nd Revised Permit has addressed the alleged violations and therefore this Appeal should be dismissed.

DCRA joins Permit Holder's Motion to Dismiss Appellant's alleged violations of the parking requirements of the Zoning Regulations as moot

Appellants recognize that the removal of the one wythe of brick would permit the Permit Holder to provide the parking required by the Zoning Regulations for the proposed four unit conversion.[7] The 2nd Revised Permit established DCRA's approval of the proposed bracing as compliant with the Building Codes, so the only alleged zoning violation remaining before the Board is whether the ZA correctly determined that the parking layout provided in the 1st and 2nd Revised Permits complied with the Zoning Regulations.

The 2nd Revised Permit, now incorporated into the Permit, shows one nine foot by eighteen foot (9' x 18') parking space corresponding to the pre-existing and so grandfathered non-conforming parking space contained in the prior garage; as well as one interior nine foot by nineteen foot (9' x 19') space that complies with Section 2115.1 of the Zoning Regulations. This interior parking space is accessible by a seven foot, two inch (7' 2") driveway that complies with the seven foot (7') minimum required by Section 2117.8(b).

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[5] BZA Appeal 19081, Exhibit 41A (Exhibit A to Permit Holder's Motion to Dismiss).
[6] BZA Appeal 19081, Exhibit 41B (Exhibit B to Permit Holder's Motion to Dismiss).
[7] BZA Appeal 19081, Exhibit 38 (Appellant's December 8 Pre-Hearing Statement) at 3.

Therefore, the parking layout, as approved by the Revised Permit, complies with the Zoning Regulations, and the Appeal should be dismissed as moot.

CONCLUSION

For the reasons stated above, DCRA asserts that the allegations stated in the Appeal are without merit and that the Appeal fails to establish a valid reason to overrule the ZA's approval of the Permit. DCRA therefore respectfully requests that the Board affirm that the Zoning Administrator correctly applied the Zoning Regulations to evaluate and approve the Permit, and that the Board therefore deny this Appeal.

Respectfully submitted,
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Date: 12/16/15

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December 2015, a copy of the foregoing Pre-Hearing Statement was served via electronic mail to:

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