

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 19106 of Richard Alan Seutter, Jr., Susan T. Seutter, and Katelijn van den Berg, pursuant to 11 DCMR §§ 3100 and 3101¹, from a May 14, 2015 decision by the Department of Consumer and Regulatory Affairs to issued Building Permits Nos. B1505056 and B1510351 to convert an existing two-family flat into a three-story apartment house with three dwelling units in the R-4 District at premises 67 V Street, N.W. (Square 3118, Lot 76).

HEARING DATE: November 17, 2015
DECISION DATE: November 17, 2015

ORDER DENYING APPEAL

This appeal was submitted on August 5, 2015 by Richard Alan Seutter, Jr., Susan T. Seutter, and Katelijn van den Berg (collectively, the “Appellant”), a group of residents who own and reside in properties near 67 V Street N.W. (the “subject property”), to challenge decisions of the Zoning Administrator, at the Department of Consumer and Regulatory Affairs (“DCRA”), to approve building permits that allowed the enlargement and conversion of a former two-family flat into a three-story, three-unit apartment house in the R-4 zone.² Following a public hearing, the Board of Zoning Adjustment (“Board” or “BZA”) voted to deny the appeal and to affirm the determination of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. On August 5, 2015 the Appellant sent copies of the appeal by email to DCRA and to WS Homes 67 V ST LLC, the owner of the subject property (“Property Owner”). By memoranda dated August 17, 2015, the Office of Zoning provided notice of the appeal to the Zoning Administrator, at DCRA; the Office of Planning; the Councilmember for Ward 5; Advisory Neighborhood Commission (“ANC”) 5E, the ANC in which the subject property is located; and Single Member District/ANC 5E08. Pursuant to 11 DCMR § 3112.14, on

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraph, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

² On October 28, 2015, Advisory Neighborhood Commission (“ANC”) 5E joined the appeal. (Exhibit 17.) References in this order to “Appellant” include both the named individuals and ANC 5E.

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August 19, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Appellant, the Zoning Administrator, the Property Owner, and ANC 5E. Notice was published in the *D.C. Register* on August 28, 2015 (62 DCR 11832).

Party Status. Parties in this proceeding are the Appellant, including ANC 5E; DCRA; and the Property Owner, WS Homes 67 V ST LLC. There were no requests for party status.

Appellant's Case. The Appellant challenged decisions of the Zoning Administrator to issue certain building permits for the subject property in conjunction with its enlargement and conversion to a three-unit apartment house. According to the Appellant, the "conversion of the subject property would be dramatically out of scale and character with existing row homes in the neighborhood." The appeal alleged that "the drawings conflict with several sections of the District's Zoning Regulations," specifically with respect to (i) interpretation and application as well as definitions and general provisions; (ii) the density of the proposed project; (iii) incorrect designation of the lower level as a cellar rather than a basement; (iv) overcrowding of the lot; (v) a non-compliant closed court on the third level that could not be resolved by a proposed trellis because it would constitute a structure within 10 feet of a neighboring chimney, in violation of the Construction Codes (Title 12 DCMR); (vi) size of roof structures; and (vii) incorrect determination of the pervious surface requirements," citing §§ 101, 199, 330, 400, 403, 406, 411, and 412 of the Zoning Regulations. (Exhibit 3.) The Appellant also alleged that "the Zoning Administrator erred "in allowing encroachment onto neighboring property" and that DCRA approved a building permit "without an Official Building Plat issued by the D.C. Office of the Surveyor and upon which the new development footprint should have been drawn by the architect of record," which was also in violation of the Construction Codes and impaired "the purpose of the applicable Zoning Regulations in relation to the Basement versus Cellar determination of the lowest level." The Appellant argued that a revised building permit issued for the subject property contained "substantive and material changes" showing that the original permit "was issued prematurely and in error." (Exhibit 21.)

DCRA. The Department of Consumer and Regulatory Affairs asserted that the Zoning Administrator "properly reviewed and approved" the building permits at issue "as in compliance with the Zoning Regulations." DCRA acknowledged that the initial permit, issued June 19, 2015 "appeared to authorize a minor violation of the Zoning Regulations" but contended that the Zoning Administrator had required the Property Owner "to obtain a building permit revision to bring the Project into compliance with the Zoning Regulations, which the [Property Owner] did," so that the Appellant's "allegations of error are without merit." (Exhibit 37.)

Property Owner. The owner of the subject property asserted that the appeal should be denied because the Appellants "failed to meet their burden of proof to show that the Zoning Administrator erred in approving the subject building permit."

ANC Report. By a vote of 8-0 at a public meeting on September 15, 2015, with a quorum present, ANC 5E adopted a resolution in support of the appeal. The resolution stated that "conversion of

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the subject property would be dramatically out of scale and character with existing rowhomes in the neighborhood” and the “personal and property interests of the surrounding homes and property owners in ANC 5E would be adversely affected by the conversion of the subject property as approved by DCRA.” The ANC also contended that conversion of the subject property “would negatively impact the air, light, privacy and property values of the surrounding homes” and complained that, in approving the building permits at issue, “it does not appear that DCRA fully considered the additional stress the conversion would add to the aging infrastructure in the neighborhood.” ANC 5E alleged that the building permits at issue violated the R-4 provisions of the Zoning Regulations, including “(i) interpretation and application as well as general provisions; (ii) the density of the proposed project; (iii) the pervious surface requirements; (iv) roof structures; and (v) overcrowding of the lot.” The ANC requested review of the project against the following provisions of 11 DCMR: §§ 101, 199, 330, 403, 404, 406, 411, and 412. (Exhibit 19.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 67 V Street, N.W. (Square 3118, Lot 76). The property is zoned R-4.
2. The lot was improved with a two-story row building formerly used as a two-family flat. The Property Owner has obtained building permits for the enlargement of the building as part of its conversion to a three-story, three-unit apartment house.
3. The conversion project involved the construction of both a new third story on the existing building and a three-story rear addition to the building. The addition would increase the lot occupancy at the subject property from approximately 35% to 56%.
4. Building Permit No. 1505056 (the “Initial Permit”) was issued on June 19, 2015 to authorize the Property Owner to construct a “new rear [addition] 3 stories, 1 new story on top of current structure to create one [totaling] 3 units,” with “interior alterations at all levels including new kitchens and bathrooms, new lighting and mechanical zones.” (Exhibit 6.)
5. Building Permit No. 1510351 (the “Revised Permit”) was issued on July 21, 2015, as a revision to Building Permit No. 1505056, to authorize the Property Owner to “move rear yard deck footings inside property line [and] to add trellis to third floor court next to neighbor chimney.” (Exhibit 7.)
6. The Zoning Regulations define a “court” as “an unoccupied space, not a court niche, open to the sky, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards. A court may also be bounded by a single curved wall of a building.” A “closed court” is defined as “a court surrounded on all sides by the exterior walls of a building, or by exterior

walls of a building and side or rear lot lines, or by alley lines where the alley is less than ten feet (10 ft.) in width.” (11 DCMR § 199.1.)

7. The drawings approved with the building permits (“the Approved Drawings”) show that the trellis will employ two-inch beams spaced 24 inches on center, creating 22-inch openings between the beams. (See Exhibit 37A.)
8. The Zoning Administrator has held, as an established practice, that a trellis that is attached to a building and that covers an otherwise unoccupied space on a lot must count toward lot occupancy if the trellis crossbeams are set apart no more than 24 inches on center. The practice is based on the rationale that such a trellis forms a sufficient cover to constitute part of the building.
9. In its application for a building permit, the Property Owner provided, as Sheet C00001 of the plan set, a scaled plat stamped by a professional surveyor licensed in the District of Columbia that was based on the records in the Surveyor’s Office. The plat was reviewed and approved by the Zoning Administrator (“ZA”) as sufficient to demonstrate compliance with the Zoning Regulations, as certified by the ZA’s stamp. (Exhibit 21A.)
10. The Approved Drawings depict a distance of less than four feet between the ceiling of the lowest level of the building and the adjacent finished grade as shown at the base of the stairs at the front of the building. The distance is either three feet, nine inches (Exhibit 21W, page 5) or three feet, eight inches (Exhibit 21A, page 40; Sheet A4.01.)
11. A “cellar” is defined in § 199.1 of the Zoning Regulations as “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade,” while a “basement” is defined as “that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.”

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.). *See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment “may be taken by any person aggrieved, or organization authorized to represent that person ... affected by any decision of an administrative officer ... granting or withholding a certificate of occupancy ... based in whole or part upon any zoning regulations or map” adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.). *See also* 11 DCMR § 3200.2.)

The Appellant challenged determinations by the Zoning Administrator in the issuance of two building permits that allowed the enlargement and conversion of a former two-family flat into a

three-story, three-unit apartment house at the subject property in the R-4 zone. The Appellant alleged that issuance of the two permits violated § 3202.1 of the Zoning Regulations because the proposed construction would not comply with all zoning requirements, and that substantive and material changes from the Initial Permit demonstrated that the Revised Permit was issued prematurely and in error.³ More generally, the Appellant contended that the enlargement of the subject property in accordance with the issued building permits would be dramatically out of scale and character with the existing rowhouses in the neighborhood, and would create negative impacts on light, air, privacy, and property values. The Appellant argued that, in approving the building permits, DCRA did not fully consider the technical objections raised by the Appellant before the permits were issued, or the additional stress the conversion would add to the aging infrastructure in the neighborhood.

Some of the errors alleged by the Appellant concern provisions of the Construction Codes, and thus are outside the Board's purview because they do not concern zoning matters.⁴ In addition, the Appellant alleged violations of some provisions of the Zoning Regulations that do not impose specific requirements but that set forth general provisions about the application and interpretation of the Zoning Regulations (§ 101) and state general provisions applicable in the R-4 zone (§ 330). These provisions are not directly relevant to the Zoning Administrator's determination of whether this project complied with the applicable minimum and maximum area requirements. Those requirements, such as height, lot dimension, lot occupancy, and yards, establish the matter-of-right parameters of construction within each zone. If the Zoning Administrator finds those requirements have been met, the building permit application must be cleared for zoning, notwithstanding assertions of the incompatibility of a particular project with its neighborhood. If such compliance with area requirements nevertheless results in an incompatible structure, the remedy is not for the Zoning Administrator to deny zoning clearance, but for the Zoning Regulations to be amended, as occurred in the instance when "pop up" conversions were adversely affecting R-4 properties. See Zoning Commission Order 14-11 (reducing the height of most R-4 construction from 40 to 35 feet and making conversions of residential buildings to apartment houses subject to special exception.) Finally, the Appellant also alleged error with respect to building height (§ 400), lot occupancy (§ 403), penthouses (§ 411), and pervious surfaces (§ 412), but did not provide evidence to substantiate its claims of error. The Board finds no basis to uphold an appeal of the Zoning Administrator's determinations in this proceeding with respect to any of these provisions.

The Appellant's other claims of error relate to an allegedly noncompliant closed court covered by a trellis, encroachment, the absence of a building plat from the Surveyor's Office, the determination of whether the lower level of the building at the subject property should be considered a basement or a cellar, and the allegedly excessive floor area ratio ("FAR") allowed by

³ Subsection 3202.1 states that, with certain exceptions, "a building permit shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless the plans of and for the erection, construction, conversion, or alteration fully conform to the provisions of [the Zoning Regulations]."

⁴ The Appellant notes that "The trellis and other building code violations regarding the [Initial] Permit are the subject of the pending [Office of Administrative Hearings] appeal." (Exhibit 21.)

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the building permits. As discussed below, the Board finds no zoning error in this proceeding and affirms the Zoning Administrator's determinations made in the issuance of the two building permits for the apartment house project at the subject property.

The "court" and trellis. The Appellant asserted that the building permits violated the Zoning Regulations because the Approved Plans included a closed court on the planned third floor that would not comply with area and width requirements of § 406 of the Zoning Regulations. According to the Appellant, the closed court would be 10 feet, nine inches wide, less than the minimum requirement of 15 feet, and would have an area of approximately 198 square feet, less than the minimum 350 square feet required by zoning. DCRA acknowledged that the Initial Permit "appeared to authorize a minor violation of the Zoning Regulations" but asserted that the Revised Permit brought the project into compliance. According to DCRA, the approved project does not include a closed court on the third floor because the area in question is not "open to the sky" – and therefore does not meet the zoning definition of a "court" – since the area will be covered by a trellis substantial enough to satisfy the Zoning Administrator's established standard to constitute part of the building.

The Board concurs with DCRA that the Revised Permit corrected an error made in the issuance of the Initial Permit so as to avoid the creation of a closed court smaller than the minimum requirements set forth in the Zoning Regulations. The Appellant contended that even "minor" violations are not permitted and therefore that the permits were issued in error. However, DCRA may issue revised permits when necessary – for example, to correct an error subsequently discovered with respect to a building permit – and the Board finds no error with respect to § 406 as the project was finally approved. The Board concludes that the Zoning Administrator reasonably determined, pursuant to an established practice, that the area in question would not constitute a court for zoning purposes because it would not be open to the sky.

The Appellant challenged the Zoning Administrator's practice employed in this case, in which a determination of whether a trellis would provide sufficient coverage to constitute part of the building was based on a standard requiring placement of the crossbeams of the trellis within 24 inches on center. The Appellant argued that the trellis approved by the Revised Permit "cannot be added to resolve the non-compliant closed court" because the Board "has previously concluded that a trellis meets the definition of 'building' when it has a roof that provides at least 51% coverage, is supported by columns or walls and is used for the shelter, enclosure or support of persons," consistent with the zoning definition of "building."⁵ According to the Appellant, the

⁵ The Appellant cites Board orders in Application No. 18263-B (Lester) (order issued July 25, 2013) and Application No. 17331 (JPI Apartment Development LP) (summary order issued July 6, 2005), which both concerned applications under § 223 to allow an addition to a one-family dwelling, not meeting certain requirements of the Zoning Regulations, where the planned addition would be connected to the existing building by a trellis sufficient to meet the definition of "building." (Exhibits 21P and 21O.). The Applicant provided a copy of a report by the Office of Planning concerning the Lester application; the report stated that "Past precedent dictates that a trellised structure, although not enclosed, can be considered a meaningful connection if the lattice provides at least 51% coverage and if the covered walkway provides communication between the different parts of the building." (Exhibit 21S) The Applicant also provided a copy of a letter from the Zoning Administrator about the proposed redevelopment of a mixed-use building located in

“third story trellis addressing the non-compliant closed court ... does not have the sufficient coverage of 51% to constitute a ‘roof’ and therefore does not meet the definition of a ‘building’ under the Zoning Regulations.”

The Board finds no reason to overrule the Zoning Administrator’s established practice of determining whether a given trellis is substantial enough to be considered part of a building and to count toward lot occupancy based on the spacing of its crossbeams. As noted by DCRA, the materials cited by the Appellant in arguing that 51-percent coverage is required concern a different use of trellises under a different aspect of the Zoning Regulations. Those cases address the minimum standard required to establish a “meaningful connection” between two buildings on the same lot that would be sufficient to classify the two buildings and the connecting trellis as a single building to comply with the requirement of § 3202.3 that no more than one principal structure may be located on a single lot of record. The issue of whether a given trellis is sufficient to constitute a meaningful connection between two otherwise separate buildings (or roof structures) is not determinative of the issue in this appeal, which concerns whether a trellis provides sufficient coverage to extinguish what would otherwise be a closed court if the trellis ensured that the area would not be “open to the sky.”

The Board does not agree with the Appellant that the Zoning Administrator’s established practice was employed as an “arbitrary standard” in this case. Rather, as DCRA indicated, the 24-inches-on-center standard was developed by the Zoning Administrator “to fill in a gap in the Zoning Regulations” when making a determination of whether a given trellis would provide sufficient coverage so as to warrant consideration of the trellis as a part of a building and something that should be taken into account when calculating lot occupancy.⁶ The Zoning Administrator reasonably determined that a trellis that satisfied the 24-inches-on-center standard – that is, sufficient to trigger lot occupancy requirements – should also be considered as providing sufficient coverage so that an area would not be open to the sky. The 24-inches-on-center standard was not devised for the building permits at issue in this proceeding, and the Appellant has not alleged that the standard was incorrectly applied to the trellis at issue.

Encroachment. The Appellant alleged that the foundation plans associated with the building permits showed that the column and stair footings of the proposed development encroached on a neighboring property, creating a violation of § 3202 of the Zoning Regulations. According to the Appellant, “the adjacent homeowners had communicated this violation to DCRA’s Deputy Chief Building Official and the Director on April 24, 2015, almost two months before” the Initial Permit

a C-2-A zone; the letter indicated that a trellis, whose pattern would be “at least 51% ‘closed’ on top,” would be “sufficient to establish the connection between the two stair towers to make them a single roof structure.” (Exhibit 21Q.)

⁶ Similarly, the 51-percent standard cited by the Appellant arose, not from any specific provision of the Zoning Regulations, but from a practice devised by the Zoning Administrator to determine whether a given trellis would provide a “meaningful connection” so that two otherwise separate buildings on the same lot would constitute one building for zoning purposes.

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was issued, and “DCRA should not have issued” the Initial Permit “without resolving this error” based on deficient building plans. (Exhibit 21.) The Board concurs with DCRA that the encroachment was corrected by the plans approved with the Revised Permit and therefore the claim of error is moot. (See Exhibit 37B.)

Plat issued by the Surveyor’s Office. The Appellant claimed error by the Zoning Administrator since DCRA approved the building permits without an official building plat issued by the Office of the Surveyor, “upon which the new development footprint should have been drawn by the architect of record.” However, the Appellant acknowledged that the plat requirement arose from the Construction Codes, and did not cite any similar requirement in the Zoning Regulations. Instead, the Appellant contends that § 106.12.1 of the Construction Codes requires certain information to be provided on an official building plat for the purpose of zoning compliance review.

DCRA responded that the Zoning Regulations do not require a building plat from the Surveyor’s Office, but only those materials that are “deemed necessary.” As DCRA explained, the Zoning Administrator has the discretion to require a building plat if the ZA deems it necessary for review of an application for zoning compliance, but a plat from the Surveyor’s Office would not necessarily be required since the Surveyor’s role is to depict the boundaries of a particular lot, while an applicant for a building permit, and not the Surveyor, has the responsibility to depict existing and proposed buildings.

The Board concurs with DCRA in finding no merit in the Appellant’s claim of error with respect to the absence of a plat from the Surveyor’s Office. Pursuant to § 3202.2, “each application for a building permit shall be accompanied by any of the following [specified information] that is deemed necessary” to determine compliance with the Zoning Regulations. The necessary information may include an official building plat prepared by the Surveyor. However, there is no indication in this proceeding that an official plat was deemed necessary to determine compliance with the Zoning Regulations in the issuance of the Initial and Revised Permits. Instead, the Property Owner included in its building permit application a scaled plat stamped by a licensed professional surveyor, which the Zoning Administrator found sufficient to demonstrate compliance with the Zoning Regulations. The Board finds no reason to overrule the Zoning Administrator in that regard.

Determination of the lower level. The Appellant contended that the lack of an official building plat “impair[ed] the purpose of the applicable Zoning Regulations” in the determination of whether the lowest level of the building at the subject property constituted a basement or a cellar. The Appellant cited “the conditions of the existing property,” “the original drawings for determination of zoning requirements for the provided construction,” and photographs in arguing that the ceiling height of the lower level “remained at least 4’ above the existing finished grade.” The Applicant also asserted that “the grade was changed in the construction drawings without any meaningful purpose other than to re-qualify the lower level of the property from a basement to a cellar.” According to the Appellant, the lower level should be classified as a basement, which “must be

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considered as one of the three stories allowed under R4” so that “the additional fourth story in the Permit plans is not permissible and the permit should be revoked.”

However, as DCRA noted, the final determination of whether the lowest level should be considered a basement or a cellar will not be made until a final inspection after the adjacent finished grade is established. That determination would not be affected by the absence of a plat from the Surveyor’s Office as part of the issuance of a building permit, nor are the materials cited by the Appellant determinative since those materials might reflect information not verified by the Zoning Administrator or might fail to indicate the dimension between the finished grade and the underside of the ceiling of the lowest level. Although some documents in the record refer to the space as a “basement,” the Appellant acknowledged that the scale drawings included in the Approved Plans “indeed suggest that [the distance at issue] is 3 feet and 9 inches” (Transcript of Hearing, November 17, 2016, p. 209.) Accordingly, the Board finds no basis to reverse the determination of the Zoning Administrator that the lower level would constitute a cellar.⁷

Floor Area Ratio. In arguing that the apartment house at the subject property would be inconsistent with the design and size of neighboring rowhouses and with the character of the neighborhood, the Appellant asserted that the floor area ratio of the project would be 1.5, which would not be permitted “even ... in an apartment district, such as an R-5-A District where Zoning Regulations set the maximum FAR at 0.9.”

However, no maximum floor area ratio was prescribed for the R-4 zone. (11 DCMR § 402.4.) As the Appellant noted, the R-4 zone is not intended as “an apartment house district as contemplated under the General Residence (R-5) Districts”; rather, the “primary purpose” of the R-4 zone is “the stabilization of remaining one-family dwellings.” (11 DCMR §§ 330.1, 330.3.) However, under the regulations in effect at the time of issuance of the Initial Permit, the R-4 zone permitted the conversion of existing structures to apartment house use subject to “control[] by a minimum lot area per family requirement.” (11 DCMR §§ 330.3.) Uses permitted as a matter of right in the R-4 zone then included the “conversion of a building ... existing before May 12, 1958, to an apartment house as limited by §§ 401.3 and 403.2.”⁸ (11 DCMR § 330.5.) Accordingly, the Board finds no basis to overturn the Zoning Administrator’s determination with respect to floor area ratio.

⁷ See also Appeal No. 18980 (Concerned Citizens of Argonne Place); order issued July 13, 2016. (Zoning Regulations do not prohibit the adjusting of the finished grade for purposes of FAR calculations. Although “adjacent finished grade” is not defined in the Zoning Regulations, the term has been consistently interpreted by its plain meaning as the grade adjacent to the building that is established at the conclusion of the construction process as shown on the plans approved with a building permit. Where that grade would be less than four feet below the ceiling of the lower level, the lower level would be a cellar under the definition in § 199.1, and, as a cellar, the lower level would not be included in the calculation of gross floor area or floor area ratio, in keeping with the definitions of those terms in § 199.1. The § 199.1 definitions do not refer to “existing” conditions but rather require an evaluation of proposed conditions for zoning compliance, since “‘finished’ means the grade proposed by the [permit] applicant to be established under a permit.”)

⁸ These provisions, applicable in the case of the conversion of a building in an R-4 zone to apartment house use, required at least 900 square feet of lot area per unit (§ 401.3) and specified that lot occupancy could not exceed the greater of 60% or the lot occupancy as of the date of conversion (§ 403.2). Neither provision is at issue in this appeal.

Timing of permit issuance. The Appellant argued that the Revised Permit “contains substantive and material changes” that demonstrate that the Initial Permit “was issued prematurely and in error,” since “both DCRA and the [Property Owner] knew about the issues necessitating these changes” before the Revised Permit was issued. The Appellant cites both “the addition of a trellis to cover the non-compliant closed court on the third story” and changes to the location of the stair and column footings as material changes authorized by the Revised Permit. Noting that the Zoning Regulations were amended soon after the Initial Permit was issued,⁹ the Appellant claimed that the Zoning Administrator acted arbitrarily to avoid the new regulations by issuing “a noncompliant permit that [had] known zoning violations.” The Board finds no merit in this allegation. With respect to zoning, the areas of “noncompliance” claimed by the Appellant are in fact not in error with the exception of the court and encroachment issues that were corrected by the Revised Permit. The Board finds no basis to conclude that the Initial Permit was issued prematurely, in haste, or knowingly in error, or that the timing of its issuance was intended to avoid application of the amendment to the Zoning Regulations. Rather, the Zoning Administrator reviewed the building permit application in accordance with the zoning requirements in effect at the time and, finding no zoning deficiencies, had no reason to delay its issuance on zoning grounds. The fact that the Initial Permit was mistaken in two respects, which were subsequently corrected, does not render the Zoning Administrator’s determinations erroneous or otherwise give reason for revocation of the permits.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001).) In this case, ANC 5E adopted a resolution in support of the appeal on the grounds that the planned conversion of the subject property would be out of scale and character with the existing neighborhood, would adversely affect nearby residents and the air, light, privacy, and property values of the surrounding homes as well as creating additional stress on the neighborhood’s infrastructure. ANC 5E alleged that the building permits at issue violated zoning requirements, including general provisions relating to the interpretation and application of the Zoning Regulations as well as provisions relating to density, pervious surface, roof structures, and “overcrowding of the lot,” citing §§ 101, 199, 330, 403, 404, 406, 411, and 412 of the Zoning Regulations. These are essentially the same grounds raised by the Appellant in this appeal, and for the reasons stated above; the Board finds the ANC’s recommendation to be unpersuasive.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof in its claims of error in the determinations of the Zoning Administrator with respect to the issuance of Building Permits Nos. B1505056 and B1510351 to convert an existing two-family flat into a three-story apartment house with three dwelling units in

⁹ By Order effective June 26, 2015, the Commission adopted new § 336, which requires special exception relief for conversions of a residential building, located in R-4 and in existence before May 12, 1958, to apartment house use. See Final Rulemaking and Order No. 14-11 (62 DCR 8883).

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the R-4 District at 67 V Street, N.W. (Square 3118, Lot 76). Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DENIED** and the Zoning Administrator's determination is **SUSTAINED**.

VOTE: 3-0-2 (Marnique Y. Heath, Frederick L. Hill, and Michael G. Turnbull voting to DENY; Jeffrey L. Hinkle not participating; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 14, 2016

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.