

Detailed Statement of Zoning Errors and Statement of How Appellants Intend to Prove Their Case

Factual Background

The Appellants are (1) Advisory Neighborhood Commission 3C (the “ANC”), within which boundaries the subject property exists, and (2) the 2926 Neighborhood and Safety Coalition, a neighborhood group consisting of many neighbors in the immediate vicinity of the subject property.

The Appellants will prove that the D.C Department of Consumer and Regulatory Affairs (“DCRA”) and the Zoning Administrator exceeded their authority and mistakenly issued permit #B1511364 (the “Permit”). The Permit relates to the creation of a new 10-car gravel parking lot established by a newly redeveloped, non-conforming apartment building located in a single-family dwelling residential zone. Appellants will prove that the Permit should have been denied.

2926 Porter Street, NW (Square 2068, Lot 95) (the “Property”) was constructed in 1923 and purchased in 2012 by Adams-Porter, LLC or an affiliate (“the Developer”). The Property has undergone extensive interior and exterior redevelopment since purchase by the Developer. Although the Property is located in an R-2 single-family dwelling residential district, it is currently operating as a 23-unit multi-family apartment building. The Property is also located within the Cleveland Park Historic District.

The south and southwest sides of the Property abut an alley. Prior to the redevelopment, the land on these south and southwest sides of the Property was sunken several feet below the level of the alley and consisted of green space containing grass, sizable trees and shrubs, all behind a fence separating the Property from the alley. As part of its redevelopment, the Developer removed 100% of the prior green space, raised the level of the land on the south and southwest sides of the building by several feet, and created ten new parking spaces on a newly-installed gravel surface. The addition of this new 10-car parking is the basis for the Appellants’ appeal to the Board.

Prior to the beginning of the redevelopment, more than twenty neighbors in the immediate vicinity of the Property and the ANC learned of the Developer’s desire to raze/regrade the green space and replace it with a new 10-car gravel parking lot. Upon learning of this, the neighborhood and ANC voiced their unanimous objections due to concerns surrounding safety, traffic, light/noise, snow and garbage removal, ingress/egress, and other reasons. The ANC unanimously passed a resolution on April 21, 2014 objecting to the new 10-car parking and reiterated its objection unanimously on September 21, 2015 in connection with the filing of this appeal. The Developer has disregarded the neighbors’ and ANC’s objections and has failed to respond to all inquiries which could have potentially resulted in a mutually agreeable solution.

At the conclusion of the redevelopment project in 2015, but only after razing the prior green space, regrading the land and installing the new 10-car gravel parking lot on the Property, the Developer submitted plans and a permit request to DCRA for the new 10-car parking lot that it had already established without a permit. This permit request was dated August 12, 2015 and the

Permit was hastily and erroneously approved in less than 24 hours by the DCRA per the instructions of the Zoning Administrator.

Appellants will prove that the DCRA and the Zoning Administrator erred in issuing the Permit and that the new 10-car parking lot is not allowed as a matter of right under the Zoning Regulations. Rather, the requested permit should have been denied. If the Developer insists on seeking approval for the new 10-car parking, it should be the subject of a special exception and/or variance process. Although the Appellants believe that neither a special exception nor variance is merited and would oppose them if sought, the arguments against such special exception or variance are not necessary for the resolution of this appeal in Appellants' favor because the special exception/variance process has not been initiated by the Developer.

The specific provisions of the Zoning Regulations that apply directly are described below. Section references refer to sections of the Zoning Regulations (11 DCMR).

1. Non-Conforming Property. Prior to the redevelopment, the Property was operating as a 19-unit multifamily apartment building with three parking spaces on the west side of the Property. Following the redevelopment, the Property is operating as a 23-unit multi-family apartment building with the original three western parking spaces plus a new 10-car parking lot added to the south and southwest sides of the building. The Property is located in an R-2 district, which does not permit multi-family apartment buildings as a matter of right (Section 300), and therefore the Property is nonconforming to the district in which it is located.

Nonconformities may not be enlarged upon, expanded or extended (Section 2000.2) and all nonconformities shall be regulated strictly and permitted only under rigid controls (Section 2000.3). Furthermore, any nonconforming use of land shall neither be extended in land area nor changed to any use except a use permitted in the district in which the property is located (Section 2000.6).

Changing the use of the Property from a nonconforming apartment building with three parking spaces to a nonconforming apartment building with 13 parking spaces (as a result of the new 10-car parking) represents a prohibited enlargement/expansion/extension that should not have been approved by the DCRA.

2. Parking and Parking Lots in R-2 District. The Zoning Regulations do not require parking at apartment buildings located within an R-2 district (Section 2101.1). Absent a special exception or variance, up to one parking space and up to two car-sharing spaces are permitted (Sections 301, 202.7). With respect to the Property, the three pre-existing western parking spaces already provide more than the required and permitted amount of parking at the Property given its location within an R-2 district. The new additional 10-car parking lot exceeds any permitted or required parking for the Property.

The Zoning Regulations list the uses of a property which are allowed as a matter of right in an R-2 district (Section 300), and incorporate by reference the uses which are allowed in R-1 districts pursuant to Section 201. The uses allowed in R-2 and R-1 districts under Sections 300 and 201 as

a matter of right do not specifically include, and would not be interpreted to include, a 10-car parking area such as that proposed to be maintained at the Property.

Furthermore, the Zoning Regulations list the accessory uses which are allowed as a matter of right in an R-2 district (Section 301), and incorporate by reference the accessory uses which are allowed in R-1 districts pursuant to Section 202. The only references to parking in such listings of accessory uses allowed in R-2 and R-1 districts under Sections 301 and 202 appear in Sections 301.1(b) and 202.7. Such Sections 301.1(b) and 202.7 limit parking to one space plus two car-sharing spaces; however, such parking is specifically in relation to a one-family detached dwelling and not a multi-family apartment building such as the Property. In either case (whether the property includes a one-family dwelling or a multi-family apartment building), a 10-car parking area such as that proposed to be maintained at the Property could not be construed as a permitted accessory use at the Property under the Zoning Regulations.

3. Erroneous DCRA/Zoning Administrator Interpretation. The ANC and neighbors in the immediate vicinity of the Property have repeatedly sought an explanation from the DCRA and Zoning Administrator as to why they might believe that the new 10-car parking lot is permitted as a matter of right at the Property, and why the Permit was issued. The only explanation offered to date came in an email on August 18, 2015 from a Program Analyst in the Office of the Zoning Administrator. Such email stated that the DCRA and Zoning Administrator are relying on Section 2101.3 in reaching their determination to issue the Permit.

The provision that the DCRA and Zoning Administrator relied upon in making their determination (Section 2101.3) is both irrelevant to the question at hand and not supportive of a new 10-car parking area at the Property. Section 2101 and such Section 2101.3 only relate to required parking. Section 2101 is the “Schedule of Requirements for Parking Spaces” and sets forth how much parking is required at a particular location. As stated above, no parking is required at the Property and none of the Appellants, the Developer, DCRA or the Zoning Administrator have concluded otherwise. Within the broader context of addressing required parking, Section 2101.3 merely states that Section 2100 in itself does not prohibit parking unless it is prohibited by other applicable provisions of the Zoning Regulations or otherwise fails to comply with the Zoning Regulations. Given that the new 10-car parking area at the Property is in fact prohibited by other applicable provisions of the Zoning Regulations as described above and does not otherwise comply with the Zoning Regulations, Section 2101.3 is irrelevant and not dispositive in any manner. By issuing the Permit in reliance on Section 2101.3, the DCRA and Zoning Administrator have improperly and unilaterally expanded the plain meaning and intent of Section 2101.3, overriding all other applicable sections of the Zoning Regulations.

If the DCRA’s and Zoning Administrator’s misguided and incomplete legal reasoning and logic were to be upheld, then the precedent established by that decision would be that any owner of a property (conforming or nonconforming) in a residential zone in the District of Columbia is entitled as a matter of right to pave/gravel over all land on the property and use that land for parking an unlimited number of vehicles without any regard whatsoever to any other provision of the Zoning Regulations, including without any regard to rules regarding location within property and setback from property lines, safety, traffic, ingress/egress, adverse effects on the surrounding area, drainage and other environmental concerns, snow and garbage removal, light, noise,

screening, maintenance, size, landscaping, etc. – all of which are addressed in other provisions of the Zoning Regulations outside of Section 2100 and 2101.3. Such an extreme interpretation and exercise of authority by the DCRA and Zoning Administrator in permitting the new 10-car parking area as a matter of right conflicts with both the very purpose of the Zoning Regulations and the other specific rules described herein.

4. Additional Proof of Case. Appellants will prove this zoning error based on the building plans, zoning maps, other written exhibits, photographic evidence, testimony from the ANC and testimony in interpreting DC Zoning Regulations, and related legal and public policy arguments.

5. Other Considerations. Although not necessary for a determination in favor of the Appellants, the Appellants wish to note the following:

a. The DCRA/Zoning Administrator have violated their legal obligations by not responding to a simple and limited FOIA request submitted on August 20, 2015 in relation to the Permit. Applicable law states that a response should have been provided within 15 business days and no such response or basis for failing to respond has been provided after more than 30 business days. As a result of the failure to respond to the FOIA request, the Appellants' ability to conduct a further analysis of the pertinent issues, zoning and otherwise, has been prejudiced.

b. The Property is located less than one block from the Cleveland Park Red Line Metro Rail Station, less than one block from multiple major Metro Bus route stops, and less than two blocks from a large Capital Bikeshare station. The destruction of 90-year old green space and replacement in favor of a new 10-car gravel parking area, in such close proximity to various forms of public transportation, is in direct conflict with the goals of the District of Columbia's Comprehensive Plan and inconsistent with the Zoning Commission's recently adopted proposed zoning regulation changes (Zoning Regulations Review Case No. 08-06A).

c. By issuing the Permit, the Zoning Administrator and DCRA have effectively set the stage to convert the area in the vicinity of the Property from a quiet, safe, low-traffic, convenient green area within the Cleveland Park Historic District to an unsafe, noisy, high-traffic, nuisance with significant adverse impact on the entire neighborhood and the many pedestrians who use the alleyway. This represents a taking and destruction of value for the nearby neighbors, or at a minimum a transfer of such value from the nearby homeowners to the Developer without due process. It is not clear what motivated the Zoning Administrator to transfer this economic value in the face of the straightforward Zoning Regulations described above with which the Zoning Administrator must be familiar; however, in light of the one-day response time in issuing the Permit, the intentional failure to respond to a basic FOIA request, and an unwillingness to engage with neighbors or the ANC who have raised legitimate concerns, the motivations for such decision-making merit further investigation.

Attachments - Initial Supporting Materials:

1. Resolution of ANC3C No. 2015-031 reiterating opposition to additional parking at 2926 Porter Street, NW and joining in appeal to BZA.
 2. Excerpt from DCRA Online Permit Status Tracker re: Permit #B1511364. ** Note that DCRA has failed to respond to a properly filed FOIA request and other inquiries requesting a copy of such permit. As a result, a complete copy of the permit has not been available for inclusion in this filing.
 3. Designation of Andrea Ferster as counsel to 2926 Neighborhood and Safety Coalition.
-

	ADVISORY NEIGHBORHOOD COMMISSION 3C GOVERNMENT OF THE DISTRICT OF COLUMBIA CATHEDRAL HEIGHTS • CLEVELAND PARK MASSACHUSETTS AVENUE HEIGHTS MCLEAN GARDENS • WOODLEY PARK
Single Member District Commissioners 01-Lee Brian Reba; 02- Gwendolyn Bole; 03-David Valdez 04- Vacant; 05- Margaret Siegel; 06-Carl Roller 07- Victor Silveira; 08-Catherine May; 09-Nancy MacWood	P.O. Box 4966 Washington, DC 20008 Website http://www.anc3c.org Email all@anc3c.org

ANC 3C Resolution No. 2015-031
Regarding BZA Appeal on Parking Spaces
Behind 2926 Porter Street NW

Whereas, in April 2014, ANC 3C unanimously adopted resolution # 2014-010, opposing the proposed alteration of the rear yard grade and the creation of a multi-space parking lot because such treatment and use is not consistent with the CP historic district.

BE IT RESOLVED that ANC 3C continues to believe that the creation of an additional 10-13 parking spaces violates existing zoning requirements and would cause harm to the quality of light, air and open space in the vicinity of the building, and therefore objects to creation of additional parking beyond what is already protected under current usage,

BE IT RESOLVED that this use raises zoning issues and that, at a minimum, ANC 3C believes a special exception is necessary and a variance may also be necessary, and therefore, ANC 3C joins with the neighbors in filing an appeal to the Board of Zoning Adjustment regarding these issues,

FINALLY, BE IT RESOLVED that the Chair and Commissioner representing ANC3C05 are authorized to represent the commission on this matter.

Attested by



Carl Roller
Chair, on September 21, 2015

This resolution was approved by a voice vote, on September 21, 2015 at a scheduled and noticed public meeting of ANC 3C at which a quorum (a minimum of 5 of 9 commissioners) was present.



Search

Search

[Ask the Mayor](#) | [Subscribe to Emails](#) | [Agency Directory](#) | [311 Online](#) | [Closures](#)

311 Online

District Residents

Businesses

Visitors

Media

Online Services

[DC Home](#) > [DCRA Home](#)

Track Status of Building Permit Application

To review the status of an application, enter the Application ID or Property Address below and click find to continue. Please note that the application status is refreshed every night at **3.00 AM** so the status you see below reflects the updates from the day before.

Search By:

Application ID

Property Address

Enter the Property Address to review Application Status:

St. No.*

St. Name*

St. Suffix*

Quad*

2926

porter

Street

NW

Find

Application Status by Property Address:

Please see the table below for review statuses. The table is not shown if the reviews have not been identified. A blank Status date means that the initial review has not been completed.

ApplicationID	Date Filed	Full Address		Agent Name		Phone Number
B1511364	8/12/2015	2926 PORTER ST NW		NA ADAMS-PORTER LLC		202-965-2250
Discipline	Review Status	Status Date	Review Comment	Reviewer Name	Reviewer Email	
Zoning Review	Zoning Review Approved	08/13/2015	r2 zone: approved to stripe 10 additional parking spaces for a total of (13) parking spaces for existing 23 unit apartment building. parking spaces to be striped and numbered. per matt legrant (zoning administrator), the provided parking spaces created may be compact spaces as they are being provided for convenience only. reference coo1502225 approved 6/4/15, and b1405197 approved 5-29-14.			
Structural Review	Structural Review N/A	08/12/2015	as noted at the application ddoe & ddot have n/a'd	Bihon Debessai	Bihon.Debessai@dc.gov	
DDOE Review	DDOE Review N/A	08/12/2015		Charles Edwards	Charles.Edwards@dc.gov	
DDOT Review	DDOT Review N/A	08/12/2015	all work in public space require's a separate public space permit as per shown at the countet	Bill Schoon	Bill.Schoon@dc.gov	
HPRB Review	HPRB Review Approved	08/13/2015		Brendan Meyer	Brendan.Meyer@dc.gov	
Issue Permit	Permit Issued	08/13/2015		Patrice Derricott	Patrice.Derricott@dc.gov	
BCIV1500157	8/12/2015	2926 PORTER ST NW		NA ADAMS-PORTER LLC		202-965-2250
SH1500005	10/27/2014	2926 PORTER ST NW		SHOLA PYNE		202-817-9457
FA1402535	7/21/2014	2926 PORTER ST NW		MARCEL QUINTANILLA		
FS1402271	6/21/2014	2926 PORTER ST NW		JUDD FIRE PROTECTION LLC		410-871-3480
B1405197	3/14/2014	2926 PORTER ST NW		CARLOS R. IGLES BELLO, BELLO ? ASSOCIATES, LLC		202-289-1663
B1403371	1/13/2014	2926 PORTER ST NW		BELLO BELLO AND ASSOCIATES- AMANDA		202-289-1663
B1403239	1/7/2014	2926 PORTER ST NW		BELLO BELLO AND ASSOCIATES		202-289-1663
B1402016	11/22/2013	2926 PORTER ST NW		BELLO BELLO AND ASSOCIATES		202-289-1663
D1400120	11/20/2013	2926 PORTER ST NW		WARREN CRUMITY BELLO BELLO AND ASSOCIATES		202-627-8637
B1302684	12/26/2012	2926 PORTER ST NW		AMANDA BARLEY		202-289-1663
B1100067	10/4/2010	2926 PORTER ST NW				

Tell us what you think

Send us an [email](#) with your comments. We'll respond within two business days.

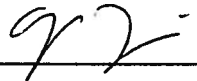
2926 Neighborhood and Safety Coalition

October 2, 2015

The 2926 Neighborhood and Safety Coalition (the "Coalition") hereby appoints Andrea Ferster, attorney-at-law, as an agent and representative and authorizes her to act as legal counsel to and on behalf of the Coalition and to bind the Coalition. Such appointment includes, but is not limited to, matters related to advice, filings and communications related to the appeal by the Coalition and ANC3C to the Board of Zoning Adjustment in connection with parking located at 2926 Porter Street, NW, Washington, DC.

Ms. Ferster may be contacted at:

Law Offices of Andrea C. Ferster
2121 Ward Court, N.W. 5th Floor
Washington, DC 20037
Tel. 202-974-5142
Email: aferster@railstotrains.org

By:  _____

Coalition Representative