

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Appeal of ANC 7F/David Belt Building Permit No. B1501924 at 4000 Benning Road, N.E. (Square 5081, Lot 0052) in the RA-3 (R-5-C) Zone District

Appeal No. 19627

Original Hearing Date: December 13, 2017

Continued Hearing Date: January 10, 2018

CHRONOLOGY OF EVENTS

Date	Description
4/19/2013	Appellant David P. Belt files ZC Case 13-07, asking the Zoning Commission ("ZC") to rezone 4000 Benning Road, N.E. ("Property") from the C-3-A Zone District to the R-1-B Zone District.
9/26/2013	As part of the proceedings on ZC Case 13-07, then-owner of the Property and the contract purchaser submit for informational purposes their proposed building plans for a 71-unit affordable housing project, which among other things, show the retaining wall. (ZC Case 13-07, Ex. 19 & 19B.)
9/26/2013	ZC holds first public hearing on ZC Case 13-07.
2/20/2014	ZC holds second public hearing on ZC Case 13-07. There, the contract purchaser testifies that it had already expended \$500,000 in developing plans to construct the project, had secured financing through DCHD, and was in the process of starting permitting and finalizing the contract to purchase. (ZC Case 13-07, 2/20/14 Tr. 121-23.)
3/17/2014	The contract purchaser submits supplemental materials requested by the ZC, including a proposed development schedule, which made clear that the owner would move quickly for a building permit. A copy of this filing was sent to Mr. Belt. (ZC Case 13-07, Ex. 51.)
3/31/2014	4000 Benning Road LLC finalizes its purchase of the Property. (DC Land Records, Instrument No. 2014032580.)
6/9/2014	The ZC issues its final order in Case 13-07, rezoning the Property from the C-3-A Zone District to the R-5-C Zone District. (ZC Case 13-07, Ex. 59.) building.
11/24/2014	The Owner files a building permit application, including substantially the same building plans that were submitted as part of ZC Case 13-07.

Date	Description
7/22/2015	The Office of Zoning approves the building permit.
10/2/2015	DCRA issues Permit No. B1501924 (the "Permit"). The Building Permit describes the work as: 4-story wood frame structure over a walkout basement – 71 residential apartments, amenity spaces, including exercise room, multipurpose room, leasing offices and main lobby. A below-grade garage will service the residents, building signage will be located on grade in front of building.
10/--/2015	Notice of the Permit sent to ANC 7F.
3/--/2016	The Owner begins principle construction on the project.
4/27/2016	Mr. Belt meets with members of the development team (Steven Wahl and Rob Peck of Hamel Buildings, as well as O'dette McDonald and Christopher Stennett of the Warrenton Group) to discuss Mr. Belt's issues concerning the construction of the project, including the retaining wall at the rear of the property. (Ex. 30 (Ex. A (Stennett Decl. ¶ 5)).) Mr. Belt also coordinates a meeting between the development team and the National Park Service pertaining in part to the temporary closing of the adjacent public alley as part of building the project. (Ex. 30 (Ex. A (Stennett Decl. ¶ 6)).)
5/19/2016	The development team and general contractor attend the monthly ANC meeting to inform the ANC and the community about the status of construction on the Property. (Ex. 30 (Ex. A (Stennett Decl. ¶ 7)).)
7/19/2016	A letter agreement between Mr. Belt, another neighbor, the Warrenton Group, and Pennrose Properties regarding the alley-closure issue is executed. (Ex. 30 (Ex. A (Stennett Decl. ¶¶ 8, 9 & Ex. 1)).)
3/--/2017	Mr. Belt contacts DCRA specifying that he does not think the apartment building is compliant with the requirements in the R-5-C Zone District. DCRA personnel discuss the Building Permit with Mr. Belt, and the fact that it had been approved by the Office of Zoning on July 22, 2015. (Ex. 3 at 5.)
4/6/2017	Mr. Belt sends a letter to the Office of Zoning stating that the Owners' building plans were not compliant with ZC Order 13-07, and requesting that another review be undertaken. That month, the Office of Zoning re-reviewed the Building Permit and related drawings and found them to be compliant. (Ex. 3 at 5.)
4/12/2017	Mr. Belt contacted DCRA to inquire why a "wall check" had not been done on the retaining wall at the Property. A wall check was done on April 27, 2017, and

Date	Description
	the wall was found to be compliant with the plans and Zoning Regulations. (Ex. 3 at 5.)
4/--/2017	Mr. Belt separately contacted DCRA to express concern that the Owner was using public space without authorization. On April 25, 2017, the Owner submitted to the Office of Zoning proof that it had permission to use the public space— <i>i.e.</i> , Permit No. PA107910-R1. (Ex. 3 at 5.)
5/15/2017	The building is under roof as of this date. (Ex. 30 (Ex. A (Stennett Decl. ¶ 11)).)
5/25/2017	The absolute deadline to file an appeal of the Permit under 11-Y DCMR § 302.3(a).
6/16/2017	Mr. Belt sends an email to the Office of Zoning acknowledging the wall-check approval and furnishing a new list of compliance concerns. The Office of Zoning sent a third-party inspector to visit the site, who determined that the construction was being built according to approved plans. (Ex. 3 at 5.)
8/31/2017	Mr. Belt contacts the Office of Councilmember Vincent C. Gray regarding the Property. The Office of Councilmember Gray responded to Mr. Belt and concluded that "[w]e do feel that all of your concerns have been adequately addressed and responded to." (Ex. 3 at 1.)
9/7/2017	Mr. Belt files Appeal No. 19627, seeking review of the Permit and claims there are "extenuating circumstances" that prevented the appeal from being brought within the regular time period. (Ex. 1, 7)
9/19/2017	ANC 7F files report claiming that it has "kept abreast of alleged zoning infractions at 4000 Benning Road, NE" and asks the Board to "waive the time restrictions for an appeal." (Ex. 13.)
12/07/2017	DCRA moves to dismiss appeal No. 19627 as untimely. (Ex. 28.)
12/08/2017	Owner moves to dismiss appeal No. 19627 as untimely. (Ex. 30.)