



ABSENTEE BALLOT
FOR THE BOARD OF ZONING ADJUSTMENT



TO: Jerrily R. Kress, FAIA – Director, Office of Zoning

FROM: ☐ Geoffrey H. Griffis ☐ Ruthanne G. Miller ☐ Curtis L. Etherly, Jr.
☐ John A. Mann II ☒ Carol J. Mitten ☐ Anthony J. Hood
☐ Gregory Jeffries ☐ John G. Parsons ☐ Kevin L. Hildebrand

RE: BZA Case No. & Name #17468-A CROSS APPEAL
Name of Applicant/Appellant Testa 124 E Street NE

I will be absent at the decision meeting on 7-11-06 and I wish to cast my vote as provided by 11 DCMR § 3105.14 and § 3105.15. I have attended all of the hearings and/or read all of the record and transcripts in this matter and wish to cast my vote as follows:

I hereby vote to:

☐ APPROVE ☐ APPROVE WITH SUCH CONDITIONS AS THE BOARD MAY IMPOSE
☐ DENY ☐ DISMISS the above-identified BZA Application

I hereby vote to:

☐ GRANT ☒ DENY ☐ DISMISS the above-identified BZA Appeal/Motion

COMMENTS: See attached.

BOARD OF ZONING ADJUSTMENT
District of Columbia

Special Instructions to Staff:

CASE NO. 17468-A
EXHIBIT NO. 29

Signature of Board Member Carol J. Mitten Date 7-11-06

I can be reached at this number if you need clarification the day of the vote: _____

It would be greatly appreciated if you would fax this form to the Office of Zoning at (202) 727-6072 the day before the vote.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17468
EXHIBIT NO. 29

Explanation of Vote in Appeal #17468-A

#1 On the issue of Estoppel: Although I can see the merits of the property owner's argument that the District is estopped from withholding the C of O, the fact that Courts do not favor estoppel as a basis for denial of the appeal precludes me from voting to support the cross appeal based on estoppel.

I vote to deny the cross appeal based on estoppel.

#2 On the issue of the Merits: There is no question that the issue being debated is a fine point of the Zoning Regulations and that reasonable people can differ on the interpretation. The language of the Ordinance is not clear (however precisely one may choose to read it), but I think the intent can be gleaned from a thorough reading of the text of the regulations and the Zoning Commission Order #211.

First, there was clearly a general intention – through the introduction of a minimum area requirement per apartment – to limit density in the R-4 zone. There is no other intention that I think could be ascribed to the Commission in creating this particular provision. It speaks to one of the principle purposes of the Zoning Regulations as expressed in Section 101.1 (b), “Prevent undue concentration of population and overcrowding of land.”

Second, there was a specific intention of the Commission, as articulated in Order #211, to limit the number of apartments in the R-4 zone: “The proposed amendment would limit the number of apartments, based on the area of the lot, which could be located in a building in an R-4 District.” (see Paragraph #1 of Order #211)

The Ordinance was apparently clear on the applicability of the density limitation on the conversion from single-family use to apartment house use in a pre-1958 dwelling. Later, the focus of Order #211 was on the applicability of the conversion criterion from some other multiple dwelling use to apartment use – it did not speak to the issue directly in question in the cross appeal before the Board – which is conversion from one intensity of apartment house to another.

One can focus, as the property owner has done, on a narrow reading of the term “apartment house,” where no distinction is made as to number of units as long as there are three or more. Therefore, in the property owner’s rendition of the facts, there can only be a conversion once – and any future increased intensity of the apartment house use in R-4 is intended to be unfettered by any density limitation.

This notion that conversion from one degree of density of apartments (in this case, 3) to another degree of density of apartments (in this case, 6) is generally what the Commission addressed in Order #211 and the section that it modified. Every chance it got to address this issue specifically, the Commission said, in essence – apply the density standard. Otherwise, as I suggested at one point during the hearing, an applicant could convert a large single-family dwelling to the maximum number of units permitted by the land area, and come back later and increase the number of units without regard to the land area, because the second increase in density would not qualify (under the property owner’s reading) as a conversion. That kind of reasoning is not supportable in my reading of the Zoning Regulations as a whole.

I think this case is one in which reasonable people can disagree on what the precise wording of the Ordinance means, which is why we have to look to the broader context in which the Ordinance was written.

I vote to deny the cross appeal based on the merits.