

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

APPEAL BY:)	
)	
)	
Advisory Neighborhood Commission 3D and)	BZA Case No. 20944
Rohit Kumar,)	
Appellants)	
)	Hearing Date: 9/18//24
Of the D.C. Department of Buildings’ issuance)	
of Building Permit Nos. B2303238, B2305686,)	
B2310998 and B2200423 ¹ – DOB,)	
Appellee.)	
)	

APPELLANTS’ OPPOSITON TO PERMIT APPLICANT’S MOTION TO DISMISS

I. Introduction

Advisory Neighborhood Commission 3D and Rohit Kumar (collectively, the “Appellants”) submit this Opposition to Permit Applicant’s Motion to Dismiss (“Opposition”). This Opposition is filed pursuant to 11-Y DCMR § 407.4 of the Zoning Regulations and is timely thereunder as Appellee’s Motion to Dismiss was filed on August 22, 2024.

II. The Matter At Issue Is Not Moot

In its Motion, the Permit Applicant asserts that this case should be dismissed due to mootness because he has submitted revised plans.

The Permit Applicant’s Motion is clearly premature. The Department of Buildings (“DOB” or “Appellee”) has not approved these plans nor issued a new permit either of which would yield documented standards to which construction by the Permit Applicant must adhere. To date, neither of these actions have occurred. In addition, as this Board is keenly aware given the extensive

¹ Most recent permit number associated with the Project.

history and multiple hearings on the matter, the Appellants have not confirmed that the zoning violations are corrected in this new set of plans.

After a review of the most recently submitted plans (undated), Appellants note the following unresolved issues:

1. The rear set back appears to be at the required 25', but this is predicated on some of the existing structures being demolished. The Demolition Plan on Sheet 006 of the Site Plan is not sufficiently detailed to assure this result. In order to be assured of compliance with the rear set back requirement, the drawings should reflect both everything that has been built to date and that which the applicant is expected to demolish. The language a "Portion of previously poured foundation wall to be removed" lacks sufficient precision to support a mutual motion to dismiss.
2. There appears to be an internal inconsistency between the attached table from the Cover Sheet (0001) and the other drawings, which is causing confusion. The table states the Rear Yard Set Back as 12'-6" for a cellar/deck within the rear yard. This is not reflected on the drawings, and we dispute that this would even be permitted. It is possible this is an error in the table as there is a small deck shown on the drawings, but it appears to adhere to the 25' setback. Clarification on this inconsistency would be necessary before a motion to dismiss would be entertained as a mutually agreeable matter.
3. The same table lists the Side Yard as "8'-'0 or equivalent to existing." As all now agree this is a raze for zoning purposes, all side setbacks must be a minimum of 8' regardless of any pre-existing / non-conforming side setbacks. The drawings and tables would need to be explicit on this point to justify a mutually agreeable motion to dismiss.

The entire basis for the Permit Applicant's assertion that the matter is moot is his word that all violations have been cured. This fact has yet to be determined by either the official reviewing authority, DOB, or the Appellants. Until confirmation, the Permit Applicant's word is simply insufficient to render the matter moot.

Conclusion

Two additional items bear note here: (1) the Parties are attempting to meet to discuss and review the revised plans in an effort to reach a mutually agreeable solution; and (2) the Permit Applicant has stated that DOB's review meeting to consider the revised plans is scheduled for September 9, 2024. The Board's Order dated June 20, 2024 postponed further review until September 18, 2024. This hearing date allows for both the Parties' meeting and DOB's meeting to occur and for the Appellants' to formally revisit this opposition to a dismissal. Even absent these potentially promising steps towards a mutually agreeable resolution, any dismissal at this time would be both premature and unnecessary.

For the above-outlined reasons, Appellants, for the time being, respectfully request that the Motion to Dismiss be denied.

Respectfully submitted on August 27, 2024

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Advisory Neighborhood Commission 3D; Rohit
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Of the D.C. Department of Buildings’
issuance of Building Permit Nos. B2303238,
B2305686, B2310998 **and B2200423²** – DOB,
Appellee.

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CERTIFICATE OF SERVICE

A copy of Appellants’ Opposition to Permit Applicant’s Motion to Dismiss was emailed on August 27, 2024 to Kathleen Beeton, Zoning Administrator, at Kathleen.Beeton@dc.gov, the Department of Buildings at dobcs@dc.gov, the Acting Director of DOB, Brian Hanlon, at Brian.Hanlon@dc.gov, Assistant General Counsel for DOB, Hugh Mayo, at hugh.mayo1@dc.gov, Deputy General Counsel for DOB, Erik Cox, at General Counsel for DOB, Esther Yong McGraw, at esther.mcgraw2@dc.gov, the Permit Applicant/ Owner, Silverstone, at kagarwal@silverstoneig.com, the Owner’s counsel, Don Padou, at Padou@PadoulLaw.com, and the Office of Planning (Jennifer Steingasser) at Jennifer.Steingasser@dc.gov and planning@dc.gov.

Respectfully submitted,

By: *Tracy L. Themak*

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