

Appellant:
David Belt
3940 Benning Road N.E.
Washington, DC, 20019
September 7, 2017

Location: 4000 Benning Road NE 20019
Owner: Warrenton Group LLC., Penrose Management Co., Holy Cristian Mission Church
Project: 71 Unit Apartment Building
Square: 5081 Lot 0052
Zoning: RA-3 (R-5-C)

Dear BZA,

This letter is to inform the BZA of the extenuating circumstances as to why this grievance could not have been brought in the time frame set forth by the BZA for appeals.

On April 19, 2013 a petition was filed by Mr. David Belt of 3040 Benning Road NE for a zoning map amendment (ZC13-07) to correct an error on the zoning map square 5081 so that it would not be inconsistent with the Comprehensive Plan's Future Land Use. On June 28, 2013, the Office of Planning ("OP") submitted a report that the Commission should set down an R-5-A rezoning for a public hearing, since the R-5-A Zone District is more consistent with the moderate density residential designation. The square 5081 consists of four detached single family brick houses with open green space and is designated under the Neighborhood Conservation Area element in the Comprehensive Plan Generalized Policy. During the subsequent properly noticed meeting, the contract purchaser of lot 0052 in square 5081 revealed that the zoning map amendment would not permit it to build a 71 unit medium density apartment building on this lot. OP submitted a second recommendation in total opposition to their first recommendation which now supports the developer. After a long battle with the OP and ZC, the ZC order 13-07 notice of final rulemaking was approved June 9, 2014 which was to still allow a project of this size; albeit as noted by the commission, it would require possible variances and most certainly BZA approval for the rear yard area. This zoning hearing was the first mention of this project to the public or the ANC.

It does appear that the building permit was issued 10/2/2015 and the construction began towards mid-2016. There was no way for anyone to know that they were not building according to submitted plans or within the zoning regulations until certain portions were built. Physical lot measurements were taken with the ANC Chair present as well as the construction manager and the project manager for the Warrenton Group. The property/lot measurement is 250 feet but the project with the additional public alley space for its loading dock actually measured just over 266 feet. No one would know this without physically measuring and there was no explanation given. Also, the retaining wall information is either vague or not included in any of the permits which are included in the evidence presented. ANCs and communities should be able to confidently rely on DCRA and other agencies to responsibly and ethically perform their functions on behalf of the city and its residents to enforce the zoning laws to the letter and prevent illegal construction. This particular project after much research and very little cooperation from DCRA and DDOT we are seeing obvious issues that should have raised red flags with these agencies for Zoning or BZA approval. Possibly the reason for avoiding the BZA approval process was the additional time it would have taken for the hearings as well as any changes that may be required which may jeopardize the project as well as the contentious relationship that they have created with the ANCs and community. This should not create a precedent to the community that once they deceive past a certain point they are home free and it's too late for the BZA to do anything about it. ANC 7F is in full support of this request to ask that the BZA open a review to investigate and clarify any misinterpretations of the zoning regulations of 1958 and possibly failing to request required BZA approvals for exemptions before building this potentially illegal project located at 4000 Benning Road NE 20019 in SMD 7F01. Our community would like very much for the BZA to examine the evidence brought forth to your commission and order a hearing to bring this project into compliance.

Attached is the documentation and evidence to challenge the validity of compliance with the rules and regulations of the zoning regulations of 1958.

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- Rear Yard distance calculation – Section 305.1 for R-5-C (RA-3) is the distance equal to 4 in. per 1 ft. of principal building height but not less than 15 ft. Actual building height is approximately 60 feet at building rear when measured from the top of the wall to the lowest point to the natural grade. The calculation according to this height would be a 20 foot rear yard measurement. It was argued to me by DCRA that the zoning regulation is interpreted as they have the “choice” of using either the calculation or the 15 feet minimum, whichever they preferred, and they preferred the 15 feet. To get 15’ rear yard distance required moving building forward four feet beyond the front lot/building line as noted in the Wall Check.
- Conflicting BHMP (front at curb grade) or Building Height at rear building height measurement for rear yard depth - measured from top of parapet to the natural grade at the lowest point of the wall.
- The project retaining wall height and placement in the required rear yard space is a 5ft. wide, 2 tiered, 22ft. high retaining abutting an improved public alley at the top of the wall along the property line creating a dangerous drop. The alley abutting the top of a retaining wall is a special circumstance which creates inherent safety concerns that should be addressed. An exception for a retaining wall along the property line is noted in permit 136249 (rule 413.6). Height measurements should be in accordance to section 413.2(b) pertaining to retaining wall rules. When the height of a retaining wall varies, the height shall be measured at the highest point of the wall, from the natural grade at the base of the wall at that point. The maximum height of a retaining wall is 6 feet (rule 413.3 unless otherwise noted in this section). Also see Z.C. Order 13-06 (Text Amendments Relating to Retaining Walls) in evidence.
- Measurement for the mandatory wall check was omitted in this project and not done until I requested; this well after the building was up. DCRA claimed that this was an oversight. To no surprise, the building structure was four feet over the property/lot line; however DCRA ignored this and passed it anyway. DCRA and DDOT offered no reasonable exemption relief from lot line restrictions for structures allowing for an additional 1,000 sq. /ft. over front property line for the primary structure and 1,600 sq. /ft. over the side lot line for the loading dock.

Documents:

- 11-404 – Rear Yard Depth
- 11-413 – Retaining Walls
- 11-2203 – Locations of loading berths, Loading Platforms, and Service Delivery Loading Spaces
- 11-2503 – Structures in Required Open Spaces
- 11-F305 – Rear Yard
- Z.C. Order NO. 13-06 (Text Amendments Relating to Retaining Walls)
- Z.C. Order NO. 13-07 (Zoning Map Amendment for Square 5081 from C-3-A to R-5-C Zone)
- Approved Building Lot Plat (B1501924)
- Building Plat for Sign Location
- A011_Architectural Site Detail (Retaining Walls)
- C104_Site Plan
- Wall Check
- Posted Permits:
 - KIMG0036
 - KIMG0038
 - KIMG0039
 - STS - Alley Public Space Permit R1 - 11.25.2017_DDOT NO: PA107910-R1
 - DDOT Permit_136249 (Retaining Wall in Public Space)
- Email Agency Correspondence

Due to the unusual circumstance in which this case is being brought forth I would like to ask the BZA's indulgence and to accept future documents not collected at this time. I should be submitting additional documentation as well as a letter of support from ANC 7F after the next session on 9/19.

Thank you.

Respectfully,

David P. Belt