GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 19067 of Advisory Neighborhood Commission 4C, pursuant to 11 DCMR §§ 3100 and 3101, from a May 18, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1505734 to allow the construction of a rear two-story addition and conversion of a one-family dwelling into a three-unit apartment house in the R-4 District at premises 1117 Allison Street, N.W. (Square 2918, Lot 59).[1]

HEARING DATES: September 22, October 27, and December 1, 2015
DECISION DATES: January 19 and February 23, 2016

ORDER DENYING APPEAL

This appeal was submitted on June 11, 2015 by Advisory Neighborhood Commission ("ANC") 4C (the "Appellant") to challenge the decision of the Zoning Administrator to issue a building permit that allowed enlargement of a one-family attached dwelling in the R-4 zone and its conversion to a three-unit apartment house.[2] Following a public hearing, the Board of Zoning Adjustment ("Board" or "BZA") voted to deny the appeal and to affirm the determination of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated June 23, 2015, the Office of Zoning provided notice of the appeal to the Zoning Administrator (or "ZA"), at the Department of Consumer and Regulatory Affairs ("DCRA"); the Office of Planning; the Councilmember for Ward 4; ANC 4C, the ANC in which the subject property is located as well as the Appellant; and Single Member District/ANC 4C03. Pursuant to 11 DCMR § 3112.14, on July 10, 2015 the Office of Zoning mailed letters providing notice of the hearing to the Appellant, to the Zoning

[1] This order refers to provisions and zone districts in effect under the Zoning Regulations of 1958 when the decision was made. The 1958 Regulations were repealed as of September 6, 2016 and replaced by the 2016 Regulations; however, the repeal and adoption of the replacement text have no effect on the validity of the Board's decision in this case or of this order.

[2] The appeal initially challenged the approval of "revision to B1409828 that eliminates the 3rd floor, to result in a 3-unit apt. building on a 3,126 sq. ft. lot, w/two stories and cellar levels." (Exhibit 1; see also Exhibits 2, 4, and 5.) After Building Permit No. B1409828 was revoked, a new permit (Building Permit No. B1505734) was issued for a different addition and conversion project at the same property. This appeal concerns the latter permit (see Exhibits 19, 24, and 45).

Administrator, and to the owner of the property that is the subject of the appeal, 1117 Allison LLC. Notice was published in the *D.C. Register* on September 4, 2015 (62 DCR 12047).

Party Status. The Appellant, DCRA, and 1117 Allison LLC ("Property Owner") were automatically parties in this proceeding. The Board granted a request for party status by Concerned Citizens of Allison & Buchanan Streets, an association of neighboring property owners ("Intervenor"). A motion to intervene submitted by Lyn Abrams, who owned a residence abutting the subject property, was withdrawn. Lyn Abrams was also a member of the Intervenor party in opposition (see Exhibit 18) and participated in this proceeding as the representative of the Appellant, ANC 4C.

Appellant's Case. The Appellant challenged the issuance of a building permit, in May 2015, which authorized the enlargement of a row dwelling and its conversion to a three-unit apartment house, with a rear addition that would "more than double the footprint and lot occupancy of the existing row dwelling," and rear balconies that would provide unobstructed views into neighboring yards. (Exhibit 19.) The Appellant alleged that the building permit violated the Zoning Regulations in several respects, including that the planned rear addition would increase the building's footprint from 920 square feet – a lot occupancy of 29% – to 1,936 square feet, creating a lot occupancy of 61.9 percent. The Appellant asserted that the Zoning Administrator erred in authorizing a deviation from the maximum permitted lot occupancy of 60 percent because the deviation impaired the purpose of otherwise applicable zoning regulations, including the statement in § 101.1 that the Zoning Regulations should be interpreted and applied to provide access to adequate light and air and to prevent undue concentration of population and the overcrowding of the land, and the statement in § 330 that the primary purpose of the R-4 district is the stabilization of remaining one-family dwellings. The Appellant also argued that the approved addition would be out of character with the neighboring residences, which were one-family dwellings occupying at most 40 percent of their lots, and that the Zoning Administrator improperly failed "to conduct a qualitative analysis to determine if his decision would impair the purpose of the otherwise applicable zoning regulations." (Exhibit 19.)

DCRA. The Department of Consumer and Regulatory Affairs requested a continuance of the originally scheduled hearing "to allow the permit holder [i.e. the Property Owner] to tender a set of plans requested by the Zoning Administrator…to facilitate the resolution of this appeal" by "more clearly depict[ing] the parameters of the planned construction…." (Exhibit 25.) The Board consented to the continuance despite the Appellant's objection, and received the revised plans into the record at Exhibits 44. DCRA asserted that the Zoning Administrator had properly reviewed and approved the relevant building permit as in compliance with the Zoning Regulations, and that the Appellant's allegations were without merit. (Exhibit 51.)

Property Owner. The owner of the subject property, Allison Street LLC, argued that the appeal was based on "false premises: (i) that the original permit application did not contemplate demolishing the original covered porch; (ii) … that a small revision to the porch … would cause the permit application to no longer be approved for a conversion as it was when originally issued; and (iii) that just because DCRA and the Property Owner decided to clarify the approved plans,

for the purpose of facilitating BZA and Appellant review, … it means that the Zoning Administrator incorrectly found the Project to be limited a lot occupancy less than sixty percent (60%)." (Exhibit 56.)

Intervenor. The Concerned Citizens of Allison & Buchanan Streets adopted the legal arguments made by the Appellant and contended that, in issuing the disputed building permit, the Zoning Administrator erred in allowing a deviation from applicable lot occupancy requirements because the deviation permitted the construction of an apartment house in the R-4 zone, contrary to the purpose of that zone as stated in § 330.3, and impaired the intent and purpose of § 403 to limit the conversion of row houses to apartment buildings. According to the Intervenor, the apartment house conversion would adversely impact neighboring properties by "significantly increas[ing] the density of the block," affecting traffic, parking, and environmental factors, and would "negatively impact the character of the neighborhood by destroying the aesthetic harmony of the relative uniform height of the properties" as well as "obliterat[ing] the openness of the block's back yards …." (Exhibit 18.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1117 Allison Street, N.W. (Square 2918, Lot 59). The lot was originally improved with a two-story attached dwelling constructed in 1915, with an accessory structure located in the rear yard.

2. The subject property is a rectangular lot, 20 feet wide and 156 feet deep, with a lot area of 3,126 square feet. The lot occupancy of the original dwelling was approximately 29 percent.

3. The subject property is zoned R-4. For the conversion project undertaken by the Property Owner, the R-4 zone allowed a maximum lot occupancy of 60 percent as a matter of right, and required an area of pervious surface of at least 20 percent. (11 DCMR §§ 403.2, 412.4.)

4. Building Permit No. B1505734 was issued for the subject property in May 2015 (the "May Permit") to authorize "interior renovation, rear 2 story addition and conversion from single family dwelling to 3-unit apartment building." (Exhibit 3.) The permit authorized construction of a two-story rear addition spanning the width of the lot and extending approximately 45 feet into the rear yard, with rear balconies and a rear staircase. The accessory structure would be demolished.

5. As the owner of a residence adjoining the subject property, the Appellant's representative Lyn Abrams received a copy of preliminary plans from the Property Owner in accordance with a neighbor notification requirement of the Construction Code. The Appellant entered the copy of those plans into the record at Exhibit 34.

6. In September 2015, DCRA requested and obtained from the Property Owner a set of revised plans depicting the construction authorized by the May Permit. The Revised Plans,

entered into the record as Exhibit 44, did not materially change the plans approved for the May Permit but corrected dimensional and labeling errors. DCRA indicated that submission of the Revised Plans into the record in this appeal allowed the Property Owner "to provide plans that correct scrivener's errors in the original plans, clarifying elements of the original plans that were not ambiguous but could be viewed as ambiguous to those without the tools, training, and experience employed by the Zoning Administrator in his review of permit applications." (Transcript ("Tr.") of December 1, 2015, p. 147-148.) The changes were indicated on the Revised Plans by means of "bubbled" notes that corrected mistakes, such as in notations of dimensions. The corrections did not alter lot occupancy of the proposed construction, but rectified an error on the original cover page included with the plans, which had incorrectly reflected information about lot occupancy based on prior calculations.

7. DCRA also submitted into the record the plans that had been approved in connection with the issuance of the May Permit ("May Approved Plans") as Exhibits 65A and 65B. The Zoning Administrator reviewed and approved pages A1, A4, and A6 of those plans, as indicated by his stamp, signature, and date (March 27, 2015) on each of those pages. The Zoning Administrator's stamp and date do not appear on pages that he did not review or approve.

8. Pages A4 and A6 of the May Approved Plans showed that the existing porch, which was eight feet deep, would be removed and replaced by an uncovered deck six feet deep.

9. The Zoning Administrator also reviewed and approved a plat, entered into the record as Exhibit 51C (the "Approved Plat"). The Zoning Administrator determined lot occupancy of the project on the basis of the Approved Plat, which was drawn correctly to scale. The plat submitted by the Appellant (Exhibit 33) was inaccurate, including with respect to the depth of the rear yard and the location of a building restriction line.

10. The Zoning Administrator reviewed the proposed building dimensions shown in the Approved Plans and calculated the resulting lot occupancy as 56.56 percent.

11. The Zoning Administrator reviewed the proposed building dimensions shown in the Approved Plans and calculated the resulting pervious surface area as 22 percent.

12. The Zoning Administrator did not review or approve pages of the May Approved Plans that were intended to establish compliance with requirements other than the Zoning Regulations. Among them, the Zoning Administrator did not review or approve page C1, the "Erosion and Sediment Control Plan," which was subject to review by the District Department of the Environment.

13. Building Permit B1600488 (the "October Permit") was issued on October 26, 2015 as a revision of the May Permit to incorporate the Revised Plans that corrected the dimensional and labeling errors in the May Approved Plans. DCRA indicated that the Property Owner

had been directed to apply for the October Permit on the basis of the Revised Plans to ensure that the same set of plans prepared to facilitate the Board's review of the May Permit were binding on the Property Owner in constructing the project. Those plans were entered into the record as Exhibits 51A and 51B.[3] The size of the building and measurements used by the Zoning Administrator to determine compliance with the Zoning Regulations (*i.e.* the approved plat and pages A1, A4, and A6) were the same in the May Approved Plans and in the Revised Plans approved for the October Permit.

14. Building Permit No. B1603100 (the "December Permit") was issued December 24, 2015 as a revision of the May Permit to authorize the "addition of seven concrete steps, maintaining the existing front porch canopy, structural supports and porch width, and removal of a portion of the second floor ceiling to provide natural lighting from existing attic windows." (Exhibit 71.) That permit was subsequently cancelled. (Exhibit 79.)

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1) (2008 Repl.).) (*See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment "may be taken by any person aggrieved, or organization authorized to represent that person, … affected by any decision of an administrative officer…granting or withholding a certificate of occupancy…based in whole or part upon any zoning regulations or map" adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.).) (*See also* 11 DCMR § 3200.2.)

The Appellant raised numerous arguments in challenging the issuance of the May Permit, including that the rear addition would exceed the maximum 60 percent lot occupancy permitted in the R-4 district as a matter of right; the Zoning Administrator erred in allowing a deviation from the lot occupancy requirements; the proposed apartment house was new construction, not a conversion as contemplated under § 330.5 of the Zoning Regulations; the plat DCRA used to approve the permit was inaccurate and had obvious errors, which resulted in flawed calculations for pervious surfaces; and the floor area ratio ("FAR") of the proposed apartment house would be

[3] The Appellant sought to exclude the plans approved in the October Permit on the ground that "they are not the building plans the Zoning Administrator reviewed and approved for the May Permit and are irrelevant to this proceeding." (Exhibit 57.) DCRA countered that the submission was intended to provide clarification by correcting "mundane scrivener's errors" that would "allow the Board to review the basis for the ZA's approval of the plans without the need to engage in the exhaustive technical review undertaken in this process or for the specialized instruments, not readily available to the Board to employ in the course of a hearing, that the ZA employs in reviewing plans." (Exhibit 58.) The Board denied the Appellant's motion, concurring with DCRA that the revised plans made no material changes to the original plans and did not alter the ZA's review of the earlier plans.

approximately 1.54, almost twice the FAR allowed as a matter of right in the R-5-A district.[4] The Appellant also challenged the Revised Plans submitted by DCRA, contending that "the Revised Plans contain material and substantive changes to the plans that constitute an amendment to the May Permit, requiring application of the current regulations." As an example of the changes that would affect the calculation of lot occupancy, the Appellant contended that "the Revised Plans now indicate that the front porch will be removed" while "the plans for the May Permit approved on May 27, 2015 show that the existing front porch will remain and not change."[5] According to the Appellant, the "change in the building plans is an amendment to the permit requiring DCRA's re-review" and "DCRA must apply the current Zoning Regulations which prohibit conversions in R-4 as a matter-of-right" because "any amendments to the permit shall comply with the law in effect on the date the permit was amended." (Exhibit 45.)

Based on the findings of fact, the Board was not persuaded by the Appellant that any error occurred in the Zoning Administrator's decision to issue the building permit at issue in this appeal for the enlargement of the residence at the subject property and its conversion to a three-unit apartment house. The Board concurs with DCRA that the Zoning Administrator had sufficient information depicted in the plans submitted with the building permit application to determine that the project would comply with applicable zoning requirements, including with respect to lot occupancy and pervious surface. The Appellant's claims to the contrary were based on inaccurate preliminary drawings or mistaken indications submitted with the permit application, while the Zoning Administrator's determination was based on the May Approved Plans, which included a correctly scaled plat and drawings. The Zoning Administrator's approval was not based on data submitted in tables on the cover sheet of the plans, some of which was inaccurate.

The May Approved Plans contained some errors, but the Board concludes that those inaccuracies did not compromise or invalidate the Zoning Administrator's determination of compliance with zoning requirements. The errors in the May Approved Plans in some cases involved pages not subject to the Zoning Administrator's review and approval, or were mistakes in how information was recorded on the plans (*e.g.* an incorrect notation of a dimension) that the Zoning Administrator did not rely on in his review. The errors did not involve the proposed dimensions of the new construction as depicted in scaled drawings and thus did not preclude an accurate determination by the Zoning Administrator as to whether the proposed construction would comply with applicable zoning requirements, including with respect to lot occupancy and pervious surface. The Board does not agree with the Appellant that the May Approved Plans were too ambiguous or inconsistent to allow the Zoning Administrator to make a determination of zoning compliance.

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[4] The Appellant acknowledged that "FAR is not applicable in R-4 districts" but asserted that "the ratio illustrates the absurdity of allowing such an enormous building in an R-4 zone despite it not being allowed in the higher density R-5 zone." (Exhibit 24.)

[5] As "additional background on the conversion," the Appellant contended that "the front porch would have remained" under plans for Building Permit No. B1409828 (the "February Permit") issued in February 2015 for conversion of the dwelling at the subject property to a three-unit apartment house. However, the Appellant acknowledges that the February Permit has been revoked and is not the subject of this appeal.

Because the Zoning Administrator determined, based on the May Approved Plans, that the project would comply with all applicable requirements then in effect, there was no need for the Zoning Administrator to approve any deviation from those requirements in approving the building permit application. Accordingly, the Appellant's claim that the Zoning Administrator acted arbitrarily and capriciously when he granted minor flexibility from any zoning requirement is without merit.

The Board concurs with DCRA that the Zoning Administrator correctly approved the project as a conversion under § 330.5(e) of the Zoning Regulations because a significant portion of the original building would be retained and the rear addition would comply with applicable zoning requirements. Similarly, the Board finds no merit in the Appellant's contention that the project would exceed the maximum FAR permitted in the R-5-A zone. The Appellant failed to demonstrate that the rear addition would not comply with zoning requirements applicable in the R-4 district, where the subject property is located.

The Board does not agree with the Appellant that the Revised Plans constituted an amendment to the May Permit, requiring application of the current regulations to the project.[6] Rather, the Board agrees with DCRA that the "clarifications corrected labeling errors and omissions, but did not change the size of the building or the measurements used by the ZA to determine compliance with the Zoning Regulations – namely the Approved Plat as supplemented by pages A1, A4, and A6." (Exhibit 65.) DCRA demonstrated that removal of the front porch was contemplated under the May Approved Plans, as shown on pages A4 and A6 of those plans, and was taken into account in the calculation of lot occupancy. Thus the Revised Plans did not allow a retroactive reduction in lot occupancy, as alleged by the Appellant, and did not modify any aspect of the approved project or require a new review and approval by the Zoning Administrator.[7]

Similarly, the Board rejects the Appellant's contention that any revision of plans – including correction of minor scrivener's errors – constitutes an admission that the plans should not have been approved. The Appellant has not demonstrated that the corrections at issue in this proceeding had any bearing on the Zoning Administrator's review and approval of the plans for zoning compliance.

The Appellant argued that the Revised Plans came "after the fact" and should not be relied upon to demonstrate compliance with zoning requirements because the Revised Plans were not the plans reviewed by the Zoning Administrator in issuing the May Permit but were used to allow the Property Owner to amend the plans retroactively so as to reduce lot occupancy. The Board does not agree, because the Appellant failed to show how the May Approved Plans would have allowed

[6] After a text amendment to the Zoning Regulations that became effective June 26, 2015, the conversion of an existing residential building to an apartment house could be undertaken only if approved as a special exception by the Board of Zoning Adjustment. *See* Zoning Commission Order No. 14-11 (June 8, 2015).

[7] The Appellant asserted that any amendment would make the permit subject to new rules; however, the Board concurs with DCRA that "even if there was a material change, it is only the amendment and not the underlying permit that would be subject to the new rules under Section 3202.4(b)" of the Zoning Regulations. (Exhibit 51.)

a lot occupancy in excess of 60 percent or any other zoning violation.[8] Rather, the pages of the May Approved Plans that were reviewed and approved by the Zoning Administrator demonstrate compliance with the zoning requirements then in effect. The "bubbled" changes noted on the Revised Plans to correct scrivener's errors in the May Approved Plans did not make any substantive changes to the plans or alter the Zoning Administrator's determination of zoning compliance.

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)).) In this case, ANC 4C is the appellant. For the reasons discussed above, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the appeal should not be dismissed for lack of jurisdiction.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof in its claims of error in the decisions of the Zoning Administrator to approve Building Permit No. B1505734 to allow the construction of a rear two-story addition and conversion of a one-family dwelling into a three-unit apartment house in the R-4 District at premises 1117 Allison Street, N.W. (Square 2918, Lot 59). Accordingly, it is therefore **ORDERED** that a portion of the **APPEAL** is **DENIED** and the Zoning Administrator's determination is **SUSTAINED.**

VOTE: **3-0-2** (Marnique Y. Heath, Frederick L. Hill, and Robert E. Miller to DENY, and SUSTAIN the determination of the Zoning Administrator; Jeffrey L. Hinkle not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

[8] In fact, the Appellant submitted a report prepared by an architect, described as "an independent peer review of the Zoning Regulations compliance" for the conversion project at the subject property that provided "an analysis of the plans for the May and October permits." That report reflected *inter alia* that "the information derived from and/or provided in…Sheet A4 [in the May 2015 Permit Set drawings] results in a calculated lot occupancy…of 59.82 percent of the lot area." (Emphasis in original.) The Appellant's claim of lot occupancy in excess of 60 percent was based on calculations shown on page C1, which was not subject to review and approval by the Zoning Administrator. The architect's report determined that pervious surface would exceed the minimum requirement of 20 percent, and concluded that the calculations of lot occupancy and pervious surface in the "revised Permit Set drawings (October 2015)" would comply with the applicable requirements for lot occupancy and pervious surface. (Exhibit 67.)

FINAL DATE OF ORDER: August 28, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.