



District of Columbia Government
Advisory Neighborhood Commission 6A
Box 75115
Washington, DC 20013



July 17, 2006

Board of Zoning Adjustment
441 4th St, NW, Suite 210
Washington, DC 20001

RE: Letter of BZA Appeal Authorization for 1405 North Carolina Ave, NE

Dear Board Members,

At the regularly scheduled and properly noticed meeting on July 13, 2006, Advisory Neighborhood Commission 6A voted unanimously to appeal the administrative decision of the Department of Consumer and Regulatory Affairs' Zoning Administrator to approve the electrical, fire, mechanical, plumbing, and zoning disciplines at 1405 North Carolina Ave, NE. Please reference Building Plan Review Status (BPRS) tracking number 4442 E 6.

Please be advised that Commissioners Nicholas Alberti, Cody Rice and Joseph Fengler are authorized to act on behalf of Commission for the purposes of this appeal.

On behalf of the Commission,

Joseph Fengler
Chair, Advisory Neighborhood Commission 6A

Before the

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:)
Advisory Neighborhood Commission 6A from the) BZA Appeal No. _____
Administrative Decision of DCRA on)
Building Plan Review Status 4442 E 6 on)
Approval of Electrical, Fire, Mechanical, Plumbing,)
and Zoning Disciplines)

Statement of the Applicant

Advisory Neighborhood Commission 6A (AANC 6A@) hereby requests that the Board of Zoning Adjustment (>Board@) GRANT the Appeal from the Administrative Decision of the Department of Consumer and Regulatory Affairs= Building and Land Regulation Administration approval of the Electrical, Fire, Mechanical, Plumbing, and Zoning Disciplines at 1405 North Carolina Ave. N.E. and in support of its appeal states as follows:

SUMMARY OF APPEAL

The Department of Consumer and Regulatory Affairs (ADCRA@) erred in its decision to grant the Electrical, Fire, Mechanical, Plumbing, and Zoning Disciplines contained in the Building Plan Review Status Tracking Number 4442 E 6. The property which is the subject of this appeal is located at 1405 North Carolina Ave. N.E. The property is located in a R-4 Zoning District. The proposed use is as a "3 family flat". The appeal is requested for three reasons: (1) if the proposed use is for an apartment house or multiple dwelling, then the number units for the property exceeds number of square feet required per apartment or condominium as prescribed by Title 11 Municipal Code Regulations (11 DCMR) 11 DCMR sections 330.5(c) and 401.3; (2) if the proposed use is for an apartment house or multiple dwelling, then the plans do not provide for the required number of parking spaces as required by 11 DCMR sections 2100.4, 2100.6, 2100.7, 2100.9, and 2101.1; and (3) if the proposed is not an apartment house or multiple dwelling then it is use is either not permitted in an R-4 District, or it use does not meet the minimum lot size required by 11 DCMR sections 401.3.

DISCUSSION

The proposed use described on the posted permit is “3 family flat”. This description is at best ambiguous and at worst, meaningless. The term “flat” is defined by 11 DCMR § 199.1 as “a two-family dwelling”. Based on this definition the term flat cannot be used to refer a three family dwelling. The phrase “3 family flat” uses contradictory language.

The arguments against the appropriateness of the proposed use of the property are dependent on the interpretation of the proposed use (“3 family flat”) and whether or not that described use has any meaning in the context of the zoning code. The proposed use as described on the permit implies one of the following two possible uses: 1) a three unit apartment house or multiple dwelling or 2) some other use not specified in 11 DCMR as a matter of right use in an R-4 District.

I. DCRA erred in approving work permits for the building construction of an apartment house or multiple dwelling that does not meet the minimum lot size requirements set forth in 11 DCMR § 401.3.

The property under consideration is an R-4 Zoning District. If the proposed use refers to either an “apartment house” or “multiple dwelling” as defined by 11 DCMR, then the use is not permitted in an R-4 District without a variance. The variance is required because the proposed use does not meet the requirements for minimum lot size as required by 11 DCMR § 401.3. The lot size of the property is 1056 sq. ft. As prescribed by 11 DCMR § 401.3, a lot size of at least 2,700 is required for 3 units (900 sq ft /unit). The proposed use as a three unit “apartment house” or “multiple dwelling” would be a nonconforming use in an R-4 District.

II. DCRA erred in approving work permits for the building construction of an apartment house or multiple dwelling that does provide the minimum number of parking spaces

If the proposed use refers to either a three unit “apartment house” or “multiple dwelling”, then a variance is required because the buildings plans do not include provisions for at least one onsite parking space. As required by 11 DCMR § 2100.4 and 2100.6, subject to §2100.7, 2100.9, and 2101.1, a minimum number of onsite parking spaces are required. In this case, § 2101.1 requires a minimum

of one onsite parking spaces.

11 DCMR 2100.7 and 2100.9 prescribes that the required minimum number of parking spaces applies to this property even though it existed prior to May 13, 1958. The planned conversion of this single family row house to a three unit dwelling, will triple the number of dwelling units which is an increase of 300% in the number of units. In this case the proposed use requires a variance which has not been applied for or granted.

III. DCRA erred in approving work permits for the building construction if they interpreted the proposed use as describing a use not permitted as a matter of right in an R-4 District.

If the proposed use is not an apartment house or multiple dwelling, then that use is either not permitted as matter of right in an R-4 District, or under the proposed use the property does not meet the minimum lot size required by 11 DCMR § 401.3.

If the ambiguity in the description of the proposed use leads one to interpret the use as one that is not permitted as a matter of right in an R-4 District, then that change to a nonconforming use is subject to the requirements of 11 DCMR § 2003.3. Under 11 DCMR § 2003, Change Uses Within Structures, § 2003.3. states “ In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility”. The proposed use which describes the intent to include three units is clearly not a flat based on the definition in 11 DCMR § 199.1 (“a two-family dwelling”). The proposed use clearly does not describe a neighborhood facility. Therefore, if the proposed use is not either an apartment house or multiple dwelling, then it is not a permitted use in a Residential District based on the requirements of 11 DCMR § 2003.3.

If the ambiguity in the description of the proposed use leads one to interpret the use as one permitted as a matter of right in an R-4 District then that use is subject to the minimum lot size requirements of 11 DCMR § 403.1. That section lists four use categories in an R-4 District; 1) Row dwelling and flat, 2) One-family semi-detached dwelling, 3) Conversion to apartment house and 4) All other structures. In this case, the proposed use falls within category of “All other uses” which requires a minimum lot size of 4,000 sq ft. The properties lot is 1,064 sq ft. Thus the proposed use would require a variance which has not been granted.

REQUEST FOR RELIEF

The appellant request that the Board ORDER the Department of Consumer and Regulatory Affairs to:

1. Revoke the Electrical, Fire, Mechanical, Plumbing, and Zoning Disciplines and the approved building and construction permits for Building Plan Review Status Tracking 4442 E 6 for 1405 North Carolina Ave N.E. as the proposed use does not meet the requirements of a matter of right use for the following reasons: 1) if the proposed use is as an apartment house/multiple dwelling, the lot size does not meet the requirements for the proposed number of units and the building plans fail to provide for the required minimum number of parking spaces; and 2) if the proposed use is other than an apartment house/multiple dwelling, then the use is either not permitted in an R-4 District or does not meet the minimum lot size.
2. Deny the pending certificate of occupancy requests based on the same reasons stated in the previous paragraph. fact the lot size does not meet the requirements for the proposed use as a three unit apartment house or multiple dwelling.