GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 18249 of Larry Heyman, pursuant to 11 DCMR §§ 3100 and 3101, from a decision on April 19, 2011, by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue a building permit (#B1103503), allowing construction in the C-3-C District at premises 1055 L'Enfant Plaza, S.W. (Square 387, Lot 870).[1]

HEARING DATE: October 18, 2011
DECISION DATE: October 18, 2011

ORDER DISMISSING APPEAL

This appeal was submitted on May 9, 2011 by Larry Heyman, the vice president of the Old Colony Company and the administrative manager of L'Enfant Colony LLC, the owner of the South Building at the L'Enfant Plaza complex (the "Appellant"). The appeal challenges the issuance, on April 19, 2011, of a building permit, which allowed "interior renovation and repair" at the subject property, another building in the L'Enfant Plaza complex. Following a public hearing on October 18, 2011, the Board of Zoning Adjustment (the "Board") voted 5-0-0 to dismiss the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated May 10, 2011, the Office of Zoning provided notice of the filing of this appeal to the Zoning Administrator (Exhibit 11); the owner of the subject property, Potomac Creek Associates LLC (Exhibit 11); the Department of Consumer and Regulatory Affairs ("DCRA") (Exhibit 11); Advisory Neighborhood Commission 6D ("ANC"), the ANC for the area within which the property is located (Exhibit 8); the affected Single-Member District, ANC 6D01 (Exhibit 9); the Councilmember for Ward 6 (Exhibit 10); and the Office of Planning (Exhibit 7).

Party Status. In addition to the Appellant, the parties in this proceeding are DCRA; the owner of

[1] The property that is the subject of this appeal is also referred to as 420 10th Street, S.W., the address used by the parties in this proceeding.

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the subject property, Potomac Creek Associates, LLC (the "Property Owner"); and ANC 6D. There were no other requests for party status.

FINDINGS OF FACT

1. The property that is the subject of this appeal is located in L'Enfant Plaza and is known as both 420 10th Street, S.W. and 1055 L'Enfant Plaza, S.W. (Square 387, Lot 870).

2. The Property Owner, on or about January 31, 2011, filed a building permit application with DCRA seeking authorization for certain interior renovations and repairs to the retail promenade and parking garage at the subject property. (Exhibit 16.)

3. DCRA approved the application and issued a building permit (No. B1103503) on April 19, 2011. The scope of work to be performed under the permit was limited to "interior renovation and repair to promenade level, G1, G2, and G3 levels for structural work only." (Exhibit 16.)

4. The Zoning Administrator did not review the building permit application because the scope of work requested by the Property Owner did not implicate the Zoning Regulations. The interior renovations planned at the subject property were permitted as a matter of right.

5. The building permit application submitted by the Property Owner correctly identified the square and lot number (*i.e.*, Lot 870) of the subject property. However, as a result of the auto-population of lot numbers by DCRA's computer database, the building permit issued on April 19, 2011 listed Lot 7000, which refers to portions of Lot 870. (Exhibit 16.) Shortly after the typographical error was brought to their attention, on May 20, 2011, DCRA re-issued the permit to reflect the correct lot number.

6. The Appellant filed this appeal on May 9, 2011. The Appellant challenged DCRA's issuance of Building Permit No. B1103503 on April 19, 2011, claiming that: (i) the Zoning Administrator issued the building permit based on incorrect information, because the building permit reflected the wrong lot number for the subject property and thus the zoning analysis underlying the permit was in error and incomplete; and (ii) the Property Owner had misrepresented the scope of work to be performed on the permit application because the structural work being performed under the approved permit might at some point in the future support the construction of a potentially non-conforming building. (Exhibit 1.)

CONCLUSIONS OF LAW AND OPINION

Section 8 of the Zoning Act authorizes appeals to the Board "... by any person aggrieved, or organization authorized to represent that person, ... affected by any decision of an administrative

officer granting or refusing a building permit ... based in whole or in part upon any Zoning Regulations...." D.C. Official Code § 6-641.07(f) (2008). The Appellant challenges DCRA's issuance of a building permit on the grounds that (i) the zoning analysis undertaken by DCRA was in error and incomplete since the permit reflected the wrong lot number for the subject property; and (ii) the Property Owner misrepresented the scope of work to be performed, because the structural work being performed under the approved permit could potentially, at some point in the future, support the construction of a building that would not comply with zoning requirements.

Motions to Dismiss

The Board received submissions from both DCRA and from the Property Owner in opposition to the appeal[2]. The submissions are practically identical in substance, both arguing that the two claims of error in the appeal were moot and premature, respectively. Both DCRA and the Property Owner stated that there was no zoning error for the Board to consider because the scope of work approved by the permit was limited to interior renovations that were permitted as a matter of right and did not implicate any provisions of the Zoning Regulations. The two submissions also asserted that any claim of error based on an incorrect lot number on the building permit was moot because (a) the permit had been re-issued with the correct number, and (b) the permit review had not been based on false information since the correct lot number had appeared on the permit application, while the incorrect lot number appeared only on the original permit, which had been printed after all reviews had taken place. Both submissions also argued that the second ground of the appeal was premature because the Appellant's claims regarding any future construction by the Property Owner were merely speculative.

The Board has no Subject Matter Jurisdiction to Consider this Appeal

Based on the findings of fact, the Board concludes that the appeal does not challenge any decision based in whole or in part upon the Zoning Regulations and therefore must be dismissed for lack of jurisdiction. Issuance of the building permit in question did not implicate any Zoning Regulations as the scope of work authorized by the permit, limited to interior renovations, was permitted as a matter of right, and the permit application was not subject to review by the Zoning Administrator. Because the Appellant does not allege any error based in whole or in part upon any Zoning Regulations, the Zoning Act does not confer any authority on the Board to consider this appeal.

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[2] DCRA's submission was styled as a prehearing statement in opposition to the appeal, while the Property Owner submitted a motion to dismiss the appeal. While the Property Owner did not serve its motion on the Appellant, DCRA did provide a copy of its prehearing submission to the Appellant prior to the hearing. The Board considered DCRA's filing in the nature of a motion, and finds no undue surprise to the Appellant, who received the submission in advance of the hearing and thus had ample time to review the arguments raised by DCRA.

The Portion of the Appeal Based Upon the Incorrect Lot Number Has Been Rendered Moot

Even assuming that the Board had jurisdiction over this appeal, the errors alleged by the Appellant have been made moot by a subsequent event or are speculative in nature. With regard to the first claim of error, concerning the incorrect lot number, the Board concurs with DCRA and the Property Owner that the issue is moot because the typographical error on the original building permit was subsequently corrected by DCRA through the issuance of a revised permit. "A case is moot when the legal issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome.... The central question is ... whether decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties." *N St. Follies, Ltd. Partnership v. District of Columbia Bd. of Zoning*, 949 A.2d 584, 588-589 (D.C. 2008) (other citations omitted). The Board shall not consider informal requests for advice or moot questions. (11 DCMR § 3100.7.)

The Portion of the Appeal Alleging Misrepresentation Is Speculative and Premature

With regard to the second claim of error, the Board concurs with DCRA and the Property Owner that any present claim of error concerning potential future construction is premature and speculative. The Appellant contended that the structural work performed pursuant to the approved permit might at some point in the future support the construction of a building that potentially would not comply with zoning requirements. Any construction undertaken at a future time by the Property Owner will require appropriate permits issued then to authorize the work. The Board finds no merit in the Appellant's claim that the Property Owner misrepresented the scope of work to be performed under the permit at issue in this appeal by not also seeking approval now for potential future plans.

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)). ANC 6D did not participate in this proceeding and thus there is nothing to which the Board can accord great weight.

For the reasons discussed above, the Board concludes that the Appellant failed to state a claim of error based in whole or in part upon the Zoning Regulations with respect to the issuance of a building permit on April 19, 2011 to authorize interior renovations in the C-3-C district at the subject property (Square 387, Lot 870). Accordingly, it is therefore **ORDERED** that the appeal is **DISMISSED**.

VOTE: **5-0-0** (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffery L. Hinkle, and Anthony J. Hood voting to Dismiss the appeal)

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

FINAL DATE OF ORDER: FEB 2 1 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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As Director of the Office of Zoning, I hereby certify and attest that on FEB 2 1 2012, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail in the case of those ANCs and SMDs that have opted to receive notices thusly, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY: _____

SARA A. BARDIN
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