

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C. , Appeal No. 12132

Appeal of Samuel and Frances Eastman, pursuant to Section 8206 of the Zoning Regulations, from the determination of the Zoning Administrator that the structure being constructed by the Government of Hungary is not in violation of Zoning Commission Order No. 106 and BZA Order No. 11880, such structure being located in a R-5-C District at the premises 2950 Linnean Avenue, N.W.

HEARING DATE: April 21, 1976

DECISION DATE; May 25, 1976

FINDINGS OF FACT:

1. In Order No. 106, dated December 30, 1974, the Zoning Commission gave final approval to the application of the Governments of Hungary, Indonesia, Czechoslovakia and Poland for a planned unit development which would allow Hungary and Poland to construct new buildings for embassy/chancery use. That Order contained fifteen (15) conditions including the following which are pertinent hereto:

"8. Any buildings or structures constructed by the Government of Hungary shall be set back a minimum of 25 feet from Lot 3 in Square 2231. (The swimming pool, platform and retaining wall as shown on the site plan for the Hungarian Chancery/Embassy sheet 2, indicates this structure to be closer than 25 feet to the northwest corner of Lot 3. Said structure shall be brought into strict compliance with the 25 foot set back requirement established herein.)

"10. There shall be no change in the wooded character or topography of the area. . ."

2. The Government of Hungary applied to the Board of Zoning Adjustment in Case No. 11880 for further processing of the planned unit development in accordance with Sub-section 7501.4 of the Zoning Regulations. A public hearing was held on February 19, 1976, and the Board approved the application on February 25, 1976. A written Order was issued by the Board dated March 5, 1976, which states in part:

"The development as proposed by the Government of Hungary is in harmony with the conditions and guidelines set out in Order No. 106, Case No. 74-7/71-5F and Section 7501 of the Zoning Regulations, and is in accordance with the intent of the Zoning Commission for this development. The landscaping, plantings, screening, site plan and drainage plans comply with the spirit and intent of the conditions contained in the Zoning Commission Order and are therefore found to be satisfactory."

3. Subsequent to the Board's approval, the Government of Hungary applied for and was duly issued a building permit to construct the embassy and chancery (Permit No. B-233770, dated May 30, 1975). Construction of the building commenced thereafter.

4. On October 7, 1975 appellants Samuel and Frances Eastman, wrote to Mr. James Fahey, the Zoning Administrator, requesting him to require that the construction of the Government of Hungary comply with the conditions of Zoning Commission Order No. 106. Mr. Fahey forwarded the letter to the Board for reply.

5. The Board determined that the proper procedure for Mr. and Mrs. Eastman to follow in presenting their objections to the Board regarding compliance by the Government of Hungary with Order No. 11880 would be to move the Board to reconsider its decision in that case. The Secretary to the Board so advised Mr. Eastman by letter dated October 14, 1975.

6. In a motion dated October 31, 1975, Mr. and Mrs. Eastman submitted a motion for reconsideration and/or further hearing.

7. The Board considered this matter at its public hearing held on December 17, 1975, and informed Mr. Eastman that upon advice of the Corporation Counsel the Board was in error in advising him to file a motion for reconsideration. In accordance with the advice given by the Corporation Counsel the Board ruled that the request for reconsideration was not filed in a timely manner in accordance with the Supplemental Rules of Practice and Procedure before the Board. The issue of reconsideration by the Board of its own decision is thus a closed matter.

8. Mr. and Mrs. Eastman thereafter filed suit against the Government of Hungary and its building contractor. Samuel Ewer Eastman et ux. v. Hungarian People's Republic and Edward M. Crough, Inc., Civil Action No. 265-76, Superior Court of the District of Columbia. A Temporary Restraining Order was issued by Judge Harry T. Alexander, on January 9, 1976, which enjoined further construction within 25 feet of Mr. and Mrs Eastman's property. Upon application by the defendants the Temporary Restraining Order was dissolved by Judge Alexander on January 16, 1976, on the grounds that the Superior Court lacked jurisdiction over the complaint.

9. On January 21, 1976, Mr. Eastman wrote to James Fahey, Zoning Administrator, alleging that the Government of Hungary had erected a tall reinforced concrete wall within the 25 foot setback from the northwest corner of his property, which wall Mr. Eastman believed was in violation of BZA Order No. 11880 and Zoning Commission Order No. 106.

10. Mr. Fahey, by letter dated January 26, 1976, responded to Mr. Eastman by stating that the plans presented to his office for a building permit complied in all respects with those approved by the Board of Zoning Adjustment in Case No. 11880. Mr. Fahey further stated:

"The plans submitted and approved by the Board and this Office showed the building containing a cellar which is within 25 feet of Lot 3, Square 2231. Inasmuch as this clearly appeared on the plans approved by the Board, this office believed that the 25 foot setback had been interpreted by the Board to mean structures above grade and not below grade. Therefore, the Zoning Administrator made no judgment with respect to this matter."

11. On February 9, 1976, Mr. & Mrs. Eastman instituted the present appeal from Mr. Fahey's above cited decision on January 26, 1976.

12. Paragraph 7504.43 of the Zoning Regulations states:

"It shall be the duty and responsibility of the Board of Zoning Adjustment to implement the planned unit development as finally approved by the Zoning Commission."

13. The plans submitted with the application for the building permit, and approved by Mr. Fahey comply completely with the approval of the Board of Zoning Adjustment. There is no evidence to indicate that the Government of Hungary or its contractor have deviated from the plans in the actual construction of the building.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the Zoning Administrator's decision that the plans as submitted to him by the Government of Hungary were consistent and complied with the decision of the Board, was correct. There is no evidence in the record to support any suggestion that the Zoning Administrator or the Government of Hungary or its contractor in any way deviated from the plans approved by the Board. It is therefore ORDERED that the Appeal be DENIED and that the decision of the Zoning Administrator be upheld.

VOTE: 3-0 (Martin Klauber, Leonard L. McCants, and William S. Harps to, DENY, Lilla Burt Cummings, and William F. McIntosh not voting, not having heard the case.)

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: _____


STEVEN E. SHER
Acting Secretary to the Board

JUN 2 1970

FINAL DATE OF ORDER: _____