

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12152, the Appeal of the Citizens Association of Georgetown, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator that a brick kiln may be located in the sub-standard rear yard of the non-conforming structure in a C-1 District at the premises 2605 "P" Street, N.W. (Square 1265, Lot 92).

HEARING DATES: July 21, 1976, March 22, 1977 and April 26, 1977  
DECISION DATES: June 7, 1977 and February 1, 1978

1. The property which is the subject of this appeal is located at 2605 P Street, N.W., on the north side of "P" Street between 26th and 27th Streets, N.W. The lot is approximately twenty feet wide by forty feet deep.
2. The property is located in a C-1 District, which also includes both sides of "P" Street between 26th and 27th Streets, N.W. The C-1 District extends to a depth of forty feet on the north side of the street.
3. The site is improved with a two story building which occupies the entire width of the lot, and extends back to a depth of approximately thirty feet, leaving a rear yard of approximately ten feet.
4. In a C-1 District, the minimum required rear yard for all structures is twenty feet.
5. The existing building is thus non-conforming as to rear yard requirements, but it may be continued under the terms of Article 71 of the Zoning Regulations.
6. In January of 1974, Taiko Goto leased the first floor of the subject premises for the purpose of operating a pottery workshop. She applied for a certificate of occupancy in January of 1974, and such a Certificate was issued in May of 1974 for "ceremics work shop detail sales and display sales incidental to shop."

7. In November of 1974, Ms. Goto commenced construction of a brick kiln in the rear yard, as an accessory use to the main use being conducted on the first floor.

8. In November of 1974, upon observing construction of the kiln, Mrs. Harold B. Hinton, Chairman of the Committee on Zoning and Planning of the Citizens Association of Georgetown, and Milton M. Gottesman, owner of the adjacent property to the rear (Lot 93 in Square 1265) complained to James J. Fahey, the Zoning Administrator, that the kiln was being constructed without a building permit and in violation of the Zoning Regulations. The Zoning Administrator had an investigation made of the complaint and orally advised the occupant to cease construction until a variance was obtained from the rear yard and Floor Area Ratio provisions of the Zoning Regulations, and until a building permit was issued.

9. Ms. Goto submitted plans for the kiln to the Zoning Administrator, and in January of 1975, Joseph Bottner, Chief of the Zoning Review Branch, wrote a memorandum addressed to the Board of Zoning Adjustment, which was given to Ms. Goto, stating that the kiln would be considered an addition to the building and would require approval of the Board of Zoning Adjustment.

10. When no application was filed with the Board of Zoning Adjustment, the Zoning Administrator referred the matter to J.W. Harris, Supervisor of the Construction Section, for enforcement action. On April 7, 1975 and again on April 22, 1975, the Supervisor of the Construction Section notified Mr. William Feighan, the owner of the building, that the kiln had been constructed without a permit and was in violation of Section 107.2 of the Building Code.

11. Shortly thereafter, Wayne S. Quin, counsel for Ms. Goto, met with Howard A. Osborg, Chief of the Engineering Branch, Inspection Division. As a result of that meeting, Mr. Osborg determined that "a permit is not required for this kiln," by so noting on a copy of the April 22, 1975 letter to Mr. Feighan. The notation was signed by Mr. Osborg and dated April 30, 1975. Also on April 30, 1975, Mr. Quin wrote to Mr. Harris, Supervisor of the Construction Section, stating that in his view all proceedings in the Construction Division were closed because the kiln required no permit.

12. When the Zoning Administrator appealed the ruling of Mr. Osborne to William Dripps, the Chief of the Bureau of Building Housing and Zoning and the superior of both officials, Mr. Dripps sustained the ruling of Mr. Osborn, stating that in his opinion, the kiln was an insignificant structure like a backyard barbecue and did not require a permit.

13. On November 18, 1975, after hearing of Mr. Dripps' ruling Mrs. Hinton and Mr. Gottesman met with Mr. Dripps. Mr. Dripps reiterated his opinion that the kiln required no permit. Mr. Dripps directed the Zoning Administrator to write an official letter to that effect which would be a ruling that could be appealed to the Board of Zoning Adjustment.

14. On January 6, 1976, the Zoning Administrator wrote to Mrs. Hinton as follows:

"This office has reviewed the kiln located at the rear of 2605 "P" Street, N.W. It has been determined that the kiln is not a building but an accessory structure, and therefore, permitted to be located within the rear yard."

15. On February 26, 1976, the Board of the Citizens Association of Georgetown authorized Mrs. Hinton to file an appeal against the decision of William Dripps to allow the kiln.

16. On March 4, 1976, Mrs. Hinton filed the subject appeal against the ruling of the Zoning Administrator as contained in the letter dated January 6, 1976.

17. On June 21, 1976, the Board of the Citizens Association of Georgetown ratified Mrs. Hinton's filing of the appeal against the Zoning Administrator instead of Mr. Dripps.

18. Prior to the first hearing in this case, the occupant of the first floor of the premises, Taiko Goto, by her counsel Wilkes and Artis, intervened on the side of the Zoning Administrator. At the first hearing on July 21, 1976, Milton M. Gottesman, the owner of Lot 93 in Square 1265, adjacent to the rear yard containing the kiln in question, was granted leave to intervene on the side of the appellant.

19. Prior to the first hearing in this case, counsel for Ms. Goto filed a Motion to Dismiss Appeal for Lack of Jurisdiction. The motion requested that the Board dismiss the appeal for the following reasons:

- a. The appeal was not timely filed.
- b. The appellant did not comply with the rules of the Board.
- c. The appellant is not a "person aggrieved," pursuant to the Zoning Regulations.
- d. The appeal is barred by equitable estoppel.
- e. The appeal is barred by laches.

20. At the public hearing held on July 21, 1976, the Chairman of the Board, William S. Harps, ruled that the motion to dismiss, on the first three grounds cited above, was denied.

21. As to the issue of the timely filing of the appeal, the Board finds the following:

- a. The first written statement formally given to the appellant of this case stating that the kiln would be permitted, was the letter from the Zoning Administrator dated January 6, 1976. Prior to January 6, 1976, the appellants had never received a written ruling from the relevant authorities of the District of Columbia Government from which they could file an appeal.
- b. The subject appeal was filed on March 4, 1976, approximately sixty days after the date of the ruling, and approximately one week after the Citizens Association had authorized its filing.

22. As to the issue of compliance with the Boards rules, the Board finds the following:

- a. The appeal form itself was completely filled in

and reasonably stated the basis upon which the Citizens Association was appealing the decision of the Zoning Administrator. In addition, the appellant filed along with the appeal other documents which supported the appeal, including a copy of Mr. Fahey's letter.

- b. The appeal was clear on its face, and met the filing requirements.
- c. On February 26, 1976, the Citizens Association of Georgetown authorized Mrs. Harold B. Hinton to file an appeal on its behalf against the decision of William Dripps to allow the kiln.
- d. Mrs. Hinton filed an appeal on March 4, 1976, against the decision of James Fahey, which was the only written ruling on the matter of the kiln received by the appellant. Mr. Fahey's letter was written at the direction of Mr. Dripps, and was a written statement of Mr. Dripps' oral ruling.
- e. On June 21, 1976, the Citizens Association of Georgetown ratified Mrs. Hinton's filing of the appeal against Mr. Fahey instead of Mr. Dripps.

23. As to the issue of "person aggrieved", the Board finds the following:

- a. The Citizens Association of Georgetown is a neighborhood citizens association composed of many residents of the area, including the immediate vicinity of the site which is the subject of this appeal. The Association has often appeared before both the Board of Zoning Adjustment and the Zoning Commission to represent the views of its members on zoning issues, and to protect its community from negative influences.
- b. Milton Gottesman, intervenor on behalf of Association, is the owner of the property immediately adjacent to and to the rear of the site which is the subject of this appeal.

24. At the public hearing held on July 21, 1976, William S. Harps and William F. McIntosh voted in favor of granting the motion of Ms. Goto to dismiss the appeal on the grounds of equitable estoppel. Lilla Burt Cummings, Esq. voted to deny the motion to dismiss on those grounds. The Chairman ruled that the issue of laches would be disposed of at the same time as the estoppel argument, and that the estoppel matter would be deferred until the two additional members of the Board had read the record. On November 15, 1976, Leonard L. McCants submitted a letter casting his vote against the motion to dismiss on the grounds of estoppel. On February 3, 1977, by written proxy, Ruby B. McZier voted to deny the motion to dismiss on the grounds of estoppel. The motion to dismiss on the grounds of estoppel was thur denied by a vote of 3-2.

25. As to the issue of estoppel, the Board finds the following:

- a. Ms. Goto did indeed have the approval of the Government of the District of Columbia to construct the kiln. However, Ms. Goto did not have the approval of the Board of Zoning Adjustment to construct the kiln.
- b. The total cost of building the kiln was approximately \$5,000. Of that total cost, approximately \$2,000 was expended after received an indication from the permit authorities in April of 1975 that no permit was required. Of that amount, approximately half was attributed to the labor expended by Ms. Goto, leaving only slightly more than \$1,000 in actual dollar outlays by Ms. Goto.
- c. The Citizens Association of Georgetown and Mr. Gottesman have diligently and in a timely manner sought to have the construction of the kiln stopped. Such actions have included conversations and discussions with the Zoning Administrator and other officials in the permit process. Such discussions ended with the issuance of the written ruling of the Zoning Administrator on January 6, 1976, and the subsequent filing of this appeal

26. Subsequent to the decision of the Board not to dismiss the appeal, the parties to the case were informed, by letter from the Board dated February 9, 1977, that the case would be scheduled for hearing on March 22, 1977.

27. On February 23, 1977, Ms. Goto, by her counsel, submitted a motion asking for clarification of the February 9, 1977 letter for entry of an order, or in the alternative for reconsideration, rehearing or reargument. That motion was denied by the Board at its meeting held on March 8, 1977 by a vote of 4-0 (Richard L. Stanton, William F. McIntosh, Lilla Burt Cummings, Esq. and Leonard L. McCants to deny).

28. The kiln has dimensions of approximately five feet long by five feet deep by five feet high, and has four burners with a tow inch gas feed. Photos submitted in the record and personal observation of the kiln by members of the Board establish that the kiln is a substantial structure which occupies a major portion of the rear yard.

29. The kiln is a structure that has a roof supported by walls and is used for the enclosure of chattel, that is, the pottery which is being fired within the kiln. Under the definitions in Section 1202 of the Regulations, the kiln is therefore a building.

30. The wall of the kiln is separated from the wall of the main building on the lot by a matter of inches, which is an insignificant distance. The kiln is connected to the main building by a substantial network of pipes and other construction, and the existence of such communication is sufficient to establish that the kiln is an addition to the building.

31. As an addition to the building, the kiln must meet the requirements of the C-1 District. Computations made by the Chief of the Zoning Review Branch, dated January 16, 1975, show that variances from the floor area ratio, rear yard and open court requirements would be necessary to allow the kiln to be located in its present position.

CONCLUSIONS OF LAW:

The Board has carefully considered the various aspects of this appeal, as they relate to the procedural objections raised by Ms. Goto, and the merits of the appeal as stated by the appellants. Particularly, in regard to the motion to dismiss filed by Ms. Goto, the Board concludes the following:

1. The appeal was timely filed. Mrs. Hinton acted on behalf of the Citizens Association of Georgetown in an expeditious manner after receiving the written ruling of the Zoning Administrator and after receiving the approval of the Association to file the appeal. Only two months elapsed between the written ruling and the filing of the appeal, and the written ruling dated January 6, 1976 was the first action which could be appealed to the Board.
2. The appellant did comply with the Board's rules. The appeal form was complete on its face, and was accompanied by sufficient other documentation to render a full statement of the matter appealed and the basis therefore. As to the issue of the authority of Mrs. Hinton to file appeal, the position of the Association taken on February 26, 1976, clearly set forth the intent of the Association to appeal against rulings which allowed the kiln in the rear yard. In fact, Mr. Fahey's letter was merely a written statement of Mr. Dripp's oral ruling.
3. The Association and Mr. Gottesman are both "persons aggrieved" within the meaning of the Zoning Regulations. Mr. Gottesman lives immediately behind the subject site. The Association represents residents of both the immediate and the general area, and has had a long standing history of appearing in zoning matters before the Board.

4. The appeal is not barred by laches or estoppel. The record is clear that the appellants have diligently objected to the kiln, and that this appeal was filed shortly after a written ruling became available from which an appeal could be taken. The Board does not accept the argument of Ms. Goto that because one official of the District Government had approved the kiln by stating that no permit was required, that the Board is estopped from hearing the appeal.

The Zoning Act and the Zoning Regulations both clearly establish the authority of the Board "to heard and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or determination....in the carrying out or enforcement" of the Zoning Regulations. To accept the position advanced by Ms. Goto would be to effectively negate the appeal process. The Board further notes that while Ms. Goto did rely on certain actions of the District Government, construction of the kiln was originally commenced before a determination was made that no permit was required, and that the substantial portion of expenses incurred for the construction of the kiln were incurred before the ruling that no permit was required.

As to the issues raised on the merits, it is clear from the findings of fact and the record that the kiln is not an insignificant structure, and that a permit should have been required for its construction. The Board also concludes that the kiln meets the definition of a building, and that because of its relation to the main building, should have been considered as an addition to that building.

It is therefore hereby ORDERED that this appeal be GRANTED, that the decision of the Zoning Administrator dated January 6, 1976 be REVERSED and that the kiln be brought into compliance with the applicable requirements of the Zoning Regulations.

VOTE: 3-0 (Leonard L. McCants, William F. McIntosh and Charles R. Norris to grant the appeal)

BZA Order No. 12152

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

ATTESTED BY: \_\_\_\_\_



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 28 MAR 1978

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 12152 of the Citizens Association of Georgetown, pursuant to Section 8102 and 8206 of the Zoning Regulations from the decision of the Zoning Administrator that a brick kiln may be located in the sub-standard rear yard of the non-conforming structure in a C-1 District at the premises 2605 "P" Street, N.W. (Square 1265, Lot 92).

HEARING DATES: July 21, 1976, March 22 & April 26, 1977

DECISION DATES: June 7, 1977 and February 1, 1978

DISPOSITION: The Board GRANTED the Appeal and REVERSED the Decision of the Zoning Administrator by a Vote of 3-0 (Leonard L. McCants, William F. McIntosh, Charles R. Norris to GRANT).

FINAL DATE OF ORDER: March 28, 1978

ORDER

Upon consideration of the intervenor's motion to reopen the record and conduct further hearing, pursuant to Rule 5.3, filed February 9, 1978, the Board finds that the motion fails to identify substantive areas that were not considered by the Board in its deliberations on the matter, and that no reasonable purpose would be served by holding further hearing. It is therefore ORDERED that the Motion to reopen the record and conduct further hearing is DENIED.

DECISION DATE: March 1, 1978

VOTE: 4-0 (Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to not REOPEN the Record).

Upon consideration of the intervenor's MOTION for rehearing, reargument or reconsideration, dated April 10, 1978, the Board finds that the motion fails to state an acceptable basis of error on the part of the Board to support the motion. It is therefore ORDERED that the Intervenor's Motion for Rehearing, Reargument or Reconsideration is DENIED.

DECISION DATE: May 3, 1978

VOTE: 3-0 (Charles R. Norris, Leonard L. McCants and William F. McIntosh to DENY, Chloethiel Woodard Smith and Walter B. Lewis not voting, not having heard the case).

ATTESTED BY:

Handwritten signature of Steven E. Sher in black ink.

FINAL DATE: 19 MAY 1978

STEVEN E. SHER, Executive Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



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FINAL DATE OF ORDER: March 28, 1978

ORDER

Following the Board's DENIAL of the application on March 28, 1978, the applicant filed a petition for review of the decision with the District of Columbia Court of Appeals. By judgement dated November 5, 1980, the Court of Appeals set aside the Order of the BZA. It held that the Citizens Association of Georgetown was barred by the principle of laches from appealing the Zoning Administrator's decision to the BZA. The Court held that it need not deal with the other contentions of the petitioner, Taiko Goto. Upon consideration of the foregoing facts, the Chair ORDERED that the Order of the Board, dated March 28, 1978, is VACATED, and that the appeal of the Citizens Association of Georgetown be DISMISSED.

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

ATTESTED BY: Alan E. Allen

FINAL DATE OF ORDER: 7 MAY 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."