

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13128, of Waverly Taylor, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraph 3105.42 and Sub-section 3307.2, to allow a new residential development comprising a group of twenty-nine flats and to allow this group of flats with division walls from the ground up to be considered as fourteen buildings in an R-5-A District at the premises 4603-4631 MacArthur Boulevard, N.W., (Square 1368, Lots 818, 819 and 825).

HEARING DATE: December 19, 1979

DECISION DATE: February 6, 1980

FINAL DATE OF ORDER: April 7, 1980

DISPOSITION: The application was GRANTED conditionally by a vote of 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Leonard L. McCants to grant; Charles R. Norris not present, not voting).

FINDINGS OF FACT:

1. The subject application was filed on November 1, 1979.
2. The final Order on this application was issued on April 7, 1980.
3. On April 17, 1980, Dumbarton Estates Joint Venture, an adjacent property owner to the subject premises, filed a timely motion for a Reconsideration and Rehearing of the application. The grounds for the motion was that DESJV was the owner of abutting property as of October 18, 1979 and accordingly a party as an affected person under Section 1.152 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment and should have received notice of the public hearing under Section 3.322 of the Rules. The movant further alleged that the placement of the buildings as approved by the Board would adversely affect the ability of the movant to sell its property.
4. The deed transferring title from Waverly Taylor to DESJV was recorded on November 2, 1979. The application was filed on November 1, 1979.

5. Notices were sent to the parties by the office of the Zoning Secretariat on November 16, 1979. Among the notices was one sent to the applicant Waverly Taylor, Inc. who was listed in the records of the D.C. Department of Finance and Revenue as the owner of record of the property abutting the subject property on the date the application was filed.

6. The movant acquired the abutting property from Waverly Taylor, Inc., after the application was filed. Waverly Taylor, Inc., never advised the movant of the notice of the public hearing. The Board believes that it is not feasible to require that an applicant constantly update the list of property owners submitted. Nor is it feasible to require an owner who sells property as in the case of Mr. Taylor, to forward the notice of the hearing to the new owner.

7. On April 24, 1980, James I. Schwartz, filed a motion for reconsideration of the Board's final order on the grounds that he was an affected person and entitled to notice under the Rules. He stated that he never received notice.

8. On May 5, 1980, Mr. Schwartz purchased from the Dumbarton Estates lots 50 and 51 which are within 200 feet of the subject property.

9. Record owners of property within 200 feet of the subject property are entitled to receive notice of a public hearing under Section 3.322 of the Rules.

10. Mr. Schwartz examined the poster that had been placed on the subject property. The poster reflected the nature of the application, the name of the applicant, the property involved and the time and date of the public hearing. In one respect the notice was inaccurate. It gave the number of the application as 13138 instead of 13128. Mr. Schwartz made inquiries of the architect for the proposed development.

11. In all other respects, proper notice for the hearing was given.

12. Application No. 13138 was heard by the Board on January 23, 1980. The final order was dated March 24, 1980. The property affected was 1219 Hamlin Street, N.E. The requested relief was to use the property as a pre-school.

13. By letter of June 2, 1980, Dumbarton Estates Joint Venture requested permission to withdraw its motion for Reconsideration and Rehearing.

CONCLUSIONS OF LAW:

Upon consideration of the motion for Reconsideration filed by Mr. Schwartz, the Board concludes that since a motion under Section 5.41 of the Rules is required to be filed within ten days of the date of the final order, in both instances, under application Nos. 13128 and 13138 the motion was untimely filed. The Board also concludes that whereas Mr. Schwartz may not have had direct notice of the hearing through the mail, he did have constructive notice of the public hearing affecting the subject property. Secondly, the Board concludes that Mr. Schwartz is without standing before the Board of Zoning Adjustment. An applicant upon filing an application with the BZA, is required under Section 3.322 of the Rules to provide a list of the names and addresses of the record property owners within 200 feet of the property involved in the application. Mr. Schwartz was not the owner of record at the time the subject application was docketed at the BZA. The Board concludes that to require otherwise would be to place a too cumbersome burden on an applicant. The Board further concludes that Mr. Schwartz had notice of the hearing, that he could have appeared and participated in the proceeding, but that he did not, and therefore he lacks standing as a party to raise new issues after a final Order has been issued. For these two reasons, untimely filing of the motion and the lack of standing before the BZA, the Chairman ruled and it is hereby ORDERED that the Motion for Reconsideration is DENIED.

As to the motion of Dumbarton Estates Joint Venture to WITHDRAW its motion for Reconsideration and Rehearing, the Board notes that DEJV also lacks standing to file a motion for reconsideration. The Board concludes that proper notice for the hearing was given, that DEJV did not appear at the hearing and that it therefore lacks standing to raise new issues after the Board has decided the application. However, since FEJV has withdraw its motion, the Board has no further reason to decide that question.

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

ATTESTED BY:



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 27 JUN 1980

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."