

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13169, of Richard Best, President of Dupont Circle Citizens Association, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decisions of the Acting Deputy Corporation Counsel and an Assistant Corporation Counsel that failure of the original plans to show the required recreational space caused those plans not to be sufficiently complete to permit processing without substantial change or deviation and, accordingly, the plans as then filed would be processed in accordance with the Zoning Regulations in effect on the date of filing in an SP-1 District at the premises located at the corner of New Hampshire Avenue and Corcoran Street, N.W., (Square 155, Lot 834).

HEARING DATE: February 13, 1980

DECISION DATE: February 13, 1980 (Bench Decision)

FINDINGS OF FACT:

1. The appeal was filed on December 21, 1979 by Ms. Anne Sellin on behalf of the Dupont Circle Citizens Association.

2. The appeal was taken from two actions of the Office of the Corporation Counsel. The first was a memorandum dated September 25, 1979 from James E. Lemert, Acting Deputy Corporation Counsel, to Robert L. Moore, Director of the Department of Housing and Community Development. The memorandum advised DHCD on the question of an application for a construction permit at 1615 New Hampshire Avenue, N.W. The second was a letter dated December 14, 1979, from John C. Salyer, Assistant Corporation Counsel to William Middleton, Chairman of ANC-2B which recapitulated the items set forth in the September 25, 1979 memo.

3. The sections of the Zoning Act and the Zoning Regulations which authorize the BZA to hear and decide appeals states that an appeal may be taken "by any person aggrieved... by any decision of an administrative officer granting or refusing a building permit...."

4. By memorandum dated January 24, 1980, the Corporation Counsel advised the Board through its Executive Director that the appeal should be dismissed. The Corporation Counsel advised that "Neither the memorandum nor the letters constitute a dispositive exercise of administrative authority, because no legal rights were either granted or withheld by the memorandum or the letters." The Counsel further advised that "no party has been aggrieved in the legal sense, because no injury in fact "has been sustained, and none will be sustained before the rendering of a decision on the application."

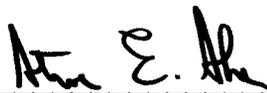
CONCLUSIONS OF LAW AND OPINION:

Based on the advice received from the Corporation Counsel, the Board concludes that the appeal has been filed prematurely. No decision has been made on the question of whether to issue the requested building permit. The letters and memorandum from the Corporation Counsel are not "decisions" as contemplated by the Zoning Act and the Zoning Regulations. Further, absent the issuance of a building permit, no person can be aggrieved. For all these reasons, it is therefore ordered that the appeal be dismissed without prejudice to the refiling of a subsequent appeal following the issuance of a permit.

VOTE: 3-0 (William F. McIntosh, Connie Fortune and Leonard L. McCants to dismiss, Walter B. Lewis and Charles R. Norris not present, not voting).

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

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 MAY 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."