

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 13917, of Advisory Neighborhood Commission 2A, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decisions of James J. Fahey, Zoning Administrator, made on October 27, 1982 to issue and then not revoke or suspend permit numbers B293485 through B293487 authorizing work in violation of the Zoning Regulations and BZA Order No. 13151, dated May 4, 1981, in an SP-2 District at premises 2117 E Street, N.W., (Square 81, Lot 96).

HEARING DATE: February 16, 1983

DECISION DATE: February 16, 1983 (Bench Decision)

FINDINGS OF FACT:

1. On December 7, 1982, Advisory Neighborhood Commission 2A filed the subject appeal of the decision of the Zoning Administrator to issue and then not revoke or suspend the following building permits:

- A. No. B-293485, issued October 27, 1982, to permit "renovation to 1st floor lobby & corridor, renovate building facade and 1st floor."
- B. No. B-293486, issued October 27, 1982, to permit erection of an awning in public space at the front of the building.
- C. No. B-293487, issued October 27, 1982, to permit erection of an awning at the rear of the building.

2. All these building permits were for the building known as 2117 E Street, N.W. All three permit applications list the use of the building as an apartment house.

3. The owner of the subject property, Sherry Towers Limited Partnership, intervened in the subject appeal.

4. As a preliminary matter at the public hearing of February 16, 1983, counsel for the intervenor requested the Board to consider a motion to dismiss the appeal. The motion to dismiss was based on the following:

- A. The plans filed for building permit No. B-293487 have been revised to eliminate the awning extending from the rear of the building. This issue is therefore moot.

- B. Building permit No. B-293486 involves construction of an awning located entirely in public space and therefore is not within the jurisdiction of the Board.
- C. The appellant has failed to specify how the approval of the issuance of building permit No. B-293485 violates the provisions of the Zoning Regulations.
- D. Building permit No. B-293485 was validly issued in accordance with all applicable provisions of the Zoning Regulations.

5. In support of its motion, the intervenor submitted revised plans which show that the awning which had been the subject of Permit No. B-293487 was no longer proposed.

6. The appellant agreed that there was no further issue as to Permit No. B-293487.

7. In regard to the permit for the awning in public space, the intervenor argued that the Zoning Regulations provided for appeals to the BZA only from decisions "based in whole or in part upon any Zoning Regulation or Map..." Since the awning is within public space, it is subject to the regulations of the Building Code and the jurisdiction of the Department of Transportation.

8. The appellant agreed that there was no issue before the Board with regard to Permit No. B-293486.

9. The intervenor argued that a general, unspecified assertion of error is not a proper basis for an appeal, and that the issues on which an appeal is based must be clearly stated. The general assertions made by the appellant do not state an allegation of error in the administrative decision for which an appeal may be taken and, accordingly, the appeal must be dismissed for failure to state a cause of action.

10. The intervenor further argued that the appeal fails to state in what respect the work authorized by Permit No. B-293485 violated the Regulations. The permit was issued for renovation to an apartment house, a use clearly permitted under the Zoning Regulations.

11. With regard to building permit No. B-293485, the appellant argued that the plans indicate that a rear door will be provided in addition to other renovations of the first floor and lobby. It was the appellant's opinion that the proposed doorway will provide direct access to the hotel located at 2116 F Street, N.W. and would thus facilitate the

use of the apartment building at 2117 E Street, N.W. as a hotel in conjunction with the hotel at 2116 F Street.

12. The appellant further stated that BZA Order No. 13150 denied a special exception to operate a hotel at 2117 E Street, N.W. and further denied a passageway connecting the two buildings. It was the appellant's opinion that the access provided between the two buildings by the proposed doorway constituted a connection between the two buildings and further that the Board's denial in BZA Order No. 13150 of a connection between the buildings prohibited the applicant from providing any connection between the two buildings. Therefore, permit No. B-293485 should not have been approved.

13. The intervenor argued that BZA Order No. 13150 is not germane to the subject appeal and further that that order neither granted the intervenor any rights nor took any rights from the intervenor.

14. The Zoning Administrator testified that the building permit which he approved was for simple renovations to the first floor lobby of a 119-unit apartment house. The Zoning Administrator stated further that the proposed use of the building on the application for permits was for an apartment house, that the subject building does not contain a restaurant and thus can not qualify as a hotel, that transient and permanent tenants can legally occupy an apartment house, and that the proposed doorway did not, in his opinion, violate BZA Order No. 13150 which disapproved a specific covered, physical link between the two buildings.

CONCLUSIONS OF LAW AND OPINION:

Upon consideration of the intervenor's Motion to Dismiss, the response of the appellant thereto and the testimony of the Zoning Administrator as set forth herein, the Board concludes that the subject appeal is not properly before the Board. The work authorized by Permit No. B-293487 is not being pursued, and the issue as to that permit is moot. As to Permit No. B-293486, the awning at issue is entirely in public space, and is not within the jurisdiction of the Board.

As to the renovation authorized by Permit No. B-293485, the Board concludes that the appellant has failed to allege any specific violation of the Zoning Regulations. The fact that a door may be installed at the rear of the building which leads to a yard that ultimately connects to another building does not change the use of either building. The construction at issue does not constitute the expansion of the adjoining hotel. The face of the permit clearly indicates that the building is an apartment house.

As to the effect of BZA Order No. 13151, that Order denied an application to convert the subject building to a hotel and to construct a covered structure connecting the two buildings at 2117 E and 2116 F Streets. The Order neither granted any rights to the appellant nor deprived it of any rights it had. The permit work at issue here has no relationship to the decision made by the Board in Application No. 13151.

Accordingly, for the above cited reasons, the Board concludes that the intervenors motion is granted as the appeal is not properly before the Board. It is therefore hereby ordered that the appeal is DISMISSED.

VOTE: 5-0 (Walter B. Lewis, Douglas J. Patton, Carrie Thornhill, William F. McIntosh and Charles R. Norris to DISMISS).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 25 1983

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."

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