GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 13925, of the Citizens Association of Georgetown, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of James J. Fahey, Zoning Administrator, made on August 25, 1982, approving a building permit to convert a single family row dwelling into a flat in an R-3 District at premises 1221 - 33rd Street, N.W., (Square 1206, Lot 812).

HEARING DATE: March 16, 1983
DECISION DATE: March 16, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject appeal was filed on December 20, 1982, by the Citizens Association of Georgetown (CAG) to challenge the decision of the Zoning Administrator approving a building permit to renovate the subject structure as a flat. The subject property is located in an R-3 District.

2. The owner of the property, First Maryland Financial Services Corporation (First Maryland), through counsel, appeared as a party pursuant to Rule 100.7 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment.

3. As a preliminary matter, the Board considered a motion by counsel for the owner to dismiss the appeal. The motion to dismiss the appeal was based on the following grounds:

a. The Board of Zoning Adjustment lacks jurisdiction to hear the case.

b. The CAG lacks standing to prosecute the appeal.

c. The CAG does not contest the basis of the Zoning Administrator's decision.

d. The District of Columbia Government is estopped from revoking or suspending the previously approved permits for renovation and use of the subject structure as a flat.

e. The appeal is barred by laches.

4. The first argument considered by the Board in support of the motion to dismiss was the issue of estoppel. The elements of estoppel, as set forth by the D.C. Court of Appeals in Saah v. D.C. Board of Zoning Adjustment, 433 A.2d 1114 (D.C. 1981) are as follows:

a. A party, acting in good faith;

b. On the affirmative acts of a municipal corporation;

c. Makes expensive and permanent improvements in reliance thereon; and

d. The equities strongly favor the party seeking to invoke the doctrine.

5. The subject property was sold to and purchased by First Maryland as a two-family dwelling. The property contained two units at the time of purchase and the purchase was made for the purpose of renovation and sale as a flat.

6. Acting in good faith, based on the representations of the seller and the concurrence of the architect hired by the owner to design the renovation of the structure that the structure contained two units, the owner purchased the property and made expensive and permanent improvements to the building configured as two units, for eventual resale as a flat. The cost of the improvements was approximately $76,500.

7. As a two-family dwelling, the owner expected the structure to be resold for approximately $250,000. If the building were sold as a single family dwelling, extensive remodelling would be necessary to reconfigure the interior of the structure as one unit and the selling price would be reduced to approximately $170,000. The owner would suffer a substantial loss due to the expenditures already invested in the purchase and rehabilitation of the structure, the additional expense of redesigning the building as a single unit, and the reduction in selling price resulting from its change from a flat to a single family dwelling.

8. When he, was first retained to design the renovations, the owner's architect inspected the property and ascertained that it contained two units. On July 8, 1982, he was informed by an employee of the Office of the Zoning Administrator that the property was located in a C-2-A District. A flat is a use permitted as a matter-of-right in a C-2-A District.

9. The architect subsequently drew plans for the proposed renovation and submitted those plans as part of permit applications on August 25, 1982. On that date, the

zoning was rechecked in the Office of the Zoning Administrator and again determined to be C-2-A.

10. On the basis of that determination, permits for demolition, repair and alteration, plumbing and electrical work were issued. An application for a certificate of occupancy was also approved but was not issued pending the substantial completion of the proposed renovation and the inspection of the premises.

11. On the basis of the approved permits, extensive renovation to the structure was undertaken and completed in December, 1982.

12. The owner was unaware of a question as to the use or zoning of the structure until January 6, 1983, when it was apprised by the Office of the Zoning Secretariat that the subject appeal had been filed. Renovation of the subject structure was complete on that date.

13. A representative of the appellant testified that on the application for a certificate of occupancy, the owner's architect recorded that the previous use of the property was as a single-family dwelling, rather than a flat.

14. In rebuttal, the architect testified that there was no certificate of occupancy on record for the subject property at the time the application was filed. The only lawful use permitted without a certificate of occupancy is a single family dwelling. The architect therefore listed the only lawful use of the premises, even though he knew that the actual use had been a flat.

15. There was no report for Advisory Neighborhood Commission 3A.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing facts, the Board concludes that the elements of estoppel, as outlined in Finding of Fact No. 4 are in existence in the subject case. The record evidences that the owner acted in good faith, in reliance on the affirmative acts of the District of Columbia Government and made expensive and permanent improvements to the subject building. The equities favor the owner of the property in this case.

Accordingly, it is ORDERED that the appeal is DISMISSED on the grounds that the District of Columbia is estopped from revoking the issued permits. Further motions by the owner are therefore moot and the Board makes no findings or conclusions thereon. No further action by the Board on the subject appeal is necessary.

VOTE: 4-0 (Douglas J. Patton, Carrie Thornhill, Maybelle T. Bennett and Charles R. Norris to DISMISS; William F. McIntosh abstaining).

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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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