

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14093, of Hugh J. Beins, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator, dated August 23, 1983, approving the issuance of Building Permit No. B297556 for the construction of a rear addition and from the decision made on October 27, 1983, to rescind a stop work order and allow the construction to continue at 3813 Jocelyn Street, N.W., in an R-1-B District (Square 1856, Lot 54).

HEARING DATES: February 8 and 15, 1984
DECISION DATE: February 15, 1984 (Bench Decision)

FINDINGS OF FACT:

1. The property which is the subject of this appeal is located on the north side of Jocelyn Street, N.W., between 38th and 39th Streets and is known as premises 3813 Jocelyn Street, N.W. The property is improved with a two-story plus basement single family dwelling.

2. The subject appeal was filed on November 28, 1983, by property owners residing at 3812 Kanawha Street, N.W., immediately to the north of the subject property, across a twelve foot wide public alley.

3. The subject appeal challenges the decision of the Zoning Administrator approving Building Permit No. B-297556, dated August 22, 1983, allowing the construction of a rear addition at premises 3813 Jocelyn Street, N.W. and the recission, on October 27, 1983, of a stop work order, dated October 26, 1983, allowing construction to continue.

4. The bases for the subject appeal are as follows:

- A. The permit was erroneously issued.
- B. The stop work order was improperly rescinded.
- C. There was a violation of due process by failure to give notice and a hearing at any time, including the meeting of October 27, 1983.
- D. Portions of the construction are in violation of the twenty-five foot rear yard requirement.

E. The Construction is in violation of the Zoning Regulations governing enlargement, expansion or extension of existing non-conforming structures or uses.

5. The owners of the subject property appeared as a party to the case, pursuant to Section 100.7 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment.

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

A. The Government of the District of Columbia is estopped from revoking the building permit issued for construction of an addition and other work; and,

B. The appeal is barred by laches.

7. 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. App., 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.

8. In approximately March, 1983, the owners hired a designer to develop a proposal to enlarge an existing family room, remove the existing deck, construct a new deck, enlarge the existing kitchen and to create an interior hallway connecting the kitchen to the family room.

9. On May 6, 1983, after the plans for the proposed changes were drawn by the designer and approved by the owners, the designer reviewed the preliminary drawings with staff of the Zoning Review Branch, Department of Consumer and Regulatory Affairs, for compliance with the Zoning Regulations. After review of the drawings, the designer was informed that the design conformed with the applicable provisions of the Zoning Regulations as interpreted by that office.

10. On May 10, 1983, the designer and the owner again reviewed the proposed design with staff of the Zoning Review Branch. After the second review of the drawings, the designer and owner were again informed that the design met the applicable provisions of the Zoning Regulations.

11. Subsequent to May 10, 1983, the designer was retained by the owners to prepare the detailed plans for the proposed improvements necessary for the issuance of the appropriate building permits.

12. The final plans were prepared and submitted with an application for a building permit on August 22, 1983. The plans were reviewed and approved by all appropriate officials, including zoning, and Building Permit No. B-297556 was issued on that same day.

13. The owners, acting in good faith and in reliance upon the approved building permit, accepted bids on the proposed construction, selected a contractor, and secured financing to proceed with the project.

14. Construction began on October 24, 1983, with the demolition of the existing family room and deck. The owners for the project, hired a general contractor, and entered into contracts or binding commitments for custom-made materials for an overall financial obligation of between \$70,000 and \$80,000.

15. Subsequent to the commencement of work on the project, the appellants contacted various representatives of the D.C. Government in an effort to discover the nature of the construction on the subject property.

16. The appellants met with the Deputy Zoning Administrator on October 26, 1983, and protested the issuance of the subject building permit without notice to the appellants as neighboring property owners and as violating the Zoning Regulations, specifically with regard to the rear yard requirements.

17. By letter dated October 26, 1983, the Deputy Zoning Administrator advised the owners' designer that a review of the plans approved under Building Permit No. B-297556 disclosed a possible problem with the required rear yard. A copy of that letter was also sent to the owners of the subject property.

18. The Deputy Zoning Administrator instructed the Chief of the Construction Inspection Branch, by memorandum dated October 26, 1983, to issue a stop work order on the subject premises "until issues relative to the rear yard are resolved."

19. A stop work order was issued on October 27, 1983. At that time, demolition of the family room and deck were virtually completed.

20. On October 27, 1983, the owners and their designer met with the Zoning Administrator and an Assistant Corporation Counsel. The owners detailed the steps taken by them to ensure compliance with zoning, the nature and extent of the work completed to that date, and the financial obligations incurred in reliance upon the issuance of the building permit.

21. At the conclusion of that meeting, the Zoning Administrator advised the owners that work on the project could continue and the stop work order was rescinded.

22. The appellants were advised by the Deputy Zoning Administrator of the results of the October 27th meeting between the owners and the Zoning Administrator on November 3, 1983. The subject appeal was filed on November 28, 1983.

23. The owners received notice of the filing of the subject appeal on December 6, 1983, by letter dated November 30, 1983, from the Executive Director of the Zoning Secretariat.

24. The appellant testified that on November 28, 1983, when the appeal was filed, less than fifty percent of the construction had been completed. The appellant submitted photographs which were purportedly taken on November 26, 1983, evidencing that construction, at that time, consisted of the erection of the wooden joists for the deck, the replacement of garage doors with a standard three feet door, and the frame structure for the family room addition.

25. One of the owners of the property testified that on November 28, 1983, the demolition of the previously existing family room and deck had been completed and siding had been removed from the wall adjacent to the kitchen. The new family room had been completed except for the installation of wall board, and floor-to-ceiling glass windows. The electrical, air conditioning and heating systems had been installed. The roof had been put on, the deck had been completed except for the stairs. The new hallway to the kitchen had been built.

26. The Zoning Administrator testified that he had no records which would indicate the extent of construction which had been completed as of November 28, 1984.

27. Counsel for the owners proffered that the evidence as to the extent of the construction completed as of November 28, 1983, was not objective in that the date on which the appellant's photos were taken and the recollection of the owner cannot be independently dated.

28. The Board heard arguments in support of and in opposition to the motion to dismiss at the public hearing of February 8, 1984, primarily relating to the issue of estoppel. The public hearing was continued until the public hearing of February 15, 1984, for the express purpose of eliciting the testimony of the Zoning Administrator and the Deputy Zoning Administrator and for cross-examination of those witnesses.

29. At the public hearing of February 15, 1984, the Zoning Administrator testified that the building permit was erroneously issued due to a technical error in the interpretation of the Zoning Regulations.

30. The Zoning Administrator further testified that, upon the advice of the Assistant Corporation Counsel, the stop work order was rescinded, by telephone, at the conclusion of the October 27, 1983, meeting noted in Finding No. 20.

31. The rescission of the stop work order was essentially based on (a) the period of time which had elapsed since the issuance of the building permit; (b) the amount of work completed which basically consisted of demolition and the laying of footings; and (c) the contracts to which the owners had become obligated. The Assistant Corporation Counsel advised the Zoning Administrator that the facts relevant to the subject case basically met the elements of estoppel as set forth in the Saah case and in Finding of Fact No. 7 of this order.

32. The record contains two letters from Advisory Neighborhood Commission 3G, neither of which address the issues raised in the owner's motion to dismiss the subject application. The Board considered the owner's motion to dismiss as related to the element of estoppel as a preliminary jurisdictional matter. The merits of the case were not addressed. The Board, therefore, did not consider the issues and concerns of the ANC in determining its action on the motion to dismiss.

33. While there is some dispute, as noted earlier, about the exact stage and nature of construction that had been accomplished by the point at which the appeal had been filed, it is clear even from the appellant's photographs that substantial construction had been undertaken. Such construction clearly constitutes expensive and permanent improvements to the property.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact, the Board concludes that the elements of estoppel, as outlined in Finding of Fact No. 7, 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 building permit. The further issue of laches raised in the motion to dismiss is therefore moot and the Board makes no findings or conclusions thereon. No further action by the Board on the subject appeal is necessary, and the Board makes no findings or conclusions on the merits of the allegations of error raised by the appellant.

VOTE: 3-0 (Walter B. Lewis, William F. McIntosh and Douglas J. Patton to DISMISS; Charles R. Norris and Carrie L. Thornhill not present, not voting).

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

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

FINAL DATE OF ORDER: MAY 29 1984

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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