

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15685 of Eugene A. Thompson, pursuant to 11 DCMR 3105 and 3200, from the decision of the Zoning Administrator resulting in the failure of the Zoning Administrator to properly act upon applications for certificates of occupancy for two rooming houses in the R-5-B District at 1746 Lanier Place, N.W. (Square 2580, Lot 359) filed on December 16, 1987 and at 1748 Lanier Place, N.W. (Square 2580, Lot 824) filed on May 6, 1987.

ORDER DISMISSING APPEAL

The subject appeal was filed in the Office of Zoning on March 11, 1992. The stated basis for the appeal was the failure of the Zoning Administrator to issue certificates of occupancy to allow the use of the subject properties as rooming houses under the Zoning Regulations in effect at the time the applications for certificates of occupancy were made and the failure of the Zoning Administrator to adequately process the applications pursuant to 14 DCMR 1402.5.

By memorandum dated April 21, 1992, the Acting Director of the Office of Zoning referred the appeal to the Office of the Corporation Counsel for advice as to whether the Board is authorized to consider an appeal from a failure to act or a failure to make an administrative decision. The Acting Director indicated that because the Zoning Administrator had not acted on the appellant's applications for certificates of occupancy, there was no administrative decision from which the appellant can properly appeal and the case should be dismissed.

By letter to counsel for the appellant dated April 29, 1992, the Zoning Administrator advised that the processing of the applications for certificates of occupancy had not been completed pending the receipt of a written order from the Administrative Law Judge on Civil Infraction Case Nos. 91-2177E and 91-2178E. The Zoning Administrator indicated that he would advise the appellant of his action upon receipt of the written decision on the civil infraction cases.

By letter dated May 1, 1992, counsel for the appellant advised that, based on the referral by the Office of Zoning to the Office of Corporation Counsel and the letter from the Zoning Administrator, the appellant would be agreeable to dismissal without prejudice provided that the appellant's right to have the matter administratively reviewed is preserved once the Zoning Administrator has made a decision on the merits.

BZA APPEAL NO. 15685
PAGE NO. 2

By memorandum dated May 21, 1992, the Office of the Corporation Counsel advised the Board of its jurisdiction "to entertain an appeal based on the wrongful or unreasonable withholding of a decision that effectively denies the application for a certificate of occupancy". The memorandum goes on to indicate that the instant appeal may be premature and that if the Board decides to dismiss the appeal as premature, it should do so without prejudice to refile at the appropriate time.

Based on the foregoing, the Board concludes that the appeal, as presently filed, is premature for consideration by the Board. Accordingly, it is ORDERED that the appeal is hereby DISMISSED WITHOUT PREJUDICE to refile within ninety days of the written order of this Board.

DECISION DATE: June 3, 1992

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell, Angel F. Clarens and Carrie L. Thornhill to DISMISS).

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

ATTESTED BY:



MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

JUL 8 1992

UNDER 11 DCMR 3103.1, "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."

app15685/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15685

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 8 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John E. Scheuermann, Esquire
Smink & Scheuermann, PC
700 E Street, S.E.
Wash, D.C. 20003

Eugene A. Thompson
1749 Lanier Place, N.W.
Wash, D.C. 20009

James P. Crane, Chairperson
Advisory Neighborhood Commission 1-C
2409 - 18th Street, N.W.
Washington, D.C. 20009

A handwritten signature in cursive script, reading "Madeliene H. Robinson", is written over a horizontal line.

MADELIENE H. ROBINSON
Acting Director

DATE: JUL 8 1992