

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 16151 of Anne Sellin on behalf of the Residential Action Coalition, pursuant to 11 DCMR 3105, 3106 and 3200.2, from the administrative decision of Pat Montgomery, Administrator, Department of Department of Consumer and Regulatory Affairs made on January 31, 1996, to the effect that the proposed extension to a rowhouse meets zoning in an R-5-D District at premises 1834 16th Street, N.W. (Square 177, Lot 5).

HEARING DATE:       October 2, 1996  
DECISION DATE:      October 2, 1996 (Bench Decision)

DISMISSAL ORDER

As a preliminary matter at the public hearing of October 2, 1996, the Board considered a letter filed by Advisory Neighborhood Commission (ANC) 1C, dated September 16, 1996, requesting continuance of the appeal to afford the parties an opportunity to arrange for meetings with all parties. The ANC stated that the continuance is requested because of the complexity of the appeal.

The owner of the subject property, P.N. Hoffman Co., through counsel, filed a memorandum on September 25, 1996 opposing the continuance. The opposing party stated that the Board sent notice of the filing of the appeal to ANC 1C by a letter dated May 17, 1996. A copy of the appeal form was attached to the letter and ANC 1C was reminded of its duty to file a written report concerning the appeal at least seven days before the date of the BZA hearing. The BZA also sent notice of the October 2, 1996 hearing to ANC 1C by a letter dated August 22, 1996, addressed to the Chairperson of ANC 1C. The opponent maintains that ANC 1C had ample time to address the issues raised in the appeal and submit its written public comments, having received notice of the appeal in May 1996, and notice of the actual hearing date in August 1996. Further, ANC 1C has stated no reason why its report could not be filed timely, and a continuance of this appeal would cause the property owner further injury as the construction of the project is well underway and continues daily. Therefore, the opponent maintains that the request for a continuance should be denied.

In addition to opposing the continuances, the opponent moved for dismissal of the appeal with prejudice. The memorandum in support of the motion to dismiss stated that on January 3, 1996, the owner, Hoffman Co., filed conceptual drawings and plans with the Historic Preservation Review Board ("HPRB") evidencing its intention to obtain a building permit to alter, repair and make an addition to the subject property. Conceptual design review was sought for the plans to obtain the review and guidance of HPRB, prior to preparation of final plans for the subject property. A

DCRA form transmittal letter addressed to the HPRB, signed by DCRA's Chief of the Permit Branch and DCRA's Structural Section, was attached to the plans reviewed by HPRB. The date of the signatures on the transmittal letter was January 31, 1996. The zoning district of the subject property was also noted on the transmittal letter, but no zoning official signed the transmittal letter.

The owner argued that since there has been no substantive evidence added to the file for this appeal, it appears that the signatures and the notation of the zoning district of the subject property on the transmittal letter are the administrative "decisions" which are the basis for this appeal. The opponent based this assumption on the contents of the BZA appeal form, the attachment of the transmittal letter to the appeal form and the lack of any additional documentary evidence filed in support of the appeal. Further, the record in this appeal does not contain any other references to acts which could be considered decisions rendered by the DCRA on January 31, 1996.

At the hearing on this matter, the owner argued that the transmittal form is used for the permit application, the preliminary design review and conceptual design review. Where the form indicates "Complies with D.C. Zoning Regulations," there is no sign-off. In this space, the Zoning Administrator just writes in the zone.

The owner of the property also noted that the appellant failed to file documentary evidence in support of the appeal 14 days in advance of the hearing date as required by Title 11 DCMR Subsection 3315.17. Without such documentation, the other parties to the appeal are unable to adequately prepare for the hearing.

In response to the motion to dismiss, the appellant stated that when she filed the appeal, she was told by the Office of Zoning staff that she must file the document from which the appeal was taken. The only document she produced was the HPRB's transmittal form. She noted that this form was accepted by staff and she assumed that it was adequate because it was accepted. She requested that the case be postponed and that the motion to dismiss the denial.

The owner noted that the Office of Zoning will accept whatever is submitted. It is the appellant's duty to appeal the decision.

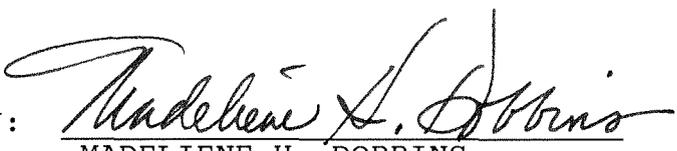
Upon consideration of the above facts, the Board concludes that the appellant failed to provide adequate documentation in the record to form the basis for this appeal and it remains unclear what zoning decision is being appealed. Therefore, neither the

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parties nor the Board would be able to address the appeal in an intelligent fashion. Consequently, it is hereby ORDERED that the appeal is DISMISSED WITHOUT PREJUDICE.

VOTE: 4-0 (Jerrily R. Kress, Laura M. Richards, Susan Morgan Hinton and Sheila Cross Reid to dismiss; Angel F. Clarens not present, not voting)

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

ATTESTED BY:   
MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER: NOV 18 1996

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."

appe16151/TWR/LJP

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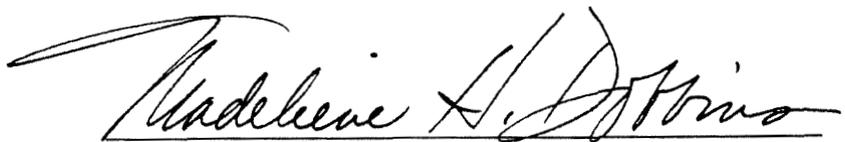
BZA APPLICATION NO. 16151

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 18 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. DOBBINS  
Director

Date: NOV 18 1996