GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 17915 of Jonathon Bolduc, pursuant to 11 DCMR §§ 3100 and 3101, from a March 25, 2008 letter from the Director of the D.C. Department of Consumer and Regulatory Affairs confirming the validity of building permit number B466306, which authorized the construction of a front porch as part of an addition to a row dwelling located in the R-5-B District at premises 1433 Parkwood Place, N.W. (Square 2688, Lot 64).[1]

HEARING DATE: May 12, 2009
DECISION DATE: May 12, 2009

DECISION AND ORDER

This appeal was submitted November 3, 2008 by Jonathan Bolduc ("Appellant"), who challenged a letter from the Director of the Department of Consumer and Regulatory Affairs ("DCRA") concerning the construction of a front porch that was part of an addition on a row dwelling at 1433 Parkwood Place, N.W., which adjoins the row dwelling owned by the Appellant. The Department of Consumer and Regulatory Affairs, the Appellee herein, filed a motion to dismiss the appeal as untimely, which the Board orally granted on May 12, 2009 for the reasons explained below.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated November 20, 2008, the Office of Zoning provided notice of the appeal to the Office of Planning; the Zoning Administrator, at DCRA; the Councilmember for Ward 1; Advisory Neighborhood Commission ("ANC") 1A, the ANC in which the subject property was located; and Single Member District/ANC 1A04. Pursuant to 11 DCMR § 3112.14, on February 25, 2008 the Office of Zoning mailed letters providing notice of the hearing to the Appellant; the Zoning Administrator; Gailya Wright, the owner of the property that was the subject of the appeal; and ANC 1A. Notice was published in the D.C. Register on February 27, 2009 (56 DCR 1809).

[1] The caption, as advertised, stated that the appeal was from a DCRA letter "allowing" construction of the porch. As will be explained below, the letter only confirmed the legality of the permit that authorized the construction. The caption has been revised to reflect the correct nature of the correspondence.

Party Status. Consistent with 11 DCMR § 3199.1, the parties in this proceeding were the Appellant, DCRA, the owner of the subject property, and ANC 1A. There were no additional requests for party status.

ANC Report. By letter dated May 7, 2009, ANC 1A indicated that, at a meeting held April 8, 2009 with a quorum present, the ANC voted to request additional information from the Board with regard to whether a variance was required for the construction undertaken at the subject property. The ANC expressed concern "that proper procedures may not have been followed by the Department of Consumer and Regulatory Affairs (DCRA) inspectors."

FINDINGS OF FACT

1. The subject property is located at 1433 Parkwood Place, N.W. (Square 2688, Lot 64). The property is improved with a row dwelling that adjoins the Appellant's row dwelling at 1435 Parkwood Place, N.W.

2. The owner of the subject property was issued Building Permit No. 466306 on October 1, 2004, authorizing the owner to renovate the row dwelling, including the front porch. A stop work order was issued in January 2005, leading to revised plans and the issuance on June 6, 2007 of Building Permit No. 107753.

3. Although Mr. Bolduc appealed neither building permit, he made a number of complaints to DCRA, alleging, among other things, that a variance was required because the porch extended into the front yard by nine feet, which was at least two feet greater than those of adjacent properties.[2]

4. In response to these assertions, the DCRA Director, sent a letter dated March 25, 2008, stating that there was no basis for enforcement and no reason to believe that there had been misrepresentation or bad faith by the owner.

5. The Appellant's appeal of the letter was filed more than seven months later, on November 3, 2008.

6. The Appellant gave several reasons why the appeal "was slow in being brought forward," including concerns about "DCRA's process," poor relations with the neighbors at the subject property, family responsibilities, "the collapse of the international credit market," and the lack of a response to a Freedom of Information Act request submitted to DCRA by the Appellant.

[2] Appellant also complained about the manner that the porch was being constructed. Issues of building code compliance are not within the Board's jurisdiction.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by Section 7 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2001), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. DCRA filed a motion to dismiss asserting that the appeal was untimely. If true, the Board would have no jurisdiction to hear and decide this case. *Economides v. District of Columbia Bd. of Zoning Adjustment*, 954 A.2d 427, 434-435 (D.C. 2008); *Waste Mgmt. of Md., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 775 A.2d 1117, 1121 (D.C.2001).

Pursuant to 11 DCMR § 3112.2(a), an appeal must be filed within 60 days after the date the person appealing an administrative decision interpreting the Zoning Regulations had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier.

The first question then is what is the decision complained of? For the purposes of this analysis, the Board will assume that decision to be the March 25, 2008 letter that, in essence, affirmed the validity of the 2004 building permit.[3] The next question is when the Appellant knew or should have known of the decision. Consistent with the customary rule, the Board will assume that the letter was received by Appellant three days after its date. The Appellant therefore had notice of the decision on March 30th and, to be timely, an appeal had to be filed on or before May 29, 2008. This appeal was filed on November 3, 2008.

Subsection 3112.2(d)(1) allows the Board to extend the May 29th deadline if the Appellant demonstrates that there were "exceptional circumstances that are outside of the appellant's control and could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board." As factors contributing to his delay, the Appellant cited concerns about "DCRA's process," poor relations with the neighbors at the subject property, family responsibilities, "the collapse of the international credit market," and the lack of a response to a Freedom of Information Act request submitted to DCRA.

While some of these circumstances might be exceptional, and perhaps all were outside of the Appellant's control, none could have "substantially impaired the appellant's ability to file an appeal." S*ee, e.g. Waste Management, supra*, 775 A.2d at 1123) (fact that Appellant "chose to concentrate on avenues that reasonably may have appeared more promising than an appeal does not excuse its delay in noting an appeal"). In view of this finding, the Board need not reach the

[3] As an alternative ground to its motion, DCRA argued that the 2004 building permit, and not the 2008 letter, was actually the "decision complained of." Although the Board chose to measure the time for filing this appeal based upon the 2008 letter, it does not at all question its past precedent holding that a post-building permit letter or certificate of occupancy cannot be appealed unless it contains a new decision. *See, Appeal No. 16982 of J. Brendan Herron Jr. and ANC 3F*, 52 DCR 3904 (2005), *Appeal No. 17411 of Paul A. Basken and Joshua S. Meyer*, 53 DCR 2495, *affirmed, Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 362 (D.C. 2008*); Appeal No. 17830 of L. Napoleon Cooper*, 56 DCR 3737 (2009).

issue of whether granting the six-month extension would prejudice the owner, which is the second showing required under § 3112.2(d)(2).

The Board is required to give "great weight" to any issues and concerns raised by ANC 1A in this proceeding. The Board credits the unique vantage point that ANC 1A holds with respect to the impact of the appeal on the ANC's constituents. However, the ANC did not offer advice to the Board, but instead sought additional information from it. The Board cannot give great weight to a request.

For the reasons stated above, the Board hereby **GRANTS** the motion of DCRA to dismiss the appeal as untimely. Accordingly, it is **ORDERED** that the appeal from a March 25, 2008 letter from the Director of the Department of Consumer and Regulatory Affairs concerning the construction of a porch addition under building permit number B466306 in the R-5-B district at 1433 Parkwood Place, N.W. (Square 2688, Lot 64) is **DISMISSED.**

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman, and Gregory N. Jeffries voting to dismiss; no other Board members participating)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of Board members approved the issuance of this order.

ATTESTED BY: Jamison L. Weinbaum
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 17 2009

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPEAL NO. 17915

As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 17, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

Don Hawkins
Jonathon Bolduc
1435 Parkwood Place, N.W.
Washington, D.C. 20010

Gailya Wright
1433 Parkwood Place, N.W.
Washington, D.C. 20010

T. Gail Maddox-Levine, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

Doris Parker-Woolridge, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Chairperson
Advisory Neighborhood Commission 1A
2905 11th Street, N.W.
Washington, D.C. 20001

Single Member District Commissioner 1A04
Advisory Neighborhood Commission 1A
2905 11th Street, N.W.
Washington, D.C. 20001

Jim Graham, Councilmember
Ward One
1350 Pennsylvania Avenue, N.W., Suite 105
Washington, D.C. 20004

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY: Jamison L. Weinbaum
JAMISON L. WEINBAUM
Director, Office of Zoning