

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 17980 of William J. Reaves, pursuant to 11 DCMR §§ 3100 and 3101, from a determination of the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to allow the construction of a one-family semi-detached dwelling under Building Permit No. B111267, in the R-5-A District at premises 4908 Quarles Street, N.E. (Square 5171, Lot 35).

HEARING DATES: February 9, 2010, February 16, 2010, March 10, 2010, and
and April 13, 2010¹
DECISION DATE: April 13, 2010

DISMISSAL ORDER

PRELIMINARY MATTERS

On June 12, 2009, William J. Reaves (“Appellant”) timely filed this appeal with the Office of Zoning (“OZ”), alleging that the Zoning Administrator (“ZA”) had issued Building Permit No. B111267 in error. The Appellant claimed that the Building Permit allowed the construction of a new one-family dwelling at 4908 Quarles Street, N.E. (“subject property”), in an R-5-A zone district, which would not comply with the side yard requirements of the Zoning Regulations.

On April 13, 2010, the Board held a hearing on Appeal No. 17980. The Department of Consumer and Regulatory Affairs (“DCRA”), the agency within which the ZA operates, appeared and moved the Board to dismiss the appeal for mootness.

The Board heard the argument on the motion by DCRA and voted 3-0-2 to dismiss the appeal on mootness grounds.

¹Four hearing dates were scheduled for this appeal. One, February 9, 2010, had to be re-scheduled due to snow. The Appellant informed the Office of Zoning that he could not appear on February 16th. He asked that the hearing be rescheduled for a date after February 21, 2010 and it was re-set for March 10, 2010. On January 11, 2010, the Appellee had filed a Motion to Dismiss the appeal for mootness. The Appellant neither responded to the Motion nor appeared on March 10th. On March 10th, the Board announced that if the Appellant did not appear at the next scheduled date – April 13, 2010 -- the case could be dismissed on procedural grounds. After the April 13th hearing, at which the Appellant again did not appear, the Board granted the Motion to Dismiss on mootness grounds.

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FINDINGS OF FACT

1. The subject property is located at 4908 Quarles Street, N.E., Square 5171, Lot 35, in an R-5-A zone district.
2. On April 17, 2009, DCRA issued Building Permit No. B111267, which permitted the construction of a new one-family semi-detached dwelling on the then-vacant subject property. Exhibit No. 17, Attachment B.
3. The plans submitted by the owner of the subject property when filing for the building permit show a semi-detached dwelling constructed on the lot line between lot 35 and the adjacent lot to the west, with a side yard between the dwelling's eastern wall and an adjacent public alley. 11 DCMR § 199.1, Definition of "Dwelling, one-family semi-detached." Exhibit No. 20, Attachment H.
4. One-family semi-detached dwellings are allowed as a matter-of-right in this R-5-A zone district. 11 DCMR §§ 350.4(a), 330.5(a), 320.3(a), and 300.3(c).
5. The Appellant owns the adjacent lot to the west of the subject property and was apparently disturbed by the fact that the proposed dwelling was situated on the lot line between his lot and the subject property, prompting the filing of this appeal.
6. On July 1, 2009, the owner of the subject property submitted a new building permit application for the property. The revised plans submitted with the new application show the proposed one-family dwelling shifted away from the Appellant's lot.
7. On July 6, 2009, DCRA issued Building Permit No. B09070006, which amended Building Permit No. B111267 and was based on the revised plans. Exhibit No. 17, Attachment F.

CONCLUSIONS OF LAW

The Board is authorized by section 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2008 Repl.), 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 the Zoning Regulations.

The error claimed here concerned the absence of a side yard adjacent to the Appellant's property, as shown in the plans approved by the issuance of Building Permit No. B111267. Although the absence of such a side yard is perfectly lawful in an R-5 zone, the property owner subsequently agreed to provide a yard adjacent to the Appellant's property. Plans consistent with this agreement were approved by the issuance of Building Permit No. B09070006 on July 6, 2009. That permit amended the earlier permit in a manner that nullified the decision that was the subject of this appeal.

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As noted by the District of Columbia Court of Appeals, “[a] case is moot when the legal issues presented are no longer ‘live.’” *Cropp v. Williams*, 841 A.2d 328, 330 (D.C. 2004). That standard applies here. As a result of the issuance of the second building permit, the plans showing no side yard adjacent to the Appellant’s property were replaced with plans showing a side yard separating the two properties. Whether those plans are lawful is not before the Board because the Appellant did not appeal the decision to issue the second permit. The only relevant fact is that the plans complained of are no longer “live” and, it follows, neither are the legal issues associated with them.

Because this case is moot, the Board must dismiss it. As recognized by the District of Columbia Court of Appeals, “the BZA has the authority to dismiss an application on mootness grounds.” *N Street Follies, LP v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 588, (D.C. 2008).

Therefore, it is hereby **ORDERED** that Appeal No. 17980 be **DISMISSED**.

VOTE: **3-0-2** (Meridith H. Moldenhauer, Shane L. Dettman, and Nicole C. Sorg, to dismiss. No fourth Board member or Zoning Commission member participating or voting)

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
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 27 2010

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.

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As Director of the Office of Zoning, I hereby certify and attest that on MAY 27 2010, 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:

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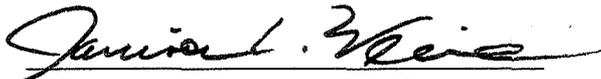
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