

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington D.C. 20001

Appeal of Capitol Hill Restoration Society

Appeal No. 18154

2010 DEC 17 PM 1:09

DISTRICT OF COLUMBIA'S MOTION TO DISMISS

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, moves this Board to dismiss the appeal the October 25, 2010 appeal filed by the Appellant, Capitol Hill Restoration Society ("CHRS"). The appeal alleges that DCRA erred in its decision to grant a reasonable accommodation under the Fair Housing Act to permit a rear deck addition at 1363 Massachusetts Ave., SE ("the Property"). The appeal must be dismissed because the Board does not have jurisdiction to review decisions of DCRA with respect to the granting or denial of a reasonable accommodation.

FACTUAL BACKGROUND

On October 13, 2010, DCRA issued building permit no. B1008586 to Mary Donovan to build a rear porch addition. Before DCRA issued the permit, Mrs. Donovan requested and was granted a reasonable accommodation under the Fair Housing Act.¹ DCRA received the request and processed it according to the procedures set forth in 14 DCMR § 111 (Procedures regarding requests for reasonable accommodation under the Fair Housing Act). Specifically, DCRA

¹ Appellant states in its appeal that DCRA granted Mrs. Donovan a zoning variance. DCRA did not grant a variance. It granted a reasonable accommodation under the Fair Housing Act.

granted Mrs. Donovan an accommodation from sections 403.2, 404.1, and 2001.3 of the Zoning Regulations to permit her to extend the rear porch on the Property.

Although the Zoning Regulations require a 20-foot rear yard, the addition that Mrs. Donovan sought to build extends her existing non-conforming deck to the rear property line. Under the Fair Housing Act, DCRA must grant such an accommodation if it is “reasonable” and “may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

THE APPEAL MUST BE DISMISSED

In this appeal, Appellant argues that DCRA should not have granted a reasonable accommodation and that the granting of the accommodation was done without a “public process.” The Board, however, is limited in its jurisdiction. It cannot review decisions of DCRA with respect to the Fair Housing Act. Consequently, the Board must dismiss this appeal.

The Board’s jurisdiction is set forth in 11 DCMR § 3100.2, which states:

The Board, pursuant to the Zoning Act, shall also hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the *administration or enforcement of the Zoning Regulations*, Title 11 DCMR.

11 DCMR § 3100.2 (emphasis added). *See also* DC Official Code § 6-641.07(g).

Additionally, the Zoning Act states in part:

Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other *administrative decision based in whole or in part upon any zoning regulation or map* adopted under this subchapter.

DC Official Code § 6-641.07(f) (emphasis added).

While building permit no. B1008586 permits construction that does not strictly comply with the Zoning Regulations, DCRA's decision to issue the permit was based on a request under the Fair Housing Act. It was not the result of an error with respect to the Zoning Regulations. Therefore, the Board is without jurisdiction to hear this appeal.

The regulations governing requests for reasonable accommodations also make it clear that decisions under the Fair Housing Act are not appealable to the Board. While the Board is vested with the power to grant variance and special exception relief, the Fair Housing Act and the District's regulations create a process for obtaining relief that is apart from that. Those regulations designate the Director of DCRA (or her designee) to evaluate and render a decision on requests for reasonable accommodations. *See* 14 DCMR § 111.6. The Director's decision "shall be deemed a final decision of the District of Columbia government, and, therefore, there shall not be any further resort to administrative remedies." 14 DCMR § 111.13. An appeal to the Board of Zoning Adjustment is exactly the type of administrative remedy the regulation prohibits.

Additionally, the public nature of the Board's hearings are antithetical to the confidential nature of a reasonable accommodation request. As reasonable accommodation requests generally involve sensitive medical and personal information about the applicant, the District's regulations seek to protect that information. Under those regulations, only explicitly authorized DCRA personnel may have access to confidential materials in a reasonable accommodation request file. *See* 14 DCMR § 111.14. Further, DCRA is prohibited from releasing those confidential materials to the public. *See* 14 DCMR § 111.15.

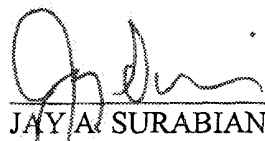
For these reasons, the Board must dismiss this appeal.

Respectfully Submitted,

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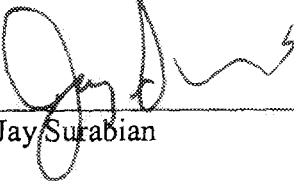
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion was served by first class mail, this
17th day of December 2010, to the following:

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