

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Edward Hanlon
of Building Permit # B1206336
and Building Permit # B1209691

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Appeal No. 18429

PROPERTY OWNER'S MOTION TO DISMISS APPEAL FOR FAILURE TO PROPERLY
FILE; AND FOR FAILURE TO STATE A ZONING ERROR

Mr. Darren Binder, owner of the property which is subject to this appeal, 1530 Swann Street, N.W., hereby requests that the Board dismiss this appeal in its entirety, with prejudice, prior to hearing the merits, for the following reasons:

1) The appeal is fatally flawed for failure to meet basic filing requirements. As it is now well past the 60-day time limit for filing an appeal, the Board has no jurisdiction to entertain a new appeal; nor does it have jurisdiction to permit Mr. Hanlon to attempt to "cure" his failed attempt.

2) Regarding Building Permit No. B1209691 and B1206336: despite multiple opportunities to do so, the appellant has failed to reference any particular section of the Zoning Regulations which may have been violated.

A. The Appeal was Not Legitimately Filed and Should Be Dismissed Without Allowing the Appellant to Revise or Replace the Initial Filing.

Section 3109.1 of the Zoning Regulations provides that the Director of the Office of Zoning shall provide appeal forms that ensure presentation of adequate information for the understanding and processing of an appeal. [Emphasis added.] Section 3112.5 of the Zoning Regulations requires that each appeal shall be made on the appropriate form and that all information required by such form shall be furnished by the appellant at the time of filing the appeal. [Emphasis added].

Pursuant to these Zoning Regulations, the Director issued Form 125, which requires a potential appellant to provide the following basic information:

- 1) each and every exception to the administrative decision [complained of], in specific detail. Details should state the allegations of error in the administrative decision – “why it was an error” – and reference the relevant Sections of the Title 11 DCMR Zoning Regulations and/or Map; and
- 2) A detailed statement explaining how the Appellant intends to prove its case.

These requirements should not be discarded lightly. The purpose of these basic “gatekeeper” requirements is to protect private citizens from unreasonable harassment or threat to their property as well as to protect the Board from hearing frivolous appeals. While the Board has often provided leeway for a potential appellant in meeting these requirements when they show up for a hearing (rather than at the time of filing), such relief is not appropriate in this case for the following reasons: (i) The appellant has not referenced any section of the Zoning Regulations, as was required at the time of filing the appeal. Mr. Hanlon is a licensed attorney and presumably has the ability to read and follow simple instructions for a legal filing (*i.e.*, if he had a good-faith argument for a specific zoning error, he would have referenced the section of the Zoning Regulations allegedly violated); (ii) waiver of this requirement prejudices not only the appellee, but also the property owner, Mr. Binder, by forcing him to spend valuable time and expense to blindly defend himself and protect his investment in a deck which he built in accordance with lawfully issued permits; (iii) waiver of these requirements robs the Zoning Administrator and Mr. Binder of the ability to prepare a defense (since there is nothing to defend); and (iv) waiver in this case may encourage others to file appeals, knowing that they can impede a project or harass a property owner¹ without having to follow the basic filing requirements.

Effectively, the appellant is throwing out a vague list of complaints apparently in the hope that this Board will provide a comprehensive de novo zoning review of the subject building permits. But it is an appellant’s responsibility to provide enough details of an alleged violation – at time of filing – to enable the Board to address those specific alleged violations.

¹ Mr. Hanlon has used the filing of this appeal as an excuse to incessantly take photographs of Mr. Binder’s home from every possible angle, including from his own - higher - roof deck.

B. The Board Does Not Have Jurisdiction to Entertain a New or “Cured” Appeal Filing.

Pursuant to § 3112.5, Mr. Hanlon was required to furnish “All information required by” Form 125 (including each exception and citation of the relevant Zoning Regulation) “at the time of filing the appeal.” Mr. Hanlon did not identify a single exception, and failed to reference any Zoning Regulation, leaving it impossible to understand or process (or defend) the appeal (see § 3109.1).

Because this basic information is required at the time of filing, Mr. Hanlon failed to meet this requirement and cannot replace or cure it now, as it is beyond the 60-day deadline for filing of an appeal. The Board should therefore dismiss this Appeal without giving Mr. Hanlon the opportunity to go on a fishing expedition and waste this Board’s, the Zoning Administrator’s, his counsel’s, and Mr. Binder’s time.

In addition, nothing in Mr. Hanlon’s various pre-hearing statement filings has succeeded in curing this defect.

C. If the Board Waives the Basic Filing Requirements and the 60-day Filing Deadline, the Appeal Should Be Dismissed for Failure to State a Zoning Violation.

Nothing the appellant has submitted includes a reference to a violation of any specific section or part of the Zoning Regulations. It is not knowable from his submittals whether or not it is even a zoning violation that is being complained of, since he discusses historic issues, lighting, etc. The appellant also complains about actual construction, or perhaps unrelated building code issues, neither of which comes under this Board’s purview. In essence, the Appellant looks to waste the valuable time of this Board, the Zoning Administrator, his counsel, and Mr. Binder, to address his own personal preferences unrelated to the Zoning Regulations.

Mr. Binder, therefore, respectfully requests that the Board dismiss the Appeal because the Appellant has failed to state a claim upon which relief can be granted; *i.e.*, he has not identified any potential error of the Zoning Administrator.

Summary

Mr. Binder respectfully requests that the Board dismiss the Appeal since the appellant has failed to meet the basic filing requirements due at the time of filing, and also because he has failed to reference a specific alleged violation of the Zoning Regulations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan". The signature is written in a cursive, flowing style with some loops and a long tail on the final letter.

Martin P. Sullivan

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2012, a copy of the attached Motion to Dismiss was delivered via electronic mail to the following:

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A handwritten signature in black ink, appearing to read "Martin P. Sullivan", is written over a horizontal line.

Martin P. Sullivan