

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Edward Hanlon

)
)
)

Appeal No. 18429

PROPERTY OWNER'S MOTION TO DISMISS PORTIONS OF THE APPEAL BECAUSE
APPELLANT IS NOT AN AGGRIEVED PARTY UNDER THE ZONING ACT AND THE
ZONING REGULATIONS

Mr. Darren Binder, owner of the property which is subject to this appeal, 1530 Swann Street, N.W., hereby moves that:

1) The Board dismiss all allegations in the Appeal - other than the allegation regarding a height violation - because as it pertains to those alleged zoning errors, the Appellant is not an aggrieved party under the Zoning Act (D.C. Code §6-641.07(f)) and the Zoning Regulations (11 DCMR §3112.2);

In light of the Appellant's last minute filing of November 1, the Property Owner requests that the Board consider this Motion, which was prompted by the information included in the Appellant's late filing.

Mr. Hanlon is *Not* an Aggrieved Party For all But the Alleged Height Violation.

At the late date of November 1, Appellant finally chose to reference the Zoning Regulations which he claims were violated as part of the issuance of the subject Building Permits. Regarding all allegations of error other than the roof deck height, and deeming all those other allegations to be true, Mr. Hanlon is not damaged or affected in any way by the Zoning Administrator's decision, and therefore does not have standing to bring this Appeal.

Mr. Hanlon lives in a row house on the north side of Swann Street, N.W., across the street from Mr. Binder's property. Mr. Binder lives in a row house on the south side of Swann Street, attached to other row houses on both sides. Mr. Hanlon, from his own roofdeck – which is at a higher elevation than Mr. Binder's new roof deck – can see portions of Mr. Binder's roof deck, including the decorative walls that Mr. Hanlon claims are in violation of height restrictions. Therefore, the Property Owner agrees that under the relaxed standard for standing under administrative proceedings, Mr. Hanlon could be an aggrieved party for that portion of the Appeal.

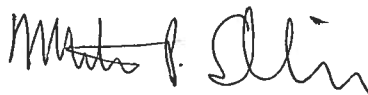
But even from his higher roof deck, Mr. Hanlon has no view whatsoever of the rear of Mr. Binder's house, including the rear courts, the rear areaway, the so-called "second floor roof structure," or any other aspect of the rear of Mr. Binder's house or property. For this reason, Mr. Hanlon has not demonstrated, nor can he demonstrate, that his interests are distinctively affected in any way by any decisions made by the Zoning Administrator that affected the rear of the property.

The BZA has followed the statutory and regulatory requirement that, in order for the Board to have jurisdiction to hear an appeal, an appellant must show that he is aggrieved by the particular alleged errors of the Zoning Administrator (D.C. Code §6-641-.07(f) and 11 DCMR §3112.2). The Board has found in past cases that general proximity to a property is not enough to show that an appellant is aggrieved. Rather, to be aggrieved by an alleged area violation, the appellant must at least be able to see the area of the alleged violation from his property, if not impacted in some other meaningful manner.¹

Because Mr. Hanlon has no view of the rear of Mr. Binder's property, he is clearly not aggrieved and does not have standing to assert allegations regarding the rear courts, the areaway, the "second floor roof structure" and the "projection of the third floor roof line," as alleged in Section II. of the Appellant's November 1 filing. Since he has no view of any of these aspects of the subject property, he cannot possibly be harmed in any way, is not aggrieved, and therefore has no standing to assert those alleged errors, and the Board has no jurisdiction to entertain those aspects of this Appeal.

This leaves only the Appellant's height allegations to be considered, so the Property Owner respectfully requests that the Board dismiss the Appeal as it relates to all allegations other than the alleged height violation, subject of course to the Property Owner's prior Motion to Dismiss the entire appeal for failure to reference a particular zoning violation at time of filing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Martin P. Sullivan".

Martin P. Sullivan

¹ In Appeal No. 17285 of Patrick Carome, it was critical to his standing that the appellant could see the thirty foot-high retaining wall that was the subject of that appeal. In Appeal No. 16489, it was critical to his standing that the appellant could see the tree canopy which was the subject of that appeal. In Appeal No. 17430, the Board dismissed an appeal because it found that the alleged error by the Zoning Administrator did not cause the appellant any "particular damage."

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, a copy of the attached Motion to Dismiss was delivered via electronic mail to the following:

Jay A. Surabian, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024
jay.surabian@dc.gov

Edward Hanlon
1523 Swann Street, N.W.
Washington, D.C. 20009
bankruptcycenter@verizon.net

Advisory Neighborhood Commission 2B
9 Dupont Circle, NW
Washington, DC 20036
2B@anc.dc.gov



Martin P. Sullivan