

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

EDWARD V. HANLON

Appellant

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No.: 18429

Hearing Date: December 4, 2012

**APPELLANT'S OPPOSITION
TO PROPERTY OWNER'S MOTION TO DISMISS PORTIONS OF THIS APPEAL
BECAUSE APPELLANT IS NOT AN AGGRIEVED PARTY UNDER THE ZONING ACT
AND THE ZONING REGULATIONS (IZIS EXHIBIT NO. 37)**

Comes Now the Appellant, Edward V. Hanlon, and files this Opposition to the Property Owner's Motion To Dismiss Portions Of This Appeal Because Appellant Is Not An Aggrieved Party Under The Zoning Act And The Zoning Regulations (IZIS Exhibit No. 37) and states as follows:

1. Appellant Edward V. Hanlon is an *adjacent property owner*, living at 1523 Swann Street NW, across the street from 1530 Swann. *But for* the public street Appellant's house and 1530 Swann would touch each other adjoining at the front corner of 1530 Swann closest to 16th Street. Mr. Hanlon has lived in his house at 1523 Swann Street since 1995.
2. Mr. Hanlon can see the deck at issue in this case from every floor of his house. If Appellant looks out his first floor living room window he can see this deck, if he looks out the second floor front windows he can see this deck, if he looks out his bedroom windows on the third floor he can see this deck *and hear* the noise from this deck. This deck is higher in elevation than Mr. Hanlon's bedroom windows and as late as

1:30 a.m. in the morning the rotating colored lights come thru the slats in the shutters and the noise of people on the deck can be heard.¹

3. Appellant's house is uniquely affected by the deck structure being built pursuant to Permits B1206336 and B1209691. Appellant's house at 1523 Swann is three stories. But, the next several houses on Appellant's side of the street are only two stories high. The rotating colored lighting and the noise affect Appellant the most because his house is higher than the next several neighboring houses.
4. Further, Appellant's house has third floor windows which tilt backwards against the slanted roof line. Because the Property Owner's deck is higher in elevation, those standing on the deck can look down thru the angled windows and see right into Appellant's bedroom from ceiling to floor. Appellant can be standing in the middle of his bedroom and those standing on the roof can not only see whether Appellant is wearing a hat, they can see whether Appellant is wearing shoes. Appellant has no privacy day or night in his own bedroom.
5. What is being built is not a roof deck or a sun deck, but a "party" deck. The architectural rendering of the finished deck submitted as part of the permit application process shows an outdoor bar, with hot and cold running water, and ice buckets on top of the bar; and, now with rotating colored lights – purple, green, blue and orange. This is at an elevation above Appellant's third floor bedroom windows. Because the deck

¹ On Friday, November 30, 2012 Applicant had an electrician wiring the 7 foot "decorative wall" which sits on the highest level of this three level deck. Given the dimensions of the large rectangular cut-out designed into the middle of this 7 foot "decorative wall", it is likely that an outdoor sound system and/or outdoor video screen is going to be installed in this wall with the resulting noise.

is large and three levels, it will accommodate a large group of people.

6. As various exhibits show, this deck is visible not only from inside Appellant's house, but also from ground level standing next to Appellant's house. Standing outside Appellant's house at night the deck can be seen forty plus feet up in the air changing colors from purple to green to blue to orange every few seconds. *See e.g.* IZIS Exhibit Nos.
7. This deck, so incompatible with the streetscape of this historic district (the Dupont Circle Overlay District) both from the front and from the 15 foot rear public alley, diminishes the quiet solitude and ambience of those closest to it – and Appellant is one of the three or four houses most close to this deck.
8. FORM 125 filed on June 11, 2012 states:

“Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of DCRA ...made on 4/10/12 ... Granting Permit B 1206336”
9. The Property Owner thru his lawyer wishes to argue that Appellant lacks “standing” to challenge any part of “Granting Permit B 1206336” except for the height of the deck.
10. This is a misuse of the concept of “standing”. **Standing is not issue preclusion.**

Standing is a prudential ‘gate keeping’ concept to help determine who has a right to be a party to a case. If an entity is a party to a case, then that entity has **all** the rights of a party to fully litigate all the issues of the case. An entity is not a half party, a truncated party or a semi-party. An entity is either a party or not a party.

11. Appellant is a valid party to this case and has the right to litigate all the issues in this case. Appellant filed an appeal to the “Granting [of] Permit B 1206336” and to the granting of B1209691. In his initial Statement filed June 10, 2012 Appellant stated:

“I hereby appeal the issuance on April 10, 2012 of Building Permit B1206336 ("Permit"). I live across the street at 1523 Swann Street NW...

“I also appeal the issuance of Building Permit B1209691 issued on or about June 5, 2012 ...” *See* IZIS Exhibit No. 2

12. Appellant, as a party, has the right to put forward all the errors made by the District of Columbia in the issuances of these two permits and is not limited to raising only those errors the Property Owner would like the Appellant to be able to raise.

13. This Board of Zoning Adjustment, as well as, the District of Columbia Court of Appeals have issued a number of decisions on the issue of standing which are relevant to the standing argument put forward by the Property Owner.

14. In a frequently cited decision not only in this jurisdiction but in many jurisdictions across the country the District of Columbia Court of Appeals in Goto v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d 917, 922-923 (D.C. 1980) addressed the issue of an adjacent property owner’s standing before BZA and held as follows:

“Generally, persons wishing to contest zoning determinations must demonstrate some damage - damage greater than that suffered by the general public - to satisfy the “person aggrieved” requirement. *See* 3 A. Rathkopf, *The Law of Zoning and Planning* § 37.03, at 37-52 & n. 35 (4th ed.) (April 1979). Members of the Board [of Zoning Adjustment], however, apparently assumed that, as the adjoining property owner, Gottesman did not have to claim any special damage to intervene in this case. **We agree. A property owner has a sufficient interest in the zoning of adjoining**

property to permit an appeal on the basis of that interest alone, without additional allegations of interest or injury. See Weiner v. City of Los Angeles, 68 Cal.2d 697, 706, 441 P.2d 293, 300, 68 Cal.Rptr. 733, 740 (1968) (en banc); Gnau v. Seidel, 25 Md.App. 16, 25-26, 332 A.2d 739, 744-45 (Ct.Spec.App.1975); 3 A. Rathkopf, *supra* § 37.03, at 37-46 to -47; Comment, *Standing to Appeal Zoning Determinations: The "Aggrieved Person" Requirement*, 64 Mich.L.Rev. 1070, 1079 & n.63 (1966)."

See Goto v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d 917, 922-23

15. The law on standing is similar in Maryland with respect to appeals of zoning determinations. In Bryniarski v. Montgomery Co., 247 Md. 137, 230 A.2d 289 (1967), Maryland's highest Court held:

"Generally speaking, the decisions indicate that a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specifically affected in a way different from that suffered by the public generally. DuBay v. Crane, 240 Md. 180, 185, 213 A.2d 487 (1965). The circumstances under which this occurs have been determined by the courts on a case by case basis and the decision in each case rests upon the facts and circumstances of the particular case under review. **Certain principles, however, have evolved.** They are as follows ...

In cases involving appeals under the provisions of a zoning ordinance:

- (a) It is sufficient if the facts constituting aggrievement appear in the petition for appeal either by express allegation or by necessary implication. Town of Somerset v. Montgomery County Board of Appeals, 245 Md, 52, 225 A.2d 294 (1966).
- (b) **An adjoining, confronting or nearby property owner is deemed prima facie, to be specially damaged and, therefore, a person aggrieved...** See also Wier v. Witney Land Co., 257 Md. 600, 263 A.2d 833 (1970)." (Emphasis added)

In 1975 the Maryland Court of Special Appeals relied on the decision in Bryniarski, *supra* on the issue of standing in its decision in Gnau v. Seidel, 25 Md. App. 16, 26

(1975), 332 A.2d 739 with the same result.

16. This Board in a final order dated August 24, 2012 in *Appeal No. 18114 of Ward 5 Improvement Association*, cited Goto v. District of Columbia Bd. of Zoning Adjustment, *supra*, and relied upon the Goto decision in resolving the issue of standing in Appeal No. 18114:

“Board’s decision to allow appeal by neighborhood association and individual upheld where the individual lived immediately behind the subject site and the association represented residents of both the immediate and general area and had a history of appearing in zoning matters before the Board; **administrative appeals do not necessarily depend on the elements of standing that judicial review would require, and a property owner has a sufficient interest in the zoning of adjoining property to permit an appeal on the basis of that interest alone, without additional allegations of interest or injury.**” (Emphasis added)

Appeal No. 18114 of Ward 5 Improvement Association, at page 10

Accordingly, for all the foregoing reasons Appellant requests that the Property

Owner’s motion to dismiss be denied.

Respectfully submitted,



Edward V. Hanlon
1523 Swann Street NW
Washington, DC 20009

CERTIFICATE OF SERVICE

I certify that on this date one copy of the foregoing was mailed first class postage pre-paid and sent via facsimile to:

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I certify that on this date one copy of the foregoing was mailed first class postage pre-paid to:

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Edward V. Hanlon

12/3/12
Date