

December 23, 2013

Via E-mail and On-line Submission

Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington, DC 20001
bzasubmissions@dc.gov

Re: Appeal No. 18429; Property Owner's Response to Motion for Reconsideration

Dear Members of the Board:

On behalf of the property owner, Darren Binder, I am submitting herewith a response to the Appellant's Motion for Reconsideration. Mr. Binder would first like to entreat the BZA to discourage the pattern of behavior by the Appellant upon the property owner. Mr. Hanlon has spent the better part of 2012 and 2013 taking countless photos of Mr. Binder's property, from every possible angle. Now Mr. Hanlon has apparently increased his efforts by trespassing upon Mr. Binder's property in gaining access to the third floor deck to take what he himself describes as "up close" photos.

The actions of Mr. Hanlon are beyond any standards of decency; and are perhaps illegal. They are particularly concerning given that Mr. Hanlon is a licensed attorney and should appreciate the nature of his actions. Such behavior should not be encouraged or rewarded. Mr. Hanlon has had the same opportunity every citizen has to appeal a Zoning Administrator decision. He is not entitled to trespass, repeatedly invade Mr. Binder's privacy, or, as he has done in his Motion, present completely new arguments on the same set of facts.

As to the merits of Mr. Hanlon's Motion, the Motion must be denied for several reasons. First, Mr. Hanlon has raised several issues which are not within the jurisdiction of the BZA, such as the false claims that the new construction encroaches on the neighboring property and that construction was not completed in accordance with the approved permit. Also, these and all other arguments made by Mr. Hanlon could have been raised during the Appeal. Since the Appeal was denied, Mr. Hanlon simply wants another bite at the apple, and so he has submitted this Motion which presents a couple new theories that Mr. Hanlon didn't think of before.

Claim #1: The construction pursuant to the Building Permits constituted an addition to the building and as such, was not permitted, since the building is currently nonconforming as to lot occupancy.

A. The Appellant Had the Opportunity to Raise This Issue During the Appeal.

To the extent the Appellant is claiming that the property owner built something beyond what was approved in Building Permits No. B1206336 and No. B120969, it would be an enforcement issue for DCRA and not within the jurisdiction of the BZA, so this claim in the Motion for Reconsideration should be denied.¹

To the extent the Appellant is claiming that the Zoning Administrator erred by finding that the proposed construction was *not* an “addition,” then Mr. Hanlon should have presented such a theory in his multiple, voluminous filings. The Appellant has presented no evidence which was not already present in the record from the beginning. In fact, Mr. Hanlon himself states in his Motion (middle of page 6) that there were MRIS photos of the pre-existing third floor deck condition, and that the property owner submitted this same photo with his building permit.

So, during the Appeal process, Mr. Hanlon was obviously aware of the existing condition of the trellis over a portion of the third floor deck. Likewise, Mr. Hanlon was aware – or at least should have been aware – that the approved Building Permits included work to fill in the trellis with a more substantial roof. The “close up” photos add nothing that wasn’t known during the Appeal.

B. If the Appellant *Had* Timely Raised the Issue, the Appeal Would Still Have Been Denied.

The Appellant undertakes his new argument under a false premise: He has assumed that the trellis above the third-floor deck was not considered a pre-existing roof. In fact, the Zoning Administrator did indeed consider this significant trellis structure to be an existing roof, which means that -- just as DCRA stated in its filings, and as the Board found in the Order – the new deck construction proposed in the Building Permits did not add any new roof, and consequently did not increase the lot occupancy, gross floor area, or interior enclosed space of the building; *i.e.*, the proposed – and completed - work did not constitute an “addition” for purposes of the Zoning Regulations.

Since the Appellant is wrong on this basic premise, his entire argument fails. But it is important to note that his argument should first fail because there was no reason why he could not have raised the argument during the course of the Appeal. Appellant’s claim is particularly egregious because he accuses District officials – and the innocent property owner - of malfeasance based solely on his misunderstanding of the Zoning Regulations and his failure to raise the issue during the Appeal.

Claim #2 – Construction Encroaches on Neighboring Property.

In his Motion, the Appellant argues that the subject construction crosses the property line. The analysis is similar to that above. If the argument is that the construction did not comply with the approved Building Permits, then this would be a compliance matter for DCRA. If Mr. Hanlon is claiming that the

¹ For the record, the property owner has fully complied with the approved Building Permits and has passed every DCRA inspection related thereto.

Zoning Administrator committed an error in approving construction over a lot line, then he fails to specifically state the error by this Board in denying the Appeal, and fails to cite the error by the Zoning Administrator, and fails to cite the applicable section of the Zoning Regulations.

At any rate, Mr. Hanlon is incorrect in making this claim, and he has submitted no survey, no site plan, or no probative evidence to support his claim. The property owner could rebut this claim, but sees no need since the Appellant has not stated any specific error by the Board or the Zoning Administrator and has not submitted any new evidence which wasn't available to him during the Appeal.

Conclusion

The Appellant has not, as required, stated specifically why he believes the Board's decision was erroneous. To the extent he has tried, he is merely attempting new theories using the same information that was available to him throughout this Appeal. The Appellant has exhibited a pattern of using DCRA and BZA as a harassment tool against the property owner. The property owner has followed all regulations and procedures in constructing his deck. Appellant has tried to stop the construction of the deck by repeatedly filing baseless complaints to DCRA during and after the construction, filing a baseless appeal, and now continuing his pattern of harassment by filing this baseless Motion for Reconsideration.

The property owner respectfully requests that the Board deny the Appellant's Motion for Reconsideration and provide certainty and finality so that the property owner can enjoy his lawfully constructed roof deck, along with his privacy.

Sincerely,



Martin P. Sullivan

cc: John Postulka, Esq.
Edward Hanlon, Esq.
ANC 2B, Noah Smith

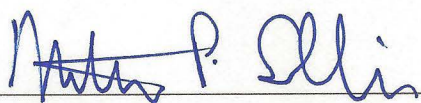
CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2013, a copy of the attached Response to the Motion for Reconsideration was delivered via electronic mail to the following:

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