

Stuart A. and Margery SMITH, Petitioners,
v.

DISTRICT OF COLUMBIA BOARD OF
ZONING ADJUSTMENT, Respondent,

Arthur H. Fawcett, Jr., and Lenore W.
Bryan, et al., Intervenors.

No. 7818.

District of Columbia Court of Appeals.

Argued Sept. 25, 1974.

Decided July 31, 1975.

Property owner petitioned for review of an order of the board of zoning adjustment reversing a grant to property owner by zoning administrator of a building permit to construct a sun deck. The Court of Appeals, Kern, J., held that findings of fact and conclusions of law of the board were so inadequate as to preclude meaningful review of the case, requiring reversal and remand of the case for further consideration.

Reversed and remanded with directions.

1. Zoning $\S$ 360, 361

Board of zoning adjustment has the responsibility to make findings on each contested issue of fact, to make determinations in which the facts adduced and found flow rationally from the evidence presented, and to make conclusions of law reasonably and rationally drawn from such findings.

2. Zoning $\S$ 726

Order of zoning board of adjustment reversing grant to property owner of building permit to construct a sun deck at rear of his home would have to be reversed, and the case remanded, where board made no findings whatever concerning issue raised by owner, who asserted that because of seven-month delay between issuance of permit and filing of appeal with the board

five months after deck was completed, because of lack of complaints by neighbors while construction was in progress, and because of good-faith reliance by owner on building permit issued, zoning appeal should be dismissed on ground of laches and estoppel.

3. Zoning $\S$ 606

Property owner's claim of estoppel and laches was not prematurely raised on appeal from board of zoning adjustment's order reversing grant to owner of building permit to construct a sun deck at rear of his home, on ground that the only issue currently before board and reviewing court was whether deck violated zoning regulation, and that no immediate enforcement action was contemplated, so even if property owner could seek a variance to preserve the deck if it was declared unlawful, it was in the interest of judicial economy that Court of Appeals not be compelled to reach the merits of the action if owners would prevail in their defense of laches and estoppel.

4. Zoning $\S$ 359

While board of zoning adjustment is not bound for all time by its prior positions, board should have considered, not only in connection with board's decision on the merits of the case but also as it related to owner's claim of estoppel, contention of property owner that zoning administrator's approval of construction of sun deck was given pursuant to a long-standing interpretation of zoning regulations which had been approved in the past by the board.

5. Zoning $\S$ 360

Court of Appeals can perform its function of insuring that decisions of zoning board of adjustment are consistent with zoning regulations, and are not arbitrary and capricious, only if the board sets out at least the outlines of the reasoning process it followed in arriving at those decisions.

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Cite as 342 A.2d 356

6. Zoning ⇨445

Order of zoning board of adjustment which reversed grant to property owner of building permit to construct a sun deck at the rear of his property improperly failed to articulate the relationship between the board's findings of fact and conclusions of law, which is a responsibility of the board, where the facts were stated and the ultimate conclusion followed, but where the Court of Appeals could not determine from the order the manner in which the board construed its regulations in arriving at its conclusion that "the structure" violated the zoning regulations.

7. Zoning ⇨445

Finding of zoning board of adjustment, which reversed grant to property owner of permit to construct sun deck at the rear of his property, that the deck cut off "light and air" to property below surface of deck was inadequate, since zoning regulation excepted from definition of "building area" that part of building which does not obstruct "light and ventilation to main building," board's finding referring to "light and air" thus was not responsive to regulatory standard of "light and ventilation," and where board gave no indication of the criteria used to judge what constituted an obstruction of light and ventilation.

8. Zoning ⇨605

Court of Appeals is ordinarily bound by zoning board of adjustment's construction of its own regulations, unless plainly erroneous or inconsistent with the regulations, and Court of Appeals will not lightly overturn a decision of the board.

Whayne S. Quin, Washington, D. C., with whom Norman M. Glasgow and John

1. The property is located at 1333 30th Street, N.W.

2. The appeal was taken pursuant to Section 8206 of the Zoning Regulations.

F. McCabe, Jr., Washington, D. C., were on the brief, for petitioners.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D. C., with whom C. Francis Murphy, Corp. Counsel, Louis P. Robbins, Principal Asst. Corp. Counsel, and Richard W. Barton, Asst. Corp. Counsel, Washington, D. C., were on the brief, for respondent.

Arthur H. Fawcett, Jr., pro se. Gerald Herz, Washington, D. C., was on the brief for intervenor Fawcett.

William H. Greer Jr., Washington, D. C., was on the brief for intervenors Bryan, and others.

Before REILLY, Chief Judge, and KERN and GALLAGHER, Associate Judges.

KERN, Associate Judge:

Petitioners seek review of an order of the District of Columbia Board of Zoning Adjustment (the Board) reversing the grant to them by the Zoning Administrator of a permit to construct a sun deck at the rear of their home.¹ The deck, which is unroofed, measures 16 feet by 13½ feet and covers the entire back yard of the premises. Because of the extreme slope of the property the deck rises 11 to 12 feet above ground level in the back yard, although it is connected to the main floor of the house. The entire deck is surrounded by a 40-inch high railing. The appeal to the Board² was taken by petitioners' next-door neighbor, intervenor Fawcett, seven months after the permit was issued and five months after construction of the deck was completed.

The Board ruled after a hearing that the deck was in violation of the Zoning Regulations requiring minimum rear yards³ and

3. Zoning Regulations § 3304.1. The minimum rear yard required in an R-3 District such as the one in which the property in the instant case is located is 20 feet.

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raised by petitioners. They asserted that because of the long delay between the construction of the deck and the filing of the appeal with the Board, the lack of complaints by neighbors while construction was in progress, and petitioners' good faith reliance on the building permit issued by the Administrator, the appeal should be dismissed on the ground of laches and estoppel.

Intervenor Fawcett denies that laches bars his appeal. He claims that he made several complaints about the deck to petitioners and to city authorities during and after its construction, and that the delay in taking the appeal was justifiable.⁷ Thus is presented a clear-cut factual dispute having direct bearing on the outcome of the case which should have been and must now be resolved by the Board.

A substantial legal issue has been raised by petitioners' claim that the city can be estopped from enforcing its Zoning Regulations where a citizen takes action in reliance on an order subsequently invalidated. See *Nathanson v. Board of Zoning Adjustment*, D.C.App., 289 A.2d 881, 884 (1972); *District of Columbia v. Cahill*, 60 App.D.C. 342, 54 F.2d 453 (1931). We cannot reach that issue unless we are provided with an adequate and concrete factual context in which to render our decision. For this reason the Board must make findings as to (a) whether there was reasonable and good

faith reliance by petitioners on the issuance of the building permit and (b) the extent to which they were on notice that the deck might violate the Zoning Regulations.⁸

[4] Second, the Board made 'no findings relevant to petitioners' claim that the Zoning Administrator's approval of the deck was given pursuant to a long-standing interpretation of the Zoning Regulations which had been approved in the past by the Board,⁹ so that established principles of stare decisis require any change in that interpretation to be made prospective only. While the Board is of course not bound for all time by its prior positions, we think it should have considered this contention, not only in connection with its decision of the merits of the case, but also as it relates to petitioners' claim of estoppel.

[5,6] Finally, the Board's order, in our view, fails to articulate the relationship between the findings of fact and conclusions of law as this court has mandated it must. The facts are stated and then the ultimate conclusion, but we are unable to determine from the order the manner in which the Board construed its regulations in arriving at its conclusion that "the structure" violates the Regulations. This court can perform its function of insuring that the Board's decisions are consistent with the Regulations and are not arbitrary and capricious, *Salsbery v. Board of Zoning Ad-*

of judicial economy that this court not be compelled to reach the merits of this case if petitioners will prevail in their defense of laches and estoppel.

7. Fawcett stated that the appeal was delayed on the advice of officials of the Bureau of Building, Housing and Zoning in order to allow petitioners to seek a variance after they were notified by the Chief of the Bureau that the deck was in violation of the Zoning Regulations.

8. We cannot agree with the Board's contention that petitioners' claim of estoppel and laches is prematurely raised in this action since the only issue currently before the Board and this court is whether the deck violates the Regulation and no immediate enforcement action is contemplated. Even if petitioners could seek a variance to preserve the deck if it is declared unlawful, as the Board suggests, a proposition about which we express no opinion, we think it in the interest

9. The Zoning Administrator testified in petitioners' behalf that "hundreds" of similar decks had been approved by the city under the construction of the Regulations utilized by him in granting the permit in the instant case. Petitioners also rely on *Smith v. Board of Zoning Adjustment*, C.A. No. 3061-62 (D. D.C., Nov. 22, 1963), in which an issue similar to that raised here was resolved by both the Board and the court in favor of the landowner. The Board did not indicate whether it considered that precedent in the decision of this case.

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