

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18677 of James P. Hill and Edward V. Hanlon, pursuant to 11 DCMR §§ 3100 and 3101, from a July 26, 2013, decision by the Zoning Administrator to permit a rear deck addition serving a flat under Building Permit No. B1309278, in the DC/R-4 District at premises 1536 T Street, N.W. (Square 191, Lot 98).

HEARING DATES: December 17, 2013, February 25, 2014
DECISION DATE: February 25, 2014

ORDER DISMISSING APPEAL

INTRODUCTION

This appeal was filed by James Hill and Edward Hanlon with the Board of Zoning Adjustment (the “Board”) on October 2, 2013, challenging the Department of Consumer and Regulatory Affairs’ (“DCRA”) issuance of a building permit approving construction of a rear deck addition to an existing semi-detached dwelling at premises 1536 T Street, N.W. That building permit was later revoked by DCRA. For this reason, the Board voted to dismiss the appeal as moot. A full explanation of the factual and legal basis for the Board’s conclusion follows.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing

This Appeal was filed with the Board on October 2, 2013 by James Hill and Edward Hanlon (the “Appellants”). (Exhibit 1- Appeal, and Exhibit 2- Appellants’ Statement.) The filings detailed several claims of zoning error, including non-conforming lot occupancy and rear yard. Accordingly, the Office of Zoning scheduled a public hearing for December 17, 2013. Notice of the hearing was provided to the Appellant (Exhibit 16), the property owner, Rafael B. Romeu (the “Owner”) (Exhibit 17), DCRA (Exhibit 18), and the Advisory Neighborhood Commission (“ANC”) 2B (Exhibit 19).

Appearance and Representation

DCRA was represented by John Postulka, Esq., of DCRA’s Office of the General Counsel. The Appellants appeared at the public hearing, as did the Owner, and Mr. Postulka. The ANC did

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not participate during the proceedings.

DCRA's Motion to Dismiss

On December 13, 2013, DCRA filed its prehearing statement in which it moved to dismiss the case, on the basis that it had issued a notice to revoke the building permit at issue. DCRA requested that the Board dismiss the case, or alternatively, hold the case in abeyance until the time for appealing DCRA's building permit revocation passed. (Exhibit 27.) Attached to DCRA's submission was a copy of DCRA's Notice to Revoke Building Permit No. 1309278, dated December 6, 2013, and signed by Rabbiah Sabbakhan, Chief Building Official of DCRA's Inspection and Compliance Administration & Permit Operations Division. (Exhibit 28.) The Notice stated that the revocation would become effective 60 days after the date of service of the Notice unless the revocation was appealed to the Board within that same period.

Continuance

On December 17, 2013, the Board considered DCRA's motion. The Appellants requested that the Board hold the Appeal in abeyance until the property owner's 60-day time period to appeal DCRA's decision to revoke the building permit expired. The Board decided to hold the matter in abeyance, and continued the hearing to February 25, 2014.

FINDINGS OF FACT

The Building Permit

1. The subject property is located at 1536 T Street, N.W., in the DC/R-4 Zone District.
2. The subject property consists of a three-story, semi-detached building and is used as a two-family flat.
3. On or about July 25, 2013, the Owner applied to DCRA for a building permit to "construct [a] rear deck addition".
4. On July 26, 2013, Building Permit No. B1309278 was issued to the Owner.

The Appeal

5. On October 2, 2013, the Appellants filed an appeal challenging DCRA's issuance of the building permit. The Appellants contended, among other things, that the approval was contrary to the lot occupancy and rear yard requirements of the Zoning Regulations.

DCRA's Post-Permit Review and Revocation

6. After the appeal was filed, DCRA on December 6, 2013 issued a Notice to Revoke Building Permit No. B1309278. As basis for the revocation, the notice stated, "DCRA's Zoning

Administrator reviewed the matter again and has determined that Building Permit B1309278 was issued in error because it allows for construction that violates the ... Zoning Regulations. Your permit approved the construction of a rear deck addition at 1536 T St., N.W. After additional review, the Zoning Administrator has determined that the addition will encroach into the required rear yard setback and will result in the lot occupancy exceeding the permissible maximum lot occupancy.”

7. The Notice to Revoke Building Permit indicated that it would become effective unless the Owner filed an appeal with the Board within 60 days. No appeal was filed within that period.
8. As a consequence, DCRA is deemed to have revoked Building Permit No. B1309278 on February 4, 2014.
9. In issuing the revocation, DCRA took the action sought by the Appellants. By virtue of that revocation becoming effective, there is no longer any controversy between the Appellants and DCRA and the instant appeal is moot.

CONCLUSIONS OF LAW

Section 8 of the Zoning Act authorizes appeals to the Board “... by any person aggrieved, or organization authorized to represent that person, ... affected by any decision of an administrative officer granting or refusing a building permit ... based in whole or in part upon any Zoning Regulations ...” D.C. Official Code § 6-641.07(f) (2008).) The Appellants challenged DCRA’s issuance of a building permit on the ground that the zoning analysis undertaken by DCRA was in error and the building permit should not have issued.

The Board’s Rules of Practice prohibit it from considering “moot” questions. (11 DCMR § 3100.7.) As the Court of Appeal has stated:

A case is moot when the legal issues present are no longer ‘live’ or when the parties lack a legally cognizable interest in the outcome... The central question is ... whether the decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.”

N Street Follies Limited Partnership v. DC Bd. of Zoning Adjustment, 949 A.2d 584 (D.C. 2008) (other citations omitted).

In accordance with these principles, the Board has dismissed several appeals as moot; for example, *Appeal No. 18321 of the Citizens Association of Georgetown* (May 2, 2013) (appeal moot when DCRA revoked the building permit that was the subject of the appeal because the plans submitted with the building permit application did not form an adequate basis for the Zoning Administrator to conclude that the proposed construction complied with the Zoning Regulations); *Appeal No. 18249 of Larry Heyman* (February 21, 2012) (portion of appeal based

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upon incorrect lot number rendered moot when DCRA issued a revised building permit with a corrected lot number); *Appeal No. 17085 of Louise and Larry Smith and Mary Ann Snow and James Marsh* (February 28, 2005) (appeal challenging construction on substandard lots rendered moot by owners' obtaining variances of lot size and lot width requirements); *Appeal No. 16984 of Advisory Neighborhood Commission 2A* (March 22, 2004) (appeal challenging portion of permit approving expansion became moot when renovation approved under revised permit which eliminated the expansion); and *Appeal No. 16752 of Advisory Neighborhood Commission 4A* (December 12, 2001) (appeal challenging certificate of occupancy became moot when new certificate of occupancy issued and original certificate of occupancy voided).

Here, DCRA gave notice of its revocation of the building permit by letter dated December 6, 2013. The revocation became effective on February 4, 2014. Thus, when the Board held the continued hearing on February 25, 2014, the Building Permit that was the subject of the appeal had been revoked by DCRA. Therefore, there was no longer any "live" controversy between Appellant and DCRA as to whether the permit was properly issued.

Accordingly, the Board hereby **ORDERS BZA Appeal No. 18677 DISMISSED as moot.**

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Peter G. May voting to Dismiss the appeal; S. Kathryn Allen, not present, not voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER March 13, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.