

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Appeal No. 18851 of James Hill, et al.**, pursuant to 11 DCMR §§ 3100 and 3101, from a July 3, 2014, decision by the Department of Consumer and Regulatory Affairs to allow the construction of a deck pursuant to Building Permit No. B1409246, in the DC/R-4 District at premises 1636 T Street, N.W. (Square 191, Lot 98).

**HEARING DATE:** November 5, 2014

**DECISION DATE:** November 5, 2014

**DISMISSAL ORDER**

**PRELIMINARY MATTERS**

On August 14, 2014, James Hill, Amir Afkhami, and Robert Uth (the “Appellants”) filed this appeal with the Board of Zoning Adjustment (the “Board”). The Appellants appeal the granting of Building Permit No. B1409246 (“Permit”) by the Department of Consumer and Regulatory Affairs (“DCRA”). The permit authorized the construction of a deck at premises 1636 T Street, N.W. (Square 191, Lot 98) (the “Subject Property”). The appeal notes that the permit was issued in reliance on the Board’s order granting variance relief in Application No. 18725. The Appellants were granted consolidated party status in opposition in that case and, after Application No. 18725 was granted, filed a motion for reconsideration and rehearing. The Board denied the motion at its public meeting on June 24, 2014. DCRA filed a motion to dismiss, arguing that the appeal is “essentially a successive motion for reconsideration.” The Property Owner also filed a motion to dismiss, concurring with DCRA’s motion and adding that the appeal is untimely and fails to cite a violation of the Zoning Regulations.

On November 5, 2014, after deliberating upon the motions to dismiss, the Board voted 3-0-2 to dismiss the appeal.

Notice of Appeal and Notice of Hearing. By memoranda dated August 18, 2014, the Office of Zoning (“OZ”) provided notice of the appeal to DCRA, and specifically to the Zoning Administrator at DCRA, the D.C. Office of Planning, Advisory Neighborhood Commission (“ANC”) 2B, the ANC within which the Subject Property is located, Single Member District 2B09, the Councilmember for Ward 2, and the owner of the Subject Property. On August 21, 2014, the Office of Zoning mailed a Notice of Public Hearing to the Appellants, DCRA, ANC 2B, and the owner of the Subject Property.

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

Board of Zoning Adjustment  
District of Columbia  
CASE NO.18851  
EXHIBIT NO.21

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Party Status. Consistent with 11 DCMR § 3199.1, the parties in this proceeding were the Appellants, DCRA, ANC 2B, and the owner of the Subject Property.

ANC Report. By letter dated October 20, 2014, ANC 2B indicated that it had considered the appeal at a duly noticed public meeting with a quorum present and approved a resolution by a vote of 5-0. In the resolution, the ANC notes that the Appellants challenge the legal sufficiency of the notice provided by ANC 2B in advance of its February 17, 2014 meeting, during which the ANC voted to support variance relief for Application No. 18725. ANC 2B maintained that its meeting on February 17, 2014 was properly noticed and requested that the Board continue to give great weight to its recommendation for that application. (Exhibit 13). ANC 2B also submitted for the record its resolution dated February 20, 2014, in which it expressed support for the variance relief requested in Application No. 18725. (Exhibit 15). Finally, ANC 2B submitted the testimony of its two representatives who appeared at the Board's public hearing for Application No. 18725 on March 11, 2014. The representatives testified in order to reiterate the ANC's support and to explain how appropriate notice was given for its February 17, 2014 meeting. (Exhibits 14 and 16.)

**FINDINGS OF FACT**

1. The property is located at 1536 T Street, N.W. (Square 191, Lot 98) (the "Subject Property"). The Subject Property is currently improved with a three-story structure that is currently used as a flat.
2. The Subject Property is located in the R-4 Zone District and is also included in the Dupont Circle Overlay District.
3. The owner of the Subject Property, Rafael Romeu (the "Property Owner"), filed Application No. 18725 to the Board, seeking area variances from the lot occupancy requirements of § 403.2, the rear yard requirements of § 404.1, and the nonconforming structure requirements of § 2001.3 in order to construct a rear deck addition.
4. At the Board's public hearing for Application No. 18725 on March 11, 2014, the Board granted party status in opposition to James Hill, Amir Afkhami, and Robert Uth as a consolidated party in opposition.
5. The Board voted 4-0-1 to grant the variance relief requested in Application No. 18725. The Board's final order for that case was issued on May 7, 2014.
6. The consolidated party in opposition filed a motion for reconsideration and rehearing, which the Board denied at its public meeting on June 24, 2014. The Board's order denying

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reconsideration had not been issued as of the date of the Board's vote in this case.<sup>1</sup>

7. The Property Owner applied for a building permit to construct the rear deck addition. In reliance on the Board's order granting variance relief in Application No. 18725, DCRA issued Building Permit No. B1409246 on July 3, 2014 authorizing the proposed construction.
8. In their initial filing, the Appellants challenge the DCRA's issuance of Building Permit No. B1409246 and indicate that the grounds for the appeal "include all grounds for opposing the grant of the variance applications on No. 18725 in the first place." (Exhibit 2.)
9. In addition, the Appellants express general grievances regarding the proposed project, alleging that "[t]he proposed construction and area variances upon which it is based are not in harmony with the Zoning Act and Regulations," and that "[t]he permit under which the deck is to be constructed is not consistent with the provisions of the relevant Overlay, namely §§1501.1 and 1501.4 of the Zoning Regulations, the Dupont Circle Overlay provisions." The Appellants also indicate that the permit does not comply with the provisions of §§ 2300 and 2116. (Exhibit 2.)
10. Finally, the Appellants claim that the building permit "is contrary to the D.C. Building Code provisions governing exterior stairs."
11. In their Pre-Hearing Statement, the Appellants acknowledge that "if the decision in No. 18725 is vacated or reversed on appeal, that Permit B1409246 must likewise be vacated" and noted that they "have no additional material to present to the Board in this proceeding." (Exhibit 17.)
12. The Appellants indicated that the purpose of the instant appeal is "to negative any possible inference that Opponents have abandoned their opposition to the proposed deck construction as authorized." (Exhibit 2.)

**CONCLUSIONS OF LAW**

The Board is authorized by § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. Therefore, the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation. *See Appeal No. 18239 of ANC 6A*, 59 DCR 1655 (2011) ("As the Board has held several times, the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation"). Further, unlike a motion for reconsideration or rehearing pursuant to § 3126 which allows a party to challenge a final decision of the Board, an appeal

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<sup>1</sup> The Order was issued and became final on January 15, 2015. (See BZA Case No. 18725, Exhibit No.1.) The Appellants filed a petition to review Case Nos. 18725 and 18725A with the District of Columbia Court of Appeals on February 6, 2015. (See BZA Case No. 18725, Exhibit No. 2.)

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must allege an “error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations.” (11 DCMR § 3100.2.)

The Appellants contend that the administrative decision at issue in this appeal is DCRA’s issuance of Building Permit B1409246. As the Appellants acknowledge, the permit was issued in reliance on variance relief granted by the Board in Application No. 18725. Thus, though the Appellants claim to appeal the administrative decision of DCRA in this case, the basis of their appeal is that the Board erred in granting Application No. 18725, to which the Appellants were a party. To that end, the Appellants advance no new arguments and introduce no new evidence in this proceeding.

Pursuant to 11 DCMR § 3126, the proper procedure for a party to allege an error in a final order of the Board is to file a motion for reconsideration or rehearing. The Appellants did file a motion for reconsideration and rehearing with regard to Application No. 18725, and the Board voted to deny that motion at its public meeting on June 24, 2014. In this appeal, the Appellants raise the same issues cited in that motion for reconsideration and rehearing, as well as in the proceedings for Application No. 18725. Accordingly, the Board finds that the appeal takes the form of an improper successive motion for reconsideration. Pursuant to § 3126.2, a motion for reconsideration or rehearing must be filed within 10 days of the Board’s final order, making the Appellants’ challenge of the Board’s decision untimely. Therefore, the appeal must be dismissed for failure to meet procedural requirements.

Further, the Board finds that the appeal fails to state a claim upon which relief could be granted. In addition to the issues that have been decided by the Board in Application No. 18725 and the motion for reconsideration and rehearing, various allegations by the Appellants do not cite a specific violation of the Zoning Regulations in this case. Specifically, the Appellants’ claims that “[t]he proposed construction and area variances upon which it is based are not in harmony with the Zoning Act and Regulations,” that “[t]he permit under which the deck is to be constructed is not consistent with the provisions of the relevant Overlay,” and that the permit does not comply with the provisions of §§ 2300 and 2116 do not clearly allege a specific error by DCRA. In addition, the Appellants’ final claim – that the permit was issued in violation of the D.C. Building Code – deals with requirements that are not found within the Zoning Regulations and therefore not within the Board’s jurisdiction. For these reasons, the appeal must be dismissed.

The Board is required to give “great weight” to the issues and concerns raised in writing by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case, ANC 2B did not make a specific recommendation as to the dispensation of the appeal, but instead, challenged the Appellants’ allegation that the ANC had not given proper notice in advance of its meeting on February 17, 2014 where the ANC voted in support of Application No. 18725. The ANC maintained that it had given proper notice for that meeting and that the Board should continue to give “great weight” to its vote in support of that application. Though the ANC did

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not specifically recommend dismissal of the appeal, the Board finds that its decision to dismiss the appeal is consistent with the ANC's resolution on this matter.

It is hereby **ORDERED** that this appeal be **DISMISSED**.

**VOTE:**       **3-0-2** (Lloyd J. Jordan, Michael G. Turnbull, and Marnique Y. Heath to Dismiss; Jeffrey L. Hinkle and S. Kathryn Allen not present, not voting).

**BY ORDER OF THE 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:** June 11, 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.