

PUBLIC HEARING -- December 16, 1964

Appeal #8030 Volkmar K. Wentzel, appellant

Zoning Administrator District of Columbia, appellee.

On motion duly made, seconded and unanimously carried the following Order was entered December 22, 1964.

ORDERED:

The rulings of the appellee are sustained.

From the records and evidence adduced at the hearing the Board finds the following facts:

(1) The appellant in this proceeding is a homeowner who has taken exception to permits authorized by the Zoning Administrator with reference to the dwelling at 3139 N Street, N. W., lot 59, square 1232 which is adjacent to his property.

(2) The single family residence on lot 59 is in the R-3 District and is a nonconforming structure due to over-occupancy of the lot.

(3) On November 21, 1962, the Construction Section of the Department of Licenses and Inspections found a side two-story covered porch on the dwelling at 3139 N Street, N. W. to be in dangerous and unsafe condition and directed the owner, Mr. Fourcade, to repair and make it safe or remove it (a provision of the Housing Code).

(4) The owner instead chose to make an enclosed two-story replacement of the two-story porch to occupy the same lot area and cubage as the porch, which on December 20, 1962, was authorized by a permit issued therefor. However, the building and site plan therefor did not show an existing rear two-story triangular portion of the dwelling since the owner intended to remove it. The record shows the owner agreed with the appellant that the rear two-story triangular portion of the building would be removed. This removal would have made the structure conforming in all respects and the validity of the permit therefor having been issued on this basis is not challenged by the appellant.

(5) While work covered by the December 20, 1962 permit was in progress, the property was sold. By that time the side porch replacement was under roof, and the rear triangular portion of the structure had not been removed and was still standing.

(6) Mr. Harris, the contract purchaser, applied for and received a new building permit on June 20, 1964, for revised remodeling plans to include internal changes and retention of both the side porch replacement and the rear triangular portion of the house. These plans did not call for any increase in the lot coverage and continued the same cubage as the original nonconforming structure.

(7) On October 7, 1964, the Department of Licenses and Inspections, upon complaint of the appellant here, directed the owner to stop work pending a legal review of the permits. Both permits were found to be valid and the stop order was recinded on November 24, 1964. Mr. Harris continued construction under the terms of the second permit. This complaint and ensuing appeal by Mr. Wentzel arose only because the new owner elected not to proceed under the original permit but decided to continue the side porch replacement construction and to also retain the rear triangular portion of the structure.

(8) While the stop order was in effect, Miss L. M. Wilson, the new owner, filed on behalf of Mr. Harris, a contract purchaser, an appeal with the Board of Zoning Adjustment for a variance from the lot occupancy requirements of the R-3 District (BZA Appeal #8005). This appeal was withdrawn without prejudice when the above stop order was recinded.

(9) Zoning Regulations to be reviewed by the Board are found under Article 71, being the applicable portion of Section 7106 and read as follows:

"Section 7106.1 Ordinary repairs, alterations, or modernizations may be made to a: ****"

"Section 7106.13 Nonconforming structure or portion thereof devoted to a conforming use, provided, no such structure shall be enlarged except as authorized in Section 7107. Repair, alterations, or modernizations permitted by this subparagraph may include structural alterations."

(Underscored words are defined)

(10) Since neither of the permits authorized, provided for enlargement of the structure the reference to Section 7107 contained in subparagraph 7106.13, above quoted, is not applicable. (See definitions of "Building" and "Building Area", page 2, Zoning Regulations revised to October 29, 1963)

(11) Mr. Wentzel, the appellant, contends that:

- (a) If the rear part of the building is not removed, the replacement and enclosure of the porch is an addition and hence an enlargement of the structure causing an increase in lot occupancy.
- (b) By removing the porch during the course of remodeling, the lot occupancy was reduced and that, therefore, the owners could not reoccupy the porch area as a matter of right.
- (c) There was a breach of faith when the second owner decided not to remove a rear triangular portion of the house as planned by the first owner.

OPINION:

We are of the opinion that subsection 7106.13 of the Zoning Regulations permits either of the planned improvements as a matter of right, since there is in fact, no enlargement nor increase in either building bulk or lot occupancy. The nonconformance of the structure runs with the land and is not lost

by mere transfer of title to a subsequent purchaser in good faith. Although the first owner intended to remove the rear portion of the structure, he did not do so nor was he required to do so under any application of the regulations, and in this respect, he did not alter any of the bases upon which the validity of permits issued must rest. The second owner was, therefore, within his rights to proceed under either permit. In any case, the mere intent to first remove and then retain the rear triangular portion of the structure has no bearing on the replacement of the porch. The delapidated condition of this porch on November 21, 1963, would have required its demolition to make any restoration required by the Housing Code. The fact that it was removed in the process of providing a replacement is a normal building operation and does not constitute an abandonment or forfeiture of vested rights in the property. We stress the fact that each of the two permits provided for a porch replacement, albeit the facades and floor plans were not identical.

The contention raised by the appellant in the matter of a breach of faith on the part of the original owner is not a proper zoning question and will not be adjudicated here.