

BZA APPEAL NO. 19115
BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA
PROPERTY OWNER’S MOTION TO DISMISS

I. Introduction

We are writing on behalf of District Design and Development Argonne LLC (“Argonne LLC”), the owner of the property located at 1636 Argonne Place, NW (the “Subject Property”). As the owner of the property which is the subject of Appeal No. 19115 (the “Second Appeal”), Argonne LLC is automatically a party to the Second Appeal, pursuant to 11 DCMR 3199.1(a)(3). Property Owner hereby moves for dismissal of the Second Appeal, as this challenge has already been argued, considered, and decided by the Board.

II. Background

In BZA Case No. 18980, Appeal of the Concerned Citizens of Argonne Place (the “First Appeal”), the final Prehearing Statement filed by the Appellant (represented by ANC Commissioner Alan Gambrell) (submitted June 23, 2015 and amended June 25, 2015) challenged the issuance of Building Permit No. B1404813 and B1509180 (issued to amend B1404813). In that First Appeal, Alan Gambrell was the principal representative of both the appellant and ANC 1C.¹ ANC 1C was a party to the First Appeal; it submitted a resolution in support, and authorized Mr. Gambrell to represent it before the Board. Argonne LLC was also a party to the First Appeal.

¹ ANC 1C authorized Mr. Gambrell, SMD Commissioner of 1C-05, to represent ANC 1C before the BZA in the First Appeal, pursuant to a letter dated April 6, 2015 (see Exhibit 18 in Appeal No. 18980).

On July 7, 2015, the Board dismissed, for failure to timely file, portions of the First Appeal that related to decisions made in approving Permit # B1404813. No party challenged the timeliness of the alleged error(s) underlying issuance of Building Permit No. B1509180, which was issued on June 23 and timely challenged as part of the First Appeal.

Also at the July 7 hearing, Mr. Gambrell put forth his challenge of the remaining issues, including a challenge of Permit # B1509180, the same exact building permit which Mr. Gambrell is attempting to challenge once again in this appeal (the “Second Appeal”). On September 15, 2015, the Board denied the First Appeal insofar as it related to Building Permit No. B1509180.

On August 17, 2015, despite the fact that it had just gone through a full hearing challenging Permit # B1509180, ANC 1C filed this Appeal with the BZA, attempting to challenge the exact same permit again, as if the July 7th hearing never happened. This Appeal should therefore be dismissed under the principles of collateral estoppel, standing, and because the issue is moot (and only challengeable in accordance with the reconsideration and appeal procedures of the Zoning Regulations and rules of the D.C. Court of Appeals. ANC 1C challenged and argued the issuance of B1509180 in the First Appeal. It does not have the ability to file another appeal of the exact same issue. And in fact, it does not matter that ANC 1C was a party to the First Appeal. The compelling argument for dismissal is the same no matter the appellants in the two cases. The issues have been finally decided by the BZA, regardless of the parties involved. The fact that it is the exact same party making the challenge, with the exact same representative, on the exact same building permit, just makes the case for dismissal that much more obvious; and it makes the actions of ANC 1C that much more egregious in clogging this Board’s agenda, burdening city employee time, and causing additional expense to the property owner.

III. The Second Appeal Mirrors the First Appeal.

There have never been any revisions to Building Permit No. B1509180. The specific issues underlying that building permit, including the retaining wall and adjacent finished grade, were argued by Mr. Gambrell on behalf of both the appellant and ANC. Mr. Gambrell's submissions in the First Appeal specifically identified approval of Building Permit No. B1509180 as one of the decisions being challenged in the First Appeal.

The Building Permit at issue is the same building permit at issue in Case No. 18980, Building Permit No. B1509180. The doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion) bar the same parties from re-litigating issues that have already been adjudicated.²

As part of the First Appeal, Mr. Gambrell filed a copy of Building Permit No. B1509180 (Exhibit #30 to the First Appeal). He also filed a Revised Pre-Hearing Statement on June 25, in which he wrote: "As is outlined in detail in this pre-hearing statement, the Zoning Administrator violated multiple zoning regulations in approving building permits....B1509180, issued 6/24/15)" (Exhibit 31 to the First Appeal, p. 1). He also noted on that same page that "our pre-hearing statement was further revised and re-submitted 6/25/15 to include information provided by DCRA on 6/24/15 ... about issuance of B1509180." (p.2).

He then proceeded in that pre-hearing statement to discuss Building Permit No. B1509180 in minute detail, discussing issues regarding the retaining wall and the concept of adjacent finished grade, stating that the challenged decision was "a frontal assault on the

² See *Rhema Christian Center v. District of Columbia Bd. of Zoning Adjustment*, 515 A. 2d 189 (D.C. 1986) (holding that the "doctrines of claim preclusion and issue preclusion are applicable to administrative as well as judicial proceedings.").

accepted definition of grade as a location external to the building façade.” In fact, there are approximately 19-20 specific references to Building Permit No. B1509180 in Exhibit 31 to the First Appeal. There are approximately sixty-seven (67) references to Building Permit No. B1509180 in the appellant’s draft findings of fact and conclusions of law (Exhibit 41 to the First Appeal).

In addition to that, Building Permit No. B1509180 was discussed in great detail at the July 7 hearing. For instance, the hearing on the merits began with the Chairman stating: “I’m going to ask the appellant to tell me what are the claims of error in the June 23, 2015 revised permit [B1509180] in those areas that we talked about? Do you understand any of that?” to which Mr. Gambrell responded: “Yes, I do.” (July 7 transcript, p. 69.)

The Board of course then went on to deny the First Appeal as it related to the retaining wall and the rear grade level for purposes of calculating FAR. The Order for that decision has not yet been published.

ANC 1C filed the Second Appeal as if the First Appeal had never happened, and once again authorized Mr. Gambrell to represent it. The appellant’s submissions in the Second Appeal do not even attempt to address this glaring redundancy, so it is not known why ANC 1C believes it has the ability to file a second appeal for an issue which has already been argued, considered, and decided. We understand that Mr. Gambrell is not happy with the issuance of Building Permit No. B1509180, along with many other permits in other areas both in and beyond ANC 1C. This does not give him or ANC 1C the right to re-file an appeal already decided; dragging the property owner, and the Zoning Administrator and his counsel back before the Board for no reason.

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Statement of Property Owner

If Mr. Gambrell and ANC 1C are not satisfied with the Board's decision in the First Appeal, it has the right to appeal that decision as provided in the Zoning Regulations and the Court of Appeals Rules. The Second Appeal is not in accordance with those rules or regulations. This Appeal should therefore be dismissed.

Respectfully,

A handwritten signature in black ink that reads "Martin P. Sullivan". The signature is written in a cursive, slightly slanted style.

Martin P. Sullivan, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 2015, a copy of the foregoing was served via electronic mail to:

Alan Gambrell
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William Simpson, ANC 1C Chair
1C06@anc.dc.gov

Maximilian Tondro, DCRA
maximilian.tondro@dc.gov



Martin P. Sullivan