BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

RECEIVED
D.C. OFFICE OF ZONING
2002 APR -5 AM 10: 26

Appeal of ROBERT LEHRMAN	)	
	)	
	)	BZA Appeal No. 16849
From the October 10, 2001 decision of the Zoning Administrator regarding 2221 30th Street, N.W.	)	
	)	
	)	

OWNER'S OPPOSITION TO PLAINTIFFS' REQUEST FOR A STAY

Owners Mr. and Mrs. Melvyn Estrin, as beneficiaries of the Estrin House Trust, ("Owner") oppose the motion filed on March 26, 2002 by the Appellant Robert Lehrman as part of his "Pre-Hearing Statement And Request For A Stay". The Appellant has requested that the Board stay the building permit that was issued to the Owner by the Building Land Regulation Administration of the Department of Consumer and Regulatory Affairs on or around October 16, 2001.

First, the Board of Zoning Adjustment, as it has determined on several occasions, does not have the authority to issue a stay of a building permit. Second, even if the Board did have such authority, the Appellant has not met the test for the issuance of a stay.

I. **ARGUMENT**

A. The Board has no Authority to Issue a Stay of a Building Permit

There is nothing in the enabling powers of the Board of Zoning Adjustment granting the Board the power to stay a building permit. Pursuant to Section

BZA
Case No. 16849
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO.16849
EXHIBIT NO.22

6-641.07 of the District of Columbia Code, in an appeal before the Board of Zoning Adjustment, the Board may only hear appeals relating to the enforcement of the Zoning Regulations. The authority granted to the Board by this section does not authorize the Board to issue what would essentially amount to a stop work order. Building Permits are issued and regulated by the Building Land Regulation Administration ("BLRA") of the Department of Consumer and Regulatory Affairs, pursuant to Title 12 of the District of Columbia Municipal Regulations (District of Columbia Construction Codes Supplement of 1999). Stop Work Orders may be issued only by the BLRA pursuant to Section 117.1 of the Construction Codes. Recognizing its lack of ability to stay building permits, the Board itself has held on many previous occasions that it does not have such authority.

B. The Appellant Has Not Met the Test for Issuance of A Stay

Even if the Board of Zoning Adjustment did have the authority to issue a stay of the building permit, the Appellant has not met the test that must be met to be granted injunctive relief. The Appellant must show: (1) That irreparable injury would result to the *Appellant* if the relief is not granted; (2) that the Appellant is likely to succeed on the merits; and (3) That a balance of the harms that would result if the stay is not granted weighs in favor of the Appellant. See District of Columbia v. Group Insurance Administration, 633 A.2d 2 (D.C 1993) (quoting Wieck v. Sterenbuch, 350 A.2d 384, 387-88 (D.C. 1976))

1. No Evidence of Irreparable Harm

In determining whether to grant preliminary injunctive relief, a person must show that he will suffer irreparable harm if the requested relief is not granted. *See* Group Insurance Administration, 633 A.2d at 2 (D.C. 1993) (quoting Wieck v. Sterenbuch, 350 A.2d 384, 387-88 (D.C. 1976). Indeed, the Court in Group Insurance Administration stated that the "most important inquiry is that concerning irreparable injury," since the justification for the injunction is to prevent irreparable injury pending final decision on the merits. *See* Group Insurance Administration, 633 A.2d at 22.

The Appellant has not and cannot show that he would suffer irreparable harm if a stay of the building permit is not granted. First, of the two trees of which Appellant complains, one has been lawfully removed because it presented an unsafe condition, and the other is being maintained in a healthy condition. In addition, the Appellant has not even attempted to explain what harm might result to him *personally* if a stay is not granted. As outlined in the Owner's motion to dismiss, the Appellant cannot make such a claim, because none of the actions with respect to the trees on the Owner's property have affected the appellant any differently than any other member of the general public.

2. The Applicant Is Not Likely To Succeed on the Merits

The Appellant has not made any showing that he is likely to succeed on the merits. To the contrary, as outlined in the Owner's Motion to Dismiss it is very likely that the Appellant will not in fact succeed on the merits of its case.

First the Board does not have jurisdiction of this case because the Appellant is not an aggrieved party, did not timely file his appeal, unreasonably delayed in bringing forth his action, and there is no relief the Board may provide to the Appellant. In addition, the Zoning Administrator has determined that the Owner did not violate the Tree Slope Overlay provisions of the Regulations and the Appellant has not presented sufficient evidence to rebut that presumption.

3. A Balance of the Harms Weighs in Favor of the Owner

The Appellant cannot show that a balance of the harms that would result if the stay is not granted would weigh in his favor. As mentioned above, the Appellant has suffered no harm at all from the actions of the Owner and Zoning Administrator with regard to the trees in question. The only harm that will result if a stay is granted will be to the Owner, who will be forced to incur additional expenses resulting from a delay in construction, as well as expenses in conjunction with defending this appeal.

In consideration of the foregoing, the Owner respectfully request that the Board deny the Owner's Request for a Stay of the building permit that was issued to the Owner in this case.

Respectfully submitted,

Whayne S. Quin
Lisa L. Jackson
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 663-7274

CERTIFICATE OF SERVICE

I hereby certify that on April 5, 2002, a copy of the foregoing Opposition to Appellant's Request for a Stay was sent via hand delivery to:

Cornish F. Hitchcock
Andrea C. Ferster
1100 17th Street, N.W., 10th Floor
Washington, D.C. 20036

ANC 3C
2737 Devonshire Place, NW
Washington, D.C. 20008

Toye Bello
Acting Zoning Administrator
Department of Consumer and Regulatory Affairs
941 North Capitol Street, NE
Washington, DC 20002

Marie Claire Brown
Charlotte Parker
Pamela Smith
Office of Corporation Counsel
441 4th Street, N.W.
4th Floor South
Washington, D.C. 20001

Lisa L. Jackson

WAS1 #1074011 v3