

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18965 of Peter and Diana Minshall, pursuant to 11 DCMR §§ 3100 and 3101¹, from a November 26, 2014 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1410905 to construct a retaining wall in the R-3 District at premises 3329-3333 Q Street N.W. (Square 1278, Lots 265 and 266).

HEARING DATES: March 31, 2015; April 14, 2015; and May 5, 2015²
DECISION DATE: May 5, 2015

DISMISSAL ORDER

On January 21, 2015, Peter and Diana Minshall (the “Appellants”) filed an appeal from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs (“DCRA”), to approve building permit application B1410905, issued on November 26, 2014 for alterations to an already existing a retaining wall (the “Retaining Wall”) on a residential property at 3333-3329 Q Street, N.W. (the “Subject Property”). On April 13, 2015, the Owner of the Subject Property, Sean P. Glass Revocable Trust, and DCRA filed motions to dismiss the appeal for untimely filing and, in the alternative, for failure to demonstrate a violation of the Zoning Regulations. On April 21, 2015, Appellants filed a response in opposition to the motion to dismiss. The Board of Zoning Adjustment (the “Board” or “BZA”) considered the motion at its hearing on May 5, 2015 and, at that time, granted the motion to dismiss.

FINDINGS OF FACT

The Project and Appeal

1. The Property that is the subject of this appeal is located at 3329 Q Street, N.W. and the

¹ All references to Title 11 DCMR within the body of this order are to provisions that were in effect on the date the case was decided by the Board of Zoning Adjustment (the 1958 Zoning Regulations), but which were repealed as of September 6, 2016 and replaced by new text (the 2016 Zoning Regulations). The repeal and adoption of the replacement text has no effect on the validity of the Board’s decision in this case or of this order.

² The application was postponed from the original hearing date of March 31, 2015 and from April 14, 2015. The public hearing was held on May 5, 2015.

adjacent 3333 Q Street, N.W. (Exhibit 23.)

2. The Property is located in the R-3 District and in the Georgetown Historic District.
3. The Owner of the Property, Sean P. Glass Revocable Trust (“Owner”), was issued Building Permit B1110228 on March 23, 2012, and Building Permit 1200001 on May 25, 2012. (Exhibit 23.)
4. Plans approved for Building Permit 1110228 and Building Permit 1200001 include depictions of the Retaining Wall as part of a larger fence/wall structure, which consists of a retaining wall, and a fence structure located on top of the retaining wall. (Exhibit 23; Transcript of April 14, 2015 Hearing (“Tr.”), pp. 42, 45-47.)
5. On February 16, 2012, prior to construction of the Retaining Wall, the Owner notified the Appellants of proposed work along the property line. (Exhibit 22.)
6. The Appellants were given additional notice of the construction through a notification that stated that the work on the Retaining Wall would begin on January 8, 2013. (Exhibit 22.)
7. On multiple occasions from 2012 to 2014, the Appellants corresponded with the Owner and the Owner’s contractor regarding finishes to be installed on their side of the fence/wall structure. (Exhibit 22.)
8. On February 20, 2014 a Stop Work Order alleging that the fence/wall structure exceeded the scope of the permit and the seven-foot height limit was granted in response to complaints issued by the Appellants. (Exhibit 28.)
9. On March 20, 2014, the DCRA hearing officer determined that all required permits had been obtained in connection with the fence/wall structure and dismissed the Stop Work Order without prejudice. The Appellants did not participate in the hearing. (Exhibit 28.)
10. The Appellants chose not to file an appeal of DCRA’s dismissal of the Stop Work Order. (Exhibit 23, Tr., p. 56.)
11. Building Permits 1110228 and 1200001 were never appealed or revoked. (Exhibit 23, Tr., p. 58.)
12. The Appellants requested that District of Columbia Office of Planning, Historic Preservation refer Building Permit 1200001 to the Commission on Fine Arts for review, two years after the issuance of the permit. (Exhibit 23.)
13. District of Columbia Office of Planning, Historic Preservation referred the overall fence/wall structure to the Commission on Fine Arts by letter dated June 12, 2014. (Exhibit 23.)

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14. On July 17, 2014, the Commission on Fine Arts rejected the application for review until accompanied by evidence of a new DCRA permit application for the fence/wall structure. (Exhibit 23.)
15. The Owner submitted an application for a permit on August 13, 2014, pursuant to the request of the Commission on Fine Arts. (Exhibit 23.)
16. The Zoning Administrator approved the proposed permit on August 13, 2014. (Exhibit 28.)
17. The Commission on Fine Arts considered and approved the 2014 Permit application on September 18, 2014. (Exhibit 23.)
18. Building Permit B1410905 was issued on November 26, 2014 and describes the work to be performed as including “add[ing] stucco facing to exterior of already constructed wall.” (Exhibit 22.)
19. On January 21, 2015, the Appellants filed this appeal with the Board of Zoning Adjustment (the “Board”), alleging that Permit B1410905 was issued in violation of the Zoning Regulations, because the work permitted violated the retaining wall regulations enacted by the Zoning Commission effective June 13, 2014. (Exhibit 23.)
20. On April 7, 2014, the Owner filed a Motion to Intervene; however, the Owner of the property involved in the administrative decision that is the subject of the appeal is an automatic party to the case. (11 DCMR § 3199.1. definition of “party”.)
21. At the May 5, 2015 hearing, all parties agreed that the Retaining Wall was constructed in January 2013. (Tr., pp. 41, 43.)
22. At the May 5, 2015 hearing it was established that the Retaining Wall portion of the fence/wall structure is less than four feet in height. (Tr., pp. 42, 47.)

CONCLUSIONS OF LAW

Under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(1) (2012 Repl.), the Board is authorized to hear and decide appeals based on an allegation that an administrative officer erred in rendering a decision or determination in administering the Zoning Regulations. (*See also* 11 DCMR § 3100.2.) Subsection 3112.2 of the Zoning Regulations requires that an appeal be filed within 60 days of the date the person filing the appeal first had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge, whichever is earlier. (11 DCMR Section 3112.2(a).) The actual decision being appealed in the instant case is the 2012 decision to permit construction of the Retaining Wall, not the decision to issue the November 2014 Building Permit 1410905. The November 2014 Building Permit 1410905 merely specified details regarding the facing of the already constructed fence/wall structure.

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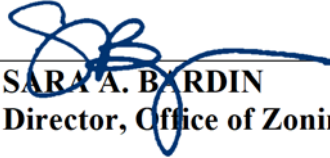
The Retaining Wall was constructed in 2013, pursuant to Building Permit 1200001 issued on May 25, 2012, and Building Permit 1110228, issued on March 23, 2012. The Appellants had ample opportunity to timely oppose the construction of the Retaining Wall. The Appellants had notice of the construction before it began, notice of the issuance of the building permits, and knowledge of the actual construction of the Retaining Wall. Yet, the Appellants failed to file an appeal of that permit within the 60-day deadline. Furthermore, the Appellants chose not to appeal DCRA's March 12, 2014 dismissal of the Stop Work Order. Therefore, the Board dismisses this appeal as untimely.

For reasons discussed above, the Board **ORDERS** that the motion to **DISMISS** the appeal is **GRANTED**.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Anthony J. Hood to DISMISS; 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. BYRDIN
Director, Office of Zoning

FINAL DATE OF ORDER: February 8, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.