

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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DISTRICT OF COLUMBIA BOARD OF ZONING
ADJUSTMENT

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SPECIAL PUBLIC MEETING

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WEDNESDAY
16 June 1999

The public meeting convened in Room 220 441 4th Street, NW, Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

Board of Zoning Adjustment Members Present:

- Sheila Cross Reid, Chairperson
- Betty King, Vice Chairperson
- Jerry Gilreath, Board Member
- Angel F. Clarens, Commissioner

Staff Present:

- Sheri Pruitt-Williams, Interim Director,
Office of Zoning
- John Nyarku, Office of Zoning
- Beverly Bailey, Office of Zoning
- Alberto Bastida, Office of Planning
- Janice Skipper, Esq., Office of Corporation Counsel

A-G-E-N-D-A

Special Public Meeting, the Appeal of Mildred Rodgers Crary, Case No. 16405.

1 P-R-O-C-E-E-D-I-N-G-S

2 10:23 a.m.

3 MS. REID: The meeting will now come to order. This
4 is the June 16 special meeting of the Board of Zoning Adjustment.
5 Pardon for the delay. We met in executive sessions first and we will
6 now proceed.

7 MS. PRUITT: Good morning, Madam Chair. Today
8 before you you have the appeal of Mildred Rodgers Crary pursuant to
9 11 DCMR 3105, from the administrative decision of the Zoning
10 Administrator to issue the following building permits to allow various
11 alterations and additions to the subject property: Permit
12 No. B413166, dated January 29, 1998, for a "Two-story addition on
13 the rear"; Permit No. 413424, dated February 9, 1998, for an "Addition
14 to a garage, length 20 feet, height 14 feet"; and Permit No. B417814,
15 dated August 17, 1998, for "Repair of existing roof, roof in place, no
16 structural change"; Permit No. B415675, dated May 27, 1998, for a
17 "New garage to be constructed on the same location as the previous
18 garage"; and Permit No. B419108, dated October 5, 1998, to "Build a
19 new porch roof as per plans."

20 The appellant also challenges the R-1-B zoning
21 classification attributed to the property by the Zoning Administrator.
22 These permits were issued for property located at 3020 43rd Street,
23 NW (Square 1621, Lot 810).

24 The case is now before you. You may proceed.

25 MS. REID: Okay. Is there a motion?

1 MR. CLARENS: Well, for the purpose of finalizing our
discussion in executive session, I will move to grant the appeal.

3 MS. KING: I second that motion.

4 MR. CLARENS: In terms of discussion of the
decision of the motion, and as a summary of our more extensive
discussion, the question before us is whether the District erred in
granting each of the permits and the cumulative effect of the five
permits which have produced the present structure which the Board
should find is noncompliant with the regulations.

10 A building has been built and additions have been
made to a building that in its present configuration does not comply
with the R-1-A

Wesley Heights Overlay District zoning regulations. That has
been the result of a number of permits issued over a period of
approximately less than a year, the total effect of which has been to
produce this noncompliant. The District has erred in the issuance of
these permits and, therefore, the appeal should be granted. That is
the issue of the substance of the case.

19 In terms of the request for dismissal on the basis of
timeliness, because of the nature of the way that the permits were
granted and applied for and the incorrectness in the content of the
applications that were submitted to the District on the basis of which
the permits were issued.

24 It is reasonable that it was not clear to the appellant
the full extent of the entire project which is what creates the

nonconformity until later or late in the process of construction. It is within that framework that we find that reasonable timeliness has been complied with and, therefore, laches do not apply to this. The Board has the authority to make a finding in this case.

5 Do you want to add anything, Betty?

6 MS. KING: I was just wondering, Mr. Clarens, if we needed to because there is also before us the motion to dismiss the inference of your motion, but perhaps it should be explicit that we dismiss the motion to dismiss and grant the appeal.

10 MR. CLARENS: I can change the order. In talking to a corporation counsel, they suggested that we start with the substance and go to the issue of dismissal.

13 MS. KING: Oh, okay.

14 MR. CLARENS: I'm not sure what is the appropriate procedure, but if we want to do the motion on dismissal and deny the motion of dismissal first on the issues and then move on to deal with the issue of the substance of the case, that seems to me a more reasonable way of doing it, but God knows how lawyers do it. Which either way is the correct way of doing it, I would say that is what we should do and maybe we should look to the corporation counsel for guidance on that issue.

22 MS. KING: It's fine. Mary says it's fine.

23 MR. CLARENS: To do it first, the motion to deny, the motion to dismiss?

25 MS. KING: Dismiss the motion?

1 MR. CLARENS: Deny the motion to dismiss. Okay.
So we first do that?

3 MS. REID: Um-hum. Let's agree to that.

4 MR. CLARENS: Okay. I'm not going to reargue the
case. I'm just simply going to --

6 MS. KING: And I will second the motion to deny.

7 MS. REID: All in favor?

8 ALL: Aye.

9 MS. REID: Opposed?

10 (No Response.)

11 MS. PRUITT: The staff will record the vote is four to
zero to dismiss -- the motion to deny.

13 MR. CLARENS: Deny the motion to dismiss. The
motion made by Mr. Clarens and seconded by Mrs. King.

15 MS. KING: Now we have the motion previously made
by Mr. Clarens and seconded by me. I absolutely concur with
everything he said and I don't have to repeat it.

18 MS. REID: I thought that this was a very difficult case
and trying to establish the basis for the pulling of the appeal or not to.
However, in looking at the merits of the case and discussion with my
colleagues, it became completely evident that unfortunately our
charge is to interpret and defend the regulations.

23 Based on what was presented to us, it appears that
obviously there's no denying there was errors made on the part of
DCRA in granting the permit. More importantly, when you go to

looking at the basis for the actual issue was rather nebulous and confusing and, in some instances, incomplete. Based on that, I would have to concur with Mr. Clarens and Ms. King.

4 MR. GILREATH: Was this the second motion?

5 MS. REID: Yeah.

6 MR. GILREATH: I would like to say, first of all, I did not see any kind of ill or deceptive intent on the part of the intervenor in this case. There's no question the District, in my judgment, made horrific mistakes. Generally speaking the citizens of this city and any community have a right to rely on reasonable competence of their organizations and so forth. I have misgivings on that, but dealing with it strictly on a technical level I will support the motion.

13 As I understand it, the intervenor will have recourse to subsequently apply for a variance. That's up to him what he wants to do. Even though it's not a happy case, I support this motion.

16 MS. REID: Any further discussion? All in favor?

17 ALL: Aye.

18 MS. REID: Opposed?

19 (No Response.)

20 MS. PRUITT: The staff will record the vote as four to zero to grant the appeal, the motion made by Mr. Clarens and seconded by Mrs. King.

23 MS. REID: That will then conclude the special meeting for June 16, Board of Zoning Adjustment.

25 (Whereupon, the meeting was concluded at 10:33
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