

DISTRICT OF COLUMBIA COURT OF APPEALS

Peter Minshall, et al. v. District of Columbia Department of Consumer and Regulatory Affairs

184 A.3d 352 (D.C. 2018) · No. 16-AA-587 · Decided May 17, 2018

SUMMARY

The District of Columbia Court of Appeals affirmed dismissal of neighbors' administrative challenges to the construction and height of a wall in Georgetown as untimely. The court held that the neighbors should have appealed the decision lifting a stop work order within the applicable 10-business-day period. It also held that a later building permit authorizing cosmetic changes did not reopen the time to challenge the previously completed construction.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher, Associate Judge; Thompson, Associate Judge; Pryor, Senior Judge
JURISDICTION	District of Columbia
DECIDED	May 17, 2018
DOCKET	16-AA-587
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of an Office of Administrative Hearings decision and order dismissing petitioners' administrative appeal as untimely.
STANDARD OF REVIEW	The court leaves agency decisions undisturbed if they flow rationally from factual findings supported by substantial evidence and reviews the agency's legal conclusions de novo.
PRECEDENTIAL VALUE	Published and precedential opinion of the District of Columbia Court of Appeals
PARTIES	Peter Minshall, et al. v. District of Columbia Department of Consumer and Regulatory Affairs

TOPICS

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QUESTIONS PRESENTED

1. Whether petitioners' challenges to the height, size, location, and overall construction of the wall were timely under 12-A DCMR § 112.2.1.
2. Whether the lifting of a stop-work order was a final, appealable decision that triggered the administrative appeal period.
3. Whether petitioners' timely appeal of the 2014 building permit permitted them to challenge the already-completed overall construction of the wall.

HOLDINGS

1. The code official's decision lifting the stop-work order was a final decision appealable to the Office of Administrative Hearings by an aggrieved person, including a neighbor.
2. Petitioners' challenge to the size, height, location, and overall construction of the wall was untimely because they had notice of the relevant decision no later than the March 2014 lifting of the stop-work order and failed to appeal within 10 business days.
3. A timely appeal from the 2014 permit did not permit petitioners to challenge the already-completed overall construction of the wall.

KEY QUOTATIONS

"We affirm the ALJ's decision to dismiss for untimeliness because petitioners should have appealed, at the latest, when a stop work order was lifted in March of 2014." (at 352)

"Mr. Gamboa's lifting of the stop work order was a "final decision" that any aggrieved party, including a neighbor, could appeal." (at 361)

"Although the 2014 permit had been timely appealed, it addressed specific aesthetic issues and "represented neither a new decision" authorizing the building of the fence/wall "nor [] petitioners' earliest notice of" DCRA's decision to approve the overall construction of the fence/wall." (at 366)

"Thus, we affirm OAH's finding that petitioners' challenges to the size and location of the wall are untimely." (at 367)

FACTUAL BACKGROUND

Peter and Diana Minshall owned a home next to Sean Glass's property in the Georgetown Historic District. DCRA issued building permits in 2012 authorizing Glass's construction project, which included a fence or wall, and the wall was completed in 2013. After the Minshalls complained, a stop-work order was issued in February 2014 and lifted after a March 2014 hearing; the Minshalls received notice of that decision but did not appeal it. DCRA later issued a 2014 permit concerning only lowering the existing wooden fence and adding stucco and stone veneers to the existing concrete wall.

PROCEDURAL HISTORY

Petitioners challenged construction of a wall separating their Georgetown properties. The Administrative Law Judge concluded that petitioners knew or should have known the basis for their claims no later than the 2014 stop-work-order proceeding and dismissed their challenge to the overall construction as untimely, while recognizing that their challenge to the 2014 permit itself was timely. Petitioners sought review in the District of Columbia Court of Appeals, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Zhang v. District of Columbia Department of Consumer & Regulatory Affairs, 834 A.2d 97, 101 (D.C. 2003)
- Woodley Park Community Association v. District of Columbia Board of Zoning Adjustment, 490 A.2d 628, 640 (D.C. 1985)
- Sisson v. District of Columbia Board of Zoning Adjustment, 805 A.2d 964, 969-71 (D.C. 2002)
- Basken v. District of Columbia Board of Zoning Adjustment, 946 A.2d 356, 365-68 (D.C. 2008)
- Montgomery County v. Longo, 975 A.2d 312, 327, 329-30 (Md. Ct. Spec. App. 2009)
- Rodriguez v. Filene's Basement Inc., 905 A.2d 177, 181 (D.C. 2006)