District of Columbia
Court of Appeals

Nos. 19-AA-201 & 19-AA-396

SHAHID Q. QURESHI,
Petitioner,

v.

BZA 19385 & 19334-A

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
Respondent.

BEFORE: Glickman and Fisher, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of petitioner's brief and joint appendix in Appeal No. 19-AA-201, respondent's motion for summary affirmance, and petitioner's opposition thereto; respondent's motion to summarily affirm in part and dismiss in part in Appeal No. 19-AA-396 and petitioner's opposition thereto; the records on appeal; and it appearing that both appeals involve the same parties, the same property, and many common facts; it is

ORDERED that respondent's motion for summary affirmance in Appeal No. 19-AA-201 is granted. *See Jackson v. District of Columbia Bd. of Elections and Ethics*, 770 A.2d 79, 80 (D.C. 2001) (stating that summary relief is appropriate in agency cases where "the facts of the case are uncomplicated and undisputed" and "the legal basis of the decision on review is narrow and clear-cut"). Petitioner cites no authority for the proposition that respondent was required to take him at his word that he was willing to comply with any unmet requirements for parking as a special exception in a residential zone, where he bore the burden of establishing entitlement to the exception. *See Citizens for Responsible Options v. District of Columbia Bd. of Zoning Adjustment*, 211 A.3d 169, 184 (D.C. 2019) ("The applicant for a special exception has the burden of proving its entitlement to the relief requested. The BZA, however, must grant the request if it finds that all of the express conditions for the exception set forth in the zoning regulations have been met."); *Golding-Alleyne v. District of Columbia Dep't of Emp't Servs.*, 980 A.2d 1209, 1216-17 (D.C. 2009) (holding that where petitioner bore the burden of proof, "it is neither mandatory nor helpful to search for 'substantial evidence' as that concept is ordinarily

understood[,]" but rather this court's "duty is to determine whether the [agency's] decision that petitioner failed to carry [his] burden of proof was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[]") (internal quotation marks omitted); 11-U DCMR § 203.1(k)(1)-(11) (setting forth the requirements for parking as a special exception in a residential zone). Moreover, petitioner fails to show respondent erred in concluding the property would not meet the use requirements for parking in a residential zone, *see id.* § 203.1(k)(6)(C)-(7)(C), to the extent its exclusive function is to store towed vehicles for petitioner's private towing business. *See Hensley v. District of Columbia Dep't of Emp't Servs.*, 49 A.3d 1195, 1206 (D.C. 2012) ("We have held repeatedly that issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived . . . . It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones.") (internal quotation marks omitted); *Gage v. District of Columbia Bd. of Zoning Adjustment*, 738 A.2d 1219, 1221 (D.C. 1999) ("[W]e start from the premise that the agency's decision . . . is presumed to be correct, so that the burden of demonstrating error is on the . . . petitioner who challenges the decision."). It is

FURTHER ORDERED that respondent's motion in Appeal No. 19-AA-396 to summarily affirm in part and dismiss in part is granted. *See Jackson*, 770 A.2d at 80; D.C. App. R. 15(b) ("If a party *timely* files a petition for . . . reconsideration in accordance with the rules of the agency, the time to petition for review as fixed by section (a)(2) of this rule runs from the date when notice of the order denying the petition is given.") (emphasis added). Petitioner neither disputes the petition's lateness with respect to respondent's order affirming the revocation of his certificate of occupancy nor claims respondent abused its discretion in refusing to waive the filing deadline for his motion to reconsider the affirmance, and his lack-of-prejudice argument alone is insufficient to invoke equitable tolling. *See Mathis v. District of Columbia Hous. Auth.*, 124 A.3d 1089, 11030-04 (D.C. 2015) (holding that "Rule 15's thirty-day filing deadline is subject to equitable tolling[,]" and "whether a timing rule should be tolled turns on whether there was unexplained or undue delay *and* whether tolling would work an injustice to the other party.") (emphasis added); *Ware v. District of Columbia Dep't of Emp't Servs.*, 157 A.3d 1275, 1280 n.4 (D.C. 2017) (describing equitable tolling as an "unusual benefit" that "should only be granted under 'extraordinary circumstances[]'"); *Menominee Indian Tribe v. United States*, 136 S. Ct. 750, 755 (2016) (affirming that equitable tolling requires a litigant to establish: "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing[]"); *id.* at 757 n.5 ("[T]he absence of prejudice to the opposing party 'is not an independent

basis for invoking the doctrine of equitable tolling and sanctioning deviations from established procedures.' Rather, the absence of prejudice is 'a factor to be considered in determining whether the doctrine . . . should apply *once a factor that might justify such tolling is identified.*'") (emphasis added in *Menominee*). It is

FURTHER ORDERED and ADJUDGED that the sole order on appeal in Appeal No. 19-AA-201 and the order on appeal in Appeal No. 19-AA-396 denying petitioner's motion to waive the filing deadline for his motion to reconsider are affirmed. It is

FURTHER ORDERED that Appeal No. 19-AA-396 is otherwise dismissed as untimely with respect to the order affirming the revocation of petitioner's certificate of occupancy.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

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