

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

General Counsel



June 5, 2008

VIA COURIER DELIVERY

Board of Zoning Adjustment ("BZA")
District of Columbia Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Re: **BZA Appeal No. 17746**

Dear BZA:

In regard to the above captioned matter, enclosed please find the District of Columbia's Department of Transportation's Motion to Dismiss Appeal for filing in the above captioned matter.

If you have any questions or need any additional information, please contact me.

Sincerely,

Charles J. Brown, Jr.
Assistant Attorney General
Office of the General Counsel
District Department of Transportation
(202) 673-6593 (direct phone)
(202) 673-2355 (facsimile)

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17746

EXHIBIT NO. 17

cc: Reed Cooke Neighborhood Association President Maurren Gallagher
ANC Commissioner Wilson Reynolds
ANC Chair Bryan Weaver
David Bishop of Erie Associates, LLC
Christopher H. Collins, Esq.

**REED COOKE NEIGHBORHOOD
ASSOCIATION,**

Appellant,

V.

**DISTRICT OF COLUMBIA DEPARTMENT
OF TRANSPORTATION,**

Appellee.

Appeal No. 17746

MOTION TO DISMISS WITH INCORPORATED MEMORANDUM

Appellee, the District of Columbia Department of Transportation (DDOT), by and through its undersigned counsel, hereby moves the Board of Zoning Adjustment (BZA) to dismiss the Reed Cooke Neighborhood Association's (Reed Cooke) appeal in this matter for the following reasons: (1) The BZA lacks jurisdiction to hear this appeal of DDOT's decision to grant a public space permit.; and, (2) Alternatively, if the BZA determines it has jurisdiction over this appeal, dismissal is appropriate because the subject public space permit does not violate zoning regulations.

Background

Reed Cooke filed an appeal before the BZA to challenge the decision of the DDOT's Public Space Committee's decision to grant a permit to expand a curb cut at 2351 and 2357 Champlain Street, N.W., in Ward 1. The subject area is within the Reed-Cooke Overlay (Overlay) and is zoned RC/R-5-B. The curb cut at issue was requested by Erie Associates, LLC as part of a driveway application for private residential apartments. The curb cut was proposed to

facilitate vehicular egress and access to off-street parking for the apartments' residents. On February 22, 2007, DDOT's Public Space Committee held a public hearing on this matter and voted to approve the curb cut at 2351 and 2357 Champlain Street, N.W. The Advisory Neighborhood Commission (ANC) for the area, ANC-1 C, was given notice of the permit application. Consequently, the ANC appeared at the hearing and on several other occasions objected to the curb cut.

Legal Argument

I. The BZA lacks jurisdiction to hear this appeal of DDOT's decision to grant a public space permit.

A. Reed Cooke Overlay District

The Reed-Cooke Overlay (Overlay) regulations found at 11 DCMR, Chapter 14 provide special treatment for the designated Reed-Cooke District. The purposes of the Overlay are as follows: 1) to implement the objectives of the Reed-Cooke Special Treatment Area, which are to protect current housing and to provide for the development of housing, to maintain heights and densities at appropriate levels, and to encourage small scale business development that will not adversely affect the residential community; 2) to ensure that new nonresidential uses serve the local community by providing retail goods, personal services, and other activities that contribute to the satisfaction of unmet social, service, and employment needs in the Reed-Cooke and Adams-Morgan community; and, 3) to protect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts.

If there is a conflict between the zoning regulations for the Reed-Cooke District and the Overlay regulations, the more stringent rule is applied. See, 11DCMR §1400.4. However, the public space permit at issues does not violate the zoning regulations because it does not authorize any land uses prohibited by the Overlay or the zoning regulations. Hence, a special exception to

the zoning regulations is necessary in this matter.

B. DDOT's Public Space Committee's Decision to Grant the Subject Curb Cut is Not an Act of Administering or Enforcing the Zoning Regulations.

The BZA's jurisdiction is established by the Zoning Act. Section 8(t), D.C. Code § 6-641.07(t) provides that appeals may be taken by persons aggrieved by any "administrative decision based in whole or in part upon any zoning regulation or map adopted under this act". The BZA's powers to hear and decide appeals extend to allegations of error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to the zoning statute. Section 8(g), D.C. Code § 6-641 .07(g), and 11 DCMR § 3100.2. (Emphasis provided.)

Reed Cooke's appeal to the BZA is to challenge a decision by the Public Space Committee to grant a public space permit for an expanded curb cut for a driveway. Any jurisdiction of the BZA over this decision must be based, in whole or in part, on zoning. In BZA Appeal # 03-0001, the BZA interpreted Section 8(t) of the Zoning Act and determined that "the plain words of this provision limit BZA appeals to issues arising from decisions related to the Zoning Regulations or Map." In this instance, Reed Cooke is seeking to have the decision of DDOT's Public Space Committee treated as a decision based on zoning. Nevertheless, it is clear that the subject decision to grant the curb cut is not a zoning issue. In fact, the decision at issue does not carry out or enforce any zoning regulation. Therefore, Reed Cooke's appeal appears to be an attempt to shoehorn jurisdiction of the BZA by alleging conflicts with zoning on an issue that was properly before and decided by DDOT's Public Space Committee. See, Mayor's Order 2006-114, dated August 29, 2006, Establishment -Public Space Committee.

Given the foregoing, the BZA lacks jurisdiction to hear this appeal of DDOT's decision

to grant a public space permit.

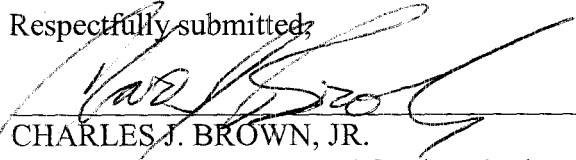
- II. Alternatively, if the BZA determines it has jurisdiction over this appeal, dismissal is appropriate because the subject public space permit does not violate zoning regulations.

If the BZA determines it has jurisdiction over this appeal, the subject curb cut does not violate any zoning regulations and Reed Cooke has failed to articulate any such violation. The Overlay states that the BZA may grant exceptions to the Overlay requirements subject to certain criteria. One such criteria is that "vehicular access and egress shall be designed and located so as to minimize conflict with pedestrian ways, to function efficiently, and to create no dangerous or otherwise objectionable traffic condition." Yet, the curb cut approved by DDOT's Public Space Committee does not conflict with this provision. Thus, an exception to the zoning regulations is not required here.

Conclusion

In consideration of the foregoing argument, the BZA does not have jurisdiction over Reed Cooke's appeal of the decision of DDOT's Public Space Committee to grant a curb cut to applicant Erie Associates for the properties at 2351 and 2357 Champlain Street, N.W., because the decision is not based on zoning and the subject public space permit does not violate zoning.

Respectfully submitted,


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6/5/08
Date:

Attorney for Appellee DDOT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June 2008, a copy of the foregoing Motion to Dismiss will be sent electronically and by first class mail, postage prepaid to the following:

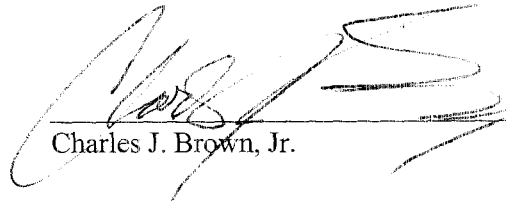
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