

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington D.C. 20001

Appeal of Kingman Park Civic Association and Simpkins

Appeal No. 18705

**DCRA’S RESPONSE TO APPELLANT’S MOTION TO FILE AN
UNTIMELY BRIEF**

Appellant filed this appeal arguing that the District of Columbia government should not be allowed to build a streetcar facility at 2500 Benning Rd NE. After the deadline had expired for Appellant to file materials with the BZA, DCRA filed its prehearing statement. Now Appellant wants permission to file an untimely brief. Because Appellant has not provided sufficient justification for filing a late brief, the motion should be denied.

ARGUMENT

The Zoning Regulations provide that “[n]o later than fourteen (14) days before the date of the hearing for the appeal, the appellant shall file with the Board any additional statements, information, briefs, reports (including reports or statements of expert and other witnesses), plans, or other materials that the appellant may wish to offer into evidence at the hearing.” 11 D.C.M.R. § 3112.10. This language unequivocally sets a deadline for when an appellant may file materials with the Board. That deadline is 14 days before the hearing.

In this case, the hearing is scheduled for February 11, 2014. 14 days before February 11 is January 28. After the January 28, 2014 deadline passed, DCRA

submitted its prehearing statement on January 29, 2014. 2 days later Appellant filed this motion seeking permission to file a late brief. The only reason Appellant gives for needing to file a late brief is that it received the DCRA brief on January 29. It is apparently Appellant's position that it was entitled to DCRA's brief before its brief was due. That is obviously wrong. The Appellant is required to file its brief first. And then DCRA has the opportunity to file a brief responding to Appellant's arguments. That is the way appeals work. Accordingly, the fact that Appellant did not receive DCRA's brief until January 29, 2014 does not provide justification for filing an untimely brief. Therefore, the Board should refuse to accept the lately filed brief.

But even if the Board accepts the brief, it should reject the arguments made in it. Appellant has attached a proposed brief to its motion. In the brief, Appellant continues to argue that the BZA should decide that the streetcar facility cannot be built at 2500 Benning Rd NE because it violates the Comprehensive Plan, the Future Land Use Map, and the Generalized Policy Map; the Mayor should have prepared an Environmental Impact Statement; the project is a general flooding hazard; and the construction improperly began before Zoning review and approval. But both the D.C. Court of Appeals and the BZA have ruled that the BZA has no authority to consider these types of arguments because they do not implicate the Zoning Regulations. *French v. DCBZA*, 658 A.2d 1023, 1034 (D.C. 1995)(the BZA's "limited function is to assure that the regulations adopted by the Zoning Commission are followed; it has 'no authority to implement the Comprehensive Plan.'"); *Appeal No. 18460 of Ginia Avery*, 60 DCR 3881 (DCBZA 2013)("Since the Large Tract Review Process and the Comprehensive Plan were

not adopted by the Zoning Commission, neither can be considered Zoning Regulations and any error regarding their interpretation is beyond this Board's jurisdiction to consider.")

What is most striking about the brief is how little attention is paid to the only arguments the Board can consider: the proper interpretation of the Zoning Regulations. Appellant spends only one paragraph in the 13 page brief addressing the Zoning Regulations. On page 6 of the Brief, Appellant makes the cursory argument that the construction violates 11 D.C.M.R. § 330 and 350. As DCRA explained in its prehearing statement, this argument is just plain wrong since "Mass Transit Facilities" are allowed in all residential districts. See 11 D.C.M.R. § 201.1(j).

CONCLUSION

Appellant's untimely brief should be rejected. But even if the Board accepts it, the arguments made in it are without merit.

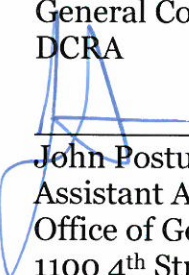
Respectfully Submitted,

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2/4/14



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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February 2014, a copy of the foregoing Brief was served to:

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Appellant's Representative

Date:

2/4/14



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