

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 SIMPKINS’S MOTION TO FILE
AN UNTIMELY BRIEF**

Appellants Simpkins and Kingman Park Civic Association filed a joint 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 Appellants to file materials with the BZA, DCRA filed its prehearing statement. A few days later, Appellant Kingman Park Civic Association filed a motion asking for permission to file an untimely brief. After DCRA filed a response objecting to Kingman Park’s request, Appellant Simpkins filed his own motion asking to file a late brief. Because Simpkins has not justified the need to file an untimely brief, the motion should be denied.

ARGUMENT

There are numerous reasons to refuse to allow Simpkins to file a late brief. The first is that Simpkins and Kingman Park Association did not file separate appeals. They filed a joint appeal. Thus, it must be assumed that Simpkins and Kingman Park speak for each other. Kingman Park filed a brief with the BZA on November 29. Thus, the BZA has already heard from Appellants so there is no need to allow Simpkins to file a late brief.

The second reason to reject the brief is that it is untimely. 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. Accordingly, it is clear that Simpkins’ February 5 brief is late. And Simpkins’ claim that the flu kept him from filing a timely brief is not sufficient justification for excusing his tardiness. The notice of hearing was mailed out on December 4, 2013. Thus, Simpkins has known since that date that his materials needed to be filed by January 28. If he thought he could not comply with this deadline, he could have asked the Board for an extension before the deadline had run. He did not do so. Instead, he allowed DCRA to file its brief and then he filed a late brief responding to DCRA’s arguments. Thus, from DCRA’s perspective at least, it appears that Appellant’s late brief is not the result of some sickness but an attempt to unfairly get the last word before the hearing.

The third problem with the brief is that the arguments made within it are meritless. It is undisputed that “mass transit facilities” are included in all residential districts, including at 2500 Benning Rd NE. The only question is whether the facility at issue is a “mass transit facility.” A “mass transit facility” is

a facility “necessary to the operation of a fixed right-of-way mass transit system.”
11 D.C.M.R. § 199.1.

In his late brief, Simpkins himself concedes that the streetcar system cannot operate without a facility like the one to be built at 2500 Benning Rd NE. See Proposed Brief, p 1 (“Since the trolley repair facility is necessary...”) Thus, it is clear that the facility is a “mass transit facility” that may be built at 2500 Benning Rd NE.¹

Simpkins’ real argument is not that the facility is not necessary but that, in his opinion, there are better locations for the facility. That argument is completely irrelevant to whether there is a violation of the Zoning Regulations. All that the Zoning Regulations require is that the facility be necessary to the operation of a mass transit system. There can be no dispute that the facility at issue in this case is so necessary.

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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¹ For a fuller description of the proposed streetcar system and the purpose of the facility at issue, see attached DCRA Exhibit 1, which is an excerpt from report on the streetcar system.

Date: 2/7/14

DCRA

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of February 2014, a copy of the foregoing Brief was served to:

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