

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18705 of Kingman Park Civic Association and W. Simpkins, pursuant to 11 DCMR §§ 3100 and 3101, from a decision by the Department of Consumer and Regulatory Affairs (DCRA) to permit a Street Car Maintenance Garage, Repair Facility and Street Car Wash, in the R-5-B District at premises 2500 Benning Road, N.E. (Parcel 160/45).

HEARING DATE: February 25, 2014

DECISION DATE: March 11, 2014

DECISION AND ORDER

This appeal was filed with the Board of Zoning Adjustment (the “Board” or the “BZA”) on November 18, 2013, challenging DCRA’s issuance of a building permit that allowed a proposed “Street Car Maintenance Garage, Repair Facility and Street Car Wash”. Appellant raised several alleged errors, only one of which pertained to an interpretation made by the Zoning Administrator of the Zoning Regulations; namely whether the facility met the definition of a mass transit facility. Having found the definition was met, the Board voted to sustain the Zoning Administrator’s determination.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Public Hearing

The Office of Zoning scheduled a hearing on the appeal for February 11, 2014. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellant, to the Government of the District of Columbia (the owner of the property that is the subject of the appeal), the Advisory Neighborhood Commission (“ANC”) 5D, and to DCRA, the appellee.

Parties

The parties in this case were the appellants Kingman Park Civic Association (the “KPCA”) and William Simpkins (collectively the “Appellant”), the appellee DCRA, and the Government of the

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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District of Columbia as owner of the property upon which the proposed facility was to be located.

Advisory Neighborhood Commission

The property that is the subject of the appeal is located within the boundary of Advisory Neighborhood Commission 5B, which did not file a report.

FINDINGS OF FACT

1. The District intends to reintroduce streetcars.
2. The first part of the streetcar system will include track along H Street and Benning Road, N.E.
3. The District selected 2500 Benning Road, N.E. (the “Site”) as the location for a training, maintenance, and storage facility (the “Facility”).
4. The Site is located in the R-5-B Zone District and is adjacent to the first line of streetcar tracks.
5. DDOT applied to DCRA for a permit to construct new retaining walls and a maintenance pit at the proposed facility.
6. The proposed facility would consist of a car wash to clean the streetcars, facilities to perform routine maintenance and repairs of the vehicles, facilities to support the inspection of the system, offices for streetcar system staff and supervisors, meeting rooms, and facilities for streetcar operators, mechanics, and supervisors to be trained in all aspects of streetcar operating including safety training. The meeting rooms would also be used for meeting with the community.
7. The Zoning Administrator personally reviewed the application and concluded that the Facility met the definition of “mass transit facility”, which is permitted in the R-5-B district as a matter of right.
8. The permit (RW 1300166) was issued to DDOT on October 16, 2013. (Exhibit 15.)
9. Appellant KPCA filed an appeal of the permit on November 18, 2013.

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by any administrative officer in the administration of the Zoning Regulations. (11 DCMR

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§§ 3100.2 and 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.)

The administrative decision in this case is DCRA's decision to issue a permit authorizing a streetcar maintenance and repair facility and a streetcar wash based upon the Zoning Administrator's determination that the facility was a permitted mass transit facility.

In addition to claiming that the Facility was not permitted in the zone district where the site is located, the Appellant also claimed the permit should not have been issued because it violated the District's Comprehensive Plan, the District of Columbia Environmental Policy Act of 1989 (lack of environmental impact statement), and the Construction Codes (construction commenced without permit). The Appellant also claimed that the Facility would be a flood hazard.

None of these allegations concern the administration of the Zoning Regulations and the Board lacks authority to consider them. *See Appeal No. 18460 of Gina Avery* (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 the Board's jurisdiction."); *Appeal No. 18429 of Edward V. Hanlon* (2013) (Claims that permit approvals were inconsistent with historic preservation requirements were outside of Board's jurisdiction); *Appeal Nos. 18239 & 18241* (2011) (Decisions to withdraw notices of revocation were based upon the Construction Codes and were outside of Board's jurisdiction); *Appeal No. 18154 of Capitol Hill Restoration Society* (2011) (Board has no authority to hear an appeal that is not based to some degree upon an interpretation of a zoning regulation); *Appeal No. 17769 of ANC 6A*, 56 DCR 156 (2009) (Board lacks subject matter jurisdiction over claim that DCRA misapplied environmental requirements in issuing building permit); *Appeal No. 17329 of Georgetown Residence Alliance* (2006) (Claims based upon the District Historic Preservation Act were outside of the Board's jurisdiction); *Appeal No. 04-0001 of William Robinson*, 52 DCR 3677 (2005); *Appeal No. 03-0001 of Peter Choharis*, 51 DCR 8210 (2004) (Requirement for a building permit is outside of Board's jurisdiction because requirement stems from Zoning "Act" and is not included in the Zoning "Regulations").

Turning to the merits of the appeal, the sole issue to be resolved is whether the Zoning Administrator correctly concluded that proposed facility is a "mass transit facility." The term "mass transit facility" is defined, in pertinent part, as: "facilities ... that have been determined by the Council of the District of Columbia to be necessary to the operation of a fixed right-of-way mass transit system." (11 DCMR § 199.1.) The Council authorized the streetcar system and the Zoning Administrator reasonably concluded that the Facility was an integral part of that system. The Facility would provide routine maintenance and repair service for the streetcar vehicles, train system personnel in streetcar operation and safety, and provide a work environment and meeting space for system personnel and supervisors.

A mass transit facility is permitted as a matter of right in the R-5-B zone. Although not specifically listed among the matter of right R-5 zone uses listed in § 350.4, all uses permitted in

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an R-1 zone are carried through to the R-5 zone by virtue of §§ 350.4 (a), 320.3 (a), and 300.3 (a). A mass transit facility is permitted as a matter of right use in an R-1 zone by § 201.1 (j). Since the facility meets the definition of a mass transit facility and such facilities are permitted in the zone district where the Facility would be located, the Zoning Administrator did not err in clearing the permit for consistency with the Zoning Regulations and DCRA made no error in the Zoning Regulations by issuing it.

Therefore, for the reasons stated above, it is hereby **ORDERED** that decisions of the Zoning Administrator and DCRA are sustained.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Michael G. Turnbull
voting in support of the motion to Sustain the decisions; S. Kathryn
Allen and Marnique Y. Heath being necessarily absent).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: August 27, 2015

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.