

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of 22 West, a Condominium	*	BZA Appeal No. 18793
and Advisory Neighborhood	*	Public Hearing: September 30, 2014
Commission 2A	*	

**Testimony of ANC 2A
on BZA Appeal No. 18793**

Chairman Jordan, and members of the Board of Zoning Adjustment, for the record, I am Florence Harmon, Vice Chair of Advisory Neighborhood Commission (ANC) 2A. ANC 2A includes the both Foggy Bottom and West End neighborhoods. The ANC has filed its written resolution objecting to the February 10, 2014 determination letter of Matthew LeGrant, Zoning Administration, which modified the explicit condition of Zoning Commission Order No. 07-21B that had prohibited a large under lite, façade mounted sign at roof level that would shine directly into adjoining residents' homes and disturb their sleep.

At the onset, I would like to take a minute to describe the neighborhood and character of the area and the ANC 2A. The permanent residential population of West End has increased drastically in the last ten (10) years. The City has encouraged numerous residential developments in this area, such that the permanent population swelled and just this past year, my single member district was redistricted due to this population growth. My district now goes up into West End, whereas previously my single member district had not covered the area at issue but covered mainly Foggy Bottom. Numerous residents have invested tremendous resources, often their life savings, to live in this area. And if City officials and developers encourage such an influx of new residents, the livability of resident surroundings in this area should also be supported.

I would also like to take a minute to describe what I hope has been perceived as a positive development in the positions taken by ANC 2A. There was a time when ANC 2A had the reputation of simply taking “knee-jerk” opposition positions to developers, particularly George Washington University. In recent years, ANC 2A has worked hard to be judicious and thoughtful in the legal positions that we take before City agencies and the Council, even when residents may object. ANC 2A recognizes that robust commercial development is also key to our neighborhood's success and needs to be supported. Accordingly, ANC 2A supported EastBanc developers through years of legal challenges from the Library Renaissance Group—and ANC 2A has often supported commercial and university developments of George Washington University—and many other developers.

Therefore, ANC 2A has tried to thoughtfully weigh the interests of residents and commercial developers in pragmatic terms so that both could peaceably co-exist, and we rely on the candor of the residents, developers, and their legal counsel, who appear before us.

After carefully weighing the residential and commercial concerns of the Hilton Garden Inn project, the ANC did not take extreme positions in the original zoning proceeding. We worked hard to mediate what we thought to be a position that took into consideration the interests of both neighboring residents and the commercial developer of Hilton Garden Inn. We made numerous concessions to the developer's position, which in some cases, residents objected to at ANC meetings. But the ANC, after weighing the equities and examining the legal precedents, came to the conclusion, that over the long-term, that the residents of 22 West and Ritz Carlton and the developers of Hilton Garden Inn would be best served, and would most peaceably co-exist, by not having a large roof level sign on the top of the hotel that projected light into the residences. According, the ANC supported the residents of 22 West in the original Zoning Commission proceeding in this matter and submitted a resolution and testimony stating that it was in the best interests of all the parties that the under lite, façade mounted roof level signage at issue should be prohibited.

The Zoning Commission performs a function similar to that of the ANC in weighing residential and commercial interests. And the Zoning Commission heard extensive testimony from residents, the ANC and the developer, and based on that testimony, the Zoning Commission found that the ANC's request for limitations on the number, location, and type of signage included in the proposed development was reasonable and consistent with the Zoning Commission's mandate to "encourage high quality development that provides public benefits," and "protects and advances the public health, safety, welfare, and convenience." 11 DCMR §§ 2400.1-2. Accordingly, in three places in the Order, the Zoning Commission says that there should be a single sign and that the single sign cannot be in a different location. And the ANC cannot imagine that the Zoning Commission could have been clearer, in prohibiting the signage that the Applicant's counsel now seeks, because the Zoning Commission expressly stated in their Order that:

"the Zoning Commission agrees with ANC 2A that there must be certainty that the actual signage will not differ from that depicted by the Applicant. Therefore, the Commission is adding a condition that the hotel sign must be above the hotel's entrance on 22nd Street as shown [on] pages A1 and A2 of the Applicant's final set of plans (submitted as Exhibit 24) and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within...." Order No. 07-21B at p. 20 (Emphasis added)

And again in the Order, the Zoning Commission unequivocally states that *"the hotel sign shall be above the hotel's entrance on 22nd Street as shown on those pages and that the sign cannot be at*

a different location or be vertically mounted on the façade of the hotel or illuminated from within.” Order No. 07-21B at p. 22-23 (Emphasis added)

So it is obvious that the Zoning Commission cannot see the roof signage that the Applicant’s counsel now claims is in an exhibit that he says trumps the plain language of the Zoning Commission—just like I cannot see the roof signage that he claims is there.

The ANC 2A unanimously opposes the Zoning Administrator’s decision in this case. The ANC and the other parties in Zoning Commission Case No. 07-21B, along with 22 West, spent a great deal of time and care in testifying before the Zoning Commission and communicating with the Applicant in that case about our concerns, including specifically the concerns we had about signage.

At the conclusion of the Zoning Commission hearing in that case, both the ANC and the Applicant were asked to address certain items, including signage. The ANC and the Applicant both suggested language regarding signage to be included in the draft order. The Applicant included no substantive restrictions on signage, while our language suggested limitations on the number of signs permitted (one), the location of the sign, how the sign would be affixed to the building, and whether it could be illuminated.

The Zoning Commission adopted the language we submitted in its final order. The ANC considered the issue to be closed. The issue was settled; the project would have to comply with this language. The ANC did not receive any further communication from the Applicant about signage, and the ANC was never informed of any requested modification or interpretation of the Commission’s order.

Thus, the ANC commissioners were surprised when Mr. Collins advanced the argument that there was an exhibit, which displayed the signage his client wanted, and that this exhibit overrode the plain language of the Zoning Commission’s Order.

We are deeply concerned about the tactics and lack of candor of the Applicant’s arguments that the plain language of the Zoning Commission’s Order, prohibiting such a sign, should be overturned based on an illegible exhibit, which was not served on the ANC prior to the Zoning Commission’s hearing or presented at an ANC meeting. I cannot see the sign in this exhibit—nor can any of the other commissioners see the sign in this exhibit.

And Mr. Collins knew this sign was of great concern to the ANC and never once approached the ANC (or the Zoning Commission) to affirmatively disclose that he would be placing such an exhibit into evidence and then use that illegible exhibit to overturn the plain language of the Order, which prohibits the signage. Mr. Collins also argues that this illegible exhibit modifies the conditions in a Planned Unit Development (PUD), which certainly does not seem supported by any legal authority, as the grounds for modification of a PUD are quite narrow.

We agree with 22 West that the Zoning Administrator has limited authority to modify the language of a Zoning Commission order. We are very concerned that denial of the appeal will set a precedent encouraging a Zoning Commission (or BZA) party to seek interpretations of the order that contradict the language mandated by either body which is often, as in this case, a product of significant debate at the Zoning Commission or BZA hearing through the filing of illegible and undisclosed exhibits at the hearing. This method raises significant issues regarding the candor of the proceedings and also due process issue because the ANC (nor the general public) is not notified of Zoning Determinations. It was only through the vigilance of a resident of 22 West that we knew this was an issue at all.

We respectfully urge the Board give careful attention to the concerns articulated the ANC and request that the Board give "great weight" to ANC-2A's position to approve the appeal, revoke the sign permit, and order that the lighted sign at the roof of the Hilton Garden Inn be removed as it is in violation of the specific language of Condition 1A of the Zoning Commission's Order in Case No. 07-21B.

Thank you for your consideration.

Florence Harmon
Vice Chair, ANC 2A