

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18857 of Advisory Neighborhood Commission 3D, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, made July 14, 2014, to issue a building permit (No. FD1400058) for a two-level underground parking garage on a university campus for the American University in the R-5-B District at premises 4400 Massachusetts Avenue, N.W. (Square 1601, Lot 3).

HEARING DATE:

November 18, 2014

DECISION DATES:

December 16, 2014 and March 10, 2015

ORDER DISMISSING APPEAL

INTRODUCTION

This appeal began as two separate appeals, the first filed on August 19, 2014, by Advisory Neighborhood Commission (“ANC”) 3D and the second filed by the Spring Valley-Wesley Heights Citizens Association (“SVWHCA”) (together with ANC 3D, the “Appellants”) on September 10, 2014. The appeals, which were consolidated (together, the “Appeal”), challenge the issuance, on July 14, 2014, of a building permit for construction of an underground parking garage on the American University (“the University”) campus. For the reasons stated below, the Board of Zoning Adjustment (“Board” or “BZA”) on March 10, 2015, voted to dismiss the Appeal as moot.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated August 20, 2014, the Office of Zoning provided notice of ANC 3D’s appeal to the Office of Planning; the Councilmember for Ward 3; ANC 3D, the ANC in which the property at issue is located; and the Zoning Administrator, who issued the permit challenged in the Appeal. Pursuant to 11 DCMR § 3112.14, on August 27, 2014, the Office of Zoning mailed letters providing notice of the hearing to ANC 3D, the Zoning Administrator, and the University.¹ Notice was also published in the *D.C. Register* on September 5, 2014 (61 DCR 9177).

¹ This notice was mailed prior to SVWHCA filing its appeal. Regrettably, the record does not indicate that formal notice of the public hearing was ever provided to SVWHCA. However, considering SVWHCA’s extensive

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Board of Zoning Adjustment

District of Columbia

CASE NO.18857

EXHIBIT NO.31

Parties. The Appellants, the Zoning Administrator, and the University were automatically parties in this proceeding.² There were no other requests for party status.

FINDINGS OF FACT

1. On March 18, 2011, the University filed an application with the Zoning Commission for approval of a Campus Plan, which also requested Further Processing³ approval for the development of its East Campus under §§ 210 and 3104.1 of the Zoning Regulations (“Z.C. Case 11-07”).
2. The Zoning Commission approved the University’s application for the Campus Plan and Further Processing for the East Campus in Z.C. Order No. 11-07, issued May 17, 2012 (“Z.C. Order No. 11-07”).
3. On January 14, 2014, the University filed an application with DCRA for a permit to begin construction of the East Campus.
4. On July 14, 2014, the Zoning Administrator approved the University’s application for zoning compliance and DCRA issued permit No. FD1400058 for construction of the East Campus.
5. On August 19, 2014, ANC 3D filed an appeal with the Board challenging the permit issuance. On September 10, 2014, SVWHCA filed a similar appeal.
6. At its November 14, 2014 public hearing, the Board granted the Appellants’ requests to consolidate the appeals.
7. The Appellants allege that the Zoning Administrator erred in issuing the University’s permit, which allowed construction of a two-level underground garage with no bus turnaround.
8. The Appellants claim that these plans do not conform to those approved by the Zoning Commission in Z.C. Order No. 11-07, which, the Appellants state, show a one-level garage with a bus turnaround.

participation in this case, both prior to and during the public hearing, the Board finds that, in this case, this deficiency was harmless.

² The University filed a Motion to Intervene in the Appeal. However, under § 3199.1(a)(3) of the Zoning Regulations, the owner of the property involved in an appeal — here, the University — is automatically a party.

³ College and university uses in Residence Zones are permitted only by special exception. An approved campus plan is a prerequisite to being granted special exceptions for specific college and university uses. Each such special exception is referred to as being a “further processing” of a campus plan.

BZA APPEAL NO. 18857

PAGE NO. 3

9. On November 18, 2014, the Board held a public hearing on the Appeal at which the Board heard testimony and arguments from the parties and scheduled a decision to be made at the Board's December 16, 2014 public meeting.
10. On November 20, 2014, the University filed an application with the Zoning Commission for Modification of its Campus Plan and Further Processing to allow construction of a two-level underground garage with no bus turnaround ("Application for Modification").
11. On December 11, 2014, DCRA submitted a letter requesting that the Board hold the Appeal in abeyance pending the outcome of the Application for Modification.
12. At its December 16, 2014 public hearing, the Board granted DCRA's request for abeyance.
13. On February 2, 2015, the Zoning Commission held a public hearing on the University's Application for Modification and voted 5-0-0 to approve the modification for a two-level underground parking garage subject to conditions.
14. On February 13, 2015, DCRA filed a Motion to Dismiss the Appeal, arguing that the Appeal was rendered moot by the Zoning Commission's approval of the Application for Modification. On February 10, 2015, prior to the Motion to Dismiss being filed, the University submitted a letter in support of the motion. The Appellants made no filings in response.
15. At its public hearing on March 10, 2015, the Board voted 3-0-0 to grant the Motion to Dismiss.

CONCLUSIONS OF LAW

Under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(1) (2012 Repl.), the Board is authorized to hear and decide appeals based on an allegation that an administrative officer erred in rendering a decision or determination in administering the Zoning Regulations. (*See also* 11 DCMR § 3100.2.) The Appellants seek review of DCRA's decision to issue a permit for construction of a two-level underground parking garage with no bus turnaround on the University's East Campus. The Appellants contend that the Zoning Administrator erred in approving the permit because the plans upon which the permit was issued showed two levels and no bus turnaround, whereas the plans for the parking garage approved by the Zoning Commission in Case No. 11-07 showed only one level and a bus turnaround. However, the Zoning Commission has now granted the University's application to modify the approved plans to be consistent with the plans upon which the building permit was issued. Accordingly, the Appeal is moot.

Subsection 3100.7 of the Zoning Regulations prohibits the Board from considering moot questions. "A case is moot when the legal issues present are no longer 'live' or when the parties

BZA APPEAL NO. 18857

PAGE NO. 4

lack a legally cognizable interest in the outcome.” *Appeal No. 18321 of the Citizens Association of Georgetown*, 60 DCR 6821, 6825 (May 2, 2013) (quoting *N St. Follies, Ltd. P’ship v. District of Columbia Bd. of Zoning Adjustment*, 949 A.2d 584, 588 (D.C. 2008)). “The central question is . . . whether the decision of a once living dispute continues to be justified by a sufficient prospect that the decision will have an impact on the parties.” *N St. Follies*, 949 A.2d at 589 (quoting 13A Charles A. Wright et al., *Federal Practice and Procedure* § 3533 (1984)).

Here, the parties’ dispute is no longer “live”. The Appellants’ argument was based upon an inconsistency between the plans originally approved by the Zoning Commission and the plans filed with DCRA. That inconsistency no longer exists as a result of the Zoning Commission’s approval of the modification⁴. That approval therefore rendered this appeal moot.

Accordingly, the Board hereby **ORDERS BZA Appeal No. 18857 DISMISSED as moot.**

VOTE: 3-0-2 (Lloyd J. Jordan, Marnique Y. Heath, and Anthony J. Hood (by absentee ballot) voting to DISMISS the appeal; Jeffrey L. Hinkle not participating; one Board seat vacant).

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: September 16, 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.

⁴ The Zoning Commission Order formally granting the modification (Z.C. Order No.11-07C) was issued on May 7, 2015.