

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 19040-A in Application No. 19040 of District Properties.com Inc., pursuant to 11 DCMR § 3103.2¹, for variances from the lot area and width requirements under § 401, and the side yard requirements under § 405, to allow the construction of a new two-story, one-family dwelling on a vacant lot in the R-2 District at premises 6002 Clay Street, N.E. (Square 5266, Lot 11).

HEARING DATES: July 14, 2015 and September 22, 2015
DECISION DATE: September 22, 2015
ORDER ISSUED: September 28, 2015

Order No. 19041-B in Application No. 19041 of District Properties.com Inc., pursuant to 11 DCMR § 3103.2, for variances from the lot area and lot width requirements under § 401, and the side yard requirements under § 405, to allow the construction of a new two-story, one-family dwelling on a vacant lot in the R-2 District at premises 4926 Foote Street, N.E. (Square 5180, Lot 3).

HEARING DATES: July 14, 2015 and September 22, 2015
DECISION DATE: September 22, 2015
ORDER ISSUED: September 29, 2015
CORRECTED² ORDER: October 8, 2015

ORDER DENYING MOTIONS FOR RECONSIDERATION

On October 9, 2015, the Advisory Neighborhood Commission (“ANC”) 7C³ submitted motions for reconsideration of the Board of Zoning Adjustment’s (the “Board’s”) order in each of the above cases. (Exhibits 37 and 32, BZA Orders No. 19040 and 19041-A, respectively.) The ANC also submitted motions to waive the time requirement for filing each motion. (Exhibits 36 and 31, BZA Orders No. 19040 and 19041-A respectively.)

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except the reference made in the final all-capitalized paragraph, are to provisions that were in effect on the date this Application was decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text (“the 2016 Regulations”). The repeal of the 1958 Regulations has no effect on the validity of the Board’s decision or the validity of this order.

² The corrected Order corrects a misspelling in the Applicant’s name in the caption. That is the only change from the original Board order.

³ As the ANC for the area within which the subject properties were located, ANC 7C was an automatic party to each of the applications. See, 11 DCMR § 3199.1(b)(2).

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Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO.35

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In each case, the Board granted the Applicant's request for variance relief from the lot area and lot width requirements under § 401, and the side yard requirements under § 405, to allow the construction of a new two-story, one-family dwelling on a vacant lot. The two properties that were the subject of the applications were in close proximity to each other. Because the facts and issues presented were nearly identical, the Board consolidated the two motions for reconsideration. At a decision meeting on November 10, 2015, the Board voted to deny the ANC's motions for the reasons explained below.

Motion to waive time requirements

Subsection 3126.2 of the Board's Rules provides that a motion for reconsideration of the Board's decision be filed within 10 days from the date of issuance of the Board's final written order. In Application No. 19040, the Board's final written order was issued on September 28, 2015 (Exhibit 34.) In Application No. 19041, the Board's final written order was issued on September 29, 2015 (Exhibit 29), although a Corrected Order (Order No. 19041-A) was issued on October 8, 2015. Both motions for reconsideration were filed on October 9, 2015, 11 days after the final written order in Application No. 19040, 10 days after the final written order in Application No. 19041, and only one day after Corrected Order in 19041.

It is clear that the motion for reconsideration was timely filed regarding Application No. 19041. However, as the ANC recognized, its motion in 19040 was filed late, but only one day late. Under § 3100.5 of the Board's Rules, the Board may waive the time requirement for this filing if the ANC shows good cause and a lack of prejudice to the Applicant. In its motion to waive the time requirement, the ANC alleged it was unable to meet the filing deadline due to "other outstanding community issues". (Exhibit 37.) The Board finds this to be an adequate basis for establishing the "good cause" required under the Rules. Because the Applicant did not respond to the Motion for Reconsideration or the Motion to Waive the Time Requirements, the Board assumes the Applicant will not be prejudiced by the Board's consideration of the merits in this matter.

Motions for Reconsideration

Subsection 3126.4 of the Board's Rules states that a motion for reconsideration shall specifically state the respects in which the Board's decision is erroneous. The ANC filed identical motions for reconsideration in the two matters at hand. In each motion the ANC alleged that, although the Applicant presented both projects to the ANC at a meeting on September 10, 2015, the Applicant did not provide enough information to allow the ANC to make a final recommendation to the BZA. This claim, whether true or false, does not amount to an error in the Board's decision, as is required under § 3126.4. However, giving the ANC the benefit of the doubt, the Board will interpret the motions as also asserting that the Board erred by not allowing a second continuance, so as to enable additional meetings with the Applicant.

The Board concludes that it did not abuse its discretion when it denied the ANC's request for a second continuance. The chronology was the same in both cases. The applications were initially scheduled for July 14, 2015. Both cases were continued to September 22, 2015, at the ANC's

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request. (Exhibit 24 - 19040 and Exhibit 20 - 19041.) The ANC did not appear on the September 22 hearing date and did not submit an ANC report with a recommendation for the Board to consider. Instead, the ANC filed identical requests for a second continuance (Exhibit 32 - 19040 and Exhibit 27 - 19041), acknowledging that a meeting was held, but stating that it wished to have “a detailed discussion about both properties” at another meeting. Before reaching its decision, the Board questioned the Applicant extensively regarding its efforts to reach out to the ANC.⁴ The Applicant testified that he met with the full ANC (before the hearing) on September 10, 2015, and that he presented drawings depicting the proposed projects at this meeting. (Hearing Transcript of September 22, 2015, (“Tr.”), p. 86-87.) He also testified that he met with Dr. Gaffney, one of the Single-Member District Commissioners, and others on September 14, 2015 to discuss the two projects further. (Tr., p. 88).

In addition to the Applicant’s testimony, the Applicant produced copies of email correspondence demonstrating the communication between the Applicant and the ANC as early as late May of 2015. (Exhibit 30 - 19040.) Based upon the testimony and evidence of record, the Board found in both cases that the Applicant diligently attempted to work with the ANC, and that a second continuance was not justified. As such, the Board denied the ANC’s requests for a second continuance in the two cases and proceeded to hear the cases without the benefit of input from the ANC. After hearing further from the Applicant, and hearing also from the Office of Planning and individuals from the neighborhood, the Board granted the requested relief in both cases.

In conclusion, the ANC has not identified any legal or factual errors, or any other basis upon which the Board should reconsider its decision in this matter. For these reasons, it is hereby **ORDERED** that the Motions for Reconsideration are **DENIED**.

VOTE: 4-0-1 (Marnique Y. Heath, Peter G. May, Frederick L. Hill, and Jeffrey L. Hinkle (by absentee ballot) to DENY; 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 30, 2016

⁴ It should be noted that neither the Zoning Regulations nor the ANC Act requires the Applicant to meet with the ANC. However, the Board encourages these meetings so that the ANC can assess the impact of proposals in a meaningful way.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.