

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 19077 of Massachusetts Avenue Heights Citizens Association, et. al., pursuant to 11 DCMR §§ 3100 and 3101, from a May 7, 2015 decision by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B1404954, to allow the renovation of an existing hotel to include a recreation area with 136 seats and five staff in the NO/R-1-B zone at premises 2505 Wisconsin Avenue, N.W. (Square 1935, Lot 45)

HEARING DATES: October 6, 2015 and November 24, 2015
DECISION DATE: November 24, 2015

DISMISSAL ORDER

Appeal No. 19077 was submitted to the Board of Zoning Adjustment (the “Board”) on July 7, 2015 by the Massachusetts Avenue Heights Citizens Association (“MAHCA”) and other named individuals in the MAHCA neighborhood. The appeal challenges a decision made by the Zoning Administrator (the “ZA”) at the Department of Consumer and Regulatory Affairs (“DCRA”) to issue Building Permit B1404954 to CS Bond St. S Properties (“the property owner”), allowing the alleged unlawful enlargement of the existing hotel structure and the unlawful expansion of the existing hotel use.

The Advisory Neighborhood Commission (“ANC”) 3C submitted a report to the Board on or about July 27, 2015, indicating that it had resolved to join MAHCA’s appeal. (Exhibit 15).¹ In its report, the ANC indicated that it would be represented by either the ANC Chair, the Commissioner of the ANC 3C-08 (the Single Member District within the full ANC), or a designee of the two.

On November 20, 2015, the property owner submitted a letter to the Board stating that it had surrendered the building permit to DCRA, and stating that it would be taking no action under the permit. (Exhibit 57.) The letter also stated that the permit surrender rendered the appeal moot. Attached to the property owner’s letter to the Board was a copy of the letter of surrender to DCRA, and a DCRA form titled “Letter of Cancellation”, which indicated that the property owner was withdrawing its building permit application.

¹ The ANC report was inadvertently refiled in the record under Exhibit 58.

BZA APPEAL NO. 19077
PAGE NO. 2

At the hearing before the Board on November 24, 2015, the Appellant, the property owner, and DCRA all appeared with their counsel. In addition, Malia Brinkam, one of the named individual appellants also appeared before the Board. No representative from the ANC appeared at the hearing. The counsel for the property owner made an oral motion to dismiss the appeal on the ground that it had been rendered moot, and counsel for DCRA joined in this motion. While Appellant's counsel was present, it was Ms. Brinkam who indicated her consent to dismissal on behalf of the Appellants. (Hearing Transcript of November 24, 2015, p.14.) As the ANC was not present, the Board received no recommendation as to the ANC's position regarding dismissal.

The Board determined that the appeal had been rendered moot

Subsection 3100.7 of the Zoning Regulations prohibits the Board from considering moot questions. As the Board has often stated, "A case is moot when the legal issues present are no longer 'live' or when the parties lack a legally cognizable interest in the outcome." *Appeal No. 18857 of Advisory Neighborhood Commission 3D* (2015), citing *Appeal No. 18321 of the Citizens Association of Georgetown*, 60 DCR 6821, 6825 (2013) (quoting *N St. Follies, Ltd. P'ship v. District of Columbia Bd. of Zoning Adjustment*, 949 A.2d 584, 588 (D.C. 2008)).

Here, the legal issues presented by the appeal are no longer "live", as the permit upon which the appeal was based was surrendered and cancelled. At the time of the public hearing, there was no longer any "live" controversy between Appellant and DCRA as to whether the permit was properly issued. In a similar case, the Board recently held that an appeal of a permit was rendered moot where the challenged permit had been surrendered. *Appeal No. 19092 of Patricia Schaub* (2016).

ANC

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. *D.C. Official Code §1-309.10(d)(2001)*. As noted, the ANC 3C voted to join the appeal and submitted a report indicating why it believed the appeal should be granted. However, the ANC did not state its position as to whether the appeal was rendered moot by the surrender and cancellation of the permit. Therefore, there is nothing to give great weight to, with respect to the motion for dismissal.

Based upon the surrender and cancellation of the permit, the consent of DCRA and the Appellant, and based upon the applicable law, the Board voted to grant the property owner's motion to dismiss. Accordingly, it is **ORDERED** that the appeal is **DISMISSED**.

VOTE: 3-0-2 (Marnique Y. Heath, Marcie I. Cohen, and Frederick L. Hill to DISMISS; Jeffrey L. Hinkle not participating, being necessarily absent; one Board seat vacant).

BZA APPEAL NO. 19077
PAGE NO. 3

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: October 7, 2016

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.