

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19116-A of DC Department of General Services, pursuant to 11 DCMR § 3104.1,¹ for a special exception from the roof structure requirements under § 411.11 to allow roof structures not meeting the setback requirements under § 400.7, and the parking space requirements under § 2116.5, to permit the modernization of an existing public high school in the R-4 District at premises 4301 13th Street N.W. (Square 2915, Lot 802)

HEARING DATE:	November 24, 2015
DECISION DATE:	November 24, 2015
ORDER ISSUED:	December 2, 2015
DECISION ON MOTION FOR RECONSIDERATION:	December 22, 2015

ORDER DENYING MOTION FOR RECONSIDERATION

On December 10, 2015, the Advisory Neighborhood Commission (“ANC”) 4C₂ submitted a motion for reconsideration of the Board of Zoning Adjustment’s (the “Board’s”) order in BZA Order No. 19116, through which the Board granted the request of the Department of General Services (“DGS” or the “Applicant”) for special exception relief from the roof structure requirements and the parking space requirements of the Zoning Regulations.

In its motion the ANC alleged that DGS misled the Board regarding the extent of its communications with the ANC, claiming that DGS did not provide the additional information that the ANC requested regarding the zoning application. Further, the ANC asserted that the Order should not have been issued without comment from the ANC even though the time period for the ANC to have submitted a report following notice had passed.

¹ This and all other references in this Order to provisions contained in Title 11 DCMR, except those references 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on the date this Application was decided by the Board of Zoning Adjustment (“the 1958 Regulations”), but which were repealed as of September 6, 2016 and replaced by new text. Also, all zone districts described in this order were renamed as of that date. The repeal and replacement of the 1958 Regulations and the renaming of the zone districts has no effect on the validity of the Board’s decision or the validity of this order

² As the ANC for the area within which the subject property was located, the ANC 4C was an automatic party to the application. (See, 11 DCMR § 3199.1(b)(2).)

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At a decision meeting on December 22, 2015, the Board voted to deny the ANC's motion for the reasons explained below.

The Underlying BZA Application

The Applicant sought zoning relief related to the modernization of an existing public high school located in the R-4 zone. The application was filed with the District's Office of Zoning ("OZ") on August 21, 2015, and OZ sent notice of this filing to the ANC 4C on that same date. (Exhibit 14.) On or about August 27, 2015, OZ sent the ANC notice that a public hearing in this case was scheduled before the Board on November 24, 2015. (Exhibit 19.) Neither of these notices to the ANC were returned to OZ by the US Post Office, and nothing in the record suggests that these notices were not received by the ANC.³ In addition, the Applicant submitted a letter to the record stating that it intended to meet with the ANC and other community groups to discuss the zoning application. (Exhibit 8.)

The Public Hearing in the Underlying BZA Case

The ANC did not submit a report to the Board reflecting any recommendations relating to the zoning application. Nor did the ANC attend the public hearing that was held by the Board on November 24, 2015. At the hearing, the Board Chair asked the DGS representative whether it had met with the ANC regarding the application before the BZA because no ANC report had been submitted in the case. DGS representative Mary Rankin handed the Chair a September 18, 2014 letter that the ANC had sent to the Public Space Committee (Exhibit 31) and stated:

That's the document I just handed. We met with the ANC twice last year to review the project. The first was July 9th to go over the general plans and our major interventions on the school. The second hearing was September 10th, 2014 specifically at the request we had to go before public space for several of the site interventions, including the curb cuts that the parking that we're talking about today is related to. The letter that you just received was a letter prepared by them and provided to us a week later indicating their support for the project.

(Transcript of Hearing November 24, 2015, "Tr.", p. 25.)

Later the following discourse occurred:

CHAIR: So again, we have received this letter. Although it is for your public space application I understand you've submitted the information, *you've had multiple meetings with the ANC since going through the public space process*. And you've submitted your information regarding this hearing to the ANC. Is that correct?

³ Other notices concerning this application were returned to OZ by the Post Office, marked "Return to Sender" (Exhibits 23-26), but notices to the ANC were not returned to OZ.

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(Tr., pp. 27-28.) (Emphasis added).

Although Ms. Rankin had just indicated that only two meetings had been held with the ANC, neither of which occurred “since going through the public space process,” she answered “correct.” (Tr., p. 28.)

The Chair then closed the hearing and the Board voted to approve the application. The BZA Order granting the application was issued on December 2, 2015. (Exhibit 33.).

The Merits of the Motion 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, and also state the relief that is sought from the Board. As noted, the ANC alleged that DGS misled the Board regarding the extent of its communications with the ANC, claiming that DGS did not provide the additional information that the ANC requested regarding the zoning application. This claim, however, does not amount to an error in the Board’s decision, as is required under § 3126.4. As noted above, a motion for reconsideration must clearly state the grounds for the motion and the desired relief that is sought. Here, other than stating the case should be “reopened”, the ANC does not state that it would seek a different result once the case was reopened. Nor does the ANC state that the Board’s decision is incorrect in any way.

The ANC states that the Order should not have been issued without comment from the ANC. This assertion suggests that the Board erred by not continuing the case, *sua sponte*, so as to allow the ANC more time to submit a report. However, the Board concludes that it did not abuse its discretion by deliberating on this matter without input from the ANC. Section 13 of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (“ANC Act”) requires each ANC be given 30 days’ written notice, excluding Saturdays, Sundays and legal holidays of certain actions, including an application for zoning relief that affects its area. The ANC Act further indicates an agency “may proceed to make its decision” on the action for which notice was given at “the close of business of the day after which the notice period concludes.” (D.C. Official Code § 1-309.10 (d)(2).)

Here, the ANC received written notice of the application on August 21, 2015 and was advised of the November 24th hearing date six days later on August 27, 2015. Therefore, the ANC had approximately twice the minimum comment period to submit its report, yet none was received. The ANC states it lacked the information it needed to submit such a report. If true, it was incumbent upon the ANC to apprise the Board of that circumstance. Instead, the ANC chose to remain silent. In the absence of an ANC Report and with the completion of the minimum ANC comment period, the Board could and did lawfully “proceed to make its decision”.

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As noted, the BZA Chair before closing the hearing questioned DGS regarding its efforts to reach out to the ANC. DGS first made it clear that it had met twice with the ANC and that both meetings occurred prior to the completion of the Public Space Committee proceeding. The Board then asked the Applicant to confirm that it “had multiple meetings with the ANC since going through the public space process,” to which the Applicant’s representative stated “correct” and “yes.”

The Board agrees with the ANC that DGS’ response may have been less than candid; however, the Board itself misstated DGS’ initial accurate representation when asking the question. Had the ANC availed itself of its right to participate during the hearing, it could have stated its concerns over DGS’ outreach deficiencies. Since the issue could have been raised, but was not, the ANC’s attempt to litigate it at the first instance through reconsideration is belated.

Finally, even if the outreach issue had been raised, the Board cannot compel an applicant to meet with an ANC, nor deny a meritorious application because of a failure to do so. The ANC Act only requires the Board to give notice of an application to an affected ANC, and then places the onus on that ANC to express its issues and concerns with the Board within the time allowed. That this ANC chose to not avail itself of that opportunity should not result in the Board reconsidering a decision that the ANC does not dispute on the merits.

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 Motion for Reconsideration is **DENIED**.

VOTE: 3-0-2 (Marnique Y. Heath, Marcie I. Cohen, and Jeffrey L. Hinkle to DENY the Motion for Reconsideration; Frederick L. Hill not participating; one Board seat vacant).

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 9, 2017

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.