GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Appeal No. 16849 of Robert Lehrman, pursuant to §§ 3100 and 3101 of the Zoning Regulations from the administrative determination of Michael Johnson, Zoning Administrator, dated October 10, 2001 stating that the holder of permit Nos B439404 and B435446 did not effect the illegal removal of trees in violation of the Tree and Slope Protection Overlay District (§1511) in the TSP/R-1-A District, at premises 2221 30th Street, NW (Square 2198, Lot 6) and the reaffirmation of that determination made by the BLRA Administrator, dated December 10, 2001.

HEARING DATE: September 24, 2002
DECISION DATE: September 24, 2002

DECISION AND DISMISSAL ORDER

Robert Lehrman ("Appellant") filed an appeal with the Board of Zoning Adjustment on January 17, 2002, challenging the determination of the Zoning Administrator and the BLRA Administrator that the holder of permit Nos B439404 and B435446 did not violate the Tree and Slope Protection Overlay District, § 1511 of the Zoning Regulations. Mr. Lehrman was originally represented by counsel, but represented himself at the hearing. Mr. Estrin, the owner of the premises ("Owner") at 2221 30th Street, NW (the "Property"), was represented by Whayne S. Quin, Esquire, from the law firm of Holland & Knight LLP. As a preliminary matter, before the scheduled public hearing for this case, the Board granted the Owner's Motion to Dismiss on the ground that the appeal was not filed in a timely manner.

Notice of Appeal and Notice of Public Hearing. By memoranda dated April 9, 2002, the Office of Zoning advised the Zoning Administrator, the Office of the Corporation Counsel, the Owner, Advisory Neighborhood Commission ANC 3C, the ANC for the area within which the property is located, the ANC Commissioner for the affected Single-Member District, the affected Ward Councilmember, and the D.C. Office of Planning.

The Board originally scheduled a public hearing on the appeal for April 9, 2002. Pursuant to 11 DCMR § 3113.14, the Office of Zoning, on February 25, 2002, mailed to the Appellant, the Zoning Administrator, ANC 3C, and Owner's counsel, notice of hearing. Notice of public hearing was also published in the *D.C Register* on July 19, 2002, at 49 DCR 6792. The hearing was rescheduled for September 24, 2002.

In its Motion to the Board dated March 20, 2002, the Owner alleged that that the appellant lacked standing, the appeal was filed untimely, and was barred by laches and mootness.

ANC Report. In its report dated March 25, 2002, ANC 3C states that, at its regularly scheduled public hearing, with a quorum present, the ANC voted to support the appeal on the grounds that

Case No. 17054
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 31

a violation of the Tree and Slope Overlay occurred on the subject property. The report did not address any jurisdictional issues.

On March 26, 2002, Appellant filed a prehearing statement and a request to the Board to stay the building permit for the Property. On April 4, 2002, Appellant filed a motion in opposition to Owner's motion for dismissal of the appeal. Owner filed, on April 5, 2002, an opposition to Appellant's stay request, and on April 8, 2002 a reply to Appellant's motion in opposition. The appeal was rescheduled for a hearing date on September 24, 2002.

Prior to the scheduled hearing date, the Board, through the Office of Zoning, asked Appellant for additional copies of materials, including: copies of all relevant building permit applications, permits, stop work orders, site plans, a chronology of all permitting and construction activities on site and any other fact relevant to the timeliness of the appeal and whether laches applies to the appeal, and any other materials that could assist the Board in its decision-making.

On the day of the scheduled hearing, Owner requested that the Board dismiss the appeal for lack of jurisdiction and requested a preliminary hearing on its motion. The Board did not address the Appellant's request for a stay, having disposed of the case by granting the Owner's motion to dismiss as a preliminary matter.

Hearing and Decision. On September 24, 2002, the Board voted to grant the property Owner's motion to dismiss the appeal based upon timeliness.

FINDINGS OF FACT

1. Appellant resides at 2900 Benton Place, NW., adjacent to the Property.

2. The trees at issue in this case are visible from Appellant's property.

3. It is undisputed that Appellant's property and Owner's property are subject to the provisions of the Woodland Normanstone Tree and Slope Protection overlay ("WNTSP").

4. The WNTSP, 11 DCMR § 1511 *et seq.*, is designed to protect the park-like setting of designated neighborhoods and includes limitations on the removal of healthy trees, depending upon their sizes. The penalty for any such removal is a prohibition on the issuance of a building permit for a seven-year period, unless the Board of Zoning Adjustment grants a special exception.

5. Owner received Building Permit No. B435446, dated March 7, 2001, from the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), Building and Land Regulation Administration ("BLRA"), to expand certain portions of the residential premises on the Property and to undertake various interior and exterior remodeling of the same. The construction began at the Property on or around June or July of 2001.

6. On or around July 19, 2001, a tulip poplar tree on the Property was removed.

7. At or around July 19, 2001, a second tree, located at the center of the Property, was damaged, allegedly as a result of construction activity.

8. Because the Board did not reach the merits of the appeal, the Owner's proffered explanation for these events are not relevant to this order.

9. On or around July 26, 2001, Appellant, through his counsel, sent a letter to Zoning Administrator Michael D. Johnson (the "Zoning Administrator") requesting that a stop work order be issued for the construction under the March 7, 2001 building permit, alleging that the construction was in violation of the WNTSP provisions of the Zoning Regulations.

10. As explained by letter to Appellant from J. Gregory Love, BLRA Administrator(the "BLRA Administrator"), dated September 14, 2001, a stop work order was issued at the Property by the BLRA Construction Inspection Branch because demolition of the existing building was beyond the scope of the plans approved for Building Permit No. B435446. By the same letter, the BLRA Administrator stated that the Zoning Administrator was "reviewing the other zoning issues related to construction not in accordance with approved plans, including the one related to the removal of trees in violation of the Zoning Regulations, DCMR 11, Section 1514. A review of our records confirms that no prior request for tree removal was made as required by the Tree and Slope Protection Form that was attached to the construction permit application. Therefore, I have instructed the Zoning Administrator to make an expeditious determination on this matter."

11. By letter to Owner dated October 10, 2001, with copy to Appellant, the Zoning Administrator concluded, in response to the issues raised in Appellant's July 26, 2001 letter, that "while there may be a question as to whether the Tree and Slope Protection Overlay Zone is even applicable to an area outside the zone of construction, I find, based upon the information that I received and the investigation conducted, that there was an unsafe condition which warranted the removal of the tree under Section 1514.1(b) of the Zoning Regulations. Further, based upon my review, site inspection and understanding of the issues raised, I conclude that there is no violation of the Zoning Regulations and no further enforcement action is required regarding this matter." The Board finds that this letter addressed both alleged violations, one involving the tree already cut down, and one involving the injured but still standing tree, where the Zoning Administrator specifically addressed the tree already cut down and conducted a site inspection to determine whether there were any other violations of the Overlay.

12. In response to the earlier stop work order, Owner obtained Building Permit No. B439404, dated October 16, 2001, which revised Permit No. B435446 and granted permission to replace masonry cinder block walls as per plan.

13. In the three months subsequent to the Zoning Administrator's ruling of October 10, 2001, Appellant did not file an appeal. Rather, Appellant communicated with various representatives of the BLRA to seek reversal of the Zoning Administrator's determination.

14. By letter to counsel for Appellant dated November 5, 2001, the BLRA Administrator noted that "[a]t the behest of your client, Robert Lehrman, I am in the process of re-evaluating the Zoning Administrator's determination. If a different interpretation is made, you will be so advised."

15. As a result of conversations between Appellant and David A. Clark, DCRA Director, a second stop work order was issued by BLRA at the Property on November 21, 2001.

16. By letter dated December 7, 2001, Acting Zoning Administrator Toye Bello notified counsel for Owner that the second stop work order was lifted and that no further enforcement action is necessary. In the same letter, the Acting Zoning Administrator noted that "[t]he Department stands by the resolution of the previous complaint of illegal tree removal as encapsulated inn(sic) the Zoning Administrator Opinion dated October 10, 2001, in which the [Zoning] Administrator found no cause for further enforcement action."

17. By letter dated December 10, 2001, the BLRA Administrator issued a letter to Appellant once again confirming the Zoning Administrator's proper application of the Zoning Regulations as well as addressing a variety of zoning and building code issues related to the Property. The BLRA Administrator noted that "the second stop work order was issued solely to address [the Appellant's] concern that construction activity continued to willfully cause fatal damage to protected trees. This stop work order has also been lifted as there was no evidence upon which [the BLRA Administrator] could justify the continuance of said order.

18 Appellant filed the present appeal on January 17, 2002 -- 99 days after the date of the Zoning Administrator's October 10, 2001, ruling, and 39 days after the date of the BLRA administrator correspondence confirming the Zoning Administrator's ruling.

19. The Board finds that the Appellant knew or should have known of the adverse decision of DCRA as of October 10, 2001, the date of the Zoning Administrator's full and final determination with respect to the issues presented on this appeal

20. The December 10, 2001, letter from the BLRA Administrator merely reaffirmed the October 10, 2001 decision.

21. Because no exceptional circumstances existed that could have impaired the Appellant's ability to file this appeal within two months after October 10, 2001, *the* Board finds that the appeal is untimely.

CONCLUSIONS OF LAW

The Owner argued that the Board lacks jurisdiction to hear this appeal because: (1) Appellant was not aggrieved as required by the Zoning Act and §3112.2 of the Zoning Regulations and therefore lacked standing; (2) because the appeal was not timely filed by Appellant; (3) because the appeal was barred by the equitable doctrine of laches; and (4) because the appeal was moot.

Because the arguments raised by Owner involve the authority of the Board to exercise jurisdiction over the appeal, the Board addressed Owner's Motion to Dismiss prior to entertaining Appellant's Motion for Stay or the parties' arguments on the merits.

Standing

In support of its argument that Appellant lacks standing, Owner contended, at the hearing and through his pre-hearing submissions, that the instant appeal is not proper because Appellant is not an "aggrieved" person within the meaning of §3112.2. Owner submitted that in order for Appellant to qualify as an "aggrieved" person within the meaning of the Zoning Regulations, Appellant must demonstrate that he has an interest that will be more significantly, distinctively, or uniquely affected in character or kind than those of other persons in the general public.

The Owner further claimed that Appellant has not suffered any injury as a result of the Zoning Administrator's ruling and that, even if such injury could be said to have been suffered, it was no different than that suffered by the general public, given the distance of Appellant's property from the subject Property.

The Board concludes, however, that the Appellant qualifies as an "aggrieved" person within the meaning of §3112.2 because of the proximity between Appellant's property and the Property and Appellant's testimony that the tree canopy from the Property can be seen from Appellant's property. Therefore, the Board concludes that Appellant does have standing to bring the instant appeal.

Timeliness

As of the date that this appeal was filed, the Zoning Regulations did not specify a particular number of days within which a decision must be appealed. The Board and the courts have long applied a standard of reasonableness, which requires appeals to be brought within a "reasonable" period of time in order to invoke the appellate jurisdiction of the Board. The "reasonableness" of the timing of an appeal has historically been judged on a case-by-case basis depending on the circumstances and factors that caused the delay.

In *Waste Management of Maryland, Inc., v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117, 1122 (D.C. 2001), the Court of Appeals re-affirmed that the timeliness requirement is jurisdictional and that if an appeal is not timely filed, the Board lacks jurisdiction to consider it. There, the Court articulated a test for timeliness:

> Experience teaches that in the ordinary scheme of things, two months is ample time in which to decide whether to seek appellate review and act accordingly. At least in the absence of exceptional circumstances *substantially impairing the ability of an aggrieved party to appeal—circumstances outside the party's control*—we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness."

(Emphasis added.)

In support of its argument that dismissal is required because the instant appeal was not timely filed, the Owner contended that Appellant waited more than three months from the date of the Zoning Administrator's October 10, 2001 determination to file the instant appeal with the Board, more than a month beyond what the Court of Appeals, in *Waste Management,* has determined is the reasonable limit of timeliness. Appellant, in turn, argued that its appeal was timely because it was filed within 60 days after Mr. Love's December 10, 2001 letter. Therefore, the Board must decide which of the two communications start the two-month time period for the Appellant to file its appeal.

The Board's decision in *Appeal of Robert E. Love*, BZA Appeal No. 14054 (1984) is dispositive of this issue. The appellant in *Love* received a letter on December 6, 1982, from DCRA, advising him that plans approved by the disputed building permits were in compliance with the Zoning Regulations. The appellant in *Love* "chose not to file an appeal before the Board of Zoning Adjustment at that time," but rather "attempted to resolve the problem through letters to and meetings with staff and members of the City Council, other D.C. Departments and the Mayor." *Love*, Findings of Fact No. 13. As a result of these efforts, an additional DCRA letter, dated August 12, 1983, was sent. However, because the letter was only a "reaffirmation of the facts" stated in the December, 1982 correspondence, the Board held that the December letter began the time for filing the appeal. The Board dismissed the appeal as untimely.

Like the August 12th letter in *Love*, the December 10, 2001 letter from the BLRA Administrator in this case merely reaffirmed the conclusion reached earlier by the Zoning Administrator on October, 10, 2001. Therefore, the time for filing this appeal began on October 10, 2001.

Appellant waited more than three months from the October 10, 2001, to file his appeal with the BZA, an additional month beyond what the Court of Appeals has defined as the limit of timeliness, absent exceptional circumstances.

The Board finds no evidence in the record upon which the Board could base a conclusion that there existed any "exceptional circumstances . . . outside [Appellant's] control," that "impaired" the ability of Appellant to appeal or to warrant extending the two-month deadline to nearly 100 days. Appellant does not deny receiving the October 10, 2001 determination by the Zoning Administrator. The Board finds that there is no reason that Appellant could not have filed an appeal to this Board shortly after October 10, 2001. Appellant became involved in the proceedings as early as June, 2001 when he corresponded with Owner regarding the removal of the tree. Likewise, Appellant maintained close contact with the Zoning Administrator and the BLRA Administrator throughout the period in question prior to October 10, 2001.

After October 10, Appellant did not choose to appeal to the BZA but rather sought reversal of the ruling by asking the BLRA to further review the determination. There is no basis in the record to indicate that the Zoning Administrator would reverse his ruling. The Board concludes that these efforts do not rise to the level of an exceptional circumstance outside Appellant's control that "impaired" the ability to appeal earlier.

With regard to the issuance of the second stop work order, issued on November 21, 2001, by BLRA under the Building Code, which was issued subsequent to the Zoning Administrator's

October 10, 2001, determination, the majority of this Board finds that such an order also does not create an exceptional circumstance. As discussed at the hearing (Transcript at 288-89), the December 10, 2001 letter from DCRA made it clear that the order was issued to ensure that existing activity was not jeopardizing the remaining trees in violation of the Overlay. It was not issued in direct response to the allegations of past violations, allegations that form the basis of this appeal. While it is not clear that the Appellant knew the reason for the issuance of the stop work order prior to the December 10, 2001, letter, neither was it clear that the stop work order was in response to his concerns of past violations.

In reaching this decision, the Board was divided, with two members indicating during the decision meeting that dismissing this case would be inconsistent with the Board's prior decision in *Appeal of Darrel J. Grinstead,* BZA Appeal No. 16764 (2001).

Grinstead involved an appeal filed seven months after the issuance of a building permit, but less than two months after Mr. Grinstead received his first and only letter from DCRA upholding the disputed building permit. The minority equate the following to Grinstead: 1) the October 10th letter in this appeal to the permit challenged in Grinstead; 2) the November 21, 2001 stop work order, the December 7, 2001 letter from the Acting Zoning Administrator, and numerous telephone exchanges in between to the period of internal DCRA resolution in Grinstead (i.e., the time during which the Appellant's letters to DCRA went unanswered), and 3) the December 10th letter in this appeal to the subsequent letter of final decision in the Grinstead case. The second stop work order is found by the minority to indicate that serious reconsideration of the Zoning Administrator's October 10th decision was underway and that a final decision had not, in fact, been made.

Based upon this ruling, the two members felt that the October 10, 2001 letter could not be a final decision where DCRA continued to review the allegations made by the Appellants. The minority thus appears to equate the October 10th letter in this appeal to the permit challenged in *Grinstead,* and to equate the December 10th letter in this appeal to the subsequent letter in the *Grinstead* case.

The majority does not find it appropriate to treat the October 10th letter as if it were no more than a bare bones permit. That letter, like the letter in *Grinstead* and the first letter in *Love,* fully addressed the issues raised. No purpose, other than delay, is served by permitting an appeal based upon follow-on correspondence.

To hold that the appeal period continues so long as a reevaluation is occurring would place holders of building permits in a state of chronic uncertainty and allow disgruntled individuals to endlessly extend the appeal period through repeated requests for DCRA to reevaluate its last stated position. While *Grinstead* recognized value in allowing DCRA to reevaluate its positions on zoning matters, the need for finality and the prompt resolution of zoning disputes dictates that such an internal process should be permitted only once, if at all.[1]

Thus, the December 10, 2001 letter from the BLRA Administrator did not begin the time for filing this appeal because it was simply a reaffirmation of the earlier decision and because, even

if it constituted more than a reaffirmation, the earlier October 10th letter fully addressed all issues raised and therefore was the only writing that could properly furnish the basis for this appeal.

Because of the disposition of this appeal on the grounds that it was not timely, the Board need not address the Owner's further assertions that the appeal is barred by the equitable doctrine of laches and is moot.

It is therefore **ORDERED** that the **MOTION TO DISMISS** be **GRANTED**, and this appeal be **DISMISSED** for lack of jurisdiction.

VOTE: 3-2-0 (Geoffrey H. Griffis, Curtis L. Etherly, Jr., and David A. Zaidain to grant Owner's Motion and dismiss the appeal, Carol J. Mitten and Anne M. Renshaw opposed)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 0 8 2003

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT. crb/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16849

As Director of the Office of Zoning, I hereby certify and attest that on MAY 08 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

District of Columbia Court of Appeals.

Charles SISSON, Petitioner,
v.
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent,
Mildred R. CRARY, Intervenor.

No. 00-AA-97.

Argued Nov. 9, 2001.
Decided Aug. 29, 2002.

Homeowner sought review of decision by the Board of Zoning Adjustment that zoning administrator erroneously issued building permits for garage and home. The Court of Appeals, Reid, J., held that: (1) neighbor timely appealed issuance of building permits more than two months earlier, and (2) evidence supported Board's conclusion.

Affirmed.

West Headnotes

[1] Administrative Law and Procedure 413
15Ak413 Most Cited Cases

The Court of Appeals accords great deference to an agency's interpretation of its own administrative regulations and will uphold that construction unless clearly erroneous or inconsistent with the regulations.

[2] Zoning and Planning 605
414k605 Most Cited Cases

The Board of Zoning Adjustment's judgment is entitled to additional deference where it is interpreting its own internal rule of procedure, rather than the zoning regulations.

[3] Zoning and Planning 358.1
414k358.1 Most Cited Cases

The timely filing of an appeal with the Board of Zoning Adjustment is mandatory and jurisdictional.

[4] Zoning and Planning 358.1
414k358.1 Most Cited Cases

A "timely appeal" to the Board of Zoning Adjustment is an appeal within a reasonable time. D.C. Mun.Regs. tit. 11, § 3315.2.

[5] Zoning and Planning 358.1
414k358.1 Most Cited Cases

At least in the absence of exceptional circumstances that substantially impair the ability of an aggrieved party to appeal and are outside the party's control, two months between notice of a decision and appeal therefrom are the limit of timeliness for an appeal to the Board of Zoning Adjustment. D.C. Mun.Regs. tit. 11, § 3315.2.

[6] Zoning and Planning 442
414k442 Most Cited Cases

Homeowner's multiple building permits based on applications that were often incomplete or misleading as to plans for garage, rear addition, and front porch created exceptional circumstances that substantially impaired neighbor's ability to appeal and were outside of her control, and, thus, neighbor timely appealed issuance of building permits more than two months earlier; because of the cumulative, piecemeal nature of the applications, the full extent of the construction project could not be discerned as each individual permit was issued, and the neighbor was not chargeable with notice of the entire scope of work until all permits were issued. D.C. Mun.Regs. tit. 11, § 3315.2.

[7] Zoning and Planning 762
414k762 Most Cited Cases

The defenses of estoppel and laches are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws.

[8] Zoning and Planning 762
414k762 Most Cited Cases

Laches is rarely applied in the zoning context except in the clearest and most compelling circumstances.

[9] Zoning and Planning 642
414k642 Most Cited Cases

While the Court of Appeals gives deference to the Board of Zoning Adjustment's findings with respect to laches, the question whether the facts, taken together, are sufficient to sustain the defense of laches is one of law to be answered de novo by the appellate court.

[10] Equity 67

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150k67 Most Cited Cases

To determine the validity of a laches defense, the Court of Appeals looks to the entire course of events.

[11] Equity 72(1)
150k72(1) Most Cited Cases

Laches is not a valid defense, unless the defendant has been prejudiced by delay and that delay was unreasonable.

[12] Equity 84
150k84 Most Cited Cases

In the absence of an analogous statute of limitations, the party asserting laches has the burden of establishing that the defendant has been prejudiced by delay and that delay was unreasonable.

[13] Zoning and Planning 442
414k442 Most Cited Cases

Neighbor's delay of several months before appealing building permits for homeowner's addition and garage renovation was not unreasonable, and, thus, laches did not bar appeal to Board of Zoning Adjustment; the delay resulted from the fact that the homeowner applied for separate building permits for each component of the construction on his property.

[14] Estoppel 52(5)
156k52(5) Most Cited Cases

Application of estoppel is limited to situations when the equities are strongly in favor of the party invoking the doctrine.

[15] Zoning and Planning 377
414k377 Most Cited Cases

To make out a case of estoppel barring neighbor's appeal of building permits issued to homeowner, homeowner needed to show that: (1) he acted in good faith, (2) he acted on affirmative acts of the Department of Consumer and Regulatory Affairs, (3) he made expensive and permanent improvements in reliance thereon, and (4) the equities strongly favored him.

[16] Zoning and Planning 377
414k377 Most Cited Cases

Homeowner did not act in good faith in presenting the proposed renovations to his property in piecemeal fashion, in demolishing his old garage and constructing a new garage without proper permits, or in building a new garage that was larger than the approved garage addition, and, thus, neighbor was not estopped from appealing issuance of building permits.

[17] Zoning and Planning 385
414k385 Most Cited Cases

Evidence supported conclusion of the Board of Zoning Adjustment that zoning administrator erroneously issued building permits for rear addition and garage in Wesley Heights Overlay District; the work increased nonconformity with respect to setbacks and lot occupancy, and the larger garage would accommodate two cars. D.C. Mun.Regs. tit. 11, § 2117.8(b, c).

[18] Zoning and Planning 605
414k605 Most Cited Cases

[18] Zoning and Planning 703
414k703 Most Cited Cases

In reviewing a decision of the Board of Zoning Adjustment, the Court of Appeals must determine whether (1) the agency has made a finding of fact on each material contested issue of fact; (2) substantial evidence of record supports each finding; and (3) conclusions legally sufficient to support the decision flow rationally from the findings.

[19] Zoning and Planning 618
414k618 Most Cited Cases

The Court of Appeals cannot substitute its judgment for that of the Board of Zoning Adjustment.

***965** Maureen E. Dwyer, with whom Paul J. Kiernan, Washington, was on the brief, for petitioner.

***966** Charles L. Reischel, Deputy Corporation Counsel, filed a first and second statement in lieu of brief.

Before SCHWELB, REID, and WASHINGTON, Associate Judges.

REID, Associate Judge:

This case concerns a challenge to the Zoning Administrator's issuance of several construction

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permits regarding petitioner Charles Sisson's renovation of his home and garage. Mildred Crary, Mr. Sisson's neighbor, appealed the issuance of the permits to the Board of Zoning Adjustment ("BZA"), which ruled in her favor. [FN1] Mr. Sisson primarily contends that Ms. Crary's BZA appeal is jurisdictionally and procedurally barred because of untimeliness and laches. He also contends that the BZA erred with respect to its decision on the merits. We affirm the decision of the BZA, which (a) denied Mr. Sisson's motion to dismiss Ms. Crary's appeal; and (b) found that the Zoning Administrator erred by issuing the building permits to Mr. Sisson.

FN1. Ms. Crary did not file an appellate brief in this case.

FACTUAL SUMMARY

Responding to Mr. Sisson's requests, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") issued five building permits to him between January 29, 1998, and October 5, 1998, covering a rear two-story addition, the garage, and the front porch. [FN2] Mr. Sisson's home is located in the Northwest quadrant of the District of Columbia, within the Wesley Heights Overlay District ("WHOD"). Residential properties within the WHOD are subject to particularized zoning regulations.

FN2. In actuality, the Department issued a sixth permit to Mr. Sisson on October 11, 2000, although that permit is not before the court for review at this time.

The BZA made extensive factual findings regarding Mr. Sisson's permit applications and the regulatory requirements for the issuance of the requested permits. Although Mr. Sisson's property is actually zoned as WHOD/R-1-A, his permit applications generally were reviewed erroneously as R-1-A or R-1-B, rather than as WHOD/R-1-A. [FN3] Furthermore, Mr. Sisson's piecemeal application process and his tendency to complete, or substantially complete, work before obtaining a permit made it difficult to determine the full scope of the renovation project.

FN3. The R-1-A and WHOD/R-1-A zoning classifications specified requirements for minimum lot area, minimum lot width, lot occupancy, floor area ratio, minimum front yard, minimum rear yard, minimum side yard, and off-street parking; and the R-1-A and WHOD/R-1-A classifications contained different requirements for lot occupancy, floor area ratio, and minimum front yard. The applicable zoning requirements for Mr. Sisson's renovation had to be considered in light of the existing dimensions of his home and garage.

The first permit issued by DCRA in response to Mr. Sisson's request, dated January 29, 1998, related to a proposed "two-story addition" to the rear of the home. This permit application apparently was examined under the R-1-B zoning classification instead of the WHOD/R-1-A regulations. The BZA found that:

> Plans submitted by [Mr. Sisson] as part of his application for the first permit did not reflect all of the construction work that [he] planned to perform at the site. [His] project was developed in a piecemeal manner and the various applications were often incomplete or otherwise misleading in that they did not always reflect [Mr. Sisson's] plans for the garage, rear addition, and front porch consistently and accurately.

***967** The second permit issued by DCRA, dated February 9, 1998, concerned an addition to Mr. Sisson's garage. The permit was issued pursuant to the R-1-A, rather than the WHOD/R-1-A regulations. The BZA's factual findings establish that "the second permit authorized an addition to an existing garage"; Mr. Sisson "demolished [the existing garage] without authorization"; and constructed a new garage "that was larger than the approved garage addition."

A third permit for the construction of a new garage, dated May 27, 1998, replaced the February 1998 permit, and "was issued after the new garage was already substantially completed." Moreover, "[t]he large size of the new garage also exceeded the dimensions allowed by the third building permit." [FN4]

FN4. A new permit was required when structural impediments prevented Mr. Sisson from completing the addition to the garage as originally planned. After discovering the structural problem, however, Mr. Sisson continued construction without first obtaining a new permit. When the DCRA

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> received Ms. Crary's complaint about Mr. Sisson's construction, an investigation was conducted, resulting in a Stop Work Order.

DCRA issued a fourth permit, dated August 17, 1998, to repair a roof allegedly situated over Mr. Sisson's porch. The permit was issued pursuant to the R-1-B zoning regulations, rather than the appropriate WHOD/R-1-A regulations. In addition, even though this permit covered repairs to an existing porch roof, "at the time the permit was issued, the porch was open and did not have a roof." The fifth and final permit, dated October 5, 1998, was issued to build a "new porch roof." In this court, "Mr. Sisson concedes that the BZA did not commit reversible error in finding that the two front porch permits (August and October 1998) were not appropriately issued ... [and does] not contest[ ] the validity of BZA's rejection of the front porch permits."

Ms. Crary filed her BZA appeal on September 18, 1998, approximately two weeks prior to the issuance of the fifth and final permit in this case. In response to Mr. Sisson's contention that Ms. Crary's appeal was barred by untimeliness, the BZA stated:

> The Board concludes that the Appeal was timely with respect to all five permits. [Mr. Sisson] submitted five separate applications for building permits that all related to work performed on a single property. Because of the cumulative, piecemeal nature of the applications, the full extent of [Mr. Sisson's] construction project could not be discerned as each individual permit was issued and therefore they must be considered as a whole.... The Board is not persuaded that the first permit put [Ms. Crary] on notice of all the work to be done on [Mr. Sisson's] property or, therefore, that the work allegedly violated the Zoning Regulations.
>
> Other factors also support our conclusion that [Ms. Crary] was not "chargeable with notice" as soon as the first permit was issued. [Mr. Sisson's] various permit applications contained errors of omission or were otherwise misleading in that they did not reflect all existing and planned improvements accurately and consistently.... Because of these errors, zoning violations arising from the failure to comply with lot occupancy and setback requirements of the Wesley Heights overlay, in particular, were not apparent until the work was substantially completed on [Mr. Sisson's] property. Moreover, some work was performed beyond the scope of the permit, as with the demolition of the existing garage and the construction of a new garage larger than the dimensions specified on the permit, and two of the permits (the ***968** third and fifth) were issued for work that was undertaken prior to receiving the permits. Therefore, the Board concludes that [Ms. Crary] was not chargeable with notice of the entire scope of work performed at [Mr. Sisson's] property until all of the permits were issued. [FN5]

> FN5. Both the Zoning Administrator and Ms. Crary's attorney had difficulty locating the third and fourth permit in DCRA's records. In fact, Ms. Crary did not locate the third permit until January 1999.

With respect to Mr. Sisson's argument regarding laches, the BZA declared: "Any delay in filing the appeal was not unreasonable but resulted from the fact that [Mr. Sisson] applied for separate building permits for each component of the construction on his property." Thus, there was no "unexcused delay." As for the merits of Ms. Crary's Appeal, the BZA asserted, in part:

> The Board concludes that the work performed on [Mr. Sisson's] property increased its nonconforming aspect with respect to setbacks and lot occupancy.
>
> As [the Zoning Administrator] acknowledged at the public hearing, the permits for the garage should not have been issued if the garage did not provide access in conformance with the zoning regulations. The two-car garage [which Mr. Sisson constructed] is accessible only through an easement that, at a width of eight feet, is narrower than the minimum width of 14 feet specified in the zoning regulations for a driveway with two-way circulation serving a parking space.
>
> The Board concludes that the Zoning Administrator erred in issuing the five building permits to [Mr. Sisson]. The Zoning Administrator's decisions were not based on complete and accurate information about [Mr. Sisson's] property, reflecting all existing and planned improvements. The zoning Administrator also failed to apply the correct zoning classification, which resulted in the issuance of permits that did not conform to applicable zoning provisions, especially the Wesley Heights Overlay District, in several material respects. The violations stemming from erroneously issued permits were compounded in this case by the fact that some work, with respect to the garage and front porch, was not performed strictly in compliance with the permits.

Ms. Crary filed her appeal on September 18, 1998, prior to the issuance of the fifth permit on October 5,

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1998, for a new porch roof. At a February 17, 1999, hearing, Ms. Crary sought to amend her BZA appeal to include two permits not addressed in her original notice of appeal. The BZA granted the amendment.

ANALYSIS

[1][2][3] Mr. Sisson continues to press his jurisdictional and procedural arguments in this court. In addition, he contends that his new garage and the two-story rear addition to his home do not violate the zoning regulations. "We accord great deference to an agency's interpretation of its own administrative regulations, and we will uphold that construction unless clearly erroneous or inconsistent with the regulations.... Moreover, the agency's judgment ... is entitled to additional deference [where] it was interpreting its own internal rule of procedure rather than the Zoning Regulations." *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n,* 431 A.2d 560, 565 (D.C.1981) (citations and references omitted); *see also, Waste Mgmt. of Md., Inc. v. District of Columbia Bd. of Zoning Adjustment,* 775 A.2d 1117, 1122 (D.C.2001) (citing *Goto v. District of Columbia Bd. of Zoning Adjustment,* 423 A.2d 917, 924 (D.C.1980) (citations ***969** omitted)). However, we are required to "[t]o hold unlawful and set aside any action or findings and conclusions found to be ... [a]rbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; ... [or] in excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights." D.C.Code § 2-510(a)(3)(A),(C) (2001). Furthermore, "[t]he timely filing of an appeal with the BZA is mandatory and jurisdictional." *Mendelson v. District of Columbia Bd. of Zoning Adjustment,* 645 A.2d 1090, 1093 (D.C.1994) (referencing *Woodley Park Cmty. Ass'n v. District of Columbia Bd. of Zoning Adjustment,* 490 A.2d 628, 635 (D.C.1985)) (other citations omitted).

[4][5] We turn first to Mr. Sisson's argument that the BZA should have dismissed Ms. Crary's appeal on the ground that it was untimely. The underlying events critical to this issue occurred around 1998. In 1998, BZA regulations required a "timely" appeal. While there was no time limitation specified in statute or regulation, our case law generally held that the filing had to be within a "reasonable period" after the appellant was chargeable with notice of the decision that was the subject of the appeal. As this Court said in *Woodley Park Cmty. Ass'n, supra,* "[b]ecause the rules of the BZA adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely." [FN6] 490 A.2d at 636 (citation and references omitted). More recently, we have stated that "[a]t least in the absence of exceptional circumstances substantially impairing the *ability* of an aggrieved party to appeal--circumstances outside the party's control--we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness." *Waste Mgmt. of Md., supra,* 775 A.2d at 1122 (emphasis in the original).

FN6. The applicable BZA rule stated:
> Any person aggrieved by any order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations, may file a timely appeal with the Board as may be provided by the Board.

11 DCMR § 3315.2 (1995). This provision was recodified in 1999 as 11 DCMR § 3112.2 (1999), 46 D.C.Reg. 7900 (1999). A notice of proposed rulemaking modifying this provision was published on May 24, 2002, 49 D.C.Reg. 4884 (2002), but apparently has not yet become final. The proposed rule would require an appeal to be filed "within sixty days (60) from the date the person appealing ... had notice or knowledge of the decision complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier." 49 D.C.Reg. at 4884. However, it also states:
> The [BZA] may extend the sixty (60) day deadline for the filing of an appeal only if the appellant demonstrates that: (1) There are exceptional circumstances that are outside of the appellant's control and that could not have been reasonably anticipated that substantially impaired the appellant's ability to file an appeal to the Board; and (2) The extension of time will not prejudice the parties to the appeal....

49 D.C.Reg. at 4885.

[6] Ms. Crary's case, as the BZA implicitly determined, falls under the principle of "exceptional circumstances substantially impairing the *ability* of an aggrieved party to appeal--circumstances outside of the party's control." *Id.* Application of this principle supports the Board's conclusion that the timing of Ms. Crary's BZA appeal was not unreasonable, precisely because circumstances

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beyond her control impacted the timeliness of her filing. As the BZA determined, "[b]ecause of the cumulative, piecemeal nature of the applications, the full extent of [Mr. Sisson's] construction ***970** project could not be discerned as each individual permit was issued and therefore they must be considered as a whole." Thus, "[Ms. Crary] was not chargeable with notice of the entire scope of work performed at [Mr. Sisson's] property until all of the permits were issued." The factual record supports this conclusion.

Not only were most of the permits issued under the wrong zoning classification, but each of the individual permits failed to reflect the entire scope of Mr. Sisson's proposed renovations. The first permit, issued in January 1998, covered a proposed two-story addition to Mr. Sisson's home, but did not authorize any garage or front porch modifications. The second permit, relating only to the garage construction, contained information that was not entirely consistent with that provided in conjunction with the first permit. Indeed, during the hearing on Ms. Crary's appeal, the BZA questioned Mr. Sisson at length about relevant omissions in his permit application. Those omissions related to the overall construction renovations at his home. Ultimately, the District issued a Stop Work Order when it appeared that Mr. Sisson's renovations did not comport with the permit issued to him by the DCRA. In fact, although his "permit authorized an addition to an existing garage," Mr. Sisson "demolished [the existing garage] without authorization," and ultimately constructed a new garage, for which he had no permit, "that was larger than the approved garage addition." Mr. Sisson then applied for a new permit relating to the garage after the District issued the Stop Work Order. He obtained the secondary garage permit, the third of the five, on May 27, 1998, at a time when the new garage was substantially complete. In fact, even the secondary permit raises questions, as evidenced by discrepancies between the permit itself and the actual construction of the garage, particularly with respect to its physical location. While the secondary garage permit authorized a "[n]ew garage to be located on same spot as previous garage," when questioned directly about this issue by the Vice Chair of the BZA, Mr. Sisson confirmed very little other than that the old and new garages shared a common wall. As to the porch, Mr. Sisson concedes that the fourth and fifth permits at issue in this case "were not appropriately issued."

Mr. Sisson argues that this court's approach in *Woodley Park Cmty. Ass'n, supra,* should control the timing of Ms. Crary's appeal to the BZA in this case, and that under that decision, her appeal was untimely. There, as in Mr. Sisson's case, the appellants before the BZA challenged permits issued on separate dates concerning different aspects of the relevant construction project, but did not file separate BZA appeals at the time each permit was issued. Rather than assessing the timeliness question in terms of the cumulative nature of the hotel project, however, this court analyzed the timeliness of the appeal on the issues of "height, setback, and accessory use" as a discrete matter, separate and apart from the timeliness of the challenge relating to parking issues. Mr. Sisson urges the court to adopt the *Woodley Park* approach in his case, rather than the analysis followed by the BZA in this case.

Significantly, "[t]his court is not to substitute its judgment for that of the agency, and ... the decision of the BZA will be upheld provided there is a rational basis for it." *Gladden v. District of Columbia Bd. of Zoning Adjustment,* 659 A.2d 249, 253 (D.C.1995) (quotation omitted). Moreover, *Woodley Park* does not compel a decision different from that reached by the BZA, because it is distinguishable. We note first that the issue here pertains to renovations on private residential property and a challenge by a single individual, whereas *Woodley Park* involved the construction ***971** of a hotel and a challenge by a community association on other grounds. Furthermore, the parties in *Woodley Park* engaged in negotiations through a task force on which the Woodley Park Community Association was represented. The negotiations lasted for many months, during which the hotel construction project was discussed at length. Consequently, the negotiations provided the BZA appellants ample opportunity to become thoroughly informed about and to raise objections relating to height, setback, and accessory use. "Thus, by October 6, 1978--the date the full building permit was issued--the [appellants before the BZA] had full actual notice of the aspects of the building project relating to height, setback, and use. Nevertheless, one year elapsed between the issuance of the building permit and the filing of the appeal on October 12, 1979." *Woodley Park Cmty. Ass'n, supra,* 490 A.2d at 637. Under those particular circumstances, the court concluded that the challenge relating to height, setback, and use was not timely filed.

Unlike the facts that gave rise to the court's approach to the multi-permit question in *Woodley Park,* Mr. Sisson did not engage in a thorough negotiation process during which Ms. Crary would have been informed about all of Mr. Sisson's construction plans on his property. In short, there was no lengthy, intense and extensive effort by Mr. Sisson to

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collaborate with Ms. Crary and the local neighborhood associations on his construction project. In contrast, the negotiation process in *Woodley Park* rendered "unreasonable" the timing of the appeal as to height, setback, and use. [FN7]

> FN7. We reiterate that the Court decided *Woodley Park* when the "reasonableness" test controlled the jurisdictional timeliness question.

Given the factual history of Mr. Sisson's permit applications, which lacked the kind of persistent and close collaboration with neighbors that was present in *Woodley Park*, the BZA reasonably concluded:

> Plans submitted by [Mr. Sisson] as part of his application for the first permit did not reflect all of the construction work that [he] planned to perform at the site. [Mr. Sisson's] project was developed in a piecemeal manner and the various applications were often incomplete or otherwise misleading in that they did not always reflect [his] plans for the garage, rear addition, and front porch consistently and accurately.

Significantly, the problematic permit history surrounding Mr. Sisson's renovations, coupled with the fact that some of the permits issued by the BZA were faulty on their face, constitute the very circumstances that were beyond Ms. Crary's control, *see Waste Mgmt. of Md., supra*, 775 A.2d at 1122, and make applicable the "extraordinary circumstances" exception in *Waste Mgmt.* Consequently, we affirm the BZA decision that Ms. Crary's appeal was timely.

[7][8][9] We turn next to Mr. Sisson's argument that Ms. Crary's appeal was procedurally barred by laches and estoppel. At the outset, we reiterate a fundamental notion that has controlled our treatment of these doctrines in prior cases: "[T]he defenses of estoppel and laches are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws." *Beins v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 122, 126 (D.C.1990) (citing *Goto, supra*, 423 A.2d at 925) (other citation omitted). Laches "is rarely applied [in the zoning context] 'except in the clearest and most compelling circumstances.' " *Id.* (quoting *Wieck v. District of Columbia Bd. of Zoning Adjustment*, 383 A.2d 7, 11 (D.C.1978) (citation omitted)). While we give deference ***972** to the BZA's findings with respect to laches, " '[w]hether the facts, taken together, are sufficient to sustain the defense of laches ... is a question of law,' to be answered *de novo* by the appellate court." *Id.* (quoting *American Univ. Park Citizens Ass'n v. Burka*, 400 A.2d 737, 741 (D.C.1979) (alterations in the original)).

[10][11][12] "[T]o determine the validity of a laches defense, we look to the entire course of events." *Goto, supra*, 423 A.2d at 925 n. 16 (reference and citation omitted). "Laches will not provide a valid defense, however, unless two tests are met: the defendant has been prejudiced by delay and that delay was unreasonable. In the absence of an analogous statute of limitations, the party asserting the defense has the burden of establishing *both elements*." *American Univ. Park Citizens Ass'n, supra*, 400 A.2d at 740 (citations omitted) (emphasis added).

[13] The record before us does not reflect "the clearest and most compelling circumstance[ ]" requiring the application of the laches doctrine. *Beins, supra*, 572 A.2d at 126. Indeed, we agree with the BZA's conclusion that the first element of laches, unreasonable delay, is not present in this case. [FN8] As "the entire course of events," *see Goto, supra*, 423 A.2d at 925 n. 16, and the BZA factual record in the case show, the BZA properly determined that: "Any delay in filing the appeal was not unreasonable but resulted from the fact that [Mr. Sisson] applied for separate building permits for each component of the construction on his property." Consequently, we affirm the BZA's decision that the doctrine of laches does not apply in this case.

> FN8. Since the first element of the laches doctrine is not satisfied, we need not address the second.

[14][15] We have also previously set forth the elements of estoppel, while noting that the doctrine is "not judicially favored," *Wieck, supra*, 383 A.2d at 10 (references and citations omitted), and that its application is " 'limited [to] situations when the equities are strongly in favor of the party invoking the doctrine.' " *Id.* (quoting *District of Columbia v. Stewart*, 278 A.2d 117, 119 (D.C.1971) (citation and footnote omitted)). To make out a case of estoppel Mr. Sisson must show that: "(1) acting in good faith, (2) on affirmative acts of [the DCRA], (3)[he] ma[de] expensive and permanent improvements in reliance thereon, and (4) the equities strongly favor [him]." *Wieck, supra*, 383 A.2d at 11 (referencing *District of Columbia v. Cahill*, 60 App.D.C. 342, 344, 54 F.2d 453, 454-55 (1931)).

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[16] On the record before us, we cannot say that Mr. Sisson acted in good faith in presenting the proposed renovations to his property in piecemeal fashion, or in demolishing his old garage and proceeding to construct a new garage without proper permits, or in building a new garage "that was larger than the approved garage addition." Nor can we conclude that Mr. Sisson initially relied on DCRA-issued permits that authorized him to demolish his existing garage and construct a new garage of larger dimensions than those approved for a garage addition. And, the record does not support Mr. Sisson's implicit assertion that the equities strongly favor him in this case. Thus, we see no reason to disturb the BZA's decision not to apply the estoppel doctrine to bar Ms. Crary's appeal. [FN9]

> FN9. Furthermore, as we indicated in *Goto, supra,* 423 A.2d at 925 n. 15, and reiterated in *Rafferty v. District of Columbia Zoning Comm'n,* 583 A.2d 169, 176 (D.C.1990) (*Rafferty I*), "[i]t is not clear that estoppel will bar a case brought by a neighboring landowner; arguably, that defense may be asserted only against the municipality which rendered the decision on which a party relied." 423 A.2d at 925, n. 15 (references omitted).

***973** [17][18] Finally, Mr. Sisson argues that: "Even if the appeal were not untimely and otherwise barred by the doctrines of laches and estoppel, the testimony before the [BZA] did not support the conclusion that the rear addition and the garage were in violation of the regulation[s] applicable in the [WHOD/R-1-A]." "In reviewing a BZA decision, we must determine '(1) whether the agency has made a finding of fact on each material contested issue of fact; (2) whether substantial evidence of record supports each finding; and (3) whether conclusions legally sufficient to support the decision flow rationally from the findings.' " *Mendelson v. District of Columbia Bd. of Zoning Adjustment, supra,* 645 A.2d at 1094 (quoting *Glenbrook Rd. Ass'n v. District of Columbia Bd. of Zoning Adjustment,* 605 A.2d 22, 31 (D.C.1992) (quoting *Levy v. District of Columbia Bd. of Zoning Adjustment,* 570 A.2d 739, 746 (D.C.1990))) (other citations omitted).

We are satisfied that: (1) the Board's conclusion--that the Zoning Administrator erred by issuing the five permits that are the subject of this case--is supported by its material findings of fact and substantial evidence of record, (2) and that its legal conclusion flows rationally from its findings. Not all of Mr. Sisson's permit applications were scrutinized under the WHOD/R- 1-A regulations. As the BZA indicated:

> A more significant oversight [of the Zoning Administrator] was the failure to recognize that [Mr. Sisson's] property is located within the Wesley Heights Overlay District. Thus, the more stringent WHOD provisions were not applied, and permits were issued that purported to allow work that does not comply with relevant lot occupancy and setback requirements. The oversight was compounded by the fact that the full scope of the work planned for [Mr. Sisson's] property was not depicted consistently and accurately on all permit applications, thus precluding an assessment of each individual permit application within the context of all existing and planned improvements.

The BZA also recognized that "[Mr. Sisson's] property is nonconforming because its lot area, lot width, and setbacks are smaller than the minimums prescribed in the WHOD/R-1-A zone, and because its lot occupancy is higher than the prescribed maximum." This meant, as the BZA found, "that the work performed on [Mr. Sisson's] property increased its nonconforming aspect with respect to setbacks and lot occupancy."

[19] Despite these BZA conclusions, Mr. Sisson asserts that the BZA erred in its application of the regulation set forth at 11 DCMR § 2117.8, [FN10] and in its finding of ***974** fact No. 14. [FN11] On the record before us, we cannot say that the BZA erroneously applied its regulation by citing subsection (c) of 11 DCMR 2117.8, rather than subsection (b) in accordance with Mr. Sisson's view. Subsection (c) applies to a "driveway ... which serves more than one (1) parking space" and which involves "two-way circulation." The Zoning Administrator's testimony before the BZA showed clear concern for ingress and egress as well as access to and from a public street or alley through a recorded easement. In addition, the Zoning Administrator recognized that the larger garage would accommodate two cars, and that there would be two-way circulation to and from Mr. Sisson's garage. We defer to an agency's reasonable interpretation of its regulations that is consistent with its governing statute. *See Dupont Circle Citizens Ass'n, supra,* 431 A.2d at 565. Given the language of the regulation and the Zoning Administrator's testimony at the BZA hearing, if we decided that subsection (b) of 11 DCMR § 2117.8 applied instead of subsection (c), we would be substituting our judgment for that of the BZA. That we cannot do. *See Gladden, supra,* 659 A.2d at 253.

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FN10. Section 2117.8 of 11 DCMR provides in pertinent part:

A driveway which provides access to required parking spaces shall meet the following standards:

....

(b) A driveway serving a one-family dwelling or flat or which otherwise serves only one parking space shall be not less than seven feet (7 ft.) in width;

(c) A driveway serving any use other than a one-family dwelling or flat, *or* which serves more than (1) parking space shall be as follows:

(1) Not less than twenty-five feet (25 ft.) from a street intersection as measured from the intersection of the curb line extended;

(2) Not less than twelve feet (12 ft.) in width if designed for on[e]-way circulation or fourteen feet (14 ft.) if designed for two-way circulation; and

(3) Not more than twenty-five feet (25 ft.) in width.

11 DCMR 2117.8 (1995) (emphasis added).

FN11. Finding of fact No. 14 stated:

A driveway providing access to required parking spaces must meet certain standards, including that a driveway serving more than one parking space must be at least 12 feet wide if designed for one-way circulation or at least 14 feet wide if designed for two-way circulation. 11 DCMR § 2117.8.

Based upon our review of the record before us, the BZA's penultimate conclusion flows rationally from its findings and is amply supported by evidence of record:

> The Board concludes that the Zoning Administrator erred in issuing the five building permits to [Mr. Sisson]. The Zoning Administrator's decisions were not based on complete and accurate information about [Mr. Sisson's] property, reflecting all existing and planned improvements. The Zoning Administrator also failed to apply the correct zoning classification, which resulted in the issuance of permits that did not conform to applicable zoning provisions, especially the Wesley Heights Overlay District, in several material respects. The violations stemming from erroneously issued permits were compounded in this case by the fact that some work, with respect to the garage and front porch, was not performed strictly in compliance with the permits.

Consequently, we do not have grounds to reverse the BZA regarding its determination on the merits of Ms. Crary's appeal.

Accordingly, for the foregoing reasons, we affirm the Order of the Board of Zoning Adjustment.

So ordered.

805 A.2d 964

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C

District of Columbia Court of Appeals.

GEORGETOWN RESIDENTS ALLIANCE, Petitioner
v.
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent
Georgetown University, Intervenor.

No. 98-AA-1819.

Argued Dec. 6, 2000.
Decided Feb. 6, 2003.

Neighborhood group petitioned for review of a decision of the Board of Zoning Adjustment (BZA) upholding a decision of the Department of Consumer and Regulatory Affairs (DCRA) to allow university to convert one of its buildings into a child development center, in a residential district designed essentially for row dwellings. The Court of Appeals, Terry, J., held that: (1) the child development center was an accessory use to uses permitted under campus plan for which university had already received special exception, and thus, an additional special exception was not required, and (2) neighborhood group's appeal to BZA, regarding issuance of building **permits** for installation of play equipment, shed, and fence on vacant lots adjacent to proposed child development center, was untimely.

Affirmed.

West Headnotes

[1] **Zoning and Planning** 605
414k605 Most Cited Cases

[1] **Zoning and Planning** 610
414k610 Most Cited Cases

Beyond its substantial evidence review of the Board of Zoning Adjustment's (BZA) findings, the Court of Appeals' review of a BZA decision is limited to a determination of whether the decision is arbitrary, capricious, or otherwise not in accordance with the law. D.C. Official Code, 2001 Ed. § 2-509(e).

[2] **Zoning and Planning** 231
414k231 Most Cited Cases

The Court of Appeals defers to the Board of Zoning Adjustment's (BZA) interpretation of the zoning regulations and must uphold that interpretation unless it is plainly erroneous or inconsistent with the regulations.

[3] **Zoning and Planning** 302
414k302 Most Cited Cases

[3] **Zoning and Planning** 508
414k508 Most Cited Cases

Proposed child development center was accessory use to uses permitted under campus plan for which university had already received special exception in residential district designed essentially for row dwellings, and thus, an additional special exception was not required; campus plan approved use of building as "mixed use main campus education/educational support," child development center was proposed for use exclusively by university employees and students, child care centers were customarily incidental to a functioning college or university, and no additional construction was proposed. D.C. Mun.Regs. tit. 11, § § 205.1, 210, 210.4(d), 300.3(a), 320.3(a).

[4] **Zoning and Planning** 508
414k508 Most Cited Cases

If a specific land use has already been approved by the grant of a special exception for use as a college or university in a residential district, and a proposed use as a child development center does not change that use or involve construction of additional buildings, then a second special exception is not required. D.C. Mun.Regs. tit. 11, § § 205.1, 210.

[5] **Zoning and Planning** 508
414k508 Most Cited Cases

"Lot" meant entire university, rather than merely the record lot on which proposed child development center would be located, for purposes of determining whether the proposed child development center was an accessory use to uses permitted under campus plan for which university had already received special exception in residential district designed essentially for row dwellings, so that an additional special exception would not be required. D.C. Mun.Regs. tit. 11, § § 199, 205.1, 210, 300.3(a), 320.3(a).

[6] **Zoning and Planning** 358.1
414k358.1 Most Cited Cases

The timely filing of an appeal with the Board of

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Zoning Adjustment (BZA) is mandatory and jurisdictional.

[7] Zoning and Planning 358.1
414k358.1 Most Cited Cases

Because the rules of the Board of Zoning Adjustment (BZA) contain no specific time limit on appeals to the BZA, a standard of reasonableness is applied in determining whether an appeal is timely.

[8] Zoning and Planning 358.1
414k358.1 Most Cited Cases

Under the reasonableness standard for determining the timeliness of an appeal to the Board of Zoning Adjustment (BZA), the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of.

[9] Zoning and Planning 231
414k231 Most Cited Cases

The Board of Zoning Adjustment's (BZA) conclusion with regard to the timeliness of an appeal to the BZA is entitled to special deference because the agency is interpreting its own internal rules of procedure.

[10] Zoning and Planning 442
414k442 Most Cited Cases

Neighborhood group's appeal, to Board of Zoning Adjustment (BZA), of Department of Consumer and Regulatory Affairs' (DCRA) issuance of building **permits** to university, for installation of play equipment, shed, and fence on vacant lots adjacent to proposed child development center, was untimely; neighborhood group knew the **permits** had been issued but it did not file its appeal until seven months after **permits** were issued in final form.

[11] Zoning and Planning 444
414k444 Most Cited Cases

Written recommendations of two advisory neighborhood commissions (ANC) which did not have jurisdiction over university site were not entitled to be given **great weight** by Board of Zoning Adjustment (BZA) when Board reviewed Department of Consumer and Regulatory Affairs' (DCRA) decision to allow university to convert one of its buildings into child development center in residential district designed essentially for row dwellings; university was not near areas over which ANCs had jurisdiction, and Board did not specifically solicit recommendations from ANCs, though ANCs had arguable interest in any precedent established by university's case. D.C. Official Code, 2001 Ed. § 1-309.10(d)(3)(A).

[12] Zoning and Planning 361
414k361 Most Cited Cases

Board of Zoning Adjustment (BZA) complied with statutory requirement that an agency make findings of fact supporting its ultimate conclusions of law, where Board made findings with regard to every issue that was contested and that Board was obliged to resolve under zoning regulations. D.C. Official Code, 2001 Ed. § 2-509(e).

***43** Don W. Crockett, for petitioner.

Maureen E. Dwyer, with whom Paul J. Kiernan, Washington, DC, was on the brief, for intervenor.

Robert R. Rigsby, Corporation Counsel at the time the briefs were filed, and Charles L. Reischel, Deputy Corporation Counsel, filed a statement in lieu of brief for respondent.

Before TERRY, RUIZ, and REID, Associate Judges.

TERRY, Associate Judge:

Petitioner, the Georgetown Residents Alliance ("GRA"), seeks review of an order of the Board of Zoning Adjustment ("BZA") which upheld a decision of the Department of Consumer and Regulatory Affairs ("DCRA") to allow Georgetown University to convert one of its buildings into a child development center. The GRA offers four arguments for reversal. First, it contends that the BZA wrongly interpreted the zoning regulations when it ruled that building **permits** for the center could issue without a special exception from the BZA; second, it argues that the BZA finding that the GRA did not timely appeal from the issuance of two **permits** was not supported by substantial evidence; third, it maintains that the BZA was required to give **"great weight"** to the recommendations of certain Advisory Neighborhood Commissions and failed to do so; and fourth, it claims that the BZA order was defective because it lacked actual findings of fact, in violation of D.C.Code § 1-1509(e) (1999). [FN1] We reject all of these arguments and affirm the BZA decision.

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FN1. Recodified as D.C.Code § 2-509(e) (2001).

I

Georgetown University sought to convert one of its buildings, Poulton Hall, into a child development center for approximately sixty children of the University's faculty, staff, and students. The proposed location of the center was on lot 835, at the corner of 37th and P Streets, N.W., and two adjacent vacant lots, 161 and 162. The proposal did not require any physical expansion of Poulton Hall or construction of any new buildings, but it did call for renovations to the building on lot 835 and for the installation of play equipment, a shed, and a fence on lots 161 and 162.

All three lots are in an R-3 zoning district [FN2] and are within the campus boundaries outlined in the BZA-approved 1990 Campus Plan for the University. [FN3] Under ***44** the 1990 Campus Plan, Poulton Hall was approved for use as "mixed use main campus education/educational support." In the past, Poulton Hall had been used for classrooms, offices, a post office, a theater, and, most recently, a printing shop.

FN2. R-3 districts are residential districts "designed essentially for row dwellings." *See* 11 DCMR § § 105.1(a)(3), 320.1 (1995).

FN3. On October 12, 1990, the BZA unanimously approved Georgetown's Bicentennial Campus Plan in BZA Order No. 15302.
After the instant petition for review was filed, the BZA voted to approve Georgetown University's Campus Plan 2000 after public notice and special exception hearings as required by the zoning regulations. *See* 11 DCMR § 210. The Campus Plan 2000 includes the designation of Poulton Hall as a child development center and makes specific reference to a child development center as one of the permitted accessory uses under the University's "academic/administrative" use category. The GRA fully participated as a party in the hearings on the new Campus Plan, but raised no objection there to the use of Poulton Hall as a child development center.

In 1995 University representatives met with the DCRA's Acting Zoning Administrator to discuss the proposed child development center. The Acting Zoning Administrator agreed with the University's position that the use of Poulton Hall as a child development center would be an "accessory use" to that already approved under the 1990 Campus Plan and, as such, would not require BZA review or approval.

On May 7, 1996, Georgetown University representatives attended a meeting of Advisory Neighborhood Commission ("ANC") 2-E, which represents the contested area, and asked for the ANC's approval of the plans for the center without further proceedings before the BZA. The ANC, however, believed that the BZA had to grant a special exception before the plans could go forward, and voted unanimously to "inquire into (and protest) the omission of the zoning variance [*sic*]."

On June 26, 1996, relying on the Acting Zoning Administrator's conclusion that no BZA approval was required, the University applied to the DCRA for building **permits** to renovate Poulton Hall and for separate **permits** to erect the fence, shed, and play equipment. On August 19 a representative of the GRA attended a meeting with DCRA Director Hampton Cross to discuss certain defects in the **permit** applications and the lack of a special exception proceeding before the BZA. Mr. Cross made two rulings at that meeting: that the procedural flaws in the **permit** applications had to be corrected, and that the DCRA would not issue **permits** until the Corporation Counsel had reviewed the matter. The University continued to submit **permit** applications to the DCRA after this meeting, although the GRA understood that no **permits** would be issued until the Corporation Counsel had been consulted. Eventually, on August 28, the DCRA issued the final **permits** for construction of a fence, a shed, and play equipment on lots 161 and 162.

On December 27, 1996, Mr. Cross responded to a letter that ANC 2-E Commissioner Byrd had written to the Corporation Counsel. Mr. Cross stated that "after consulting with Corporation Counsel [and] the Acting Zoning Administrator and reviewing the concerns of all parties involved, the [DCRA] has made the decision to issue alteration and repair **permits** for the proposed Child Development Center."

On January 31, 1997, the DCRA issued the final **permits** for renovation of Poulton Hall.

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The GRA appealed to the BZA, challenging the issuance of all the **permits**. The BZA held a hearing on the matter, receiving testimony from, among others, representatives of the GRA and ANC 2-E. The BZA also heard extensive testimony from the Acting Zoning Administrator explaining the reasons for her decision. In its final written order, the BZA ruled that the use of Poulton Hall as a child development center was consistent with the previously approved 1990 Campus Plan and ***45** that "[s]ince the proposed use is intended to serve students, faculty, and staff of the University, as well as to support the teaching mission of the University, it is a proper University function and does not come within the normal zoning restrictions for a child development center in an R-3 District." The BZA also noted in its order that it and prior Zoning Administrators had approved child development centers on other university campuses in the District of Columbia without granting special exceptions. [FN4]

FN4. The BZA listed Catholic University, Howard University, American University, and Trinity College as schools for which child development centers had been approved as a matter of right. Also in the record is a copy of BZA Order No. 14082, issued February 1, 1984, which approved Catholic University's use of a portion of one of its buildings as a child care center as a matter of right.

In addition, the BZA determined that, with respect to the **permits** for lots 161 and 162, the appeal was not timely. The order went on to say that the uses on those lots were accessory uses, allowed as a matter of right on residentially zoned land, and that BZA approval was not required in any event.

The BZA concluded that the child development center did not require a special exception under 11 DCMR § 205 [FN5] because it was a permissible accessory use consistent with the approved campus plan governing the site. "As such, it is permitted under the land use category of education/educational support." [FN6]

FN5. Section 205 authorizes the BZA to grant a special exception for a child development center if certain specified conditions are met.

FN6. No stay of the BZA order was ever sought or granted. After the BZA ruled, work proceeded to completion on the child development center. According to the GRA's brief, the center has been in operation since 1998.

II

[1][2] This court must uphold the validity of the BZA's findings if they are "supported by and in accordance with ... reliable, probative, and substantial evidence." D.C.Code § 1-1509(e) (1999); [FN7] *see Citizens Ass'n of Georgetown v. District of Columbia Zoning Comm'n,* 402 A.2d 36, 41 (D.C.1979). Beyond that, our review of a BZA decision is "limited to a determination of whether the decision is arbitrary, capricious, or otherwise not in accordance with the law." *Davidson v. District of Columbia Board of Zoning Adjustment,* 617 A.2d 977, 981 (D.C.1992) (citation omitted). In addition, we defer to the BZA's interpretation of the zoning regulations and must uphold that interpretation "unless it is plainly erroneous or inconsistent with the regulations." *Glenbrook Road Ass'n v. District of Columbia Board of Zoning Adjustment,* 605 A.2d 22, 30 (D.C.1992) (citation omitted). Guided by these principles, we reject the GRA's contentions.

FN7. Recodified as D.C.Code § 2-509(e) (2001).

A. *Was a special exception required?*

[3] The GRA's main argument is that the plain and unambiguous language of the zoning regulations, specifically 11 DCMR § 205, has only one meaning: that a special exception is a prerequisite for *all* child development centers in *all* residential zones, and that the BZA therefore erred when it ruled that the **permits** could issue without a special exception because the child development center at issue was already a permissible accessory use. [FN8] We ***46** hold, to the contrary, that the BZA's conclusion was correct as a matter of law and fully consistent with the zoning regulations.

FN8. The GRA sought a special exception because of what it regards as the procedural safeguards that accompany such a

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proceeding. If a special exception were required, residents of the area adjacent to the proposed child development center would be afforded notice of the proposed use and an opportunity to be heard at a public hearing before the BZA. *See* 11 DCMR § § 3300-3399; *see generally* *Rhema Christian Center v. District of Columbia Board of Zoning Adjustment*, 515 A.2d 189, 192 (D.C.1986). The GRA does not assert that the center itself has caused it any injury; indeed, the center has been fully operational for more than four years, and the GRA has not objected to its continued use. Rather, it contends that, had a special exception been required in this case, it would have been able to offer to the BZA, at a hearing, any objections it might have had before the **permits** were issued. It is the unavailability of a hearing at which such objections could be presented that underlies the GRA's claims of error. Although there was a hearing before the BZA, it was limited to the issue of whether a special exception was required, not whether one should be granted.

11 DCMR § 205.1 provides that child development centers "shall be permitted in an [R-3] [FN9] district if approved by the [BZA] in accordance with the conditions specified in § 3108 of chapter 31 of this title, subject to the provisions of this section." Section 3108, in turn, states that the BZA may grant special exceptions for, among other things, child development centers in residentially zoned districts. Although section 205, when read in isolation, seems to require a special exception for all child development centers, the BZA ruled, in essence, that because the 1990 Campus Plan had already been approved by the grant of a special exception under section 210, [FN10] and because the child development center was a use consistent with the uses approved in that plan, a second special exception under section 205.1 was not required.

FN9. Section 205.1, which applies in R-1 districts, is incorporated by reference into the regulations for R-3 districts. *See* 11 DCMR § § 300.3(a) and 320.3(a).

FN10. Section 210 provides, *inter alia,* that a use as a college or university is permitted in a residential district after a special exception is granted by the BZA following a hearing. We note that the University's Campus Plan 2000--approved after a hearing in which the GRA participated-- designates Poulton Hall as a child development center.

[4] Reading the zoning regulations as a whole, [FN11] we agree with the general proposition advanced by the BZA and the University: that if a specific land use has already been approved by the grant of a special exception under section 210, and no change in that use or construction of additional buildings is proposed, then a second special exception under section 205 for the already approved use is not required. *See* *Levy v. District of Columbia Board of Zoning Adjustment*, 570 A.2d 739, 748-749 (D.C.1990). We agree with the University that requiring a second special exception in such a case, granted after its own separate hearing, would render the first special exception meaningless. [FN12] The real issue in this case is whether the proposed child development center was in fact a use consistent with the uses permitted under the 1990 Campus Plan, so that it can correctly be said that such a use was effectively approved in 1990.

FN11. *See* *Lange v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1058, 1061 (D.C.1979).

FN12. We emphasize, however, that a second special exception may be required for concepts that have been approved in a campus plan if new construction is to occur, if there is a change in use from that approved in the campus plan, or if the approval of a particular use in the campus plan was contingent upon obtaining further BZA approval. *See* *Citizens Coalition v. District of Columbia Board of Zoning Adjustment*, 619 A.2d 940, 943-944 (D.C.1993); *Levy*, 570 A.2d at 749.

Under the 1990 Campus Plan, Poulton Hall was approved for use as "mixed use ***47** main campus education/educational support." The BZA ruled in this case that "accessory" uses were permitted under that designation and that the child development center was such an accessory use. There are two separate questions here which we must address: first, was the use as a child development center an accessory use within the meaning of the zoning regulations, and second, is such an accessory use

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permissible under a campus plan designation of "mixed use main campus education/educational support" without additional BZA approval? We answer both questions in the affirmative.

The zoning regulations define an accessory use as "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use." 11 DCMR § 199. Section 321.1(b) of the regulations further defines an accessory use in an R-3 zone as a use "incidental to" permitted uses. The Acting Zoning Administrator and the BZA both concluded that the child development center was an accessory use to the University. At the hearing before the BZA, the Administrator testified that the center was such an accessory use because it "serve[d] ... the University population" and supported the University's educational mission. In its order the BZA held that, because the child development center would be used exclusively by University faculty, staff, and students and would "support the teaching mission of the University," it was an accessory use. The BZA also pointed out that child development centers on other university campuses in the District have been approved as a matter of right without additional BZA approval. *See* note 4, *supra.*

We have generally afforded the BZA fairly wide latitude in construing the term "accessory use," so long as its interpretation is rational and not inconsistent with the zoning regulations. [FN13] In *Citizens Coalition v. District of Columbia Board of Zoning Adjustment,* 619 A.2d 940 (D.C.1993), we upheld the BZA's conclusion that an addition to a power plant located on the Georgetown campus was an accessory use to the University. [FN14] We endorsed as reasonable the BZA's interpretation of the phrase "accessory use" to include the power plant because it was "clearly subordinate, incidental and related to the principal use of the University," *id.* at 956, and found the BZA's rationale convincing:

> Like food sold in a cafeteria to students, the energy generated by the facility, used to heat dormitories, classrooms, a hospital, and other campus buildings, would also be for the benefit of the students, and thus serve as an accessory use to the principal function of the University.
>
> *Id.* at 951.

Applying the same reasoning, we conclude that the BZA's acceptance of the ***48** child development center in this case as an accessory use was reasonable and consistent with the regulations. The center was proposed for use exclusively by University employees and students, and was thus "for the benefit" of those persons and "clearly subordinate, incidental, and related to the principal use of the University." *Id.* at 951, 956. Furthermore, substantial evidence supports the proposition that child care centers are "customarily incidental" to a functioning college or university. [FN15]

[5] The GRA argues nevertheless that this particular child care center is not an accessory use because it fails the "same lot" test set forth in the zoning regulations. *See* 11 DCMR § 199 ("a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use"); *Hilton Hotels, supra* note 13, 363 A.2d at 671 (facility not on same lot is not an

FN13. *See, e.g., National Cathedral Neighborhood Ass'n v. District of Columbia Board of Zoning Adjustment,* 753 A.2d 984 (D.C.2000) (athletic facilities deemed accessory to school's main purpose); *Dupont Circle Citizens Ass'n v. District of Columbia Board of Zoning Adjustment,* 749 A.2d 1258 (D.C.2000) (permitting accessory uses to other permitted accessory uses); *Citizens Coalition, supra* note 12 (power plant on university campus held to be an accessory use to the university); *Dietrich v. District of Columbia Board of Zoning Adjustment,* 320 A.2d 282 (D.C.1974) (high school gymnasium deemed an accessory use); *see also Hilton Hotels Corp. v. District of Columbia Board of Zoning Adjustment,* 363 A.2d 670 (D.C.1976) (laundry facility was not an accessory use to a hotel because it was not on the same lot as the hotel).

FN14. In approving Georgetown's 1990 Campus Plan, the BZA also approved the power plant in concept. However, that same order expressly required the University to submit a separate application for a special exception before constructing the plant. *Citizens Coalition,* 619 A.2d at 944.

FN15. In support of its argument that child care centers are "customarily incidental" to a university's principal use, the University submitted evidence that more than 800 colleges and universities nationwide have such centers on campus.

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accessory use). Specifically, because Poulton Hall stands on lot 835, in a residential neighborhood and not on Georgetown's main campus, which bears a different lot number in the District of Columbia land records (it is directly across the street), the GRA claims it cannot be deemed an accessory use to the University. This argument is unavailing. Both the Acting Zoning Administrator and the BZA interpreted "lot" in this context to mean the entire University, not just the record lot, for the purpose of its consideration as an accessory use. We uphold the BZA's ruling on this issue, since it is consistent with both the zoning regulations and our case law. *See* 11 DCMR § 199 ("A lot may or may not be the land so recorded on the records of the Surveyor of the District of Columbia"); *Citizens Coalition*, 619 A.2d at 955 (holding that, because the proposed power plant was on a remote part of the University campus, the "same lot" requirement for accessory uses was satisfied); *see also Georgetown Residents Alliance v. District of Columbia Board of Zoning Adjustment*, 802 A.2d 359, 366 (D.C.2002) (distinguishing between "lot" and "lot of record").

We next consider whether the BZA erred in determining that such a use was permissible under the 1990 Campus Plan designation of Poulton Hall for "mixed use education/educational support" [FN16] as a matter of right. We find no error in the BZA's conclusion that the center was covered by this designation and that BZA approval before the **permits** could issue was therefore unnecessary.

FN16. This was one of seven categories of "Future Land Use" set forth in the 1990 Campus Plan.

At the BZA hearing, the Acting Zoning Administrator testified that "the mixed use/educational use category would leave the door open for accessory uses" and that, in her opinion and in the opinion of past Zoning Administrators, when a child development center is "introduced to an existing building, [it does] not need a special exception." The BZA held that the University "did not need to amend its campus plan to establish the child development center at Poulton Hall" because it was "permitted under the land use category of education/educational support."

Nothing in the zoning regulations states explicitly whether any particular accessory use may be allowed under a campus plan without a special exception. [FN17] Our case ***49** law likewise contains no explicit discussion of the issue. In several cases we have considered the validity of BZA grants of special exceptions for accessory uses, see note 13, *supra,* and we have recognized that a special exception is necessary for accessory uses involving new construction. *See National Cathedral*, 753 A.2d at 986; *Citizens Coalition*, 619 A.2d at 947. We have also held that, under the zoning regulations, an *addition* to a university cannot be located in residential zone as a matter of right. *See Duke v. American University*, 675 A.2d 26, 27 (D.C.1996). But those cases do not discuss whether certain accessory uses, such as a child development center, are permissible as a matter of right without BZA approval. The BZA has held on prior occasions that child development centers are permitted on university campuses as a matter of right [FN18] so long as they are restricted to use by employees and students of the university. [FN19] We find nothing in the regulations that conflicts with that interpretation, at least when no new construction is involved.

FN17. The zoning regulations provide only that a campus plan must provide "[a] description of all activities conducted or to be conducted on the campus, and the capacity of all present and proposed campus development." 11 DCMR § 210.4(d).

FN18. In Zoning Commission Order No. 752, 41 D.C. Register 1201 (February 14, 1994), the Commission rejected a proposal by a member of the Council of the District of Columbia (which also had the support of several Advisory Neighborhood Commissions) that it amend applicable regulations to provide that "any relocation of a major use within or outside the campus plan, even if to a so-called matter-of-right use, be subjected to ... [BZA] review and approval."

FN19. *See* BZA Order No. 14082 (February 1, 1984).

We have also recognized that some flexibility is warranted in dealing with campus plans. *See Duke*, 675 A.2d at 28 (university not required to build law school at site previously approved by BZA); *Glenbrook Road*, 605 A.2d at 34 n. 8 (university could resume past use of a site without BZA approval). Realistically, this must be so, since

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university officials cannot predict with specificity exactly how the campus must adapt to future needs when developing a ten-year campus plan. Furthermore, the GRA has cited no case in which a college or university was required to go before the BZA for approval when it planned to change only the use of a building and no additional construction was proposed.

We therefore hold that the BZA did not err in determining that the child development center was permissible as a matter of right under the zoning regulations.

B. *Timeliness of the appeal as to lots 161 and 162*

[6][7][8][9] "The timely filing of an appeal with the BZA is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment,* 645 A.2d 1090, 1093 (D.C.1994) (citations omitted). "Because the rules of the BZA contain no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely." *Id.* (citations omitted); *see Waste Management of Maryland, Inc. v. District of Columbia Board of Zoning Adjustment,* 775 A.2d 1117, 1122 (D.C.2001). Under the reasonableness standard, "the time for filing an appeal commences when the party appealing is chargeable with notice or knowledge of the decision complained of." *Id.* (citations omitted). In addition, the BZA's conclusion with regard to the timeliness of an appeal is entitled to special deference because the agency is interpreting its own internal rules of procedure. *Id.*

[10] With these standards in mind, we find no error in the BZA's decision that the **permits** for lots 161 and 162 were not ***50** timely appealed. Those **permits** were issued in final form on August 28, 1996, and became appealable on that date. The GRA did not file its appeal with regard to those **permits** until March of 1997, approximately seven months later. Although the GRA contends that it was unaware that **permits** for these lots had issued at that time, there was substantial evidence from which the BZA could find that the GRA was "chargeable with notice" in August of 1996. *See Woodley Park Community Ass'n v. District of Columbia Board of Zoning Adjustment,* 490 A.2d 628, 636-637 (D.C.1985). Specifically, an ANC 2-E representative testified before the BZA that by August of 1996 the ANCs and the larger community were aware that the Acting Zoning Administrator had made her decision concerning the **permits** *and knew that the* ***permits*** *had been issued.* In addition, there was evidence that University representatives had appeared before ANC 2-E at least three times and had gone door-to-door to inform community residents of the decision.

On this record, and recognizing the deference we must give to the BZA's decision on the matter, we conclude that the seven-month delay from the issuance of the **permits** to the filing of an appeal was not reasonable. *See Waste Management,* 775 A.2d at 1122 (delay of "one or two months" may be reasonable (citing cases), but delay of four months probably is not); *Woodley Park,* 490 A.2d at 637 (delay of one year unreasonable); *Maroney v. Friere,* 74 Misc.2d 339, 340, 343 N.Y.S.2d 183, 185 (N.Y.Sup.Ct.1973) (delay of 127 days unreasonable); *cf. Sisson v. District of Columbia Board of Zoning Adjustment,* 805 A.2d 964, 969-970 (D.C.2002) (upholding BZA decision that appeal was "timely"--*i.e.,* filed within a reasonable time--when neighboring property owner challenged the issuance of four separate construction **permits** on different dates from January through August, but her appeal was not filed until September; BZA ruled that "because of the cumulative, piecemeal nature of the **[permit]** applications, the full extent of [Mr. Sisson's] construction project could not be discerned as each individual **permit** was issued and therefore they must be considered as a whole"). [FN20]

FN20. After this case was argued, the Zoning Commission published a proposed new regulation which would require an appeal to be filed with the BZA "within sixty (60) days from the date the person appealing ... had notice or knowledge of the decision complained of, or reasonably should have had notice or known of the decision complained of, whichever is earlier." Proposed 31 DCMR § 3112.2(a), 49 D.C. Register 4884 (May 24, 2002). Subsection (c) of the proposed regulation contains an "exceptional circumstances" provision which would **permit** the BZA to extend the sixty-day period, but only on a showing that "[t]he extension ... will not prejudice the parties to the appeal ...." While this new regulation, if and when adopted, would have no effect on the present case, it does lend some modest support to our conclusion that the seven-month delay in this case was not reasonable.

C. *Failure to give* ***"great weight"*** *to ANC views*

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[11] The ANC with jurisdiction over the Georgetown University site, ANC 2-E, did not submit a written report expressing its views on the project and took no position on this appeal. The GRA contends, however, that the BZA was required to give **"great weight"** to the written recommendations of two other ANCs, ANC 2-A and ANC 3-D, [FN21] and that its failure to do so was reversible error. *See* D.C.Code § 1-261(d) (1999); [FN22] 11 DCMR § 3307.2. We disagree.

FN21. ANC 2-A and ANC 3-D represent the areas encompassing George Washington and American Universities, respectively.

FN22. Recodified, as amended, as D.C.Code § 1- 309.10(d)(3)(A) (2001).

***51** The GRA bases its argument on *Neighbors United for a Safer Community v. District of Columbia Board of Zoning Adjustment,* 647 A.2d 793 (D.C.1994), in which property on the borderline between two ANC areas, 6-C and 7-B, was the subject of a proposed special exception. This court held that the views of the ANC (7-B) whose area was directly across the street from the proposed facility (which was in 6-C) were entitled to **"great weight"** under section 1- 261. Our rationale was that the BZA's decison "affected" both ANCs "and that therefore the written reports of both ANCs ... were entitled to **'great weight.'** " *Id.* at 795.

Neighbors United is inapposite here. Although the two ANCs that submitted recommendations may have an arguable interest in any precedent established in this case, neither Poulton Hall nor Georgetown University itself is within or adjacent to the areas of either of those ANCs. Nor were their views specifically solicited by the BZA, as was the case in *Neighbors United.* Section 1-261 provides in part that "[e]ach Advisory Neighborhood Commission ... may advise ... [the BZA] with respect to all proposed matters of District government policy ... *which affect that Commission area*" (emphasis added). This court stated in *Neighbors United* that "it would be manifestly unreasonable to conclude that the area represented by an ANC which is *physically located directly across the street from the proposed facility* for which the special exception is sought would not be affected by it." *Id.* at 797 (emphasis added). But *Neighbors United* does not expand the requirements of section 1-261 to other ANCs with *any* potential interest in the outcome of a BZA proceeding, even those in more remote parts of the city; [FN23] its holding is based solely on the physical proximity of the ANC area to the property at issue. Thus we hold that the BZA was not required to make these other ANCs parties to the proceedings and was under no obligation to give **"great weight"** to their written submissions.

FN23. American University is approximately two miles north of Georgetown University; George Washington University is approximately two miles east.

D. *The BZA's Findings of Fact*

[12] Finally, the GRA contends that the BZA order must be reversed because it fails to comply with D.C.Code § 1-1509(e) (1999) (now § 2- 509(e) (2001)), which requires an agency to make findings of fact that support its ultimate conclusions of law. The GRA claims that the BZA merely summarized the evidence and legal arguments submitted by each party and did not support its legal conclusions with factual findings.

D.C.Code § 1-1509(e) provides:

> Every decision and order adverse to a party to the case, rendered by the Mayor or an agency in a **contested case**, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.

"Generalized, conclusory, or incomplete findings are insufficient; subsidiary findings of basic fact on all material issues must support the end result in a discernible manner." *Levy,* 570 A.2d at 746. The findings in this case, while perhaps they could have been more detailed, were specific enough to meet this standard. The BZA made findings with regard to every issue that was contested and that the BZA was obliged to resolve under the zoning regulations. *See Lee v. District of Columbia Zoning Commission,* 411 A.2d 635, 638 (D.C.1980). The statute does not require anything further.

***52** III

For the foregoing reasons, the order of the Board of Zoning Adjustment is in all respects

Affirmed.

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