



yet under roof, we have ample time yet to file our appeal.” ANC Response at 1. In reaching this conclusion, the ANC fails to consider BZA Rule 3112.2(b)(2), which states that a building not yet being under roof “shall not relieve an appellant of the jurisdictional requirement” of filing the appeal within sixty (60) days of the decision which is being appealed.<sup>2</sup> Even though the project continues to not be “under roof”, the ANC’s opportunity to file its appeal concluded on March 20, 2007.

The ANC’s questioning the reasonableness of the sixty-day filing deadline is contrary to District of Columbia law and, therefore, unavailing. In its Response, the ANC stated, “Certainly, it cannot be reasonably argued that appeals must be filed within sixty days of a permit being issued.” ANC Response at 2. However, the Court of Appeals takes the opposite position in *Waste Management v. District of Columbia Board of Zoning Adjustment*, 775 A.2d 1117 (D.C. 2001). In deciding the timeliness of an appeal to BZA, the Court stated:

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.

*Waste Management*, 775 A.2d at 1122 (underline added, italics in original); *see also, Mendelson v. District of Columbia Bd. of Zoning Adjustment*, 645 A.2d 1090, 1094 (D.C. 1994); *Beins v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 122, 127 (D.C. 1990); *Woodley Park Cmty. Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 637 (D.C. 1985);

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(1) No appeal shall be filed later than ten (10) days after the date on which the structure or part thereof in question is under roof. For purposes of this subparagraph, the phrase “under roof” means the stage of completion of a structure or part thereof when the main roof of the structure or part thereof, and the roofs of any structures on the main roof or part thereof, are in place.

<sup>2</sup> 11 DCMR § 3112.2(b)(2): The provisions of paragraph (b) of this subsection shall not relieve an appellant of the jurisdictional requirement in paragraph (a) of this subsection of filing a timely appeal.

*Goto v. District of Columbia Bd. of Zoning Adjustment*, 423 A.2d 917, 924-25 (D.C. 1980).

Furthermore, the Court explicitly addresses the reasonableness question, stating:

This conception of the reasonableness standard does not countenance delay in taking an appeal when it is merely convenient for an appellant to defer making that decision. Rather, because deadlines for taking appeals serve important ends, they should not be extended without good cause. We therefore think that the reasonableness standard imposes a duty on appellants to act with diligence and prudent dispatch in protecting their own interests through the appellate process.

*Waste Management*, 775 A.2d at 1122.

The Court of Appeals has answered the question of reasonableness, and the holdings of that Court are binding upon this Board. Under District law, the sixty-day deadline for filing an appeal is reasonable; therefore, the ANC's argument fails.

In conclusion, the Court of Appeals held that "[t]he timely filing of an appeal with the Board is mandatory and jurisdictional." *Mendelson v. District of Columbia Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994). The 60th day fell on Tuesday, March 20, 2007. The appeal filed on May 11, 2007, was fifty-two days late. Moreover, Appellant failed to identify any exceptional circumstances which impaired its ability to file a timely appeal as required to toll the sixty-day deadline under § 3112.2(d). As a result, the Board lacks jurisdiction to hear the appeal because it was untimely filed. Therefore, this Board should find that the appeal was untimely and grant the District's motion.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing District of Columbia's Reply Brief to Appellant's Opposition to the Motion to Dismiss was served by e- mail this 7th day of December 2007, to the following:

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