

----- Forwarded Message

From: IZIS <system@dcoz.dc.gov>
Date: Fri, 30 Jun 2017 05:27:43 -0400
To: nef
Subject: Case No. 19573

Dear Applicant,

Your application has been successfully submitted and will be reviewed for completeness within five (5) business days by Office of Zoning (OZ) staff. If it is determined that all the required documents have been submitted, you will receive an email instructing you to pay the filing fee within 24 hours or the next business day.

If your application is deemed to be deficient, you will receive an email detailing the items that are required to be submitted within five (5) business days. If you do not submit the documents within five (5) business days, your application/appeal may be voided.

----- Forwarded Message

From: nef
Date: Mon, 03 Jul 2017 13:28:18 -0400
To: "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>
Cc: "tracey.rose@dc.gov" <tracey.rose@dc.gov>, "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>
Subject: Case No. 19573 Request for Fee Waiver

Hello Ms. Bardin,

Attached, please find my request for a fee waiver of the amount due (\$1040) in a new appeal of a Zoning Administrator decision related to the same adjoining development.

As payment would otherwise be due this week, can you please let me know how soon it will be before a decision can be made on this request? And whether I would have to pay this amount this week while I await your decision? ...

Thank you so very much for your time and consideration

-NM

**DISTRICT OF COLUMBIA
DC OFFICE OF ZONING**

July 3, 2017

Via sara.bardin@dc.gov
and clifford.moy@dc.gov
and IZIS (if required)

Nefretiti Makenta
3618 11th St, NW
Washington, DC 20010

Director of the Office of Zoning
Sara Bardin
441 4th Street, NW
Suite 200S
Washington, DC 20001

Re: **Appeal No. 19573**
Request for a Fee Waiver

Pursuant to Title 11, Subtitle Y, Section 1602.1, I am requesting that the Director of the Office of Zoning waive the fee (\$1040) for case 19573.

In April 2017, I previously paid this exorbitant amount for case 19510, which involves the same development and the same parties and is also in reference to a Zoning Administrator (ZA) decision. The Applicants have amended their permit to include a side roof deck that negatively impacts my property and was not part of the original ZA decision or the BZA order that led to the original permit. This amended ZA decision was made on May 2, 2017, while the first decision appealed was made on February 10, 2017.

This development is a moving target. But just because the Applicants and the Zoning Administrator are being allowed to proceed in a piecemeal fashion by adding elements that create an undue adverse impact to me, the adjoining owner, I should not have to bear the burden of this steep BZA cost to preserve my rights every time they decide to make a change to the same development. This would be a fundamentally unfair.

As such, it is appropriate given the circumstances that the fee be waived, and I respectfully request that I not be required to pay an additional \$1040 to appeal this second ZA decision on this same development.

Sincerely,
Nefretiti Makenta

----- Forwarded Message

From: "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>

Date: Mon, 3 Jul 2017 17:38:00 +0000

To: nef

Cc: "Rose, Tracey (DCOZ)" <tracey.rose@dc.gov>, "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>

Subject: RE: Case No. 19573 Request for Fee Waiver

Dear Ms. Makenta

We will respond to your inquiry by cob on Wednesday.

Sincerely,

Sara

Sara Bardin

Director

Office of Zoning | District of Columbia Government

----- Forwarded Message

From: "Cain, Alexandra A. (DCOZ)" <alexandra.cain@dc.gov>

Date: Wed, 5 Jul 2017 19:39:48 +0000

To: nef

Cc: "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>, "Moy, Clifford (DCOZ)" <clifford.moy@dc.gov>

Subject: BZA Appeal 19573

Ms. Makenta;

We have received your application for the appeal referenced above.

The Office of the Attorney General has advised us that, when a building permit that is already subject to a BZA appeal is revised, the Board can consider the revised permit as part of the existing appeal, as long as no new issues are raised. If a revised permit represents a new decision of the Zoning Administrator or raises new issues, however, then a separate appeal would need to be filed. Based on our review of the newly-filed appeal and revised permit, we are unable to make a determination as to whether the revised permit should be considered as amendment to the existing appeal or a new appeal.

Therefore, at the advice of OAG, we have decided to proceed in the following manner: since your current appeal (19510) is scheduled to be heard next Wednesday, July 12th, we will be sending notice of the new appeal to all parties to that case. Part of this notice will request that the parties to submit responses as to whether this new appeal should be considered as a separate matter or included as an amendment to your original appeal. The Board will then review any comments received at next week's hearing and vote on how to proceed.

Based on the fact that this issue will be addressed a preliminary matter at next week's hearing, the documents submitted as part of the application for 19573 will be uploaded to the 19510 case record for now. In the event that the board determines to handle 19573 as a separate appeal, the documents will be marked/voided appropriately.

If you have any questions on this matter please contact our office.

Alexandra Cain
Zoning Specialist
Office of Zoning | District of Columbia Government

On 7/5/17 3:39 PM, "Cain, Alexandra A. (DCOZ)" <alexandra.cain@dc.gov> wrote:

If a revised permit represents a new decision of the Zoning Administrator or raises new issues, however, then a separate appeal would need to be filed.

----- Forwarded Message

From: nef

Date: Thu, 06 Jul 2017 10:40:26 -0400

To: "Cain, Alexandra A. (DCOZ)" <alexandra.cain@dc.gov>

Cc: "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>, "Moy, Clifford (DCOZ)"

<clifford.moy@dc.gov>, "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>

Subject: Re: BZA Appeal 19573

The side deck represents an entirely new decision by the Zoning Administrator.

So it is my understanding that it has to be considered an entirely new appeal and scheduled for a later date unless the Appellant makes a motion to join the cases...

-NM

----- Forwarded Message

From: "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>

Date: Mon, 10 Jul 2017 14:57:18 +0000

To: nef

Cc: "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>, "Cain, Alexandra A. (DCOZ)"

<alexandra.cain@dc.gov>, "Moy, Clifford (DCOZ)" <clifford.moy@dc.gov>

Subject: RE: BZA Appeal 19573

Good morning, Ms. Makenta,

Of course. Subtitle Y, Section 302 governs the processing and accepting of appeals (regulations attached).

In the case of your most recent appeal, the threshold question that arises is whether that revised permit reflects a new decision of the ZA or whether it is a technical amendment of the existing appeal of the original building permit.

Rather than making that finding as staff, and given the upcoming appeal hearing on the original building permit, OAG advised and OZ agreed that the Board should make the determination of whether the revised building permit modifies or reverses the original decision or reflects a new decision. The Board's decision would be based on the evidence you have provided in the newly-filed appeal and on any responses from the parties to the appeal, and would be discussed as a preliminary matter during the public hearing session.

In appeals where the Board determines that the revised permit(s) do not modify or reverse the original decision, the revised permit is added to the existing appeal, as the most recent reflection of the original decision...

However, the Board could instead determine that the revised permit reflects a new decision of the ZA and raises a new issue, not previously identified by the appeal. Pursuant to the regulations:

Y § 302.13: An appeal may not be amended to add issues not identified in the statement of the issues on appeal submitted in response to Subtitle Y § 302.12(g) unless the appellee impeded the appellant's ability to identify the new issues identified.

Therefore, if the Board determines that a new issue has been raised, the Board will instruct OZ to process the appeal filed on June 30, 2017 based on the applicable regulations. I understand that Director Bardin will be responding separately regarding the fee waiver issue and the scheduling of a hearing date.

Let me know if you have further questions.

Best,
Allison Myers
Zoning Specialist
DC Office of Zoning

----- Forwarded Message

From: "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>
Date: Mon, 10 Jul 2017 15:44:19 +0000
To: "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>, nef
Cc: "Cain, Alexandra A. (DCOZ)" <alexandra.cain@dc.gov>, "Moy, Clifford (DCOZ)" <clifford.moy@dc.gov>
Subject: RE: BZA Appeal 19573

Dear Ms. Makenta

To follow up on Ms. Myers' email, if the Board determines that your filing is a technical amendment of the existing appeal of the original building permit, you would not be required to pay the filing fee since it would be an amendment to your original appeal. However, if in fact the Board determines that your filing is a new appeal, you would be required to pay the \$1,040 fee, as **there is no provision that allows me waive the appeal fee** (see Subtitle Y Section 1600.1). Once the new appeal is deemed complete and the fee is paid, your case would be scheduled for the next available public hearing date.

Sincerely,
Sara Bardin
Director
Office of Zoning | District of Columbia Government

----- End of Forwarded Message

----- Forwarded Message

From: nef
Date: Tue, 11 Jul 2017 12:26:00 -0400

To: "Bardin, Sara (DCOZ)" <sara.bardin@dc.gov>, "Myers, Allison E. (DCOZ)" <allison.myers@dc.gov>
Cc: "Cain, Alexandra A. (DCOZ)" <alexandra.cain@dc.gov>, "Moy, Clifford (DCOZ)" <clifford.moy@dc.gov>
Subject: Re: BZA Appeal 19573 Refund Policy?

I have learned that the issue that I am complaining about in appeal 19573 is actually a building code violation, as well, and perhaps principally.

Like the chimney issue, this appears to be another issue involving not just the zoning code, but also the building code.

The roof side deck violates DCMR12A Section 705 regarding "Fire Resistance Rated Construction: Openings...near...property lines." As such, it should have never been approved by DCRA. As this is an issued that may be worked out through OAH and/or DCRA prior to a new hearing date, what is the refund policy as it related to cases that were filed due to an(other) error by DCRA, which a citizen should have never had to bring to the BZA and certainly should not have had to pay an extra \$1040 to bring.

-NM