

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4th Street, N.W.
Washington, D.C. 20001

Appeal by DC for Reasonable Development

BZA Appeal No. 20191

**D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS’
RESPONSE TO APPELLANT’S EMERGENCY
MOTION TO SUPPLEMENT THE RECORD WITH INFORMATION REGARDING
THE U.S. COMMISSION OF FINE ARTS**

The D.C. Department of Consumer and Regulatory Affairs (“DCRA”), in Response to Appellant’s emergency motion to supplement the record with information regarding proceedings before the U.S. Commission of Fine Arts (“CFA”), states as follows:

I. INTRODUCTION

On July 31, 2020, the Appellant filed an “Emergency Motion Pursuant to 11-Y DCMR 407.1, .2, et. seq., and 11-Y DCMR 408.1(b), 11-Y DCMR 506.1(b),(h) to Supplement the Record with Critically Important Information Not Otherwise Known Until Recently or In the Alternative to Accept this Information Pursuant 11-Y DCMR 302.13” (“Emergency Motion”). Appellant’s Emergency Motion states that the community center is under review by the CFA. Appellant claims that, because the CFA may make further recommendations to alter some aspects of the community center, it demonstrates that the permits were issued in error. However, the Appellant’s Emergency Motion must be denied because: 1) the Board lacks jurisdiction to hear issues regarding the CFA and the D.C. Historic Preservation Act; and 2) the Emergency Motion violates Subtitle Y § 302.13 by attempting to add additional information to amend the appeal. For these reasons, the Board of Zoning Adjustment (the “Board”) must deny the Appellant’s Emergency Motion.

A. The Board Lacks Jurisdiction to Hear Matters Regarding the CFA and the D.C. Historic Preservation Act as They Do Not Arise from the Zoning Regulations.

It is well settled that the Board has no authority to hear an appeal that is not based upon an interpretation of a zoning regulation. *See*, Subtitle X § 1100.3¹, *see also*, *BZA Appeal No. 17504 of JMM Corporation* (the Board’s “authority is limited to hearing appeals alleging error in the administration and enforcement of the Zoning Regulations”); *BZA Appeal No. 18154 of Capitol Hill Restoration Society* (The “Board has no authority to hear an appeal that is not based to some degree upon an interpretation of a zoning regulation”); *BZA Appeal No. 17444 of Kuri Brothers, Inc.* (“The Board has no jurisdiction to hear allegations of error concerning the DCRA Director’s interpretation of a provision not contained in the Zoning Regulations”).

Moreover, the Board lacks jurisdiction to hear issues that do not arise from the zoning regulations. *See*, *Appeal 19477 of Kingman Park* (the Board lacks jurisdiction to hear issues regarding business licensing laws and regulations, Construction Codes, environmental laws, and the Historic Preservation Act); *Appeal No. 20132 of the Concerned Citizens of Woodridge* (the Board has no authority to consider claims regarding environmental issues, stormwater management, and property devaluation, *citing*, *Kingman Park*).

In this instance, the Appellant claims that because certain aspects of the community center are under review by the CFA, it demonstrates an error by the Zoning Administrator. Furthermore, the Appellant alleges that the CFA’s administrative review somehow “intersects” with the D.C. Historic Preservation Act. However, the Appellant has failed to show any such error or “intersection.” The Board lacks jurisdiction to hear any issues that may be pending before the CFA

¹ Subtitle X 1103.3 states: “The Board of Zoning Adjustment has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map.”

and any purported implication of the D.C. Historic Preservation Act. Since no zoning regulation is implicated in the Emergency Motion, the Board *has no authority* to hear these claims—none of the issues raised in Appellant’s Emergency Motion is within this Board’s jurisdiction. As in its numerous prior filings in this matter, the Appellant’s Emergency Motion fails to identify a single relevant zoning regulation. Accordingly, the Appellant’s Emergency Motion must be denied.

B. The Appellant’s Emergency Motion is an Attempt to Amend the Appeal in Violation Subtitle Y § 302.13.

Assuming *arguendo* that the Board had jurisdiction to hear Appellant’s claims regarding the CFA (which it does not), the Emergency Motion attempts to raise new issues in violation of Subtitle Y § 302.13 and the explicit instructions of the Board. *See* Exhibit 40 (BZA Memo, June 26, 2020). Under Subtitle Y § 302.13, the Board must strike any new claims not stated in the Appellant’s original statement of appeal. The BZA’s decision in the *Citizens of Woodridge* (*supra*) is directly on point. In the *Citizens of Woodridge*, the Board allowed the appellant an opportunity to review material and emergency text amendments to the zoning regulations to allow the appellant to supplement its appeal. However, rather than clarifying the original filed appeal, the appellant in *Citizens of Woodridge* added new claims. The Board declined to entertain these new claims and concluded that the appellant violated the prohibition on amending the appeal as proscribed by Subtitle Y § 302.13.

Turning to this matter, the Appellant’s Emergency Motion violates Subtitle Y § 302.13 by attempting to raise new issues regarding the pending review by the CFA. The Board, following its reasoning in *Citizens of Woodridge*, must prevent the Appellant from introducing new claims in violation of Subtitle Y § 302.13. For this reason, the Board must deny Appellant’s Emergency Motion.

II. CONCLUSION

WHEREFORE, DCRA respectfully requests that the Board deny Appellant’s Emergency Motion and Dismiss the Appeal.

Respectfully submitted,

/s/ Esther Yong McGraw

ESTHER YONG MCGRAW

General Counsel

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/s/ Melanie Konstantopoulos

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Date: August 3, 2020

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CERTIFICATE OF SERVICE

I certify that on this August 3, 2020 a copy of the foregoing was served via electronic mail to:

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