



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

Motion of:

☐

Applicant

☐

Petitioner

☐

Appellant

☒

Party

☐

Intervenor

☐

Other

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Dismiss the Appeal

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

☐ Yes, consent was obtained by all parties

☐ Consent was obtained by some, but not all parties

☒ No attempt was made

☐ Despite diligent efforts consent could not be obtained

Further Explanation: Appellants oppose the dismissal of this appeal even though they have already received the relief sought.

CERTIFICATE OF SERVICE

I hereby certify that on this

1st

1st

day of

September

Month

,

2nd

0th

2nd

4th

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

☐ Mailed letter

☐ Hand delivery

☒ E-Mail

☐ Other

Signature:

Chris Haresign

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Board of Zoning Adjustment
District of Columbia
CASE NO.20944
EXHIBIT NO.60

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

One Judiciary Square
441 4th Street, NW
Washington, DC 20001

Appeal by Advisory Neighborhood Commission 3D
and Rohit Kumar

BZA Appeal No. 20944

D.C. DEPARTMENT OF BUILDING’S FIFTH MOTION TO DISMISS APPEAL

Appellee District of Columbia Department of Buildings (“DOB”), through its undersigned counsel, moves to dismiss this appeal from Advisory Neighborhood Commission 3D and Rohit Kumar (“Appellants”). There are no active permits for 5122 Cathedral Avenue NW (the “Property”), and no reviewable zoning decision before the Board of Zoning Adjustment (“BZA” or the “Board”). In support of this motion, DOB states as follows:

I. Background

This matter arises from Appellants’ Appeal of Building Permit No. B2303238. Exhibit 1. This permit, along with revision permit B2305686 were the subject of a notice to revoke issued by DOB on September 27, 2023, and were subsequently surrendered by the owner of the Property on October 3, 2024. Exhibit 21. On January 31, 2024, the owner of the Property obtained permit B2310998 after multiple meetings with DOB. However, DOB then became aware that the plans approved under the B2310998 did not reflect necessary changes that DOB had discussed with the developer of the Property to bring the project into compliance with the zoning regulations, and DOB issued a notice to revoke B2310998. In response to that notice, the Property owner surrendered B2310998. Exhibit 46A.

Though the Property owner has submitted an additional permit application B2408898, that application is pending multidisciplinary review and comment response. This includes comments pending response on outstanding zoning issues, as well as structural, plumbing, and mechanical

review comments requiring response. No new permit has issued, and no zoning determination has been made regarding the revised plans.

II. Argument

The decision appealed has been rescinded. At this time, there is no active permit for the Property, and no attendant zoning decision for the Board to review. Pursuant to D.C. Code § 6-641.07(f), an Appeal to the Board of Zoning Adjustment may be taken from “any decision of the Director of the Department of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter.” (Emphases added). Likewise, 11-Y DCMR § 302.1 allows an appeal from “an 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.” (Emphases added). Without a decision, there can be no appeal.

Appellants concede that there is no operative decision at issue concerning the Property. In the August 27, 2024 “Oppositon [sic] to Permit Applicant’s Motion to Dismiss,”¹ Appellants specifically note that zoning compliance “has yet to be determined by the official reviewing authority...” Exhibit 59 at p. 3. The Board’s authority articulated above extends to reviewing administrative zoning decisions and determinations. Respectfully, absent such an administrative determination or decision, there is nothing for the Board to review. The Board may be asked to review a future permit issuance, or even a denial of the permit application by DOB. However, until such a decision is rendered, there is nothing for the Board’s review concerning this Property. The

¹ The Property owner has filed a Motion to Dismiss based on submission of revised plans. Exhibit 58. Though DOB seeks the same relief, DOB does not adopt the arguments made by the Property owner. The case is not moot based on the submission of plans. The case should be dismissed because the appealed permit has been surrendered and there is no zoning decision for the Board to review concerning this Property.

decision appealed is no longer in effect, there is no decision before the Board, and the Appeal should now be dismissed.

III. Conclusion

For the foregoing reasons, DOB requests that the Board dismiss the current appeal as moot.

Respectfully submitted,

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GENERAL COUNSEL

ERIK COX
DEPUTY GENERAL COUNSEL

/s/ Chris Haresign
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CERTIFICATE OF SERVICE

I certify that on September 11, 2024 a copy of the foregoing was sent via electronic mail and/or the electronic filing system to:

Advisory Neighborhood Commission (ANC) 3D
3D02@anc.dc.gov

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