

Zoning Commission of the District of Columbia
Case No. 08-06A
Submission of John Lawrence Hargrove on
Subtitles Y and Z: Dealing with Remanded Cases
September 25, 2015

On November, 2013, I testified on this subject, urging the Commission to develop regulations governing the handling of remanded cases by the Commission and the BZA; that brief testimony is set out below. It noted the inordinate multi-year delay that sometimes occurs in the disposition of remands, and the lack of provisions informing parties of their rights and obligations, or assuring them due process, in the agency's re-determination of remanded issues.

Subsequently, identical one-page chapters were added to Subtitles Y and Z to "provide regulations for the Board [Commission] to follow" when a case is remanded (Y Ch. 8, Z Ch. 9). Unfortunately these Chapters do no reliably address any of the problems noted:

- They do not address delay at all. If the Commission does not exercise the self-discipline needed to devise reasonable scheduling rules for these special cases, it is reasonable to expect that some will still be allowed to languish in limbo, subjecting the agency concerned to contempt and ridicule and the parties to additional cost and lingering uncertainty.
- The new Chapters leave it to the unfettered discretion of the agency whether parties will even be informed of the of the agency's deliberations on the case, let alone accorded the right to participate by hearing or otherwise. I.e., unless the agency decides otherwise, on its own, these regulations will serve only as internal housekeeping rules, presumably useful for that purpose but for no other. The presumption should be that parties will be accorded full procedural rights in remanded cases. If it can be demonstrated there is a predictably recurring class of remands in which the exclusion of the parties can genuinely be justified, it should be clearly identified and its criteria stated in the regulations.

I urge the Board to go back to the drawing board and correct these deficiencies.

--Larry Hargrove

Zoning Commission of the District of Columbia
Case No. 08-06A
Testimony of John Lawrence Hargrove on
Subtitles Y and Z: Dealing with Remanded Cases
November 4, 2013

I am testifying on my own behalf and that of my wife, Ann Hughes Hargrove, who is prevented by illness from attending. We have owned a home in Adams Morgan for a half-century, and Ann was a member of the task force on the current Comprehensive Plan, which the present exercise is intended to implement.

Today I want to address one narrow subject: **procedures for dealing with cases remanded from the Court of Appeals**, especially to the BZA. Remand happens with some frequency. So far as I have been able to discern, the proposed Regulations do not prescribe how the remanded case is to be handled, or on what schedule. The practical result has been that a remanded case may disappear into a procedural black hole, sometimes emerging only two or three or more *years* later. And the current and proposed Regulations do not inform the parties as to what will be their rights and obligations or the governing procedures when it finally does emerge.

The regulations should prescribe procedures for the Board's handling of these remanded cases, just as they do, in the BZA for example, for applications, zoning appeals, and chancery cases. Drafting these procedures should be based on the following considerations:

1. Inordinate delay of this sort is injurious to the parties and undermines the integrity of the judicial and administrative process. A remanded case, unlike a newly filed case, is one in which the parties have already suffered the costs of significant time elapsed in prosecution of the case. The remanded case should therefore be given preferential treatment in scheduling, and there should be a finite limit on the time between remand by the Court and the initiation of the case by the agency – say, 60 days.

2. In general, the same procedures for hearing and argument should be followed in the case of a remand as were applicable to the remanded issue or issues in the first instance. A remand by the Court is a statement that the agency's previous determination on a particular issue was in some respect deficient. The interest of all concerned in getting the decision on that issue *right* is no less compelling on remand that it was in the first instance, and there should be no cutting of corners on the due process afforded toward reaching that end.

We would urge the Commission to request OP, working with the Office of Zoning, to draft regulations responding to these needs.