

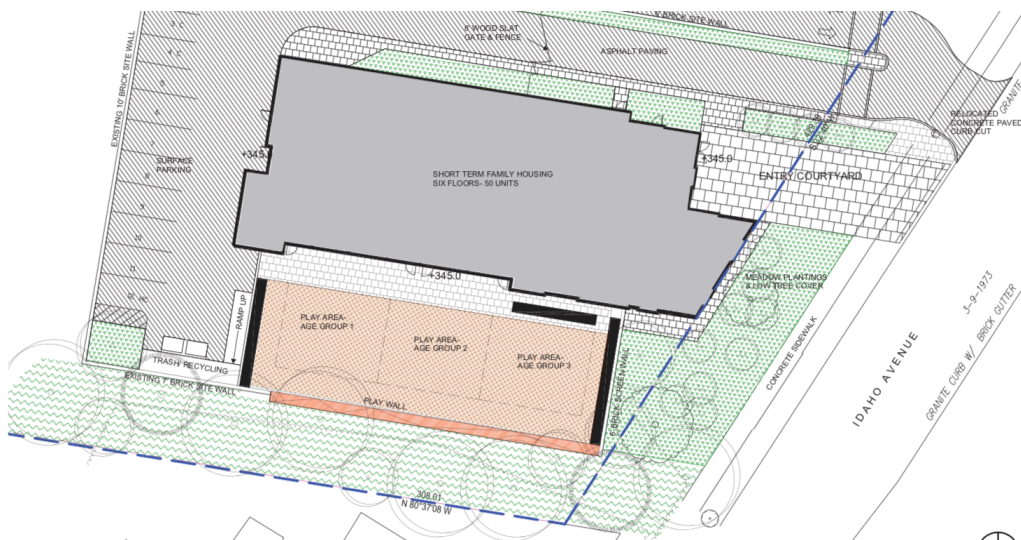
Appeal of the Zoning Administrator's Determination That Adding a Patio/Deck for Adults to the Ward 3 Short-Term Family Housing Shelter Was a Minor Design Change and Does Not Need BZA Review

Sept. 10, 2018*

Introduction

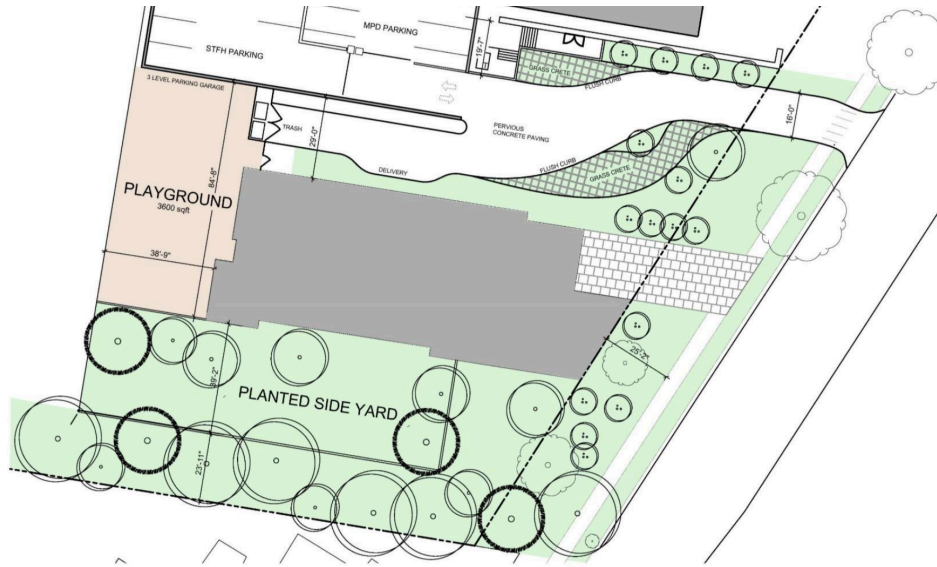
The D.C. Department of General Services (DGS) applied on Jan. 3, 2017, to the Board of Zoning Adjustment (BZA) for a special exception and variances to build the Ward 3 Short-Term Family Housing shelter at 3320 Idaho Ave. NW.

At that time, the city planned to build a playground south of the facility, between the facility and an existing brick wall. Between the wall and the southern property line are trees, and on the other side of the property line is a single-family home. (Exhibit 7, BZA Case 19450)



Original playground location. Exhibit 7, BZA Case 19450, Jan. 4, 2017.

In response to neighborhood and ANC3C concerns about the potential for noise from the playground, the city moved the playground to the rear of the shelter, farther from the southern property line. (Exhibit 237, BZA Case 19450) The city did this after the BZA heard the case but before the BZA made a decision.



Revised playground location in response to neighborhood concerns about noise. Exhibit 237, BZA Case 19450, March 13, 2017.

The BZA on Aug. 30, 2017, approved the city’s requested zoning relief “subject to the approved plans at Exhibit 237 – Applicant’s updated plans.” (p. 36, BZA order, Case No. 19450).

BZA Findings

The BZA granted zoning relief after finding that the project would not result in any adverse impacts on the neighborhood. The finding was based on evidence presented by the city stating that there would be a buffer between the shelter and playground, and nearby residences.

In a Feb. 21, 2017, letter to the BZA, the city stated, “In response to community comments about potential noise, the Applicant has moved the outdoor playground to the western side of the proposed building and the dumpsters and loading area to the northern side of the building. The net result is the creation of a southern facing side yard that is now 63 feet, which provides an extensive buffer between the project and the neighboring residential home.” (pages 1-2, Exhibit 165, BZA order, Case No. 19450)

The BZA found that action sufficient to address ANC 3C concerns about potential adverse impacts:

“The ANC expressed concern that the request for special exception approval ‘raises issues of ... noise from a shelter playground and multiple per week trash pick-ups adjacent to single family residences.’ (Exhibit 170.) However, the ANC’s resolution was adopted before changes were made to the Applicant’s proposal, which resulted in the relocation of the shelter playground from the south side of the building to the rear, and relocation of the proposed trash storage area to the north side of the building, thereby increasing the distance of the playground and trash storage from any residences. **The playground or trash operations, as now proposed, are not likely to create any adverse impacts on the neighborhood.**” (emphasis added, p. 23, BZA order, Case No. 19450)

In making its determination, the BZA also relied on the findings of the Office of Planning, which determined that “no substantial detriment to the public good” was “likely to result from approval of the requested variances ... and that the new emergency shelter building would be **‘substantially set back and buffered from adjacent streets and residences** and would therefore not overwhelm the nearby lower scale buildings.” (emphasis added, p. 33, BZA order, Case No. 19450)

Also, the BZA found that “[t]he emergency shelter use is not likely to generate any adverse impacts relating to noise or operations. ... All operations will be contained within the building **with the exception of the small play area, which will be located on the western edge of the property** ...” (emphasis added, p. 22, BZA order, Case No. 19450)

Modifications

Earlier this year, ANC3C commissioners learned of modifications made to the shelter design when reviewing plans that DGS submitted to the DDOT Public Space Committee as part of a curb cut application. In one of the drawings, a patio had been added.

At a July 2, 2018, meeting of the ANC’s Planning and Zoning Committee, commissioners asked for more details about the scope and nature of the changes. Based on information subsequently provided by the city, the commissioners asked the Zoning Administrator to have the BZA review the modifications.

DGS filed two documents with the Zoning Administrator, dated July 23, 2018 (available at <http://anc3c.wpengine.netdna-cdn.com/wp-content/uploads/2018/08/Citys-July-23-filing-to-the-Zoning-Administrator-Regarding-Shelter-Modifications.pdf>) and Aug. 6, 2018 (available at <http://anc3c.wpengine.netdna-cdn.com/wp-content/uploads/2018/08/Citys-Aug.-6-Filing-to-the-Zoning-Administrator-Regarding-Shelter-Design-Modifications.pdf>, with exhibits available at <http://anc3c.wpengine.netdna-cdn.com/wp-content/uploads/2018/08/Exhibits-for-Citys-Aug.-6-Filing.pdf>), outlining the modifications. The Zoning Administrator approved the changes on Aug. 7, 2018, finding them to be “minor.” (See attached “Request for Modification of Plans Approved by the Board of Zoning Adjustment.”)

Zoning Administrator Authority

Title 11, Subtitle A 304.10, [states](#):

“For building permits that are authorized by an order of the Board of Zoning Adjustment (the Order), the Zoning Administrator, following receipt of a request made pursuant to Subtitle A § 304.11, is authorized to permit modifications to approved plans in addition to those modifications specifically authorized pursuant to flexibility granted by the Order if the Zoning Administrator determines that the proposed modifications are consistent with the intent of the Board of Zoning Adjustment and the modifications would not:

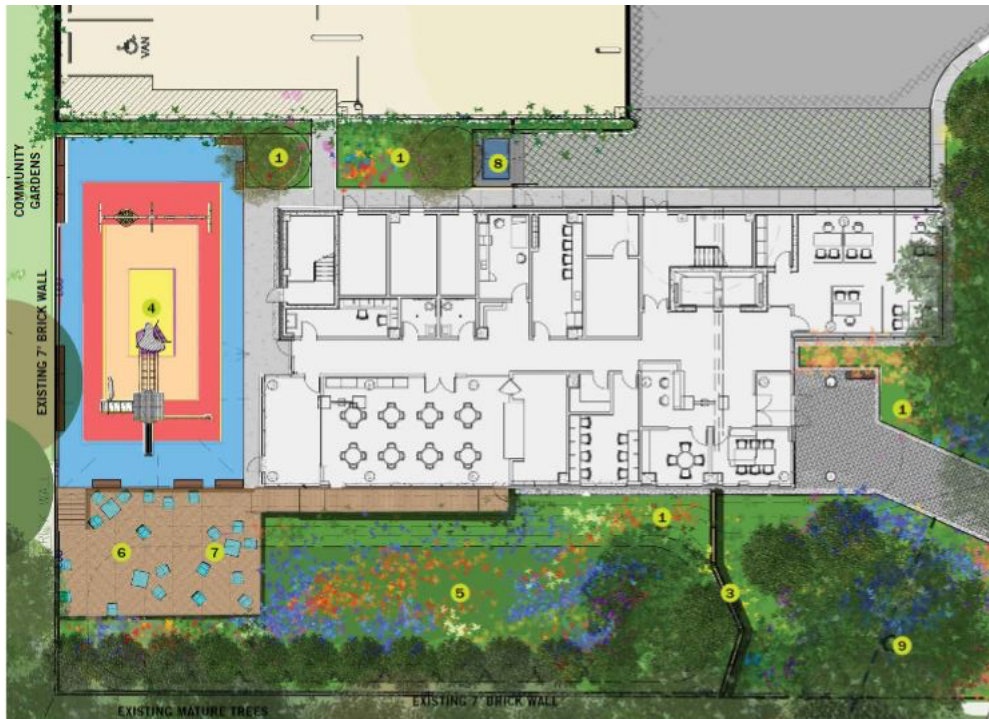
1. (a) Violate any condition of approval included in the Order;

2. (b) Increase, expand, or extend any area of relief granted by the Order;
3. (c) Create any need for new relief;
4. (d) Change a principal use from that approved in the Order;”

The Zoning Administrator erred in finding the addition of an outdoor patio/deck to the Ward 3 shelter site to be “minor” and consistent with the intent of the BZA. The finding violated Title 11, Subtitle A Sec. 304.10 (a) and (c).

Patio/Deck addition

The city has added to the Ward 3 shelter design a 62-person capacity, 1,000 square-foot patio/deck that extends south of the playground as shown on the approved site plan (Exhibit 237). The patio/deck is to be used as an outdoor gathering area for adults. This modification is significant because it represents a new use at the site: an outdoor gathering area for adults.



An outdoor patio/deck has been added south of the playground. Aug. 6, 2018, letter from Meridith Moldenhauer representing DGS to the Zoning Administrator.

In addition, the patio/deck is to be closer to the southern property line than the playground – or any structure or hardscape – had been in the plans the BZA approved. Exhibit 237 showed the playground set back 63 feet and one inch from the property line. (The distance might be two feet less; the city shows different distances between the property line and wall depending on the drawing. In Exhibit 75A1, for example, the city shows the distance to be 21 feet. In Exhibits 165A and 237, the distance is 23 feet.) The new patio is to be 40 feet from the property line. (In its Aug. 6, 2018, letter, p. 5, the city refers to a “40’-foot separation between the Deck and the southern property line”).

The Modification Is Significant

The proximity of the playground to nearby homes in the city’s original design – and the potential for noise – was a point of concern for the neighborhood and the ANC. In response, between the date of the city’s original filing and the date of its final filing with the BZA, the city moved the playground away from the property line to the west of the shelter, so it would be at the rear of the shelter. The city also moved the trash area from the rear of the shelter to the north side in response to concerns about noise affecting residents to the south. The city’s stated goal was to move all uses that could predictably result in noise away from residences to lessen the impact of the project on neighbors. Based on the city’s action, the BZA determined that the project would have no adverse impact on the neighborhood.

Zoning Administrator Erred

Zoning Administrator Violated Title 11, Subtitle A Sec. 304.10 (a)

The BZA approved the city’s requested zoning relief based on the plans submitted in Exhibit 237. Specifically, the BZA approved the relief “**subject to** the approved plans at Exhibit 237 – Applicant’s updated plans.” (emphasis added, p. 36, BZA order, Case No. 19450).

By approving the addition of a 62-person outdoor patio/deck, the Zoning Administrator violated a condition of the order and therefore violated Title 11, Subtitle A Sec. 304.10 (a).

Zoning Administrator Violated Title 11, Subtitle A Sec. 304.10 (c)

The BZA granted zoning relief for the project after finding that it would not result in any adverse impacts to the neighborhood. The finding was based on evidence presented to the BZA by the city stating that the side yard would provide a buffer between the shelter and nearby residences. (See above).

The city has introduced a new use to the project: an outdoor gathering area for adults – and a sizable one.

Although the city stated to the Zoning Administrator that it had planned this use all along as an outdoor gathering area (“The Project proposed a southern side yard that could also function as a gathering area,” p. 2, July 23, 2018, letter from Meridith Moldenhauer representing DGS to the Zoning Administrator), nothing in the record indicates the area was to be a gathering space for adults. In fact, in its Feb. 21, 2017, letter to the BZA referenced above, the city outlined the changes and depicted the southern side yard as “**an extensive buffer between the project and the neighboring residential home.**” (emphasis added, p. 2, Exhibit 165, BZA order, Case No. 19450)

DGS argued in its Aug. 6, 2018, letter to the Zoning Administrator that the BZA approved a “generic ‘Playground’ area” and that the plans didn’t identify what portions of the playground would be limited to children (p. 3). This is inaccurate. The BZA based its finding on the understanding that a playground would be just that – a playground for children:

“An outdoor play area will be provided at the rear of the building along the western edge of the subject property. The playground ... will be divided into two or three zones to provide recreational space **for children of different ages**, and will be bordered by the planned parking garage and the existing brick fence.” (emphasis added, p. 14, BZA order, Case No. 19450)

The new patio/deck clearly is a different use than the playground the city presented to the BZA.

Further, while the city told the Zoning Administrator that the purpose of the patio was for parents to watch their children on the playground (“The Deck will provide space for residents to access the dining room and for residents to monitor children on the Playground,” (p. 2, Aug. 6, 2018, DGS letter to the BZA)), the project manager has stated that the patio is not intended for that purpose. In fact, the patio is to be three feet below the level of the playground, which would make it difficult for parents to adequately monitor their children.

Furthermore, the only site plan submitted to the BZA by the applicant that shows any intention of providing seating near the playground is Ex. 75A. On page 8, the proposed playground in the side yard is bordered at each end by a very narrow area labeled “potential site furniture.” This unspecific area was never mentioned in testimony. When the playground location was moved to the rear of the proposed shelter the “potential site furniture” areas were deleted and are not shown in Exhibit 237 – the plan approved by the BZA.

The addition of the patio has created a need for new relief. Therefore, the Zoning Administrator erred in approving the patio addition as minor, thereby violating Title 11, Subtitle A Sec. 304.10 (c).

Conclusion

Process is important, especially for a project such as this. ANC3C wants this shelter to work and be compatible with the neighborhood. As such, communication between the city and the neighborhood is essential to developing goodwill and helping ensure the shelter is a success.

By adding a new use – a patio/deck for adults – and placing it closer to a residential home, the city has made a significant change to the design of the shelter – one that likely would have elicited feedback from residents and the ANC, and one that the BZA may have set conditions on – or rejected – had it had the opportunity.

For this reason, we ask the BZA to review the patio/deck addition.

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** Please note that this appeal was filed Sunday, Sept. 9, in the evening, making it effective the next business day. However, due to a glitch in the Izis system, the case disappeared from the*

system. I am therefore refiling it. Below is a copy of the email I received acknowledging that the case was filed Sept. 9.

IZIS <system@dcoz.dc.gov>

Reply all |

Sun 9/9, 7:59 PM

Bradbery, Angela (SMD 3C06)

Inbox

Flag for follow up. Start by Monday, September 10, 2018. Due by Monday, September 10, 2018.

Action Items

Thank you for filing your Appeal to the DC Office of Zoning (DCOZ). Your case is being processed under Appeal No. . If you haven't already done so, please submit you Affidavit of Service on all parties and your proof of status for fee exemption within five (5) calendar days.

This is an automatically generated e-mail. If you have questions, please contact DCOZ at (202) 727-6311 or BZASecretary@dc.gov.