

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19808 of Marc Rogers, pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance from the parking location requirements of Subtitle C § 710.2, to permit a parking space in the front yard of an existing principal dwelling unit in the R-2 Zone at premises 1740 40th Street, S.E. (Square 5523, Lot 31).

HEARING DATES: October 3, November 14, and November 28, 2018
DECISION DATE: November 28, 2018

DISMISSAL ORDER

This application was submitted to the Board of Zoning Adjustment (“Board” or “BZA”) on May 20, 2018 by Marc Rogers (the “Applicant”). The Applicant requested a variance from the parking location requirements of Subtitle C § 710.2, to permit a parking space in the front yard of an existing principal dwelling unit in the R-2 Zone. The hearing for this application was originally scheduled for October 3, 2018 and was postponed at the Applicant’s request to November 14, 2018. At the rescheduled public hearing, the Applicant did not appear when the case was called, and the Board rescheduled the hearing on its own motion to November 28, 2018. Again, the Applicant did not appear at the November 28, 2018 hearing. The Board voted to dismiss the application at that time.

Notice of Public Hearing. Pursuant to 11-Y DCMR § 402.1, notice of the original hearing date was sent to the Applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (“ANC”) 7E, the Single Member District Commissioner for ANC 7E 02, adjacent ANC 7B, and the D.C. Councilmember for Ward 7.

ANC Report. Neither ANC 7E nor ANC 7B submitted a written report.

OP Report. The Office of Planning (“OP”) submitted a timely report to the record recommending approval of the relief requested, but raising the issue that relief may not be needed. OP recommended that the Applicant confirm with the Zoning Administrator whether relief is necessary. (Exhibit 35.)

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DDOT Report. The District Department of Transportation (“DDOT”) submitted a report, raising objections to the relief requested on the grounds that (1) the Applicant has alley access and can create a vehicle parking space at the rear of the site, and (2) the proposed curb cut will reduce on-street vehicle parking and impact an existing tree. (Exhibit 36.)

FINDINGS OF FACT

1. On May 20, 2018, Marc Rogers (the “Applicant”) filed a request for a variance from the parking location requirements of Subtitle C § 710.2, to permit a parking space in the front yard of an existing principal dwelling unit in the R-2 Zone at premises 1740 40th Street S.E. (Square 5523, Lot 31).
2. The Office of Zoning (“OZ”) originally scheduled this application for public hearing on October 3, 2018.
3. At the public hearing of October 3, 2018, the Applicant requested a postponement of his case and related case Application No. 19809. (BZA Hearing Transcript (“Tr.”) of October 3, 2018 at pp. 47-48.)
4. The Board, in the Applicant’s presence, granted his request and postponed the public hearing to November 14, 2018.
5. The Board also requested that the Applicant work with the Office of Planning and the Zoning Administrator to determine whether relief was necessary for the proposed parking space.
6. At the public hearing of November 14, 2018, the Applicant did not appear when the case was called on two occasions during the hearing session. (Tr. of November 14, 2018 at pp. 43 and 300.)
7. On its own motion, the Board postponed the hearing to November 28, 2018, to allow OZ staff to contact the Applicant.
8. OZ advised the Board that it contacted the Applicant by email and informed the Applicant that, if a representative is not present when the case is called at the November 28, 2018 hearing, the case may be dismissed.
9. At the public hearing of November 28, 2018, neither the Applicant nor his representative appeared when the case was called. (Tr. of November 28, 2018 at p. 91.)
10. At that time, the Board voted to dismiss the application without hearing the merits of the case.

CONCLUSIONS OF LAW

Pursuant to 11-Y DCMR § 600.4, the Board shall not dismiss an application on the grounds of a procedural deficiency “unless, after due notice of the deficiency and expiration of a reasonable time as fixed by the Board, the deficiency has not been corrected, except that the Board may immediately dismiss an application or appeal if the applicant or appellant fails to appear at a hearing without explanation.” Because the Applicant failed to appear at the scheduled public hearing of November 14, 2018 after having received notice and again on November 28, 2018 without explanation notwithstanding the efforts of the Office of Zoning to contact him, the Board dismissed this application without hearing its merits.

The Board is required to give “great weight” to the recommendation of OP. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, OP provided a recommendation as to the relief requested; however, the Board did not reach the merits of this case and therefore could not afford great weight to that recommendation.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC in its written report. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)).) In this case, neither ANC 7E nor the adjacent ANC 7B submitted a written report.

Accordingly, it is **ORDERED** that the application is **DISMISSED**.

VOTE: 5-0-0 (Frederick L. Hill, Carlton E. Hart, Lesylleé M. White, Lorna L. John, and Peter G. May to DISMISS).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: January 25, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.