

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-07A(1)
Z.C. Case No. 11-07A
Order Denying Motion for Reconsideration or Rehearing
(American University - Further Processing of Approved Campus Plan
and Variance Relief – North Hall)
June 11, 2012

By order dated May 17, 2012, the Zoning Commission for the District of Columbia (“Commission”) approved, subject to conditions, an application of the American University (the “University” or “Applicant”) requesting special exception approval, under the campus plan provisions of the Zoning Regulations at 11 DCMR §§ 3104 and 210, for further processing of an approved campus plan and for variance relief from § 400.9 of the Zoning Regulations, pursuant to 11 DCMR § 3103.2, to allow the construction of the North Hall residence facility. *See* Z.C. Order No. 11-07A, Case No. 11-07A, issued May 17, 2012 (“Order No. 11-07A”).

In addition to the University, Advisory Neighborhood Commission (“ANC”) 3D was automatically a party in this proceeding. The Commission granted a request for party status in opposition to the application to the Spring Valley Wesley Heights Citizens Association and Neighbors for a Livable Community.

By motion submitted May 29, 2012, ANC 3D requested reconsideration or rehearing of the Commission’s decision on the grounds that “portions of the ZC Order No. 11-07A are erroneous because they are incomplete, inaccurate, and arbitrary.” The motion also alleged that, by “excluding evidence in the Order offered by ANC 3D and ignoring specific recommendations of ANC 3D, the ZC Order also is erroneous in failing” to “give ‘great weight’ to the issues and concerns raised by the affected ANC.”¹ (Exhibit 40.) Specifically, ANC 3D alleges that Order No. 11-07A presents “an inaccurate summary of the history” of the Applicant’s proposed North Hall project and “arbitrarily mischaracterize[ed] ANC 3D’s position on the project in a way that is both inaccurate and disingenuous....”; that the Order alters “the standard for review by the Zoning Commission” outlined in § 210 of the Zoning Regulations by “stressing the compatibility of the new structure to existing campus facilities” and by ignoring the University’s

¹ Although its submission is titled a “Motion for Reconsideration or Rehearing,” ANC 3D also alleges that, because the “effect of the Order is to authorize construction by American University of the North Hall that – once initiated – will have significant consequences and harms for residents in the surrounding neighborhood,” the “confluence of the errors in the Order...and the potential impacts on residents are so egregious as to warrant the Zoning Commission to stay, reconsider, and conduct a new hearing in the case.” (Exhibit 40.) The ANC did not otherwise address its request for a stay, and did not demonstrate that the request satisfied the criteria for issuance of a stay. Accordingly, to the extent that ANC 3D’s motion for reconsideration or rehearing was also intended as a motion for stay, the Commission denies the request for a stay of the Order as without merit.

“responsibility to demonstrate that the project is not likely to become objectionable through a show of ‘substantial evidence’ and instead inappropriately shifts the burden to ANC 3D to prove that the project will not create objectionable conditions”; and that Order No. 11-07A “is erroneous because it fails to address specific issues and concerns raised by ANC 3D,” contains “many factual inaccuracies,” “acknowledges approval by the Zoning Commission of the Further Processing application prior to Zoning Commission action in ZC Case No. 11-07 (the American University 2011-2020 Campus Plan)”, and “fails to address the legal standards cited by ANC 3D to recommend that the application be rejected.” (Exhibit 40.)

In a response in opposition to the motion, submitted June 5, 2012, the University asserted that ANC 3D’s motion should be denied because it “does nothing more than rehash arguments about the existing record: arguments that the ANC had a full and fair opportunity to present and that the Commission has already given the appropriate consideration.” According to the University, ANC 3D “fails to present any new evidence” but “simply reargues a number of points based upon the evidence and issues already in the record.” The University also asserted that “[c]ontrary to the statements in the motion for reconsideration, the Zoning Commission has already given great weight to the issues on which ANC 3D took a position in this case.” (Exhibit 41.)

CONCLUSIONS OF LAW

Pursuant to § 3035.5, the Commission is required to apply the Board of Zoning Adjustment Rules of Practice and Procedure in chapter 31 of the Zoning Regulations that apply to special exception proceedings in processing, reviewing, and approving college and university uses. The Board’s Rules of Practice and Procedure specify that a motion for reconsideration must “state specifically all respects in which the final decision is claimed to be erroneous, the grounds for the motion, and the relief sought.” (11 DCMR § 3126.4.) A motion for rehearing must submit “new evidence...that could not reasonably have been presented at the original hearing.” (11 DCMR § 3126.6.)

The Commission was not persuaded that the motion for reconsideration or rehearing submitted by ANC 3D alleged any grounds to reconsider its decision in this proceeding, or to rehear the University’s application. The motion did not state specifically any respect in which the Commission’s decision was claimed to be erroneous, and the “reasons for reconsideration” listed in the motion did not present any new argument or testimony relevant to the Commission’s deliberations in this case. Rather, the motion provided only a conclusory list of perceived errors, without any reference to specific evidence in the record or any argument to explain the allegation. The Commission concurs with the Applicant that the motion failed to provide grounds for any of the claims of error, as required by § 3126.4. The Commission concurs with the Applicant that ANC 3D’s statements in the motion “rehash arguments about the existing record” and do not provide grounds for reconsideration or rehearing.

The Commission also disagrees with ANC 3D's allegation that the Commission failed to give great weight to the issues and concerns raised by ANC 3D in this proceeding. As is reflected in Order No. 11-07A, the Commission did give great weight to the issues and concerns raised by ANC 3D. However, the "great weight" requirement does not compel the Commission to follow an ANC's recommendations or adopt its views. (*Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 2141 (D.C. 1993); *Draude v. District of Columbia Bd. of Zoning Adjustment*, 582 A.2d 949, 953 (D.C. 1990); *Upper Georgia Avenue Planning Committee v. Alcoholic Beverage Control Board*, 500 A.2d 987, 993 (D.C. 1985).)

For the reasons stated above, the motion for reconsideration or rehearing submitted by ANC 3D is hereby **DENIED**.

VOTE: **3-0-2** (Anthony J. Hood, Peter T. May, and Michael Turnbull to deny; Marcie Cohen not having participated, not voting; and one mayoral appointee position vacant, not voting.)

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this Order.

ATTESTED BY:



SARA A. BARKIN
OFFICE OF ZONING DIRECTOR

FINAL DATE OF ORDER: December 19, 2012