GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Appeal No. 17746 of Reed Cooke Neighborhood Association, pursuant to 11 DCMR §§ 3100 and 3101, from a February 22, 2007 decision of the Department of Transportation, Office of Public Works, to grant a curb cut serving accessory parking for an apartment building in the R-5-B District at premises 2351 Champlain Street, N.W. (Square 2563, Lot 109).

HEARING DATES: May 6, 2008 and June 10, 2008
DECISION DATE: June 10, 2008

DISMISSAL ORDER

PRELIMINARY MATTERS

On October 19, 2007, The Reed Cooke Neighborhood Association ("RCNA" or "Appellant") filed this appeal with the Board of Zoning Adjustment ("Board" or "BZA"). RCNA appealed the decision of the Office of Public Works, Public Space Committee, of the D.C. Department of Transportation ("PSC"), to allow a curb cut at 2351 Champlain Street, N.W., within the Reed Cooke Overlay District ("Overlay"). RCNA contended that the curb cut violated the provisions of the Overlay.

The Board heard the appeal on June 10, 2008 and determined that that it had no jurisdiction over the decision appealed. Therefore, after the hearing, the Board voted 3-0-2 to dismiss the appeal.

FINDINGS OF FACT

1. On February 22, 2007, the PSC held a public hearing on the request of Erie Associates, intervenor herein, to permit the expansion of an already-existing curb cut at 2351 Champlain Street, N.W.

2. The curb cut expansion request was addressed to the PSC because the curb cut is located within the area along Champlain Street, N.W. designated as "public space."

3. At the end of the hearing on February 22, 2007, the PSC granted the curb cut request, allowing the expansion of the already-existing curb cut at address 2351 Champlain Street,

N.W. to facilitate access to parking accessory to a residential building being constructed by the intervenor.

4. The PSC's action did not permit the creation of off-street parking spaces.

5. The PSC does not make determinations concerning parking on private property; its jurisdiction with regard to parking is limited to ensuring that no off-street parking requirements will be fulfilled by using the public space, unless permitted.

6. The appellate jurisdiction of the BZA is limited to appeals of decisions that arise out of the administration or enforcement of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1) (2001); 11 DCMR § 3100.2.

7. The subject property, 2351 Champlain Street, N.W., is in an R-5-B zone district and within the Reed-Cooke Overlay District ("Overlay").

8. There is no provision in the Zoning Regulations, including in the Reed-Cooke Overlay provisions, which prohibits curb cuts within the Overlay.

9. There is no provision in the Zoning Regulations, including in the Reed-Cooke Overlay provisions, which prohibits a use from providing more off-street parking spaces then required by the regulations. *See,* 11 DCMR § 2101.2.

10. The purposes of the Overlay set forth in 11 DCMR § 1400 do not include any standards that must be met and are not self-effectuating.

11. There was no request for zoning relief involved in the application before the PSC.

12. The decision of the PSC to permit the curb cut was not based on any Zoning Regulation or any violation thereof.

CONCLUSIONS OF LAW

The Board is authorized to hear appeals of any decision of any administrative officer or body "in the carrying out or enforcement" of any Zoning Regulation. D.C. Official Code § 6-641.07(g)(1) (2001). *See,* 11 DCMR § 3100.2. (The Board may hear appeals of decisions made "in the administration or enforcement of the Zoning Regulations.") Therefore, if an appeal is brought before the Board which does not arise from the carrying out/administration or enforcement of the Zoning Regulations, it is not within the Board's jurisdiction, and the Board is without authority to hear it.

The Appellant and ANC 1C both opposed the curb cut and asserted that the PSC's decision to permit it violated several Zoning Regulations, specifically §§ 1400.2(c) and 1403.1(b), both

provisions of the Overlay, and § 2101.1, concerning required parking.[1] The Board, however, disagrees and fails to find any real nexus between the cited Zoning Regulations and the PSC's decision. Section 1400.2(c) sets forth one of the purposes of the Overlay, *to wit*: "[p]rotect adjacent and nearby residences from damaging traffic, parking, environmental, social, and aesthetic impacts." The purpose set forth in § 1400.2(c) is merely precatory. It is not self-effectuating and does not contain standards by which the curb cut application could have been judged, therefore, it does not create the nexus between the Zoning Regulations and the PSC decision necessary to bring that decision within the jurisdiction of this Board. *See, Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 365 (D.C. 2002). Section 1403.1(b) is inapplicable here because it is one of several subparagraphs which must be met if one is applying for a special exception from the requirements of the Overlay. There is no request for a special exception here.

The Appellant also cites § 2101.1 of the Zoning Regulations, which sets forth the parking requirement for the intervenor's building, as an ostensible basis for the Board's jurisdiction. The Appellant appears to be arguing that since, without the curb cut, the building already had access to sufficient required parking, granting the curb cut was not proper because it facilitated parking in excess of the amount required. The Zoning Regulations, however, do not mandate parking maxima. On the contrary, § 2101.2 states, in relevant part, that: "[n]othing in this section shall be construed to prohibit the establishment of accessory parking spaces in an amount that exceeds that required by § 2101.1." 11 DCMR § 2101.2. Nor is there any allegation that § 2101, or any other Zoning Regulation, was violated by the granting of the curb cut.

It is clear from the testimony presented at the hearing that the PSC did not make any determination with respect to any Zoning Regulation and that it does not, in the usual course of its business, make any determinations with respect to parking on private property. *See*, June 10, 2008 Public Hearing Transcript at 407, lines 16-22, and at 408, lines 17-22. Such determinations are made by other responsible District agencies, including, where appropriate, this Board.

For all the reasons stated above, the Board concludes that this appeal did not arise out of the administration or enforcement of the Zoning Regulations, and that, therefore, the Board lacks subject matter jurisdiction over the appeal and must dismiss it. *See, Board Order No. 17585 of Darshan Shah*, 55 DCR 1201 ((2008) and cases cited therein. Because the Board lacks subject matter jurisdiction, it does not reach the question of the timeliness of the filing of the appeal.

It is hereby **ORDERED** that this appeal be **DISMISSED.**

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[1]During the hearing, § 1400.2 was also mentioned as a possible basis for the appeal, but this section merely states that where the provisions of the Overlay *conflict* with the underlying zone district, the more restrictive regulations govern. The Board was not directed to any such conflict, and even in the event of such a conflict, § 1400.2 is a procedural provision and, like the purposes provisions, does not set forth any standard on which the PSC could have based its decision. Therefore, it does not create the necessary jurisdictional nexus between the Zoning Regulations and the decision appealed.

VOTE: **3-0-2** (Ruthanne G. Miller, Shane L. Dettman and Mary Oates Walker to dismiss. No fourth member nor Zoning Commission member participating or voting.)

Each concurring Board member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

ATTESTED BY: _____
RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: JAN 12 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPEAL NO. 17746

As Director of the Office of Zoning, I hereby certify and attest that on **JANUARY 12, 2009**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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