

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17889-A of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, pursuant to 11 DCMR § 3104.1, for a special exception under § 1553 to construct a new two-story church on a vacant lot in the Sixteenth Street Heights Overlay, and a variance, pursuant to § 3103.2, from the off-street parking requirements under § 1553.2 in the SSH/R-1-B District at premises 4901 16th Street, N.W. (Square 2710, Lot 15).

HEARING DATE: March 10, 2009
DECISION DATES: March 24, 2009 and April 28, 2009
ORDER DATE: August 28, 2009
RECONSIDERATION DATE: October 20, 2009

ORDER DENYING RECONSIDERATION

This proceeding concerns an application submitted September 25, 2008 by the Corporation for the Presiding Bishop of the Church of Jesus Christ of the Latter-Day Saints, the owner of the property that is the subject of the application (“Applicant”). The self-certified application requested a special exception under 11 DCMR § 1553 to construct a new two-story church and an area variance from the off-street parking requirements under § 1553.2(b)(2) to locate parking spaces on the lot between the principal building and a street right-of-way on a site located within the Sixteenth Street Heights Overlay District and zoned SSH/R-1-B at 4901 16th Street, N.W. (Square 2710, Lot 15). Following a public hearing, the Board of Zoning Adjustment (“Board” or “Zoning Board”) voted 3-0-2 on April 28, 2009 to grant the application.

Parties in this proceeding are the Applicant, Advisory Neighborhood Commission (“ANC”) 4C, which voted not to support the application, and the Carter Barron East Neighborhood Association (“CBENA”), a party in opposition to the application.

ANC’s Motion. By letter dated September 8, 2009 and filed the following day, ANC 4C indicated that, at a properly noticed meeting on the same date, with a quorum present, a motion was passed unanimously to request reconsideration of the Board’s decision:

based on the fact that the Zoning Board could not give ‘great weight’ to the ANC 4C written report, because the written report did not specifically express or state

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the issues and concerns of its constituents that will be adversely impacted by the building of the two-story church on a vacant lot in the Sixteenth Street Heights community and overlay.

The September letter noted that “ANC 4C submitted a letter dated February 21, 2009 that stated its position and noted opposition to the Applicants [sic] proposal by neighbors and community members associated with the Carter Baron [sic] East Neighborhood Association (CBENA).” The ANC also noted that “the Zoning Board notes [in its Order] the ANC 4C did testify at the hearing on March 10, 2009, the Decision and Order did not note or take into considerations, the other issues and concerns verbally testified at the hearing by the ANC 4C Commissioner representative.”

In its motion, ANC 4C cited the following as reasons for requesting reconsideration of the Board’s decision:

- (i) The Board “could not give ‘great weight’ to the ANC 4C written report, because the written report did not specifically express or state the issues and concerns of its constituents”;
- (ii) “Sixteenth Street neighborhoods are over-saturated with the number of institutions currently located throughout the community, which changes the intent of the residential neighborhood ...”;
- (iii) “Residents in the SMD 4C02 overwhelmingly continues [sic] to express non-support of the LDS two-story church to be built in their neighborhoods”;
- (iv) “Concerns for infrastructure and the environmental impact [that] the church will cause the community ...”;
- (v) “Pedestrian safety for residents on Piney Branch Road ...”;
- (vi) “Traffic impact this will add to the current impact of traffic on 16th Street on Sunday during worship hours ...”; and
- (vii) “Concerns for excavation construction for building of the proposed underground parking, and its possible structural damage to existing residential homes”

CBENA’s Motion. By letter dated September 8, 2009 and filed two days later, the Carter Barron East Neighborhood Association also requested reconsideration of the Board’s decision in this proceeding. CBENA complained that the Board’s decision was arbitrary, citing the following “points and relief sought”:

- (i) The Order “sets out a legal standard which is to be met in determining the required number of off-street parking spaces for the facility, then ignores this standard while providing no analysis of how the Board arrived at its decision”;

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- (ii) “[i]n determining whether there would be adverse impact on the use and enjoyment of neighboring and nearby properties due to traffic and noise, [the Order] relies solely on the Applicant’s statements as to the number of cars which will drive to the facility, completely ignores concerns raised by the community and DDOT and provides no analysis of how the Board arrived at this decision”;
- (iii) “The Decision and Order while stating that the standard to be used to assess the impact of the project on the neighborhood properties is whether there is an adverse impact or effect raises this standard”;
- (iv) “The BZA ignored ANC 4C’s report to which it is required to give ‘great weight’”;
- (v) “[w]hile giving great weight to the Office of Planning [the Order] ignores the full scope of the Office of Planning Report which recommends approval ‘subject to resolution of certain issues raised by DDOT’”;
- (vi) “The Decision and Order does not accurately reflect the full scope of the proceedings, the arguments made by the community and contains numerous misleading information [sic]. As written, it is unclear whether the Board had access to all the filings, considered all the testimony and had accurate information as to the facility, leading the community to conclude that the Decision and Order is arbitrary.”

Applicant’s Response. By letter dated September 16, 2009, the Applicant asserted that both motions for reconsideration should be denied, in part because neither the ANC nor CBENA “identified any new evidence bearing on the decision.”

CONCLUSIONS OF LAW AND DECISION

Pursuant to 11 DCMR § 3126.2, any party may file a motion for reconsideration of a decision of the Board, provided that the motion is filed within 10 days from the date of issuance of a final written order by the Board. In this case, the written order granting the Applicant’s requested zoning relief was issued August 28, 2009 and became effective 10 days later, on September 7, 2009. The motions for reconsideration were filed on September 9 and 10, 2009 and therefore were timely. A motion for reconsideration must state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. 11 DCMR § 3126.4.

ANC 4C requested reconsideration “based on the fact that the ... Board could not give ‘great weight’ to the ANC 4C written report, because the written report did not specifically express or state the issues and concerns of its constituents...” (emphasis added). By statute, the Board is

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required to give “great weight” to the “issues and concerns raised in the recommendations of the [affected ANC] during the deliberations ...,” where “great weight” requires “acknowledgement of the [ANC] as the source of the recommendations and explicit reference to each of the [ANC’s] issues and concerns.” D.C. Official Code § 1-309.10(d)(3)(A) (2001). “The recommendations of the [ANC] ... shall be in writing and articulate the basis for its decision.” D.C. Official Code § 1-309.10(d)(1) (2001).

In this case, the written report of the ANC reflected ANC 4C’s unanimous vote not to support the Applicant’s request, and noted opposition to the Applicant’s proposal by CBENA and other neighbors. The ANC’s written report stated that the Applicant had made a presentation at the ANC’s meeting, after which the president of CBENA described reasons for the association’s opposition to the application. The ANC report did not expressly adopt the neighbors’ or CBENA’s concerns as its own or otherwise indicate the ANC’s specific issues and concerns about the application. In its Order, the Board “fully credit[ed] the unique vantage point that ANC 4C holds with respect to the impact of the requested zoning relief on the ANC’s constituents” but concluded that “the ANC did not offer persuasive advice that would cause the Board to find that the requested zoning relief should not be approved” because “ANC 4C expressed its opposition to the project without stating any specific issues or concerns about the application to which the Board can give ‘great weight.’”

The Board was not persuaded by either motion for reconsideration that its determination with respect to ANC 4C’s written report was in error. In its motion for reconsideration, ANC 4C again notes that the ANC’s written submission “stated its opposition and noted opposition to the ... proposal by neighbors and community members....” However, the ANC’s observation that some neighbors opposed the application did not constitute a statement of “issues and concerns” of the ANC that merited “great weight” consideration by the Board. The ANC’s written submission reported that some persons living in the ANC did not support the application, and, in fact, many of the neighbors in opposition to the application were represented separately in this proceeding through the participation of CBENA. The Board again concludes that the ANC’s written submission indicated the opposition of ANC 4C to the Applicant’s proposal but did not state any specific issues or concerns about the application of the ANC itself to which the Board could give great weight. To the extent that the ANC’s written report was intended to adopt the issues and concerns raised by CBENA as its own, the Board fully addressed those issues in this proceeding, in which CBENA participated as a party in opposition to the application.

The Board is required to treat oral testimony by an ANC “as if provided in advance in writing ... when accompanied within 7 days by written documentation approved by the respective [ANC], which supports the testimony.” D.C. Official Code § 1-309.10(d)(4) (2001). The testimony at the public hearing by ANC 4C commissioner Janet Scott was not accompanied by any written documentation approved by the ANC, and thus was not entitled to be given “great weight” by the Board pursuant to D.C. Official Code § 1-309.10(d)(1) (2001). *See Neighbors United for a Safer Community v. District of Columbia Bd. of Zoning Adjustment*, 647 A.2d 793, 798 (D.C. 1994); *Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment*, 403 A.2d 291, 295 (D.C. 1979).

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The Board concludes that the other grounds for reconsideration raised by ANC 4C do not state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, or the relief sought. Some of the grounds were not germane to the Board's consideration of the Applicant's request for a special exception under § 1553 to construct a new church building within the Sixteenth Street Heights Overlay District and an area variance from off-street parking requirements under § 1553.2(b)(2) to locate parking spaces on the lot between the principal building and a street right-of-way. The Board's deliberations were limited to zoning factors pertaining to the requested area variance and to provisions set forth in § 1553 with respect to establishing a new special-exception use in the Sixteenth Street Heights Overlay District, which did not encompass such contentions by the ANC that Sixteenth Street neighborhoods were oversaturated with institutions, concerns pertaining to infrastructure, excavation and construction, or the environmental impact of the proposed church. Other grounds for reconsideration raised by the ANC – pedestrian safety, traffic impacts, and neighborhood opposition to the church – were fully considered by the Board in its deliberations and decision in this case.¹ The ANC's motion did not state any respect in which the Board erred in its decision.

The motion for reconsideration submitted by the Carter Barron East Neighborhood Association similarly fails to state specifically all respects in which the final decision is claimed to be erroneous. The Board concurs with the Applicant that CBENA's motion "attempts to re-argue the evidence and arguments presented at the hearing" without alleging specific grounds of error in the Board's Order, and that CBENA "wants a reconsideration of all these issues [such as parking] based on the same evidence and same arguments already considered."

With regard to parking, CBENA alleges that the Board should have determined the minimum number of spaces necessary based on "the needs of the maximum number of people who can use the facility at one time," and complains that the Board "just credits the Applicant's studies ... even though the community questioned these estimates in writing and at the hearing" In seeking reconsideration, CBENA attempts to continue its argument that the 72 parking spaces to be provided at the Applicant's church will not be sufficient, without indicating how the Board's decision does not comply with the requirements of the Zoning Regulations as set forth in chapter 21, which requires a minimum 28 spaces, or § 1553.2(b), which requires "adequate ... off-street parking sufficient to provide for the needs of the maximum number of occupants, employees, congregants, and visitors who can use the facility at one time" The Board made detailed findings with respect to the maximum number of occupants, employees, congregants, and visitors likely to use the Applicant's church at one time, and does not agree with CBENA's assertions, which the Board fully considered at the hearing and in its deliberations. *See, e.g., Dorchester Associates LLC v. District of Columbia Bd. of Zoning Adjustment*, 976 A.2d 200, 215 (D.C. 2009) (as finder of fact, agency may credit evidence it relies on to detriment of conflicting

¹ The ANC gives no indication why the contentions listed in its motion for reconsideration were not raised earlier in its written submission. Although the ANC did not ask for rehearing, the Board notes that, in any event, no request for rehearing will be considered unless new evidence is submitted that could not reasonably have been presented at the original hearing. 11 DCMR § 3126.6.

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evidence, and generally need not explain why it favored evidence of one side or the other); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Commission*, 402 A.2d 36, 47 (D.C. 1979) (agency not required to explain why it favored one witness or one statistic over another).

CBENA also challenges the Board's findings that the church was not likely to cause adverse impacts related to traffic and noise as based "solely on the Applicant's statements as to the number of cars which will drive to the facility, [and] completely ignores concerns raised by the community and by DDOT" The Board finds no merit in CBENA's assertions. Concerns raised by the community and by DDOT were heard and fully considered at the public hearing. After its concerns were addressed by the Applicant, DDOT ultimately concluded that it had no objection to approval of the application,² and the Board credited the Applicant's expert testimony. *See Washington Ethical Soc. v. District of Columbia Bd. of Zoning Adjustment*, 421 A.2d 14, 17 (D.C. 1980) (while agency is not required to explain why it favored one witness over another or one statistic over another, opinions of qualified experts cannot be lightly disregarded and the probative value of lay opinions is often doubtful). In seeking reconsideration, CBENA does not allege any specific error by the Board with respect to its findings of no adverse impacts related to traffic or noise.

In its motion for reconsideration, CBENA complains that the Board's Order was arbitrary with respect to the standard of review used "to assess the impact of project on neighborhood properties." While CBENA apparently confuses the "adverse impact" standard used in assessing the Applicant's request for a special exception and the "substantial detriment" standard used in assessing the request for variance relief, CBENA's motion does not state specifically the respects in which the final decision is claimed to be erroneous or the grounds of the motion. Rather, CBENA reiterates its opposition to a decision "placing another non-residential use in a highly institutionalized residential community with a zoning overlay," but does not indicate any manner in which the Board's decision was inconsistent with the relevant provisions of the Zoning Regulations.

The Board finds no merit in CBENA's contention that its decision did not accurately reflect the full scope of the proceeding or contained misstatements. CBENA does not specifically indicate any misstatements or misinformation contained in the Order, or allege that the Board should have addressed a material, contested issue that is not discussed in the Order.

In fact the Board did have access to all the filings in the record and fully considered all testimony and evidence in its deliberations. The Board is required to issue a written decision accompanied by findings of fact and conclusions of law, where the findings of fact "shall consist of a concise statement of the conclusions upon each contested issue of fact." D.C. Official Code § 2-509(e).

² For this reason, the Board finds no merit in CBENA's contention that reconsideration is warranted on the ground that the Board allegedly "ignore[d] the full scope of the Office of Planning Report which recommends approval 'subject to resolution of certain issues raised by DDOT.'"

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(2001). The findings of fact and conclusions of law must be “supported by and in accordance with the reliable, probative, and substantial evidence,” but are not required to restate every party’s testimony and argument when the Board based its decision on other testimony and evidence found more credible and persuasive. *See Citizens Ass’n of Georgetown, Inc.*, 402 A.2d at 47 (requiring an agency “to sort out in writing, for example, how it came to accept the judgments of certain traffic experts and not others” would create a burden on the agency that “would surely outweigh the incremental benefits of further enlightening the parties and facilitating judicial review”); *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85, 89 (D.C. 1978) (mere fact that a party presented testimony on a point does not make it an issue the Board is required to resolve; the structure and purpose of the Zoning Regulations are such that once the Board has determined that an application satisfies the regulations it follows as a matter of law that the application is consistent with its provisions); *Lovendusky v. District of Columbia Bd. of Zoning Adjustment*, 852 A.2d 927, 932 (D.C. 2004) (Board was not required to consider arguments of adjoining and nearby neighbors as “material” or to address those views with particularity).

The Board’s decision in this proceeding was supported by substantial evidence in the record, and neither the ANC nor CBENA has provided sufficient basis to warrant the Board’s reconsideration of the decision. For the reasons discussed above, the Board concludes that neither ANC 4C nor the Carter Barron East Neighborhood Association has satisfied the requirements for reconsideration of the Board’s decision to approve the Applicant’s request for a special exception under § 1553 to construct a church, a new nonresidential use, in the Sixteenth Street Heights Overlay District and an area variance from the off-street parking requirements under § 1553.2 in the SSH/R-1-B District at premises 4901 16th Street, N.W. (Square 2710, Lot 15). Accordingly, it is hereby **ORDERED** that the motions for **RECONSIDERATION** are **DENIED**.

VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman (by absentee vote), and Meridith H. Moldenhauer voting to DENY the motion for reconsideration submitted by ANC 4C; no other Board member or Zoning Commission member participating)

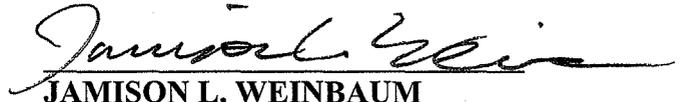
VOTE: 3-0-2 (Marc D. Loud, Shane L. Dettman (by absentee vote), and Meridith H. Moldenhauer voting to DENY the motion for reconsideration submitted by Carter Barron East Neighborhood Association; no other Board member or Zoning Commission member participating)

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

Pursuant to 3125.10, a majority of Board members approved the issuance of this Order, including Nicole C. Sorg who read the record.

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ATTESTED BY:



JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 20 2010

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on MAY 20 2010, 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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ATTESTED BY:

A handwritten signature in black ink that reads "Jamison L. Weinbaum". The signature is written in a cursive style and is positioned above the printed name.

JAMISON L. WEINBAUM
Director, Office of Zoning