

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18376-A of Cornelle Smith, pursuant to 11 DCMR § 3103.2 for a variance from the story requirements under § 400.1, and a variance from the open court requirements under § 406.1, to accommodate third and fourth floor additions to an existing four-unit apartment building in the R-4 District at premises 3453 Holmead Place, N.W. (Square 2834, Lots 82, 73).

HEARING DATE: July 17, 2012
DECISION DATE: July 17, 2012
ORDER DATE: March 8, 2013
**RECONSIDERATION
DECISION DATE:** April 9, 2013

ORDER DENYING
MOTION FOR RECONSIDERATION AND STAY

On March 8, 2013, the Board of Zoning Adjustment (“Board”) issued an order (“the Order”) granting in part and denying in part the application of Cornelle Smith (“the Applicant”). Specifically, the Order granted the Applicant’s request for a variance from the minimum open court requirements of 11 DCMR § 406.1 and denied a variance from the maximum story limits of 11 DCMR § 400.1. On March 21, 2013, the Applicant filed a Form 153 “Motion for Reconsideration or Rehearing” (“the Motion”). (Exhibit 37.) The Applicant checked the box on the form indicating that the motion was for reconsideration and left the box for “rehearing” blank. In the portion of the form in which the movant is asked to identify why the motion should be granted, the Applicant made seven statements, the third of which requested a stay of the effectiveness of the Order.

For reasons explained below, the Board voted on April 9, 2013 to deny the reconsideration and stay requests.

The Motion for Reconsideration

Subsection § 3126.4 of the Board’s Rules of Practice and Procedure (Chapter 31 of Title 11 DCMR) requires that 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.”

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The Applicant asserts six claims of error, none of which have merit.

The Applicant first alleges that the Board failed to consider the relevancy of the “intent” of a topographic survey to the claimed exceptional condition of the property. In fact the Board reviewed all of the exhibits contained in the record, but was not required to explain how its review of each affected its ultimate decision. Rather, the Board need only make “sufficiently detailed findings on basic factual issues to demonstrate that it has considered and ruled upon each of the party's contentions.” *Draude v. D.C. Bd. of Zoning Adjustment*, 527 A.2d 1242, 1251 (D.C. 1987). The Board’s order did so in this case.

Second, the Applicant claims that the Board should have given great weight to Advisory Neighborhood Commission (“ANC”) 1A’s public vote to support the Application, even though no written report by that ANC was received by the Board prior to its deliberations.¹ However, to do so would have been contrary to the Court of Appeals holding that “the ‘great weight’ requirement pertains ‘only to the written recommendations of the [affected] ANC’ and not to its oral testimony.” *Neighbors United for a Safer Cmty. v. D.C. Bd. of Zoning Adjustment*, 647 A.2d 793, 798 (D.C. 1994), quoting, *Friendship Neighborhood Coalition v. D.C. Bd. of Zoning Adjustment*, 403 A.2d 291, 295 (D.C. 1979).

Next, the Applicant complains that the length of time between the Board’s vote and its issuance of the Order caused him “strife, mental burden, family stress” and loss of an investor. The assertion does not go to the substance of the Order and therefore cannot form a basis for granting reconsideration. Similarly irrelevant is the Applicant assertion that the Office of Planning (“OP”) waited too long to suggest that additional zoning relief might be necessary. The Board’s Order did not deny the height variance because other relief might have been needed, but because the Applicant failed to meet its burden of proof for the height relief sought.

The Applicant also claimed that a fifth member of the Board should have participated and thereby been given the chance to “weigh in”. Section 8 of the Zoning Act of 1938 created a five member Board and provided that the “concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order,” D.C. Official Code § 6-641.07 (h). The requirement is repeated at § 3125.2 and was met in this case with four Board members voting to deny the height variance. (Order, p. 8.) The Order was therefore properly issued.

The Applicant's final allegation is that “the property is a conversion to an apartment house, and relief sought should be considerate [sic] of that.” First, no conversion was involved. The Order found that the “building was previously developed as a three-story apartment building with a partially above ground basement,” Finding of Fact 6, and that the Applicant subsequently

¹ On April 3, 2013, the ANC belatedly informed the Board of its vote. However, the ANC’s position on the underlying application is irrelevant to the Board’s consideration of a motion for reconsideration. Pursuant to § 3126.5, a party’s response to a motion for reconsideration must be filed within seven days after the motion is filed and be either “an answer in opposition or support of such motion.” The ANC report met neither of these requirements and was therefore not considered.

“constructed two additions to the building without obtaining a building permit.” Regardless of how the Applicant’s project may be characterized, the existing and intended use of the property was an integral part of the Board’s decision as reflected in the Order. For example, the Board specifically rejected the Applicant’s contention that the third and fourth floors had to be combined in order that the project be financially viable. The Board also explicitly addressed the financial difficulty claimed by the Applicant in his effort to redevelop the property, noting that there was no evidence that this difficulty resulted from the size of the fourth unit. (Order, p.7.)

Request for a Stay

The Applicant seeks to stay the effectiveness of the Board’s Order, but offers no explanation why such relief should be granted. The requested stay is therefore denied.

CONCLUSION

For the reasons stated above, it is ORDERED that the Motion for reconsideration and stay is DENIED.

VOTE: 4-0-1 (Nicole C. Sorg, Jeffrey L. Hinkle, Lloyd J. Jordan (by absentee ballot), and Marcie I. Cohen (by absentee ballot) to Deny; one Board seat vacant.)

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

The 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 15, 2014

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.