

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18732-A on the Motion for Reconsideration and Rehearing of the Application of WSD Capital LLC, pursuant to 11 DCMR § 3104.1, for a special exception under § 223, not meeting the lot occupancy requirements under § 403, the side yard requirements under § 405.9, and nonconforming structure requirements under § 2001.3, for a second story addition to an existing one-family detached dwelling in the R-1-B District at premises 859 Venable Place, N.W. (Square 2971, Lot 39).

HEARING DATE: March 18, 2014
DECISION DATE: March 18, 2014
**MOTION FOR RECONSIDERATION
& REHEARING DECISION DATE:** April 15, 2014

ORDER DENYING RECONSIDERATION AND REHEARING

The order of the Board of Zoning Adjustment (the “Board”) approving the application of WSD Capital LLC (the Applicant) was issued on March 18, 2014. On March 18, 2014, a motion for reconsideration and rehearing was filed by Michael Sindram, who was not a party to the case. The Office of Zoning sent a letter dated March 19, 2014 to Mr. Sindram, noting that only a party may request rehearing and reconsideration and informing Mr. Sindram that he must seek a waiver of this requirement pursuant to 11 DCMR § 3100.5. On March 24, 2014 Mr. Sindram submitted a request to reopen the record and to accept an untimely filing.¹

In both motions, Mr. Sindram put forth the same arguments. First, he claimed that he did not receive mailed notice of the hearing. Next, he argued that the Board failed to provide reasonable public accommodation under the Americans with Disabilities Act (ADA) to allow him to testify by phone. Finally, Mr. Sindram indicated that the ANC meeting agenda provided an incorrect address for the Subject Property and attached ANC 4B’s agenda for February 24, 2014, which lists the address as 829 Venable Place.

¹ The request to reopen the hearing pursuant to § 3121.9 is not properly before the Board, as it was filed after the decision was rendered. Subsection 3121.9 provides the opportunity to enter testimony or evidence into the record after it has been closed, provided that the movant “demonstrate good cause and the lack of prejudice to any party.” If the Board grants a motion under this provision, the relevant evidence will be considered by the Board during the decision-making process.

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For the reasons discussed below, the Board found the arguments and evidence insufficient to support waiving the party status requirement for reconsideration or rehearing of the case.

CONCLUSIONS OF LAW AND DECISION

Pursuant to § 3126.2 of the Board's Rules of Practice and Procedure (Chapter 31 of Title 11 DCMR):

Any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board.

Under § 3100.5, the Board may waive the party status requirement of § 3126.2 where good cause is shown. Mr. Sindram claims that he did not receive mailed notice of the hearing, that the Board did not provide reasonable public accommodation to allow him to testify by phone, and that the ANC meeting agenda provided an incorrect address for the Subject Property. As a result, Mr. Sindram argues that he was not given proper notice about the public hearing, nor was he afforded a reasonable opportunity to testify. For the following reasons, the Board concludes that these arguments do not show good cause that would justify waiving the prohibition against filing a motion for reconsideration or rehearing by a non-party.

The Board finds that notice of the hearing was mailed to Mr. Sindram and that, even if it were not, adequate notice of the public hearing was provided through other means. As required by § 3113.13, the Director of the Office of Zoning provided notice not less than 40 days before the date of the hearing by "mailing the notice to the applicant and to the owners of all property within two hundred feet (200 ft.) of the property involved in the application." Mr. Sindram's address was included on the list of property owners to whom notice of the hearing was sent, as shown in Exhibit 7 of the record. In addition, the Board concludes that Mr. Sindram was given notice of the hearing through the other means required by §§ 3113.13 through 3113.15, such as, the posting of the notice on the Subject Property and publication of the notice in the *D.C. Register*.

As to Mr. Sindram's argument regarding the Board's failure to allow him to testify by phone, the Board does not allow anyone to testify by telephone. The Board notes that any person wishing to provide testimony may do so in writing. Written testimony is entered into the record and considered by the Board as it renders a decision, thus making the submission of written testimony a reasonable option for persons unable to appear at the public hearing. As to the motion's final argument, the error contained in ANC 4B's agenda did not impact the Board's proceedings and does not support the claim that Mr. Sindram did not receive proper notice of the Board's hearing or a reasonable opportunity to testify. Accordingly, the Board finds that Mr. Sindram's arguments do not show good cause that would justify the Board's waiver of the party status requirement for reconsideration and rehearing.

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Nonetheless, if the Board were to waive the party requirement, the motion for reconsideration and rehearing must be denied, as Mr. Sindram does not address the requirements of § 3126. Pursuant to § 3126.4, “a motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought.” Under § 3126.6, the Board shall not consider a request for rehearing “unless new evidence is submitted that could not reasonably have been presented at the original hearing.” Neither motion addresses an error in the Board’s final decision, nor does either motion provide evidence that was not available at the time of the public hearing.

Accordingly, it is hereby **ORDERED** that the motion for **RECONSIDERATION** and **REHEARING** is **DENIED**.

VOTE: 3-0-2 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marnique Y. Heath to DENY; S. Kathryn Allen and the Zoning Commission member not present, not voting.)

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: October 27, 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.