

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

August 25, 2016

John Kupcinski
Commissioner
Advisory Neighborhood Commission 2B07
1767 P Street NW
Washington, DC 20036

Re: Applicability of Great Weight to HPRB and the BZA

Dear Commissioner Kupcinski:

On August 19, 2016, the Board of Zoning Adjustment (“BZA”) issued a written order approving a zoning variance application from St. Thomas’ Episcopal Parish. That variance would, for zoning purposes, allow the Parish to construct a church and a multifamily residential building. Before the Parish filed this variance application with the BZA, it separately requested and received conceptual design review approval¹ for this construction project from the Historic Preservation Review Board (“HPRB”). You asked us whether, in these two matters, the HPRB and the BZA were required to give great weight to relevant written recommendations articulated by an affected Advisory Neighborhood Commission (“ANC”). The answer is yes.²

The BZA was required to give great weight to an affected ANC’s written recommendations pursuant to the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”),³ which requires advance notice and great weight for “requested or proposed zoning changes [or] variances.”⁴

¹ See 10-C DCMR § 301.2 (“The purpose of conceptual design review is to allow applicants to benefit from the guidance of the [HPRB] . . . in advance of a permit application, and to allow the [HPRB] . . . to review and take action at an early stage of design”).

² We offer no opinion as to whether this requirement was satisfied in either the variance proceeding or the concept design review proceeding.

³ Effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.01 *et seq.* (2012 Repl. and 2016 Supp.)).

⁴ D.C. Official Code § 1-309.10(c)(1) (2012 Repl.); see *Office of People’s Counsel v. Public Serv. Comm’n*, 630 A.2d 692 (D.C. 1993) (“The ‘great weight’ requirement is tied to the statutory ‘notice’ requirement [in the ANC Act]”); D.C. Official Code § 1-309.10(c)(4) (2012 Repl.) (“The Office of Zoning shall ensure that each affected Commission, the Commissioner representing the affected single member district, the affected ward Councilmember, and the Office of Advisory Neighborhood Commissions is provided notice of applications, public hearings, proposed actions, and actions on all zoning cases.”); *Glenbrook Road Ass’n v. District of Columbia Bd. of Zoning*

Likewise, the HPRB's regulations require it to give great weight to the written recommendations of any "affected ANC":

In order to ensure that neighborhood views as expressed through the ANC receive specific attention in its deliberations, the Board shall give great weight to any properly adopted written recommendations of the affected ANC that are germane to the issues that fall within the Board's authority.⁵

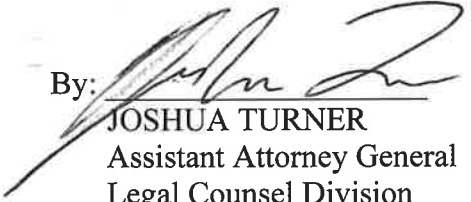
An "affected ANC," in turn, is "[t]he ANC for the area within which a subject property is located, or in the case of a property located in close proximity to an ANC boundary, either ANC sharing the boundary."⁶ Our understanding is that the Parish is located within ANC 2B, which means that your ANC would be "affected" under this provision and its written recommendations would be entitled to great weight.

If you have any questions, please contact Josh Turner, Assistant Attorney General, at 442-9834, or Janet M. Robins, Deputy Attorney General, Legal Counsel Division, at 724-5524.

Sincerely,

KARL A. RACINE
Attorney General for the District of Columbia

By:


JOSHUA TURNER
Assistant Attorney General
Legal Counsel Division

(AL-16-514)

Adjustment, 605 A.2d 22, 34 (D.C. 1992) ("The BZA is also required to give "great weight" to the concerns of Advisory Neighborhood Commissions").

⁵ 10-C DCMR § 326.3.

⁶ *Id.* § 9901.