

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

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WASHINGTON, D. C. 20001



IN REPLY REFER TO:
OLC:LNG:lng
(AL-96-604)

December 3, 1996

Dorothy Miller
Commissioner
Advisory Neighborhood Commission 2-A
2440 Virginia Avenue, N.W.
Washington, D.C. 20037

Re: Is a resolution sent to the Board of zoning Adjustment on October 26, 1996 by four commissioners of ANC 2-A, relating to BZA Case # 15461 (2501 Pennsylvania Avenue, N.W.), entitled to be given "great weight" by the BZA?

Dear Commissioner Miller:

This is in reply to your November 29, 1996 letter requesting the advice of this Office concerning the legal status of a resolution that was transmitted to the District of Columbia Board of Zoning Adjustment (BZA) on October 26, 1996 by four commissioners of Advisory Neighborhood Commission (ANC) 2-A.

The transmittal of the resolution in question was accompanied by a letter, dated October 26, 1996, that was signed by ANC 2-A commissioners Sara Maddux, Jean Swift, Michael Geroe, and Dale Barnhard. This letter states as follows:

This letter provides our support for the proposed modification of the development planned for 2501 Pennsylvania Avenue, N.W. (BZA # 15461). The new developer made a presentation at the regularly scheduled monthly meeting of the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) on October 16, 1996. Unfortunately, ANC-2A was unable to vote on the enclosed resolution at that time since the Commission had only three of its six Commissioners present. Subsequent to the meeting, Jean Swift, who was out of the country at the time of the meeting, was briefed on the proposed modification.

Since the next monthly meeting of ANC-2A is after the Board's November 6, 1996, meeting, we want to indicate in

a timely way our support for the enclosed resolution.
[Emphasis added.]

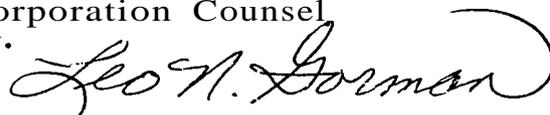
Under section 13(d) of the Advisory Neighborhood Commissions Act of 1975, D.C. Code § 1-261(d) (1992), a District government agency is required to give "great weight" to the written recommendations of an ANC on a government action proposed to be taken by the agency that is of significance to neighborhood planning and development within the ANC's area. In order to be entitled to great weight consideration by the agency, the ANC's written recommendations must be adopted at a properly noticed public meeting of the ANC that is open to the public and at which "a majority of the elected representatives of the Commission is present." Id. The underscored language in the above-quoted October 26, 1996 letter makes it clear that the resolution that was transmitted to the BZA under cover of that letter was never adopted by ANC 2-A in accordance with the requirements of section 13(d). Therefore, the resolution is question is not entitled to be given "great weight" by the BZA when it decides Case # 15461. In sum, the October 26, 1996 letter and the accompanying resolution represent only an expression of the individual views of four commissioners of ANC 2-A, not of ANC 2-A as a commission.

In rendering this advice to you, we hasten to add that this Office does not dictate to the BZA how it shall rule on such questions. Thus, it is for the BZA, not this Office, to make a final administrative determination concerning the legal status of written recommendations submitted to it by ANCs.

You raise a question about the propriety of Commissioner Swift's signature on the October 26, 1996 letter since Commissioner Swift was not present at the October 16, 1996 ANC 2-A monthly meeting. Because the October 26, 1996 letter constitutes an expression of the views of the signers speaking for themselves personally, rather than for ANC 2-A, the fact that Commissioner Swift was not present at the October 16, 1996 ANC 2-A monthly meeting is wholly irrelevant. She, like any other member of ANC 2-A, has a right to express her personal views to the BZA on a matter pending before it that affects the ANC 2-A area.

Sincerely,

Charles F.C. Ruff
Corporation Counsel
By.



Leo N. Gorman
Assistant Corporation Counsel
Office of Legal Counsel

cc: The Honorable Harold Brazil
Chairman
Committee on Government operations
Council of the District of Columbia

Betty King
Director
Office of the Ombudsman

Ayo Bryant
Director
Office of Diversity and
Special Services

Sara Maddux
Chairperson
ANC 2-A

Jean Swift
Vice-Chairperson
ANC 2-A

Laura Richards
Chairperson
D.C. Board of Zoning Adjustment