

D.C. Court of Appeals Clarifies Role of Advisory Neighborhood Commissions
In Zoning Cases

In two recent cases decided within weeks of each other last February, the District of Columbia Court of Appeals clarified the role of Advisory Neighborhood Commissions (“ANC’s”) in administrative decisions. The two cases were styled as Foggy Bottom Association v. Board of Zoning Adjustment and Neighbors Against Foxhall Gridlock v. Board of Zoning Adjustment.

In both cases, the Court of Appeals affirmed Board of Zoning Adjustment rulings that were contrary to the views expressed by the respective ANC’s involved. The Foggy Bottom Association matter involved an appeal from the BZA’s grant of a special exception allowing the George Washington University to build a new hospital on 23rd Street, N.W., across the street from the existing hospital. The Neighbors Against Foxhall Gridlock case involved an appeal from the BZA’s grant of a special exception to permit a private school to be established on Foxhall Road, N.W.

In both cases, the BZA’s rulings had been contrary to the recommendation of the applicable ANC. In both cases, a key basis for the appeal was that statutory requirement imposed by the D.C. Code (§1-261(d) in the 1981 edition, §1-309.10 in the 2001 edition), requiring that the BZA give “great weight” to the ANC’s decision.

It has long been part of the District of Columbia Zoning statute and regulations that the input of the applicable ANC be given such so-called “great weight,” but the precise meaning of the term has been contested. These recent cases provide some further guidance on the issue, and, importantly, they demonstrate that the “great weight” standard does not require that the BZA adhere to the ANC’s recommendation. In fact, after reading these two cases, some might argue that there are significant loopholes that permit the ANC’s recommendation to be disregarded entirely.

In the Foggy Bottom Association case, the Court of Appeals pointed out the “special position” occupied by the ANC’s, and reiterated, from previous cases, the agencies’ obligation to “elaborate, with precision, its response to the ANC issues and concerns.” As part of making a final decision, an agency is not required to follow the ANC’s recommendation, but it must articulate why the particular ANC does, or does not, offer “persuasive advice.” Furthermore, agencies should make explicit reference to each ANC issue and concern, and address specific findings of fact and conclusions of law with respect to each. At the same time, the Court of Appeals cautioned that an agency does not have to accept the ANC’s concerns. As the Court of Appeals put it, “All that the law demands is that the views of the ANC be specifically addressed.”

In Neighbors Against Foxhall Gridlock, the Court of Appeals clarified that the “great weight” provision is “not a quantum requirement,” and the agency is “not obliged to follow the ANC’s recommendations or adopt its views.” The Court of Appeals also stated that the ANC does not enjoy “expert” status, and that its views are not necessarily entitled to special deference. Instead, the agency must “pay specific attention to the

source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings.”

The precise meaning of the “great weight” requirement has long been the subject of dispute. See, e.g., Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment, 403 A.2d 291 (D.C. 1979); Wheeler v. District of Columbia Bd. of Zoning Adjustment, 395 A.2d 85 (D.C. 1978). Practitioners need to be familiar with the legal guidance as to what giving “great weight” means. Although some might argue that the recent decisions mean that “great weight” requires that the agency merely look carefully at what the ANC has said, and find a basis for disregarding the ANC, if that is desired, one can be sure that these issues will continue to be debated and pondered over the coming years.