

Government of the District of Columbia



Office of Advisory Neighborhood Commissions
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TO: Commissioner D'Andrea
FR: Denise Wiktor, General Counsel
DT: 10/18/2023

DZW

RE: Whether the ANC has “great weight” in an alley closing petition; and whether the ANC has Great Weight attach, at the Office of the Surveyor or at the City Council.

You asked whether the ANC comments should be given Great Weight regarding an alley closing petition and whether great weight attached to the Office of the Surveyor’s recommendations or the City Council vote on the matter. My conclusion, as outlined below, is the ANC position is entitled to be given great weight by the Office of the Surveyor in formulating recommendations to be given to the City Council.

Background

ANC 6 B has received notice of an alley closing within its ANC. It is a dead-end alley surrounded by the same property owner. Street and Alley closings in the District of Columbia are begun with an application to the Office of the Surveyor which is located within the Department of Buildings¹.

After the application is filed the Surveyor sends it to the local utilities, select DC government agencies (DDOT, EMS, OP are some) and affected property owners, if there are any other than the applicant. If the street or alley is in the National Capital Service Area², a special historic district or in the National Capital Service Area it could go to the Old Georgetown Board, Fine Arts Commission, or a federal agency. The affected ANCs are also required to be given notice of the application.³

¹ Procedures are governed by D.C. Official Code § 9-202.02 *et seq.* and 24 DCMR 1400 *et seq.* The procedures refer to the Department of Consumer and Regulatory Affairs which has since separated into the Department of Buildings and the Department of Licensing and Consumer Protection. The Office of the Surveyor is within the Department of Buildings.

² An area defined in the D.C. Official Code § 1-207.39

³ D.C. Official Code 9-202.02(5)

Generally, a time is set for agencies and utilities to return comments. The utilities, from my experience as Public Space Manager, are the most often objectors and their objections are frequently abated with an agreement with the applicant. Other objections could be for EMS and fire access, or other owners being cut off from egress. If there are no objections or the objections have been addressed to the Surveyor's satisfaction, the application is then forwarded to the Administration which then submits. It is then submitted to City Council for closure⁴. Once closed, the title of the land reverts to the adjacent property owners, if it is not an original alley.⁵

“[T]he Council, in deciding whether to close a street, considers and devises broad policy-that goes beyond the circumstances of specific parties-relating instead to the public generally. Policy decisions must be made with respect to such matters as traffic flow, transportation facilities, population density, and proper mixture of housing, commercial facilities, schools and parks. In making these policy decisions, the Council tends to consult broad relevant surveys, studies, and published reports. Expertise from other government departments is sought.”⁶ The comments and concerns of the ANC should be directed to policy issues that the Council will be addressing in addition to any issues created for an impacted property owner. Concerns about the Applicant itself are not relevant to the impact of closure.⁷ Concerns about the potential scope and impact of the closing, such as potential for later allowing for the construction of a large single building on the site, should be addressed at this point as such objection may be deemed waived if raised at a later point.⁸

ANC right to comment.

Prior to consideration by a committee of the Council of an application to close all or part of a street or alley, the Mayor shall “[r]efer the application to the Advisory Neighborhood Commission in whose area the street or alley to be closed is located for its review and provide the Council with a copy of any comments submitted by the affected Advisory Neighborhood Commission.”⁹ The Mayor's agent in alley closings is the Office of the Surveyor.

Responding to the notice from the Surveyor's office may be the only opportunity for the ANC to submit written comments. The alley in question is a dead-end alley surrounded by the same property owner.¹⁰ The D.C. Official Code allows that a dead-end alley may be closed without a public hearing when it is a dead-end alley, and the application is signed by all the property owners and accompanied by a written statement supporting the closure.¹¹

⁴ Council jurisdiction to close a street or alley is found at D.C. Official Code § 9-202.02 *et seq.*

⁵ D.C. Official Code § 9-202.12

⁶ *Chevy Chase Citizens Ass'n v. D.C. Council*, 327 A.2d 310, 316 (D.C. 1974)

⁷ The land (with the closed alley) may change hands as in the *Chevy Chase* case cited above.

⁸ *Am. Univ. Park Citizens Ass'n v. Burka*, 400 A.2d 737, 743 (D.C. 1979) Subsequent owner doubled the size of the project that was in planning at the time of the alley closure.

⁹ See also, 24 DCMR 1402.6

¹⁰ D.C. Official Code

¹¹ D.C. Official Code § 9-202.05, See also 24 DCMR 1403.3-1403.5

The Council does not have to abide by that rule, but it would likely be discharged from committee without a hearing and go directly to a full Council vote if it met those requirements.

Great Weight

The Home Rule Act as codified in the D.C. Official Code requires 30 days written notice to ANCs of “requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development.”¹² D.C. Official Code § 1-309.10(b) and (c) specifies the types of decisions that District government bodies must give advance notice. Section 309.10(b)(2) requires notice of “the intent to change the use of property owned or leased by or on behalf of the government.” Section 309.10(c) specifies particular notices required to be given by agencies in addition to those covered in Section 309.10(b)(2). For purposes of this discussion the notices required in 1-309.10(c)(1)(A)(iii) are relevant. Those are notices about “the formulation of any final policy decision or guideline with respect to ...public improvements... affecting the Commission area.

“Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with [§ 1-309.11\(c\)](#) which is open to the public in accordance with [§ 1-309.11\(g\)](#). The recommendations of the Commission, if any, shall be in writing and articulate the basis for its decision”¹³

“The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”¹⁴

To summarize, Executive Branch agencies are required to give notice to ANCs of certain actions. Once the ANCs receive the notice, they may make recommendations in writing on the action which are voted on in a public meeting. “The issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity. Great weight requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission’s issues and concerns.”¹⁵

Arguably, alley closings are a public improvement of significance to neighborhood planning or development. At the same time, it could also be argued that a dead-end alley is not significant to neighborhood planning. Closing an alley also would fall under the “intent to change the use of property owned or leased” by the District. Closing an alley would also arguably fall within “a final policy decision” regarding a public improvement.

The Surveyor’s office takes in the application to close the alley and the responses by the agencies and utilities to the Application. The agency may make a recommendation on whether

¹² D.C. Official Code § 1-207.38(d)

¹³ D.C. Official Code § 1-309.10(d)(1)

¹⁴ D.C. Official Code § 1-309.10(d) (3)(A)

¹⁵ D.C. Official Code § 1-309.10(d) (3)(A)

to close the alley¹⁶ and all of it is forwarded to the City Council with a recommendation. If the recommendation is favorable, then no hearing is held. Since the recommendation by the agency will negate a public hearing requirement, then great weight should be given and noted in the recommendation by the agency.

No similar great weight attaches to the Council consideration. ANC's may "advise the Council of the District of Columbia...with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area."¹⁷

Conclusion

The only stage in the alley closing process where the ANC may receive great weight is in response to the Surveyor's notice of the alley closing.

¹⁶ 24 DCMR 1403.2(c)

¹⁷ D.C. Official Code § 1-309.10(a)