

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
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Legal Counsel Division

February 21, 2017

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

Re: Do ANC Act Great Weight Requirements Apply to the Historic Preservation Review Board?

Commissioner Kupcinski:

You asked us whether the Advisory Neighborhood Commissions Act of 1975 (“ANC Act”)¹ requires the Historic Preservation Review Board (“HPRB” or “Board”) to give great weight to an ANC’s written recommendations pertaining to the Board’s review of work affecting historic landmarks and historic district.² The answer is no.

Section 738(d) of the Home Rule Act³ states that “timely notice shall be given to each [ANC] of requested or proposed zoning changes, variances, public improvements, licenses, or permits of significance to neighborhood planning and development within its neighborhood area for its review, comment, and recommendation.” As the D.C. Court of Appeals explained in *Kopff v. Alcoholic Beverage Control Board*,⁴ the ANC Act implements this requirement by guaranteeing affected ANCs advance notice of certain “adjudicative situations,” including “the issuance of particular liquor licenses,”⁵ as well as “proposed zoning changes, variances, public improvements, licenses, or permits that affect the Commission area.”⁶ An ANC that is entitled to

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

² See 10-C DCMR, Ch. 3. We previously advised that the Historic Preservation Review Board is required by its regulations to give great weight to the recommendations of affected ANCs. The letter did not address whether the ANC Act also requires that the HPRB gives great weight to the ANC’s recommendation. See Letter to ANC 2B07 Commissioner John Kupcinski, Aug. 25, 2016, available at <http://oag.dc.gov/sites/default/files/dc/sites/oag/publication/attachments/Letter%20to%20Commr%20Kupcinski%20re%20Great%20Weight--8-25-16.pdf> (last visited Feb. 9, 2017).

³ Approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-207.38(d) (2012 Repl.)).

⁴ 381 A.2d 1372 (D.C. 1977).

⁵ *Id.* at 1381.

⁶ D.C. Official Code § 1-309.10(c)(1) (2012 Repl. and 2016 Supp.).

advance notice of proposed zoning changes and permits that affect its neighborhood area is also entitled to receive great weight on any written recommendations it adopts.⁷

Because the statutory duty to provide notice and great weight applies in the context of an actual decision that will affect neighborhood planning and development, that duty rests with the government body that actually makes the decision. No court decision holds, and none of our letters maintains, that the ANC Act requires a government body to offer notice and great weight before simply offering advice that does not bind the ultimate decisionmaker. Offering advice, however, is precisely what the Board does when it reviews work affecting landmarks and historic districts. It offers guidance to permit applicants,⁸ and it advises the Mayor's Agent as to whether proposed work should be approved.⁹ It has no authority to decide whether the work will be authorized. As the D.C. Court of Appeals explained in *N Street Follies, LP v. Board of Zoning Adjustment*,¹⁰ "the final authority for approving applications for construction in historic areas under the Historic Protection Act rests with the Mayor's Agent, not the HPRB."¹¹ Accordingly, for proposed work affecting landmarks and historic districts, the statutory duty to give great weight to the issues and concerns raised in an affected ANC's properly adopted written recommendations rests with the Mayor's Agent, not with HPRB.

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,

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By:


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(AL-16-514 B)

⁷ See *id.* § 1-309.10(d)(3).

⁸ See 10-C DCMR § 301 (Conceptual Design Review).

⁹ See *id.* § 330 (Report of Recommendations to the Mayor's Agent).

¹⁰ 949 A.2d 584 (D.C. 2008).

¹¹ *Id.* at 589.