

**Written Testimony of  
Mark Eckenwiler (ANC 6C04)  
Before the Committee of the Whole**

**Public Roundtable on  
PR 24-21, Board of Zoning Adjustment  
Carl Blake Confirmation Resolution of 2020**

**February 4, 2021**

Mr. Chairman and Members of the Committee,

The Board of Zoning Adjustment (BZA) plays a crucial role in upholding the District’s land-use rules in deciding whether to approve or deny applications for special exceptions and variances. Those decisions, when made in conformity with the zoning regulations, can improve not only individual properties but also their environs. Unsound decisions, on the other hand, can stifle needed growth and/or impose substantial hardships on adjacent properties and nearby communities.

Surprisingly, the local law establishing the BZA imposes only the most minimal requirements for appointment. The three members appointed by the Mayor and approved by the Council need only demonstrate residency in the District over the previous three years, and one must be a homeowner.<sup>1</sup>

By contrast, the statutes applicable to the Historic Preservation Review Board require, at a minimum, that a majority of the members be “professionals qualified in history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, landscape

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<sup>1</sup> See D.C. Official Code § 6-641.07(a).

architecture, and related disciplines.”<sup>2</sup> The regulations impose even more stringent criteria, including a mandate that “[a]ll Review Board members must have demonstrated competence, interest, or knowledge in historic preservation.”<sup>3</sup>

The disparity here makes no sense. BZA members must grapple with the District’s complex, detailed zoning regulations. Interpreting those regulations is a demanding task; it requires members not just to understand scores of nuanced definitions and zone-specific rules, but also to make informed judgments on architectural and aesthetic questions. (These questions include the meaning of “cornice,” a term undefined in the regulations, and whether an addition would “substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage.”<sup>4</sup>)

I speak here from personal experience. For the past ten years, I have chaired ANC 6C’s extremely busy zoning committee. In that capacity, I have testified at scores of BZA hearings, filed five BZA appeals, and observed countless other hearings. Even as a licensed attorney with 30 years of experience interpreting other statutory and regulatory frameworks, I personally find it challenging at times to understand parts of the DC zoning regulations.

Moreover, those regulations are a moving target. The Zoning Commission continues to make adjustments, either to address gaps or inconsistencies in the 2016 rewrite or to address entirely new issues.

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<sup>2</sup> 54 U.S.C. § 300318(2). HPRB’s organic statute, D.C. Official Code § 6-1103, refers to the regulations issued pursuant to 16 U.S.C. § 470 *et seq.* These federal statutes were repealed in 2014 when Congress enacted a new U.S. Code Title 54. The regulations, however, remain in place; see below.

<sup>3</sup> 36 CFR § 61.4(f)(1).

<sup>4</sup> 11-E DCMR § 5201.3(c).

My point is this: BZA members should bring substantial experience to the position, and the Council should look closely to see whether nominees have the necessary qualifications. A record of accomplishment in urban land-use planning, architecture, or law, or at least a demonstrated interest in District zoning issues, should be a *de facto* prerequisite. Even participation in zoning matters via a local neighborhood association or other civic group would be helpful, both in preparing nominees for BZA service and in affirming their genuine enthusiasm for the subject matter.

In recent years, the BZA has not always covered itself in glory. Its members have struggled to understand the regulations, often reaching conclusions that cannot be squared with the language or intent of the law.<sup>5</sup> More professionalism is needed, given that BZA serves, in the words of the public notice for this hearing, as a “quasi-judicial body.”

Having reviewed Mr. Blake’s nomination package, I see much evidence of a successful career in finance and property ownership, but nothing that suggests the kinds of skills and experience needed to serve on the BZA. I don’t know anything else about Mr. Blake, and it may well be that he has the necessary qualifications and temperament. The Council should inquire closely to make that determination.

To sum up: the BZA plays an important role, exercising quasi-judicial power that can have lasting impacts on residents across the District. In considering nominees, the Council should look not merely for good citizenship or life success; instead, I urge you insist on relevant and concrete experience and expertise as a condition of confirmation.

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<sup>5</sup> In December 2018, the BZA denied ANC 6C’s meritorious appeal in BZA 19550. Despite the passage of more than two years since then, the Board still has not issued a written decision. My personal view is that the delay has resulted, at least in part, from the challenges OAG faces in writing an order justifying that vote consistent with the regulations.

Thank you for the opportunity to testify. I welcome any follow-up questions the Committee may have.