

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

MARGARET M. ERNST, et al.,

Plaintiffs,

v.

**DEPARTMENT OF CONSUMER
AND REGULATORY AFFAIRS, et al.,**

Defendants.

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**Case No. 2010 CA 005006 B
Judge Zeldon**

**ORDER DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND
DISMISSING THE CASE ON THE MERITS**

On August 5, 2010, Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief containing two counts. In their first count, Plaintiffs allege that Defendants “have violated Chapter 27 of Title 10 of the District of Columbia Municipal Regulations [‘Office of the Surveyor: Subdivision Regulations’¹] by approving a subdivision that violated the requirements of the Zoning Regulations without having followed the required variance procedures in those Subdivision Regulations.” Pl.’s Amended Compl. ¶ 38. In their second count, Plaintiffs allege that Defendants “violated D.C. Code §§ 1-207.38 (d) and 1-309.10 by failing to provide Advisory Neighborhood Commission [‘ANC’] 3C with notice of the proposed actions regarding the subdivision of the [p]roperty. . .” Pl.’s Amended Compl. ¶ 40. Plaintiffs also filed a Motion for Preliminary Injunction seeking relief in the form of a stay of any actions by Defendants that could result in the subdivision and development of the property pending entry of judgment in this case, including the issuance of building, razing, and tree removal permits.

During a hearing on the Motion for Preliminary Injunction on August 19, 2010, the District asserted that the Motion is moot because the building, razing, and tree removal permits

¹ Referred to hereinafter as “Subdivision Regulations.”

all have been issued. Consequently, the District suggested that the case should be adjudicated on the merits. Agreeing with the District, Plaintiffs and Intervenor ZP 29th Place, LLC also asked the Court to resolve the dispute on the merits and not proceed with a preliminary injunction in light of the fact that the above-described permits have been issued. After discussion on the record, the Court agreed to resolve the dispute on the merits.

As for Count One of the Amended Complaint, the Court finds that the Subdivision Regulations do not supersede the Zoning Regulations in this case. The Subdivision Regulations specifically refer the reader to and incorporate the Zoning Regulations on lots as follows:

The size and shape of all lots on a plat of subdivision shall be appropriate as regards the location of the subdivision, and be the size and shape as to permit compliance with all requirements of the Zoning Regulations.

10 DCMR § 2716.1.

Defendants did not violate the Subdivision Regulations because the size of the lot is in compliance with the requirements of the Zoning Regulations, which expressly authorize the Zoning Administrator to permit a minor deviation, as defined in the Zoning Regulations. *See* 11 DCMR § 407.1. In this case, the Zoning Administrator, acting under 11 DCMR § 407.1, allowed the Intervenor to have what the Zoning Regulations characterize as a “minor flexibility” ruling.

With respect to Count Two of the Amended Complaint, the Court holds that D.C. Code § 1-309.10 (c) does not require notice to the ANC of a request for a deviation from the minimum lot area requirements of the Zoning Regulations pursuant to 11 DCMR § 407.1. Significantly, Plaintiffs’ counsel conceded that custom and practice under D.C. Code § 1-309.10(c) has been to

not give the ANC Commissions notice of a request to the Zoning Administrator for a minor flexibility ruling.²

Accordingly, it is this 20th day of August, 2010, hereby

ORDERED, that Plaintiffs' Motion for Preliminary Injunction is **DENIED AS MOOT**;

and it is

FURTHER ORDERED, that the case is **DISMISSED** for the reasons stated above.

Joan Zeldon



Joan Zeldon
Associate Judge
(Signed in Chambers)

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² William Kummings, an ANC Commissioner for the district in which the disputed property lies was present at the hearing, but was unable to cite to any authority that would require notice to the ANC of the request for a minor flexibility ruling. He also described how he was aware of the concern over the subdivision of the lot at issue in this case since April 2010 and that the ANC is now involved in the proceeding related to this case before the Board of Zoning Adjustment.