

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the General Counsel



September 29, 2007

District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite, 210 South
Washington, DC 20001

2007 SEP 29 PM 2:30
U.S. DEPT. OF ZONING

re: BZA Appeal No. 17615

Dear Chair Miller and Members:

Please find attached the original and twenty copies of the Zoning Administrator's Findings of Fact and Conclusions of Law. I realize how important it is that you have the opportunity to hear from the Acting Zoning Administrator in this matter, and I greatly appreciate your patience after my accident.

I have arranged with Deputy General Counsel Lori Parris to be screened from filings of other parties and have not read any of them prior to the filing of the attached documents.

I request that you extend counsel for the Appellant and the Intervener the time necessary to respond to this filing.

Sincerely,

Dennis M. Taylor
Office of General Counsel
Department of Consumer and
Regulatory Affairs

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 40

**DISTRICT OF COLUMBIA'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN BOARD OF ZONING ADJUSTMENT APPEAL
NO. 17615
William J. Harnett**

Appeal No. 17615 of William J. Harnett pursuant to 11 DCMR §§ 3112, from the November 17, 2006, administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issuance Building Permit No. 101019, permitting the alteration and repair, including striping five (5) new parking spaces in the owner's parking garage identified in yellow as spaces P-1 thru P-5. The subject property is located in the W-3 District at premises 3030 K Street, N.W. (Square 1173, Lot 102).

HEARING DATES: June 5, 2007; July 17, 2007; July 31, 2007

DECISION DATE: October 2, 2007

DECISION AND ORDER

INTRODUCTION

William J. Harnett ("Appellant") filed this appeal with the Board of Zoning Adjustment challenging the decision of the Zoning Administrator ("ZA") for the Department of Consumer and Regulatory Affairs to issue Building Permit No. 101019 (the "Permit") permitting the Washington Harbor Condominium Owners Association, Inc. ("WHC") to alter and repair the Property by the striping of five (5) new parking spaces, the condominium building's parking garage. The new spaces were to be identified in yellow as spaces P-1 thru P-5.

The instant appeal follows Appeal No. 17317 filed by WHC. Appeal 17317 was filed March 7, 2005, and also, like the instant appeal, is in regard to WHC creating the five new parking spaces in 2004.

On October 27, 2004, DCRA inspector Allen James inspected the parking garage and found two violations of the District of Columbia's municipal regulations: striping parking spaces without approved plans/building permits in violation of 12 DCMR § 105.1, and access, maintenance, and operations in violation of 11 DCMR § 2117. On January 4, 2005, the Notice of Violation and Notice to Abate ("NOV") was issued to WHC. The NOV required WHC to correct the violations by obtaining plans and building permits for the parking garage. On March 7, 2005, WHC appealed the NOV to this Board, pursuant to BZA Rule 3112.2.

On November 17, 2006, prior to the Board hearing No. 17317, WHC performed the required corrective action by applying for, and receiving, Building Permit No. 101019. The receipt of the Permit rendered Appeal 17317 moot, and WHC withdrew it.

The Appellant filed the instant appeal on January 12, 2007. Appellant alleges that the ZA erred in determining that the five new parking spaces comply with the zoning regulations.¹ However, for the following reasons, Appellant's allegations must fail:

1. Appellant alleges that the aisle between parking spaces P-111 and P-112 and parking spaces P-2 and P-3 is less than 17 feet. Therefore, the alleged conclusion is that spaces P-2 and P-3 are in violation of 11 DCMR § 2117.5 because they create a drive-aisle that is too narrow. However, Appellant's allegation fails because none of these four spaces needs to be treated as required spaces, requiring a twenty-foot drive-aisle. In addition, Plaintiff incorrectly measured the width of the drive-aisle.
2. Appellant alleges that space P-5 does not maintain a minimum vertical clearance of at least six feet, six inches for the entirety of the space because of a slanted column. Therefore, the alleged conclusion is that the space is in violation of 11 DCMR § 2115.5 because the column reduces the vertical clearance of some portion of the required width of the parking space.² However, Appellant's allegation fails because Appellant has failed to provide conclusive evidence that space P-5 has a vertical clearance lower than the six foot, six inch standard of § 2115.5. In addition, Appellant acknowledges that as a non-required space, P-5 does not have a required minimum width. Finally, Appellant has failed to provide any evidence that the parking plan relied upon by the Zoning Administrator contains any indication of a substandard vertical clearance.
3. Appellant alleges that spaces P-2 and P-3 encroach on a walkway because the drive-aisle is also a walkway and the spaces do not have end stripes or wheel stops. Therefore, the alleged conclusion is that these two spaces are in violation of 11 DCMR § 2117.7. However, Appellant's allegation fails because Appellant has failed to prove that the area comprising spaces P-2 and P-3 was once officially designated as a walkway and should be outfitted with the protections listed in § 2117.7.
4. Appellant alleges that spaces P-2 and P-3 do not furnish reasonable and convenient parking facilities for the occupants and guests of 3030 K Street, NW. Therefore, the alleged conclusion is that these two spaces are in violation of 11 DCMR § 2116.8, which requires accessory parking spaces not located on the same lot as the structure being served to be reasonably and conveniently located in relation to the served structure. However, Appellant's allegation fails because section 2116.8 only pertains to applications for special exceptions. However, no

¹ See Statement of Appeal at 6-8.

² The original Statement of Appeal alleged that spaces P-1 and P-4, as well as P-5, were in violation of the vertical clearance requirement of 11 DCMR § 2115.5. Appellant stipulated in the hearing that only P-5 was being challenged. See Transcript of July 17, 2007 hearing at 352; 354. The result would have been the same if all three spaces were being challenged.

special exception has been requested for the Property. Even if a special exception had been requested, special exceptions are under the purview of this Board, not the Zoning Administrator.

When the Board determines that the above-listed allegations are not applicable, the Appellant has requested that the Board invoke its right under 11 DCMR § 2116.9 to impose conditions to protect Appellant's property rights. However, Appellant's request must also fail because § 2116.9 also pertains only to applications for special exceptions, no application for a special exception has been made in this case, the ZA could not err in not granting relief when authority for that relief is vested only in this Board, and Appellant is already seeking similar relief in another judicial body.

For the reasons set forth below, the Board finds Appellant's contentions regarding the ZA's decision without merit and accordingly denies the appeal.

The Board held public hearings on June 5, 2007; July 17, 2007; and July 31, 2007. At the close of the July 31, 2007 hearing the Board set a decision date of October 2, 2007. At the decision meeting, the Board voted ____ - ____ to deny the appeal and uphold the decision of the ZA.

PRELIMINARY MATTERS

Party Status. Washington Harbor Condominium Owners Association, Inc. ("WHC") filed a Motion to Intervene. Because WHC owns the parking garage, it is a party as a matter of right. Pursuant to BZA Rule 3199.1, the owner of the property is automatically granted party status.

The subject property is located within the area represented by Advisory Neighborhood Commission 2E ("ANC"), which is entitled to party status in this Appeal as a matter of right. However, the ANC did not appear in this matter. On October 6, 2006, the ANC sent a letter to this Board indicating that it supported the denial of the WHC Appeal, No. 17317.³ On June 28, 2007, the ANC sent a letter to this Board indicating that its position remained the same. Because the ANC did not include any specific issues or concerns, this Board has nothing to accord great weight.⁴

Authorization to Represent. Appellant averred that counsel for WHC did not have authority to represent WHC in this matter. BZA Rule 3106.1 requires counsel representing a party to produce written documentation from the party, authorizing counsel to provide the representation. Counsel had not submitted such documentation. On July 5, 2007, WHC verbally confirmed its authorization for Linowes and Blocher to represent it in this appeal through the testimony of WHC Board of Directors member

³ See Letter from Solomon to BZA of June 28, 2007.

⁴ See D. C. Official Code § 1-309-10(d)(3).

Robert Pence.⁵ On July 17, 2007, counsel provided a letter from the WHC Board, confirming counsel's representational authority.

Jurisdiction. WHC alleged that the appeal was untimely because the parking spaces of which the Appellant complains have been in use for over three years. However, the appeal before us is an appeal of the Zoning Administrator's decision to approve the issuance of Building Permit No. CO 101019 (the "Permit"). This appeal was filed with sixty days of the issuance of the Permit, and it is, therefore, timely and within this Board's jurisdiction.

Motion to Compel. Prior to the July 31, 2007 hearing, Appellant filed a motion to compel DCRA and WHC to each turn over all correspondence between DCRA and WHC, and to turn over all DCRA appeal-related correspondence with non-parties. In particular, Appellant wanted to determine the document to which "Attachment 1" had previously been attached. DCRA stipulated that Attachment 1 was loose in the file and DCRA had no way to determine to what the item had previously been attached. This Board determined that Appellant would not be prejudiced by not having the requested information in the requested form, and the Board voted unanimously to deny the motion.

FINDINGS OF FACT

1. The property at issue is the parking garage located beneath the condominium units at 3030 K Street, NW (the "Property"). When originally constructed, the Property included forty-eight parking spaces. *See* Transcript of June 5, 2007 hearing ("Transcript-1") at 49.

2. The common areas of the Property are owned by Washington Harbor Condominium Owners Association, Inc. ("WHC"). However, parking spaces P-101—P-148 are owned in fee simple by condominium unit owners and others. *Id.*

3. William J. Harnett (the "Appellant") is a unit owner at 3030 K Street, NW. Mr. Harnett owns spaces P-112 and P-116. Mr. Harnett also owns at three other parking spaces in the garage. *See* Transcript-1 at 59; Letter from Vaia to Griffis of October 23, 2006.

4. Pursuant to 11 DCMR § 2101.1, Washington Harbor Condominium, located in a W-2 zone, is required to have one parking space for every three units. The building contains 35 units. Therefore, the Property is required to have twelve parking spaces.

⁵ *See* Transcript of June 5, 2007 hearing ("Transcript-1") at 54.

5. In 2004, WHC re-striped the Property. In addition to painting over the stripes of the original forty-eight spaces, stripes and space-numbers were added to create five additional spaces. *See* Invoice of September 20, 2004; Transcript-1 at 49.

6. The aisle-width between spaces P-110—P-112 and spaces P-2—P-3 is nineteen feet, six inches. *See* DCRA-016.

7. According to Appellant, the area now comprising spaces P-2 and P-3 was originally marked with, "big black stripes over all of the entire space" and used as a pedestrian walkway. Transcript-1 at 108.

8. However, prior to the creation of spaces P-2 and P-3, tenants were also able to drive through the area and use it as a drive-aisle. *See* Transcript-1 at 81.

9. In addition, prior to the designation of spaces P-2 and P-3, that area was often used illegally for parking, even by the Appellant, in spite of not having any striped parking spaces. *See* Transcript-1 at 117.

10. Appellant has not produced any evidence indicating that a public walkway in the area now designated P-2 and P-3 was recorded in the condominium documents or that the District ever issued permits for such designation.

11. No witness for the Appellant presented empirical evidence regarding the vertical clearance of any parking space. *See* Transcript-2 at 349; Transcript-2 at 142.

12. WHC did not secure a building permit for the re-striping at the time of the re-striping. *See* Transcript-1 at 114.

13. On October 27, 2004, DCRA inspector Allen James inspected the parking garage and found two violations of the District of Columbia's municipal regulations: striping parking spaces without approved plans/building permits in violation of 12 DCMR § 105.1, and access, maintenance, and operations in violation of 11 DCMR § 2117. On January 4, 2005, Inspector James issued WHC the Notice of Violation and Notice to Abate ("NOV"). The NOV required WHC to correct the violations by obtaining plans and building permits for the parking garage. *See* Notice of Violation of January 4, 2005.

14. Challenging the NOV, WHC, pursuant to BZA Rule 3112.2, filed Appeal No. 17317 with this Board, challenging the need to secure a building permit for the re-striping. *See* Transcript of July 17, 2007 hearing ("Transcript-2") at 408.

15. Beginning shortly after Mr. Crews assuming his position on October 5, 2005, and Appeal No. 17317 was pending, while Mr. Crews and WHC had several communications regarding avenues for abatement and possible resolution of the appeal. As part of the communications, WHC presented the parking plan known as "Attachment 1." *See* Transcript of July 31, 2007 hearing ("Transcript-3") at 433-437.

16. After review of Attachment 1, Mr. Crews determined that the plans contained the minimum number of spaces meeting the required dimensions and that the five new parking spaces complied with the District of Columbia zoning regulations. See Transcript-2 at 417. Mr. Crews noted the measurements noted around spaces P-2 and P-3. However, he determined they were irrelevant because the spaces were not required. See Transcript-3 at 121-122.

17. Attachment 1 included relative vertical clearance measurements. Each measurement described a vertical clearance of at least six feet, six inches. See Attachment 1.

18. Mr. Crews notified WHC by letter of October 23, 2006, that DCRA was rescinding the NOV. See WHC Pre-Hearing Statement, at 2. WHC withdrew Appeal No. 17317 the next day. See Letter from Vaia to Griffis of October 24, 2006.

19. WHC applied for the requested building permit on November 17, 2006 Cf. Transcript-2 at 343. The parking plan WHC submitted with the application was not as detailed as the one Mr. Crews had relied upon in determining that the re-striping conformed to the zoning regulations. See DCRA-002. However, based upon his previous review, Mr. Crews approved the application. See Transcript-3 at 110-111.

20. DCRA issued Building Permit 101019 on November 17, 2006. See Building Permit 101019.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(1) (2001 ed.) to hear and decide appeals where it is alleged that there is error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator in the enforcement of the Zoning Regulations. This appeal is properly before the Board pursuant to 11 DCMR § 3100.2.⁶

The Parking Spaces Authorized by Building Permit No. 101019 Do Not Violate the Aisle-Width Requirement of 11 DCMR § 2117.5

In reaching this conclusion, the Board must first resolve interpretive issues regarding the identification “required parking spaces.” Once that issue is resolved, the aisle-width requirement in the context of the required spaces.

⁶ Unless specified otherwise, all citations to regulations will be to the zoning regulations. 11 DCMR § 100ff.

Regulation 2100.1 requires all buildings or structures constructed after March 12, 1958, to be provided with a number of parking spaces.⁷ Regulation 2101.1 is a table which lists the number of parking spaces that are required to be provided with a structure for any use.⁸ The number of spaces required under § 2101.1 is a minimum number. As space permits, one may include more parking spaces than are required.⁹

The Property is a thirty-five unit condominium in a W-2 zone. The table in § 2101.1 indicates that twelve parking spaces are required.¹⁰ Regulation 2118.9 provides clear guidance as to whether a regulation applies to all parking spaces or just to the minimum necessary to satisfy section 2101.1. If the regulation does not include the phrase "all parking spaces," the regulation only applies to the minimum number of spaces required.¹¹

A critical question is whether a "required space" has a specific physical location, or if such a space is merely one of the spaces that meets all characteristics required for a space to qualify to be counted toward the specified minimum number of spaces under § 2101.1. The regulations do not explicitly address the issue. Appellant concedes that no regulation requires a permit applicant to specify which spaces on an application are the "required spaces."¹² Appellant also concedes that the ZA is the one who determines if sufficient required spaces are provided.¹³

This Board accepts current Acting ZA Matthew Le Grant's description of the evaluation:¹⁴

[T] he methodology that is employed is to look at an application which has a representation of a parking area, whether it be an open

⁷ 11 DCMR § 2100.1: All buildings or structures erected on or after May 12, 1958 shall be provided with parking spaces to the extent specified in § 2101, except as permitted by § § 2102 through 2108.

⁸ 11 DCMR § 2101.1: On and after May 12, 1958, all buildings or structures shall be provided with parking spaces as specified in the following table:

⁹ 11 DCMR § 2101.2: Nothing contained in this section shall be construed to prohibit the establishment of accessory parking spaces in an amount which exceeds that required by § 2101.1; provided, that each case complies with all other applicable provisions of this chapter and chapter 23.

¹⁰ See 11 DCMR § 2101.1

¹¹ 11 DCMR § 2118.9: Except where otherwise indicated, whenever the word "all" is followed by the words "parking spaces" in the same sentence, the parking requirements as specified shall apply to all parking spaces, whether or not the spaces are required by this chapter. The requirements shall also apply to both accessory parking spaces and parking spaces that are constructed as a principal use unless otherwise specified.

¹² See Transcript-2 at 345.

¹³ Transcript-2 at 370-371:

Q. So and is there anything in the code that says how you determine which spaces are required and which are not required?

A. There is lots in the code that determines what has to be part of a required space.

Q. Okay. But nothing that says who determines which spaces are required or which are not required?

A. I believe the Zoning Administrator determines what is required and what's not required.

¹⁴ Transcript-3 at 181-182.

parking lot or a parking structure or garage. [The practice of the Office of the Zoning Administrator is to] look to see what is the minimum number of spaces that are required for the specific use and then do those spaces, does that minimum number of spaces satisfy by the plan submission.

Additionally then the minimum size requirements applicable to required spaces must be satisfied.

Just as there is no requirement for the applicant to specify specific parking spaces as the “required” spaces, neither is there a requirement for the Zoning Administrator to label specific spaces as the “required” spaces.¹⁵ Appellant’s zoning expert, Ellen McCarthy concurs, “There is nothing that says that you have to put the word required space or non-required space on [the building plans submitted to secure a building permit].”¹⁶

From the above discussion, this Board concludes that the term “required parking space” does not apply to any specific parking space if there is an excess of spaces that meet the proper horizontal dimensional requirements. It is undisputed in the instant matter that when the parking area was constructed, over thirty spaces met the minimum horizontal dimensional requirements. There was no need to designate any specific spaces as one of “the” spaces that was required, and no space was so designated.

Along with the determination that no need exists to designate specific spaces as the “required spaces,” any time the layout of the parking area is reviewed the question is still whether twelve or more spaces meet the required horizontal dimensions. In the instant matter, it is undisputed that an excess of twelve spaces meet the required horizontal dimensions.

Once it is established that a parking area contains at least the necessary number of parking spaces meeting the required horizontal dimensions, the question of aisle-width must be addressed. The aisle-width regulation reads:¹⁷

Except as provided in §§ 2115.9 through 2115.18 and 2117.6, when required parking spaces are so arranged that an aisle is required for accessibility or maneuvering space between rows of two (2) or more parking spaces, or between a row of two (2) or more parking spaces and the perimeter of the area devoted to parking spaces, the aisle shall have a clear width of not less than twenty feet (20 ft.) for ninety degree (90 (degrees)) angle parking. . . .

To perform a compliance analysis of aisle-width, the ZA must look at specific spaces. First, one must identify spaces that meet the required horizontal dimensions that are gathered in rows of two or more spaces. Rows qualifying for consideration include:

¹⁵ See Transcript-3 at 183.

¹⁶ Transcript-2 at 348.

¹⁷ 11 DCMR § 2117.5.

(1) P-101—P-109, (2) P-110—P-112, (3) P-128—P-143, (4) P-114—P-116, and (5) P-117—P-126, a total of forty-one spaces. Some spaces can be eliminated because they do not have an aisle at least twenty feet wide behind them. These would include spaces P-102—P-104 and P-111—P-112. The elimination of these five spaces leaves thirty-six spaces that meet the required horizontal dimensions and have a twenty-foot aisle width in which to maneuver. If the permit applicants were required to designate twelve of these thirty-six spaces as the special twelve “required spaces,” any number of combinations would be available.

For purposes of analyzing the instant application, the permit applicants designated P-118—P-126 and P-128—P-130 as required spaces. This designation does not convey any special rights to those spaces and carries no permanent meaning. The designation simply identifies twelve spaces that meet the required horizontal dimensions and have an aisle at least twenty feet wide behind them. The remaining twenty-four qualifying spaces, not counting any qualifying spaces in the new P-1—P-2 group, are superfluous to the analysis, but could be substituted for the applicant designated spaces just as easily and would achieve the same result.

At least twelve spaces meet both the horizontal dimension standard of § 2115.1 and the aisle-width standard of § 2117.5. That was sufficient for approval of the presented plan. Therefore, the Zoning Administrator did not err in determining that the re-stripping met the aisle-width standard, and this count of the appeal must be denied.

Parking Space P-5, Authorized by Building Permit No. 101019, Does Not Violate the Vertical Clearance Requirement of 11 DCMR § 2115.5

Appellant’s argument that the slant of the column abutting space P-5 violates section 2115.5 fails for two reasons: Appellant has not presented any evidence that the then Zoning Administrator, Bill Crews, erred in granting approval of the space, and Appellant has not conclusively placed a substandard clearance above a required parking space.

The parking area at 3030 K Street, NW, like many parking garages in the District has many support columns that rise at an angle rather than straight up. These columns abut many of the parking spaces in the garage. Sometimes the slant is parallel to a parking space and sometimes the slant is at a ninety-degree angle with the parking space.

Regulation 2115.5 requires all parking spaces, with two exceptions not relevant to this matter, to have a vertical clearance of six feet, six inches.¹⁸ In spite of this empirical standard, Appellant did not produce a single measurement of a vertical clearance over space P-5, or any other space. Asked if she was alleging that a slanted column abutting

¹⁸ 11 DCMR § 2115.5: Except as provided in §§ 2115.6 and 2115.7, all parking spaces shall have a minimum vertical clearance of six feet, six inches (6 ft., 6 in.).

space P-5 reduced the vertical clearance below the six foot, six inch standard, Appellant's zoning expert stated:¹⁹

Yes, I believe that Mr. Albers is the one that actually talked about the measurements, the specific measurements. I alluded to it in my testimony, but he was the parking dimensions expert, so he is the one that actually measured those.

However, in his testimony, Mr. Alburs stated that he was only testifying in regard to spaces P-2 and P-3.²⁰ Therefore, the only testimonial evidence regarding the vertical clearance over P-5 is the Appellant's allegations and Appellant's zoning expert's contention that non-measured photographic evidence is sufficient.²¹ The bare allegations and non-measured photographs are not sufficient to meet Appellant's burden of proof in this matter.

Moreover, Appellant's zoning expert's conclusion that the vertical clearance was below six feet, six inches was based on a faulty premise. She stated that the column created a lower clearance over a "point which is part of the required width of the parking space."²² However, there has been no allegation made that space P-5 is a space that must meet the horizontal dimension standard of § 2115.1. As Ms. McCarthy stated, "The zoning regulations don't indicate required dimensions for non-required parking spaces."²³ As a result, Appellant has provided no evidence defining the width of this non-required parking space. Because Appellant cannot empirically state the width of the space, this Board concludes that the space reaches its horizontal endpoint wherever the vertical clearance drops below six feet, six inches.

Finally, Mr. Crews testified that in evaluating the permit application he relied upon the document labeled Attachment 1.²⁴ Attachment 1 is a copy of the parking plan approved during the construction of the building, with hand drawings indicating the locations of the five new spaces, and recorded in the Office of the Surveyor. The document is at scale. The drawing of space P-5 does show one vertical clearance measurement of concern. The drawing references a "junction box" that has a vertical clearance of six feet, eight inches, which is two inches higher than the minimum standard. Nothing on the parking plan indicates any vertical clearance of less than six

¹⁹ Transcript-2 at 349.

²⁰ See Transcript-1 at 142.

²¹ Cf. "And I think -- but if you look at this, it's pretty clear if you were to measure 6 foot 6 inches up from this point, which is part of the required width of the parking space, you don't measure 6 foot 6 inches and you don't get 6 foot 6 inches here and that column is encroaching over the height of the space." Transcript-2 at 351.

²² *Id.*

²³ Transcript-2 at 343.

²⁴ "I relied on Attachment 1." Transcript-3 at 102.

feet, six inches.²⁵ A reasonable Zoning Administrator could not have concluded that the vertical clearance of space P-5 failed to meet the standard.

Appellant has failed to provide conclusive evidence that space P-5 has a vertical clearance lower than the six foot, six inch standard of § 2115.5. In addition, Appellant acknowledges that as a non-required space, P-5 does not have a required minimum width. Finally, Appellant has failed to provide any evidence that the parking plan relied upon by the Zoning Administrator contains any indication of a substandard vertical clearance. Therefore, the Zoning Administrator did not err in determining that space P-5 met the vertical clearance standard, and this count of the appeal must be denied.

Parking Spaces P-2 and P-3, Authorized by Building Permit No. 101012, Do Not Encroach on a Walkway in Violation of 11 DCMR § 2117.7

Regulation 2117.7 prohibits vehicular encroachment into public rights-of-way, private walkways, and driveways.²⁶ Appellant's allegations of encroachment must fail for two reasons. First, no walkways designated on the approved plans recorded in the Office of the Surveyor, and second, the only walkway is protected from encroachment by a wheel-stop.

The document identified in the transcript as "Attachment 1" is a copy of the original parking plan recorded in the Office of the Surveyor when the building was being constructed. The document has had five parking spaces and relevant annotations added by hand during discussions leading to the issuance of the Permit and the withdrawal of BZA Appeal No. 17317. Attachment 1 bears no indication that the area now comprising spaces P-2 and P-3 was ever designated as a walkway.²⁷

According to Appellant, the area now comprising spaces P-2 and P-3 was originally marked with, "big black stripes over all of the entire space."²⁸ Additionally, when asked if there was a sign saying "No Parking," Appellant stated, "I think when I first moved in it did have a small sign saying no parking. . . ."²⁹ When asked why he thought the area was designated a walkway, Appellant responded, "Because that's where everybody walked through."³⁰ While this Board credits Appellant's testimony, this Board also notes that no such designation was recorded on the original building plans,

²⁵ Exhibit DCRA-012 shows a vertical clearance of six feet, three inches, three inches below the minimum in Appellant's own parking space. However, the approval of that space is not being challenged in this matter, and this Board does not need to rule upon that item.

²⁶ 11 DCMR § 2117.7: The public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment from all parking spaces by wheel bumper guards, curbs, guard rails, or screening between the property line and the perimeter of the parking area. Parking shall be designed so that no vehicle or any part thereof shall project over any lot line or building line.

²⁷ A review of the original document in the Office of the Surveyor confirms Attachment 1.

²⁸ Transcript-1 at 108.

²⁹ Transcript-1 at 108-109.

³⁰ Transcript-1 at 109.

and Appellant has not produced any evidence indicating that the District ever issued permits for such designation.

Moreover, even if the area was designated as a walkway, Appellant concedes that cars frequently parked in that area. Sometimes Appellant also parked in that area. Therefore, the area was not treated as a protected walkway by the unit owners and their guests, and WHC has no responsibility to maintain the area as a protected walkway.

Appellant claims that for people parking in the garage to get to the elevators, they were to walk in the drive-aisle until they got to the area now comprising P-2 and P-3. Then they were to cut through that area to the drive-aisle behind spaces P-110—P-112. Finally, they would enter into the hallway leading to the elevator lobby. Even if Appellant is correct, pedestrian safety was not materially harmed by the conversion of the area into spaces P-2 and P-3. Depending upon where one parked, the walk to the elevators would partially, if not mostly, in the same aisles used by other vehicles. If cars were already parked in that area, pedestrians would still have had to take the path available today, which is entirely in the driving aisles until reaching the hallway leading to the elevator lobby. The Appellant has not met his preponderance of the evidence burden of proof that the P-2—P-3 area was an officially designated walkway.

Finally, as noted by the Zoning Administrator, the garage does have one area that is devoted to pedestrians, the hallway from P-112 to the elevator lobby. Only one parking space abuts this hallway, P-116.³¹ As is clearly shown on DCRA-002, DCRA-003, and DCRA-004, P-116 has a stripe indicating the border between the parking space and the walkway, and it also has a wheel stop to prevent encroachment. While P-116 is not being challenged in this appeal, the Board does note the compliance with § 2117.7 already in place.

Appellant has failed to prove that the area comprising spaces P-2 and P-3 was once officially designated as a walkway and should be outfitted with the protections listed in § 2117.7. Therefore, the Zoning Administrator did not err in approving non-required parking spaces in this area, and this count of the appeal must be denied.

11 DCMR § 2116.8 is Not Applicable to Parking Spaces P-2 and P-3

Regulation 2116.8 only pertains to applications for special exceptions. As a result, § 2116.8 is beyond the scope of this matter.

Regulations 2116.1 and 2116.2 state that, with certain specific exceptions, all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve. The parking spaces may be in a garage, under a carport, or open parking area almost anywhere on the lot.

³¹ Ironically, Appellant also owns P-116.

Among the exceptions is § 2116.5, which provides that this Board may grant a special exception for accessory parking spaces to be located other than on the lot of the building or structure they are intended to serve. Regulations 2116.6 through 2116.9 provide directions for the Board to follow in granting a special exception. Regulations 2116.6 and 2116.9 explicitly reference actions that may be taken by the Board. Regulations 2116.7 and 2116.8 explicitly refer to what constitutes a proper siting of accessory parking spaces located on a different lot.³²

No special exception has ever been sought or required for the Property because the siting of 3030 K Street, NW parking is consistent with §§ 2116.1 and 2116.2. Therefore, any analysis by the Zoning Administrator necessarily goes no further than those two sections.

The relationships among the subsections of § 2116 were clearly delineated in Zoning Commission Order No. 82-5. That Order served to formally propose the Commission's new parking regulations to the public. The regulations that became §§ 2116.6 through 2116.9 were indented one level beyond what became § 2116.5. They also were designated with an extra dot in their numbers in the proposed regulations. Instead of xxxx.x, the form of designation was xxxx.x.x.³³ When the regulations were placed in final form, all section numbers were re-designated and a majority of the double-indentations were removed. The form of presentation may have changed, but the intent of the drafters remains clear. Sections 2116.5 through 2116.9 all are applicable only to applications for special exceptions.

Section 2116.9 also pertains only to applications for special exceptions, no application for a special exception has been made in this case, the ZA could not err in not granting relief when authority for that relief is vested only in this Board, and Appellant is already seeking similar relief in another judicial body.³⁴ Therefore, the Zoning Administrator did not err in not applying § 2116.8 in his evaluation of the Permit application, and this count of the appeal must be denied.

³² Accessory spaces are those ancillary to the main use of a structure. They include both required and non-required spaces. See Transcript-3 at 205.

³³ E.g., current § 2116.9 was designated as § 7205.314.

³⁴ Although the location of space P-112 may be reasonable and convenient, the Board recognizes that Appellant's use of the space may not be convenient. As stated by the Zoning Administrator, it is possible to have a parking arrangement that meets the zoning regulations, but some space-holder feels aggrieved. In such instance, the District has forums other than BZA in which one may have the complaint heard. See Transcript-3 at 246-248.

This board is cognizant that Mr. Harnett and WHC are litigating other questions regarding the new parking spaces in Superior Court, Case No. 2004 CA 007452 B. Among the issues in the Superior Court litigation is whether WHC damaged Mr. Harnett by creating the five new parking spaces. This Board's review of the matter extends only to whether the then Zoning Administrator erred in approving issuance of Building Permit No. 101019. The Board takes no position on whether Mr. Harnett was damaged by the creation of the spaces.

CONCLUSION

In view of the foregoing, the Board concludes that the Zoning Administrator did not err in approving the issuance of Building Permit No. 101019, on the grounds that the plans submitted to the Zoning Administrator do not violate 11 DCMR § 2117.5, 11 DCMR § 2115.5, and 11 DCMR § 2117.7, and 11 DCMR § 2116.8 is not applicable to the Zoning Administrator's decision.³⁵

Accordingly, it is ORDERED that this appeal is DENIED:

VOTE: __-__-__ (_____, to deny the appeal;
_____, to sustain the appeal)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

FINAL DATE OF ORDER: _____, 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

³⁵ Should DCRA determine, as has been alleged in this matter, that the plans submitted to the Zoning Administrator did not properly reflect the relevant facts, DCRA may take appropriate enforcement action.