

17615

**District of Columbia
Court of Appeals**

July 2, 2009

2009 JUL -5 AM 10:45

No. 08-AA-564: William J. Harnett v. District of
Columbia Board of Zoning Adjustment; Washington
Harbour Condominium Unit Owners Association, Inc.

Director
District of Columbia Zoning Commission
441 4th Street, NW, Suite 210
Washington, DC 20001

Dear Sir or Madam:

Pursuant to Rule 41(a) of this Court, the decision
in the above-entitled case is attached.

Please acknowledge receipt of the decision by
signing the copy of this letter and returning it to
this office as soon as possible.

Garland Pinkston, Jr.
Clerk

I hereby acknowledge receipt of the original of this
letter with attachments.


Signed

JUL 06 2009
Date

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17615

EXHIBIT NO. 46

Board of Zoning Adjustment
District of Columbia
CASE NO. 17615
EXHIBIT NO. 46

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 08-AA-564

WILLIAM J. HARNETT, APPELLANT,

v. (No. 17615)

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, APPELLEE,

and

WASHINGTON HARBOUR CONDOMINIUM UNIT OWNERS ASSOCIATION, INC., INTERVENOR.

Petition for Review of a Decision of the
District of Columbia Board of Zoning Adjustments

(Argued May 12, 2009)

Decided June 9, 2009)

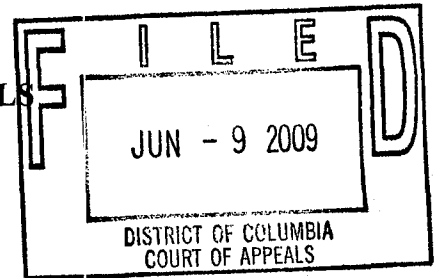
Before WASHINGTON, *Chief Judge*, OBERLY, *Associate Judge*, and KING, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant William Harnett appeals from an order of the Board of Zoning Adjustment (“the Board”), approving the Washington Harbour Condominium Unit Owners Association’s (“Association”) permit request for the striping of five new parking spaces in the parking garage of the Washington Harbour Condominium building (“Building”) in Northwest Washington, D.C. Appellant argues that the Board’s interpretation and application of the zoning regulations was arbitrary, capricious, and contrary to the facts and applicable law. Finding that the Board’s factual findings and interpretations of the regulations were reasonable and supported by substantial evidence, we affirm.

I.

Appellant owns two parking spaces in the Building’s garage. Zoning regulations require the Building to provide twelve parking spaces that meet certain size and access requirements in accordance with the parking schedule accompanying 11 DCMR § 2101.1. The regulations also allow for additional parking spaces that do not have to meet the same size and access requirements. It is undisputed that the Association identified twelve parking spaces that meet the criteria applicable to required parking spaces, and that Appellant’s spaces were not included in those twelve spaces. Appellant contends that the Board erred by not requiring his parking spaces to be either included in



the twelve required spaces or added as additional required spaces because when he purchased the parking spaces they met both the size and access requirements of the zoning regulations applicable to required spaces. Appellant also contends that the five new parking spaces do not comply with the applicable zoning regulations.

II.

In reviewing administrative orders, “[f]irst, we review the factual findings of the agency to determine if there is substantial evidence to support them. If, after examining the record as a whole, we conclude that the agency’s findings are supported by substantial evidence, we must accept those findings even though the record could support a contrary finding.” *Zhang v. D.C. Dep’t of Consumer & Regulatory Affairs*, 834 A.2d 97, 101 (D.C. 2003). We then review the agency’s legal conclusions *de novo*, “accord[ing] great deference to the agency’s interpretation of its own regulations, so long as that interpretation is reasonable and consistent with the statutory language.” *Id.* (internal citations omitted). “[W]e leave an agency’s decision undisturbed if it flows rationally from findings of fact that are supported by substantial evidence in the record.” *Id.*

The Board concluded that, under the zoning regulations, because the Association identified twelve compliant required parking spaces, the additional parking spaces were not required to comply with the required parking space criteria. The Board reasoned that because 11 DCMR § 2118.9 draws a distinction between the criteria applicable to required spaces and those applicable to all spaces, the only parking spaces subject to the required parking space criteria are those that the zoning regulations require the building owner to provide. Accordingly, because the Association identified twelve parking spaces that met the requirements under the zoning regulations for required parking spaces, not including Appellant’s, the Board found that Appellant’s spaces were not required to be maintained in a manner consistent with the zoning regulations for required spaces. Further, the Board rejected Appellant’s argument that the zoning regulations demand that once a parking space has been identified as a required space, it must be maintained in conformance with the required space criteria in perpetuity. Instead, the Board found that, since the regulations do not mention permanent designations, there need only be a minimum number of compliant required parking spaces at any one time and that the specific parking spaces included in that number may change.

III.

We are satisfied that the Board’s interpretation of its regulations applicable to required parking spaces is a reasonable interpretation of the regulations and is consistent with the statutory language. Thus, the Board’s interpretation is entitled to great deference from this court. The Board’s regulatory interest in parking garages extends only to ensuring compliance with the zoning regulations. “While this court retains an important role in ensuring the ultimate legal integrity of [the Board’s] decisions, it is not within our purview to micro-manage the myriad policy, operational, and

fact-finding functions undertaken by this body.” *Smith v. D.C. Dep’t of Empl. Servs.*, 934 A.2d 428, 432 (D.C. 2007). Here, the statute is designed to minimize the impact of street parking on the community surrounding a multi-family dwelling. Thus, nothing in the Board’s interpretation conflicts with the underlying purpose of the Act. Moreover, the regulations specifically distinguish between required spaces and other parking spaces, and the Board’s interpretation of its regulations recognizes that distinction. Finally, nothing in the zoning regulations requires a building owner to permanently maintain particular parking spaces in accordance with the required space criteria in perpetuity. We are satisfied that the Board’s interpretation of its regulations is reasonable and consistent with the statutory language.¹ Accordingly, of the fifty-three parking spaces in the garage, as long as there are twelve that meet the criteria applicable to required spaces, the additional forty-one parking spaces need only meet the criteria applicable to all parking spaces.

Appellant also argues that the Board erred in finding that the five new spaces have the requisite 6-foot, 6-inch vertical clearance required by the zoning regulations and finding that the Association’s parking plan accompanying the permit application complied with the zoning regulations. Further, Appellant complains that the Board failed to afford great weight to concerns raised by the Advisory Neighborhood Commission before making its decision. Having reviewed the entire record, however, we are satisfied that these alleged errors are also without merit. First, there was substantial evidence submitted that all of the remaining parking spaces met the requirements of the zoning regulations. Second, the Board explained that the zoning regulations cited by Appellant, 11 DCMR §§ 2100.2 and 2100.3, required that no post-1958 building permit can be issued for a building or a structure until a proper parking plan has been approved, and that no certificate of occupancy could be issued unless the parking spaces depicted in the approved plan had been provided. The Board concluded that the relevant building permit and parking plan referred to in those regulations was the permit and parking plan granted and approved when the building was built, and not the subsequent building permit at issue in this case, which granted the Association’s request to stripe the five new parking spaces. We find the Board’s conclusion to be reasonable. Finally, there is no evidence that the Advisory Neighborhood Commission set forth any formal concerns as required by the zoning regulations. Therefore, we accept the Board’s findings in this regard. Thus, because

¹ It appears that Appellant’s complaints are not really with the Board of Zoning Appeals, but instead arise out of a contract dispute with the Association for diminishing what Appellant perceives as his rights under his contract of sale for the parking spaces. Appellant repeatedly contends that the striping of the new parking spaces altered the characteristics of the garage, thereby affecting his ability to use and enjoy his parking spaces. The Board’s zoning laws only require compliance with applicable regulations, and any potential effect, resulting from changes in the characteristics of the parking garage, on the rights and relationships between private parties, is not properly resolved through a challenge to the Board’s application of the zoning regulations. We express no opinion with regard to the merits of a contract dispute between Harnett and the Association.

the Board's factual findings are supported by substantial evidence in the record and its legal conclusions flow rationally from the facts, we affirm.

So ordered.

ENTERED BY THE DIRECTION OF THE COURT:



GARLAND PINKSTON, JR.
CLERK OF THE COURT

Copies to:

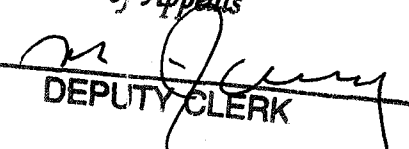
Todd S. Kim, Esq.
Solicitor General, D.C.

Vernon W. Johnson III, Esq.
401 - 9th St., NW, #900 (04)

Emily J. Vaias, Esq.
7200 Wisconsin Ave., #800
Bethesda, MD 20814

*A true Copy
Test:*

*Garland Pinkston, Jr.
Clerk of the District of Columbia Court
of Appeals*

BY 
DEPUTY CLERK