

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18563 of MCSKA, LLC, pursuant to 11 DCMR § 3103.2 for a variance from the off-street parking requirements under § 2101.1, to expand a two-unit building to a six-unit¹ apartment building in the R-5-B District, at premises 1469 Harvard Street, N W. (Square 2670, Lot 818).

HEARING DATE: June 4, 2013
DECISION DATE: June 28, 2013

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18563
EXHIBIT NO. 39

DECISION AND ORDER

On March 15, 2013, MCSKA, LLC, (the "Applicant") filed an application with the Board of Zoning Adjustment (the "Board") requesting variance relief from the requirement to provide four parking spaces, to allow conversion of a two-unit building to an eight-unit apartment building, with no parking provided. Following the hearing, the Applicant amended its application to propose a six-unit apartment building also with no parking provided. As a result, the number of required parking spaces was reduced from four to three. The Board voted to grant the modified variance relief from the parking requirement subject to certain conditions.

PRELIMINARY MATTERS

The Applicant

The Applicant in this case is MCSKA, LLC, owner of the property located at 1469 Harvard Street, N.W. It was represented by an architect, Carmel Greer of District Design. (Exhibit 3.2)

The Application

The application was filed by Ms. Greer on March 15, 2013, seeking a parking reduction variance from the requirement under § 2101.1 to provide four parking spaces for an eight-unit building in the R-5-B zone. The application was self-certified (Exhibit 6)

Notice of Public Hearing

By memoranda dated March 19, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"), the District Department of Transportation; the Councilmember for

¹ The Applicant initially sought to develop an eight-unit apartment building with no parking spaces, but amended its proposal to reduce the number of units to six. The caption reflects the amended relief sought

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Ward 1; Advisory Neighborhood Commission ("ANC") 1A, the ANC in which the subject property is located; and Single Member District/ANC 1A03. Pursuant to 11 DCMR § 3112.14, on March 22, 2013, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 1A, and the owners of all property within 200 feet of the subject property. Notice was published in the *D C Register* on March 22, 2013 (60 DCR 4196)

The Applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR § 3113.14 through § 3113.20. The Applicant also submitted an affidavit to this effect in accordance with 11 DCMR § 3113.19 and § 3113.20 (Exhibit 25.)

ANC 1A

The subject site is located within the jurisdiction of ANC 1A, which is automatically a party to this application. By a report dated May 8, 2013, ANC 1A indicated that, at a properly noticed meeting on that same date, with a quorum present, the ANC voted 5-4-1 to recommend approval of the application. While the ANC report noted various "concerns" expressed by certain neighbors, the ANC explained that the subject property was "landlocked" and "unable to support any parking without trespassing on private property" (Exhibit 23)

Requests for Party Status

The Board granted a Request for Party Status from Eric Hoy, an adjacent property owner residing at 1471 Harvard Street, N.W. (Exhibit 26.) Mr. Hoy claimed that parking on the 1400 block of Harvard Street was already at or near capacity, and that the proposal would displace the cars of current residents. Mr. Hoy objected to having more than four units at the building and argued that no variance should be granted from the two parking space required for a four-unit building.

After the public hearing Mr. Hoy withdrew his objection to the Board granting a complete parking variance for a four-unit building. However, as noted, the Applicant's revision was for a six-unit building. Therefore, Mr. Hoy is still considered a party in opposition.

Persons in Opposition

The Board received letters in opposition from several persons who objected to the parking variance principally because of their view that, absent the required minimum parking, the project would exacerbate an already overcrowded parking situation.

Testimony in Opposition

The Board heard testimony in opposition from Mr. Hoy, and from five other neighbors.

Persons in Support

The Board received a letter in support from Soon Hee Kim, the owner of 1460 Harvard Street,

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N.W. (Attachment to Exhibit 24) Mr Kim stated that the project would result in the renovation of a property that is currently vacant which, in turn, would improve the street and the neighborhood

Office of Planning Report

By a report dated May 24, 2013, OP recommended approval of the zoning relief requested by the Applicant, subject to a condition that the Applicant provides a bicycle rack for eight bicycles (Exhibit 28.) OP explained that a very narrow 5 8-foot wide portion of an alley abutted the subject property, an opening that is not wide enough to give standard-sized vehicles access to the property. Moreover, because the property is well served by Metrorail and Metrobus routes, OP explained that approval of the variance would not result in a substantial detriment to the public good. Maxine Brown-Roberts, a planner with OP, also testified to this effect at the public hearing.

FINDINGS OF FACT

The Property

1. The subject property is located at 1469 Harvard Street, N.W., in the R-5-B zone.
2. The site is a relatively large rectangular property with a lot area of approximately 3,000 square feet.
3. The property is currently improved with a two-story row dwelling
4. An apartment house is permitted as a matter of right in the R-5-B zone.

The Surrounding Area

5. To the east and west of the property are two-story row dwellings; to the north is a two-story alley dwelling; and to the south are three five-story row dwellings
6. The neighborhood is developed with a mixture of row dwellings, flats, garden apartments and high-rise multi-family residential buildings, ranging in height from two to ten stories.

The Proposal and the Zoning Relief

7. The Applicant originally planned to renovate the property and expand the existing two-unit structure to an eight-unit apartment building, with no parking provided.
- 8 Under § 2101.1 of the Zoning Regulations, four parking spaces would be required with an eight-unit building.

9. After the public hearing, the Applicant amended its application to construct a six-unit building instead of an eight-unit building, with no parking provided (Exhibit 35)
- 10 Under § 2101.1 of the Zoning Regulations, three parking spaces would be required in a six-unit building.

Exceptional Condition

11. The rear of the site abuts the corner of a 12-foot wide alley. Though the alley touches the site at the northwest corner, the access to the alley from the site is only 5.8 feet wide (See Survey, Exhibit 3.)
12. The 5.8 feet wide alley access may be sufficient to accommodate sub-compact cars such as the “Smart Car” and the “Fiat 500”, but is not wide enough to accommodate most vehicles.
13. The Applicant unsuccessfully attempted to purchase an access easement from two adjacent neighbors, Mr. Hoy and Mr. Veenstra
- 14 Mr. Hoy stated that he does not have enough space to sell an access easement, while Mr. Veenstra testified that he and the Applicant entered into negotiations, but did not arrive at an agreement

Practical Difficulty

15. While the lot may be of sufficient size to accommodate the required parking spaces, the current alley access does not allow for most vehicles to enter the rear of the property

The Impact of the Proposal

16. The Columbia Heights metro station is approximately ¼ mile north of the property.
17. The site is well served by a number of bus routes along 14th Street, 16th Street, and Columbia Road, N.W.
18. To help mitigate any negative impacts from the proposal, the Applicant has proffered to restrict the ability of building occupants from obtaining a residential parking permit (“RPP”) from the District of Columbia (Hearing Transcript of June 4, 2013, p. 187.)
19. If a block is subject to the RPP program, persons who do not have RPP stickers may only park their automobiles for two-hour intervals during the days and times that RPP is in effect. (18 DCMR § 2411.1.)
20. The Applicant has agreed to provide a bicycle rack that will accommodate a minimum of eight bicycles. This condition will also help to mitigate any negative impacts from the proposal.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-631.07 (g)(3), to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, “the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. *See* 11 DCMR § 3103.2.

As noted in § 3103.7:

The standard for granting a variance, as stated in § 3103.2 differs with respect to use and area variances as follows:

- (a) An applicant for an area variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property, and
- (b) An applicant for a use variance must prove that as a result of the attributes of a specific piece of property described in § 3103.2, the strict application of a zoning regulation would result in exceptional and undue hardship upon the owner of the property

The Applicant is seeking an area variance.

As to whether the property is subject to an exceptional condition, the Board concludes that the subject property is, for the most part, a landlocked property. The property fronts on Harvard Street, and there is a 12-foot alley to the rear of the property. However, only a small corner of the alley – 5.8 feet in width – abuts the property to the rear. As noted, the Applicant sought to purchase an access easement from the adjacent property owners, but the negotiations failed. The Board concludes that this is an exceptional condition.

The Board further concludes that this lack of access to the property results in a practical difficulty to the owner. As stated, the only access to the property is from a corner of the alley that is only 5.8 feet wide. As a result, there is no access to the property for most vehicles. Only the smallest subcompact vehicles can access the property from the alley. Requiring the Applicant to construct parking spaces that cannot be accessed by most vehicles “would be unnecessarily burdensome” and therefore a practical difficulty. *See Palmer v Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972).

Finally, the Board credits OP's finding that approval of the parking reduction variance will not result in substantial detriment to the public good or the zone plan. As stated in OP's report, the area is well served by Metrorail and Metrobus routes. In addition, the Applicant has offered to mitigate the impacts of this variance in two respects. (1) The Applicant has agreed to restrict the ability of future residents of the building from obtaining RPP permits; and (2) The Applicant has also agreed, as OP recommended, to provide a bicycle rack that accommodates eight bicycles.

The Opposition Party asserts that the proposed RPP restrictions are not effective. He maintains that many parking spaces in the area are not limited to those with RPP permits, and that future occupants will not necessarily be discouraged from parking on the street in those spaces that are available to the public at large. The Board disagrees with the reasoning of the Opposition Party. While the RPP restrictions will not dissuade future residents from parking in spaces where such permits are not required, the Board believes that the restrictions do serve to deter parking where RPP is enforced. And since RPP is intended for blocks where parking congestion exists, 18 DCMR § 2411.4(c)(iii), it is those areas that will most benefit from the restriction proposed. Accordingly, on approving this application, the Board will impose a condition that requires the Applicant to prohibit future occupants of the building from obtaining RPP permits.

ANC

Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21, D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the report of the affected ANC. In this instance, ANC 1A recommended approval of the variance. As noted previously, the ANC explained that the subject property was "landlocked" and "unable to support any parking without trespassing on private property." The Board agrees with this finding.

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive and is imposing the condition OP recommended requiring that the Applicant provide a bicycle rack.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow an area variance from the requirements under § 2101.1 to provide three parking spaces for the six proposed units, **SUBJECT** to the following **CONDITIONS**:

1. The Applicant will provide a bicycle rack to accommodate eight bicycles.
2. The Applicant shall include language in all documents related to the lease or sale of the residential units that residents of the building are prohibited from applying for residential permit parking stickers from the District of Columbia, regardless of the building's ownership, and for the life of the building. Prior to the issuance of a Certificate of Occupancy for the building, the Applicant shall record a covenant, satisfactory to the Office of the Attorney General, binding any future owners of the

building and any of its residential units to include this restriction in any future leases or sales agreements

Pursuant to 11 DCMR § 3125.7 “approval of an application shall include approval of the plans submitted with such application for the construction of a building or structure.. unless the Board orders otherwise.” The Applicant’s original plans provided for an eight-unit building. However, the Board has approved a parking variance for no more than a six-unit building. Since there is nothing about the building itself that raised any issues for the Board, it is not necessary for the Applicant to submit revised plans, but any plans submitted for a building permit may not depict a building with more than six-units.

VOTE: **3-0-2** (Jeffrey L. Hinkle, Peter G. May, and S. Kathryn Allen to Approve the variance, Lloyd J. Jordan being necessarily absent; one Board seat vacant.)

Vote taken on June 28, 2013

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY:  *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 25, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401 01 ET SEQ (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.