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October 6, 2015

Marnique Y. Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: **BZA Appeal No. 19081 – 1828 Ontario Street NW (Square 2583, Lot 438)**
Prehearing statement of the Property Owner

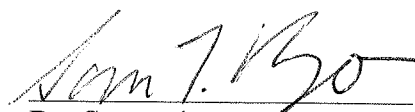
Chairperson Heath and Honorable Members of the Board:

On behalf of 1828 Ontario Place LLC, the owner of the subject property, enclosed please find the Property Owner's Prehearing Statement for the above-referenced appeal. The appeal is scheduled to be heard before the Board of Zoning Adjustment on October 20, 2015.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP


By: Samantha L. Mazo

Enclosure:

Cc: ANC 1C

DCRA c/o Maximilian Tondro

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPEAL OF ANC 1C
REGARDING 1828 ONTARIO PLACE, N.W.**

APPEAL NO. 19081

PRE-HEARING STATEMENT OF THE PROPERTY OWNER

I. INTRODUCTION

1828 Ontario Place LLC (“Owner”), the owner of the property at 1828 Ontario Place, N.W. (the “Property”) submits this pre-hearing statement along with exhibits that Owner may rely upon at the hearing on this matter. The challenge to the Zoning Administrator’s May 13, 2015 Parking Space Determination (the “Determination”) filed by ANC 1C (the “Appellant”) is a baseless attempt to stop the Owner’s by-right conversion of the Property from a single-family dwelling into a four-unit apartment house in the R-5-B Zone District (the “Project”).

Although not expressly characterized as such, Appellant’s underlying arguments appear to be that the Zoning Administrator erred in granting a one-space parking credit; the smaller, extra parking pad does not satisfy the Zoning Regulations’ parking space dimension requirements; and the provided 9’ by 19’ parking space is not accessible from the alley.

All of these arguments fail, and the Determination should be affirmed, because:

- The Property was built before 1958 as a one-family dwelling and did not provide satisfactory parking – so the parking credit was permitted pursuant to 11 DCMR §§ 2100.1 and 2100.4. Further, the parking credit vests with the one-family structure, so any demolition to the detached garage has no impact on the credit.
- The smaller parking pad is not a “required” parking space, and, therefore, does not need to satisfy the parking space dimension standards for required parking spaces set out in 11 DCMR §2115.1;

- The only evidence in the record regarding access to the 9' by 19' parking space demonstrates that it will be accessible, as proposed. There are no facts to contrary.

Accordingly, the Appellant has failed carry its burden of proof, and the appeal must be rejected.

II. OWNER'S EXHIBITS

Exhibit A: Property Zoning Map
Exhibit B: Baist Map
Exhibit C: PIVS Report from the DCRA website
Exhibit D: Location Survey
Exhibit E: Parking Plan
Exhibit F: April 29, 2015 Wells and Associates Parking Accessibility Study

III. SUMMARY OF FACTS

The Property is located at 1828 Ontario Place, N.W. in the R-5-B Zone. See **Exhibits “A” and “B”**. The Property is a single-family dwelling with a detached garage that was constructed in approximately 1915 based on the PIVS report from DCRA's website attached here as **Exhibit “C”**. As shown in the location survey included as **Exhibit “D”**, the detached garage (“Detached Garage”) is substandard in size, being approximately 8-feet by 16 feet (“Substandard Pad”). The Property has no parking spaces other than the Substandard Pad.

On or about September 22, 2014, the Owner's agent submitted building permit application No. B1412288 (“Building Permit”) to DCRA seeking to convert the Property from a single-family dwelling to a four-unit apartment house as permitted by matter of right in the R-5-B Zone.

Because the one-family dwelling was constructed prior to adoption of the 1958 Zoning Regulations and the Substandard Pad was too small in size to be considered as a parking space, the Property was allotted one parking credit.

Pursuant to 11 DCMR 2101.1, apartment houses in the R-5-B zone are required to provide 1 space for each 2 dwelling units. Accordingly, while a new four-unit apartment house in the R-5-B Zone District would require two parking spaces, the subject Project only requires one parking space because the Property was allotted one parking credit.

As shown on the parking plan included as **Exhibit “E”**, the Project provides one, standard 9’ by 19’ parking space (the “Zoning Parking Space”) and therefore, complies with the Zoning Regulations. The Project also maintains the Substandard Pad, but does not rely on it to satisfy the parking requirements.

During the spring of 2015, the Owner worked with DCRA and the Zoning Administrator to determine the location and size of the Zoning Parking Space. On April 29, 2015, the Owner submitted the Wells and Associates Parking Accessibility study (“Parking Study”) included hereto as **Exhibit “F”**. The Parking Study provided an “Autoturn” analysis for both Chevy Cobalt and Ford Expedition model vehicles and concluded that the Zoning Parking Space was accessible by both.

On May 13, DCRA’s website listed the following building permit comment, which includes the Determination that is the subject of the current appeal:

Zoning Review	Zoning Review Approved - WC	05/13/2015	(r-5-b zoning district) -- zoning approval for the conversion of an existing sfld into an apartment house with four (4) dwelling units. includes a two-story addition (four story + cellar apartment house). parking provided via one standard 9' by 19' parking space and one substandard 8' by 16' parking space. substandard space approved by za matt legrant based upon existing condition in existing garage (providing one standard and one substandard space). parking configuration approved by za matt legrant based upon traffic/parking report prepared by wells and associates. existing garage roof to be removed and walls demolished to a height of four feet. prior to issuance of a final certificate of occupancy, a zoning inspection will be required to 1. verify use, 2. verify number of parking spaces, and 3. verify that the garage has been demolished per the above description to not count towards lot occupancy.	Shawn Gibbs	shawn.gibbs@dc.gov
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The Building Permit was issued on July 20, 2105.

IV. THE ZONING ADMINISTRATOR CORRECTLY DETERMINED THAT THE PROJECT PROVIDES SUFFICIENT PARKING

In their effort to undermine the Determination, Appellant appears to make the following arguments: (1) the Property is not entitled to one parking space credit due to some demolition of the Detached Garage; (2) the Substandard Pad must be expanded to satisfy the Zoning Regulation's 9' by 19' parking space standard for required parking spaces; and (3) the parking location plan, as proposed, is impossible to implement. All of these arguments lack merit as discussed more thoroughly below.

A. The Board's Standard of Review on Appeal of a Zoning Determination

The Board of Zoning Adjustment is authorized by Section 8 of the Zoning Act of 1938 to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.)) (See also 11 DCMR § 3100.2). The decision or determination in this case is the Zoning Administrator's May 13 Determination regarding the vested parking credit and the

suitability of the Zoning Parking Space to satisfy the parking space requirement for a four-unit apartment house in the R-5-B Zone District.

Pursuant to 11 DCMR § 3119.2, in all appeals and applications, the burden of proof rests entirely with the appellant or applicant. As discussed below, the Appellant in the subject appeal fails to carry this burden, and the subject appeal should be rejected.

Further, it is well accepted that the Zoning Administrator's interpretation and construction of the Zoning Regulations is accorded great deference "unless clearly erroneous or inconsistent with the regulations." *See Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 968 (D.C. 2002); *Ass'n For Pres. of 1700 Block of N St., N.W. & Vicinity v. D.C. Bd. of Zoning Adjustment*, 384 A.2d 668, 671 (D.C. 1978). In this case, as discussed below, the Zoning Administrator's interpretation of the Zoning Regulations is entirely consistent with the plain text. The Determination was, therefore, proper, and Appellant's appeal should be denied.

B. The Zoning Administrator Properly Determined that the Property was Entitled to a Parking Credit

Although not directly alleged by the Appellant, the underlying presumption of its case is that the Property was not entitled to a vested parking credit upon the conversion of the single-family dwelling to the four-unit apartment house, and instead, the Project must provide two, standard 9' by 19' parking spaces. This presumption is contrary to the language of the Zoning Regulations and findings of the Courts and the Board, as discussed below.

First, as to the Zoning Regulations, 11 DCMR §§ 2100.1 and 2100.4 establish "grandfathering" procedures that explicitly exempt buildings built prior to May 12, 1958 from specific parking requirements. Specifically, 11 DCMR § 2100.1 makes clear that the parking

requirements only apply to structures “erected on or after May 12, 1958” and 11 DCMR § 2100.4 establishes that when a structure is changed to another use that requires more parking spaces than were required for the prior use, only the additional parking spaces need to be provided in the “amount necessary to conform to § 2101”.

Second, read together, these Zoning Regulation sections have been interpreted to allow for a vested parking credit to be allocated to structures constructed prior to May 12, 1958 that do not provide the number of standard parking spaces required by the current Zoning Regulations upon conversion to a new use. This is well reflected in the decisions of the Courts and this Board.

For example, in a case similar to the one at hand because it applies to the conversion of pre-1958 single-family dwelling to a new use, the District of Columbia Court of Appeals in *Gladden v. BZA*, 659 A.2d 249 (D.C. 1995) concluded that where a single-family dwelling had existed prior to May 12, 1958, when it was converted to a youth rehabilitation home use that required two spaces under 11 DCMR § 2101.1, one space was vested by the grandfathered credit for the pre-1958 structure. Accordingly, the applicant in that case only needed to provide one, standard 9’ by 19’ space to satisfy the parking requirements for the new youth rehabilitation home use. *See also Page Associates v. District of Columbia Bd. of Zoning Adjustment*, 463 A.2d 649, 651 (D.C. 1983) (noting that buildings built before the regulations that are converted to another use must provide additional parking spaces in the amount not grandfathered).

These court cases have been repeatedly followed by the Board to deny appeals, similar to the subject appeal, challenging the validity of conversion of a pre-1958 structure to a new use based on what those appellants perceived was a lack of required parking. *See Appeal No. 17526 of ANC 6A* (upholding DCRA’s issuance of a building permit for a conversion of a one-family

dwelling to a flat when no parking space was provided and concluding that the subject property was entitled to a parking credit because it was constructed prior to 1958).

Based on the above, it is clear that the Zoning Administrator properly determined that the Property was entitled to a parking credit and only one, 9' by 19', standard-sized space was required. The Property was only improved with the Substandard Pad, which did not constitute a parking space. Accordingly, in order to satisfy § 2101, only one, standard size space is required. The Project provides such a space, the Zoning Parking Space, so the Determination was issued properly, and no error was made.

C. The Parking Credit is Vested by the pre-1958 Single Family Dwelling.

The parking credit is tied to the existing single-family dwelling on the Property, not the existence of the non-standard Detached Garage. Thus, the parking credit is not impacted by modifications to the Detached Garage, and any claim to the contrary is baseless.

D. The Zoning Regulation's Parking Size Requirements Only Apply to Required Parking Spaces.

Again, although not expressed as such, Appellant appears to also argue that the Substandard Pad was approved in error because it does not satisfy the dimensional requirements of a required parking space as set forth in 11 DCMR § 2115.1. The problem with Appellant's position with respect to the legality of the Substandard Pad is the failure to recognize the clear distinction in the Zoning Regulations between "required" and "non-required" parking spaces.

The Zoning Regulations are clear as to which provisions are applicable to "required" parking spaces and which provisions are applicable to all parking spaces. Indeed, Title 11 DCMR § 2118 sets forth the rules of interpretation that are applicable to all of Chapter 21. Specifically, Section 2118.9, provides as follows: "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 Board in the *Appeal No. 17615 of William Harnett* expressly found that by applying this accepted rule of interpretation, “The Board interprets the reference to ‘spaces ... required by this chapter’ to refer to the minimum number of parking spaces that each building must provide in accordance with § 2101.1. Thus, when more parking spaces are constructed than are required, as [was the case in that matter], only those provisions of Chapter 21 that say “all parking spaces” apply to all of the parking spaces. Conversely, those provisions that do not refer to “all parking spaces” apply only to those spaces required by § 2101.1.”

This is exactly the current situation. Irrefutably, 11 DCMR § 2115.1, which regulates parking space dimensions specifically states, “Except as otherwise provided in this section, a **required** automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of § 2117.3...” (Emphasis added).

Clearly, the 9’ by 19’ parking space dimension specifications only apply to “required” spaces. As discussed above, only the Zoning Parking Space is a “required” parking space because the Property has a grandfathered parking credit, and only one, 9’ by 19’ parking space needed to be provided. Accordingly, the Substandard Pad is not a required parking space and does not need to satisfy the dimension standards of 11 DCMR § 2115.1. Any arguments to the contrary lack merit.

E. No Facts Support Appellant’s Claim that the Project’s Proposed Parking Layout is “Mathematically Impossible”

Finally, Appellant's allegation that the proposed parking design has a "mathematical impossibility of compliance" lacks basis in fact or in the record. Indeed, the only evidence in the record regarding parking accessibility is the Parking Study, which specifically concluded that two different sizes of cars can access the Zoning Parking Space. As documented, the proposed parking design is not "impossible". Rather, it has been determined to be "possible" and adequate.

V. WITNESSES

The following witnesses will appear on behalf of the Owner:

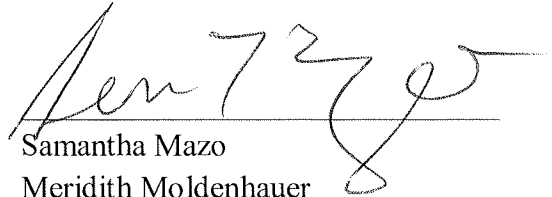
1. Chris Bogdan, on behalf of the Owner
2. KC Price, design consultant on behalf of the Owner
3. Any other witnesses necessary to counter testimony given by the Appellant

VI. CONCLUSION

For the reasons stated above, Owner asserts that the allegations contained in the appeal are without merit. Appellant has failed to establish a valid reason to overrule the Zoning Administrator's May 13 Determination. Owner, therefore, respectfully requests that the Board affirm the Determination and deny the appeal.

Respectfully submitted,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS,
LLP

A handwritten signature in black ink, appearing to read "Samantha Mazo", written over a horizontal line.

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