

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

**APPEAL OF ANC 1C &
MICHAEL G. RAFFERTY
REGARDING 1828 ONTARIO PLACE, N.W.**

APPEAL NO. 19081

PRE-HEARING STATEMENT OF THE APPELLANTS

I. INTRODUCTION

ANC 1C and Michael G. Rafferty (“Appellants”) submit this pre-hearing statement that the Appellants may rely upon at the hearing for this matter. See **Appellants’ Exhibit A**. The Appellants appeal the decision of the Zoning Administrator (“ZA”) allowing conversion of the existing single family dwelling at 1828 Ontario Place, NW (“Property”) into a four unit condominium building pursuant to the issuance of Building Permit B1412288 on July 20, 2015 (“Building Permit”). The decision was based in part on allowing one substandard 8’ x 16’ parking space “based upon existing condition in the existing garage”. (See below in Section IV from the DCRA PIVS history relating to the Building Permit). We believe that the decision of the ZA allowing one substandard parking space with a size of 8’ x 16’ to satisfy one of the 2 required parking spaces for the 4 unit building is an error and is in violation of the Off-Street Parking Requirement of 11-2101 of the DCMR.

Bogdan Builders (the “Property Owner”) has submitted a pre-hearing statement (“Owner’s PHS”) that has a lengthy discussion of parking credits under the zoning regulations that is wholly inapplicable to the case at hand, as further detailed below.

II. EXHIBITS

For ease of reference and consistency the Appellants hereby incorporate by reference each of the 6 Exhibits A through F that were attached to the Owner’s Pre-Hearing Statement, which shall be referred to as Owner’s Exhibits A through F.

Also, attached hereto are the following Exhibits:

Appellants’ Exhibit A: Letter of Authorization from ANC 1C

Appellants’ Exhibit B: October 26’ 2015 Picture of Existing Parking Pad

Appellants’ Exhibit C: Diagram Showing Owner’s Misrepresentation of the Existing Parking

III. SUMMARY OF FACTS

The Property is located at 1828 Ontario Place, N.W. in the R-5-B Zone. See **Owner's 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. See **Owner's Exhibit "C"**. The detached garage on the Property is 16.68' x 18.9' as shown in the location survey, dated 6/20/2014, attached to the Owner's Pre-Hearing Statement ("Property Survey"). See **Owner's Exhibit D**. This same survey was submitted to DCRA by the Owner as part of its building permit application and relied upon by DCRA in its issuance of Building Permit B1412288. The Owner misrepresents in its Owner's PHS that the size of the detached garage and the existing parking pad is 8' x 16', a fact clearly contradicted by their own Property Survey. See **Owner's Exhibit D**. The Owner's Property Survey shows that the detached garage measures 16.68' x 18.9'. See **Owner's Exhibit D**. Given that the party walls shown on the Owner's Property Survey are still in place, the existing parking pad actually measures 15.68' x 18.9'. The remainder of the Owner's PHS is largely based upon the material misrepresentation that the existing parking pad is 8' x 16'.

Attached is a current picture of the existing parking pad. See *attached* **Appellants' Exhibit B**. This clearly shows that the parking pad previously enclosed by a garage is the full width of the property, which is 16.68' total and 15.68' within the existing party walls, and the full depth of the party wall, which is 18.9'. See **Owner's Exhibit D**. Also attached is a diagram that shows the dimension of the existing parking pad, the dimension of the existing non-conforming parking space that has been in existence for decades and the size of the parking space that the Property Owner is attempting to get "grandfathered" based upon its material misrepresentation. See **Appellants' Exhibit C**. This diagram will prove useful in navigating the discussion below.

On or about September 22, 2014, the Owner's agent submitted its application for the Building Permit to DCRA seeking to convert the Property from a single-family dwelling to a four-unit condominium. In order to do so it needed to satisfy the requirement of 2 parking spaces to support the 4 units. Although the Owner alleges in the Owner's PHS that 1 parking credit was granted to the Property and on that basis the Property Owner met the parking requirements for the 4 unit Building Permit, those allegations are untrue. The ZA consistently maintained that the Property Owner needed to provide 2 parking spaces to the proposed project at the Property. As discussed further below, a parking credit was never granted for the Property and it would have been inappropriate if it had.

IV. PARKING CREDIT DOES NOT APPLY TO THE CASE AT HAND

Although the Property Owner alleges that the ZA granted a parking credit to the Property, those allegations are untrue. The parking credits relating to buildings constructed prior to 1958 granted in the cases referenced in the Owner's PHS only apply to buildings that do not provide the number of parking spaces required by the current zoning regulations upon conversion to a

new use. In the present case, we have a single family dwelling that has had one parking space in a garage, meeting its parking requirements for decades going back well before 1958. A parking space is defined in the Zoning Regulations as “an off-street area accessible and of appropriate dimensions to be used exclusively for the temporary parking of a motor vehicle.” See **11 DCMR 199**. The Project has had a parking space meeting that definition dating back decades to before 1919. See **Owners Exhibits B & D**. A parking credit would never be granted in this instance given these facts. 11 DCMR 2100.10 (a) clearly provides that the “If the existing number of parking spaces now provided is less than or equal to the minimum number of parking spaces now required by this chapter, the number of parking spaces cannot be reduced.”

Nothing in the record reflects that the ZA granted a parking credit to the project at the Property. In fact, the ZA maintained all along that the Project required 2 parking spaces. On April 11, 2015, the ZA stated in the public record relating to the Building Permit application that “the existing garage provides only one (1) parking space. [A]pplicant is required to provide two (2) off-street parking spaces for the proposed 4-unit building, or seek [BZA] relief for the off-street parking required per section 2101 of [DCMR] [T]itle 11.” (See below from the DCRA PIVS history relating to the Building Permit)

Zoning Review	Zoning Review - HFC	04/11/2015	per za matt legrant's 10 april 2015 review of the drawings to determine the number of parking spaces provided in the existing garage, the zoning administrator has determined that the existing garage provides only one (1) parking space. applicant is required to provide two (2) off-street parking spaces for the proposed 4-unit apartment building, or seek bza relief for the off-street parking required per section 2101 of dcmr title 11.
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In the ZA’s final ruling on parking related to the Building Permit on May 13, 2015, which is the basis of this Appeal, the ZA did so based upon the provision of 2 parking spaces, one standard and one substandard. (See below from the DCRA PIVS history relating to the Building Permit). There was no mention or discussion of any parking credit.

Zoning Review	Zoning Review Approved - WC	05/13/2015	(r-5-b zoning district) -- zoning approval for the conversion of an existing sfd 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.
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**V. THE ZONING ADMINISTRATOR INCORRECTLY DETERMINED
THAT THE PROJECT PROVIDES SUFFICIENT PARKING FOR A
FOUR UNIT BUILDING AS A MATTER OF RIGHT**

It is clear that the current zoning requirements regarding parking would apply to the project currently proposed at the Property. Per 11 DCMR 2100.1, “[a]ll buildings or structures erected on or after May 12, 1958 shall be provided with parking spaces to the extent specified in Section 2101.” 11 DCMR 2101.1 provides that 1 parking space per 2 dwelling units is required for residential development in R-5-B zoned properties. 11 DCMR 2118.9 further clarifies that “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.” This is true of the requirement laid out in 11 DCMR 2100.1.

11 DCMR 2115.1 further provides that a parking space shall be a minimum of 9 feet in width and 19 feet in length. The existing parking space on the Property that has been there for almost 100 years is 9’ wide by 18.9’ long, falling just short of the parking space size requirement. See **Owner’s Exhibits B & D**. The existing space is 170.1 SF, or 99.47 % of the 171 SF of the required 9’ x 19’ sized parking space.

On these facts, to the extent that the ZA decides to grant one non-conforming space on a grandfathered basis, it should be based upon the long existing 9’ x 18.9’ parking space evidenced in the garage on both the Owner’s Property survey and the 1919 Baist’s Atlas. See **Owner’s Exhibits B & D**. By approving a non-conforming substandard 8’ x 16’ parking space instead of the long existing 9’ x 18.9’ parking space, the ZA has made an error in allowing the Property Owner to increase the degree to which the existing parking space is substandard,

exceeding any authority the ZA might have to grant minor flexibility on an as-of-right building permit given the facts at hand. The ZA has no “minor flexibility” regarding parking spaces pursuant to 11 DCMR 2522.

The ZA’s granting of the substandard 8’ x 16’ parking space was done based “upon existing condition in the existing garage.” (See below from the DCRA PIVS history relating to the Building Permit). It is highly likely that the ZA approved the substandard parking space based upon a material misrepresentation by the Owner similar to the one made in the Owner’s PHS. As the “Diagram Showing Owner’s Misrepresentation of the Existing Parking” shows, granting of a substandard 8’x16’ parking space given the actual existing conditions of the garage and the related parking pad actually makes no sense at all. See **Appellant’s Exhibit C**.

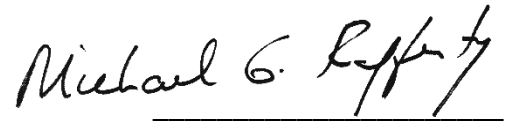
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What has been approved here is to allow the Property Owner to expand a slight non-conformity of about one half of 1% to a much larger degree of non-conformity, over 25% based upon the 8’ x 16’ space, which is 128 SF rather than the required 171 SF of a conforming spot, or 74.85% of a conforming spot. This result is not only outside of the ZA’s authority, it runs contrary to the very intent of the zoning regulations which attempt to minimize any non-conformity to only the amount necessary. If you were to apply the same theory to a project that minimally exceeds a height restriction, you could allow development of a full extra story to be built based upon a non-conforming height that is mere inches over a height restriction. For the same reason that scenario would be an absurd result, the ZA’s decision at issue here is equally absurd. In the case at hand, the ZA’s decision is allowing the Property Owner to expand upon the existing degree of non-conformity of a parking space to a much larger degree of non-conformity for no other reason than to fit the desired result of the Property Owner. In the case at hand that desired result is 2 extra dwelling units that the Property Owner wouldn’t otherwise be able to build.

VI. CONCLUSION

Allowance of the non-conforming substandard 8' x 16' space for the Property needs to be reversed. The BZA should require that if the ZA approves any non-conforming or substandard space on the Property on a grand-fathered basis, it should be the currently existing 9' x 18.9' non-conforming space that has existed on the Property for decades. If the currently existing 9' x 18.9' non-conforming space is grandfathered, the parking plan and parking study submitted by the Property Owner showing the ability to provide a second conforming parking space are no longer viable. See **Owner's Exhibits E & F**. Consequently, the only thing that can be approved by the ZA at the Property as a matter of right would be a 2 unit building based upon the parking requirements. Any variance of the parking requirements should be required to be submitted to the BZA requesting proper relief for a full review.

Respectfully submitted,



Michael G. Rafferty

Individually as Appellant
& Owner of 1826 Ontario Place
202-957-1326 mobile

And as an Authorized Representative
of Appellant ANC 1C
P.O. Box 21009, Kalorama Station
Washington, DC 20009

Exhibit A
Letter of Authorization from ANC 1C



Advisory Neighborhood Commission 1C

PO Box 21009, NW, Washington, DC 20009

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Representing Adams Morgan

Commissioners:

Julie Seiwel (1C01)

Hector Huevo (1C02)

Ted Guthrie (1C03)

Gabriela Mossi (1C04)

Alan Gambrell (1C05)

Billy Simpson (1C06)

Wilson Reynolds (1C07)

JonMarc Buffa (1C08)

October 16, 2015

Marnique Y. Heath, Chair
Board of Zoning Adjustment
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: BZA Case No. 19081

Dear Chair Heath,

This letter is to authorize residents Stacie Desai and Michael Rafferty of Ontario Place, NW to represent ANC 1C before the Board of Zoning Adjustment in BZA Case No. 19081. Please note that these residents are volunteers and are not paid professionals. As such, we sincerely ask for the Board to show leeway when Ms. Desai appears next Tuesday to seek continuation of the hearing to November 2015.

Thank you for your consideration.

Respectfully,

Billy Simpson
Chair, ANC 1C

Exhibit B

October 26, 2015 Picture of Existing Parking Pad



Exhibit C

1828 Ontario Place NW

Existing Parking Misrepresented

