ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

ALLISON C. PRINCE
202-663-8853
allison.prince@shawpittman.com

2003 JUN 12 P 12:05

June 12, 2003

By Hand Delivery

Mr. Rick Nero
Board of Zoning Adjustment
441 4th Street, N.W.
Room 210
Washington, DC 20001

Re: BZA Order No. 1686, Ingleside at Rock Creek (Square 2285, Lots 3,4, 803, and Square 2287, Lot 808)

Dear Mr. Nero:

We represent Ingleside at Rock Creek ("Ingleside"), the applicant in BZA Application No. 16861 for a special exception to use of the property located at 5121 Broad Branch Road, N.W. (the "Property") as recreation space, meeting room, and guest rooms for visitors to Ingleside. On May 15, 2002, the Board issued its final order approving the application. The language at the end of the Order states that, pursuant to 11 DCMR § 3130, "the Order shall not be valid for more than six months after it becomes effective."

Section 3130 provides that an order authorizing only the use of a structure is valid for six months. However, when the authorized use is dependant upon the erection or alteration of a structure, the order is valid for two years. In our case, the Property requires accessibility and life/safety alterations before can be made is suitable for the approved use. Indeed, Ingleside is unable to obtain a certificate of occupancy to establish the approved use until those alterations are completed. Accordingly, because the use of the Property is dependant upon the alteration of a structure, the language at the end of the Order should have stated that the Order was valid for two years.

The alterations to the Property are underway, and Ingleside expects to establish the approved use shortly. However, the Order appears to have expired. Due to this mistake, Ingleside respectfully requests that the Board issue a revised order stating that the Order is valid for a period of two years from May 15, 2002.

Sincerely,

Allison C. Prince

Attachment

Document #: 1330738 v.1

BZA
Case No. 16861
Exhibit No. 35

Board of Zoning Adjustment
District of Columbia
CASE NO.16861
EXHIBIT NO.35

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16861 of Ingleside at Rock Creek, pursuant to 11 DCMR § 3104.1, for a special exception to include additional property for use as recreation space, meeting room, and guest rooms for family members and guests visiting an existing community residence and health care facility under sections 218 and 219, in an R-1-A District at premises 5121 Broad Branch Road, N.W. (Square 2285, Lots 3, 4, 803, and Square 2287, Lot 808).

HEARING DATE: April 30, 2002
DECISION DATE: April 30, 2002

SUMMARY ORDER

SELF - CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 3G, and to the owners of property within 200 feet of the site. The application was also referred to the Office of Planning for review and report.

The site of this application is located within the jurisdiction of ANC 3G. ANC 3G, which is automatically a party to this application submitted a letter in conditional support of the application. The Office of Planning submitted a report in conditional support of the application. The Department of Transportation submitted a report stating no objection to the application. Anne M. Renshaw testified as an individual at the public hearing, having recused herself from the Board deliberations.

As directed by 11 DCMR § 3119.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception from the strict application of the requirements of 11 DCMR §§ 3104.1, 218 and 219. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR § 3104.1, for a special exception under

sections 218 and 219, which will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. It is therefore **ORDERED** that this application be **GRANTED** subject to the following **CONDITIONS:**

1. There shall be no rental to or use of the building by groups that are not related to Ingleside, except that community organizations such as Advisory Neighborhood Commission 3G may use the building up to a total of four times per year.

2. Large events shall be limited to one per month. Large events shall be defined as events involving 75 or more attendees, the majority of whom are not residents of Ingleside. The Ingleside security personnel shall be responsible for managing any parking demands associated with an event to insure that there is no spillover parking in the neighborhood.

3. The maximum occupancy of the building for any event at any time shall be 150.

4. The guest apartments shall be available only for family and friends of residents of Ingleside. The maximum stay shall be one week. In the event of extenuating circumstances, the maximum stay limit may be waived.

Pursuant to 11 DCMR 3101.6, the Board has determined to waive the requirement of 11 DCMR 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **4-0-1** (Carol J. Mitten, Curtis L. Etherly, Jr., Geoffrey H. Griffis, and David W. Levy to Approve, Anne M. Renshaw not participating, not voting, having recused herself).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this order.

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director

Final Date of Order: MAY 15 2002

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.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, 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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16861

As Director of the Office of Zoning, I hereby certify and attest that on MAY 15 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Allison C. Prince, Esq.
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

Anne M. Renshaw, Chairperson
Advisory Neighborhood Commission 3G
P.O. Box 6252
Washington, D.C. 20015

Anne M. Renshaw, Single Member District Representative
Advisory Neighborhood Commission 3G03
P.O. Box 6252
Washington, D.C. 20015

Kathleen Patterson, City Councilmember
Ward Three
1350 Pennsylvania Avenue, N.W.
Suite 107
Washington, D.C. 20004

Toye Bello Acting, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 200

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning