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The District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W., Suite 200/210-S
Washington, D.C. 20001

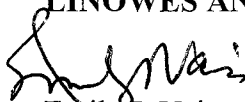
Re: BZA Appeal No. 17317
Pre-Hearing Statement of Appellant Washington Harbour Condominium Unit Owners
Association, Inc.

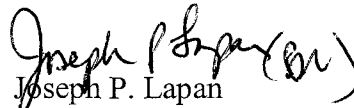
Dear Boardmembers:

Please find enclosed twenty (20) copies of Appellants' Pre-Hearing Statement for the above-referenced case. Thank you for your cooperation in this matter.

Sincerely,

LINOWES AND BLOCHER LLP


Emily J. Vaias


Joseph P. Lapan

EJV:ejv

cc: Mr. John W. (Wes) Guckert
Mr. Ken Joy

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17317
EXHIBIT NO. 20

Board of Zoning Adjustment
District of Columbia
CASE NO. 17317
EXHIBIT NO. 20

**Pre-Hearing Statement of Appellant
Washington Harbour Condominium Unit Owners Association, Inc.**

Questions Presented on Appeal

- I. Are the Newly Created Parking Spaces at 3030 K St. in violation of 11 DCMR 2117, as cited by the Notice of Violation?
- II. Can the Newly Created Parking Spaces be found in violation of a provision of 11 DCMR that was not cited at the time the Notice of Violation was issued?
- III. Are the requirements of 11 DCMR with respect to “required” parking spaces applicable to the Newly Created Parking Spaces?
- IV. Are the Newly Created Parking Spaces in compliance with all applicable requirements of 11 DCMR?
- V. How should the BZA treat the recommendation of ANC 2E for this appeal?

Statement of the Case

This appeal of the Washington Harbour Condominium Unit Owners Association, Inc. (the “Association”), pursuant to Title 11 of the District of Columbia Municipal Regulations (DCMR) §§ 3100 and 3101, is taken from the administrative decision of the Zoning Administrator of the Department of Consumer and Regulatory Affairs to issue a Notice of Violation and Notice to Abate to the Association on January 4, 2005 (the “Notice”) for an alleged violation of 11 DCMR 2117 “Off-Street Parking Requirements- Access, Maintenance, and Operation” (noted as BZA Appeal No. 17317, the “Appeal”).

The Washington Harbour Condominium is located at 3030 K Street (the “Property”), and is identified at Lot 102, Square 1173 on the Plat and Plan of Condominium Subdivision dated March 20, 1986 (the “Plat”). The Property is in the W-3 Zone. For multi-family residential uses in W zones, Section 2101 of the District of Columbia Zoning Regulations (the “Schedule of Requirements”) requires one (1) parking space for every three (3) residential units. The Property contains 35 multi-family dwelling units; therefore twelve (12) parking spaces are required for the Property per the Schedule of Requirements. The Parking Facility Plan of Condominium Subdivision approved as part of the Plat (the “Parking Facility Plan”) shows an approved parking facility consisting of 18,075 square feet within a covered parking structure and including 43 parking spaces (the “Parking Facility”).

In late-2004, the duly elected and authorized Board of Directors for the Association, acting in proper course and within the scope of their authority, decided to create five new parking spaces in the parking facility (the “Newly Created Parking Spaces”, marked as Spaces #1-5 on the Required Parking Space Exhibit A) and auctioned licenses to the Newly Created Parking Spaces to interested unit owners. After the creation, auction and execution of license agreements for the Newly Created Parking Spaces, an inspector from the Building and Land Regulation Administration, along with the Zoning Administrator, issued the Notice to the Association. As stated, the Notice cited a violation of 11 DCMR 2117 with respect to the Newly Created Parking

Spaces. The Notice also cited a violation of 12 DCMR 105.1 (dealing with whether a building permit is needed for the Newly Created Parking Spaces), which is the subject of a separate appeal to the Office of Administrative Hearings, which is currently pending.

This Appeal was made to the Board of Zoning Adjustment on March 7, 2005. Also on March 7, 2005, an appeal of the Notice with respect to the citation of 12 DCMR 105.1 was made to the Office of Administrative Hearings pursuant to 1 DCMR 28.

Argument

I. THE NEWLY CREATED PARKING SPACES ARE NOT IN VIOLATION OF 11 DCMR 2117, AS CITED BY THE NOTICE OF VIOLATION.

Each of the requirements and standards of 11 DCMR 2117, the section cited by the Notice, is addressed below:

2117.1 The parking spaces required by this chapter shall be provided and maintained so long as the structure that parking spaces are designed to serve exists.

None of the Newly Created Parking Spaces are “required” by the Schedule of Requirements and, therefore, this provision is inapplicable to the Newly Created Parking Spaces. However, all required and non-required parking spaces in the Parking Facility continue to be provided and maintained.

2117.2 Required parking spaces shall not be reduced in total extent after their provision except upon approval of the BZA.

Per the Schedule of Requirements, the required number of parking spaces is twelve (12). The Association has not and does not seek to reduce this number.

2117.3 All required parking spaces shall be clearly striped and lined according to the dimensions specified in Section 2115.....

None of the Newly Created Parking Spaces are “required” by the Schedule of Requirements and, therefore, this provision is inapplicable to the Newly Created Parking Spaces. Nonetheless, all required parking spaces in the Parking Facility are clearly striped and lined according to the dimensions specified in Section 2115.

2117.4 Except as provided in Section 2117.15, each required parking space shall be accessible at all times directly from improved streets or alleys or shall be accessible from improved streets and alleys via graded and unobstructed private driveways....

None of the Newly Created Parking Spaces are “required” by the Schedule of Requirements and, therefore, this provision is inapplicable to the Newly Created Parking Spaces. Nonetheless, each required parking space in the Parking Facility is accessible at all times directly from an improved street or alley via a graded and unobstructed private driveway.

2117.5 Except as provided in Sections 2115.9 through 2115.18 and 2117.6, when required parking spaces are so arranged that an aisle is required for accessibility or maneuvering space between rows of two (2) or more parking spaces....the aisle shall have a clear width of not less than twenty feet (20 ft.) for ninety degree (90°) angle parking.....

None of the Newly Created Parking Spaces are “required” by the Schedule of Requirements and, therefore, this provision is inapplicable to the Newly Created Parking Spaces. Nonetheless, each required space in the Parking Facility is arranged such that an aisle is provided for accessibility and maneuverability that has a clear width of not less than twenty (20) feet. In fact, the drive aisle between the twelve (12) required spaces in the Parking Facility is 22 feet wide.

2117.6 Aisle widths as prescribed in Section 2117.5 serving compact spaces exclusively shall have a clear width of not less than twenty feet (20 ft.)....

There are no parking spaces in the Parking Facility that are designated as “compact car spaces”.

2117.7 The public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment from all parking spaces.....

All private walkways and driveways are protected from vehicular encroachment from all parking spaces in the Parking Facility and no vehicle or any part thereof projects over any property line.

2117.8 A driveway that provides access to required parking spaces shall meet the following standards.....

The driveway that provides access to both the required and non-required parking spaces in the Parking Facility meets all standards contained in this section with respect to maximum grade, minimum distance from a street intersection, minimum and maximum width.

2117.9 Driveways and parking for row dwellings.....

This section applies to row dwellings and is inapplicable to the Property.

2117.10 All open parking spaces....

All parking spaces, including the Newly Created Parking Spaces, access aisles, driveways and ramp areas are covered spaces and not subject to this section.

2117.11 Landscaping with trees and shrubs shall be provided for all open parking spaces....

All parking spaces, including the Newly Created Parking Spaces, access aisles, driveways and ramp areas are covered spaces and not subject to this section.

2117.12 The open parking spaces shall be screened.....

All parking spaces, including the Newly Created Parking Spaces, access aisles, driveways and ramp areas are covered spaces and not subject to this section.

2117.13 Any lighting used to illuminate open parking spaces.....

All parking spaces, including the Newly Created Parking Spaces, access aisles, driveways and ramp areas are covered spaces and not subject to this section.

2117.14 Detailed plans shall be submitted to the D.C. Department of Transportation for approval of all curb units and driveway openings.....

Creation of the Newly Created Parking Spaces did not alter any existing curb cuts or driveway openings, and all prior approvals for any curb cut or driveway opening is unaffected.

2117.15 Required parking spaces for a gasoline station....

This section is inapplicable as it applies only to required parking spaces for gasoline service stations.

II. THE NEWLY CREATED PARKING SPACES CANNOT BE FOUND IN VIOLATION OF A PROVISION OF 11 DCMR NOT CITED ON THE NOTICE OF VIOLATION.

Because the Notice was issued for a violation of 11 DCMR 2117, application and enforcement of the Notice is necessarily limited to the provisions of the section cited. Similarly, the Appeal is necessarily limited to a review of the rulings and interpretations made with respect to the section cited.

However, in the alternative, should the Zoning Administrator and BZA seek to address sections of the Zoning Regulations not cited by the Notice, the Association can show that the Newly Created Parking Spaces are not in violation of any applicable section of the Zoning Regulations.

III. THE NEWLY CREATED PARKING SPACES ARE NOT SUBJECT TO THE REQUIREMENTS OF “REQUIRED” SPACES AND ARE ONLY SUBJECT TO THE REQUIREMENTS FOR “NON-REQUIRED” PARKING SPACES.

As discussed above, “Required spaces” in the various zones are specified by the Schedule of Requirements. The Property is in the W-3 Zone, and the Schedule of Requirements requires one (1) parking space for each three (3) dwelling units. The Property has 35 dwelling units, meaning

there are 12 “required spaces” that are subject to any section of the Zoning Regulations applicable to “required spaces”. We have identified the twelve (12) required spaces on the Parking Facilities Plan (the “Required Parking Spaces Exhibit”), which do not include any of the Newly Created Parking Spaces, nor Spaces #111 or #112. All of the “required spaces” have sufficient dimensions and aisle widths, and otherwise comply with all provisions applicable to “required spaces”, as required by the Zoning Regulations.

11 DCMR 2101.2 clearly allows for the creation of parking spaces in an amount that exceeds that required by the Schedule of Requirements (i.e. “non-required parking spaces”) provided that these non-required spaces comply with “all other applicable provisions” of the Zoning Regulations. This Section does not serve to make any provisions of the ordinance applicable to non-required spaces that were not already applicable, but instead makes clear the fact that certain provisions of the ordinance are applicable to non-required accessory spaces and must be complied with.

11 DCMR 2118.9 provides guidance in determining which provisions of the Zoning Regulations are applicable to non-required accessory spaces by stating that where the ordinance refers to “all parking spaces” it refers to required AND non-required spaces. However, any section that specifically applies to “required” spaces, or to some other qualified class of parking spaces, remains inapplicable to non-required spaces and Section 2101.2 does not render these sections applicable to the non-required parking spaces. Therefore, the Newly Created Parking Spaces, and for that matter all non-required parking spaces in the Parking Facility, are not subject to the requirements for “required spaces” and are subject only to those requirements applicable to “all parking spaces”. To interpret this sections of the Zoning Regulations in any other matter would be contrary to the plain meaning of the statutes as written and contrary to the fundamental rules of statutory construction.

IV. THE NEWLY CREATED PARKING SPACES ARE IN FULL COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF 11 DCMR.

Per the discussion above, the provisions of the Zoning Regulations that are applicable to the Parking Facility and, specifically, the Newly Created Parking Spaces, as non-required spaces are: 11 DCMR 2115.5, 2115.7, 2115.13, 2116.1, 2116.2, and 2116.8. Compliance with 11 DCMR 2117 is fully addressed in Section 1 above.

Compliance with each applicable provision of the Zoning Regulations is addressed below:

2115.5 Except as provided in Sections 2115.6 and 2115.7, all parking spaces shall have a minimum vertical clearance of six feet, six inches (6 ft., 6 in.).

All parking spaces, including the Newly Created Parking Spaces, have the required minimum vertical clearance.

2115.7 All entrances, exits, access aisles, ramps and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in Sections 2115.5 and 21215.6, respectively.

The Parking Facility entrance/ exit and all ramps and driveways providing access to all parking spaces, including the Newly Created Parking Spaces, contain the minimum vertical clearance of six feet, six inches.

2115.13 All parking areas and spaces provided under Section 2115.9 shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicle without moving any other vehicle onto public space

As demonstrated by the Association's parking expert in Exhibit B all parking areas and parking spaces, including the Newly Created Parking Spaces, provide sufficient access and maneuvering space to permit parking and removal of any vehicle without moving any other vehicle onto public space.

2116.1 Except as provided in all parking spaces shall be located on the same lot with the buildings or structures they are intended to serve.

All parking spaces, including the Newly Created Parking Spaces, are located on the same lot with the residential building they are designed to serve.

2116.2 Parking spaces shall be located.... (a) within a permitted garage or carport....

All parking spaces, including the Newly Created Parking Spaces, are located in a permitted parking structure as shown on the approved Parking Facilities Plan.

2116.8 The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures that they are designed to serve.

All parking spaces, including the Newly Created Parking Spaces, furnish reasonable and convenient parking facilities for the residents and guests of the Property.

V. THE RECOMMENDATION OF ANC 2E WITH RESPECT TO THIS APPEAL SHOULD BE REJECTED BASED ON THE CORRECT LEGAL INTERPRETATION OF 11 DCMR.

On October 3, 2006, Advisory Neighborhood Commission (ANC) 2E considered the Appeal and passed a motion to recommend that the BZA consider the removal of the Newly Created Parking Spaces. However, in reaching this decision, the ANC 2E did not receive information, nor consider any of the legal interpretation or compliance issues addressed above at its meeting. In fact, a representative of the Association was specifically told by ANC 2E that it did not wish to receive details regarding the interpretation and compliance issues relative to the Appeal. Accordingly, although pursuant to 11 DCMR 3115.2, the BZA shall give "great weight" to the report of the ANC and acknowledge the ANC as the source of recommendations with explicit reference to each of the ANC's issues and concerns with respect to any matter, we believe the

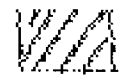
ANC's recommendation lacks any factual or legal basis. Therefore, the BZA should carefully address and acknowledge the ANC 2E's recommendation, giving it "great weight", but still choose to nullify the violation notice based on the facts and law of this case. See *Spring Valley Wesley Height Citizen's Assn. v. D.C. Zoning Comm'n*, 856 A.2d 1174 (2004).

Conclusion

The Association respectfully requests that the BZA, based on the foregoing, render the Notice null and void and direct the Zoning Administrator to remove the Notice from the violation records and cancel any enforcement action relative to the Notice.

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POTOMAC RIVER FREEWAY



W18

$\pm 589^{\circ}36'20''$ E - 177.75 (Record)
 $\pm 588^{\circ}36'14''$ E - 177.75 (Survey)

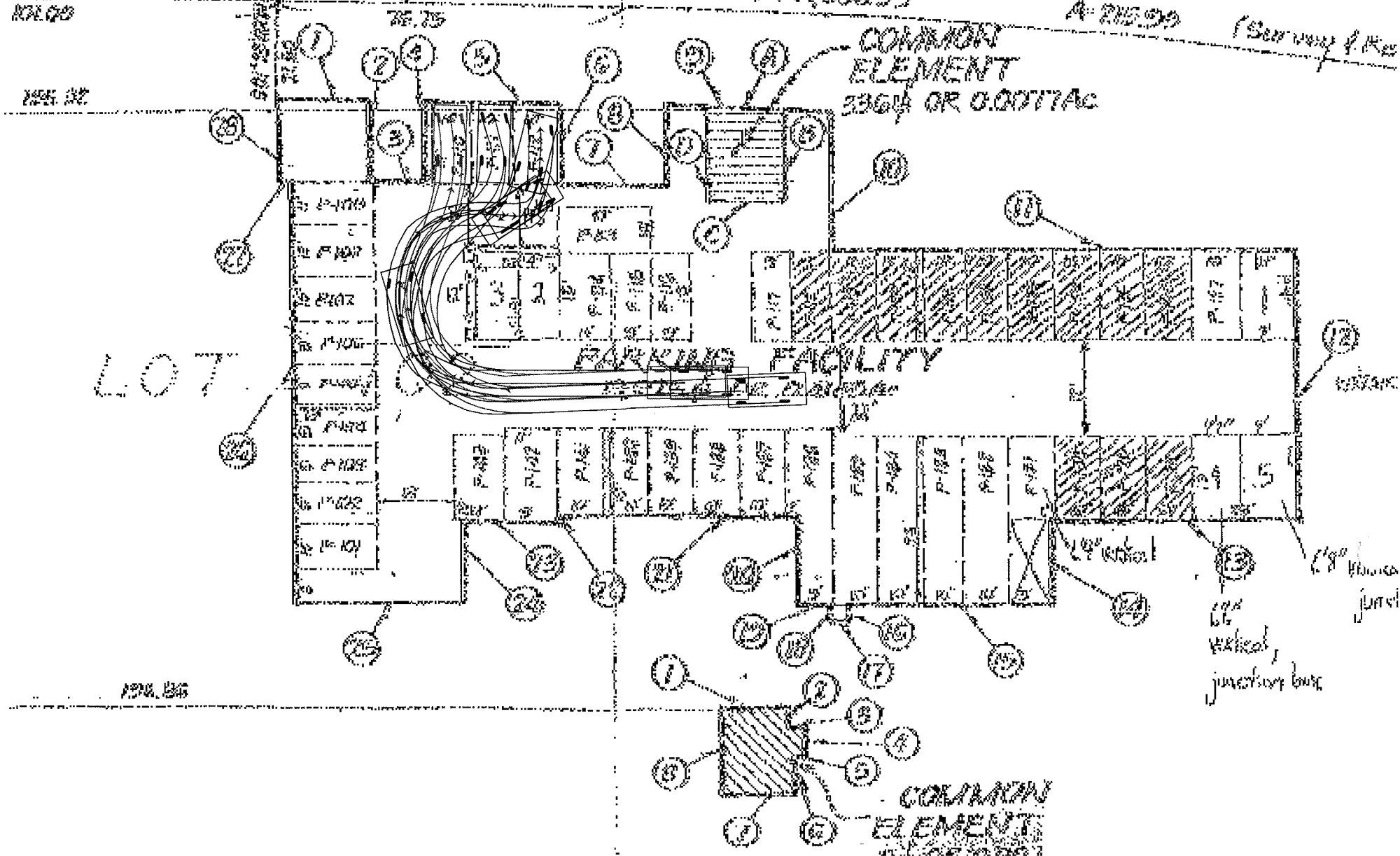


Exhibit B