

Board of Zoning Adjustment
District of Columbia
CASE NO. 17615
EXHIBIT NO. 19

meet the requirements of Chapter 21 of the Zoning Regulations, which govern parking lot dimensions and design.

As is clear from the testimony of the parking consultant, the creation of spaces 2 and 3 (see Exhibit 4 of the Appellant's prehearing statement) makes the width of the drive aisle behind space 112 so narrow it no longer meets the required 20-foot width specified in section 2117.5:

2117.5 Except as provided in §§ 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, or between a row of two (2) or more parking spaces and the perimeter of the area devoted to parking spaces, the aisle shall have a clear width of not less than twenty feet (20 ft.) or ninety degree (90°) angle parking, and not less than seventeen feet (17 ft.) for angle parking that is sixty degrees (60°) or less as measured from the center line of the aisle.

2117.6 Aisle widths as prescribed in § 2117.5 serving compact car spaces exclusively shall have a clear width of not less than twenty feet (20 ft.) for ninety degree (90°) angle parking and not less than sixteen feet (16 ft.) for angle parking that is sixty degrees (60°) or less as measured from the center line of the aisle.

This situation does not meet any of the exceptions delineated in 2115.9 through 2115.18, which all relate to commercial buildings which offer attendant parking, and, even in those instances, the aisles still need to be 20 feet. It is clear that a 20-foot width is required here, and that, with the addition of the two spaces, such width is not provided. Depending on where the cars are parked in spaces 2 and 3, there can be less than 17 feet, as Mr. Harnett indicated. In no case is there 20 feet or more, and when the cars are parked to maximize the distance between spaces 112 and 2 and 3, then the cars in 2 and 3 encroach into the drive aisle on the opposite side.

I have included above the language from 2117.6 as well, since the Washington Harbour Condominium Unit Owners' Association (WHCA) previously attempted to intimate that the problem is caused by the length of Mr. Harnett's car. Please note that, even if space 112 were a compact space, a clear aisle width of 20 feet would still be required. This is a width that the

Zoning Commission previously determined was necessary in order to provide parking spaces which met basic standards of utility. It is a standard that the District Department of Transportation and the Zoning Administrator must use when determining if the parking proposed in a legitimate building permit application meets the regulations.

In addition to this violation of the Regulations, space number 5 also fails to meet the Zoning Regulations for vertical clearance:

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

The measurements conducted by Mr. Harnett, and the photographs in the record, document this failure, given presence of a slanted column which restricts the vertical clearance. In addition, spaces 4 and 5 have what appears to be utility lines over the space, which is dangerous, and no doubt explains DCRA's initial refusal to permit parking spaces to be located there in the original building permit.

In addition, not only do the retroactively-created parking spaces 2 and 3 fail to meet the drive-aisle width requirement for required spaces, they fail to comply with Section 2117.7 of the Zoning Regulations, which clearly states it applies to ALL parking 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 by wheel bumper guards, curbs, guard rails, or screening between the property line and the perimeter of the parking area. Parking shall be designed so that no vehicle or any part thereof shall project over any lot line or building line.

In this case, the private walkways are not protected from vehicular encroachment by any type of mechanism. The initial private walkway, in fact, was obliterated by the addition of parking spaces 2 and 3. While the striping and signage naming that area as the pedestrian walkway was removed, the area still functions as the only practical private walkway for the cars

in that corner of the garage, for spaces 101 through 113, yet there is no protection from vehicular encroachment, as required by 2117.7.

In fact, the addition of spaces 2 and 3 and the lack of wheel guards have created a particularly dangerous condition for the owner of space 113. If the car in that space parks so that it must back out of the space, it has no way of knowing whether or not the cars parking in spaces 2 and 3 are pulling in at the same time, and, since there is no barrier to stop them from encroaching in the drive aisle.

Past experience indicates that WHCA may argue that the regulations that Mr. Harnett alleges violations of apply only to required parking spaces. That argument is specious, for a variety of reasons. First, there was no delineation in any building permit document of which spaces were deemed “required” and which were not. It is bad enough that WHCA went ahead with work without a building permit, and then lied as to the cost of the work, presumably to minimize the fee for the permit, but they can not arbitrarily declare, twenty years after the initial parking scheme was approved, and spaces purchased in good faith, that some parking spaces are “more equal” (or at least, “more required”) than others.

As you can see from section 2100.2 of the Zoning Regulations below, the original building permit could not have been approved without “a parking plan showing the location, dimensions, and grades of all parking spaces and approaches thereto in accordance with the provisions of this chapter.” Section 2100.3 goes further and indicates that the certificate of occupancy of the building could not have been issued “unless the required parking spaces have been provided in accordance with the parking plan provided for in the approved building permit.”

- 2100.2 No application for a building permit for a building or structure to be erected on or after May 12, 1958 shall be approved unless there is included with the plans for the building or structure a parking plan showing the location, dimensions, and grades of all parking spaces and approaches thereto in accordance with the provisions of this chapter.
- 2100.3 No certificate of occupancy shall be issued for the use of a building or structure erected on or after May 12, 1958, unless the required parking spaces have been provided in accordance with the parking plan provided for in the approved building permit.
- 2117.1 The parking spaces required by this chapter shall be provided and maintained so long as the structure that the parking spaces are designed to serve exists.

Section 2117.1 then guarantees that the parking will be maintained as approved, “so long as the structure that the parking spaces are designed to serve exists.”

- 2117.3 All required parking spaces shall be clearly striped and lined according to the dimensions specified in § 2115. Durable materials that are all-weather impervious shall be used. Striping shall be maintained for as long as the parking spaces requiring the striping are in existence.

Section 2117.3 reinforces this conclusion, by specifically requiring that all the spaces must be striped and lined, and that such “Striping must be maintained for as long as the parking spaces requiring the striping are in existence.”

Clearly, the Zoning Regulations prohibit the kind of “bait and switch” of parking spaces that took place here. The Regulations provide that, in the event that the building wishes to reduce the required parking originally provided, it must show why such spaces are no longer needed. It also requires that, if there has been a change in the intensity of use, that would have initially required additional spaces, the spaces must be required, relief formally granted, or the more intense use may not be approved. The Zoning Regulations never provided that one only had to meet the requirements at one point in time, and then things could be changed, without seeking additional relief. That is what the WHCA appears to have attempted in this case, and

that is why the Zoning Administrator's determination that the WHCA acted in accordance with the Zoning Regulations must not be upheld.

Finally, we should note section 2116.9, which reinforces the importance accorded by the Zoning Regulations to having access maintained to approved parking spaces:

2116.9 The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it deems necessary to protect adjacent or nearby property. It may also impose other conditions it deems necessary to assure the continued provision and maintenance of the spaces.

The importance of this provision is two-fold. First, it gives the Board additional discretion to go beyond the Zoning Administrator's purview and impose conditions on ALL parking spaces regarding setbacks, etc. Second, it specifically mentions the Board's ability to impose conditions "to assure the CONTINUED provision and maintenance of the spaces." [Emphasis added] It is clear that the Board has the authority and mandate to protect access to parking spaces under the Zoning Regulations, and it would appear to be important that the Board send a message that parking spaces, or access to them, may not be taken away once a building permit, and its accompanying parking plan, are improved.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



MAR 21 2007

Vernon W. Johnson III
401 9th Street, N.W., Suite 900
Washington, D.C. 20004

Re: BZA Appeal No. 17615

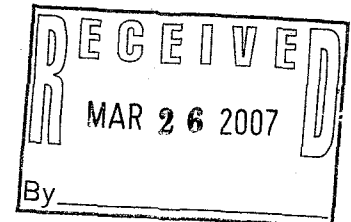
Dear Mr. Johnson:

Your appeal has been accepted as complete. You are hereby notified to appear before the Board of Zoning Adjustment on Tuesday, June 5, 2007, at 441 4th Street, N.W., Suite 220, Washington, D.C., 20001 for a public hearing concerning the following appeal:

Appeal of William J. Harnett, pursuant to 11 DCMR §§ 3112, from the November 17, 2006, administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issuance Building Permit No. 101019, permitting the alteration and repair, including striping five (5) new parking spaces in the owner's parking garage identified in yellow as spaces P-1 thru P-5. The subject property is located in the W-3 District at premises 3030 K Street, N.W. (Square 1173, Lot 102).

This case will be heard between 1:00 p.m. and 6:00 p.m. The subject property is located within Advisory Neighborhood Commission 2E.

You should be aware that items may be submitted to the Board by other individuals, organizations and government agencies both in support of and in opposition to your appeal. Approximately one week prior to the public hearing, you should review the file in your appeal so that you are prepared to respond to any issues that may be raised regarding your appeal. Further, if you are not clear about what information you must present to the Board in support of your appeal, please contact the Office of Zoning as soon as possible.



441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

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If you have any questions or require any additional information, feel free to call the Office of Zoning at (202) 727-6311.

SINCERELY,



JERRILY R. KRESS, FAIA
Director

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