

BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
BZA APPEAL NO. 19274
INTERVENOR'S PREHEARING STATEMENT

Summary of Argument

For the reasons set forth below and summarized herein, this Appeal should be denied and the Zoning Administrator determination should be affirmed. The ANC erroneously argues that the Addition (as defined below) approved for the subject property requires additional parking. It filed this appeal to challenge a determination issued by the Zoning Administrator confirming that no additional parking is required for the construction of the Addition. The ANC's argument rests on two assertions: 1) the approved Addition is not subject to the parking exemption of Section 2120 because it is not attached to the landmark and 2) even if the Addition can avail itself of the exemption, it exacerbates an existing non-conformity with respect to parking. Intervenor will demonstrate in this brief that these assertions are without basis. First, the Addition is unequivocally attached to the landmark and subject to the parking exemption of Section 2120. This argument can be dispelled by a mere glance at the architectural plans the Historic Preservation Review Board approved. Second, the number of zoning-compliant spaces on-site *increases* under the site plan approved by the HPRB; it does not decrease: the Project makes the Property *more* conforming with the Zoning Regulations. The ANC is grasping at straws to thwart the construction of a modest two-story addition on the Property. It opposed the development application before the HPRB and because the HPRB overwhelmingly approved the Project, the ANC is now challenging a determination issued by the Zoning Administrator, all in an effort to stall construction. Its claims are baseless and are not founded in fact; accordingly, its appeal should be dismissed with prejudice.

Background on the Appeal

Washington REIT (“Intervenor”) is the owner of the property at issue in Appeal No. 19274, known as the Spring Valley Shopping Center (Square 1500, Lots 1-3) (“Property”). See 11 DCMR § 3199.1(a)(3). The Property is located in the C-2-A Zone District and is a designated landmark in the D.C. Inventory of Historic Sites. The Property is triangular in shape and comprises the entirety of Square 1500. (Exhibit 4 in the record for Case No. 19274 (“Record”)).

The Property was designated as a historic landmark by the Historic Preservation Review Board on July 19, 1989. At that time, there were five retail structures the Property and the remainder of the Property was used for surface parking. Each of the five structures was constructed prior to the adoption of the Zoning Regulations in 1958. (Exhibit 7) (the five buildings collectively, “Buildings”). There is no documentation available concerning the number of parking spaces on the Property at the time it was designated as a historic landmark or prior to that time period. The only documentation of the number of parking spaces on the Property is the existing parking plan submitted by the ANC as Exhibit 6 in the Record.

The Intervenor is constructing a modest two-story infill addition along Massachusetts Avenue (“Addition”)(together with the Buildings, “Project”). Intervenor submitted its plans for the addition to the Historic Preservation Review Board (“HPRB”), and presented its proposal at public hearings in April, July and October 2015. The HPRB approved the proposal at its public meeting on October 22, 2015. Advisory Neighborhood Commission 3D opposed the application before the HPRB; the Board approved the application over the ANC’s objection. (Exhibit A)

Upon HPRB approval, Intervenor prepared its plans for submission of a building permit application. As part of this preparation, Intervenor sought a determination from the Zoning Administrator confirming that the Addition did not require relief from the parking requirements. The Zoning Administrator issued a letter dated March 24, 2016, confirming that the Addition does not trigger additional parking on-site and does not require relief (Exhibit 6). ANC 3D filed an appeal of this determination on April 5, 2016 and the Spring Valley-Wesley Heights Citizens Association requested approval to intervene in the application. (Exhibits 1 and 24)

I. The Addition Does Not Require Relief from the Parking Requirements

The ANC alleges that the Addition triggers a requirement for additional on-site parking; however, this allegation is unfounded. The Addition can only trigger a requirement for additional parking one of two ways: (1) the Addition exceeds 50% of the existing gross floor area of the structure and that increase in gross floor area triggers a requirement for at least four parking spaces (see 11 DCMR Section 2120.3) or (2) the Addition reduces the existing number of on-site parking spaces. As demonstrated below, the ANC has not, and cannot, demonstrate that additional parking is required on-site.

A. The Addition is Exempt from the Parking Requirement Pursuant to Section 2120.3

Section 2120.3 of the Zoning Regulations states:

A historic resource and any additions thereto are exempt from the requirement of Section 2100.4 to provide additional parking as a result of a change of use and from the requirement of Section 2100.6 to provide additional parking as a result

of an increase of intensity of use, except that parking shall be required for any addition where:

- (a) The gross floor area of the historic resource is being increased by 50% or more, and
- (b) The parking requirement attributable to the increase in gross floor area is at least four (4) spaces.

The ANC does not argue that the Addition exceeds 50% of the gross floor area of the landmark; instead, the ANC erroneously argues that this exemption does not apply because the Addition is not attached to the existing landmark. Section 2120.1 provides that the exemption does not apply to “new unattached structures constructed on the same lot as a historic resource.” This assertion is clearly refuted by a simple review of the approved plans, which were conveniently absent in the ANC’s appeal.

Attached as Exhibit B is an excerpt of the plans for the approved Project. Even a cursory review of the attached categorically refutes the assertion that the Addition is not attached. The plans very clearly show that the Addition is physically affixed to the landmark building to the west. The facades of the Addition will be fastened to the landmark building through shared mortar joints; this is consistent with the plain meaning of “attached”. Due to the exemption provided by Section 2120, the Addition does not trigger an additional parking requirement.

B. The Zoning Administrator has the Authority to Determine the Required Number of
Parking Spaces

Just as the job title implies, the Zoning Administrator has the authority to administer the Zoning Regulations, which is precisely what the Zoning Administrator did in this instance. The disputed determination letter establishes the required number of parking spaces for the shopping center, which is entirely within the purview of the Zoning Administrator. As established above, the Addition does not trigger additional parking because it is attached to the landmark. The Addition; however, cannot displace existing parking. Because the Addition will displace parking spaces on-site, Intervenor met with the Zoning Administrator to discuss reconfiguring the parking lot so that any displaced spaces would be recaptured elsewhere on-site. There is a net loss of 0 zoning-compliant parking spaces as a result of the Addition. In fact, the new parking plan captures one additional zoning-compliant parking space than the current parking plan.

1. *Parking Spaces Must be Zoning Compliant in Order to Satisfy Zoning Requirement*

The structures on the Property were constructed prior to the adoption of the Zoning Regulations in 1958. As such, the structures, as well the parking they provided, were “grandfathered”, meaning that upon adoption of the Zoning Regulations in 1958, the structures were not required to modify its parking or the buildings in order to comply with the Zoning Regulations. In this instance, the structures provided less parking than what would otherwise be required by the Zoning Regulations. As such, the structures were considered non-conforming buildings with respect to parking. The Zoning Regulations allow additions to non-conforming buildings such as these.

Section 2001.3 of the Zoning Regulations states:

“Enlargements or additions may be made to the structure; provided:

(a) The structure shall conform to percentage of lot occupancy requirements, except as provided in Section 2001.13;

(b) The addition or enlargement itself shall:

1) Conform to use and structure requirements; and

2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined.

The ANC does not dispute that the buildings comply with lot occupancy, use and structure requirements; the ANC contends that the Addition extends the existing parking nonconformity. The Addition does not exacerbate the parking non-conformity; to be clear, the Addition does not reduce the number of zoning-compliant parking spaces on-site.

To determine whether the Addition “increase[s] or extend[s] any existing, nonconforming aspect”, the existing – baseline - condition must first be established. The existing parking lot for the Property includes 64 spaces that satisfy the dimension and location requirements of the Zoning Regulations. See site plan attached as Exhibit 6. The ANC points to an additional 8 parking spaces that are located in public space and argues that those spaces should be included in the count. Those spaces, however, are partially located in public space; accordingly, they do not comply with the Zoning Regulations and cannot be included in the tally of the existing spaces. Viewing this situation from a different perspective, if Intervenor proposed spaces in public space in order to satisfy its parking requirement, it would not be allowed and a building permit would

not be issued because these spaces are not provided on the same lot as the buildings they serve. Accordingly, the Zoning Administrator correctly removed them from the existing parking count.

The ANC asserts that Intervenor should submit an application to the Public Space Committee to allow the parking spaces in public space. Even if approved, this would not alter the fact that the spaces are not provided on the same lot as the use and would require BZA approval. Moreover, as the attached email confirms, the District Department of Transportation does not support the spaces in public space and specifically requested their removal. (Exhibit C)

2. There is No Evidence That There Have Been More Than 64 Zoning-Compliant Spaces On-Site

The ANC contends that Intervenor's baseline determination is flawed because there is evidence that more than 64 zoning-compliant spaces have been located on-site; however, they have not provided such evidence. The ANC points to two plans that it submitted into the record as well as two aerial photos. None of this documentation is relevant and it is certainly not determinative.

Exhibit 4 in the Record includes two engineering plans. Both plans submitted by the ANC are for a proposed parking scheme to provide 90 spaces on-site. This scheme was never effectuated, which is apparent because the ANC cannot point to any evidence to demonstrate that it was. Instead, the ANC latches on to a parking space tabulation chart provided on each plan; one chart states that there are 76 'existing' parking spaces while the chart on the second plan states that there are 77 'existing' parking spaces. Yet, the ANC has not produced any evidence of these 76 or 77 parking spaces. No plan has been provided that shows the 76 or 77 spaces. Without the benefit of a 76 or 77 space parking plan, Intervenor cannot analyze whether the

spaces complied with the Zoning Regulations – were they located on-site? Did they comply with the dimensional requirements? Were some located in public space? Were the drive aisles serving the spaces in compliance with the Zoning Regulations? Does this parking count include ‘stacked’ parking spaces that do not comply with Zoning Regulations? There are no answers to these questions because plans for a 76 or 77 space parking lot have not been produced and are not known to exist. Intervenor cannot be held to this standard if there is no evidence of its existence. The ANC has not been able to point to any other parking plan that has been implemented on-site, other than the site plan in Exhibit 6, which confirms 64 zoning-compliant spaces. It is entirely appropriate to base the number of required spaces on the number existing spaces on-site, just as Intervenor did.

II. Conclusion

The Appellants’ arguments are unsupported by the clear evidence and well-established interpretation of the Zoning Regulations set forth above. Accordingly, the appeal should be denied, and the Zoning Administrator’s determination that the Addition does not require additional parking should stand.


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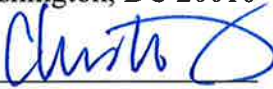
Certificate of Service

A copy of the foregoing documents were sent to the following addresses on June 29, 2016:

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