

November 10, 2008

Whayne S. Quin
202 663 7274
whayne.quin@hklaw.com

VIA HAND DELIVERY

D.C. Zoning Commission
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

#03-10A

RECEIVED
D.C. OFFICE OF ZONING
2008 NOV 10 PM 1:08

Re: **Request for a Technical Correction under Section 3030 (Consent Calendar)**
Zoning Commission Order No. 03-10 – Text Amendments – Public Libraries

Dear Members of the Commission:

The purpose of this letter is to request, pursuant to § 3030 of the Zoning Regulations, a technical correction to text amendments adopted by Zoning Commission Order No. 03-10 (the "Order") regulating public libraries. A copy of the Order is attached hereto as Exhibit A. Section 3030 allows the Commission "in the interest of efficiency, to make, without public hearing, minor modifications and technical corrections to ... rulemaking ... including corrections of inadvertent mistakes." 11 DCMR § 3030.1.

Prior to the effective date of the Order, § 2104.1 of the Zoning Regulations read as follows:

The number of parking spaces required under § 2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty-five percent (25%); provided:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

11 DCMR § 2104.1 (February 2003 ed.). That language permitted a twenty-five percent reduction in the number of required off-street parking spaces for nonresidential buildings located within 800 feet of a Metrorail station entrance *as a matter of right*.

ZONING COMMISSION
District of Columbia

CASE NO. 03-10A

As further explained below, in addition to requiring approval from the Board of Zoning Adjustment ("BZA" or the "Board") for a reduction in the number of required parking spaces for public libraries, the Order also revised § 2104.1 to read as follows:

2104.1 **Except as otherwise provided in § 2104.2, the Board of Zoning Adjustment is authorized to reduce** ~~the~~ the number of parking spaces required by §2101.1 for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance may be reduced by up to twenty-five percent (25%) ...

Zoning Commission Order No. 03-10 (effective December 19, 2003), at 6. As revised by the Order, § 2104.1 requires BZA approval for a twenty-five percent reduction in the number of required off-street parking spaces for all other nonresidential uses located in close proximity to Metrorail stations. That amendment was not part of the scope of the case and appears to have been made as part of a conforming amendment to § 2104.

The proposed technical correction, as set forth below, would return § 2104 to its state prior to the adoption of the Order to provide that a twenty-five percent reduction in the parking required for nonresidential uses other than libraries is permitted as a matter of right. We respectfully request that the Commission determine that this matter falls within the scope of the consent calendar process and that this matter be determined at the earliest possible date without the need for an additional public hearing.

Chapter 21 includes a number of provisions that permit the elimination or a reduction in the number of off-street parking spaces that would otherwise be required under § 2101.1. Prior to the effective date of the Order, the permitted reduction in the required number of parking spaces authorized under § 2104.1 did not require approval by the BZA. Where the Zoning Regulations do require such approval, the requirement is clearly stated and standards for review by the Board are set forth. *See, e.g.*, 11 DCMR §§ 2103.2, 2107.1, and 2108.1. Unlike the off-street parking reductions authorized under each of those sections, the reduction permitted under § 2104.1 does not use the terms "Board of Zoning Adjustment" or "special exception." On the contrary, that section simply provided that the number of parking spaces otherwise required for a nonresidential building within 800 feet of a Metrorail station entrance could be reduced by up to twenty-five percent as long as: (1) the property was not located within 800 feet of a residential zoning district; and (2) the Metrorail station was currently operational. Other provisions in Chapter 21 similarly reduce the parking otherwise required under § 2101.1 without the need for BZA approval. *See, e.g.*, 11 DCMR § 2103.1.

Furthermore, the parking reduction permitted under § 2104.1 is not listed in the exhaustive table of special exceptions set forth in § 3104.1. The off-street parking reductions permitted under §§ 2103.2, 2107.1, and 2108.1 are each listed as special exceptions in the table presented in Chapter 31 of the Zoning Regulations. In contrast, the automatic parking reductions permitted under §§ 2103.1 and 2104.1 (the section at issue here) are not listed in the table. Because the parking reduction permitted under § 2104.1 is not so listed, it is clear that such a reduction does not require review and approval by the Board as a special exception. It is also

important to note that the BZA has never reviewed an application for special exception relief under § 2104.

Zoning Commission Case No. 03-10

On February 28, 2003, the District of Columbia Public Library filed a request with the Office of Planning for a number of text amendments that would have permitted the construction of public libraries as a matter of right within any underlying zoning district. The whole thrust of Case No. 03-10 was to provide standards for public libraries, including parking requirements, in all zones. In its preliminary report, the Office of Planning recommended that the Zoning Commission set down the proposed text amendments for a public hearing. The report noted the absence of any off-street parking requirements for public libraries in Chapter 21 of the Zoning Regulations, and recommended the adoption of specific text amendments to establish such requirements. As discussed in the preliminary report, the Office of Planning proposed that the number of off-street parking spaces required for public libraries under the proposed text amendments could be reduced by up to fifty percent for any library located within one-half mile of a Metrorail station. Under the proposed text amendments, the fifty-percent reduction was noted in the table presented in § 2101.1. The proposed text amendments included no references to § 2104.1 of the Zoning Regulations, nor did the Office of Planning's report mention that section.

Neither the Office of Planning nor the Commission mentioned § 2104.1 of the Zoning Regulations during the initial public meeting on the case, and there was no indication that any of the proposed text amendments would apply to any properties other than public libraries. Indeed, one of the representatives of the Office of Planning stated during the initial public meeting that "we should be clear ... that the parking requirements that we are writing in are written *to apply to new library construction or complete reconstruction only*." Public Meeting Transcript, Zoning Commission Case No. 03-10 (March 10, 2003), at 19-20 (emphasis added). None of the reports prepared by the Office of Planning discussed any revisions to § 2104.1, nor was there any discussion of such an amendment during the Commission's public hearing or any of the public meetings on the proposed text amendments.¹

Although the Commission had provided no indication that it intended to expand the scope of Zoning Commission Case No. 03-10 beyond the regulation of public libraries, the text

¹ See Office of Planning Preliminary Report, Zoning Commission Case No. 03-10 (February 28, 2003), attached hereto as Exhibit B; Public Meeting Transcript, Zoning Commission Case No. 03-10 (March 10, 2003), attached hereto as Exhibit C; Office of Planning Prehearing Statement, Zoning Commission Case No. 03-10 (March 20, 2003), attached hereto as Exhibit D; Notice of Public Hearing, Zoning Commission Case No. 03-10 (May 9, 2003), attached hereto as Exhibit E; Office of Planning Supplemental Report, Zoning Commission Case No. 03-10 (June 16, 2003), attached hereto as Exhibit F; Public Hearing Transcript, Zoning Commission Case No. 03-10 (June 26, 2003), attached hereto as Exhibit G; Office of Planning Second Supplemental Report, Zoning Commission Case No. 03-10 (July 7, 2003), attached hereto as Exhibit H; Public Meeting Transcript, Zoning Commission Case No. 03-10 (July 31, 2003), attached hereto as Exhibit I; Notice of Proposed Rulemaking, Zoning Commission Case No. 03-10 (September 5, 2003), attached hereto as Exhibit J; Public Meeting Transcript, Zoning Commission Case No. 03-10 (December 8, 2003), attached hereto as Exhibit K.

amendments that were ultimately adopted in the Order revised § 2104.1 of the Zoning Regulations as described above.

In its discussion of the new text amendments, the Order emphasized the narrow scope of the rulemaking—i.e., to "establish 'public library' as a distinct permitted use, with corresponding parking requirements." Zoning Commission Order No. 03-10 (effective December 19, 2003), at 1. While the Order provides that a "special exception from the parking requirements is possible for any public library located within one-half mile of a Metrorail station," *id.* at 2, it includes no discussion of the amendment to § 2104.1.

Proposed Technical Correction

We seek to amend the current language of § 2104.1, as amended by the Order, to correct the inadvertent revision of that section by the text amendments. The language suggested below was developed in consultation with the Office of the Attorney General and is designed to restore the prior effect of § 2104.1 without affecting the other text amendments adopted in Zoning Commission Case No. 03-10. Rather than simply reinstating the prior language of that section, however, the proposed correction would provide that the number of required parking spaces for a nonresidential building located within 800 feet of a Metrorail station entrance shall be seventy-five percent of what would otherwise be required under § 2101.1, subject to the requirements set forth in §§ 2104.1(a) and 2104.1(b). The requested technical correction is as follows, with additions in **bold underlined font**:

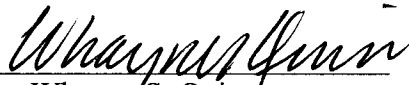
2104.1 Except as ~~otherwise~~ provided in § 2104.2, ~~the Board of Zoning Adjustment is authorized to reduce~~ the number of parking spaces ~~required under § 2101.1~~ for a nonresidential building or structure located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance ~~may be reduced by up to twenty-five percent (25%)~~ **shall be seventy-five percent (75%) of the parking spaces otherwise required under § 2101.1**; provided:

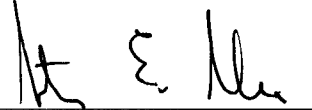
- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

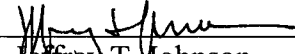
We respectfully request that this matter be placed on the consent calendar at the earliest possible date for disposition without the need for an additional public hearing. If you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

HOLLAND & KNIGHT LLP

By: 
Wayne S. Quin

By: 
Steven E. Sher
Director of Zoning and Land Use Services

By: 
Jeffrey T. Johnson

Enclosures.

cc: Jennifer Steingasser, D.C. Office of Planning
Alan Bergstein, Office of the Attorney General