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VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N W , Suite 210S
Washington, D.C. 20001

Re. Re. Zoning Commission Case No 06-33
Proposed Text Amendment to Clarify Parking Requirements
for Historic Structures

Dear Commissioners

The law firm of Holland & Knight LLP offers the following comments in opposition to the proposed text amendment on parking requirements for historic structures as currently drafted. Our office represents numerous property owners who have been able to rehabilitate, adaptively reuse and expand historic buildings as a result of the parking exemption available under section 2100.5 of the Zoning Regulations. This exemption has been invaluable in providing developers and small property owners with the necessary flexibility to proceed with complex redevelopment of historic properties that are financially and structurally challenging by their very nature. We believe that the proposed amendment as currently written will act as a disincentive to rehabilitate historic properties, particularly smaller historic retail buildings in historic districts. At the same time, it will overburden the already taxed agenda of the Board of Zoning Adjustment with numerous requests for relief from the parking requirements. We therefore oppose the proposed amendment, as described in greater detail below.

1 Clarification Unwarranted in Light of Consistent Historical Interpretation of Section 2100.5.

The Office of Planning Preliminary Report and Pre-Hearing Statement on the proposed text amendment indicate that the revision is necessary to "help clarify the intent of the section and prevent the meaningless attachment of contributing buildings to new, larger developments." In making its recommendation, OP has relied upon an interpretation issued in July 2005 by

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Corey Buffo, then-Acting Zoning Administrator, that section 2100.5 only applies to use changes within existing historic buildings and does not extend to additions to historic buildings¹

Unfortunately, it seems that during his brief tenure, the Acting Zoning Administrator may not have had the benefit of the long-standing interpretation of section 2100.5 both before and after his assignment in the summer of 2005. Since its enactment in 1985, the Zoning Commission and the Board of Zoning Adjustment have consistently interpreted section 2100.5 to apply to both the existing historic building and any addition thereto. In fact, several of the current Zoning Commission members have agreed with that interpretation, based on their concurrence in certain decisions issued by the Zoning Commission and the Board of Zoning Adjustment.²

Most recently, for example, in approving an addition to a former school public school, the BZA held on October 3, 2006 that the building at 1005 5th Street, N.E., "has been designated an historic landmark and therefore is exempt from parking requirements pursuant to 11 DCMR § 2100.5." *See BZA Order in Application No. 17531.* Earlier in the year, the Board likewise ruled in Application No. 17459 that section 2100.5 applies to both the historic building and any addition to the structure.

Based upon the evidence of record, and upon the Board's own previous rulings, the Board finds that a parking variance is not required in this instance. The record contains evidence that the subject site includes a historically significant building that is certified as contributing to the character of the Greater 14th Street Historic District. Section 2100.5 of the Zoning Regulations states that "no additional parking spaces shall be required for a historic landmark or a building ... located in a historic district that is certified ... as contributing to the character of that historic district." The record in this case contains citations to many decisions of this Board finding and concluding that Section 2100.5 operates to waive the requirement for additional parking spaces for new construction in such instances. This has been a long-standing interpretation by this Board, as well as by the Office of the Zoning Administrator, since Section 2100.5 was enacted by the Zoning Commission in 1985. The Office of the Zoning Administrator has recently called this interpretation into question. The Board finds that its prior reasoning is sound, and that there is no reason to reverse this long-standing interpretation. Indeed, it is the Board, and not the Zoning Administrator, which has the final administrative authority to interpret the Zoning Regulations. *Murray v. D.C. Bd. of Zoning Adjustment*, 572 A.2d 1055, 1058 (D.C. 1990).

BZA Order in Application No. 17459, July 7, 2006, at 2

¹ Mr. Buffo was temporarily assigned from the Office of the Attorney General to Acting Zoning Administrator and held the post for approximately three months

² See, for example, BZA Case Nos. 17531 dated October 11, 2006 (Jeffries), BZA Case No. 16970B dated June 28, 2005 (Hood), and Z.C. Order No. 940 (Woodies Building) May 11, 2001 (Hood, Mitten, Parsons), FMBZA Case Nos. 16026, 15809, 15852, 16063, 15509, and others (Parsons)

This decision is consistent with the Zoning Commission's approval of the PUD for the former Woodies Department Store, where it noted that "[a]s a historic landmark located in a historic district, the PUD site is not subject to otherwise applicable parking and loading requirements." *See Z C Order No 940, May 11, 2001, at 4*

According to the record in BZA Application No 14655, the Office of Attorney General has also issued an opinion that parking exemption under section 2100.5 applies to both the historic building and any addition to the building. *See BZA Order in Application No. 14655, August 24, 1987, at 1 ("[t]he applicant stated that the off-street parking variance was not applicable since the subject structures were designated historic landmarks, and noted the filing in the record of a memorandum from the Office of the Corporation Counsel so stating ")* Other precedent is listed in the chart attached as Attachment A

Based on these consistent rulings over the past 21 years, the only anomaly in the interpretation has been during the brief period in the summer of 2005. However, that short-lived reading was quickly clarified by subsequent rulings of the BZA. Consequently, there does not seem to be any further need to clarify the clear interpretations of the Zoning Commission and the Board of Zoning Adjustment.

2. No Adverse Consequences Are Generated by the Long-Standing Interpretation of Section 2100.5.

The OP report also suggests that the text amendment is necessary to prevent the meaningless attachment of contributing buildings to new, larger developments. This rationale suggests that developers deliberately seek out sites with historic buildings to construct large new additions in order to avoid the parking requirements. It also suggests that by limiting the applicability of section 2100.5 to changing uses in an historic building, this "trend" will be thwarted. We disagree. Given the enormous additional costs generated by historic preservation constraints, developers are most likely to seek out vacant sites or non-historic areas for new projects. Moreover, in the instance where large projects have been built on sites where only facades or portions of the historic building have been retained, the new construction invariably provides sufficient parking. For example, we understand that the Georgetown Incinerator site was granted a parking waiver yet ample parking is nevertheless provided on site. Similarly, at 922-42 F Street, N.W., which included the facades of the historic Atlantic Building into a new development, an exemption was granted from the parking requirements even though parking was being provided in the building.

Thus, we do not believe any adverse effects are created by the current, long-standing interpretation of section 2100.5.

4 Proposed Text Amendment Would Discourage Effective Rehabilitation of Historic Properties

Conversely, the proposed text amendment would potentially discourage developers, small business owners and property owners from pursuing projects in historic districts. Historic preservation approvals can place significant constraints on the rehabilitation and development of historic properties by limiting the size of additions and the location of any new openings in historic facades, such as garage entrances, and require a higher level of design and quality of materials. The design parameters add significant costs to projects, and excavation for parking is not always feasible. By eliminating the exemption for these projects, an owner would be forced to seek zoning relief, adding further costs, time and uncertainty to the process. In instances where a property cannot meet the variance test because it is not unusual or exceptional in any way, a rehabilitation project may be thwarted entirely. This is particularly true for small retail buildings that contribute to historic districts where the economics of the project are already at the margin.

The proposed text amendment would also likely generate a significant increase in parking variance applications to the BZA, which is already overburdened with applications. It seems unreasonable to foist this additional layer of time, money and process upon both the applicant and the Board when the current interpretation of section 2100.5 is not causing any adverse effects.

3. Recommendations for Alternative Means of Narrowing Scope of Section 2100.5 Without Eviscerating its Benefits

However, if the Commission finds that some revision to section 2100.5 is necessary, we recommend that the amendments be limited in scope in order to preserve the benefits created by this provision. For example, if the real concern is preventing meaningless attachments to contributing buildings, then perhaps a better solution is to allow the exemption only in instances where more than 50% of the exterior historic structure is preserved.

Additionally, we recommend that any zoning relief required be considered a special exception and not a variance. As noted above, it may be difficult for contributing buildings to meet the threshold "uniqueness" test since only landmarks are considered "unique" by virtue of their historic status. This is consistent with section 2108.1, which authorizes the Board to grant a reduction in the number of parking spaces by special exception. However, we further recommend that historic buildings be allowed relief from *all* the parking requirements – including size of spaces, aisle widths, and the like – as a special exception, given the burdens and constraints of rehabilitating and redeveloping historic properties.

4. Conclusion

We appreciate the opportunity to provide these comments on the proposed text amendment. Based on the foregoing, we urge you to deny the requested amendment or, alternatively, significantly limits its scope in order to preserve the benefits it provides to historic properties.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By *Mary Carolyn Brown*
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Attachment

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**Summary of Cases Applying §2100.5 to Eliminate the Parking Requirement
for Projects Including the Preservation and Restoration of Historic Structures**

	Application/Order	Finding	Transcript
1	17446 — Pauline S Ney 2160-2162 California Street, N.W. (Square 2530, Lots 99 and 100). Decision - 2006	It is the Board's position that additions to historic buildings would not be required to have additional parking spaces. Board not sure why it continues to revisit issue, because it seems that although there are areas in the Zoning Regulations that are unclear, [§2100.5] is clear.	March 14, 2006 at 244-248
2.	17115 — Rainbow Lofts, LLC 1445 Church Street, NW Square 209, Lot 106 Decision — February 2004	Parking not required for project since it incorporates a building determined to be historic.	February 17, 2004 at 73
3	17012 — Jemal's Benjo LLC 1301-1309 9 th Street, N.W. (Square 399, Lots 62, 63, 800, 8011 803 and 804) Decision — 2003	The regulation [§2100.5] is very clear on its face that no additional parking spaces are required for historic structures and/or landmarks and that there is no reason to reverse any long standing interpretations that the Board has been holding with respect to that regulation.	June 3, 2003 at 126-130
4	16999 — U.S. Property Devel Corp 1401 and 1413 P Street, NW, 1502 and 1506 14th Street, NW, 1510 - 1520 14th Street, NW, and 1410 Church Street, NW (Square 209, Lots 1, (800 and 802), part of 2 (803), 36 (800), 34, 35 & 57-59 (916), 37 (837) and a portion of a public alley closed by Act 14-608) Decision — March 2003	Since the buildings included in the development have been certified as contributing buildings to the historic district, the Applicant is entitled to a waiver from the parking requirements	March 25, 2003 at 96-97, 145-146
5	16970 — National Child Research Center 3209 Highland Place, N.W. (Square 2072, Lot 30) Decision — 2004	Pursuant to 11 DCMR § 2100.5, no additional parking spaces are required on the subject property because it contributes to the character of the Cleveland Park historic district	
6	16970-B (*This order corrects BZA Order (No. 16970) National Child Research Center 3209 Highland Place, N.W. (Square 2072, Lot 30) Decision — 2004	Pursuant to 11 DCMR § 2100.5, no additional parking spaces are required on the subject property because it contributes to the character of the Cleveland Park historic district. The subject property is not required to provide parking on-site by virtue of its status as a property contributing to the character of a historic district.	June 24, 2003, 133-148

	Application/Order	Finding	Transcript
7	<p>16848 — 1425 P Street LLC 1425 P Street, NW (Square 209, Lot 94)</p> <p>Decision — March 19, 2002</p> <p>****</p> <p>16841 — Church Street LLC 1440 Church St, N W (Square 209, Lot 102)</p> <p>Decision — March 2002</p>	Technically, since project includes an addition to a historic building, the parking requirement can be waived.	March 19, 2002 at 26
8.	<p>Z C Order No 940 Square 346, Lot 805</p> <p>Decision — April 2001</p>	As a historic landmark located in a historic district, the PUD site is not subject to otherwise applicable parking and loading requirements. See 11 DCMR §§ 2403.9(c); 2100.5, 2200.5.	
9.	<p>16307 — National Child Research Ctr. 3209 Highland Place, N.W. Square 2072, Lot 30 (855 & 866)</p> <p>Decision — Jan, Feb and May 1998</p>	The application was amended at the public hearing to eliminate the variance from DCMR 2101 for off-street parking. The applicant submitted into the record a letter dated November 12, 1997 from the State Historic Preservation Officer for the District of Columbia stating that the subject building is either a historic landmark in the D.C. Inventory of Historic Sites or is located within a historic district and contributes to the character of the historic district. The Board determined that a parking variance is not needed based on Subsection 2100.5 of the Zoning Regulations which exempts such historic structures from providing additional parking when the use is changed	January 21, 1998 at 113-125
10.	<p>16071 — Washington International School 2735 Olive Street, N.W. (Square 1215, Lot 806)</p> <p>Decision — December 1995</p>	The DPW report fails to point out that there is no residential parking requirement anywhere in the District for more than one parking space per dwelling unit. The DPW report fails to note that, pursuant to Section 2100.5 of the Zoning Regulations, no parking spaces are required for the proposed change of use to an apartment house.	
11	<p>15678 — Royal Embassy of Saudi Arabia 1520 18th Street, N W (Square 136, Lots 25 and 32)</p> <p>Decision — June 1992</p>	The site is exempted from the parking requirements pursuant to a waiver secured for contributing buildings to the historic district under Section 2100.5 of the Zoning Regulations.	

	Application/Order	Finding	Transcript
12.	15461 — Capital City Suites, Inc. 2501 Pennsylvania Avenue, N.W [Square 14, Lot per subdivision (Lots 800 and 812)] Decision(s) 1991-1997	This project is exempt from parking and loading requirements pursuant to 11 DCMR Sections 2100.5 and 220.5, because the existing Luzon building on the site is a historic landmark, and will be retained in the new project.	
13.	15338 — Louis I and M.F. Glickfield 637 I Street, N.W Square 452, Lots 804 & 805 Decision - July 1990	The application was further amended to eliminate the variance from the parking requirement of 11 DCMR 2101.1 and the loading berth, loading platform and service delivery space requirements of 11 DCMR 2201.1 because the application qualifies under Sub-sections 2100.5 and 2200.5 that no additional parking spaces or loading facilities are required for structures located in an historic district.	
14	14763 — United Unions, Incorporated 500-530 — 17 th Street, N.W. (Square 171, Lot 34) Decision — May 1988	In addition, in this instance, parking is not required pursuant to Section 2100.5, because the Corcoran Gallery is a landmark structure	
15.	14655 — Donnelly Associates 2521 — 2523 K Street, N.W (Square 15, Lots 802 and 803) Decision — July 1987	The applicant stated that the off-street parking variance was not applicable since the subject structures were designated historic landmarks, and noted the filing in the record of a memorandum from the Office of the Corporation Counsel so stating ***** The Board further ruled that the applicant is not seeking an exemption from the parking requirement for designated landmarks pursuant to Sub-section 2100.5 of the Zoning Regulations. The Board, therefore, will not address variance relief pursuant to 2100.5.	

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