

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14759 of the Ralph D. Kaiser Co., Inc., pursuant to 11 DCMR 3107.2, for the following variance relief:

1. A variance from the allowable percentage of lot occupancy requirements of Subsection 403.2 (Lots 43, 62, and 810);
2. A variance from the floor area ratio requirements of Subsection 1203.3 (Lots 43, 62 and 810);
3. A variance from the rear yard requirements of Subsection 404.1 (Lots 43, 62, and 810);
4. A variance from the number of stories requirements of Subsection 1203.1 (Lots 43, 62, and 810);
5. A variance from the provisions of Subsection 2507.4 to construct an apartment house which exceeds the allowable height limit (Lots 43, 62, and 810);
6. A variance from the provisions of Subsection 2507.4 to construct an apartment house which exceeds the allowable height limit (Lots 43, 62, and 810);
7. A variance from the minimum lot area requirements of Subsection 401.3 (Lots 43, 62, and 810); and
8. A variance from the side yard requirements of Subsection 405.3 (Lots 43, 62, and 810).

For the proposed new construction of three apartment houses in a CAP/R-4 District at the rear of 424 4th Street, N.E., (Square 780, Lots 43, 62, and 810).

HEARING DATES: March 9 and 30, 1988; March 6, April 3, May 1, June 5, and July 10, 1991; February 5, March 14 and April 8, 1992

DECISION DATE: May 5, 1988; May 6, and June 3, 1992

ORDER ON REMAND

On May 5, 1988, the Board of Zoning Adjustment (BZA) granted the application with conditions by a vote of 3-2 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; William F. McIntosh opposed to the motion; Maybelle Taylor Bennett opposed

to the motion by proxy). The Order granting the application was issued on December 16, 1988.

On January 17, 1989, The Committee of Concerned Neighbors, Inc. and the Capitol Hill Restoration Society, Inc. (hereinafter "petitioners"), brought their Petition for Review to the Court of Appeals seeking reversal of the Board's decision to grant the variances. On February 16, 1989, the prior applicant, Ralph P. Kaiser Company, Inc., intervened in the petitioners' action on the side of the Board of Zoning Adjustment. On June 15, 1989, the applicant, Ralph P. Kaiser Company, Inc. filed its Motion to Withdraw as Intervenor, which was granted by the Court of Appeals on July 7, 1989. On July 24, 1989, Corporation Counsel, on behalf of the Board moved to remand the case. On January 24, 1990, the District of Columbia Court of Appeals granted the motion, and remanded this case to the BZA ordering it to articulate with greater clarity the basis for the variance relief it had granted. On January 30, 1990, the petitioners filed a motion with the BZA for clarification of the D.C. Court of Appeals Order remanding the case. On February 6, 1990 Counsel for respondent and Counsel for the contract purchaser, Barrett Linde (hereinafter known as "applicant") joined in a request for reopening of the record on remand to permit consideration of the revised plans, or in the alternative, a stay of the remand procedures pending consideration of the revised plans. This motion was opposed by the petitioners.

On January 22, 1991, petitioners' motion for clarification of the Court of Appeals January 24, 1990 Order was granted in part. The Board was ordered to make the initial determination of the effect of prior applicant Ralph P. Kaiser Company, Inc.'s failure to apply for a building permit on respondent's variance order. On April 3, 1991, the respondent reopened the record to receive written submissions from the parties about the effect on the BZA's Order of the applicant's failure to apply for a building permit within the six month time period set out in 11 DCMR 3104. On April 22, 1992 the petitioners filed a letter stating that the failure on behalf of the applicants to apply for a building permit constituted an abandonment of their claim. On the same date, the applicant also submitted a letter arguing to the contrary, that they had not abandoned their claim. On May 2, 1991 petitioner replied to applicant's letter. On the same date, applicant replied to petitioner's reply to their letter.

On May 14, 1992, the applicant requested that the application be dismissed as moot in light of the special exception granted by the BZA on January 8, 1992 for accessory parking in the subject lots.

The Board considered this application during its public meetings on March 6, 1991; April 3, 1991; May 1, 1991; June 5, 1991; July 10, 1991; February 5, 1992; March 14, 1992; and April 8,

1992. On each occasion, the Board deferred action in the case. On May 6, 1992 the Board voted to grant the application, and then decided to defer the decision until it received written advice from the Office of the Corporation Counsel regarding the legal status of the case. On June 3, 1992, the Board voted to vacate its Order and Dismiss the application as moot, in light of the May 14, 1992 letter it received from the applicant, requesting the Board to dismiss the application as moot because there was no longer any intention of developing the site as proposed. There was no opposition to the applicant's request to dismiss.

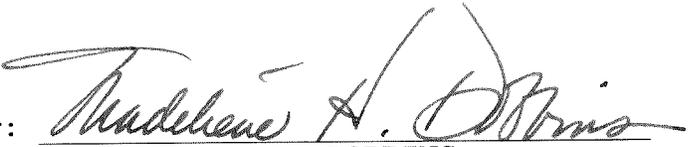
In light of the request of the applicant and the current circumstances surrounding the development of the site, the Board **ORDERS** that its decision in this case be **VACATED** and the application **DISMISSED** as moot.

Vote: 3-0 (Maybelle Taylor Bennett, Paula L. Jewell and Carrie L. Thornhill to dismiss; Angel F. Clarens, and Sheri Pruitt not voting, not having heard the case).

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on November 25, 1997. The filing deadline for exceptions and arguments was December 19, 1997. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT --- SUSAN MORGAN
HINTON, LAURA M. RICHARDS, SHEILA CROSS REID AND BETTY KING.

Attested By:


MADELIENE H. DOBBINS
Director

Final Date of the Order: DEC 29 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 14579

As Director of the Board of Zoning Adjustment, I certify and attest that on DEC 29 1997 a copy of the order entered on that date in this matter was mailed prepaid to each party who appeared and participated in the public hearing concerning this matter and who is listed below:

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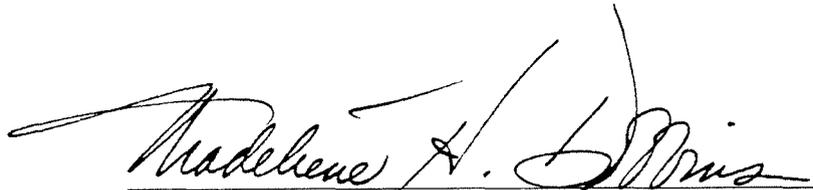
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A handwritten signature in cursive script, reading "Madeliene H. Dobbins". The signature is written in black ink and is positioned above a horizontal line.

MADELIENE H. DOBBINS
Director

Date: DEC 29 1997