

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15578 of 1839 13th Street Limited Partnership, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 215 to allow accessory parking spaces elsewhere than on the same lot on which the principal use is located, and a variance from the 900 square feet per apartment requirement (Sub-section 401.2) to allow the conversion of a structure to an apartment house in an R-4 District at premises 1839 13th Street, N.W., (Square 275, Lots 10, 814, 825, and 828).

HEARING DATE: October 9, 1991
DECISION DATE: October 9, 1991 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

FINAL DATE OF ORDER: November 4, 1991

RECONSIDERATION ORDER

The Board granted the application by its order dated November 4, 1991, subject to seven conditions. By letter dated November 18, 1991, Virginia Khan, a party in opposition to the application, requested an extension of the ten-day period to file a motion for reconsideration of the Board's decision on the application. The basis for the request was that Ms. Khan did not receive a copy of the Board's final order until November 13, 1991. The Board granted the extension of time until November 29, 1991.

By letter dated November 25, 1991, Ms. Khan filed a motion for reconsideration of the Board's decision in the subject application. The bases for the requested reconsideration are generally summarized as follows:

- a. Most, if not all, of the residents within 200' of the site were not notified as required by law and the Zoning Regulations.
- b. The recommendation of the Advisory Neighborhood Commission (ANC) for approval was incorrect both in substance and procedure.
- c. The density of the proposed project and parking arrangements proposed will adversely impact the area and worsen the existing traffic problems in the alley.

- d. The community believes there are significant conflicts of interest between parties and proponents.
- e. Several local community organizations were not contacted because it was known they would be opposed. Letters from several such organizations were attached to the motion.

By letter dated December 23, 1991, Ms. Khan requested the Board to grant a motion to stay the effect of the Board's order pending a final resolution of the case.

By letter dated December 2, 1991, counsel for the applicant opposed the motion for reconsideration. Counsel for the applicant questioned Ms. Khan's status as a party to the case because the Board did not formally admit her as a party at the public hearing and Ms. Khan did not specifically request party status or exercise the rights of a party, such as cross-examination. The Board notes that it does not generally formally determine a person's party status unless specifically requested or unless there is some doubt as to the specific right or interest of an individual or organization seeking to participate in a case. The Board is satisfied that Ms. Khan, who lives within a 200' radius of the site, participated in the hearing process, and expressed specific issues and concerns has satisfied the criteria necessary to establish party status in the instant case.

With respect to the specific bases cited by the opposition in support of the motion, counsel argued as follows:

- a. All of the notice required under the Zoning Act, Zoning Regulations and Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment (BZA) was given. The applicant obtained the property owner's list from the D.C. Department of Finance and Revenue, Tax Assessor's Office in accordance with the instructions on the application form.
- b. The validity of the reports submitted by Advisory Neighborhood Commission 1B and Advisory Neighborhood Commission 2C are supported by the evidence of record.
- c. Ms. Khan did not raise any issues related to opposition to the density of the project or the parking lot at the public hearing, but only that she disagreed with the layout of the parking lot as proposed.
- d. The assertion of "conflicts of interest between parties and proponent" is a general assertion, unsupported by facts or references.

- e. The correspondence from the community organizations solicited by Ms. Khan and submitted as attachments to her motion were not served on the applicant and other parties to the case.

Upon consideration of the motion, responses thereto, the record in the case, and its final order, the Board concludes that it made no error in deciding the application. The Board concludes that the motion does not state any specific erroneous findings made by the Board relevant to its final decision but attempts to reargue the opposition's case. The Board further concludes that no new evidence has been proffered which could not reasonably have been raised at the public hearing. The Board concludes that the issues and concerns expressed by the opposition were considered by the Board during the public hearing process and addressed in its final order. The Board's decision and the conditions imposed were based on consideration of all the evidence presented by both the applicant and the opposition. The fact that the Board and the opposition came to different conclusions does not make the judgment of the Board arbitrary, capricious or unlawful. Accordingly, the motion for reconsiderations is hereby **DENIED**. The motion for stay of the Board's Order is therefore moot. The order of the Board dated November 4, 1991 shall remain in full force and effect.

DECISION DATES: December 4, 1991 and January 8, 1992

VOTE: 3-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

JAN 30 1992

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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."

15578Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15578

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JAN 30 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard Nero, Jr.
Wilkes Artis Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

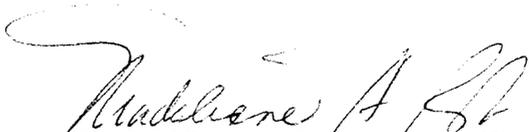
James M. Dickerson
c/o MANNA, Inc.
P.O. Box 26049
Washington, D.C. 20001

S.M. Shefferman, General Partner
1839 - 13th Street Limited Partnership
1111 Spring Street
Silver Spring, Maryland 20910

Virginia Khan
1815 - 13th Street, N.W.
Washington, D.C. 20009

Stanley Mayes, Chairperson
Advisory Neighborhood Commission 1-B
519 Florida Avenue, N.W.
Washington, D.C. 20001

Clifford W. Waddy, Chairperson
Advisory Neighborhood Commission 2-C
1200 S Street, N.W., #201
Washington, D.C. 20009


MADELIENE H. ROBINSON
Acting Director

DATE: JAN 30 1992

15578Att/bhs