

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 15618 of the Sixteenth Street Heights Civic Association, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Joseph F. Bottner, Zoning Administrator, made on August 6, 1991 on permits No. B351621 and B349935, to the effect that to increase the number of parking spaces and add to existing pavement on parking lot would adversely impact on the community and is not in compliance with the Zoning Regulations and the Comprehensive Plan for a church in an R-2 District at premises 1400 Nicholson Street, N.W., (Square 2723, Lot 44).

HEARING DATE: February 19, 1992  
DECISION DATE: March 4, 1992

DISPOSITION: The Board **DENIED** the appeal by a vote of 4-0 (Sheri M. Pruitt and Paula L. Jewell to deny; Angel F. Clarens and William L. Ensign to deny by proxy; Carrie L. Thornhill not voting, not having heard the case)

FINAL DATE OF ORDER: August 7, 1992

RECONSIDERATION ORDER

The Board denied the appeal by its order, dated August 7, 1992. By motion received August 20, 1992, the appellant filed a timely motion for reconsideration or rehearing of the Board's decision. The basis for the motion for either rehearing or reconsideration is as follows:

1. The Board erred in upholding the issuance of the subject permit for the reconfiguration of the parking site and in implicitly concluding that the church had proper authorization to use the public space in question based upon the representations of the Zoning Administrator.
2. Whereas a proper permit has not been issued for the use of the public space in question, the Board erred in not revoking the subject permit.
3. The Board erred in not revoking the permit in question when the subsequent survey of the parking site by the Department of Public Works indicates that there is insufficient land for the proposed parking resulting in such parking not being in compliance with applicable regulations and when the submitted plans had been certified by the architect of the property owner to be in such compliance.

4. The Board erred in not making findings of fact and conclusions on the contested issues of the public space permit (particularly, since the Zoning Administrator acknowledged that the submitted plans called for the use of public space, See Transcript, pp. 41, 48-49), handicapped parking, required parking barriers, required parking grades, and occupancy capacity as required by D.C. Code 1-1509(e).
5. The Board erred in making findings of fact regarding the conditions under which the permit for pew installation will be issued, seating computation, and application of special exception relief, which are summaries of testimony and serve as substitutes for definitive findings of relevant facts in violation of applicable law.
6. The Board erred in making conclusory and incomplete findings of fact regarding the Zoning Administrator's interpretation of Section 2101.1 and the matter of right requirements that are devoid of a logical nexus to its conclusions in violation of applicable law.
7. The Board erred in making findings of fact and conclusions of law that are not supported by substantial evidence regarding the means of computation used by the Zoning Administrator, the Zoning Administrator's interpretation of Section 2101.1, the consistency of that interpretation with decision in Appeal No. 14402, the necessity of review and approval of the permit by the Board, and the necessity for approval and execution of the parking layout prior to installation of the pews.
8. The Board erred in upholding the issuance of the subject permit when questions regarding handicapped parking fall within the jurisdiction of the Zoning Administrator and the evidence is unrefuted that the handicapped parking does not comply with applicable law.
9. The Board erred in recognizing the apparent discretion of the Zoning Administrator to accept the submitted plans as it pertains to the lack of a proper barrier between a parking space and adjacent public space, grading in excess of 12 percent, and the widths of parking aisles.
10. The Board erred in concluding that the appellant was required to demonstrate that the approved plans "would not be able to comply with applicable regulations and

codes nor that proper review was not provided", when in fact the testimony of the Zoning Administrator confirmed that the parking site did not comply with applicable zoning regulations as to barriers and grade conditions.

There was no response to the motion by the intervenor church, owner of the subject property.

Upon consideration of the motion, the evidence of record and its final order, the Board concludes that it has committed no error in deciding the appeal. The Board concludes that the motion raises no materially different issues nor provides any evidence of a substantive nature that the Board has not previously considered and addressed in its order. The Board's decision was based on consideration of all evidence presented by the appellant, the Zoning Administrator, the intervenor property owner, and the Advisory Neighborhood Commission. Accordingly, it is ORDERED that the motion for rehearing or reconsideration is DENIED.

DECISION DATE: September 2, 1992

VOTE: 3-0 (William L. Ensign, Paula L. Jewell and Angel F. Clarens to deny; Sheri M. Pruitt not present, not voting; Carrie L. Thornhill not present, 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:

NOV 17 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15618

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 17 1982 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:

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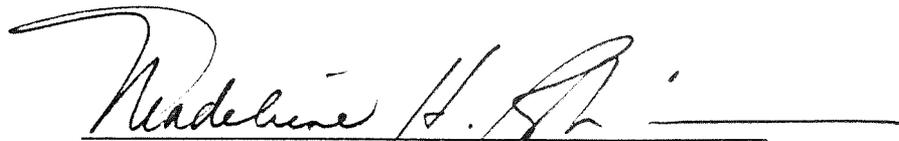
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MADELIENE H. ROBINSON  
Acting Director

DATE: \_\_\_\_\_

NOV 17 1982