

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15630 Wisconsin Realty Corporation, pursuant to 11 DCMR 3108.1, for special exception under Section 215 and 2514.2 to allow accessory parking spaces in an R-1-B District and the extension of any use permitted in the lesser restrictive C-2-A District into the more restrictive R-1-B District for a lot in the C-2-A and R-1-B Districts at premises 3939 Wisconsin Avenue, N.W. (Square 1825, Lot 800).

HEARING DATE: February 19, 1992
DECISION DATE: February 19, 1992 (Bench Decision)

DISPOSITION: The Board GRANTED the application with conditions by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant; William L. Ensign and Angel F. Clarens not present, not voting).

FINAL DATE OF ORDER: March 2, 1992

RECONSIDERATION ORDER

The Board granted the application, subject to two conditions, by its final order dated March 2, 1992. By letter dated March 3, 1992, counsel for the applicant requested the Board to modify Condition No. 1 of its order which reads "Approval shall be for a period of FIVE YEARS" to read "Approval of the Board with regard to the accessory parking spaces in the R-1-B District is for a period of FIVE YEARS."

Advisory Neighborhood Commissions (ANCs) 3F and 3C, by letters dated March 9, 1992 and March 10, 1992 respectively, opposed the applicant's request. The ANCs were of the opinion that the five year limit on the entire project imposed by the Board provided a reasonable substitute for the ANC's recommended conditions relative to the building which the Board did not adopt. Further, the ANCs were of the opinion that approval of the applicant's request without the adoption of the conditions originally recommended by the ANCs, regarding the future use and expansion of the building, would fail to satisfy or respond to their concerns; such as a change in the future use of the building that is detrimental to neighboring residential property without further opportunity for public or ANC comment and without further review by the Board. The ANCs recommended that the Board impose an additional condition, limiting the entire building to office use, if it decides to grant the applicant's request.

By letter dated March 13, 1992, counsel for the applicant filed a supplement to its motion. Counsel for the applicant argued

that the ANC's concerns regarding the future use and expansion of the building were addressed by the Board at its public hearing and that the only issue for reconsideration relates to the time period for approval and whether that time period should apply to the entire project or only to the accessory parking lot. Counsel further argued that the condition as presently stated, presents an onerous burden on the applicant because the Federal National Mortgage Association's (FNMA) substantial investment in the purchase and renovation of the subject structure would be effectively limited to five years and the distinction within the building relative to the split zoning of the site could ultimately render the rear five feet of the building within the R-1-B District unusable.

By letter dated March 20, 1992, ANC 3F opposed the applicant's supplemental comments. The ANC was of the opinion that the use of the entire building should be limited to office use, and further, that the Board's authority would permit imposing such a use limit on the entire building, not just that portion located in the R-1-B District.

By letter dated April 3, 1992 and signed by counsel for the applicant and representatives of ANCs 3C and 3F, counsel for the applicant advised the Board that an agreement had been reached between the applicant and ANCs 3C and 3F to modify the conditions of the Board's order as follows:

1. Replace Condition #1 (which reads "Approval shall be for a period of FIVE YEARS") with: "The use of the building shall be restricted to general office use only."
2. Leave Condition #2 as it (it reads "Landscaping and screening shall be provided as shown on the plans marked as Exhibit No. 24A of the record").
3. Add a Condition #3 to read as follows: "Approval of the Board with regard to the accessory parking spaces in the R-1-B District is for a period of FIVE YEARS."
4. Add a Condition #4 to read as follows: "The existing building shall not be enlarged. Only cosmetic changes to the exterior may be made."

At its public meeting of April 8, 1992, only two of the three Board members who heard the case were present. A motion to reconsider the application and modify the conditions of the order failed for lack of a majority vote of the Board. The third Board member who had participated in the case had submitted a proxy which, in the context of the motion made at the public meeting, was counted as a negative vote. The Board deferred consideration of the request. Board members Clarens and Ensign were provided with

copies of the record in the application to afford them an opportunity to participate in the consideration of the application.

By letter dated April 14, 1992, counsel for the applicant requested that the Board expedite its consideration of the matter. In support of the request, counsel indicated that the timeliness of the Board's decision was critical to plans to proceed to settlement and to begin steps to prepare the property for occupancy. The Board scheduled the matter for its special public meeting of April 22, 1992.

Upon consideration of the record in the application, its final order, the motion for reconsideration and supplement, the responses of the ANCs, and the agreement between the applicant and ANCs 3C and 3F, the Board concludes that with respect to Condition No. 1 of its order dated March 2, 1992, the Board was in error in failing to limit the five year period to the portion of the site governed by special exception approval for an accessory parking lot in the R-1-B District.

With respect to Condition No. 1 proposed by the applicant and the ANCs, the Board concludes that it does not have the authority to restrict the matter-of-right use of that portion of the building in the C-2-A District, within the context of the special exception application presently before the Board. However, in order to attempt to address the ANCs' concerns, the Board does not believe it is inappropriate to limit the use of the portion of the site to which the special exception applies.

With respect to Condition No. 4 proposed by the applicant and the ANCs, the Board concludes that such a limitation is not necessary because the existing building currently exceeds the permitted floor area ratio (FAR), therefore requiring Board approval for any enlargement of the structure.

The Board notes that there was no opposition to Condition No. 2 of its March 2, 1992 order by any parties to the application.

Based on the foregoing, it is hereby ORDERED that the motion is GRANTED and the CONDITIONS imposed on BZA Application No. 15630 are MODIFIED as follows:

1. Approval of the accessory parking lot located in the R-1-B District shall be for a period of FIVE YEARS.
2. The portion of the building which is located in the R-1-B District shall be limited to office use only.
3. Landscaping and screening shall be provided as shown on the plans marked as Exhibit No. 24A of the record.

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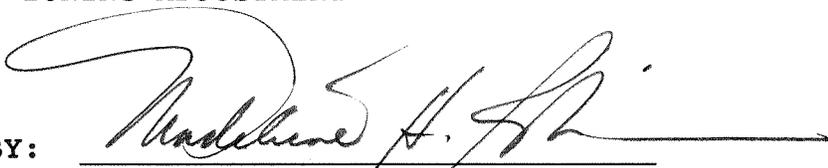
In all other respects, the order of the Board dated March 2, 1992 shall remain in full force and effect.

DECISION DATE: April 22, 1992

VOTE: 5-0 (Sheri M. Pruitt, Paula L. Jewell, Angel F. Clarens, William L. Ensign and Carrie L. Thornhill to amend conditions).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: MAY 27 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.

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.

15630Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15630

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 27 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:

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Chuck Braun, Chairperson
Advisory Neighborhood Commission 3-F
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MADELIENE H. ROBINSON
Acting Director

DATE: MAY 27 1992

15630Att/bhs