

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 16328** of Hugh V. Kelly, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to establish an accessory parking lot in the residential portion of a site in a C-1/ R-5-A District at premises 3922 12<sup>th</sup> Street, N.E. (Square 3887, Lot 5).

**HEARING DATE:** April 1, 1998

**DECISION DATE:** April 1, 1998

**DISPOSITION:** The Board granted the application by a vote of 3-0 (Herbert M. Franklin, Betty King and Sheila Cross Reid to grant; Maurice Foushee not present, not voting).

**FINAL DATE OF ORDER:** May 6, 1998

**RECONSIDERATION AND REHEARING ORDER**

The Board approved the application by its order dated May 6, 1998. On May 15, 1998, the abutting property owner, Rodney Creecy, (movant herein) filed a motion for reconsideration and rehearing.

Motions for reconsideration or rehearing are governed by the Board's Rules of Practice and Procedure found at 11 DCMR Subsection 3332.4, which provides that a motion for reconsideration or rehearing shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought. No request for rehearing shall be considered by the Board unless new evidence is submitted which could not reasonable has been presented at the original hearing.

The movant indicated that his property would be severely impacted by the accessory parking lot. The movant stated that his property would be further impacted by the new order of the Board because it was not enacted with proper consideration of factual information and contains false representations.

The movant stated that the following were omissions and errors in the record/order:

1. No staff reports were submitted into the record from any of the District government agencies that have been involved with the property, including those that have conducted inspections of the site through the years. The D.C. tax assessor (and private appraisers) have acknowledged that the accessory parking

lot is a burden on the abutting residentially zoned property. The 8-foot gated entrance, which exists on the public sidewalk, is illegal. None of this information was provided to the Board from District government agencies such as the Office of Planning, the Office of the Zoning Administrator, and the Tax Assessor's Office.

2. Condition No. 3 of the Order states that the parking lot shall operate 8:00 a.m. to 1:00 a.m., weekdays, and 8:00 a.m. to 2:00 a.m. on the weekends. The movant indicated that he suggested, at the hearing, closing the lot at 9:00 p.m. to allow for the quiet enjoyment of his property. The movant indicated that because there is only a 5-foot clearance between his dwelling and a portion of the accessory parking lot, late night operation of the lot would be disruptive to his property. The movant stated that, to minimize noise from patrons, the owner of the site has indicated a willingness to rope-off the lot late at night. However, if the property were sold, the new owner would not be required to do the same.
3. Item No. 4 of the Order improperly states that the accessory parking lot was used exclusively by Michigan Liquors. The lot, in the past, was used for overflow parking for a variety of entities including businesses on the 12<sup>th</sup> Street corridor, Brookland Elementary School, residents of the area, and Turkey Thicket Park.
4. Item No. 16 improperly represents, as a basis for approval of the application, movant's five conditions that were to be included in the Order.
5. Item No. 2 of the Order's Findings of Fact omits movants testimony that a portion of the site that fronts on Michigan Avenue is located in public space. Movant indicated that the public space was established as a setback from Michigan Avenue. The subject property incorrectly incorporated the public space with a commercial fence six years ago.
6. Item No. 5 of the Order's Findings of Fact is self-contradicting. The site is split-zoned (C-1/R-5-A); accordingly, there is a difference in standards and conditions between the two zoning categories. There is a need for the imposition of conditions so that the parking lot does not adversely affect the use of neighboring properties. Without the careful imposition of these conditions, the economic viability of movants property would be severely impacted. The applicant's business (Ellis Island Restaurant and Pub) closes at 10 p.m. The Board granted operation of the accessory parking lot to 1:00 a.m. on the weekdays, and 2 a.m. on the weekends, without the possibility of review of the application for six years. Movant indicated that the effect of this action is to fully commercialize his residentially zoned property.

For the above stated reasons, the movant requested a reconsideration of the record and a rehearing of the facts in the case.

The respondent, in correspondence dated May 27, 1998, requested that the Board deny movant's motion for reconsideration and rehearing. The following are the respondent's arguments, as well as the Board's findings.

- By memorandum dated February 19, 1998, the application was referred to the Department of Public Works for review, as required by Section 213.8 of the Zoning Regulations. The application was also referred to the Office of Planning. Further, Subsection 3318.6 of the Regulations stipulates that when an application is referred to a government department or office, if no report is received in the record and the time specified for filing the report has elapsed, then the Board may proceed to decide the application based on the record. There is no zoning requirement that the Office of Planning and the Department of Public Works shall file a report.
- Concerning the parking lot's hours of operation, the issue was fully discussed at the public hearing. The Board considered the facts affecting both the applicant's and the movant's property, and weighed the information presented in the case prior to making a decision. Accordingly, the Order appropriately conditioned the hours of operation of the parking lot. The Order is conditioned so that the lot can be used for a period of six years. Thereafter, the applicant or any subsequent owner must return to the Board to continue to legally use the site. The Board, at that time, will have an opportunity to review all of the conditions, and to ascertain their appropriateness.
- No documentation was presented at the public hearing, or thereafter, substantiating movant's argument that a portion of the site is located in public space. The Board notes that although movant objects to the District's land records, no written documentation was presented contradicting the Surveyor's plat. The movant did not submit any evidence (e.g., notarized statements from government officials, land records) to verify that a portion of the site is located in the public right-of-way.

The Board concurs with the respondent. Further, the Board's decision on this application was made after careful consideration of the facts in the case. The comments and recommendations of community organizations and individual residents are advisory. Orders are conditioned, as appropriate, based on the Board's discretion and the Zoning Regulations.

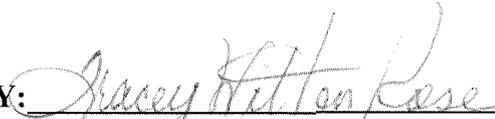
#### **CONCLUSIONS OF LAW AND OPINION:**

The Board concludes that movant failed to introduce any new evidence that was not presented at the public hearing. Movant did not demonstrate that the Board's Order is erroneous. Movant did not demonstrate that his property would be severely impacted by the use of the site as a parking lot. The conditions identified are appropriate for this application. The Board is of the opinion that movant has failed to meet the requirements for reconsideration and rehearing of its decision. Accordingly, the Board hereby **ORDERS** that the **MOTION for RECONSIDERATION AND REHEARING** be **DENIED**.

**VOTE: 3-0** (Herbert M. Franklin, Betty King and Sheila Cross Reid to deny.)

**DECISION DATE:** June 3, 1998

**BY ORDER OF THE BOARD OF ZONING ADJUSTMENT**

**ATTESTED BY:**   
*for* **SHERI M. PRUITT-WILLIAMS**  
**Interim Director**

**FINAL DATE OF ORDER:**           AUG 21 1998          

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 OF THE DISTRICT OF COLUMBIA. "

ORD16328/BAB/8-11-98

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16328**

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest that on AUG 21 1998 a copy of the Reconsideration and Rehearing Order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Jerry A. Moore, III (Attorney for the Applicant)  
Arter & Hadden  
1801 K Street, NW, Suite 400K  
Washington, DC 20006

Hugh V. Kelly  
111 Virginia Avenue  
Edgewater, MD 21037

Joseph L. Bowser, Chairperson  
Advisory Neighborhood Commission 5A  
Slowe School Demountable  
14<sup>th</sup> & Irving Streets, NE  
Washington, DC 20017

Rodney Creecy  
Sandra F. Peaches  
4501 Venton Place  
Lanham, MD 20706

ATTESTED BY:

*Tracey N. Rose*  
for SHERI M. PRUITT-WILLIAMS  
Interim Director

DATE: AUG 21 1998