

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Appeal No. 17615 of William Harnett**, pursuant to 11 DCMR § 3112, from the November 17, 2006 administrative decision of the Zoning Administrator (“ZA”), Department of Consumer and Regulatory Affairs (“DCRA”), to issue Building Permit No. 101019, permitting the alteration and repair of the owner’s parking garage, including striping of five (5) new parking spaces, identified as spaces P-1 through P-5. The subject property is located in the W-3 zone district at premise 3030 K Street, N.W. (Square 1173, Lot 102).

**HEARING DATES:** June 5, 2007, July 17, 2007, July 31, 2007  
**DECISION DATES:** October 2, 2007, October 23, 2007

**ORDER**

**PRELIMINARY MATTERS**

On January 12, 2007, William Harnett (“Appellant”) filed this appeal with the Board of Zoning Adjustment (the “BZA” or the “Board”) challenging the decision of the ZA to issue Building Permit No. 101019 to Washington Harbour Condominium Unit Owners’ Association, Inc. (herein referred to as “property owner”). The ZA issued the building permit on November 17, 2006, authorizing “alteration and repair” of the property owner’s below-grade parking garage, including the creation of five new parking spaces. The Appellant claims that aspects of these new spaces do not comply with the Zoning Regulations and further, that they negatively impact the use of the spaces he currently owns in the same garage.

The Board heard the appeal over the course of several hearing dates and, at its decision meeting on October 23, 2007, decided 3-0-2, to deny the appeal.

**FINDINGS OF FACT**

**Background**

1. The property whose below-grade parking garage (“garage”) is the subject of this appeal is located at 3030 K Street, N.W., in Square 1173, Lot 102, within a W-3 zone district, and is known as the Washington Harbour condominium building.
2. The building and garage were constructed in the mid-1980’s.

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3. Sometime in 2004, the property owner decided to add five more parking spaces to the 48 that already existed in the garage.
4. For the purposes of this appeal, the new parking spaces will be referred to collectively as “the five new parking spaces” and individually as numbers one, two, three, four, and five, as they are depicted on numerous exhibits in the record, for example, Exhibit No. 4, Attachment No. 5, Exhibit No. 16, Attachment No. 4, and Exhibit No. 28, Attachment No. 1.
5. The striping of the five new parking spaces was completed on or about September 20, 2004.
6. Appellant owned and still owns at least two parking spaces in the garage that pre-existed the five new spaces added on that date. The numbers of the parking spaces owned by the Appellant are P-112 and P-116, as shown on the Exhibits listed in Finding of Fact Number 4.
7. In order to resolve zoning and building code enforcement actions brought because the striping was performed without a building permit, the property owner, on November 15, 2006, applied to DCRA for a permit authorizing it to “alter” the garage by creating, i.e., striping, five new parking spaces. Exhibit No. 4, Attachment No. 3.
8. The building permit authorizing the striping of the five new parking spaces was issued on November 17, 2006. Exhibit No. 4, Attachment No. 1.
9. The appeal was filed on January 12, 2007, less than 60 days later.

Vertical Clearance of Parking Space Number 5

10. Appellant claimed that parking space number five had a vertical clearance of less than 6 feet, 6 inches, in violation of 11 DCMR § 2115.5.
11. The plans accompanying the building permit application showed that the vertical clearance of parking space number five, which is located underneath a junction box, is 6 feet, 8 inches.

Size, striping, and drive aisle width

12. Appellant claimed the five new parking spaces did not comply with §§ 2117.1 and 2117.3, which govern the size and striping of “required” parking spaces and § 2117.5, which establishes a minimum driving aisle width between such spaces. None of these provisions contain the phrase “all parking spaces.”
13. Subsection 2118.9 provides that “whenever the word “all” is followed by the words “parking spaces” in the same sentence, the parking requirements as specified shall apply to all parking spaces, whether or not the spaces are required by this chapter.”

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14. The required parking spaces referred to in § 2118.9 mean those parking spaces that a building must provide in accordance with the parking schedule that follows the text of 11 DCMR § 2101.1.
15. According to that schedule, a multiple dwelling located in a W zone district, such as the Washington Harbour condominium building, is required to provide one parking space for each three units. Washington Harbour has 35 dwellings units. Dividing 35 by 3 results in a product of 11.6. Subsection 2118.6 provides that “[w]henever calculations based on the schedule set forth in § 2101 result in a fractional space... any fraction of one-half or over shall require one (1) parking space.” Therefore the required parking for the building is 12 spaces.
16. Counting the five new parking spaces, the building provides 41 more spaces than the 12 required.
17. The Zoning Regulations did not require that the property owner specify on its building permit application which of its 53 parking spaces represented the 12 that must meet provisions applicable to required parking spaces.
18. The property owner has identified 12 parking spaces that meet all the necessary Zoning Regulations, including the three provisions that Appellant contends the five new parking spaces should meet. These spaces are numbered P-118 through P-126 and P-128 through P-130 (“required space(s)”). See, Exhibit No. 28, Attachment No. 1 (wherein these required parking spaces are specifically delineated).
19. As to those three provisions, each of these twelve spaces is at least 19 feet long by 9 feet wide, 11 DCMR § 2115.1, appropriately striped, 11 DCMR § 2117.3, and separated from another required space by a drive aisle of at least 20 feet wide, 11 DCMR § 2117.5.

Vehicle Encroachment

20. Appellant claims that the five new parking spaces violate § 2117.7, which protects “the public rights-of-way as well as private walkways and driveways ... from vehicular encroachment from all parking spaces” by requiring the installation of “wheel bumper guards, curbs, guard rails, or screening between the property line and the perimeter of the parking area.”
21. The boundaries of the five new parking spaces do not coincide with any property line that separates the perimeter of the garage’s parking area from any public right of way or a private walkway or driveway.
22. The perimeter of the garage does not abut any private driveway and the two property lines that separate the lot from 31st Street and the Potomac River Parkway are not anywhere near the five new spaces.

## **CONCLUSIONS OF LAW**

### **The Board's jurisdiction over the appeal**

The property owner moved to dismiss the appeal on jurisdictional grounds. The property owner first claims that the appeal is not within the Board's subject matter jurisdiction because it "deals only with the issuance of the Permit" and not with the administration or enforcement of the Zoning Regulations. The motion further argued that the appeal must be dismissed as untimely because it had to be filed within DCRA within 15 days of the November 17, 2006 issuance of Building Permit No. 101019, pursuant to 12A DCMR § 112.1. Exhibit No. 15, at 2-3. The Board has no jurisdiction to hear an untimely-filed appeal. *Mendelson v. D. C. Board of Zoning Adjustment*, 645 A.2d 1090, 1093 (D.C. 1994).

The Board concludes it has subject matter jurisdiction over this appeal. Section 8 of the Zoning Act of 1938, D.C. Official Code § 641.07 (f) (2001) authorizes appeals to the Board of "any decision ... granting or refusing a building permit ... based in whole or in part on any Zoning Regulation." The appeal here falls squarely within the authority granted by section 8, as it challenges the issuance of a building permit based upon claimed violations of certain Zoning Regulations.

As to timeliness, the section of the Building Code cited by the property owner does not apply to this Board or this appeal. Subsection 112.1 of DCMR Title 12A provides for appeals "*within the Department* from the issuance or denial of a building permit, ... *which shall be based on a claim that the Construction Codes* or the rules legally adopted thereunder have been incorrectly interpreted or applied," (emphasis added). This appeal does not allege violations of the Construction Code, but as noted above, allegations that the Zoning Regulations have been incorrectly interpreted and applied. As such, the Board's authority to hear this appeal is based in the Zoning Act and the Zoning Regulations and is not subject to any rule of procedure adopted by any other District agency.

Section 8 of the Zoning Act vests the Zoning Commission with the exclusive authority to "specify in its zoning regulations general rules to govern the ... procedure of the Board of Adjustment," D.C. Official Code § 6-641.07(f), (c). Pursuant to that authority, the Zoning Commission adopted 11 DCMR § 3112.2, which requires that appeals be filed no later than 60 days after the date that an appellant knew or should have know of the decision (in this case the issuance of the building permit). That permit was issued on November 17, 2006. The appeal was filed on January 12, 2007, less than 60 days later. The appeal is therefore timely.

### **The merits of the appeal**

*Required v. All Parking Spaces*

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There is no dispute that the Washington Harbour condominium building must provide at least 12 parking spaces on its lot. Nor is there any disagreement that at least this number of spaces exists within its parking garage. What separates the parties is Appellant's contention that *all* of the requirements of Chapter 21 of the Zoning Regulations, which governs off-street parking, apply to *all* 53 of the parking spaces in the garage, including the five new spaces that are the subject of this appeal. However, the parking regulations distinguish between *all* parking spaces and those that are *required* by Chapter 21. For the reasons stated below, the Board concludes that the five new spaces need only comply with provisions that refer to "all" parking spaces.

Title 11 DCMR § 2118 sets forth the rules of interpretation that are applicable to all of Chapter 21. Section 2118.9, provides as follows:

Except where otherwise indicated, whenever the word "**all**" is followed by the words "**parking spaces**" in the same sentence, the parking requirements as specified shall apply to all parking spaces, *whether or not the spaces are required by this chapter.*

(Emphasis added).

The Board interprets the reference to "spaces ... required by this chapter" to refer to the minimum number of parking spaces that each building must provide in accordance with § 2101.1. Thus, when more parking spaces are constructed than are required, as is the case here, only those provisions of Chapter 21 that say "all parking spaces" apply to all of the parking spaces. Conversely, those provisions that do not refer to "all parking spaces" apply only to those spaces required by § 2101.1. Applying this principle to the Washington Harbour condominium building, only twelve of its parking spaces must comply with the provisions that are only applicable to required spaces.

The Zoning Regulations do not require that the plans accompanying a building permit designate the location of the required spaces, or that once constructed, the required spaces must be demarked in some fashion and never relocated. Rather, the plans need only show that the number of parking spaces that meet the specific requirements applicable to required spaces are at least equal to the number of parking spaces required. In this appeal, that number is twelve. Of course, these required spaces must also meet the requirements applicable to "all" parking spaces.

The property owner has identified 12 spaces that met both sets of requirements at the time its application for a building permit was reviewed. These are depicted covered with diagonal lines on Exhibit No. 28, Attachment No. 1, and are numbered P-118 through and including P-126 and P-128, P-129, and P-130. Therefore, the remaining 41 spaces, including the five new parking spaces, need only comply with those provisions that apply to "all" parking spaces.

Three of the regulations cited by Appellant, §§ 2117.1, 2117.3 and 2117.5 do not include the phrase "all parking spaces", but specifically refer to "required parking spaces." Therefore, in

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accordance with the rule of interpretation set forth at § 2118.9, these provisions only apply to the 12 required spaces described above and not to the five new spaces that are the subject of this appeal. As a consequence, the portion of this Appeal alleging such violations is denied.<sup>1</sup>

This leaves the Board to address the Appellant's remaining assertions of error that apply to the regulations governing *all* parking spaces.

*Vertical clearance*

Appellant claims that new space five does not meet the requirement of § 2115.5 that all parking spaces have a 6-foot, 6-inch vertical clearance. The record, however, shows that new space five, although located under a junction box, has a vertical clearance of 6 feet, 8 inches. Finding of Fact No. 7. Appellant, whose burden it is to demonstrate the vertical clearance violation, has not offered any convincing evidence to contradict this measurement.

*Encroachment on public rights of way and private walkways and driveways*

Section 2117.7 applies to all parking spaces, and states, in relevant part, that

[t]he public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment from all parking spaces by wheel bumper guards, curbs, guard rails, or screening *between the property line and the perimeter of the parking area.*

(Emphasis added).

Appellant claims that there are no striping or bumper guards at the ends of new parking spaces two and three. However none are needed. The regulation does not even mention striping and only requires bumper guards "between the property line and the perimeter of the parking area." The boundaries of the five new parking spaces do not coincide with any property line that separates the perimeter of the garage's parking area from any public right of way or a private walkway or driveway. Indeed, the perimeter of the garage does not abut any private driveway and the two property lines that separate the lot from 31st Street and the Potomac River Parkway are not anywhere near the five new spaces.

Appellant is concerned that the absence of bumper guards will result in vehicles encroaching into the drive aisle. He also appears to contend that a sign directing pedestrians toward an elevator will create a pedestrian walkway through space P-116, which he owns. Even if both assertions are true, no violation of § 2117.7 would result. The subsection does not prohibit encroachments of any kind, but requires the installation of specific devices to prevent vehicles from encroaching

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<sup>1</sup>The Board further notes that any alleged violation of § 2117.1, which provides that required parking spaces be permanently maintained, could only occur after the issuance of a building permit and thus would not serve as grounds for denial of the building permit.

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on private or public property separated from the perimeter of a parking area by a property line. Although the subsection begins by explaining the reason for its requirement, *i.e.* that “public rights-of-way as well as private walkways and driveways shall be protected from vehicular encroachment,” such explanatory language establishes no actual prohibition against encroachment of any kind, at any location.

*Reasonable and convenient parking spaces*

Appellant argues that the five new parking spaces are not “located so as to furnish reasonable and convenient parking facilities” for occupants or guests of the building, which he claims violates § 2116.8. He also requests that the Board invoke § 2116.9 to impose conditions on the five new parking spaces to assure their continued provision and maintenance, even though, as non-required spaces, they would not be subject to the maintenance requirement of § 2117.1.

The first provision has no role to play when the ZA is reviewing requests to construct parking spaces and the second may not be utilized by the Board when considering an appeal of such a review. These provisions only apply to instances when the Board is hearing a special exception to locate parking spaces where they are not permitted.

The various subsections of § 2116 must be read *in pari materia*. Subsection 2116.1 requires that “all” parking spaces must be located on the same lot with the building they serve, subject to certain exceptions. Subsection 2116.2 sets forth the specific areas within the lot where such parking spaces may only be located, which includes a garage. Subsection 2116.5 then permits the Board to allow, by special exception, “open parking spaces accessory to any building or structure [to] be located anywhere on the lot upon which the building or structure is located, or elsewhere [i.e. on another lot]... *in accordance with §§ 2116.6 through 2116.9.*” (Emphasis added.)

Thus it is only in the context of such a special exception request that the italicized provisions must be satisfied. While an inquiry regarding reasonable and convenient parking is relevant to a request to locate parking spaces where they are not permitted, and particularly when location will be on a different lot, it has no role to play when parking spaces will be located where they are supposed to be, *i.e.*, pursuant to §§ 2116.1 and 2116.2. Subsection 2116.8 is for the Board to apply in its special exception analysis for parking spaces not meeting § 2116.2. It does not authorize the Zoning Administrator to consider the issue where spaces are located pursuant to §§ 2116.1 and 2116.2. Accordingly, the ZA committed no error by not doing so.

Subsection 2116.9 authorizes the Board, within the context of a § 2116.5 special exception, to impose conditions to ensure provision and maintenance of parking spaces and to protect nearby property. This, of course, is particularly relevant when the request is to locate parking spaces on someone else’s property. This provision does not also authorize the Board to impose such conditions when hearing an appeal that happens to concern parking spaces. Subsection 2116.9 is not relevant to this appeal.

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The Board's interpretation of §§ 2116.8 and 2116.9 as applying only within the context of a § 2116.5 special exception is consistent with the long-standing interpretation of the Zoning Regulations, as borne out by the testimony at the hearing. *See*, July 17, 2007 Hearing Transcript, at pp. 395-398 (testimony of Lindsley Williams) and July 31, 2007 Hearing Transcript, at pp. 188-198 (testimony of Acting ZA, Matt LeGrant). This long-held and reasonable interpretation of the limited applicability of §§ 2116.8 and 2116.9 will not be disturbed by the Board. *See, e.g., Smith v. D.C. Board of Zoning Adjustment*, 342 A.2d 356, 359 (D.C. 1975).

Appellant generally contends that the five new spaces adversely impact the use of his parking spaces. The Zoning Administrator cannot reject a building permit after finding that all applicable zoning requirements have been met. Once the ZA made that determination as to this building permit, he could not consider any extraneous factors, including the potential impact of the matter of right use being constructed. No error was committed.

*Parking Plan*

Finally, the Appellant also alleges that the creation of the five new parking spaces violated §§ 2100.2 and 2100.3. These sections state, respectively, that no post-1958 building permit can be issued for a building or a structure until a proper parking plan has been approved, and no certificate of occupancy can be issued unless the parking spaces depicted in the approved plan have been provided. Since the Washington Harbour building was built, and its building permits and certificate of occupancy issued, approximately twenty years ago, the proper time to bring forth these claims has long passed.

**Great Weight**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC. D.C. Official Code § 1-309.10(d) (2001). Great weight means acknowledgement of these issues and concerns and an explanation of why the Board did or did not find the ANC's views persuasive.

The letter from ANC 2E in this case, dated June 28, 2007, referred to an earlier ANC letter, dated October 6, 2006, which was filed in BZA Appeal No. 17517. In that appeal, the property owner appealed a Notice of Infraction issued by the ZA on January 4, 2005, which DCRA later withdrew. The ANC letter filed in the instant appeal states that the ANC's position in BZA Appeal No. 17517 had not changed – the ANC supports Mr. Harnett. In neither letter does the ANC explain its decision to support Mr. Harnett, nor does either letter set forth any issues or concerns to which the Board could accord great weight and therefore none can be given.

For the reasons stated above, the Board concludes that the Appellant did not meet its burden of demonstrating that DCRA or the ZA erred in issuing Building Permit No. 101019, and in consequently allowing the striping of new parking spaces one through five in the garage. Therefore, it is hereby **ORDERED** that this appeal be **DENIED**.

**VOTE:**       **3-0-2** (Ruthanne G. Miller, Curtis L. Etherly, Jr., and Marc D. Loud, to deny;  
                  No fourth member nor Zoning Commission member participating or  
                  voting.)

Each concurring Board member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**  
Director, Office of Zoning

**FINAL DATE OF ORDER:**     MAY 2 2008    

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



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As Director of the Office of Zoning, I hereby certify and attest that on MAY 2, 2008, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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