

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



**Application No. 17729-A of Morrison-Clark Limited Partnership I and Morrison-Clark LP**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the use provisions of subsection 350.4(d), a variance from the nonconforming structure provisions of subsection 2001.3, a variance from the rear yard requirements of § 404, and a special exception from the roof structure setback requirements of subsection 400.7, pursuant to subsection 411.11, to allow the renovation and expansion of an existing inn, located in the DD/R-5-E District at premises 1015 L Street, N.W. (Square 341, Lots 63, 69, 70, 831 and 832).

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| <b>HEARING DATE:</b>                          | March 11, 2008            |
| <b>DECISION DATE:</b>                         | March 11, 2008            |
| <b>DATE DECIDED TO RECONSIDER:</b>            | May 6, 2008               |
| <b>DATE OF DECISION AFTER RECONSIDERATION</b> | May 27, 2008 <sup>1</sup> |

**ORDER ON MOTION FOR RECONSIDERATION AND REHEARING**

This self-certified application was filed with the Office of Zoning (“OZ”) on September 13, 2007, by Morrison-Clark Limited Partnership I and Morrison-Clark LP (“Applicant”), the owner of the property which is the subject of this application (“subject property”). The application requests three variances and one special exception to enable the Applicant to renovate and enlarge an existing historic inn located at 1015 L Street, N.W.

The Board of Zoning Adjustment (“Board” or “BZA”) held a hearing on the application on March 11, 2008. There were no parties in opposition, but one person, the owner of a condominium unit in the adjacent Quincy Park condominium building testified to her concerns with the proposed project. Advisory Neighborhood Commission (“ANC”) 2F, the ANC within which the subject property is located, did not appear at the hearing but submitted a detailed letter in support of the project. At the conclusion of the hearing, the Board voted 4-0-1 to orally grant

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<sup>1</sup>The date of the decision after reconsideration was originally set for May 20, 2008, but was postponed for a week in order to permit all necessary Board members to read the transcript of the deliberations of May 6, 2008.

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the application, and on March 31, 2008, a Summary Order was issued memorializing that decision. Exhibit No. 35.

On April 10, 2008, ANC 2F filed a timely motion for reconsideration and rehearing (“motion”), alleging, *inter alia*, that it had never seen the final plans which were presented to the Board at the March 11th hearing, and, that if it had, it almost certainly would not have supported the application. Thus, the ANC withdrew its support and requested that the Board reconsider its decision. In addition, the ANC requested a rehearing to address several issues. The major issue the ANC wanted addressed was the impact of the new construction on the adjacent condominium building, specifically the close proximity of its rear wall to the south-facing wall of the adjacent building, which, the ANC opined, had not been adequately addressed by the Board at the March 11, 2008 hearing.<sup>2</sup> The ANC motion also asserted that a rehearing was necessary due to the Applicant’s alleged failure to substantiate its claim of lack of marketability of certain buildings on the subject property and due to questions of proper notice. Exhibit No. 37.

At its public meeting on May 6, 2008, the Board deliberated upon the motion and decided, by a vote of 4-0-1, to grant reconsideration, in order to take into account the new position of the ANC in opposition to the application. The Board also voted 4-0-1 to deny rehearing. At a Special Public Meeting on May 27, 2008, the Board re-addressed the issues brought up in the motion and decided, by a vote of 5-0-0, not to change any of the relief originally granted, but to affirm it.

**Conclusions of Law**

The Board granted reconsideration, and reconsidered its decision, but is not persuaded that that decision should be changed, or that a rehearing is necessary. The ANC’s motion focuses on four issues: (1) whether the impact of the proximity of the proposed project on the adjacent condominium building was adequately addressed by the Board, (2) whether that impact amounts to a substantial detriment to the public good, (3) the alleged failure of the Applicant to substantiate its claim of lack of marketability of the part of the subject property that formerly belonged to the Chinese Community Church, and (4) questions concerning the adequacy of notice, specifically to the individual condominium unit owners.

The Board has sufficiently considered the impact of the proximity of the proposed project on the adjacent condominium building

Prior to the hearing, the Board was aware of the proximity of the rear wall of the proposed addition to the Quincy Park building. Before the hearing, the Board was presented with the Applicant’s plans, dated February 26, 2008, which depict the proximity of the proposed project to the adjacent Quincy Park condominium building. Exhibit No. 24, Attachment D. These plans, and a last, 2-page partial set of plans presented at the hearing, show the same proposed footprint as the earlier plans dated September 12, 2008, which are marked in the record as

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<sup>2</sup>The rear wall of the proposed addition will be constructed at the rear lot line and the south-facing wall of the Quincy Park condominium building is located approximately three feet from that line.

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Exhibit No. 10. Each of these plans informed the Board of the relationship of the rear wall of the proposed construction to the south-facing wall of the Quincy Park building.

At the hearing, the Board heard testimony from one of the condominium unit owners concerning the proximity of the proposed rear wall to the Quincy Park building. The unit owner testified as to her concerns with the project, which included its proximity to her building and the adverse impacts that she claimed would result. Specifically, she testified to loss of light and air into the windows on the south-facing wall of the Quincy Park building, potentially adversely affecting the use and enjoyment of the affected condominium units. *See, e.g.*, March 11, 2008 Hearing Transcript (“Transcript”) at 247, lines 4-7, 254-255, lines 20-22 and 1-2, and 255, lines 4-5.

The proximity of the walls of the two buildings was discussed at some length by the Applicant’s architect and the Applicant’s counsel, both of whom the Board engaged in an extended colloquy on the issue, including some discussion of possible detrimental effects. The architect stated that no windows on the Quincy Park building will be completely blocked, with at least three feet of open space between the closest windows and the wall of the new addition, but conceded that this may result in more diffused light than is presently available to the Quincy Park windows. *See, e.g.*, Transcript at 260, lines 6-21. Applicant’s counsel, however, explained that, due to Building Code restrictions, windows on this south-facing wall should not be relied on to provide required light and ventilation to their condominium units. Transcript at 256-257, lines 20-22 and 1-2, and 257, lines 18-21.

The Board was well aware of the proximity of the rear wall of the proposed addition to the south-facing wall of the Quincy Park building and thoroughly considered it at the hearing. It heard testimony, and engaged both the Applicant’s architect and the unit owner with questions about the proximity issue and its potential ramifications. *See, generally*, Transcript at 245-264. At the close of the hearing, the proximity issue was specifically considered by the Board members during their deliberations. *See*, Transcript at 290-292. Therefore, at every step of these proceedings, the Board addressed the issue and there is no need for a further hearing on it.

Any impacts of the proximity of the proposed project to the Quincy Park building do not amount to a substantial detriment to the public good

Even though the proximity issue was fully addressed at the hearing, the Board granted the ANC’s motion to reconsider the issue, but, in the end, reached the same conclusions it had reached during its original deliberations, and did not change its decision to grant the application. No substantial detriment to the public good or impairment of the zone plan will be caused by the placement of the rear wall of the addition. There will be approximately three feet of open space between the addition and the Quincy Park building, and any effect on light and air will be minimal. Placing the rear wall of the addition on the rear lot line eliminates the less-than-optimal rear yard, continuing the building façade along the alley and making for a more appropriate and harmonious design. On the whole, the entire project has been sensitively designed to integrate harmoniously with the historic structures, and permitting the expansion of

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the hotel use is consistent with the purposes of the DD Overlay. *See*, 11 DCMR §§ 1700.3(a) and 1700.3(c). Therefore, granting of the use and area variances requested will not be a substantial detriment to the public good nor will it cause any impairment of the zone plan.

Moreover, although the ANC eventually rescinded its support letter, that letter specifically states that there would be no substantial detriment if the proposed addition is constructed without a rear yard, demonstrating that the ANC knew that the addition would be built to the lot line, and in effect, recognizing that, even with this proximity, there would be no substantial detriment. Exhibit No. 25, at 3. The ANC then switched its position, but the Board concludes that its first position is the better one.

The non-marketability of the former Church buildings was sufficiently established in the record

The ANC also contends that the Applicant failed to substantiate its representations as to the non-marketability of the former Church buildings.<sup>3</sup> The marketability or non-marketability of the buildings in question is addressed in the record of this case (*See, e.g.*, Exhibit No. 24, Applicant's Prehearing Statement, at 9-12) and in any event, the granting of the use variance did not hinge on the non-marketability of the buildings. Whether or not a property is marketable is not the test of undue hardship for a use variance, that test is whether or not a property can be reasonably adapted for a use permitted in the zone in question. *See, e.g., Bernstein v. D.C. Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977). Once the Applicant became the owner of the buildings, it needed to show that they could not be reasonably adapted for a use permitted in the zone, which it did to the Board's satisfaction.

Proper notice was provided

The last issue touched upon by the ANC in its motion is a potential lack of notice. The unit owner who testified at the hearing claimed generally that the unit owners had not been kept informed of the evolution of the Applicant's project and the ANC's motion states that there had been no notice to the unit owners of any meetings with the Applicant. Exhibit No. 37, at 5. The unit owner, however, appeared at the hearing, because the property was properly posted. *See*, Exhibit No. 23. From what could be discerned from the record, OZ had also sent proper notice to her condominium association. *See*, Exhibit No. 9, at 3 (notice sent to "Condominium Association for 1001 L Street," *i.e.*, the Quincy Park building) and Exhibit No. 21; and *see* 11 DCMR § 3113.13(b). Section 3113.13(b) provides that the Office of Zoning must provide notice to the "board of directors or to the association of the condominium," and does not mandate that separate notice be sent to each unit owner. The proper notice was sent to the condominium board and all other applicable methods of notice listed in subparagraphs 3113.13 (a) – (e) were also performed by the Office of Zoning. Therefore, the Board finds no failure as to proper notice.

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<sup>3</sup>The ANC separately states in its motion that the Applicant made misleading statements to it concerning the non-marketability of the former Church buildings. The ANC does not contend, however, that the Applicant made any such statements to the Board; therefore, there is nothing here for the Board to reconsider.

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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 those issues and concerns and an explanation of why the Board did or did not find the ANC’s views persuasive. The Board, after again assessing the proximity issue and its potential effects, as well as the other issues raised by the ANC on reconsideration, has once more determined that they do not rise to the level of requiring the Board to change its decision. Further, neither these issues nor the ANC’s withdrawal of its recommendation of approval, and consequent opposition to the application, warrant a rehearing.

For the reasons stated above, the Board concludes that ANC 2F has not met its burden of demonstrating that it is entitled to rehearing on the issues raised in its motion, and, having already granted a reconsideration of these issues, and having reconsidered them, the Board declines to change its decision, and therefore **AFFIRMS THE RELIEF GRANTED IN ORDER NO. 17729** and **DENIES** the relief requested in ANC 2F’s motion for reconsideration and rehearing dated April 10, 2008.

**VOTE ON ORIGINAL APPLICATION:**

**4-0-1**

(Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, and Shane L. Dettman to approve; Mary Oates Walker abstaining.)

**VOTE ON MOTION FOR RECONSIDERATION AND REHEARING**

**4-1-0**

(Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman, and Mary Oates Walker to grant reconsideration, but to deny rehearing; Curtis L. Etherly, by absentee ballot, to deny both reconsideration and rehearing)

**VOTE AFTER RECONSIDERATION, TO AFFIRM ORIGINAL RELIEF**

**5-0-0**

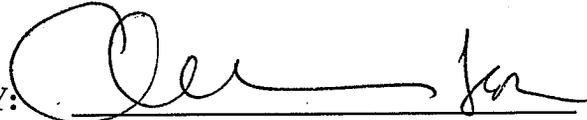
(Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc D. Loud, Shane L. Dettman, Mary Oates Walker to affirm original relief granted)

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

Each concurring Board member has approved the issuance of this order.

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**ATTESTED BY:**



**RICHARD S. NERO, JR.**  
**Acting Director, Office of Zoning**

**FINAL DATE OF ORDER: DEC 30 2008**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

**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 **DECEMBER 30, 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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**ATTESTED BY:**

A handwritten signature in black ink, appearing to read 'Richard S. Nero, Jr.', written over a horizontal line.

**RICHARD S. NERO, JR.**

**Acting Director, Office of Zoning**