

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17904 of Robert Holland et al., pursuant to 11 DCMR § 3104.1, for a special exception to establish an accessory parking lot under section 214 and for location of parking spaces under section 2116.5 in the R-2 District at premises 3820-26 McKinley Street, N.W. (Square 1859, Lots 49, 50, 51, and part of Lot 92).¹

HEARING DATE: April 7, 2009

DECISION DATE: May 5, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibit 4)

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (ANC) 3G and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3G, which is automatically a party to this application. ANC 3/4G filed a report dated January 16, 2009, indicating that it had voted at its regularly scheduled meeting of January 12, 2009, at which a quorum was present, to support the application subject to conditions. (Exhibit 19) The ANC submitted a second letter of support, dated April 15, 2009, indicating that it had voted unanimously at its regularly scheduled April 13, 2009, at which a quorum was present, to support the Applicant's landscaping plan submitted with a contract for soil preparation and planting as well as a maintenance contract for the planting area.² (Exhibits 28 and 30) The Office

¹ The application was amended at the public hearing on April 7, 2009, to seek relief under section 214 for accessory parking spaces and subsection 2116.5 for location of parking spaces. The application was prompted by the expiration of the 2003 Order on July 26, 2008, at the end of the term period of five years. The application again seeks to establish the accessory parking spaces so as to reapply for a Certificate of Occupancy.

² At the hearing on April 7, 2009, the Board requested that the Applicant submit a Landscape Plan that included the location and types of trees and other vegetation. The Board also provided the Applicant the opportunity to provide

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of Planning (OP) submitted a report and a supplemental report in support, as conditioned, of the requested special exceptions (Exhibits 23 and 29). Two petitions in support of the application were submitted for the record (Exhibits 22 and 25).

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 214 and subsection 2116.5. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 214, and 2116.5, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibits 24 and 27 – Parking Lot and Lawn Maintenance and Landscaping Contracts and Plans) be **GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. Approval shall be for **FIVE (5) YEARS**.
2. No trash dumpsters shall be located on the portion of the lot zoned residential.
3. The parking lot landscaping shall be planted within six months of the date of final BZA action and prior to the issuance of the Certificate of Occupancy for the parking lot use.
4. Snow and ice shall be promptly removed from the parking lot.
5. Representatives of the owners of the subject property shall establish and maintain a liaison with Advisory Neighborhood Commission 3G to discuss problems that might arise in connection with the operation of the parking lot to ensure that it continues to have no objectionable impact on the immediate area.

VOTE: **3-0-2** (Shane L. Dettman, Marc D. Loud, Michael G. Turnbull, to APPROVE. Mary Oates Walker, and the third Mayoral (vacant) appointee not participating, not voting.)

supplemental information addressing the provisions under section 214 and 2116.5 and a written statement outlining how the landscaping contract would be revised to include the design changes. The Applicant submitted a landscaping plan with a contract for soil preparation and planting and a maintenance contract. *See*, Exhibit 27.

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

Each concurring member approved the issuance of this order.

ATTESTED BY:



RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: MAY 07 2009

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR

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PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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As Acting Director of the Office of Zoning, I hereby certify and attest that on May 7, 2009, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

George H. Smith and Vivia Sherwood
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Silver Spring, MD 20910

Robert Holland
24271 Waterview Drive
Worton, MD 21678

Chairperson
Advisory Neighborhood Commission 3G
P.O. Box 6252 Northwest Station
Washington, D.C. 20015

Single Member District Commissioner 3G06
Advisory Neighborhood Commission 3G
3835 Livingston Street, N.W.
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941 N. Capitol Street, N.E.
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ATTESTED BY:

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

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