

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



**Application No. 18272-A of KS FBC, LLC**, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception for roof structures of unequal height pursuant to section 411, and for variances from the location of compact parking spaces under subsection 2115.4, and the height provisions under section 530, to allow the development of an apartment house as an addition to an existing church building in the DC/SP-1 and DC/SP-2 Districts at 1328 16<sup>th</sup> Street, N.W. (Square 181, Lot 163).

**HEARING DATE:** November 15, 2011

**DECISION DATE:** January 10, 2012

**ORDER DATE:** June 1, 2012

**RECONSIDERATION**

**DECISION DATE:** July 10, 2012

**ORDER DENYING RECONSIDERATION**

On June 13, 2012, Ms. Kay Marlin filed a motion for reconsideration of the decision of the Board of Zoning Adjustment ("Board" or "BZA") in Case No. 18272, as set forth in Order No. 18272 issued June 1, 2012 (59 DCR 6710). Ms. Marlin filed the application in her individual capacity and not on behalf of any party to the proceeding.

The Board deliberated on the request for reconsideration at its July 10, 2012, public meeting, and voted 4-0-1 to dismiss the motion.

**Request for Waiver to Allow Non-Party to File Motion**

Pursuant to § 3126.2 of the Board's Rules of Practice and Procedure (Title 11 DCMR, Chapter 31), only parties may seek reconsideration of a Board decision.<sup>1</sup> At the hearing

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<sup>1</sup> "Any *party* may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed with the Director within ten (10) days from the date of issuance of a final written order by the Board." 11 DCMR § 3126.2 (emphasis added).

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in this matter, the Board only granted party status to the Richmond Group and Ms. Helen A. White, on behalf of the Richmond Condominium. (See BZA Order No. 18272 at 2.) While Ms. Marlin testified at the hearing as a witness for the Richmond Group, she neither requested nor was granted party status. (See Transcript in BZA Case No. 18272, November 15, 2011 at 15-17; 133-48.) In filing her motion, Ms. Marlin did not expressly request a waiver of the Board's rules to allow a non-party to file a motion for reconsideration. Nevertheless, in an effort to assist a member of the general public with the complexities of the Zoning Regulations, the Board determined to infer from and treat Ms. Marlin's cover letter accompanying her motion as a request to waive the Board's rules to allow a non-party to file such a motion. Pursuant to 11 DCMR § 3100.5, the Board may, for good cause shown, waive many of its rules, including this one, if, in the judgment of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

Ms. Marlin stated that she was filing her motion for reconsideration as an individual because she lacked the financial resources to retain legal counsel to act on her behalf. However, she offered no explanation as to why the Richmond Group, the party on whose behalf she testified, could not file the motion for reconsideration. Ms. Marlin did not establish any nexus between her inability to obtain legal representation and the inability of the Richmond Group, a party, to file the motion. The Board therefore concluded that Ms. Marlin had failed to establish good cause pursuant to § 3100.5 to waive the requirements of § 3126.2 and allow a non-party to file a motion for reconsideration.

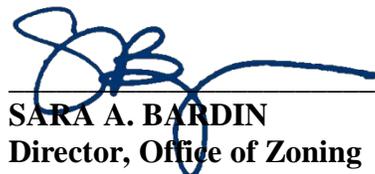
It is therefore **ORDERED** that the request to waive the Board's rules to allow a non-party to file a motion for reconsideration is hereby **DENIED**, and because a non-party may not request reconsideration, the motion is hereby **DISMISSED**.

**VOTE:**     **4-0-1**     (Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle to Deny the waiver<sup>2</sup>; Lloyd L. Jordan to deny by absentee ballot; no Zoning Commission representative participating)

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

A majority of the Board members approved the issuance of this order.

**ATTESTED BY:**

  
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**SARA A. BARDIN**  
**Director, Office of Zoning**

<sup>2</sup> Although the oral motion approved by the Board was only to “deny” the waiver request, this Order reflects the Board action to include the dismissal of the reconsideration motion since the denial of the waiver necessarily results in Board’s inability to reach the merits.

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**FINAL DATE OF ORDER:** August 15, 2012

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."