

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



Application No. 17527-A of John R. Klein, II, as amended,<sup>1</sup> pursuant to 11 DCMR § 3103.2<sup>2</sup> and § 3104.1, for variances from the parking space requirements under §§ 2115.1 and 2117.5, and a special exception from the parking lot requirements under § 213, to permit the continued operation of an accessory parking lot in the R-1-B District at premises (rear) 4418-4420 Connecticut Avenue N.W. (Square 1971, Lot 825).

**HEARING DATES:** July 19, 2016, and September 13, 2016  
**DECISION DATE:** September 13, 2016

**SUMMARY ORDER**

**SELF-CERTIFIED**

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Revised – Exhibit 45; Original - Exhibit 5.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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<sup>1</sup> The original application did not include the request for variances from parking space dimension and drive aisle width requirements, which were added to the application by revised self-certification form on September 7, 2016. (Exhibit 45.) The Applicant provided notice of the amendment by posting notice on the property on August 29, 2016, in advance of the continued hearing date. (Exhibit 42.) The caption has been revised accordingly.

<sup>2</sup> This and all other references in this Order to provisions contained in Title 11 DCMR, except those references made in the final all-capitalized paragraphs, are to provisions that were in effect on the date this Application was heard and decided by the Board of Zoning Adjustment ("the 1958 Regulations"), but which were repealed as of September 6, 2016 and replaced by new text ("the 2016 Regulations"). The repeal of the 1958 Regulations has no effect on the validity of the Board's decision or the validity of this order. Pursuant to Subtitle A § 104 of the 2016 Regulations, the construction authorized by this Order is vested as to the area requirements contained in 1958 Regulations as of September 5, 2016.

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441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@slc.gov](mailto:dcoz@slc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

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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") 3F and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. The ANC submitted a report on June 24, 2016 indicating that at a duly noticed and regularly scheduled public meeting on June 21, 2016, at which a quorum was in attendance, ANC 3F voted unanimously (7-0-0) in support the application, subject to 11 conditions. (Exhibit 29.) At the public hearing on September 13, 2016, ANC 3F Commissioner Malachy Nugent also testified in support of the ANC's proposed conditions, which included a four-year time limit on any relief approved by the Board.

The Office of Planning ("OP") submitted a timely report, dated July 12, 2016, recommending approval of the special exception under § 213, subject to conditions consistent with those proposed by the ANC. (Exhibit 35.) OP also testified at the hearing in support of the original application. After the Applicant amended its application to add a request for variances from the parking dimension requirements of § 2115.1 and the drive aisle requirements of § 2117.5, OP submitted a supplemental report recommending approval of the amended application, subject to conditions. (Exhibit 43.)

The District Department of Transportation ("DDOT") submitted two reports. On July 12, 2016, DDOT submitted a report indicating that additional information was needed from the Applicant before it could provide a recommendation on this application. (Exhibit 36.) On September 1, 2016, DDOT submitted a supplemental report indicating that it had no objection to the granting of the application, with conditions. (Exhibit 44.)

At the public hearing on September 13, 2016, the Applicant testified that it accepted the conditions proffered by the ANC, OP, and DDOT, except that the Applicant proposed a ten-year time limit on the relief, while the ANC, OP, and DDOT proposed a four-year time limit. The Board determined to impose a ten-year limit on its order granting relief, finding that a longer term is appropriate because the conditions include an annual reporting requirement to the ANC and because the ten-year term allows for the Board to impose a condition requiring pervious paving between the eighth and ninth year of that time period, if not sooner.

Special Exception Relief

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 a special exception from the parking lot requirements under § 213, to permit the continued operation of an accessory parking lot in the R-1-B District. 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

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filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to §§ 3104.1 and 213, 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.

Variance Relief

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 11 DCMR § 3103.2, for variances from the parking space requirements under §§ 2115.1 and 2117.5, to permit the continued operation of an accessory parking lot in the R-1-B District. 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 filed in this case, the Board concludes that in seeking a variance from §§ 2115.1 and 2117.5, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, AND PURSUANT TO § 3125.8, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 41 AND THE FOLLOWING CONDITIONS:**

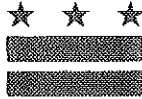
1. The Board's approval shall be valid for a period of **TEN (10) YEARS** beginning on the effective date of this order.
2. The Applicant shall provide up to 19 parking spaces, including one accessible space, in compliance with the American with Disabilities Act requirements and guidelines, on the site.
3. All areas, except the landscaped area, shall be maintained with a paving of material forming an all-weather impervious surface. The existing impervious material shall be replaced with pervious material between the eighth and ninth year of approval, or sooner, if major repaving activities are required.

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BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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 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 PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on September 22, 2016, pursuant to 11 DCMR § 3111.3, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail or delivered by electronic mail to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Patrick Brown, Jr., Esq.  
Kate M. Olsen, Esq.  
Greenstein DeLorme & Luchs, P.C.  
[jpb@gdllaw.com](mailto:jpb@gdllaw.com)  
[kmo@gdllaw.com](mailto:kmo@gdllaw.com)

John R. Klein, II  
P.O. Box 53  
Sharps, VA 22548

Chairperson  
Advisory Neighborhood Commission 3F  
4401-A Connecticut Avenue, N.W., Box 244  
Washington, D.C. 20008


Single Member District Commissioner 3F06  
Advisory Neighborhood Commission 3F  
3632 Appleton Street, N.W.  
Washington, D.C. 20008

Chair and At-Large Councilmembers  
Council of the District of Columbia  
[pmendelson@dccouncil.us](mailto:pmendelson@dccouncil.us)  
[esilverman@dccouncil.us](mailto:esilverman@dccouncil.us)  
[dgrosso@dccouncil.us](mailto:dgrosso@dccouncil.us)  
[abonds@dccouncil.us](mailto:abonds@dccouncil.us)

Mary Cheh, Councilmember  
Ward Three  
Council of the District of Columbia  
[mcheh@dccouncil.us](mailto:mcheh@dccouncil.us)

Charles Thomas, Esq.  
General Counsel  
Department of Consumer and Regulatory Affairs  
[charles.thomas@dc.gov](mailto:charles.thomas@dc.gov)

ATTESTED BY:

  
SARA A. BARDIN  
Director, Office of Zoning

