Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - May 12, 1971

Appeal No. 10720 F.H. Benson and E.A. Audette, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried, the following Order of the Board was entered at the meeting of May 18, 1971.

ORDERED:

That the appeal for request for Reconsideration and/or Rehearing for variance from the provisions of Section 7205.33 to permit accessory parking more than 800 feet from use, 1034-42 - 29th Street, NW., Lots 35,65, and 66, Square 1192, to serve Emergency, Inc. located at 2813 M Street, NW., be denied.

OPINION:

The request by the Committee Concerned About Emergency, Inc. for a rehearing of the subject appeal is denied in that there was not, as required by Section 8204 of the Zoning Regulations, any showing that new evidence would be produced at a rehearing that could not reasonably have been presented at the original hearing. There was also no showing that there would be new evidence that was not presented or considered at the original public hearing.

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

ATTESTED:

By: _____

PATRICK E. KELLY
Secretary of the Board

5/21/71

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - March 17, 1971

Appeal No. 10720 F.H. Benson and E.A. Audette, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried, with William F. McIntosh dissenting, the following Order of the Board was entered at the meeting of March 23, 1971.

EFFECTIVE DATE OF ORDER - April 16, 1971

ORDERED:

That the appeal for variance from the provisions of Section 7205.33 to permit accessory parking more than 800 feet from use, 1034-42 - 29th Street, NW., Lots 35,65, and 66, Square 1192, to serve Emergency, Inc. located at 2813 M Street, NW., be granted.

FINDINGS OF FACT:

1. The subject property is located in a C-M-2 District.

2. The property which the proposed parking is to serve is improved with a brick structure used as a restaurant, record shop, and public hall and is located in a C-2-A District. (See BZA Order on Appeal No. 10150). There is no space available on the lot for on-site parking.

3. The lot located at 1034 - 29th Street, NW., which is the subject of this appeal, is presently the closest area available for accessory parking and is easily reached by a short walk of barely over 800 feet along sidewalk-lined lighted streets.

4. The Board previously, on November 24, 1970, denied a request of Emergency for a special exception pursuant to Section 7205.33 of the Zoning Regulations to permit accessory parking at 1034 - 29th Street, NW., citing as grounds for its decision that the proposed parking is more than 800 feet from the site of Emergency, as required by Section 7205.33, interpreting that Section to require "sidewalk" rather than "air line" measurement.

5. On February 25, 1971, Emergency, Inc. filed an appeal to this Board "for a variance from the provisions of Section 7205.33 to permit accessory parking more than 800 feet from use, said parking to serve Emergency, Inc., located at 2813 M Street, NW.", said parking to be located at 1034-42 - 29th Street, NW., Lot 33, Square 1192. The application was filed in order to permit future use of the premises pursuant to a certificate of occupancy for a public hall.

6. The Department of Highways and Traffic offers no objections to the granting of this appeal.

7. The Committee Concerned About Emergency and the Citizens Association of Georgetown opposed the granting of the variance. As a result of Emergency's application and subsequent testimony and written documents submitted at the March 17, 1971 hearing, the following questions were presented:

(1) Has the BZA been ousted of its jurisdiction in this matter by the pending District Court action, Emergency, Inc. v. Scrivener, Jr. et al, or is that case sufficiently separate and distinct from the one presently before the Board.

(2) Does Emergency's request fall within the terms of paragraph [3] of Section 5-420 of the District of Columbia Code.

OPINION:

On the basis of the record presented to the Board, we are of the opinion that Emergency's pending application for a variance in the above-captioned appeal involves the future use of the property at 2813 M Street and that therefore the Board has not been ousted of its jurisdiction in this matter by the pending District Court action, Emergency, Inc. v. Scrivener, Jr. et al, (Civil Action No. 1770-70) as said District Court case deals with Emergency's present use of the above mentioned property. We conclude that we have jurisdiction to consider and decide Emergency's present application.

OPINION Cont'd:

We are further of the opinion that Emergency's request for a variance satisfies the requirements of paragraph [3] of Section 5-420 of the District of Columbia Code. In the C-2-A zone in which Emergency is located a public hall use is permitted as a matter of right (Section 5102.35 of the Zoning Regulations). The only factor preventing Emergency from obtaining the public hall certificate of occupancy which it now desires is the requirement of on-site parking for off-site parking within 800 feet (sidewalk measurement) pursuant to special exception, which cannot technically be met because of the condition of the property and the immediate area adjacent thereto which is involved herein. Consequently, an "extraordinary and exceptional situation or condition of a specific piece of property" exists such that the strict application of Section 7205.33 of the Zoning Regulations "would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the owner of such property" and upon Emergency.

The record shows that the parking lot in question, which is in a C-M-2 zone and is presently used for daytime parking by the patrons of District Lithograph Company, is barely outside the 800 foot requirement of Section 7205.33 of the Zoning Regulations. The record of this appeal and of former Appeal No. 10565 shows that 19 immediate neighbors have signed a petition indicating their support of Emergency's request and more than 150 other citizens have submitted written expressions of their support for the request. Consequently, the variance required herein 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" (D.C. Code, Section 5-420, para. [3]).

OPINION Cont'd:

The Board recognizes the fact that its previous opinion of November 24, 1970, stating that the proposed parking spaces at 1034-29th Street, "will not furnish reasonable and convenient parking for the guests of Emergency", was based primarily on the contention of the opposition set forth in FINDINGS OF FACT NO. 5 of the November 24 Order. In that Order, the Board relied on the argument of the Citizens Association of Georgetown that "the proposed parking spaces are more than 800 feet from the property line of Emergency, Inc. and therefore would not furnish convenient and reasonable parking" (emphasis supplied). Having reconsidered this matter after inspection of the property involved, we do not find that the mere fact that said parking spaces are located at a distance of more than 800 feet from the Emergency property line renders these spaces per se not "reasonable and convenient". The record shows that the parking lot in question is barely outside the technical requirements of Section 7205.33 of the Zoning Regulations and that the proposed lot is reasonably and conveniently reached by a short walk along sidewalk-lined, lighted streets.

We therefore conclude that this appeal should be granted.

This order shall be subject to the following condition:

(a) The Appellant shall provide a covenant for the proposed parking.

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

ATTESTED:

By: _____
PATRICK E. KELLY
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.