

AMENDED ORDER

BEFORE THE BOARD OF ZONING ADJUSTMENT, D.C.

Application No. 11668, of Donohoe Construction Company, Inc. for roof structure approval (Section 5306), extension of the C-3-A District (Section 7514.12), reduction in required parking (Section 7203.1), accessory parking on R-2 portion of site (Section 3101.411) and variances to permit arcade at other than sidewalk level (Section 7515.1) and reduction in required size of parking space for 30 spaces (Section 7204) in connection with proposed office building at 4200 Wisconsin Avenue, N.W. Lots 814,815,819 and 820, Square 1786.

DECISION DATE: October 26, 1976 (Executive Session)

FINDING OF FACTS:

1. The application was heard on June 19, 1974 and July 14, 1974. By its Final Order No. 11668, dated November 15, 1974, the BZA GRANTED applicant's request for special exception to reduce required parking by 25%, roof structure approval, and extension of below grade parking 35 feet into the R-2 Zone, and variances from the setback requirements for roof structures and arcade at other level than sidewalk level. The Order DENIED the special exception to allow 52 parking spaces above grade extended 35 feet into the R-2 Zone. The Finding of Fact set forth in the Order of November 15, 1974 are incorporated herein by reference except insofar as they pertain to the request for special exception to permit accessory parking on the R-2 portion of the site as hereinafter more fully described. See, particularly, Findings of Fact, Nos. 7,11,13,21 and the first two paragraphs of the Conclusions of Law of the Order of November 15, 1974.
2. In a related case BZA appeal No. 11906 the North Cleveland Park Citizens Association filed an appeal, D.C. Court of Appeals No. 9044, challenging the approval of a building permit for the subject premises, 4200 Wisconsin Avenue, which appeal is now pending.

3. The Corporation Counsel, D.C. filed a Motion For Remand on the grounds that it believed the findings of fact and conclusions of law of respondent, Board of Zoning Adjustment, were inadequate as to petitioner's request pursuant to Zoning Regulations, Sub-section 3101.411, to permit a surface parking lot containing 52 accessory parking spaces on the R-2 petitioner's lot.
4. Respondent's Motion was unopposed and was GRANTED, per curiam, March 13, 1975.
5. Counsel for the applicants and counsel for those in opposition on Case No. 11668 and the petitioner in the appeal from the aforementioned appeal No. 11906 have prepared a Letter of Understanding dated July 29, 1976, based upon a more restricted number of spaces for accessory parking. In essence the settlement agreement provides for a limitation of the number of accessory parking spaces to 23 in lieu of the 52 originally requested, and a detailed site plan having the approval of the parties and persons in opposition.

Upon approval by the Board of Zoning Adjustment of the 23 spaces and the site plan the aforesaid North Cleveland Park Citizens Association will dismiss the pending petition in the District of Columbia Court of Appeals, D.C.C.A. No. 9044.

6. The site plan submitted with this request for approval of the 23 spaces shows a substantial setback from the Northwest property line with substantial screening, both on the outside of the parking area and inside of a seven-foot high continuous masonry wall. The screening thus provided, together with the reduction in number of cars, permit the proposed parking spaces to be so located and designed so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.

7. The parking spaces will be in an open area the entirety of which is within 200 feet of the area to which the spaces are accessory, and contiguous to the use to which they are accessory.
8. Because of the size and shape of the lot and existing strip zoning of the C-3-A on the frontage of the lot with R-2 at the rear and because of the restrictions on the size of the building which are caused by the depth of the lot extending into the R-2 zone it is economically impracticable to locate the parking spaces within the principal building or a portion of the lot zoned C-3-A. Moreover the site has difficult subsoil conditions as indicated in the statement of the architect at the hearing and test boring submitted to the Board. Finally, from a traffic standpoint, it is desirable to have access on Van Ness Street substantially removed from Wisconsin Avenue.
9. On August 6, 1976 applicant and others requested BZA action on that portion of application No. 11668 requesting a special exception for location of accessory parking on the R-2 portion of the site in connection with the proposed building at 4200 Wisconsin Avenue, N.W.

CONCLUSION OF LAW:

On the basis of the evidence of record, the Board concludes that the applicant has met the requirements of Section 3101.411 of the Zoning Regulations with regard to the accessory parking spaces to be located on the R-2 portion of the property. Further, the Board concludes that the special exception can be granted without adversely affecting the use of neighboring property in accordance with Zoning Maps and Regulations and is in harmony with the general purpose and intent of the Zoning Regulations and Maps. Accordingly, it is

ORDERED that the request for approval of accessory parking spaces pursuant to Section 3101.411 of the Zoning Regulations for 23 spaces is GRANTED subject to the points of understanding as set forth in the Letter of Understanding, dated July 29, 1976 and incorporated herein by reference. The Board's Order of November 15, 1974 is AFFIRMED in all other respects.

VOTE: 3-0 (William F. McIntosh, Leonard L. McCants, Esq., and William S. Harps)

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

ATTESTED BY: 
ARTHUR B. HATTON
Executive Secretary

FINAL DATE OF ORDER: 1-14-77

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 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D. C.

Application No. 11668, of Donohoe Construction Company, Inc., for roof structure approval (Section 5306), extension of the C-3-A District (Section 7514.12), reduction in required parking (Section 7203.1), accessory parking on R-2 portion of site (Section 3101.411) and variances to permit arcade at other than sidewalk level (Section 7515.1) and reduction in required size of parking space for 30 spaces (Section 7204) in connection with proposed office building at 4200 Wisconsin Avenue, N. W., Lots 814, 815, 819 and 820, Square 1786.

PUBLIC HEARINGS: June 19, 1974 and July 17, 1974

EXECUTIVE SESSION: July 23, 1974, August 27, 1974

FINDINGS OF FACT:

1. The property which is the subject of this application is located at the northwest corner of the intersection of Van Ness Street and Wisconsin Avenue, N. W., is irregularly shaped and is split zoned C-3-A and R-2.
2. The F.A.R. of the roof structure is 0.178. The roof structure will be constructed of pre-cast beige masonry as will the main structure. The roof structure, pursuant to Section 3308.21, is set back from all property lines except for the northern property line where the roof structure adjoins the roof structure of the office building immediately to the north, which was approved by this Board in Application No. 8179-82. The size, split zoning and configuration of the site require the roof structure to be located as proposed in order to have a suitable location for the elevator and mechanical core.
3. The applicant proposes to construct a building to be located within the C-3-A zoned portion of the lot, applicant seeks special exception approval and "area" variances from this Board as indicated above in the description of the application.
4. With regard to the extension of the C-3-A District pursuant to Section 7514.12, Lots 814 and 819 in Square 1786 were split zoned by the Zoning Regulations and Maps on May 12, 1958 when said lots were in single ownership. The extension requested is limited to that portion of the lots in the R-2 District not exceeding 35 feet from the C-3-A District and is solely to permit extension of the garage level below grade which will be used for miscellaneous storage incidental to the office use. No portion of the building above grade will be located in the C-3-A District.
5. As determined by the Zoning Administrator, the required parking is 294 spaces. The applicant seeks a reduction in the

required parking spaces to 258 spaces. The office use of the proposed building has a gross floor area of 85,447 square feet and a gross floor area of retail use of 39,019 square feet.

6. The major use of the building is for office use. The property is located on the major arterial of Wisconsin Avenue with direct access to the cross street of Van Ness Street. Wisconsin Avenue is a six-lane major arterial which traverses the District of Columbia diagonally and extends from the Maryland line to K Street, N. W. Van Ness Street has two lanes east at its intersection with Wisconsin Avenue and two lanes west at its intersection with Nebraska Avenue and offers traffic service from Massachusetts Avenue to Connecticut Avenue. Wisconsin Avenue provides bus transportation access and, in the future, through Metro by way of rapid transit, will have additional public transportation available. Existing bus service is shown in Figure 2 of this Traffic Analysis for the proposed office building submitted by Wilbur Smith & Associates, traffic consultants. The reduction in parking is expected to increase the utilization of public transportation. While there are no other immediately available parking facilities, the parking provided will be adequate for the peak population of the building. Traffic generated by the proposed building can be adequately handled within existing street capacities.

7. Of the 258 parking spaces provided, 206 will be located within the parking garage structure. The remaining 52 spaces are proposed to be located at the rear of the building pursuant to Section 3101.411 of the Zoning Regulations on the R-2 portion of the site. These proposed 52 spaces would be located in their entirety within 200 feet of the area to which they are accessory and are contiguous to the main building.

8. The applicant, at public hearing, specifically requested a 17% reduction of the number of required parking spaces, although this application was filed under Section 7203.7 of the regulations, which provides for a 25% reduction of required parking spaces as a special exception.

9. Of the 258 parking spaces provided, applicant requests reduction from the required size of 9x13 feet, excluding columns.

10. Applicant asserted at public hearing that this "area" variance is based upon the split zoning of the site, its configuration and the subsurface soil conditions, that these conditions make it practically difficult to provide the 258 spaces within the garage and on the surface without the reduction in size of the 30 spaces.

Applicant further stated that experience has shown that utilization in recent years of compact cars at office buildings and retail spaces is between 10 and 20 percent, and it is anti-

icipated that in succeeding years the percentage of compact cars will substantially increase. The compact cars can utilize the reduced parking space size.

11. Mr. Coleman Bird, a property owner affected by this application, represented himself and 127 property owners in the neighborhood of this application. The substance of the opposition raised by Mr. Bird is that parking in the R-2 portion of the subject property would allow a commercial use in a residential zone and that the above grade parking 35 feet into the R-2 zone in question would be objectionable by increasing automobile traffic in this residential neighborhood which is presently subjected to parking congestion.

12. Mrs. Beaubien, of 3669 Haupman Street, N. W., testified on behalf of the North Cleveland Park Citizens' Association and testified that the association did not oppose reduction of required parking.

13. The opposition, further stated objections to the granting of the applicants' requested variances which relate to the construction of the proposed building on the grounds that the District's Zoning Plan for this area is bad and that development in this area should be halted until plan for development of the Van Ness Area is created.

14. The use of an office is permitted as a matter of right in the C-3-A Zone.

15. The applicant's proposal to construct the building in question requires approval of area variances for arcade construction, and roof structure set back.

16. The applicant's arcade complies with all the provisions of Section 7515, except that because of the drop in topography from Wisconsin Avenue westerly on Van Ness Street, the arcade cannot be completely at sidewalk level. The arcade, which faces Van Ness Street and also Wisconsin Avenue at its eastern end, contains approximately 600 square feet, has a 0.015 F. A. R. and is approximately 1.6 per cent of the floor area to which it is adjacent. The topography drops from Wisconsin Avenue a total distance of 175 feet.

17. The purpose of the arcade is to encourage pedestrian usage from the western end of the building to the eastern end at Wisconsin Avenue. A substantial amount of open space is provided by the arcade as well as on private property adjacent to the arcade at the intersection of Wisconsin and Van Ness. All other conditions of Section 7515 will be complied with.

18. The only adjoining single-family home owner to the subject property (residence--3939 Van Ness Street, N. W.) by letter dated June 14, 1974 supports the application and states, "It is my belief that the proposed use will be an asset to the area and will not have any detrimental affects. In my view, the use will be a better neighbor than the past use of the flower shop and sales on the site. This is because, in my belief, the traffic and activities will not be as noticeable and will be more controlled."

19. The applicant complies with the provisions of Section 7514.11 (d) in that a floor area ratio of 0.4 is utilized for the 35 foot extension, which is permitted as a matter of right. The extension will not have any adverse affect upon the present character and future development of the neighborhood in that it will not be visible from any other surrounding properties because it is below grade and it does not increase the density of the building over what is permitted as a matter of right.

20. The proposed parking spaces below grade which would extend underground into the R-2 Zone are located so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.

21. The proposed 52 parking spaces which would be located to the rear of the proposed building in the R-2 Zone would be objectionable because there is no rear access to the R-2 portion of the lot.

22. The Department of Highways and Traffic stated no objections to the reduction of parking requested by the applicant, however, the Department suggested that "No left turn signs" be posted on Van Ness Street, N. W., to prohibit traffic going east on Van Ness from entering the subject property during peak hours of traffic.

23. By detailed staff reports dated June 11, and June 12, 1974, the Office of Planning and Management submitted a favorable recommendation on the applicant's requests. The staff supported a further reduction in parking. At the public hearing on June 19, the staff member presenting the OPM report also proposed that there be an additional 10-foot setback from the northern line of the property for the parking area and masonry wall. Applicant, through counsel, stated that it would have no objection to such an additional setback if deemed appropriate. However, it pointed out that the setback from Veazey Street, by reason of the intervening public space, was already 27 to 36 feet at 40th Street.

24. At the public hearing on July 17, a supplemental revised report of the Office of Planning and Management was proffered to the Board. This report was not prepared by the staff member who had prepared the previous report and the person who prepared the revised report was not present for cross-examination. Essentially, this revised report supported the reduction in parking but stated that no variances should be granted which would increase the density of the building. Applicant does not request any variances which increase the density of the building although, under the arcade provisions, credit will be permitted for 600 square feet. Such credit is permitted as a matter of right. The only variance requested with regard to the arcade is that it be permitted at other than the sidewalk level.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board concludes that the applicant has met all the requirements and standards set forth in the regulations for the special exception requested with the exception of above grade parking on the R-2 portion of the lot. The office building in the C-3-A area is permitted as a matter of right and the special exception approvals are incidental to that building and use. We conclude that the roof structure meets all the requirements of Section 3308 and that the reduction in required parking is appropriate. Such a reduction, we believe, is in keeping with the need to encourage public transportation. The sole purpose of the extension of the C-3-A District under Section 7514.12 is to permit a below-grade extension of two levels of a garage. We do not believe that this constitutes a detrimental intrusion into the R-2 area.

The Board is of the opinion that the 52 accessory parking spaces proposed to be located on the surface parking area at the rear of the site in the R-2 District, if approved by the Board, would not be in harmony with the residential use of adjoining and nearby property.

With regard to the reduction in size of parking spaces for 30 spaces, the Board concludes that the basis for such relief submitted by the applicant does not support the granting of this variance. The Board is of the opinion that split zoning, configuration of the lot, and configuration of the site creates a practical difficulty to strict application of the Zoning Regulations in this case, wherein, a 25% reduction of required parking would be a solution to such practical difficulty.

The variance from the arcade requirement that the arcade be at sidewalk level is established by virtue of the topography of the site and its drop in elevation of approximately nine feet westerly from Wisconsin Avenue. If the site were basically level, the arcade provided would be permitted as a matter of right.

The Board concludes that the grant of the special exceptions requested will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the regulations and maps. Each of the conditions and standards set forth in the regulations will be met. The area variances from roof structure set back and arcade location requirements are minor and are established by the practical difficulties inherent in this particular tract of land. We conclude that the granting of these minor variances will not be in conflict with the public good and will not impair the intent, purpose and integrity of the zone plan.

ORDERED: That the applicant's request for special exception to reduce required parking by 25%, roof structure approval, and extension of below grade parking 35 feet into the R-2 Zone, and variances from the setback requirements for roof structures and arcade at other level than sidewalk level be GRANTED; and the special exception to allow 52 parking spaces above grade extended 35 feet into the R-2 Zone be DENIED.

CONDITIONS:

1. Applicant will comply with all the provisions of Article 74.

VOTE: 4-0, (Lilla Burt Cummings, Esq., not present, not voting).

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

ATTESTED By: James E. Miller
JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: **NOV 15 1974**

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 DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.