

Before the Board of Zoning Adjustment, D. C.

Application No. 11807 , of the Golden Commissary Corporation, pursuant to Section 8207.2 of the Zoning Regulations, for a special exception to permit accessory parking in the W-1 zone, as provided by Section 4402.219, on a lot other than where the principal use is located, as provided by Section 7205.33 of the Regulations, at the premises 1074 & 1076 - 30th Street, N. W., and the rear of Thomas Jefferson Street, N. W., Lots 839, 840 and 854, Square 1197, the principal use being that of the Biograph Theater, located in the C-M-2 zone, at 2819 M Street, N.W., Lot 807, Square 1212.

HEARING DATE: December 18, 1974, January 15, 1975 and February 19, 1975
EXECUTIVE SESSION: February 25, 1975

FINDINGS OF FACT:

1. Applicant proposes to permit use as accessory parking ; its parking lot located in the W-1 zone in the amount of 14 spaces, with the principal use being the Biograph Theater located in the C-2-A zone.

2. Public hearing of this matter has been continued over for three separate hearing dates and required notice has been furnished pursuant to the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment 22 D.C.R. 3.23 including but not limited to mailing notice to owners of property abutting the subject property and to occupants of property situated within 200 feet of both the proposed accessory use, Lots 839, 840 and 854, Square 1197, and the principal use, Lot 807, Square 1212.

3. The principal use, the Biograph Theater, is a public theater containing 280 seats. The building was constructed prior to adoption of the Zoning Regulations and it covers the entire Lot 807, in Square 1212, with no alley adjacent to the lot therefore providing no off-street parking on its site.

4. Pursuant to Section 7202.1 of the Zoning Regulations, the Biograph Theater containing 280 seats is required to furnish 1 off-street parking space for each ten seats requiring a total of 28 spaces.

5. The total number of required spaces is reduced by Section 7201.2 which provides "when the use of a structure is changed to another use which requires more parking spaces than required for the use existing immediately prior to such change, . . . parking spaces shall be provided for the additional requirement in the amount necessary to conform to Section 7202."

6. The prior use of the Biograph Theater, as a retail service agency, entitles it to a credit of 14 parking spaces, pursuant to Section 7201.2 of the Regulations, leaving a total net requirement of 14 off-street parking spaces. The applicant's Exhibit #1 provides for furnishing 16 parking spaces.

7. Applicant proposes to provide accessory parking for the Biograph Theater pursuant to the authority of Sections 7205.33 and 7205.34 which provide in part that "such spaces are **so** located as to furnish reasonable and convenient parking facilities for the occupants or guests of the structure for which they are designed to serve, but in no case shall they **be** farther than 800 feet from any lot line of the lot upon which the structure is located;" and the Board . . . may also impose such other conditions as **it** shall ~~deem~~ necessary to assure the continued provision and maintenance of such spaces."

8. While there is contradictory testimony as to the precise total walking distance from any lot line of the principal use to the portion of the parking lot designated on Applicant's Exhibit No. 1 which encompasses 16 parking spaces, **both the** Applicant and the Zoning Activities Unit of the Municipal Planning Office show the distance to be no more than 800 feet. The measurement is calculated in this case from the nearest lot line, which meets the intent of Section 7205.33 of the Regulations requiring the point of origin be any of the four lot lines of the site where the principal use is located.

9. Applicant has obtained oral agreement which will become a written covenant between the Applicant, its long-term lessee and the Biograph Theater that the precise 16 parking spaces designated on Applicant's Exhibit No. 1 will be continuously available to the Theater as accessory parking during the term of the Board's Order.

10. Applicant has introduced Exhibit No. 2, a Certificate of Occupancy issued **on** June 26, 1968 for the premises known as Lots 839, 840 and 854, Square 1197, in the C-M-2 zone, for use as a parking lot. Said Certificate of Occupancy remains valid and unexpired and the facility continued to operate as a commercial parking lot as a matter of right until November 21, 1974 when the zoning district was changed to W-1.

11. Section 4402.4 prohibits parking lots in the W-1 zone but the continued lawful use of the property prior to the re-zoning has resulted in a change to a **non-conforming** use as provided in Section 4402.5. The non-conforming use does not prevent the subject property from being utilized as accessory parking which is permitted in a W-1 zone pursuant to Section 4402.219

12. Applicant customarily operates its parking facility from 8:00 a.m. to 6:30 p.m. but has the intention to change the hours of operation to accommodate the Biograph Theater parking.

13. The Zoning Unit of the Municipal Planning Office recommends approval of the proposed application both **by** written memorandum addressed to the Board and **by** testimony at the public hearing through its duly authorized agent, The testimony of the Zoning Unit concludes that the proposed accessory parking complies with Article 72 of the Zoning Regulations; it meets the standards of Section 8207 requiring harmony with the neighborhood and the intent of the Zoning Regulations; and there is no adverse affect on the immediate neighboring row houses which are in close proximity to the commercial scrip of M Street, N. W, and the mixed uses partially surrounding the subject property.

14. Petitions were filed but no testimony was offered by property owners and occupants of property directly affected by the proposed application. The petitions were in opposition to the application on the ground that the extension of operating hours of the parking facility into the evening hours **may** cause continued disturbance to the homes and represent an unwarranted intrusion of a commercial use on the residential property.

15. A photograph **was** submitted as Opponent's Exhibit No. 3 depicting some portion of the subject property for the purpose of establishing the measurements of the parking spaces and parking aisles as being in violation of Article 72 of the regulations. The opposition also testified that all of the accessory parking spaces proposed were not within the 800 feet requirement.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact and record, the Board is of the opinion that the proposed accessory parking is in harmony with the purpose and intent of the Zoning Regulations. While the opposition objects to the proposed use because of evening usage of the subject parking facility would disturb their residential neighborhood, the Board is of the opinion that the off-street parking sought by applicant and required by the regulations for a use that is permitted as a matter of right, would remove ^{to} some extent the on-street parking of theater patrons on the residential streets of the neighborhood in question, which **is indeed the** purpose for requiring off-street parking.

The Board concludes, that the applicant has carried his burden of proof by demonstrating compliance with the conditions set forth in Section 7205.33 of the regulations, and that the proposed use is reasonable and convenient to the principle use (Biograph Theater) and if granted, This application would not adversely affect the use of nearby and adjoining property as stated by Section 8207.2 of the regulations.

ORDERED:

That the above application be GRANTED providing sixteen (16) parking spaces subject to the applicant furnishing and recording a covenant running from the applicant and its long-term leasee, to the Biograph Theater Corporation whereby the parking spaces set forth on applicant's Exhibit No. 1 are expressly provided for use by the Biograph Theater as accessory parking for the duration of operation of the theater located at 2819 M Street, N. W. Said covenant shall also have attached a certified copy of the lease existing between the applicant and its long term leasee,

VOTE: 4-1 (Mr. Scrivener not present, having voted by proxy through Mr. Harps, **who** dissented, Lilla Burt Cummings, Esq., dissented.)

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: *7/17/75*

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.