

Before the Board of Zoning Adjustment, D. C.

Appeal No. 11906 of the North Cleveland Park Citizens Association, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from a determination of the Zoning Administrator in issuing **building** permit No. B230377, December 13, 1974, alleging error in construction of Section 7202.1 of the Zoning Regulations and applying Board of Zoning Adjustment Order No. 11668 dated November 15, 1974, affecting premises 4200 Wisconsin Avenue, N. W., Lots 814, 815, 819, 820, Square 1786 in the C-2-A/R-2 zones.

PUBLIC HEARING: March 31, 1975
DECIDED FROM BENCH: March 31, 1975

FINDINGS OF FACT:

1, Appellant Association in this appeal asserts that the Zoning Administrator committed error in following the long-established application of Section 7202.1 of the Zoning Regulations in approving a building permit for 4200 Wisconsin Avenue, N. W. pursuant to the Board's Order in Application No. 11668 granting a 25 per cent reduction in required parking. Specifically, appellant challenges the application of Section 7202.1 in a manner which exempts 2,000 square feet of gross floor area for each retail establishment within a building and asserts that the Zoning Administrator improperly applied the Board's grant of 25 per cent reduction in required parking for the subject building,

2. Appellee Zoning Administrator and intervenor property owner, Donohoe Construction Co., Inc., state that the Zoning Administrator did not err in applying Section 7202.1 of the Zoning Regulations and in applying the 25 per cent reduction to the plans before the Zoning Administrator pursuant to the Order of the Board in B.Z.A. Application No. 11668.

3, In B.Z.A. Application No. 11668, Donohoe Construction Co., Inc. sought, with regard to parking for a mixed-use commercial office and retail building which is permitted as a matter of right in a C-3-A zone, permission to locate 52 parking spaces on the surface of the property at the rear of the building in the R-2 zoning classification, a reduction in size of parking spaces from the 9' X 19' requirements of Section 7204 for 30 spaces and for a reduction in required parking of 12 per cent. Under the applicant's proposal presented to the Board, the Zoning Administrator's Office had computed a requirement of 298 parking spaces. Applicant had proposed to meet that requirement by providing 52 spaces on the surface of the lot on the R-2 portion at the rear of the proposed building and 206 spaces within the garage. Thirty of the parking spaces would be reduced in size and a total of 258 parking spaces would be provided, thereby meeting the requirements with a 12 per cent reduction.

4. On the face of the plans before the Board of Zoning Adjustment in No. 11668, four retail areas were shown and required parking for the four areas was computed on the basis of the long-established application by the Zoning Administrator and the Board of Zoning Adjustment in applying a 2,000 square foot exemption to each retail area pursuant to Section 7202.1. The plans indicated a possible further division of retail space into smaller retail shops, which division in the C-3-A District is permitted as a matter of right.

5. Appellant Association appeared and actively participated in the hearings before the Board in B.Z.A. Application No. 11668 opposing the construction of the building in the C-3-A zone but supporting a reduction in parking to encourage the use of mass transit. Applicant's plans for its proposed building indicating the method of computation of the retail areas and further indicating a possible further subdivision of the retail space were contained in the public record and were exhibited at the public hearing.

6. The Board of Zoning Adjustment by Order dated November 15, 1974, denied the request to provide 52 parking spaces at the rear of the building on the surface of the lot, denied the reduction in size of parking spaces for 30 spaces but granted a 25 per cent reduction in parking in lieu of the 12 per cent reduction requested on the basis of practical difficulties inherent in the site. The practical difficulty related to the inability to provide "the 258 spaces within the garage and on the surface without the reduction in size of 30 spaces." The Order of the Board contained no conditions as to the specific number of spaces required and no conditions with regard to resubmitting final plans to the Board. As applicable here, "the applicant's request for special exception to reduce required parking by 25 per cent , . . (was) **GRANTED**," with no pertinent conditions. See pages 2, 5 and 6 of Order in No. 11668.

7. The Order granting partial relief was served upon appellant Association. Appellant Association did not seek reconsideration, did not appeal to the courts from the Order and did not otherwise challenge the method of computing required retail parking or the effect of the denials of surface parking and reduction in parking spaces and the consequent requirement to locate parking for the building under the 25 per cent reduction within the garage space,

8. In reliance upon the Board's Order, Donohoe Construction Co., Inc; filed final plans with the Zoning Administrator pursuant to the Board's Order without the 52 parking spaces on the surface of the lot and with the parking within the two garage levels fully complying with the

required 9' X 19' size of parking spaces. 187 spaces were provided in the garage area which was before the Board based upon the same office area and retail area, except that seven retail areas instead of four retail areas were provided in the plans. A further subdivision had been indicated in the plans before the Board and is permitted as a matter of right in the C-3-A zone.

9. Without the right to locate required parking spaces on the surface of the lot and without the right to reduce the size of the parking spaces, Donohoe Construction Co., Inc., pursuant to the 25 per cent reduction in required parking granted by the Board, was able to provide the 187 parking spaces within the garage areas. The 187 spaces total the required parking under a 25 per cent reduction for a parking requirement of 250 spaces for the proposed mixed-use building.

10. The Zoning Administrator in computing the required parking applied the long-established method of computing the requirements for retail establishments with a 2,000 square foot exemption for each retail area on the basis of a long-standing application of the Regulations, which was specifically affirmed by the Board of Zoning Adjustment in Appeal No. 11227. As previously indicated, the parking computation for the plans before the Board in No. 11668 were also computed on the same basis.

11. In B.Z.A. Appeal No, 11227, the Board by Order dated July 24, 1973 upheld the Zoning Administrator's application of Section 7202.1 and specifically affirmed the computation of required parking for retail establishments with a 2,000 square foot exemption as to each establishment.

12. On December 13, 1974, a building permit for excavation and foundation work was issued to the Donohoe Construction Co. with the approval of the Zoning Administrator.

13. On February 28, 1975, two and one-half months after the permit was issued, appellant Association filed the instant appeal. During the period of time from the date of the Order on November 15, 1974 to approximately February 28, 1975, appellant Association did not review the plans or seek information with regard to the processing of said plans within the Office of Zoning Administrator. The counsel for appellant Association stated at public hearing that he had no recollection of why such review **was** not made.

14. Counsel for Donohoe Construction Co, at the public hearing represented that in excess of \$120,000 was expended on the basis of the Order of the Board of Zoning Adjustment and the issuance of the permit with the Zoning Administrator's approval,

15. The letter of authorization required pursuant to the Rules of Procedure of the Board with regard to the instant appeal dated February 25, 1975, indicates that the only basis for appeal is the contention that, under Section 7202.1, the Zoning Administrator committed error in applying a 2,000 square foot credit to each retail establishment,

16. In applying Section 7202.1 to the final plans before him, the Zoning Administrator relied upon the long-established and consistent interpretation of Section 7202.1 excepting 2,000 square feet for each retail establishment.

17. In applying the Order of the Board in No. 11668 to the final plans, the Zoning Administrator based his approval on the long-established and consistent method of applying Orders of the Board in which partial relief is granted and where there is no condition requiring resubmission of the plans to the Board.

18. The building for which permit was issued is not within the boundaries of appellant Association, Appellant's statements before the Board do not factually describe any adverse affect on the Association by virtue of the approval of the building permit, The only allegations are conclusory in nature set forth in an addendum to the appeal form. No further statements of substance relating to "aggrievement" were submitted to the Board pursuant to the requirements of Rule 2.23 of the Rules of Practice and Procedure.

19. At the public hearing, the Zoning Administrator and Donohoe Constructton Co., Inc. moved to dismiss the appeal on the basis that the Zoning Administrator had not comnitted error in applying Section 7202.1 and the Order of the Board in No, 11668 in approving the building permit. All parties were given full opportunity to be heard and the views of the parties were fully considered with regard to the Motion to Dismiss,

20. Ruling upon the Motions to Dismiss, the Board granted the Motions to Dismiss the appeal with regard to the alleged error by the Zoning Administrator in applying Section 7202.1 pursuant to the Board's Order by a vote of 4-1 (Board Member Cumings Dissenting).

21. Board Member Klauber made a motion to require a hearing to review the final plans which were approved by the Zoning Administrator pursuant to B.Z.A, No, 11668. After considerable discussion and indication by the Chairman that action on the motion, if a denial, would dispose of the appeal, the motion was denied by a vote of 3-2 (Board Members Cummings and Klauber dissenting) .

CONCLUSIONS OF LAW:

1. Order No. 11668 was a final and binding Order upon all parties and the Board of Zoning Adjustment, no motion for reconsideration or appeal having been filed by appellant Association.

2. The Zoning Administrator in basing his computation of required parking for retail spaces on the previous Board decision in Case No. 11227 did not commit error.

3. The Zoning Administrator did not commit error in applying the Order of the Board in No. 11668 to the plans before him and approving permit No. B230377.

OPINION:

All pleadings, testimony and argument of counsel having been fully considered, the Board is of the opinion that the Zoning Administrator did not err in applying the 2,000 square foot exemption to each retail establishment on the plans before him and did not err in applying the Order of the Board in Application No. 11668.

Under the terms of the Board's Order, the property owner, because of the practical difficulty found by the Board and the denial by the Board of surface parking and the reduction in size of parking, was not able to provide the 206 spaces in the garage. Thus, the parking layout in compliance with the required 9' X 19' size of spaces resulted in a layout within the garage area of the building as approved by the Zoning Administrator. There was no change in the size of the building and gross floor area.

The change from four retail areas to seven retail areas is permitted as a matter of right in the C-3-A zone. Further, the plans before the Board indicated the possibility of further subdivision of the retail space. The Board's Order did not specify a specific number of spaces that were required to be provided for the site, did not prohibit the further subdivision of retail space and did not require the applicant to resubmit plans to the Board for approval,

Under the terms of the Board's Order in No. 11668, because of the denial of surface parking and the denial of the reduction in size of parking spaces for 30 spaces, a modification of the plans was required. The Zoning Administrator approved the final plans under the normal and long-standing procedure of applying Orders of the Board granting partial relief and to final plans submitted for approval thereunder. The Zoning Administrator accordingly did not commit error in approving the applicant's plans pursuant to the Board's Order and under Section 7202.1.

The Board notes further that appellant Association has stated no factual showing of injury because of the approval of the final plans and did not seek an appeal or reconsideration of the Board's Order in No. 11668, Such reconsideration or appeal to the courts could have then challenged the long-established application of the computation of individual retail establishment parking requirements as well as the terms of the Board's Order, Appellant did not seek to have implemented any further conditions to the Order of the Board in No. 11668. Further, we note that the appellant, after the Board's Order, did not at any time seek to review or question the plans before the Zoning Administrator or his method of computation until approximately February 25, 1975.

ORDERED: That the appeal of the North Cleveland Park Citizens Association be DISMISSED and the approval of building permit No. B230377 by the Zoning Administrator be AFFIRMED.

VOTE: 4-1 as to the application of Section 7202.1 under the Order in No. 11668 (Board Member Cummings dissenting),
3-2 as to requiring a hearing on final plans ~~and~~ approved by Zoning Administrator (Board Members Cummings and Klauber dissenting).

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

ATTESTED BY:



JAMES E. MILLER
Secretary to 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 DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER,

FINAL DATE OF ORDER: 9/19/75