

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12256, of the Kenmore Joint Venture, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a modification of BZA Order No. 7792 granting permission to continue a parking lot providing accessory off-street parking for the Kenmore Apartments in the R-1-B District at Legation Street and Chevy Chase Parkway, N.W. (Square 1870, Lots 23-29, 815 and 816).

HEARING DATE: February 16, 1977
DECISION DATE: March 8, 1977

FINDINGS OF FACT:

1. The subject property is located on the west side of Chevy Chase Parkway, south of Legation Street, N.W.
2. In BZA case No. 7792, by Order dated July 15, 1964, the Board granted approval for the continuation of a parking lot on the subject property. The Board did not set a time limit for expiration of its approval of the lot, but the Board did impose the following condition:

The parking spaces authorized under the terms of this Order will require the owner of the land upon which such parking is to be located to agree to become a party to a covenant with the District of Columbia to run with the land and to be binding upon him and his successors in title, which requires that the area approved for off-street parking shall be reserved exclusively for that purpose so long as the improvements to be served exist or so long as said accessory off-street parking is required by the Zoning Regulations.

3. On August 5, 1964, the owner of the property executed a covenant with the District of Columbia, which reads in pertinent part as follows:

/The/ parties of the first part do further covenant that the aforesaid right to use said Tract #2 /sub-ject property for accessory parking of motor vehicles shall be appurtenant to said Tract #1 so long as said Tract #1 and the improvements thereon are used as apartment buildings or for any other purpose requiring accessory passenger automobile parking in accordance with the Zoning Regulations of the District of Columbia.

4. The accessory parking services the Kenmore apartments, located at the southeast corner of Connecticut Avenue and Legation Street, which contains 372 dwelling units. The apartments were erected before May 12, 1958, and are located in an R-5-C District. Sub-section 7202.1 of the Regulations requires that one (1) parking space be provided for every three (3) dwelling units in the R-5-C District. The Kenmore thus would require 124 spaces, if Article 72 were applicable.

5. There are presently 151 parking spaces for the Kenmore Apartments. Of this total 87 are in current use and include 48 spaces located in the garage within the building and 39 surface parking spaces. There are 64 surface parking spaces presently blocked off and unused. It is the latter 64 spaces for which the applicant seeks to modify the covenant in order to erect houses on that portion of the site.

6. The applicant proposes to provide 124 spaces in the area where the existing 87 used spaces are located. Of the total of 124, 86 would be located in and adjacent to the garage, and 38 would be located in a surface lot. Access to these spaces would be from two driveways from Legation Street.

7. The applicant had previously filed a request with the Zoning Commission for rezoning of the unused parking lot from R-1-B to R-5-A in order to construct townhouses on the site. After receiving the advice of the Corporation Counsel, the Zoning Commission dismissed the application without prejudice, in order that the applicant could file an application with the Board to modify the Board's previous approval and have the covenant removed. If the Board proposed this application, the applicant intended to file a new application for rezoning with the Zoning Commission.

8. The Municipal Planning Office, by report dated February 11, 1977 and by testimony presented at the hearing, recommended that the application be approved, on the basis that the area in question provided parking spaces over and above the requirements of the Zoning Regulations. However, the Municipal Planning Office did not take into account the limited and inadequate amount of on-street parking in the area.

9. Advisory Neighborhood Commission 3G, by testimony presented at the hearing, opposed the application on the grounds that the proposed development of the site was not sufficiently precise as to offer safeguards for the protection of the neighborhoods. The ANC also was concerned over the potential adverse impact that the proposal to eliminate parking would have upon on-street parking on the adjacent street.

10. The demand for and use of the accessory parking fluctuates. At times, the demand has been for parking in excess of that which Article 72 of the Zoning Regulations would require.

CONCLUSIONS OF LAW AND OPINION:

The Board notes that the subject property is zoned R-1-B which permits detached single family dwellings on lots having a minimum area of 5,000 square feet. Other uses are permitted as a matter-of-right, and certain other uses are permitted as special exceptions with approval of the Board. The future development proposed by the applicant requires some change in the existing zoning of the property, which change is within the jurisdiction of the Zoning Commission, not the Board. While the Board notes the objections of various individuals and groups to the proposed townhouses, the Board concludes that such objections are not relevant to the issues before the Board and they have been given no weight.

The Board notes that the covenant entered into by the owner of the Kenmore contains language which differs from that contained in the Board's Order in Case 7792. The Board's previous Order is written so as to require that the area approved for parking be reserved exclusively for parking if either of two situations exist; i.e., if the improvements to be served exist or if the Zoning Regulations require that the parking be provided. Parking can be otherwise provided to meet the requirements of the Zoning Regulations. However, the Kenmore Apartments are still in existence, and the Board concludes that its prior Order would require the continuation of the exclusive parking use.

The Board notes that the covenant was entered into willingly by the owner of the property, in order to comply with and accept the benefits of the Board's Order, in order to use the premises for parking. The Board concludes that while the language of the covenant differs somewhat from the language of the Order, the covenant is not more restrictive than the Order in any way material to this case. In sum the covenant carries out the intent of the Board.

The Board notes that the demand for parking was originally very strong, which encouraged the owners of the Kenmore to seek approval for the parking lot in the first place. The demand for spaces may increase again in the future as it has fluctuated in the past. There is an existing shortage of on-street parking on the streets closest to the Kenmore Apartments. The Board concludes that the exclusive parking use originally approved by the Board should be retained, in order to protect the surrounding lower density residential neighborhoods from the potential on-street parking which might result from the Kenmore. Based on these findings and conclusions, the Board is of the opinion that the application is not consistent with the intent and purposes of the Zoning Regulations, and that the application may have an adverse effect on neighboring properties.

IT IS THEREFORE ORDERED THAT THE APPLICATION BE DENIED.

VOTE: 3-0 (William F. McIntosh, Richard L. Stanton and Leonard L. McCants).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 24 AUG 1977