

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12421 of Safeway Stores, Incorporated, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to permit accessory parking in the R-1-B Zone at the premises 3725 and 3729 Morrison Street, N.W., (Square 1867, Lots 74 and 76).

HEARING DATE: May 24, 1977

DECISION DATE: June 7, 1977

FINDINGS OF FACT:

1. Safeway Stores, Incorporated has applied for a special exception that would permit continued use of Lots 74 and 76, Square 1867, at 3725 and 3729 Morrison Street, N.W., as an accessory parking facility to its grocery store at 5545 Connecticut Avenue, N. W.

2. The lots in question are located in their entirety in an R-1-B District but within 200 feet of and contiguous to a C-1 District.

3. The property upon which the current Safeway Store is sited and upon which there is accessory parking, Lots 29, 30, 31, 32, 90, 91 and 77, now appear on the land records of the District of Columbia as one lot, Lot 92.

4. On August 24, 1967, a special exception for parking for the property which is the subject of this application was initially granted after a hearing and a finding by the Board that all conditions specified in the regulations had been satisfied. BZA Appeal No. 9217-18. The Order granted parking on the property for five (5) years.

5. On September 11, 1972, Safeway Stores, Incorporated applied to the Board for continuance of parking for the subject property. The application, BZA No. 1244, was opposed by the Upper Connecticut Avenue Betterment Association (UCABA), which raised certain objections to the granting of the renewal application. A hearing was held and an order was issued on January 31, 1973, granting parking on the property for five (5) years, effective July 25, 1973.

6. UCABA filed a Petition for Review of the BZA Order in the District of Columbia Court of Appeals on April 24, 1974. On Motion of Corporation Counsel, the Court of Appeals remanded the case to the Board on August 7, 1974.

7. A further hearing on the application No. 11244 was held on December 18, 1974. UCABA opposed the application. On January 21, 1975, the Board issued an Order denying the application for accessory parking.

8. Safeway Stores, Incorporated filed a Petition for Review of the BZA Order denying its application in the District of Columbia Court of Appeals. While the appeal was pending, UCABA and Safeway entered into negotiations to resolve the disputes that were the basis for UCABA's opposition to the application at the prior hearings.

9. On June 16, 1976, an agreement was reached between Safeway and UCABA (hereinafter referred to as "the agreement") in which Safeway agreed to construct an additional driveway on Connecticut Avenue and close off the driveway on Morrison Street; plant trees and bushes in quantities, sizes and locations, all as agreed and as set forth in a plat attached to the agreement; install two (2) redwood National Park Service-type trash receptacles in the locations specified in the plat; construct a pedestrian access in accordance with the plat; not to expand the operation of the store beyond its present boundaries for twenty (20) years; and not to expand, alter or modify the parking lot at the store and the residential lots for twenty (20) years; not to permit vehicular access to the store or parking lot from the alley adjacent to the store and parking lot; not to permit truck unloading at the store and residential lots except between the hours of 6:00 A.M. to 10:00 P.M.; to keep the parking lot and grass areas around the store and residential lots clean and attractive; to maintain the plantings in a healthy and growing condition and replace any dead plants promptly; to place a "No Parking" sign at two points on the side of the store facing the sidewalk facing Connecticut Avenue; and to keep the curtains at the store completely closed during non-daylight hours.

10. On February 16, 1977, Safeway filed the agreement and an Amended Order with the Board and requested that the Board amend its Order to grant the special exception for parking and incorporate in its Order the provisions of the agreement.

11. On April 6, 1975, at its Executive Session, the Board declined to amend its Order and requested that a new application be filed.

12. On April 12, 1977, Safeway Stores, Incorporated filed the current Application No. 12421, which requested that the Board issue an Order continuing the special exception for parking in accordance with the agreement.

13. UCABA and the Chevy Chase Citizens Association supports Application No. 12421 incorporating the terms of the agreement.

14. ANC 3G supports Application No. 12421 incorporating the terms of the agreement.

15. All the requirements of Article 74 for the operation and maintenance of parking lots have been met.

16. The Safeway Store for which accessory parking is sought serves the immediate community by providing retail grocery facilities.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant has demonstrated that all of the conditions specified in Paragraph 3101.48 have been met, that the request is within 200 feet of a commercial district and that all of the conditions of Article 74 are complied with. In regard to the creation of objectionable conditions, the Board concludes that the agreement between Safeway and the UCABA will insure that no adverse condition will result from the use of the site as a parking lot. It is therefore ORDERED that this application be GRANTED, subject to the following conditions:

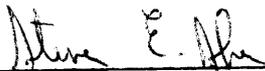
1. Approval shall be for a period of two (2) years,
2. The applicant shall comply with all of the conditions contained in the agreement dated June 16, 1976 and marked in the record as exhibit PH-1, between Safeway and the Upper Connecticut Avenue Betterment Association, a copy of which is attached hereto.

Application No. 12421
Page 4

VOTE: 4-0 (Walter B. Lewis, Charles R. Norris, William
McIntosh and Leonard L. McCants to GRANT).

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

FINAL DATE OF ORDER: 18 JUL 1977

ATTESTED BY: 
STEVEN E. SHER
Executive Director

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.

hearing. The Court found that the Board failed to make sufficient findings of fact and conclusions of law as required under the District's Administrative Procedure Act.

The Board held a second hearing on Owner's application on December 18, 1974. The Association again appeared and presented evidence in opposition to Owner's application. By order of May 14, 1975, the Board denied Owner's application. Owner sought review of the Board's denial of its application in the District of Columbia Court of Appeals on November 7, 1975.

G) Thereafter, counsel for the respective parties met several times, with a view towards reaching a mutually satisfactory solution with respect to the future utilization of the residential lots in connection with the store.

NOW, THEREFORE, in order to resolve Owner's future utilization of the residential lots in connection with the store, to enhance and preserve the residential character of the neighborhood and to protect the members of the Association and other residents of the neighborhood from further commercial encroachment and traffic, the parties agree as follows:

1) In accordance with the Proposed Re-alignment and Planting Plan ("Plan") attached hereto as Appendix B, Owner agrees to:

(a) Construct an additional driveway on Connecticut Avenue and close off the driveway on Morrison Street. The additional Connecticut Avenue driveway to be constructed is marked in red in the Plan;

(b) Plant the trees and bushes in the quantities, sizes and locations specified in the Plan;

(c) Install two redwood National Park Service type trash receptacles in the locations specified in the Plan;

(d) Construct a pedestrian access in the location specified in the Plan.

2) To prevent further commercial encroachment into the neighborhood, Owner agrees not to expand operation of the store beyond the present boundaries of the store and residential lots for a period of 20 years. The owner further agrees not to expand, alter or modify in any way the parking lot at the store and residential lots for a period of 20 years, except as provided in Clause 1 hereof.

3) Owner agrees not to permit vehicular access to the store or store parking lot from the public alley adjacent to the store and residential lots.

4) Owner shall not permit truck unloading at the store and residential lots except between the hours of 6 a.m. to 10 p.m.

5) Owner agrees to keep the parking lot and grass area at the store and residential lots clean and attractive.

6) Owner agrees to maintain all plantings made in accordance with Clause 1 (b) hereof in a healthy growing condition. In the event any one of these plantings die, Owner agrees to promptly replace any such planting, with the same type and size planting at the same location.

7) Owner agrees to place a "No Parking" sign at two points on the side of the store facing the sidewalk facing Connecticut Avenue.

8) Owner agrees to keep the curtains at the store completely closed during non-daylight hours.

9) Owner agrees to pay the Association or its designee the sum of \$1,000.00 to cover a portion of its expense in this matter.

10) The covenants contained in this Agreement shall run with the land to which they pertain, and shall be binding upon the parties, their successors, heirs and assigns. Owner shall cause this Agreement to be properly recorded by the Recorder of Deeds of the District of Columbia in a manner satisfactory to counsel for the Association, and shall pay all costs in connection with said recordation.

11) In consideration of the covenants contained herein, the Association agrees, effective on the effective date hereof, to withdraw its opposition to Owner's application in Appeal No. 11244.

12) This Agreement shall become effective upon the date ("effective date") that the last of the following events shall occur:

- a) Execution of this Agreement by the Owner and the Association;
- b) Full compliance with Clause 1;
- c) Payment of \$1,000.00 as provided in Clause ⁹ 20;
- d) Recordation of this Agreement as provided in Clause 11 and
- e) Approval of this Agreement by the Board and incorporation of the substance of the settlement reached herein in a decision by the Board in Appeal No. 11244.

13) This agreement shall be governed in all respects by the law of the District of Columbia. Owner designates the law firm of Hanson, O'Brien, Birney and Butler of 888 17th Street, N. W., Washington, D. C., or any of the members of said firm on the date hereof as its agent for the service of process in connection with any dispute arising out of the interpretation or implementation of this Agreement. Without prejudice to any other rights or remedies of the Association, Owner expressly agrees that this Agreement may be enforced by action for specific performance.

IN WITNESS WHEREOF, Owner and Association, each through their representatives warranted to be duly authorized, have signed this Agreement in Washington, D. C. as of the day and the year first above written.

(Corporate Seal)

SAFEWAY STORES, INCORPORATED
(a Maryland Corporation)

By *N. E. Keuper*
Norman E. Keuper
Its Assistant Secretary

By *Carey A. Ford*
Carey A. Ford
Its Vice President
(Owner)

STATE OF MARYLAND)
) SS:
COUNTY OF PRINCE GEORGE)

I, Theresa Lopez, a Notary Public in and for the County and State aforesaid, do hereby certify that CAREY A. FORD, Vice President of and Attorney-in-fact for, and NORMAN E. KEUPER, Assistant Secretary of SAFEWAY STORES, INCORPORATED, a body corporate under laws of the State of Maryland, party to a certain agreement bearing date as of June 16, 1976, and hereto annexed, personally appeared before me in the County and State aforesaid, the said CAREY A. FORD and NORMAN E. KEUPER being personally well known to me to be the persons who executed the said agreement, and acknowledged same to be the act and deed of said corporation.

GIVEN under my hand and notarial seal, this 31st day of January, A. D., 1977.

(Notarial Seal)

Theresa N. Lopez
Theresa Lopez
Notary Public in and for the State
of Maryland, with principal office
in the County of Prince George

My commission expires July 1, 1978.

UPPER CONNECTICUT AVENUE
BETTERMENT ASSOCIATION

By Milton Kotler
Milton Kotler
Its President
(Association)

DISTRICT OF COLUMBIA, SS:

I, A. Stanley Wolfe, a Notary Public in and for the District of Columbia aforesaid, do hereby certify that MILTON KOTLER, President of and Attorney-in-fact for, UPPER CONNECTICUT AVENUE BETTERMENT ASSOCIATION, a body corporate under the laws of the District of Columbia, party to a certain agreement bearing date as of June 16, 1976, and hereto annexed, personally appeared before me in the District of Columbia aforesaid, the said MILTON KOTLER, being personally known to me to be the person who executed said agreement, and acknowledged same to be the act and deed of said corporation.

GIVEN under my hand and notarial seal, this 2nd day of February, A. D., 1977.

(Notarial Seal)

A. Stanley Wolfe
Notary Public

My commission expires August 14, 1981.