

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12432, of Edward B. Harry, Lawrence W. Harry and Franklin L. Derrick, Trustees of the Estate of John B. Harry, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to establish a parking lot for a Safeway store at 4840 42nd Street, N. W., (Square 1672, part of Lot 810).

HEARING DATES: June 15, July 20, September 21 and  
October 11, 1977

DECISION DATES: December 6, 1977, January 4 and March  
1, 1978

FINDINGS OF FACT:

1. The application for a special exception was filed by Safeway Stores, Inc., with the authorization of the Trustees of the Estate of John B. Harry, on May 2, 1977. The application requested approval of a parking lot for 181 cars on land adjacent to the existing Safeway Store at 4840 42nd Street, N. W., to allow the existing store to be reconstructed and expanded.

2. The application was advertised and scheduled for hearing on June 15, 1977. On June 15, 1977, the Board received and discussed a request for an extension of time within which to report from the D. C. Department of Transportation dated May 17, 1977, a request for a postponement from the Municipal Planning Office dated June 10, 1977, and a request from an individual in opposition to the case for a continuance. The Chairman ruled that the hearing would be postponed, in order to allow both DOT and MPO time to file reports so that the best available information on the case would be before the Board. The Chairman ruled that the case would be heard at the end of the agenda on July 20, 1977.

3. On July 20, 1977, counsel for Safeway requested the Board to postpone the hearing of the case until September 21, 1977, in order that Safeway could have time to determine, in cooperation with the Municipal Planning Office, whether the expansion of the store and the relocation of parking

could be accomplished with an amendment to the zoning map, which would require no action from the Board. The parties in opposition raised no objections to the postponement. On a motion made by William F. McIntosh, seconded by Walter B. Lewis, the Board postponed the hearing until September 21, 1977 by a vote of 5-0 (William F. McIntosh, Walter B. Lewis, Leonard L. McCants, Charles R. Norris and Chloethiel Woodard Smith to postpone). In so ruling, the Board determined that if the case were to go forward for hearing on September 21, 1977, there would have to be additional advertisement and posting of the property.

4. In accordance with the Board's direction, the application was readvertised and notice given on August 19, 1977, for public hearing to be held on September 21, 1977. An affidavit of posting was filed on September 1, 1977.

5. On September 21, 1977, the applicant stated that he wished to go forward with the case. The Board heard testimony on the proposed parking lot from the applicant, and from various proponents of the application. At the conclusion of these presentations, counsel for the applicant requested that he be allowed to submit an amended site plan to the Board, to enable the applicant to comply with the wishes of an abutting property owner to the north. The amended site plan, marked as Exhibit No. 65 in the record, reduced the number of parking spaces to 145. This reduction required that the Board also consider whether to grant a special exception under Section 7203 to reduce the amount of parking required for the Safeway store under Section 7202. The applicant therefore requested the permission of the Board to so amend the application.

6. The Chairman ruled that the application could be so amended. In order to allow for full public hearing and comment on the revised plans, the Chairman continued the hearing until October 11, 1977 and directed the applicant to supply copies of the amended plans to the parties in opposition.

7. The parties in opposition questioned whether the application should be filed and considered under Paragraph 3101.411, for accessory parking, rather than under Paragraph 3101.48, which is a parking lot generally. The Chairman ruled that Paragraph 3101.48 was the governing regulation, since there would be no use other than parking on the residentially-zoned portion of the site.

8. The application therefore before the Board in this case requests approval of two special exceptions, one under

Paragraph 3101.48 to establish a parking lot and one under Section 7203 to reduce the amount of required parking.

9. The subject site is located in the square bounded by Davenport, 43rd, Ellicott and 42nd Streets. The site borders directly on Davenport and 43rd Streets, which are only paper streets and are not in place except for a short piece of Davenport Street at the southeast corner of the parking lot. The eastern boundry of the parking lot would be the reconstructed Safeway Store on the same lot. The northern boundry of the lot is the back of property fronting on Ellicott Street, N. W.

10. The subject site is presently divided by a public alley, which the applicant proposes to close. To the east of the alley is a lot which contains 59,369 square feet. This lot is presently improved with a Safeway Store containing 14,639 square feet of gross floor area adjacent to the alley, and has seventy-six parking spaces south and east of the store. To the west of the alley is the part of lot 810, containing 40,158 square feet, proposed to be used as a parking lot. This part of the lot is vacant.

11. The portion of the subject site east of the alley is zoned C-2-A while the portion to the west is zoned R-2. The zone boundry line follows the centerline of the alley. Even though parking is permitted as a matter-of-right in a C-2-A District, and approximately forty-two of the proposed parking spaces are in the C-2-A portion of the lot, the Board considered the lot as a whole, since it is impossible to separate the lot into two parts.

12. Safeway proposes to build a store on the C-2-A portion of the site, containing a gross floor area of 38,085 square feet. The store would utilize less than half the maximum permitted density of the C-2-A District, and would be entirely within the C-2-A District. The store would be constructed on the eastern side of the C-2-A portion, adjacent to 42nd Street.

13. In a C-2-A District, parking for retail uses is required at the rate of one space for each 200 square feet of gross floor area in excess of 2,000 square feet. The store would thus require 180 spaces. Safeway proposed to provide 145 spaces, or thirty-five less than normally required. Such a decrease amounts to a reduction of approximately nineteen per cent, within the twenty-five per cent reduction permitted under Section 7203.

14. Access to the proposed lot would be in three places, from 42nd Street by way of a ramp adjacent to and on the north side of the new store, from Ellicott Street by way of the public alley and directly from Davenport Street on the south.

15. The proposed parking lot falls in its entirety within 200 feet of a commercial district and is contiguous to or separated only by an alley from that commercial district. The western boundary of the proposed parking lot is 185 feet from the middle of the alley which is the boundary of the C-2-A commercial district.

16. The proposed parking lot has been designed to comply with the requirements of Section 7404 regarding parking lots, as follows:

- A. All of the land to be used for parking and access drives will be paved with asphalt. The loading berths and sidewalks will be concrete. These materials form an all weather impervious surface.
- B. A brick wall twelve inches thick will be constructed around the north, west and south boundaries of this lot. This will prevent any vehicle or part thereof from projecting over any lot line or building line.
- C. There is no other use proposed to be located in the parking lot.
- D. The parking lot will have three entrances, which will be located on Ellicott, 42nd and Davenport Streets. All entrances will be more than twenty-five feet from the nearest intersection. The entrance on Ellicott Street will be the current alley entrance which is approximately 200 feet from the nearest intersection at 42nd and Ellicott Streets. The entrance on 42nd Street is approximately 130 feet from the intersection of 42nd and Ellicott Streets and the proposed entrance on Davenport Street is approximately 220 feet from the intersection of Davenport and 42nd Streets.
- E. Safeway plans to light the parking lot by using light standards approximately twenty feet in height with square fixtures having aluminum side panels which will direct the light downward to the surface of the parking lot. The number of lamps on each standard will vary from one to four, depending upon the location of the standards. A preliminary site

plan of the light standards, submitted as Exhibit 55, shows that the standards will be located near the entrances to the lot on Ellicott Street and Davenport Street and at the western side of the lot as well as in the southwest corner. Four fixtures will be placed throughout the lot. The spacing of the standards is designed to light all portions of the lot without illuminating the adjacent property.

F. A brick wall, twelve inches thick, will be constructed around the perimeter of the parking lot. The wall will have a minimum height of forty-two inches, but will increase in height according to the topography of the site. The topographical survey plat, shows that the parking lot slopes downward from east to west, with a maximum variance in elevation of approximately twenty feet. The wall will be constructed in segments thirty feet in length which will be arranged in steps along the slope to accommodate the differences in elevation. The top of each segment of wall will remain level, but the height of the wall will vary according to the changes in the slope. The eastern side of each segment of wall will be forty-two inches and the western side will vary in height up to a maximum of five feet. The only exception to the minimum height of the wall will be in the northwest corner. There, the minimum height of the wall will be six feet.

G. The Safeway property which is not paved or devoted to parking was proposed to be landscaped in accordance with the plan submitted as Exhibit 65. The landscaping would be located outside of the brick walls and would include a mixture of shade trees, flowering trees, needle evergreens and some deciduous shrubs. The plant material was selected to provide a varied appearance along the brick wall. All of the landscaping shown on the plan, with the exception of the five existing maple trees on 42nd Street, would be planted by Safeway.

17. The proposed parking lot will be reasonably necessary or convenient to the neighborhood. The lot will be located immediately adjacent to the store which it is intended to serve, and will provide parking required under the Zoning Regulations to serve the store.

18. Safeway proposes to enlarge its store to provide better retail grocery service to the surrounding community. The current store building needs substantial structural improvement and is too small to provide a full line of merchandise. Although Safeway can provide 12,000 items of merchandise, the current store can stock only 7,000 items. The proposed store would provide space to stock approximately 15,000 items. In a larger store, Safeway would be able to provide shoppers with greater variety of items and more selection among brands. The enlarged store requires more parking, which is reasonably necessary for the operation of the store and the convenience of the neighborhood.

19. The parking lot is designed so as to not become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. The brick wall surrounding the lot will help to block both the light from headlights of cars and any noise generated by cars in the lot. The plant material used to landscape the area around the parking lot will supplement the brick wall in screening the parking lot from the residential area. The trees and shrubs will further filter any light and noise that may originate from the store or from cars in the parking lot.

20. The traffic generated by the enlarged Safeway store can be easily accommodated by the existing street system. The current Safeway store is located just to the south of the intersection of 42nd Street, Ellicott Street and Wisconsin Avenue. Traffic conditions at this intersection are excellent and the intersection operates at service level A during the peak hours of traffic. (Exhibit 60, p. 2). Although the floor space of the proposed store will increase by 165%, Safeway's traffic expert stated and the Board finds that there would be only a sixty-five per cent increase in traffic to and from the store during the peak hours. Even though the actual increase in traffic should be substantially less, Safeway's traffic expert testified and the Board finds that, if traffic increased by 165% and was distributed in accordance with existing patterns, all intersections in the area would continue to operate at satisfactory levels of service during the peak hours. Furthermore, the intersection of 42nd Street, Ellicott Street and Wisconsin Avenue would continue to operate at service level A during the peak hours.

21. Safeway's traffic expert testified and the Board finds that the maximum number of spaces likely to be occupied at any one time is approximately 116. The revised plan would provide approximately thirty spaces more than that number. The proposed reduction in the number of spaces to be provided will be sufficient to serve the needs of the proposed store and will not result in any undue congestion at the store or

on neighborhood streets. The Board finds that the reduction in spaces will benefit adjoining properties since it enables Safeway to provide an expanded buffer zone between the parking lot and the neighboring residential property.

22. The location of the parking lot to the west of the current Safeway store will not adversely affect the character of the existing neighborhood. Safeway proposes to locate the parking lot on a vacant tract of land. There are only two residences adjacent to the site on the north side of the proposed parking lot, although several townhouses will be built on the northwest corner of the site in the near future. Vacant land and streets surround the remaining portions of the proposed parking lot. Although the area is largely undeveloped, the amended site plan provides an undeveloped strip of land along the west and northwest sides of the parking lot. This area of the parking lot is the closest to residentially-developed land and the strip of land will be landscaped to form a buffer between the residentially-zoned land and the parking lot. Because the parking lot is located in an area which is largely undeveloped, any impact that the parking lot may have on adjacent property can be minimized by the proposed buffer strip, brick wall and landscaping plan.

23. The Municipal Planning Office, by reports dated July 15, 1977 and September 16, 1977 and by testimony presented at the hearing, recommended approval of the application with the revised site plan, on the grounds that the improved Safeway Store would be consistent with general city policy and would provide a needed facility in the area, and that the expanded store would require parking to serve it. The Board so finds. The MPO reported and the Board finds that the only feasible method of providing the required parking at this time is to locate the parking to the west of the proposed store.

24. The D. C. Department of Transportation, by memorandum dated September 26, 1977 and by testimony at the hearing, reported to the Board on the issues of level of service and surplus capacity, impact of the proposed development, public financial investment needed to accommodate this development and potential traffic generation by alternative development of the site. The Department reported and the Board finds that the two intersections most directly affected by this application, Wisconsin Avenue at Ellicott and 42nd Streets and River Road at 42nd Street, are both operating at level of service A at present, and that there is surplus capacity at both intersections which would keep those intersections operating at level of service C. The Department reported and the Board finds that even if traffic generation increases at a rate proportional to the increase in the number of parking spaces, there would be

an additional 140 trips in and 140 trips out of the facility during the peak hours, and that if those trips were distributed in the same directions as present trips, no street in the vicinity would fall below level of service C. The Department reported and the Board finds that no capital expenditures by the District would be necessitated by this application.

25. The Department of Transportation submitted to the Board a report prepared for DOT by the Department of Environmental Services dated October 4, 1977. The DES report stated that there are deficiencies in the storm water drainage system in the area, and recommended that on site storage of storm water be considered to minimize run-off. The Board finds that such a system for storm water run-off is necessary to protect adjoining properties which might otherwise suffer from the consequences of uncontrolled run-off.

26. In order to further investigate the issues raised about storm water run-off, the Board referred a copy of the site plan to the Department of Environmental Services. By memorandum received on December 27, 1977, the Department reported that the existing storm water system serving the area is not adequate to accommodate the parking lot drainage, and that additional run-off into the system could cause excessive sur-charging and possible street ponding in some areas. The Department reported that sufficient run-off could be detained on-site so that the impact on the system would be no greater than under present conditions. By memorandum dated January 3, 1978, the Department reported that it had reviewed preliminary design drawings and computations for such a system prepared by Safeway's engineers, and that such a system would be adequate and acceptable as a method for managing additional storm water run-off caused by the parking lot. The Board so finds.

27. Following receipt of the drawings regarding the storm water system, the Board reopened the record to allow the parties in opposition to file written comment on those drawings. Comments were filed by some of the parties in opposition, which comments suggested that the proposed system would be inadequate. The Board notes that there was no background technical information to support that position, and lacking definitive information from an engineer, the Board finds no reason not to accept the findings of the Department of Environmental Services.

28. Advisory Neighborhood Commission 3-E, after notice and public meeting, appeared before the Board and opposed the application, on the grounds that the application constitutes an unacceptable intrusion of commercial usage into a residential neighborhood, and that further widening of the Wisconsin Avenue commercial corridor is undesirable and would create a dangerous

precedent for future expansion. The ANC did state its concern over seeing the Safeway Store remain in operation, as Safeway has stated it will.

29. The Friendship Neighborhood Coalition, certain nearby property owners and area residents also opposed the application, on the same grounds as the ANC, and also on the grounds that the proposed parking lot with its attendant, noise, traffic, light and air pollution will adversely affect the residential character of the neighborhood.

30. There was testimony in the record, from nearby property owners and other area residents, in support of the application.

31. The Municipal Planning Office is in the process of preparing a Sectional Development Plan for the Tenley Circle Area. As part of that process, in accordance with Sub-section 7502.4, a Community Advisory Group (CAG) has been formed to work with the MPO. The Tenley CAG took no position on the application.

32. As to the concerns of the ANC, the Board finds that the present application does not constitute an unreasonable intrusion into a residential neighborhood. The subject site is vacant, is abutted by two paper public streets, neither of which is improved, and is further surrounded by vacant land to the south and west. The Board finds that Safeway has made a reasonable effort to further minimize the effects of the parking lot by providing an extensive landscaped buffer on the north and west sides of the lot, and by providing the required brick wall around the perimeter of the lot. As to the setting of a precedent, the Board finds that each individual case must be decided on its own merits and on the record before the Board in that case. The granting of this application by itself would not be sufficient to sustain the granting of any other application. The Board further finds that an examination of the existing parking lot cases in this general area sustains that view. The Board further finds that expansion of parking to the south of the new store is not a real possibility, and cannot be considered a viable alternative.

33. As to the other concerns raised in opposition, the Board finds that Safeway has made an extensive and reasonable effort to meet the concerns raised by the neighborhood, and that the specific findings as to impacts cited above are sufficient to sustain the view that the parking lot would not result in unreasonable, unacceptable neighborhood impacts.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicant has filed for the proper special exception; that is, for a parking lot under Paragraph 3101.48, rather than for accessory parking under Paragraph 3101.411. Based on the findings of fact and the extensive record in this proceedings, the Board further concludes that the applicant has met all of the requirements for the two exceptions requested, and that the application is not likely to be objectionable to the surrounding neighborhood because of noise, traffic or other objectionable conditions.

The Board notes that there was substantial support for the application in the community, and also substantial opposition. The Board notes that it will not decide applications on the basis of the number of people in favor or opposed to an application, but rather concludes that it must decide cases on the basis of the facts presented in the record. The Board concludes that each application must be decided on its own facts, and that this decision cannot by itself serve as a precedent for other applications such that no facts or basis for the grant of such an application need be presented. If the facts warrant that a case be granted, it will be granted; if the facts warrant that a case be denied, it will be denied.

The Board notes that the ANC opposed the application. The Board concludes that it has given the "great weight" intended by the statutes to the issues and concerns of the ANC, but as cited in the Findings of Fact, the Board did not accept the recommendations of the ANC for the reasons noted.

The Board concludes that the parking lot should be approved. The Board however concludes that the proposed plans as submitted should be further revised, to even further reduce the number of spaces to even further minimize traffic impact, and to increase the landscaping and buffer areas of the plan, to even further protect the area. The Board concludes that the number of spaces in the lot should be reduced by the maximum of twenty-five percent under Section 7203, which reduction is the maximum the Board can approve without the granting of a variance. It is therefore hereby ordered that the application is granted subject to the following conditions:

1. The parking lot shall be developed to include the storm water detention system approved by the Board and marked as Exhibits No. 101 and 102 in the record.
2. The parking lot shall be developed in accordance with the parking and landscaped site plan as modi-

fied and approved by the Board and marked as Exhibit No. 107 in the record. There shall be a total of 136 parking spaces on the lot, as shown on the plan.

3. The lot shall comply with the requirements of Section 7404.

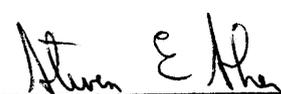
Votes: 4-0 to grant the application on January 4, 1978 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith and Leonard L. McCants to grant, John G. Parsons not present, not voting).

5-0 to approve the storm water detention plans on March 1, 1978 (Charles R. Norris, William F. McIntosh, Leonard L. McCants, and Chloethiel Woodard Smith to approve, John G. Parsons to approve by proxy).

5-0 to approve the site plan as modified by the Board on March 1, 1978 (Charles R. Norris, William F. McIntosh, Leonard L. McCants and Chloethiel Woodard Smith to approve, John G. Parsons to approve by proxy).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 17 APR 1978

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.