

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 12728 of Bureau of National Affairs, Washington, Inc. pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator that there is insufficient evidence to warrant granting a Certificate of Occupancy for a parking lot in the CR District at the premises 1221-1225, 1229 and 1231 - 25th Street, N.W., (Square 24, Lots 43,95,837,842 and 862).

HEARING DATE: October 18, 1978

DECISION DATE: October 18, 1978 (Bench Decision)

FINDINGS OF FACT:

1. The subject parking lot is located on the east side of 25th Street, between M and N Streets, N.W. and is known as premises 1219 25th Street, N.W.

2. To the north of the site, separated by a fifteen foot alley are two office buildings owned by the applicant. To the south, separated by a fifteen foot alley are lots used for parking by PMI and one single family dwelling. Further south along the 2400 block of M Street are a store, a private parking area, a garage type of structure and the M Street entrances to the PMI parking facility. To the east, separated by a thirty foot alley and fronting along 24th Street is a pharmaceutical supply facility and a B and W Parking Garage. To the west, on the opposite side of 25th Street, is the Francis Junior High playing field and at the northwest corner of the intersection of 25th and M Streets is a parking lot.

3. The applicant and its predecessor in title have continuously leased space for the operation of a parking lot on the subject premises since 1967. The use is recognized by surrounding property owners and long-term lessees as being in existence for an extended period of time.

4. Since the demolition of structures on the subject lots the area has been surfaced with macadam, lined for parking spaces and used for parking purposes.

5. Parking Management, Inc. (PMI) was the lessee of the subject premises from 1967 to 1977. The subject premises was operated as a part of a larger lot to the south, premises address 2439 M Street, N.W. Initially, the former PMI lot encompassed record Lots 35, 98, 99, 830, 831 and 851 in Square 24, premises address 2439 M Street, N.W. Certificate of occupancy No. B-48228 was issued on November 6, 1964 permitting a parking lot on Lots 39, 98, 99, 830, 831 and 851 in Square 24. The certificate of occupancy apparently issued erroneously includes Lot 39 and, through administrative error, excludes Lot 35. Lot 35 contains the only attendant's shed for the entire lot and a part of the curb cut for the M Street frontage of the parking lot.

6. An extension was made to this lot in certificate of occupancy No. B-4227 which authorized Lots 40, 803, 845 and 852 for parking use. This certificate was dated December 3, 1964 and authorized for public lot use, the premises having the address of 1219 25th Street, N.W. The subject lots however were not included in said Certificate of Occupancy.

7. PMI, as operator of the lot, failed to file for a subsequent certificate of occupancy for the subject site when the lots at issue were added in approximately 1967. In 1967 the subject site was zoned C-M and could have been used for parking purposes as a matter-of-right.

8. Prior to October of 1966, the premise address of the subject properties were 1221-31 25th Street, N.W. After this date, the site had addresses 1215-23 25th Street, N.W. In 1972, an enforcement letter dated March 17, 1972 from Mr. Carncross, Chief of the Zoning Inspection Branch, was sent to Mr. Wacaster of PMI stating that premises 1219 25th Street, N.W. was being used for parking purposes without a valid certificate of occupancy. At that time the aforementioned certificate No. B-48227 was exhibited as permitting such use and apparently accepted as such by the District with the matter being closed.

9. A commercial parking lot was permitted as a matter of right under the C-M-2 zoning classification which existed on the subject property from 1958 to December 29, 1974. On December 29, 1974 the subject property was rezoned to C-R.

10. There has been no Certificate of Occupancy authorizing a parking lot for the lot numbers in question in this appeal.

11. There are immediate plans to develop the subject site. The applicant intends to construct within two years an office building on the site and the subject parking lot would be an interim use until construction commences.

12. On December 3, 1964, the date the Certificate of Occupancy was issued for the subject address, that address did not apply to the subject properties. There were buildings in existence on the subject lots on that date.

13. The appellant argued as follows: that there was substantial compliance with Sub-section 4502.5 in that a Certificate of Occupancy in fact exists for the address of 1219 25th Street and that the District of Columbia Government and the owners assumed that the Certificate of Occupancy covered the subject property; if the mutual mistake had not occurred the appellant could have obtained a valid Certificate of Occupancy for the subject site as a matter of right by the new filing of an application and the payment of a fee; the doctrine of laches applies in that the appellant should not be penalized for a long delay in enforcement by the Zoning Administrator when it has made a good faith effort to comply with the Zoning Regulations and possesses a Certificate of Occupancy bearing the premise address of the subject site; and, lastly, the principles of estoppel prevent the District of Columbia from enforcing Sub-section 4502.5 and Section 8104 of the Zoning Regulations in that the appellant owner acted in good faith, the District of Columbia, affirmatively acted in conducting meetings to determine the validity of Certificate of Occupancy No. B-48227 as permitting parking lot use on the subject site, the appellant made an expensive acquisition of real estate and intended to make use of the property on the basis that it could be used for parking purposes, the equities of the case strongly favor the party invoking the doctrine.

CONCLUSIONS OF LAW:

Based on the findings of fact the Board concludes that the appeal is improper. The appellant is requesting the Zoning Administrator to perform an act over which he has no authority. The appeal is not based on a mistake or an abuse of discretion on the part of the Zoning Administrator. No Certificate of Occupancy was ever issued for the subject lots. No Certificate of Occupancy could have been issued for the use of the subject lots as a parking lot on December 3, 1964 since at that time there were buildings still standing on said lots. The appellant seeks his relief based on the equitable doctrines of substantial compliance, mutual mistake, estoppel and laches. The Zoning Administrator cannot provide equitable relief. Only the BZA can on an application property brought before it. However, the Board further concludes that the appellant's proper remedy in this situation is to request a variance, as has been done in Case No. 12728. Accordingly, it is ORDERED that the appeal is DISMISSED.

VOTE: 5-0 (Charles R. Norris, John G. Parsons, William F. McIntosh, Chloethiel Woodard Smith and Leonard L. McCants)

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 25 JAN 1979