

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12868 of Pollin Development Company, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue the use of a parking lot and pursuant to Paragraph 8207.11 for a variance from Sub-paragraph 4101.413 to permit all-day parking in an SP-2 District at the premises 460 Massachusetts Avenue, N.W., (Square 517, Lots 849,850,45,851,866,867,872,873,31,33,34 and 43).

HEARING DATE: April 18, 1979  
DECISION DATE: June 6, 1979

FINDINGS OF FACT:

1. The subject Square 517 is bounded by Massachusetts Avenue, 4th, 5th and H Streets, N.W. The parking lot is located in the northern part of the square along Massachusetts Avenue. Two twenty foot wide public alleys border the lot on the east and south. Directly south of the lot, fronting on H Street, is Judiciary House, a 268 unit apartment building. Judiciary House is a federally funded facility for the elderly. The subject property is known as 460 Massachusetts Avenue and is in an SP-2 District.
  2. The property included in this application is approximately 33,000 square feet in area. With the exception of four row structures on 5th Street, N.W., the area north of the public alley in this square is devoted entirely to surface parking. Three of the row structures on 5th Street, N.W. are vacant and the fourth, adjacent to the parking lot contains low offices. East of this lot on Massachusetts Avenue, are three story row dwellings which appear to be used for residential purposes, a D.C. Fire Department facility, and a restaurant. Across Massachusetts Avenue is a small triangular park, the House of Ruth, and a number of residential and commercial uses. South of H Street, between 4th and 5th Streets, is the General Accounting Office.
  3. The land uses in the section of the city are extremely varied. There are residential blocks, including row dwellings and small apartment buildings with a limited number of large apartment buildings, and a substantial number of small scale commercial uses and surface parking lots.
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4. Zoning patterns in this area reflect its location at the edge of the Central Business District. North of Massachusetts Avenue in the Mt. Vernon East Urban Renewal Area, C-2-A, C-2-B and R-5-D zoning exits. South of Massachusetts Avenue SP-2 zoning predominates and includes Judiciary Square. West of 6th Street is the Central Business District which is zoned C-4 south of H Street and C-3-B north of H Street. East of 3rd Street in the Judiciary Square is zoned C-3-B.

5. Portions of the subject parking lot were established in 1965 by BZA Order No. 5154 with subsequent approval of the entire lot in BZA Order No. 9032 and 10443. The last approval by the Board was on January 6, 1977 for a period of two years in BZA Order No. 12040. In the last order the applicant was requested to landscape the Massachusetts Avenue frontage of the property which is public space.

6. The parking lot accommodates approximately 135 cars. The hours of the operation of the lot are 6:30 a.m. to 5:30 p.m. and there is an attendant present during the hours of 6:30 a.m. to 4:30 p.m. Maintenance is on a daily basis and the lot is periodically policed during the day. Neither the owner nor the operator of the lot, RBI Parking Inc., have received any complaints concerning the operation of the lot.

7. The majority of the lot patrons are all-day commuters, but there are approximately ten monthly overnight residential users, and an additional twenty to thirty non-paying residential users. The lot is also used by the Corinthian Baptist Church on Wednesday nights and Sundays.

8. The subject parking lot was originally assembled for the purposes of residential development as a companion project to Judiciary House. Originally a non-subsized apartment building, Judiciary House now provides subsidized housing for the elderly. The property has been actively on the market for over ten years but no purchasers for development in accordance with existing zoning have been found although a non-binding agreement has been recently entered by a prospective purchaser.

9. The applicant requests a special exception to continue the use of the parking lot for one year or eighteen months and a variance to permit all-day commuter parking on the lot. He testified that the continuation of the parking lot is the only reasonable short term use of the property and that a denial of the application would force the property to remain idle.

10. The applicant's expert traffic witness testified that Massachusetts Avenue has a volume of 22,000 cars daily and that the noise generated by the subject 132 cars now using the parking lot is negligible compared with that generated by the existing traffic flow. He further testified that the highrise residential structure to the south of the subject lot and other residential uses in the square are more affected by noise from the traffic flow along Massachusetts Avenue and H Street and that generated by the General Accounting Office located across H Street to the south than applicant's parking lot. The witness further testified that there is a need for all-day commuter parking at this location due to the presence of the General Accounting Office building which provides only one parking space for each eight employees and the inadequacy of the present mass transit system to provide transportation to all those employed in this area of the city. He further testified that there are few retail facilities or residential uses in the vicinity which would generate sufficient short-term parking demand to permit reasonable utilization of the lot. The Board concurs with the findings of the traffic expert. As to need for commuter parking, the Board notes that the Zoning Regulations as adopted by the Zoning Commission, state the Commission's policy to reduce all day parking in surface lots.

11. The Office of Planning and Development, by report dated April 13, 1979, and in its testimony at the public hearing, recommended that the application be approved for a period not to exceed two years. In analyzing the application, the OPD reported as follows:

The recently amended Zoning Regulations concerning parking lots in the SP-2 District became effective on October 5, 1978. Paragraph 4101.41 states that parking lots in the SP District under approval by the Board may be permitted to continue for a maximum of four years from the date of expiration of the present Certificate of Occupancy, provided that the use is not likely to become objectionable to adjoining and nearby properties, the present character and future development of the neighborhood is not adversely affected and the lot does not provide all-day commuter parking.

The recently amended SP Regulations regarding parking lots, were designed to discourage surface commuter parking lots where they adversely affect residential uses. This condition is particularly acute where SP Districts adjoin residential districts as is the case near Dupont Circle. In the Judiciary Square area only a small portion of the SP-2 District (east of Mount Vernon Square), adjoins a residential district. The zoning surrounding the SP-2 District is commercial, predominantly C-4 and C-3-B.

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This parking lot is approximately four blocks east of the Convention Center site. It is OPD's belief that the construction of the center will be a major impetus in the elimination of many of the large surface parking lots which are major land users in this section of the city. Because of the limited number of parking spaces proposed for the Convention Center, public parking facilities will be needed in the vicinity to accommodate local events certainly until additional segments of the Metrorail System are completed. OPD expects that public parking facilities will be accommodated in new construction thereby eliminating surface parking.

The applicant has stated that there is renewed interest in developing this site and that the continuation of this lot is an interim use. OPD notes that there are few retail uses in the immediate vicinity of this site which would be served if this lot provided short-term parking. In addition the majority of residential structures in the vicinity consist of single family and multiple row dwellings. Judiciary House, immediately adjacent to this lot, provides on-site parking, and as a facility for senior citizens would not generate the same demand for parking as a typical apartment building of similar size (268 units). Therefore, it would appear that the need for residential and retail parking facilities at this location is not a critical need at this time.

It is OPD's opinion that the continuation of this lot for a limited period of time would not adversely affect nearby and adjoining property. Judiciary House is separated from this lot by a public alley and parking for this structure is located to the rear of the building. It is anticipated that the parking lot will be a suitable site for development in the near future as a result of the Convention Center to the west, continued activity in the Mt. Vernon East Urban Renewal area, and projected new office and retail development near Judiciary Square to the south. OPD believes that the attractiveness of this site for development has increased substantially in the past few years and will continue to do so.

OPD believes that if this site is to be developed within the period indicated by the applicant, it would serve no public purpose to deny the use of the site for commuter parking at this time. Its particular location and the lack of uses which would require short-term parking facilities in the immediate vicinity are mitigating circumstances to allow its continuation.

The Board concurs in the findings of the Office of Planning and Development.

12. The application was referred to the Department of Transportation on January 5, 1979. No report was received.

13. Advisory Neighborhood Commission 2C made no recommendation on the application.

14. Letters and petitions were received by the Board in support of the application from the Corinthian Baptist Church, Judiciary House and users of the lot including both commuters and local residents.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a special exception and a variance. As to the special exception the Board concludes that the applicant has substantially met the requirements of Paragraph 4101.41 of the Zoning Regulations. The subject parking lot had been in existence on October 5, 1978 under approval of the BZA. Pursuant to Sub-section 4101.411, the use is not likely to be objectionable to adjoining property owners because of noise, traffic or other objectionable conditions due to the location of the subject site and surrounding uses including the GAO building and Massachusetts Avenue. Pursuant to Sub-section 4101.412, the present character and future development of the neighborhood will not be affected adversely by the use because of its nature of operation, use as a facility which serves both local residents and commuters and existence as an interim use. Pursuant to Sub-section 4101.413, the lot is used in part for residential parking and for parking for the Corinthian Baptist Church.

The applicant complies with the provisions of Sub-section 8207.2 because the proposed continued use of the site for parking purposes for a limited period of time is in harmony with the general purposes and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring properties.

As to the variance, the Board concludes that the requested variance is a use variance, because the variance requested relates to the manner in which the parking spaces will be used. In order to grant a use variance, the applicant must demonstrate that there is an undue hardship upon the owner arising out of some unique or exceptional condition of the property. The Board concludes that the subject site has no other reasonable use than the continuation of the existing parking facility. The Board concludes that there are not sufficient facilities in the area to generate enough demand for short-term parking and that restriction of use of the lot to other than commuter parking only would create a hardship for the owner.

The Board further concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The proposed parking lot use because of its nature of operation will not adversely affect the present character and future development of the neighborhood. The lot abuts a major arterial road and a fire station across its alley to the east. In addition, as evidenced by the letters and petitions submitted in this case, there is a need for this lot which services many uses. Therefore, this use, as further conditioned by this Order, is appropriate for the site.

Accordingly it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

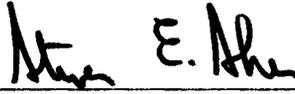
1. Approval shall be for a period of TWO years from the date of expiration of the previous Certificate of Occupancy, namely January 6, 1979.
2. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
3. An eight inch coping shall be erected and maintained along each side of all driveways to protect the public space.
4. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
5. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
6. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
7. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

8. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 3-2 (Chloethiel Woodard Smith, Leonard L. McCants and Charles R. Norris to grant, William F. McIntosh opposed, Walter B. Lewis opposed 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:

30 JUL 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.