

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12953 of Hyman Zoslow, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions, (Section 4101) to use the subject premises as a parking lot in the SP-2 District at the premises 1135-1147 10th Street, N.W. (Square 369, Lots 854,855 and 857).

HEARING DATE: July 18, 1979
DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The subject property is located on the southeast corner of the intersection of 10th and M Streets in an SP-2 Zone District at premises known as 1135-1147 - 10th Street, N.W.

2. The property was last operated as a parking facility pursuant to Certificate of Occupancy No. B-97105 and BZA Order No. 11845 dated September 15, 1975 which expired on September 15, 1978.

3. The applicant proposes to operate a parking lot to serve commuters at this site.

4. Paragraph 4101.41 of the Zoning Regulations provides that a parking lot in existence on October 5, 1978 under approval by the Board of Zoning Adjustment may be permitted by the Board to continue in existence for a period not to exceed four years from the date that the present certificate of occupancy expires provided the lot complies with the other requirements of Article 41. On October 5, 1978, this lot was not in operation pursuant to this Board's Order, and did not have a valid certificate of occupancy.

5. The applicant testified that the certificate of occupancy expired and lapsed because of his efforts to remove and unwanted tenant at that time who was not operating the lot in a respectable fashion.

6. The subject square contains a number of vacant structures and parking facilities. The area has a predominance of old structures in need of repairs and rehabilitation.

7. The Office of Planning and Development by report dated June 5, 1979, and oral testimony at the time of public hearing recommended denial of the application on the grounds

that the lot was in a state of disrepair and not operating in accordance with this Board's previous Order. The Board so finds.

8. The applicant presented no evidence or testimony that there was any exceptional or extraordinary condition or situation which affects the property to qualify it for a variance.

9. The applicant testified that the only feasible use of the premises was as a parking lot. The applicant presented no factual evidence to support the condition that there is no reasonable use of the property which can be made for a purpose permitted in the SP District. The applicant did testify that conforming SP development was occurring on surrounding or nearby property.

10. There was no report from Advisory Neighborhood Commission 2C on this application.

11. There was no opposition to the granting of this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the above Findings of Fact and the evidence of record the Board concludes that at the time the new SP Zoning Regulations became effective on October 5, 1978 this facility was not in operation as a valid parking lot and therefore the Board has no jurisdiction to grant a special exception to continue a parking lot.

The Board is of the opinion that the only consideration that could be given to this application is that of a request for a use variance. The Board concludes that the applicant did not carry the burden of proof necessary to support the granting of a use variance. There is no evidence that the property is affected by a condition which meets the test for a variance. There is further no evidence of an undue hardship upon the owner of the property if the Zoning Regulations are strictly applied.

The Board further notes that the SP District regulations do not permit all day commuter parking. The Board concludes that to grant the application would thus impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map. Accordingly, it is hereby ORDERED that this application is DENIED.

VOTE: 4-1 (William F. McIntosh, Walter B. Lewis and Charles R. Norris to deny; Leonard L. McCants to deny by proxy; Chloethiel Woodard Smith opposed)

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

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

FINAL DATE OF ORDER: 27 FEB 1980

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 ADJUSTEMENT."