

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12990, of Safeway Stores, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to continue accessory parking in the R-1-B District at the premises 3725-3729 Morrison Street, N.W. (Square 1867, Lot 93, formerly Lots 74 and 76).

HEARING DATE: July 25, 1979
DECISION DATE: September 9, 1979

FINDINGS OF FACT:

1. In response to objections, the Chair, as a preliminary matter, ruled that all parties within 200 feet of the subject property had been properly notified of the public hearing on the subject application.

2. The subject lots are located at 3725-3729 Morrison Street, N.W. and are in an R-1-B District.

3. The subject lots serve as an accessory parking facility to the Safeway Store located at 5545 Connecticut Avenue, N.W. which the lots abut.

4. The Board first approved the creation of the subject parking lot in 1967 in BZA Order No. 9217. The Board's last approval for continuance of the subject lots was in BZA Order No. 12421, dated July 18, 1977.

5. In the aforementioned BZA Order No. 12421, the Board granted the application for a period of two years and subject to the condition that the applicant shall comply with all of the conditions contained in an agreement dated June 16, 1976 between Safeway and the Upper Connecticut Avenue Betterment Association.

6. The applicant testified that all of the conditions of the Board's prior Order had been observed. The Board so finds.

7. The applicant testified that it had received no complaints concerning the operation and maintenance of the subject lots.

8. The applicant testified that it now seeks a continuance of the subject parking lot under the same terms and conditions as in the prior grant except that it requests approval for a longer period of time.

9. There was no opposition to the application.

10. Subsequent to the public hearing, a memorandum from the Department of Transportation dated August 6, 1978, was received by the Board. The DOT stated that the existing driveways on Connecticut Avenue encourage inefficient and unsafe operations. The close proximity of the driveways to each other creates conflicts between turning vehicles. Automobiles queue on Connecticut Avenue, block the Morrison Street intersection and present a safety problem to the pedestrians on the sidewalk crossing the driveways. The DOT recommended that this application be approved for no longer than one year. During this time, with the cooperation of Safeway officials, DOT proposed to monitor the existing parking lot and driveways and prepare a report with recommendations that DOT believes will be in the best interest of both the city and Safeway.

11. The Board, at it's public meeting of August 8, 1979, deferred a decision on this application until it's public meeting of September 5, 1979. It directed that the report of the DOT should be sent to all parties and time afforded to all parties to respond.

12. By letter of August 8, 1979, the applicant requested the Board not to impose any conditional grant of this application on a future report of the DOT. It recommended that DOT present it's recommendations to Safeway and the affected citizens in the vicinity of the store for any recommended remedial action not inconsistent with the aforementioned agreement.

13. By memorandum of August 14, 1979, the DOT stated that because of an undisputed need for this accessory parking, and in view of the inexact amount of time needed to develop a more suitable access arrangement for this lot, DOT would like to recommend that BZA approve the extended permit for the normal duration with the condition that the applicant develop jointly with DOT a reconfiguration plan. In this manner, it should be assured that such a plan will evolve on or before the next request for a permit extension. This should also ensure time for coordinating the improved access with all interested parties.

14. Advisory Neighborhood Commission - 3G in a letter to the Board dated August 27, 1979, replied as follows:

ANC - 3G responds here to memorandums dated August 6 and 14, 1979 from the Department of Transportation to the Board, regarding the above application.

ANC - 3G continues to support the application of Safeway for a special exception provided that the Agreement of June 16, 1976 between Safeway and the Upper Connecticut Avenue Betterment Association is incorporated as a condition of the special exception. This Agreement was carefully negotiated over several years. The Board included the Agreement as a condition to Safeway's special exception in the previous case, and we urge it to do the same here.

The Department of Transportation, concerned about traffic safety at the parking lot, has recommended that the Board approve the special exception for the normal period (presumably 2 years) with the condition that Safeway and the Department develop a new parking plan. The Department says that this condition could provide adequate time to develop a plan before the next special exception case, and that it would ensure time for coordinating development of the plan with all interested parties.

If the Board adopts the proposal, ANC - 3G suggests two clarifications. First, the Board should make ANC - 3G, Chevy Chase Citizens Association, Upper Connecticut Avenue Betterment Association and all interested neighbors a party, along with Safeway and the Department, in evaluating the need for a new parking plan. Second, if a new plan is developed, the Board should consider it in the next special exception proceeding and not in the present case. ANC believe that this is the most prudent way to proceed in view of the Department's comments." The Board concurs.

CONCLUSIONS OF LAW:

The Board concludes that the applicant has demonstrated that all of the conditions specified in Paragraph 3101.48 have been met, that the parking lot 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.

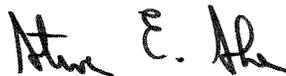
It is therefore ORDERED that this application be GRANTED, subject to the following conditions:

1. Approval shall be for a period of TWO YEARS from the date of expiration of the previous Certificate of Occupancy.
2. The applicant shall continue to comply with all of the conditions contained in the agreement dated June 16, 1976 between Safeway Stores, Inc. and the Upper Connecticut Avenue Betterment Association, attached as part of Exhibit 24 of the record, a copy of which is attached to and made a part of this Order.
3. The applicant shall meet with the D.C. Department of Transportation, Advisory Neighborhood Commission 3G, The Upper Connecticut Avenue Betterment Association and other affected area residents to discuss and resolve the differences concerning access to and circulation around the parking lot. When it applies for continuation of the parking lot, the applicant shall present to the Board the result of such meetings and any proposed modification to the lot which may have been agreed to.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith and Leonard L. McCants to GRANT).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

28 NOV 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.

AGREEMENT

AGREEMENT, dated June 16, 1976 between the Upper Connecticut Avenue Betterment Association ("Association") and Safeway Stores, Incorporated ("Owner")

WHEREAS

A) Owner is a corporation organized under the laws of the State of Maryland and owns the residentially zoned properties at 3725 and 3729 Morrison Street, N. W., Washington, D. C. These properties are more particularly described as Lots 74 and 76, Square 1867 and are hereinafter referred to as "residential lots".

B) Owner uses the residential lots as an accessory parking facility to its Safeway Store at 5545 Connecticut Avenue, N. W., Washington, D. C. This Safeway Store comprises Lots 30, 31, 32, 29, 90, 91 and 77, Square 1867 and is hereinafter referred to as "store".

C) Owner operates the store pursuant to a lease expiring July 17, 1983. This lease, attached hereto as Appendix A, provides Owner with options to renew for 6 separate and additional periods of 5 years each.

D) Association is a non-profit corporation organized under the laws of the District of Columbia whose members consist of residents of the neighborhood bounded by Military Road on the South, Broad Branch Road on the East, Connecticut Avenue on the West and the District line on the North ("neighborhood").

E) Under the District of Columbia zoning regulations, the residential lots cannot be used as an accessory parking facility to a commercial enterprise unless the Board of Zoning Adjustment ("Board") grants a special exception therefor. In the spring of 1967, Owner applied to the Board for a special exception that would permit use of the residential lots as an accessory parking facility to the store. By order of August 16, 1967, the Board granted Owner's application for special exception permitting such use for a 5-year period.

F) After expiration of this special exception, Owner applied to the Board on September 11, 1972 for another special exception that would permit continued use of the residential lots as an accessory parking facility to the store (Appeal No. 11244). On January 17, 1973, the Board held a public hearing on the application. The Association appeared at the hearing presenting evidence in opposition to this application. By order of July 25, 1973, the Board granted Owner's application for a 5-year period. The Association sought review of this order in the District of Columbia Court of Appeals on January 23, 1974. By order of August 7, 1974, the Court reversed the Board's order and remanded the case for another

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 16, 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 in 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 ⁹20;

d) Recordation of this Agreement as provided in Clause 10, and

e) Approval of this Agreement by the Board and incorporation of the substance of the settlement reached herein in a decision reached by the Board in Appeal No. 11244.

13) This agreement shall be governed in all respects by the laws 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 the 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 21st day of January, A. D., 1977.

(Notarial Seal)

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

My commission expires 1st July, 1978.

