

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13053, of Canal and Ivy Associates, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the parking requirements (Sub-section 7202.1) and from the prohibition against parking spaces measuring less than nine feet in width and nineteen feet in length (Sub-section 7204.1) for a proposed office and retail building and parking garage in a C-M-1 District at the premises 55 Ivy Street, S.E., (Square 693, Lots 1, 2, 67, 79, 80, 801, 804-822 and 834).

HEARING DATE: October 24, 1979  
DECISION DATE: November 7, 1979

FINAL DATE OF ORDER: March 6, 1980

DISPOSITION: The application was conditionally GRANTED by a vote of 3-0 (Walter B. Lewis, Charles R. Norris and William F. McIntosh to GRANT; Leonard L. McCants and Chloethiel Woodard Smith not voting, not having heard the case).

FINDINGS OF FACT:

1. The Board, at its decision meeting of November 7, 1980, approved the garage parking plan as shown on Exhibit No. 34 of the record.
2. By letter of December 17, 1979, the applicant requested the Board to approve a revision to the plan approved previously by the Board. At its public meeting of November 9, 1980, the Board denied the request as premature since the Final Order had not been issued. By letter dated January 11, 1980, the Board advised the applicant of the Board's decision and stated in part "you may properly file a motion for reconsideration or rehearing after the Order is final."
3. On March 6, 1980, the Final Order of the Board was issued.
4. By motion of March 28, 1980, the opposition petitioned the Board to STAY its Final Order of March 6, 1980 pending the decision of the D.C. Court of Appeals to which the Board's Order had been appealed. At the public meeting of April 2, 1980, the Board denied the petition for STAY of Order. That decision was finalized by Order dated April 21, 1980.

5. The applicant, by letter of April 7, 1980, requested approval of the modification of the garage parking plan as approved by the Board in its Final Order.

6. The New Jersey Avenue Southeast Neighborhood Association opposed the request, on the grounds that it was untimely filed and that a new public hearing was required.

7. Under Section 5.41 of the Supplemental Rules of Practice and Procedure, a motion for reconsideration must be filed within ten days of the date of a final decision.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the request to modify the plans should be treated as a motion for reconsideration of the decision approving the specific set of plans referred to in the Order dated March 6, 1980. The Board notes that the applicant was advised prior to the issuance of the final decision that the proper way to present the request to modify the plans was as a motion for reconsideration or rehearing. The Board concludes that the motion was not filed in a timely manner, and therefore should be denied. The Board further notes that the decision of the Board has been appealed to the D.C. Court of Appeals, where it is now pending. The Board concludes that it is inappropriate to entertain this request in this manner while the court challenge is pending. The Board further concludes that, at this point, if the applicant wishes to pursue the modification of the plans, it must properly file a new application for which there would be a public hearing with proper notice. Accordingly, it is ORDERED that the request of the applicant for modification of plans is DENIED.

VOTE: 4-0 (Walter B. Lewis, Charles R. Norris, William F. McIntosh and Leonard L. McCants to DENY; Connie Fortune not voting, not having heard the case).

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

ATTESTED BY: \_\_\_\_\_

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 2 JUN 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 ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13053 of Canal and Ivy Associates, pursuant to Paragraph 8207.11 of the Zoning Regulations for variances from the parking requirements (Sub-section 7202.1) and from the prohibition against parking spaces measuring less than nine feet in width and nineteen feet in length (Sub-section 7204.1) for a proposed office and retail building and parking garage in a C-M-1 District at the premises 55 Ivy Street, S.E., (Square 693, Lots 1, 2, 67, 79, 80, 801, 807, 814-822 and 834.)

HEARING DATE: October 24, 1979

DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The application was initially scheduled for the public hearing of October 17, 1979 but was continued since the opposition had established that not all of the property owners within 200 feet of the subject property had received notice of the public hearing. The applicant was directed by the Chair to serve the notices of the hearing on the four additional property owners who had not been included on the list submitted by the applicant.

2. The subject site is located on the east side of the intersection of Canal and Ivy Streets, S. E., and is known as 55 Ivy Street, S. E. It is in a C-M-1 District.

3. The subject site is irregular in shape. It resembles somewhat the shape of a horseshoe. It is approximately 63,168 square feet in area. It is unimproved. The site is currently used as a commercial parking lot with spaces for 220 cars.

4. The subject site is bounded by Ivy Street, Canal Street and E Street. To the east of the site is a fifteen foot public alley and residential structures. To the south of the site is a row of two story brick buildings.

5. The applicant proposes to construct an office, retail and parking garage building on the subject site.

6. Under the Zoning Regulations, the applicant is required to provide 317 parking spaces for the proposed building. The applicant proposes to provide 157 parking spaces of which 140 spaces would measure nine feet by nineteen feet and seventeen spaces would measure less than nine feet by nineteen feet. The applicant seeks two variances, one from the parking requirements and a second variance to provide spaces that are less than nine feet by nineteen feet.

7. The applicant's traffic expert witness testified that the subject property has excellent access to public transportation. A Metro subway station is within 800 feet and there are four bus lines that serve the area with stops adjacent to the subject site. The witness further testified that based on his study the proposed building will need to provide 112 spaces for the employees of the building and approximately thirty-eight spaces for visitors to the building. The applicant's proposal to provide 157 spaces will adequately meet the needs of the proposed building. The witness further testified that the average compact car could be parked in parking spaces that are nine feet wide and fifteen feet long, and would not need the space dimensions of nine feet by nineteen feet as required by the Zoning Regulations. The witness testified that the subject proposal would further the goal of the DOT in encouraging greater use of mass transportation.

8. The DOT testified at the public hearing that the subject neighborhood has a great need for off-street parking. Most of the residences have no off-street parking facilities and that is the reason why residential permit parking to the north and east of the subject property has been authorized. The subject lot had provided 220 spaces that serviced the neighborhood's needs, the needs of visitors to the Capitol building and businesses in the neighborhood. These 220 spaces are a resource that the District is losing in this neighborhood because of the proposed construction. The DOT testified that the proposed building will generate a parking need for eighty-two vehicles daily. The DOT urged that the applicants control their parking for their employees and provide additional spaces to compensate for the spaces being given up by the loss of the parking lot. The DOT recommended that the applicant provide seventy-five spaces on another level of parking. These seventy-five spaces, the eighty-two employee spaces and the seventy-five spaces for visitors and guests to the proposed building would compensate for the 220 spaces now being used by the general public. The DOT also emphasized that there were some eighty-five other parking

spaces available in the immediate neighborhood that were underutilized since they were not known to the public. The DOT suggested that it could provide signs directing the public to the unused spaces.

9. The subject site is affected by a sub-surface water condition with ground water levels within the site varying from thirteen feet to twenty-seven feet below existing ground surface, placing the water table only slightly below the structure with one basement level. The applicant's witnesses testified that if two basement levels are required, several technical construction problems will be encountered. De-watering of the excavation site will be required and sheeting and shoring will become considerably more complicated due to the excavation depth and the poor quality of the soil. Further, underpinning of the foundations of existing structures to the south will be required and the construction period for the project would be extended by a minimum of ten weeks due to the extra excavation.

10. The applicant's witnesses testified that the subject site is the only C-M-1 zoned land located within 800 feet of the Capitol Hill Metro station proposed for office use. The parking requirements for office use in the C-M-1 zone did not contemplate locations of Metro stations within walking distance of such zoned land and the parking requirement is excessive for such locations. The witnesses further testified that approximately 150 parking spaces, on one parking level, could be rented at this location at the market rate. Therefore, the cost of the second parking level, approximately one and three-quarter million dollars, would be incurred for which there would be little or no income received.

11. The applicant's witnesses testified that there is no parking demand for 317 spaces at the subject site.

12. There was testimony that the unique shape of the subject site and the constrictions which it imposes on the design of the parking garage leave space which is suitable for the parking of automobiles which is less than the required nine feet by nineteen feet size. The proposed spaces are nine feet by fifteen feet and, according to the testimony of the applicant's expert traffic witness, are of sufficient size in which to park compact and sub-compact automobiles.

13. There was opposition to the application by private citizens, the New Jersey Avenue S.E. Neighborhood Association, the Capitol Hill Restoration Society, and the Advisory Neighborhood Commission. The basic opposition to the application, hereinafter more fully discussed, was that off-street parking was a critical issue in the subject neighborhood even with the 220 spaces provided by the subject lots which are now proposed to be removed from the public's use.

14. The Capitol Hill Restoration Society, by letter of October 15, 1979, and in its testimony at the public hearing opposed the application on the grounds that no case had been made that there exists extraordinary conditions resulting in exceptional hardship and practical difficulties as required under Sub-section 8207.11. The Society argued that there is nothing extraordinary about the piece of property here in question, and that the sub-surface can support either one level of parking, as proposed by the applicant, or two levels if the variance is denied. The Society further argued that no practical difficulties or undue hardship have been demonstrated by the applicant. The expense of constructing a second level of parking does not qualify as a difficulty or hardship. The Society did not reach the third ground for a variance, no detriment to the public good, inasmuch as it believes that the applicant has failed to meet grounds one and two. The Society noted, however, that many neighbors of this project are seriously concerned at the adverse impact they believe that the granting of this variance will have on their neighborhood.

15. Advisory Neighborhood Commission-6B by letter dated October 16, 1979 and by testimony at the public hearing, opposed the application. The ANC noted that residents of the neighborhood are uniformly and vocally opposed to a reduction from 317 to 157 parking spaces. The residents cite the already overcrowded parking conditions in the immediate area which will be further aggravated by the opening of the Madison Library with its additional 2,000 plus employees. The ANC further stated that Section 7203 limits the variances for parking to twenty-five percent of the required spaces, and might be considered as limiting authority under 8207.11. In addition, the ANC cited questions raised as to the adequacy of notice to the neighborhood as required by the Regulations. The ANC was of the opinion that, unlike downtown areas, this building will be located immediately adjacent to a residential neighborhood. The ANC argued that the applicant has not demonstrated that either exceptional practical difficulties or exceptional and undue hardship would result from compliance with the regulations.

16. The New Jersey Avenue S.E. Neighborhood Association opposed the application on essentially the same grounds as the Capitol Hill Restoration Society and the Advisory Neighborhood Commission.

17. The Board held the record open at the conclusion of the October 24 public hearing for the parties to submit supplemental statements. The applicant submitted a supplemental statement. The applicant then submitted a revised parking plan. The opposition objected to the revised parking plan as an amended application which required further hearing by the Board. The Board does not concur with the opposition.

18. Under the revised parking plan the applicant proposes to provide 224 parking spaces as follows:

- a. 140 nine feet by nineteen feet lined spaces.
- b. Nineteen spaces nine feet by fifteen feet.
- c. Fifty-two spaces with attendant parking, forty-six of which are nine feet by nineteen feet and six of which are nine feet by fifteen feet.
- d. Thirteen spaces located in a vault area, eleven of which are nine feet by nineteen feet and two of which are nine feet by fifteen feet.

In addition the applicant proposed to provide fifty over-night parking spaces available from 6:30 p.m. to 7:30 a.m. to residents of the immediate vicinity at the rate of ten dollars per month.

19. The Board is required by statute to give great weight to the issues and concerns of the ANC. In replying to these issues and concerns as well as those expressed by neighborhood associations and private individuals, the Board finds first that as to the adequacy of notice to the neighborhood this issue was met when the public hearing was continued from the public hearing of October 17, 1979 to October 24, 1979 and that any additional parties were served with the notice of the new public hearing date. The defect in notice was cured. Secondly, the applicant has elected to seek a variance under Paragraph 8207.11, not a special exception under Section 7203. The twenty-five percent reduction has no applicability to a variance case. The

Board, based on the record, will determine if the burden of proof has been met under the provisions elected by the applicant. The Board in its Findings of Fact and Conclusions will set forth the facts in which the applicant has or has not met its burden. Third, the Board finds that the concerns of the citizens that the applicant is not providing adequate parking are also shared by the DOT in Finding No. 8. The Board is aware however that the applicant has submitted a revised parking plan. The Board finds that the revised parking plan, by increasing the number of spaces from 157 to 224 and by providing some over-night parking, will alleviate many of the concerns expressed by the opposition as to the inadequacy of the parking facilities proposed by the applicant. The Board will incorporate said plan as a condition to granting the application. Fourth, as to the condition of the property, in Finding of Fact No. 3, the Board determined that the property has an unusual shape.

20. By letter dated December 17, 1979, the applicant filed a proposed revision to the site plan which had been previously submitted to the Board and marked as Exhibit No. 34. The New Jersey Avenue S.E. Neighborhood Association opposed the proposed revision, and moved that the Board either require the applicant to file a new application or set a new public hearing. At its public meeting held on January 9, 1980, the Board determined that the request for approval of a revised site plan was premature, in that no final order had yet been issued. The Board therefore denied the applicant's request.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The subject property is essentially shaped like a horseshoe with three street frontages. Ground water levels within the site vary from thirteen to twenty-seven feet below existing ground surface, placing the water table only slightly below the structure with one basement level. To build two basement levels would require de-watering of the excavation site.

The excavation depth and the poor quality of the soil would make sheeting and shoring more complicated and would require underpinning of the foundations of existing structures to the south. Lastly, the subject site is the only C-M-1 zoned land located within 800 feet of the Capitol Hill Metro station proposed for office use. For these reasons the Board concludes that the subject site is unique and affected by several exceptional situations or conditions.

Testimony at the hearing established that the amount of parking required by the Zoning Regulations would not be utilized and would impose a substantial added cost to the project. According to the District of Columbia Department of Transportation parking survey, presently there are vacancies in parking lots and parking structures in the immediate vicinity. The applicant proposes to provide, with attendant parking, 224 spaces, only nine less than the parking demand computed by DOT. The cost of providing two levels of parking is approximately eighteen percent of the total construction cost of the project. Due to the low level of parking demand, this cost would be incurred by the applicant with little or no income received in return. The Board concludes that this imposition of an undue economic burden imposes a practical difficulty on the applicant. For all the above reasons the Board concludes that the practical difficulty has been established to support the variance from the parking requirements.

The Board further concludes that the unique shape of the subject site and the constrictions which it imposes on the design of the parking garage leave space which is suitable for the parking of automobiles which is less than the required nine feet by nineteen feet size. The practical difficulty on which the variance is based is thus established.

The Board also concludes that the relief can be granted based on the revised parking plan without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

The Board concludes that it has given the great weight required by statute to the issues and concerns of the ANC. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The total number of parking spaces to be provided shall be 224, of which twenty-seven shall be less than nine by nineteen feet, as follows:
  - a. 140 nine feet by nineteen feet lined spaces,
  - b. Nineteen spaces nine feet by fifteen feet.
  - c. Fifty-two spaces with attendant parking, forty-six of which are nine feet by nineteen feet and six of which are nine feet by fifteen feet.
  - d. Thirteen spaces located in a vault area, eleven of which are nine feet by nineteen feet and two of which are nine feet by fifteen feet.
2. The spaces shall be provided as shown on Exhibit No. 34 of the record.
3. The applicant shall provide fifty over-night parking spaces available from 6:30 p.m. to 7:30 a.m. to residents of the immediate vicinity at the rate of ten dollars per month.

VOTE: 3-0 (Walter B. Lewis, Charles R. Norris and William F. McIntosh to grant, Leonard L. McCants not present, not voting, Chloethiel Woodard Smith not voting, not having heard the case).

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

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

6 MAR 1980

FINAL DATE OF ORDER: \_\_\_\_\_

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



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HEARING DATE: October 24, 1979  
DECISION DATE: November 7, 1979

DISPOSITION: The application was GRANTED CONDITIONALLY by a vote of 3-0 (Walter B. Lewis, Charles R. Norris and William F. McIntosh to grant, Leonard L. McCants not present; not voting, Chloethiel Woodard Smith not voting, not having heard the case).

FINAL DATE OF ORDERL 3/6/80

ORDER

Counsel for the opposition, the New Jersey Avenue Neighborhood Association, Inc., filed a Motion for a STAY of BZA Order No. 13053, dated 3/6/80, pending judicial review of the Board's Order by the D.C. Court of Appeals. Upon consideration of the Motion and the Order, the Board finds that the Motion fails to state specifically the respects in which the final decision is claimed to be erroneous. The Board concludes that it has committed no error in deciding the application. No grounds have been stated as to why the Motion should be granted as a matter of law. Accordingly, it is ORDERED that the Motion is DENIED.

Decision Date; April 2, 1980

VOTE: 4-0(Charles R. Norris, William F. McIntosh, Connie Fortune and Leonard L. McCants to deny)

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

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

FINAL DATE OF ORDER: 21 APR 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 ADJUSTMENT."