

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."