

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Rehearing pursuant to the Order of the District of Columbia Court of Appeals in the Application No. 13096 of First Baptist Church, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue the operation of a parking lot in an R-5-B District at the premises 1513-19 O Street, N. W., (Square 195, Lots 74, 75, 830, 40, 71 and 111).

HEARING DATE: July 29, 1981
DECISION DATE: September 4, 1981

FINDINGS OF FACT:

1. In BZA Order No. 13096, dated April 7, 1980, the Board DENIED the subject application on the grounds that the applicant had not met the burden of proof as to compliance with Sub-section 8207.2 and Paragraph 3104.44 of the Zoning Regulations.

2. In BZA Order No. 13096, dated June 12, 1980, the Board DENIED the applicant's Motion for Reconsideration, Rehearing, or, in the alternative, Reargument of the Board's Order denying the application.

3. The applicant appealed the Order to the District of Columbia Court of Appeals. The Court reversed and remanded the case on the grounds that the Board's findings and conclusions were deficient. The application was reheard de novo on July 29, 1981.

4. The subject parking lot is located at the northwest corner of 15th and "O" Streets, N. W. It is known as 1513-19 O Street, N. W. and is in an R-5-B District.

5. The subject parking lot is owned by the applicant, First Baptist Church, (hereinafter the Church) and is leased to Parking Management, Inc. (hereinafter PMI).

6. The subject parking lot is located in a mixed-use neighborhood, the predominant uses being residential and institutional. Institutional uses line Massachusetts Avenue and 16th Street. High density apartment buildings and hotels are concentrated along Rhode Island Avenue east of Scott Circle. Extensive lower density residential development, primarily flats and row houses, is located north and west of the subject square. East of 15th Street, the character of the area changes. The properties therein are devoted to light industrial and auto related uses

with mixed residential. The subject square includes a mixture of residential and institutional uses. Some row structures within the square have been converted from residential to office use. There are a large number of commuter parking lots located in and around the area.

7. The Board approved an application on July 15, 1959 to establish a temporary parking lot for five years on Lots 74 and 830 in BZA Order 5583. The Board approved applications on October 10, 1960 to establish temporary parking on lots 108, 109 and 110 for five years in BZA Orders 6088, 6089 and 6090. On March 30, 1961 the Board granted permission to continue operation of the parking lot on lots 74, 75 and 830 for an additional five years in BZA Order No. 6239. The Board granted permission on November 29, 1966 to continue operation of that lot and the parking lot on lots 108, 109 and 110 for five years in BZA Order 8984. The Board on February 11, 1972 granted permission to continue operation of the lot for another five years and to establish a temporary parking lot on Lots 71 and 111. In BZA Order No. 12387 dated September 21, 1977 the Board granted the continuance of the parking lot for two years.

8. The subject parking lot is approximately 18,600 square feet in area and it is designed to accommodate eighty-four cars. The lot is operated as a commercial parking lot by PMI from 7:00 A. M. to 6:00 P.M., Monday through Friday. The lot is an attendant controlled facility. The lot is used for commercial parking, ninety percent of which is commuter parking.

9. On Wednesday nights and on Sunday, the parking lot is used by the applicant for the members of its Church. There is an attendant on duty. At all other times after the closing of business for the day, the lot is available, without charge, for all uses of the neighborhood. The parking lot is unlocked. The subject lot is one block removed from the Church which is located at 16th and O Streets.

10. The applicant also owns a lot that is adjacent to the Church that accommodates cars for the Church members. On this latter lot the applicant is erecting a four story educational building that will be used for church purposes. The applicant testified that there will be no underground parking in the new building since it will be too expensive to construct. When the educational building is constructed approximately thirty to forty spaces will be restored for the parish use. The applicant further testified that the Church had received no complaints concerning the subject parking lot. The applicant proposes to retain the subject lot to service its members' parking needs. The applicant testified that ninety percent of the church membership uses automobiles to arrive at the church.

11. The number of church members is estimated at 950, of whom some 450 attend Sunday services. The applicant testified that on Sunday some 140 spaces in the aggregate are required to accommodate the parishioners. On Wednesday some 100 persons attend classes. There is less demand for parking spaces on Wednesday nights.

12. A representative of PMI testified that the lot is policed by the attendant for trash on a daily basis, that the trash is removed from the lot on a weekly basis, that the landscaping is maintained, and that once a month the lot receives a thorough sweeping with a mechanical sweeper. He further testified that he received no complaints concerning the maintenance and operation of the lot. He further testified that the users of the lot are employed by businesses in the immediate area. The Board, for reasons discussed below, is not persuaded that the alleged housekeeping activities occur or are sufficient.

13. The applicants' traffic expert testified that the level of traffic on 15th Street is normal, but the level of traffic on O Street is low, due to the fact that it is only one block long at that point, connecting 15th and 16th Streets, and that at 16th Street, traffic moving west on O Street is directed northbound by a dividing median in the road. He further testified that since several parking lots in the immediate area had been closed there was a big demand for parking in the area. The witness also testified that if other facilities were available in the immediate area for the parishioners, then the subject commercial parking lot would not be needed by the Church. The traffic expert advised that there was public transportation available on 16th Street and that there was a subway within 2500 feet of the Church.

14. The Department of Transportation testified at the public hearing that, since its report of July 28, 1977, on the subject lot, the accessibility by transit to the facilities served by the subject parking lot had improved only minimally in this area even though there has been expansion of the Metrorail system. The DOT further reported that it would continue to monitor the parking lot, if approved by the Board, to ascertain whether accessibility by transit improves to the extent that continued use of the lot by commuters is contrary to the city's air quality and energy conservation goals. Addressing other transportation impacts and issues, DOT found that the subject parking lot is grossly over crowded. The DOT observed that automobiles are jammed into every available space, and in aisles and driveways, in contrast to the formal layout of the lot as shown by the applicant. There is no space to maneuver cars on the site. The DOT observed cars from the parking lot being moved by attendants and double parked on the city streets to enable other cars on the lot to exit. The DOT concluded that the double parking and backing into the streets adversely affect traffic operations and create

unsafe conditions. The DOT recommended that the applicant improve the maneuverability within the property, relieve the overcrowded condition, provide adequate aisle space and maintain clear entrance and exit driveways.

15. Opposition to the application was presented by a property owner residing at 1528 O Street, N. W. which is diagonally access from subject parking lot. The opposition has lived at said address since May, 1976. The witness opposed the parking lot on the grounds that it was overutilized, in that the lot was providing facilities for 190 cars when the lot composed eight-four spaces. The witness testified that cars were parked in public space, protruded into the sidewalk, and parked in alleys, public and private. Exit and access lanes of the lot were used for parking. Cars were double parked on O Street to obtain maneuverability on the lot. The opponent, in support of her testimony, introduced photographs to the record taken at 9:00 A.M. on, Wednesday July 29, 1981 marked as Exhibit No. 48, pictures 1, 2, 3 and 4. The Board strongly credits the testimony as supported by the photographs.

16. The opposition also testified that the lot was full of trash and debris, including broken bottles, beer cans, boxes, paper and an abandoned engine block. In support of this, the applicant submitted photographs to the record marked as Exhibit No. 49, pictures A, B, C, and D taken at 8:00 A.M., Sunday, July 19, 1981 and pictures E and F taken at 12:15 P.M. and 11:00 A.M. of the same day. The photographs also evidenced missing, misaligned and misplaced wheel stops. The Board is persuaded by such evidence in contravention to the statements in Finding No. 12 of the operator of the lot.

17. The opposition further opposed the parking lot on the grounds that it attracted illegal actions such as prostitution and drug use. The opposition introduced into evidence nine used condoms and a drug syringe which she testified was taken off the subject lot on two Sunday mornings.

18. The opposition further offered testimony that the lot was not needed by the Church. Exhibit 54, attachment C, evidences that the S-2, S-4, G-2 and G-4 bus routes run on a ten to fifteen minute schedule during both Wednesday evening and Sunday morning time periods when the Church asserts a need for mass transit service. This timing results in an average wait of five to seven minutes for a bus arrival. The transit map included in the same Exhibit 54, attachment C, shows that the 1,500 foot radius of the Church is served by the P-1, G-2, G-4, S-1, S-2, S-3, S-4 and S-5 routes. Slightly outside that radius stops of at least thirty additional bus routes, including the 40-series, L-series, N-series, and D-series routes, may be found. Also, two subway stops, Dupont Circle and Farragut North, are within 2500 feet of the Church. The opposition, through Exhibits

51 and 52, evidenced that the peak usage of the lots on Sundays, July 19 and July 26 were twenty-one cars and sixteen cars respectively. The applicant had testified that fewer people attend on Wednesday night than Sunday and there is less of a need for parking. The applicant further testified that the subject parking lot would not be needed by the Church if other facilities were located. The applicant testified that the Church had not contacted the owners of nearby parking facilities with respect to possible parking.

19. The opposition further testified that there is a heavy flow of traffic on O Street in the morning and evening hours caused by the parkers on the lot to get to their spot on the lot or to get home. In the morning, cars make illegal turns on 16th Street onto O Street. The cars are going south on 16th Street, proceed southbound on the northbound lanes on the wrong side of a concrete dividing median that is there to prevent turns before the underpass, and turn left into O Street through the traffic going north on 16th Street. In the evenings, the motorists turn right on 16th Street in the northbound traffic, cut in front of the median and turn into the traffic going south on 16th Street. Such actions create traffic hazards. Fifteenth Street is one way northbound. Sixteenth Street runs north and south. The Board finds that the testimony of an actual resident, based on daily observations, as to the traffic conditions to be more persuasive than the applicant's traffic expert who visited the neighborhood on a few occasions.

20. The Dupont Circle Citizens Association opposed the application. Based on a visit to the site by members of the Association and walking by it on many occasions during the years, the Association found the lot to be overpacked. It confirmed through its own experience what the other opposition had reported through Exhibits 48 and 49 as to overparking, parking on public space and trash and debris on the lot. The Association also testified to the question of the need for the lot by the Church, since there were facilities such as the parking lot at 1501 16th Street, the National Wildlife Association building, the American Trucking Association, the Airline Pilots Association building and the Forest Industry Building, all possible parking facilities within minutes of the Church which the Church has not sought out to meet its needs. The Association argued that a continued use of a lot in an R-5-B District that is not serving the neighborhood is precluding the lot from being developed for residential purposes. The Association cited as an example the construction of the Latrobe apartment building on 15th Street in the immediate subject area, which site had previously been a parking lot.

21. Advisory Neighborhood Commission 2B testified at the public hearing that at its meeting of July 22, 1981 the commissioners voted unanimously to recommend that the Board

deny the application. The ANC testified that it was reported at the meeting that this residentially zoned property, in existence for twenty years as a parking lot, is kept in a filthy condition and in the evening serves prostitutes and drug addicts. It was the strong opinion of the ANC commissioners that the lot has a great adverse impact on neighboring residential properties. Similar properties in the neighborhood, residentially zoned and once used as parking lots now have residential structures covering them. In the view of the ANC, this is especially appropriate since, in most instances, homes had been torn down to accommodate commercial commuter lots such as this one. Clearly, it would be in the best interests of the city's tax and population base were this lot as soon as possible cleared for residential construction. At the ANC meeting, the commissioners listened to First Baptist Church members describe their need for Sunday parking. However some commissioners agreed Sunday was the least difficult day to find parking in this neighborhood and more so in eastern sections of the community. The applicant gave no evidence of having investigated parking possibilities in nearby organizations such as the American Trucking Association, the National Wildlife Federation and the Airline Piolets Association. The ANC noted that, since the Board previously considered the Church's parking lot, Metrorail service has expanded, residential renovation and development of the neighborhood has increased, and the worsening D. C. housing crisis has rendered land suitable for residential development more socially precious.

22. The Board is required by statute to give great weight to the written recommendation of the ANC based on its issues and concerns. The Board concurs with the ANC in that the lot was not kept free of refuse or debris and that the applicant could investigate other facilities in the neighborhood that might accommodate the parking needs of its parishioners. As to the other concerns of the ANC, the Board emphasizes that the relief sought is through a special exception. The applicant has no burden to prove that the lot cannot be put to residential purposes. Further, the alleged issue of prostitutes and drug addicts using the lot is not an issue over which the Board has jurisdiction. The ANC and the other opposition have other forums for redress of those grievances.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the requirements of Paragraph 3104.44 and Sub-section 8207.2 of the Zoning Regulations. The Board for the reasons discussed below concludes that the applicant has not met its burden of proof.

Finding No. 15 evidences that the applicant has not complied with Article 74 of the Zoning Regulations which were listed as conditions to the grant of the prior application in BZA Order No. 12387, dated September 21, 1977. Bumper and wheel stops were missing or not maintained. Vehicles projected over lot lines and were parked on and over the public space. All parts of the lot were not kept free of refuse or debris.

Finding No. 14, the report from the DOT, and No. 15 and 19, testimony of opposition, are substantial evidence of the existence of dangerous or objectionable traffic conditions resulting from the use of the lot. The overcrowding of the parking lot, the inability to maneuver cars in the lot, double parking on a city street and the backing into the city street are such evidence.

Finding No. 16, the existence of the refuse and debris, attests to the adverse affect on the present character and future development of the subject neighborhood. As to the further requirement that the parking lot is reasonably necessary and convenient to other uses in the vicinity the Board concludes that the lot serves as a convenience to the neighborhood but that it is not reasonably necessary. Findings Nos. 13, 18, 20 and 21 evidence the availability of public bus and metro facilities to the site, the small use made of the lot by the parishioners, and other available avenues for parking in office buildings, hotels and motels that are in the immediate area.

The Board notes that the applicant gave much importance to the fact that it never received any complaints as to the operation and maintenance of the parking lot. The Board concludes that while it might be helpful, it is not incumbent upon the opposition to give such notice. As found in Finding No. 7 the subject lot has been operating since 1959. The applicant was certainly aware of its responsibilities and duties. The applicant had more than just passing familiarity with the Zoning Regulations.

The Board further concludes that for all the above reasons a grant of the special exception would not be in harmony with the general purpose and intent of the Zoning Regulations and the granting of the relief would tend to affect adversely the use of neighboring residential property.

The Board concludes that it has given the great weight required by statute to the issues and concerns of the ANC.

The Board is mindful of the opinion of the D. C. Court of Appeals when the case was remanded to the Board for rehearing. The Board concludes that the evidence contained in the record of this case is significantly different from

the previous cases requesting approval of parking. The Board concludes that the existence of the lot results in dangerous traffic conditions and adverse effects on the neighborhood. The record in previous cases did not compel the Board to reach the same conclusion. The conditions affecting consideration of the parking lot have significantly changed. The Board concludes that, based on the current record, the lot cannot be allowed to continue. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, Lindsley Williams, Douglas J. Patton, William F. McIntosh and Connie Fortune to deny).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

MAR 17 1982

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."