

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13248 of Mincho N. Dimitrov, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3101) to use the subject premises as a private parking lot to serve the Embassy of Finland during the normal working hours in an R-1-B District at the premises 3301-3305 - 45th Street, N.W., (Square 1603, Lots 1,2 and 3).

HEARING DATE: May 21, 1980

DECISION DATE: May 21, 1980 (Bench Decision)

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of 45th and Macomb Streets, N.W. and is known as 3301-3305 - 45th Street, N.W. It is in an R-1-B District.

2. The subject site is rectangular in shape and is approximately 10,750 square feet in area. The site is improved with a two story brick structure which fronts on 45th Street. There is a driveway entering from Macomb Street to the rear of the building.

3. The first floor of the subject structure is occupied by the Community Market and Wesley Heights Pharmacy and the second floor contains apartments.

4. To the north and east of the subject site is the Horace Mann Elementary School grounds and play equipment. To the south is Macomb Street followed by single family dwellings in an R-1-B District. To the west is 45th Street followed by single family dwellings in the R-1-B District.

5. The applicant proposes to use the vacant portion of the subject site to park twenty cars for his tenants and for the Embassy of Finland which is located one block north of the subject site. The proposed parking area is now covered with grass and shrubbery. The proposed site is approximately 6,375 square feet in area. It is rectangular in shape and topographically level.

6. The applicant testified that if the application is not granted he could put the site to residential uses.

7. The Office of Planning and Development, by report dated May 12, 1980, recommended that the application be denied. It reported that the proposed parking lot use of the site would not be appropriate. The site's use as a parking lot for embassy personnel would add to the traffic which presently travels residential streets to reach the retail commercial businesses at this location. The OPD was further of the view that the lot's use would impact adversely the operation of the school grounds it abuts on two sides. In conclusion, the OPD was of the opinion that a hardship had not been established as specified in Paragraph 8207.11 of the Zoning Regulations and that the application should be denied because the proposed use would cause substantial detriment to the public good and impair the intent, purpose and integrity of the Zoning Regulations. The Board so finds.

8. Advisory Neighborhood Commission 3D opposed the application on the following grounds:

- a. A parking lot at this location would endanger Horace Mann Elementary School students and other young children playing on the "tot lot" of the school grounds, immediately adjacent to the boundary between the subject premises and the playground. Not only the threat of collision with vehicles crossing the sidewalk while entering the parking lot driveway near the walkway from Macomb Street to the Mann School, but the deterioration of air quality at the "tot lot" would result from automobiles parking in this location.
- b. The parking lot applied for would be located off Macomb Street at the rear of the subject premises, directly across the street from private residences whose owners would suffer damage to their property values, nuisance from noise and pollution and face an eyesore in front of their homes.
- c. The present use of this premises is already a variance from its zoning, R-1-B, which has existed as the Wesley Heights Pharmacy and Community Market since the development of this neighborhood. The applicant has stated his intention to many people of applying for a zoning change to C-2 to operate a catering business on the premises. This application for a parking lot would provide for customers to his intended business which would be a great intensification of commercial use of this property, to the detriment of neighboring residents and the local community which patronizes the present pharmacy and market.

- d. The applicant states that the parking lot would be for "myself and the Embassy of Finland during the normal working hours." However, Mr. Eric Helqvist, Minister and Counselor of the Embassy, has stated to Barbara Fant, representative of ANC 3D, that the lot would be used exclusively by the Embassy if it constructed the lot. There does not seem to be any agreement between the Embassy and Mr. Dimitrov regarding who would use the lot when, how and why.
- e. When the government of Finland purchased its present chancery at 3216 New Mexico Avenue, N.W., a block away from the subject premises of the applicant, its attorney told the Zoning Commission at a meeting on February 9, 1978 that the parking lot adjacent to its new building would be sufficient to accommodate employees' vehicles. Since that time, the Embassy has applied for and been granted by D.C. Department of Transportation a diplomatic parking only zone on 44th Street, adjacent to its premises. Mr. Helqvist told Mrs. Fant that chancery employees still needed fifteen additional parking spaces. Mrs. Fant and Diane D. Wayman, chairman of the Spring Valley--Wesley Heights Citizens Association's zoning committee, then approached Mr. Lawrence Brandt re. Sutton Place Mall parking and Mr. Robert Seigfried re. American University parking lots, and were told that the Embassy could arrange for additional spaces there. Mr. Brandt would lease fifteen spaces to the Embassy for three months until his new commercial building across New Mexico Avenue --Sutton Place Mall is fully leased. The American University would probably allow the Embassy to occupy fifteen spaces of the lot on New Mexico Avenue, which is never filled by students and visitors, if the Ambassador would write to the president of the University requesting this. Mr. Helqvist indicated that the Ambassador would do this, for such an arrangement would be less costly than constructing a new parking lot on the applicant's property.

9. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. In addressing these concerns the Board concurs with the thrust of the issues "a" through "c". As to objections "d" and "e" the Board cannot vouch for the accuracy of the conversations reported but the Board does find that there are other facilities available in the immediate neighborhood to meet the needs of the proposed lessee of the subject proposed parking lot.

10. The Spring Valley-Wesley Heights Citizens Association opposed the application. There were numerous letters of record in opposition to the application. There was a petition of some fifty-five neighborhood residents in opposition to the application. The basic grounds of opposition were the potential danger of the proposed parking lot to the safety of the young students of the abutting elementary school, that additional traffic detracts from the quiet, residential character of the neighborhood, the proposed use was a commercial intrusion into a residential neighborhood, there was parking available in garages in the neighborhood and that a parking lot would be an eyesore in the subject residential neighborhood. The Board so finds.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a use variance. This requires a showing of a hardship upon the owner of the property that is inherent in the property itself. The applicant has the burden of proof in establishing the hardship. The Board concludes that the applicant has not met his burden. The site is some 10,750 square feet in area and is rectangular in shape. There was no evidence that the site could not be used for a purpose for which it is zoned. In fact, as found in Finding No. 6, the applicant testified that if the application was not granted he could put the site to residential uses. The Board notes the strong opposition to the application and the grounds expressed. The Board further concludes that the application cannot be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (John G. Parsons, Charles R. Norris, Connie Fortune, William F. McIntosh and Leonard L. McCants to deny)

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 28 JUL 1980

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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."