GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13279, of the Cosmos Club, pursuant to Subsection 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.45 to continue to operate an accessory parking lot in an R-5-B District at the premises 2168 Florida Avenue, N.W., (Square 66, Lots 832, 21, 45, 46 and 47).

HEARING DATES: July 16 and September 10, 1980
DECISION DATE: October 1, 1980

FINDINGS OF FACT:

1. The subject application was initially scheduled for the public hearing of July 16, 1980. It was continued to the public hearing of September 10, 1980 since the applicant had not complied with Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA in that the applicant failed to post the notice of the public hearing on each street frontage.

2. The subject accessory parking area is generally located in the interior of the subject Square 66. The premises are known as 2168 and 2156 Florida Avenue, N.W., and 5 Hillyer Court, N.W. The area is in an R-5-B District.

3. The subject Square 66 is split, with the SP-1 designation on the southern portion and D/R-5-B on the northern portion. In addition to the Cosmos Club, Square 66 also contains a military attache of the Government of France at 2164 Florida Avenue, the Embassy of India on Que Street and a number of art galleries and row structures used for residential purposes. The area is located between Connecticut and Massachusetts Avenues. Between the two avenues, row and detached dwellings and apartment buildings with numerous embassy, chancery and diplomatic uses form the predominant character of the area.

4. The Cosmos Club is a private club permitted as a matter-of-right in a D/R-5-B or SP-1 District. Its membership approximates 3200 of which 1600 are local members. It has an auditorium which accommodates 150 people. It has five meeting rooms, three dining rooms and forty-eight transient bedrooms. The Club has daily and monthly activities. The facility is also used for seminars and conferences.

5. Accessory parking for the Cosmos Club was established in 1960 by virtue of BZA Order No. 6129 and subsequently expanded or continued by the Board in application Nos. 6605, 7177, 10207, 11746, and 11874. The configuration of the accessory parking and the lots involved have remained essentially the same since 1964 when parking was established on lots 52 and 825 in BZA Order No. 7717.

6. The total area of Lots 832, 21, 45, 46 and 47 is approximately 12,300 square feet. Access to the parking area is from a public alley between the Cosmos Club, Lot 71, and the French Military and Technical Mission or from Florida Avenue.

7. Fifty-two vehicles can be accommodated in the parking area. The club has an additional thirty-three spaces located on Lot 71 where the Club itself is located, to yield a total of 85 spaces for the Cosmos Club.

8. A field inspection by the Office of Planning and Development disclosed that all areas of the parking lot are paved and lined and spaces are numbered. The maintenance of the parking areas, brick walls, copings, and bumper stops is excellent. The entire area was free of trash and debris at the time of field inspection and all provisions of the Board's previous Orders and Article 74 appear to have beem complied with.

9. The Board had found in its previous Orders that it is impractical to locate the subject parking spaces in the principal building or on the Lot 71 due to the existing parking spaces located thereon, the age and configuration of the existing building, the configuration of Lot 71 with the existing building and the intersection of Que Street, Massachusetts Avenue and Florida Avenue.

10. There is an attendant on duty from 11:30 a.m. to 3:00 p.m. and 5:30 p.m. to 9:30 p.m., six days per week, and on Sunday from 11:30 a.m. to 3:00 p.m. An extra attendant is hired for heavily attended events.

11. The applicant testified that it received no complaints concerning the operation and maintenance of the parking lot.

12. Five spaces adjacent to 2164 Florida Avenue are designated as reserved for use by the French Military Mission.

13. This application was referred to the D.C. Department of Transportation for review and comment. By memorandum dated September 9, 1980, the DOT reported that during its investigation DOT found that lot 21 is striped for the use of eight parking spaces. However, one parking space abutting the alley is not of regulation size, nine feet by nineteen feet, and any vehicle parking in this space will overhang into the public alley and cause vehicular maneuvering and circulation problems. The DOT recommended that the use of this space be eliminated and striped for no parking. The Board agrees.

14. The Office of Planning and Development by report, dated August 29, 1980 recommended that the application be approved. It reported that accessory parking for the Cosmos Club was first approved by the Board in 1960. The operation of the accessory parking has remained unchanged since 1964. The OPD field inspection of the site revealed that the lot is in excellent condition and appears to comply with all provisions of the Board's previous Order. It was OPD's opinion that it is impractical to locate additional spaces on Lot 71, the site of the principal building, the Cosmos Club, and that the continuance of this parking will not be detrimental to the neighborhood and will be in keeping with the intent and purposes of the Zoning Regulations. The Board so finds.

15. There were letters in support of the application from the adjacent property owners, the French Military Mission and the Phillips Collection, on the grounds that the Club was a good neighbor and that the parking lot was well maintained and managed.

16. The Dupont Circle Citizens Association opposed the application on the grounds that the Club misuses the public alley in that the Club uses it as part of their parking lot, that the present use is more intense than when the BZA originally granted the earlier applications, that the parking lot is too large and is not in keeping with the intent and purpose of the Zoning Regulations, and that the properties facing Florida Avenue should not be allowed to be used for parking.

17. Advisory Neighborhood Commission - 2B recommended that the application be denied as to those lots fronting on Florida Avenue, Lots 21 and 832 but had no objection to the application in respect to those lots bounded on three sides by alleys, Lots 45, 46 and 47. The ANC in its report dated September 5, 1980 and at the public hearing stated that it opposed the continuation of long-term use of prime locations, suitable for residential housing development, located in the midst of residential housing, for extensive parking accommodations.

The ANC stated that basic position is reinforced in this case by the fact that a major element of the applicant's case is the need for parking in support of what are essentially commercial functions of the Cosmos Club, or, at least, akin to commercial functions i.e., the operation of its dining facilities and its hotel services. The lack of opposition in respect to the lots at 5 Hillyer Court is based on the Commission's assumption that these alley lots could not readily accommodate residential housing development, and the fact that the "eyesore" facet of the Club's parking operation is limited at the alley location.

The ANC further reported that the applicant is not an untidy neighbor but that parking lots are eye-sores. Whereas the front of the Club on Massachusetts Avenue presents a gracious front it is ugly and crowded across the residential block to the rear of the Club. Certain lots could be eliminated since there is a convenient entrance to the metro less than two blocks from the Club and excellent intra-city and bus service to the Club. The ANC further testified that the Club has increased the intensity of the use of the lots.

Further, while no egregious deviations are noted, the ANC testified that the promise that there would be no access from Florida Avenue has not been observed. 2156 Florida Avenue has a driveway across the front property line onto Florida Avenue. A screening wall, to have a pedestrian access only, has a driveway access on the same lot. A screening wall that was to have no access has a pedestrian access at 2162 Florida Avenue. If there are bumper stops the ANC was unable to see them. The two way nite-light at 2156 Florida Avenue glares towards Florida Avenue. None of these "deviations" is critical, although some of them suggest that the care lavished on the Potemkin facade is lacking at the back door where neighbors live. The ANC further noted the question of the application of certain District Laws which prohibit discrimination. The subject Club is open to male membership only.

18. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board will address the concerns as well as those of the DCCA. The Cosmos Club is a private club. It is permitted as a matter-of-right in a D/R-5-B or SP-1 Districts. It is inherent in its structure as a private club that it will have such amenities as dining assembly and lodging facilities as accessory uses. The Club is not a commercial venture nor a hotel. The relief requested is through a special exception. The applicant's burden is that it must meet the requirements of the Zoning Regulations under which it is brought. The applicant has no burden to prove that its lots in a residential district cannot be used for residences.

As the opposition had pointed out at the public hearing, there is no provisions in the Zoning Regulations which limit the size of an accessory parking lot or the number of parking spaces it may provide. If the opposition seeks redress as to those matters in general, the proper tribunal would be the Zoning Commission not the BZA. Again, it is not sufficient that the opposition be opposed to all parking lots or parking lots in general. It is incumbent upon them to address themselves to the subject lot as a source of noise, traffic or other objectionable conditions. The Board concurred in the reports of the OPD and the DOT that the subject lot does not fit into this category.

As to the issue of discrimination, the Board finds that it has no jurisdiction over such matters. Any such complaints can be referred to the proper governmental agencies that issue licenses and permits and exercise control over a private or public accommodation. As to the issue of non-conpliance with the earlier Orders of the Board as to solid walls with or without openings for automobile or pedestrian access the Board finds that they may remain as now existing. Inspections over the years have not shown them to be hazardous or detrimental or causing any traffic problems.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant has complied with the requirements of Paragraph 3104.45 of the Zoning Regulations. The Board further notes that the subject parking lot has been in existence for some twenty years without any history of complaints as to its operation and maintenance. There have been no complaints of noise, traffic or other objectionable conditions. As pointed out in Finding No. 18 it is not incumbent upon the applicant to use residential lots for dwellings. The remedy sought by the applicant is by special exception. Accessory parking is permissable in a residential zone if approved by the BZA. Approval comes only after the applicant has met the criteria as listed in the Zoning Regulations. The Board concludes that in the subject application, the burden of proof has been met. The Board further concludes that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that it will not tend to affect adversely the use of neighboring properties.

The Board has addressed the issues and concerns of the ANC. It is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

a. Approval shall be for a period of five years from the date of the previous Certificate of Occupancy, namely March 27, 1980.

b. The parking space marked as No. 22 on the plans submitted as Exhibit No. 32 shall be eliminated.

c. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

d. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

e. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

f. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

g. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the Zoning District in which the parking lot is located.

h. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Connie Fortune, and Leonard L. McCants to GRANT; Theodore F. Mariani not voting, having recused himself).

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

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

FINAL DATE OF ORDER: 12 JAN 1981

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.