

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13321, of Jonathan Woodner, Co., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Sub-section 3307.2 to allow a group of flats with division walls from the ground up to be deemed a single building and under Sub-paragraph 3101.410 to permit portion of an underground garage to be used for accessory parking to serve the Woodner apartments at 3636 - 16th Street, N.W., and for a variance to permit parking where the underground garage is partially above the level of the adjacent finished grade (Sub-paragraph 3101.4101) for a proposed new residential development comprising forty-two flats with common division walls from the ground up to be considered three buildings in an R-4 District at the premises 1601-1681 Oakwood Mews, N.W., (Square 2621, Lots 351, 354, 358, 839 and 840).

HEARING DATE: October 29, 1980
DECISION DATES: November 5 and December 3, 1980

FINDINGS OF FACT:

1. The subject property is located in an R-4 District between 16th and 17th Streets, N.W., adjacent to Oak Street and Oakwood Terrace, south of the existing Woodner Apartment complex located at 3636 - 16th Street, N.W. Oakwood Terrace and Oak Street are cul-de-sacs, Oakwood Terrace running north-south and Oak Street running east-west approximately halfway through the block between 16th and 17th Streets, N.W.
2. The subject site is partially unimproved and partially improved with an at-grade open parking lot having a capacity of 100 spaces. The lot is presently used for accessory parking for seventy-five tenants of the Woodner Apartment complex. Accessory parking use of this lot was approved by the Board of Zoning Adjustment in a number of cases the most recent of which was Case No. 12988. Portions of the subject site are densely wooded with oak and beech trees.
3. The subject site has a total area of 52,227 square feet.

4. The subject site is adjacent to the highrise Woodner rental apartment complex completed in the early 1950s, separated from the Woodner only by a drainage alley.

5. Oak Street was closed and the circular cul-de-sac located at its western edge was dedicated to the City from property owned by the owners of the Woodner Apartment complex in 1952. The portion of Oak Street now closed and lying to the west of the cul-de-sac is used for drainage easement purposes.

6. The applicant proposes to build a total of fifty-two new dwelling units in a low-rise townhouse type configuration. The total project consists of twenty-five flats and two single family townhouse units, grouped in four rows of units. The applicant is contemplating adding a second flight of exterior stairs from Oak Street to the proposed deck area in the new development and, as was noted on the plans, may also add additional or larger windows in lieu of the small single windows shown in the side wall of the proposed development facing the existing Woodner Apartment complex as shown on the plans submitted with this application or change interior space configuration in the easternmost rows should changed market conditions so warrant.

7. The westernmost row to be known as Row 1, faces directly onto 17th Street and is comprised of two townhouses and four flat units for a total of ten dwelling units. No zoning relief whatsoever is required for these ten dwelling units. However, the applicant presented the entire development scheme to the Board in this case in order for the Board to see and deal with the property as a whole. The three easternmost rows consists of a total of forty-two dwellings units, comprised of seven flats or fourteen dwelling units per row. Row 2, adjoining Row 1 immediately to the east, could also be designed to be built as a matter-of-right.

8. The applicant seeks a special exception under Sub-section 3307.2 to allow the twenty-one flats in rows 2, 3 and 4 to be deemed three buildings.

9. No rear or service entrance of the proposed rows of housing abuts a street, frontyard, or front court unless below the main floor.

10. No exterior stairway is constructed above the level of the joists of the main floor unless located entirely within the building area.

11. Each of the flat units in the three rows of development will have adequate vehicular access. The westernmost row will be served by a driveway and will have a twelve car open parking area leading out to 17th Street. Therefore, traffic serving these units will not infringe upon the traffic service area for the remaining two rows of development. Vehicular access to the two remaining rows will come off the circular cul-de-sac of Oak Street on the north and from Oakwood Terrace, to the south. Twelve open parking spaces will exist off Oakwood Terrace. Oak Street would lead to an entranceway to an underground garage providing a total of eighty-eight spaces.

12. The fifty-two dwelling units of Oakwood Commons require nineteen parking spaces to be provided on the site under the applicable R-4 zoning requirements. The applicant proposes to provide fifty-two spaces for an average of one parking space per dwelling unit. Twelve of these spaces are provided on the surface at the rear of Row 1. Fourteen spaces are provided in individual garages in Row 2. Another fourteen are provided in the underground garage. The remaining twelve are provided on the garage deck at the Oakwood Terrace level. The remaining seventy-four spaces in the underground garage, which has a capacity of eighty-eight spaces, will be for guests and residents of the adjacent Woodner Apartment complex, thereby partially replacing the loss of the accessory surface parking to the Woodner by development of this site.

13. The applicant proposed a developer-administered card system which would limit the flow of traffic in and out of the development, as set forth in Exhibit No. 64A of the record. All residents of the Woodner Apartments who utilize spaces in the new underground garage would have a clause in their lease specifically binding them to use the existing driveway across the Woodner property providing direct access to 16th Street. Such Woodner residents would be issued green cards and Oak Street would be posted with signs prohibiting entry to green card holders. Residents of Oakwood Commons would be issued red access cards. Signage directing the flow of "red card" and "green card" traffic would be provided at the new garage exit and along Oak Street, N.W.

14. The applicant's traffic expert testified that during the morning peak hour, the proposed development would generate nine outbound trips onto 17th Street, five onto Oakwood Terrace and thirty-three onto Oak Street. During the evening peak hour, the proposed development would attract six inbound trips from 17th Street, four from Oakwood Terrace and twenty-five from Oak Street. The existing level of traffic on all three streets is very low, and the expert concluded that the peak hour traffic volume generated by the proposed development will not create an adverse impact on the surrounding local street system. The Board so finds.

15. The applicant also seeks a special exception pursuant to the provisions of Paragraph 3101.410 to allow accessory parking on a lot other than that where the principal use is situated. The applicant seeks to replace the at-grade accessory parking lot for the Woodner Apartments, which contains 1,116 rental apartments located immediately northeast of the subject property, with an underground garage. Seventy-two of the spaces in the proposed garage are to be used for Woodner residents and guests.

16. The existing configuration of the Woodner Apartment complex renders placement of the spaces on the Woodner lot economically impractical. The numerous wings of the Woodner fan out in such a manner as to preclude placement of additional permanent at-grade parking spaces on the lot other than as applicant proposes.

17. A garage already exists underneath the Woodner building. This houses approximately 230 spaces, with valet capacity of approximately 300. The Woodner Apartment was constructed prior to the effective date of the current Zoning Regulations. The applicant provides substantially more parking than was required under the Regulations in effect at the time of its construction in 1951.

18. The proposed plans will remove the existing at-grade accessory parking to an underground garage, thereby decreasing noise and adverse aesthetic impact on adjoining property.

19. The applicant further requests a variance from the requirement of Sub-paragraph 3101.4101 providing that no portion of an underground garage may extend above finished grade. A portion of the underground garage wall extends approximately 6.5 feet above the adjacent grade at the northeast corner of the site. This configuration results from the extreme topographical variation of the site.

20. The grade drops nineteen feet from the end of Oak Street at the center of the block to Oakwood Terrace to the south. From Oakwood Terrace to 17th Street a drop of another sixty-seven feet occurs. Entrance to the garage from Oak Street is the only practical way of providing access.

21. The applicant and his architect testified that while new development could be accommodated by massive regrading, such regrading would have a negative consequence by removing all the topographical variations of this site which faces Rock Creek Park, would be prohibitively expensive and would require construction of further retaining walls which may have an adverse impact on the surrounding community. The Commission of Fine Arts in exercising its design review jurisdiction by virtue of the proximity of Rock Creek Park, has given preliminary approval for the development on the basis of the grading and planting plans as presented in the subject application.

22. The applicant's architect testified that the design of the garage could be altered so as to eliminate the need for the variance. The wall of the garage could be moved approximately ten feet to the south, and a retaining wall would be constructed outside the wall of the garage structure. This could result in the loss of approximately four parking spaces. The Board finds that it is desirable to include as many parking spaces in the proposed garage as possible, to alleviate on-street parking congestion as much as possible.

23. Denial of the proposed eighty-eight car garage would increase the already heavy demand for on-street parking in the area. The existing configuration of the Woodner Apartment complex makes permanent provision of additional parking on that lot impossible as a practical matter in the face of the requirements of Paragraph 7205.22 prohibiting such spaces within ten feet of any wall of a multi-dwelling unit if such wall contains openings for light or ventilation. Digging out another level for an addition to the existing underground Woodner garage is not feasible as a practical matter.

24. Advisory Neighborhood Commission - 1E, by letter dated October 29, 1980 marked as Exhibit No. 50 of the record, recommended approval of the proposed project, including approval of the requested variance. The ANC further requested that the Board impose a condition on the approval requiring that traffic from Oakwood Commons be routed across the Woodner property directly to 16th Street rather than by way of Oak Street. The ANC reported that it had discussed conditions relating to speed bumps or other traffic impediments on 17th Street and the deletion of the parking lot adjacent to Oakwood Terrace, but had been unable to reach a conclusion on those issues.

25. The Office of Planning and Development, by report dated August 29, 1980 and by testimony at the public hearing, recommended that the application be approved. The OPD reported that, in its view, the application did not impair the intent and purpose of the Zoning Regulations, given the topography and shape constraints of the site, and efforts by the applicant to continue the use of the site as accessory parking for the adjoining apartments. The OPD recommended that tenants of the Woodner be given the option to continue exiting across the grounds of the Woodner to gain access to 16th Street, to lessen the traffic impact on Oak Street.

26. The Department of Transportation, by memoranda dated September 10 and October 27, 1980 and by testimony at the hearing, advised the Board on the transportation issues presented by the application. In its memorandum dated September 10, 1980, the Department reported the following:

- a. All streets surrounding the site are classified as local streets, with paved widths of twenty-four or twenty-three feet.
- b. The Woodner apartment building presently has a total of 373 available parking spaces, including 100 spaces in a surface lot on the subject property. That number of spaces should be retained.
- c. The proposed development would provide seventy-four spaces for the Woodner, in addition to the 277 spaces to be provided in the lot of the Woodner apartments. These would thus be a deficit of twenty-two spaces for the Woodner.
- d. In addition to providing one parking space for each dwelling unit in the proposed development, the project should include twenty-five per cent more space for visitor parking. This would require thirteen more spaces.
- e. Access from the underground garage to Oak Street should be eliminated in favor of providing direct access to 16th Street via the Woodner property.
- f. The twelve surface parking spaces at the end of Oakwood Terrace should be relocated to the garage or the surface of the Woodner property.

- g. The access to 17th Street should be relocated or accomplished in an alternative manner.

In its second memorandum, dated October 27, 1980 and at the hearing the Department modified its earlier recommendation to the following extent:

- a. The colored card system to control access to Oak Street is in principle a satisfactory alternative to limiting access to the Woodner property. Such a system would have to be evaluated to determine how it works in practice.
- b. The twelve car parking lot at the end of Oakwood Terrace would be appropriate if there were to be only twelve houses having Oakwood Terrace addresses and using these spaces.
- c. There is no practical alternative location for access to 17th Street. The applicant should provide a warning sign on 17th Street to alert downhill traffic of the presence of a hidden driveway.

The Board accepts the findings and recommendations of the DOT.

27. Subsequent to the public hearing, the applicant submitted a proposal, marked as Exhibit 72, 72A and 72B, to provide six to nine visitor parking spaces on a portion of the Woodner property adjacent to 17th Street.

28. Several area residents, predominantly residents of the Woodner apartment complex, appeared in support of the application at the hearing. These proponents testified that they favored development of the subject site including some parking to serve the Woodner apartments. They testified that usually there were parking spaces available in the existing Woodner garage.

29. There was opposition to the application from the owners of adjoining residential property on Oak Street, 17th Street and Oakwood Terrace. The basis for the objections and reasons why the application should be denied were stated as follows:

- a. The proposed development would generate additional vehicular traffic on Oak Street, Oakwood Terrace and 17th Street, which would adversely effect the residents of property on those streets.

- b. The proposed development would not have a sufficient number of parking spaces, and would adversely effect the availability of on-street parking for area residents.
- c. The design of the site as proposed would adversely effect the adjoining neighborhood because of the location and height of exposed retaining walls.
- d. The location of the vehicular access point to 17th Street would create a dangerous condition because of the slope and curve of 17th Street.
- e. The applicant failed to carry its burden of proof for the special exceptions under Paragraph 3101.410 and Sub-section 3307.2.
- f. The applicant failed to demonstrate why the parking garage could not be constructed without a variance.
- g. The basis for the variance is related to problems not arising out of the site, which problems are not a proper basis for the granting of the variance.
- h. Since the parking spaces are not necessary to serve the needs of residents of the Woodner, such spaces should not be permitted to serve the commercial tenants in the building.

30. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. In addressing those issues, the Board finds that the only concerns adopted by a majority of the ANC related to minimizing the impact of vehicular traffic on Oak Street. The Board has already determined as set forth in Finding of Fact 14, that the development will generate relatively low level of traffic on Oak Street, approximately one additional car every two minutes. The applicant's proposal to direct the traffic from seventy-four of the eighty-eight spaces in the underground garage away from Oak Street will greatly reduce that impact even further. The Board finds that allowing the fourteen spaces assigned to houses having Oak Street addresses to use Oak Street is not unreasonable.

31. The Board notes that two other issues discussed by the ANC were not adopted by a majority of the ANC. The Board finds that as to traffic on Oakwood Terrace, there will be only four to five trips entering or leaving the development during the peak hours. There will be only twelve parking spaces accessible from Oakwood Terrace. The impact will be negligible. As to 17th Street, the Board notes that the Department of Transportation reported that there is no practical alternative to locating the access to 17th Street other than where the plans so propose. The potential for any dangerous condition can be eliminated by the placement of appropriate warning signs, which the Board will require.

32. As to the points raised in opposition to the application, the Board finds as follows:

- a. The level of traffic to be generated on Oak Street, Oakwood Terrace and 17th Street would not significantly affect those streets.
- b. The proposed development provides one off-street parking space for each dwelling unit. That is significantly more spaces than the Regulations require. It is adequate to serve the needs of residents of the project. The area at present suffers from a shortage of on-street parking because the existing residences in the area have insufficient parking to serve their own needs. It would be improper for the Board to deny an application which had sufficient parking for its own needs because it did not provide enough parking to make-up for an areawide deficiency.
- c. The design of the site responds to the severe topographic condition of the site. It would be impractical to design the site without the use of retaining walls. In addition, the walls which engendered the most opposition, those facing the circle on Oak Street, are visible only to a very limited number of persons. The use of retaining walls is common in that general area because of the slopes, and there would be no adverse effect associated with the walls of the proposed development.

- d. The access to 17th Street has been addressed in Finding of Fact No. 31.
- e. The applicant did present sufficient evidence and testimony to carry the burden of proof in regard to the two special exceptions requested. As to Sub-paragraph 3101.4103, the Board found in Finding of Fact No. 16 that additional parking space could not be located on the Woodner apartment property because of its shape. As to Paragraph 3101.410 generally, the Board is not required to find that the proposed parking spaces are necessary. The Board further notes that the references by counsel for the opposition to "Section 4101.6" are inapplicable. That Sub-section applies to SP Districts only. The proper reference is to Paragraph 3105.43. The Board finds that the parking permitted under Paragraph 3101.410 is not deemed to be limited only to residents of the Woodner, but may extend to all of the functions properly permitted under the Zoning Regulations in that district.
- f. The requirement for the variance arises primarily out of the physical configuration of the site. As noted previously, by reducing the number of parking space, the variance would be avoided. This is a less satisfactory result. The applicant should provide as many parking spaces as possible to serve the adjoining residential building.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking two special exceptions and a variance. As to the special exception to allow a group of one family dwellings and flats with division walls from the ground up or from the lowest floor up to be erected and be deemed a single building for the purpose of these Regulations, the Board concludes that the applicant complies with the requirements of Sub-sections 3307.2 and 8207.2. The technical requirements of Paragraph 3307.12 and 3307.13 are met and vehicular access to all or part of the group is provided safely and in the interest of public convenience. The Board concludes that the arrangement of such group will not adversely affect the present character or future development of the neighborhood. The proposed development is consistent as to scale, density, and housing type with the surrounding character of this residential neighborhood.

As to the special exception for the accessory parking, the Board concludes that the applicant has met the criteria of Paragraph 3101.4101 for the following reasons. The proposed accessory underground garage will be on a lot contiguous with and within 200 feet of the principle use, the Woodner Apartments. The provisions of Article 74 regulating parking lots have been complied with and will be complied with. It is impracticable to locate additional parking spaces for the Woodner lot within the principle building or on the same lot as such building because of the existence of the Woodner apartment building. Such underground parking spaces are so located as to be least objectionable to nearby property owners because of noise, traffic or other conditions. There is no evidence that an undue traffic burden will be generated on Oak Street or Oakwood Terrace by the existence of such garage, and the removal of the on-grade parking to this below-grade garage will increase the aesthetic appearance of the site.

The Board also concludes that the applicant has complied with the requirements of Paragraph 8207.11 so as to be entitled to variance relief from strict compliance with the requirements of Sub-paragraph 3101.4101, which requires, as a condition for approval of accessory passenger automobile parking spaces elsewhere than on the same lot which the main use is permitted, that such spaces be in an open area or in an underground garage no portion of which, except for access, extends above the level of the adjacent finished grade. The record shows that the subject site is effected by extraordinary topographical conditions. Further, the dedication of the cul-de-sac on Oak Street results in irregularity of lot dimensions constituting a unique condition for which variance relief is appropriate. Denial of the variance which is minor in nature as it relates to the project as a whole, would create practical difficulties and would work an undue hardship on the applicant.

Further, the Board concludes that the requested relief may be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan. Removal of the existing at-grade parking to an enclosed underground facility will not be intrusive upon the residential character of the surrounding neighborhood. The provision of the eighty-eight car underground garage with access from Oak Street does not unduly burden the traffic-handling capacity of that street. The Board further concludes that provision of such off-street parking helps to meet the demands for parking of visitors to the residents and businesses contained in the Woodner as well as the residents of the proposed new development. Adequate off-street parking to serve the development is provided and approval will not increase the demand for curbside parking in the neighborhood.

The Board notes that the applicant could build a development of substantially the same size as a matter of right without providing this additional parking and the impact on the parking needs of the neighborhood would be more adversely effected by that alternative proposal than by any affects which might occur by approval of the application presented to the Board.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled Accordingly, the requested special exceptions and variance relief are hereby GRANTED subject to the following CONDITIONS:

1. The property shall be developed in accordance with the plans marked as Exhibit No. 39 of the record.
2. The applicant shall landscape the property in accordance with the landscape plan marked as Exhibit No. 76 of the record.
3. There shall be a prohibition against turning out from the proposed development left onto 17th Street. The applicant shall post signs at the end of the driveway which exits onto 17th Street so indicating.
4. The applicant shall cause to be installed on 17th Street a warning sign or light, advising of the existence of the driveway which provides access to the subject site. The nature, location and design of such warning device shall be approved by the Department of Transportation. The applicant shall bear the full cost of providing the device.
5. The applicant shall construct the color coded card system governing access to the parking garage, as described in the letter dated October 20, 1980, marked as Exhibit No. 69A of the record, subject to the following provisions:
 - a. The applicant shall make very effort to see that the card system functions properly.
 - b. Residents of Oakwood Mews shall be permitted to gain access to the garage across the Woodner property.

- c. Approval of the card system is valid for only one year after the date of issuance of the Certificate of Occupancy for the entire project. At the end of one year, the applicant shall reapply to the Board, so that the Board may evaluate whether the system is functional and appropriate. The applicant is advised that if the card system is not effective in minimizing traffic on Oak Street, the Board will consider other measures to effectuate a reduction in traffic.
6. All residents of the Woodner Apartments who lease parking spaces in the subject development shall have a clause in their lease specifically binding them to use the driveway on the Woodner Apartments property for access to the parking garage, and not to use Oak Street.
7. At least one off-street parking space shall be included with the sale of each dwelling unit.
8. The applicant shall provide a visitor parking lot as indicated on Exhibit Nos. 72A and 72B of the record. Such lot shall contain nine spaces, except that the number may be reduced to not less than six spaces in order to save existing trees in the area.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune, William F. McIntosh and Douglas J. Patton to grant)

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 MAR 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.