

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13363 of Canal and Ivy Associates, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the parking requirements (Sub-section 7202) and from the prohibition against allowing parking spaces which are less than nine feet in width and nineteen feet in length (Sub-section 7204.1) for a proposed office, retail and parking garage building in a C-M-1 District at 55 Ivy Street, S.E., (Square 693, Lot 84).

HEARING DATES: January 21 and February 4, 1981  
DECISION DATE: March 4, 1981

FINDINGS OF FACT:

1. On March 6, 1980, a Final Order of the Board was issued in the matter of BZA Application No. 13053, involving the same site, parties, and requested variances as appear in the subject application.
2. On March 24, 1980, the opponents filed a petition for review of Final Order No. 13053 with the D.C. Court of Appeals.
3. On April 7, 1980, the applicant in No. 13053 requested approval of a modification of Final Order No. 13053 by letter to the Board.
4. On June 2, 1980, the Board denied the applicant's modification request as untimely under Section 5.41 of the Supplemental Rules of Practice and Procedure, which requires a motion for reconsideration to be filed within ten days of the date of the final decision. In its opinion the Board said "...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."
5. On August 4, 1980, the applicant filed the subject application, No. 13363, for variances from Sub-sections 7202.1 and 7204.1. All issues relating to these variances are before the Board for de novo determination in Application No. 13363.
6. The subject site is located on the east side of the intersection of Canal and Ivy Streets, S.E. and is known as 55 Ivy Street, S.E. It is in the C-M-1 District.
7. The subject site is irregular in shape, resembling somewhat the shape of a horseshoe and containing 63,168 square feet in area. The subject site remains unimproved and most recently has been used as a commercial parking lot, with spaces for 220 cars.

8. The subject site is bounded by Ivy Street, Canal Street and E Street. To the east of the site is a 15-foot public alley off E Street and residential structures.

9. The applicant proposes to construct an office, retail and parking garage building on the subject site.

10. Under the Zoning Regulations, the applicant is required to provide 317 parking spaces for the proposed building. The applicant proposes to provide 224 parking spaces of which twenty-five spaces would measure less than nine feet by nineteen feet. The applicant seeks two variances, one from the parking requirements and a second variance to provide spaces that are less than nine feet by nineteen feet.

11. The Order of the Board of Zoning Adjustment in Application No. 13053 issued on March 6, 1980 granted the relief requested on condition that the total number of parking spaces to be provided shall be 224, of which twenty-seven shall be less than nine feet by nineteen feet in the following configuration: (a) 140 spaces nine feet by nineteen feet; (b) nineteen spaces nine feet by fifteen feet; (c) fifty-two spaces with attendant parking, forty-six of which are nine feet by nineteen feet, and six of which are nine feet by fifteen feet and two of which are nine feet by fifteen feet. The Board further required that all spaces shall be provided in accordance with the plan known as Exhibit No. 34 and that the applicant shall provide fifty overnight parking spaces available for neighborhood use from 6:30 P.M. to 7:30 A.M. at the rate of \$10.00 per month.

12. Under the plan proposed in this application, the applicant would also provide a total of 224 spaces, of which 25 would be less than nine feet by nineteen feet, in the following configuration: (a) 160 spaces nine feet by nineteen feet; (b) forty-three spaces with attendant parking, of which four would be nine feet by fifteen feet; (c) twenty-one spaces located within the vault area all of which would be nine feet by fifteen feet. The applicant represented that it was willing to provide fifty overnight parking spaces available from 6:30 P.M. to 7:30 A.M. to residents of the immediate vicinity at the rate of \$10.00 per month.

13. The present application consists of a modification of the parking garage layout plan as approved in BZA Order No. 13053. This modification is made at the request of the District of Columbia Department of Environmental Services (DES). The former plan provided an eighteen foot vault space on Canal Street, S.E., and DES was concerned that this vault was located too close to the sanitary sewer line and might at times of heavy storms expose the roof line to damage and present a health hazard. Accordingly, the plan presently before the Board reduces the vault along the Canal Street frontage from eighteen feet to eight feet, creates a ten foot wide vault along the E Street frontage and builds the garage up to the property line as it abuts the alley off E Street, S.E. The plan is acceptable to DES.

14. The applicant's traffic expert witness testified that the subject property has excellent access to public transportation. A Metro subway station is within 800 feet and there are at least four bus lines that serve the area with stops adjacent to the subject site. The witness further testified that based on his study, the proposed building will need to provide 112 spaces for the employees of the building and approximately thirty-eight spaces for visitors to the building. The applicant's proposal to provide 224 spaces will provide over 100 spaces above the number needed to adequately meet the needs of the proposed building. The witness further testified that the average compact car could be parked in parking spaces that are nine feet wide and fifteen feet long, and would not need the space dimensions of nine feet by nineteen feet as required by the Zoning Regulations. The witness testified that the subject proposal would further the goal of the DOT in encouraging greater use of mass transportation. The witness also reaffirmed his prior testimony in Application No. 13053 and that there had been no occurrences in the interim period between that case and the present action which would cause a change in his testimony. The Board concurs with the testimony of applicant's traffic expert.

15. The DOT testified at the public hearing that the subject neighborhood has a great need for off-street parking. Most of the residences have no off-street parking facilities and that is the reason why residential permit parking to the north and east of the subject property has been authorized. The existing surface parking lot provides 220 spaces that service the neighborhoods needs, the needs of visitors to the Capitol Building and businesses in the neighborhood. These 220 spaces are a resource that the District is losing in this neighborhood because of the proposed construction. The DOT testified that the proposed building will generate a parking need for eighty-two vehicles daily. The DOT urged that the applicant control its parking for its employees and provide additional spaces to compensate for the spaces being given up by the loss of the parking lot. The DOT recommended that the applicant provide eighty-two spaces for employees, seventy-five spaces for visitors and guests to the proposed building, seventy-five spaces for the loss of short term space on the existing lot and an additional fifty-five spaces. As to the latter forty-five spaces the DOT reported that in its testimony on the prior application No. 13053 it believed that there were eighty-five spaces available in the immediate neighborhood at the Marfair building while in fact there were forty spaces. In summary the DOT recommended that the applicant provide 277 spaces. The DOT further noted that twenty-one of the proposed spaces were vault space which is not ordinarily considered appropriate for required parking. As to these additional forty-five spaces the Board finds that to grant such would only encourage persons to use automobiles. This is contrary to the DOT policy of encouraging people to use public transportation. As to the vault space the Board will condition below the grant that the applicant obtain a lease from the D.C. Government for further guidance. As to the DOT recommendation, the Board based on Finding No. 14, cannot concur.

16. The applicant's witnesses testified that the subject site is the only C-M-1 zoned land located within 800 feet of the Capitol Hill Metro station proposed for office use. The parking requirements for office use in the C-M-1 zone did not contemplate locations of Metro stations within walking distance of such zoned land and the parking requirement is excessive for such locations. The representative of the applicant testified that, based on the applicant's experience, there is insufficient parking demand to warrant charging parking rates obtained in the downtown area and in other parts of the city. The applicant's expert traffic consultant provided additional testimony to the same effect. The representative of the applicant testified that it would cost approximately \$2 million to build an extra parking level of this size and configuration on an average site and that an extra \$550,000.00 would be required to build it on this site due to the water pressure conditions affecting it. Therefore, the cost of the second parking level, approximately \$2.5 million dollars, would be incurred for which there would be little or no income received.

17. There was testimony that the unique shape of the subject site and the constrictions which it imposes on the design of the parking garage leave space which is suitable for the parking of automobiles which is less than the required nine feet by nineteen feet size. The proposed spaces are nine feet by fifteen feet and, according to the testimony of the applicant's expert traffic witness, are of sufficient size in which to park compact and sub-compact automobiles. The Board so finds.

18. The subject site is affected by a sub-surface water condition with ground water levels within the site varying from thirteen feet to twenty-seven feet below existing ground surface, placing the water table only slightly below the structure with one basement level. The applicant's witnesses testified that if two basement levels are required, several technical construction problems will be encountered. De-watering of the excavation site will be required and sheeting and shoring will become considerably more complicated due to the excavation depth and the poor quality of the soil. Further, underpinning of the foundations of existing structures to the south will be required and the construction period for the project would be extended by a minimum of ten weeks due to the extra excavation.

19. The applicant testified that the cost of creating a second parking level is approximated to be \$2.5 million and would result in undue economic burden to the applicant since there would be little or no income received in return for providing such required parking spaces in substantial excess of the expected demand. The cost of de-watering this site was estimated at \$100,000.00. An expense of an additional \$450,000.00 is needed to overcome adverse hydrostatic pressure conditions on this site which in and of itself imposes a burden when no return would be received for the expenditure. The Board so finds.

20. The New Jersey Avenue, S.E. Neighborhood Association, a party in opposition, was represented by counsel at the public hearing. An objection was raised by applicant's counsel at the January 21, 1981 hearing that opposition counsel could not appear both as an attorney and as a witness in the same proceeding. The Board sustained the objection and requested that opposition counsel elect in which capacity he wished to act. Opposition counsel elected to appear as counsel in the proceeding.

21. Opposition counsel objected to being required to appear in only one capacity claiming that this effectively limited the ability of the New Jersey Avenue S.E. Neighborhood Association to present its direct testimony. The Board finds that a further hearing in this case was held on February 4, 1981 at which time the New Jersey Avenue S.E. Neighborhood Association would have an opportunity to have its views presented.

22. There was opposition to the application by private citizens, the New Jersey Avenue S.E. Neighborhood Association, the Capitol Hill Restoration Society, and Advisory Neighborhood Commission 6B. The basic opposition to the application, hereinafter more fully discussed, was that off-street parking was a critical issue in the subject neighborhood even with the 220 spaces provided by the subject lot which are now proposed to be removed from the public's use.

23. The Capitol Hill Restoration Society in its testimony at the public hearing opposed the application. The Society also incorporated by reference its letter of October 15, 1979 in the prior application as continuing grounds for its application. The Society argues that no case had been made and that there exists no extraordinary condition resulting in exceptional hardship and practical difficulties as required under Paragraph 8207.11. The Society argued that there is nothing extraordinary about the piece of property here in question, and that the sub-surface can support either one level of parking, as proposed by the applicant, or two levels if the variance is denied. The Society further argued that no practical difficulties or undue hardship have been demonstrated by the applicant. The expense of constructing a second level of parking does not qualify as a difficulty or hardship. The Society did not reach the third ground for a variance, no detriment to the public good, inasmuch as it believes that the applicant has failed to meet grounds one and two. The Society noted, however, that many neighbors of this project are seriously concerned at the adverse impact they believe that the granting of this variance will have on their neighborhood.

24. Advisory Neighborhood Commission 6B testified in opposition to the application. The ANC also incorporated by reference its letter of October 16, 1979 in the prior application as grounds for its continuing opposition. The ANC noted that residents of the neighborhood are uniformly and vocally opposed to a reduction from 317 to 224 parking spaces. The residents cite the already overcrowded parking conditions in the immediate area which will be further aggravated by

the opening of the Madison Library with its additional 2,000 plus employees. The ANC further stated that Section 7203 limits the variances for parking to twenty-five percent of the required spaces, and might be considered as limiting authority under Paragraph 8207.11. The ANC was of the opinion that, unlike downtown areas, this building will be located immediately adjacent to a residential neighborhood. The ANC argued that the applicant has not demonstrated that either exceptional practical difficulties or exceptional and undue hardship would result from compliance with the regulations.

25. The New Jersey Avenue S.E. Neighborhood Association, by statement and in testimony, claimed that recent developments would aggravate the adverse impact which a reduced parking requirement at the site would have on neighboring property. The Association stated that P.L. 96-432, effective October 1981, had removed 393 on-street parking spaces from long-term city control on the borders of the Capitol Grounds. It stated that 600 nearby surface spaces leased to Congress were subject to early closure and sale by the city. It also introduced published estimates by the Architect of the Capitol that over 2,000 new Library of Congress employees would relocate to the nearby Madison building in the early 1980's, and that only one in eleven of these employees would have Library-provided parking space. The Association testified that the applicant's proposal to allow limited overnight parking privileges for residents of the neighborhood was unacceptable to these neighbors because it forced them to risk use of an unguarded garage late at night, and because it would require them to seek on-street parking again during the following morning rush hour. The Association introduced a poll taken of seventy-one individuals who parked at the subject site, of which 68.6 percent said they would hunt for on-street parking more often if the parking lot on the subject site were closed. The poll also recited that 24.6 percent of those surveyed said they would be willing and able to use public transportation if the lots on the subject site were closed.

26. The Board is required by statute to give great weight to the issues and concerns of the ANC. In replying to these issues and concerns as well as those expressed by neighborhood associations and private individuals, the Board finds first that the applicant has elected to seek a variance under Paragraph 8207.11, not a special exception under Section 7203. The twenty-five percent reduction has no applicability to a variance case. The Board, based on the record, will determine if the burden of proof has been met under the provisions elected by the applicant. The Board in its Findings of Fact and Conclusions of Law will set forth the facts in which the applicant has or has not met its burden. Secondly, the Board finds that the concerns of the citizens that the applicant is not providing adequate parking are also shared by the DOT. The Board finds that the parking plan including 224 spaces provides more spaces than necessary to serve the

subject site. In addition, by providing some overnight parking, the applicant will alleviate some of the concerns expressed by the opposition as to the inadequacy of the parking facilities proposed by the applicant. The Board will incorporate said plan as a condition to granting the application. As found prior the Board did not concur in the DOT report since the DOT recommendation would encourage less use of public transportation and more use of automobiles. The Board also finds that it is unfair to the applicant to impose upon it the full responsibility for the long standing parking problem faced by Capitol Hill residents.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of an exceptional or extraordinary condition of the property which creates a practical difficulty for the owner. The subject property is essentially shaped like a horseshoe with three street frontages. Ground water levels within the site vary from thirteen feet to twenty-seven feet below existing ground surface, placing the water table only slightly below the structure with one basement level. To build two basement levels would require de-watering of the excavation site. The excavation depth and the poor quality of the soil would make sheeting and shoring more complicated and would require underpinning of the foundations of existing structures to the south. Lastly, the subject site is the only C-M-1 zoned land located within 800 feet of the Capitol Hill Metro station proposed for office use. For these reasons the Board concludes that the subject site is unique and affected by several exceptional situations or conditions.

Testimony at the hearing established that the amount of parking required by the Zoning Regulations would not be utilized and would impose a substantial added cost to the project. According to the District of Columbia Department of Transportation parking survey, presently there are vacancies in parking lots and parking structures in the immediate vicinity. The applicant proposes to provide, with attendant parking, 224 spaces. The cost of providing two levels of parking is approximately eighteen percent of the total construction cost of the project. Due to the low level of parking demand, this cost would be incurred by the applicant with little or no income received in return. The Board concludes that this imposition of an undue economic burden imposes a practical difficulty on the applicant. For all the above reasons, the Board concludes that the practical difficulty has been established to support the variance from the parking requirements.

The Board further concludes that the unique shape of the subject site and the constructions which it imposes on the design of the parking garage leave space which is suitable for the parking of automobiles which is less than the required nine feet by nineteen feet size. The practical difficulty on which the variance is based is thus established.

The Board also concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

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

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. The total number of parking spaces to be provided shall be 224, of which twenty-five shall be less than nine feet by nineteen feet, as follows:
  - a. 160 nine feet by nineteen feet lined spaces;
  - b. Forty-three spaces with attendant parking, thirty-nine of which are nine feet by nineteen feet and four of which are nine feet by fifteen feet; and
  - c. Twenty-one spaces located in a vault area all of which are nine feet by fifteen feet.
2. The applicant shall enter into a lease agreement for this vault space with the D.C. Government prior to the issuance of a building permit. If the lease is terminated, the applicant must reapply to this Board for further guidance as to the provision of the required parking spaces.
3. The spaces shall be provided as shown on Exhibit No. 28 of the record.
4. The applicant shall provide fifty overnight parking spaces available from 6:30 P.M. to 7:30 A.M. to residents of the immediate vicinity at the rate of \$10.00 per month.

VOTE: 4-0 (Douglas J. Patton, Walter B. Lewis, William F. McIntosh and Connie Fortune to grant, Charles R. Norris not present, not voting).

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

ATTESTED BY:



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 9 JUN 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 PRACTICA 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.