

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 13389, of Ethel C. Lessig, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue to operate a parking lot in an R-5-B District at the premises 1524 O Street, N. W., (Square 195, Lot 834).

HEARING DATE: November 19, 1980

DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. The subject property is located on the south side of "O" Street between 15th and 16th Streets, N. W. and is known as 1524 "O" Street, N. W. It is in an R-5-B District.

2. The subject site is presently used as a parking facility. The applicant proposes the continuation of this use.

3. The subject site is twenty feet wide by 97.20 feet deep. It accommodates nine cars. There is no attendant. Access to the parking spaces is through a fifteen foot alley to the west of the site.

4. There is a larger parking lot directly to the east of the subject site. Across "O" Street to the north-east is another parking lot.

5. The applicant testified that the present tenants of the subject parking lot are on a month-to-month basis. They pay twenty-one dollars a month to use the lot. The lot provides mostly commuter parking for parties who work in the immediate area. The hours of operation are from 8:30 A.M. to 5:30 P.M. There are no chains to close off the lot. At night and during the weekends, the lot is available for neighborhood uses. Because of the limited size of the lot, there are no traffic congestion problems caused by the lot.

6. The subject lot has been in existence for approximately twenty years. It was last approved by the BZA in Order No. 13115, dated May 27, 1980.

7. The present owner, Mrs. Ethel C. Lessig, has a contract to sell the property to Mr. Robert Jones. Mr. Jones testified that he intends to develop the property in accordance with the R-5-B zone once a proper assemblage of adjoining lots to warrant development can be made. He estimated that this process would take approximately two years, barring any unforeseen delays.

8. Mr. Jones further testified that he had no other intended use to which the property could be put, and proposed the continuation of the parking lot to help defray the taxes and mortgage of the property.

9. The Dupont Circle Citizens Association objected to the application on the grounds that the lot was not reasonably necessary and convenient to other uses in the vicinity, that provisions for commuter parking in residential zones was contrary to policies of the Department of Transportation and that the lot could be used for housing.

10. The owner of property within the immediate area of the subject property opposed the application primarily on the grounds that it was not maintained properly. She complained of dirt and litter that is allowed to accumulate and that the lot was used by prostitutes and dope users at night.

11. Advisory Neighborhood Commission - 2B, by report received November 19, 1980, opposed this parking lot which is situated on residential land and operates completely as a commuter parking lot. The ANC advised that neighbors report the lot is filled with trash. A large house was torn down to accommodate the lot which has been in operation for twenty-five years. For those reasons, the ANC argued that the lot was not in conformance with Sub-paragraph 3104.433 of the Zoning Regulations which requires that the present character and future development of the neighborhood not be adversely affected, and that the parking lot be reasonably necessary and convenient to other uses in the neighborhood.

12. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing those concerns as well as those of the Dupont Circle Citizens Association and private citizens, the Board notes that the subject application is for a special exception. The applicant must satisfy the requirements of Paragraph 3104.44 to obtain relief. The applicant need not establish that his property cannot be used for residential purposes. As to the issues of trash and debris, while the Board feels that the lot could be better maintained, the applicant did take steps to clean the lot after

a complaint was registered by a neighboring resident. The Board further notes that the lot services the neighborhood at night and during the weekend. Also, the lot is of a small size. With the availability of other lots in the neighborhood for residential purposes, the Board is of the opinion that the existence of the subject lot for one year will not adversely affect the present character and future development of the neighborhood. As to the use of the lot by prostitutes and narcotics addicts, the Board finds that such uses are unlawful, and that it is the responsibility of the Metropolitan Police Department to enforce such laws against such activities. The Board further notes that dismissal of this application would have no practical effect on such uses.

13. Pursuant to Paragraph 3104.44 the application was referred to the Department of Transportation for its review and report. No report was received at the time of the public hearing. A motion was filed by counsel for the opposition on December 3, 1981 to strike the memorandum of the Department of Transportation or to reopen the hearing so that the applicant would have the opportunity to cross-examine a representative of the DOT. The Board ruled that the Motion was moot since the memorandum had been filed late and would not be considered by the Board .

14. On December 17, 1981, counsel for the applicant filed a Motion to DISMISS the proceeding for want of an aggrieved applicant. Counsel argued that the owner Lessig had sold the subject property and that the new owner is not an applicant for any special exception. The Board Denied the Motion, on the grounds that the contract purchaser had appeared and testified at the hearing, that the Board routinely permits the substitution of owners when such changes occurs and that both the original applicant and the new owner had standing to appear and present the application before the Board.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the relief requested in this application is a special exception as provided for in Paragraph 3104.44 and Sub-section 8207.2 of the Zoning Regulations. In order to be granted such an exception, the applicant must demonstrate that she has complied with all of the requirements of those Regulations. In the subject application, the Board concludes that the applicant has so demonstrated. The lot is relatively small, and will not generate any significant traffic

to cause adverse or dangerous traffic conditions. The lot serves uses located in the area, and is necessary and convenient to such uses. The lot is also used by area residents in the evening.

The Board concludes that the applicant has not requested a variance. The applicant is therefore not required in this application to prove that the property cannot be used for a purpose permitted in the R-5-D District. As stated above, the applicant has proven all that is required. With the exception of some accumulation of trash, the lot has been kept in compliance with the Zoning Regulations and previous Orders of this Board. The Board therefore concludes that the applicant has met the burden of showing that the application should be granted.

The Board has also given careful consideration to the issue of all day parking. The Board notes that the lot can accommodate only nine cars. As such, it is too small to warrant an attendant to supervise use of the lot for parking on other than an all day basis. For this reason, the Board will allow all-day commuter parking for the time period stipulated in the approval of the application.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled, but for the reasons stated in this Order, will grant the application. The Board concludes however, that the application should be GRANTED for a period of ONE YEAR ONLY. This will allow the contract purchaser, Mr. Jones the opportunity to make a proper assemblage of adjoining property, and commence construction on the site. It is therefore ORDERED that the application is hereby GRANTED SUBJECT to the following CONDITIONS:

- a. Approval shall be for a period of ONE YEAR from the date of expiration of the Board's previous Order No. 13115, namely until May 27, 1981.
- b. This approval is limited to the applicant, Ethel Lessig, or the contract purchaser, Robert Jones ONLY.
- 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: 3-2 (Charles R. Norris, Theodore F. Mariani and William F. McIntosh to grant; Douglas J. Patton and Connie Fortune opposed).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 MAR 1981

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.

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."