

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13558 of William B. Willard, et al., pursuant to Sub-sections 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 1633-35 Q Street, N.W., (Square 179, Lots 14 and 802).

HEARING DATE: September 23, 1981
DECISION DATE: October 7, 1981

FINDINGS OF FACT:

1. The site is located on the north side of Q Street between 16th and 17th Streets and is known as 1633-35 Q Street, N.W. It is in an R-5-B District.

2. The site is part of a larger parking lot which includes the adjoining Lot 803 to the west.

3. The subject lots have 40.64 feet of frontage on Q Street and extend to a depth of 100 feet. To the north of the site is a ten foot wide public alley followed by several vacant commercial stores. To the east of the site are newly constructed condominiums and the former Cairo Hotel which has been converted to a condominium with no on-site parking provided for the owners. To the south of the site across Q Street are several retail stores and restaurant-bars. To the west is Lot 803 used for parking and 17th Street, a one-way southbound thoroughfare.

4. Both the operator of the parking lot and the owner of the property were notified of the public hearing thirty days in advance thereof.

5. The subject parking lot was first permitted by the Board of Zoning Adjustment in Order No. 8786, effective August 9, 1966. It has been approved by the BZA on five occasions since that date. Most recently, in Application No. 13010, by Order dated January 28, 1980, the lot was approved subject to the following conditions:

- a. Approval shall be for a period of Two Years from the date of expiration of the previous Certificate of Occupancy which may be renewed at the discretion of the Board upon the filing of a proper application.

- b. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- c. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- d. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- e. 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.
- f. 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.
- g. 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.

6. Lot 803, which is directly west of the site, accommodates about twenty cars and constitutes approximately fifty percent of the parking lot. It is not part of the application since it is zoned C-2-B and its use as a parking lot is permitted as a matter of right.

7. The subject parking lot was reduced by approximately twenty spaces to its present twenty spaces by the recent construction of condominium units on the adjoining lot 100 to the east. The lot is operated Monday through Friday, from 7:00 A.M. to 6:00 P.M. There is an attendant on duty. At night and on weekends, the lot is open to the neighborhood residents without charge.

8. The subject lot has approximately five monthly contracts. It caters primarily to the customers of the retail stores and restaurants in the surrounding neighborhood. It also caters to the residents of the Cairo Condominium.

9. The owner has no immediate plans for the lot. He testified that the lot is now servicing a community need. He also testified that at the current interest rates it is inappropriate to think of building on the subject lot.

10. The operator of the lot visits the subject lot once approximately every two weeks. He further testified that the attendant is advised to police the area daily, that once a week, the trash bins are emptied and that every two weeks the landscaping is attended. The operator of the lot stated that he had received no complaints concerning the maintenance and operation of the lot.

11. The Board requested the operator to address Exhibit No. 4 of the record, a series of three pictures of the subject lot. The pictures depicted wide gaps in the wooden picket fence surrounding the parking lot on 17th Street and on Q Street. Where pickets have replaced the gaps, they are unpainted. The fencing has not been leveled off. It rises and falls with the level of the parking. The applicant reported that the construction of the new condominium units to the east of the site had been continuing for one and one-half years and that the truck trailers had parked on the eastern side of the lot along with their supplies and materials. The daily work of the construction had created havoc on this section of the lot. The owner testified that he intended to do extensive repairs to the lot to the amount of \$5,000 but that the extent of the repairs would depend upon the Board granting a sufficient period of operation for the owner to recoup his costs. Although construction of the new condominiums had been completed three months prior to the public hearing, the fence still had not been repaired nor had the damages to the surface of the lot been fixed.

12. The Department of Transportation, by memorandum dated September 23, 1981, reported that the subject parking lot is responding appropriately to residential and short-term parking needs of the neighborhood. The DOT had no objection to the granting of the application provided this use is continued. For reasons discussed below, the recommendation of the DOT is not controlling in this application.

13. The Dupont Circle Citizens Association opposed the application on the grounds that the lot is unnecessary, is poorly kept and has a detrimental effect on the area. A representative of the DCCA reported that she passes the subject lot several times a week including day and night hours. She testified that the lot is not needed during the weekday. From her observation, no more than ten cars use the lot at one time. The DCCA representative testified that the lot is ugly and dirty and has grass growing up in the cracked concrete.

14. Advisory Neighborhood Commission 2B opposed the application. By letter of September 23, 1981 and at the public hearing, the ANC reported that the ANC voted to oppose continuation of the subject lot. The ANC reported

that the applicant did not comply with the conditions as to operation and maintenance of the lot enumerated in the prior orders of the Board in which the Board permitted the continuation of the parking lot. The ANC submitted eight photographs to the record marked as Exhibit No. 31, 1 to 8. Photo 1 was taken on Friday, September 20, 1981. Photos 2 to 8 were taken on Monday, September 21, 1981. In general the photos evidence unaligned wheel stops, broken wheel stops, no wheel stops, grass growing wildly from under the concrete, holes in the picket fence enclosing the lot, bricks, sticks and other litter on the surface of the parking lot, and cars with non-D.C. license plates parking on the subject lot.

15. There were many form letters of record in support of the application from owners of businesses in the immediate area and residents. The letters recited in general that there was an acute shortage of parking in the area and that the lot was beneficial to the entire neighborhood providing off-street parking.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception the granting of which requires proof that the applicant has complied with the requirements of Paragraph 3104.44 of the Zoning Regulations and that the relief pursuant to Sub-section 8207.2 can be granted as in harmony with the Zoning Regulations and it will not tend to affect adversely the use of neighboring property.

Based on Findings No. 11, 13 and 14, the Board concludes that the applicant has not complied with the requirements of Sub-paragraph 3104.441 of the Zoning Regulations. The property is not paved with an impervious surface surface, as required by Paragraph 7401.11. Consequently, all the requirements of Article 74 of the Zoning Regulations have not been met. Conditions to the granting in prior Orders of the Board have been ignored. The subject lot is not free of refuse and debris, the paving is irregular, the fencing is not kept in a state of repair. Grass is allowed to grow wildly. Wheel stops are missing or in disrepair. The applicant was aware of the date of the public hearing. Photos taken two days prior to the public hearing demonstrate a disregard on the part of the applicants to clean up the lot. In Finding No. 11 the applicants acknowledge that the lot would require \$5,000 in repairs. Yet, the applicants are reluctant to do anything until they know for how long the Board will approve the continuation of the lot. Finding No. 11 also evidences that the trucks and trailers had vacated the lot some three months prior to the public hearing, yet the applicants had

done nothing to correct the disrepair they allege was caused by the construction company. The conditions imposed on previous approvals at the order of the Board were designed to insure that the use would be operated in such a manner as not to be objectionable and to protect surrounding property. The Board is concerned with the cavalier attitude of the applicants in neglecting to comply with those conditions.

The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board concurs in the ANC written recommendation to deny the application on the grounds that the applicant has failed to comply with Article 74 of the Zoning Regulations and the conditions attached to prior Orders of the Board wherein the Board granted permission to continue this lot. The pictures of record are more convincing than the unsubstantiated statements of the applicant. The testimony of the ANC and the Dupont Circle Citizens Association, representing a more extensive familiarity with the subject site, is more persuasive than one inspection by the DOT or the statement of the applicants' operator based on every-other-week visits.

The Board notes that the subject lot has been in existence some sixteen years and that over this span the lot has been approved by the Board for continuance on five occasions. The Board is mindful of the opinion of the D.C. Court of Appeals in the case of First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment, D.C. App., 432 A.2d 695 (1981), regarding the circumstances in which the Board may deny the continuation of a special exception previously approved by the Board. The Board concludes in this case that the applicant's past history of operation does not mandate a continuance. In the subject renewal, the Board finds a change of conditions in the operation and maintenance of the lot as evidenced in Findings No. 11, 13 and 14. The Board further concludes that the relief cannot be granted as in harmony with the Zoning Regulations and the present maintenance of the lot does affect adversely the use of neighboring property whether it be residential or commercial. For all these reasons pertaining to lack of compliance with Article 74 and previous orders of the Board, the application is denied. The Board need not address itself to the other provisions of Paragraph 3104.44. Accordingly, it is ORDERED that the application is DENIED.

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

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

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

FINAL DATE OF ORDER: MAY 12 1982

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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."