

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13588, of Fred Hurowitz, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to establish a parking lot and for variances from the use provisions (Sub-section 3104.3) to permit a driveway and menu speaker board to serve a drive-in window at a restaurant and to allow an accessory storage building for a proposed drive-in window addition to an existing restaurant in a C-2-A and R-4 District at the premises 1164 Bladensburg Road, N.E., (Square 4077, Lots 193-196, 211, 805, 804, parts of 51 and 179-182).

HEARING DATES: October 28, 1981 and January 13, 1982  
DECISION DATE: February 2 and July 7, 1982

DISPOSITION: The Board DENIED the application by a vote of 5-0 (Douglas J. Patton, Connie Fortune, William F. McIntosh, John G. Parsons and Charles R. Norris to deny). A motion for Further Hearing or hearing de novo was DENIED by a vote of 4-0 (Douglas J. Patton, Connie Fortune, William F. McIntosh and Charles R. Norris to deny; Walter B. Lewis not voting, not having heard the case).

FINAL DATE OF ORDER: July 14, 1982

ORDER

The counsel for the applicant filed a timely Motion for Reconsideration, Rehearing or Reargument on July 26, 1982. The basis for the request was that the Order of the Board was erroneous and that new evidence could be presented which was not available at the time of the public hearing on the subject application. The applicants' motion alleges that Findings of Fact No. 7 and No. 9 of the Boards' Order are erroneous. Finding of Fact No. 7 states as follows:

7. There are approximately thirty-two spaces on the parking lot in the R-4 District. They are never used to capacity even during the peak-hours of operation of the restaurant. Approximately forty percent of the spaces are used. After the proposed construction, only twelve spaces will remain. The applicant testified that the neighbors find it convenient to park on this site when it is not in use, especially over night.

The Board notes that at the public hearing of January 13, 1982, both of the applicant's witnesses testified that they were familiar with the operation of the McDonald's restaurant and the use of the accessory parking on this site. When questioned by the Board with regard to the actual amount of usage of the residentially zoned portion of the site for parking purposes, one witness stated that he did not know and the other witness testified that no more than forty percent of the spaces were filled at any given time.

Finding of Fact No. 9 states as follows:

9. One of the applicant's witnesses, a real-estate expert, testified that the R-4 section of the site is developable for R-4 uses and that such development can be anticipated. The subject R-4 portion is surrounded by R-4 uses. The applicant submitted no evidence that there was any inherent hardship in the land which prohibited its use for R-4 purposes. The witness further testified that the storage building on the R-4 site could be moved to the C-2-A section of the property.

The Board notes that the applicant's witness did, in fact, testify at the public hearing of January 13, 1982 that the property could be developed for R-4 purposes, that "there is future in that property," and that the property will be leased to McDonalds for an "additional twenty and twenty" years.

The applicant's motion offers the submission of new evidence in the form of testimony of the restaurant manager and a traffic expert concerning the use of the accessory parking lot and relevant permit materials regarding the construction of the storage building in the R-4 area if such permits can be found by District personnel.

The Board notes that this accessory parking lot has been in existence since 1963 and has been operating without a valid Certificate of Occupancy for eighteen years. The Board concludes that there is no justifiable reason why accurate testimony regarding the use of the accessory parking lot could not have been available at the time of the public hearing. The Board further notes that the applicant's motion sets forth no concrete information regarding the issuance of a permit for construction of the storage building on the R-4 portion of the site. The Board concludes that its finding that "There is no evidence that a permit for that construction was ever obtained" is an accurate statement of what is in the record.

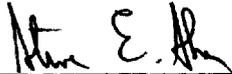
The Board concludes that its decision in the subject application was based on the record, and was in accordance with all applicable regulations. Upon consideration of the transcript, the Final Order and the subject Motion, the

Board concludes that it made no errors of fact or law, and that the applicant has proffered no new evidence that could not have reasonably been presented at the original hearing. Accordingly, it is ORDERED that the Motion is DENIED.

DECISION DATE: August 4, 1982

VOTE: 4-0 (Walter B. Lewis, Douglas J. Patton, William F. McIntosh and Charles R. Norris to deny; Connie Fortune 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:           AUG 31 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 SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."