

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

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of October 28, 1981. It appeared on the Preliminary Calendar for that date since the applicant had not complied with Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA in that the applicant had posted the property for five days prior to the public hearing rather than the required ten days. The Chair ruled that the application was not sufficiently publicized in the five day period for it to go forward on its merits. The application was continued to January 13, 1982.

2. The subject site is located at the southwest corner of the intersection of Meigs Place, and Bladensburg Road and is known as premises 1164 Bladensburg Road, N.E. It is improved with a McDonald's restaurant and associated parking and accessory buildings.

3. The site is a through lot connecting with 16th Street to the west. The portion of the site which fronts on 16th Street and is zoned R-4 is the subject of this application. The site is split in half by a ten foot wide alley which also separates the site in terms of zoning, C-2-A to the east of the alley and R-4 to the west of the alley. The R-4 zoned portion of the site is improved with an asphalt paved, thirty-two space parking lot and a brick one-story storage building. The C-2-A zoned portion of the property is developed with a one-story restaurant building, trash bins and thirty-eight space parking lot.

4. To the north of the site is a grocery store and other commercial uses in the C-2-A Districts. Immediately adjoining the parking lot west of the alley are the rear yards of homes which front on Meigs Place. To the west are dwellings and apartment houses fronting on 16th Street in an R-4 District. To the south is a Kentucky Fried Chicken restaurant in the C-2-A District. To the south of the parking lot is a residential building which front on 16th Street. To the east is Bladensburg Road, followed by a Market Tire shop, and Capitol Liquor store in the C-2-A District. The property is located in the Trinidad neighborhood area of the District of Columbia.

5. The applicant is requesting the Board's approval of a special exception to establish a parking lot on the R-4 zoned property to serve a commercial use in the C-2-A District, as well as a variance from the R-4 use provisions to install the menu speaker board and a driveway for the drive-in window, and to maintain a storage building.

6. The subject McDonald's Restaurant was built in 1963. At that time, the Board in BZA Order No. 7015 granted permission to create the subject parking lot in the R-4 District. Permission was granted for one year. No Certificate of Occupancy was ever renewed. The lot has been operating without a Certificate of Occupancy for eighteen years. Approximately eight years ago the storage building was built in the R-4 area. There is no evidence that a permit for that construction was ever obtained.

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.

8. There are now three curb cuts off Bladensburg Road to approach the restaurant. Persons can also enter from 16th Street and from Meigs Place. The applicant proposes that the driveway closest to Meigs Place, the northernmost part of the site, and the driveway to the southernmost part of the site will be used for entrance and exit. The driveway between both of the above driveways, after one passes the drive-through window in the building, will be an exit only. In taking the northernmost driveway, a driver would drive up alongside the restaurant, turn left at the rear of the restaurant on to the alley, drive down the alley and then turn right to get around into the approach line from 16th Street. In using the southernmost driveway, a driver has to proceed into the alley and get on the R-4 section of the site to get to the drive-through window. The

applicant proposes to erect a sign "Do not block the alley" and to stack cars so that no more than eight can accumulate up to the drive-through window. The Board foresees from such a design a blocking of the alley that is needed to service five trucks and other facilities along the alley.

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.

10. The Office of Planning and Development, by report, dated October 21, 1981, recommended that all the use variances be denied and that the special exception to continue a parking lot be granted. The OPD found no hardships inherent in the property that would sustain the use variances. The OPD opined that if the granting of the parking lot was limited to two years and landscaping was approved, OPD would recommend that the special exception be granted. The Board, for reasons discussed below, does not concur in the OPD recommendation.

11. The Department of Transportation, by memorandum dated October 26, 1981, reported that Bladensburg Road is a principal arterial with an average week day traffic volume of 20,100 vehicles in the vicinity of the site. It is a six lane roadway approximately sixty-four feet wide. Parking is permitted on both sides of the street except during the period from 7:00 A.M. to 9:30 A.M. on the west side and from 4:00 P.M. to 6:30 P.M. on the east side. Sixteenth Street is a local street, one-way northbound. It has a twenty-six foot wide roadway with parking permitted on both sides at all times. Meigs Place is a local street, one-way eastbound. It has a twenty-six foot wide roadway. Parking is permitted at all times. The DOT noted that all access driveways are from Bladensburg Road, away from the residential neighborhood. There is an existing exit from the development off 16th Street. However, few vehicular trips are using this exit now and the DOT did not anticipate that pattern to change in the future. The most likely objection to a drive-in window facility is its potential to cause a queue extending to the external streets. This happens when demand exceeds the capacity of the facility. However, in the present case, the applicant has incorporated a built in mitigating measure, which will ensure that if this should occur, all such vehicles would be contained on site. This is reflected by the proposed circulation plan as shown on sheet SP-1 dated January 19th, 1978. The DOT did not anticipate that measurable adverse impact will be imposed by

this proposal on the surrounding street system. The DOT had no objection to approval of this application. The Board notes that the DOT addressed itself in a vacuum to the transportation issue and not a zoning issue. The Board, for reasons discussed herein, does not concur in the DOT report and recommendation.

12. Advisory Neighborhood Commission 5B made no recommendation on the application.

13. There was no further support of or opposition to the application at the public hearing or of record.

14. The record was left open at the end of the public hearing to permit the applicant to submit a copy of sheet SP-1 dated January 19, 1979 that was commented on in the DOT report and not a part of the BZA file and for the applicant to submit a detailed landscaping plan.

15. The applicant's proposed site plan for use of the parking lot is deficient in two respects. First, as described in Finding No. 8, the applicant requires use of the public alley for substantial and significant maneuvering to reach the drive-in window. The alley is designed to provide access for service and loading to properties. It should not be used as a thoroughfare for maneuvering for the convenience of the applicant. Second, the site plan marked as Exhibit No. 24 of the record indicates that the six parking spaces on the southern side of the lot could potentially be blocked by cars waiting to order at the menu speaker board. This would create potentially dangerous and objectionable traffic conditions on the site itself, as cars attempting to back out would encounter cars waiting to proceed westbound attempting to get to the drive-through access lane.

16. On June 18, 1982, counsel for the applicant filed a Motion for Further Hearing or for a hearing de novo of the application. As grounds for the motion, counsel cited the fact that certain "required" witnesses were not in attendance at the hearing, that neither the Office of Planning and Development nor the Department of Transportation objected to continuation of the lot, and that there was no neighborhood objection.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception and use variances. The granting of the special exception requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3101.48 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning

Regulations and will not tend to affect adversely the use of neighboring property. As to the use variances, the granting of them requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for purposes for which it is zoned. The Board further must find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

As to the special exception, Sub-paragraph 3101.483 provides that the proposed use must be reasonably necessary or convenient to the neighborhood. Based on Finding of Fact No. 7, the Board concludes that the proposed use is not reasonably necessary and that all parking necessary for the restaurant can be accommodated on that part of the site zoned C-2-A. Sub-paragraph 3101.482 further requires that all provisions of Article 74 are complied with. Paragraph 7104.13 provides in pertinent part "No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected..." As set forth in Finding of Fact No. 6, an accessory storage building for the restaurant is located on the parking lot and has been there since it was constructed illegally in the mid-1970's. The Board concludes that the applicant has not met the requirements of Paragraph 3101.48.

As to the use variance, the Board concludes that based on Finding of Fact No. 9, there is no hardship inherent in the land which precludes its use for the purposes for which it is zoned. The applicant has not met the burden of proof. The restaurant use can function as it is now constituted. If the use variances were granted, the restaurant would become more and more dependant on the R-4 property which would never be used for the purposes for which it is zoned. The Board further concludes that the proposed use variances are conveniences to enhance the business. As such, these reasons do not constitute grounds for a use variance.

As to the applicant's Motion for Further Hearing or new hearing, the Board has addressed the OPD and DOT reports and recommendations in this order. As to the presence of witnesses, the Board notes that it is the burden of an applicant to prove its case. The Board heard the case following proper notice, and based its decision on the facts presented. The Board concludes that its decision is based on reliable, probative evidence in the record, and that further testimony from the owner or other persons would not likely change the conclusions reached by the Board. Further, the applicant proffered no specific testimony or evidence that would be presented, nor did it cite any issue or matter that requires further hearing. As to the lack of neighborhood opposition, Section 4.53 of the Supplemental

Rules of Practice and Procedure provides that even if no evidence is presented in opposition to an application, an applicant still has the burden of proof.

Accordingly, it is therefore hereby ORDERED, for all the above reasons, that the Motion for Further Hearing or hearing de novo is denied, and the application is DENIED in its entirety.

VOTE as to the application: 5-0 (Douglas J. Patton, John G. Parsons, Connie Fortune, William F. McIntosh and Charles R. Norris to DENY).

VOTE as to the motion: 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).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: JUL 14 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."