GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13591, of St. Luke's P. & E. Church, 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 1514-20 Church Street, N. W., (Square 194, Lots 84, 85, 86 and 87).

Application No. 13592, of St. Luke's P. & E. Church, 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 1053 P Street, N. W., (Square 194, Lots 66, 92, and 93).

HEARING DATE: October 28, 1981
DECISION DATES: December 2, 1981 and January 6, 1982

DISPOSITION: As to No. 13591, the Board, GRANTED the application with conditions by a vote of 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to GRANT). As to No. 13592, the Board DENIED the application by a vote of 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to DENY).

FINAL DATE OF ORDER: June 4, 1982

ORDER:

On June 16, 1982, the applicant filed a timely Petition for Reconsideration. The Petition requested the Board to reconsider the denial of the application in BZA No. 13592 and to reconsider the imposition of a condition in BZA No. 13591 prohibiting cars from parking on the lot for more than six hours between the hours of 8:00 A.M. and 6:00 P.M. The applicant further requested the Board to stay the effect of the order as to the denial of BZA No. 13591 and the imposition of the condition cited above in BZA No. 13592.

As to the conditions in BZA No. 13592, the applicant argued that the imposition of the condition regarding parking during the day is beyond the authority of the Board, is invalid to the extent that it attempts to regulate the

business operation of the premises, and would be detrimental to neighborhood residents by preventing them from utilizing the lot for parking. In support of the request, the applicant relies heavily on an alleged order of the Board dated May 5, 1982, in BZA Application No. 13676

The Board notes that when the petition was filed,no Order of the Board had been issued in that application. The material cited by the applicant is from a draft Order submitted by the counsel for the applicant in BZA No. 13676. The draft is not an Order of the Board, and does not reflect the Board's position.

Further, it is a well established principle of zoning law that the Board of Zoning Adjustment may impose reasonable conditions on the granting of an application for a special exception to protect surrounding and nearby property. In BZA Application No. 13017, by Order dated January 28, 1980, in response to the urging of Advisory Neighborhood Commission 2B and upon review of the record in that case, the Board imposed the condition that "There shall be no all-day commuter parking." That case involved the same applicant and the same operation as the subject application. That decision was not contested by the applicant.

In the subject application, the D.C. Department of Transportation, as set forth in Finding of Fact No. 12 of the Order dated June 4, 1982, recommended that the applicant demonstrate to the Board "The measures that will be implemented to enforce the use of short-term parking and the elimination of commuter parking..." The Dupont Circle Citizens Association and ANC2B further expressed concern at the continued use of the lot for commuter parking. The Board notes that in the record of this case, at the request of the Board, the applicant submitted a plan to implement the ban on commuter parking. This plan was nothing more than a recitation of the applicant's pledge to advise the public that no commuter parking would be allowed, a prohibition which the applicant had ignored for more than two years. The Board concluded that it had to design and impose a plan that would be readily understood and administered by the applicant. Based on the Department of Transportation's understanding that commuter parking entails parking for more than six hours, the Board imposed the condition at issue herein.

The applicant's argument as to regulation of business operation is without foundation. The Board's decision clearly regulates the applicant's use of the lot for parking. Since the Zoning Regulations require parking lots to receive Board approval in R-5-B Districts, the operation of the lot can and must be subject to Board review and approval, including the conditions imposed by the Board.

The applicant's argument as to neighborhood input is also without foundation. The lot is not used by neighborhood residents during the period of time for which the condition is applicable. The lot is used as a commercial operation during those hours. Furthermore, there is no support from the neighborhood in the record of the application.

As to the decision in Application No. 13592, the applicant argued that the Board's basis for denying the application was improper. The applicant alleges that the Board had no authority to impose the condition on commuter parking, and may thus not justify the revocation of the special exception on the violation of the condition. The applicant alleges that the Board was incorrect in finding that the applicant was parking cars in public space and that the applicant knowingly, willfully and continuously violated the Board's prior Order. The applicant alleges that the Board's findings regarding the applicant's plan of the parking lot are in error.

As to the commuter parking issue, the Order cited by counsel for the applicant is not an order of the Board, as noted above. As to the opinion of the Corporation Counsel, dated July 6, 1976, it deals with conditions for the SP District which are not applicable in this case and which are no longer in effect in any event. Further, the Corporation Counsel stated "I am not in a position to state an opinion as to whether the record in these cases supports imposition of the proposed condition..." The Board concludes that it is not barred from imposing such a condition, and that the record in the previous case supported the condition in the proceeding. The Board notes that at no time did the applicant challenge the condition banning commuter parking contained in Order No. 13016, dated January 28, 1980.

As to the parking of cars over the lot line, the same applicant and the same operator were the principals in Application No. 13016, wherein the Board took notice of testimony from opposition witnesses about parking of cars over lot lines in public space. The operator testified that he did not realize that such parking was prohibited. As set forth in Finding of Fact No. 12 of the Order in Case No. 13016, dated January 28, 1980, "The operator testified that such oparking would be ceased."

The record in the subject application includes documentary evidence of cars parked over lot lines in public space. The applicant's own Plat of Survey, marked as Exhibit No. 28 of the record, reveals that the lot line is set back from the sidewalk approximately eighteen feet along 15th Street and approximately seventeen feet along P Street. The applicant's contention in the Petition for Reconsideration that the lot extend to the sidewalk line is

rebutted by the applicant's own plat. As to the applicant's allegations regarding the Board's intrepretation of the site plan, the Board finds nothing in the petition to compel the Board to reach a different conclusion than that set forth in the earlier Order.

Upon review of the applicant's petition, the Order in Cases No. 13016/13017, the record in the subject cases and the order of the Board dated June 4, 1982, the Board concludes that it has committed no error of fact on law. The argument put forward by the applicant are not persuasive. It is therefore ORDERED that the Petition for Reconsideration is DENIED. The Motions for Stay of the condition in No. 13591 and the decision in No. 13592 pending disposition of the Petition for Reconsideration are therefore MOOT.

DECISION DATE: July 7, 1982

VOTE: 3-1 (Connie Fortune, Douglas J. Patton and Charles R. Norris to DENY; Walter B. Lewis OPPOSED; William F. McIntosh not present, not voting).

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

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

FINAL DATE OF ORDER: OCT 26 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."