

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13641, of Theodore and James Pedas, et al., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 3101.48 to permit forty accessory parking spaces serving a theatre in a commercial district to be located in a residential district and under Sub-section 7203.1 to modify the amount of parking spaces required for a non-residential use and for a variance from the prohibition against allowing accessory parking spaces whereby each space will not have direct means of ingress and egress (Sub-section 7206.4) for a proposed addition to an existing theatre and restaurant in an R-5-B and C-2-C District at the premises 1101, 1113, 1117, 1123 - 23rd Street, N. W., (Square 51, Lots 74, 868, 813, and 61).

HEARING DATE: January 20, 1982

DECISION DATE: February 3, 1982

FINDINGS OF FACT:

1. The original application filed included Ulysses G. and Lulu Auger as co-owners of the subject property. However, since the filing, Ulysses and Lulu Auger have sold their interest in the subject property to Theodore and James Pedas.

2. The subject property is located on the northwest corner of the intersection of 23rd and L Streets, N.W. It is in the R-5-B and C-2-C Districts at premises known as 1101, 1113, 1115, 1117 and 1123 - 23rd Street, N. W.

3. The site is presently improved with a theater and restaurant both located in the C-2-C District. Off-street surface parking is provided on that portion of the site in the R-5-B District as well as part of the C-2-C portion.

4. The site contains approximately 23,699 square feet of land area, of which approximately 7,597 square feet is zoned R-5-B and some 16,102 square feet is zoned C-2-C. Adjoining the subject property to the east is the Carriage House Condominium, a ten story apartment house and a vacant five story office building. Row dwellings exist along 22nd Street one of which is a medical clinic. In the subject block a restaurant's parking lot is at the corner of 22nd Street and M Street. Commercial structures exist along

M Street. Approximately three fourths of the subject square is devoted to surface parking lots.

5. The R-5-B zone portion of the subject property contains a parking lot of forty spaces which has been the subject of this Board's approval since 1971 in application No.'s 10722, 11224 and 12624.

6. The theater has existed on the subject property since 1969 as a result of this Board's approval in Appeal No. 9963 as a private school for the performing and dramatic arts in the R-5-D District. The theater was subsequently rezoned in 1974 to C-2-B with a floor area ratio of 6.0, by Zoning Commission Order 109 in case No. 74-9 which then permitted the theater as a matter-of-right. It was later designated C-2-C by Zoning Commission Order No. 242. In 1977, Certificate of Occupancy B-103496 was approved for the theater with a capacity of 500 seats.

7. The restaurant has been at the present location since 1976 under Certificate of Occupancy B-96877.

8. The applicant proposes to construct an addition to the theater and restaurant of approximately 5,123 square feet which is an increase of some sixty percent over the existing floor area of 8,641 square feet. The C-2-C District allows a maximum of 96,612 gross square feet on the proposed site of which 32,204 may be devoted to commercial uses.

9. The applicants acquired the theater in question, the West End Circle Theater, in 1975. They own several other motion picture theaters within the District of Columbia. The present West End Circle Theater has one auditorium with a capacity of 359 seats and seven employees. The proposed addition will require an additional two employees.

10. The applicants desire to expand the theater to three auditoriums instead of one because of the risks involved in the selection of types of movies. Having more than one movie would help to reduce the risk of the theater being unsuccessful. Films are purchased without a preview by the purchasing movie house. Film companies require as a part of the contract that they receive ninety per cent of all the money taken in at the box office.

11. The applicant testified that film distribution practices have changed over the years. Films in past years were limited to a specific theater chain. Today films are distributed according to the needs of a neighborhood. Therefore, the theater itself must be built to serve a market.

12. The applicant further testified that determining who uses the theater can be done by observing where a crowd comes from and where it goes. Generally persons who use cars are not from the neighborhood

13. The applicants furnished for the record data which recorded the average daily attendance for all shows at the theater for a period of twelve months, Monday through Friday (Exhibit No. 30). The figures show that even during peak demand the theater was at less than half capacity.

14. The application requests a special exception under Paragraph 3101.48 to have forty of the required parking spaces for the theater and restaurant located in the R-5-B portion of the property. The application also requests a special exception to reduce the number of required parking spaces. Under Sub-section 7201.1, three spaces are required for the restaurant and seventy-five are required for the theater, for a total of seventy-eight. The applicant proposes to provide three spaces for the restaurant and fifty-six for the theater, for a total of fifty-nine spaces. The application requests a reduction of nineteen spaces. The layout of the spaces in the parking lot is such that cars are stacked one behind the other. All spaces are not freely accessible directly from a street, alley or drive, as required by Sub-section 7206.4. A variance from the accessibility requirement to allow stacked parking is requested.

15. Albert Goenner, architect, testified for the applicants as to the design and circulation of the proposed addition to the theater and restaurant. The design concept involves constructing the theater addition as an elevated structure above the existing surface parking on the east side of the theater and will also extend along the L Street frontage. The proposed addition to the restaurant is to be located above the existing three car garage at the rear of the restaurant. The entrance to the theater would remain on 23rd Street. Access to the proposed addition would be from the existing lobby. A single projection room would serve the two additional auditoriums with seating capacities for the proposed theater No. 1 of 266 seats and theater No. 2 of 185 seats. Fire exits would be provided as required by D. C. Code. The present sign will be increased slightly in size but will remain at its present location on 23rd Street.

16. Keith Hinshaw, Vice President of RBI Parking, testified for the applicants that his company has been the operators of the forty parking space lot since 1977. RBI parking will continue to be the operator for the restaurant and theaters. The lot has existed since 1971 with Board approval. The lot is primarily a park and lock lot with access from the alley. Attendant parking is provided.

17. The lot is paved with an all weather impervious material. Bumper stops are used to protect adjoining areas and there are no projections over building or lot lines. The lot is maintained on a daily basis. The lighting is arranged so that all rays are on the surface of the parking lot.

18. The parking lot is a neighborhood facility serving residents and neighborhood businesses during the daytime and the theater and restaurant in the evening. No complaints concerning noise, debris or of a similar nature have been made about the subject parking lot.

19. The parking lot portion of the subject property is located within 200 feet of the existing commercial district.

20. The applicants filed into the record a petition in support of the proposed application which was signed by approximately fifty persons with addresses in the District of Columbia, Maryland and Virginia.

21. Robert L. Morris, traffic consultant, testified for the applicant that there would be no adverse impact due to traffic and that there would be sufficient parking for the worst condition. A survey was conducted to determine the occupancy of parking spaces during the peak period for two days. It was determined that twelve of the forty parking spaces in question were vacant and ninety of the 178 parking spaces in the square were also vacant. Mr. Morris observed that at a 6:00 P.M. movie eighty-six percent of the patrons came by foot; at an 8:00 P.M. movie, seventy-nine percent arrived by foot. He also observed that at 8:30 P.M. ninety percent of the restaurant users had parked in the immediate area. An automobile occupancy survey was also made and it was determined that there was an average of 2.33 persons per automobile patronizing the theater and an average of 2.1 persons per automobile patronizing the restaurant. Mr. Morris concluded that the total parking demand for the expansion of the restaurant and theater and employees was for fifty-four spaces while fifty-nine spaces are provided. The Board concurs in the findings of Mr. Morris.

22. As to the requested variance relief, the Board finds that, in the present case, the location and configuration of the existing theatre on the subject property leaves minimal space for the provision of parking and creates an extraordinary or exceptional condition.

23. There are practical difficulties in providing additional surface parking in compliance with Section 7206.4. Because of the size and location of the existing building, to provide parking in full compliance with

Sub-section 7206.4 would significantly reduce the amount of parking that could be provided.

24. It is practically difficult and prohibitively costly to provide underground parking. The lot is too narrow to accommodate ramps plus the required turning radius and several levels of parking would create tremendous expense.

25. The presence of an attendant at all times ensures that owners of parked cars will have ready access to their cars when needed. Further, the requested variance would enable the applicants to provide adequate parking to serve the customers of the theatre.

26. Mr. Jeffrey Rahn, a member of the Board of Directors of the Carriage House Condominium, appeared on behalf of the Condominium Association in support of the proposed application subject to the terms of an agreement reached with the applicants. The agreement had been filed as a part of the record in this case as Exhibit No. 35.

27. The Office of Planning and Development, by report dated January 18, 1982, recommended approval of the application with conditions. The OPD noted that no variances or special exceptions are required for the construction of the theater and restaurant additions. The OPD felt that the requested special exception for accessory parking in the R-5-B District would not require periodic review and approval by the Board as has been done for the past several years and that the lot would principally remain unchanged. The OPD stated that the variance to permit valet parking is not inappropriate provided the lot is properly managed and that an attendant is available at all times. In regard to the special exception to reduce the number of parking spaces, the OPD stated that there is good access to public transportation in the neighborhood and that existing uses on the site are more neighborhood oriented than are similar uses in other parts of the city. There are fewer uses in the immediate neighborhood which would generate a demand for evening non-residential parking. The OPD concluded that approval of the application will not adversely affect adjoining or nearby property and recommended approval subject to the following conditions:

1. A detailed landscaping plan shall be submitted by the applicant for review and approval of the Board for the area along 23rd Street adjacent to the parking lot. Such plans shall show the location, size, material, species and general characteristics of all landscape material as appropriate.

2. All landscaped areas shall be free of trash and debris at all times and all plant material shall be maintained in a healthy growing state.
3. Parking lot attendants shall be available for patrons of the restaurant and theater during the hours of operation of the establishments.
4. Not less than 59 parking spaces measuring 9 feet by 19 feet shall be provided and shall be available at all times for exclusive use by the patrons and employees of the restaurant and theater.
5. All provisions of Article 74 shall be complied with except as specifically modified by Order of the Board.

28. The District of Columbia Department of Transportation, by memorandum dated January 20, 1982, reported that 23rd Street is a minor arterial one-way southbound having a thirty-two foot roadway with parking allowed after 9:30 A.M. Twenty-second Street is a minor arterial street, one-way northbound having a thirty-two foot roadway and parking prohibited at all times in the vicinity of the site. M Street is a minor arterial one-way westbound having a fifty foot roadway and two hour parking is allowed from 7:00 A.M. to 6:30 P.M. L Street is a minor arterial one-way eastbound having a thirty-two foot roadway with parking prohibited from 9:30 A.M. to 4:00 P.M. The DOT reported that the Foggy Bottom Metrorail Station is two blocks from the site and that Metrobus routes operate on Pennsylvania Avenue and K Street. The DOT found that the commercial parking lot located within the subject square is empty after 6:00 P.M. The DOT concluded that the proposed parking supplemented by available parking in adjacent commercial lots is adequate to accommodate the patrons of the theater and restaurant and that the proposed development will not create traffic problems. The DOT further recommended that because of the possibility that future development may occur on adjoining lots and the availability of additional parking may diminish that the applicant demonstrate through agreements with the lot owners that the availability of the additional parking would be assured.

29. Advisory Neighborhood Commission 2A, by resolution marked as Exhibit No. 28 of the record, supported the application with the following conditions:

1. That no approval be granted for this zoning application prior to a careful study of the parking situation for this theater by the D. C. Department of Transportation Policies and Plans.

2. That in the event that this office determines that the number of spaces provided by the theater is inadequate, the theater be required to make other arrangements to provide the necessary number of spaces
3. That, regardless of the findings of this DOT office, the BZA review the special exceptions after a period not to exceed three years, so that local residents can assess the impact of the theater's expansion on the parking situation and report back to the BZA on whether these arrangements have proved adequate.

30. No one appeared in opposition to this application at the hearing. However, there were letters in opposition filed in the record. One letter in opposition was concerned about the amount of traffic that the proposed expanded theater and restaurant would generate. The other letter was concerned about the impact of the potential construction and parking on the adjoining Carriage House apartments.

31. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. In addressing those issues, as well as those raised by the DOT, and letters in opposition, the Board finds as follows:

- a. The Department of Transportation did report to the Board, by memorandum dated January 20, 1982, marked as Exhibit No. 32 of the record.
- b. There is a sufficient number of parking spaces available to serve the proposed uses, as demonstrated by the applicant's traffic expert and the DOT.
- c. The applicant's traffic expert, the OPD and the DOT all demonstrated that there would be no significant traffic impact. Moreover, the uses in question are permitted as a matter-of-right. All that is at issue in this application is the adequacy and location of the parking spaces.
- d. The parking spaces to be provided are required spaces; they must be provided. Adequate enforcement mechanisms exist to resolve situations where the property is not maintained in accordance with the Board's order.
- e. The applicant's agreement with the Carriage House Condominium Association resolves any issues of potential adverse effects. Such agreement is a private transaction between the two parties, and

only the portions relevant to the zoning consideration of the application will be incorporated in the order.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking two special exceptions and a variance. The granting of the requested exceptions requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3101.48 and Sub-section 7203.2. The Board concludes that the proposed parking lot is contiguous to the commercial zone it is intended to serve. Because the Board has had control over this lot since the early 1960's, all provisions of Article 74 are presently in effect and such standards could be incorporated as a condition to approval of this application. The Board concludes that the proposed parking lot will not be objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditons.

The Board concludes that the theater and restaurant are predominantly neighborhood facilities and the amount of traffic and parking generated by patrons and employees will not adversely impact upon the present street system in that ample parking exist elsewhere in the square and that adequate public transportation exists in the neighborhood.

The Board also concludes that the applicant is seeking a variance from the prohibition against allowing accessory parking spaces which do not have direct means of ingress and egress. Such a variance is an area variance, the granting of which requires a showing of an exceptional condition situation of the property which creates a practical difficulty for the owner. The Board concludes that the applicant have made the required showing. Since the applicants propose attendant parking, the requested relief can be granted without substantial detriment to the public good.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board further concludes that the proposed uses are in harmony with the intent and purposes of the Zoning Regulations and would not have an affect on the present character of the neighborhood. It is therefore ordered that this application is GRANTED subject to the following CONDITIONS:

1. The parking lot shall be landscaped in accordance with Exhibit No. 37 of the record approved by the Board.
- 2, All landscaped areas shall be free of trash and

debris at all times and all plant material shall be maintained in a healthy growing state.

3. Parking lot attendants shall be available for patrons of the restaurant and theater during the hours of operation of both establishments.
4. Not less than fifty-nine parking spaces measuring nine feet by nineteen feet shall be provided and shall be available at all times for exclusive use by the patrons and employees of the restaurant and theater.
5. All provisions of Article 74 of the Zoning Regulations shall be complied with except as specifically modified by Order of the Board.

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

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

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

FINAL DATE OF ORDER: JUN - 4 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."

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.