

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**BOARD OF ZONING ADJUSTMENT**



Application No. 13684, of Gelman Construction Co., Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraphs 3104.44 and 3104.45 to continue the use of an accessory parking lot to serve the McDonald's restaurant at 2705 Martin Luther King Jr., Avenue, S.E., in an R-5-A District at the premises 650-54-56 Milwaukee Place, S.E., (Square 5982, Lot 821).

HEARING DATES: February 17 and March 4, 1982  
DECISION DATES: April 7 and May 5, 1982

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of February 17, 1982. It was continued to March 4, 1982 because of the lateness of the hour.

2. The subject site is located on the north side of Milwaukee Place and is known as 650-54-56 Milwaukee Place, S.E. It is in an R-5-A District. The subject accessory parking lot serves the McDonald's restaurant located at 2705 Martin Luther King Jr., Avenue, S.E. The restaurant is located in a C-2-A District. The subject parking lot is located at the rear of the restaurant.

3. The subject parking lot was originally approved on August 24, 1970 for a period of five years in BZA Order No. 10408-10. In BZA Application No. 12025, dated March 4, 1976, the Board granted a continuance of the parking lot for a period of five years terminating on March 4, 1981. On August 6, 1981, the Deputy Zoning Administrator advised the lessee that the subject lot was operating without a valid Certificate of Occupancy. On September 16, 1981, the applicant filed the subject application. Neither the applicant nor its witnesses offered any valid reason why the lot was operated illegally after the Board's approval in Case No. 12025 expired on March 4, 1981. They stated that the renewal application was overlooked.

4. The restaurant services 15,000 customers a week. Its hours of operation are from 7:00 A.M. to 12:00 A.M., Sunday through Thursday. On Friday and Saturday the hours are from 7:00 A.M. to 4:00 A.M.

5. In the aforementioned BZA Order No. 10408-10 the Board approved twenty-four parking spaces for the

residential position of the lot and thirty-three spaces for the commercial portion. In BZA Order No. 12025, the Board approved twenty-one spaces for the residential portion. The applicant now seeks approval of sixteen spaces in the R-5-A portion. There will be eight spaces in the C-2-A portion of the lot. The eight spaces alone do not meet the needs of the customers.

6. The applicant, in response to the Board's question to explain the decrease in parking spaces, replied by letter dated April 20, 1982 that the spaces in BZA Order No. 10408-10 were based on a site plan submitted for that hearing. In BZA Order No. 12025, the reasons for the space reduction were that a trash compactor was constructed and the concrete sidewalk separating the residential area from the commercial area was cut on the northern side to allow automobile access. A review of the transcript of this hearing indicates no discussion about the reduction in the number of spaces. The Order, however, reflects the Board's approval of this reduction. In the subject application the revised site plan indicates sixteen spaces in the R-5-A portion and eight spaces in the C-2-A portion for a total of twenty-four spaces. This reduction in spaces from the two previous BZA applications resulted from an additional cut in the concrete sidewalk separating the residential and commercial areas that was made to allow automobile access, and the construction of a drive-thru window eliminating parking in the rear of the commercial portion of the site and preventing angle or straight parking along the northern and southern sides of the lot. The drive-through construction also eliminated four parking spaces in front of the restaurant. The reduction in the number of parking spaces over the years was done at the initiative of the applicant. No permission was ever requested or received from the Board.

7. The northern boundary of the property line is improved by a ten foot stone wall and the western boundary is improved by a fence and evergreen screening. The wall, fence and evergreen screening are well maintained and in good order, as required by the Board's previous Orders.

8. The accessory parking lot has access from both the parking lot located on the commercial portion of the site and from Milwaukee Place.

9. By virtue of its location and nature of operation and the need generated by the facility to which it is accessory, the lot is convenient to the neighborhood and is designed in a manner so as not to become objectionable to adjoining or nearby property owners because of noise, traffic or other objectionable conditions.

10. The lot has been maintained in a clean manner. The lot itself is policed for trash and debris continuously during the day and evening hours. Twice daily, an area approximately 500 feet in both directions on Martin Luther King Jr., Avenue and all of Milwaukee Place is policed for trash. Approximately every forty minutes from the opening hour to the closing hour of the restaurant, the site is policed. There are eleven trash receptacles on the site. In the R-5-A section there is a trash compactor which compacts the trash into a large container. The container is dumped into a truck located on the residential area of the site. The trash is removed three times a week.

11. The applicant's traffic expert testified that it is impracticable to locate parking elsewhere than on the subject accessory lot since the restaurant is located on Martin Luther King, Jr. Avenue which is strip zoned, the depth of the restaurant's lot is very shallow, there is a need for the subject lot by the customers of the restaurant, there are adverse adjoining improvements preventing parking elsewhere, and the subject site is currently improved for parking lot use. The Board so finds.

12. The Department of Transportation, by report dated December 3, 1981, offered no objection to the continuation of this parking lot since it found the lot to be clean and in excellent condition. The report also noted that the parking lot layout submitted for review did not conform to the existing conditions at the site. Therefore, the Board requested that the applicant submit a revised site plan to the Department of Transportation for their further review. By supplemental report, dated April 20, 1982, the Department found that the revised site plan was in conformance with the existing parking lot layout and offered no objection to the continued use of the lot.

13. The parking lot is designed so that no vehicle or any part thereof projects over the property line of any building. The entrance to the lot is more than twenty-five feet removed from a street intersection. The lighting is so arranged what all direct rays will be confined to the surface of the lot. At the time of the public hearing, the parking area was not paved with an impervious surface and the spaces were not striped. The applicant testified that there was a break in the sewer system and that when good weather set in the lot would be replaced and striped in a manner previously approved by the Board.

14. A trash compactor serving the restaurant is located on the parking lot, in violation of Paragraph 7404.13.

15. There was no opposition to the application.

16. Advisory Neighborhood Commission 8A made no recommendation on the application.

17. After the public hearing, the Board directed the applicant to submit a post-hearing submission addressing the following issues: submission of the aforementioned revised site plan to the Department of Transportation and the Zoning Administrator, submission of a Landscape Plan to the Board, submission of a schedule of paving and planting to the Board, submission of a tickler system scheme in order to prevent lapses of certificates of occupancy, and an explanation as aforementioned of the reduction in the number of parking spaces since 1970. The applicant submitted a response to each of these issues. At its April 7, 1982 public meeting, however, the Board requested further information concerning the number of parking spaces proposed for the site. Therefore, a second submission was filed on April 20, 1982, addressing this concern. The Board finds that the parking lot is landscaped and kept in a neat and orderly condition, there is no adverse impact, and that the lot will be in compliance with the Board's previous orders and Article 74 when the repaving and striping of the lot is completed.

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 that the applicant comply with Paragraphs 3104.44 and 3104.45 of the Zoning Regulations. The Board concludes that the applicant has so complied, with the exception of the location of the trash compactor.

The Board concludes that the lot is convenient to the area and is necessary to serve the needs of the restaurant facility to which the parking is accessory. The Board concludes that the use has not resulted in any dangerous or objectionable traffic conditions, and likely not so result in the future. The Board concludes that, as conditioned herein, there shall be no deficiency regarding the operation of the lot and the Board is satisfied that continuing the parking lot will not adversely affect surrounding properties. The Board further concludes that the application is in harmony with the general purpose and intent of the Zoning Regulations, thus meeting the requirements of Sub-section 8207.2.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

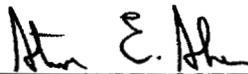
1. Approval shall be for a period of three years from the date of expiration of the previous Order, namely, March 4, 1981.

2. The trash compactor located on the lot shall be removed and replaced with either a parking space or landscaping.
3. The number of parking spaces on the lot shall not be reduced to less than sixteen spaces.
4. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
5. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
6. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
7. 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.
8. 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.
9. 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.

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

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

ATTESTED BY: \_\_\_\_\_

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

SEP 13 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.