

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13705 of John W. Ridenour, III, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue to operate a parking lot and for a variance from the prohibition against all day commuter parking (Sub-paragraph 4101.413) in an HR/SP-2 District at the premises 401-407 Massachusetts Avenue, N.W., (Square S-516, Lots 24,23,800,805 and 842).

HEARING DATES: March 17, 1982 and April 28, 1982  
DECISION DATES: April 7 and May 5, 1982

FINDINGS OF FACT:

1. The subject property is located on the northwest corner of the intersection of Massachusetts Avenue and 4th Street, N.W. and is known as premises 401-407 Massachusetts Avenue, N.W. It is zoned HR/SP-2.
2. The subject property consists of 6,545 square feet of land area and is presently used as a parking lot for twenty-three vehicles. The parking lot use was established pursuant to BZA Order No. 12493, dated November 29, 1977, for a period of three years. Prior to the establishment of the parking lot, the premises was used for used car sales.
3. The letter from the Zoning Administrator to the applicant, dated August 6, 1981, cited the expiration date of the then existing certificate of occupancy as November 29, 1981. Pursuant to BZA Order No. 12493, the approval to use the lot expired on November 29, 1980, and the aforementioned letter is erroneous. The subject application was not filed with the Zoning Secretariat until November 25, 1981. It is the applicant's responsibility to file an application for the continuance of a parking lot in a timely manner to ensure that the certificate of occupancy does not become invalid, creating an illegal use. The Board finds that the applicant in this case was not diligent in this respect.
4. Uses surrounding the subject site include the General Accounting office building, the Chester Arthur building, auto repair shops, residential structures, some of which are vacant, parking facilities, and small office uses. The site now used as a parking facility diagonally across Massachusetts Avenue from the subject site has been approved

as a planned unit development for development of an office/hotel use, leading to removal of 132 available existing parking spaces from the area. There are inadequate retail or service uses in the immediate area to generate a need for short term parking.

5. The subject parking lot is operated from 7 A.M. to 5 P.M., Monday through Friday. The lot is used by residents of the area after normal operating hours and on weekends at no charge.

6. The subject parking lot has a capacity of twenty-three parking spaces of which approximately nineteen are used for all-day commuter parking by employees of nearby government office buildings. The remainder are occupied by local residents. A daily parking fee is charged. There are no monthly contracts.

7. The lot is operated by RBI Parking Co. as a self-park lot and is not attended although there is an attendant's shelter located on the northeast corner of the lot. An attendant at the RBI parking lot located at 4th and Eye Streets, N.W. collects the parking fees and polices the subject lot on a daily basis.

8. Access to the parking facility is from 4th Street only. No ingress or egress occurs from Massachusetts Avenue due to heavy traffic flow.

9. At its public meeting of April 7, 1982, the Board decided to reopen the record in the subject application and to hold a further hearing on the issue of proof of the applicant's compliance with the conditions of BZA Order No. 12493 and the response of the applicant to personal observations by members of the Board as to the condition of the lot. Specifically, members of the Board personally observed that:

- (a) The used car lot sign has not been removed from the lot.
- (b) There are no lane markings on the lot.
- (c) Some of the wheel stops are missing or askew.
- (d) There is trash on the lot.
- (e) The paving is in need of repair.
- (f) There appears to be more than one entrance to the lot and one of the exits appears to be located too near the intersection.

The Board finds that the time which has passed since it granted permission to establish the lot is sufficiently long to have allowed the applicant to fully comply with the conditions of the Board's order and to correct any deficiencies in the lot.

10. The further hearing on the subject application was held on April 28, 1982. The owners and the operator of the lot appeared at that hearing to respond to the Board's concerns as follows:

- (a) The applicant stated at the March 17, 1982 public hearing that the subject sign would be removed upon approval by the Board of the continuance of the parking lot. It was not his understanding that the sign was to be removed prior to the Board's decision on the application.
- (b) The operator testified that the lane markings were done prior to the public hearing of March 17, 1982.
- (c) The operator testified that the wheel stops are in place except for one corner where a building angle prevents it and adjacent to the small shed on the northeast corner of the lot where a wheel stop is movable to allow for the unloading of a truck which supplies salt for use during icy weather.
- (d) The operator testified that the lot is policed daily but there is a problem with the dogs of a neighbor bringing or spreading trash onto the lot. The owner testified that he would provide a metal trash receptacle to prevent the dogs from spreading trash collected on the lot.
- (e) The operator testified that the lot was repaved one or two years ago, that cracks in the paving have been repaired, there are some depressions where settlement has occurred but the asphalt has not broken through and the lot serviceable.
- (f) The operator testified that there is only one entrance or exit to the lot which is located at the corner of Fourth and Massachusetts Avenue and which was in existence prior to the parking lot use.

11. The applicant has been operating the subject parking facility for five years and has not removed the deteriorating sign which advertises a use which has not been in existence for at least five years and which is unattractive and a blight on the area.

12. Lane markings were provided only prior to the March 17, 1982 public hearing on the subject application.

13. Although the applicant testified that the lot is policed daily it is not sufficient to prevent trash and debris from accumulating on the lot.

14. The applicant realigned the wheel stops only after being notified by the Board members who observed them to be missing or askew.

15. The surface of the lot is now adequate. The entrance to the parking lot is via a curb cut which was in existence prior to the establishment of the parking lot use.

16. The Board finds that it is the responsibility of the applicant to comply with the conditions of approval imposed by the Board and to maintain the facility in a manner which is not deleterious to the neighborhood in which the facility is located. The Board finds that the applicant has been remiss in this regard.

17. Advisory Neighborhood Commission 2C made no recommendation in the subject application.

18. There was no opposition to the application present at the public hearings or of record.

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 a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 4101.41. The applicant must further show that the requested relief 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. The Board concludes that the applicant has not met his burden of proof. The applicant has not complied with all of the conditions of the Board's prior order. The Board notes that the establishment of the parking use does not mandate a continuance of such use where there has been a change of conditions or other considerations materially affecting the merits of the application. The Board concludes that the manner in which the parking lot has been maintained constitutes a change of conditions and further creates an objectionable condition of the lot which may adversely affect the present character and future development of the neighborhood. Accordingly, it is ORDERED that the application is DENIED.

Further relief requested by the applicant as to a variance from the provisions of Sub-paragraph 4101.413 is therefore MOOT.

VOTE: 4-1 (Douglas J. Patton, Connie Fortune, Walter B. Lewis and Charles R. Norris to DENY; William F. McIntosh opposed to the motion).

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

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: JAN 27 1983

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."

13705order/KATHY5