

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13754, of Capital Building, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7613.12 to extend the provisions of a less restrictive district thirty-five feet into a more restrictive district and under Sub-section 7404.3 to provide a wooden fence in lieu of a solid masonry wall to permit the extension of a building, accessory parking, driveway serving a drive-through window facility and menu board for a McDonald's Restaurant in an R-2 District at the premises east side of Georgia Avenue, N.W. between Geranium and Hemlock Streets, N.W., (Square 2962, Lot 24).

HEARING DATE: May 26, 1982
DECISION DATE: June 2, 1982

FINDINGS OF FACT:

1. The subject site is located on the east side of Georgia Avenue, N.W. between Geranium and Hemlock Streets, N.W. and is in an R-2 District.
2. The subject site is rectangular in shape with approximately 239.75 feet of frontage along Georgia Avenue. It has a depth of approximately 135 feet. It is generally level in topography and was vacant of permanent structures at the time of the hearing. There is a temporary trailer/office and the site is used to park automobiles of a used car dealership. A twenty-five wide curb cut provides access to the site. The site is paved from the Georgia Avenue lot line to a depth of approximately 100 feet at which point a chain link fence runs the full width of the lot. A six foot wooden fence in disrepair runs along the rear lot line.
3. North of the subject site in the C-2-A/R-2 District is a Pizza Hut Restaurant under construction and a 7-11 grocery store at the southeast corner of the intersection of Hemlock Street and Georgia Avenue. On the northeast corner of the intersection of Hemlock Street and Georgia Avenue is a branch office of the National Bank of Washington. To the east of the subject site are a private drive and the rear yards of fourteen single family residences, twelve of which are semi-detached, owned by the applicant and leased to residential tenants all in the R-2 District. The houses front on 9th Street between Hemlock and Geranium Streets, N.W. To the south in the C-2-A/R-2 District is the Cork-

N-Bottle liquor store and an Exxon gasoline station at the northeast corner of the intersection of Geranium Street and Georgia Avenue. To the west across Georgia Avenue are apartment houses, an automobile dealership and the McGuire Funeral Home, all in the C-2-A District.

4. The subject property is split zoned C-2-A/R-2 and is typical of other lots on the east side of Georgia Avenue between Geranium and Hemlock Streets. The C-2-A District extends along the entire Georgia Avenue frontage to a depth of 100 feet parallel to the Georgia Avenue right-of-way. The remaining approximately thirty-five feet of depth is zoned R-2 and is the area of land that is the subject of this application.

5. The applicant proposes to construct a one-story McDonalds restaurant, adjacent parking and a drive-thru window on the entire C-2-A site. The structure will contain 3,740 square feet located in the northern portion of the site. It is masonry with a face-brick exterior and a double mansard roof. The drive-through window is to be located on the north side of the structure. The remaining portion of the site will be devoted to a parking lot of forty-four spaces and an access lane to serve the drive-through window.

6. The applicant proposes to locate eleven parking spaces, a portion of the structure which contains the freezer and the access and queuing lane to the drive-through window in the R-2 portion of the site. The existing wood fence would be replaced with a solid, six foot stockade fence for the length of the rear property line. Trees and other plantings would be provided as landscaping. Three sixteen foot high 400-watt high pressure sodium bulb light standards will be located in the R-2 area of the site providing exterior lighting to the parking lot and grounds. All direct rays of the lighting would be confined to the surface of the lot.

7. As to the landscaping to be provided in the R-2 District, the six foot stockade fence that is in disrepair will be replaced with a new six foot stockade fence. It will be maintained to provide a solid screen six feet in height. Ten white pine trees would be spaced along the eastern property line at a height of ten feet at planting time. The applicant requests permission to provide the landscaping and fence as described in lieu of the Zoning Regulations requirement of a four foot masonry wall.

8. The main access point to the site is an existing twenty-five foot curb cut. There will also be a curb cut located on the northwest corner of the property, which will be an exit-only type curb cut for the drive-through window.

9. No vehicular entrance or exit will be located within twenty-five feet of any street intersection extended.

10. The on-site traffic circulation flows in a counter clockwise pattern through the forty-four space parking compound on the majority of the southern half of the site.

11. There will be nine spaces at a sixty degree angle along the Georgia Avenue frontage. There will be five additional spaces along the southernmost property line. There will be eleven spaces to the rear of the main parking compound, which are located in the R-2 zone. There will be seven parking places immediately adjacent and perpendicular to the building, two of which are twelve foot wide parking places for vehicles of handicapped persons. In the center of the compound are twelve additional spaces, which are also in the C-2-A District. Of the forty-four parking places, eleven along the eastern portion of the parking compound are in the R-2 zone. The remainder are completely located in the C-2-A zone.

12. The trash enclosure is located in the area of the southeast corner of the property. It is located on the site plan, Exhibit No. 24, and is completely located on the C-2-A portion of the property.

13. The menu board is located adjacent to the northeast corner of the building, in the C-2-A portion of the site.

14. The freezer enclosure, which is part of the structure, is basically in the southeast corner of the building, but on the rear of the building. It is in the R-2 portion of the site. The freezer area will have a floor area ratio that does not exceed 0.1. The applicant testified that if the freezer section of the structure were placed along-side of the structure rather than behind, it would necessitate a redesign of the structure, externally and internally. The applicant further testified that, if all the items that are proposed for the R-2 District were put into the C-2-A District, a substantial circulation problem would be created. Preliminary site layout plans were done and the subject plans proved to be the best and most feasible, in the applicant's view.

15. The queuing lane for the drive-through window begins at the southeastern corner of the lot. It turns and runs north, parallel to Georgia Avenue, across nearly the entire extent of the rear property line, to the northeast corner of the property. At that point, it makes a ninety degree turn, headed directly to the west, until it reaches the northeast corner of the building at which point the customer will place an order at the order station. The customer will then proceed to pick-up booth which is located

on the north wall of the building near the northwest corner thereof. Upon picking up the order and completing the transaction, the customer would then exit through the new exit-only curb cut to Georgia Avenue.

16. Georgia Avenue is marked for six traffic lanes, all of which are used north of Hemlock Street during rush hour movement. At other times parking is permitted, leaving four travel lanes. In the block between Geranium and Hemlock Streets, however, there are no peak period restrictions and only four lanes are available at all times. Parking is regulated on the west side with residential permit parking from 7:00 A.M. to 6:00 P.M. On the east side, the only regulation is for street cleaning and no parking zones for bus stops.

17. Hemlock Street is a thirty foot wide street which intersects with Georgia Avenue from the east. No parking is allowed on the north side of Hemlock Street. Parking on the south side is unregulated. Entry to Georgia Avenue is controlled by a stop sign.

18. Geranium Street intersects Georgia Avenue at a signalized intersection. Geranium Street extends to 16th Street and Alaska Avenue to the east and Blair Road to the east. This street is about thirty feet wide with parking allowed on both sides.

19. The traffic signal at Geranium Street is about 300 feet south of the site. The next signal to the north is at Eastern Avenue-Kalmia Road-Alaska Avenue, a distance of about 1,300 feet from the site.

20. The applicant presented testimony and evidence from a traffic expert in support of the application. The testimony and evidence presented indicated that Georgia Avenue at Geranium and Hemlock Streets presently operates at a high level of service and has excess capacity. The expert further argued that the traffic to be generated by the proposed restaurant use would be accommodated on Georgia Avenue without significantly affecting the level of traffic or changing the level of service.

21. The applicant's traffic expert further undertook a search of records of the D.C. Department of Transportation to determine the number of accidents by time over the three year period 1978 - 1980. The expert argued that the number of accidents that occurred in each of these three years, 1978 - 1980, is very modest compared to the fact that almost 11,000,000 cars per year pass along Georgia Avenue at a rate of about 30,000 per day. When the average rate for the three year period of 0.61 accident per 1,000,000 vehicles that pass the site is translated into a time period between

accidents, there is one accident occurring each fifty-five days on average in this block.

22. The traffic expert further testified that the subject McDonald's required a total of approximately forty-four parking spaces to serve peak demand. That demand was calculated based on an observation of a McDonald's located at Georgia Avenue and Barry Place, N.W. which had a parking capacity of fifty spaces. The witness testified that the spaces on the R-2 portion of the site were required to meet the parking demand for the site, as only thirty-three spaces are located on the C-2-A portion of the site.

23. The traffic expert testified that the drive-through lane was placed at the rear of the site because there would be no pedestrian activity at that location, either that which is generated on the site, or that which can come from adjacent areas.

24. The traffic expert testified that at the same time, sufficient space has been provided on-site to accommodate what would be the maximum queue waiting for drive-through service. With reference to the Barry Place facility, the witness observed the number of cars that were on that site in the queue waiting for service. The menu board was used as the point of reference. The witness counted the number of cars in line at one minute intervals, throughout the sixteen hours of counting that was undertaken. During that time, a total of nine minutes out of sixteen hours there was a queue that got to be seven cars long. There has been provided on this site sufficient space to stack eleven vehicles.

25. The traffic expert further testified that studies of McDonald's on a nation-wide scale have indicated that overall the addition of a drive-through lane increases the total traffic on the site by about fifteen percent. There are fifteen percent more turns.

26. The site development manager for McDonald's testified that immediately east of the R-2 District, there are fourteen single family residences. There is a distance of approximately fifty feet from the back of the closest residence to the stockade fence. The distance includes the private drive and the lawn area between the private drive and the fence. The witness further testified that monographs and filed studies have shown that, at a distance of thirty-five feet from the speaker board, no audible sound can be detected. In addition, the voice box itself is turned ninety degree from the R-2 District and faces north to the commercially zoned property.

27. The hours of operation and use of the drive-through window would be from 7:00 A.M. until 11:00 P.M. weekdays and 7:00 A.M. until 1:00 A.M. on Friday and Saturday.

28. The subject site is the last substantially undeveloped parcel on the east side of Georgia Avenue between Geranium and Hemlock Streets. The applicant argued that, if approved, this application would correct, with all the appropriate controls, an anomaly in the zoning map where the commercial zoning extends to a depth of 135 feet in the block just north of the subject site, and to a depth of only 100 feet in the block that is the subject of this application.

29. The applicant argued that the Board in BZA Order No. 13598 dated March 17, 1982, conditionally approved an application of Capital Building, Inc., the subject applicant, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to permit a parking lot in an R-2 District as an extension of an accessory parking lot in a C-2-A District on parts of lots 22 and 23, Square 2962, the site of the aforementioned 7-Eleven store and Pizza Hut Restaurant just north of the subject property.

30. In response to the applicant's arguments cited in Findings 28 and 29, the Board finds that it cannot correct any anomaly in a zoning map even if it found such to exist. That is the responsibility of the Zoning Commission. The matter before the Board is a special exception. Further, the Board finds that BZA Order No. 13598 can be distinguished from the subject application. In application No. 13598, the relief requested was under Paragraph 3101.48 to permit a parking lot in an R-2 District as an extension of an accessory parking lot in a C-2-A District. In the subject application, the relief requested is under Paragraph 7613.12 to extend the provisions of a less restrictive district thirty-five feet into a more restrictive district. In addition, the subject application requests not only an extension of parking, but also to place a portion of the principle structure and a driveway to a drive-through window of a restaurant into the more restrictive district.

31. The Office of Planning and Development, by report dated May 21, 1982, recommended that the application be conditionally approved. The OPD was of the opinion that the applicant had satisfied the requirements of Paragraph 7613.12 which permits the extension of provisions of a less restrictive district thirty-five feet into a more restrictive district. The OPD was of the opinion that the use of a six foot stockade fence and landscaped strip along the site's eastern property line in lieu of a solid masonry wall would provide adequate screening of the restaurant from the residential properties. The OPD noted that the split

C-2-A/R-2 zoning of the subject lots is typical of the other lots on the east side of Georgia Avenue between Hemlock and Geranium Streets. The OPD noted that from a review of the site plan, including the landscaping plan, there would be no adverse affect on neighboring property. The OPD further recommended that the proposed stockade fencing would be more appropriate than a solid masonry wall since it would be more in conformance with the neighborhood. The Board, for reasons discussed below, does not concur in the OPD recommendation or its reasoning.

32. Plan Takoma, by letter dated May 20, 1982, the Shepherd Park Citizens' Association, by letter dated May 26, 1982 and Neighbors, Inc., by letter dated May 23, 1982, and through testimony at the public hearing, expressed their opposition to the application.

33. The grounds for the opposition was based on the adverse impact the drive-in carry-out operation would have on the traffic condition on Georgia Avenue from the Maryland-District of Columbia border to Walter Reed Hospital. Georgia Avenue is a main commuter thoroughfare. In addition to the normal traffic congestion which will be caused by motorists entering and exiting the proposed McDonald's restaurant, the opposition argued that traffic can be expected to be backed up by lines of autos entering the carry-out driveway.

34. In addition, the opposition argued that the driveway and menu board, and parking lot extension into the R-2 portion of the lot will change the character presently existing in the neighborhood because of the noise level and pollution which will be caused by the intensity of use by patrons in automobiles who will drive immediately adjacent to residential dwellings east of the subject property.

35. Neighbors, Inc. testified that it had participated in a comprehensive transportation planning process for the Takoma community, and statistics provided to it from the Department of Transportation and D.C. Police Department show that the subject block has an extremely high rate of mid-block accidents, caused by cars entering and leaving the Cork-N-Bottle Liquor Store. In this respect, Neighbors, Inc. disagreed with the statistics provided by the applicant's witness as to accidents occurring in the vicinity of the subject site.

36. Advisory Neighborhood Commission 4B, in which ANC the subject site is located, by letter of May 24, 1982, recommended that the application be denied. The ANC reported that it was dismayed at the proliferation of fast food outlets and convenience stores in the neighborhood and on Georgia Avenue. While the ANC understood that a McDonald's would be built on that location regardless of

whether the exception was granted, it believed that the granting of that exception would greatly increase the traffic congestion in that area. The ANC was also concerned about the creation of additional pedestrian safety hazards with the use of the drive-through facility. The ANC stated as another reason for its opposition the high number of midblock accidents in that area, according to statistics provided from the Department of Transportation and the D.C. Police Department. The ANC noted that northbound evening rush hour traffic is often blocked and at a standstill from Eastern Avenue to Geranium and Hemlock Streets. The rate of flow that McDonald's expects through the drive-through along with the increased congestion caused by the Seven-Eleven and Pizza Hut to the north, would greatly increase street congestion, increase midblock accidents, increase pedestrian safety hazards and increase automotive pollution both in the drive-through and on Georgia Avenue. In addition, regardless of whether the special exception is granted, the ANC recommended that the applicant provide a fence and trees on the back portion of the lot to screen the adjacent homes as was done on previous applications for Seven-Eleven and Pizza Hut and that this fence and line of trees be contiguous along the back of the lot and facilities.

37. Advisory Neighborhood Commission 4A, which includes property located on the west side of Georgia Avenue, reported by letter dated May 25, 1982, that at its May 13, 1982, public meeting, the Commission voted unanimously to support the Upper Georgia Avenue Planning Committee in its opposition to this establishment. If the drive-through restaurant is allowed to settle in this location, there will be serious problems of traffic, noise pollution, litter, loitering, and a further degradation of a stable, secure and beautiful neighborhood.

38. Several individuals appeared at the public hearing in opposition to the application. There were two letters and a petition with approximately 230 signatures, of record, in opposition to the application.

39. The Board is required by statute to give great weight to the issues and concerns of Advisory Neighborhood Commission 4B. In addressing those issues and concerns, as well as those raised by ANC 4A, the Board finds as follows:

- a. The area of Georgia Avenue from Fern Street to Eastern Avenue is zoned C-2-A. That district permits as a matter-of-right restaurants and carry-outs of any kind, as well as a large variety of other retail and service uses. If the ANC's are concerned about the suitability and appropriateness of development in that zone generally, such issues should be addressed to the Zoning

Commission. The BZA is not the proper forum in which to raise those questions.

- b. The location of the drive-through window access and queuing lane is likely to have no significant affect on pedestrian safety. The lane is located at the rear of the site, where there is no pedestrian traffic. The drive-through lane exits at a curb cut which would be constructed regardless of whether the application is approved.
- c. The information on accidents is insufficient for the Board to determine whether a serious safety problem exists. There is no standard against which to measure the data provided by the applicant's traffic expert or the ANC. There is no information indicating the nature of the accidents, the severity of damage or injury and the cause, as to enable the Board to determine that a problem exists.
- d. Although the applicant's traffic expert alleged that there was no significant congestion along Georgia Avenue as measured by level of service, the testimony from the ANC's and other opposition witnesses evidences problems at peak hours, particularly in the northbound direction. It is the undisputed right of the applicant to construct a McDonald's restaurant on the C-2-A portion of the site, thus adding traffic to the flows on Georgia Avenue and the neighborhood streets. The intensification of that restaurant use by increasing the number of parking spaces and by adding a drive-through access lane will encourage or result in more traffic to and from the site. Such additional traffic, when combined with existing development and new facilities under construction, has the potential to adversely affect the present character and future development of the neighborhood.
- e. The ANC's allegations about litter, loitering and noise pollution are generalizations based on unspecified fears. Further, those impacts could just as well occur from the restaurant use in the C-2-A portion of the site, where it is permitted.
- f. The ANC's request for landscaping and screening is not germane. The Board, in denying the application, has no jurisdiction to require that action of the applicant.

40. The Board finds that extension of the restaurant use into the R-2 District will have an adverse affect on the

present character and future development of the area. There are semi-detached houses located directly adjacent to the area proposed to be used for the access lane. These houses are located as close as fifty feet to the property line. There is no public alley separating the subject property and these houses. The use of the R-2 portion of the subject site for access lane and parking extends the commercial activities of the site very close to the adjoining residences. The nature of the restaurant use, including the number of vehicles who would use the drive-through lane and the turnover of vehicles in the parking spaces, makes it inadvisable to extend that use closer to the residential area than is already permitted.

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 a special exception, the granting of which requires compliance with the requirements of Paragraph 7613.12 of the Zoning Regulations, that the relief can be granted without an adverse impact on the use of neighboring property and a showing that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map.

The Board concludes that the applicant has not met the burden of proof. The applicant has not met the requirements of Sub-paragraph 7613.123 in that the proposed use will have an adverse effect on the present character and future development of the neighborhood. The proposed access lane to the drive-through window will generate additional vehicular movements on-site in close proximity to the adjoining residential properties. The proposed drive will lead directly to a curb cut into Georgia Avenue where increased traffic will further congest the streets.

The Board concludes that the special exception under Sub-section 7404.3 to provide a wooden fence in lieu of a solid masonry wall is an integral part of the special exception under Paragraph 7613.12 and development of the entire lot. If development of the R-2 zoned area of the subject lot does not occur, the provision for wooden fence becomes moot.

The Board further concludes that the relief requested is not in harmony with the purpose and intent of the Zoning Regulations and will effect adversely the use of neighboring property. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis, Connie Fortune and Charles R. Norris to DENY; William F. McIntosh and Douglas J. Patton 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: _____

MAR 11 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."

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