

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13814, of Ruby Restaurant, Inc., pursuant to Sub-section 8207.1 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue the use of a parking lot and for a variance from Sub-paragraph 4101.413 to permit all day commuter parking in an SP-2 District at the premises 518 H Street, N.W., (Square 486, Lot 36).

HEARING DATE: September 8, 1982
DECISION DATE: October 6, 1982, and May 4, 1983

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of 6th and H Streets and is known as 518 H Street, N.W. It is in an SP-2 District.

2. The subject parking lot was first approved by the BZA in Order No. 12321, dated April 22, 1977. BZA Order No. 12669, dated July 21, 1978, granted a further conditional continuance of the lot for a period of two years. The Board last approved the subject parking lot pursuant to BZA Order No. 13342, dated December 11, 1980, for a period of two years.

3. The subject property is approximately 4,250 square feet in area. It has facilities for twenty-two cars. The lot is operated as a commercial facility from 7:30 A.M. to 6:00 P.M. During that time, six of the spaces, in accordance with the Board's Order No. 13342, are reserved exclusively for the customers of the Ruby Restaurant at 609 H Street, N.W. which is diagonally across the street from the subject parking lot. From 6:00 P.M. to 4:00 A.M., the lot is used exclusively for patrons of the Ruby Restaurant.

4. The subject lot is operated by Parking Management, Inc. in conjunction with three other adjacent parking lots. There is an attendant.

5. The immediate neighborhood consists of restaurants, carry-outs, bars and vacant structures. Located nearby are the North, South and East Potomac Buildings, St. Mary's Church, Bergman's Laundry, the Government Accounting Office and the recently constructed Wah Luck apartment building.

6. The subject lot is operated in conjunction with three other parking lots in the same square. The Board

granted a variance from Sub-paragraph 4101.413 for the other three lots in BZA Order Nos. 13743, 13803 and 13147. The applicant asserts that the situation affecting the property in the other three cases is identical to that affecting the parking lot in the subject case and thus justifies the granting of a variance from the prohibition of all-day commuter parking on the subject lot.

7. The lot has been operated in the past so as not to create dangerous or other objectionable traffic conditions. There is no evidence that conditions have changed so as to cause objectionable conditions in the future.

8. The subject lot is in compliance with the appropriate requirements of Article 74 and the conditions of the prior BZA Order.

9. The applicant leases the property on which the Ruby Restaurant is located. The lease will expire in about five years. The applicant hopes to locate the restaurant on the subject parking lot which the applicant owns. There are no immediate plans for the relocation of the restaurant.

10. The applicant has received no complaints as to the maintenance and operation of the parking lot.

11. There was no opposition to the application at the public hearing or of record.

12. Advisory Neighborhood Commission 2C made no recommendation on the application.

13. At its public meeting of October 6, 1982, the Board granted the application for a period terminating on July 21, 1984, and incorporated the conditions imposed in the Board's prior Order No. 13342.

14. BZA Order No. 13342, dated December 11, 1980, granted a special exception to continue the use of the subject site as a parking lot and denied the request for a use variance to allow all-day commuter parking. Condition (b) of that order prohibited all-day commuter parking.

15. By memorandum dated January 5, 1983, the Executive Director of the Zoning Secretariat requested the Board to clarify its position as to whether or not Condition (b) of BZA Order No. 13342 was incorporated into the decision on the subject application.

16. At its public meeting of May 4, 1983, based on its review of its decision in the subject application and the findings and conclusions of BZA Order No. 13342, the Board reconsidered its decision in the subject application. The Board, by a vote of 3-0, granted the request for a special

exception and denied the use variance in the subject application.

17. The Board finds that Condition (b) of BZA Order No. 13342 prohibits all-day commuter parking based on Finding of Fact No. 7 of that order which states as follows:

"7. Approximately one-third of the parking places are committed to all day commuter parking. The applicant testified that there are many short term parkers but still not enough to make the operation financially successful. The applicant further testified that if the Board were not to grant the requested variance from the all day commuter parking that it would do what it had previously done in the aforementioned three other parking lots surrounding the subject one. Since all the parking lots are under one management, the operator can manipulate the cars by parking the commuter parkers in those parking lots where the Board approval all day parking and then place all the short term parkers together."

Based on the applicant's testimony, the Board further finds that the situation affecting the subject lot has not substantially changed since the Board's prior decision and that the lot has been operated in compliance with the conditions of the prior order. No evidence of an undue hardship upon the owner resulting from denial of the variance was demonstrated.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception and a use variance. As to the special exception the Board concludes that the applicant has substantially complied with the requirements of Paragraph 4101.41 of the Zoning Regulations and that the special exception, as hereinafter conditioned, 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. As to the use variance, the variance to permit all-day commuter parking, this requires a showing of a hardship upon the owner of the property that arises from the property itself. The Board concludes that the applicant has not met the burden of proof necessary for the granting of a use variance. The operation of the lot in accordance with the conditions of the Board's prior Order as set forth in Findings of Fact Nos. 8 and 17 evidences that there is no condition inherent in the subject lot which prohibits its operation in compliance with Sub-paragraph 4101.413. Accordingly, it is hereby ORDERED that the request for a use variance is DENIED and the special exception is GRANTED SUBJECT to the following CONDITIONS:

- A. Approval shall be for a period terminating on July 21, 1984.
- B. There shall be no all-day commuter parking.
- C. This lot will operate as a commercial facility from 7:30 A.M. to 6:00 P.M. with the exception of six spaces to be reserved for customers of Ruby Restaurant, Inc.
- D. Between the hours of 6:00 P.M. and 4:00 A.M., this lot is exclusively for use by customers of Ruby Restaurant, Inc.
- E. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- F. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- G. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- H. 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.
- I. 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.
- J. 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 of the Board at the Public Meeting of October 6, 1982:

- 4-0 (Connie Fortune, Douglas J. Patton, Walter B. Lewis and Charles R. Norris to GRANT; William F. McIntosh not voting, not having heard the case).

VOTES of the Board at the Public Meeting of May 4, 1983:

- 3-0 (Walter B. Lewis and Charles R. Norris to

reconsider; Douglas J. Patton to reconsider by proxy; William F. McIntosh and Carrie L. Thornhill not voting, not having heard the case).

3-0 (Walter B. Lewis and Charles R. Norris to grant the special exception and deny the use variance; Douglas J. Patton to grant the special exception and deny the use variance by proxy; William F. McIntosh and Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

JUN 22 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."

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.

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