

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 13864, of Stewart Marshall Bloch, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Sub-section 4101.3) to operate a parking lot and from the prohibition against all-day commuter parking (Sub-paragraph 4101.413) in an SP-2 District at the premises 1304-1312 N Street, N. W., (Square 245, Lots 9 and 811).

HEARING DATE: December 8, 1982

DECISION DATE: January 5, 1983

FINDINGS OF FACT:

1. The subject property is located on the south side of N Street, N. W. between Vermont Avenue and 13th Street, N. W. It is known as 1304-1312 N Street, N. W. and is in an SP-2 District. The southern portion of the subject square is bounded by M Street and Massachusetts Avenue.

2. Lot 811 is 10,275 square feet in area and Lot 9 is 3,425 square feet in area. The lot is bordered by a public alley in the rear and a brick wall of four feet in height. A portion of the public alley is thirty feet in width and the remainder is fifteen feet. Access to the parking lot is from N Street, N. W.

3. To the north of the subject parking lot, across N Street, is a commercial parking lot. To the south, is the aforementioned alley and wall. To the west is a nine story apartment building with a private driveway and to the east is a private driveway.

4. The subject parking lot has been in existence for approximately twenty-seven years. The continuation of the parking lot was last approved for a period of two years by BZA Order No. 12968, dated September 5, 1979 commencing from March 25, 1979, the date of expiration of the previous certificate of occupancy.

5. On June 2, 1981 the applicant's agent filed for a special exception to continue the operation of the subject parking lot. The Board in BZA Order No. 13534, dated September 23, 1981, dismissed the application. In that application, the Board found that there was a lack of good faith on the part of the owner of the lot in not diligently processing the application before the Board, in not being

prepared to present the case adequately and properly at two public hearings, and in continuing to operate the parking lot after the certificate of occupancy expired.

6. On August 31, 1982, the subject application was filed. The applicant's representatives in this case testified that subsequent to the Board's Order No. 13537, the subject owner terminated the lease agreement with the operator of the parking lot and recovered possession of the lot.

7. The premises are no longer used for commercial parking. The subject lot is used for parking by some fifty employees of the owner. The owner was of the opinion that he could park on a lot that he owned and the persons employed by him at a property adjacent to the subject lot could legally park thereon. It was the owner's opinion that the only prohibition was that the lot could not be used for commercial parking. The Board finds that the only principal use permitted without a certificate of occupancy is a single family dwelling, as set forth in Sub-section 8104.1 of the Regulations.

8. The owner of the parking lot was not present at the public hearing. The owner's agent testified that the subject parking lot, an adjacent parking lot and the Hysong building located at the corner of 13th and N Streets, N.W. were purchased as one unit. The owner has been attempting to lease the structure as office space.

9. Arrangements had not been made for the daily operation of the subject lot. The owner will select a lessee if the application is approved. The agent testified that the lot would be operated under the conditions imposed by the Board in BZA Order No. 12968.

10. At the time this application was heard and decided by the Board, the Zoning Regulations provided that the continued operation of a parking lot that had been in existence on October 5, 1978 could be approved by the Board for a period not to exceed four years. The subject lot was in operation on October 5, 1978 with a certificate of occupancy that expired on March 25, 1979. Consequently, by way of special exception under Paragraph 4101.41, the lot could be approved only until March 25, 1983. The applicant therefore determined to seek a use variance to obtain approval for a longer period of time.

11. The agent argued that the facts and the conclusions for the one variance as to commuter parking embodied in BZA Order No. 12968 still prevail. The hours of operation would remain the same. There would be an attendant. The schedule for the cleaning of the lot would remain intact. The lot would cater to all day commuter parkers

since the neighborhood has not changed in that there are not sufficient facilities in the area to generate enough demand for short-term parking. The applicant argued that the Board's conclusions that the subject site has no other reasonable use than the continuation of the existing parking facility and that restriction of the lot to other than commuter parking would create a hardship for the owner are as valid today as they were on September 5, 1979. The agent argued that his burden of proof for the subject application had been met.

12. The agent offered no probative evidence that the site could not be used for a purpose for which it is zoned.

13. Advisory Neighborhood Commission 2C, by letter dated November 29, 1982, reported that it had received no objection to this application and, therefore, had no opposition. The ANC supported the following statement submitted to it by the Logan Circle Community Association:

"The Logan Circle Community Association has no objection to the requested variances but requests the following conditions be part of the BZA order:

- a. All open sides of the lot will be enclosed by a chain or fence.
- b. The entrance to the lot will be securely closed during non-operating hours.
- c. Bumper stops shall be erected on all sides of the lot to protect adjoining walls and to preclude parking on public space.
- d. The wall fronting the lot is to be neatly repaired prior to issuance of a certificate of occupancy.
- e. All other BZA requirements in similar situations, dealing with lighting, other uses, paving, refuse, etc. will be part of the BZA order.
- f. Loitering on or in front of the lot will be monitored and actively discouraged by the operator".

14. The Board is required by statute to give "great weight" to the issues and concerns of the ANC wherein the recommendation has been reduced to writing. The presence or absence of objection to an application, in and of itself, is not a basis to decide an application. For reasons discussed in its conclusions, the Board does not concur with the ANC recommendation.

15. There was one letter of record in support of the application based on the issue that parking is at a premium in the subject neighborhood. The Board does not find that such a need is dispositive of the application. The applicant must first establish that he has met his burden of proof in establishing grounds for a use variance, all of which will be discussed below.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking two use variances. In order to grant a use variance, the Board must find through persuasive, probative evidence that there is some exceptional or extraordinary situation or condition inherent in the site such that the strict application of the Regulations causes an undue hardship on the owner. The Board must determine that there is no reasonable use for the property for a purpose for which it is zoned. The Board concludes that no such condition or hardship exists. The site through special exception relief, had been used as a parking lot for some twenty-seven years. A parking lot in an SP-2 District would be an interim use of land. In BZA Order No. 12968, in Finding of Fact No. 9, the applicant testified that the subject property had been on the market for years and that it was the intent of the owner that the parking lot would be an interim use until a purchaser is found. Some three and one half years have expired since the last valid certificate of occupancy was issued, and still the subject site has not been developed for a permitted SP-2 use. The Board takes judicial notice that sites that were previously used as commercial parking lots have been developed during this period.

The applicant is not seeking his relief through a special exception wherein his burden is less than that required for a use variance. Under a special exception the burden is to comply with the requirements of the Zoning Regulations under which the relief is sought. The burden under a use variance is to establish by probative evidence that the site cannot be put to any of the uses established under the Zoning Regulations for SP-2 Districts. The Board concludes that the applicant has not met his burden. The Board has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ordered that the application is DENIED in its entirety.

VOTE: 5-0 (William F. McIntosh, Lindsley Williams, Carrie L. Thornhill and Charles R. Norris to deny; Douglas J. Patton to deny by proxy).

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

