GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13913, of Rose W. Weinsoff and Jerome Golub and Rental Associates, Inc., pursuant to Paragraph 8107.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 4101.3) to establish a parking lot in an SP-2 District at premises 920 and 928 M Street, N.W., (Lots 28, 29, 830 and 831); 906 and 918 M Street, N.W., (Lots 832, 833, 834, 861, and 862); and 930-932 M Street, N.W., (Lots 829 and 853, all in Square 369).

Application No. 13914, of National Rental Co., pursuant to Paragraph 8107.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 4101.3) to establish a parking lot in an SP-2 District at premises 1127-1131 - 10th Street, N.W., (Square 369, Lots 26, 820, 821, 822, 823 and 61).

HEARING DATES: February 9 and April 27, 1983
DECISION DATE: June 1, 1983

FINDINGS OF FACT:

1. At the public hearing of February 9, 1983, during the cross-examination of the applicants by the opposition, evidence was adduced by the Board that proper notice of the public hearing had not been given. A significant number of property owners within 200 feet of the subject site had not been notified of the hearing by mail, because the list submitted by the applicant was deficient. The property had not been posted for the required period of time. Such procedure is required under the Supplemental Rules of Practice and Procedure before the BZA. The Chair directed that the public hearing be continued and that both applications be readvertised. The applications were scheduled for and heard at the public hearing of April 2, 1983. Since no additional persons were present, the Board resumed at the point it had concluded on February 9, 1983.

2. The two parking lots which are the subject of Application No. 13913 and No. 13914 are located within the same square. The majority of the lots are contiguous to one another. The owners of both lots are the same persons. The applicants are seeking permission to use all the lots as a consolidated parking lot in order to provide parking spaces for patrons of the Convention Center. For these reasons, the two applications were consolidated for the purpose of hearing and decision.

3. Application No. 13913 includes the premises 920 and 928 M Street, N.W. (Lots 28, 29, 830 and 831); 906 and 918 M

Street, N.W., (Lots 832, 833, 834, 861, and 862); and 930-932 M Street, N.W., (Lots 829 and 853), all in Square 369. Application No. 13914 includes the premises 1127-1131 - 10th Street, N.W., (Square 369, Lots 26, 820, 821, 822, 823 and 61). All of the lots are located in an SP-2 District.

4. The subject Square 369 is bounded by M Street, N.W. to the north, L Street, N.W. to the south, Ninth Street, N.W. to the east, and Tenth Street, N.W. to the west. The subject lots are concentrated in the northern half of the square. Four of the lots border Tenth Street, N.W., and ten of the lots border M Street, N.W. Three of the lots are interior lots which have access from a network of alleys running through the square. Approximately sixty percent of Square 369 is vacant land used as surface parking lots.

5. The general area to the north, south, and west of the subject lots is characterized by residential uses housed in low to moderate bulk structures. The residential structures on the west side of Tenth Street, and several structures on the north side of M Street closest to the intersection of Tenth and M Streets are in extremely poor condition. Some are actually vacant and boarded. On the north side of M Street, near the intersection of Ninth and M Streets, there are several rehabilitated residential structures. M Street is the southern border of the Shaw Urban Renewal Area. The residential structures on L Street, the rear of which can be seen from the applicants' proposed parking lot, are in fair condition, as is the moderate bulk office building sandwiched between the residential uses.

6. East of the subject lots is a C-2-A commercial district which runs along Ninth Street and includes portions of Square 369. The C-2-A District boundary separates two lots owned by the applicants on the south side of M Street (Lots 866 and 865) from the other M Street lots also under the applicants' ownership. The applicants intend to use the two lots located within the C-2-A District for parking in conjunction with their other lots. These lots can be used for parking as a matter-of-right. Aside from the C-2-A District, other zoning districts in the surrounding area include an R-4 District north of M Street, N.W., a C-2-A District along Eleventh Street north of M Street, and a C-3-C District along Ninth Street south of L Street.

7. Between 1964 and the present, the applicants have come before the BZA on four occasions, each time seaking a special exception to use various lots within Square 369 for parking. Beginning in 1969, each successive application to the Board has increased the number of lots for which parking lot use was requested. As early as 1973, the applicants testified before the Board that the parking lot use was an interim use and future development of the lots was planned.

The Board consistently conditioned its approval of parking lot use. Said conditions were designed to ensure a minimum standard of parking lot operation and thereby protect adjoining properties and the surrounding neighborhood from adverse impacts.

8. On two occasions, between 1969 and 1973 and between 1975 and 1977, the applicants either failed to obtain or to apply in a timely matter for a certificate of occupancy. The inability to locate a certificate of occupancy for parking lot use beyond 1975 indicates that the applicants failed to legitimize their use of the subject lots for parking beyond that date.

9. On September 14, 1978, the Zoning Commission amended the text of the Zoning Regulations relative to the SP District, effective October 5, 1978. The establishment of new parking lots within the SP District was prohibited. Parking lots in existence as of October 5, 1978, with a valid approval from the Board, were permitted to continue for a period of four years beyond the expiration date of the then existing certificate of occupancy. In a further action by the Zoning Commission, the period was extended for two additional years to six years.

10. A parking lot is a commercial use first permitted as a matter-of-right in a C-1 District.

11. The applicant's are now seeking variances from the use provisions to establish the subject parking lots. On the aforementioned date of October 5, 1978, the subject parking lots were not in existence with a valid certificate of occupancy.

12. The site is composed of a number of rectangles in shape and is flat. The site is unimproved.

13. The applicant's site plan depicts a parking lot with approximately 212 marked spaces. Since the network of alleys running through the square precludes one all encompassing fence, the applicants propose to enclose contiguous parcels with a chain link fence. Two attendant's booths are indicated on the plan, one on M Street adjacent to the public alley approximately halfway between 9th and 10th Streets and one on 10th Street. Entrance to the lots will be in close proximity to these booths and/or where applicable, by way of public alleys. A limited amount of landscaping is indicated on the plan, and it is unclear as to where this landscaping will be placed. By letter dated November 17, 1982, the applicants' agent indicated that the proposed parking lot will be blacktopped and it will be manned by cashiers and attendants who will be supervised daily by a field manager. The applicants' agent also contended that landscaping will be provided and maintained.

14. The applicant will comply with all the requirements of Article 74 of the Zoning Regulations.

15. The subject property is approximately two blocks from the Washington Convention Center. The subject property would be operated as a parking lot by Sarbov Parking Corporation between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. On occasion, there is a nighttime or weekend function at the Convention Center and at such times the parking lot would remain open for one hour following the close of the function. A representative of Sarbov Parking Corporation testified that among other garages and parking lots that it operates in the area, it operates the parking lot on 9th Street immediately across the street from the Convention Center. When the Convention Center facilities are being used, there are not sufficient parking spaces in the area and additional spaces are needed to accommodate those attending the Convention Center. The subject property would be attended during all hours of operation and would be used to meet the needs of the visitors and exhibitors at the Convention Center.

16. The entire subject square encompasses approximately 220,000 square feet, of which the applicants own 80,000 square feet. During the last eight years, at which time the parking lots were not operated, the applicants have been acquiring additional parcels in an attempt to square off their holdings in the subject square. The applicants contend that the square is not yet buildable. The parcels are scattered and too small. Public alleys run through and around the parcels. The alleys would have to be closed. The applicants in all cases do not own both sides of the alleys in order to effectuate their closings.

17. The subject property is approximately one and one half blocks from the property in the 700 block of M Street, N.W., which is owned by the District of Columbia for use by the University of the District of Columbia. The applicants testified that they prepared preliminary plans for the development of the subject property and following several meetings with the District's Planning Office, its staff requested that the subject property be developed in a manner compatible with the development of the nearby D.C. property. To date, the District of Columbia has not revealed how it intends to develop its property. The applicant's argued that, as a result of the proximity of the subject property to the governments' property, their desire to comply with the request of the District's Planning Office regarding the development of the subject property and the present uncertainty of the District's plans for the development of its property, an extraordinary or exceptional situation exists which results in exceptional practical difficulties to and/or exceptional and undue hardship upon the applicants.

18. The applicants cite Clerics of St. Viator, Inc. v. District of Columbia BZA, 320 A.2d 291, (D.C. 1974) and two recent cases before this Board, BZA Order Nos. 13720 and 13803 in support of their arguments. In the Clerics of St. Viator case, the District of Columbia Court of Appeals rejected the contention that only a hardship which is inherent in the land can be the basis of a use variance. The Court held that land and improvements constituted "property" for the purpose of applying the variance clause. The Court further held, in discussing the self-created hardship test, that subsequent events extraneous to the land such as the failure of a seminary to remain a viable institution, does not constitute a self-created hardship. In the two BZA Orders cited, the applicants argued that the Board granted use variances pursuant to Paragraph 8207.11 of the Zoning Regulations based upon the physical location of the applicants' parking lots relative to other property. In each case, the Board concluded that since the physical location of the parking lot precluded its use by short term parkers, the hardship was inherent in the property.

19. In distinguishing the cited cases from the subject application, the Board finds that in the Clerics of St. Viator case the applicant sought to convert an existing religious seminary in an R-1-B District to a convalescent or nursing home. The property consisted of approximately 93,241 square feet of land, improved by a twelve year old modern seminary of approximately 29,000 square feet containing approximately eighty rooms and chapel on three floors and basement. In the subject applications, there is no structure on the subject sites. The sites are vacant. The "subsequent events extraneous to the land" on which the applicant relies is undeveloped land located at least one and one half blocks away from the subject sites. The Board finds that there is no demonstrated connection between the decision of the D.C. Government as to how it will develop its land and the applicants' present ability to make a reasonable disposition of their property for permitted uses.

20. In distinguishing the two cited BZA cases from the subject applications, the Board finds that in both Application No. 13720 and No. 13803 the relief sought was through a special exception to continue the use of a parking lot already in existence and with a valid certificate of occupancy. A special exception must be granted if the applicant complies with all the requirements of Paragraph 4101.41. The relief sought in the subject applications is through a use variance which can only be granted if the applicant meets the hardship test. The use variances sought in Application No. 13720 and No. 13803 were not to establish a parking lot but rather was relief from the prohibition against the all-day commuter parking provision of Subsection 4101.3. The Board noted that more than one-half of the parking lots were used for commuter parking on a monthly

basis and that the other uses in the near vicinity of these parking lots did not generate sufficient short-term parking needs to allow the lots to be operated without all-day parking. The Board concluded that since parts of the subject properties were leased for commuter parking and that the physical location of the parking lots precluded their use by short term parkers, the hardship was inherent in the properties.

21. The Office of Planning, by memorandum dated February 2, 1983, recommended that the applications be denied. The Office of Planning reported that there was every indication that the subject lots can be used in a manner consistent with SP use requirements. Also, the Office of Planning was of the opinion that the granting of these use variances to allow parking on the subject lots would have an adverse impact upon the surrounding neighborhood which is exhibiting signs of decline and transition. Finally, Sub-section 4101.4 of the Regulations is clear with regard to prohibiting the establishment of new parking lots in the SP District. Approval of this application would, therefore, undermine the intent, purpose, and integrity of the zone plan for the city. The Board concurs with the findings and recommendation of the Office of Planning.

22. Advisory Neighborhood Commission 2C, by letter dated January 31, 1983, recommended that the application be denied for the following issues:

a. The proposed use is not allowed as a matter of right.

b. The neighborhoods adjacent to the property have expressed strong opposition on the grounds of an increase in noise, pollution, traffic congestion, and safety impact on their young children and senior citizens and potential illegal activities.

c. The areas north and west of the subject site are primarily low to moderate density residential.

d. There is no current need for additional short-term parking for either local residents or local community businesses.

e. The Zoning Regulations state that the BZA will not establish any new parking lots in an SP District.

23. The Logan Circle Community Association and several owners of property in the immediate area testified at the public hearing in opposition to the applications. Petitions of residents in the 1100 block of 10th Street and the 900 block of M Street in opposition in the applications were

filed in the record. The grounds were the same as listed by the ANC.

24. The Board is required by statute to give great weight to the issues and concerns of the ANC embodied in the ANC written recommendation. The Board finds that the ANC as well as the other opposition, did not address the primary questions related to a use variance test. In addressing those issues that were raised, the Board finds that there is a substantial likelihood that a parking lot of 212 cars would be an undesireable use and have a negative impact in an area that has a significant number of low to medium density residential uses. The Board finds that the applicant did not affirmatively demonstrate that the proposed use would be consistent with the intent and purposes of the Regulations and not be of substantial detriment to the public good.

CONCLUSIONS OF LAW AND OPINION:

Based on the record and the findings of fact, the Board concludes that the applicants are seeking use variances to establish a parking lot that did not exist on October 5, 1978. The Zoning Regulations were amended, effective on that date, to prohibit the Board from establishing any new parking lots in an SP District.

In order to be granted a use variance, an applicant must demonstrate that there is an exceptional or extraordinary situation or condition inherent in the property such that strict application of the Zoning Regulations would cause an undue hardship for the owner. An applicant must demonstrate that there is no reasonable use that can be made of the property for a purpose permitted in the district in which the property is located.

In the subject application, the land is vacant and thus contains no dwellings or structures. The Board is thus faced with the question of whether reasonable use of that land is precluded by the SP District. The Board concludes that the applicants have not demonstrated that they cannot make reasonable use of the property. The SP District permits a broad range of residential and institutional-type uses as a matter-of-right, and permits office, hotels and college or university use, among others, with approval from the BZA as a special exception. The applicants made no attempt to demonstrate that any of the uses could not reasonably be established.

The applicants argued that the location of the property, in proximity to land owned by the District of Columbia which was acquired for the University of the District of Columbia and for which current use plans have not been determined, is an exceptional condition. The Board

disagrees. The District of Columbia has no legal interest in the subject properties, nor does it have the means to prevent the applicant from proceeding with the development of the properties. The applicants have presented no plans to the District of Columbia seeking development approvals, and have thus not had any plans rejected.

The Board concludes that there is no merit in the applicants' argument that the property is affected by any extraordinary condition. The connection between the subject property and the influence of other property located over a block away is speculative and without any foundation in the record. The applicant's reliance on Clerics of St. Viator and the two BZA Orders is misplaced. Those cases can be distinguished on the facts, as set forth herein.

The Board concludes that the application is further in direct contradiction to the intent and purposes of the zone plan as embodied in the Zoning Regulations. This property is located in an SP District. The Regulations expressly prohibit the BZA from approving any new parking lots. The applicants have further not carried their burden as to demonstrating that the proposed parking lot use will not cause substantial detriment to the public good. The issues and concerns raised by the opposition are sufficiently cogent that the Board cannot dismiss them, and the applicant has failed to adequately address the potential impact of traffic, noise, lack of screening and other impact factors on the area.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that both Applications 13913 and 13914 are DENIED.

VOTE: 5-0 (Walter B. Lewis, Carrie Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to DENY).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: OCT 14 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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