

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13915, of Rental Associates, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 4101.3) to operate a parking lot in an HR/SP-2 District at premises 435-437 H Street, N.W., (Square 517, Lots 816 and 817).

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

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of February 9, 1983. Because of the lateness of the hour, the application was continued and readvertised for the public hearing of April 27, 1983.

2. The subject site is located on the north side of H Street between 4th and 5th Streets and is known as premises 435-437 H Street, N.W. Directly across the street from the subject site is the General Accounting Office. To the west of the site there is a highrise apartment building. To the east there is a parking lot. The site is vacant.

4. The surroundings are characterized by mixed office and residential uses with surface parking lots. The residential uses in the subject square are a highrise apartment building and some rooming houses. The existing office uses in the area are housed in medium to highrise buildings. The subject premise is located within an HR/SP-2 District which encompasses a large portion of the surrounding area.

5. The Board in BZA Order No. 11941, dated June 4, 1976, granted permission to continue the subject parking lot until June 4, 1979. In BZA Order No. 13078, dated March 10, 1980, the Board denied the continued use of the parking lot. The Board concluded that the applicant presented no evidence or testimony as to how the proposed continuation met the requirements of Paragraph 4101.41. There was no information presented as to how the use would comply with the prohibition against commuter parking. The Board also noted that the applicant did not comply with the implementation of a landscape plan, even though it had been directed to do so. The Board further noted that the appearance of the lot was very poor and had an adverse effect on adjacent property. The Board therefore concluded that approval of the application would not be in harmony with the general purpose

and intent of the Zoning Regulations and maps and would tend to affect adversely the use of neighboring property in accordance with the Regulations and Maps.

6. 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.

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

8. The applicant now seeks a variance from the use provisions of the Zoning Regulations to establish a new parking lot on the subject site. No legitimate parking lot use has been authorized on the lot since June 4, 1979.

9. The site is flat and basically rectangular in shape. The site is unimproved.

10. The subject lots are part of a row of lots owned by the applicant which are used for parking purposes. The other lots do not require Board approval because they existed as parking lots prior to the adoption of the present Zoning Regulations.

11. The applicant proposes to use the subject property as a parking lot in conjunction with the adjacent parking lot. The subject lot will accommodate approximately ten automobiles.

12. The lot will be operated by Sarbov Parking Corporation between the hours of 7:00 A.M. and 6:00 P.M., Monday through Friday. The lot will be attended during all hours of operation. During other hours, the lot will be left open for use by residents of the neighborhood.

13. The operator of the adjacent parking lot, who will be the same operator of the subject property, has received no complaints about the appearance, maintenance and operation of the present parking lot.

14. The applicant has attempted to purchase from the District of Columbia the fire station in the 400 block of Massachusetts Avenue, N.W., which is to the rear and west of the property. The applicant has also attempted to purchase two other lots in the square which it does not presently own. Square 517 is generally irregular in shape.

15. The applicant argued that, due to the irregular shape of the subject Square 517 in which the lots are located, the ownership by the applicant of all of the lots with the exception of two privately owned lots and the

lot owned by the District of Columbia, which was formerly used as a fire station, as well as the proximity of the subject lot to the aforesaid lots not owned by the applicant, the physical location of the subject property renders a hardship upon the owner that is inherent in the property. Further, the applicant argued that, since the subject property will be used in conjunction with an existing parking lot immediately adjacent to it, the use variance can be granted without substantial detriment to the public good and without substantially impairing the intent purpose and integrity of the zone plan.

16. The Office of Planning, by report filed February 2, 1983, recommended that the application be denied. The Office of Planning reported that, based upon its review of the file, the applicant had not met the burden of proof in establishing a hardship that was inherent in the property itself. It noted that this rectangular, flat, vacant and paved lot does not have any unique characteristics which would preclude its use in accordance with the HR/SP-2 District provisions. The applicant had not shown any peculiar condition or situation of the property that would create a hardship if it were not able to use the subject site in accordance with the existing regulations. The intent of the SP-2 District is to eliminate existing commercial parking lots to encourage development of these sites. The granting of this application would impair 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.

17. Advisory Neighborhood Commission 2C, by letter dated January 31, 1983, recommended that the application be denied. The ANC reported that it had received no community support for this application. The ANC took note of the fact that the community and the ANC supported public transportation in this section of the community which is adequately served by Metro bus and rail service. The ANC believed that the applicant failed to meet the provisions of Sub-section 4101.3 of the Zoning Regulations, and the establishment of a new parking lot at this location would be completely contrary to the provisions of the section cited. The Board concurs in the ANC recommendation.

18. The applicant cited 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 its 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 applicant 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 application, there is no structure on the subject site. The site is vacant. The "subsequent events extraneous to the land" on which the applicant relies is undeveloped land located elsewhere in the square. The Board finds that there is no demonstrated connection between the decision of the D.C. Government as to how it will develop or to whom it will sell its land and the applicants present ability to make a reasonable disposition of its property for permitted uses.

20. In distinguishing the two cited BZA cases from the subject applicants, the Board finds that in both Application Nos. 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 application is through a use variance which can only be granted if the applicant meets the hardship test. The use variances sought in Application Nos. 13720 and No. 13803 were not to establish a parking lot but rather was relief from the prohibition against the all-day commuter parking provisions of Sub-section 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.

CONCLUSIONS OF LAW AND OPINION:

Based on the record and the findings of fact, the Board concludes that the applicant is seeking a use variance 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 HR/SP District. The Board concludes that the applicant has not demonstrated that it cannot make reasonable use of the property. The HR/SP District permits a broad range of residential, hotel and institutional-type uses as a matter-of-right, and permits office and college or university uses, among others, with approval from the BZA as a special exception. The applicant made no attempt to demonstrate that any of the uses could not reasonably be established.

The applicant argued that the location of the property, in proximity to property formerly used by the District of Columbia as a fire station for which current use and/or sale plans have not been determined, is an exceptional condition. The Board disagrees. The District of Columbia has no legal interest in the subject property, nor does it have the means to prevent the applicant from proceeding with the development of the property. The applicant has presented no plans to the District of Columbia seeking development approvals, and has thus not had any plans rejected.

The Board concludes that there is no merit in the applicant's argument that the property is affected by any extraordinary condition. The connection between the subject property and the influence of other property located elsewhere in the square 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 HR/SP District. The Regulations expressly prohibit the BZA from approving any new parking lots. The applicant has further not carried its burden as to demonstrating that the proposed parking lot use will not cause substantial detriment to the public good. 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 the application is 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
Executive Director

FINAL DATE OF ORDER: OCT 13 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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