

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14001 of First F.S.K. Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to establish a parking lot in an R-1-B District at premises 4817 U Street, N.W., (Square 1389, Lot, 816).

HEARING DATE: August 3, 1983

DECISION DATE: August 3, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the north side of U Street, between MacArthur Boulevard and 48th Street, and is known as premises 4817 U Street, N.W. It is zoned R-1-B.

2. The subject lot is rectangular in shape with a lot area of 31,000 square feet. The lot slopes slightly downward from south to north. There are no structures on the lot which is paved with an all-weather impervious surface and is striped for parking purposes.

3. The subject property was originally approved for use as a parking lot serving the MacArthur Theatre for a period of two years in BZA Order No. 1662 dated November 22, 1946. Approval was subject to the condition that the lot be graded and treated to prevent dust, that planting abutting the street be provided, and that the unfinished portion of the street be graded and surface with a hard top covering.

4. Continuation of the parking lot was approved in BZA Order No. 2566, dated May 19, 1950, for a period of one year, subject to the condition that the privet hedge on the eastern boundary of the lot be located at least five feet from the slope of the existing bank.

5. BZA Order No. 3688, dated November 18, 1953, approved the continuation of the parking lot for a period of five years subject to the condition that the hedge on the eastern boundary of the lot be thickened.

6. The most recent BZA approval of the subject parking facility is pursuant to BZA Order No. 5391 dated February 13, 1959, for a period of five years. No application for BZA approval or for a certificate of

occupancy for use of the subject parking lot have been filed since that order expired on February 13, 1964.

7. The current lessee of the subject property, the Washington Circle Theatre Corporation, hereinafter referred to as the applicant, proposes to continue the use of the site for parking for patrons of the MacArthur Theatre which is located in a C-2-A District at 4859 MacArthur Boulevard.

8. The applicant leased the MacArthur Theatre and the subject parking lot for a period of fifty-five years in approximately June of 1982. The applicant was unaware at that time that the subject lot had been operating without a valid certificate of occupancy since 1964. The purpose of the subject application is to obtain approval to continue the existing parking lot use.

9. The applicant, subsequent to leasing the subject property, resurfaced the lot, added lighting, and re-landscaped the perimeter of the lot.

10. All areas of the parking lot, including the aisles and drive ways, are paved with an all-weather impervious surface.

11. The applicant submitted two proposed parking layouts for the subject lot, marked as Exhibit Nos. 18A and 18B of the record. Exhibit No. 18A provides for seventy-nine parking space measuring nine by nineteen feet. Exhibit No. 18B provides for a total of eighty-three parking spaces. Fifty of those spaces measure nine by nineteen feet. The remaining thirty-three spaces measure eight by seventeen feet and are of sufficient size to accommodate compact cars.

12. The proposed parking is not required parking accessory to the theatre but is provided as a convenience to theatre patrons and neighborhood residents who park there overnight. There is no fee for parking on the subject lot.

13. The parking lot is located approximately ninety feet to the north of the MacArthur Theatre across U Street, and is adjacent to a C-2-A District which fronts on MacArthur Boulevard. In its prior orders on the subject lot, the Board found that the lot was reasonably necessary and convenient to the neighborhood. The Board finds that the character of the use and nature of surrounding vicinity has not changed and the lot continues to be "reasonably necessary and convenient" to the theater use.

14. Lighting for the parking area is provided by four 500 watt mercury vapor lamps located at each corner of the lot. All rays of such lighting are directed to the surface of the parking lot.

15. The manager of the theatre testified that the lot and adjacent areas to the curb are policed by theatre ushers between shows to remove any rubbish which may accumulate. The maintenance department is responsible for maintaining the landscaping. The manager testified further that he has had no complaints regarding the operation of the parking lot since he has been in charge.

16. The applicant re-landscaped the perimeter of the lot in late 1982. That landscaping included the resodding of the perimeter of the lot and the replacement of the existing privet hedge along U Street with dwarf Japanese holly.

17. The lot is designed so that no vehicle or any part thereof projects over any lot line or building line. The lot is separated from residential properties by a 2.5 foot masonry wall which is topped by a forty-two inch stockade fence.

18. There are no structures on the subject lot and no other use is conducted from the subject premises.

19. Access to the subject lot is from U Street. The driveway is located in excess of twenty-five feet from any street intersection.

20. The owner of the residence located at 2000 48th Street, N.W., immediately to the east of the subject parking lot, appeared at the public hearing in opposition to the application. The witness testified that he would not oppose the continuation of the parking lot if approval of the application was contingent on the applicant:

- A. Adopting a maintenance plan which would ensure continuing and regular maintenance of the parking lot, the grass area bordering U Street and the buffer area between the lot and his residence; and
- B. Providing at least a five foot hedge to screen the lot from the nearby residential area.

The witness expressed concerns regarding the increase in the number of vehicles using the subject lot due to the conversion of the MacArthur Theatre from one movie theatre to three movie theaters in the same building and the present lack of policing in the buffer zone. The witness further testified that the prior approvals of the Board in 1946, 1950 and 1953 placed considerable emphasis on landscaping and required that the five foot hedge be maintained.

21. The applicant's architect testified that the replacement of the privet hedge with dwarf holly was for security reasons, in that the shorter hedge provided greater

visibility into the parking area for pedestrians and eliminated potential "ambush" areas.

22. The record contains a letter from Mr. Marshall Hornblower, a nearby resident, which letter expresses concern regarding the adequacy of the dwarf holly for screening purposes and for preventing parkers from short-cutting through it to reach the parking lot. Mr. Hornblower recommended the replacement of the dwarf holly with a privet hedge. The record contains two additional letters from area residents concurring with the concerns and recommendation expressed by Mr. Hornblower.

23. Advisory Neighborhood Commission 3D, by letter dated August 1, 1983, requested the Board to waive Section 108.1 of its Rules in order to accept the ANC report. The letter stated that the report was mailed in ample time to reach the Board seven days prior to the public hearing but was apparently delayed in the mail resulting in its being filed one day late. The Chairman ruled that the Rules be waived to accept the report.

24. Advisory Neighborhood Commission 3D recommended that the Board approve the subject application with the condition that a five foot privet hedge be provided on the U Street frontage. The rationale for the ANC's decision was that:

- A. The property has been used for parking purposes for many years and its continued use is necessary to prevent theater patrons from using neighborhood streets for parking.
- B. The applicant is working out an acceptable screening plan with the neighbors.
- C. The neighborhood strongly supports continued operation of the theater as opposed to office or other C-2-A uses.

The Board concurs with the ANC recommendation.

25. The application was referred to the D.C. Department of Transportation for review and report on May 12, 1983. No report from the Department of Transportation was received.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has substantially complied with the provisions of Paragraph

3101.48 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied.

The Board concludes that granting a new approval to this parking facility will not create dangerous or otherwise objectionable traffic conditions. The parking facility is located adjacent to a C-2-A District. The parking facility complies with the provisions of Article 74 of the Zoning Regulations. The parking lot is reasonably necessary and convenient to the neighborhood. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled and further, that the concerns of the opposition are addressed by the conditions hereinafter imposed.

The Board notes that the parking lot has been operated without proper approval since 1964. The Board advises the applicant not to let that situation occur again. The Board further notes that the screen hedge which surrounded the site was recently removed. Since the orders of the Board which required that screening are no longer in effect, the applicant may not have been required to keep the hedge. At the same time, it had no authority to operate the lot. The Board again admonishes the applicant to maintain the lot in accordance with the conditions of this Order, and not to let the approval granted herein expire before reapplying to the Board if the use is to continue.

The Board further concludes that, as hereinafter conditioned, the special exception can be granted as in harmony with the general purposed and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with said Zoning Regulations. It is therefore ORDERED that the application be GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FOUR YEARS. from the date of this order.
2. The layout of parking spaces on the lot shall be in accordance with the parking scheme marked as Exhibit No. 18A of the record.
3. The paved parking area and the surrounding buffer area shall be maintained free of refuse and debris at all times.
4. The existing dwarf Japanese holly along the U Street frontage shall be replaced with a privet hedge except along the sides of the driveway entrance. Such hedge shall be designed and allowed to grow to a height of at least five feet.
5. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

6. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
7. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
8. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped.
9. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
10. 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.
11. Any lighting used to illuminate the parking lot or its accessory building shall be as arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Douglas J. Patton, Lindsley Williams, William F. McIntosh, and Charles R. Norris to grant; Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: JAN 10 1984

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 CONSUMER AND REGULATORY AFFAIRS.