GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14053, of Public Citizen, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the parking requirements (Sub-section 7202.1) or in the alternative, a special exception under Sub-section 7205.3, to permit required parking to be located on an alley lot (Lot 8) to the rear of the subject premises which is other than on the site where the structure to which the spaces are accessory is located for the proposed conversion of office space into a restaurant, second floor, in a C-2-A District at premises 215 Pennsylvania Avenue, S.E., (Square 762, Lots 809 and 810).

HEARING DATE: December 14, 1983
DECISION DATES: January 11, and February 1, 1984

FINDINGS OF FACT:

1. The subject site is located on the south side of Pennsylvania Avenue between 2nd and 3rd Streets and is known as premises 215 Pennsylvania Avenue, S.E. It is in a C-2-A District.

2. The site is irregular in shape. It has a frontage of 63.17 feet on Pennsylvania Avenue. Its rear width measures 49.50. The average depth of the site is 110 feet. The rear of the site abuts a twenty-five foot wide public alley. The alley continues in a southeast direction but measures fourteen feet in width. Access to the alley is from 3rd Street to the east or C Street to the south. Directly south of the twenty-five foot public alley is a parking lot designated as Lot 8 in Square 762.

3. The site is improved with a three story office building. The structure occupies the entire site. To the east and west of the subject building, fronting on Pennsylvania Avenue, are two three-story office buildings. Other than the C-2-A strip along Pennsylvania Avenue, the square consists of residences fronting on 3rd Street to the east, 2nd Street to the west and C Street to the south in the R-4 District.

4. The applicant has leased the second floor of the subject structure to the Fu Mei Restaurant, Inc. The second floor has a gross floor area of approximately 5,600 square feet. The second floor is currently vacant. Its last recorded use was for offices. The lessee proposes to

renovate the space into a Chinese restaurant that will have a seating capacity of 152 persons. The restaurant will employ eighteen persons. The hours of operation will be from 11:00 A.M. to 11:00 P.M.

5. Under the Zoning Regulations, twelve off-street parking spaces are required. The site currently has no parking spaces and can provide none. The applicant seeks a variance from the parking requirements or, in the alternative, a special exception to locate eight spaces on the aforementioned Lot 8 which is directly south of the site and on a different lot from that of the subject structure to which the eight spaces are accessory.

6. Submitted to the record were an architectural drawing showing the front of 215 Pennsylvania Avenue, plus detailed drawings of the first and third floors as they have been renovated. There is no floor plan for the second floor as such, but a copy of a typical floor plan for the building which portrays the second floor was submitted. That floor plan shows that there is a single entrance to each of the floors in the right front corner of the property, where there is a stairwell leading from the ground floor to the second and third floors. In addition, there is access through the rear via a rear stairwell and a freight elevator, both in the southeast corner of the building. At the hearing, a question was raised as to whether the premises could be divided such that two smaller restaurants or a restaurant and some other usage could be made of the second floor. The applicant contends that because of the need for all tenants to have access to both front and rear entrances, it is highly unlikely that any such arrangement would be possible.

7. Lot 8 measures 43.0 feet by 41.5 feet. This area would be sufficient for eight parking spaces under the required nine feet by nineteen feet dimensions. The applicant has a permanent easement over Lot 8. The Fu Mei Restuarant under its lease is entitled to two parking spaces. Arrangements have been made with the owner whereby six additional spaces on Lot 8 are available to the lessee. The lessee would provide an attendant on the lot during the hours of operation and provide valet parking.

8. The fourteen foot wide public alley leading southward is available for vehicular use, but records of the D.C. Government reflect that the alley is not a dedicated alley.

9. The applicant anticipates that its customers will walk to the restaurant from nearby Government and private offices and residences, or use the Metrorail located at the Capitol South station at 1st and D Streets, S.E., three blocks away, or use Metrobus service on Pennsylvania Avenue.

10. The Department of Transportation, by memorandum dated January 3, 1984, reported that on-street parking conditions in the area reflect the mix of commercial and residential activities found in the neighborhood. One-hour metered parking spaces exist on the south side of Pennsylvania Avenue and on the portions of 2nd and 3rd Streets that abut the Pennsylvania Avenue commercial district. The remainder of the on-street parking spaces in the area, on 2nd, 3rd, and C Streets, are subject to residential permit parking controls.

11. The DOT concluded that the alley system could support the traffic that the restaurant would generate. There are already several parking lots on the interior of this square, with access only from the alley network, and no operational or traffic safety problems appear to have developed. Since the parking spaces in question are already in use, no net increase in traffic volume on the alley system would result from assigning the spaces to restaurant employees and patrons. Any operational problems which might occur would be minimized by the presence of a parking attendant.

12. The DOT further reported that use of the alley lot for restaurant parking could well produce spillover parking and traffic in the adjoining residential neighborhood. The alley lot in question is ill-lighted and accessible to the restaurant only by a roundabout route, via either C Street or 3rd Street. Several turns are required in the alley system within the square itself to reach the lot. Even if potential customers knew of the presence of the lot, they might well occupy on-street residential spaces instead for the sake of convenience and safety. The DOT was of the opinion that, even if a workable valet parking arrangement were devised, the activity in the alley which presumably would continue until 11:00 P.M., the proposed restaurant closing time, could be disturbing to the residents of the adjacent townhouses. In DOT's estimation, the proposed commercial activity would impinge on nearby residential uses. The Board concurs with the DOT opinion that the use of Lot 8 for parking by the customers of the restaurant would have an adverse affect on the use of neighboring residential properties.

13. The Capitol Hill Restoration Society, Inc., by letter dated December 12, 1983, reported that the Society supported the application. The Society further reported that doubts were raised as to whether the parking spaces were available or whether the spaces were in fact needed to satisfy the parking requirement for the bank located at the same address as the proposed restaurant or for the Calomiris Building on Lot 8. The Society recommended that, if the spaces were not available for the proposed restaurant, then the Society would support the granting of the variance. The

Board, for reasons discussed, below concurs with the recommendation of the Society to grant the variance from the parking requirements.

14. There was one letter of record in total opposition to the application on the grounds that the proposed restaurant would exacerbate the traffic problem in the interior alley system and on the surrounding residential streets, and that a further restaurant establishment would exacerbate current health problems with rats. There was also a letter from the owner of a group of existing restaurants in opposition to the variance relief. The restaurant owner argued that the seating capacity of its establishments were controlled by the parking requirements that it had to meet and that the applicant should be subject to the same parking requirements.

15. There was a further letter of record from the owner of a house located at 218 2nd Street, S.E. The said owner had no objection to the granting of a variance from the parking requirement, inasmuch as the granting of such a variance would not result in a substantial detriment to the public, the neighborhood, or adjacent landowners. The owner agreed that the requirement that off-street parking be provided for restaurants larger than 2,000 square feet of gross floor area may, in most cases, benefit the public through decreased congestion and competition for existing street parking. However, the need for off-street parking, in this instance, would be less where the restaurant would be served by a nearby Metro station and many patrons may be expected to travel by foot from their Capitol Hill offices and nearby homes. The owner therefore supported the granting of the variance requested by Fu Mei Restaurant. The said owner did oppose the granting of the special exception on the grounds generally stated by the Department of Transportation.

16. In response to the concerns of the opposition, the Board finds that the use by the customers of the restaurant of Lot 8 with the internal alley system would exacerbate an existing traffic situation. The alley is only fourteen feet wide and is not fully dedicated, as noted in Finding No. 8. It is congested through its use by the surrounding residents. The site is not convenient to the customers who would have to proceed through a roundabout route to the restaurant. Such traffic would result in noise and disruption to the nearby residences.

17. As to whether an additional restaurant would exacerbate the problem of rats, the Board finds this concern is not a zoning issue. It is a question of enforcement of health regulations.

18. As to the concern of the other restaurant owner to enforce the parking requirements equally, the Board finds

that the Zoning Regulations do not base the parking requirements for restaurants by the number of seats, but rather by the gross floor area of the establishment. The Board further finds that it will judge each case on its own merits. If the applicant meets its burden of proof, then the variance relief must be granted.

19. As to the concerns about traffic generation in general, the Board finds that the proposed restaurant's lunch time business will generate little vehicular traffic, because of the predominance of walk-in and transit related business. The availability of metered on-street parking and other commercial parking should be adequate to serve the facility in the evening. The Board will limit the number of seats, and thus the number of patrons who can be accommodated, even though this is not the normal standard specified by the Regulations for determining the number of parking spaces for a restaurant. Such a limitation will prevent the establishment from expanding the traffic that could be generated and the parking that would then be demanded. Given the proximity of the establishment to residential areas, the Board will also limit the hours of operation to prevent late-night noise and traffic.

20. Questions were raised on the record as to whether proper authorization has been granted for the existing use of Lot 8 as a parking lot to serve certain commercial establishment in the buildings on Pennsylvania Avenue. The Board's decision to grant the variance and deny the special exception renders that issue irrelevant to this application.

21. Advisory Neighborhood Commission 6B made no recommendation on the application.

22. At the public meeting of January 11, 1984, a motion by Lindsley Williams, seconded by Carrie L. Thornhill, to grant the variance with conditions and deny the special exception failed for a lack of a majority of the members of the Board by a vote of 2-1 (Lindsley Williams and Carrie L. Thornhill to grant; Douglas J. Patton opposed; William F. McIntosh not present, not voting; Charles R. Norris not voting, not having heard the case). The case was continued to the public meeting of February 1, 1984 with Charles R. Norris having read the record and with William F. McIntosh present at the next public meeting.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance or in the alternative a special exception. To grant the area variance, the applicant must show evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness,

shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. To grant the special exception, the applicant must show that it has substantially complied with the requirements of Sub-section 7205.3 of the Zoning Regulations and that the relief requested 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 area variance, the Board concludes that the applicant has met its burden of proof. The practical difficulty is inherent in the site. The structure encompasses the entire lot. There is no room to locate any parking spaces on the site.

As to the special exception, the Board concludes that, based on the Department of Transportation report, and the opposition's concerns, the accessory parking for the restaurant on Lot 8 would be neither reasonable nor convenient for the customers of the restaurant and would affect adversely the use of neighboring property. Accordingly, it is therefore hereby ORDERED that the special exception is DENIED and the variance is GRANTED SUBJECT to the following CONDITIONS:

1. The capacity of the restaurant shall not exceed 152 seats, including the bar or lounge area.

2. The hours of operation shall not extend beyond 11:00 P.M.

The Board further requests the Zoning Administrator to determine whether Lot 8 is properly being used for parking, and to take such actions as are necessary to achieve compliance with the Regulations if a violation is found.

VOTE: 3-2 (Carrie L. Thornhill to grant the variance and deny special exception; Lindsley Williams and Charles R. Norris to grant the variance and deny special exception by proxy; Douglas J. Patton and William F. McIntosh opposed).

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

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

FINAL DATE OF ORDER: FEB 28 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.

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