

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



DRAFT

Application No. 14061, of the First Baptist Church of Washington, D.C., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to establish a parking lot in an R-5-B District at premises 1513 O Street, N.W., (Square 195, Lots 74, 75, 830, 840, 71 and 111).

HEARING DATES: November 9, 1983, January 18, 1984 and
February 15, 1984

DECISION DATES: March 7, 1984 and April 4, 1984

FINDINGS OF FACT:

1. The Board at the public meeting of September 9, 1983, denied the applicant's request for an expedited hearing on the application. The Board did not find the applicant's reasons of sufficient merit to warrant an advance of the subject application over other applications filed prior to the subject application.

2. At the public hearing of November 9, 1983, as a preliminary matter, opposition to the application challenged the Board's jurisdiction to hear the application on its merits at that time. The opposition argued that, when an application is denied, under the Supplemental Rules of Practice and Procedure, the Board cannot entertain a new application on the same facts within one year. The opposition argued that the year began to run at the end of the appellate court proceedings on the prior case, which was April 18, 1983. The Board overruled the objection, on the basis that, pursuant to Section 505.1 of the Rules, the year begins to run from the date of the Final Order, which was March 17, 1982. The effect of that order was not stayed by the pending court proceeding. The subject application was filed August 25, 1983, and is properly before the Board.

3. The opposition challenged the jurisdiction of the Board on a second count. The opposition argued that the case could not go forward on its merits since the applicant had not complied with Section 302.2 of the Rules, in that all the owners of property within 200 feet of the subject property had not been notified by mail of the pending application. Upon a review of the file, the Board sustained the objection. The Board found that the applicant had not submitted the names of all such owners, and that all owners had not been notified. In addition, the Board found that

parking on lots 108, 109 and 110 for five years in BZA Orders 6088, 6089 and 6090. On March 30, 1961, the Board granted permission to continue operation of the parking lot on lots 74, 75 and 830 for an additional five years in BZA Order No. 6239. The Board granted permission on November 29, 1966, to continue operation of that lot and the parking lot on lots 108, 109 and 110 for five years in BZA Order 8984. The Board on February 11, 1972, granted permission to continue operation of the lot for another five years and to establish a temporary parking lot on Lots 71 and 111. In BZA Order No. 12387, dated September 21, 1977, the Board granted the continuance of the parking lot for two years.

10. In BZA Order No. 13096, dated April 7, 1980, the Board Denied the application for the continued use of the parking lot on the grounds that the applicant had not met the burden of proof. The applicant appealed the Order to the District of Columbia Court of Appeals. The Court reversed and remanded the case on the grounds that the Board's findings and conclusions were deficient. The application was reheard de novo on July 29, 1981. The Board, in its Order dated March 17, 1982, again denied the application on the grounds that the burden of proof had not been met in that the existence of the parking lot resulted in dangerous traffic conditions and adverse affects on the neighborhood. The Order was appealed to the D.C. Court of Appeals. The Court, in a memorandum opinion and judgement dated April 18, 1983, affirmed the Board's Order.

11. The subject parking lot has been inoperative since April 18, 1983, the date of the Court of Appeals' decision. The applicant now seeks to reestablish the site as a parking lot but under new management.

12. The BZA has authority under Paragraph 3104.44 to approve a parking lot provided:

- a. All provisions of Article 74 are complied with;
- b. No commercial advertising signs shall be permitted outside any building located thereon, except one advertising the rates as required by the Police Regulations of the District of Columbia;
- c. No dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, the present character and future development of the neighborhood will not be affected adversely, and the parking lot is reasonably necessary and convenient to other uses in the vicinity; and,
- d. Before taking final action on an application for such use, the Board shall submit the application

to the District of Columbia Department of Transportation for review and report.

13. The subject parking lot is approximately 18,600 square feet in area. It is designed to accommodate eighty-four cars. The lot will be operated as a commercial parking lot from 7:00 A.M. to 6:30 P.M., Monday through Friday. The lot will be an attendant controlled facility. Ninety percent of the commercial parking will be commuter parking.

14. On Wednesday nights and on Sunday, the parking lot will be used by the applicant for the members of its Church. There will be an attendant on duty.

15. At all other times after the closing of business for the day, the applicant offered to make the lot available, without charge, for all uses of the neighborhood.

16. The subject lot is one block removed from the Church, which is located at 16th and O Streets.

17. The applicant also owns a lot that is adjacent to the Church in the 1600 block of O Street that accommodates cars for the Church members. On this latter lot, the applicant has erected an educational building that will be used for church purposes. There is no underground parking in the new building since it was too expensive to construct. When the educational building was constructed, forty-four spaces were restored for the parish use.

18. The applicant proposes to retain the subject lot to service its members' parking needs. Ninety percent of the church membership uses automobiles to arrive at the Church.

19. The number of Church members is estimated at 950, of whom some 450 attend Sunday services. The applicant testified that, on Sunday, approximately 140 spaces in the aggregate are required to accommodate the parishioners. On Wednesday, approximately 100 persons attend classes. There is less demand for parking spaces on Wednesday nights.

20. The Church has other functions which require the use of the subject parking lot. The Church has a day care center for forty children which operates Monday through Friday. The parents of the children park their cars on both of the Church's parking lots in bringing their children to and picking them up from the center. There are twelve staff persons involved with the operation of the day care center. The Church also sponsors a St. Elizabeth's weekday program and a Bread for the City program, all of which generate a need for more parking than the site adjacent to the Church can provide.

21. The Church site provides forty-four parking spaces. Eight of the spaces are reserved for the Church staff. The site adjacent to the Church by itself cannot accommodate the needs of the congregation on Sundays and Wednesday evenings.

22. Many members of the congregation are elderly and reside outside the District of Columbia. They cannot and do not use the Metro or bus services available to the site.

23. On Sundays, the Grace Reformed Church, located on 15th Street across from the subject lot, is permitted to use spaces on the subject lot subject to the applicant's needs.

24. The Pastor and the President of the Congregation of the Grace Reformed Church testified at the public hearing in favor of the application. They testified that all but six of its 170 members reside at too great a distance from Grace Church to walk to the services there. Many members live such a distance away that it would be very time consuming and otherwise difficult to travel to services by public transportation, especially in view of the advanced age of a large number of them. When the subject premises was used as a commercial parking lot, permission was given the members and others attending services to share a portion of those premises on Sundays. The need for parking space for Grace Church members on Sundays is a critical matter. Without off-street parking, Grace Church would have a very serious problem of surviving at its present location at 1405 15th Street, N.W.

25. The applicant will proceed immediately to clean the lot of refuse and debris and maintain whatever landscaping is provided in a healthy growing condition.

26. If the lot is approved, prior to the operation of the lot, the lessee will replace any missing bumper stops, install pole lighting, repair the all-weather impervious surface and comply with any further conditions of the Board as listed in the Board's order.

27. On the basis of the above commitments on the part of the lessee, the applicant and the Grace Reformed Church have agreed in writing to assist the lessee in the underwriting of capital expenses for the operation and maintenance of the proposed parking lot.

28. The lessee, Super Service Parking, Inc., is a corporation consisting of three members. Two of the members have past experience in the operation of parking lots.

29. The Department of Transportation, by memorandum dated September 8, 1983, reported that its inspection of the site indicated that at present the lot is poorly maintained, lacking both adequate screening and bumper guards to

separate the parking area from the public space. The DOT reported that, if the Board approved this application, the applicant should be required to upgrade the appearance of the parking lot by improving maintenance, providing adequate screening, and installing bumper guards. If these conditions are met, the DOT would have no objection to the proposed parking facility, since on-street parking is limited in the surrounding area and the presence of a public lot could mitigate current on-street shortages. The Board concurs in the reasoning and recommendation of the DOT and will hereinafter condition such a grant of the application.

30. There was one letter of record in support for the application from the 1401 16th Street Associates, which owns premises 1521 O Street, N.W., the abutting property to the east of the subject site.

31. Advisory Neighborhood Commission 2B opposed the application. By letter dated October 31, 1983, the ANC reported that it opposed the proposed parking lot because it is an inappropriate use for an R-5-B District. The ANC noted that the past operation of the lot had adversely affected the neighborhood. The ANC cited past reports of the DOT and the Municipal Planning Office and prior Orders of the Board. The ANC requested that the BZA deny the reopening of this lot, as it did in the previous application. The church has recently constructed a thirty to forty car capacity parking lot for its parishoners next to its new educational building at 17th & O Streets. In the late fifties, housing was demolished to make space for commuter cars. The ANC was of the opinion that housing or some construction permitted in this zone go forward so that optimal use is made of this land, the tax base is strengthened and an eyesore is removed from the community. For reasons discussed below, the Board does not concur in the ANC recommendation.

32. The Dupont Circle Citizens Association, (DCCA) by letter of November 11, 1983, opposed the application. The DCCA reported that the proposed use is not a parking lot intended for churchgoers. Nor is it intended for residents in the neighborhood. It is proposed as a commercial lot to serve commuting parkers. This proposal cannot meet the requirement that such a special exception must not create objectionable traffic conditions and still less would it meet the requirement that "the present character and future development of the neighborhood will not be affected adversely." The DCCA further reported that these objections would apply if there had been no history of previous parking on this lot. There has, however, been a substantial deleterious effect on the neighborhood of previous parking uses. It was the opinion of the DCCA that these effects would be multiplied if a commercial lot were to be established in a residential zone.

33. The Residential Action Coalition and neighboring property owners also opposed the application. In addition to the reasons cited by the ANC and the DCCA, other issues raised were as follows:

- A. A parking lot such as the one proposed brings no gain to the residents or the community. It does bring increased traffic, pollution and crime. During the last few years of operation of this lot, the management never cared for the up-keep of the lot nor showed any concern for the residents who complained about the noise, the traffic, the over-flow of cars from the lot that were double parked on the public streets blocking access, and of the debris such as dead batteries, discarded flat tires, oil cans, oil filters and broken glass that managed to be scattered through-out the neighborhood as a direct result of this parking operation. When brought to the attention of the parking management cooperation, no remedial action was taken.
- B. Aside from the above stated points, the most important point to prompt a denial of this request is the crime that this lot has introduced to the neighborhood. This lot acts as a field for drug trafficking and theft. The Third District Police have in the past and are currently patrolling this premises for just those reasons. Residents of 1414, 1416 and 1420 15th Street have all been victimized by crime which resulted from the operation of a parking lot at this location.
- C. There is no need for a special exception to be granted. The community already has plenty of public parking. Just a half block north of this lot are four large public parking lots all in a C-M-3 zone. These lots are located up the corridor and at the intersections of 15th and P Streets, N.W.
- D. The area is for the most part a residential community with surrounding commercial zoning. The request should be denied because of the existing Zoning Regulations as well as for the sake of the residents who have suffered greatly as a result of such operations as proposed. In the last two years there has been a restoration and beautification trend in the area. Owners are restoring and remodeling homes. They chose such sites because this neighborhood was zoned residential.

34. The Board is required by statute to give "great weight" to the issues and concerns of the ANC that are reduced to writing. In addressing these issues and concerns, as well as those of the other opposition, the Board finds that:

- A. The applicant is seeking its relief through a special exception and not through a use variance. The applicant has no burden to establish that the site cannot be used for residential purposes. The proposed parking lot is a permitted use if found by the BZA to be in conformance with Paragraph 3104.44 of the Zoning Regulations.
- B. The application is to establish a parking lot, not a continuance of an existing parking lot. The past history of the parking lot, while instructive, is not controlling. The proposed lot will be under new management. This management has presented persuasive evidence to the Board that it will meet the zoning requirements under which it will operate. In addition, with the conditions it will impose on the grant of the application the Board will demand such compliance. If the lessee fails to comply, then the opposition can seek its remedy through the proper enforcement department of the D.C. Government or by appearing before this Board at the time application for renewal of this lot is made.
- C. The opposition has made many allegations that are not supported by the weight of evidence adduced at the public hearing, particularly allegations concerning crime, pollution and traffic. Evidence of such in prior applications cannot be imputed to the subject lessee/operator. This is not to say that the Board condones the Church's attitude of apparent disregard for the maintenance of the site while the lot was inoperative. The Church has not been a good neighbor, which it admitted at the public hearing. It has repeatedly assured the Board that in the future, it will be responsive to the concerns of the citizens.

35. At the end of the public hearing, the Residential Action Coalition requested that the record remain open for it to submit further evidence, particularly the evidence of a property owner, Meredith DeHart, who was not present at the public hearing. The Chairman denied the motion and ruled that the record be closed.

36. On February 17, 1984, counsel for the aforementioned Meredith DeHart, filed a petition to reopen the record to receive additional evidence and further testimony.

Counsel also filed proposed findings of fact and conclusions of law. At the public meeting of March 7, 1984, the Board declined to waive Section 406.2 of the Supplemental Rules of Practice and Procedure before the BZA to admit the evidence. The Board denied the petition to reopen the record. In addition, the Board declined to accept the proposed findings and conclusions since Meredith DeHart did not appear and participate at the public hearing and under Section 100.7(b)3 of the Board's Rules did not constitute a party. Further, the proposed findings relied in large part on the material which the Board did not accept in the record.

37. The subject application was heard by three members of the Board. At the Board's public meeting of March 7, 1984, a motion made by William F. McIntosh, seconded by Douglas J. Patton to deny the application failed for lack of a majority of the members of the Board by a vote of 2-1 (William F. McIntosh and Douglas J. Patton to deny; Walter B. Lewis opposed to the motion; Charles R. Norris and Carrie L. Thornhill not voting, not having heard the case). The Board deferred a decision on the application until its public meeting of April 4, 1984. Charles R. Norris and Carrie L. Thornhill read the record and participated in the decision at the public meeting of April 4, 1984.

CONCLUSIONS OF LAW AND OPINION:

The Board notes that two procedural issues were raised in the course of the proceeding which must be addressed. As set forth in Finding No. 2, opposition questioned whether this application was barred by the one year ban following denial of an application. The Board concludes such is not the case. The Rules of Procedure clearly relate the filing period to the date of the order on the previous case. Since the Order was issued in March of 1982, and no stay of the order was ever entered, even though the matter was on appeal in the courts, the filing of this application on August 25, 1983, was proper.

As set forth in Findings No. 35 and 36, requests were made to the Board to accept certain material in the record from a person not present when the case was heard on the merits. Finding no good cause to leave open or reopen the record, the Board declined to do so. The Board concludes that Ms. DeHart was not a party to the case. Even though she lives in close proximity to the lot, and even though her counsel raised certain procedural objections on her behalf at the original hearing, the case was not considered on the merits at that hearing. Neither Ms. DeHart nor her counsel appeared and participated at the hearing when the case finally was considered. Accordingly, she does not qualify as a party under the Rules.

As to the merits, based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3104.44 and that the relief requested under Sub-section 8207.2 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. The Board concludes that the applicant has met its burden of proof. The Board is of the opinion that the grant, as conditioned below, will create no dangerous or otherwise objectionable traffic conditions, the present character and future development of the neighborhood will not be adversely affected and the parking lot will be reasonably necessary and convenient to other uses in the vicinity.

The Board notes that much of the opposition centered around past operations and effects of a parking lot on this property. Those facts are immaterial to the subject application. The Board is convinced, based on the record before it now, that the use as proposed should be approved for a trial period. The Board is of the opinion that controlled use of the site, with someone responsible for it as limited and conditioned herein, is better than allowing the property to remain vacant with no one responsible for day-to-day control. The Board notes that approval to operate this lot has been revoked once already. The Board cautions the applicant and the operator that failure to abide by all the conditions set forth below and failure to operate the lot in a manner which is not objectionable, will result in denial of continued use of the lot.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of two years from the date of this Order.
2. Operation of the subject lot is limited to Super Service Parking, Inc. only.
3. The hours of commercial operation of the lot shall not exceed from 7:00 A.M. to 6:30 P.M., Monday through Friday.
4. The use of the lot during hours it is not used for commercial parking shall be limited to parking for church-related functions only.
5. The entrance to the parking lot shall be secured by a gate, chain or cable during all hours that

the lot is not in use by the church or the commercial operation as limited by Condition No. 3.

6. The parking lot shall be posted with a sign which limits the use of the lot to Super Service Inc., Co., and church related functions.
7. An attendant shall be present at all times during the hours of operation of the subject lot.
8. The lot shall be striped so as to designate the location of all parking spaces.
9. Lighting shall be provided sufficient to illuminate all areas of the lot. Such illumination shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot. Lights shall be turned off when the lot is not in operation.
10. Trash and debris shall be removed from the lot at least twice daily from Monday through Friday, before and after the hours of commercial operation of the lot. Trash and debris shall be removed at least once daily on weekends and holidays.
11. The applicant shall provide an eight-inch concrete curb along all sides of the lot which do not immediately abut the walls of existing buildings.
12. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
13. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
14. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
15. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
16. 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.

VOTE: 4-1 (Charles R. Norris, Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton opposed).

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

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAY 11 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 LICENSES, INVESTIGATIONS AND INSPECTIONS.

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