GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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, February 15, 1984 and October 9, 1985
DECISION DATES: March 7, 1984, April 4, 1984 and November 11, 1985

FINDINGS OF FACT:

1. The Board, in BZA Order No. 14061, dated May 11, 1985, granted the subject application SUBJECT to sixteen conditions. The Dupont Circle Residential Action Coalition and Meredith L. De Hart appealed the decision to the D.C. Court of Appeals. The Respondent, District of Columbia Board of Zoning Adjustment, moved the Court to remand this case to it for further administrative proceedings. The grounds for this motion were that the petitioners, in their petition for review, contended, inter alia, in the circumstances of this case, that the Board of Zoning Adjustment erred in failing to notify petitioner De Hart of the rescheduling of the hearing set for January 18, 1984, to February 15, 1984, and that such failure resulted in prejudice when the Board subsequently excluded the evidence she proffered. The motion was granted.

2. A further hearing was scheduled for the public hearing of October 9, 1985. The further hearing was limited to the testimony of Meredith De Hart, the cross-examination thereof and rebuttal of the applicant.

3. The Board incorporates by reference all of the Findings of Fact and Conclusions of Law contained in Order 14061, dated May 11, 1984, a copy of which is attached hereto.

4. Opposition to the application was presented by a Ms. De Hart, a property owner residing at 1528 O Street, N.W. which is diagonally across from the subject parking lot. Ms. De Hart has lived there since May, 1976. Based on her personal knowledge of the area, Ms. De Hart opposed the

parking lot on the grounds that it adversely affects the character of the neighborhood.

5. Ms. De Hart testified that the parking lot is littered with trash and debris, including dangerous broken beer and liquor bottles, used condoms, potentially disease-laden drug syringes, a fallen dividing wall and abandoned clothing. The lot also has a broken metal fence jutting over the sidewalk. Ms. De Hart submitted 12 photographs which demonstrate that these conditions are present at the lot. These photographs were taken under Ms. De Hart's personal supervision on January 1, 1984. On February 9, 1984, Ms. De Hart revisited the parking lot and found that the conditions depicted by the pictures still existed at the lot.

6. Further, the witness testified that as shown by the photographs, the lot's surface is no longer impervious to weather as required by Paragraph 7404.11 of the Zoning Regulations. The photographs similarly show that the lot lacks the requisite wheel stops as required by Paragraph 7404.12.

7. Ms. De Hart further opposed the parking lot on the grounds that it attracted illegal actions such as prostitution and drug use. The lot also provided hiding places for muggers and other street criminals.

8. Ms. De Hart further testified that the parking lot was not needed by the Church because the neighborhood is well served by mass transit. Three Metrorail stops (on the Red, Orange and Blue lines) are located within 2000 feet of the parking lot, as well as numerous, high-density bus routes operating along K, P, and 16th Streets. Additionally, the Church has now constructed an accessory parking lot in its own property in the 1600 block of O Street. Based on her measurements and observations, Ms. De Hart testified that less than twenty cars use the lot for Church parking on Sunday morning.

9. In the opposition's opinion when Mr. Lyon, a co-owner of Super Service, Inc., was the lot's operator as an employee of PMI, Inc., objectionable traffic conditions existed on and flowed from the lot including double parking and blocked driveways, forcing pedestrians to walk in the street. It is likely that these dangerous conditions will reoccur if Mr. Lyon again operates the lot as a commercial parking lot.

10. The Board finds that the testimony of Ms. De Hart raises no issues and concerns not previously considered by the Board through the reports and testimony of Advisory Neighborhood Commission 2B, the Dupont Circle Citizens Association, the Residential Action Coalition and other opposition. The Board in Finding No. 34 of the said Order

of May 11, 1984, addressed those issues and concerns as follows:

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 applicant 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 lesses/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.

CONCLUSIONS OF LAW AND OPINION:

The Board reaffirms its prior Conclusions stated in Order No. 14061, dated May 11, 1984. The Board concludes that the applicant has met its burden of proof. The Board is of the opinion that the grant, as conditioned, 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 the 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. Accordingly, it is ORDERED that the Board's decision in its Order of May 11, 1984, is reaffirmed.

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

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

ATTESTED BY: _____
CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 19 FEB 1986

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.

14061order/LJPL

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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 71, 74, 75, 830, 840 and 111)

HEARING DATES: November 9, 1983, and January 18 and February 15, 1984
DECISION DATES: March 7 and April 4, 1984
DISPOSITION: The Board GRANTED the application subject to sixteen conditions by a vote of 4-1 (Charles R. Norris, Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton opposed to the motion).
FINAL DATE OF ORDER: May 11, 1984

ORDER

On May 21, 1984, the counsel for the Dupont Circle Residential Action Coalition, a party in opposition to the subject application, filed a timely motion for reconsideration, rehearing or reargument and for stay pending the decision on the motion. On May 23, 1984, the Chairman ruled that the request for stay be denied. In support of the motion for reconsideration, counsel argued that:

A. The applicant failed to meet its burden of proof in that it failed to demonstrate that no dangerous or otherwise objectionable traffic conditions shall result from the establishment of the parking lot, that the establishment of the lot will not adversely affect the present and future character of the neighborhood, and that the parking lot is reasonably necessary and convenient to other uses in the vicinity.

B. The Board is estopped from granting the present application based upon previous Board and D.C. Court of Appeals decisions.

C. The Board failed to accord "great weight" to the issues and concerns of the affected Advisory Neighborhood Commission.

Upon consideration of the motion and its final order, the Board concludes that it has made no error in deciding the application. The motion does not raise any new issues that were not previously considered by the Board. The issues and concerns of all parties in opposition to the application were thoroughly presented at the public hearing and are addressed in the final order of the Board.

The Board concludes that its final order, dated May 11, 1984, cites the history of the subject site before the Board and the D.C. Court of Appeals. The Board notes that it decides each application based on its individual merits and that its decision on a specific application does not create a precedent which is binding in determining subsequent applications for similar relief or relative to a specific property. The Board notes that the subject application is not an application to continue a parking lot, as was Application No. 13096, but rather is an application to establish a parking lot where one does not now exist.

The Board further concludes that the issues and concerns of the ANC were afforded the "great weight" to which they were due. The final order specifically addresses the issues and concerns of the ANC, as well as those of other parties in opposition.

The motion further requests that the Board maintain continuing jurisdiction to ensure that the applicant complies with the conditions of the special exception. The Board notes that the application has been approved for a short period of time and is subject to stringent conditions. Failure of the applicant to abide by the conditions of the final order, could result in the denial of the continued use of the lot in a future application. During the course of the current approval, jurisdiction over violations of the order of the Board is with the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs.

A motion dated June 3, 1984, by counsel for the Residential Action Coalition to supplement the original motion, was denied by the Chairman as not being proper under the Supplemental Rules of Practice and Procedure before the BZA.

Accordingly, it is hereby ORDERED that the Motion for Reconsideration or Rehearing is hereby DENIED.

Vote: 5-0 (Walter B. Lewis, Charles R. Norris, William F. McIntosh and Douglas J. Patton to deny the motion; Carrie L. Thornhill to deny by proxy).

Decision Date: June 6, 1984

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

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

FINAL DATE OF ORDER: AUG 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."

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