GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14120, of Dale M. and Donald K. Duvall, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.44 to continue the use of a parking lot in an R-4 District at premises 1717 and 1721 E Street, N.E., (Square 4546, Lots 143 and 144).

HEARING DATE: April 18, 1984

DECISION DATE: May 2, 1984

FINDINGS OF FACT:

1. The application was called as a preliminary matter at the public hearing of April 18, 1984. The property had been posted only thirteen days prior to the public hearing and not fifteen days as required under the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment. The applicant testified that the late posting was due to the error of an employee and the applicant had been out of town. The Board waived the rules to hear the application as scheduled.

2. The subject site is located on the south side of E Street, N.E., between 17th Street on the east and 18th Street on the west. The site is in an R-4 District and is known as premises 1717 and 1721 E Street, N.E.

3. The subject site is rectangular in shape and consists of two adjoining lots. The dimensions of the site are 68.72 feet on the north and south sides and 120 feet on the east and west sides. The area of the site is 8,246.4 square feet.

4. The subject site is improved with a paved at-grade parking lot, a brick wall at the front of the lot, a cement wall at the rear of the lot and a driveway providing access to and from the lot at the north. The access to the lot is through E Street. There is a public alley at the south of the site that provides access to seven garages which are located at the southern edge of the site.

5. The subject parking lot provides fourteen parking spaces, twelve of which are used by tenants of the adjoining apartment buildings at the east and west of the site. The two remaining spaces are used to provide maneuvering area for cars entering and leaving parking spaces.

6. The subject site has been used as a parking lot since April 23, 1963, pursuant to Board Order No. 7221, which granted the original approval. Use of the lot has been renewed by the Board every five years. The use was last renewed by Board Order No. 12800, dated January 26, 1979. The lot is owned and maintained by the applicants who lease the spaces to tenants of the adjoining apartment buildings which their company owns.

7. The subject square and the surrounding neighborhood area are developed with row dwellings and apartment buildings of two or four units. There is one-way traffic eastbound on E Street and there are no parking restrictions. On-street parking is adequate but fully utilized on E Street and on surrounding streets. The subject parking lot is the only parking lot located in the neighborhood. If the lot were discontinued, the twelve apartment residents who currently park on the lot would be forced to utilize on-street parking.

8. The subject property is the site of a main sewer line that runs underground beneath the lot. The District of Columbia holds an easement which provides perpetual access to the sewer main. The applicant is unable to construct a building on the lot because the excavation of a foundation would endanger the existing sewer main. The only use that the applicants have been able to develop on the subject lot is that of an accessory parking lot for the adjoining buildings.

9. The applicants propose to continue the use of the subject premises as a parking lot with a capacity of fourteen vehicles. There would be no changes in the conditions of operation and the spaces would continue to be leased to tenants of the two adjoining buildings. The applicant has received no complaints concerning the operation of the lot and there are no complaints of record. The lot is unattended.

10. The Board of Zoning Adjustment has authority to grant a special exception to continue a parking lot under Sub-section 8207.2 of the Zoning Regulations which provides that the Board may grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps.

11. Paragraph 3104.44 of the Zoning Regulations provides that parking lots in an R-4 District shall meet the following requirements:

A. All provisions of Article 74 are complied with;

B. No commercial advertising signs shall be permitted outside any building, 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.

12. There is no other use conducted from the premises except for the parking lot use, and no other structure is erected thereon. The vehicular entrance and exit from the subject lot is located more than twenty-five feet from the nearest street intersection. There are no commercial advertising signs located on the subject lot.

13. The D.C. Department of Transportation, by memorandum dated March 6, 1984, reported that a site inspection indicated that this lot is poorly maintained. The pavement is deteriorating, the striping has faded, and debris has accumulated around the edges of the lot. Provided the applicant undertakes to rectify these conditions and to improve maintenance standards, DOT had no objection to the continuation of this use. The Board concurs with the DOT findings and its recommendation.

14. Advisory Neighborhood Commission 6A made no report on the application.

15. A person, not a resident of the neighborhood, testified in support of the application. The support was based on a site visit. The witness testified that if the application is not approved, then the twelve vehicles that presently use the lot will be parked on the residential streets of the surrounding neighborhood. The lot has existed compatibly in the neighborhood since 1963. The presence of minor defects on the lot has not adversely affected the character and future development of the neighborhood. The supporter observed that the lot is reasonably necessary to the neighborhood and is convenient to the uses in the vicinity. Since the applicant can not develop the lot because of the passage of the main sewer line, there is no other possible use for the lot except for the existing use as a parking lot. The lot has asphalt paving, striping, and wheel barriers, although they are deteriorated. The

lighting used to illuminate the parking lot is so arranged that all direct rays of light confined to the surface of the parking lot.

16. The Board in addressing the testimony recited in Finding No. 15 finds that the defects of the subject lot are not minor, and that the applicant has disregarded the conditions of the Board's prior orders. Despite the benefits to the neighborhood that result from the off-street parking provided by the subject lot, the deterioration of the lot has an adverse affect on the present character and future development of the neighborhood. The application would have to be denied unless the applicant brings the condition of the lot into compliance with the Board's requirements. In these circumstances the Board could only grant the application for a trial period, in order to monitor compliance.

17. Persons, not residents of the neighborhood, testified in opposition to the application. The opposition was based on a site visit and the observation that the subject property is not in conformity with the provisions of the D.C. Zoning Regulations and more specifically with the BZA Order No. 12800 of 1978. The opponents found that the surface of the parking lot, driveways and access lanes was not impervious because the asphalt had deteriorated through weathering effects. There is also a general deterioration of the parking lot. Potholes will eventually cause alignment and suspension damage to cars, while loose gravel will destroy tire tread life for users. The overall appearance is an eyesore. The lot has been inappropriately used as a depository for unregistered or abandoned cars. This has created a de facto car dump, which is not the intended or permitted use of the lot. The subject property also did not satisfy a further condition of BZA Order No. 12800 which required bumper stops be erected and maintained for the protection of all adjoining buildings. The opponents observation revealed that a number of bumper stops at the property were missing or in disrepair. To the rear of the lot, approximately four spaces are not equipped with functional bumper stops. Vehicles at the rear of the lot are parked up against or just meeting adjoining structures, building or fence. The Board concurs with the testimony of the opposition.

18. The Board finds that the applicant has not met the conditions of the prior BZA order as to maintaining an impervious surface, striping of spaces and maintaining wheel barriers. Further, continued accumulation of trash and old cars on the lot could adversely affect the character and development of the neighborhood.

19. The applicant expressed a willingness to comply with all conditions of the Board's Orders and to bring the

subject lot up to the standards set by the Zoning Regulations.

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 to continue a parking lot in an R-4 District. The granting of such a special exception requires that the proposed use satisfy all requirements listed in Paragraph 3104.44 of the Zoning Regulations. The Board must further find that the relief requested, will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect the use of neighboring property.

The Board is aware through the testimony of the opposition and the report of the DOT that the application could not be approved if the lot remains in its present condition. The Board is disturbed that the applicant has been less than prudent in failing to comply with the conditions of the prior order of the Board. To remedy this situation, the Board will order below that no certificate of occupancy for the parking lot be issued until the lot is brought into compliance. The Board will limit the approval time so that it may monitor this lot more closely. The Board concludes that the applicants can meet their burden of proof if they respond in a positive manner to the Board's directives.

The proposed parking lot use will comply with all provisions of Article 74 as conditioned herein. There will be no commercial advertising signs located on the premises. No dangerous or otherwise objectionable conditions will result from the use. The present character and future development of the neighborhood will not be affected adversely by the use. The lot is reasonably necessary and convenient to other uses in the vicinity. The D.C. Department of Transportation reviewed the application and had no objection to continuation of the use, provided that all defects at the lot are rectified and maintenance improves.

The Board further concludes that a special exception to continue the subject parking lot will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of the neighboring property. The subject parking lot will provide off-street parking space for tenants in adjoining apartment buildings who would otherwise overburden the available parking on nearby residential streets. The applicant will bring the subject lot up to required standards and improve maintenance as a condition of further renewal of the parking lot use. Accordingly, it is hereby 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 expiration of the prior order, namely from September 6, 1983.

2. No certificate of occupancy shall be issued until the lot has been brought into compliance with the conditions of this action and previous orders of the Board. Until a proper certificate of occupancy is issued, the Zoning Administrator is hereby directed to seek termination of the subject lot for parking purposes.

3. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

4. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

5. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

6. 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.

7. 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.

8. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Charles R. Norris, Douglas J. Patton, William F. McIntosh and Carrie L. Thornhill to grant; Walter B. Lewis not voting, having recused himself).

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

ATTESTED BY: Steven E. Sher

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL 24 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.

14120order/BJW4