

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14123 of Arthur and K. L. Auerbach, as amended, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.412 to permit the continued use of the property as the office of a non-profit organization, for special exception under Section 7205 to provide accessory off-street parking on the subject site within three feet of a side lot line and a main building and to provide additional parking within 800 feet of the subject site at premises 1637 Q Street, N.W., (Square 179, Lots 14, 802 and 803) in the R-5-C District at the premises 1623 16th Street, N.W., (Square 193, Lot 145).

HEARING DATES: April 25 and June 27, 1984

DECISION DATE: July 11, 1984

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 4-0 (Charles R. Norris, Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not voting, not having heard the case).

FINAL DATE OF ORDER: August 27, 1984

ORDER

The Board granted the application, subject to ten conditions, by Order dated August 27, 1984. By motion timely filed on September 7, 1984, counsel for the applicants requested that the Board reconsider Condition Nos. 4 and 10 imposed by the Order. In the alternative, the motion request a further hearing limited to the issue of modifying those two conditions.

Condition No. 4 of the Order requires that the applicants provide seven parking spaces for the use of its tenant, The Green Door, Inc., at a commercial parking facility located at 1637 Q Street, N.W. Condition No. 4 further requires that, since the site of that parking facility is planned for development in the future, the applicants must reapply to the Board within thirty days of receipt of notice that the facility will be closed, to request an alternate parking solution. Condition No. 10 requires that the three vans used by the Green Door, Inc., be parked at the facility located at 1637 Q Street, N.W. Reconsideration of the two conditions by the Board was requested by the applicants because the applicants have been informed that the parking lot located at 1637 Q Street, N.W.

may close within the next six months to permit the development of that site.

The applicant's tenant has located an alternative location for the seven parking spaces required by the Board's Order on the site of the St. Augustine Parish, located at 15th and V Streets, N.W. Counsel for the applicants contended that it is physically impossible to provide parking on the subject site, the proposed alternate spaces are the closest ones available to the tenant, they are located on a site which is not planned to be developed, and the cost of leasing the spaces at the alternate location would be more economical for the tenant, a non-profit organization.

The location of the proposed alternate parking spaces is in excess of 800 feet from the subject site. A variance from the requirements of Paragraph 7205.33 would therefore be necessary. Counsel for the applicant further contended that no change in the use of the subject site is proposed and all other conditions of the Board's Order have been met. The applicants were not aware of the availability of the alternate parking spaces until after the public hearing and decision on the subject applicant.

A party in opposition to the application filed a response to the motion on September 17, 1984, requesting the Board to deny the motion for reconsideration or rehearing for the following reasons:

1. The applicants and tenant have not implemented all of the remaining conditions imposed by the Board's order.
2. No new evidence justifying a rehearing has been submitted which could not reasonably have been presented at the original public hearing as required by Section 503.4 of the Supplemental of Practice and Procedure before the BZA.
3. The location of the proposed alternate parking is nearly 3,000 feet in walking distance from the subject property and therefore would require a variance from Paragraph 7205.33 of the Zoning Regulations. Such variance was not granted by the Board nor properly advertised. Therefore the granting of that variance would be inappropriate.

By motion dated September 24, 1984, the party in opposition also filed a motion for reconsideration and/or rehearing of the subject application. Counsel for the applicants filed a response in opposition to that motion on September 28, 1984. The Board notes that the motion for reconsideration and/or rehearing filed by the opposition was

not filed in a timely manner as required by Section 503.1 of the Supplemental Rules of Practice and Procedure before the Board. The Board notes the extenuating circumstances described in the letter accompanying the motion regarding receipt of the Order by the party in opposition.

Upon consideration of the motions, the responses thereto, and its final Order, the Board concludes that the applicants are seeking additional variance relief which has not previously been considered by the Board. The Board further concludes that the relocation of the off-site parking to a new location substantially affects the material facts relied upon by the Board in granting the application.

The subject case was originally heard and decided by four Board members. Subsequent to the disposition of this case, one of the members on the subject case has resigned and may not participate in any further deliberations or action on the subject application. As a result, only three present Board members have a full understanding of the facts of this case, as presented at the public hearing, and the rationale for the Board's decision.

In light of the complexity of the issues raised by both the counsel for the applicants and the opposition and due to the fact that only three members of the Board are active participants in the decision, the Board concludes that a rehearing of the case in its entirety is appropriate.

Accordingly, it is ordered that BZA Order No. 14123, dated August 27, 1984, is hereby VACATED. It is further ordered that the application be readvertised to include the additional variance relief and that the case be properly scheduled and reheard de novo in keeping with the procedures of the BZA.

DECISION DATE: November 7, 1984

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to VACATE and REHEAR; Douglas J. Patton not voting; not having heard the case; Walter B. Lewis not voting).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

11 DEC 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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