

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14184, of Ruby Restaurant, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.41 to continue the use of a parking lot and for a variance to permit all day commuter parking (Sub-paragraph 4101.413) in an SP-2 District at the premises 518 H Street, N.W., (Square 486, Lot 36).

HEARING DATE: September 26, 1984  
DECISION DATE: October 3, 1984

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of 6th and H Streets and is known as 518 H Street, N.W. It is in an SP-2 District.
2. The subject parking lot was first approved by the BZA in Order No. 12321, dated April 22, 1977. BZA Order No. 12669, dated July 21, 1978, granted a further conditional continuance of the lot for a period of two years. The Board last approved the subject parking lot pursuant to BZA Order No. 13814, dated June 22, 1983, for a period terminating on July 21, 1984.
3. The subject property is approximately 4,250 square feet in area. It has facilities for twenty-three cars. The lot is operated as a commercial facility from 7:00 A.M. to 6:00 P.M. During that time, six of the spaces, in accordance with the Board's Order No. 13814, are reserved exclusively for the customers of the Ruby Restaurant at 609 H Street, N.W. which is diagonally across the street from the subject parking lot. From 6:00 P.M. to 4:00 A.M., the lot is used exclusively for patrons of the Ruby Restaurant.
4. The subject lot is operated by Parking Management, Inc. in conjunction with three other adjacent parking lots. There is an attendant.
5. The immediate neighborhood consists of restaurants, carry-outs, bars and vacant structures. Located nearby are the North, South and East Potomac Buildings, St. Mary's Church, Bergman's laundry, the Government Accounting Office and the Wah Luck apartment building.
6. The subject lot is operated in conjunction with three other parking lots in the same square. The Board

granted a variance from Sub-paragraph 4101.413 for the other three lots in BZA Order Nos. 14111, 14104 and 14088. The applicant asserts that the situation affecting the property in the other three cases is identical to that affecting the parking lot in the subject case and thus justifies the granting of a variance from the prohibition of all-day commuter parking on the subject lot.

7. The lot has been operated in the past so as not to create dangerous or other objectionable traffic conditions. There is no evidence that conditions have changed so as to cause objectionable conditions in the future.

8. The subject lot is in compliance with the appropriate requirements of Article 74 and the conditions of the prior BZA Order.

9. The applicant leases the property on which the Ruby Restaurant is located. The lease will expire in about three years. The applicant hopes to locate the restaurant on the subject parking lot which the applicant owns. There are no immediate plans for the relocation of the restaurant. The applicant was alerted by the Board that a restaurant is not a use permitted as a matter-of-right in an SP-2 District.

10. The applicant has received no complaints as to the maintenance and operation of the parking lot.

11. The Department of Public Works (DPW), by memorandum dated September 7, 1984, reported that the subject parking lot currently serves as a commercial parking lot and is used for long-term parking by office employees in the area. The Zoning Regulations prohibit such use and place a six year limit on parking lots in the SP-2 zone. This parking lot has exceeded this time limit. The DPW is not in favor of long-term parking lot use in the SP-2 zone. The DPW realized that there will be a need for commercial parking lots in the SP-2 zone until commercial buildings containing underground parking spaces are developed to replace existing surface parking lots. Therefore, the DPW did not object, at this time, to the continuation of the parking lot in question for another two-year period. However, the DPW encouraged the owners of this lot to seek development plans for the property prior to the next expiration date of their use permit. The Board concurs with the reasoning and recommendation of the DPW. The Board will so condition the grant herein.

12. The Board finds that the DPW was incorrect in stating that the six year limit had been exceeded. The six year period was from the date of expiration of the certificate of occupancy that was in effect on October 5, 1978. That date is July 21, 1980. Accordingly, approval can be granted until July 21, 1986.

12. The Board finds that Condition (b) of BZA Order No. 13814 prohibits all-day commuter parking. In that case, the applicant testified that there are many short term parkers but still not enough to make the operation financially successful. The applicant further testified that, if the Board were not to grant the requested variance from the all-day commuter parking, it would do what it had previously done in the three other parking lots surrounding the subject one. Since all the parking lots are under one management, the operator can manipulate the cars by parking the commuter parkers in those parking lots where the Board approved all-day parking and then place all the short term parkers together.

13. Based on the applicant's testimony, the Board further finds that the situation affecting the subject lot has not substantially changed since the Board's prior decision and that the lot has been operated in compliance with the conditions of the prior order. No evidence of an undue hardship upon the owner resulting from denial of the variance was demonstrated.

14. Advisory Neighborhood Commission 2C made no recommendation on the application.

15. There was no opposition to the application at the public hearing or of record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception and a use variance. As to the special exception the Board concludes that the applicant has substantially complied with the requirements of Paragraph 4101.41 of the Zoning Regulations and that the special exception, as hereinafter conditioned, 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 use variance, the variance to permit all-day commuter parking, this requires a showing of a hardship upon the owner of the property that arises from the property itself. The Board concludes that the applicant has not met the burden of proof necessary for the granting of a use variance. The operation of the lot in accordance with the conditions of the Board's prior Order evidences that there is no condition inherent in the subject lot which prohibits its operation in compliance with Sub-paragraph 4101.413. Accordingly, it is hereby ORDERED that the request for a use variance is DENIED and the special exception is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period terminating on July 21, 1986.

2. There shall be no all-day commuter parking.
3. The lot will operate as a commercial facility from 7:30 A.M. to 6:00 P.M. with the exception of six spaces to be reserved for customers of Ruby Restaurant, Inc.
4. Between the hours of 6:00 P.M. and 4:00 A.M. the lot shall be for the exclusive use of customers of Ruby Restaurant, Inc.
5. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
6. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
7. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
8. 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.
9. 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.
10. 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 (Douglas J. Patton, William F. McIntosh, Maybelle T. Bennett and Carrie L. Thornhill to grant; Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 28 NOV 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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