

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14199, of the West End Trading Co., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to establish a parking lot in an R-5-B District at premises 1126, 1128, 1130, 1132, 1134 and 1136 22nd Street, N.W., (Square 51, Lots 24, 31, 32, 33, 34, 35 and 36).

HEARING DATES: October 24, 1984 and January 23, 1985
DECISION DATE: February 6, 1985

FINDINGS OF FACT:

1. The subject application was scheduled for the public hearing of October 24, 1984. At the public hearing, counsel for the applicant requested a postponement of the hearing on the subject application. The bases for the request for postponement were as follows:
 - A. The applicant became aware of strong citizen opposition to the granting of the subject application and retained counsel to assist in the preparation of the case on October 11, 1984.
 - B. Section 301.3 of the Supplemental Rules of Practice and Procedure before the BZA requires that the applicant submit all materials intended to be offered as evidence fourteen days prior to the date of the public hearing. The filing date for the applicant's submissions in the subject case was October 10, 1984.
 - C. In light of the fact that counsel was not retained until October 11, 1984, postponement was desired because counsel for the applicant did not have sufficient time to prepare for the public hearing and/or to submit written evidence to the record prior to the filing deadline of October 10, 1984.
 - D. No prejudice would result from the granting of the postponement as the subject property had been barricaded to prevent its use during the pendency of the application and the postponement would permit the applicant to meet with the community to address any concerns.

2. The Single Member District Commissioner for ANC 2A01 appeared at the public hearing and opposed the request for continuance on the grounds that the subject property was being used for parking purposes without a permit. Counsel for the applicant stated that the applicant had been advised to barricade the property and that the applicant had done so on October 18, 1984, and that the applicant had further instructed the operator of the adjacent commercial parking lot not to use the subject property for parking.

3. The Chairman ruled that the subject application be rescheduled for the public hearing of January 23, 1985.

4. At the public hearing of January 23, 1985, the Single Member District Commissioner for ANC 2A01 requested that the application be postponed because, due to inadvertence on the part of the Zoning Secretariat, the application had not been referred to the D.C. Department of Public Works for review and comment, as required by Paragraph 3101.48 of the Zoning Regulations.

5. The Chair ruled that the hearing would proceed as scheduled but that the record would be left open to receive the report of the Department of Public Works prior to the decision on the subject application.

6. The subject site is located on the west side of 22nd Street, between L and M Streets and is known as premises 1126 through 1136 22nd Street, N.W. It is zoned R-5-B.

7. The subject property contains approximately 8,890.72 square feet of lot area and is currently paved. The subject property is generally rectangular in shape except for a small protrusion measuring 12.08 by 25.66 square feet at the northwest corner of the property.

8. The square in which the subject property is located is zoned C-2-C to the north and west of the subject property. To the southwest is a small area zoned R-5-D. To the south, across the public alley, is C-2-C zoning followed by another small R-5-D area. To the east, across 22nd Street, is C-2-C zoning.

9. The applicant is requesting permission to use the subject property for parking for thirty-six cars in conjunction with an existing commercial parking facility for approximately 225 cars located in the C-2-C area to the north and west of the subject site. The parking spaces are to be arranged as shown on the plat marked as Exhibit No. 2 of the record. Approval was requested for a period of four years.

10. Pursuant to Paragraph 3101.48 of the Zoning Regulations, a parking lot is permitted in the R-5-B District, subject to approval by the Board, provided that:

- A. Such use will be located in its entirety within 200 feet of an existing Commercial or Industrial District and such parking lot shall be contiguous to or separated only by an alley from such Commercial or Industrial District;
- B. All provisions of Article 74 are complied with;
- C. Such use is reasonably necessary or convenient to the neighborhood and is so located and all facilities thereof are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions; and
- D. Before taking final action on an application for such use the Board shall have submitted the application to the District of Columbia Department of Public Works for review and report.

11. The subject site is contiguous to and located in its entirety within 200 feet of an existing C-2-C District.

12. The subject site is currently paved. The applicant testified that all the requirements of Article 74 would be complied with should the Board grant the subject application.

13. The existing commercial parking facility adjacent to the subject site provides parking for Blackies House of Beef restaurant, as well as neighborhood businesses, commercial uses, and hotels in the nearby area, area residents and their guests. Because the subject site is contiguous to the existing facility, the additional spaces planned for the site will provide additional convenient parking spaces for those needs.

14. In addition, the Columbia Hospital for Women closed a parking facility of approximately 200 spaces in November, 1984. The existing facility, with the additional thirty-six spaces proposed for the subject site, will help offset the resulting decrease in the number of parking spaces in the immediate area.

15. Access to the existing commercial parking facility is via two driveways along M Street and via the east-west alley to the south of the existing and proposed parking lots. The main access off of M Street near 22nd provides access to the area of the lot which accommodates high-turnover customers and which includes the subject

property. The access on M Street near 23rd and the alley access serve the area of the lot which accommodates monthly leases or long-term parkers. There is an existing driveway and curb cut along 22nd Street which is not contemplated for use.

16. Due to the location of the proposed parking lot adjacent to a large existing facility, the three existing means of access and egress, the small size of the proposed facility, and its convenience to the neighborhood, the proposed facility is not likely to become objectionable to the neighborhood because of noise, traffic or other objectionable conditions.

17. The hours of operation of the lot will be from 8:00 A.M. to 11:00 P.M. Monday through Thursday, from 8:00 A.M. to 2:00 A.M. Friday, and from 5:30 P.M. to 2:00 A.M. on Saturdays, the same hours of operation as the adjacent commercial parking facility, also operated by Colonial Parking. Maintenance will be on a daily basis and the lot will be policed periodically during the day by the attendant. The lot will be open for parking by area residents during the hours it is not operated commercially. The operator of the existing facility indicated that no complaints regarding the operation of the existing parking facility have been received.

18. The property had previously been developed with townhouses. In the first quarter of 1983, the houses were razed because of their deteriorated condition and their inability to be rented. The houses required major rehabilitation in order to continue to be used as housing. At the same time, there was an oversupply in the market due to nearby condominium development. The lots were also adjacent to the larger commercial parking facility and thus less desirable from a marketing point of view.

19. The representative of the applicant testified that when the houses were initially razed, the lot area was covered with a broken stone material to delineate it from the larger commercial parking facility. Subsequently, in August of 1984, the lot was paved at the request of an inspector from the Zoning Division.

20. The representative of the applicant testified that from the time the houses were razed until October 18, 1984, the lot was on occasion used by persons desiring free parking. The representative of the applicant testified that at no time did the applicant authorize use of this area for commercial parking.

21. The operator of the existing and proposed lot testified that on occasion the subject property had been used illegally for parking and that the operator of the lot

had experienced problems in trying to keep people from using this portion of the property. Since October 18, 1984, however, a barricade has been constructed around the perimeter of the subject property to prevent further unauthorized use.

22. The record reflects that on August 9, 1984, the owner of the property received a letter from the Zoning Inspections Branch advising that he would be required to file an application with the Board to request approval for a parking lot use. On August 10, 1984, the subject application was filed.

23. The applicant requests approval for a period of four years because it is of the opinion that the property has no other reasonable use at the present time. It is anticipated that the property will be developed in the future, but due to the rapid pace of development in the surrounding area, including two new hotels, office development, and residential development, there are no plans to proceed with additional development at this time.

24. The Department of Public Works, by memo dated January 29, 1985, indicated that it had no objection to the proposed extension of the parking subject to all applicable provisions of the parking and loading regulations effective March 1, 1985. The DPW noted that the adjacent lot is clean and well-maintained. The Board notes that the subject application was heard and decided by the Board prior to March 1, 1985. Accordingly, the new parking regulations do not apply.

25. Advisory Neighborhood Commission 2A, by resolution dated October 10, 1984, objected to the granting of the requested relief for the following reasons:

- A. The property is zoned R-5-B;
- B. Habitable townhouses on the subject property were razed in 1982;
- C. The property has been used for parking purposes since 1982 in violation of the Zoning Regulations;
- D. The applicant had been informed that the property was being used for parking in violation of the Zoning Regulations in March, 1984;
- E. Habitable housing has been demolished and the lot used for parking in violation of the Zoning Regulations in other areas of the West End;

- F. The granting of the application would result in rewarding the applicant for a knowing violation of the Zoning Regulations; and
- G. The use of the subject lot for parking would change the use of the lot from residential to commercial use to the detriment of the residential nature of the West End.

26. Harriett Hubbard appeared at the public hearing as an interested person in opposition to the application. Her opposition was based on the loss of residential units for parking purposes, the blight on remaining residences caused by parking lots in close proximity to those residences, and the precedent set by the granting of this application which would encourage other property owners in the area to raze existing residences in order to provide parking lots.

25. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. In addressing those concerns, and the other relevant concerns of the opposition, the Board finds as follows:

- A. The proposed use is permitted as a special exception in the R-5-B District.
- B. The applicant is not required to demonstrate that the property can not be used for residential purposes.
- C. The illegal use of the property was caused, in part, by negligence of the operator and, in part, by persons seeking free parking. As evidenced by testimony at the public hearing and photos of the property marked as Exhibit No. 29F of the record, the applicant has made good faith efforts to prevent the further illegal use of the lot. Those pictures demonstrate that the lots are not now being used.
- D. The applicant filed the subject application in a timely manner, one day after formal notification of a zoning violation by the Zoning Enforcement Branch.
- E. The decision in the subject application will not set a precedent in that the Board determines each case based on the merits of each individual application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof through substantial evidence of compliance with the provisions of Paragraph 3101.48 of the Zoning Regulations. The Board concludes that the applicant has so complied. The subject property is located in its entirety within 200 feet of and adjacent to a commercial district. Compliance with the provisions of Article 74 shall be required as a condition of approval of the parking lot. The location of the lot is reasonably necessary and convenient to the neighborhood. Because of the small size of the subject property and its proximity to an existing large parking facility, no adverse effect upon the present character and future development of the lot will result from approval of the proposed parking lot. Due to the small number of proposed parking spaces to be provided and the use of existing curb cuts, the Board concludes that no objectionable traffic conditions will result. The Department of Public Works has no objection to the proposed use. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled.

The Board further concludes that the requested relief can be granted as in harmony within the general purpose and intent of the Zoning Regulations and that it will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

- A. Approval shall be for a period of three years from the date of this order.
- B. The number and arrangement of spaces shall be as shown on the plat marked as Exhibit No. 2 of the record.
- C. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- D. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- E. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- F. 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.

G. 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.

H. 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, William F. McIntosh and Douglas J. Patton to grant; Patricia N. Mathews to grant by proxy; Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

23 APR 1985

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.

14199order/LJPC