

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14392, of Square 35 Residential Joint Venture, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.49 to continue to use the subject site as accessory parking for premises 2400 N Street, N.W. and from the prohibition against an accessory parking site not being contiguous or separated only by an alley from the use to which they are accessory (Paragraph 3101.491) in an R-5-B District at premises 2301 N Street, N.W., (Square 35, Lot 802).

HEARING DATE: February 12, 1986
DECISION DATE: March 5, 1986

FINDINGS OF FACT:

1. The site, known as premises 2301 N Street, N.W., is located on the north side of N Street between 23rd and 24th Streets. It is in an R-5-B District.

2. The subject site is rectangular in shape. It has a frontage of 274.41 feet along N Street and 78 feet along 23rd Street.

3. The property is bounded by a 16 foot wide public alley to the north and a 20 foot wide public alley to the west. Across the alley to the north are tennis courts and Rock Creek Park. Across the alley to the west is the Francis Junior High School. The area to the south of the property is zoned C-R. The lot directly south of the property, premises 2300 N Street, N.W., is a commercial use, with an office building currently under construction.

4. The applicant, Square 35 Residential Joint Venture, is a joint venture between U.S. News and World Report and Boston Properties. The parking lot serves as parking for employees of U.S. News. The U.S. News headquarters building is located diagonally across the street from the parking lot, at 2400 N Street, N.W. U.S. News has more than 400 full-time employees.

5. The property has been used for parking purposes approved by this Board on six successive occasions beginning in 1961. The lot is currently operating pursuant to BZA Order No. 13944, dated July 28, 1983, which approved the continuation of the parking facility for three years.

6. Pursuant to Sub-section 8207.2 and 8207.11 of the Zoning Regulations, the applicant is seeking a special exception under Paragraph 3101.49 and a variance from Paragraph 3101.491 to continue to use the subject site as accessory parking for an additional two years. Paragraph 3101.49 provides that accessory passenger automobile parking spaces may be located elsewhere than on the same lot or part thereof on which the main use is permitted, except for a one family dwelling, provided that:

3101.491 Such parking spaces will be in an open area or in an underground garage no portion of which, except for access, extends above the level of the adjacent finished grade, provided in either case they are located in their entirety within 200 feet of the area to which they are accessory, and provided further that they are contiguous to or separated only by an alley from the use to which they are accessory;

3101.492 All provisions of Article 74 regulating parking lots are complied with, except that the Board may in an appropriate case under Sub-section 7404.3 modify or waive the conditions specified in Sub-section 7404.2 where compliance therewith would serve no useful purpose;

3101.493 It is economically impracticable or unsafe to locate such parking spaces within the principal building or on the same lot on which such building or use is permitted because of:

3101.4931 Strip zoning or shallow zoning depth;

3101.4932 Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on such lot;

3101.4933 Unusual topography grades, shape, size or dimensions of the lot;

3101.4934 The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or,

3101.4935 Traffic hazards caused by unusual street grades or other conditions;

3101.494 Such parking spaces are so located and facilities in relation thereto 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

3101.495 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.

7. The parking lot is located in an open area approximately three and one-half feet below the adjacent finished grade.

8. In all of the prior orders regarding the lot, the Board granted approval of the parking lot use as a special exception without the need for a variance. Because of recent changes in the Zoning Regulations requiring that accessory parking spaces be located in their entirety within 200 feet of the area to which they are accessory and contiguous to or separated only by an alley from the use to which they are accessory (3101.491), the applicant no longer fully satisfies the requirements for granting of the special exception and now must seek an area variance.

9. A major portion of the parking lot is located within 200 feet of the U.S. News Headquarters building. However, because the parking lot itself is approximately 273 feet long, it is not located in its entirety within 200 feet of the U.S. News headquarters building.

10. The lot complies with all provisions of Article 74.

11. The spaces which are provided by the parking lot are essential to U.S. News, many of whose employees, because of the irregular work hours which are inherent in the news business, arrive at and leave the office late at night and need to be able to park within close proximity to the U.S. News headquarters building.

12. Since the time of the prior Order, three out of the five surface parking lots then in use by U.S. News employees have been eliminated. U.S. News has lost nearly 100 spaces that it used to lease from B&W Garage, which has since closed. Ninety employee spaces are provided in the new U.S. News headquarters building at 2400 N Street, N.W. The net effect of these changes is a substantial decrease in available parking.

13. U.S. News has made inquiries regarding leasing additional parking spaces from neighboring facilities. No such spaces are currently available, but the applicant anticipates that such additional spaces will become available by the time construction begins on the site.

14. Plans for development of the site are currently underway. The applicant filed an application for a Planned Unit Development on the property (Application No. 86-1C)

with the Zoning Commission on or about February 3, 1986, and expects development work to begin within two years or less. A notice of intent to file the PUD application, dated January 10, 1986, was sent to owners of all property within 200 feet of the property.

15. The applicant has discussed the proposed PUD with several interested organizations, including ANC - 2A, ANC 2B, the Department of Recreation, the Commission of Fine Arts, the Francis Junior High School, the U.S. Park Service, the District of Columbia Office of Planning and the Department of Public Works. The applicant has received conceptual design approval from the Commission of Fine Arts.

16. Since the Board's prior Order, the applicant has built the U.S. News headquarters building at 2400 N Street, N.W. Currently under construction are a hotel at 24th and M Streets, N.W. and an office building on the site where the U.S. News headquarters used to be located at 2300 N Street, N.W.

17. The findings of fact contained in the Board's prior Order stated that at that time, in 1983, the applicant projected that development of the property would not occur before the middle of 1986.

18. The lot contains 57 marked parking spaces. It is surrounded by a chain link fence which has been painted green pursuant to a request by the ANC. The area outside the fence is landscaped, with trees and shrubs surrounding almost the entire lot. The lot is unattended.

19. The use and operation of the parking lot complies with the conditions of the Board's prior order.

20. The entrance to the subject lot is more than forty feet from a street intersection. The lot has been in existence since 1961 with no adverse traffic impacts on surrounding streets. The applicant has received no complaints with regard to the parking lot.

21. By memorandum dated February 5, 1986, the Department of Public Works (DPW) offered no objection to the continued use of the parking lot for a two year interim period. The DPW reported that it finds that although the parking lot is located in a residential district the lot is sufficiently buffered by adjacent park land from all surrounding residential uses. Also, the lot is located in an area which is characterized by a mix of high density commercial and residential uses. The design, location and character of the lot will not pose any adverse traffic conditions for the neighborhood. The lot is designed so that ingress and egress to the lot is performed off a public alley away from primarily residential streets, also the lot

serves a single office-tenant use where the traffic patterns follow a predictable and consistent time schedule. The discontinuance of the lot may pose additional problems for the neighborhood by forcing vehicles which currently utilize the lot onto surrounding neighborhood streets where competition for curb side parking is already high. The Board concurs with the recommendation of the DPW.

22. By letter dated February 4, 1986, Advisory Neighborhood Commission (ANC) 2B reported that it voted to oppose the subject application for the following reasons:

- (a) Three years ago the then owner of the premises in a BZA application asked for a special exception for parking lot use for five years and the BZA granted three years;
- (b) Three years ago the previous applicant in asking for the support of ANC 2B said that the lot would not be necessary when new buildings with indoor parking are completed at 24th and N Streets, N.W. and they are virtually completed;
- (c) The previous applicant told the ANC it would have residential housing built on the premises within two years and this did not happen;
- (d) Under the current application there is a different developer as the premises were purchased and changed ownership since the previous application and such purchase transferred the rights, duties, and liabilities of the previous owner to the current owner;
- (e) The premises is roughly five blocks north of the Foggy Bottom Metro Station and five blocks west of the Dupont Circle Metro Station;
- (f) Twenty-second Street going north and 23rd Street going south are two lanes in each direction with curb lane parking and N Street has two lanes, one going east and one going west with some curb lane parking, all of which currently creates considerable congestion; and
- (g) Any continued special exception to use the premises for parking would discourage use of public transportation, encourage and attract more vehicular traffic in an otherwise already congested area, and delay development of residential use for which the premises is zoned.

23. The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to

writing and resulting in a recommendation. The Board finds that since the previous application requested the use of the subject site for parking for five years the applicant had not intended to construct housing within two years on the site. The denial of the application will not accelerate the residential development of the site. Alternative parking is not yet available and closing the lot would result in a spillover onto neighboring streets. Public transportation is not available for many U.S. News employees because of their irregular work hours.

24. By letter dated January 14, 1986, the Dupont Circle Citizens Association reported that it voted to oppose the subject application since it opposed commercial intrusions into an R-5-B residential district. A representative of the Residential Action Coalition, appeared at the public hearing in opposition to the application. Their opposition to the application was based on the following grounds:

- a. The site is located in an R-5-B District and should be developed for residential purposes.
- b. The site has been in existence as a parking lot for too long.

25. The Board finds that the applicant seeks its relief through a special exception not a use variance. There is no burden of proof that the site cannot be used for residential purposes. The Board notes that if the application were denied the property would remain vacant until new residential development for the site is approved and initiated. The vacant lot might have adverse affects on the neighborhood.

26. The principal of neighboring Francis Junior High School submitted a letter to the Board, supporting this application. The letter and testimony that was presented at the hearing indicated that the parking lot poses no problems for the junior high school and that U.S. News has been an excellent neighbor.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception to continue an accessory parking use, the granting of which requires proof that the applicant has met the requirements of Paragraph 3101.49 of the Zoning Regulations and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

The applicant is also seeking an area variance from portions of Paragraph 3101.491, the granting of which

requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met its burden of proof. All parking spaces are in an open area no portion of which extends above the level of the adjacent grade. The parking lot is in compliance with the conditions imposed in its prior Order and Article 74 of the Zoning Regulations. It is economically impracticable to locate the parking spaces on the same lot on which the U.S. News headquarters building is located because of the substantial improvements on such lot. The parking spaces are located such that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. As stated in Finding No. 21 above, the DPW offered no objection to the application.

The Board further concludes that the parking lot will be in harmony with the general purpose and intent of the Zoning Regulations and that it will not adversely affect the use of the neighboring property in accordance with said Zoning Regulations.

The Board further concludes that the strict application of Paragraph 3101.491 would result in peculiar and exceptional practical difficulties for the applicant. The property has been used as a parking lot since 1961. The distance between the farthest corner of the parking lot and the principal use, the U.S. News headquarters building does not meet the requirement under Paragraph 3101.491 that the lot be located in its entirety within 200 feet of and contiguous to or separated only by an alley from, the use to which it is accessory since the lot itself is longer than 200 feet. The Board concludes that the applicant has taken major steps towards discontinuing the parking use and developing the property, in accordance with the timetable for development that was proposed at the time of the prior Order. The parking is essential to U.S. News, because of the elimination of many of the parking lots in the area, and because many of its employees, due to the irregular work hours which are inherent in the news business, arrive at and leave the office late at night and need to be able to park within close proximity to the U.S. News headquarters building. Until planned construction begins on the subject site, the property cannot be used for anything other than parking. A denial of this application would not encourage or hasten development of the property, but would cause the land to lay idle. The Board further concludes that the requested variance can be granted without detriment to the public good and without substantially

impairing the intent, purpose and integrity of the Zoning Regulations.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that this application be GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of TWO YEARS from the date of expiration of the prior approval, namely to expire March 23, 1986.
2. The applicant shall comply with all requirements of Article 74.

VOTE: 4-0 (Maybelle T. Bennett, Charles R. Norris, Carrie L. Thornhill, Paula L. Jewell to grant; William F. McIntosh not voting, not having heard the case).

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: JUL 8 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.

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