

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14923, of 5501 Connecticut Avenue Associates, pursuant to 11 DCMR 3108.1 for a special exception under Section 213 to continue to operate an accessory parking lot for fifteen vehicles in an R-1-B District at premises 3725 Livingston Street, N.W., (Square 1868, Lot 69).

HEARING DATE: January 18, 1989
DECISION DATE: February 1, 1989

FINDINGS OF FACT:

1. The site of the application is located on the north side of Livingston Street between Connecticut Avenue and Chevy Chase Parkway and is known as premises 3725 Livingston Street, N.W. It is located in an R-1-B District.

2. The subject parking lot is part of lot 69. The western - part of lot 69 is zoned C-1. The commercial portion of the property is improved with a two-story building. The site is located to the rear of the building which contains four retail establishments on the lower level and offices on the upper levels. The two-story building fronts on Connecticut Avenue.

3. The retail stores are occupied by Circle Liquor Store, Chevy Chase Seafood Market, Fishery Seafood Restaurant and Rossini's Restaurant and Market. The subject parking lot services the customers/clients of the four retail stores.

4. A 15-foot through alley is located in the square. Vehicular traffic cannot use the alley to access the subject property because of the square's steep topography. Steps provide pedestrian access from the site to the alley.

5. The parking lot provides accessory parking for 15 automobiles. The driveway to the parking spaces is also used by truck traffic for delivery of goods to the retail establishments that front on Connecticut Avenue. Signs on the lot indicate by whom the lot should be used.

6. A parking attendant's shelter is located on the lot. An attendant supervises the lot on a periodic basis.

7. Parking and access to the second-story office space are provided north of the property by an elevated

parking lot and entrance which are approximately level with the second story. This parking lot is accessible by way of the alley. The parking provided for the offices is not part of the subject application.

8. The predominant zoning classification of the neighborhood is R-1-B, a low density residential zoning category. A C-1 commercial strip abuts the site to the west, along Connecticut Avenue. To the south of the site, Connecticut Avenue is zoned R-5-C.

9. The Board of Zoning Adjustment in BZA Order No. 12259, dated May 31, 1977, granted permission to the applicant to establish fifteen accessory parking spaces in the R-1-B portion of Lot 69 for a period of five years. The Board found that there was a demonstrated need for the spaces, that they alleviated traffic congestion on the surrounding residential streets and Connecticut Avenue, and that the relief as conditioned by the Board would not become objectionable to neighboring property.

10. The Board in BZA Order No. 13805, dated November 22, 1982, granted a continuation of the special exception for a period of five years to expire on May 31, 1987, subject to various conditions as set forth by that Order.

11. By Order dated October 5, 1984, the Board granted the applicant a special exception as set forth in its previous Order No. 13805. Necessitating applicant's filing (Application No. 14159) for this special exception was applicant's failure to file an application for a certificate of occupancy within six months of the Board's previous November 22, 1982 approval of the special exception.

12. On August 18, 1988, applicant filed the instant application with the Board seeking a new special exception to continue operation of the parking lot at issue.

13. The proposed lay-out of the parking lot has not changed since the issuance of the Board's last Order, wherein the Board found that the applicant complied with Sub-section 3101.411. In addition, the twenty-five foot buffer zone between the parking and the adjacent residential property to the east is still maintained. The need for the spaces by the retail business still exists.

14. The tenants of the commercial buildings, under their respective leases, have been responsible for the operation and maintenance of the subject parking lot. As the leases come up for renewal, responsibility for the operation and maintenance of the parking lot will pass to the owner (landlord) of the premises. A general partner of the applicant testified that the owner, as a property manager, would be better equipped to operate the parking lot

and meet the concerns of the neighborhood. While daily trash pick-ups could not be guaranteed, the applicant intends to hire someone from the neighborhood to pick up trash when needed and to call the owner if further assistance is necessary.

15. The applicant testified that it was in the substantial conformance with all of the conditions of Board's previous Orders. The applicant noted that a required "Right Turn Only" sign to be placed on the exit on Livingston Street has recently been taken down and removed by a person or persons unknown; that applicant's office notified the Department of Public Works about the removal of the sign.

16. The Office of Planning, by memorandum dated January 11, 1989, recommended that this application be approved for a period of five years subject to conditions as stated below:

1. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface. Parking spaces shall be appropriately marked.
2. Bumper and tire stops shall be maintained for the protection of all adjoining buildings.
3. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
4. The lot shall be kept free of refuse or debris.
5. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
6. 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.
7. 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.

17. The Office of Planning noted that on the day of its site visit "the lot was clean, well-landscaped, and

generally in good condition". The Board agrees with the recommendation of the Office of Planning.

18. Memorandum dated December 15, 1988 from the Department of Public Works indicated that the Department had no objections to the approval of the application.

19. Advisory Neighborhood Commission (ANC) 3G, by letter dated January 6, 1989, and through testimony at the hearing, noted several problems with maintenance of the subject lot and recommended denial of the application unless the following conditions could be met:

1. Renewal of the Special Exception shall be for a period of no more than two years.
2. Applicant agrees to instruct all vendors to use the loading zone in the parking lot and to comply with "No Parking" and traffic laws, particularly on Livingston Street and Connecticut Avenue, N.W. This notification will be done in writing and the Applicant shall give copies of these letters to the ANC office.
3. Applicant shall provide a Parking Lot Attendant who shall be present during all of the business hours kept by the businesses sharing the lot.
4. Applicant agrees to actively prohibit loitering by any person or persons in the parking lot. This includes those employees or customers talking loudly, playing music or otherwise engaging in other noisy, disturbing activities. Applicant agrees to notify the Metropolitan Police Department in the event that one or more vagrants are loitering on the subject property.
5. At least once a day, all parts of the lot-including the wooded bank serving as a buffer to the residential area, and the sidewalk areas on Connecticut Avenue and Livingston Street -- shall be inspected and kept free of all debris and refuse.
6. All parts of the lot shall be kept free of rats and other rodents and shall be paved or landscaped. Landscaping shall be in accord with the revised landscaping plan submitted on May 3, 1977, in BZA File No. 12259, and shall include thirty-three arbor vitae trees,

six feet in height at planting, and thirty-two Japanese yew trees, two feet in height at planting.

7. Applicant agrees to maintain landscaping in and around the lot in a healthy growing condition and in a neat and orderly appearance. This includes frequent and regular leaf raking -- particularly on the wooded bank -- and installing wood timbers or other like material at the base of the bank to prevent soil erosion.
8. All areas devoted to driveways, access lanes and parking areas shall be maintained with a paving of material forming an all-weather impervious surface. Parking spaces shall be appropriately marked.
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. Applicant shall comply with all D.C. laws regarding snow removal on public sidewalks. This includes the sidewalks which extend from the end of the property line on Livingston Street to the end of the property on Connecticut Avenue.
11. Applicant shall, at its own expense and in cooperation with the Department of Public Works (DPW), cause the installation of a "Right Turn Only" sign in public space at the exit from the lot, to direct traffic toward Connecticut Avenue. Applicant shall agree to advise the DPW at any time the sign is bent down or otherwise unusable.
12. 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.
13. The layout and number of parking spaces shall be in accord with the revised plan submitted March 3, 1977, in BZA File No. 12259.
14. Directional arrows, as shown on the revised

parking plan of the aforementioned date of March 3, 1977, will be placed on the pavements, to establish a one-way driving pattern.

15. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
16. Bumper and tire stops shall be erected and maintained for the protection of all adjoining buildings.

20. Several neighbors submitted statements and testified in opposition to the application. Many of the points raised by the ANC (and addressed in the conditions above) were reiterated. They emphasized the fact that the property is not being properly maintained under the present caretakers and that an absentee landlord would not alleviate the current maintenance problems.

21. The Board finds the concerns of the ANC and neighbors to be legitimate and that the applicant will address the majority of these concerns through more active participation in the maintenance of the property and as further conditioned in this order.

22. Responding to the concerns of the ANC and opposing neighbors, the applicant indicated that the property manager will handle those matters within his authority but that the Police Department should be notified regarding parking and traffic violations and disturbances made by loiterers. The Board agrees.

23. The applicant is in substantial compliance with the requirements of Section 213 of the Zoning Regulation governing accessory parking spaces.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception to continue to use the subject lot in an R-1-B District as accessory parking for retail establishments in the adjacent C-1 District. The granting of such a special exception requires a showing through substantial evidence that the proposed use is 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. The applicant must also meet the requirements of Section 213 regulating accessory parking spaces.

The Board concludes that the application meets the standards for granting the requested special exception. The physical layout of the parking lot remains unchanged since last approved by the Board. The lot is located within 200

feet of the retail stores which it will service, and is separated from the main building only by an alley. The Board concludes that the parking facility will not adversely affect the use of neighboring property, nor will it create dangerous or otherwise objectionable traffic problems if the applicant complies with the conditions set forth in this Order.

The Board further concludes that the lot is reasonably necessary and convenient to the operation of the adjoining commercial corridor. The operation of the lot is in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that it has afforded the ANC the great weight to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS from the date of expiration of the previous order, namely from May 31, 1987.
2. The parking layout shall be as shown on the plat marked as Exhibit No. 2 of the record.
3. Applicant shall prohibit loitering on the lot. In the event that one or more vagrants are loitering on the lot, the applicant shall contact the Metropolitan Police Department.
4. Applicant shall comply with all D.C. Laws regarding snow removal on public sidewalks adjacent to the site.
5. Directional arrows painted on the surface of the lot to establish a one-way driving pattern in accordance with the Board's previous approval shall be maintained in good condition.
6. The applicant shall, at its own expense and in cooperation with the D.C. Department of Transportation, cause the installation of a "Right Turn Only" sign in public space at the exit from the lot to direct traffic toward Connecticut Avenue.
7. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface. Parking spaces shall be appropriately marked.
8. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

9. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
10. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be in accord with the revised landscaping plan submitted on March 3, 1977, in BZA file NO. 12259, and shall include thirty-three arbor vitae trees, six feet in height at planting, and thirty-two Japanese Yew trees, two feet in height at planting. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
11. 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.
12. 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.
13. The attendant's shelter shall not be located on nor project into the public space.

VOTE: 3-0 (Charles R. Norris, William F. McIntosh, and Paula L. Jewell to grant; Lloyd Smith and Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: JUL 24 1989

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW

2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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.

14923order/BHS6

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14923

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated JUL 24 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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A handwritten signature in black ink, appearing to read "E. L. Curry".

EDWARD L. CURRY
Executive Director

DATE: JUL 24 1989