GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15064 of First F.S.K. Partnership, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to continue to operate a parking lot in an R-1-B District at premises 4817 U Street, N.W., (Square 1389, Lot 816).

HEARING DATE: July 21, 1989
DECISION DATE: July 28, 1989

FINDINGS OF FACT:

1. The application was amended to request a special exception to establish, rather than to continue, a parking lot since the most recent special exception expired on January 10, 1988, prior to the filing of this application.

2. The subject property is located on the north side of U Street, between MacArthur Boulevard and 48th Street. The site is known as 4817 U Street, N.W., located in an R-1-B Zone.

3. The subject lot is rectangular in shape with a lot area of 31,000 square feet. The lot slopes slightly downward from south to north. There are no structures on the lot which is striped for parking purposes.

4. The subject property has been used as a parking lot since 1946 pursuant to a series of special exception approvals granted by the Board. The most recent was granted in 1984 for a four-year period which expired January 10, 1988 (BZA Application No. 14001).

5. The current lessee of the subject property, Plitt Theatres, Inc., the U.S. subsidiary of Cineplex Odeon Corp., proposes to continue the use of the site for parking for patrons of the MacArthur Theater which is located in a C-2-A District at 4859 MacArthur Boulevard.

6. The parking lot which contains 79 spaces is not required parking accessory to the theatre but is provided as a convenience to theatre patrons and neighborhood residents who park there over night. Entrance to the lot is not fenced off and there is no fee for parking on the lot.

7. The applicant testified that all of the requirements of Section 212 of the Zoning Regulations have been met.

8. The parking lot is located approximately ninety feet to the north of the MacArthur Theatre across U Street, and is adjacent to a C-2-A District which fronts on MacArthur Boulevard.

9. All areas of the parking lot, including the aisles and driveways, are paved with an all-weather impervious surface at least 4 inches in depth.

10. The lot is designed so that no vehicle or any part thereof projects over any lot line or building line.

11. There are no structures on the subject lot and no other use is conducted from the subject premises.

12. Access to the subject lot is from U Street. The driveway is located approximately 124 feet from the closest street intersection at MacArthur Boulevard and U Street, N.W.

13. Lighting for the parking area is provided by four 500 watt mercury vapor lamps located at each corner of the lot. All rays of such lighting are directed to the surface of the parking lot.

14. The applicant indicated that the parking lot will be kept free of refuse and debris. The manager of the MacArthur Theatre will implement a new maintenance policy for the lot. Under this policy, the lot will be checked and cleaned of debris on a daily basis at 6:00 P.M. After the last show the manager will check the premises again and have any refuse and debris removed.

15. Landscaping and a wooded area cover approximately 25% of the subject property, most of which is located on the eastern boundary of the property and in the rear of the site. A hedge and bushes are also located near the entrance of the site.

16. The applicant testified that Cineplex Odeon recently entered into a 2-year service agreement with Johnson's Landscaping Service to maintain the premises. A copy of that contract was submitted into the record. Services covered by this contract include weekly lawn mowing, fertilizing and pruning of all hedges and small trees. The agreement covers the on-site landscaping as well as the area in the front of the lot owned by the District of Columbia.

17. The lot is separated from residential properties by a 2.5 foot masonry wall which is topped by a forty-two inch stockade fence.

18. The applicant indicated that no dangerous or otherwise objectionable conditions will result from the continued operation of the subject parking lot. Access to the lot is well marked. The access driveway includes separate entry and exit lanes thereby minimizing the risk of traffic conflicts upon entering and exiting the lot.

19. The applicant indicated further that the present character and future development of the neighborhood will not be adversely affected by continued use of the site as a parking lot. The lot has been a feature of the neighborhood since, at least, 1946 and serves to alleviate parking congestion caused by the theatre use on neighborhood streets.

20. The applicant stated that the parking lot is located near a strip of commercial stores most of which do not provide off-street parking. The Board finds that the parking lot is reasonably necessary and convenient to other uses in the vicinity, and it is likely that continued use of the lot will result in a reduction in overspill parking on neighborhood streets.

21. The Board finds further that there is no charge for the use of the parking spaces which serve patrons of the MacArthur Theatre as well as residents who park there overnight.

22. The Office of Planning (OP), by report dated July 12, 1989 and through testimony at the hearing recommended that the application be approved with conditions. OP noted the location of the subject property and indicated that the predominant use in the area is residential, with the exception of the commercial uses on MacArthur Boulevard. OP notes further that the parking lot, which has been on the subject site for many years, meets the requirements of the Zoning Regulations. It is the opinion of OP that the lot is convenient and reasonably necessary to prevent objectionable traffic conditions in the area. OP therefore recommends that the subject application be approved with the same conditions that were contained in BZA Order No. 14001. These conditions are:

a. Approval shall be for a period of four years.

b. The layout of parking spaces on the lot shall be in accordance with the parking scheme marked as Exhibit No. 18A of the record in Case No. 14001.

c. The paved parking area and the surrounding buffer area shall be maintained free of refuse and debris at all times.

d. There shall be provided an evergreen privet hedge along U Street except along the sides of the driveway entrance. Such hedge shall be designed and allowed to grow to a height of at least five feet.

e. All areas devoted to driveway, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

f. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

g. No vehicle or any part thereof shall be permitted to project over any lot of building line or on or over the public space.

h. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped.

i. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

j. 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.

k. 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.

The Board is in accord with the opinion of the Office of Planning.

23. Advisory Neighborhood Commission (ANC) 3D by report dated July 14, 1989, recommended approval of the application with the following conditions:

a. The owner shall submit a satisfactory plan which includes adequate contractual arrangements with an outside landscape and maintenance organization to keep the area in compliance with the Board's Order;

b. Renewal of the special exception shall be required on a yearly basis; and

c. The applicant shall post a $5,000 performance bond running to the benefit of the interested parties to allow these parties to maintain the lot when the applicant fails to perform.

24. The Board finds that the theatre company has entered into a contract with a landscaping company to maintain the property in a neat and orderly manner.

25. Because it takes several months to process BZA cases, the Board finds that granting the special exception for only one year would not give the applicant enough time to demonstrate compliance with the Order before having to file again.

26. The Board finds that the contractual arrangements made with the landscaping company are sufficient to ensure that the property will be properly maintained and that a performance bond is therefore unnecessary.

27. By memorandum dated May 8, 1989, the Department of Public Works (DPW) indicated that it has no objection to continuing the use of the lot for parking. DPW noted that, from site inspection, the subject lot is in good condition, well landscaped and screened from all adjacent residential properties.

28. Two neighbors submitted letters and testified in opposition to the application. The neighbor residing at 2000 - 48th Street, N.W., immediately to the east of the subject parking lot, indicated to the Board that the property has not been maintained in a neat and orderly fashion. He testified that the owner of the theatre failed to mow the lawn on the lot and in the buffer zone and that the manager failed to have refuse removed from the parking lot. The neighbor also testified that old mattresses, and an abandoned car remained on the lot for a period of time despite complaints to the theatre chain's offices by another neighbor. It was suggested that the Board should grant the requested relief only with the conditions included in the ANC report.

29. A resident at 4800 U Street also testified in opposition to the application. His testimony was similar to that of the previous neighbor. He noted that an abandoned car and trailer had been left on the lot for approximately 18 months and that the grass and landscaping had not been properly maintained in the past.

30. The applicant testified that the abandoned car and trailer were left on the subject lot by the previous lessee.

He indicated that the District moved the abandoned vehicle in July 1988 after numerous requests to District officials. The applicant also indicated that the trailer had been holding seats for another theatre and was moved promptly after notice from the neighbor.

31. The Board finds that the contract submitted by the applicant with Johnson's Landscaping Service and the new clean-up policy adopted by the theatre adequately address the concerns regarding maintenance of the lot.

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 establish a parking lot in an R-1-B 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 212 regulating parking lots.

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 and is contiguous to a C-2-A Zone District. The provisions of Chapter 23 have been met. The Board concludes further that the parking lot does not create dangerous or otherwise objectionable traffic conditions nor does it have an adverse effect on the present character or future development of the neighborhood. Further, the Board concludes that the parking lot is reasonably necessary and convenient to other uses in the vicinity. The Board concludes that the parking spaces shall serve residential uses as well as the short term parking needs of a public facility use in the neighborhood. The Board concludes that the application has been referred to the Department of Public Works for review and report.

The Board is of the opinion that granting the subject application is in harmony with the general purpose and intent of the Zoning Regulations and Maps. Further, it is the view of the Board that to grant the application will not adversely affect the use of neighboring property in accordance with the Regulations and Maps.

The Board 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 TWO YEARS.

2. The layout of parking spaces shall be in accordance with the plat marked as Exhibit No. 25 of the record.

3. The paved parking area, the adjacent buffer area, and the public space along U Street shall be kept free of refuse and debris at all times and shall be maintained in accordance with the landscaping plan marked as Exhibit No. 27 of the record.

4. The evergreen privet hedge along U Street, except along the driveway, shall be allowed to grow to a height of at least five feet.

5. The parking lot shall comply with all the provisions of Section 2303 of the Zoning Regulations.

VOTE: 3-0 (William F. McIntosh and Carrie L. Thornhill to grant; John G. Parons to grant by proxy; Paula L. Jewell and Charles R. Norris 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: FEB 2 1990

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.

15064order/BHS15

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPLICATION No. 15064

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 2 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Robert Jones
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EDWARD L. CURRY
Executive Director

DATE: FEB 2 1990