

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15189 of 12th and Newton Associates Limited Partnership, pursuant to 11 DCMR 3108.1, for a special exception under Section 215 to establish an accessory parking lot of 20 spaces to serve the use at 3609 - 12th Street, N.E., said lot in an R-1-B District at premises 1204 Newton Street, N.E., (Square 3927, Lot 10).

HEARING DATE: September 13, 1989
DECISION DATE: January 3, 1990

FINDINGS OF FACT:

1. The subject site is located on the north side of Newton Street between 12th and 13th Street, N.E. It is known as premises 1204 Newton Street, N.E. and it is located in an R-1-B District.

2. The subject lot contains 7,500 square feet of land area and is currently unimproved. The lot is rectangular in shape and has a 50-foot frontage along Newton Street.

3. The site abuts a single-family dwelling to the east and another single-family dwelling to the north. Abutting the property to the west is a People's Drug Store. This store is located in the adjoining C-2-A District. The area surrounding the site is characterized by single-family residential uses in the R-1-B District and a mixture of light commercial uses along 12th Street in the C-2-A District.

4. In the R-1-B District, the Zoning Regulations permit matter-of-right development of single-family residential uses for detached dwellings with a minimum lot area of 5,000 square feet, a minimum width of 50 feet, a maximum lot occupancy of 40 percent and a minimum height of three stories/40 feet.

5. The applicant proposes to establish an accessory parking lot with the adjoining People's Drug Store as the principal use. A special exception under Sections 215 and 3108.1 to establish an accessory parking lot elsewhere than on the same or part of a lot on which the main use is permitted, may be approved by the Board where in the judgment of the Board, the special exception will be 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 in accordance with the Zoning Regulations and Zone Maps. The conditions of Section 215 which must be met are as follows:

- 215.2 Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.
- 215.3 Accessory parking spaces shall be located in their entirety within two hundred feet (200') of the area to which they are accessory.
- 215.4 Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.
- 215.5 All provisions of chapter 23 of this title regulating parking lots shall be complied with, except that the Board may in an appropriate case under §2303.3 modify or waive the conditions specified in §2303.2 where compliance would serve no useful purpose.
- 215.6 It shall be economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:
 - (a) Strip zoning or shallow zoning depth;
 - (b) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;
 - (c) Unusual topography grades, shape, size, or dimensions of the lot;
 - (d) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or
 - (e) Traffic hazards caused by unusual street grades or other conditions.
- 215.7 Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining

or nearby property because of noise, traffic, or other objectionable conditions.

215.8 Before taking final action on an application for use as an accessory parking space, the Board shall have submitted the application to the D.C. Department of Public Works for review and report.

6. Chapter 23 of the Zoning Regulations provides that all parking lots shall conform to the following provisions:

- (a) All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials which form an all weather impervious surface, and which is a minimum of four inches (4") in thickness;
- (b) The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line;
- (c) 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 the use or structure is otherwise permitted in the district in which the parking lot is located;
- (d) No vehicular entrance or exit shall be within forty feet (40') of a street intersection as measured from the intersection of the curb lines extended; and
- (e) Any lighting used to illuminate a parking lot or its accessory buildings shall be arranged so that all direct rays of the lighting are confined to the surface of the parking lot;
- (f) The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

7. The proposed parking lot is to be located on an open lot and will not extend above the level of the adjacent finished grade.

8. The parking spaces would be located entirely within 200 feet of the People's Drug Store to which they are to be accessory. They would be contiguous to the drug store property.

9. The parking lot cannot be located on the same lot as the drug store because the store occupies approximately 90 percent of the lot.

10. The applicant's architect testified that the proposed parking spaces would not be located in such a way as to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. Nor is the store designed so as to become objectionable. He indicated that a brick wall measuring three feet six inches (3'6") tall will be placed on the east side of the lot. He further indicated that the height can be increased to four feet five inches (4'5") and extended to the rear of the lot. This would help muffle the noise from the cars and block their view from neighboring properties. The applicant's architect also testified that the parking lot will help to relieve traffic congestion in the area by removing the parked cars for People's Drug Store customers off of the street.

11. The application was referred to the Department of Public Works for review and a report was received.

12. The Board finds that the provisions of Chapter 23 regulating parking lots will be met by the proposal. According to the proposal, the lot will be properly paved and maintained; no vehicle or part thereof will project over the lot or building line; there will be no structures erected on the premises; the entrance/exit is not located within forty feet of the street intersection; all direct rays of lighting will be confined to the surface of the parking lot; refuse and debris will be removed from the parking lot on a daily basis and the lot will be landscaped.

13. The hours of operation for the parking lot would be the same as those of the drug store - 8:00 A.M. to 8:00 P.M. Monday through Saturday, 10:00 A.M. to 6:00 P.M. on Sunday. A security guard will patrol the lot. Trash and debris will be removed on a daily basis. The lot will be lit, and at closing a locked chain will be placed at the entrance to prevent use of the lot at night. Access to the parking lot would be from Newton Street through a new 15-foot wide curb cut.

14. The manager of the People's Drug Store testified that the lot would benefit the store which has about 5,000 customers per week. He testified that the area is very congested and people will not come to the store if they cannot park. The lot would take 20 cars off the street and eliminate the congestion.

15. The Office of Planning (OP) by report dated December 6, 1989, recommended approval of the application with conditions. OP noted that the subject site has been

vacant for over ten years and that the last use on the property was residential. OP further noted that the applicant proposed to screen the abutting properties to the north by planting three-foot six-inch high evergreen trees on a four-foot area along the rear property line of the subject lot. The parking lot would be screened to the east by a three-foot six-inch high brick wall. Access to the parking lot would be from Newton Street through a new 15-foot wide curb cut. The Office of Planning recommended that the application be approved subject to the following conditions:

- A. The proposed brick wall screening would be extended to the north (rear) of the subject property in order to provide adequate buffer and screening for the abutting property on that side of the proposed parking lot. Landscaping would also be provided inside the brick wall.
- B. The height of the brick wall screening would be four feet five inches instead of the proposed three feet six inches. The proposed height is too low and would not provide adequate screening and security for the residential properties abutting the proposed parking lot.
- C. The parking lot would be lighted in the evenings and lighting would be directed toward the parking lot to minimize any adverse impact on the adjacent properties.
- D. Landscaping would be maintained in a healthy growing condition and in an orderly appearance.
- E. The parking lot would be patrolled regularly and kept clean. The entrance to the parking lot would have gates that would be closed at night and secured with a chain.
- F. Measures would be taken to control storm water run off so that neighboring properties would not be adversely affected by that runoff.

16. Advisory Neighborhood Commission (ANC) 5A did not take an official position on the subject application.

17. The Department of Public Works (DPW), by memorandum dated September 20, 1989, stated that it has no objections to the applicant's proposal. DPW further stated that the proposed parking lot would aid in reducing the great demand on the local parking supply which has resulted from the commercial activities along 12th Street.

18. One neighbor, residing at 2430 Newton Street, testified in support of the application. He has a business across the street from People's at 3610 - 12th Street, N.E. He testified that the area is becoming a very vital business center which serves the needs of the Brookland residents. However, the shortage of off-street parking interferes with convenience and growth. The proposed parking lot would help to remedy that problem.

19. Six neighbors testified in opposition to the application and expressed the view that the parking lot will adversely affect the use of neighboring property. The neighbor residing at 1206 Newton Street, the lot next door to the subject site, testified to several matters. She indicated that the cars on the lot would be visible from her front porch and yard. She complained that there would be noise and fumes coming from the cars. The safety of children and elderly citizens in the area would be jeopardized as a result of traffic congestion caused by cars trying to enter or exit the lot from Newton Street. The lot is located near a very busy intersection at 12th and Newton Streets. Furthermore she maintained that the lot is unlikely to be well regulated and undesirables are likely to loiter on the property. Finally she expressed the view that the presence of a parking lot in the area would cause property values to fall.

20. An opposing neighbor, who resides at 1222 Newton Street, testified that he has a driveway located within 75 feet of the subject site. He stated that people exiting the lot will likely turn away from the business area where the traffic is congested and, because Newton Street is so narrow, they are likely to turn their cars around using his driveway. The added wear and tear on his driveway will require additional upkeep.

21. A resident of 1206 Newton Street testified that the parking congestion that the parking lot is intended to alleviate existed prior to there being a drug store on the corner. The store did not create the problem and the lot cannot relieve it. In his view, the parking problem can be solved by other means such as placing a light at the corner or installing parking meters. He further testified that the property owners removed the grass from the lot, replacing it with sod. Now the lot is muddy when it rains and water runs off onto the adjacent property.

22. A neighbor in opposition, residing at 1309 Newton Street, testified that Newton Street is presently residential. She objected to the infiltration of commercial uses onto the residential street.

23. Another opposing neighbor, residing at 1328 Newton Street, indicated that the subject lot is situated behind

his residence. He objects to the noise from the cars and the light that will shine through his windows from the cars' headlights.

24. Finally, a neighbor residing at 1267 Newton Street testified as a representative of the owners and the 41 tenants at that residence. He expressed a concern for the safety of the nearly two dozen children that live and play in that area.

25. Responding to the many concerns of the neighbors in opposition to the application, the applicant testified that the developer has the interests of the neighborhood in mind. In the applicant's view, the development on the corner has been positive for the Brookland area and the parking lot will add to it. He indicated that the owners are willing to cooperate with neighbors on any reasonable requests regarding higher walls, better lighting, landscaping, etc. There is presently landscaping planned to screen the lot from the streets.

26. Regarding storm water run-off, the applicant indicated that the water would be re-routed to the Newton Street storm sewer. The applicant testified that a vacant, uncared for lot with no lights is worse in terms of the potential for loitering than a controlled chained-off, well lit parking lot. He testified further that the lot will not add to the danger to children because the number of cars coming from the lot is small when compared to the number of cars in the 12th Street area just a little further down the street. Finally, he testified that the subject lot does not infringe upon the residentially designated section of the street.

27. The Board finds that presently, neighborhood children play football on the lot. Also, trucks use the lot to unload for the store.

28. Three letters and a petition with 41 signatures opposing the application were submitted into the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record the Board concludes that the applicant is seeking a special exception to establish an accessory parking lot of 22 spaces 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 provisions of Section 215 regulating Accessory Parking Spaces in the R-1 District must also be met.

The Board concludes that the applicant has failed to meet this burden of proof. The Board is of the opinion that the 4'5" wall proposed would adequately protect neighboring property owners from being able to see the cars in the lot and from having the headlights shine through their windows. Further, the Board believes that the parking lot may help to alleviate the parking problems in the area. However, in the Board's opinion the lot cannot be established without adversely affecting the use of nearby residential properties in terms of noise and exhaust fumes. Further, the Board is of the opinion that, with traffic conditions as they presently exist in the area of the subject site, the parking lot would contribute to the traffic congestion as cars attempt to turn into or out of the lot. This condition may also threaten the safety of children and elderly citizens who frequent the area.

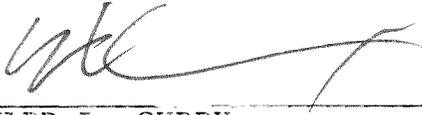
The Board concludes that although the proposed parking lot would be in harmony with the general purpose and intent of the Zoning Regulations and Maps in relieving parking problems, it would, however, tend to affect adversely the use of neighboring property.

The Board therefore disagrees with the recommendation of the Office of Planning and the report of the Department of Public Works. "Great weight" cannot be given to the ANC as no official position was taken. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (William F. McIntosh, Paula L. Jewell and Charles R. Norris to deny; 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 30 1990

UNDER 11 DCMF 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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15189

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that copies of orders dated JUL 30 1990 have been mailed postaged prepaid denying reconsideration and denying a stay have been mail to each parties, who appeared and participated in the public hearing concerning this matter, and who is listed below:

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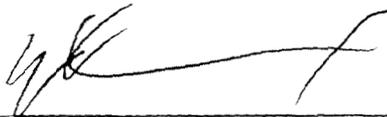
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EDWARD L. CURRY
Executive Director

DATE: JUL 30 1990