

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15875 of George Basiliko, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from the off-street parking requirements (Subsection 2101.1) or, in the alternative, a special exception under Section 2108 to reduce the number of parking spaces required for nonresidential uses to allow a public hall - 300 seats on the first floor in a C-M-2 District at premises 1350 Okie Street, N.E. (Square 4038, Parcel 142/103).

HEARING DATE: December 15, 1993
DECISION DATE: February 2, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the north side of Okie Street, between Kendall and Fenwick Streets N.E. It is known as 1350 Okie Street, N.E., and it is zoned C-M-2.

2. The site is currently improved with a three-story warehouse and a loading dock.

3. The property is surrounded by industrial and warehouse uses.

4. The owner of the property, George Basiliko, is currently leasing it to Alton Gayle. For purposes of this order, Mr. Gayle will be referred to as the applicant.

5. The applicant proposes to establish a night club at the site. He applied for an occupancy permit for a public hall with a maximum capacity of 300 persons. The certificate of occupancy was denied because of the inability of the applicant to provide 30 parking spaces on the site as required by 11 DCMR 2101.1 which provides that one parking space shall be provided for every 10 persons.

6. The applicant comes to the Board seeking a special exception pursuant to Section 2108 to relieve him of the obligation to provide 15 spaces. He is also seeking a variance from Subsection 2101.1 to further reduce the number of required spaces by 15.

7. Five persons testified at the hearing. The applicant, the applicant's partner, and an Advisory Neighborhood Commission (ANC) 5B Commissioner, testified in support of the application.

The Chairperson of ANC 5B, and the owner of property next to the site, testified in opposition to the application.

8. With regard to the special exception relief, the relevant provisions of Section 2108 provide as follows:

2108 REDUCTION OF PARKING SPACES: AUTHORITY OF THE BOARD

2108.1 The Board of Zoning Adjustment is hereby authorized to reduce the amount of parking spaces required for nonresidential uses by Section 2101.1 pursuant to the provisions of this section.

2108.2 The amount of required parking spaces shall not be reduced by more than twenty-five percent (25%); Provided, that for a use which is in the category of "All Other Uses" in the table in Section 2101.1, the amount of required parking spaces shall not be reduced by more than fifty percent (50%).

2108.3 The Board shall give consideration to the following:

- a. The nature and location of the structure;
- b. The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;
- c. The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood;
- d. The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use; and
- e. The proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works.

Section 3108, which authorizes the Board to grant special exception relief provides that a special exception may be granted where granting the relief will not tend to affect adversely the use

of neighboring property, and where it would be in harmony with the general intent, purpose and integrity of the zone plan.

9. The applicant originally requested a special exception for a 50 percent reduction of parking spaces under Subsection 2108.2 based on the premise that the use falls within the category of "All Other Uses" in the table in Subsection 2101.1. The Board determined, however, that the proposed use is a "dance hall", an enumerated category in Subsection 2101.1. Therefore, under Subsection 2108.2, the Board is only authorized to reduce the number of required parking spaces by 25 percent - 8 spaces. (A variance will be needed to relieve the applicant of the remaining 22 spaces).

10. Nature and Location of the Structure:

The applicant stated that the subject property is a three-story block and concrete building, the first floor of which contains 12,000 gross square feet of space.

The Office of Planning (OP), by memorandum dated January 18, 1994, stated that the property is located in a C-M-2 District which permits medium bulk commercial and light manufacturing uses to a maximum floor area ratio (FAR) of 4.0 and a maximum height limit of 60 feet, with new residential uses prohibited.

The applicant stated that the structure is surrounded by warehouses.

A supporting witness testified about the uses in the area of the site. He stated that there is a school yard that is currently the headquarters for a private construction company. The property is used as a storage facility for the construction equipment and other items. The company does not maintain the rear of the property that abuts Okie Street. Also near the subject site, there are six trailers that are used as temporary emergency shelters during cold weather.

Behind the site, there is a halfway house. At the rear of this facility there is a small lot that is used for parking. This space is inadequate for parking and the facility also uses 12 spaces on a lot owned by the Hecht Co. located across the street on New York Avenue.

The supporting witness testified that there are other uses and businesses nearby as well. There is an auto repair shop which the witness believes is an illegal usage. There is a taxi cab repair shop, an automotive garage, Louie's Carryout, Greyhound maintenance division, and ProFish seafood distributors. The witness noted that

the Hecht Co. warehouse is on the corner of Fenwick and Okie Streets. There is also a tomato factory in this area but there are no residential areas facing Fenwick Street near Okie Street.

11. Maximum Numbers of Employees and Guests:

The applicant testified that the club will have a maximum capacity of 300 persons at any one time. He stated that most people go to clubs in couples, therefore he expects that between 50 and 150 cars will be used to bring the customers to the site.

12. Traffic Congestion:

The applicant stated that he does not expect traffic congestion to result from the use of his property. He stated that he plans to operate on Thursdays and Sundays from 9:00 p.m. to 2:00 a.m. and Fridays and Saturdays from 9:00 p.m. to 3:00 a.m.

The applicant's partner testified about the operating hours of other businesses in the area. He stated that Pro Fish opens around 2:00 a.m. to prepare the fish for delivery by drivers around 9:00 a.m. when other businesses open. The restaurant is open from 5:00 a.m. to 5:00 p.m. The main business is for breakfast and lunch therefore there is not much traffic after 3:00 p.m. The taxi cab company that fixes cars operates between approximately 7:00 a.m. and 6:00 p.m. The parking garage and lot across the street from the site is used by a church that parks its buses there. The buses are only removed on Sunday morning and the lot is monitored from 8:00 a.m. to 4:00 p.m.

The applicant stated that the area will not be adversely affected by traffic because the hours of operation of surrounding businesses do not coincide with the hours of his business. Further, he stated that the site is easily accessed from New York Avenue and there is no need to travel through residential neighborhoods to reach the property.

The supporting witness noted that there are New Jersey barriers at the end of Okie Street creating a dead end near Kendall Street. He testified that there is adequate room for cars to turn around at this end of Okie Street because it is wide enough for tractor trailers to make U-turns.

A witness in opposition to the application stated that this area is not wide enough for cars to make U-turns without congestion.

The Department of Public Works (DPW), by memorandum dated January 7, 1994, stated that Okie Street is a 60-foot right of way.

13. Parking availability off-site:

The applicant testified that he has entered into an agreement with the owner of Fenwick Automotive Storage Company to allow about 15 cars to park on the lot located about 1 1/2 blocks from the club at 1805 Fenwick Street, N.E. He stated that the owner of the subject building has recently purchased additional property near the intersection of Okie and Kendall Streets specifically to provide additional off-street parking for this use. Approximately 14 cars can be parked on this property. The applicant stated that he is also exploring the possibility of renting space on the church's parking lot.

The applicant testified that there is enough space on the street for curbside parking.

DPW noted that parking is allowed on both sides of Okie Street at all times and that up to 25 curb parking spaces will be available along Okie Street between Kendall and Fenwick Streets. DPW stated that to the extent that the night club patrons are willing to walk a half block or more from the site to their cars, there will be enough on-street parking to accommodate the project. Therefore, DPW has no objection to the application.

The opposing neighbor testified that the streets in the vicinity would accommodate on-street parking of about 15 cars.

14. Availability and Proximity of Public Transportation:

The applicant testified that there are no metrorail stations nearby. However, metrobus service is available on New York Avenue and West Virginia Avenue N.E. The applicant stated that while club patrons do not usually travel by bus, the service is available should they choose to use it.

15. Adverse Impact on Use of Neighboring Property:

The applicant stated that the closest residential uses are apartments located on Gallaudet Street. He maintains that having cars park off-site will not have an adverse effect on these residential uses or on the industrial uses nearby.

Mr. Diedrich, the opposing neighbor, testified that there are houses on Gallaudet Street that were burned out but are in the process of being refurbished. People will be moving back into them once they are complete.

Advisory Neighborhood Commission (ANC) 5B believes that the applicant's club will greatly increase the amount of vehicular and pedestrian traffic in the Ivy City residential area. The ANC representative stated that while the proposed site is accessible

from the New York Avenue corridor, it is highly unlikely that patrons traveling north or west would use this route.

16. Harmony with the Zone Plan:

The ANC 5B representative stated that to establish a night club at the site is extremely incompatible with the existing mixture of public and commercial facilities in this area. The ANC noted that the D.C. Community Correctional Center No. 4 is located at 1355-57 New York Avenue, N.E. This facility houses approximately 200 residents (inmates) and the director of the facility believes that the club would have an undersirable influence on the center's residents.

None of the parties submitted evidence related to the impact of off-site parking on the zone plan.

17. The Board is authorized to grant a variance where the owner is faced with a practical difficulty arising out of some unique or extraordinary condition of the property, where the granting the relief will not be of substantial detriment to the public good and where it will not impair the intent, purpose and integrity of the zone plan.

18. Uniqueness/Extraordinary Conditions and Practical Difficulty:

The applicant testified that the structure on the subject lot occupies 100 percent of the lot. Therefore the required parking spaces cannot be provided. In testimony at the hearing, the applicant and other witnesses noted that most other lots in the area have space to park vehicles.

19. Detriment to the Public Good:

The applicant maintains that the inability to provide parking on site will not be harmful to the public good. He stated that there is plenty of on-street parking because most of the nearby properties are not used during the club's operating hours. He also stated that those near the facility will not be disturbed because they are not operating late at night. Finally, the applicant maintains that his patrons will be safe walking between the Fenwick Street lot and the club. He pointed out that the lot is only 1 1/2 blocks away.

The supporting witness testified that the applicant's business will help the neighborhood at night when the area is quiet. He testified that patrons walking between the club and the lot on Fenwick Street will be safe because there is activity at the Hecht Co. Warehouse facility and Fenwick Street is lit.

The ANC 5B representative raised some concerns about the safety of patrons who have to walk between the club and the parking lot. If the applicant is relieved of his obligation to provide parking at the site, and parking is provided at 1805 Fenwick Street, the safety of patrons will be jeopardized because the area is high in crime and infested with drugs and prostitution. The ANC maintains that the lighting along this path is insufficient. The ANC representative stated that these conditions of blight and poor lighting would make it difficult for the police to provide constant surveillance.

Addressing some of the concerns raised by the ANC, the applicant's supporting witness testified that the owner of 1805 Fenwick Street has verbally agreed with the applicant to provide more exterior flood lighting to help secure the area. He has also agreed to mount a video camera at his property to record traffic on the street. The witness also testified that having the club will benefit the area by bringing people to the area which is deserted at night.

The ANC chairman conceded that more lighting may make it safer, however she stated that she still opposes the application.

Testifying in opposition to the application, the adjacent property owner stated that the proposed use will lower the value of his property because it will attract young people and the problems and bad behavior associated with them.

With regard to parking at the Fenwick Street property, he stated that the patrons would have to park at the rear of the lot because trailers are on the front of the lot.

20. In the report submitted to the Board, the Office of Planning (OP) expressed the opinion that the applicant has not met the burden of proof relative to the zoning relief sought in this application. OP stated that the applicant is requesting parking relief for 87 percent of the on-site spaces. The Board can only grant relief for 50 percent. In addition, the Department of Corrections has verbally expressed to the Office of Planning its objection to the proposed facility because of its close proximity to and potential negative impact on the 252-bed correctional treatment facility abutting the rear of the subject site. Based on the above analysis, the Office of Planning recommends denial of this application.

21. By report dated September 1, 1993, the Metropolitan Police Department commented on the application. The department stated that the property is located in the Fifth District and is patrolled by Scout Car 147.

The department stated that based on its review of the application, it does not appear that the change proposed will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department stated that it does not oppose the application.

22. By memorandum dated October 21, 1993, the D.C. Fire Department indicated that it has reviewed the application and that it has no objection to the request.

23. At the end of the public hearing on the application, the Board left the record open to allow the applicant to submit the following: a) a statement addressing the variance test regarding the off-street parking with the inclusion of a site plan showing all improvements on the lot and the identification of legal parking spaces that may be located on-site; b) a written agreement between the applicant and Advisory Neighborhood Commissioner Jeffrey Desmukes, of Single Member District 5B-09 regarding lighting and safety on Okie Street; c) lighting of the public right-of-way from the parking lot at 1805 Fenwick Street to the subject site; d) agreement with the owner of the 1805 Fenwick Street parking lot regarding the lot's operation during the applicant's use of it (i.e. use of the gate, attendant, security, lighting, signage, etc.), and; d) a new letter in support of the application from Councilmember Harry Thomas. The applicant's submission was to be filed by January 19, 1994. Responses and proposed findings were due by January 26, 1994.

At the public meeting of February 2, 1994, staff informed the Board that none of the requested documents were submitted by the applicant.

CONTESTED ISSUES:

1. Whether there is adequate space to make U-turns at the end of Okie Street near Kendall Street.

2. Whether the absence of parking on the subject lot will increase the amount of vehicular and pedestrian traffic in the Ivy City residential area.

3. Whether the proposed use of the site will have an impact on the correctional facility located behind the site.

4. Whether there is adequate lighting or other devices to ensure the security of patrons who park on the Fenwick Street lot and walk between the parking lot and the night club.

5. Whether the applicant's patrons will be able to park toward the front of the lot on Fenwick Street.

6. Whether the proposed night club use will lower the property value of the property adjacent to the site.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. There is adequate space at the end of Okie Street for cars to make U-turns.

2. It is likely that vehicular and pedestrian traffic will increase in the Ivy City residential neighborhood because approximately 150 cars are anticipated by the applicant and only about 25 cars can park on Okie Street.

3. Because the night club is a matter of right use, the impact of the use on the correctional facility or on the value of adjacent property is not proper for consideration by this Board. Therefore the Board makes no findings with regard to these issues.

4. The Board is without sufficient substantive evidence to determine that adequate measures will be taken to secure the safety of patrons using the parking lot.

5. The Board is without sufficient evidence to determine the location of space for parking on the Fenwick Street lot.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing evidence of record the Board concludes that the applicant is seeking a special exception to reduce the number of required parking spaces by 25 percent for the operation of a night club in a C-M-2 District. The granting of such a special exception requires a showing through substantial evidence that the application can be granted as being in harmony with the intent, purpose and integrity of the zone plan and that it will not affect adversely the use of neighboring property. The applicant must also meet the provisions of Section 2108 governing the reduction of parking spaces.

The Board concludes that the applicant has failed to meet the burden of proof. The Board concludes that the applicant failed to demonstrate that granting the relief requested will not affect adversely the use of neighboring property.

The Board concludes that the applicant is also seeking an area variance to reduce the number of parking spaces by 75 percent for the operation of a night club. The granting of such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional

condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

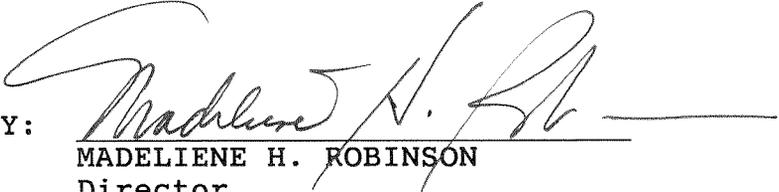
The Board concludes that the applicant has not met this burden of proof. The Board concludes that the applicant has demonstrated a practical difficulty arising from an exceptional condition of the property in that the lot is occupied almost entirely by the subject structure and no parking can be provided on the site. However, the Board concludes that the applicant has failed to submit substantial evidence to demonstrate that the measures to be taken will make patrons reasonably safe in the area if they must park away from the site. Because of the lack of evidence on this issue, the Board concludes that the applicant has failed to demonstrate that the variance application can be granted without substantial detriment to the public good.

In light of the foregoing, the Board **ORDERS** that the special exception and variance are hereby **DENIED**.

VOTE: 5-0 (Maybelle Taylor Bennett, George Evans, Craig Ellis and Angel F. Clarens to deny; Laura M. Richards to deny by proxy).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER:

AUG 2 1994

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."

15875Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15875

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 2 1994 a copy of the order entered on that date in this matter was 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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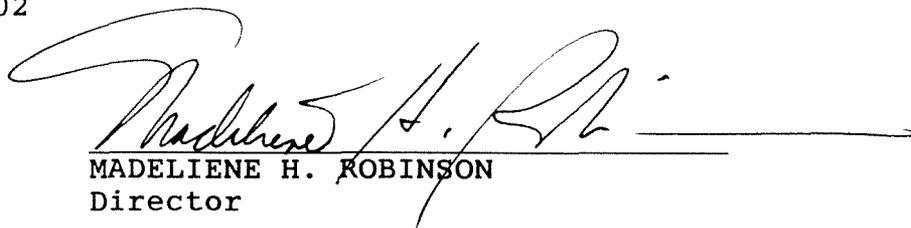
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MADELIENE H. ROBINSON
Director

DATE: AUG 2 1994

15875Att/bhs