

BEFORE THE BOARD OF ZONING ADJUSTMENT, D. C.

Rehearing of Application No. 9700, of Joseph Gottlieb, et al on the sole issue of whether the use of the rear access to the parking area at 4243 Wisconsin Avenue, N.W., should be limited or restricted and, if so, in what manner it should be limited or restricted. The affected premise is 4243 Wisconsin Avenue, N.W., Lot 8, Square 1786.

HEARING DATE: September 18, 1972

EXECUTIVE SESSION: Relief Granted from the Bench at Public Hearing

FINDINGS OF FACT:

1. In B.Z.A. Appeal No. 8179-82, this Board granted a variance from the provisions of the R-2 District to permit accessory off-street parking on residential portions of Lots 2, 3, 813, 4 and 5, Square 1786.

2. The Order in B.Z.A. Appeal No. 8179-82 was subject to the following condition:

"(a) There shall be no automobile access from the rear; however, a rear opening may be provided to be used only by trucks who cannot get access from Wisconsin Avenue due to their size. Appellant shall provide a locked gate when the rear entrance is not being used."

3. Since the opening of the office building, the tenants have experienced difficulty in using the Wisconsin Avenue entrance. This was established in the statement of Mr. J. A. Weinberg and the photographs submitted as Exhibits No. 15 and 21c. It is for this reason that applicants request amendment to permit access to the lot by all vehicles using the lot previously established.

4. There is an abundance of curb parking through the area and particularly evening parking on Wisconsin Avenue as described by Burr N. Johnson, Jr. a realtor.

5. Part of the existing and approved parking spaces are rented out and the remaining are maintained for the convenience of the customers and guests of the tenants. The applicants state that due to the condition previously imposed by the Board, prohibiting the general use of the access to 40th Street, they have not been successful in renting many of the spaces.

6. Applicants propose to continue the use of the parking area as in the past but with general use of the rear accessway.

7. After the original hearing on this case on July 17, 1968, this Board in executive session on August 14, 1968, denied the requested relief. Subsequent to the denial, applicants submitted additional information consisting of a plat of the property showing the subject property and its zoning boundary line. This plat indicated that the access to the parking lot is over commercially zoned (C-3-A) land. Applicant also submitted the statement of Mr. J. A. Weinberg, who described the difficulties in policing the property and those encountered by restricting the access from 40th Street.

8. This case was remanded to this Board by Order of the D.C. Court of Appeals in Case No. 8225 entered April 2, 1974, and pursuant thereto this Board conducted further hearings on September 18, 1974.

9. The petitioner, C. Coleman Bird, in D.C. Court of Appeals Case No. 8225 appeared together with applicant in this appeal before the Board on September 18, 1974, and agreed as follows:

- (a) The applicant shall cause the rear exit to the parking lot to be blocked by a locked chain from 6:00 P.M. to 7:00 A.M. each week day, and on weekends, from 6:00 P.M. Friday to 7:00 A.M. the next Monday.
- (b) Any amendment to this Order shall require the filing of a new application; and
- (c) That upon the Board of Zoning Adjustment's accepting this stipulation of agreement as set forth above, the petitioner, C. Coleman Bird and the applicant Joseph Gottlieb agree that this represents a complete and final settlement of this Appeal No. 9700 and also District of Columbia Court of Appeals Case No. 8225.

FINAL DATE OF ORDER:

CONCLUSIONS OF LAW AND OPINION:

This Board is of the opinion that applicants have shown that the granting of the requested relief is in accord with the requirement of Section 3102.4 (3101.411) in that the parking surface and garage is located within 200 feet of the principal use to be served, that all provisions of Article 75 have been complied with and that due to traffic hazards that exist for the office tenants and occupants entering or leaving, exclusively from Wisconsin Avenue.

The Board is further of the opinion that the granting of the relief sought will have no adverse affect on the surrounding neighborhood and will be in accordance with the Zoning Maps and Zoning Regulations.

ORDERED:

THAT THE ABOVE APPLICATION BE, GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:

- (a) The applicant shall cause the rear exit to the parking lot to be blocked by a locked chain from 6:00 P.M. to 7:00 A.M. each week day, and on weekends, from 6:00 P.M. Friday to 7:00 A.M. the next Monday.
- (b) Any amendment to this Order shall require the filing of a new application.

VOTE:

3-0 (Lilla Burt Cummings, Esq., & Mr. Klauber not voting, did not hear the case.)

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

ATTESTED BY:



JAMES E. MILLER
Secretary to the Board

OCT 01 1974
OCT 01 1974

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D. C.

Amendment to Order No. 9700 of an April 20, 1971 requiring the applicant to install automatic punch card control gates at the rear entrance at rear of 4234 Wisconsin Avenue, N. W., Lot 8, Square 1786.

EXECUTIVE SESSION: January 23, 1973

ORDERED:

That condition (B) of the Board's order written pursuant to the decision by the Board on April 20, 1971 which requires applicant to install automatic punch card control gates be deleted and substituted by the condition that "no thoroughfare signs" be posted at all entrances and exits of parking lot.

VOTE: 3-1-0 (Mr. McIntosh dissenting, Mr. Mackey not present.)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED By:



JAMES E. MILLER
Secretary for the Board

FINAL DATE OF ORDER: **DEC 20 1973**

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - July 17, 1968

Appeal No. 9700 Joseph Gottlieb, et al, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried, the following Order of the Board was entered at the meeting of October 29, 1968.

EFFECTIVE DATE OF AMENDMENT - Oct. 16, 1970

ORDERED:

That the appeal for permission to amend Condition (a) of Board of Zoning Adjustment Order No. 8179-80-81-82, dated July 7, 1965, to permit access to rear of premises 4234 Wisconsin Avenue, NW., Lot 8, Square 1786, be conditionally granted.

FINDINGS OF FACT:

1. In BZA Appeal No. 8179-82, this Board granted a variance from the provisions of the R-2 District to permit accessory off-street parking on residential portions of Lots 2,3,813,4, and 5, Square 1786.

2. The Order in BZA Appeal No. 8179-82 was subject to the following condition:

"[a] There shall be no automobile access from the rear; however, a rear opening may be provided to be used only by trucks who cannot get access from Wisconsin Avenue due to their size. Appellant shall provide a locked gate when the rear entrance is not being used."

3. Since the opening of the office building, the tenants have experienced difficulty in using the Wisconsin Avenue entrance. This was established in the statement of Mr. J.A. Weinberg and the photographs submitted as Exhibits No. 15 and 21c. It is for this reason that applicants request amendment to permit access to the lot by all vehicles using the lot previously established.

4. The statement of Burr N. Johnson, Jr. and Company, realtor, supports the fact that there is an abundance of curb parking through the area and particularly evening parking on Wisconsin Avenue.

5. Part of the existing and approved parking spaces are rented out and the remaining are maintained for the convenience of the customers and guests of the tenants. The applicants state that due to the condition previously imposed by the Board, prohibiting the general use of the access to 40th Street, they have not been successful in renting many of the spaces.

6. Applicants propose to continue the use of the parking area as in the past but with general use of the rear accessway.

7. The Board in other appeals has permitted access to commercial building by way of streets adjoining residential development.

8. After the original hearing on this case on July 17, 1968, this Board in executive session on August 14, 1968, denied the requested relief. Subsequent to the denial, applicants submitted additional information consisting of a plat of the property showing the subject property and its zoning boundary line. This plat indicated that the access to the parking lot is over commercially zoned (C-3-A) land. Applicant also submitted the statement of Mr. J.A. Weinberg, who described the difficulties in policing the property and those encountered by restricting the access from 40th Street.

OPINION:

This Board is of the opinion that the applicants have shown that Condition (a) of the Order in BZA Appeals No. 8179-82 works a hardship on the operations of the office building and parking lot use previously approved by the Board. The Board is further of the opinion that the granting of the relief sought will have no adverse affect on the surrounding neighborhood and will be in accordance with the Zoning Maps and Zoning Regulations.

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This Order shall be subject to the following condition:

[a] That the subject parking area shall be limited to use by tenants of the building, their customers and guests and may be rented out in accordance with the past and proposed use of the area.

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

ATTESTED:

By: 

PATRICK E. KELLY
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - April 14, 1971

Appeal 9700 Joseph Gottlieb, et al., appellant

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee

On motion duly made, seconded and unanimously carried, the following amendment to the Order in this appeal was entered by the Board at its meeting of April 20, 1971.

ORDERED:

That the appeal for permission to amend condition (a) of the BZA Order No. 8179-80-81-82, dated July 7, 1965, to permit access to rear of premises 4234 Wisconsin Avenue, N.W., lot 8, Square 1786 is amended as follows:

(b) The appellant shall install automatic punch card control gates at the rear entrance.

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

ATTESTED:

By: _____
GEORGE A. GROGAN
Secretary of the Board

8/16/71

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - December 8, 1971

Appeal No. 9700 Joseph Gottlieb, et al, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried, the following Order of the Board was entered at the meeting of April 12, 1972.

ORDERED:

That the Board of Zoning Adjustment reaffirmed its order of April 14, 1971 requiring the appellant to install automatic punch card control gates at the rear entrance, at rear of 4234 Wisconsin Avenue, NW., Lot 8, Square 1786.

FINDINGS OF FACT:

1. On facts of previous BZA Orders number 8179-80-81-82 and BZA Order No. 9700 dated July 16, 1970 and April 20, 1971 are incorporated by reference.
2. On December 8, 1971 appellant appeared at the public hearing for request for rescission or reconsideration of the Board's amendment to appeal No. 9700 which was sent to applicant on August 23, 1971.
3. The appellant alleges that the installation of an automatic punch card control gate at the rear entrance is completely unworthable.
4. The appellant alleged that the control gate amendment deprives the owners of access rights previously and specifically approved by the Board in Appeals No. 8179-82 and continued by the order of the Board in Appeal No. 9700.
5. The file contains many letters of objections to this appeal and there was also objections registered at the public hearing to the granting of appellant's request for rescission or reconsideration.

6. The objections were essentially made on creating a traffic hazard for the many pedestrians in the neighborhood. The objectors believe that the automatic card control gate will alleviate this condition.

OPINION:

It is a well established principal that the Board, in cases dealing with parking lots, has continuing jurisdiction over said parking lots as in the case before us, the Board has previously granted relief to appellant. The relief granted was issued in the hope that it would not be detrimental to the neighborhood or create an undue traffic congested situation. Upon the finding that the previous relief granted to appellant did not alleviate the traffic congestion, the Board feels that its order of installation of automatic punch card control gates at the rear entrance should be sustained and the relief sought by appellant should be denied.

It is also the opinion of the Board that appellant's position that the automatic punch card is unworkable, is without merit because appellant has not tried to comply with its previous order. It is further the position of the Board that appellant's argument that the order dated October 16, 1970 was a final order is without merit in that the Board retained jurisdiction then and will continue to retain jurisdiction in appeals of this type.

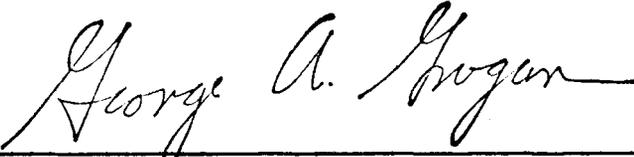
The Board is cognizant that its rules of procedure at the time of the hearing on this matter did not specifically provide for cross-examination but that there was no specific request for an opportunity to cross-examine made or denied. If any person participating in this proceeding believes that he has been prejudiced by the lack of an opportunity to cross-examine, the Board is disposed to entertain a motion to re-open this case to permit cross-examination. Such a motion should be made within fifteen (15) days from the date of this final decision. The motion should identify the witnesses to be cross-examined, as

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well as that portion of his testimony to be subjected to cross-examination. Specific reference to the transcript of proceedings will be helpful. Copies of the transcript are available for inspection by the public in the Offices of the Zoning Commission, District Building, Room 11-A, 14th and E Streets, NW., between 8:15 a.m. and 4:45 p.m. The motion should be forwarded to the Board in care of this address. The motion should also be served upon all other persons appearing in proceeding. Objection to the motion should be filed and served on all other persons to the proceeding no later than five (5) calendar days after receipt of the motion.

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

ATTESTED:

By: 

GEORGE A. GROGAN
Secretary of the Board