

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18494 of Lauriol Properties, LLC Cactus Cantina, pursuant to 11 DCMR § 3104.1, for a special exception under § 214 to allow the continued use of an accessory parking lot in the R-5-B District at premises 1780-1782 T Street, N.W. (Square 152, portion of Lot 862).

HEARING DATE: January 29, 2013
DECISION DATE: March 26, 2013

DECISION AND ORDER

This self-certified application was submitted on October 26, 2012 by Lauriol Properties LLC Cactus Cantina (“Applicant”), the owner of the property that is the subject of the application, seeking a special exception under § 214 of the Zoning Regulations to continue an accessory parking lot use in the R-5-B Zone District at 1780-1782 T Street, N.W. (Square 152, portion of Lot 862) to provide parking for the Applicant’s restaurant, located on an abutting lot. Following a public hearing, the Board of Zoning Adjustment (“Board”) voted to approve the application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated November 2, 2012, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 2; Advisory Neighborhood Commission (“ANC”) 2B, the ANC in which the subject property is located; and Single Member District/ANC 2B08. Pursuant to 11 DCMR § 3112.14, on November 15, 2012 the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on November 16, 2012 (59 DCR 13041).

Party Status. The Applicant and ANC 2B were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application submitted by Joseph Brinker, a resident of the 1800 block of 18th Street, across the street from the Applicant’s restaurant.

Applicant’s Case. The Applicant provided evidence and testimony from Raul Sanchez, co-owner of the Applicant’s restaurant, who described operations of the accessory parking lot as

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previously approved as well as the plans for modifications to its valet parking program intended to minimize traffic impacts associated with the restaurant. The Applicant indicated its agreement with conditions proposed in this proceeding by OP.

OP Report. By memorandum dated January 29, 2013, OP recommended approval of the application, subject to conditions similar to those previously adopted by the Board for the accessory parking lot use. (Exhibit 33.)

DDOT Report. By memorandum dated January 22, 2013, DDOT indicated no objection to the application. According to DDOT, the continued use of the parking lot would have negligible impacts on the travel conditions of the District's transportation network, noting that "the area has a high demand for on-street parking spaces and the continued use of the parking lot is not expected to increase on-street parking demand in the area." (Exhibit 34.)

ANC Report. By letter submitted January 16, 2013, ANC 2B indicated that, at a regular public meeting, held January 9, 2013 with a quorum present, the ANC voted 8-0 to approve a resolution in support of the application, subject to conditions pertaining to DDOT's approval of a permit for a new valet staging area proposed by the Applicant on 18th Street "to alleviate the hazards and nuisance issues that derive from the existing lot and valet system," and to the installation of new landscaping by the Applicant "in the garden outside the wall separating the parking lot from T Street, to mitigate views of the lot from T Street and surrounding residences." According to ANC 2B, the Applicant's parking lot "benefits the neighborhood by relieving parking pressure on neighborhood streets," but its location, near the intersection of 18th and T Streets, also adversely affects the neighborhood when vehicles of restaurant patrons form a queue that "bottlenecks traffic at the intersection – causing hazards to pedestrians, bicyclists, and other drivers" on both streets" as well as creating "noise nuisance to surrounding properties." The ANC noted two changes since the parking lot was originally approved in 1998: (i) DDOT had constructed a new streetscape along 18th Street that "substantially narrowed the opening to T Street to 1 car width and eliminated substantial curb-side idling space near the corner," thereby "exacerbate[ing] the problems associated with the queuing of patrons' cars"; and (ii) new rules had been implemented for any valet parking that utilizes public space, inducing the Applicant to apply for a valet parking permit to stage all drop-offs using three parking spaces on 18th Street, directly in front of the restaurant. (Exhibit 31.)

Persons in support. The Board received letters in support of the application from persons living in the vicinity of the subject property. The letters stated generally that the Applicant's current use of the subject property as an accessory parking lot did not adversely impact the surrounding neighborhood and reduced the demand for on-street parking. The letters also commented favorably on the Applicant's planned valet parking station on 18th Street, which was expected to eliminate the vehicular stacking that presently occurs near the intersection of 18th and T Streets. (Exhibit Nos. 26-29.)

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Party in opposition. The party in opposition asserted that the Applicant's current parking operations, including the valet service, contributed to traffic congestion especially on 18th Street in the vicinity of the restaurant. By letter dated March 19, 2013, the party in opposition acknowledged that the Applicant's revised valet parking plan "may solve the significant current congestion and public safety problem" but recommended approval of the requested special exception conditioned on "a review of the success of the proposed valet parking plan six months to one year after the approval ... to allow the community to evaluate if the plan did in fact solve the problem it is meant to address." (Exhibit 41.)

Persons in opposition. The Board received letters from persons living in the vicinity of the subject property who contended that the Applicant had not provided sufficient landscape screening to block the view of the parking lot from nearby residences and that the restaurant's current parking operations cause noise and traffic congestion, especially at night. The residents did not oppose the continued use of the parking lot if their concerns were adequately addressed. (Exhibit No. 24.)

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 1780-1782 T Street, N.W., on the south side of the street near its intersection with 18th Street (Square 152, portion of Lot 862).¹ Lot 862 is rectangular, approximately 49 feet wide and 100 feet deep, with an area of 4,893 square feet. A public alley, 10 feet wide, abuts the property along its rear lot line.
2. Approximately 3,262 square feet of Lot 862 is used to provide off-street parking. The remaining (eastern) portion of the lot is improved with a row dwelling and accessory building at 1778 T Street, N.W.; that property is also owned by the Applicant. The lot abutting the subject property to the west is the site of the Applicant's restaurant.
3. The subject property is improved with a surface parking lot currently used to provide accessory parking for the restaurant. The subject property contains space to park 20 vehicles, while the remainder of the Applicant's property provides some additional parking spaces at the rear of the restaurant building. The entrance to the parking lot is approximately 63.5 feet east of the intersection of 18th and T Streets.
4. The parking lot is paved and striped, and is partially enclosed by a masonry wall and wooden fence. Lighting fixtures have been mounted on the row building immediately to the east of the parking lot, and lights have been positioned so as to confine all direct rays to the surface of the parking lot.

¹ Lot 862 is also known as Lots 60-62; the subject property comprises record lots 60 and 61.

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5. The Applicant's restaurant, Lauriol Plaza, is located immediately to the west of the subject property at the corner of 18th and T Streets, N.W. The restaurant site lacks space to provide any off-street parking beyond the 10 parking spaces currently provided behind the restaurant building. Construction of below-grade parking there might not be possible, given the size and configuration of the lot, and would be economically impracticable in any event.
6. Properties fronting on 18th Street in the vicinity of the subject property, including the restaurant site, are zoned C-2-A, while areas to the east and west, including the subject property, are zoned R-5-B. Properties on the west side of 18th Street are also located within the Dupont Circle overlay zone.
7. Properties in the vicinity of the subject property include numerous row dwellings and some multifamily dwellings along T Street. Properties along 18th Street contain a variety of commercial uses as well as some residences.

The Applicant's Project

8. Use of the subject property as an accessory parking lot was originally approved, subject to 11 conditions, in Application No. 16301.² The Applicant proposed to continue the accessory parking lot use as previously approved.
9. The Applicant proposed an updated landscaping plan reflecting its commitment to plant three Redspire Pear trees to replace trees that had been removed due to vehicular and storm damage. (Exhibit 42, Tab B.) The new trees are intended to screen the view of the accessory parking lot from residences on the north side of T Street.
10. The Applicant also proposed to modify its valet parking program in connection with use of the accessory parking lot. The new program will utilize five valet parking spaces located on

² Those conditions were:

1. Approval shall be for a period of fifteen (15) years.
2. Twenty (20) parking spaces shall be provided on the lot as identified on Exhibit No. 30 of the record.
3. The lot shall be attendant-controlled during its hours of operation.
4. The lot shall be secured during all hours that it is not in operation.
5. Landscaping shall be maintained in a healthy growing condition and have a neat and orderly appearance.
6. The lot shall be cleaned daily and trash pick-up shall occur five times per week.
7. Any lighting of the parking lot shall be arranged so that all direct rays are confined to the surface of the lot.
8. All areas devoted to driveways, access lanes, and parking areas shall be maintained with an all-weather impervious surface paving material.
9. No vehicle or any part thereof shall be permitted to project over any lot or building line or on the public space.
10. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
11. No other uses 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.

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18th Street in front of the restaurant. The Applicant received approval for the five valet parking spaces from the District of Columbia Public Space Committee on February 28, 2013, provided that the Applicant obtains the necessary permit within six months.

11. Pursuant to the new valet operation, customers arriving at the Applicant's restaurant during dinner hours and all day on weekends will be able to leave their vehicles at the five valet parking spaces for parking by valet attendants. The attendants will turn right from 18th Street onto T Street, then make another right turn into the accessory parking lot on the subject property. Customers will retrieve their vehicles from an attendant at the accessory lot and exit by turning right onto T Street. During weekday lunch hours, when the restaurant generates less traffic, customers driving to the valet station on 18th Street will be directed to park at the accessory parking lot or to leave their vehicles for parking at the accessory lot by a valet attendant.
12. When the accessory lot is full, customers will be directed to use another parking lot owned by the Applicant at 18th and California Streets, N.W., which contains space for approximately 60 vehicles.

Harmony with Zoning

13. The subject property is zoned R-5-B, a general Residence District designed to permit flexibility of design by permitting, in a single district, all types of urban residential development that conform to the height, density, and area requirements established for the districts, as well as institutional and semi-public buildings compatible with adjoining residential uses. (11 DCMR § 350.1.) The R-5-B District permits a moderate height and density. (11 DCMR § 350.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception under § 214 of the Zoning Regulations to continue an accessory parking lot use in the R-5-B Zone at 1780-1782 T Street, N.W. (Square 152, portion of Lot 862) to provide parking for a restaurant on an abutting lot. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, 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 Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR § 3104.1.)

Pursuant to § 214, accessory passenger automobile parking spaces, elsewhere than on the same lot on which the principal use is located, are permitted subject to the specific provisions. The accessory parking may be in an open area (or in an underground garage), and must be located in their entirety within 200 feet of the area to which they are accessory. (11 DCMR §§ 214.2, 214.3.) Accessory parking spaces on another lot are appropriate when the location of parking

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within the principal building or on the same lot as the principal building or use is economically impracticable or unsafe due to factors such as shallow zoning depth; restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot; unusual topography grades, shape, size, or dimensions of the lot; the lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or traffic hazards caused by unusual street grades or other conditions. (11 DCMR § 214.6.) The accessory parking spaces must be contiguous to or separated only by an alley from the use to which they are accessory, and they must be located, and the facilities in relation to the parking lot must be designed, so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions. (11 DCMR §§ 214.4, 214.7.) The accessory parking lot must comply with the provisions governing parking lots set forth in chapter 23, which establishes requirements with respect to paving, lighting, and landscaping as well as a provision mandating that a vehicular entrance or exit to a parking lot must be located more than 40 feet of a street intersection. (11 DCMR § 214.5, 2303.1.)

Based on the findings of fact, the Board concurs with the Applicant and OP that the requested special exception to continue an accessory parking lot use, subject to the conditions of approval adopted in this order to mitigate any potential adverse impacts, satisfies the requirements of §§ 214 and 3104.1 as well as chapter 23. As set forth in the findings of fact, the application demonstrates compliance with the applicable zoning requirements, including location of the accessory parking lot in an open area contiguous to and less than 200 feet of the area to which the parking spaces are accessory, but more than 40 feet from a street intersection; a principal building located on a lot where the location of additional parking is economically impracticable; design of the parking lot so that the accessory parking is not likely to become objectionable to nearby property because of noise, traffic, or other objectionable conditions; and compliance with provisions pertaining to paving, lighting, and landscaping.

The Board also concludes that approval of the requested special exception, subject to the conditions adopted in this order, will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The subject property is located in a Residence zone of moderate density, and abuts the site of the principal use, which is located in a Commercial zone. The restaurant site provides off-street parking for 10 vehicles but lacks space to provide any additional parking to accommodate those customers traveling to the site by car. The ANC and persons in support of the application noted that the accessory parking lot provided a benefit to the surrounding neighborhood by relieving parking pressure on neighborhood streets. The additional measures planned by the Applicant to improve its valet parking operation will address concerns pertaining to traffic congestion associated with operation of the restaurant.

As conditions of approval of the continued use of the accessory parking lot, the Board readopts several of the conditions originally approved in Application No. 16301. However, some of the prior conditions are not adopted in this Order because they restated provisions of the Zoning

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Regulations, some of which have been amended since 1998, and which require compliance by the Applicant in any event.³ The Board declines to adopt the recommendation of the party in opposition to limit approval of the application to a term of six months to one year. As noted by the party in opposition, the Applicant's revised valet parking plan is intended to address issues related to traffic congestion on 18th Street associated with the restaurant use. The Board does not find that any adverse impacts associated with the use of the subject property as an accessory parking lot warrant the imposition of such a short term of approval as necessary to mitigate any objectionable conditions related to the operation of the accessory parking lot.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved, subject to conditions.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001).) In this case, ANC 2B voted to support the application subject to conditions related to the valet parking operation and the landscaping of the parking lot. The Board notes the issues and concerns raised by ANC 2B and concludes that the conditions of approval adopted in this order will be sufficient to avoid creation of adverse impacts related to traffic congestion or insufficient landscaping.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception to allow continued use as an accessory parking lot use in the R-5-B Zone at 1780-1782 T Street, N.W. (Square 152, portion of Lot 862) for the restaurant on the abutting lot. Accordingly, it is **ORDERED** that the application is **GRANTED**, subject to Exhibit 10 – Site Plan, and **SUBJECT** to the following **CONDITIONS**:

1. The application is approved for a term of 15 years beginning on the date upon which this order becomes final.
2. Twenty (20) parking spaces shall be provided on the lot as identified on plan attached as Tab B of the Applicant's post-hearing submission, as amended. (Exhibit 42.)
3. The Applicant shall implement the valet parking plan described in the post-hearing filing dated March 19, 2013, as amended. (Exhibit 42.)
4. The lot shall be attendant-controlled during its hours of operation.
5. The lot shall be secured during all hours that it is not in operation.

³ Prior Condition No. 7 (lighting) is similar to § 2110.5(i); prior Conditions 8 (paving) is similar to § 2110.5(g); prior Condition No. 9 (projections by vehicles onto other spaces) is similar to § 2110.5(b); prior Condition No. 10 (bumper stops) is similar to § 2117.7; and Condition No. 11 (no other use) is similar to § 2110.4.

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6. Landscaping at the Property shall be in accordance with the plan attached as Tab B of the Applicant's post-hearing submission (Exhibit 42) and shall be maintained in a healthy growing condition and have a neat and orderly appearance.
7. The parking lot shall be cleaned daily and trash pick-up shall occur five times per week.

VOTE: **4-0-1** (Lloyd J. Jordan, Michael G. Turnbull, Nicole C. Sorg, and Jeffrey L. Hinkle, to Approve; S. Kathryn Allen not present, not voting.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: September 20, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE

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BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.