GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16656 of Jemal's Gateway D.C. LLC/Douglas Development Corporation, pursuant to 11 DCMR § 3104.1, for a special exception under section 214* for the continued operation of an existing accessory surface parking lot to serve adjacent retail establishments in an R-1-B District at premises 7820 Georgia Avenue, N.W., 7830-42 Eastern Avenue, N.W., and 7800 Alaska Avenue, N.W. (Square 2960, Lot 17).

* This application was originally brought before the Board of Zoning Adjustment (BZA) under section 214 of the Zoning Regulations entitled, "Accessory Parking Spaces." Based upon the recommendation of the Office of Corporation Counsel, the application was amended at the public hearing, and was reviewed under section 213 of the Zoning Regulations, "Parking Lots." The standards for approval of a special exception under sections 213 and 214 of the Zoning Regulations are virtually identical, therefore the Board found that all interested persons and parties had sufficient notice of the relief requested and that formal notice under section 213 could be waived pursuant to section 3101.6 of the Zoning Regulations.

HEARING DATE: January 16, 2001
DECISION DATE: January 16, 2001 (Bench Decision)

DECISION AND ORDER

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 4A and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 4A. ANC 4A, which is automatically a party to this application, submitted a written statement granting conditional approval, contingent on the agreement of the applicant to include specific conditions. The Applicant accepted these conditions and they were included in the list of conditions attached to this order.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a special exception pursuant to 11 DCMR § 3104.1. Lamar Dwayne Revis, a neighbor living at 1129 Kalmia Road, N.W., a property adjacent to the subject parking lot, by letter, dated January 2, 2001, and by testimony at the hearing, detailed various complaints relating to current operations of the parking lot. Through testimony at the public hearing, Mr. Revis indicated that the proposed conditions on the operation of the parking lot set forth at the public hearing were satisfactory.

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Board of Zoning Adjustment
District of Columbia
CASE NO.16656
EXHIBIT NO.33

FINDINGS OF FACT:

1. Lot 17 is split zoned. The subject site is located in an R-1-B Zone District, at premises known as 7820 Georgia Avenue, 7830-42 Eastern Avenue, and 7800 Alaska Avenue, N.W. (Square 2960, Lot 17).

2. The frontage of Lot 17 directly adjacent to Alaska, Georgia and Eastern Avenues and Kalmia Road is zoned C-2-A.

3. The subject site serves as a parking lot for the commercial uses located on the commercially zoned portion of Lot 17.

4. This parking lot has been in existence since 1949, pursuant to BZA Order No. 2385, dated July 20, 1949, and it was most recently approved, pursuant to BZA Order No. 14317, dated October 22, 1985.

5. The subject parking lot currently accommodates approximately 98 vehicles and operates as a short-term, self-park facility. The Applicant proposes to continue operating the parking lot in this fashion, consistent with the revised survey. (Exhibit #32 of the Record).

6. Section 3104 of the Zoning Regulations provides that the Board is authorized to grant special exceptions where, in the judgment of the Board, such a 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 neighborhood property in accordance with said Zoning Regulations and maps, subject in each case to the special conditions specified in the pertinent section(s) of the Zoning Regulations.

7. Section 213 of the Zoning Regulations provides that a parking lot may be permitted in a residential zone provided that:

   A. The entire parking lot shall be located within two-hundred (200) feet of an existing Commercial or Industrial District;

   B. The parking lot shall be contiguous to or separated only by an alley from a Commercial or Industrial District;

   C. All provisions of Chapter 23 shall be complied with;

   D. No dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, and the present character and future development of the neighborhood will not be affected adversely;

E. The parking lot shall be reasonably necessary and convenient to other uses in the vicinity, so that the likely result will be a reduction in overspill parking on neighborhood streets;

F. A majority of parking spaces shall serve residential uses or short-term parking needs of retail, service and public facility uses in the vicinity

G. Before taking final action on an application for use as a parking lot, the Board shall submit the application to the D.C. Department of Public Works for review and report.

8. The Board finds that the entire parking lot is located within two-hundred (200) feet of the adjacent C-2-A Zone District and that this parking lot is contiguous with or separated only by an alley from the C-2-A Zone District.

9. The Board finds that the subject parking lot meets all the requirements of § 2303.1 of the Zoning Regulations. Specifically, the Board finds

A. All areas devoted to driveways, access lanes and parking area are paved and maintained with a material approved by the D.C. Department of Public Works, which forms an all-weather impervious surface, and which is a minimum of four (4) inches in thickness;

B. No vehicle projects over any lot line or building line;

C. No other use is conducted from or upon the parking lot;

D. No vehicular entrance or exit is within forty (40) feet of a street intersection;

E. All lighting used to illuminate the parking lot is arranged so that all direct rays of lighting are confined to the surface of the parking lot;

F. The parking lot will be kept free of refuse and debris and will be landscaped a minimum of five (5) percent;

G. The parking lot is screened from all contiguous residential property by a solid wall at least 12 inches thick and 42 inches high; and

H. All parts of the parking lot not devoted to parking areas, driveways, access lanes, attendant's shelter or required screening walls will be kept free of refuse and debris and are paved or landscaped.

10. The Board finds that no dangerous or otherwise objectionable traffic conditions result from the parking lot, and the character and future development of the neighborhood will not be adversely affected.

11. The Board further finds that the subject parking lot is reasonably necessary and convenient to other uses in the vicinity, such that it results in a reduction in overspill parking on neighborhood streets, and that a majority of the parking spaces serve the residential uses or short-term parking needs of retail, service and public facility uses in the vicinity.

12. The application was submitted to the D.C. Department of Public Works for review and report.

13. The Office of Planning, by memorandums dated January 9, and February 2, 2001 and through testimony at the public hearing, recommended approval of the application to allow the continued operation of the parking lot for a period of five years subject to the conditions set forth at the public hearing. The Office of Planning was of the opinion that the subject parking lot met the requirements of § 213 of the Zoning Regulations.

14. A letter dated January 9, 2001, from Advisory Neighborhood Commission (ANC) 4A was submitted into the record in support of the subject application, provided certain conditions were met. Through testimony at the public hearing, the ANC representative agreed that conditions of operation put forth by the ANC are satisfactorily met by the proposed conditions set forth at the public hearing. The position of the ANC was given great weight by the Board.

15. The Shepherd Park Citizens Association submitted a letter, dated January 12, 2001, in support of the subject parking lot.

CONCLUSIONS OF LAW

Based on the forgoing findings of fact and the evidence of the record, the Board concludes that the Applicant is seeking a special exception to use the subject lots in the R-1-B District as accessory parking for neighboring businesses in the C-2-A District. The granting of such a special exception requires a showing, through substantial evidence, that the proposed use satisfies the requirements of § 3104.1 and § 213 of the D.C. Zoning Regulations.

The Board concludes that the application meets the standards for granting the requested special exception. The parking lot is located within 200 feet of the adjacent C-2-A commercial district and is separated only by an alley from such commercial district. The parking lot does not create dangerous or otherwise objectionable traffic conditions, and it is necessary and convenient to other uses in the vicinity, with a majority of the parking spaces serving short-term parking needs of retail uses in the vicinity. The Board concludes that the subject parking lot meets the standards set forth in Chapter 23 of Title 11 DCMR. The operation of the parking lot is in harmony with the general purpose and intent of the Zoning Regulations. Accordingly, it is **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The parking spaces shall be striped to be consistent with the revised survey submitted by the Applicant.

2. Existing trash dumpsters shall be replaced with a mechanized trash compactor including an ionization feature to reduce odors. Until such time as the trash compactor is provided, the existing dumpsters will be maintained, emptied and cleaned on a regular basis to prevent odors, lids on dumpsters will be kept closed, and the area around the dumpster will be kept clean to prevent garbage from being scattered in the parking lot and on adjacent properties.

3. The new trash compactor shall be installed along the public alley on the western side of the parking lot so that it is not directly adjacent to any residential homes, in a location shown on the revised survey.

4. The Applicant shall retain a rodent control company to help keep the parking lot rodent-free.

5. The Applicant shall write a letter to all tenants who are food providers, emphasizing the importance of care when dealing with food garbage.

6. The Applicant shall appoint an employee as a community liaison to deal with any issues that arise vis-à-vis the operation of the parking lot and the surrounding community. This individual's name will be provided to ANC 4A and updated as necessary.

7. An employee of the Applicant will make periodic site visits to ensure the cleanliness and smooth operation of the parking lot.

8. The Applicant shall work with the retail establishments along Eastern and Georgia Avenues to place signs informing patrons of the parking lot that is available for use.

9. The Applicant shall coordinate with the Department of Public Works to address access off of Kalmia Road to more clearly delineate the paths of vehicles and minimize inappropriate vehicle/pedestrian conflicts.

10. The continued operation of the parking lot shall be approved for a period of five (5) years.

VOTE: **5 - 0 - 0** (Anthony J. Hood, Sheila Cross Reid, Anne M. Renshaw, Rodney L. Moulden and Robert N. Sockwell to grant.)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: Jerrily Kress
Jerrily R. Kress, FAIA
Director

Final Date of Order: MAR 2 2 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, 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

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16656

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 2 2001, a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John T. Epting, Esquire VRL for JTE
Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037

Adrian Fenty, Councilmember
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James H. Jones, Chairperson
Advisory Neighborhood Commission 4A
7600 Georgia Avenue
Washington, D.C. 20012

Jourdinia S. Brown, Commissioner
Single Member District 4A02
7820 14TH Street, N.W.
Washington, D.C. 20012

Michael D. Johnson, Zoning Administrator
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E., Room 2000
Washington, D. C. 20002

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

VCE/POH