Before the Board of Zoning Adjustment
For The District of Columbia

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ALL SOULS MEMORIAL EPISCOPAL CHURCH 2300 Cathedral Ave., N.W. Washington, D.C. 20008 *Application for Special Exception*	Docket No. 16875 Decision Date: 7/2/02

ALL SOULS MEMORIAL EPISCOPAL CHURCH
STATEMENT OF FACTS AND CONCLUSIONS OF LAW

This application of All Souls Memorial Episcopal Church (the "Church") is for a special exception pursuant to 11 DCMR §3104.1 to allow the use of an existing accessory parking lot for weekday parking under Section 213, in the R-4 District at premises 2300 Cathedral Avenue, N.W., Square 2208, Lots 23 and 24 (hereinafter, "Application").

PROCEDURAL HISTORY

1. On March 11, 2002, the Church filed its Application with the Board seeking a special exception for the weekday use of up to 17 of its otherwise vacant parking spaces located in its existing parking lot located adjacent to its parish building ("Parking Lot").

2. A public hearing date of May 29, 2002 was set.

3. The Board provided proper and timely notice of the hearing to Advisory Neighborhood Commission 3C ("ANC"), as well as to all property owners within 200 feet of the Parking Lot.

BZA
Case No. 16875
Exhibit No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO.16875
EXHIBIT NO.39

4. The Church provided copies of its Application to the ANC and arranged to appear on the agenda of its April 22, 2002 meeting.

5. The ANC, at its April 22 meeting, heard a report from the Church concerning its Application. Property owner, Barbara Ioanes, was present at the meeting to voice her support for the Application. A motion was made to assert the ANC's support for and to recommend Board approval of the Application. After discussion, the Resolution received the unanimous vote of the ANC members. That Resolution was made a part of the record of this Application.

6. The Woodley Park Community Association ("WPCA") was informed of the Church's Application. In April 2001, at its General Meeting, at which hundreds of neighborhood residents eligible to vote on WPCA matters attended, the WPCA unanimously adopted a Resolution endorsing the plans of the Church to obtain the necessary approvals from the D.C. Government to open its Parking Lot for weekday use by residents and business people in the neighborhood. Later, after the Church filed its Application, the WPCA specifically endorsed the Application, referring back to its initial Resolution. That Resolution, and the subsequent endorsement of the WPCA are part of the record of this Application.

7. Councilmember Jim Graham, in whose Ward the Church property is situated, was provided a copy of the Church's Application. Councilmember Graham subsequently prepared a letter to the Board encouraging its approval of the same. A copy of Councilmember Graham's letter was made a part of the record of this Application.

8. The Office of Planning ("OP") inspected the Parking Lot and surroundings, during both day and night times. A report was submitted in which the OP recommended that the Application be approved.

9. The District Division of Transportation ("DOT") reviewed the Application and assessed the transportation and traffic impact of the Church's plans as proposed. A report was submitted in which the DOT concluded that the proposed additional use of the Parking Lot would "not have an adverse traffic or parking impact on the neighborhood residential area." In view of this finding, the DOT supported the proposed parking arrangement presented by the Application.

10. Two letters of opposition were filed. One each by the owners of 2758 and 2738 Woodley Place. The only objection voiced by the owner of 2758 Woodley Place, which was not already addressed in the Application, was the prospective use of the Parking Lot for valet parking. In response to this concern, the Church Vestry adopted a resolution expressly prohibiting the use of its Parking Lot for this purpose, and requiring that all parking tenants agree to abide by the restriction. Upon taking this action, the owner of 2758 Woodley Place verbally withdrew her objection.

11. The letter filed by the owners of 2738 Woodley Place voiced only general concern over security, safety and environmental impact. It provided no specific objection, but conjectured that the use of parking lots necessarily attracts crime and impacts safety and the environment negatively. The letter also implies that, while Woodley Place was once a quiet street, its character has changed with the increase in traffic through the area. However, no claim was made that this condition resulted from the Parking Lot.

12. On May 14, 2002, the Church posted two orange zoning signs prominently on its property providing notice of its Application and the May 29 hearing. Those signs remained in place until May 30.

13. On May 29, 2002, the Board conducted its hearing on the Application. Three Board members were in attendance.

13. At the hearing, the owner of 2771 Woodley Place, Mr. Peter Choharis ("Mr. Choharis"), was the only property owner in attendance. He had not filed a letter of objection, nor had he requested party status. He claimed rather that he had not received notice of the hearing by mail and that, if he had, it had gotten destroyed in a flood. Mr. Choharis made a verbal request for party status.

14. The Church objected to party status for Mr. Choharis due to the absence of advance notice of the request.

15. While Mr. Choharis has owned the property at 2771 Woodley Place for two years, he does not reside there. In addition, Mr. Choharis is reconstructing his property to make it a multi-family dwelling, thereby himself exacerbating the very traffic and parking issues about which he complained and the Church is trying to ameliorate.

16. After a caucus on the matter, the Board granted Mr. Choharis party status on the strength of his claim that notice of the hearing had been lost in a flood.

17. Mr. Choharis provided no specific objections, but argued and conjectured generally that the expanded use of the Parking Lot would increase crime, traffic and pollution to the Woodley Place block on which he owns property.

18. The hearing proceeded for nearly three hours. At the conclusion, the Church requested a bench decision. However, because only three members were present,

one member declined the request to allow other Board members the opportunity to examine the Application. Another Board member requested that the Church submit a management plan to address several issues raised at the hearing by Mr. Choharis. A filing schedule was established whereby the Church would file its management plan by June 17, Mr. Choharis would file a response, if at all, by June 24, and both parties would file Statements Of Fact And Conclusions Of Law by June 26. The matter was scheduled for a decision on July 2, 2002 at the Board's next public meeting.

19. On June 17, as requested, the Church filed its Management Plan setting forth how it intended to lease and operate the 17 parking spaces it wished to offer for long-term weekday rental by residents and business people.

20. On June 24, Mr. Choharis filed a preliminary response, requesting more time to further develop his position.

21. The Church respectfully objects to any extension of time in this matter, as all the necessary facts and arguments are now a matter of record and before the Board.

FINDINGS OF FACT

1. The Parking Lot is located in an R-4 District on Church property located at the corner of Cathedral Avenue and Woodley Place, N.W., with a legal description of Square 2208 and Lots 23 and 24. Since redistricting earlier this year, the subject property is under the province of ANC-3C and Ward 1.[1]

2. With the instant application, the Church seeks a special zoning exception to expand the existing use of its parking lot to accommodate the weekday parking needs

[1] Contrary to the Board's inquiry, this property does not lie in ANC-1C, as confirmed by counsel with ANC-3C and Councilmember Jim Graham's office.

of up to 17 residents and business people in the area, and thereby alleviate some of the parking demand in the neighborhood for the greater good of the community.

3. The primary use of the Parking Lot is, and will remain, to accommodate the parking needs of the Church and its parishioners.

4. The Church parish was built in the early 1900s, and the Parking Lot has been used continuously at its present location for church parking since about 1930. The Parking Lot is an approved and existing accessory property of the Church, which meets all technical requirements for its present use.

5. On Sundays, parishioners use the Parking Lot to attend church services and evening church-sponsored events. On Saturdays, the Parking Lot is used for weddings, special events, and a Farmers' Market from mid-May through mid-December, which is popular with the community.

Monday through Friday, the Church regularly uses only four of its 21 parking spaces, one for the Rector, one for the Parish Administrator, and two for the Solar Light for Africa Mission.

6. Therefore, the Parking Lot is substantially underutilized during the week, with 17 spaces remaining largely vacant.

7. The Parking Lot is located in the neighborhood commonly known as Woodley Park. It is a community characterized by row houses, many of which have been converted into multi-family dwellings (*see*, Report of Office of Planning, filed herein, page 3), high-density apartment buildings. There are restaurants and commercial apartment buildings scattered in the area along Connecticut Avenue, the closest one being a restaurant at the corner of Cathedral and Connecticut Avenue some 750 feet from the

Parking Lot. The bustling Connecticut Avenue commercial district, consisting of a concentration of retail establishments, restaurants, art exhibits, banks, hair salons and businesses, is located approximately two blocks, or some 900 feet, from the Parking Lot.

8. To the south of the Parking Lot are two large conference centers, the Omni Shoreham and Marriott Wardman Park Hotels. The community is framed on the north and east by two bridges along Connecticut Ave and Calvert Street. Also to the north and northwest are Rock Creek Park and the National Zoo.

9. Weekday parking in the neighborhood is in high demand. According to the DOT report, "parking is at a premium in the area, overflow traffic is forced into residential areas, creating competition between residents and visitors." Each the commercial district, the two large hotels in the area, the large apartment complexes and the National Zoo, in addition to the rowhouse residences attract substantial visitor and tourist traffic. In addition, a subway stop at Connecticut Ave. and Woodley Road brings commuters from surrounding neighborhoods who seek parking on the streets of Woodley Park to utilize the subway for downtown travel.

10. While demand for parking is high, parking facilities in the neighborhood are extremely limited. There is a small public parking lot (approximately 50 spaces), Standard Parking, located below the Lebanese Taverna restaurant and neighboring bank on Connecticut Ave. It has no commercial presence at the street level and is accessed only through the alleyway behind the commercial district. Standard Parking is used primarily for valet parking, but also offers monthly parking permits. However, overnight parking in the lot is prohibited.

There is another small public parking lot (50 spaces, including for handicapped) located underground at the new American Association of Homes & Services For The Aging building at the corner of Calvert Street and Connecticut Ave. Because the building is not fully occupied, a number of spaces remain available during weekdays for monthly permit parking. The parking lot is located more than two blocks from the residential area near the Church. Hourly parking is also available, mainly in the evening until midnight.

Parking may also be found at the nearby hotels, unless a conference or event has filled the limited number of spaces available. Parking at the hotels is expensive, inconvenient to the commercial district and not advertised other than on hotel property. As a result of these factors, it is observed that patrons, residents and visitors to the area typically drive around the streets of Woodley Park in search of on-street parking. Meters line the streets in the commercial district. On weekdays, the maximum meter stay is one hour, with no parking during morning and afternoon rush hours. Weekday parking on residential streets is more appealing, since visitors and business people can park for two hours before residential parking zone restrictions become effective.

11. While the on-street parking restrictions and limited availability of private parking spaces impose a substantial burden on visitors and patrons seeking short-term parking, these conditions inflict an even greater weight on residents who compete for spaces near their homes, and on business people with long-term parking needs who are not eligible for residential parking privileges.

12. In the view of DOT, as stated in its report, approval of this Application "would help alleviate some of the parking shortages in the community."

13. The same conclusion as DOT was reached by the ANC, the WPCA, Councilmember Jim Graham and the OP in making their respective recommendations for approval of this Application.

14. The Church intends to manage the weekday use of its Parking Lot and its prospective parking tenants in the manner and method set forth in its Monthly Parking License Agreement (hereinafter, "Agreement"), which is on file as part of the record hereto.

15. The Parking Lot is an approved and existing facility. It currently meets all of the technical requirements for use as a parking lot, including an all-weather impervious surface, striping, fencing, landscaping and lighting.

Upon approval by the BZA of its application, the Church will restripe its Parking Lot to clarify the distinction between tenant parking spaces and those reserved for weekday Church use.

Signs posted at the entrance to the Parking Lot, as well as along the perimeter fence area indicate that the Parking Lot is private and that violators will be towed.

16. The Parking Lot is surrounded on two sides by substantial garden space, which more than adequately meets the landscaping requirements set forth in the regulations. Two existing mature trees border the Woodley Park entrance to the Parking Lot, creating a pleasant canopy of green over the area, without obstructing visual observation of oncoming vehicles.

A third side of the Parking Lot is bordered fully by a row house, located at 2762 Woodley Place, which has been owned by the Church since the 1950s, The

backyard of the house is separated from the Parking Lot by both a chain-link fence and a taller wooden stockade fence.

The fourth side of the Parking Lot borders entirely along a public alley which abuts a large apartment building. The Parking Lot is separated from the alley by a six-foot chain link fence. There exists an entrance from the Parking Lot into the alley, which the Church does not regularly use. Currently, a sliding extension fence is slung open and a chain is secured across the opening. The open fence portion will be closed with the existing extension fence, thereby securing the entire border to the alley.

17. Existing lighting on the Parking Lot is adequate. At the hearing on May 29, 2002, a representative from OP informed the Board that he had personally inspected the Parking Lot after dark and found the lighting to be sufficient.

There is an existing high-intensity spotlight affixed to the back corner of the Church's administrative wing at the roof level which illuminates the entire southern half of the Parking Lot, as well as the side of the Church building.

There are otherwise existing city-owned street lights erected on high posts in the alleyway which abuts the Parking Lot. These street lights cast light over large, overlapping areas of the Parking Lot, as they are situated directly over the region.

In addition, security lights are affixed to the back of the apartment building along the Parking Lot perimeter. Three of the lights in this group located nearest Cathedral Ave. are high intensity white lights which, by themselves, illuminate the northern half of the Parking Lot and otherwise supplement the other lights mentioned. The light produced by these security lights is unobstructed by the chain link fence which separate them from the Parking Lot.

Finally, a set of spot lights are directed toward the Church on the stained-glass windows, on the garden, and at the back entranceway. These security lights cast beams on otherwise dark areas of the grounds surrounding but not on the Parking Lot.

The lighting of the Parking Lot meets fully the requirements for illumination, yet without creating a nuisance to surrounding residential properties. Any additional lighting would merely be redundant.

18. Concern that the proposed additional use of the Parking Lot will contribute substantially to the rate of crime in the neighborhood is specious.

There is a relative low incidence of crime in the neighborhood, notwithstanding that Woodley Place street is dimly lit at night and consistently lined with parked vehicles at all hours. Where, as here, a community has no tendency towards crime, it is pure speculation that a surge would result from the additional use of the Church's Parking Lot.

With the Church's notification of the Second District police station of the additional use of its Parking Lot, and the protective provisions found in its Agreement, grant of this Application will not materially impact the safety of the neighborhood.

19. The Church is committed to meeting the objectives that both the Advisory Neighborhood Commission and the Woodley Park Community Association envisioned by their support of the Parking Lot proposal, which is to provide parking to residents and business people in the community and thereby alleviate parking constraints on the community by up to 17 spaces. Parking tenants will be selected generally on a first-come, first-served basis.

Any person who wishes to lease a space in the Parking Lot must agree to the terms and conditions set forth in the Church's Agreement, and must comply with those terms to continue as a parking tenant.

20. Tenants are prohibited from assigning or subletting their parking spaces to third parties.

21. Valet parking is prohibited.

22. The Agreement makes clear the Church's priority over weekday parking spaces. Accordingly, tenants are subject to the occasional suspension of their parking privileges during weekdays for Church use.

23. The Church intends to charge a discounted market rate to tenants of its Parking Lot.

24. The Agreement imposes adequate and meaningful safety requirements on tenants, which alleviate concern over unruly behavior or offensive conditions.

25. The Agreement further prohibits tenants from acting in a manner that disturbs the peace or unreasonably disrupts the quiet enjoyment by neighbors of their property, thereby adequately addressing nuisance concerns.

CONCLUSIONS OF LAW

The Board is authorized under §8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Code §§6-641.07(g)(2) and (3) (2001), to grant special exception and variance relief from the Zoning Regulations. The Church is seeking a special exception and, in the discretion of the Board, a variance, if necessary, from the requirements of 11 DCMR §213.

The Board is authorized to grant special exceptions where "those special exceptions 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 neighborhood property...." 11 DCMR §3104.1.

While the Church is of the view that its Application fully meets the abstract qualifications, although not fully the technical requirements, for a special exception, if variance relief is determined necessary for a waiver of the provisions found in §§213.2 and 213.3, the Church meets these criteria, as well. A variance is granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C.App. 1972).

Great Weight Of ANC/OP Support

In reviewing special exception and variance cases, the Board is required under D.C. Code §1-309(d) (2001) to give "great weight" to the recommendation of the affected ANC. The Board is also required to give "great weight" to OP's recommendations. In this case, both the ANC and OP recommend unconditional approval of this Application.

Requirements Of §213 For Special Exception

§§213.2 and 213.3 – Proximity to Commercial District. The Parking Lot is located some 750 feet from the nearest property which is zoned commercial. A substantial commercial area is located some 150 feet further than this nearest property to the east. While the Parking Lot shares an alley with an apartment complex, that property is zoned an R-5 District. While the Church does not meet the technical requirement that

its Parking Lot be located within 200 feet of a commercial district, or that it be separated only by an alley from a commercial district, the Application satisfies the intent of the special exception requirements by satisfying a dire need for additional parking in the community. The Parking Lot, which has been in existence for approximately 50 years, would otherwise remain underutilized.

It is the majority of residents in the neighborhood, and the owners and employees of some of the businesses in the referenced commercial districts who are seeking contract parking arrangements with the Church because of the lack of adequate parking spaces. Therefore, the greater good of the community is satisfied by the approval of this Application.

§213.4 – Satisfaction Of Chapter 23 Requirements. As stated in the OP report, the Parking Lot satisfies all technical requirements of Chapter 23. The Parking Lot has been in operation as a parking lot for some 70 years and meets all standards of the Department of Public Works for surface composition. Once the back entranceway is closed shut by the existing fence portion, vehicles using the parking lot will not project over the lot or building line. There will be no use other than parking conducted on the Parking Lot during the weekday periods. There are no other structures on the Parking Lot with the exception of a trash dumpster.

§213.5 – No Dangerous Or Otherwise Objectionable Conditions. There is no history of dangerous or otherwise objectionable traffic conditions involving the Parking Lot. Dissenters raise no specific incidents or events, only general concerns based on speculation and not science. Both the ANC and the WPCA have documented and filed their support for the Application.

Approval of this application will reduce and not increase the amount of vehicular traffic on Woodley Place. By allowing residents and business people to use the Parking Lot during the week, the Church will effectively remove these vehicles from the street and the incessant need to circle the block in search of parking. These vehicles will go directly to the Parking Lot and stop, thereby reducing noise and pollutants.

The DOT, in its report, acknowledged that, "the proposed use [of the Parking Lot] will not have an adverse traffic or parking impact on the neighboring residential area." On the basis of this conclusion, the DOT recommended approval of the instant application.

§213.6 – Reasonably Necessary And Convenient. Full use of the Parking Lot during weekdays will result in a reduction in vehicular traffic in the neighborhood by more than merely 17 vehicles. With the approval of the Application, 17 new spaces will be made available on residential streets, including Woodley Place, for short-term parking. With greater turnover, these newly available on-street spaces will be able to accommodate the vehicles of more than 17 people, including residents, patrons, visitors and tourists who would otherwise travel up and down the streets looking for parking spaces.

The Parking Lot offers convenient parking opportunities for both residents in the neighborhood and local community business people.

§213.7 – Prospective Tenants. Up to 17 of the spaces in the Parking Lot will be used by local residents and business people. Spaces will be offered on an individual long-term contract basis.

Application Meets Special Exception Test

The Application and the Church's Management Plan provide sufficient support for the grant of a special exception by demonstrating that the proposed additional use will satisfy a critical need for additional parking in the community. Additionally, the Management Plan shows adequately that conditions are such that adjacent properties will tend not to be adversely affected.

The neighbors largely support the project, as does the local ANC, Councilmember Graham, the OP and DOT. Moreover, the neighborhood has become a dense region of apartment buildings, multi-family dwellings and commercial areas intermingled with single-family rowhouses. As the community has changed, the establishment of additional parking facilities has not increased. Therefore, full utilization of the Church's Parking Lot will enhance the enjoyment of the area.

Application Meets Variance Requirements

At the hearing on May 29, 2002, the Corporation Counsel suggested the need for a variance from the technical requirements of §§213.2 and 213.3. John Moore of OP voiced disagreement with this view, stating that the Application otherwise met the intent of the rules governing a special exception. This assessment was provided after consultation with both Richard Nero and Toya Bello, both of the Office of Zoning.

Nevertheless, should the Board require a variance of §§213.2 and 213.3, the Church adequately meets the standards required for a variance.

The applicant for a variance must show "that the difficulties or hardships [are] due to unique circumstances peculiar to the applicant's [lot] and not to the general conditions in the neighborhood." Barbour v. District of Columbia Bd. of Zoning

Adjustment, 358 A.2d 326, 327 (D.C. 1976). Because the Parking Lot is approximately 750 feet from the nearest commercial property, and it does not share an alley with a commercial district, this Board may find that a variance of these two technical requirements is warranted.

Accordingly, the Board should find that the circumstances surrounding the Parking Lot constitute an exceptional situation. The Parking Lot has been used as such for some 70 years. The neighborhood was built up around the property and congested parking conditions developed as a result. The Church cannot move the Parking Lot, and it is otherwise underutilized during the week when parking remains at a premium. This Board should further find that variance relief can be granted to the Church without substantial detriment to the public good or the integrity of the zone plan. The neighborhood, including the WPCA, the ANC and Councilmember Graham, unanimously support the project, as does OP and DOT. As noted by both OP and DOT in their respective reports, parking is in high demand in the community and even the addition of up to 17 more spaces is favorable and recommended.

FOR THE REASONS STATED ABOVE, the Church hereby respectfully requests a finding by this Board that it has met its burden of proof for the grant of its Application. Grant of this Application is hereby requested.

June 26, 2002

Respectfully submitted,

Brigitte L. Adams

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Statement Of Facts And Conclusions Of Law was mailed, first-class, postage prepaid, to party opponent Mr. Peter Choharis at his residence at 3108 New Mexico Ave., Apt. #531, Washington, D.C. 20016, and to his property located at 2771 Woodley Place., N.W., Washington, D.C. 20008 on this 26th day of June, 2002.

Brigitte L. Adams

Brigitte L. Adams