GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16875 of All Souls Memorial Episcopal Church, pursuant to 11 DCMR § 3104.1 for a special exception 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 & 24).

HEARING DATE: May 29, 2002
DECISION DATES: July 2, 2002; January 21, 2003, February 10, 2004

DECISION AND ORDER

The Applicant in this case is All Souls Memorial Episcopal Church, the owner of the property that is the subject of the application. The Zoning Administrator informed the Applicant by memorandum dated February 25, 2002 that its request for a certificate of occupancy to use the subject property as a parking lot for weekday parking required approval as a special exception under 11 DCMR § 213. By letter dated March 8, 2002, the Applicant authorized Brigitte L. Adams to seek the special exception on its behalf. The application for a special exception pursuant to section 213 was filed March 11, 2002.

Following a hearing on May 29, 2002 and a public meeting on July 2, 2002, the Board voted 3-0-2 to grant the application subject to conditions. On December 10, 2002, prior to the filing of a final decision, the Board voted pursuant to 11 DCMR § 3124.2 to re-open the record in this proceeding to receive additional information from the parties with respect to the Applicant's burden of proof under sections 213 and 3104.1. After receiving a supplemental filing from the Applicant and a response from the party in opposition, the Board denied the application on January 21, 2003 by a vote of 3-0-2.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 15, 2002, the Office of Zoning mailed notice of the application to the Councilmember for Ward 3, the Office of Planning, Advisory Neighborhood Commission ("ANC") 3C, Single Member District/ANC 3C01, and the Department of Public Works. Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated March 25, 2002 to the Applicant, ANC 3C, and all owners of property within 200 feet of the subject property, providing notice of the hearing.[1]

[1] The Board later learned that the subject property was affected by the recent redistricting of ward boundaries and is now located in Ward 1, although still within the boundaries of ANC 3C.

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Requests for Party Status. ANC 3C was automatically a party in this proceeding. The Board granted party status to Peter Choharis, the owner of a residence in the 2700 block of Woodley Place directly opposite the main entrance to the subject parking lot.

Applicant's Case. The Applicant requested a special exception to allow the weekday use of up to 17 parking spaces by contract arrangement on the Applicant's existing parking lot, which provides accessory parking for the adjacent church. The Applicant asserted that the proposed expanded parking lot use would be in harmony with the intent of the Zoning Regulations and would not adversely affect the use of neighboring property, but would enhance the neighborhood by providing additional weekday parking in an area that has a serious parking shortage.

Government Reports. By memorandum submitted May 24, 2002, the Office of Planning recommended approval of the application. By report dated May 24, 2002, the District Department of Transportation indicated its support for the proposed parking arrangement between the Applicant and business owners, employees, and residents of the Woodley Park community.

ANC Report. By resolution dated April 22, 2002, adopted by unanimous vote at its regular public meeting with a quorum present, ANC 3C indicated its full support for the Applicant's request for a special exception to allow weekday use of its parking lot by neighborhood businesses.

Party in Opposition. The party in opposition, Peter Choharis, testified that the weekday use of the subject parking lot would have adverse noise and safety impacts on the residential community, and that the business community could find long-term parking in other lots throughout the neighborhood.

Hearing. A public hearing on the application was held March 29, 2002. Testimony and evidence was provided by the Applicant, the Office of Planning, and Peter Choharis. While the Applicant originally requested a special exception under section 213, the Board determined that the Applicant required variance relief because the subject parking lot did not satisfy two conditions for special exception approval pursuant to section 213; specifically, subsections 213.2 and 213.3, relating to the location of the parking lot relative to the closest Commercial or Industrial district.

FINDINGS OF FACT

1. The subject property is a parking lot adjacent to a church building located at 2300 Cathedral Avenue, N.W. (Square 2208, Lots 23 and 24). The Applicant has owned the property since 1913. The church building was constructed in 1923 as an enlargement of a smaller building built in 1914, and the accessory parking lot has been in use since about 1930.

2. The site is bounded on the north and east by local streets (Cathedral Avenue and Woodley Place, respectively), on the south by residential property, and on the west by a 15-foot public alley that runs parallel to Connecticut Avenue. The rowhouse abutting the parking lot at its southern edge is also owned by the Applicant.

3. The parking lot has an area of approximately 10,000 square feet and contains 21 spaces, only four of which are used regularly during weekdays for church business. The parking lot has entrances on Woodley Place and on the alley; the alley entrance is presently chained closed.

4. The subject property is zoned R-4 and is located in the Woodley Park section of Ward 1. The surrounding land use is predominantly residential, primarily rowhouses and large apartment buildings.

5. The Applicant proposes to allow weekday parking in its parking lot on a contract basis to residents, businesses, and business employees in the community. The Applicant plans to enter into contracts with the intent to maintain control over the use of its spaces and to charge a reasonable monthly or annual fee to each contract holder. Contract holders would be permitted to park in the subject parking lot between midnight Sunday and midnight Friday, excluding Christmas. Spaces would not be rented for periods of less than one month.

6. The Office of Planning ("OP") recommended approval of the Applicant's request even though the Applicant "has not fully met all of the criteria" for special exception relief under section 213. OP's recommendation was based on its conclusion that "the addition of 17 parking spaces in the area where parking is at a premium would serve a greater need in the community."

7. According to OP, the Commercial districts closest to the subject site are: (a) an area within the Woodley Park Neighborhood Commercial Overlay district whose underlying zone is C-2-B, located approximately 750 feet, or one block, from the southern edge of the subject parking lot; and (b) an area on the west side of Connecticut Avenue north of Cathedral Avenue, zoned C-2-A and located approximately 900 feet, or two blocks, from the Applicant's church building. OP did not indicate that any Industrial district is the vicinity of the subject property.

8. The District Department of Transportation ("DDOT") had no objection to the requested special exception, which DDOT concluded would not have an adverse traffic or parking impact on the neighboring residential area. Citing "a serious overflow of vehicular traffic in the Woodley Park community generated by customers of retail establishments in search of curb parking spaces" and "overflow

traffic . . . forced into residential areas," DDOT concluded that the proposed parking arrangement would help to alleviate some of the parking shortages in the community.

9. ANC 3C unanimously voted to support the Applicant's request for a special exception on grounds that (a) "the extremely limited street parking in Woodley Park is frequently further stressed by events at local businesses, [so that] residents are often forced to search for street parking and to park far from their residences;" (b) the additional parking proposed by the Applicant would help alleviate the neighborhood parking shortage; and (c) the Applicant's request has the full support of the Woodley Park Community Association.

10. The Woodley Park Community Association passed a resolution by unanimous consent at its meeting on April 19, 2001 expressing its support for the Applicant's efforts "to rent parking spaces in its adjacent parking lot to local business owners and residents."

CONCLUSIONS OF LAW

The Applicant seeks a special exception under section 213, pursuant to 11 DCMR § 3104.1, to allow weekday use of an existing parking lot accessory to a church use. Pursuant to section 213, use as a parking lot is permitted in a Residence district if approved by the Board as a special exception, subject to the provisions enumerated in that section. The provisions include that a parking lot in a Residence zone (a) must "be located in its entirety within two hundred feet (200 ft.) of an existing Commercial or Industrial District," 11 DCMR § 213.2, and (b) must "be contiguous to or separated only by an alley from a Commercial or Industrial District." 11 DCMR § 213.3.

The Board credits OP's testimony that the subject parking lot is located approximately 750 and 900 feet from the two closest Commercial zones in the vicinity of the site, and finds further that there is no Industrial zone within 200 feet of the subject property. Accordingly, the Board concludes that the subject property fails to satisfy two provisions of section 213; specifically subsection 213.2, which requires location of a parking lot entirely within 200 feet of a Commercial or Industrial zone, and subsection 213.3, which requires location of the parking lot contiguous to or separated only by an alley from a Commercial or Industrial District. Because the subject property cannot satisfy two provisions listed in section 213 as requirements for special exception approval of use as a parking lot in an R-4 district, the Applicant's request for a special exception under section 213 must be denied unless the Applicant can satisfy the burden of proof for a variance from the two provisions at issue.

Recognizing the subject property's noncompliance with subsections 213.2 and 213.3, the Applicant asserts that a variance is warranted under the circumstances. The Board is

authorized to grant a variance from the strict application of the zoning regulations where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of the property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted 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. D.C. Official Code § 6-641.07(g)(3) (2001); 11 DCMR § 3103.2.

An applicant for a use variance must make the greater showing of "undue hardship," as opposed to the lesser showing of "practical difficulties," which applies in area variance cases. *Palmer v. Board of Zoning Adjustment,* 287 A.2d 535, 541 (D.C. 1972). The variance relief sought here does not fall neatly into either of the traditional variance categories. The Applicant does not seek greater height, setback, density, lot occupancy, or other similar types of zoning relief associated with area variance. Indeed, the relief sought does not even relate to its property as such, but the distance between its property and the zone boundary. However, it cannot be said that the relief sought would introduce a use that is not allowed in the zone district under any circumstances, and thus does not comport with the traditional view of a use variance.

However, determining which variance test should be applied to a particular application does not necessarily depend upon whether the relief seems to concern area or use limitations. In *Taylor v. D.C. Board of Zoning Adjustment,* 308 A.2d 230 (D.C. 1973), the Court of Appeals found that the various types of area relief sought by that applicant would, if granted, "drastically alter the character of the zoned district" and therefore was subject to the undue hardship burden. *Id.* at 233. This approach is consistent with what one commentator has described as a "common thread" running through court decisions that have grappled with non-traditional variance requests. "If the variance will permit a use of the land that changes the character of the neighborhood, then it is more likely that the variance will be held to be a use variance." 1 E. Ziegler, Rathkopf's The Law of Zoning and Planning § 58:4, p. 58-17 (4th ed. 2001).

This application involves a proposal to introduce a use – a parking lot in a Residence zone – under conditions other than those required for special exception approval under section 213. The subject property currently serves as accessory parking for a church, and the Applicant proposes to expand the existing use to allow the weekday parking by business and residential users not accessory to the church use. The Applicant seeks a variance from two conditions for special exception approval: location of a parking lot entirely within 200 feet of a Commercial or Industrial zone, and location of the parking lot contiguous to or separated only by an alley from a Commercial or Industrial District.

The requested variance, while not "a use variance in its purest form,", *Taylor, supra.*, would significantly alter the character of the Residence zone district of the subject property by permitting a public parking lot use on property where parking lot use is not permitted except by special exception subject to several provisions, including two that the Applicant is unable to meet. Both the Applicant and the party in opposition made arguments regarding undue hardship, the standard applicable to a request for a use variance. *Palmer*, 287 A.2d 535, 541 (D.C. 1972). Because the Board finds that the location of the proposed accessory parking lot could potentially change the character of this neighborhood, it is appropriate to analyze the application using the undue hardship standard.

The Applicant contends that a use variance would be appropriate because the parking lot has been in continual use for 70 years, the land surrounding the subject site has been completely developed, and the Applicant is unable to relocate its parking lot closer or adjacent to a commercial district to meet the technical criteria of subsections 213.2 and 213.3. According to the Applicant, the undue hardship resulting from its inability to relocate the parking lot supports the approval of a use variance. The Applicant also argues that approval of a variance is warranted because the expanded use of the otherwise largely vacant facility to long-term weekday use by residents and neighborhood businesses would promote the greater good of the community, reduce circling traffic on residential streets, and advance the Comprehensive Plan, without affecting the use of neighboring properties.

Peter Choharis, the party in opposition to the application, asserts that the subject property is not unique, and that its use as a parking lot for more than 70 years demonstrates that the Zoning Regulations do not preclude the use of the property. He also contends that the Applicant's proposed expanded use of the parking lot would not satisfy parking needs in the area but would create adverse noise and safety impacts on neighboring residential properties.

Even accepting *arguendo* the Applicant's assertion that the subject property is unique, the Board concludes that the Applicant has failed to demonstrate that the strict application of the Zoning Regulations would result in undue hardship upon the Applicant as owner of the property. The primary use of the Applicant's property is as a church, and the subject parking lot has been used for more than 70 years as an accessory parking lot serving the principal church use. The accessory use is consistent with the Zoning Regulations and is expected to continue in the future. Accordingly, the Board cannot conclude that the Applicant is unable to use the subject property consistent with the Zoning Regulations, or that the strict application of the Zoning Regulations creates undue hardship on the Applicant as the owner of the subject property.

The Board is not persuaded by the Applicant's argument that undue hardship results from its inability to relocate the parking lot closer to a commercial district to meet the requirements of subsections 213.2 and 213.3. The parking lot exists to provide accessory parking for the church; if the Applicant wished to provide parking at another location, at a greater distance from the church, it could seek to do so subject to the requirements of section 213 or other applicable provision. The Applicant has not demonstrated that any hardship results to the Applicant by limiting the use of the accessory parking spaces to their intended purpose of providing parking accessory to the principal church use of the property. *See, e.g. Palmer*, 287 A.2d 535, 542 (D.C. 1972) (a use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations).

The Board has accorded ANC 3C the "great weight" to which it is entitled. The record reflects that the affected ANC voted unanimously to support the application for a special exception to allow weekday use of the subject accessory parking lot. The Board credited the unique vantage point held by the ANC with respect to the effect of the requested special exception on its constituents. However, the Board concludes that the ANC report did not offer persuasive advice that would cause the Board to find that the application to allow use as a parking lot in an R-4 zone would be consistent with the requirements for a special exception under section 213 or with the statutory requirements for a variance.

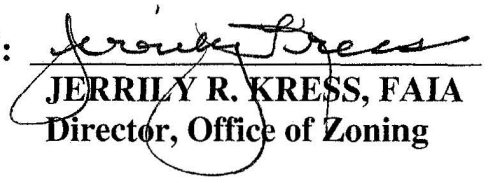
For the reasons stated above, the Board concludes that the Applicant has not satisfied the burden of proof with respect to the application for a special exception or variance allowing use as a parking lot in an R-4 zone. Accordingly, it is therefore **ORDERED** that the application is **DENIED.**

VOTE: **3-0-2** (Geoffrey H. Griffis, Anne M. Renshaw, and Carol J. Mitten to deny the application; Curtis L. Etherly, Jr. not present, not having heard the case; and David A. Zaidain not present, not voting)

Because the term of Board member Anne M. Renshaw expired before issuance of this order, the Board conducted a second decision meeting on February 10, 2004 and voted to **ADOPT** this **ORDER** as the decision of the Board as follows:

VOTE (February 10, 2004) **3-0-2**: (Geoffrey H. Griffis, Carol J. Mitten and David A. Zaidain to approve the issuance of this order; Curtis L. Etherly, Jr. not voting, not having heard the case; Ruthanne G. Miller not voting, not having heard the case)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: 

JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR - 1 2004

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. MN/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16875

As Director of the Office of Zoning, I hereby certify and attest that on MAR - 1 2004 a copy of the attached Order was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning