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Findings of Fact and Conclusions of Law
BZA Case #16938
Submitted by
The Most Worshipful Prince Hall Grand Lodge

Findings of Fact

The property

1. The subject property is located at 1902 Vermont Avenue, NW. (Square 333, Lot 827), in the Old City II neighborhood of Ward 1. The site is located at the northwest corner of the Vermont Avenue/T Street intersection with 73.22 feet of street frontage along Vermont Avenue and 103 feet of frontage along T Street. The property is zoned R-4 (Row Dwellings and Flats) and is located within an immediate area developed with similar uses. It abuts a series of row dwellings to the west and is separated by two vacant lots from a series of row dwellings to the North.

2. The property currently serves as an accessory parking lot for the Most Worshipful Prince Hall Grand Lodge (the "Lodge") located at 1000 U Street N.W.

3. The property contains approximately 5,226 square feet of land area. The entrance to the lot is from Vermont Avenue, NW. There is a twelve and a half foot (12.5 ft.) alley adjacent to the property that will be used for emergency egress from the lot. The property is fenced and gated to prevent non-emergency vehicular access to or from the alley as well as to restrict vehicular access to the approved hours of operation. The applicant has contracted to with a fence company to repair or replace damaged fencing and gates.

History of Operation

4. The principal building to which the lot is accessory is a six-story masonry structure with 64,739 square feet of gross floor area. The principal use of the building is to house Lodge offices, meeting rooms and an assembly hall. Approximately 8,000 square feet is devoted to offices of other nonprofit organizations. There is no off-street parking.

5. The property first obtained Board approval as an accessory parking lot in 1974. The use was continued with Board approval until the authorization expired on June 4, 1992. The Lodge changes leadership every two years and all office workers are volunteers. The applicant proffered that the oversight was probably due to change in leadership. The lot has continued operation without Board approval.

6. Previous Board orders indicate that there was no opposition to the application and there is no record of any complaint having been filed regarding operation of the lot during its existence.

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Case No. 16938
Exhibit No. 71

Board of Zoning Adjustment
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EXHIBIT NO.71

7. The applicant initially filed application (BZA #16901) to continue use of the existing lot and expand the use to two adjacent lots that it owns. That application was subsequently withdrawn. The applicant now seeks relief only to continue use of the existing lot.

Metrorail Alternative

8. The Lodge is immediately adjacent to the U Street/Cardoza Metrorail Station. The applicant encourages its members use the Metrorail system and many do use the system. Many members are elderly, handicapped, or otherwise infirm and cannot reasonably access the system. The elevator is located at the 13th Street entrance, three blocks away.

9. Some Lodge events end well into the evening at 11:00pm or 12:00pm. With the exception of weekends and special events the Metrorail ceases operation at most stations at 12:00pm. Transfer to another train would not be possible after this hour.

Alternative Parking

10. The opposition and the DDOT suggested that the applicant seek parking alternatives at established parking lots and parking garages

11. Shared parking on a time-of-day basis is specifically allowed in the ARTS District Overlay for certain specified uses. The Lodge is not one of the specified uses that qualifies for either daytime or evening shared parking. Most available parking alternatives within reasonable distance from the Lodge building are located within the ARTS District Overlay.

12. Uses, such as churches that are not located in commercial zones may require Board approval to share their non-commercial accessory parking lots.

13. The applicant has begun negotiations with The Housing Finance Agency located two blocks from the Lodge at 815 Florida Avenue, NW, to provide additional parking for its members. The applicant testified that the existing lot that they own provides the best alternative to the lack of on-site parking.

Section 2303.1 – Parking Lots

14. The proposal complies with pertinent provisions of Chapter 23 and Chapter 21.

15. The lot has recently been repaved with an approved all-weather impervious surface.

16. The lot has been re-striped and wheel stops are in place to prevent any part of any vehicle from projecting over any lot line or building line. The current layout of the striping is not consistent with zoning requirements. The applicant proposes to re-stripe according to the parking layout submitted with the application.

17. The applicant has purchased a new attendant's shelter to replace the preexisting dilapidated structure. Permanent location of the new structure will be as shown on the parking layout. No other use is proposed or will be conducted from or upon the premises.

18. The existing Vermont Avenue entrance is at least forty feet (40 ft.) from the nearest intersection.

19. Any permanent lighting will be directed to the surface of the parking lot away from neighboring properties and the public space.

20. The applicant has established a maintenance program to keep the lot free of refuse and debris.

21. There is currently no landscaping in place. The applicant has contracted to provide required landscaping consistent with the parking layout. A masonry wall, as shown on the layout, will be erected consistent with the screening requirements of Section 2117.12.

Objectionable Conditions Related to the Operation of the Lot

22. There has not been complaint or opposition to the operation prior to this application. The Lodge has instituted effective controls to minimize the potential for future conditions that may become objectionable. During the day parking spaces are assigned to officers of the Lodge and members or tenants that work in the building. In the evening between 6:00pm and 12:00pm, when the lot operates on a first come first served basis, the lodge has a guard posted to regulate who is allowed to park and to control potentially objectionable activity.

Traffic Report

23. Rapid revitalization of the U Street Corridor has resulted in an increased demand for off-street parking spaces to accommodate patrons of the mixed uses, restaurants, nightclubs, retail, office, etc, that have been developed. The applicant's traffic expert (Osborne George, O.R. George and Associates) testified that on-street parking in the residential area in proximity to the subject property is covered by the residential parking permit restriction with its two-hour parking limit between 7:00am and 8:30pm further contributing to the dearth of available parking. There would be a greater impact on the community if the parking lot were not available to members of the Lodge. He further testified that continued use of the lot as proposed by the applicant should not result in objectionable conditions to abutting property.

24. Mr. George further testified that there are no safety or capacity issues at the intersection nearest the parking lot entrance since Vermont Avenue is not a primary north/south route. His report indicated that reliable information from the Department of Transportation indicated that there had only been one accident at

the intersection of Vermont Avenue and T Street in the last three years and that this accident was attributed to driver error.

Government Reports

25. The DDOT report recommended that the Lodge pursue additional options for provision of off-street parking, but indicated no objection to continuation of the operation of the existing parking lot.

26. The OP report recommended approval subject to the same conditions imposed by the most recent BZA order:

(a) Approval shall be for a period of five years subject to renewal by the discretion of the Board upon filing of a proper application.

(b) All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all weather impervious surface.

(c) Bumper stops shall be erected and maintained for the protection of all adjoining buildings.

(d) No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space

(e) All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

(f) No other use shall be conducted from or upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

(g) Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

(h) The parking lot is for use by tenants of the building and members of the lodge only;

(i) All spaces shall meet code standards with respect to size and location of parking spaces as required by sections 2115 and 2116.

(j) The applicant shall implement the landscaping plan as submitted.

(k) The parking lot shall be limited to lot 827 with 20 parking spaces.

ANC Report

27. The property is located within ANC 1B. The ANC is in opposition to the application citing community concerns regarding noise, traffic, proximity to the Black Civil War Memorial and the historic nature of the area.

28. The applicant has responded to issues of noise and traffic. Although the parking lot predated the memorial and the historic designation, the applicant has committed to upgrade the lot and comply with all District regulations regarding historic preservation.

Nature of the Variance Relief Sought

29. The applicant is requesting special exception relief to reinstate the accessory parking lot at the subject premises. Special exception relief is authorized "subject to the special conditions contained in the title" In order to qualify for special exception relief, the applicant must obtain variances from the distance and proximity conditions. It was questioned as to whether the variances sought by the applicant are "area variances" or "use variances". The nature of the variance relief defines the burden that must be carried by the applicant. A use variance carries the additional burden of proving "undue hardship".

30. The applicant has testified that the variances sought are area variances. An area variance, often referred to as a "dimensional variance" is generally defined as, "a variance that allows for the use of land in a way that is not permitted by dimensional or physical requirements of the zoning law". The conditions of §§ 214.3 and §§214.4 are dimensional requirements.

31. The use is predeemed compatible. The Board has the authority to grant variance from conditions if the applicant meets the appropriate test.

Conclusions of Law

Applicable Law

The Board of Zoning Adjustment is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps, subject in each case to the special conditions specified in this title.... D.C. Official Code § 6-641.07(g)(2) (2001); 11DCMR § 3104. The applicant is seeking a special exception pursuant to 11DCMR §§ 3104 and 214 to reestablish the use of the accessory parking lot located at 1902 Vermont Avenue, NW.

The Board is authorized to grant variances where "by reason of exceptional topographical conditions or other extraordinary or exceptional situation or conditions" 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..." D.C. Code § 6-641.07(g)(3) (2001 Ed.), 11DCMR § 3103.2. Where and applicant seeks an area variance, as here, the above standard of "practical difficulties" applies, with the "undue hardship" standard applying only to use variances. Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972). Additionally, variance relief can be 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". Id.

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 (D.C. 1976) (quoting Palmer v District of Columbia Bd. Of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972).

Because the accessory parking lot is not located within 200 feet of the principal use as required by §§ 214.3 and the accessory parking lot is not "contiguous to or separated only by an alley from" the principal use as required by §§ 214.4 the applicant needs variances to allow reinstatement of the parking lot.

The Board finds that circumstances surrounding the property constitute an exceptional situation. The principal building that the lot supports was built prior to existing zoning regulations and is without benefit of on-site off-street parking. Open parking on the site is not possible because the building occupies almost the entire lot. Structural constraints make it impractical to provide parking within the building.

The accessory parking lot was established, in its current location, with Board approval in 1974 and was continued with subsequent orders in 1976, 1982, and 1988. Board approval expired in 1992, but the operation has continued to the present. The area around the building is fully developed providing no option for accessory parking spaces consistent with the conditions of §§ 214.3 and §§ 213.4. The existing lot provides the only parking option exclusively for the use of the applicant.

Revitalization of the U Street Corridor and surrounding residential areas has created competition for on-street parking spaces. The Metrorail station adjacent to the Lodge building has provided relief, but the limited hours of operation will not fully accommodate the needs of the members and guests of the Lodge. Regulatory constraints minimize the potential for obtaining needed parking at other approved locations.

In accordance with section 214.7, an accessory parking lot shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.

Based on the findings of fact, and having given great weight to the recommendations of the Office of Planning and to the issues of the ANC 1B. ciation the Board concludes that

the proposed accessory parking lot, as conditioned by the Board can be located at the subject property so that it is unlikely to become objectionable to adjoining and nearby property.