BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

RE: Application of The Most Worshipful Prince Hall Grand Lodge for Special Exception and Variances to Operate an Accessory Parking Lot Located at 1902 Vermont Avenue, NW, Lot 827, Square 333.

Case. No. 16938

D.C. OFFICE OF ZONING
2003 MAR 27 PM 4:48

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

Submitted by
Westminster Neighborhood Association

PRELIMINARY STATEMENT

1) The Board of Zoning Adjustment has before it for consideration the amended application[1] of The Most Worshipful Prince Hall Lodge, pursuant to 11 DCMR § 3104.1, for a special exception to establish an accessory parking lot having 21 spaces under § 214, and pursuant to 11 DCMR § 3103.2, a variance from the requirement that the parking spaces be located within 200 feet of the use to which they are accessory under subsection 214.3, and a variance from the requirement that accessory parking spaces be contiguous to or separated only by an alley from the use to which they are accessory under subsection 214.4, in the R-4 District at premises 1902 Vermont Avenue, NW (Square 333, Lot 827).

2) Pursuant to notice, public hearings were held by the Board of Zoning Adjustment for the District of Columbia on February 25, March 18, and March 25, 2003. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3117.

FINDINGS OF FACT

3) The applicant, The Most Worshipful Prince Hall Lodge (hereafter Masons), is the owner of the proposed accessory parking lot at 1902 Vermont Avenue, NW, with their

[1] The initial application was filed August 9, 2002 and requested approval of accessory parking for three parcels, to wit, Squares 824, 825, and 827, all in Lot 333. Sometime thereafter, an amended application was filed formally withdrawing Squares 824 and 825 from consideration.

BZA
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Exhibit No. 72

Board of Zoning Adjustment
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EXHIBIT NO.72

main building—to which the accessory parking is proposed—at 1000 U Street, NW. The lot at 1902 Vermont Avenue is zoned R-4 and comprises 13,411 square feet. The Masons' main building (the lodge) is zoned C-2-A.

4) The other parties include ANC 1B, who is automatically a party because the property is within its boundaries. They oppose the application. The Westminster Neighborhood Association (WNA) was also granted party status. They are an incorporated 501(c)(3) non-profit association representing approximately 147 households directly to the east and south of the proposed accessory parking lot. They also oppose the application. The Office of Planning has issued a report supporting the application.

5) The Masons have used the proposed lot as an accessory parking lot since 1974. See BZA Order dated August 26, 1974 (Application no. 11664), BZA Order dated November 8, 1976 (Application no. 12215), and BZA Order dated September 9, 1988 (Application no. 14732). The approval given in the latter BZA Order expired by its terms on June 4, 1992. It is uncontradicted that the applicant has continued to use this lot as a parking lot since the expiration of our Order and continues to use it as a parking lot. Based on these facts, this Board has determined that this application shall be considered as a new application and not as an application to continue or extend a prior use.[2]

6) The lot on which the parking is proposed is now part of the Greater U Street Historic District, the community having obtained that designation in 1999. The proposed lot is directly on the corner of Vermont and T Streets NW, two busily traveled thoroughfares in our city. This lot also lies within a few hundred feet from the community's only U.S. National Park site, the African-American Civil War Memorial and is readily visible to all tourists to this site.[3] The closest building to the proposed lot is the residential home of the late Madame Evanti, internationally renowned opera singer, itself a

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[2] Statement of board chairman Geoffrey Griffis at February 25, 2003 hearing.

[3] See Exhibit no. 60, which provides a brief description of this Civil War memorial.

national historic landmark.[4] This lot is also adjacent to the Uptown Arts Overlay District, which has as one of its purposes the encouragement of pedestrian traffic.[5]

Requirements for Approval

7) The applicant here is requesting one special exception and two variances.. The special exception requested is to permit an accessory parking lot in an R-4 district. The two requested variances are to § 214.3 which requires that accessory parking spaces be located in their entirety within 200 feet of the area to which it is accessory, and to § 214.4 which requires that accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory. The parking regulations have their own built-in standard for any variance request, at § 214.7, requiring that the parking lot not be objectionable to its neighboring property. For the special exception, the Masons must meet the standard specified in 11 DCMR § 3104.1. For the two critical variances it needs, the Masons must meet the multi-part standards set out in 11 DCMR §3103.2. The burden of proof for all applicable standards is squarely on the applicant. See 11 DCMR §3119.2.

8) It should be noted that the vast majority of applications we consider for accessory parking in a residential district come from residential owners themselves. This is primarily because § 214.3 requires that such accessory parking spaces be within 200 feet of the lot to which the parking is accessory. The only situation where the applicant would not be a residential owner is where an owner of land contiguous to a residential district wants to locate accessory parking within the residential zone. This is the unique situation we have here. While the Masons' main building is located in a commercial zone on U Street, it is requesting that it be permitted to use a residential lot it owns as an accessory parking lot for the occupants of its commercial property. WNA argues that a higher

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[4] See Exhibit no. 65, which is a brief biography on Lillian Evanti as well as on her late son, Thurlow Tibbs, an art collector.

[5] 11 DCMS § 1900.2(b).

standard should apply when the applicant is not a residential property owner. There appears, however, to be no additional statutory or regulatory restrictions on such commercial applicants than otherwise would apply to a residential applicant seeking accessory parking in his or her own neighborhood. We accordingly decline to raise the bar of approval for non-residential applicants.

Application of Standard for Special Exception

9) Section 3104.1 sets forth the conditions any applicant must meet when requesting a special exception. This Section requires that 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 the neighboring property in accordance with the Zoning Regulations and Zoning Map..."

10) The operative language of this provision, that it "will not ... affect adversely the use of the neighboring property" is in many ways, similar to the "not likely to become objectionable" standard of §214.7, as well as the "no substantial detriment" standard of §3103.2. The numerous objectionable conditions testified to by the opposition, and shown by their exhibits, which are considered below include noise, glaring headlights, trash, safety, loss of an on-street parking space, and aesthetics. All such objections are noted herein and need to be considered in determining whether the accessory parking lot will "affect adversely the use of the neighboring property."

11) We note that the Masons did not specifically address this provision at the hearings in this matter. However, the burden remains on the Masons to show that the neighboring property will not be adversely affected by the proposed accessory parking lot. We also note that this lot is zoned R-4, the purpose of which is the stabilization of remaining one family dwellings, and that very little vacant land shall be included in such zones (11 DCMR 330.2). This special exception request for a parking lot, while not

technically converting this residential property to vacant land, would be about as close in similarity as one could get to vacant land, at least in terms of physical appearance.

12) What is clear from the significant opposition received from the adjoining community in this proceeding is that aesthetics have now become a significant consideration of the community. The proposed lot is now located in the center of a vibrant and diverse residential neighborhood. This community has voluntarily subjected itself to the historic preservation requirements. The photographs presented by WNA show residential buildings of considerable architectural prominence and detail. The restoration of many of these structures are notable. It is not only reasonable, but highly likely, that an accessory parking lot—the size of which can hold 20 plus vehicles—would adversely affect the aesthetic character of the neighboring property.

Application of Specific Standard for Parking Lots

13) In considering any variance to the requirements for accessory parking, § 214.7 comes into play. This specialized standard is applicable only to accessory parking spaces. It is separate and apart and in addition to the more general standard for all variances, which is set out in §3103.2 and is discussed herein later. Section 214.7 states:

> Accessory parking spaces 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.

The Masons have submitted scant information on how their proposed parking lot would affect their neighbors. While the Masons did have a traffic expert testify,[6] such testimony revolved primarily around the impact the parking lot would have on the traffic of the adjoining streets to the parking lot. This witness did state that the proposed accessory parking lot "should not become objectionable to nearby properties." Such opinion was

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[6] While traffic expert, O.R. George, did testify about a study that he had completed, such study was not admitted as evidence in this proceeding because the applicant did not meet the time requirements for such submission prior to the hearing in this action.

based, however, solely on considerations of "traffic generation and use as parking." He had neither experience nor expertise regarding the noise, lights, litter, and aesthetic issues that such parking lot either has or could engender.

14) In contrast, several neighbors and members of the Westminster Neighborhood Association complained of numerous objectionable conditions resulting from the use of this lot as a parking lot. Many of those complaints were received by the filing of letters in this proceeding.[7] There was also significant direct testimony from WNA witnesses who personally observed the objectionable conditions emanating from this lot's use as a parking lot. For instance, one recurring complaint was of the noise coming into the surrounding houses when the Masons' evening meetings would adjourn and the Masons were either walking from their lodge to the parking lot and/or would congregate in the parking lot to talk after the meetings. The Masons testified that they generally hold meetings at the lodge every night during the week as well as on most Saturdays, with most meetings ending about 10:00 p.m., but sometimes not ending until after 11:00.[8]

15) There was also significant testimony about the problems that the headlights caused when the Masons would exit the parking lot at night, with such headlights shining into the neighbors' windows.[9] As shown by the photographs submitted by WNA,[10] there

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[7] See letter filed October 10, 2002 from Glenn Melcher, then the ANC 1B chairman, stating the numerous complaints he received from neighbors, letter from the Cardozo-Shaw Neighborhood Association in opposition, letter from the French Street Neighborhood Association in opposition, a petition containing 68 signatures of residents all located within a few blocks of the proposed parking lot objecting to its use as a parking lot, seven letters from individual residents in opposition, and one affidavit from neighbor Loretta Johnson who lives directly across the street from the parking lot complaining of the noise and headlights coming through her bedroom window as she tries to sleep at night.

[8] See testimony of John Ellington, Jr.

[9] See testimony of Lawrence Savoy, Tania Shand, and the affidavit from Loretta Johnson. Mr. Savoy, the caretaker of the Evanti/Tibbs home, which is directly north and less than 50 feet from the parking lot, testified that the headlights would often light up his entire living room.

[10] Exhibit nos. 59 and 67.

are no walls, bushes or other barriers on any side of this parking lot to limit either the noise or the headlights from going out into the community.

16) Neighbors also testified that trash, both in the parking lot and on its adjoining sidewalks, as well as the access areas from the parking lot to the Masons' lodge, was a continuing and perennial problem.[11] Similarly, there was testimony that there was a lack of snow removal on the sidewalks surrounding two sides of the parking lot.[12]

17) Many neighbors also found it objectionable and dangerous that some of the Masons would drive up wrong side of street to enter the parking lot. Specifically, the neighbors testified that the drivers, when coming northbound on Vermont Avenue, would cross over to the southbound lane at the T Street intersection and travel the approximately 50 feet to the parking lot entrance. This was apparently being done so that the driver would not have to travel past the entrance and then make a U turn to come back to the parking lot entrance. With respect to the safety issue, the Masons' own expert brought out yet another hazard of entering/exiting the lot. This hazard, he explained, comes from closeness of the on-street parking on the north side of the parking lot entrance. With cars and trucks parked close to the parking lot entrance, there is a sight problem with respect to any car in the lot seeing a car coming southbound on Vermont Avenue as well as the car on Vermont Avenue seeing the car coming out of the parking lot. The traffic expert recommended that if the parking lot were to be approved, consideration be given to taking out one of the on-street parking spaces. Of course, the removal of any on-street parking spaces would negatively impact the community's ability to park.

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[11] The Masons admitted on cross-examination that they did not have any trash receptacles either in or around their parking lot. See testimony of John Ellington, Jr. and Aaron Jordan, past grand master and current grand master, respectively.

[12] See testimony of neighbor Tania Shand who testified that as to the recent snow storm in February of this year, the Masons were able to get their parking lot cleaned out within 24 hours after the storm ended, but failed to have the sidewalk around the parking lot shoveled for another two days thereafter.

18) A number of neighbors also testified about the chain link fence surrounding the property. In addition to the negative architectural statement that such a fence gives the community, the neighbors testified to the poor condition of the fence such that it no longer keeps strangers out of the property, as well as the fact that the lot is often not gated at night when not in use. The neighbors testified that this caused a security issue and that, in fact, one person was currently sleeping in the parking lot at night.[13]

19) The Masons introduced limited evidence to controvert these objectionable conditions. While grand master Aaron Jordan testified that the Masons had received no complaints from the neighbors, this was rebutted by WNA member Tania Shand who testified that she had repeatedly discussed these matters with the Masons. The Masons denied that the headlights could go into the surrounding neighbors' windows. As to the poor condition of the chain link fence, the Masons acknowledged its poor condition but indicated that it would be repaired. The Masons did have one neighbor, Alonzo Jacobs, testify. However, his testimony centered around the length of time that the Masons had been in this area and how the area has changed from what was once a blighted area with significant vacant property to one that is now fully occupied, with much of the housing being architecturally restored. He did not controvert the objectionable conditions cited by the other neighbors.

20) Of significant concern to this Board is the apparent failure of the Masons to attempt to satisfy the objectionable concerns raised by the neighbors. Historically, it appears that little has been done by the Masons to alleviate these concerns. For instance, § 2303.2 requires that any parking lot next to a residential district shall be screened from all contiguous residential property by a solid brick or stone wall or thickly planted evergreen hedges. It is clear from both the testimony of the Masons as well as the photographs submitted by WNA that no such walls or hedges exist on any side of this

[13] Testimony of Tania Shand.

property. This situation is especially troubling because this regulation was in effect during the time that prior BZA approvals were given to the Masons to operate this lot as a parking lot.[14] When it comes to compliance with either BZA or other administrative requirements, the Masons do not have an enviable record. It is undisputed that they have operated—and still operate—this lot as a parking lot despite the fact that our approval expired more than ten years ago. While our prior Order also required that the lot be kept free of trash and that the landscaping be kept healthy and neat, the uncontradicted testimony and photographs entered in the record belie any significant attempt toward such compliance. The Masons also admitted that, despite our last Order permitting them to have 21 parking spaces, they increased that to 29 parking spaces and, in fact, just recently paved and restriped the lot for yet again 29 parking spaces. This action was taken after they had filed this application.[15] The Masons' prior grand master may have illuminated the reason for both the Masons' lack of concern and lack of compliance when he stated, during cross-examination, that the Masons "owned" this property and that they could do what they wanted with it.[16] If that were true, of course, then the last 200 years of land regulation have been for naught.

Application of Standard For Variance

21) Every applicant seeking a variance must meet the standard set out in §3103.2

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[14] In fact, the initial application by the Masons, no.11664, was contested by a neighborhood association and the Masons apparently had notice then that screening was necessary if this lot was to be used as a parking lot. The resulting BZA Order, dated August 26, 1974, concluded that "[w]ith proper screening and landscaping, we feel the present character and future development of the neighborhood will not be adversely affected."

[15] Testimony of grand master Aaron Jordan and John Ellington, Jr., as well as exhibit no. 47, which is a letter from Aaron Jordan discussing the recent repaving of the lot. Further, Mr. Jordan testified that he did not make any inquiry into whether any approvals or permits were required from either the city's environmental, water and sewer, or building construction agencies prior to having this repaving done.

[16] Testimony of John Ellington, Jr. at February 25 hearing.

[which essentially requotes the standard set forth by the City Council in DC Code, 6-641.07(g)(3) (2001 ed.):

> Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this subchapter and subchapter V of this chapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such 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.

It should be noted here that the Masons are asking for two variances. They must meet the dictates of §3103.2 with respect to each variance.

22) Section 3103.2 contains a three-part test, each of which have two parts. The first part can be met only if the property has either a "size or shape condition" or a "unique condition" (shorthand for "extraordinary or exceptional situation or condition"). If this is met, applicant must then show that without the variance there would result either an "exceptional practical difficulty" or "undue hardship" on the owner. If this is also met, applicant must then show there will be no "substantial detriment" and that it will not "substantially impair" the zone plan. Only when all three parts of this test are met can the Board grant a variance.

23) In looking to the first part of the test, the Masons have not claimed any size or shape issue in the subject property nor could they reasonably make such a claim. The record reflects not only that the subject property was once a grand apartment building,[17] but the Masons themselves testified that they have had many developers approach them about developing this site.

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[17] See photograph at p. 6 of WNA's Opposition, filed November 19, 2002 (exhibit no. 21).

24) Turning to the second part of the first test, it unclear whether the Masons are even claiming a unique condition, which they must if they are to meet the standard for obtaining a variance. It appears that the primary reason given by the Masons for a variance to § 214.3 is that the accessory lot is greater than 200 feet from their lodge and the primary reason given for § 214.4 is that the parking lot is not contiguous to or separated only by an alley from the lodge. Quite simply, these arguments provide no rationale. They simply state the very reason why the property does not comply with the accessory parking regulations. To permit an applicant to use the fact of non-compliance as an affirmative basis for why it should be granted a variance would be vaulting circular reasoning to a recognized status.

25) It is undisputed that the accessory parking lot is greater than 200 feet from the main structure and that it is separated by nine residential houses (one of them being the historic Madame Evanti home), the African-American Civil War Memorial and, of all things, a Metro station.[18] What is disputed is whether this gives the subject property a unique condition status. OP recognizes the Masons' argument that it is physically impossible to accommodate parking within the constraints of §§ 214.3 and 214.4. However, OP does not find that this meets the unique condition requirement of the first part of the test under § 3103.2. Rather, OP instead applies the standard set forth in the second test under § 3103.2, *i.e.*, finding that an "exceptional practical difficulty" exists. Of course, we need not go to the second part of the test if we cannot find that the Masons have met one of the two conditions in the first part of the test. Nonetheless, if we briefly jump to the second part of the test, OP's logic still fails. OP found that the practical difficulty condition had been met because "it is impractical to remove the existing structures contiguous to the lodge." While we do not dispute the impracticality—or for that

[18] In essence, the Masons are claiming they need this variance, in part, because a public transportation station lies between their proposed parking lot and their lodge. The irony of this argument is not lost on the Board.

matter the desirability—of destroying 9 homes, a memorial, and a Metro station, such an argument can be made by any applicant who needs to request a variance due to his or her failure to meet the restrictions of the zoning regulations.

26) At best, it appears that the Masons may be claiming that because their lodge structure (at 1000 U St) takes up all relevant space on that site, that this creates the unique condition. The fallacy with this argument, however, is that the unique condition must be "of the property," *i.e.*, it must apply to the property under consideration for the zoning variance. Here, the unique condition, if one exists at all, would be on the Masons' lodge property, it being the property on which all relevant space is taken up by its structure. The requested variance is for 1902 Vermont Avenue, however, and it is to that lot on which the unique condition must be shown.[19]

27) Even assuming that we could consider the unique condition of the property to which the property under consideration will provide accessory parking, the fact that such property is almost entirely covered by its building and has insufficient space for parking does not make that property any more unique than similarly situated property in that part of our City. The Masons' traffic expert testified that 1000 U Street was built long before the city's zoning regulations were implemented (1958) and which required that off-street parking be provided.[20] Since most of the neighboring buildings along U Street were also built prior to the zoning regulations, these neighbors have the same conditions existing on their properties. Accordingly, there is nothing unique about the Masons' claim that their main property does not provide for parking. A situation is no longer unique when it is part of the general condition of the neighborhood. *See Barbour v. District of Columbia Bd. of*

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[19] The Masons may have understandably confused the requirements of this provision with the requirements of § 214.6, which applies specifically to accessory parking. This latter section requires that the applicant must show that it cannot park on its own lot as a condition for seeking accessory parking. However, meeting the conditions of §214.6 neither waives nor lends support to applicant's burden in meeting the unique condition requirement of § 3103.2.

[20] Traffic Study prepared by O.R. George, p.2 (Exhibit no. 53).

Zoning Adjustment, 358 A.2d 326, 327 (D.C.1976); *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (D.C.1973).

28) The Masons also seem to be arguing that the unique condition of the property comes from their need to use this lot for accessory parking. Their traffic expert testified that if the Mason building were built today, it would need 112 parking spaces.[21] Such an argument, though heartfelt, cannot carry the day. In *Palmer v BZA,* 287 A.2d 535 (1972), the applicant requested a variance for use of space as a parking lot that was greater than 800 feet from their proposed public hall. The Appeals Court found that, "[t]he only aspect about the location in question that is unique is [applicant's] desire to utilize it as a public hall. Such a consideration cannot support a variance."[22]

29) The Masons have made no other plausible arguments why the lot under consideration has either a size or shape condition or an extraordinary or exceptional situation or condition of the property as required by the first part of the test in §3103.2. While we need go no further in our analysis, we do so here for the sake of fully considering all matters presented to the Board.

30) Turning then to the second test required by §3103.2, the Masons must show exceptional practical difficulties or undue hardship on the owner. It is at this point that the significance of whether the Masons are requesting an area variance or a use variance becomes relevant. Generally speaking, an area variance relates to restrictions such as side or rear yard, frontage, setback, or minimum lot requirements. In short, it does not alter the character of the zoned district. A use variance, on the other hand, seeks a use ordinarily prohibited in the particular district. In substance, it will alter the character of zoned district. The variances requested here are for accessory parking spaces. While one could reasonably argue that accessory parking for one or a few cars would not alter the

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[21] See note 20, *supra.*

[22] 287 A.2d at 540.

character of a residential neighborhood, the reality is that the Masons are asking for accessory parking for 21 vehicles. In *Palmer v. BZA*, 287 A.2d 535,540 (1972), the D.C. Appeals Court found that a parking lot was a hybrid, stating that a "variance of the off-street parking regulation here concerned does not strictly fall into either category." Accordingly, we will use the analysis required for a hybrid variance in this proceeding. This means that we must consider both the "exceptional practical difficulties" and the "undue hardship" requirements of § 3103.2.

31) A use variance cannot be granted unless "reasonable use cannot be made of the property in a manner consistent with the zoning regulations.[23] Here, the subject property was used as an apartment building prior to its use as parking lot. There has been no showing by the Masons that this lot cannot be used for housing today. In fact, the property tax-assessed value indicates the current property value to be $336,000,[24] which would indicate little, if any, hardship resulting from any unique conditions on this property.

32) Another factor significantly mitigating any undue hardship argument is the availability of alternative parking for the applicant. While the applicant has the burden of showing the need for this variance, and hence the lack of alternative parking in the area, the Masons failed to present any evidence in that regard. Notably undermining any such argument, however, is the parking study presented by WNA which shows 13 separate parking lots within a few blocks of the Masons' lodge.[25] The Masons admitted during cross-examination that they had only investigated one of these parking lots. Interestingly, one of the lots shown on the parking study (at 1026 U Street, NW) is directly across the street from the Masons' lodge and is closer than the lot here under consideration for

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[23] *Palmer v BZA,* 287 A.2d 535, 540.

[24] See ANC Report, dated February 8, 2003, Exhibit no. 48.

[25] WNA Study of Parking Options, Exhibit no. 62.

accessory parking. WNA member Chuck Baxter testified that the owner of that lot had nine spaces available for parking and that the owner was willing to consider the Masons' use of all nine parking spaces. Similarly, DDOT, in their initial report,[26] refers to its observation of three surface parking lots within a two block radius of the subject lot, with availability for 61 vehicles. This report also recommends that the Masons encourage their patrons to use public transportation, on-street parking, and the available private parking lots.

33) Combined with the availability of alternative parking is the recognition that the WMATA subway stop is literally next door to the Mason lodge,[27] again an option available to the Masons that is physically closer than their proposed parking lot. As testified to at the hearing, this transportation mode is available at the Masons at all times prior to and after their meetings held at the lodge. Such "undue hardship" would be welcomed by many commercial buildings in this City.

34) Turning to the considerations for an area variance, the applicant has the burden of showing exceptional practical difficulties if a variance is not granted. Generally it must be shown that compliance with the area restriction would be unnecessarily burdensome, *Palmer v. BZA,* 287 A.2d 535, 542 (1972). The subject property is zoned R-4, which is residential housing. As stated above, the Masons have testified that not only have they been approached by developers, they are also considering developing this property themselves. One can safely assume that such anticipated development includes residential housing. This simply belies any argument that such development would be unnecessarily burdensome or that there exists any exceptional practical difficulty in using this property under its current zone designation.

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[26] Memorandum from Kenneth Laden to Office of Zoning, dated November 19, 2002, Exhibit no. 26.

[27] See the WNA photographs, p.7 (Exhibit no. 59) and the Metrobus Service on U Street brochure (Exhibit 63).

35) Turning now to the third part of the test under § 3103.2, the applicant must show there will be no "substantial detriment" and that the variances will not "substantially impair" the zone plan. These two conditions, unlike the dual conditions in the first two parts of this test, are stated in the conjunctive so that both conditions must be met by the applicant. The "no substantial detriment" part of this test in many ways encompasses the "not likely to become objectionable" standard of §214.7 as well as the "will not ... affect adversely the use of the neighboring property" standard of § 3103.2. The numerous objectionable conditions testified to by the opposition, and shown by their exhibits, which we considered above include noise, glaring headlights, trash, safety, loss of an on-street parking space, and aesthetics. All such objections are noted herein and need to be considered in determining whether there will be any substantial detriment by the approval of these variance requests.

36) Again, the Masons have the burden of presenting sufficient evidence showing that they meet each of conditions of §3103.2, including the lack of "substantial detriment"to the public good. As stated in our consideration of § 214.7, the Masons presented little to rebut the objections raised by the community.[28]

CONCLUSIONS OF LAW

At the public hearings held February 25, March 18, and March 25, 2003, the Board of Zoning Adjustment reviewed and considered all testimony and evidence presented in this case, including all post- hearing submissions from all parties. Based on its deliberations in this case, the Board's conclusions of law and decision follow:

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[28] The Office of Planning's Supplemental Report apparently bases its opinion that approval will not cause substantial detriment, in large part, on the belief that since we have approved this lot for accessory parking in prior Orders, that we can "reinstate" the most recent Order. However, as discussed herein, due to the applicant's failure to seek renewal of that Order for over ten years, we are not viewing this proceeding as a reinstatement request, but rather, as a new request.

1. This Board's prior approval of the use of the subject lot as accessory parking expired June 4, 1992. Despite this, the Masons have continued to use the lot for parking since the expiration of our Order and continue to use it in this fashion. Accordingly, this Board has determined that this application shall be considered as a new application and not as an application to continue or extend a prior use.

2. The Masons have failed to meet their burden under § 3104.1 which requires that the requested special exception will not affect adversely the use of the neighboring property. The Masons have not presented sufficient evidence with respect to this standard. In addition, considerable evidence of detrimental effects have been presented by the neighbors. We also note that this lot is zoned R-4 and that a parking lot for 21 spaces would have an significant adverse impact on a community such as this which has shown itself to be intensely concerned about its architectural and aesthetic considerations.

3. The Masons have failed to meet their burden under §214.7 showing that the proposed parking lot will not likely become objectionable to adjoining and nearby property because of noise, traffic, and other objectionable conditions. These objectionable conditions include noise when the Masons leave the parking lot at night and glare from headlights. There are no walls, bushes or other barriers on any side of this parking lot to limit either the noise or the headlights from going out into the community. Trash has also been a problem both in the parking lot as well as on the adjoining sidewalks and the access areas from the parking lot to the Masons' lodge. There is no trash receptacle on the parking lot. There has also been a lack of snow removal on the sidewalks surrounding two sides of the parking lot. Objectionable safety conditions have also arisen in the community due to some of the Masons driving up wrong side of street to enter the parking lot as well as the danger resulting from the closeness of the on-street parking next to the parking lot entrance which creates a visual sight problem with respect to the ability of drivers in either the parking lot or on Vermont Avenue seeing each other. The parking lot is also

objectionable due to its negative impact on the aesthetic character of the neighborhood. This negative impact comes not only from the inherent lack of character that a parking lot imparts on a residential neighborhood, but also from the existence of a chain link fence surrounding this property as well as the general lack of physical maintenance of this parking lot. The poor condition of the fence also causes a security issue for the neighbors.

4. The Masons have historically failed to either comply with this Board's requirements or to satisfy the concerns raised by the neighbors. The Masons have failed to comply with § 2303.2 with respect to the construction of a wall (12" thick and 42" high) or hedges to screen the lot from all contiguous residential property. As stated earlier, the Masons have operated this lot as a parking lot for over ten years after expiration of our approval[29]. The lot has also not been kept free of trash and the landscaping has not been kept healthy and neat. Further, despite our last Order permitting the Masons to have 21 parking spaces, they unilaterally increased that limit to 29 parking spaces and continue to use for 29 spaces.

5. The Masons have failed to meet their burden of proof under the first test of §3103.2 which requires that this lot have either a "size or shape condition" or an "extraordinary or exceptional situation or condition." The subject property was once a grand apartment building and appears to be prime property for development, which belies any size or shape condition. As to any unique condition, the Masons have failed to present any evidence or argument showing any unique condition for the subject property. Any claim by the Masons that their lodge structure (at 1000 U Street) takes up all relevant space on that site fails to satisfy this requirement because the unique condition must apply to the property for which the variance is sought. Even if we did consider 1000 U Street, the fact that such property is almost entirely covered by its building makes this property no

[29] This failure by the Masons to request BZA approval took away the opportunity of the neighbors to present their arguments to us for why this lot should not have been used as a parking lot. In effect, the Masons were granted a ten year extension by their failure to act.

more unique than other properties in that same area. Any argument that the unique condition of the property comes from the Masons' need to use this lot for accessory parking is simply not a consideration that can be used to meet the dictates of §3103.2.

6. The Masons have also failed to meet their burden under the second test required by §3103.2, which is that they must show exceptional practical difficulties or undue hardship on the owner, and that such difficulties or hardships flow from the conditions used to meet the first part of this test. Using the hybrid variance analysis, we conclude that the Masons have failed to show the required undue hardship necessary for a use variance. The subject property was used as an apartment building prior to its use as a parking lot and there has been no showing that this lot cannot be used for housing today. There also appears to be significant alternative parking available to the Masons, as shown by the parking study presented by WNA, as well as the fact that a WMATA subway stop exists literally next door to the Mason lodge. The Masons fare no better in showing that they meet the area variance standard of exceptional practical difficulties. This property is zoned R-4 and the Masons have not shown that there would be any difficulty in using this property in compliance with its current zone designation.

7. The Masons have also failed to meet the third part of the test under § 3103.2 that there will be no "substantial detriment" to the public good. The neighbors have shown that noise, glaring headlights, trash, safety, loss of an on-street parking space, and the negative effect on the aesthetics of the community would all result from the use of this lot as an accessory parking lot. The Masons have failed to present any significant evidence regarding these issues.

8. We have accorded great weight to the recommendation of Advisory Neighborhood Commission 1B, to which they are entitled. The ANC, along with a significant number of community members and associations, have strongly opposed the granting of this application. Times have changed in the 30 years since the Masons initially

started using this residential lot for the parking needs of its commercial building. The community has also changed and, by all apparent indications, will continue to change. An accessory parking lot of this size, sandwiched between residential housing on all sides, is no longer appropriate in this community.

DECISION

On consideration of the Findings of Fact and Conclusions of Law contained herein, the Board of Zoning Adjustment for the District of Columbia ORDERS that the amended application of The Most Worshipful Prince Hall Grand Lodge for a special exception and two variances to operate an accessory parking lot located at 1902 Vermont Avenue, NW, Lot 827, Square 333, be DENIED; and it is further

ORDERED that the applicant shall cease and desist from using the subject property as an accessory parking lot forthwith.

The vote of the Board of Zoning Adjustment was taken at a public meeting on May 6, 2003, (_____), to approve; (_____), to deny, and the Order was adopted by the Board of Zoning Adjustment by a vote of ___to____.

In accordance with the provision of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register, on _____.

Geoffrey Griffis, Chairperson Board of Zoning Adjustment	Jerrily R. Kress, FAIA, Director Office of Zoning

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of April 2003 a copy of the foregoing Proposed Findings of Fact, Conclusions of Law and Decision by the Westminster Neighborhood Association was served by first-class mail, postage prepaid, on:

Edgar Nunley
4707 Brinkley Road
Temple Hills, MD 20748

Deborah Thomas, Chair
ANC 1B
1440 W Street, NW, Apt. B-1
Washington, DC 20009

Andrew Altman, Director
Office of Planning
801 N. Capitol Street, NW, Suite 4000
Washington, DC 20002

Phil Spalding, Secr.
ANC 1B
1929 13th St., NW
Washington, DC 20009

Lynn H. Johnson, Esq.