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September 9, 2003

CHRISTOPHER H. COLLINS
(202) 457-7841
ccollins@hklaw.com

RECEIVED
D.C. OFFICE OF ZONING
2003 SEP -9 PM 3:27

Hand Delivery

Board of Zoning Adjustment
441 4th Street, N.W.
Room 210 S
Washington, D.C. 20001

Re: BZA No. 17049

Dear Members of the Board:

Enclosed please find an original and 20 copies of the Applicant's Statement in Support of the above-referenced application, scheduled for public hearing on September 23, 2003.

Please do not hesitate to contact us should you have any questions or require further information.

Very truly yours,

HOLLAND &KNIGHT LLP

Christopher H. Collins

Enclosures
WAS1 #919995 v2

BZA
Case No. 17049
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO. 17049
EXHIBIT NO. 23A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF
THE DISTRICT OF COLUMBIA

Application No. 17049
of
SMC-United Industrial Limited Partnership
to Reinstate Parking Lot Use
at the
Rear of 3070 V Street, N. E.

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006

Christopher H. Collins
Attorney-at-Law

September 9, 2003

BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION OF	**BZA APPLICATION NO. 17049**
SMC-UNITED INDUSTRIAL LP	**HEARING DATE: SEPTEMBER 23, 2003**
	ANC 5B

STATEMENT OF THE APPLICANT

I.

NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of SMC-United Industrial Limited Partnership, the owner of property located at premises 2310 and 2320 31st Street, N.E. - Rear of 3070 V Street, N.E. - (Square 4365, Lots 805 and 806) (the "Site"), in support of the above-referenced application to the Board of Zoning Adjustment. The application requests a reinstatement of the special exception under 11 DCMR § 213 approved by the Board of Zoning Adjustment in Order No. 16164, to permit the continued operation of a parking lot pursuant to 11 DCMR § 3104.1. The Applicant has operated the subject parking lot continuously for more than 45 years, since 1957, with Board of Zoning Adjustment approval.

II.

JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the special exception relief requested herein pursuant to Section 3104 of the District of Columbia Municipal Regulations (the "Zoning Regulations"). 11 DCMR § 3104.

III.

BACKGROUND

A. Description of the Subject Property

The parking lot is located at the rear (north) of warehouse premises at 3070 V Street, N.E., in Square 4365. The Square is roughly bounded by Adams Street, 30th Street, 31st Street and V Street, N.E. The parking lot is located within the eastern portions of Lots 805 and 806, along 31st Street, N.E. Lots 805 and 806 together contain approximately 92,177 square feet of land area. The parking lot surface occupies approximately 38,000 square feet of subject property.

The property is located in an R-1-B District. The site abuts the C-M-1 District immediately to the south along V Street, N.E., and the east across 31st Street. The premises at 3070 V Street, N.E. is currently used as a U.S. Postal Service Warehouse. The subject parking lot is a private lot located directly behind the warehouse. The entrance to and exit from the lot are along 31st Street, N.E.

B. Description of the Surrounding Area

The V Street corridor, between South Dakota Avenue to the east and Bladensburg Road to the west, is lined with low-rise (one and two-story) brick warehouses, many having offices incorporated into them on the ground floor. Across 31st Street to the east of the subject site is a WMATA employee parking lot and bus storage lot in the C-M-1 District. Farther east is the open storage yard of a construction company in the C-M-1 District. Open storage yards are also scattered

throughout the area. A labor union office headquarters building and public hall are located to the northeast of the subject property, on Ames Place.

The nearest residentially zoned property to the parking lot is located to the north of the subject property and is owned by the Applicant. A residential neighborhood of mostly single-family detached houses, many with rear-lot garages and/or accessory buildings are separated from the subject property by open areas and steep slopes, and by wooded areas with large trees. There is a chain link fence enclosure around the lot that acts as a buffer between the subject site and the residential areas.

C. History of Prior BZA Approvals

By BZA Order No. 4845, effective on or about September 20, 1957, the Board granted permission for the establishment of the subject parking lot. The Board subsequently approved the continued use of the parking lot through the issuance of the following orders: Order No. 5904 and 5905, dated May 25, 1960; Order No. 11171, dated February 6, 1973, Order No. 12219, dated December 9, 1976; Order No. 12592, dated March 28, 1978; Order No. 14787, dated June 24, 1998; Order No. 15425, dated January 31, 1991; and Order No. 16164, dated April 14, 1998 and modified July 7, 1999 (See Exhibits G and I). Each of the above orders limited the period of approval to five years or less.

IV.

THE APPLICANT MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF UNDER THE ZONING REGULATIONS

In order for the Applicant to continue the existing parking lot use, special exception relief is required under the §213.

A special exception use is deemed compatible with other uses permitted in a particular zoning classification provided that the specific regulatory requirements are met. If the Applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695 (1981). The court in that case held that before the Board can decline to reissue a special exception for a period of time, there must be evidence of "(1) a change of conditions and (2) other considerations materially affecting the merits of the subject matter" Id at 701. In this case, there has been no change of conditions or other such considerations. The Applicant has operated the parking lot in full compliance with the previous order, and respectfully requests reinstatement of the Board's prior approval, for a period of 10 years.

A. Section 213

Pursuant to § 213.1 of the Zoning Regulations, use as a parking lot shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of § 213. The subject application satisfies these criteria as set forth below:

1. **§ 213.2** - *A parking lot shall be located in its entirety within two*

hundred feet (200 ft.) of an existing Commercial or Industrial District.

The subject parking lot is located within two hundred feet (200 ft.) of industrially zoned (C-M-1) property to the east and south.

2. **§ 213.3** - *A parking lot shall be contiguous to or separated only by an alley from a Commercial or Industrial District.*

The subject parking lot is contiguous to industrially zoned property on its south and east sides.

3. **§ 213.4** - *All provisions of chapter 23 of this title shall be complied with.*

All provisions of chapter 23 will be complied with, as will be further detailed in this Statement.

4. **§ 213.5** - *No dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, and the present character and future development of the neighborhood will not be affected adversely.*

The continued operation of the parking lot will not result in dangerous or otherwise objectionable traffic conditions. As demonstrated during the last 45 years of the parking lot's existence, and prior BZA approvals, the continuation of the parking lot will not adversely affect the present character or future development of the neighborhood.

5. **§ 213.6** - *The parking lot shall be reasonably necessary and convenient to other uses in the vicinity, so that the likely result will be a reduction in overspill*

parking on neighborhood streets.

The parking lot continues to minimize the demand for overflow parking on neighborhood streets. There is no overspill from the parking onto neighborhood streets.

6. **§ 213.7 -** *A majority of the parking spaces shall serve residential uses or short-term parking needs of retail, service, and public facility uses in the vicinity.*

The subject parking lot is used primarily for temporary vehicle storage by the United States Postal Service, which is the tenant in the warehouse to the south of the subject site, and which is a public facility.

7. **§ 213.8 -** *Before taking final action on an application for use as a parking lot, the Board shall submit the application to the D.C. Department of Transportation for review and report.*

It is the Applicant's understanding that the application has been submitted to and reviewed by the Department of Transportation.

B. **Section 2303**

1. **§ 2303.1** – (a) *All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials or other material approved by the D.C. Department of Transportation as structurally equivalent or better, that form an all-weather impervious surface, and that are a minimum of four inches (4 in.) in thickness.*

The parking lot consists of a concrete surface.

2. **§ 2303.1** – (b) *The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line.*

The parking lot is fenced at the lot line along its east side, and is well within the lot line on all other sides.

3. **§ 2303.1** – (c) *No other use shall be conducted from or upon the premises, and no structure other than an attendant's shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the district in which the parking lot is located.*

The lot is used exclusively as a parking lot.

4. **§ 2303.1** – (d) *No vehicular entrance or exit shall be within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended.*

No vehicular entrance or exit is located within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended.

5. **§ 2303.1** – (e) *Any lighting used to illuminate a parking lot or its accessory buildings shall be arranged so that all direct rays of the lighting are confined to the surface of the parking lot.*

The parking lot is not lighted. In the future, if lighting is installed, it will be arranged so that all direct rays of the lighting are confined to the surface of the

parking lot.

6. **§ 2303.1** – (f) *The parking lot shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot otherwise requiring Board approval.*

The parking lot is kept free of refuse and debris and is landscaped with grass, trees, and bushes. The amount of landscaping on the site exceeds the requirement that a minimum of five percent (5%) of the total area of the lot be landscaped.

7. **§ 2303.2** – *In addition to the requirements of § 2303.1, a parking lot located in an R-1, R-2, R-3, R-4 or R-5 District, and a parking lot located in any other district where such parking lot is contiguous to an R-1, R-2, R-3, R-4 or R-5 District, shall be screened from all contiguous residential property located in the R-1, R-2, R-3, R-4 or R-5 District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges or evergreen trees that are thickly planted and maintained and at least forty-two inches (42 in.) in height when planted.*

> *(a) The parking lot shall be screened from all contiguous residential property located in an R-1, R-2, or R-3 District by a solid masonry wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high;*

and

(b) All parts of the lot not devoted to parking areas, driveways, access lanes, attendant's shelter, or required screening walls shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing conditions and in a neat and orderly appearance.

The only contiguous residential property to the parking lot are Lots 28 and 29 which are owned by the Applicant. These lots are unimproved and serve as a buffer between the subject property and the nearest residential property not owned by the Applicant.

8. **§ 2303.3** – *If approved by the Board of Zoning Adjustment as a special exception under § 3104, the conditions in § 2303.2 may be waived or modified.*

The Applicant requests that compliance with § 2303.2(a) be waived. The parking lot has operated for over 45 years pursuant to BZA approval, without a masonry wall enclosure. The lot is fenced in.

9. **§ 2303.4** – *Before authorizing a waiver or modification, the Board shall consider:*

(a) The adequacy of protective and screening walls located on adjacent residential property;

(b) Topographic and traffic conditions; and

(c) Any adverse effect the requested waiver or modification of standards may have on adjacent residential property.

There have been no changes with regard to the physical conditions or operational character of the parking lot since the last Board approval pursuant to Order No. 16164. The Applicant respectfully requests a waiver of the fee requirement.

10. **§ 2303.5** – *The Board may require any special treatment of the premises that it deems necessary to protect the value of adjacent property.*

The Applicant has continued to comply with the conditions of the approval specified in its last Order (No. 16164). The Applicant is committed to continuing to operate the parking lot in a manner so as to protect the value of the adjacent property.

V.

COMMUNITY SUPPORT

The Applicant has discussed the project with representatives of the community, and presented the project to Advisory Neighborhood Commission ("ANC") 5B on September 4, 2003. The ANC voted to support the project conditioned upon an agreement between the Applicant and the neighboring community organizations. A copy of the signed Agreement is attached as Exhibit I to this Statement.

VI.

EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A: Portion of the Baist Atlas Map showing the subject site outlined in red;

Exhibit B: Portion of the Zoning Map showing the subject site outlined in red;

Exhibit C: Surveyor's Plat of the subject site;

Exhibit D: Photographs of the subject site;

Exhibit E: Outline of Testimony of Representative of SMC-United Industrial Limited Partnership.

Exhibit F: BZA Order No. 16164, dated April 14, 1998 and modified on July 7, 1999, approving the use of the subject site as a parking lot for a period of five (5) years.

Exhibit G: Parking Lot site layout.

Exhibit H: Copies of Board of Zoning Adjustment Order Nos. 4845, 5904, 5905, 11171, 12219, 12592, 14787, and 15425, approving parking lot use of the subject site.

Exhibit I: Agreement with Community for continued use of parking lot.

VII.

WITNESSES

A. Representative of the SMC-United Industrial Limited Partnership.

VIII.

CONCLUSION

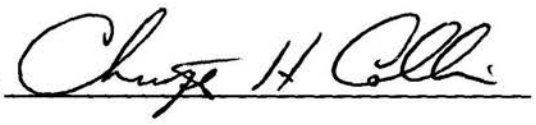
The Applicant submits that it has fully met the burden of proof for special exception relief under Section 213 and Subsection 3104.1 of the Zoning Regulations.

The Applicant has complied with all of the conditions enumerated in the Board's previous approval under Order No. 16164.

For the reasons stated above, the Applicant respectfully requests that this application be approved for ten (10) years.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: 

Christopher H. Collins, Esq.

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006
(202) 955-3000

WAS1 #1210023 v1

A

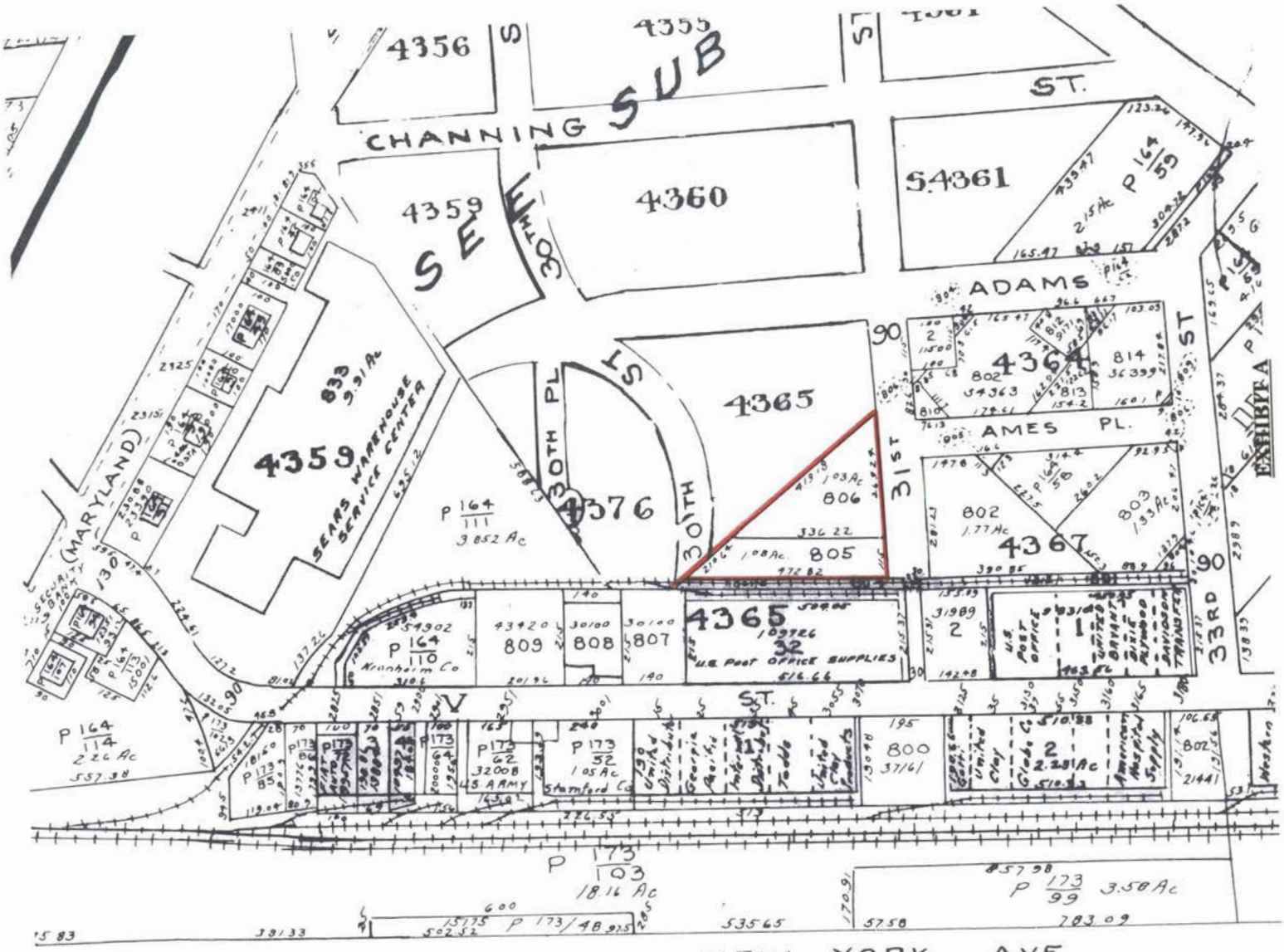

4356
4355
CHANNING
SUB
ST.
4359
4360
54361
P 164/59
2.15 Ac
ADAMS
4364
802
54363
814
3.6399
813
154.2
AMES PL.
4365
30TH PL
30TH ST
31ST ST
33RD ST
EXHIBIT A
4376
4359
SEARS WAREHOUSE
SERVICE CENTER
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3.31 Ac
P 164/111
3.852 Ac
806
1.03 Ac
805
1.08 Ac
336.22
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1.77 Ac
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803
1.33 Ac
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807
4365
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U.S. POST OFFICE SUPPLIES
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U.S. POST OFFICE
P 164/110
Krumhorn Co
P 164/114
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557.38
P 173/85
P 173/62
32008
U.S. ARMY
Stamford Co
P 173/52
1.05 Ac
800
37161
2
2.281 Ac
510.13
802
21441
P 173/103
18.16 Ac
P 173/99
3.58 Ac
283.09
NEW YORK AVE




EXHIBIT B
R-1-B
C-M-1
C-2-A
C-2-B
R-5-A
R-5-D
C-3-C
GOV
M
C-M-2
PUD035
PUD160
Fort Lincoln New Town
FRANKLIN ST
HAMLIN ST
DOUGLAS ST
CHANNING ST
ADAMS ST
AMES PL
BLADENSBURG RD
CHERRY RD
BERRY RD
APPLE RD
FORT LINCOLN DR
SPRING HOUSE RD
HICKEY LN
HICKEY HILL RD
CONIFER RD
HOLLY SPRING RD
VALLEY RD
MONTANA AVE
LAFAYETTE AVE
PARK AVE
QUEENS CHAPEL RD
LAWRENCE AVE
MILLS AVE
GIRARD PL
EVARTS ST
VISTA ST
CENTRAL AVE
EARL PL
FULTON PL
ADAMS PL
LO/C-M-1

C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., May 15, 2003

Plat for Building Permit of SQUARE 4365 LOTS 805 & 806

Scale: 1 Inch = 40 feet Recorded In A & T Book Page 3427-E

Receipt No. 04431

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

By: L.E.S.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted, that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or less, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.

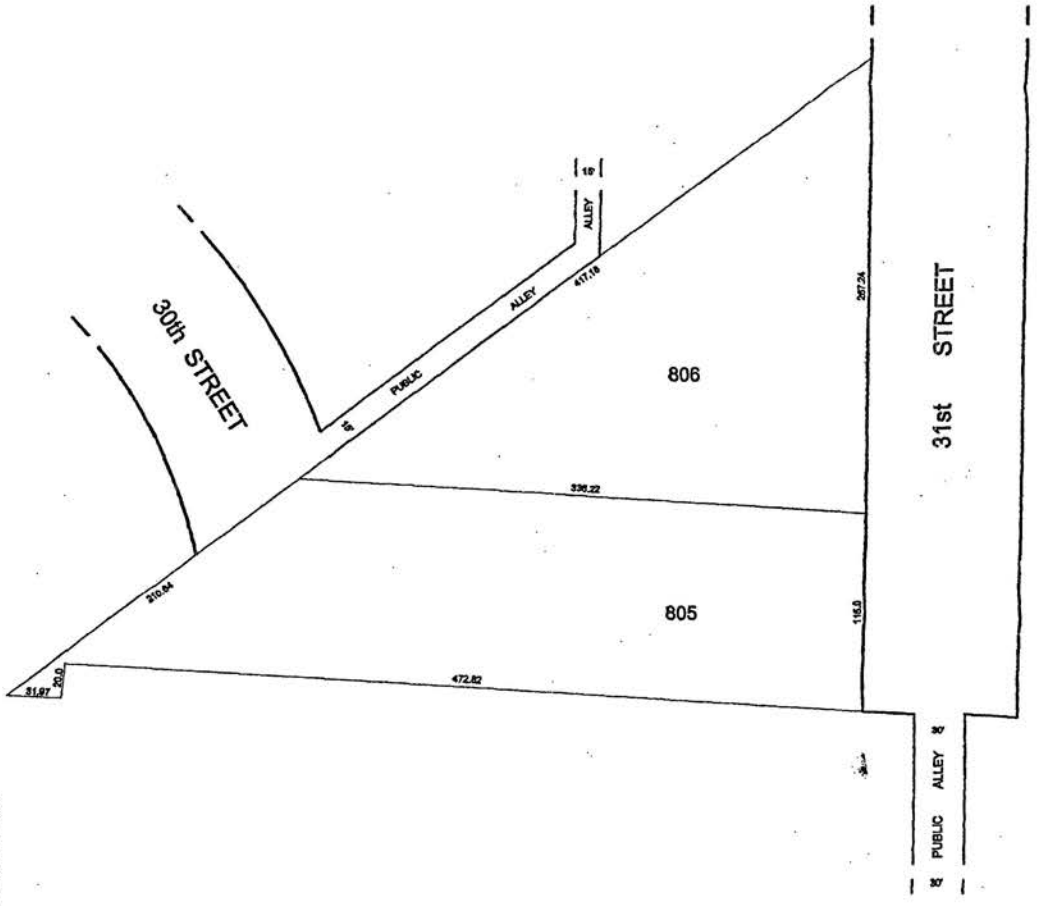


EXHIBIT C

SO-04431(2003)



Rear of 3070 V Street, NE, Washington, DC, 20018
Square 4365, Lots 805 and 806
2310 and 2320 31st Street, NE



Front of Lot, Looking Out



Side of Lot

EXHIBIT D

Rear of 3070 V Street, NE, Washington, DC, 20018
Square 4365, Lots 805 and 806
2310 and 2320 31st Street, NE



Front of Lot
Looking into Lot



BZA APPLICATION NO. 17049

OUTLINE OF TESTIMONY
FRED FARSHEY
SMC-UNITED INDUSTRIAL LP

I. Introduction

II. The use of the subject property as a parking lot has a 45 year history of BZA approval.

III. The continued use of the subject property as a parking lot will be in accordance with the provisions of Section 213 and 2303 of the Zoning Regulations.

IV. The past use of the subject property as a parking lot has complied with the conditions of BZA Order No. 16164.

V. Approval of the special exception can be granted without substantial detriment to the public good, and without substantially impairing the intent, purpose and integrity of the Zone Plan embodied in the Zoning Regulations and Map.

VI. The application has the support of the Advisory Neighborhood Commission. [anticipated]

VII. The application should be approved.

EXHIBIT E

F

SMC UNITED INDUSTRIAL
11892/002

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16164 of SMC-United Industrial Limited Partnership, as amended, pursuant to 11DCMR 3108.1 (new section 3104.1), for a special exception under Section 213 to establish a parking lot in an R-1-B District at the rear of 3070 V Street, N.E. (Square 4365, Lots 805 and 806).

HEARING DATE: October 16, 1996
DECISION DATE(S): November 6, 1996, and July 7, 1999

MODIFICATION ORDER

REQUEST FOR MINOR MODIFICATION OF APPROVED PLANS

This application was approved by the Board pursuant to Order No. 16164, dated January 2, 1998, as corrected by Order No. 16164, dated April 14, 1998. The Applicant, SMC United Industrial Limited Partnership, by letter dated June 25, 1999, in accordance with the provisions of Section 3335 of the Zoning Regulations, requested approval of minor modifications to the approved site plan (Exhibit No. 32, in the record) in BZA Order No. 16164, dated April 14, 1998. The Applicant stated that the requested minor modifications do not change the material facts the Board relied upon in approving the application.

The Board in the subject case approved a special exception for continued use of the parking lot at the subject site for the adjacent warehouse use. The parking lot had a history of use by the U.S. Postal Service for its vehicles. The Postal Service will be vacating the property and would be removing its vehicles by October, 1999. The Applicant is presently in lease negotiations with the Metropolitan Police Department, which will lease the adjacent warehouse building and will use the subject lot for the parking of its vehicles. The Applicant therefore requests permission to modify the approved site plan to delete the references made to the use of the lot by the U.S. Postal Service. In conjunction with the above change to the site plan, the Applicant proposed that Conditions 3.b. and 3.c. of the Modification Order should be changed to read:

EXHIBIT F

3.b. Service vehicles for the tenant of the adjacent building shall be restricted to the northern portion of the facility.

3.c. Employee passenger vehicles for the tenant of the adjacent building shall be restricted to the central portion of the facility.

The above modification will allow future users (new tenants) of the parking lot to do so without having to reappear before the Board. The Applicant stated that all of the other conditions of the Order would remain in full force and effect.

CONCLUSION OF LAW AND OPINION:

Based on the evidence of record, the Board concluded at its regularly scheduled public meeting on July 7, 1999, that the modification sought by the Applicant in the subject matter is minor in nature, and does not change the material facts the Board relied upon in approving the application. The modification to Condition Nos. 3.b. and 3c. of Order 16164, dated April 14, 1998, will eliminate the need for the Applicant to return to the Board each time a new tenant wishes to use the parking lot.

In light of the foregoing, the Board **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Amend Conditions 3.b. and 3.c. in Order No. 16164, dated April 14, 1998, to read as follows:

   3.b. Service vehicles for the tenant of the adjacent building shall be restricted to the northern portion of the facility.

   3.c. Employee passenger vehicles for the tenant of the adjacent building shall be restricted to the central portion of the facility.

2. The layout of the site shall be in accordance with the revised site plan attached to the Applicant's June 25, 1999, letter and marked as "Proposed Modifications".

VOTE: **4-0** (Betty King, John Parsons, Jerry H. Gilreath and Sheila Cross Reid to grant).

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: MAY 18 2000

Ord16164/PH

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA MODIFICATION ORDER NO. 16164

As Director of the Office of Zoning, I certify and attest that on MAY 18 2000, a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Fred Farshey
SMC United Limited Partnership
7220 Wisconsin Avenue, N.W.
Suite 210
Bethesda, MD. 20814

Mr. Richard Nero, Jr.
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Washington, D.C. 20006

Ms. Mozelle E. Watkins
ANC 5A-11, Single Member District
3225 Walnut Street, N.E.
Washington, D.C. 20018

Ms. Leslie C. Bournes
Gateway Community Association
P.O. Box 41476
Washington, D. C. 20018-0876

Ms. Annie M. Dawkins
2330 31st Street, N.E.
Washington, D.C. 20018

Attested by: _____
JERRILY R. KRESS, FAIA
Director

DATE: MAY 18 2000

11842-001

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16164 of SMC-United Industrial Limited Partnership, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to establish a parking lot for vehicles of the U.S. Postal Service in an R-1-B District at the rear of 3070 V Street, N. E. (Square 4365, Lots 805 and 806).

HEARING DATE: October 16, 1996
DECISION DATE: November 6, 1996

CORRECTED ORDER*

PRELIMINARY MATTER

The application was advertised as a special exception under Section 214, to allow general parking for a parking lot established by Board's Order No. 14787 for vehicles of the U.S. Postal Service. The subject property is located at the rear of 3070 V Street, N. E., and is in a R-1-B District. At the hearing, the applicant requested that the Board consider the application under Section 213. The applicant stated that there has been some confusion within the Zoning Regulations, because the numbering in the regulations has changed. The applicant stated that it is asking for reinstatement of BZA Order No. 15425 that was granted under Section 214. The applicant stated that if the application cannot be considered as a continuation of the previous approval, that it shall be considered as an original application of the parking lot. The applicant also stated that they are prepared to present the application under either section. The applicant stated that if you look back in history, Section 214 was intended to address those situations where there is a single property, a single ownership, and a zoning line going through the property. It speaks in terms of parking that is accessory to the principal use, and is located elsewhere than on the same lot as the principal use. The applicant stated that it may be cars, jeeps, or postal vehicles, the lot is still considered as accessory to the main use. He also stated that in its case, the main use is a warehouse, and it is typical for a warehouse to have trucks.

The Board stated that Section 214 is for accessory parking spaces, that the correct Section is 213 which permits parking lots in an R-1 District if approved by the Board of Zoning Adjustment.

The applicant stated that it went to the community to address the application and that it received support from the Advisory Neighborhood Commission and Gateway Community Association.

---

*The order was administratively corrected to accurately reflect the agreement with the issue of lighting. The corrections appearing on pages 5, 7, and 9 of this order are noted by asterisks.

The Office of Planning (OP) stated that its report addressed Section 214, and if the Board continued with the hearing of the application under Section 213, they would not be prepared to address the regulations in this application. The Office of Planning said it needed to look at both sections to see how similar or dissimilar they are. OP stated that it could not respond to Section 213 at this time.

The Board left the record open for OP to prepare a supplemental report.

The Board stated that under Section 213 of the Zoning Regulations a parking lot must be contiguous to or separated only by an alley from a Commercial or Industrial district.

The applicant stated that the subject parking lot (Lots 805 and 806) is in fact contiguous to the warehouse property Lots (Lots 804 and 32). They also stated that a railroad spur crosses Lot 804 that is owned by the applicant, but it is still a part of the warehouse site.

The Office of Planning stated that when the Board approved the application for a special exception, the application was valid, but the applicant did not obtain a certificate of occupancy (C of O). OP also stated that the use was discontinued because the applicant lacked a valid C of O, and three years had lapsed. OP stated that the applicant should be seeking a use variance and not a special exception.

The applicant testified that they lost the certificate of occupancy, that they reapplied for the C of O, and that they have been involved in this process for twelve months.

The application was amended accordingly, and the Board proceeded to hear the application under Section 213 as a special exception to establish a parking lot for vehicles of the U.S. Postal Service.

SUMMARY OF EVIDENCE

The subject property is located at the rear of 3070 V Street, N. E. The site is located in the Northeast Gateway neighborhood. The boundaries of the property are Adams Street to the north, V Street to the south, 30th Street to the west, and 31st Street to the east.

The site is a triangular-shaped piece of property that consists of two contiguous lots (lots 805 and 806). Lot 805 contains 47,297 square feet of land area, and Lot 806 contains 44,880 square feet of land area. Both lots combined have a total land area of 92,177 square feet. The parking lot surface occupies approximately 38,000 square feet of the subject property. A chain link fence topped with barbed wire surrounds the property. Egress and ingress is electronically controlled. The parking lot is divided into three sections. The northern portion of the lot is used for parking the United States Postal Service (USPS) employee/carrier vehicles, and employee vehicles, the central portion of the lot is used for private cars, and the southern portion of the lot is used for tractor trailers.

The site is located in an R-1-B District. The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings. The R-1-B District also permits parking lots, if approved by the Board of Zoning Adjustment.

The subject property abuts a C-M-1 District. There are industrial and commercial uses located to the south and west of the property, whereas residential uses are located to the north. The C-M-1 and C-2-A zoned areas along V Street and Bladensburg Road contain warehouses, wholesale businesses, transportation services, automotive repair garages, fast food restaurants, and other types of businesses. An unused railroad spur and a wooded area divide the industrial uses from the residential uses along V Street.

The applicant is requesting zoning relief from Section 213 and Subsection 3108.1 of the Zoning Regulations to reinstate BZA Order No. 15425 of SMC-United Industrial Limited Partnership.

ISSUES AND ARGUMENTS

I. Subsection 213.1 states that use as a parking lot shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment in accordance with conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section as stated below:

> The Board is authorized to grant special exceptions, as provided in this title where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

Adversely Affect Neighboring Property, Zoning Regulations and Map. The applicant stated that the lot has continued in existence as a necessary adjunct to the industrial uses along V Street for over 40 years. The site and area description sections on the site plan demonstrate that the utilization of the subject premises as a parking lot will be in harmony with the existing neighboring properties. The applicant proposes to continue the parking lot use as previously approved by the Board.

The Office of Planning in its report dated October 8, 1996, stated that the site has been used as a parking lot for over 30 years. OP stated that the site serves as a buffer between two distinctly different uses, industrial and residential. Although the site is zoned for low-density residential development, the record in this case does not indicate that the site was ever used for housing. The parking lot is a functional way of using the site for much-needed parking spaces for the industrial businesses and, simultaneously, screening the nearby residential dwellings from the industrial uses. The applicant's proposal is not in disharmony with the general purpose and intent of the Zoning Regulations and Map. Further, if the recommendations suggested by the Office of Planning accompany approval of this application, the accessory parking lot would not affect adversely the use of neighboring properties.

Advisory Neighborhood Commission 5A submitted a report to the record dated October 7, 1996. In the report, the ANC stated that it met with a representative from the Postal Service and the Gateway Community Association to discuss the application. The ANCs in its report stated, no one voiced opposition to the request at the meeting, but citizens expressed concerns about not receiving a copy of the occupancy permit. The citizens wanted to know if there would be a change in the use of the property. The ANCs and the Gateway Community Association agreed

to approve the application contingent upon the applicant complying with certain conditions and making an agreement in written form. The representative of Single Member District 5A-11 testified at the hearing representing 5A-11 and ANC 5A. She reiterated the concerns expressed in the report.

Gateway Community Association (SMC) submitted a report to the record stating that it voted to oppose the application if certain conditions are not met in the future. The community association stated that, in the past, it had to continually make telephone calls to the applicant requesting resolutions to these issues. The conditions that SMC did not comply with in the Board's previous order are listed below:

1. The applicant did not install signs to direct existing traffic to flow south towards V Street;

2. None of the lots were kept free of debris and refuse; and the lots were not maintained with landscaping in a healthy growing condition or orderly appearance;

3. Over the years, the lots were used for storage of disabled vehicles and were open to public use for abandoned vehicles and refuse dumping.

ANC 5A, ANC Single Member District 5A-11 and the Gateway Community Association reached an agreement with SMC United Limited Partnership to approve the application with the following conditions:

a. All tractor trailers, contractor office trailers and other large commercial vehicles should be restricted to the southern portion of the lot. This includes no more than 10 tractor- trailer vehicles parked on the site at any given time.

b. U.S. Postal Service delivery vehicles must be restricted to the northern portion of the facility.

c. U.S. Postal Service employee passenger vehicles must be restricted to the central portion of the facility.

d. No commuter parking or public parking use will be permitted at this facility at any time.

e. No vehicle maintenance, storage of equipment or dumping of trash or other refuses and debris will be permitted on site.

f. 24-hour controlled parking by electronic access or attendant access must be provided.

g. The lots should be monitored or patrolled when unattended.

h. Any lots not used for parking must be chained and locked.

i. Lighting must be provided for all areas of the facility and shall be arranged so that all direct rays of such lighting are confined to the surface of the facilities.

j. The two lots numbered 28 and 29 located to the north of the facility will remain as a vacant landscaped buffer area between the residential and commercial land use.

*The applicant testified that they entered into an agreement with the neighbors on the issue of lighting. The original agreement, which was signed, indicated that lighting would be provided. However, the applicant testified that they subsequently agreed not to provide lighting (or electricity) on the lot because the lot would not be used in the evenings. The applicant indicated that the change in the agreement was made that morning, prior to the hearing and the statement about lighting should have been crossed out on the document. The ANC Commissioner who testified at the hearing offered to initial the copy of the agreement that the Board members had, but the Board declined to require initialing, stating that the testimony was sufficient.

The applicant stated that there are quite a few owners of warehouses nearby that have requested permission to use the lot for parking. The applicant stated that the drivers who work at other warehouses in the vicinity, park on residential streets that abut its property. The applicant also stated that with the permission of ANC 5A and the Gateway Civic Association, it agreed to allow the drivers to use the lot to park. The applicant testified that it has not decided whether to charge the other drivers who work at some of the other warehouses in the vicinity, but if a decision is made, it will make an offer to the neighborhood to use that money to keep the areas clean.

II. **Subsection 213.2** states that a parking lot shall be located in its entirety within two hundred feet of an existing commercial district.

In its brief to the Board dated September 24, 1996 and in its testimony at the hearing, the applicant stated that it met this test because the parking lot is located within 200 feet of industrially (C-M-1) zoned property to the east and south.

The Office of Planning in its supplemental report dated October 23, 1996, stated that the existing parking lot is located in its entirety within 200 feet of an industrial district. Approximately 50 feet separate both uses.

III. **Subsection 213.3** states that a parking shall be contiguous to or separated only by an alley from a Commercial or Industrial district.

The applicant stated that the subject parking lot is contiguous to industrially zoned property on its south and east sides.

The Office of Planning in its report stated that the parking lot is not contiguous to or separated by an alley from the U.S. Postal Service Warehouse. An unused railroad spur separates the two uses. According to OP, the applicant stated at the hearing that, along with owning the site, the partnership owns the railroad spur (Lot 804) and the USPS Warehouse (Lot 32).

IV. **Subsection 213.4** provides that all provisions of chapter 23 of this title shall be complied with.

The Office of Planning testified at the hearing that the applicant's site plan does not identify any lighting that may be used at the site at night. Also, the site plan does not identify any

on-site landscaping. OP stated that the Zoning Regulations require that five percent of the parking lot's total land area, at a minimum, shall be landscaped. OP also stated that the site plan that was submitted with the application was the same site plan that was submitted with the last application and that it needs to be revised. OP stated that the resurfaced area had not yet been striped and that it is difficult to ascertain the correct number of parking spaces that would be available at the site. In addition, OP stated that the site plan does not indicate the number of vehicles that would be parked on the northern and southern portions of the site.

The applicant testified that it concurs with the Office of Planning's recommendation, that the site plan must be updated because there are a number of things that are not shown.

The Board recommended that the applicant submit revised site plans into the record.

V. Subsection 213.5 provides that no dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, and the present character and future development of the neighborhood will not be affected adversely.

The applicant testified that the continued operation of the parking lot would not result in dangerous or otherwise objectionable traffic conditions. The applicant stated that they have demonstrated by its nearly 40 years existence, and previous BZA approvals, that the continuation of the parking lot will not adversely affect the character of future development of the neighborhood.

The Office of Planning in its report stated that to alleviate the potential of having industrial-related traffic from the site traveling into the adjacent residential neighborhood, the applicant has agreed to install a sign directing all vehicles exiting the lot to use V Street. OP stated that they are not aware of any existing dangerous or objectionable traffic conditions that prevent the continued use of the site as a parking lot.

The application was referred to the Department of Public Works. At the time of the hearing the Board had not received a report, nor was there a representative at the hearing.

VI. Subsection 213.6 states that the parking lot must be reasonably necessary and convenient to other uses in the vicinity

The applicant stated that the lot shall be used by the U.S. Postal Service and other warehouses in the vicinity. The applicant also stated that this use has minimized the demand for overflow parking on neighborhood streets, that there is no spillover parking from the parking lot.

The Office of Planning stated that as proposed, the site would be used exclusively to provide parking for the warehouse located at 3070 V Street, N. E. The warehouse property is 100 percent developed. The site has a long history of being used to provide for the warehouse, and prevents spillover parking onto nearby residential streets.

VII. Subsection 213.7 states that a majority of the parking spaces shall serve residential uses or short-term parking needs of retail, service and public facility uses in the vicinity.

The applicant testified at the hearing that it intends to allow parking short-term during the day, that there will be no parking allowed at night.

The Office of Planning in its report stated that none of the parking spaces would be used for residential purposes, however, the applicant stated that the lot would be used for short-term parking. The lot will be used for employees and visitor parking during daytime hours. The tractor trailers and other commercial vehicles that would be using the site would be in use regularly and not parked for long periods of time. The site would not be used for the storage of vehicles.

VIII. Subsection 213.8 states that before taking final action on an application for use as a parking lot, the Board shall submit the application to the D.C. Department of Public Works for review and report.

The application was referred to the D.C. Department of Public Works.

The Office of Planning submitted a supplemental report dated October 23, 1996. In that report, OP stated that the applicant submitted a revised site plan that addresses the concerns identified at the public hearing. That the site plan depicts existing landscaping, how the site is to be striped, and the number of parking spaces that will be made available for both passenger and commercial vehicles. OP also stated that the applicant testified that the property will not be artificially illuminated. The Office of Planning recommended approval of the application with conditions in their supplemental report. The Department of Public works did not submit a report.

FINDINGS OF FACT

Based on the evidence of record, the Board finds as follows:

1. The application was incorrectly advertised under Section 214. The Board amended the application and proceeded to hear it under Section 213 as a special exception to establish a parking lot.

2. The applicant does not have a certificate of occupancy for previous approval of the parking lot. The applicant did at one time have a C of O, but it was lost or misplaced. The applicant did reapply for the certificate of occupancy.

3. The lots are contiguous, but they are separated by a railroad spur that is owned by the applicant.

4. There will be no change in use of the property.

5. The conditions imposed by the Board will be adequate to alleviate the concerns expressed by neighbors.

*6. The applicant and the community agreed that lighting would not be provided.

CONCLUSIONS OF LAW AND OPINION

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a parking lot for vehicles of the U.S. Postal Service in an R-1-B District. The granting of such a special exception requires a showing through substantial evidence that granting the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of 11 DCMR 213 regulating parking lots in R-1 Districts.

The Board concludes that the applicant has met the burden of proof. The Board also concludes that the application is in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded ANC 5A the "great weight" to which it is entitled. In light of the foregoing, the Board **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of five years.

2. The layout of the site shall be in accordance with the revised site plan marked as Exhibit No. 32 of the record.

3. Use of the lot shall be restricted as follows:

    a. All tractor trailers, contractor office trailers and other large commercial vehicles shall be restricted to the southern portion of the lot. No more than 10 tractor trailer vehicles parked on the site at any given time.

    b. U.S. Postal Service delivery vehicles shall be restricted to the northern portion of the facility.

    c. U.S. Postal Service employee passenger vehicles shall be restricted to the central portion of the facility.

    d. No commuter, fringe or public parking use, except by employees of neighboring properties, shall be permitted at this facility at any time.

    e. No vehicle maintenance, storage of equipment or dumping of trash or other refuse and debris shall be permitted on site.

    f. Twenty-four hour controlled parking by chain and padlock or attendant access shall be provided.

    g. The lots shall be monitored or patrolled when unattended.

    h. Any lots not used for parking shall be chained and locked.

h. Any lots not used for parking shall be chained and locked.

4. *Lighting shall not be provided at the site in accordance with the agreement between the applicant and the community.

5. Lot 28 and 29 located to the north of the facility, shall remain as a vacant landscaped buffer area between the residential and commercial land use. This area shall be maintained in a neat and orderly condition.

6. The applicant shall install signage on the lot directing all vehicles exiting the lot to turn right on 31st Street, heading south toward V Street.

7. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weathered impervious surface.

8. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.

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

10. No other use shall be conducted from or upon the premises and no structure other that an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

VOTE: 4-0 (Laura M. Richards, John G. Parsons and Sheila Cross Reid to grant; Susan Morgan Hinton to grant by absentee vote; Angel F. Clarens not present, not voting).

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

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: APR 14 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE,

TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

cord16164/BJW/bjw

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16164

As Director of the Board of Zoning Adjustment, I certify and attest that on APR 14 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Fred Farshey
SMC United Limited Partnership
7220 Wisconsin Avenue, N.W.
Suite 210
Bethesda, MD 20814

Mr. Richard Nero, Jr.
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Ms. Mozelle E. Watkins
ANC 5A-11, Single Member District
3225 Walnut Street, N.E.
Washington, D.C. 20018

Ms. Leslie C. Bournes
Gateway Community Association
P.O. Box 41476
Washington, D.C. 20018-0876

Ms. Annie M. Dawkins
2330 31st Street, N.E.
Washington, D.C. 20018

Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

DATE: APR 14 1998

11842/002

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16164 of SMC-United Industrial Limited Partnership, as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 213 to establish a parking lot for vehicles of the U.S. Postal Service in an R-1-B District at the rear of 3070 V Street, N. E. (Square 4365, Lots 805 and 806).

HEARING DATE: October 16, 1996
DECISION DATE: November 6, 1996

ORDER

PRELIMINARY MATTER

The application was advertised as a special exception under Section 214, to allow general parking for a parking lot established by Board's Order No. 14787 for vehicles of the U.S. Postal Service. The subject property is located at the rear of 3070 V Street, N. E., and is in a R-1-B District. At the hearing, the applicant requested that the Board consider the application under Section 213. The applicant stated that there has been some confusion within the Zoning Regulations, because the numbering in the regulations has changed. The applicant stated that it is asking for reinstatement of BZA Order No. 15425 that was granted under Section 214. The applicant stated that if the application cannot be considered as a continuation of the previous approval, that it shall be considered as an original application of the parking lot. The applicant also stated that they are prepared to present the application under either section. The applicant stated that if you look back in history, Section 214 was intended to address those situations where there is a single property, a single ownership, and a zoning line going through the property. It speaks in terms of parking that is accessory to the principal use, and is located elsewhere than on the same lot as the principal use. The applicant stated that it may be cars, jeeps, or postal vehicles, the lot is still considered as accessory to the main use. He also stated that in its case, the main use is a warehouse, and it is typical for a warehouse to have trucks.

The Board stated that Section 214 is for accessory parking spaces, that the correct Section is 213 which permits parking lots in an R-1 District if approved by the Board of Zoning Adjustment.

The applicant stated that it went to the community to address the application and that it received support from the Advisory Neighborhood Commission and Gateway Community Association.

The Office of Planning (OP) stated that its report addressed Section 214, and if the Board continued with the hearing of the application under Section 213, they would not be prepared to address the regulations in this application. The Office of Planning said it needed to look at both

sections to see how similar or dissimilar they are. OP stated that it could not respond to Section 213 at this time.

The Board left the record open for OP to prepare a supplemental report.

The Board stated that under Section 213 of the Zoning Regulations a parking lot must be contiguous to or separated only by an alley from a Commercial or Industrial district.

The applicant stated that the subject parking lot (Lots 805 and 806) is in fact contiguous to the warehouse property Lots (Lots 804 and 32). They also stated that a railroad spur crosses Lot 804 that is owned by the applicant, but it is still a part of the warehouse site.

The Office of Planning stated that when the Board approved the application for a special exception, the application was valid, but the applicant did not obtain a certificate of occupancy (C of O). OP also stated that the use was discontinued because the applicant lacked a valid C of O, and three years had lapsed. OP stated that the applicant should be seeking a use variance and not a special exception.

The applicant testified that they lost the certificate of occupancy, that they reapplied for the C of O, and that they have been involved in this process for twelve months.

The application was amended accordingly, and the Board proceeded to hear the application under Section 213 as a special exception to establish a parking lot for vehicles of the U.S. Postal Service.

SUMMARY OF EVIDENCE

The subject property is located at the rear of 3070 V Street, N. E. The site is located in the Northeast Gateway neighborhood. The boundaries of the property are Adams Street to the north, V Street to the south, 30th Street to the west, and 31st Street to the east.

The site is a triangular-shaped piece of property that consists of two contiguous lots (lots 805 and 806). Lot 805 contains 47,297 square feet of land area, and Lot 806 contains 44,880 square feet of land area. Both lots combined have a total land area of 92,177 square feet. The parking lot surface occupies approximately 38,000 square feet of the subject property. A chain link fence topped with barbed wire surrounds the property. Egress and ingress is electronically controlled. The parking lot is divided into three sections. The northern portion of the lot is used for parking the United States Postal Service (USPS) employee/carrier vehicles, and employee vehicles, the central portion of the lot is used for private cars, and the southern portion of the lot is used for tractor trailers.

The site is located in an R-1-B District. The R-1-B District permits matter-of-right development of single-family residential uses for detached dwellings. The R-1-B District also permits parking lots, if approved by the Board of Zoning Adjustment.

The subject property abuts a C-M-1 District. There are industrial and commercial uses located to the south and west of the property, whereas residential uses are located to the north.

The C-M-1 and C-2-A zoned areas along V Street and Bladensburg Road contain warehouses, wholesale businesses, transportation services, automotive repair garages, fast food restaurants, and other types of businesses. An unused railroad spur and a wooded area divide the industrial uses from the residential uses along V Street.

The applicant is requesting zoning relief from Section 213 and Subsection 3108.1 of the Zoning Regulations to reinstate BZA Order No. 15425 of SMC-United Industrial Limited Partnership.

ISSUES AND ARGUMENTS

I. **Subsection 213.1** states that use as a parking lot shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment in accordance with conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section as stated below:

> The Board is authorized to grant special exceptions, as provided in this title where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.

Adversely Affect Neighboring Property, Zoning Regulations and Map. The applicant stated that the lot has continued in existence as a necessary adjunct to the industrial uses along V Street for over 40 years. The site and area description sections on the site plan demonstrate that the utilization of the subject premises as a parking lot will be in harmony with the existing neighboring properties. The applicant proposes to continue the parking lot use as previously approved by the Board.

The Office of Planning in its report dated October 8, 1996, stated that the site has been used as a parking lot for over 30 years. OP stated that the site serves as a buffer between two distinctly different uses, industrial and residential. Although the site is zoned for low-density residential development, the record in this case does not indicate that the site was ever used for housing. The parking lot is a functional way of using the site for much-needed parking spaces for the industrial businesses and, simultaneously, screening the nearby residential dwellings from the industrial uses. The applicant's proposal is not in disharmony with the general purpose and intent of the Zoning Regulations and Map. Further, if the recommendations suggested by the Office of Planning accompany approval of this application, the accessory parking lot would not affect adversely the use of neighboring properties.

Advisory Neighborhood Commission 5A submitted a report to the record dated October 7, 1996. In the report, the ANC stated that it met with a representative from the Postal Service and the Gateway Community Association to discuss the application. The ANCs in its report stated, no one voiced opposition to the request at the meeting, but citizens expressed concerns about not receiving a copy of the occupancy permit. The citizens wanted to know if there would be a change in the use of the property. The ANCs and the Gateway Community Association agreed to approve the application contingent upon the applicant complying with certain conditions and

making an agreement in written form. The representative of Single Member District 5A-11 testified at the hearing representing 5A-11 and ANC 5A, she reiterated the concerns expressed in the report.

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d. No commuter parking or public parking use will be permitted at this facility at any time.

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The Office of Planning in its supplemental report dated October 23, 1996, stated that the existing parking lot is located in its entirety within 200 feet of an industrial district. Approximately 50 feet separate both uses.

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The applicant stated that the subject parking lot is contiguous to industrially zoned property on its south and east sides.

The Office of Planning in its report stated that the parking lot is not contiguous to or separated by an alley from the U.S. Postal Service Warehouse. An unused railroad spur separates the two uses. According to OP, the applicant stated at the hearing that, along with owning the site, the partnership owns the railroad spur (Lot 804) and the USPS Warehouse (Lot 32).

IV. Subsection 213.4 provides that all provisions of chapter 23 of this title shall be complied with.

The Office of Planning testified at the hearing that the applicant's site plan does not identify any lighting that may be used at the site at night. Also, the site plan does not identify any on-site landscaping. OP stated that the Zoning Regulations require that five percent of the parking lot's total land area, at a minimum, shall be landscaped. OP also stated that the site plan that was submitted with the application was the same site plan that was submitted with the last application and that it needs to be revised. OP stated that the resurfaced area had not yet been striped and that it is difficult to ascertain the correct number of parking spaces that would be available at the site. In addition, OP stated that the site plan does not indicate the number of vehicles that would be parked on the northern and southern portions of the site.

The applicant testified that it concurs with the Office of Planning's recommendation, that the site plan must be updated because there are a number of things that are not shown.

The Board recommended that the applicant submit revised site plans into the record.

V. Subsection 213.5 provides that no dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use, and the present character and future development of the neighborhood will not be affected adversely.

The applicant testified that the continued operation of the parking lot would not result in dangerous or otherwise objectionable traffic conditions. The applicant stated that they have demonstrated by its nearly 40 years existence, and previous BZA approvals, that the continuation of the parking lot will not adversely affect the character of future development of the neighborhood.

The Office of Planning in its report stated that to alleviate the potential of having industrial-related traffic from the site traveling into the adjacent residential neighborhood, the applicant has agreed to install a sign directing all vehicles exiting the lot to use V Street. OP stated that they are not aware of any existing dangerous or objectionable traffic conditions that prevent the continued use of the site as a parking lot.

The application was referred to the Department of Public Works. At the time of the hearing the Board had not received a report, nor was there a representative at the hearing.

VI. Subsection 213.6 states that the parking lot must be reasonably necessary and convenient to other uses in the vicinity

The applicant stated that the lot shall be used by the U.S. Postal Service and other warehouses in the vicinity. The applicant also stated that this use has minimized the demand for overflow parking on neighborhood streets, that there is no spillover parking from the parking lot.

The Office of Planning stated that as proposed, the site would be used exclusively to provide parking for the warehouse located at 3070 V Street, N. E. The warehouse property is 100 percent developed. The site has a long history of being used to provide for the warehouse, and prevents spillover parking onto nearby residential streets.

VII. Subsection 213.7 states that a majority of the parking spaces shall serve residential uses or short-term parking needs of retail, service and public facility uses in the vicinity.

The applicant testified at the hearing that it intends to allow parking short-term during the day, that there will be no parking allowed at night.

The Office of Planning in its report stated that none of the parking spaces would be used for residential purposes, however, the applicant stated that the lot would be used for short-term parking. The lot will be used for employees and visitor parking during daytime hours. The tractor trailers and other commercial vehicles that would be using the site would be in use

regularly and not parked for long periods of time. The site would not be used for the storage of vehicles.

VIII. Subsection 213.8 states that before taking final action on an application for use as a parking lot, the Board shall submit the application to the D.C. Department of Public Works for review and report.

The application was referred to the D.C. Department of Public Works.

The Office of Planning submitted a supplemental report dated October 23, 1996. In that report, OP stated that the applicant submitted a revised site plan that addresses the concerns identified at the public hearing. That the site plan depicts existing landscaping, how the site is to be striped, and the number of parking spaces that will be made available for both passenger and commercial vehicles. OP also stated that the applicant testified that the property will not be artificially illuminated. The Office of Planning recommended approval of the application with conditions in their supplemental report. The Department of Public works did not submit a report.

FINDINGS OF FACT

Based on the evidence of record, the Board finds as follows:

1. The application was incorrectly advertised under Section 214. The Board amended the application and proceeded to hear it under Section 213 as a special exception to establish a parking lot.

2. The applicant does not have a certificate of occupancy for previous approval of the parking lot. The applicant did at one time have a C of O, but it was lost or misplaced. The applicant did reapply for the certificate of occupancy.

3. The lots are contiguous, but they are separated by a railroad spur that is owned by the applicant.

4. There will be no change in use of the property.

5. The conditions imposed by the Board will be adequate to alleviate the concerns expressed by neighbors.

CONCLUSIONS OF LAW AND OPINION

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a parking lot for vehicles of the U.S. Postal Service in an R-1-B District. The granting of such a special exception requires a showing through substantial evidence that granting the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of 11 DCMR 213 regulating parking lots in R-1 Districts.

The Board concludes that the applicant has met the burden of proof. The Board also concludes that the application is in harmony with the general purpose and intent of the Zoning Regulations and that the use will not tend to adversely affect the use of neighboring property.

The Board concludes that it has accorded ANC 5A the "great weight" to which it is entitled. In light of the foregoing, the Board **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of five years.

2. The layout of the site shall be in accordance with the revised site plan marked as Exhibit No. 32 of the record.

3. Use of the lot shall be restricted as follows:

   a. All tractor trailers, contractor office trailers and other large commercial vehicles shall be restricted to the southern portion of the lot. No more than 10 tractor trailer vehicles parked on the site at any given time.

   b. U.S. Postal Service delivery vehicles shall be restricted to the northern portion of the facility.

   c. U.S. Postal Service employee passenger vehicles shall be restricted to the central portion of the facility.

   d. No commuter, fringe or public parking use, except by employees of neighboring properties, shall be permitted at this facility at any time.

   e. No vehicle maintenance, storage of equipment or dumping of trash or other refuse and debris shall be permitted on site.

   f. Twenty-four hour controlled parking by chain and padlock or attendant access shall be provided.

   g. The lots shall be monitored or patrolled when unattended.

   h. Any lots not used for parking shall be chained and locked.

4. Lighting shall be provided for all areas of the facility and shall be arranged so that all direct rays of such lighting are confined to the surface of the facilities.

5. Lot 28 and 29 located to the north of the facility, shall remain as a vacant landscaped buffer area between the residential and commercial land use. This area shall be maintained in a neat and orderly condition.

6. The applicant shall install signage on the lot directing all vehicles exiting the lot to turn right on 31st Street, heading south toward V Street.

7. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weathered impervious surface.

8. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.

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

10. No other use shall be conducted from or upon the premises and no structure other that an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

VOTE: 4-0 (Laura M. Richards, John G. Parsons and Sheila Cross Reid to grant; Susan Morgan Hinton to grant by absentee vote; Angel F. Clarens no present, not voting).

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

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER JAN 2 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16164.ORD/BJW/bjw

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16164

As Director of the Board of Zoning Adjustment, I certify and attest that on JAN 2 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. Fred Farshey
SMC United Limited Partnership
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Mr. Richard Nero, Jr.
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.,
Suite 1100
Washington, D.C. 20006

Ms. Mozelle E. Watkins
ANC 5A-11, Single Member District
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Ms. Leslie C. Bournes
Gateway Community Association
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Ms. Annie M. Dawkins
2330 31st Street, N.E.
Washington, D.C. 20018

Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: JAN 2 1998