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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15413 of Northeast Gateway Associates Limited Partnership, pursuant to 11 DCMR 3108.1, for special exceptions under Section 2116.5 to allow required accessory parking to be relocated from Lots 4, 800 and part of 801 (now Lots 835, 836 and 837, Square 669) to other lots in the same square, and a special exception under Section 2108 to allow a twenty-five percent reduction in the number of required parking spaces from forty-nine to thirty-seven for the relocation of required off-street parking in a C-2-A and C-M-3 District at premises 1421-29 North Capitol Street; No. 7-15 P Street; and No. 10 Decatur Street, N.E. (Square 669, Lots 54, 115, 157-160, 162, 830 and 831).

HEARING DATE: December 19, 1990
DECISION DATE: January 9, and February 6, 1991

SUMMARY OF EVIDENCE:

1. The property is located at the southeast corner of the intersection of North Capitol and P Streets and is known as premises 1421-29 North Capitol Street, No. 10 Decatur Street and Nos. 7-15 P Street, N.W. The property is split-zoned C-2-A and C-M-3.

2. The property is rectangular in shape with a frontage of 135 feet along North Capitol Street and 205.17 feet along P Street. The site abuts a 30-foot wide public alley to the south which is proposed to be closed. Subsequent to the filing of this application, Decatur Street was closed and the Surveyor's Office has recorded one lot of record for Square 669 excluding five lots in the southeastern portion of the square. The subject lot is currently undeveloped.

3. The area surrounding the subject site is zoned C-2-A, C-M-3 and C-M-2 and is characterized by a mix of residential, commercial and industrial uses. The subject square is unimproved except for a dilapidated warehouse structure in the northeast quadrant of the square and one single-family dwelling.

4. In BZA Order No. 5185, issued in 1958, the Board authorized the location of the required off-street parking in connection with an addition to an existing warehouse building located at 60 Florida Avenue, N.E. to be provided on a lot other than the lot upon which the building was located. The location of the required parking spaces was approved for the property known as 54-64 O Street, N.E. on former Lot Nos. 800, 801 and 4 in Square 669, subject to the condition that "the parking spaces authorized under the terms of this order are required parking spaces which

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will make necessary the providing of a convenant running with the land reciting in whatever detail is legally necessary, continued usage thereof for such purposes and for no other use."

5. The applicant proposes to relocate the required parking accessory to 60 Florida Avenue to the subject site and to reduce the number of required parking spaces by 25 percent.

6. Pursuant to 11 DCMR 2116.5, the Board may approve open accessory parking spaces located anywhere on the lot upon which the building is located, or elsewhere, subject to the following provisions:

2116.6 The Board shall determine that it is not practical to locate the spaces in accordance with Section 2116.2 for the following reasons:

(a) Unusual topography, grades, shape, size or dimensions of the lot;

(b) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;

(c) Traffic hazards caused by unusual street grades; or

(d) The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties.

2116.7 When the accessory parking spaces are to be located elsewhere than on the lot upon which the building or structure they are intended to serve is located, the parking on adjacent lots or lots separated only by an alley from the lot upon which the building or structure is located, shall be preferred.

2116.8 The accessory parking spaces shall be located so as to furnish reasonable and convenient parking facilities for the occupants or guests of the building or structures which they are designed to serve.

2116.9 The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it shall deem necessary to protect adjacent or nearby property. It may also impose the other conditions as it shall deem necessary to assure the continued provision and maintenance of the spaces.

7. The Board is authorized to reduce the amount of parking spaces required for nonresidential uses subject to the following provisions:

2108.2 The amount of required parking spaces shall not be reduced by more than twenty-five percent (25%); Provided, that for a use which is in the category of "All Other Uses" in the table in Section 2101.1, the amount of required parking spaces shall not be reduced by more than fifty percent (50%).

2108.3 The Board shall give consideration to the following:

(a) The nature and location of the structure;

(b) The maximum number of students, employees, guests, customers, or clients who can reasonably be expected to use the proposed building or structure at one time;

(c) The amount of traffic congestion existing or which the building or structure can reasonably be expected to create in the neighborhood;

(d) The quantity of existing public, commercial, or private parking, other than curb parking, on the property or in the neighborhood which can reasonably be expected to be available when the building or structure is in use; and

(e) The proximity to public transportation, particularly Metrorail stations, and the availability of public transportation service in the area, or a ride-sharing program approved by the District of Columbia Department of Public Works.

2108.4 If the applicant relies on a ride-sharing program, the applicant shall demonstrate to the Board that the program shall continue as long as the use continues.

2108.5 Prior to taking final action on an application, the Board shall refer the application to the District of Columbia Department of Public Works for review and report.

8. The building at 60 Florida Avenue, N.E. is no longer used as a warehouse. The building has been leased to the District of Columbia Department of Human Services which operates a children's health clinic and Income Maintenance Administration, which is responsible for food stamps and Medicaid operations, emergency assistance and Aid for Families with Dependent Children (AFDC) programs.

9. The representative of the applicant testified that it has been the owner of 60 Florida Avenue since 1976, and further testified that the staff, employees and visitors to 60 Florida Avenue have not used the parking lot at 52 O Street. The proposed relocation to the North Capitol and P Street location would be closer to 60 Florida Avenue to encourage greater utilization of the parking.

10. The building at 60 Florida Avenue requires 49 accessory parking spaces. As the BZA found in Order No. 5185, it is impossible to provide any of the 49 required parking spaces on the 60 Florida Avenue site because the building covers the entire lot.

11. The applicant presented a landscape plan and testified that the parking lot will be landscaped and lighted to provide an improved appearance of the property as viewed from both P Street and North Capitol Street. Access to the parking spaces will be provided from P Street. The proposed landscaped area covers approximately eight percent of the lot which exceeds the five percent requirement of 11 DCMR 2303.1(f). Ingress and egress are provided through a curb cut and driveway apron on P Street located approximately 60 feet west of North Capitol Street. This entrance is an improvement over the O Street entrance, which is affected by New York Avenue traffic which can impede ingress to the lot.

12. The proposed location of the parking lot is separated from the main use at 60 Florida Avenue by a distance of approximately 700 feet, and is the nearest vacant parcel available for parking. Because the building at 60 Florida Avenue occupies the entire lot and is adjacent to fully occupied properties, it is impractical to locate accessory parking on adjacent properties. Likewise, there are no parking lots separated from the main building by an alley.

13. Based on the operational characteristics of the use of 60 Florida Avenue since 1976, the applicant testified that the majority of employees and visitors to the site use public transportation. Several metrobus routes provide convenient service along North Capitol Street and New York Avenue. For those employees and visitors who do drive to the site, the proposed location is both closer to and more visible from the 60 Florida Avenue building.

14. The applicant owns the entire square in which both the existing and proposed parking lots are located. Although the applicant has no plans for the immediate development of the square, it desires the flexibility to relocate the parking within the subject square, either at grade or within a future building so as to continue to provide the required parking without returning to the Board for additional special exception relief.

15. The applicant's traffic expert testified that the total parking demand for the main use would be approximately 20 cars. The traffic expert concluded that the proposed parking facility would provide more than adequate parking, and that the location of the new facility will be closer and more convenient to the main use. Moreover, the traffic expert testified that access to the parking lot from P Street is preferable to the O Street entrance which is occasionally blocked by cars backed up on 1st Street from the New York Avenue intersection.

16. By memorandum dated December 13, 1990, the Office of Planning (OP) recommended conditional approval of the application. The OP was of the opinion that the relocation of the parking lot from the middle of the square to the proposed site would allow for more efficient development of the square and would provide a safer environment for persons using the facility. The OP was further of the opinion that the proposed 25 percent reduction in the number of parking spaces provided would have little impact on the functioning of 60 Florida Avenue or on the neighborhood. In addition to the standard parking lot conditions, the OP recommended the following as in keeping with the proposed redevelopment of the surrounding area:

a. Fencing used to surround the parking area should be a black, vinyl clad chain link fence with decorative post caps (finials), six feet in height.

b. A continuous planting of rugosa roses should be planted on the outside of the fence along its entire length, with a break for the driveway entrance. The hedge should be 42 inches tall when it is fully grown.

17. The Metropolitan Police Department, the D.C. Fire Chief and the D.C. Department of Finance and Revenue offered no objections to the subject application.

18. By letter received on December 29, 1990, the Chairperson of Advisory Neighborhood Commission (ANC) 5C requested that the Board postpone its decision of the application to allow the community time to investigate whether the proposal would act to facilitate plans to locate a detention center at or near the subject site.

19. By correspondence and/or representatives at the public hearing, So Others May Eat (SOME), the Hanover Area Task Force/Truxton Circle Coalition, and North Capitol Neighborhood Development, Inc., on behalf of two ANC Commissioners, opposed the granting of the application based on the following:

a. The applicant would obtain economic benefits at the cost of adverse impacts on the community with respect to traffic and the safety of children attending Cooke Elementary School with no benefits or amenities to the neighborhood.

b. The increased congestion of the proposed project would exacerbate the adverse impacts of existing parking, traffic, and congestion in the area.

c. The site of the existing parking is not usable for parking purposes and is, in fact, cluttered with construction debris, trash and abandoned cars.

d. No decision should be made pending a determination by the Federal Bureau of Prisons regarding the potential of locating a detention center at or near the subject site.

20. The Board left the record open at the conclusion of the public hearing to afford the applicant and the community an opportunity to meet in order to attempt to resolve issues concerning the subject case and report to the Board the results of such meetings. In addition, the Board requested the applicant to submit any public documents regarding the proposed Federal detention center and the applicant's proposal to make employees aware of the parking lot and to encourage the use of the parking lot by employees and visitors.

21. On January 8, 1991, counsel for the applicant submitted documents provided by the Federal Bureau of Prisons regarding the site selection process for the detention center. Counsel noted that no meetings between the applicant and the community had occured subsequent to the public hearing.

22. By letter dated January 7, 1991, the Single Member District (SMD) Commissioner 5C-01 noted that because of the holiday season and conflicting schedules, the Advisory Neighborhood Commission was unable to reach a quorum to consider the matter. The SMD Commissioner requested the Board to defer consideration of the application until after January 29, 1991.

23. At its public meeting of January 9, 1991, the Board deferred consideration of the case and reopened the record to receive reports of a meeting to be convened by OP between the applicant and parties, and to receive further response from the applicant regarding plans to inform employees and visitors of the subject lot's availability.

24. By letter dated January 30, 1991, the applicant submitted its report on the community meeting held on January 24, 1991. In addition, counsel indicated that the applicant will provide written

notice to the tenants of 60 Florida Avenue advising them of the new location and will post a similar notice on the bulletin board in the building. The applicant noted that the proposed location of the parking is closer and more visible to the 60 Florida Avenue building than the old location which was blocked from view by the existing warehouse building. The applicant proposed appropriate signage and policing of the lot to discourage unauthorized use of the proposed parking lot.

25. By memorandum dated February 1, 1991, the Office of Planning (OP) summarized the meeting between the applicant and the affected community held on January 24, 1991. No other parties submitted reports on the meeting for the record.

Findings of Fact:

1. The applicant has met the requisite burden of proof for special exception approval pursuant to 11 DCMR 2116.5, 2108 and 3108.1.

2. The applicant and the community have made a substantial effort to work together to rectify existing problems at the site and to ensure satisfactory landscaping operations, maintenance, security and circulation patterns. The Board finds that it may condition the use to further ensure that the parking lot would not adversely impact the immediate area.

3. The possible future location of a federal detention center at or near the subject site is not at issue before the Board and does not alter the applicant's burden of proof in the instant case.

4. The special exception process before the Board is not the proper forum for seeking public amenities in exchange for community support.

5. The Board is persuaded by the evidence presented by the applicant that the proposed parking lot will not have an adverse impact on existing traffic and parking patterns in the immediate area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking special exceptions, the granting of which requires substantial evidence of compliance with the criteria set forth in 11 DCMR 2116.5, 2108 and 3108.1. The Board concludes that the applicant has met the requisite burden of proof. It is not practical to locate the parking on the same lot nor in the same square as the main use because the structure occupies 100 percent of its site and the

adjoining properties are developed. The proposed location of the parking is reasonably convenient to the occupants and guests of the main use. The nature of the operation of the main use and its proximity to public transportation does not generate excessive traffic. There are no available parking lots or garages in the immediate area. The Board concludes that, as hereinafter conditioned, the parking lot shall not adversely impact adjacent or nearby property.

With regard to the flexibility requested in any future relocation of the parking, the Board concludes that provided a minimum of 37 parking spaces are provided within Square 669 to serve the 60 Florida Avenue building, the applicant need not return to the Board for further approval. These spaces may be relocated within the square or within any future structure on the square provided that the employees and visitors of 60 Florida Avenue are made aware of the existence of this accessory parking.

The Board further concludes that the requested special exceptions can be granted as in harmony with the general purpose and intent of the Zoning Regulations and, as hereinafter conditioned, will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. Accordingly it is **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Fencing used to surround the parking area shall be six feet in height, black, vinyl clad chain link with decorative post caps (finials);

2. A continuous planting of rugosa roses shall be planted on the outside of the fence along its entire length, with a break for the driveway entrance. The hedge should be 42 inches tall when it is fully grown;

3. The lot shall be striped so as to designate the location of all parking spaces;

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

5. Bumper stops shall be erected and maintained;

6. No vehicle or any part thereof shall be permitted to project over any building line or on or over the public space;

7. Any lighting used to illuminate the parking lot shall be arranged so that all direct rays of the lighting are confined to the surface of the parking lot;

8. The parking lot shall be kept free of refuse and debris;

9. 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 such use or structure is otherwise permitted in the zone district in which the parking lot is located, and

10. The applicant shall provide written notice advising of the location of the parking spaces to the tenants of 60 Florida Avenue, N.E. The applicant shall also provide a sign advising of the location of the parking spaces in plain view of the public at the premises of 60 Florida Avenue, N.E.

11. The applicant is granted the flexibility to relocate the subject 37 parking spaces within Square 669 to serve the 60 Florida Avenue building. The parking spaces may be relocated within the square or within any future structure on the square provided that the employees and visitors of 60 Florida Avenue are made aware of the existence of the accessory parking.

VOTE: 3-0 (Sheri M. Pruitt, Charles R. Norris and Carrie L. Thornhill to grant; Paula L. Jewell not voting, not having heard the case; Tersh Boasberg not present, not voting).

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

ATTESTED BY: Madeliene H. Robinson

MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: AUG 28 1997

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 SIX MONTHS 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.

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