

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13346 of B.B. & H. Joint Venture, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-paragraph 3101.410 to establish an accessory parking lot in an R-1-B District at premises 4422 Connecticut Avenue, N.W., (Square 1971, Lot 822).

HEARING DATE: September 24, 1980
DECISION DATE: November 5, 1980

FINDINGS OF FACT:

1. The subject site is located on the west side of a public alley which runs parallel to Connecticut Avenue between Yuma and Albermarle Streets, N.W. and is known as 4422 Connecticut Avenue N.W. It is in an R-1-B District.
2. The applicant proposes to use the subject site as a parking lot that will be accessory to the Burger King drive-in restaurant now under construction at 4422 Connecticut Avenue and across the subject alley to the east from the subject site.
3. The frontage on both sides of Connecticut Avenue at the subject location is zoned C-3-A and is developed with commercial uses that include a gas station, hardware store, carwash and a motel on the west side. The proposed parking lot abuts a residential area to the west. The exits and entrances to and from the alley at Yuma and Albermarle Streets are in close proximity to residential areas. The alley has a number of parking facilities which service the existing businesses along Connecticut Avenue. The site is located within walking distance of the campus of the University of the District of Columbia.
4. The Burger King restaurant will have two stories. The first floor will have a carry-out facility with some seating and the second floor will be devoted entirely to seating. The seating arrangement will accommodate a total of 158 people at one time.
5. The Burger King restaurant will have sixty employees, approximately twenty at one given time. The hours of operation will be from 11:00 a.m. to 11:00 p.m., except that on Fridays and Saturdays the restaurant will close at midnight. The subject parking lot will be open and available during these hours.

6. A drive-in restaurant in the C-3-A District is a permitted use under the Zoning Regulations. The Burger King restaurant complies with the requirements of the Zoning Regulations. The proposed accessory parking would constitute additional parking for the convenience of customers.

7. The subject parking lot will accommodate eighteen cars. A dumpster will also be located on the site. The applicant testified that there will be daily removal of trash and garbage that will be contained in the dumpster and that the site will be policed for trash and litter several times a day as warranted.

8. The applicant testified that the subject lot is now an eyesore. The lot is now vacant, poorly maintained and borders commercial activity. The applicant further testified that the improvement of the lot with an impervious surface and lighting would remove the blighted condition. There is a steep and abrupt change in elevation from the lot level to that of the abutting residential neighborhood. The applicant further testified that in addition to this difference in elevation which provides a natural buffer, there is heavy vegetation with tall trees planted on the border. There is also an existing wooden fence six feet high broken only by the rear of a masonry garage which further insulates the lot from the residences. Further, it is the rear of the residences that face the lot. The applicant further testified that the peak period of use of the lot would be during lunch hour and would not interfere with other heavy use periods of the alley during morning and rush hours nor interfere with rush hour traffic along Connecticut Avenue and that the use of the lot would reduce reliance upon the streets for parking.

9. There will be two lanes at the entrance of the restaurant at Connecticut Avenue. One lane will lead to the exit on Connecticut Avenue through a carry-out window and the other lane will lead to the alley to the west and provide access to the proposed accessory parking lot. Cars can also enter and exit the lot through the Albermarle and Yuma Streets entrances to the alley.

10. There was testimony that the sitdown clientele will spend approximately twenty minutes within the restaurant and that vehicles in the accessory parking lot are expected to turn over at approximately the same rate.

11. The OPD, by report dated September 19, 1980, recommended that the application be denied on the grounds that the proposed accessory parking lot is intended to provide additional parking for the restaurant that is not required by the Zoning Regulations. It was the opinion of the Office of Planning and Development that the proposed excess accessory parking will over-intensify the activities in this area and would cumulatively adversely impact the neighborhood. The Board so finds.

12. The Department of Transportation, by memorandum dated September 24, 1980, reported that the subject application is for an accessory parking lot, proposed in the rear of a newly constructed Burger King Restaurant, for customer parking. The lot is separated from the restaurant by a heavily used twenty foot wide public alley. Access to the lot will be either directly from the alley or via a driveway from Connecticut Avenue, along the north side of the restaurant, and across the alley. The Department reported that without controls, this access could be a potential hazard for both pedestrians and vehicles. The Department of Transportation, therefore, recommended that the granting of this application be contingent upon the applicant agreeing to:

- a. install and maintain speed bumps in the drive-through lane from Connecticut Avenue leading to the accessory parking lot.
- b. install and maintain stop signs at each of the two driveways entering the alley.
- c. construct a concrete curb at the property line between the two parking lot driveways to prevent traffic entering or leaving the lot except at the driveways.
- d. eliminate the diagonal parking space located adjacent to the alley.
- e. install fencing at the south, west, and north sides of the lot to provide security for the adjacent residential properties.
- f. provide visual buffering between the lot and the residential properties, by additional plantings or appropriate fencing.

The Board, notwithstanding the recommendation of the DOT, does not concur that the application should be granted, which reasons will be discussed below in the Conclusions of Law.

13. The Citizens Committee Legal Fund, an organization of neighborhood residents represented by the Anne Blaine Harrison Institute For Public Law, opposed the application on the following grounds:

- a. The proposed accessory lot is not in harmony with the general purpose and intent that zoning regulations for R-1-B Districts are to "protect quiet residential areas". The anticipated flow of vehicles through the alley and lot will result in traffic congestion, noise and exhaust pollution that will disrupt neighbor-

ing residents' quiet enjoyment of their property. The applicant's projection that business will require the accessory lot to be used until 11:00 p.m. on weekdays and until midnight on Fridays and Saturdays indicates that neighboring residents will suffer additional disruption of the quiet they now enjoy during the evenings and on weekends.

- b. The proposed accessory lot is not in harmony with the general purposes and intent of the Zoning Regulations because of the expected increase in vehicular use of Albermarle and Yuma Streets to enter the alley which leads to the accessory lot. This use will result in additional traffic congestion, noise, pollution and auto and pedestrian safety hazards in an R-1-B District. Such use contravenes the intent that R-1-B Districts are "to stabilize such areas and to provide a suitable environment for family life".
- c. Under the proposed plans the alley between Albermarle and Yuma Streets would become a thoroughfare for purposes of ingress to and egress from the proposed accessory lot. The proposed additional use of the alley will result in traffic congestion, safety hazards, noise and auto pollution that will tend to adversely affect the use of neighboring property in violation of the R-1-B zoning regulations. In addition, increased vehicular traffic on the alley is "likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions" in violation of Sub-paragraph 3101.4104.
- d. Based on the estimated turnover figures during period when the accessory lot is used to capacity, vehicles will be either entering or leaving the lot on an average of approximately one car every sixty seconds. Use of the proposed accessory lot at the projected turnover rate will generate traffic tie-ups and pedestrian safety hazards along the Connecticut Avenue corridor between Albermarle and Yuma Streets that will tend to have an adverse affect upon the use of neighborhood property.
- e. Increased vehicular traffic at the Connecticut Avenue entrance, particularly due to northbound vehicles turning left to drive through to the accessory lot, is likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions in violation of Sub-paragraph 3101.4104.

- f. The applicant's arguments point merely to the current use and condition of the alley when addressing the questions of traffic, noise and objectionable conditions. To make the required showing under Sub-paragraph 3101.4104 and 4101.404, it is not enough for the applicant to identify other sources of noise, traffic or objectionable conditions existing in residential areas. Rather the applicant must submit evidence to the Board so that the Board may make unequivocal and specific findings that the incremental traffic, noise and other conditions attributable to the proposed exception are not likely to become objectionable to adjoining or nearby property. The applicant has failed to make this showing.

The Board agrees with the findings, conclusions and recommendation of the Citizens Committee.

14. Advisory Neighborhood Commission - 3F recommended that the application be denied for the following reasons:

- a. The erection of light poles in the parking lot would severely interfere with the quiet enjoyment of home life for residents of adjoining properties, not only because of light entering their homes until 11:00 p.m., during the week and Midnight on Fridays and Saturdays, but by the companion pieces of sound from automobiles entering and leaving the lot, radio noises while they are there, sight intrusion, litter, garbage with its attendant pieces, roaches, rats, etc.;
- b. The applicant's request for an exception is inconsistent with and materially different from the representations made to the ANC and the plans it filed with the D.C. Agencies;
- c. Use of the alley as an entry and departure way would unreasonably interfere with pedestrian safety on both Yuma and Albermarle Streets;
- d. Use of the alley would otherwise interfere with deliveries to and from business establishments adjacent to the fast food site;
- e. The alley exits to and enters from the existing residential area;
- f. The Connecticut area corridor is already saturated with automobile traffic;

- g. The approved, but not yet constructed buildings by the University of District of Columbia, Prudential, Intelsat and the eleven Chanceries, all on the west side of Connecticut Avenue between Tilden Street and Idaho Avenue will further aggravate an already overloaded traffic situation, and further despoil the quality of life for the area residents.

15. The Board accepts the general findings and recommendations of the ANC. As to the representations made by the applicant to the ANC, the Board is required to decide an application based on the record before the Board, not on any other representation made elsewhere. As to the representations made to other District bodies, the Board address that issue in Finding of Fact no. 16. As to the impact of any future development on other site, those issues are speculative and not before the Board in this application.

16. The ANC further recommended that the Board review whether the building permit issued by the Department of Licenses, Inspection and Investigation for the construction of the restaurant should be revoked. The Board finds that the subject application and the right to construct the restaurant are two separate subject matters and must be treated separately. The Board further notes that it has been advised by the opposition that an Appeal has been taken from the issuance of the permit for the construction of the restaurant and that the matter is pending in Court. The Board will in no manner interfere with the Court process.

17. There were letters on file from businesses along the subject Connecticut Avenue strip and from homeowners whose homes border on the subject lot. Several people appeared at the public hearing. All were opposed to the granting of the application on grounds expressed by the Institute For Public Law and the ANC.

18. On September 26, 1980, after the public hearing, counsel for the applicant filed a Motion for Recusal of Board members Connie Fortune and Theodore F. Mariani and a Rehearing of the application. Mrs. Connie Fortune is a member of the advisory board of the Institute For Public Law. Mrs. Connie Fortune subsequently recused herself from the case and took no part in the discussion of the Board or in the vote on the application. As to Mr. Theodore F. Mariani it was alleged that during the Public Hearing Mr. Mariani indicated his opposition to "fast food" restaurants, reciting that Mr. Mariani picked up trash from the front of his residence from a fast food restaurant, that Mr. Mariani lives within three blocks of the subject lot, that Mr. Mariani's actions pervaded the attitude of the hearing so that the focus was away from the merits of the application and on the drive-through aspect of the restaurant. Mr. Mariani decline to recuse himself on the grounds that he had no financial interest at issue in the application and no justification had been presented to him which persuaded him that he should withdraw. The Chair ruled to deny the

applicant's Motion for Recusal as it related to Mr. Mariani . Having so ruled, the Chair further ruled to deny the applicant's Motion for Rehearing as there existed a majority of the members of the Board prepared to decided the application.

CONCLUSIONS OF LAW: AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception, the granting of which requires that the applicant has complied with the requirements of Sub-paragraph 3101.410 of the Zoning Regulations and that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that the applicant has complied with Sub-paragraph 3101.4101 and 3101.4102 of the Zoning Regulations.

The Board concludes, however, that the applicant has not met the requirements of Sub-paragraph 3101.4103. The applicant presented no conclusive evidence or testimony at all that it was "economically impractical on unsafe to locate such parking spaces within the principal building or on the same lot on which such building or use is permitted..

The Board further concludes that based on Findings of Fact No. 5, 13,14 and 17 the applicant has not met the requirements of Sub-paragraph 3101.4104 which states that the parking spaces are so located and facilities in relation thereto are so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. The Board further concludes that the subject spaces are not required spaces under the Zoning Regulations and as the Board found in Finding No. 11, these extra convenient spaces for the restaurant business would over intensify the activities in this area and would cumulatively impact adversely the neighborhood. The Board concludes that its accorded to the ANC the "great weight" to which it is entitled.

For the reasons stated above it is ORDERED that the application is DENIED.

VOTE: 3-0(Theodore F. Mariani, Leonard L. McCants and William F. McIntosh to deny, Connie Fortune not voting, having recused herself, Charles R. Norris, not voting, not having heard the case).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

5 MAR 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "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".