

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Rehearing of Application No. 12313, as amended, of Sidney Margolis, for a special exception under Sub-sections 7104.2 and 7105.2 to permit the change of a non-conforming use from a retail men's clothing, haberdashery, tailoring, cleaning agency and uniform processing establishment on the first floor to a restaurant seating seventy-six (76) persons in the R-5-C District at 2145 "G" Street, N.W., (Square 79, Lot 808).

HEARING DATE: September 21, 1977
DECISION DATE: October 11, 1977

FINDINGS OF FACT:

1. The Board of Zoning Adjustment first heard this application on February 22, 1977, and decided it on March 8, 1977. By BZA Order No. 12313, dated May 26, 1977, the Board denied the application by a vote of 3-1 (Lilla Burt Cummings, William F. McIntosh and Ruby B. McZier to DENY, Leonard L. McCants to GRANT).
2. On June 2, 1977, the applicant filed a motion for a rehearing based on new evidence not available at the time of the hearing of the application.
3. The Board at its Executive Session of August 3, 1977, granted the applicant's motion and scheduled a hearing for September 21, 1977.
4. The application was amended at the public hearing of September 21, 1977, with the Board's approval. The applicant no longer seeks to extend the restaurant to the second floor for seating purposes and the restaurant on the first floor will seat seventy-six persons, not sixty.
5. George Washington University, not a participant in the original public hearing held February 22, 1977, filed a motion to DISMISS the rehearing of the application. The Board DENIED the motion as untimely.

6. The subject property is located at 2145 "G" Street, N.W. The site is approximately 1,533 square feet in area and is improved with a two-story structure.

7. The structures within 300 feet of the subject property include student dwellings, George Washington University buildings, a fire station, a few residences, a D.C. public school and a hotel. There are limited public eating facilities within the area, including two non-conforming restaurant-carry-outs and some University dining facilities.

8. The site is located within the boundaries of the George Washington University Campus and is included within the area of the Campus Plan. The illustrative site plan included in the Campus Plan includes no immediate plans for this portion of Square 79.

9. The applicant is currently operating a men's clothing sales, and civilian and military tailoring store as an existing non-conforming use under Certificate of Occupancy B-14340 issued on November 3, 1958, on the first floor of the property. Such use is first permitted in the C-1 zoning district as a matter-of-right.

10. The store operates between the hours of 9:00 A.M. and 6:00 P.M., Monday thru Saturday and services approximately two hundred customers a week.

11. The second story of the property is residential. Access to the apartment, consisting of four bedrooms, bath and kitchen, is by exterior stairs and separate entrance. It is now vacant.

12. The applicant proposes to change the existing use by leasing the property to Armand's Chicago Pizzeria for the operation of a seventy-six seat restaurant. The second floor will be used for rest rooms, storage and office space.

13. A restaurant use is first permitted in the C-1 zoning district as a matter-of-right.

14. Architectural drawings indicating the seating plans were submitted by the intended lessee along with testimony that there will be no structural alterations required.

15. The hours of operation for the proposed use will be 11:00 A.M., until 12 midnight, seven days a week. There will be a total of 30 employees, with a maximum of 10 employees on the premises at any one time.

16. There will be 300 customers on the average day with peak business on Friday and Saturday evenings. There will be an average of five truck deliveries and one trash pick-up each day for which vehicles will part at the curb and unload across the sidewalk using the two loading zones which presently exist.

17. The operator of the restaurant intends to seek an alcoholic beverage license permitting the sale of beer and wine, but not liquor, on the premises.

18. There will be no live entertainment on the premises.

19. The applicant has indicated that the proposed restaurant is primarily intended to serve the needs of the student population of the neighborhood as well as other community residents. The proposed use of the property as a restaurant would thus be a neighborhood facility and would be compatible with the present character of the neighborhood.

20. The applicant will use one business sign, small in nature, to identify the business.

21. The operator of the proposed restaurant presently operates similar restaurants on Wisconsin Avenue near American University and on Rockville Pike in Rockville. The operator testified that the odor and noise levels generated inside the present restaurants do not impact adversely on the surrounding neighborhoods, and that the proposed use in this location would be similar.

22. The D.C. Municipal Planning Office made no new report on the rehearing of this application. By its report dated February 18, 1977, it recommended conditional approval of the application on the grounds that the use would be consistent with the neighborhood character, the proposed use serving primarily the student population, and that the majority of the adjacent properties were either owned or leased by the University.

23. The application was supported by some long term residents and property owners of the area.

24. The application was opposed by other residents, property owners, ANC 2-B and the West End Citizens Association and George Washington University. The grounds of opposition were that the proposed use would have an adverse impact on the neighborhood due to the intensification of the use with attendant noise, litter and traffic, that the residential character of the neighborhood would be changed to commercial, and that there already are adequate eating facilities in the neighborhood and that the property should be put to the use for which it is zoned.

25. The University objected to the proposed pizzeria operation on the grounds that it is not consistent with the BZA approved George Washington University Campus Plan.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the proposed use is permitted as a matter-of-right in the most restrictive district in which the present use is permitted, and that the change is thus consistent with the requirements of Sub-section 7104.2. The Board concludes that the extension of the use to the second floor can be permitted, as it is part of the same structure where the present use is located, and no structural alterations will be made.

The Board concludes that the proposed use will be a neighborhood facility, in that it will serve primarily the student population of George Washington University and other residents of the area. The Board concludes that the use does represent an intensification over the previous use. However, the Board concludes that the proposed use will not have significant negative effects, in that the noise, odor and trash coming from the building will be limited, and that little automobile traffic will be generated since the primary users of the restaurant will be neighborhood residents who will walk.

The Board concludes that the Campus Plan approved by the Board for George Washington University is binding upon the University for property owned by the University. The Board concludes that the campus plan is not and cannot be binding upon privately owned property within the plan area.

The Board concludes that the proposed restaurant use will not have an adverse effect on surrounding and nearby properties, and that the application is consistent with the intent and purposes of the Zoning Regulations. Paragraph 7109.13 of the Regulations authorizes the Board to control various aspects of the proposed use including hours of operation, signs etc. Based on the findings of fact, the evidence of record and the conclusions of law, the Board hereby Orders approval of the application subject to the following conditions:

1. The restaurant operations shall close at 10:00 P.M.
2. The second floor shall be used for toilet facilities of employees and patrons, storage and office uses. There shall be no restaurant seating on the second floor.
3. Alcoholic beverages shall be limited to beer and wine.
4. The building sign as proposed shall be the only exterior sign permitted.

VOTE: 3-2 (John G. Parsons, Chloethiel Woodard Smith, and Leonard L. McCants to GRANT, William F. McIntosh and Charles R. Norris to DENY).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: **20 OCT 1977**

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.