

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12634, of George Basiliko, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the use provisions (Section 5101) and the parking requirements (Sub-section 7202.1) to permit use of the subject premises as a public hall in the C-1 District at the premises 4801 Benning Road, S.E., (Square 5357, Lot 802).

HEARING DATES: April 26, 1978 & July 26, 1978
DECISION DATE: August 2, 1978

FINDINGS OF FACT:

1. The subject property is located on the west side of Benning Rd., S.E., between G and 46th Streets. It is known as 4801 Benning Road, S.E., and is located in a C-1 District.

2. The site has an area of 31,218 square feet and is improved with a one story structure and an adjoining seventy-eight car parking area. The building is set back thirty-three feet from the curb line of Benning Road. Benning Road is forty four feet from curb to curb with four traffic lanes. Two curb cuts in front of the parking lot provide access to and from the site.

3. The surrounding zone districts include R-2 and R-5-A. To the north along 46th Street and east on Benning Road are two and three story walk-up apartments. To the west, behind the site at a substantially higher elevation, are three-story apartment buildings. Further west are single family detached residences. To the northeast, diagonally opposite the site is the Fletcher Johnson Elementary and Junior High School completed in 1977. To the immediate south is a fourteen car parking area which serves the adjoining People's Drug Store.

4. Other neighborhood commercial districts (C-1) which serve the area include a larger area located at the intersection of Benning Road and East Capitol Street and a smaller area located at Benning Road and H Street. The former is 2,100 feet north of the subject site and encompasses approximately 720,000 square feet of land area. Commercial uses include four gasoline stations, a restaurant, the Shrimp Boat Carry Out, a twenty-four hour supermarket, a liquor store, a barber shop, a cleaners, and a recently constructed building housing Gino's Carry Out. The Benning Road Metro station will be located 200 feet north of the intersection of Benning Road and East Capitol Street. The smaller district is 1,200 feet south of the site, encompasses a land area of 45,000 square feet and is occupied by a record shop, cleaners, liquor store, gas station and a 7-11 Food Store.

5. The areas surrounding the site have been designated the Marshall Heights Commercial Development Area bounded by Benning Road, East Capitol Street, Benning Park and Southern Avenue.

6. Neighborhood shopping in Marshall Heights is inadequate to serve the needs of the population in terms of the location and kinds of goods and services offered.

7. The subject building was used as a Safeway food store from July 1963 to February 1973. Reasons offered by Safeway officials for leaving the area were high incidence of crime, pilferage, and inadequate police protection.

8. The applicant indicated that the premises have been vacant since Safeway departed and that attempts to lease or sell the building for uses other than a public hall have been unsuccessful. The present tenant has leased the site for three years at a monthly rental of \$4,000.

9. The applicant proposes to use the subject premises as the "Chocolate City Arena". Monday through Thursday the premises will be made available, free of charge, to community groups, churches, and non-profit associations for fund raising activities, meetings and educational programs. During Friday, Saturday, and Sunday, the arena will offer live entertainment, gospel shows, and dances that will be restricted to various age groups, at different times up until 3 a.m. A Board of advisors consisting of representatives of the subject neighborhood will monitor the activities occurring between Monday through Thursday. The applicant will control the weekend activities. The applicant also reserves the right to impose certain restrictions on the Monday through Thursday operations that it feels might be deleterious to its enterprise.

10. The gross floor area of the building totals 24,121 square feet and consists of a refreshment stand, dance floor, stage, and all equipped game room. The interior of the building has been refinished and all changes completed to accommodate the proposed use. The applicant has testified that the structure can accommodate between 1,000 to 1,500 persons during weekend events. It is proposed that twenty-eight employees will operate the facility which includes ten security personnel who will monitor the parking area while the building is in use.

11. Information from the Sixth District Police Precinct reported that on March 4, 1978, the subject premises were closed because entertainment activities and the selling of food were occurring without a valid certificate of occupancy. The closing was in response to a complaint received during the week of February 27, 1978.

12. Applying Article 72 to the proposed use, a variance of 267 parking spaces (292%) is required. More specifically, a public hall with a gross floor area of 24,121 square feet requires 345 parking spaces. Subtracting the seventy-eight existing parking spaces from those required leaves a remainder of 267.

13. The purposes of the C-1 Districts are to provide convenient retail and personal service establishments for the day-to-day needs of small tributary areas with a minimum impact upon surrounding residential development and accommodate a major portion of existing strip commercial development.

14. Public halls are first permitted as a matter-of-right in the C-2 District.

15. The Municipal Planning Office, by report dated April 20, 1978, recommended that the application be denied. It stated that after a review of the site and surrounding C-1 uses it believed that a reasonable permitted C-1 use can be made of the subject property despite its more than average size. Some of these permitted uses include electrical appliance stores, dry cleaning establishments, drug stores, food stores, restaurants, laundries, bakeries, or a combination of the above. The MPO further stated that since Chocolate City advertises its activities, it is anticipated that part of the clientele will come to the site by automobile, necessitating the need for adequate off-street parking. In this regard, the seventy-eight car parking facility appears inadequate to accommodate the maximum number of patrons (1,500) that the premises can accommodate. In addition, the use, if approved would tend to adversely effect the surrounding residential neighborhoods with traffic congestion, spillover parking, and noise. The Board so finds.

16. Councilwoman Willie Hardy, in whose Ward the subject property is located, recommended, on the basis of the input received from her constituency that the application be denied. She testified as to the abundance of recreational facilities in the neighborhood and that the subject 7th Ward has ten recreational centers, each less than six years old, three of which cost over one million dollars and one of which is located approximately four blocks from the subject site. She further testified that the new Fletcher Johnson School, directly across the street from the subject site, has space for meetings and other community activities; that the Fort DuPont Park in Ward 7, is a Federal park with a large clubhouse which allows

recreational parties and meeting spaces for youths, adults and children and with ample parking spaces; that the National Capital Parks and the D.C. Arts Commission sponsor free jazz and rock concerts every weekend during the summer months in the park and that, in addition, there is a new ice skating rink in the 7th District. The Board so finds.

17. A further objection to the granting of the application was on the grounds that the applicant had held two affairs at the subject site without having consulting the community; that the applicant's advertising for said affairs was misleading to the people who had gathered at the site and were loitering around without any direction. Councilwoman Willie Hardy further testified that based on the anticipated crowds that would gather for the popular attractions the applicant had proposed he would book, that the parking spaces on the subject site would be inadequate; that neighborhood parking facilities would be used and that such crowds would block traffic throughout the neighborhood. All this with the noise and number of youths on the street at night and early morning would be undesirable to the residents of the area. The Board so finds.

18. The 6th District Crime Prevention Project, the Eastern Gardens Civic Association, the Commanding Officer of the 6th Police District, the 6th Police District Citizen's Advisory Council and the D.C. Department of Recreation all recommended that the application be denied on the grounds that the subject Ward offers many opportunities for participation in enriching experiences for all its residents through its recreational programs, community schools, libraries and park sites; that the community, in addressing priorities, would first welcome a return of those businesses that meet the community's basic needs, such as food stores, clothing, etc.; that the opening of a public hall with the proposed programs would not only appeal to youth in the local area but would have a tendency to draw clients from the entire Washington Metropolitan area and beyond, all of which would increase the possibility of criminal infractions and increased police activity; that the 6th Police District has now the lowest crime rate in the city and the residents intend to keep it as such; that the assembling of approximately 1,000 teenagers on weekend nights between dusk and the early hour of the morning would create a police hazard; that the applicant opened its business in violation of the law and accordingly showed bad faith, and that since the subject site is right in the middle of a public housing, there will be teenagers walking to the site with no money and milling about on the outside and creating their own unsupervised activities.

19. There were letters on file, some with petitions from the Benning Heights, a 474 unit garden apartment complex in the immediate vicinity of the site, from the Far Northeast - Southeast Council, Inc., the Fort Davis Improvement Association and well as individual letters of residents and PTA groups recommending that the application be denied for the reasons heretofore stated.

20. There were hundreds of signatures on petitions recommending that the application be granted. There was testimony that many of these were signed by teenagers some of whom were from the immediate area and many from parties outside the immediate area and that the petitions had been distributed at the subject site. There were also several letters on file in support of the character of the principals who would operate the subject enterprise. There were witnesses who testified on behalf of the proposed activities of the subject enterprise.

21. The subject site is within the physical boundaries of Advisory Neighborhood 7F. Residents adjacent to the site are within the boundaries of ANC 7E.

22. Advisory Neighborhood Commission 7F, by resolution dated April 19, 1978, voted to support the application by a vote of two in favor, one opposed, and one abstention. The grounds for the support of the application were stated as follows:

- a. Existing recreation centers are not able to accomodate all of the children in the area.
- b. The existing programs are not and can not be varied enough in each center.
- c. Some young people do not feel comfortable and will not go to the recreation centers but would go to the arena as proposed.
- d. Some young people do not want to become Boy or Girl Scouts but would participate in a similar program if it were named differently. The Arena could be used for this activity.
- e. A grocery store could not survive at this location at this time. In addition, the back room of the proposed operation will be used as a distribution center for those who wish to join a Co-Op Venture.

- f. The traffic on Benning Road does not seem excessive after 7:30 P.M. The flow could also be changed by changing the sequence of the lights.
- g. Most programming will be geared to the young people. Even though all are welcomed, most established adult people and affluent young people with cars will most likely continue to go to places such as the Capital and Kennedy Centers. The objective is to provide cultural activities and entertainment for those who either cannot afford to attend elsewhere or have no cars to transport them. There is also a parking lot next to Fletcher Johnson School that might possibly be used during the weekends.

23. Advisory Neighborhood Commission 7E, by letter of April 26, 1978, advised the Board that it resolved to oppose the granting of any variance of the Zoning Regulations for the property known as "Chocolate City" until such time as we receive a detail plan of operations for that site.

24. At its public meeting held on May 31, 1978, the Board requested the applicant to submit a copy of its proposed plan of operation to ANC 7E.

25. Advisory Neighborhood Commission 7E by letter of June 27, 1978, from its Chairman, advised the Board that it had received the plan of operations, and that after hearing the many concerns voiced at the ANC meeting of June 13, 1978, the ANC voted not to make an affirmative or negative vote in regard to granting a license for a public hall at 4801 Benning Road, S.E. The ANC expressed concerns about the following:

- a. Decline of residential property values because of noise and limited parking spaces.
- b. Community should be polled.
- c. Activities of Jones United Methodist Church may be interrupted.
- d. Proposed name "Chocolate City".
- e. Proposed operating plan is not a detailed plan. Capacity, parking spaces available and financial plans are not included as requested by ANC 7E.

f. Youth activities will be during school days.

ANC 7E did vote acceptance of the goals of the Chocolate City Arena with the stipulation that a Board of Governors composed of a broad base of the community is established.

26. Subsequent to the request of the above letter, the Board received other communication from members of ANC 7E, stating their support for the project.

27. At its public meeting held on July 5, 1978, the Board ordered that a further hearing be held on the application on July 26, 1978 and that the scope of the further hearing would be limited to the following designated issues:

1. Clarification of the position of ANC 7E
2. The composition of a Board of Governors for the proposed operation.

28. At the hearing no opposition of ANC 7E appeared. However, the Board finds that in the record there are letters from a majority of the individual members of ANC 7E opposed to the application, on grounds that have already been stated.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is a use variance, the granting of which requires the showing of an extreme hardship related to the property. The Board concludes that the applicant must prove that he cannot make reasonable use of the property for a purpose permitted in the C-1 District.

The purposes of the C-1 Districts are to provide convenient retail and personal service establishments for the day-to-day needs of small tributary areas with a minimum impact upon surrounding residential development and to accommodate a major portion of existing strip commercial development. There was a dearth of evidence as to why the subject site has been vacant since February, 1973, and more particularly, as to why the subject site could not be used for a purpose for which it is zoned. To the contrary, there was considerable evidence that the residents were very anxious to have the subject property put to a permitted C-1 use. The Board concludes that a reasonable permitted C-1 use which includes many kinds of retail and service activities could be made of the subject property.

As to the applicant's assertion that there is a need for the proposed facility in this neighborhood, the Board, based on the entire record, is not so persuaded. There was much testimony from neighborhood civic groups and from the D.C. Department of Recreation of the ample facilities in the subject district to serve the needs of all ages. Such service, in addition, is provided without detrimental impact on the neighborhood from inadequate parking facilities, traffic congestion, noise and potential criminal infractions such as the Board concludes, the proposed facility as now constituted would engender.

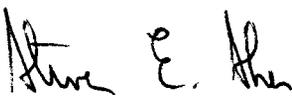
The Board is aware that by statute, it must give **great** weight to the "issues and concerns" expressed by the ANC's. In the subject application both ANC-7F and ANC-7E are concerned. For the reasons stated in the Findings of Fact ANC-7F supported the application and ANC-7E opposed the application. The Board, however, is not bound to follow the recommendations of any ANC. It must take evidence from other sources in order to arrive at its determination. The Board is aware from the testimony of the neighborhood associations and individual residents that they supported the viewpoint of ANC-7E. In addition, the Board is aware of many petitions from residents of the ANC-7F District that they disagreed with the recommendation of ANC-7F. In this particular instance, the Board is persuaded from the evidence and for the reasons stated to concur with the views and recommendations of ANC-7E and the majority view of residents of the neighborhood.

Finally, the Board further concludes, from the record herein that the variances requested could not be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Theodore F. Mariani, Chloethiel Woodard Smith and William F. McIntosh to DENY; Charles R. Norris and Leonard L. McCants ABSTAINING).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER 27 SEP 1978