

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12663 of Dominick and Wanda DeCantis, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5102.41 to permit an automobile repair garage, no body work, in the C-2-A District at the premises 1305 Good Hope Road, S.E., (Square 5768, Lot 286 and 814).

HEARING DATES: June 21 and August 16, 1978

DECISION DATE: September 6, 1978

FINDINGS OF FACT:

1. The subject property is located on the south side of Good Hope Road, between 13th and 14th Streets, S.E., and is known as 1305 Good Hope Road, S.E. It is in an C-2-A District.

2. The subject lot is 5,200 square feet in area and is improved with a one story garage type structure which has an enclosed office. A sign in front of the building indicated it was once used as an outlet for Hercules Used Auto Parts. However, there is no valid certificate of occupancy on record verifying such use. The last certificate of occupancy issued for the subject property was issued on January 21, 1972 for retail sales and display of furniture and clothing.

3. The subject building is located within a commercial strip with on-site parking provided in front of the buildings. Adjoining to the immediate west is an ice cream store and a Chinese American Restaurant. To the east separated by an alley is a dry cleaning establishment and an office building. To the north across from the site on the opposite side of Good Hope Road is a tire service center and an appliance store. To the south, at the rear lot line is the beginning of the R-5-A District and the rear yards of residences which front along "U" Street.

4. By BZA Order No. 10181, dated December 9, 1971 the Board granted the establishment of a gasoline station on the subject premises but denied the request for a variance from the twenty-five foot setback requirement of Paragraph 7404.14 of the Zoning Regulations.

5. The lessee, James Cox proposes to use the premises as the Cox Auto Repair which will be engaged in the general repair of automobiles, no body work. The business will operate from 8:00 to 7:30 p.m. on weekdays and 8:00 to 4:00 p.m. on Saturday. The business will employ three persons. All repair work will be done inside the building.

6. The application was initially referred to the Department of Transportation on June 8, 1978 for its review and report and on July 18, 1978 with the additional information DOT requested. No report was received.

7. The Municipal Planning Office, by report dated June 13, 1978, recommended that the application be denied on the grounds that the proposed use (repair shop) is within one foot of the abutting R-5-A District line and is not separated by a street or alley and that the close proximity would be likely to adversely affect the residential character of the abutting neighborhood. The Board so finds.

8. The Board, on its own motion, amended the application, to include a request for a variance from the requirements of the Zoning Regulations (Sub-paragraph 5101.41 a) that the proposed use be located more than twenty-five feet from a residential district unless separated there from by a street or alley. The application was scheduled for further hearing on this specific issue on August 16, 1978.

9. There is no alley to the rear of the subject premises. There is an area of approximately 1000 square feet to the rear of the building and an alley to the east. The area at the rear could be used for the parking/storage of cars, which would have a negative effect on abutting property. The applicant testified that he would not use it for the storage or parking of cars.

10. At the further hearing, the applicant produced no evidence to suggest that there was an extraordinary or exceptional condition related to this particular property to qualify it for a variance.

11. The subject property is within twenty-five feet of the residential zoning line.

12. The subject lessee currently operates an automobile repair shop at 2201 Alabama Avenue, S.E. BZA Order No. 11656, dated August 13, 1974, granted that application SUBJECT to the following conditions:

- A. No more than three cars be parked outside the garage awaiting repair.
- B. No body or fender work be done on the premises.

13. By memorandum, dated March 6, 1978, the Zoning Administrator advised the BZA as follows:

On May 9, 1975, Mr. James A. Cox, Jr., Apartment #403, 843 Bellevue Street, S.E. was issued a Certificate of Occupancy, Number B-91979, which states "auto repair" No body or fender work, towing service or storage.

The Advisory Neighborhood Commission entered a complaint to the Metropolitan Police Department; who in turn, contacted the Zoning Inspection Branch for a joint inspection on March 2, 1978 which was conducted with the following facts being ascertained:

1. Twenty-nine (29) vehicles were on the garage lot, with an without proper registration plates and a variety of dis-repair from flat tires to no motors.

2. 1967 Ford tow crane with a sign on its door advertising "Cox Auto Repair and Towing" 2201 Alabama Avenue, S.E. 20555.

14. By memorandum dated August 31, 1978, the Commander of the Seventh Police District advised the Board that James Cox has been operating at 2201 Alabama Avenue, S.E. in violation of his occupancy permit, Zoning Regulations and applicable consumer protection regulations. The memorandum contains a detailed statement of the violations with which Mr. Cox is charged. On numerous occasions, more than twenty-five vehicles were found parked on the premises, far in excess of the three permitted by the Board's order.

15. The applicant did not deny that he was in violation of his Certificate of Occupancy.

16. Advisory Neighborhood Commission 6C made no recommendation on the subject application.

17. There was no one in support of or opposed to the subject application.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the variance of twenty-four feet (ninety-six per cent) is too great a variance from the prescribed Zoning Regulations and that the granting of the special exception for the proposed use would adversely affect the use of neighboring property in terms of noise and pollution and would be contrary to the intent of the intent of the Zoning Regulations and maps.

The Board is mindful that the application could have been granted with sufficient conditions to protect adjoining residential properties. The Board notes that the prospective operator of the proposed use was the recipient of a previous approval from the Board. The Board notes that the record in this application reveals that the applicant has consistently and flagrantly violated the terms of that order. The Board concludes that such evidence directly challenges the credibility of the applicant, and the Board is unable to conclude that, if conditions were placed on a grant of this application, the applicant would willingly and conscientiously abide by those conditions.

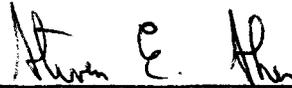
Lastly, the Board adminishes Mr. Cox for his contempt of the Board's previous Order with his flagrant continuous violations thereof and reminds him that such actions are not taken lightly by this Board or the residents of the community.

Accordingly, it is ORDERED that the application is DENIED in its entirety.

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

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

ATTESTED BY:



STEVEN E. SHER

Executive Director

FINAL DATE OF ORDER:

25 SEP 1978