

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12755, of M. Sine, Trustee, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3105) to permit the use of the first floor for "retail sales stoves, fireplaces, accessories and retail items" in the R-5-D District at the premises 1005 - 7th Street, N.W., (Square 450, Lot 15).

HEARING DATE: September 27, 1978
DECISION DATE: October 4, 1978

FINDINGS OF FACT:

1. The Board for good cause shown waived the requirements of Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA, regarding the timely filing of an affidavit attesting to the posting of the property.
2. The subject property is located at the intersection of 7th Street and New York Avenue, N.W., and is known as 1005 - 7th Street, N.W. It is in an R-5-D District.
3. The subject site is 2,192 square feet in area and is improved with a two story commercial style building that is vacant.
4. A Certificate of Occupancy for the subject property was issued May 31, 1974 for use as a retail beverage store, tobacco products, patent medicine and packaged food products, first floor.
5. In November 1972, the square of the subject site was rezoned from C-3-B to R-5-D in order to bring the zoning map into conformance with the Downtown Urban Renewal Plan. The plan designates the said square for high density residential development.
6. To the north adjoining the site along Seventh Street are two retail stove companies, a furniture and appliance store, a real estate office, a hardware store, a furniture store and a liquor store. To the south on the opposite side of New York Avenue is an electric supply company, an auto body repair shop, a carry out, and other commercial uses. Adjoining to the east along New York Avenue are four boarded up structures, a lumber company, a muffler shop, a lighting fixture establishment, and other commercial uses. To the west on the opposite side of 7th Street is a parking lot used by the Police Department for the temporary storage of vehicles which have been impounded.

7. The applicant presently uses the adjoining buildings, No. 1007 thru 1015, for the retail sales of fireplaces, stoves and heaters. The applicant seeks to expand the operation of the subject premises. The use of the subject premises would be used in conjunction with the present business operations. No additional employees would be required to operate the facility and hours of operation would conform to the existing business which is from 9:a.m. to 5:p.m. on weekdays and 9: a.m. to 4: p.m. on Saturday.

8. The applicant has operated his present business for twenty years. He has remodeled the interior of the stores. The applicant owns the subject property.

9. The store in the subject property had been a liquor store. It has been vacant for two years. There was testimony that it had been listed for rent during the two year period. Letters in the file recommending approval of the application state that the vacant store is an eye-sore.

10. Retail sales of stoves, fireplaces, accessories and retail items would fall under the category of Home Furnishing Sales which are first permitted in the C-2 District. The prior use of the premises as a liquor store is first permitted in the C-1 District.

11. The regulations characterize the proposed C-2 use as more intensive than the prior C-1 liquor store use, and the Board could therefore not approve a change of non-conforming use to permit the proposed use.

12. The C-1 use on the subject site has been in existence prior to May 12, 1958, the effective date of the Zoning Regulations.

13. The first floor of the subject premises is not appropriate for residential use, located in the middle of a commercial area, at the intersection of two major heavily traveled streets in a building which was not designed for and traditionally has not been used for residential purposes.

14. The Municipal Planning Office, by report dated September 15, 1978, recommended that the application be denied on the grounds that the proposed use represents a more intensive use than the prior use of the premises as a liquor store and that a reasonable C-1 use could be located on the subject premises.

15. Advisory Neighborhood Commission 2C, recommended that the application be granted on the following grounds:

" We feel strongly that the expansion of commercial facilities of all types along the 7th Street corridor is in the best interest of the local community and the city as a whole.

We are at odds with the Downtown and Shaw Urban Renewal Plans on this issue. We feel that the change from commercial to residential use of 7th Street was shortsighted and detrimental to the current residents of the area. We and the residents would much prefer to see all of 7th Street from New York to Florida Avenues used as mixed commercial/residential with emphasis on commercial. We have every expectation that in the near future there will be Urban Renewal Plan changes proposed reflecting this attitude.

For these reasons, we favor the application for variance even though it is not in line with Urban Renewal Plans."

16. There were three letters on file in support of the application.

17. There was no opposition to the application.

CONCLUSIONS OF LAW:

The applicant seeks a variance from the use provisions which requires a showing of an undue hardship upon the owner stemming from the property itself. The Board concludes that the owner cannot reasonably use the first floor of the subject premises for an R-5-D residential purpose, and that denial of the variance would constitute a hardship upon the owner by preventing any use of that area.

The Board also notes that in the subject application, there is a thin distinction between a C-1 and a C-2 use. The retail sale of stoves, fireplaces, accessories and retail items is a personal service to a neighborhood as well as a facility for shopping and business needs for large segments of the city.

The Board notes the position of the Advisory Neighborhood Commission, to which it must accord "great weight", and concludes that it is not unreasonable to grant the application. Having considered the nature of the neighborhood, the uses surrounding the subject property and the vacant state of this property for over two years, the Board concludes that in the particular instance the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is GRANTED.

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

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

FINAL DATE OF ORDER: 2 NOV 1978

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.