

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12861, of Mary H. Sherwood, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3103) to use the first floor of the subject premises for the storage and minor servicing of motor vehicles incidental to retail sale of said vehicles at 1600 Wisconsin Avenue, N.W., in an R-3 District at the premises 1609 - 33rd Street, N.W. (Square 1279, Lot 812).

HEARING DATE: February 14, 1979
DECISION DATE: March 7, 1979

FINDINGS OF FACT:

1. Under Section 3.3 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment, the applicant is required to post the subject property ten days in advance of the public hearing date. In this case the property was posted for nine days. The retail sales place of the motor vehicles was advertised inadvertently as 1600 Vermont Avenue, N.W. instead of 1600 Wisconsin Avenue, N.W.

There was opposition present at the public hearing. The opposition requested the Board to go forward with the hearing on the merits of the application. The Board waived the ten day posting period and determined that notices had been properly sent concerning the subject property and that persons understood the address of the retail sales place to be on Wisconsin Avenue.

2. The subject site is located on the east side of 33rd Street, N.W., between "Q" Street and Wisconsin Avenue, N.W. It is about sixty feet north of "Q" Street. A portion of the subject site is located in a D/C-2-A District but the subject structure is completely located in an R-3 District.

3. The subject property is rectangular in shape and contains 3,624 square feet of land area. It is improved with a one story red brick building with a garage door and driveway frontage on 33rd Street. Automobile access to the site is not possible from the rear of the property and 33rd Street at this location is one-way traveling north. The site's rear yard backs up to commercial uses fronting on Wisconsin Avenue.

4. To the north of the subject property fronting on 33rd Street there are row dwelling in the R-3 District. To the north-east and east there are commercial land uses fronting on Wisconsin Avenue in the D/C-2-A District. To the south there is a detached dwelling in the R-3 District and to the west across 33rd Street there are row dwellings in the R-3 District.

5. The applicant proposes to use the subject premises for the storage and minor repair of automobiles incidental to the sale of automobiles at 1600 Wisconsin Avenue. Records in the Central Permits Branch show no past certificates of occupancy were ever issued on the subject property. It appears that the improvement was built about 1880 and designed as a stable or carriage house.

6. There was testimony that the applicant's father established a dairy in 1885 at 1608 Wisconsin Avenue, which property the applicant owns. It's back portion joins the subject garage. The rear access to the dairy was the 33rd Street property. At first the 33rd Street property was open space and in about 1920 it was roofed over and made into a garage. The dairy moved to 3247 Q Street which property also abuts and adjoins the subject property. The subject property served as the storage space for the horse drawn vehicles for the dairy and later for the dairy trucks. When the dairy business moved the subject garage was rented for commercial vehicles to the present date. At present the garage is the support facility for the foreign car sales lot at the corner of Wisconsin Avenue and Q Street. Cars are stored in the garage at night, cleaned and prepared for sale. No major repairs are done. The garage serves as access to the commercial property owned by the applicant at 1608 Wisconsin Avenue. Although there is no alley behind the garage there is a small courtyard of approximately two feet that can be used as a loading platform to the back door of the property at 1608 Wisconsin Avenue.

7. The applicant contends that the subject site and the improvements therein have been used continuously as commercial property since 1880 for the storage and the servicing initially of horse-drawn vehicles, and now motor vehicles and that the present use in connection with a used car lot does not constitute a change of use.

The Board does not concur with the applicant. Sub-section 7102.1 of the Zoning Regulations states that a non-conforming use of a structure lawfully existing on the effective date of the Zoning Regulations (May 12, 1958) or any subsequent amendment thereto may be continued subject to the provisions of Article 71. In this case there never was a certificate of occupancy issued for any use to which the subject property was put. This is therefore not a use that ever lawfully existed.

8. The applicant testified that the subject property cannot be used as a parking garage to serve the neighboring residents. It is approximately thirty-two feet by 113 feet. It is scaled to accommodate many vehicles including trucks. There is insufficient room within which to maneuver cars. Also, the subject property is an integral part of the other properties that the applicant owns. The applicant further testified that if the accessway to the rear of the garage was compartmentalized in any way it would seriously hamper the commercial property the applicant owns on Wisconsin Avenue. The Board does not concur.

9. The storage and repair of automobiles incidental to retail sales is first permitted as a matter of right in the CM District or by special exception in the C-2 District. The subject garage building is located in an R-3 District.

10. The subject structure fronts on a residentially zoned and developed street. 33rd Street at this location allows restricted curb parking on both sides. It has a narrow right of way width of thirty feet making one way travel a necessity.

11. The Office of Planning and Development, by report dated February 9, 1979, recommended that the application be denied on the grounds that the use of this property as proposed would not be in character with the densely situated residential dwellings fronting on 33rd Street, and would create dangerous and objectionable traffic conditions by autos backing out from between parked cars onto a narrow one-way residential street. The OPD did not find reason to support the grant of the use variance because of any specific condition of the property or finding of hardship stemming from the property itself. The OPD noted that the premises can be developed in accordance with its R-3 zone designation. The Board so finds.

12. The Citizens Association of Georgetown opposed the application on the grounds of noise, traffic, litter and intimidation by personnel of the garage. It also argued that the application should be treated as a change of a non-conforming use rather than a variance from the use provisions, since uses subsequent to the parking for the dairy trucks, such as the terminex pest control with its one truck, were less intense uses. The Board having determined that a Certificate of Occupancy was never issued for the subject property finds that the remedy sought cannot be change of a non-conforming u

13. There was opposition to the application by neighboring residents who testified at the public hearing. There were also numerous letters from neighboring residents in the file. The opposition was based on the grounds of noise, air pollution emanating from the work done in the garage, traffic congestion, a depreciation of the neighborhood values and nuisance. The Board so finds.

14. Advisory Neighborhood Commission - 3A opposed the application by a unanimous resolution adopted at its meeting of February 7, 1979. No reasons were given. A representative of the ANC was present at the public hearing but did not remain to testify.

CONCLUSIONS OF LAW:

The Board in finding of fact No. 7 determined that the applicant's contention that the property has continuously been used for commercial purposes and therefore must be perpetuated is not tenable. As stated therein, the commercial use of the subject property was never legally constituted. The property had no certificate of occupancy in its entire history of operation. It thus follows that the Board need not concern itself whether the application can also be construed as a change of a non-conforming use.

Based on the record, the Board concludes that the applicant is requesting a variance from the use provisions. This requires a showing of a hardship stemming from the property itself. The subject property is rectangular in shape, it has no exceptional topographical conditions. It could be put to a use for which it is zoned. The Board concludes that there is no hardship inherent in the subject property.

Further, as evidenced by the concern expressed by the resident neighbors, the Citizens Association of Georgetown and the ANC as to noise, dirt, pollution, traffic congestion and the non-residential use of the premises the Board further concludes that the variance could not 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 DENIED.

VOTE: 5-0 (Ruby B. McZier, Charles R. Norris, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to DENY).

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

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

FINAL DATE OF ORDER: 3 JUL 1979