GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 12926 of Discount Drugs Wisconsin Inc., t/a Rodman's Drug Store, pursuant to Sections 8102 and 8206 of the Zoning Regulations from the decision of the Chief, Permit Branch, Department of Licenses, Investigation and Inspection to cancel Certificate of Occupancy No. B-110941, authorizing "Drug-store-Retail and Sale of Wine and Beer in Commercial Part of Building" in a C-2-A and R-2 District at the premises 5100 Wisconsin Avenue, N.W., (Square 1656, Lot 9).

HEARING DATE: May 23, 1979
DECISION DATE: June 6, 1979

FINDINGS OF FACT:

1. The Board, at the Public Hearing permitted ANC 3E and the Friendship Neighborhood Coalition to intervene.

2. The subject premises is located on the west side of Wisconsin Avenue, N.W. between Garrison Street on the south and Harrison Street on the north. It is part of a commercial development which contains Rodman's Drug Store, Alfio's La Trattoria Restaurant, an office of Interstate Savings and Loan Association, a beauty shop and a motion picture theatre. There are also offices located on the upper floors of the building. The lot is in a C-2-A and R-2 District. The premises is known as 5100 Wisconsin Avenue, N. W.

3. A Certificate of Occupancy, No. B-110941, was issued October 13, 1978 to the appellant to use the subject premises for purpose of drugstore-retail and sales of wine and beer in the commercial part of the building; lower level, storage of wine and beer.

4. By letter of March 7, 1979, the Chief of the Permit Branch, Department of Licenses, Investigations and Inspections notified the appellant that the subject Certificate of Occupancy was cancelled. The specific grounds for the cancellation as cited in the March 7, 1979 letter were as follows:

> "The certificate was issued erroneously, in that there was no administrative determination that the authorized uses complied with the Zoning Regulations and the Building Code. Such a determination is required in order to enforce the provisions of Section 8104 of the Zoning Regulations.

In addition, recent inspections of the premises demonstrate that, because of various violations of the Building Code, Fire Prevention Code, and Zoning Regulations, it could not have been concluded that the use authorized did in fact comply as required. The noted violations are:

Zoning Regulations: failure to provide required loading berths, in that the areas intended to serve as loading berths have suffered a diversion of purpose. Zoning Regulations, Sec. 7305."

The letter also cited numerous Building Code and Fire Prevention Code deficiencies, not here at issue.

5. The Zoning Administrator testified that based upon complaints from the intervenors that parking was not available for the customers of Rodman's and that the loading sections were also being used for parking, an on-site inspection was made of the subject premises in November 1978. Violations of the loading berth and platform provisions of Article 73 of the Zoning Regulations and violation of the off-street parking requirements of Article 72 were discovered Subsequently violations of the Building Code and Fire Prevention Regulations were discovered. The Zoning Administrator on February 9, 1979 requested the Permit Branch to cancel the Certificate of Occupancy since an investigation of the Zoning Administrator's files disclosed that the Certificate of Occupancy had been issued without a determination having been made that the premises complied with the Zoning Regulations and the Building Code, as required by Sub-section 8104.1 of the Zoning Regulations.

6. After the issuance of the aforementioned March 7, 1979 letter of cancellation the subject building was registered under Article 54 of the Zoning Regulations which deals with existing structures. At the time of registration plans were submitted and on approximately April 10, 1979 the Zoning Administrator met with appellant's counsel and architect and reviewed the parking plans. The appellant was providing 209 parking spaces. The Zoning Regulations require 201 spaces. Eighty of the required spaces were alloted to offices in the subject building, eighty-three spaces to the theater, one space to the savings and loan, fifteen spaces to the restaurant and twenty-two spaces to the subject Rodman's Drug Store. No spaces were required for the beauty shop.

7. At the April 10, 1979 meeting it was discovered from a review of the parking plans that although twenty-two spaces were alloted to Rodman's Drug Store they were not always available for Rodman's use because of other leasing arrangements of the parking spaces. A funeral parlor to the north of the subject property had exclusive use of twenty-three spaces.

8. The Zoning Administrator requested copies of the leasing agreements from appellant's counsel so that the parking problem could be resolved. As of the date of the hearing the leases had not been submitted to the Zoning Administrator, who was thus unable to determine how many spaces were actually available to the building at 5100 Wisconsin Avenue.

9. The appellant objected to the introduction of evidence as to violations concerning the parking plan since the letter of March 7, 1979 referred only to the loading berth and platform provisions of the Zoning Regulations The Chair ruled that the appellant had notice as evidenced from his counsel's and architect's contacts with the Zoning Administrator regarding the entire question of parking including the leasing arrangements and that the parking and platform issues were integrated from the very beginning.

The appellant also argued that the violations of the loading berth and platform provisions had been since corrected and accordingly the Certificate of Occupancy should be reinstated. The Chair ruled that the issue was whether the conditions existed on October 13, 1978 when the Certificate of Occupancy was issued and not at a subsequent date. The Chair further ruled that the issue before the Board is not whether the appellant is entitled to a new Certificate of Occupancy but whether the decision of the Permit Branch on March 7, 1979 was valid.

10. Advisory Neighborhood Commission 3E opposed the Appeal. By letter of May 11, 1979 it advised the Board that the ANC voted unanimously to oppose the reissuance of the Certificate of Occupancy for Rodman's Discount Drugstore in Case No. 12926. The opposition by the Advisory Neighborhood Commission, supported by the residents of the area remains until:

a. Rodman's corrected the total list of fire violations for which they have been cited by the Fire Marshall;

b. Rodman's has presented documented proof that they have full use of parking spaces sufficient for the square footage of the store in compliance with D.C. Zoning Regulations;

c. the loading dock requirements of the Zoning Regulations for that size of store are met fully;

d. the owner of the building or Mr. Rodman solves the traffic circulation pattern problems brought out at the BZA hearing in 1976. The Department of Transportation recommended at that time that traffic should enter the parking lot on Garrison Street and exit on Harrison Street.

In view of non-compliance by Rodman's in the past, the ANC recommended that the Board of Zoning Adjustment should invoke any and all penalties deserved to be invoked under the law.

11. Counsel for the ANC stated the basic grounds of the ANC's opposition was that the premises were not in compliance with the Zoning Regulations as to loading and parking at the time the Certificate of Occupancy was issued, and that no proper determination was made that the premises complied with the Zoning Regulations before the Certificate of Occupancy was issued.

12. At the Public Hearing a representative of the ANC testified that on May 13, 1979 she had inspected the subject premises and had found a delivery truck parked on Garrison Street and unloading there since the loading dock was chained and the truck could not enter. She also found that where the chain was broken cars had entered and parked up against the apron of the building. The loading dock that was observed was immediately at a right angle to a small entryway which is blocked by an electric arm. The arm prohibited entry of a large truck. The ANC further testified that circulation through the lot is impeded and is made worse by the walls which are set up to assure entryway to the leased spaces.

13. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board concurs with all the recommendations of the ANC. The Board notes however,that it is not within its jurisdiction to rule on building and fire code violations. Also, the Board is not an enforcement agency and is not empowered to invoke penalties. The Board further finds that the issue of traffic circulation is not properly before the Board at this time, especially as to congestion on public streets.

14. The Friendship Neighborhood Coalition opposed the Appeal on the grounds that the premises were not in conformance with the Zoning Regulations when the Certificate of Occupancy was issued. The Friendship Neighborhood Coalition also noted that trucks are parking on Garrison Street instead of at the unloading dock, the parking spaces are compartmentalized which interferes with traffic circulation and the parking on Garrison Street intrudes into the residential neighborhood. The FNC recommended that all areas of traffic concern be worked out before any Certificate of Occupancy issues. The Board responds to those issues with the same response cited to the ANC.

15. The evidence is uncontroverted on the record that the loading requirements of the Regulations were not met when the Certificate of Occupancy was issued, that no parking and loading plans were submitted and that no determination was made that the premises complied with the Zoning Regulations at the time the Certificate of Occupancy was issued.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the Appeal must be denied. The appellant's premises as to a parking plan and a loading plan were not in conformity with the provisions of the Zoning Regulations on October 13, 1978 the date that Certificate of Occupancy No. B-110941 was issued. Also, the Certificate of Occupancy was not issued in conformity with the procedural requirements of the Zoning Regulations in that no determination was made prior to the issuance of the Certificate of Occupancy.

The Board concludes that a Certificate of Occupancy improperly issued is one which inherently the District of Columbia Government has the authority to cancel. The Board concludes that the subject Certificate of Occupancy was improperly issued. The Board concludes that the premises conflict with the requirements of the Zoning Regulations. It is not within the Board's jurisdiction to consider any building code or fire code violations, nor is it proper at this time to consider any issues related to traffic and circulation.

The Board concludes that it has accorded to the ANC the "great weight" to which it's entitled.

Accordingly the Appeal is DENIED and the decision of the Permit Branch is UPHELD.

VOTE:

3-0 (Leonard L. McCants, John G. Parsons and Chloethiel Woodard Smith to deny, Charles R. Norris and William F. McIntosh not voting, not having heard the Appeal).

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

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

FINAL DATE OF ORDER: 23 JUL 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."