

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12950 of Himmelfarb Realty, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5101) to use the subject premises as a used car sales lot (retail sales) in a C-1 District at the premises 1736 Rhode Island Avenue, N.E., (Square 4134, Lots 1,2,3, and 18).

HEARING DATE: July 25, 1979
DECISION DATE: August 8, 1979

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of 18th Street and Rhode Island Avenue, N.E. and is known as 1736 Rhode Island Avenue. It is in a C-1 District.
2. The subject site is approximately 11,675 square feet in area and is improved with a gasoline service station. The improvements comprise a one story building without a basement that is used as an office area and three service bays.
3. The site is bounded by Rhode Island Avenue, N.E. to the south and 19th Street, N.E. on the east and Hamlin Street, N.E. on the north. The site abuts a public alley on part of it's northern boundary. The property is abutted on the western side and part of the northern side by used car lots which are also zoned C-1. On Hamlin Street, behind the site, is a Safeway supermarket.
4. Certificate of Occupancy No. B81839, issued May 4, 1972, permits use of the subject premises for the purposes of a gasoline service station, a taxicab office and a towing service with no storage on lot.

5. The gasoline station was last improved and modernized in the 1950's. Until about 1966, the owners were able to lease the gasoline station, on a ten year lease, to the Tidewater Oil Company. Tidewater found the operation to be uneconomical and did not renew the lease. Since the expiration of the Tidewater lease, the owners of the property have been unable to lease it to any oil companies. Subsequent tenants, who have attempted to operate a gasoline station on the site, have consisted of independent dealers who made their own contractual arrangements with oil companies.

6. The subject premises is presently leased for minor auto repairs. The lessee if the requested variance is granted will use the property as a used car sales lot. The lessee will store approximately twenty-five cars on the lot. The hours of operation will be from 9:00 A.M. to 6:00 P.M., Monday through Friday, and 9:00 A.M. to 2:00 P.M. on Saturdays. No repairs other than those required for the used cars to be sold will be conducted on the site. The operator of the proposed use car lot testified that major repairs will be contracted out to nearby garages in the neighborhood.

7. The small size of the site renders it obsolete for purposes of a modern gasoline service station. The underground tankage capacity of the site is too small and there is not sufficient space on the site to provide larger storage capacity.

8. The entrances to the subject gasoline station are on Rhode Island Avenue and 18th Street. Access to the site by east bound traffic is made difficult because of a traffic island on Rhode Island Avenue and a divider on 18th Street. Outbound traffic cannot conveniently turn on 18th Street and Rhode Island Avenue to gain access because a left turn traffic signal at that intersection is of such short duration that only three cars at a time can turn. Those cars turning left must go into 18th Street and around the divider to gain access to the station thereby creating a bottleneck.

9. The applicant testified as to the unsuitability of the site for the purposes for which it is zoned. The obsolete service building on the site, which includes three service bays cannot reasonably be adopted to other C-1 uses due to its interior layout. Renovation of the property for other C-1 uses would not

be economically feasible, especially since many of those uses cannot pay the rent necessary to provide a reasonable return. For several C-1 uses, the obsolete service building cannot be adapted because it is too large. For other such as automobile accessory's sales, the building is too small. Most C-1 uses would be hampered by the access problem. The Board so finds.

10. The applicant testified that the property is suitable and reasonably adaptable to the proposed used car lot use. There are used car lots on either side of it. There are a total of six used car lots on Rhode Island Avenue, N.E. between 7th Street and the District line, two of which are affiliated with new car dealership. Used car lots are often found on commuter routes, of which Rhode Island Avenue is one. Access would not be a problem since a used car lot often has only one or two customers at a time.

11. The proposed used car lot use will be a less intense use than the permitted gasoline service station use. There will be no adverse traffic impact since a used car lot normally has only one to two customers at a time.

12. In a letter dated July 5, 1979 addressed to the operator of the proposed used car lot, ANC 5A expressed support of this application. That support was based on the fact that by granting the variance the business community of the Rhode Island, N.E. corridor would be revitalized. The ANC letter went on to say that this revitalization would aid in keeping and possibly increasing the tax base of the District of Columbia. A Commissioner of ANC 5A appeared at the public hearing and testified in support of the application. The Board concurs with the recommendation of the ANC but for different reasons as set forth in the conclusions of law and opinion.

13. One neighbor appeared at the Public Hearing in favor of the application on the grounds that it would revitalize that part of the neighborhood by converting a shabby littered lot into a more pleasant place. There were two persons in opposition to the application. They stated no grounds for their opposition.

14. A representative of Safeway Stores testified in opposition to the application. A Safeway store adjoins the subject property. He stated that the proposed use of the property does not conform with the characteristics of the neighborhood and that a use permitted as a matter of right under the Zoning Regulations would better serve the neighborhood. The representative further testified that the lot is now being used as a storage lot for derelict cars and a repair facility for damaged cars.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a variance from the use provisions, the granting of which requires a showing of a hardship upon the owner stemming from the property itself. The Board finds that the size of the subject lot and its location and the improvements therein create the hardship. For several C-1 uses the property is too large. For other C-1 uses the building on the lot is too small. The Board also finds that the former use of the property is not feasible as evidenced in Findings of Fact No. 5. The Board further concludes that the proposed use is a less intensive use than the gasoline service station use in terms of noise and traffic. While the Board is reluctant to see a third used car lot in the immediate neighborhood it notes the lack of strong opposition to the application on the part of property owners in the neighborhood, and the support of ANC 5A. The Board concludes that the application 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: 3-1 (William F. McIntosh, Charles R. Norris and Chloethiel Woodard Smith to grant; Leonard L. McCants to opposed)

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

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

FINAL DATE OF ORDER: 27 SEP 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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLES WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.