

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13101, as amended, of Eston L. Lewis, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations for special exceptions under Sub-section 7104.2 to change a non-conforming use of office, first and second floors, to a restaurant, under Sub-section 7105.2 to extend the non-conforming use of a restaurant to the basement and third floors and for a variance from the prohibition against allowing structural alterations to a non-conforming structure devoted to a non-conforming use (Sub-paragraph 7106.121), for a proposed conversion of an office building to a restaurant in an SP-2 District at the premises 512 - 5th Street, N.W. (Square 488, Lot 18).

HEARING DATE: December 19, 1979  
DECISION DATE: February 2, 1980

FINDINGS OF FACT:

1. At the public hearing of December 19, 1979, the Board for good cause shown, waived Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA. That section requires that an affidavit be filed not less than five days before the public hearing date that the subject property has been posted and that a picture of the posting be affixed to the affidavit. The Board found that the property had been posted for at least ten days prior to the public hearing, that the poster had disappeared and the picture of the posted property was a blank.

2. At the public hearing, the applicant accepted the recommendation of the Board that because of the many reliefs sought that the applicant review the application with the Office of Planning and Development and the Zoning Administrator with the intent of amending the application. The case was continued to February 6, 1980.

3. On February 6, 1980 the Board received the report of the OPD, the revised memorandum of the ZA, the amended application and the revised plans.

4. The application was amended so that the applicant no longer seeks the following variances as were originally advertised:

- a. Variance from the use provisions allowing an addition to a building which will be used as a restaurant (Sub-section 4101.3).
- b. Variance from the open court requirements (Sub-section 4305.1).
- c. Variance from the rear yard requirements (Sub-section 4303.1).

5. The subject property is located on the west side of 5th Street between F Street to the north and E Street to the south and is known as 512 - 5th Street, N.W. It is in an SP-2 District.

6. The site is rectangular in shape and is approximately 1,746 square feet in land area. The site is improved with a three story brick structure and basement which occupies approximately two-thirds of the site.

7. The applicant maintains a bail bond agency on the first floor of the subject premises. The second floor had been used as an attorney's office but is now vacant.

8. The applicant now proposes to use the basement, first and second floors as a restaurant. The third floor will contain an employees lounge and the restaurant office space.

9. To the north, abutting the subject site is the one-story Evans Printing Company building, followed by a three story row structure which is also part of Evans Printing Company, followed by the newly built Fire Engine Company No. 2 all of which are in the SP District. To the east across 5th Street is the D.C. Superior Court Building "A" in Judiciary Square. To the south are two row structures and one semi-detached building each occupied with law offices in the SP District, followed by the three and one-half story red brick Salvation Army Office building in the SP District. To the west is a ten foot wide alley followed by the rear yards of structures in the SP District.

10. The zoning of the subject property was changed from the SP District to the SP-2 District in 1978. A Certificate of Occupancy No. B-89001, was issued on April 4, 1978 for the subject property for use of the first and second floors as office space. The use of the bail bond office extends back at least as far as 1952, prior to the adoption of the present Zoning Regulations in 1958.

11. Sub-section 7104.2 of the Zoning Regulations provides that, with BZA approval, a non-conforming use may be changed to a use which is permitted in the most restrictive District in which the existing non-conforming use is permitted. A bail bond office and a restaurant are first permitted in a C-1 District.

12. The applicant proposes to make no changes in the facade of the building.

13. The subject premises is located within a designated historic area. The site location in an historic area will require exterior design review by the Joint Committee on Landmarks and Fine Arts Commission.

14. The applicant anticipates that the restaurant will be patronaged by a walk-in clientele consisting of people who work in the surrounding neighborhood. Breakfast and lunch are expected to comprise the bulk of the restaurant's business.

15. The Office of Planning and Development, by report dated January 14, 1980, recommended that the application be approved subject to the condition that the applicant submit amended site plans showing the deletion of the originally proposed rear addition, front and rear elevations, and that the proposed non-conforming restaurant use be limited to the basement, first and second floors. The OPD reported that the proposed use of the subject premises will not change the character or adversely affect the use of neighboring properties, and that the requested variances to allow structural alterations to a non-conforming structure devoted to a non-conforming use in this case will permit the utilization of a facility compatible with the neighborhood, provided that the exterior facade is not changed so as to alter the continuity of the other row structures in the block. The OPD believed that the third floor of the premises can be used in accordance with the SP-2 provisions. The OPD was also of the opinion that the structural alterations of the stairs and the extension of the restaurant use to the basement will improve the vertical circulation, and the opportunity for economic feasibility given the narrow width and size of the premises which creates a practical difficulty in renovating the structure for restaurant use. The Board concurs except that the Board is of the opinion that the third floor can be adapted to the restaurant use as contemplated by the applicant for an employees lounge and the restaurant's office use.

The Board further notes that the extension to the third floor does not require a variance, and that the applicant is not required to show that the third floor cannot be used for an SP purpose.

16. There was no opposition to the application.

17. Advisory Neighborhood Commission - 2C made no recommendation on the application.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking two special exceptions and a variance. To grant the special exceptions the Board must conclude that the applicant has substantially complied with Sub-sections 7104.2 and 7105.2 and that the relief can be granted as in harmony with the intent, purpose and integrity of the Zoning Regulations and that the relief will not affect adversely the use of neighboring property. Based on the Findings of Fact, the Board so concludes.

As to the variance from the structural alterations, the Board concludes that the requested variances are area variances. The use of the property as a restaurant is permitted by special exceptions, and the variance requested relates not to the use but to the physical configuration of the building. The Board concludes that the requested variances are minimal in nature. The Board concurs with the report of the OPD, as set forth in Finding of Fact No. 15. The Board concludes that the variance 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 SUBJECT to the following CONDITIONS:

- a. Approval is granted in accordance with the two special exceptions and the variance described in the memorandum to the Board from James E. Bess, Deputy Zoning Administrator dated January 30, 1980 marked as Exhibit 17 of the record.
- b. Renovation and construction shall be in accordance with the revised plans filed with BZA on January 30, 1980 marked as Exhibit 19 of the record.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Leonard L. McCants to grant, Charles R. Norris not present, not voting).

