GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13164, of E. A. Audette, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the floor area ratio requirements (Sub-section 5301.1) and the off-street parking requirements (Sub-section 7202.1) for a proposed renovation and conversion of the subject premises from residential/ commercial to commercial (restaurant) in a D/C-2-A District at the premises 1203 - 28th Street, N.W. (Square 1214, Lot 28).

HEARING DATE: March 12, 1980
DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. The subject property is located at the northeast corner of the intersection of 28th and M Streets, N.W. and is known as 1203 - 28th Street, N.W. It is in a D/C-2-A District.

2. The subject site is rectangular in shape and measures sixty-two feet by thirty-one feet. It is improved with three attached structures, all of brick construction. The improvements are two stories in height and occupy ninety percent of the lot area. There is no space for on-site parking.

3. To the north of the subject property is a driveway followed by the Corcoran School and row dwellings continuing north in an R-3 District. To the east is a paved asphalt parking lot in a D/C-2-A District, at an elevation eight to ten feet lower than the subject property's M Street grade level. The lot is used by the D.C. Department of Transportation. To the south is M Street, followed by a small park which separates M Street with its intersection with Pennsylvania Avenue. Rock Creek and Potomac Parkway are further to the south. To the west is 28th Street, followed by a semi-detached brick structure occupied by the American Needlework Center and garage in the D/C-2-A District.The Pasta Inc. and a restaurant are further west fronting on M Street in the D/C-2-A District.

4. The applicant's lessees propose to renovate the subject three improvements to accommodate a restaurant on both floors and the basement. The restaurant will be known as Aldo's Cafe. All three buildings will be gutted and used as one unit. The facade will remain the same except for cosmetic touchups. The interior will be renovated.

5. It is proposed that the capacity of the restaurant will be 115 seats including a lounge. There will be approximately seventeen staff including management. The hours of operation will be from 11:00 a.m. to 2:00 p.m. and 5:00 p.m. to 12:00 p.m. six days a week.

6. Under the Zoning Regulations nine parking spaces are required to service the proposed restaurant. Since the site can provide none, the applicant seeks a 100 percent variance. The lessees have made arrangements for twenty-five parking spaces at an Amoco Gas Station, southeast of the site, for its evening customers and for afternoon parking at Doggett's facility which is two blocks west of the site. All parking will be valet parking.

7. The lessees testified that according to the custom of the restaurant business, they can plan their own delivery of goods and pick-up of trash arrangements. A stairwell in front of the buildings on 28th Street will be used to accept deliveries and pick-up trash.

8. There are no facilities to the rear or side of the subject properties for delivery or trash trucks to park. The lessees testified that they did not know where said trucks would park.

9. The Zoning Regulations permit an F.A.R of 1.5 or a gross floor area of 2790 square feet for the subject property. The computations provided by the Zoning Administrator indicate that the applicant proposes to provide 4056.35 square feet. A variance of 1,266.35 square feet or forty-five percent is required. The applicant argued that only 3,445.2 feet of commercial use is chargeable against the gross floor area. The difference is in the amount of the basement level which is four feet or more out of grade. The Board finds that the determination of the Zoning Administrator, who is the proper authority of the District of Columbia to compute such matters, is correct.

10. The applicant argues that the lease and renovations of the subject premises were planned as early as October 28, 1978. At that time the maximum F.A.R. was 2.0. Sub-section 5301.1 of the Zoning Regulations was amended effective November 17, 1978 reducing the maximum F.A.R. from 2.0 to 1.5. The Board finds that as of November 17, 1978, all three subject buildings were used for separate, individual purposes and not as one structure. The two buildings to the north of 1203 - 28th Street were considered residential. The site was not used for commercial purposes to the full 2.0 F.A.R. There were no "grandfathering-in" rights for the three structures to be considered one facility. Further, there was no application for a building permit pending when the regulations were changed, so as to vest a right to build under the old regulations as set forth in Subsection 8103.5.

11. The Office of Planning and Development, by report, dated March 4, 1980 recommended that the application be denied on the grounds that a variance request of forty-five percent from the maximum allowable floor area ratio is excessive in any instance. The applicant has not provided reasons for his inability to use the property in accordance with the D/C-2-A District regulations that would support a finding of practical difficulty. The Office of Planning and Development recognized the alternative plan for on-site parking as a reasonable remedy considering the physical restraints of the site and the availability of off-site parking arrangements in close proximity to the restaurant. In conclusion, however, the Office of Planning and Development recommended that this application be denied, because the requested variance from the F.A.R requirements, if granted, would be excessive and would circumvent the intent, purpose and integrity of the Zoning Regulations and Map. The Board concurs as to the F.A.R variance. It will discuss the parking variance in more detail below.

12. Advisory Neighborhood Commission - 3A, by letter of March 7, 1980 and testimony at the public hearing, recommended that the application be denied on the grounds that the variance from the F.A.R requirements would be detrimental to the public good through overintensification of use and loss of existing residential use thereby diminishing the housing stock of the neighborhood. As to the variance from the off-street parking requirements the ANC reported that the proposed use would further impact the already congested subject residential neighborhood. The Board concurs as to the overintensification of use and the traffic impact. As to the loss of housing stock, the Board finds that because of its present zoning the Board could not order that the premises be used exclusively for residential purposes.

13. There was opposition to the application from the Georgetown Citizens Association and independent property owners on the grounds of traffic impact, noise, litter, odors, intensification of use of property and the loss of housing stock for the District. There was also a petition of approximately 186 signatures of neighborhood residents in opposition that was submitted at the public hearing. There were also several letters of record in opposition. The opposition testified that even with residential parking permits there was no space to park in Georgetown. The subject property had no on-site parking facilities. There were no alleys to the rear or sides of the subject property and consequently no provisions for the parking of delivery and trash trucks which would necessitate double parking on the streets or in the parking spaces of private citizens or the private spaces of surrounding businesses. The opposition further argued that valet arrangements for customer parking did not guarantee that the spaces would be allocated or even available to the customers of the proposed restaurant.

The opposition argued that the former uses of 1203 - 28th Street as a tire shop and a poodle shop and the buildings at 1205 and 1207 as residences and offices were less intense than the proposed use as to number of visitors, traffic, litter and noise. The Board so finds.

CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing of a practical difficulty upon the owner of the property that is inherent in the property. The Board finds no practical difficulty inherent in the subject property that would preclude the applicant from using the property in accordance with the Zoning Regulations for a D/C-2-A District. The difficulty stems from the proposed over-use and intensification of use of the subject premises. A variance of forty-five percent from the F.A.R. requirements is too great.

Additionally, for a variance to be granted, it must be established that 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. The Board notes and concurs with the grounds of the opposition as found in Findings of Fact No. 12 and 13. The Board concludes that for these reasons, the relief requested cannot be granted. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, William F. McIntosh, Connie Fortune and Leonard L. McCants to DENY; Theodore F. Mariani to DENY by PROXY).

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

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

FINAL DATE OF ORDER: 30 JUN 1980

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."