

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13165 of Sidney Margolis, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a retail men's clothing, haberdashery, tailoring, cleaning agency and pressing uniforms, first floor, to a restaurant seating seventy-six persons, first floor, and to extend the proposed non-conforming use to the second floor for storage and toilet facilities, in an R-5-C District at the premises 2145 G Street, N.W., (Square 79, Lot 808).

HEARING DATE: March 19, 1980

DECISION DATE: April 2, 1980

FINDINGS OF FACT

1. The subject property is located at the northeast corner of the intersection of 22nd and G Streets, N.W. and is known as 2145 G Street, N.W. It is in an R-5-C District.

2. In BZA Order No. 12313, dated May 26, 1977, the Board denied a change of non-conforming use from a retail men's clothing, haberdashery, tailoring, cleaning agency and uniform pressing establishment on the first floor of the subject property to a restaurant seating sixty persons and to permit the expansion of the proposed non-conforming use to the second floor.

3. On June 2, 1977, the applicant filed a motion for a rehearing based on new evidence not available at the time of the hearing of the application. The Board, at its Executive Session of August 3, 1977, granted the applicant's motion and scheduled a hearing for September 21, 1977. The Board denied the motion of George Washington University, not a participant in the original public hearing held on February 22, 1977, to dismiss the applicant's motion for rehearing. The Board ruled the motion of George Washington University was untimely.

4. The application was amended at the public hearing of September 21, 1977, with the Board's approval. The applicant no longer sought to extend the restaurant to the second floor for seating purposes and the restaurant on the first floor will seat seventy-six persons, not sixty. By BZA Order No. 12313, as amended, dated October 20, 1977, the Board granted the application with conditions. One of the conditions was that the second floor shall be used only for toilet facilities of employees and patrons, storage and office uses.

5. George Washington University filed a petition for review in the D.C. Court of Appeals. The respondent BZA moved to remand the record for further administrative proceedings. In an Order filed November 14, 1978, per curiam, the Court DISMISSED the University's appeal as moot since the prospective restaurant tenant at the time of the public hearing had been replaced by another. The Order of Dismissal was without prejudice to the Board's expediting any further proceedings in respect to the subject property.

6. The structures within 300 feet of the subject property include student dwellings, George Washington University buildings, a fire station, a few residences, a D.C. public school and a hotel. There are limited public eating facilities within the area, including two non-conforming restaurant-carry-outs and some University dining facilities.

7. The site is located within the boundaries of the George Washington University Campus and is included within the area of the Campus Plan. On the same square as the property is the George Washington University library. Located diagonally across from the subject property is the Smith Athletic Center, which is the site of diverse public sporting events for which admission is charged, such as tennis, basketball and swimming. In addition, located within the Smith Center is a private athletic facility open to alumni and other financial contributors to George Washington University.

8. The applicant was operating a men's clothing store as an existing non-conforming use under Certificate of Occupancy B-14340 issued on November 3, 1958 on the first floor of the property. Such use is first permitted in the C-1 zoning district as a matter of right.

9. The applicant proceeded with the proposed plans for a restaurant based on the approval of the Board given on October of 1977. In carrying out these plans an extensive remodeling was carried out. The testimony by two expert witnesses, a structural engineer and an architect, was that the remodeling involved either ordinary repairs, alterations or modernizations or that all alterations made relating to the structure were required by municipal law or regulation. No enlargement of the building occurred nor were there any structural changes in the appearance of the building. These renovations would be continued for the new proposed restaurant use. No structural alteration would be made other than those required by municipal law or regulation.

10. The applicant now proposes to change the existing use by leasing the property to Dominique D'Ermo, the current operator of Dominique's Restaurant located on Pennsylvania Avenue and 20th Street, for the operation of a 76-seat restaurant. The second floor will be used for restrooms and storage. A restaurant is first permitted in the C-1 zoning district as a matter of right.

11. The hours of operation for the proposed use will be 7:00 a.m. until midnight, six days a week. The restaurant will be closed on Sunday. There will be a total of seven employees on the premises at any one time. The restaurant will have a seating capacity for seventy-six persons. The lessee proposes to serve breakfast, lunch and dinner. There will be a small percentage of carry-out trade.

12. There will be approximately 500 to 600 customers on an average day. There will be an average of five to seven truck deliveries and one trash pickup each day for which vehicles will park at the curb and unload at the sidewalk using the two loading zones which presently exist.

13. The operator of the restaurant intends to seek an alcoholic beverage license permitting the sale of beer and wine, but not liquor, on the premises.

14. There will be no live entertainment on the premises nor will there be recorded music that will project beyond the boundaries of the building.

15. The applicant testified that its proposed restaurant is primarily intended to fulfill the needs of the student and staff population of George Washington University as well as other neighborhood residents in the surrounding apartment houses. The proposed use of the property as a restaurant would be a neighborhood facility. There will be no advertising of the restaurant beyond the boundaries of the neighborhood. There may be ads in the student newspaper of the George Washington University and in the magazine put out by the Foggy Bottom community.

16. A proposed sign was submitted with the logo of the Cherry Tree Restaurant. It was proposed that the sign approximately six feet by two feet would not be neon, would be located at the front of the building, and would be illuminated from behind.

17. The applicant's traffic expert witness testified that the proposed restaurant would create no traffic problems for people who live and work in the area, or for people who pass through the area. It would be a neighborhood facility, with the majority of customers walking to the site. The witness further testified that there were approximately ninety-four on-street parking sites in the immediate neighborhood of which eighty were metered parking

providing for many turnovers. There is a subway stop within three blocks. The witness further testified that the forty foot long loading space is more than adequate for the deliveries of food and garbage collection purposes and that the hours of delivery would not have any impact on the traffic which reaches a peak between 8:00 a.m. and 9:00 a.m. The level of service in the immediate neighborhood is level "B" which is interpreted as no congestion. The Board so finds.

18. Advisory Neighborhood Commission 2A recommended that the application be granted conditionally on the following grounds:

- a. The ANC would prefer to see this viable commercial use which is of service to the community, than the derelict hulk of a building left when renovation was stopped in 1978.
- b. The George Washington University Campus plan, which has been cited as reason for opposing a restaurant, does not govern non-university owned property within campus boundaries and therefore is not a valid consideration in this case.
- c. While the George Washington University administration may oppose the application, they are, in effect, only a single property owner in the area and are outnumbered by the closest resident property owners in the immediate area who support the application. It is specifically noted that the GWU administration does not represent the students of GWU. These students, by survey and petition, letters and editorials have supported Mr. Margolis.
- d. The University is basically a high intensity use and a restaurant would not be inconsistent with that use. It is the ANC's judgement that the proposed restaurant will basically draw from the persons resident near or on campus or going to classes or other attractions on campus. Thus, the ANC feels there will be minimal additional traffic bound for the restaurant. It has been substantially demonstrated that the proposed restaurant is primarily intended to serve as a neighborhood facility.
- e. There are a minimal number of restaurants in the area of the campus, considering the large number of people who flow into the area each day for work or studies, in addition to residents. In a previous case, the GWU "cited" over ninety eating places within four blocks of 22nd and G Streets. An analysis was made of that

list approximately one year ago, which demonstrated that the cited 90 eating places were in fact only twenty-four. That analysis is believed to be substantially accurate today.

- f. The application, when earlier heard as Case 12313, was opposed by some neighborhood residents and individual ANC Commissioners. The ANC believes much of the opposition was based on fears of much noise and litter which should not occur if the controls on the restaurant are specifically enumerated.

The conditions for approval which the ANC would like to see incorporated in any BZA order are:

- a. The building shall be designated as a restaurant only by small painted signs and not by an illuminated sign.
- b. Alcoholic beverages shall be limited to beer and wine for consumption on the premises only, with no carry-out.
- c. Restaurant operations and seating shall be confined to the first floor with such support facilities as toilets and storage allowed on the second floor.
- d. The restaurant shall close at 10:00 p.m.
- e. There shall be no live entertainment on the premises and no recorded music shall be amplified so it is audible outside the restaurant.
- f. Trash shall be compacted and retained within the premises until pick-up by a private trash-hauler.
- g. The operator of the restaurant shall endeavor to minimize the number and noise of vehicles delivering supplies to the restaurant or picking up trash.
- h. The lessee and operator of the restaurant shall make every effort to keep disposable materials from the restaurant from littering the area in the vicinity of the restaurant, which ANC interprets as 100-200 feet in each direction along the sidewalks and streets.
- i. No presently existing on-street parking spaces shall be removed.

19. The President of the Student Government of George Washington University recommended that the application be approved on the basic grounds listed by the ANC.

20. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing the concerns, the Board finds that it concurs in essence with the ANC. As hereinafter noted, the Board will incorporate most of the conditions recommended by the ANC on its approval of the application.

21. The West End Citizens Association and several neighboring residents opposed the application on the grounds that the proposed use would create additional traffic congestion, litter, debris, noise and odors and that there was a sufficiency of restaurants in the immediate neighborhood. The Board finds that with the conditions imposed by it on the granting of this application that most of the concerns of this opposition will be alleviated. The Board has already found in Finding No. 17 that no adverse traffic congestion will occur.

22. The George Washington University opposed the application on the grounds that the proposed non-conforming use and extension thereof was a more intense use than the former haberdashery use and that a food operation center was not compatible with the academic environment of the neighborhood. The George Washington University further opposed the application on the grounds that since 1958 commercial uses in the subject portion of G Street were declared non-conforming through map amendments by the Zoning Commission and that this position was strengthened by the BZA's approval of the Campus Plan for George Washington University. To operate the proposed use was in contradiction to such zoning changes.

#### CONCLUSIONS OF LAW AND OPINION

Based on the record the Board concludes that the applicant is seeking a special exception. The Board, to grant the special exception, must conclude that the applicant has complied with the requirements of Sub-section 7104.2 and Section 7109 of the Zoning Regulations. The Board concludes that the applicant has met these in that the proposed use is permitted as a matter-of-right in the most restrictive district in which the present use is permitted, and that the change is thus consistent with the requirements of Sub-section 7104.2. The Board concludes that the extension of the use to the second floor can be permitted, as it is part of the same structure where the present use is located, and no structural alterations will be made except those required by municipal law or regulation.

The Board further concludes that the proposed use will be a neighborhood facility, in that it will serve primarily the student population of George Washington University and other residents of the area. The Board concludes that the use does represent an intensification over the previous use. However, the Board concludes that the proposed use will not have significant negative effects, in that the noise, odor and trash coming from the building will be limited, and that little automobile traffic will be generated since the primary users of the restaurant will be neighborhood residents who will walk.

The Board concludes that the Campus Plan approved by the Board for George Washington University is binding upon the University for property owned by the University. The Board concludes that the campus plan is not and cannot be binding upon privately owned property within the plan area.

The Board notes that in his closing argument, counsel for George Washington University alleged that the previous non-conforming clothing store use had been abandoned, and that the property thus no longer could be considered under Sub-section 7104.2. The Board notes that whatever physical changes were made to the building were deliberately made to convert the building to a new non-conforming use, as a restaurant, as approved by the Board. The Board concludes that the non-conforming use has not been abandoned, and that the application is properly before the Board under Sub-section 7104.2.

The Board further concludes that the proposed restaurant use will not have an adverse effect on surrounding and nearby properties, and that the application is consistent with the intent and purposes of the Zoning Regulations. Paragraph 7109.13 of the Regulations authorizes the Board to control various aspects of the proposed use including hours of operation, signs, etc. In summary the Board concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that the grant will not tend to affect adversely the use of neighboring property. The Board concludes that it has given the "great weight" required to the issues and concerns of the ANC. In conditioning the closing hours of the restaurant to midnight rather than 10:00 p.m. as requested by the ANC, the Board concludes that midnight is more in keeping with the hours of the students, the hours of operation of some of the George Washington University's buildings and the nature of the proposed use. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

- a. The building shall be designated as a restaurant only by small painted signs and not by an illuminated sign.
- b. Alcoholic beverages shall be limited to beer and wine for consumption on the premises only, with no carry-out.
- c. Restaurant operations and seating shall be confined to the first floor with such support facilities as toilets and storage allowed on the second floor.
- d. The restaurant shall close at 12 o'clock midnight.
- e. There shall be no live entertainment on the premises and no recorded music shall be amplified so it is audible outside the restaurant.
- f. Trash shall be compacted and retained within the premises until pick-up by a private trash hauler.
- g. The operator of the restaurant shall endeavor to minimize the number and noise of vehicles delivering supplies to the restaurant or picking up trash.
- h. The lessee and operator of the restaurant shall make every effort to keep disposable materials from the restaurant from littering the area in the vicinity of the restaurant, by daily policing and cleaning of of the area.

VOTE: 4-1 (Charles R. Norris, Connie Fortune, William F. McIntosh, and Leonard L. McCants to grant, with McIntosh dissenting only as to the extension to the second floor; Theodore F. Mariani to deny by proxy).

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

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 27 JUN 1980

BZA APPLICATION NO. 13165

PAGE 9

UNDER SUB-SECTION 8204.3 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, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.