

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13174, of John C. Formant, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3104) to use the subject premises as a business office of a towing and storage facility and the yard for storage of vehicles in an R-4 District at the premises 901 4th Street, N.E., (Square 807, Lot 802).

HEARING DATE: February 20, 1980

DECISION DATE: April 2, 1980

FINDINGS OF FACT:

1. At the public hearing of February 20, 1980, the Board waived for good cause shown Section 3.33 of the Supplemental Rules of Practice and Procedure before the BZA which requires that the applicant file an affidavit within five days of the public hearing that the subject property had been posted at least ten days prior to the public hearing.

2. The subject site is located at the northeast corner of the intersection of I and 4th Streets, N.E. and is known as 901 - 4th Street, N.E. It is in an R-4 District.

3. The subject site is rectangular in shape. It measures 100.58 feet in width, and 70.17 feet in depth. The site is improved with a small one story structure with a cinder block masonry wall along I Street and a wooden fence along 4th Street. There is a ten foot public alley to the rear of the property. The structure is now vacant.

4. The remaining development in Square 807 in which the property is located, is comprised of rowhouse type structures. The general character of the area is predominantly residential except that across the street from 4th Street are light commercial uses in Square 775. These uses are located in an area zoned C-M-1.

5. The subject property is not included in the boundaries of the H Street Urban Renewal Area Plan. The properties in all directions with the exception of the north side are included in the H Street Urban Renewal Area. The Urban Renewal Plan recommends this area to be residential.

6. The applicant proposes to use the subject property as a business office of a towing and storage facility and the yard for the storage of vehicles.

7. The subject property was used previously as a coal yard and ice facility under Certificate of Occupancy No. 56237. The Board of Zoning Adjustment by Order dated November 12, 1975 in case No. 11968, approved a change in a non-conforming use from a coal yard and ice company to an office and parking facility for taxi cabs. The Certificate of Occupancy for the change in non-conforming use was never issued and the Board approval therefore expired.

8. The applicable non-conforming use of the property for coal and ice company includes the use of the land and is therefore classified as Class I type non-conforming use as determined by the Zoning Administrator. Sub-section 7103.3 of the Zoning Regulations states that a Class I Non-conforming use shall be deemed to include the use of land not involving a structure or the use of land involving structures which are incidental to the use of the land.

9. A Class I type non-conforming use may be changed only to a use permitted in the district in which such non-conforming use is located. The proposed use in this application is not permitted in the R-4 District. Therefore, a use variance as requested in this application is needed to allow the proposed use on the premises.

10. The applicant, his wife and his father will operate the subject business. There is room on the subject lot for twenty cars including the two trucks which will be engaged in the business. The hours of operation will be from 7:00 a.m. to 7:00 p.m. The cars will be towed to the subject property and stored pending an insurance adjuster's examination of the cars that were involved in an accident. There will be no major repair work done on the premises. When the damages have been estimated, the subject disabled cars will be towed elsewhere. None of the vehicles will be parked on the streets.

11. The Office of Planning and Development, by report dated March 10, 1980, recommended that the application be denied on the grounds that the subject property is located adjacent to the H Street Urban Renewal Area. The predominant character of the area is residential. The property is comprised of land which can be developed for residential use and there appear to be no special circumstances or practical difficulty related to the physical features of the property that would limit the use of the property for uses specified under the existing R-4 zoning. The Board so finds.

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

13. Three owners of property in the immediate neighborhood objected to the application on the grounds that the subject property should be used for a residential use, that a commercial use in a residential area would not stabilize the neighborhood of one family dwellings, that the neighborhood was undergoing revitalization and the creation of a "junk yard" would be a setback for the homeowners, that traffic was already congested and more cars on the street from the subject business would increase the congestion and that a junk cars create debris and rodent problems. The Board so finds.

CONCLUSIONS OF LAW AND OPINION:

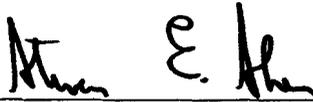
Based on the record, the Board concludes that the present non-conforming use is a Class I non-conforming use. Pursuant to Subsection 7104.1, a Class I use may be changed only to a use permitted in the zone district in which it is located. The Board notes that in the prior Case No. 12968, no evidence was adduced nor findings made nor conclusions drawn as to whether the existing non-conforming use was a Class I or Class II use.

Based on the record in this case, the Board concludes that the applicant is thus seeking a use variance and not a change from one non-conforming use to another. A use variance requires a showing of a hardship upon the owner of property that arises from the property itself. The Board notes that the subject property is rectangular in shape and has no characteristics that would prevent it from being used for the purpose for which it is zoned. The Board concludes that there is no hardship in the property. The Board further concludes that the variance cannot 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 DENIED.

VOTE: 4-0 (Walter B. Lewis, Connie Fortune, Charles R. Norris
and William F. McIntosh to DENY; Leonard L. McCants
not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 18 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."