

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13193 of Flora Holt, 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 grocery store, first floor, to a grocery store and delicatessen, first floor, in an R-4 District at the premises 1303 Shepherd Street, N. W. (Square 2823, Lot 1).

HEARING DATE: April 23, 1980  
DECISION DATE: May 7, 1980

FINDINGS OF FACT:

1. The subject site is located in an R-4 District on the northwest corner of the intersection of Shepherd Street and 13th Street, known as 1303 Shepherd Street, N. W.
2. The subject site is rectangular in shape and is improved with a two story, brown brick structure. The first floor of the building is currently used as a grocery store, while the second floor is used as apartments. There are presently three soda machines and a telephone booth lined up against the southern wall of the building facing Shepherd Street. There is a green trash dumpster on the west of the building adjacent to an alley.
3. The predominant existing land use in the area is row dwellings. There is one additional existing non-conforming grocery store located at the northeast corner of 13th and Shepherd Streets, N. W.
4. The existing grocery store use on the first floor is a non-conforming use in the R-4 District. It is now operating under Certificate of Occupancy No. B-53525, dated May 9, 1975. A grocery store is a use first permitted as a matter-of-right in a C-1 District.
5. The applicant proposes to sell prepared foods for off-premises consumption, in addition to continuing the present grocery store use. Such food would include, sandwiches, soups, drinks and french fries.
6. The preparation and sale of foods for consumption off the premises is considered a delicatessen or carry-out use. Such use is permitted in a C-1 District.

7. The store is presently open from 8:00 a.m. to 10:00 p.m. The number of employees varies from one to three. There would be no change to the hours of operation or the number of employees to accommodate the proposed delicatessen use.

8. There would be no change in the exterior appearance of the building. No interior structural alterations would be required either.

9. The applicant testified that there are a large number of elderly persons living in the area who have asked her to prepare light meals for them, but that she is unable to do that under her present Certificate of Occupancy. She furthermore testified that school children from three public schools in the area desire to purchase prepared food, and that she would like to be able to sell nutritional items in addition to candy and snacks.

10. The Office of Planning and Development, by report dated April 11, 1980, and by testimony at the public hearing, recommended that the application be denied. The OPD noted that there are existing carry-out shops and restaurants located two blocks east of the site on Georgia Avenue in a C-2-A District. The OPD reported that the increased pedestrian and vehicular traffic anticipated by the addition of the delicatessen will create adverse external effects, including increases in trash, littering and parking congestion. The OPD noted that the past operation of the grocery store by itself has been insensitive to the basic residential character of the area, as evidenced by the unsightly location of the soda machines, the open trash dumpster in full view adjacent to residential property and the overall shabby appearance of the store facade. The Board concurs with the findings and recommendations of the OPD.

11. There was opposition to the application from the Shepherd Street Neighborhood Association, the Northwest Boundary Civic Association, the D.C. Federation of Civic Association, the Evergreen Neighborhood Club and many individual residents and homeowners in the neighborhood. The grounds for the opposition were generally as follows:

- a. The area is residential in character. Approval of a delicatessen would tend to change that character, and might be seen as a precedent **for** other exceptions for commercial use.
- b. The introduction of a delicatessen would cause more noise, more trash and more traffic in and around the building.
- c. The potential of outdoor eating facilities is not consistent with the residential uses adjacent to the property.
- d. The evening hours of operation are disruptive to the neighbors.
- e. There are existing commercial areas within close proximity to provide delicatessen or carry-out facilities.
- f. There are adequate institutional facilities to provide appropriate meals for the elderly and children.

12. A representative of Advisory Neighborhood Commission 4C appeared and testified at the hearing. He stated that the ANC opposed the application on the grounds cited by the citizens, as set forth in Finding of Fact No. 11, above. The ANC further stated its opposition to any changes which tend to perpetuate existing non-conforming uses. The record does not contain a written statement of the issues and concerns of the ANC.

13. Councilwoman Charlene Drew Jarvis opposed the application on the same grounds already cited.

14. As to the issues and concerns of the ANC and the other persons in opposition, the Board agrees with those concerns as to the increase in noise, trash, traffic and parking, the intensification of the non-conforming use, the intrusion of additional commercial use into a basically residential neighborhood and the availability of existing commercial zoning in other portions of the vicinity. As to the issue of precedent, the Board notes that each case must be decided on its own merit based on the particular set of facts presented. As to the outdoor eating facilities, the Board finds that no such facilities were proposed

in the record of the case by the applicant. The Board further notes that the Police Regulations prohibit the leasing of public space for a sidewalk cafe in a residential area. As to the availability of institutional food service and the desire of the applicant to provide nutritionally sound food for school children, those are not proper issues for consideration by the Board.

15. There is a petition in the record in support of the application. However, no grounds for the support are stated.

CONCLUSIONS OF LAW AND OPINION:

Based on the above stated Findings of Fact and the record in this case, the Board concludes that the application meets the requirements of Sub-section 7104.2, in that the proposed use is permitted in the most restrictive district in which the existing use is permitted. However, the Board concludes that the proposed use is one which will be objectionable to the neighborhood in which it is located. The proposed use clearly will create more noise, more trash and more activity and congestion at that location. The Board concludes that intensification of a non-conforming use in general is contrary to the intent and spirit of the Zoning Regulations. It is therefore ORDERED that the application be DENIED.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Leonard L. McCants and Charles R. Norris to deny).

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

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

FINAL DATE OF ORDER: 28 JUL 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."