

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13622 of Dunphy Properties, Inc., 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 restaurant seating less than seventy-four persons, first floor, to an office, first floor in an R-4 District at the premises 723 F Street, N.E., (Square 892, Lot 72).

HEARING DATE: December 16, 1981  
DECISION DATE: January 6, 1982

FINDINGS OF FACT:

1. The subject property is located at the southwest corner of the intersection of F and 8th Streets, N.E. and is known as premises 723 F Street, N.E. It is in an R-4 District.

2. The lot measures 984 square feet in area and is improved with a one-story building with its entrance on the corner. The last certificate of occupancy was issued April 10, 1973, for the use of the premises as a restaurant. The building is currently used as a newspaper distribution office without a proper certificate of occupancy.

3. Adjacent to the property on the west are five one story structures of commercial design. One of these, 715 F Street, is also used by a newspaper distributor. Of the other four buildings, two are laundries, one is a TV/repair store, and one appears vacant. There are also commercial uses, now apparently vacant, at the northeast and northwest corners of this intersection, and a grocery at the southeast corner. Adjacent to this property on the south are row dwellings. Beyond this intersection, this area is predominantly residential in use.

4. The applicant proposes to continue to lease the premises to the Washington Post. The Washington Post subleases space in the office to five of its distributors, all of whom are independent contractors, who deliver the newspaper throughout the District of Columbia and collect subscription payments from subscribers living in all parts of Washington, D.C. These distributors and their assistants use the office to make and receive telephone calls regarding circulation matters and to perform general clerical duties connected with delivering the newspaper in the Washington,

D.C. area. The distributors do not confine their business operations to the subject immediate neighborhood.

5. The subject lessee leased the subject site on November 26, 1979. In June of 1980, the lessee was advised through the Zoning Administrator's office that it had no certificate of occupancy for the use of the site. On June 10, 1981 the lessee filed an application for a certificate of occupancy. By letter of July 23, 1981 the application was disapproved. The lessee filed with the Board of Zoning Adjustment on August 13, 1981.

6. A restaurant is a use first permitted in a C-1 District. An office use is permitted as a matter-of-right in a C-1 District.

7. The site has no off-street parking facilities and no alley access. Each of the five distributors parks his van on the streets wherever a space is available whether it be in front of a residence or a commercial facility. Parking of commercial vehicles is not permitted in front of residences. The F street block is not governed by the Residential Parking Permit Program.

8. The hours of operation for the distributors are generally 7:00 A.M. to 12:00 P.M., Monday through Friday and 7:00 A.M. to 4:00 P.M., Saturday and Sunday. Generally there is no mass distribution of papers from the site since by the time the distributors arrive at the subject office they have completed their dropoffs in the Washington area. There have been some occasions on Saturdays where Sunday papers have been loaded on or from the vans at the subject site.

9. The Office of Planning and Development, by report filed December 11, 1981, recommended that the application be denied. It reported that the use is not a neighborhood facility and in addition, the use is objectionable. The OPD noted that there have been a variety of complaints about the operation of the office. These include the parking of trucks on the sidewalk, which is not permitted, the accumulation of litter, and a lack of general upkeep of the property. On a site visit on December 8, 1981, the OPD noted a truck was parked on the sidewalk and litter was observed on the 8th street frontage. The OPD stated that the current use has been in existence for two years and operated during that period in a consistently objectionable manner. The Board concurs in the OPD recommendation.

10. Four property owners in the immediate area of the site appeared at the public hearing in opposition to the applications. Photographs in support of the opposition's testimony were submitted to the record showing private cars and vans parked on the sidewalks or aprons in front of and adjacent to the site and double parked in the streets. One

photo evidenced a van backed into the entrance of the site with loading or unloading of papers taking place. The persons in opposition testified to the loitering occurring in front of the site, with beer bottles left on the ledges of the exterior of the property or placed on the apron or grass between the curb and sidewalk. The opposition testified that the loiterers were abusive and coarse in their language with passersby, that there were fights among the loiterers and that when the loiterers played football they trampled on the hoods of residents' cars. The opposition suggested that the loiterers were not discouraged by the lessee since the lessee from time to time employed them in the unloading of the vans and that at one time the loiterers had the freedom of the bathroom facilities on the site. There was further testimony that the distributors had other offices and there was no need for the subject office and that consequently the site was used as a parking lot. A common objection was the issue of noise emanating from the site with the traffic arriving early. There were some admissions that most of the early morning noise emanated from the Post distribution office at 715 F Street, a few doors down from the subject site. Yet, it was difficult to distinguish since the operations at 715 and the subject site appeared as one operation with the same distributors using both facilities and the loiterers were employed by both offices.

11. The Capitol Hill Restoration Society and the Stanton Park Neighborhood Association objected to the granting of the application on the following grounds.

- a. The prior illegal operation of the office
- b. The poorly-maintained condition of the building front and the continual presence of loiterers around the building
- c. The traffic and noise problems created by Post delivery trucks which enter the neighborhood to use a building several doors down the street, but whose drivers occasionally use 723 F Street also.

The organizations noted that neighbors had asserted that the Post management has had ample opportunity to rectify the conditions causing the first two of the above-mentioned factors. The organizations stated that the direct cause of most of the truck traffic is not the subject 723 F Street, but the office located at 715 F Street. However, the organizations alleged that individuals who do use 723 frequently arrive by truck and arrive there early. The subject site itself is responsible for a certain amount of truck traffic and congestion in the neighborhood. The proposed use was entirely inappropriate for the subject

small residential block which must bear most of the traffic burden. The Board concurs in the recommendations of the Capitol Hill Restoration Society and the Stanton Park Neighborhood Association.

12. Advisory Neighborhood Commission 6A made no recommendation on the application.

13. There were several persons at the public hearing in support of the application. They argued that the proposed use was less intensive use than the prior restaurant, that the parking problems could be controlled and that the loitering issue was not an issue created by the lessee but outstanding for many years. Five affidavits from the five distributors were submitted to the record. They attested to the fact that the subject office is used to perform basic office duties and that basically there is no pick-up or delivery of papers. They attested that the litter is not caused by them and that they have advised the loiterers to move away from the premises. The Board finds that this evidence and argument is not persuasive, in light of the testimony and recommendation of the OPD and the testimony of surrounding neighbors and citizens organizations.

CONCLUSION OF LAW AND OPINION:

Based on the record the Board concludes that the applicant seeks its relief through a special exception under Section 7104 of the Zoning Regulations. Sub-section 7104.2 provides that if approved by the Board of Zoning Adjustment in accordance with the authority and procedures established in Section 7109 of this Article, a Class II nonconforming use may be changed to a use which is permitted in the most restrictive district in which the existing nonconforming use is permitted. The Board concludes that the prior and proposed use are Class II non-conforming uses and that both are first permitted in a C-1 District. Paragraph 7109.111 provides that the new use must be either a neighborhood facility or the type of use which although not a neighborhood facility will not be objectionable. The Board concludes that the proposed use is not a neighborhood facility. It is a use associated with the distribution of papers throughout a large part of the city and does not rely on walk-in business. Sub-section 5101.1 provides that a C-1 use should provide convenient retail and personal services for the day-to-day needs of a small tributary area. This is not so. The Board further concludes that based on Findings of Fact Numbers 9, 10 and 11 the proposed use is objectionable. Accordingly, for all the above reasons, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Lindsley Williams, Charles R. Norris, William F. McIntosh, Douglas J. Patton and Connie Fortune to deny).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: JUN 22 1982

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."