

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13673 of the Heights Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5101) to use the ground floor of the subject premises as a retail carpet and tile store in a C-1 District at the premises 333 Hawaii Avenue, N.E., (Square 3664, Lot 819).

HEARING DATE: February 10, 1982

DECISION DATE: February 10, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject property, situated on the ground floor of 333 Hawaii Avenue, N.E., is located in a newly constructed shopping center which is part of the Heights residential/commercial development, portions of which were approved by the Board and the Commission. The shopping center is located on the northwest corner of the intersection of Hawaii Avenue and Taylor Street, N.E. It is located in a C-1 District.

2. To the north and south of the subject site is undeveloped R-5-A zoned property. West of the site, on a higher elevation, are the newly constructed Heights apartment buildings, followed by the Marist College. Both are zoned R-5-A. East of the site is undeveloped R-5-A property followed by Metro rail tracks. The site is located in the University Heights neighborhood which is characterized by Catholic University-owned properties, detached and semi-detached dwellings, and apartment developments.

3. The applicant testified that it has been unable to lease the property for the C-1 uses enumerated in the Zoning Regulations. The applicant proposes to lease the subject property as a retail wallpaper, carpet and tile store which is first permitted in a C-2 District. The applicant contends that the proposed total activity constitutes a C-1 use. The applicant stated that a retail wallpaper store is a C-1 use. When advised by the Board that the proper remedy may be through an appeal rather than an application, the applicant advised that he would file an appeal.

4. The representative of the applicant at the hearing agreed with the Board that there was no condition inherent

in the property that would serve as the basis for a use variance.

5. The Office of Planning and Development, by report dated February 4, 1982, recommended that the application be denied. The OPD reported that the proposed use is of a less intensive nature than the existing uses in the shopping center, such as a 7-Eleven store and a restaurant, and that the proposed use would not have an adverse impact on the area. However, the OPD could find no evidence of undue hardship inherent in the property itself which would prevent it from being used in accordance with the use provisions of the C-1 District. The Board agrees with the conclusion of the OPD.

6. Advisory Neighborhood Commission 4D made no recommendation on the application.

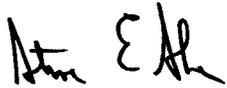
7. There was no opposition to the application at the hearing or in the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself. The Board concludes that the applicant has not met the burden of proof. The Board concludes that there is no hardship inherent in the property itself. The Board notes that in Zoning Commission Case No. 78-18 the subject property was undeveloped and that the developer had then adapted the site to accommodate C-1 uses. The site was so designed. As to the applicant's contention that the proposed use is a C-1 use, the Board concludes that the subject application is not the proper remedy, but that the applicant can file an appeal from the decision of the Zoning Administrator. Accordingly, it is ORDERED that the application be DENIED.

VOTE: 4-0 (Walter B. Lewis, Douglas J. Patton, William F. McIntosh and Charles R. Norris to deny, Connie Fortune not present, not voting).

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

ATTESTED BY: 
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAR 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."