

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 13756 of Joseph H. Willis, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief of the Zoning Review Branch dated July 22, 1981, denying an application for a Certificate of Occupancy on the grounds that a retail carpet and tile store does not constitute a C-1 use in a C-1 District at the premises 333 Hawaii Avenue, N.E., (Square 3664, Lot 819).

HEARING DATE: May 26, 1982

DECISION DATE: May 26, 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 of Zoning Adjustment and the Zoning 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 Metrorail 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 Board, in BZA Order No. 13673, dated March 22, 1982, denied the application of the owner of the subject premises, the subject appellant's lessor, to use the subject premises as a retail carpet and tile store. The relief requested was through a use variance. The Board found no hardship in the subject property that would support the granting of a use variance.

4. The appellant then filed the subject appeal contending that the Zoning Administrator was in error and that the proposed use constitutes a proper C-1 use.

5. At the public hearing of May 26, 1982 the appellant offered no evidence that the proposed use

constituted a proper C-1 use. The appellant testified that he had changed the style of his business from a retail carpet and tile store to a do-it-yourself home decorating center featuring wallpaper, wallpaper accessories, tile, floor care products and cleaning products.

6. The appellant has not applied to the Zoning Administrator's office for a Certificate of Occupancy based on his new style of business.

7. The Board finds that the appellant has not met the burden of proof as to the issue on the appeal. The Board further finds that the issue on the appeal and the current business activity are separate matters.

8. The current operation of the appellant's business is not properly before the Board. It's activity has never been ruled on by the Zoning Administrator's office. The current subject matter has never been advertised for a public hearing.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the appellant has not sustained the burden of proof. The appellant has offered no evidence in support of the issue on which the appeal is based. Rather, the appellant testified only to the current operation of his business, an issue which is not properly before the Board since it has never been reviewed by the Zoning Administrator and has never been advertised for a public hearing. The Board further concludes that the Zoning Administrator made a proper determination in denying a Certificate of Occupancy on the grounds that a retail carpet and tile store did not constitute a proper C-1 use. The Zoning Administrator ruled only on the matter before him at the time. The current operation of the store was not before the Zoning Administrator at the time of his decision. Accordingly, it is ORDERED that the appeal is DENIED and the decision of the Zoning Administrator is UPHOLD.

VOTE: 3-0 (Connie Fortune, Walter B. Lewis, and Charles R. Norris to deny and uphold; William F. McIntosh and Douglas J. Patton not present, not voting).

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

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

FINAL DATE OF ORDER: DEC - 3 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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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