

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13835, of Melvin C. Garbow, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Sub-section 7104.2 and 7105.2 to change a nonconforming use from rental and repairs of T.V. equipment, no sales, first floor and basement for storage only, to office, first floor and basement, and to extend the proposed office use to the second floor and for variances from the floor area ratio requirements (Sub-section 3302.1 and Paragraph 7107.23), from the prohibition against permitting an addition to an existing nonconforming structure devoted to a nonconforming use (Sub-section 7107.1) and from the prohibition against permitting an addition to a nonconforming structure which now exceeds the allowable lot occupancy limitations (Paragraph 7107.21) for a proposed addition to an existing nonconforming structure devoted to a nonconforming use in a D/R-5-B District at the premises - 1727 - 21st Street, N.W., (Square 92, Lot 22).

HEARING DATE: October 13, 1982

DECISION DATE: October 13, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the east side of 21st Street between Florida Avenue and S Street, N. W. and is known as premises 1727 21st Street, N. W. It is zoned D/R-5-B.

2. The subject property is basically rectangular in shape and is developed with a one-story, store front structure which was built in 1906 as a grocery store. The building occupies 100 per cent of the lot. A certificate of occupancy was issued for the use of the premises as a grocery store which occupied the premises until 1953, when a certificate of occupancy was issued for a laundry/dry cleaners. The most recent certificate of occupancy for the subject premises, for TV rentals and repairs, was issued in 1906. The building was not designed as, and has never been used as, a residence. The property became vacant in December of 1981.

3. The subject property is bordered on the west by 21st Street, on the north and east by a public alley and on the south by a residence.

4. To the north of the property immediately across the alley are office buildings in a C-3-B zone. To the south and west across 21st Street are residences. Across the alley to the east are various commercial uses which front on Connecticut Avenue.

5. The applicant proposes to renovate the structure for use as an office. The applicant has no specific tenant for the structure at the present time, but anticipates a professional office use, such as a lawyer's office. The applicant testified that residential use of the property was not viable because the lot is too small in size, the property is surrounded on three sides by heavily trafficked alleys and a street, and there is no back yard.

6. The applicant proposes to raise the level of the roof of the existing structure approximately two and one-half feet and regrade the interior floors to provide a full basement and two stories above grade. The floor area of the structure would be increased from approximately 900 feet to approximately 2,000 feet. The proposed office use would occupy the entire structure.

7. The exterior of the existing structure will be renovated in keeping with its existing architectural character. The existing bay window, which was constructed in 1963, will be removed to restore the facade of the building to its original condition.

8. The applicant testified that the traffic generated by the proposed use will be less than that generated by its previous use for TV rentals and repair. The applicant further testified that there is a public parking garage available in the Universal Building which is less than 400 feet from the subject site and that the site is convenient to the Dupont Circle Metro station and the Connecticut Avenue Metro bus routes.

9. Mary Capalbi, a resident and owner of several properties in the subject square, appeared at the public hearing in support of the proposal. Mrs. Capalbi testified that the proposal will convert a deteriorating store front to desirable office space, the facade of the structure will be restored, the increase in interior space will not be apparent from the street, the hours of use will not conflict with the primarily residential character of the block, and the number of users will be small and will not adversely impact traffic and parking conditions in the area.

10. Several residents appeared at the public hearing in opposition to the subject application. Their opposition was based on the intensification of the nonconforming use of the subject site, the impacts of intensification of traffic in the alley caused by deliveries and visitors to the proposed office use, and an increased demand for parking

in the area. The opposition supported the use of the site for residential use in conformance with the existing zoning and opposed further encroachment of a commercial use in a residential area which would result from the expansion of a nonconforming use on the subject site.

11. A representative of the Dupont Circle Citizens Association testified in opposition to the application. The DCCA supported the use of the site for residential purposes. The representative of the DCCA asserted that the applicant had not met the burden of proof necessary for the granting of an area variance and requested that the Board deny the application from the bench.

12. By letter dated October 5, 1982, Advisory Neighborhood Commission 2B supported the application because the premises probably could not be converted to suitable residential use and that building expansion would not solve this problem because of contiguous alleys.

13. The Office of Planning & Development, by memorandum dated October 8, 1982, recommended that the special exception to change a non-conforming use from TV sales and rental to office use be granted, with the condition that such office use would be limited to SP-type office use. The OPD recommended that the special exception request to extend the nonconforming use to the second floor be denied. The OPD would have supported the request for a variance from the lot occupancy requirements provided that the second story addition was put to conforming use. The OPD found no uniqueness of the property which would preclude its development in accordance with the FAR requirements and recommended denial of that relief. It was the OPD's opinion that the proposed expansion, unless converted to a conforming use, would change a small nonconforming use situation into what would likely be an extended time period of nonconformity and a greater localized impact in conflict with the intent of the R-5-B District.

14. The Board finds that the applicant is seeking to change the use of a nonconforming TV rental and repairs operation to an office use. The applicant has no specific prospective tenant. There is therefore no knowledge of what impact an unknown tenant might have on the adjacent and nearby residential properties in terms of the number of employees, hours of operation and traffic. The Board further finds that the proposed professional office use might attract clients from all of the District of Columbia, would not be limited to the immediate area and in this sense would not be a neighborhood facility. The Board finds that the proposed use would not primarily serve the immediate area, that it would be out of character with the adjacent residential property and that it would not be consistent with the intent and purposes of the Zoning Regulations for the R-5-B District.

15. The Board notes that Sub-section 7105.2 provides that the Board may approve the extension of a nonconforming use to other portions of a structure devoted to such use, provided no structural alterations are made and no other structure is involved in the extension of such nonconforming use. The Board finds that the applicant is clearly proposing structural alterations to the subject building. Accordingly the Board finds that the applicant is not in compliance with the Zoning Regulations in this regard.

16. The Board finds that the applicant has submitted no testimony or evidence to demonstrate that the applicant would suffer a practical difficulty or undue hardship if the Zoning Regulations were strictly applied.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of records, the Board concludes that the applicant is seeking both a special exception and various variances. In order for the Board to grant a special exception, the applicant must demonstrate through substantial evidence that he has met the requirements of Sub-sections 7104.2 and 7105.2 and that the relief requested will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property. The burden is upon the applicant to prove his case. The Board concludes that the applicant has not met this burden of proof in the subject case. The Board concludes that the applicant did not address the standards set forth in Sub-sections 7104.2 and 7105.2 against which the Board must judge the application.

In order for the board to grant the requested variances, the applicant must demonstrate through substantial evidence that the owner will suffer a practical difficulty or undue hardship arising out of some exceptional or extraordinary condition of the property. The Board concludes that the lot, although small, is basically rectangular in shape with no unusual topographic conditions. The Board concludes that the size of the lot itself does not create an exceptional or extraordinary condition of the property. The Board notes that the variances requested are intended to allow for the substantial intensification and expansion of a nonconforming structure devoted to a nonconforming use. It is the intent of the Zoning Regulations that such uses in such structures be strictly limited. The Board further concludes that because of the extent of the requested variances, the requested relief cannot be granted without substantial detriment to the public good and without substantially impairing th intent, purpose and integrity of the zone plan.

The Board notes the position advocated by Advisory Neighborhood Commission 2B. For the reasons set forth herein, the Board concludes that the application cannot and should not be approved. Accordingly it is ORDERED that the subject application is hereby DENIED.

VOTE: 5-0 (Douglas J. Patton, William F. McIntosh, Connie Fortune, Maybelle Taylor Bennett 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: MAY 23 1983

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."

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