

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13896, of Anne W. Walker, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the first floor of the subject premises as a catering service in an R-5-A District at premises 2725 Pennsylvania Avenue, S.E., (Square 5581, Lot 38).

HEARING DATE: April 13, 1983
DECISION DATE: April 13, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject application appeared on the preliminary calendar of the public hearing of April 13, 1983. According to the affidavit of posting, the subject property was posted with the notice of the hearing on April 8, 1983, five days prior to the public hearing. The Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment require that property be posted at least fifteen days prior to the public hearing. The applicant testified that she had misread the instructions regarding the posting of the property and the filing of the affidavit. When the affidavit was prepared, the date that the affidavit was notarized was shown as the posting date. The applicant testified that she had posted the property fifteen days prior to the hearing. The Board questioned the opponents of the application regarding the community's knowledge of the public hearing on the subject application. One person testified that the signs had been posted approximately one and a half weeks prior to the scheduled public hearing. Other opponents testified the notices regarding the subject application had been received and circulated within the community over a period of several weeks. The Chairman determined that substantial notice about the pending application had been available throughout the neighborhood. The Chairman ruled to proceed with the public hearing on its merits as scheduled.

2. The subject property is located on the southwest corner of the intersection of Pennsylvania Avenue and 28th Street, S.E. The site is improved with a two story, plus basement detached, clapboard and brick structure attached to which is a one story addition. The one story addition is connected to the main portion of the structure at the basement level. Without the porches, the subject premises consists of approximately 2,440 square feet of floor space.

The lot has an area of approximately 6,613 square feet. The subject property is located in an R-5-A District and is known as premises 2725 Pennsylvania Avenue, S.E.

3. Immediately adjacent to the subject premises to the west is a single family semi-detached dwelling. Single family dwellings are also located to the south of the subject structure, although an alley separates these dwellings from the subject structure. While there are other single family dwellings scattered nearby, the surrounding area is characterized by low bulk, low rise, multi-family apartment houses. Surrounding zoning districts include C-2-A and R-1-B. The C-2-A District runs along Pennsylvania Avenue, S.E., but it ends 108 feet east of the intersection of Pennsylvania Avenue and 27th Street, S.E. The R-1-B District begins midblock between 29th and 30th Streets, S.E. and covers a large portion of the surrounding area west of 30th Street.

4. The applicant is seeking a variance to convert the use of the one story addition to a Bar-B-Q catering service outlet. The two-story residence would include the applicant's residence and a rental unit.

5. In order for a use variance to be granted, the applicant must demonstrate that some condition inherent in or peculiar to the subject site does not permit any reasonable use of the site for a use permitted in an R-5-A District and that strict application of the R-5-A requirements would result in an undue hardship upon the owner. Also, there must be a showing that the use variance can be granted without substantial adverse impacts, and that its granting will not impair the intent, purpose, and integrity of the zone plan for the city.

6. The applicant asserted that the subject property was used originally as a doctor's residence and that the one-story addition was used by the doctor as a clinic. The applicant purchased the subject property in 1977 with two partners. Subsequently, the applicant acquired the partner's shares in the property. The applicant alleged that the conversion to a combination residence and commercial enterprise was delayed when the applicant's request to use the accessory building as offices was denied by the Board. The applicant then leased the premises to a federally funded health association. Between 1977 and 1980, the association operated a clinic in the addition. The association intended to convert the residential portion into a continuing education center. There are no certificates of occupancies on public record for the subject premises to indicate that any of the previous uses cited by the applicant were lawfully established.

7. After the health association vacated the subject premises, the applicant repaired the structure. During the repair process, the clinic portion was renovated so as to better accommodate food catering services. The main two-story portion of the building is being further renovated for residential use. The two story structure does not have a fully serviceable kitchen area. The applicant therefore uses the kitchen facilities in the addition for her personal use.

8. The first food service certificate of occupancy sought by the applicant was to use the addition for a carry-out facility. After objections were raised by the neighborhood community, the applicant changed the proposed service to a catering operation. Neither the carry-out nor the catering operation is permitted in an R-5-A District.

9. The applicant needs the food catering service to generate income. She became unemployed on July 1, 1982, and proceeded to conduct the food catering business without a certificate of occupancy. Subsequently, the Zoning Administrator's office inspected the premises. The applicant testified that she has ceased her catering services from the premises. The applicant has been employed in the interim by another catering business. The applicant services clients of her employer by using her van for distribution of food prepared at another location by her employer.

10. The applicant argued that the one-story portion of the building for which she requests the use variance has never accommodated residential use. The food products would be prepared on site and served at other locations. No food would be served on the subject premises. The proposed catering service would not have pedestrian traffic in and out of the building.

11. The applicant maintains her residence on the subject premises in the two-story building. She has hired no employees for the proposed catering service. The residential portion of the subject property is equipped for limited household living. No cooking equipment is yet installed.

12. Two witnesses for the applicant testified that the applicant is a good neighbor in the community and that the applicant would suffer financial hardship without the catering facility. One witness further testified that the applicant's catering vehicles are not usually parked on the street. Access to the subject property can be through the public alley at the rear. Such access is presently precluded by a brick wall. The applicant would remove the wall and provide parking on the lot for her vans.

13. The Office of Planning, by report dated April 6, 1983, recommended denial of the subject application. The Office of Planning reported that:

- a. The subject site is not unusual or peculiar in any way, shape or form.
- b. The subject structure has been used in the past for a permitted-by-right R-5-A use.
- c. While the line of demarcation between the C-2-A District running along Pennsylvania Avenue, S.E. and the applicable R-5-A District falls within the square containing the subject premises, the subject premises is sufficiently removed from the commercial district and buffered by low density residential uses to preclude consideration of a commercial use at this site.
- d. A commercial catering venture is first permitted in a C-2 District. A C-2 commercial use would appear incompatible with surrounding residential uses and could adversely impact these uses in terms of noise, traffic, and other deleterious external effects.
- e. While the rate of return on investment for a permitted R-5-A use may be lower than that associated with a commercial catering use, any number of R-5-A uses would offer in come potential.
- f. The applicant's economic hardship argument is insufficient grounds for the granting of a use variance.

The Office of Planning further reported that the use variance, if approved, would adversely impact the surrounding residential neighborhood. The Board agrees with the Office of Planning's reasoning and concurs with the Office of Planning's recommendation.

14. Advisory Neighborhood Commission 7B, by letter dated March 28, 1983, reported that at its executive meeting on March 23, 1983, the Commission unanimously voted to go on record in opposition to the application. The area referred to in the application is residential. The service that is requested will not enhance the community and will also cause traffic congestion. The community opposes any change in zoning in the corridor of Pennsylvania Avenue. The Board concurs with the Commission's recommendation, except that the Board must clarify that the application does not seek a change in zoning. Such a matter is for the Zoning

Commission, not the BZA. The applicant is seeking a use variance and as such is properly before the Board.

15. After the close of the applicant's case-in-chief, the Board denied the application for failure to meet the burden of proof. The Board did not hear any additional testimony or receive evidence from other persons present who opposed the application.

CONCLUSIONS OF LAW AND OPINION:

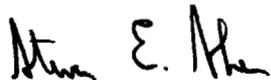
Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself, which precludes the property from being reasonably used for the purposes permitted in an R-5-A District. The applicant presented no testimony or evidence that the building, including the one-story addition, could not reasonably be put to a permitted R-5 use.

The Board concludes that the applicant's hardship is based on a personal economic circumstance. However, such a reason is not grounds on which to grant a use variance. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Walter B. Lewis, Carrie Thornhill, William F. McIntosh and Charles R. Norris to GRANT; Douglas J. Patton 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: MAY 31 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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