

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13942, of Yong Joon and Young Ja Park, 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 grocery store, first floor and basement for storage, to a delicatessen and grocery store, first floor and basement for storage, in an R-4 District at the premises 301 P Street, N.W., (Square 521, Lot 40).

HEARING DATE: March 23, 1983
DECISION DATE: April 6, 1983

FINDINGS OF FACT:

1. The subject property is located on the northwest corner of the intersection of Third and P Streets, N.W. in an R-4 District at the premises known as 301 P Street, N.W.
2. The site is presently improved with a two story plus basement brick structure and a one story attached garage which is located at the rear of the structure with access from P Street.
3. The top floor is being renovated for residential use by the applicant. The ground floor is being used as a non-conforming retail grocery store pursuant to Certificate of Occupancy No. B-131797, dated August 6, 1982.
4. The applicant proposes to change the subject nonconforming use of grocery store to include a delicatessen section within the present grocery. The delicatessen would serve a limited menu, Monday through Friday. Food preparation would require one hour of cooking per day.
5. The present character of the neighborhood is residential, with complimentary uses such as churches and schools. Residential structure types include row dwellings used as single family homes, flats and apartments, and low-rise, low bulk apartment houses. Other ground floor nonconforming uses are also found within the neighborhood, usually at the intersections of similar minor arterial and/or local streets. Within a two to three block radius of the site there are several public schools including Dunbar High School.
6. If approved by the Board of Zoning Adjustment, 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 new use must be either a neighborhood facility or if not, a neighborhood facility, the type of use which would not be objectionable.

7. The current nonconforming use of the first floor of the subject premises as a grocery store is a Class II nonconforming use. A food or grocery store is first permitted in a C-1 District. A delicatessen is likewise permitted in a C-1 District.

8. One of the applicants testified that a delicatessen use had existed when she purchased the property. The delicatessen equipment already on the premises was included as part of the grocery. The applicant continued operating the delicatessen portion of the grocery store until inspection agents discovered that no certificate of occupancy existed for the delicatessen use. The applicant testified that she was unaware of licensing requirements for the delicatessen.

9. The subject nonconforming grocery store has existed at the present location for at least twenty-five years.

10. The grocery store is operated between 7:30 A.M. and 8:00 P.M., seven days a week. The delicatessen food preparation would require one hour of cooking each morning. The delicatessen services would be offered only on Monday through Friday. The applicant's primary customers for the delicatessen's limited food menu would be the neighborhood school students and nearby residents who are within walking distance of the property. The store's customers are seldom from outside the neighborhood.

11. Public transportation is one block away from the subject site. No restrictions on parking exist within the vicinity of the property. The applicant does not anticipate additional traffic due to the proposed use. Trucks delivering supplies to the store find parking spaces on the streets.

12. Trash receptacles located on the site are emptied several times during the day by a part-time employee who lives nearby. No inside seating is provided and customers are not allowed to congregate and consume purchases in or around the premises. The applicant has received no complaints about the facility's operation or maintenance.

13. The Office of Planning recommended conditional approval of the application. By memorandum dated March 16, 1983, the Office of Planning reported that the proposed nonconforming use would not adversely affect the present character or future development of the neighborhood. The Office of Planning was of the opinion that the incremental

increase in noise and traffic resulting from the addition of a delicatessen at the subject premises would be marginal, especially since the applicant's anticipated clientele would be walk-in, neighborhood trade. The Office of Planning further reported that the applicant's continuing improvements to the facade of the subject structure would have a beneficial impact on the neighborhood, which includes vacant and boarded structures. No on-site parking is required for operation of the subject facility or the proposed use. During an inspection of the subject property, Office of Planning staff did not observe traffic or parking problems due to the facility. The OP site inspection further disclosed that the premises are very clean. There was no evidence of litter or loitering. The Office of Planning reported that the odors and exhaust emanating from the structure should be minimal due to the limited amount of cooking proposed by the applicant. The Board concurs with the Office of Planning reasoning and recommendation.

14. Advisory Neighborhood Commission 5C, by letter dated March 11, 1983, reported that it recommended approval of the application. The ANC had several concerns which it requested the Board to address, as follows:

- a. That the special exception was being sought to enable the store to continue its present operations and not for the purpose of expanding or enlarging its operations.
- b. That the safety of students attending Dunbar and Armstrong High Schools would be held in high regard.
- c. That any cooking in the store be limited to one hour as stated on the application.
- d. That the applicant intended to live in the building upon completion of renovation work in the future, according to a statement made at the ANC's meeting by the applicant.
- e. That adequate trash receptacles would be available to help control littering.
- f. That loitering and pedestrian traffic be kept to a minimum.
- g. That preference in hiring be given to community residents.

15. The Board is required by statute to give great weight to the issues and concerns of the ANC. The Board finds that the application as hereinafter granted with conditions addresses those issues and concerns over which

the Board has jurisdiction. As to issue "a," the Board is of the opinion that the operation of the delicatessen without a certificate of occupancy was done out of ignorance and not maliciously. As to issue "b," the safety of students, the Board is unclear as to what action the ANC desires. The Board notes that the applicant allows no loitering on the premises and that beer and wine cannot be sold to minors. As to issue "d," the Board cannot force the applicant to live on the premises but notes that the applicant testified under oath that the premises are being remodeled for the applicant's use. As to issue "g," the applicant testified that one of the two employees is from the neighborhood.

16. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicants have complied with the requirements of Sub-sections 8207.2 and 7104.2 of the Zoning Regulations.

The Board concludes that the applicant has made the required showing as to the special exception. The proposed use is permitted in the most restrictive district in which the existing use is permitted. The proposed use is a neighborhood facility, serving the residential and neighborhood school patrons of the community. The proposed additional delicatessen use will not adversely affect the present character or future development of the area.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled by statute. The Board, in granting this application will impose a series of conditions designed to meet the issues and concerns of the ANC. In order for the Board to adequately address the actual impacts of the delicatessen as operated, the Board will grant the initial approval for a limited period of time.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of three years from the date of this Order.
2. Any cooking on the premises shall be limited to one hour per day.
3. Adequate trash receptacles shall be provided to help control littering.

4. No neon or gas tube display shall be located on the outside of the building.
5. Any sign advertising the use shall not exceed three feet by five feet in size.

VOTE: 5-0 (Douglas J. Patton, Maybell Taylor Bennett, Carrie Thornhill, William F. McIntosh and Charles R. Norris to GRANT).

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

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