

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13958, of Koo L. Yuen, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the second and third floors of the subject premises as offices for "private auto owners service club" in an R-5-D District, at premises 301 New York Avenue, N.W., (Square 524, Lots 3 and 6).

HEARING DATE: May 25, 1983
DECISION DATE: May 25, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the northwest corner of the intersection of New York Avenue and Third Street, N.W. and is known as premises 301 New York Avenue, N.W. It is in an R-5-D District.
2. The subject lot is improved with a three-story brick structure.
3. The two upper floors of the subject structure are presently vacant. In the past, those floors were used for residential purposes. On the ground floor, a non-conforming grocery store/delicatessen use is in operation.
4. The applicant proposes to use the second and third floors of the subject premises as offices for a private automobile owners service club. The club's function will be to instruct automobile owners on the art of small repairs and the proper use of vapor recovery systems which were recently installed on all service station gasoline pumps within the District of Columbia.
5. The surrounding area north and east of the site, zoned R-4, is characterized by row dwellings, churches, and several public and private schools. There is also a grouping of some small-scale, non-conforming commercial uses fronting on New York Avenue approximately two blocks northeast of the subject site. The area south and west of the site is, like the subject premises, zoned R-5-D and includes variety of nonresidential uses and structure types along M Street, N.W., north of New York Avenue. Many of the structures in the surrounding area, and in the square in which the subject premises is located, are in a deteriorated and dilapidated condition. An occasional structure is

vacant and boarded. Within the subject square, all but one structure fronting New York Avenue have been cleared.

6. The office use requested is first permitted in a C-1 District. In order for the proposed use variance to be granted, the applicant must demonstrate that some condition inherent in or peculiar to the subject site results in the inability to make any reasonable use of the property in a manner authorized by the Zoning Regulations, and that strict application of the applicable zoning requirements would result in an undue hardship. 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.

7. Office use at the subject site is requested because the applicant suffered considerable damage to the property when the premises was in apartment use. The applicant has been unable to secure responsible residential tenants.

8. The applicant was unable to establish that the proposed office use for a "private auto owners service club" met the definition in the Zoning Regulations of a "private club." Such a use is permitted as a matter-of-right.

9. The Board finds no exceptional topographical conditions or other extraordinary or exceptional situation or condition of the subject premises which precludes reasonable use of the property in a manner authorized by the Zoning Regulations. The applicant has used the second and third floors of the subject premises in the recent past for a permitted R-5-D use. The circumstances regarding potential residential use of this property have not materially changed since that time.

10. Advisory Neighborhood Commission 2C by letter of May 18, 1983, reported that the Commission took no position on the subject application and that the ANC had received no notice of community opposition.

11. The Board is required by statute to give great weight to the issues and concerns of the ANC only when such are reduced to writing in a recommendation. In the subject application, the ANC made no recommendation and stated no issues and concerns for the Board to address.

12. There was one letter of record opposing the application on the grounds that the proposed use is not necessary to the residential neighborhood and that the potential parking congestion would be objectionable.

12. At the close of the applicant's case in chief, the Board denied the application for failure of proof.

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 use variance, the granting of which requires proof of a hardship that is intrinsic to a property which precludes the reasonable use of that property for purposes for which it is zoned. The Board concludes that the applicant has failed to sustain the burden of proof. The Board concludes that the subject property has been and may continue to be used for residential purposes. The applicant's hardship derives from a desire for economic betterment. Such a reason is not cause to grant a use variance. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Walter B. Lewis, Carrie Thornhill, Douglas J. Patton, Charles R. Norris to DENY, William F. McIntosh 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: JUL 25 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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