

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14041 of Klinging Klein Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use of upholstery shop to a restaurant (tea room) seating twenty persons, in an R-3 District at premises 3343 Prospect Street, N.W., (Square 1220, Lot 30).

HEARING DATE: October 12, 1983  
DECISION DATE: November 2, 1983

FINDINGS OF FACT:

1. The subject site is located at the northeast corner of the intersection of 34th and Prospect Streets N.W., and is know as premises 3343 Prospect Street N.W. It is in an R-3 District.
2. The subject site is rectangular in shape with forty feet of frontage on Prospect Street and ninety feet of frontage on 34th Street.
3. The site is improved with a one story brick building which contains six separate leasible stores created by the division of the structure. The subject premises is one store removed from the corner to the east, with the corner space being occupied by a nonconforming dry cleaning establishment. To the north on 34th Street is a small art gallery, a small art restorer and two vacant stores. The structure since its construction in 1923 has had a history of nonconforming uses.
4. The prior use of the subject premises was as an upholstery shop pursuant to Certificate of Occupancy No. B-42672, dated July 16, 1963. The store is now vacant. The applicant proposes to open a tea room seating twenty persons.
5. With the exception of a small C-1 District on 35th Street between Prospect and N Streets, the surrounding area north and west of the subject premises is zoned R-3. As such it is characterized by residential uses with an occasional low intensity nonconforming use. Georgetown University is also in the R-3 District with portions of the campus beginning one block west of the subject premises at 35th Street, N.W. One block south of the subject premises is the M Street C-2-A commercial corridor.

6. The applicant seeks a special exception to change a nonconforming use from upholstery shop to a restaurant (tea room).

7. The Board is authorized to grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and maps.

8. Pursuant to Paragraph 7106.11, a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

- A. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with the Regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.
- B. The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- C. When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.
- D. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.
- E. The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

9. The previous nonconforming use, an upholstery shop, is first permitted as a matter-of-right in a C-1 District. The proposed restaurant use is also first permitted as a matter-of-right in a C-1 District.

10. The proposed tea room will contain approximately 400 square feet. It will have a seating capacity for twenty persons. All required equipment will be contained in this space, including counter space, storage, refrigeration, restrooms, heating equipment and storage.

11. A limited menu consisting of croissants, pastries, and salads, will be offered. Coffee, tea and soft drinks will be offered. No alcoholic beverages will sold. No carry-out service is proposed. Table service will be on china. No paper products are intended.

12. The hours of operation will be from 9:00 A.M. to 7:00 P.M. Monday through Saturday, and from 12:00 P.M. to 5:00 P.M. on Sunday. The staff will consist of a manager, one full-time waiter/waitress and one part-time waiter/waitress.

13. The applicant anticipated seven deliveries per week, which includes daily Monday through Friday for food, and once per week for beverages.

14. The applicant will contract for trash pick-up twice per week. Trash will otherwise be stored in a trash compactor.

15. The applicant plans no roof or other vents for cooking equipment.

16. A sign will be painted on the window to advertise the shop's business.

17. The subject premises has no parking or loading facilities. There is one door, in front, opening onto the sidewalk.

18. The applicant anticipated that the tea room would attract walk-in customers from the surrounding residential and student community.

19. Prospect Street is a local street, carrying two-way traffic, with two-hour residential permit parking permitted on one side of the street. The street is approximately thirty feet wide, and it carries an average daily traffic volume of approximately 3500 vehicles. It extends from 37th Street on the west to Wisconsin Avenue on the east.

20. Thirty-fourth Street is a collector street, carrying one-way southbound traffic from Wisconsin Avenue to M Street. Two-hour residential permit parking is permitted on one side of the street. The street is approximately thirty feet wide, and it carries an average daily traffic volume of approximately 4,800 vehicles.

21. The intersection of 34th and Prospect Streets is controlled by stop signs for eastbound and westbound traffic. The traffic on 34th Street has the right-of-way. Traffic moves freely through the intersection except during the evening rush hours, when congestion occurs because of traffic moving south, toward M Street and to Key Bridge, between 4:00 and 6:00 P.M..

22. The applicant's traffic expert testified that the actual level of service at 34th and Prospect Streets is A, but the impact from the 34th and M Streets intersection, which operates at an E level of service, results in a perceived E level of service at the former intersection during the periods of congestion. There is two-hour residential permit parking on both 34th Street and Prospect Street, but available space in close proximity to the subject site is generally in short supply. There are two public parking facilities within 1800 feet of the subject site, a garage on the north side of the 3200 block of Prospect Street, and a lot directly opposite. In normal circumstances, spaces are available at both facilities.

23. The traffic expert further testified that the tea room would be neighborhood-oriented, attracting walk-in customers from the surrounding residential and student community. It is not the type of use that would attract people in automobiles. His observations at other eating establishments in Georgetown, the most comparable being the Boeymonger at Prospect and Potomac Streets, two blocks to the east, supported his opinion that customers would walk to and from the tea room, and that no parking spaces would be needed.

24. The traffic expert further testified that deliveries can be made, legally, from curbside in front of the tea room. They would not be made during the evening rush hours, so that there would be no effect on the periodic congestion that occurs at that time.

25. The traffic expert concluded that the proposed use would create no deleterious external effects as a result of traffic, parking or loading. The Board does not concur with this conclusion, for reasons set forth below.

26. The applicant contended that the proposed use is a neighborhood facility. The proposed tea room is designed to be a small, low intensity use drawing its clientele primarily from the neighborhood. It is anticipated that customers will walk from residences in the neighborhood and no effort will be made by the owner of the tea room to attract customers from throughout the Washington area. The nature of the service provided, the small size of the establishment, and its hours of operation are all designed to attract neighborhood residents and to fit in with the character of the area.

27. The applicant contended that the proposed use will not adversely affect the present character or future development of the surrounding area. The applicant argued that the surrounding area is characterized by a mix of uses and structures, including several nonconforming uses. Although the subject property is zoned R-3, it has a history of nonconforming commercial use. Further, within 200 feet from the subject property is a C-2-A District. The present character of the neighborhood is established and future development is limited. The area is located in the Georgetown Historic District and there are no vacant properties for development. The applicant argued that the proposed restaurant use will permit use of a building long devoted to small, relatively low intensity commercial use and will have no adverse impact on the present character or future development of the neighborhood. It will enhance the neighborhood by providing an attractive and convenient neighborhood restaurant for residents and by adding to the ambience of Georgetown.

28. The applicant argued that the proposed use will not create any deleterious external effects. The tea room is a relatively low intensity use with a limited menu. There will be no baking on the premises and the seating capacity is limited to twenty persons. Thus, in terms of fumes and noise, the proposed use will have no deleterious external effect. The tea room is designed to provide residents of the neighborhood with a convenient and attractive place to eat. It is not expected to attract customers outside of the neighborhood as is the case with large commercial restaurants. Before deciding to lease the subject premises, the owner of the proposed tea room conducted an informal count of pedestrian traffic in front of the subject building. During the course of one hour, approximately 300 persons walked past the building. On the basis of this study, the owner of the tea room concluded that the location was suitable for the use proposed.

29. The existing nonconforming use has not been changed to a conforming or more restrictive use.

30. The Office of Planning, by report dated October 5, 1983, recommended conditional approval of the application, with ten conditions of operation relating to roof top air conditioning, hours of operation, seating capacity, number of employees, baking and cooking on the premises, alcoholic beverages, neon or similar lighting and signs, deliveries, and a two-year time limitation for approval of the specific proposed use. The Office of Planning further noted that it lacked sufficient information from the applicant concerning trash removal and that an additional condition might be required in this regard. It was the opinion of the Office of Planning that these conditions would minimize the intrusion of a commercial use, albeit a neighborhood facility, on

a residential neighborhood and protect the neighborhood and adjacent property owner from potential adverse impacts associated with the proposed restaurant/tea room. At the same time, these conditions were intended to permit operation of the tea room in basically the same manner described by the applicant in pre-hearing discussions. The Board, for reasons discussed below, does not concur in the recommendations of the Office of Planning.

31. There was a petition with eighty-six signatures in favor of the application on the grounds that the tea room would be a pleasant and attractive neighborhood facility. The applicant obtained the signatures from passers-by in front of the subject premises. A review of the signatures disclosed that thirty-one were students, five signers changed their position, fifteen were residents of the immediate area, some listed work address and others could not be verified.

32. Advisory Neighborhood Commission 2E, by resolution dated September 7, 1983, opposed the application on the following grounds:

- A. The former use, an upholstery shop, was a small quiet operation that had only two to three employees, virtually no on-site retail trade, no lights visible from the street, no delivery trucks and was closed in the evenings and on week ends.
- B. The adjoining property has its main entry door right next to the proposed entry to the restaurant and the residence is occupied by a single family with small children.
- C. There are numerous tea-room type restaurants within a short walking distance that are located in properly-zoned commercial property.
- D. Many neighbors have expressed no interest in living with or patronizing this type of restaurant at this location. Thus, it cannot be considered a neighborhood facility.
- E. There is no parking on the north side of Prospect Street in front of the site, neighborhood residential parking is at a premium, and, due to Georgetown University and Key Bridge traffic, this is one of the most congested intersections in residential Georgetown.
- F. The proposed use would constitute an intensification of a nonconforming use and, therefore, an undesirable commercial encroachment into an historic residential conservation area contrary to

the goals and objectives of the Comprehensive Plan of the District of Columbia.

- G. The proposed use would adversely affect the present character and future development of the neighborhood and would create added traffic, noise, trash, and other deleterious effects that would undermine the integrity of the zoning plan for this neighborhood.

The Board concurs with the ANC recommendation for reasons discussed more fully in its conclusions of law.

33. The Citizens Association of Georgetown, by letter of September 15, 1983, opposed the application and adopted the grounds listed by the ANC.

34. Residents and property owners in the immediately surrounding residential area submitted a petition of 183 signatures in opposition to the application on the grounds that the new use would not be a neighborhood facility, would not be patronized by the neighborhood residents, would adversely affect the character of the neighborhood, and would have deleterious external effects. The petition stated that the proposed restaurant would be offensive and disruptive for the reasons cited in the ANC resolution.

35. Many neighborhood residents appeared at the Public Hearing to testify against the application. The Board received fifteen letters from neighborhood residents and property owners in opposition, a letter from Councilman John Wilson, and five letters from residents who had signed the supporting petition and subsequently changed their minds.

36. On the questions of what constitutes a neighborhood facility, the opposition argued that such a facility in a residential district must primarily serve the residents of the neighborhood, provide services reasonably needed and desired by such residents, be of an appropriate size, nature and character, be compatible with the surrounding neighborhood and its needs, have such appropriate supporting facilities as not to encroach upon surrounding neighborhood facilities and not adversely affect the character, of the neighborhood and create deleterious external effects.

37. The opposition further argued that the proposed use is not a neighborhood facility. It would not serve primarily the residents of the immediately surrounding neighborhood in which it is located. The proposed tea room, like those on Wisconsin Avenue and M Street, would be patronized by persons coming into Georgetown for shopping, tourist and other purposes. The proposed use would not provide services reasonably needed and desired by the residents of the immediately surrounding neighborhood. The

subject residents have no need for the proposed use. There are more than abundant restaurants in nearby commercial areas. The proposed use is not of an appropriate size, nature and character to be deemed a neighborhood facility in a residential neighborhood.

38. The opposition further argued that the neighborhood in this case is bounded by M Street on the south, Wisconsin Avenue on the east, Georgetown University on the west and approximately R Street on the north. Those were determined as the boundaries because M Street and Wisconsin Avenue are major arterial streets which are physical edges as well as places where the fabric and character of the area changes. The Georgetown University campus is a substantially different use and bulk, as compared to the adjoining residential area. The boundary on the north is harder to distinguish. North of Reservoir Road and R Street has traditionally been referred to as the Burleith area, a residential community not normally considered as part of Georgetown.

39. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. As to those issues and concerns, and the other matters raised in opposition, the Board finds as follows:

- A. The proposed restaurant would represent a substantial intensification of use over the prior upholstery shop. While the number of employees would not significantly change, there will be more deliveries, more activities, more noise and the hours of operation will be greater, particularly on weekends, for the proposed use.
- B. The impacts on the immediately adjoining house will be substantial. Even with the limited size of the premises and the number of seats proposed, the pedestrian activity in and out of the building will occur immediately next to the main entrance to the adjoining rowhouse. Such activity is not compatible with the enjoyment of single family residential property.
- C. The restaurant as proposed does not constitute a neighborhood facility. As described by the applicant, the proposed restaurant would not appear to be attractive to university students. It further is not the kind of restaurant that would appear to be able to sustain its business primarily from persons residing within a short distance of the site.

- D. The boundaries noted by the opposition in Finding No. 38, above, are a reasonable description of the "neighborhood" in which the subject site is located.
- E. The nature of typical restaurants in this area of the city is such that they attract clientele from all parts of the Washington metropolitan area. It is unlikely that the proposed restaurant could exist primarily on the business it would attract from a limited area.
- F. There are no off-street parking or loading facilities available at all to serve the site. All loading would occur from the public street. Any persons who traveled by car to the site, employees or customers, would have to park on the street or use other public parking elsewhere in the vicinity. On-street parking is generally in very short supply in the Georgetown area. Additional demands on that parking should be avoided.
- G. The existence of other similar restaurants in the area is not material to the subject application.

CONCLUSION OF LAW AND OPINION:

Bases on the record the Board concludes that the applicant is seeking a special exception the granting of which requires that the applicant has met the requirements of Paragraph 7106.11 and that the relief can be granted pursuant to Sub-section 8207.2 as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that the applicant has not met the burden of proof.

The Board concludes that the proposed use would not be a neighborhood facility under Sub-paragraph 7106.114. Although this concept was present in the Zoning Regulations prior to 1983, it has only recently become a requirement for approval and its meaning was extensively briefed by both sides. The Board concludes that the proposed use would not primarily serve neighborhood residents serving the day to day needs of a small tributary area. The Board also concludes that the proposed use would not be of an appropriate size, nature and character to be a neighborhood facility.

The Board further concludes that the proposed use would have adverse effects on the character of the surrounding neighborhood and would have deleterious external effects. It would therefore not satisfy the requirements of Sub-paragraphs 7106.111 and 7106.112 of the Regulations. The

ANC, the Citizens Association of Georgetown, the abutting property owner and many other neighborhood residents presented persuasive testimony concerning the adverse and deleterious effects of the proposed use, with which the Board concurs. The Board concludes that the general character of uses and structures existing within the immediate area of the nonconforming use are residential, except for the low intensity, low volume commercial activities in the subject structure. To grant the application would be a significant intensification over the prior use, substantially increasing the amount of noise, traffic, vibration, congestion of foot traffic, litter, and other deleterious external effects which the proposed nonconforming use can reasonably be expected to generate. It would also compound the extreme parking problems suffered by neighborhood residents. The Board further concludes that the conditions of operation suggested by the Office of Planning would not materially lessen these deleterious external effects.

Lastly, the Board concludes that under Sub-section 8207.2 the proposed use would adversely affect the neighborhood and would not be in harmony with the general purpose and intent of the Zoning Regulations and maps. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, for all the above reasons, it is hereby ORDERED that the application be DENIED.

VOTE: 5-0 (Douglas J. Patton, Carrie L. Thornhill, William F. McIntosh and Charles R. Norris to deny, Walter B. Lewis to deny by proxy).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:     MAY 22 1984    

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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