

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14087, of Mesfin K. Araya, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3104.3) to use the subject premises as a grocery store in an R-4 District at premises 2628 - 11th Street, N.W., (Square 2862, Lot 77).

HEARING DATE: January 25, 1984
DECISION DATE: March 7, 1984

FINDINGS OF FACT:

1. The application appeared on the preliminary calendar for the public hearing of January 25, 1984. According to the affidavit of posting, the property was posted five days prior to the public hearing instead of fifteen days as required under the Supplemental Rules of Practice and Procedure before the BZA. The applicant testified that the property had been posted for a least fifteen days and that the five days referred to pertained to the time the affidavit of posting was filed with the office of the Zoning Secretariat. The Chair ruled that a mistake had been made and decided to go forward and hear the application on its merits.

2. At the public hearing, counsel for the applicant raised a preliminary question as to whether the applicant required any relief from the Board. Counsel attempted to establish that the grocery store use for which a certificate of occupancy had last been issued in 1939 was still in effect, since the use had not been abandoned albeit the premises was vacant for many years. The Chair ruled that the applicant had failed to establish to the office of the Zoning Administrator that there had been no discontinuance of the use and that the 1939 permit was still valid. Accordingly, the applicant's remedy was through a variance from the use provisions which was the manner in which the application was advertised. The Chair ruled that there was no jurisdictional question before the Board.

3. The site is located at the southwest corner of the intersection of 11th and Fairmont Streets, N.W. and is known as premises 2628 11th Street, N.W. It is in an R-4 District.

4. The site has 35.60 feet of frontage on Fairmont Street and fifty feet of frontage on 11th Street. It is

improved with a semi-detached two story structure with no basement or cellar. On the north side of the building, there is a slope of approximately forty percent running up from north to south. The northern tip of this slope is approximately on level with the bottom of the second floor of the subject structure. The first floor is on the same level as the adjacent basements of dwellings to the west of the subject site.

5. In front of the subject structure and situated on the property a few feet north of the front entrance is a public telephone. On the public sidewalk directly in front of the 11th Street side of the structure is a Metrobus stop and a mailbox. There is a door on the second floor on the north side of the structure, but because of the topography, the door is several feet above grade without steps to afford access.

6. Along 11th Street to the south of the subject property, there are six row houses two stories in height, with English basements. South of the six row houses is a large five story apartment house. Across from the subject property on 11th Street, at the southeast corner of 11th and Fairmont Streets, there is a larger corner house built on a double lot. This house is two stories in height with English basement. To its south, there are five identical houses with brick bay windows, two stories in height plus English basements. Further to the south there are six two story plus basement rowhouses with wooden porches.

7. Across from the subject property, to the north, along 11th Street, there is a small, four story apartment building with its entrance on Fairmont Street. Behind the apartment building, there is a one story commercial building housing a dry cleaning and laundromat facility. Next to it, there is a small, two story plus basement apartment building.

8. The east side of 11th Street, north of Fairmont, consists of eight row dwellings, three stories in height plus English basements. Further to the north there are six rowhouses two stories in height plus basement with wooden porches.

9. Along Fairmont Street, the houses are wider and bigger, with a variety of styles. The houses are predominantly two stories in height plus basement. In the middle of the block, there are about eight houses which are three stories in height plus English basement. At the northern corner of 13th and Fairmont (12th Street does not go through this block), there is the Greater First Baptist Church, a large brick building. Behind the Church, along Fairmont Street, there is a large contemporary apartment building two stories in height plus English basement.

10. The first floor of the subject structure consists of a large room approximately eighteen feet wide and twenty-seven feet deep, with a three-foot-wide stairway going up to the second floor along the south wall of the building. There are no plumbing fixtures on the first floor. There is a waste and plumbing line on the southwest corner of the first floor. The first floor has large, commercial type windows, one along 11th Street and the other along Fairmont Street. These windows do not appear to be the original windows, but were installed as replacements many years ago. The entrance is located on the east side of the property at the south end of the east wall.

11. The second floor consists of four rooms. The southwest area consists of a small kitchen with a double hung window and a door. The northwest room has two double hung windows and an outside door. The door is operable but cannot be used to exit the premises because of the difference between the bottom of the door and the finished grade. The northeast room has three double hung windows and two interior doors. The southeast room is a very small bathroom, with a double hung window, a shower stall, a toilet and a wash basin. The shower stall was added recently, but the bathroom seems to have been rearranged many years ago.

12. Although the building's appearance suggests it was originally constructed for residential use, the Lusk Assessment Directory (19th Edition) indicates the structure as "store-miscellaneous," but does not give a construction date.

13. The applicant proposes to use the subject structure as a grocery store. The store will be operated by the applicant and his wife and no more than two other employees. The store will close at 9:00 P.M. The first floor will be used as the store. The second floor will provide toilet facilities for the staff and the office for the store records.

14. The applicant purchased the subject premises on December 15, 1982, from Womens' National Bank which had acquired the premises by deed in lieu of foreclosure from the prior owner. The subject structure was boarded-up and vacant at the time of the applicant's purchase and in substantial disrepair. The applicant was unable to learn from Womens' National Bank or from the public records maintained by the Department of Consumer and Regulatory Affairs how long the subject premises had been vacant or the exact date of its last use as a grocery store.

15. Prior to completing the purchase, the applicant visited the Building and Land Regulation Administration and inquired about whether the subject premises could be put to

the planned commercial use. At that time, the applicant was informed that commercial use of a grocery store was possible, since such use was a continuation of a nonconforming use for which a certificate of occupancy had been issued. In reliance on its commercial potential, the applicant purchased the subject premises.

16. Following his purchase of the subject premises, the applicant invested approximately \$20,000 in materials and labor to improve the structure and to acquire equipment suitable for use in the operation of a grocery store. The applicant obtained a building permit on December 12, 1983, to complete certain electrical wiring and intended to open for business upon the completion of the electrical work.

17. In November, 1983, the applicant submitted an application for a certificate of occupancy to use the subject premises as a grocery store. The Building and Land Regulation Administration rejected the application on the grounds that on August 5, 1983, amendments to Article 71 of the Zoning Regulations required the applicant to demonstrate that the previous nonconforming use had not been discontinued within the preceding three years in order to continue a nonconforming use as a grocery store. The applicant lacked sufficient evidence to establish this fact and was informed that he would therefore have to request a use variance pursuant to Paragraph 8208.11 of the Zoning Regulations.

18. The subject structure was built earlier than all of the neighboring row dwellings, approximately 1900 compared with 1909 to 1936.

19. The structure has physical characteristics which clearly distinguish it from the typical style of row dwellings in the neighborhood. Such characteristics appear to be more suitable for commercial use.

20. The history of use of the subject premises evidences an uninterrupted series of permits beginning in 1924 and ending in 1939 authorizing use as a grocery store. The subject premises have been taxed as a non-residential Class III property by the District of Columbia. Lusk's D.C. Assessment Directory (1982 Edition) shows the use of the subject premises as "Store-Miscellaneous".

21. The lot, 1,780 square feet in area, is itself non-conforming since the minimum lot size for a one-family semi-detached dwelling in an R-4 District is 3,000 square feet. This circumstance precludes the applicant from further enlarging the existing structure to adapt the structure to residential use. Any enlargement of the subject structure, even if permitted by the Zoning Regulations as a matter-of-right, is further limited by the

topography of the lot. The extensive slope covering the northern half of the lot would add additional costs to any enlargement because of necessary excavation, regrading and retaining wall construction.

22. The Office of Planning, by report dated January 18, 1984, recommended denial of the application based on the R-4 zoning of the neighborhood and the presumed residential capability of the subject premises. In preparing this report, the Office of Planning did not make an interior inspection of the structure. At the request of the Board, following the hearing the Office of Planning made an interior inspection and compared the subject structure with other neighboring dwellings. In its supplemental report, dated February 22, 1984, without withdrawing its initial recommendation, the Office of Planning confirmed the non-residential character of the interior of the structure and demonstrated the uniqueness of the subject premises in relation to nearby dwellings. The Board concurs with this finding of distinctiveness and the commercial character of the subject premises.

23. Advisory Neighborhood Commission 1B made no recommendation on the application.

24. Two neighborhood residents, Ms. Fleta Hilliard and Ms. Mary F. Brown, testified in support of the application, which in their view would provide a necessary service to the neighborhood and clean up a derelict property.

25. There were also three letters of record from neighboring property owners in favor of the application.

26. 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 use variance, the granting of which requires a showing of undue hardship upon the owner of the subject premises arising out of some unique or exceptional condition in the property so that the property cannot reasonably be used for the purposes for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The historic use of the subject premises as a grocery store suggests strongly that the subject premises was intended originally for commercial purposes. The layout

of the structure with its open first floor, devoid of plumbing fixtures, and the large commercial windows plainly indicate the commercial nature of the structure. The small size of the lot and structure in relation to other nearby dwellings supports the conclusion that conversion of the structure to residential use or other permitted uses would not be economically feasible. The nonconformity with minimum lot size requirements and the unusual topography of the lot further demonstrate the infeasibility of enlargement of the existing structure and conversion to residential use.

The Board concludes that the relief can be granted without substantial detriment to the public good. Not only will the applicant's renovation remove the eyesore of an abandoned and vacant structure, but the commercial use of the subject premises will provide a useful convenience for neighborhood residents. The zone plan is not impaired by permitting the continuation of a commercial use of a unique structure which has been devoted to use as a grocery store from as early as 1924. The Board notes the lack of opposition to the application.

Although it is not dispositive of the application, the Board may also recognize a special hardship in the particular history of zoning regulation applicable to the subject premises and reliance by the applicant on the former Zoning Regulations. In this application, the unique circumstance of a change in zoning regulations between the time of the applicant's purchase of the subject premises and his application for a certificate of occupancy presents a fact pattern deserving of special consideration by the Board. Accordingly, it is ORDERED that the application for use of the premises as a grocery store is GRANTED. This approval does not allow operation of the facility to include a delicatessen or carry out use.

VOTE: 3-0 (Carrie L. Thornhill, Maybelle Bennett and Douglas J. Patton to GRANT; William F. McIntosh and Charles R. Norris not voting, not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

MAY - 4 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."

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 CONSUMER AND
REGULATORY AFFAIRS.

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