

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14139, of Klinging Klien 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 from offices, first floor, to a unisex barber shop, first floor, in the R-3 District at premises 1231 34th Street, N.W., (Square 1220, Lot 30).

HEARING DATE: June 13, 1984  
DECISION DATE: July 11, 1984

FINDINGS OF FACT:

1. The subject site is located at the northwest corner of the intersection of 34th and Prospect Streets and is known as premises 1231 34th Street, N.W. It is zoned R-3.
2. The subject site is rectangular in shape with ninety feet of frontage on 34th Street and forty feet of frontage on Prospect Street.
3. The subject site is improved with a one-story brick structure which contains six separate leasable stores created by the division of the structure. The subject premises is to the north of and three stores removed from the corner. The corner space is occupied by a nonconforming dry cleaning establishment. To the north of the dry cleaners on 34th Street is a small art gallery, a small art restorer, the subject premises and a vacant leasable space. There is an upholstery shop to the east of the dry cleaners on Prospect Street. The structure has had a history of nonconforming uses since its construction in 1923.
4. Pursuant to Certificate of Occupancy No. B27646 dated April 13, 1961, 1231-1233 34th Street was last used for office purposes. The premises have been vacant since the fall of 1982. The applicant proposes to open a unisex barber shop at the subject premises 1231 34th Street.
5. There is no proposed use for 1233 34th Street at the present time. Any use proposed for that space would require the approval of this Board.
6. 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 zoned R-3, with portions of the campus beginning one block west of the subject premises at 35th Street. One block south of the subject premises is the M Street C-2-A commercial corridor.

7. The applicant is seeking a special exception to change a nonconforming use from offices to a unisex barber shop.

8. 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.

9. Pursuant to Paragraph 7106.11, a nonconforming use may be change 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 nonconforming 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.

10. The proposed unisex barber shop is first permitted as a matter-of-right in the C-1 District. The previous use for offices is also first permitted as a matter-of-right in the C-1 District.

11. The proposed unisex barber shop will contain approximately 700 square feet. It will have four barber chairs. The lessee proposes to have two hairstylists initially and would expand to a maximum of four stylists as business expands. The anticipated number of customers per day would be seven for each hair stylist.

12. The hours of operation of the proposed barber shop will be from 9:00 A.M. to 6:30 P.M., Monday through Saturday. The barber shop will be closed on Sundays.

13. The proposed facility will offer a full range of hairstyling including haircuts, shampoos, blow dry and permanent waves for both men and women. The lessee expects that the majority of his clientele will be men.

14. The lessee does not expect deliveries at the site. Supplies will be purchased and brought to the subject premises by the lessee approximately once per week or by-weekly.

15. The lessee anticipates very little accumulation of trash at the proposed facility and proposes to hand carry any daily accumulation of trash to his car to be disposed of at his place of residence.

16. A nameplate, approximately one square feet in area, will be the only sign on the premises to advertise the facility.

17. The subject premises has no parking or loading facilities. There is one door, in front, opening onto the sidewalk. The lessee has made arrangements to lease parking at a location on K Street approximately two blocks away, for himself and one employee.

18. The lessee is presently employed at a hair salon located approximately two blocks away on M Street. The lessee has been at that location for approximately six years and expects that the majority of his existing clientele will continue to seek his services at the proposed location. The lessee anticipates that the proposed facility will attract walk-in customers who live or work in the Georgetown area.

19. 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.

20. 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.

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.

22. The applicant's traffic expert testified that the proposed use would have no affect on traffic operating conditions in the area. Customers of the proposed type of facility would normally arrive on foot or by taxicab. There are two commercial parking facilities approximately 1,800 feet away at Wisconsin Avenue and Prospect Street to serve any customers who drive to the site. The traffic expert testified further that the use proposed generally attracts customers from a four to six block radius of the facility.

23. The applicant contended that the proposed use is a neighborhood facility. The proposed unisex barber shop/hair salon is designed to be a small, low intensity use drawing its clientele primarily from the neighborhood. It is anticipated that customers will walk from their residences or places of work in the neighborhood and no effort will be made by the owner 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.

24. 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 hair salon 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 a convenient neighborhood unisex barber shop.

25. The applicant argued that the proposed use will not create any deleterious external effects. The barber shop is a relatively low intensity use. It is designed to provide residents of the neighborhood with a convenient place to get their hair done. It is not expected to attract customers outside of the neighborhood.

26. The record contains ten form letters from clients of the lessee that patronize the existing M Street location and indicating that they would patronize the facility at the proposed location and that the use would be convenience for residents of the area.

27. One neighborhood resident appeared at the public hearing in support of the application. That support was based on his current patronage at the lessee's place of employment, the facility will be in close proximity to his residence, and that the lessee's operation will be a "good neighbor."

28. The Office of Planning, by memorandum dated June 6, 1984, recommended conditional approval of the application. The Office of Planning was of the opinion that the use is a neighborhood facility and as appropriately conditioned, will not adversely impact the immediate neighborhood. The Office of Planning was concerned that the proposed method for removal of trash was not adequate. The Board concurs with the findings and recommendation of the Office of Planning.

29. Advisory Neighborhood Commission 2E, by resolution dated May 25, 1984, recommended that the application be denied on the grounds that the proposal is an intensification of the nonconforming use of the property. The ANC cited BZA Order No. 4266 in which the Board denied a request to change a nonconforming dress shop at 1231-1233 34th Street to a dress shop in 1231, and an antique shop in 1233 on the grounds that "the substitution of two uses for the one use now existing in this property will more adversely than the existing use affect the present character or the future development of the area..." The ANC was of the opinion that granting the proposed use in 1231 34th Street would lay the groundwork for the establishment of an additional nonconforming use in 1233 34th Street, thereby intensifying the nonconforming use of the building.

30. The Advisory Neighborhood Commission further noted that its opposition was not specifically related to the granting of the proposed use, but to the subdivision of the premises resulting in leasable space suitable for a further nonconforming use. The ANC was of the opinion that the

proposed use would not be objectionable to the neighborhood if conditioned, as follows:

- A. No neon or gas tube displays shall be located on the outside of the building, or shall any such displays if placed inside the building be visible from the outside of the structure.
- B. No signs other than a nameplate not to exceed one square foot in area.
- C. Window displays, if used, shall preclude any type of printed advertisement, and show windows shall not be lighted after closing hours.
- D. Occupancy shall not exceed two employees per address number, counting the owners in the allowable occupancy quota if they work on premises.
- E. Hours of operation shall be 9:00 A.M. to 6:30 P.M. weekdays and Saturdays, with no hours of operation on Sundays.

31. By letter dated June 11, 1984, the Citizens Association of Georgetown recommended that the application be denied on the grounds that it an intensification of the nonconforming use of the property.

32. Three neighborhood residents testified in opposition to the application. That opposition was based on the following:

- A. The new use would increase the number and intensity of nonconforming uses in the subject structure.
- B. The use would have deleterious external effects, such as fumes generated from hair products used on the site.
- C. The use would adversely affect the character of the neighborhood.

33. The opposition testified that the last occupant of 1231-1233 34th Street was an art restorer. That use has been relocated at 1229 34th Street. The art restorer drew few customers to the subject site and attracted no walk-in clients. The proposed use would draw between fourteen and twenty-eight customers to the site on a daily basis, a significant increase over that generated by the previous lot intensity nonconforming use. In addition, the opposition argued that the previous nonconforming use occupied both 1231 and 1233 34th Street but the proposed use will occupy only 1231. The property at 1233 will, therefore, be vacant and available for least to an additional nonconforming use.

34. The rear of the subject premises is immediately adjacent to the garden of one of the parties in opposition. The opposition submitted Health Department regulations concerning the ventilation requirements for a barber shop or hair salon. The opposition was concerned that venting and mechanical equipment for air conditioning would be located on the roof of the subject premises, exposing her garden area to fumes and noise from that equipment.

35. The opposition further argued that the proposed use would not be a neighborhood facility in that it would likely be patronized by persons coming to the Georgetown area for shopping, tourist and other purposes.

36. The record contains four letters and a petition signed by thirty-six residents in opposition to the granting of the application.

37. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission as such issues and concerns are submitted in writing. As to those issues and concerns, and those raised by the residents in opposition, the Board finds as follows:

- A. The subject structure has a history of housing five nonconforming uses. Four uses are currently in operation and the granting of the proposed barber shop would result in a total of five. The vacant space at 1233 34th Street is not before the Board in this case, therefore, the Board is without jurisdiction to consider the use of that space until such time as an application relative to that specific address is properly brought before the Board. At that time, the Board will assess the impact of a proposed use for that space. The Board cautions the applicant that it will carefully scrutinize any proposed use for that space to ensure that intensification of the use of the premises will not occur.
- B. The impacts on the garden immediately east of the rear of the subject premises can be eliminated by imposing appropriate conditions on the granting on the granting of the application.
- C. Although the proposed use may attract more pedestrian activity in and out of the building, the use is separated from the nearest residence by 1233 34th Street, which is currently vacant, and will not unduly disrupt nearby residences.
- D. As testified to by the lessee and the traffic expert, the proposed use will primarily serve a walk-in trade and deliveries will be infrequent

and brought to the premises by the operator. Therefore, there will be no substantial adverse impact on traffic and parking conditions in the immediate area.

- E. The proposed use would be a neighborhood facility serving patrons who live or walk in a four-to-six block radius of the subject premises.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such relief, the applicant must demonstrate compliance with the requirements of Paragraph 7106.11 and that the requested relief can be granted, pursuant to Sub-section 8207.2, as in harmony with the general purpose and intent of the Zoning Regulations. The Board concludes that the applicant has met the required burden of proof.

The Board concludes that the proposed use, as hereinafter conditioned, would have no adverse effects on the character of the surrounding area and would cause no deleterious external effects therefor satisfying the requirements of Sub-paragraphs 7106.111 and 7106.112. The premises have not been changed to a conforming or less restrictive use. The Board further concludes that the proposed use would be a neighborhood facility as required by Sub-paragraph 7106.114. The Board concludes that the proposed use would be of an appropriate size, nature and character to be a neighborhood facility and that it would primarily serve the day-to-day needs of a small tributary area.

The Board is not persuaded that the proposed use as hereinafter conditioned, substantially increase the amount of traffic, vibration, congestion of foot traffic, fumes or other deleterious effects nor would it represent a significant intensification over the prior nonconforming use.

The Board further concludes that the subject premises has a history of commercial nonconforming use and that the proposed use would not adversely affect the neighborhood and can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

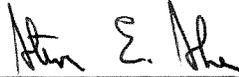
1. No neon or gas tube displays shall be located on the outside of the building, nor shall any such displays inside the building be visible from the outside of the structure.

2. There shall be no sign other than a nameplate not to exceed one square foot in area.
3. Window displays, if used, shall include any type of printed advertisement. Show windows shall not be lighted after closing hours.
4. Occupancy shall not exceed two employees.
5. Hours of operation shall not exceed from 9:00 A.M to 6:30 P.M. Monday through Saturday, with no hours of operation on Sunday.
6. No air conditioning or mechanical equipment shall be located on the roof of the structure.
7. No vents shall be located on the rear half of the roof nor shall there be any vents or mechanical equipment in the rear wall of the structure.

VOTE: 3-0 (Carrie L. Thornhill, Walter B. Lewis and William F. McIntosh to grant; Charles R. Norris and Douglas J. Patton 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: \_\_\_\_\_

14 SEP 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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