

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14294 of Chul Ho Pak, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from variety store - packaged food, cigarettes, pin ball machines and retail beverage, first floor to grocery and delicatessen, first floor in an R-4 District at premises 1726 North Capitol Street, N.W., (Square 3105, Lot 71).

HEARING DATE: May 22, 1985

DECISION DATE: June 5, 1985

FINDINGS OF FACT:

1. The application appeared on the preliminary calendar of the public hearing. The affidavit of posting reflected that the property was posted nine days prior to the public hearing, whereas the supplemental Rules of Practice and Procedure before the BZA require that the property be posted no less than fifteen days. The applicant stated that the posting date on the affidavit was incorrect; the sign was properly posted twenty-two days prior to the hearing. In addition, a neighboring property owner stated that he had not received notice of the hearing. The record indicated that a notice was mailed to the neighboring property owner and that the notice had not been returned to the Zoning Secretariat by the post office. The chair ruled that the sworn testimony of the applicant indicated that the property was properly posted and that a reasonable effort had been made to notify the neighboring property owners and that the case would go forward on that date on its merits.

2. The subject site, known as premises 1726 North Capitol Street, N.W., is located on the west side of North Capitol Street. It is one lot north of Randolph place. The site is zoned R-4.

3. The subject site is rectangular in shape. It has a frontage along north Capitol Street of seventeen feet and a depth of 66.66 feet. The property is improved with a three story brick structure.

4. The R-4 district extends north and west of the subject site. There is a C-2-A district approximately 100 feet to the southeast of the site.

5. The area along North Capitol Street is characterized by three story row dwelling units of which the first

floor of the majority of the buildings have been converted to commercial use, such as liquor store, beauty parlor, funeral home, dry cleaning etc. The area along Randolph Street, and First street, one block west of the site, is characterized by single family row dwelling units two or three stories in height, generally in good state of repair.

6. The most recent certificate of occupancy, No. B139538 dated August 6, 1984, permits the first floor of the subject property to be used as a variety store - packaged food, cigarettes, pin ball machines and retail beverages. This constitutes a nonconforming use in the R-4 district.

7. The applicant proposes to use the first floor of the subject structure as a delicatessen and grocery store. The second and third floors will remain as residential uses. The residential uses have a separate entrance from the store. Such a change of the first floor use requires a special exception under Sub-section 8207.2 of the Zoning Regulations.

8. Paragraph 7106.11 of the Zoning Regulations, in pertinent part, provides that 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 Zoning Regulations. The surrounding area encompasses 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. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.
- D. 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. Both the prior use of variety store and the proposed grocery and delicatessen are first permitted as a matter-of-right in the C-1 District.

10. It is proposed that the grocery and delicatessen will operate from 10:00 A.M. to 10:00 P.M. six days a week. The applicant is undecided as to which day the store will be closed.

11. The proposed business will prepare and/or sell hot and cold sandwiches, food by the pound and other packaged grocery items.

12. No seating will be provided. Food will be sold on a carry-out basis only.

13. Two persons residing in the neighborhood will be employed part time at the proposed business.

14. Deliveries will be made to the proposed business twice a week, between 10:00 A.M. and 2:00 P.M.

15. A private service will collect trash from the subject site twice a week.

16. The applicant will clean the space in front of the subject site, including the corner, each morning.

17. Equipment utilized by the proposed business will include a delicatessen machine for slicing meat and fish, a ten foot delicatessen-case, a twenty-seven inch wide sandwich unit, an eighteen by nineteen inch deep fry and a thirty by nineteen inch grill.

18. The cooking facilities' ventilation system will lead out of the rear of the subject structure and up to the rooftop. It will operate only while food is cooking. No other structure is connected to the rear of the subject structure.

19. The pinball machines located inside the subject structure will be removed.

20. A small, unobtrusive sign will replace the one located at the subject site.

21. Two vending machines located in front of the subject site will be removed. No other substantial exterior changes are proposed.

22. The applicant's mother operates a store which sells beer, wine and packaged meat at premises 1728 North Capitol Street, adjacent to the subject site.

23. Neighborhood patrons of the store at 1728 North Capitol Street have requested that the business offer warm sandwiches and food by the pound for sale. This is not possible because of space limitations.

24. There are no delicatessens in the immediate area of the subject site. Residents have to travel a number of blocks to Florida Avenue to get a hot sandwich.

25. Most customers of the proposed business would walk to the site.

26. The Office of Planning (OP), by memorandum dated May 15, 1985, recommended approval of the subject application. The OP reported that the previous nonconforming use located at the subject site and other nonconforming uses in the area, including the beauty parlor adjacent to the subject site, have apparently not impacted deleteriously on the area. The OP further reported that the number of customers patronizing the proposed business will be approximately 200 a day, of which over ninety-five percent are expected to come on foot, as they presently do at the existing establishment. Because of this, the proposal seems to be a neighborhood facility. North Capitol Street is a major arterial of the street system of the District of Columbia and carries heavy through traffic all day long. Very little, if any, new traffic is expected to be generated by this proposal. The Board concur with the OP's findings and recommendation.

27. By letter dated May 15, 1985, Advisory Neighborhood Commission 5C stated its opposition to the subject application. The ANC reported that at a recent hearing of the D.C. Alcoholic Beverage Control Board (Cases No. 24560-85200P), an Office from the Metropolitan Police Department 5th District Vice Unit testified under oath that more the 250 arrests had occurred at or near the corner of North Capitol and Randolph N.W. (the site of the present application) in the last year. The ANC was of the opinion that the proposed use would adversely affect the use of neighboring property by increasing pedestrian and vehicular traffic, noise, litter and other problems. Such a use in a residential zone would not seem to be in harmony with the general purpose and intent of the Zoning Regulations. The Board for reasons stated below does not concur with the recommendations of the ANC.

28. The applicant contacted neighbors in the surrounding area to determine if they had any objections to his operating a delicatessen and grocery at the subject site. Many persons expressed support for the proposal. On a petition dated April 15, 1985, approximately ninety neighbors of the subject site stated that they had no

objection to the proposed operation and requested the Board to approve the subject application.

29. Five persons residing in the immediate neighborhood of the subject site testified in favor of the application. They reported that the proposed business would be a great convenience for the neighborhood. They and the children in the area would not have to cross a busy street and walk a number of blocks to buy certain food items as they do now.

30. A person residing in the neighborhood of the subject site opposed the application fearing that a delicatessen would re-create the undesirable existence of drug traffic on the street corner. The existence of trash at the corner made the neighbor believe that the applicant lacked commitment to the neighborhood.

31. The Board is required by statute to give "great weight" to the issues and concerns of an ANC reduced to writing in a formal recommendation. In addressing the concerns of the ANC and those of the other opposition the Board finds that the concern regarding crime cannot be predicated upon the operation of the applicant's business. There is no probative evidence of record reflecting the arrests in the vicinity of the subject business as attributable to the actions of the applicant. Again, such a concern is a police matter not a zoning use. The Board finds that the grant of the application as conditioned below will alleviate the further concerns of noise, littering and loitering. Also, the Board does not find in this record any substantive evidence of a problem from vehicle traffic.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board conclude that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and that the relief requested under Sub-section 8207.2 can be granted 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 met the burden of proof. The use provides a convenient service for the day-to-day needs of the immediate neighborhood, with a minimum impact upon surrounding development. The use is permitted as a matter-of-right in the most restrictive district in which the previous variety store use is permitted as a matter-of-right. The Board concludes that the use constitutes a neighborhood facility which will not adversely affect the present character or future development of the area.

The Board further concludes that it has accorded to the ANC the "great weight" to which it is entitled. ACCORDINGLY, it is ORDERED that the application is GRANTED, SUBJECT to the following conditions:

1. All vending machines shall be removed from the public space in front of the premises.
2. There shall be no mechanical amusement machines located on the subject premises.
3. The hours of operation shall not exceed from 10:00 A.M. until 10:00 P.M. six days a week.
4. No mechanical equipment necessary for ventilation purposes shall be located on the roof or outside of the building.

VOTE: 3-0 (William F. McIntosh and Carrie L. Thornhill to grant; Lindsley Williams to grant by proxy; Charles R. Norris not voting, not having heard the case; Douglas J. Patton not present, not voting).

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

ATTESTED BY:



CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 03 SEP 1985

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.