

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14303, of Hee R. Rye and Yun H. Fogleman, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from barber shop, first floor to grocery store, first floor, in an R-4 District at premises 1245 5th Street, N.W., (Square 513, Lot 98).

HEARING DATE: June 19, 1985
DECISION DATE: July 3, 1985

FINDINGS OF FACT:

1. The subject site is located at the southeast corner of the intersection of 5th and N Streets and is known as premises 1245 5th Street, N.W. The site is located in an R-4 District.

2. The site is rectangular in shape and flat. There is an eighteen foot frontage on 5th Street. There is a depth of eighty feet on N Street.

3. The site is improved with a two story brick structure. The first floor had been used for retail purposes. The second floor contains a residential unit.

4. The structure is now in a dilapidated condition and boarded-up. There appears to have been a fire in the residential unit on the second floor. The structure is vacant. The applicant purchased the property in April, 1985.

5. To the immediate east and south of the subject site are R-4 Districts. To the immediate north and west of the site are R-5-B Districts.

6. The outstanding Certificate of Occupancy No. B-66275 dated August 20, 1968 is for the use of the first floor as a barber shop.

7. The applicant proposes to change a non-conforming use of a barber shop to a grocery store. The relief is sought through a special exception under Paragraph 7106.11 of the Zoning Regulations.

8. Paragraph 7106.11 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, 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 values, utilization, or enjoyment of property in the neighborhood.

9. The existing use and the proposed use are first permitted as a matter-of-right in a C-1 District.

10. Within 300 feet of the site are basically row houses. The nearest food store, a Giant market, is several blocks away. The immediate neighborhood is comprised of elderly residents who have no transportation. The residents live on a low-fixed income.

11. The proposed use will be operated by the applicant and two employees.

12. The hours of operation are proposed as 7:00 A.M. to 10:00 P.M., seven days per week.

13. The applicant will pick up his supplies in his station wagon. No deliveries by outside contractors will be made to the store. The station wagon will be parked on N Street in front of the applicant's property abutting N Street.

14. Trash will be stored in a trash receptacle located inside the store. A private contractor will haul the trash away. The site area will be policed daily.

15. The applicant's customers will be from the immediate neighborhood and will be walk-in trade.

16. There will be no chairs or tables provided inside the establishment. All products sold will be carried out by the purchasers. All food products for sale will be packaged.

17. The applicant will occupy the residential unit on the second floor.

18. The basement will not be used for storage. It will house all utility equipment.

19. Two immediate neighbors testified at the public hearing in favor of the application. A petition with 110 signatures in favor were submitted to the record. The pastor of Miles Memorial C.M.E. Church located at 501 N Street, N.W. submitted a letter to the record in favor of the application. The grounds for support were that the proposal would be a convenience store for the neighborhood which lacked such a facility. The restoration of the structure would eradicate a blight in the neighborhood. The residents were elderly and had no transportation to acquire their basic groceries.

20. Advisory Neighborhood Commission 2C by letter dated June 7, 1985, reported that it opposed the application for the following reasons:

- a. Four years ago, there was a serious drug problem in this location. It took enormous effort and time for many district residents, elected and public officials to remedy this situation. The delicatessen/carryout traffic will attract people, who will in turn attract drug pushers and create problems.
- b. It will serve as a magnet for Dunbar's students during lunch periods and will give them a reason to leave school grounds.
- c. Mr. Ryu has assured that should help be needed to operate the store, he would hire a neighborhood resident. However, residents of 2C10 do not feel that he will in fact honor that assurance. They feel he and his wife will, as he has himself admitted, operate the store themselves. Mr. Ryu currently owns a delicatessen on 17th and Kalorama Road which he and his wife operate. He plans to give the store to relatives.

- d. Residents of 2C10 don't feel Mr. Ryu will promote the well-being of the neighborhood and will not contribute anything of value.

The Board does not concur with the ANC recommendation.

21. The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to writing and resulting in a recommendation. The Board finds that concern "a" is not a zoning matter, but, a police matter. Items "b", "c" and "d" are purely speculative. The applicant seeks his relief through a special exception. When the burden of proof has been met then the relief must be granted.

22. The Board finds that the proposed use is a neighborhood facility since it is designed to provide convenient retail service for the daily needs of a small tributary area with a minimum impact upon surrounding residential development.

23. No one appeared at the public hearing in opposition to the application.

24. There was some concern expressed at the public hearing by a Board member referencing Paragraph 7106.15 which provides that should a structure devoted to a non-conforming use be destroyed by fire to an extent of more than fifty percent of the cost of reconstructing the entire structure, it shall not be restored. The Board finds that this is a determination beyond its scope and that the Zoning Administrator through its agents will make this determination

25. One of the former owners of the property testified at the public hearing that the subject fire occurred in the winter of 1984, and that the fire was contained to the front room on the second floor. Damage was done primarily to the roof.

26. The Board noted that the applicant filed the proposed use as a grocery store. The memorandum from the Zoning Administrator also recited the proposed use as a grocery store. At the public hearing the applicant sought to have a delicatessen use included with the grocery store use since in his mind the two uses were one and the same. The Board ruled that the application could not be amended at the public hearing. The relief had been advertised for one specific use. Proper notice to the public would not have been given. The applicant was advised that the proper remedy was to file a further application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes 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 proposed use is designed to provide convenient retail service for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development. The proposed use is permitted as a matter-of-right in the most restrictive district in which the previous use is permitted as a matter-of-right. The Board concludes that the proposed use constitutes a neighborhood facility which will not adversely affect the present character or future development of the area.

The Board concludes that it has afforded 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. The use of the first floor of the subject premises shall be limited to grocery store.
2. The hours of operation shall not exceed from 8:00 A.M. to 9:00 P.M. Monday through Saturday.
3. The number of employees shall not exceed three.
4. Trash pick-up and deliveries shall be scheduled to occur between the hours of 3:00 P.M. to 4:00 P.M.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Lindsley Williams to grant by proxy; 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: 25 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.

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