

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14321 of Chu Moy, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from retail grocery, first floor, to grocery/delicatessen, first floor, in an HR/SP-2 District at premises 509 H Street, N.W., (Square 485, Lot 4).

HEARING DATE: September 11, and November 20, 1985
DECISION DATE: December 4, 1985

FINDINGS OF FACT:

1. The subject application appeared on the preliminary calendar at the public hearing of September 11, 1985. No affidavit of posting was filed in the record. A representative of the applicant testified that the property was not posted fifteen days prior to the public hearing as required under the Supplemental Rules of Practice and Procedure before the BZA. The Chair continued the case until the public hearing of November 20, 1985.

2. The subject premises is located on the north side of H Street approximately mid-block between 5th and 6th Streets, N.W. and is known as premises 509 H Street N.W. It is zoned HR/SP-2.

3. The subject site is rectangular in shape, measuring approximately twenty feet by eighty feet for a total lot area of 1,600 square feet. The rear of the site abuts a ten-foot wide public alley which is accessible from both 5th and 6th Streets, N.W.

4. The subject site is improved with a three-story brick row structure. The ground floor of the subject structure is currently used as a retail grocery store pursuant to Certificate of Occupancy No. B67160. The second and third stories are used for residential purposes. The applicant proposes to add a delicatessen operation to the existing grocery store.

5. The subject site is located on the eastern edge of Chinatown. The surrounding area is characterized by a mix of uses including retail ethnic grocery stores, restaurants specializing in Chinese food, federal and municipal office buildings, surface parking lots, boarding and rooming houses, and apartment buildings. Surrounding zoning

districts include C-4 zoning southeast of the subject square; HR/C-3-C to the west and northwest of the subject square; and HR/SP-2 to the south and east of the subject square.

6. 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, subject to BZA approval, provided.

- a. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these 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.

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.

7. The existing grocery store is first permitted as a matter-of-right in the C-1 District. The proposed grocery/delicatessen is also first permitted in the C-1 District.

8. The existing grocery has been in operation at the subject premises for approximately sixteen years. The applicant testified that the grocery store use is not responsive to the desires of its clientele which consists mainly of government workers and senior citizens residing in nearby apartment building. The applicant is of the opinion that its clientele would prefer to purchase hot food and

sandwiches in addition to the existing pre-packaged grocery items currently available, making the operation more economically viable.

9. No exterior alterations to the subject structure are proposed with the exception that the sign advertising the use will be redesigned to publicize the proposed use. The proposed sign will not exceed the dimensions of the existing sign.

10. The applicant proposes to accommodate the delicatessen use within the 1,070 square feet grocery store by adding a range, range hood, exhaust duct, deep fryer and steam table. There will be no seating available for customers to eat on the premises.

11. The hours of operation of the existing use are from 10:00 A.M. to 6:00 P.M., Monday through Friday. The average number of customers is approximately 200 per day and generally consists of walk-in patrons from nearby offices and apartment buildings. The applicant proposes to extend the hours of operation, if customer demand warrants it, to a maximum of from 6:00 A.M. to 9:00 P.M. The applicant expects an increase in the number of customers of approximately 100 per day. The type of clientele is expected to remain the same.

12. Trash is removed from the subject site twice per week. Trash is picked up from the rear of the premises via the public alley. Trash is stored in a locked container. Additional pick-ups will be provided if necessitated by the delicatessen use.

13. Deliveries to the subject site average three to four per day and occur during the hours from 10:00 A.M. to 2:00 P.M. Deliveries take place from an existing loading zone in front of the store or from the rear of the premises. The type of goods delivered will differ from those currently received, however, the applicant does not expect an increase in the number of deliveries.

14. Two on-site parking spaces are provided at the rear of the subject premises. These parking spaces are generally used for vehicles delivering goods to the subject facility.

15. The Office of Planning, by memorandum dated September 4, 1985, recommended conditional approval of the subject application. The OP was of the opinion that the requested delicatessen use satisfies the criteria of Paragraph 7106.11, and poses little or no threat to nearby and adjacent properties. The proposed use is not inconsistent with the mixed use character of the area and appears to service the needs of neighborhood residents and

nearby office workers. The OP recommended that the Board condition the operational characteristics of the proposed use relative to trash removal, loading arrangements and signage. The Board concurs with the recommendation of the OP.

16. Advisory Neighborhood Commission 2C made no recommendation on the subject application.

17. There was no opposition to the application at the public hearing or of record.

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, the granting of which requires compliance with the requirements of Paragraph 7106.11 and evidence that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that it will not adversely affect the use of neighboring property.

The Board concludes that the applicant has met the required burden of proof. Both the existing use and the proposed use are first permitted as a matter of right in the C-1 District. The proposed use, as hereinafter conditioned, will not adversely affect the present character and future development of the area. The proposed use occupies a small portion of the area presently devoted to grocery store use and the nature of the use is such that it will not tend to create any adverse exterior effects such as noise, traffic or other deleterious effects. There has been no abandonment of the nonconforming use of the premises. The Board concludes that the use is a neighborhood facility. The size, nature and character of the use is designed to serve walk-in trade generated by nearby residences and offices.

The Board further concludes that the proposed use will not adversely affect the neighborhood and will be in harmony with the general purpose and intent of the Zoning Regulations and map. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. The hours of operation shall not exceed from 7:00 A.M. to 9:00 P.M., seven days a week.
2. The sign advertising the grocery/deli use shall not exceed the size of the existing sign advertising the grocery use.
3. The applicant shall provide a trash receptacle in front of the premises for customer use.

4. No loading activities shall occur in the loading area located on H Street during the hours from 8:00 A.M. to 9:30 A.M. and from 4:00 P.M. to 6:30 P.M.
5. Trash shall be removed from the rear of the premises via the public alley a minimum of twice per week.

VOTE: 4-0 (Charles R. Norris, Patricia N. Mathews, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

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

ATTESTED BY: *Cecil B. Tucker*
CECIL B. TUCKER
Acting Executive Director

26 MAR 1986

FINAL DATE OF ORDER: _____

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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