

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14352 of Robert M. Jordan, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from a tailor shop, not more than five employees, first floor, to a dry cleaning pick-up point and laundromat, first floor, in an R-4 District, premises 2022 - 4th Street, N.W., (Square 3080, Lot 33).

HEARING DATE: November 13, 1985
DECISION DATE: December 19, 1985

FINDINGS OF FACT:

1. The site is located at the northwest corner of the intersection of Elm and 4th Streets, N.W. The site is known as premises 2022 - 4th Street, N.W. It is in an R-4 District which is part of an Historic District.

2. The site consists of a two story building occupying most of Lot 33. The building fronts on 4th Street with the entrance facing the corner of the lot. There is no room for parking spaces located on the lot.

3. The property is located within one block of Howard University Hospital and within two blocks of Howard University. To the north of the property is a residential unit. Directly across 4th Street to the east is a retail/apartment complex with only the apartments occupied. A grocery store is located on the southeast corner of the intersection. Residential units occupy Elm Street to the west.

4. At present, the owner occupies the first floor of the premises under Certificate of Occupancy No. A34552 which allows the premises to be used as a tailor shop, not more than five employees. The owner uses the property for a tailor shop and a pick-up dry cleaning and shoe repair service. The second floor is presently vacant. The owner plans to renovate it for an apartment.

5. The owner plans to renovate the first floor of the premises to include a laundromat. A partition will divide the length of the premises: the front area being used as a laundromat and the rear being used for the other services. The owner plans to install no more than four washing machines and four dryers. Exhaust from the dryers will be vented through a duct out the rear wall.

6. There are no parking spaces provided on the lot itself, there is one public parking space along the side of the building. The owner plans to cater to the needs of those residents who are within walking distance.

7. The proposed hours of operation are from 7:00 A.M. to 7:00 P.M. The owner plans to employ another individual along with himself to operate and supervise the business.

8. In letters and reports dated November 6 and November 26, 1986, Advisory Neighborhood Commission (ANC) 1B, recommended a denial of the application. The ANC based its recommendation on the following reasons:

- a. The Board of Zoning Adjustment lacks the authority to grant the requested relief. The applicant here seeks to add (not substitute) a nonconforming use and expand the commercial character of the building by adding a laundromat use to the already existing uses. However, according to the language of the Zoning Regulations, Paragraph 7106.11 would permit the substitution of one nonconforming use for another nonconforming use, but no expansions or additions of such uses are specifically authorized.
- b. The proposed use would create deleterious external effects. First, the use would increase demand for parking in an area already plagued with parking. The applicant does not propose to add any off-street parking to mitigate the demand. Second, the use might have damaging environmental impacts on the neighborhood, since washers and dryers do emit noise, and the exhaust and dust from the dryers will be vented into the atmosphere through the rear wall of the building. Thirdly, the proposed use could reduce residential property values. The cumulative effect of increased parking demand, increased noise, and the other adverse effects enumerated above could reduce the demand for residential properties in the area.
- c. The proposed use would be inconsistent with the character and development of the neighborhood as envisioned in the Zoning Regulations and maps. Section 3104.1 of the Zoning Regulations indicates that R-4 areas are designed primarily for residential row house uses, not laundromats. Thus, to allow this otherwise prohibitive use would be inconsistent with the present character and future development of the neighborhood as envisioned in Section 3104.1.

- d. The proposed use is inconsistent with the D.C. Comprehensive Plan.

9. In letters dated November 7, 1985 and November 25, 1985, the LeDroit Park Preservation Society expressed opposition to the application based on rationale similar to the reasons of the ANC.

10. The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to writing in the form of a recommendation. The Board concurs with reasons "a" and "b". It disagrees with reasons "c" and "d". As to "c", the applicant is seeking his relief through a special exception not a use variance. The applicant has no burden to prove that the property cannot be used for residential purposes. As to "d", the reference to the Comprehensive Plan by the Advisory Neighborhood Commission is to the Land Use Element. At the time this application was heard and decided, the Land use Element had been passed by the Council of the District of Columbia, but had not become law. Consequently, the provisions of that element were not in effect. Even if the law had become effective, the provisions of the element are no self-executing. The Comprehensive Plan Act of 1984 (Section 102) provides in part that "the District elements of the Plan are a guide intended to establish broad policies and goals while affording flexibility for future implementation and are not binding policy directives." The Land Use Element does not automatically change the Zoning Regulations. The Zoning Act as amended by the Home Rule Act requires that the Zoning Regulations "not be inconsistent with the comprehensive plan." It is the responsibility of the Zoning Commission to accomplish that task. The Board is limited to following the Zoning Regulations as they exist, and unless and until the Zoning Commission amends the Regulations to require the Board to determine whether an application is consistent with the Comprehensive Plan, that determination is beyond the scope of the Board's consideration.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence in the record, the Board concludes that the applicant is seeking a special exception to change a nonconforming use from a tailor shop to a dry cleaning pick-up point and laundromat. In order to be granted such special exception relief, the applicant must demonstrate substantial compliance with the requirements of Paragraph 7106.11 of the Zoning Regulations and that the relief can be granted as in harmony with the intent and purpose of the Zoning Regulations and will not tend to affect adversely the use of neighboring property (Paragraph 8207.2).

Paragraph 7106.11 of the Zoning Regulations authorizes the Board to approve a change of a nonconforming use to a use which is first 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:

7106.111 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.

7106.112 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.

7106.114 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

7106.116 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.

The Board concludes that the applicant has failed to meet his burden of proof for special exception relief, specifically pursuant to sub-paragraphs 7106.111 and 7106.112. The proposed use would result in an expansion of a nonconforming use and adversely affect the present character and future development of the surrounding area. The addition of a laundromat would create deleterious external effects which do not result presently from the pick-up dry cleaning use of the building.

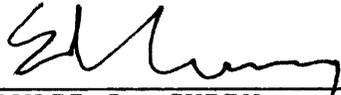
Given an existing parking problem, any increase of commercial activity (even that of a laundromat) consequently increases parking demand. Since parking is prohibited on 4th Street during the day, those customers who choose to drive will invariably park on Elm Street where the residents do not have off-street parking. Furthermore, the applicant does not propose any plans to mitigate the potential parking problems created by commercial activity which engages the consumer for a couple of hours rather than the few minutes needed for drop-off or pick-up of dry cleaning.

Second, the applicant does not propose any plans to control noise and exhaust from the laundromat use. Washer and dryers do emit noise, and the exhaust and dust from dryers are usually vented into the atmosphere. Whereas the applicant testified at the hearing that the exhaust would be vented through a duct three feet above the roof of the building, the plans submitted revealed that the exhaust will be vented out the rear wall. Furthermore, no plans have been submitted to reduce the outside noise from the laundry machines and the exhaust fans. Thus, noise, dust and pollution will be directly vented onto adjacent properties. Finally, the proposed use results in an expansion of nonconforming uses; such expansion directly contradict the intent and purpose of the Zoning Regulations and plans. The very intent of the Regulations and the Zoning Commission is to reduce eventually and cease all nonconforming uses.

Accordingly, it is hereby ORDERED that this application is denied.

VOTE: 3-2 (William F. McIntosh, Maybelle T. Bennett, and Douglas J. Patton to deny; Charles R. Norris and Carrie L. Thornhill to grant).

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

ATTESTED BY: 
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: SEP 12 1986

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."

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