

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14363 of G.S.P. Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 71-6.1 to continue to use the subject premises as a restaurant seating 125 persons in an HR/SP-2 District at premises 1335 Green Court, N.W., (Square 247, Lot 831).

HEARING DATE: November 20, 1985
DECISION DATE: December 4, 1985

FINDINGS OF FACT:

1. The subject site is located in the center of the square bounded by Massachusetts Avenue, 13th, 14th and L Streets, N.W. and is known as premises 1335 Green Court, N.W. The property, as an alley lot, has no street frontage. It is zoned SP-2.

2. This site is situated on the northeast corner of the intersection of two alleys. The east-west alley, known as Green Court, is thirty feet wide and extends easterly from 14th Street to the rear of properties which front on 13th Street. The north-south alley is fifteen feet wide and extends through the square from L Street to Massachusetts Avenue.

3. The site contains approximately 2,000 square feet of land area and is improved with a two-story structure which occupies the total area of the lot.

4. The property is surrounded by office buildings, apartment houses and parking lots. To the north of the site across a fifteen foot dead-end alley, is an apartment house. East of that is an office building occupied by the U.S. Catholic Conference. Immediately east of the subject site is a warehouse building used for book storage by the Catholic Conference. South of the site is a parking lot fronting on L Street.

5. By BZA Order No. 13677, dated May 24, 1982, the Board granted a special exception to use the subject premises as a restaurant for a period of three years. Prior to Board approval of the restaurant use the subject site was occupied by a uniform supply company. No Certificate of Occupancy was issued for that use. The most recent Certificate of Occupancy issued for the subject premises

prior to the restaurant use was Certificate of Occupancy No. B121103, dated July 3, 1980, for an office.

6. The subject premises was renovated for restaurant use at a cost of approximately \$300,000. The facility provided a limited menu with food prepared and served on the premises and had capacity of approximately 125 to 130 seats.

7. The restaurant was in operation for approximately one year and nine months. The applicant-owner was unable to continue the operation of the restaurant due to past debts and operating losses. The applicant now proposes to lease the subject premises for continued use as a restaurant.

8. The lessee proposes to operate a sit-down restaurant with recorded music during the week and a jazz trio on the second floor on weekend evenings. There will be no dancing on the premises and no cover charge or admission will be charged.

9. The hours of operation of the proposed restaurant will be from approximately 11:00 A.M. to 2:00 A.M., seven days a week. Hot meals will be served until approximately 10:00 P.M. Sandwiches will be available until approximately midnight or 1:00 A.M.

10. The proposed restaurant will be a neighborhood facility serving a local clientele with substantially all of its business coming from walk-in patrons who reside or work in the surrounding area, as well as some evening patronage by persons visiting the downtown area for theatres, shopping, etc.

11. No alterations to the premises are proposed with the exception that the existing sign will be replaced with an illuminated sign with the new name of the establishment.

12. There is no requirement for off-street parking since the subject building was constructed prior to 1958 and has a parking credit from the previous non-conforming use.

13. The majority of the proposed restaurant's patrons will come to the site on foot. In the opinion of the lessee there is an abundant amount of commercial parking available in the immediate area to meet any demand for parking generated by the proposed use. A doorman is proposed to be on duty to escort patrons to automobiles parked in the commercial lot south of the subject site.

14. Deliveries to the subject premises are proposed to occur between the hours of 8:30 A.M. and 11:00 A.M. Deliveries will take place in the dead end alley immediately north of the subject site as was conditioned by the Board's Order No. 13677.

15. The surrounding area of the site is presently undergoing major development. Two office buildings have recently been constructed within 500 feet of this site and other sites are currently in the process of being developed. The applicant is of the opinion that the proposed use will serve the present and future needs of the high density residential and office uses in the neighborhood without adversely affecting its present character or future development.

16. Although not located in a residential district, the proposed use will meet the standards of external effects established for the C-M District. There will be no emission or escape of any objectionable smoke, gas, sound or objects in accordance with Sub-Paragraph 7106.114 of the Zoning Regulations.

17. By memorandum dated November 13, 1985, the Office of Planning (OP) indicated that no report on the subject application was prepared. The OP reiterated its concerns as expressed in its February 19, 1982 report in BZA Application No. 13677, that the use of the subject premises as a restaurant would increase pedestrian and vehicular traffic in the alley system, and because the subject premises occupies 100% of the site, use of the alley for loading and for trash containers and pick-up may have an adverse effect on traffic circulation in the alley system.

18. By letter dated November 13, 1985, Advisory Neighborhood Commission (ANC) 2C advised the Board that a meeting with the applicant was scheduled for that date and that the Chairman of the ANC would testify at the public hearing on the case.

19. At the public hearing, the Chairman of ANC 2C recommended denial of the application. The bases for the ANC's recommendation are summarized as follows:

- a. The proposed use will create deleterious external effects such as noise; traffic, parking and loading congestion; odors; and increased pedestrian and vehicle traffic in the alley.
- b. The issuance of a liquor license for the proposed use will have an adverse impact on the present character and future development of the neighborhood. The ANC was of the opinion that existing conditions in the area, including the selling and using of controlled substances, prostitution, loitering, and traffic congestion will be exacerbated by the proposed use.
- c. The ANC was further of the opinion that the operation of the proposed use would differ from

the prior restaurant use based on the proposed tenant's prior operation of a sexually oriented business in the area.

20. The ANC recommended that if the Board approved the application, such approval be conditioned to restrict the hours of operation to not exceed 10:00 P.M. since the majority of the expected business will occur during lunch time.

21. Representatives of the Logan Circle Citizens Association, the Franklin Square Association, the owner of the Thomas House at 1330 Massachusetts Avenue, N.W. and the owner of the apartment building at 1314 Massachusetts Avenue, N.W. as well as several nearby residents, testified at the public hearing in opposition to the application. In addition to the issues raised by the ANC, the opposition was based on the following:

- a. The subject site is inappropriate for restaurant use due to its close proximity to two residential buildings, 1314 and 1330 Massachusetts Avenue, N.W. The rear of 1314 Massachusetts Avenue N.W. is only twenty-five feet from the subject premises. 1330 Massachusetts Avenue, N.W. houses elderly residents, including a fifty-three bed nursing facility. The illumination of the sign and the noise generated by patrons arriving at and leaving the facility until 2:00 A.M. and live music on the premises would have an adverse impact on those nearby residents.
- b. The facility occupies 100% of its lot and the alley system is too small to absorb the traffic generated by the restaurant or to effectively handle truck deliveries to the subject site. The "stub" alley which has been designated as the loading area for the subject site is difficult for trucks to maneuver into. Trash pickup and loading in the alleys has caused blockage of the delivery areas of both 1330 and 1314 Massachusetts Avenue, N.W. during the past operation of the site as a restaurant.
- c. Commercial parking lots in the immediate area are likely to be developed in the future decreasing the availability of parking for patrons of the facility.
- d. There are a sufficient number of dining facilities in the area to meet neighborhood demand.
- e. Trash generated by the use has been kept in the "stub" alley area rather than inside the building as required by the Board's prior order. Such trash storage could create a public health hazard

and thus have a deleterious effect on the neighborhood.

- f. The proposed hours of operation, the illuminated sign, the proposed tenant's history of operating a sexually oriented business, and the alley location of the subject premises are conducive to illegal activities such as those mentioned by the ANC.
- g. The site is zoned HR/SP-2 which does not permit a restaurant use as a matter-of-right.

22. Based on the Board's prior three-year approval of the restaurant use, the owner invested \$300,000 in renovation costs to open the facility. The operation of the facility resulted in a loss of approximately \$200,000. Maintenance of the building, including mortgage, taxes and insurance, costs an additional \$7,000 per month.

23. The owner further testified that the structure is not appropriate for other than restaurant use without substantial renovations and would be unlikely to be suitable for other uses permitted in the SP District in any event. If the restaurant use is not continued, the owners would be forced to sell at a substantial loss a building that has no practical use.

24. The Board is required to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. In addressing the issues and concerns of the ANC, as well as the opposition, the Board finds as follows:

- a. The issuance of a liquor license for the subject premises is not within the jurisdiction of this Board and, therefore, cannot properly be considered as part of the application.
- b. The proposed use being considered by the Board is a restaurant, not sexually oriented. The lessee's prior business operations are not at issue in the subject application.
- c. The Board is persuaded by the testimony of the opposition that the past operation of the facility was not in compliance with the conditions imposed by BZA Order No. 13677. The use created an adverse impact on the immediate area due to blockage of the alley and loading areas of adjacent residential buildings during truck deliveries to the subject site and improper storage of trash containers outside of the building.
- d. The Board is further persuaded by the testimony of the opposition that the use, as proposed, would have an adverse impact on residents in the

immediate area due to the noise generated by live music and by patrons arriving or departing the subject premises up to 2:00 A.M., the close proximity of an illuminated sign to residential buildings, and an increase of pedestrian and vehicular traffic in the alley system adjacent the residential buildings.

25. The Board notes that its prior order limited approval of the special exception to use the subject premises for restaurant purposes to a period of three years to permit the Board to monitor the impact of the use on the surrounding area. The Board does not take lightly the testimony offered by the opposition which indicates that the conditions of the Board's prior approval designed to minimize impacts on the neighborhood were not complied with during the operation of the restaurant at the subject premises.

26. The Board further notes that, although it is regrettable that large amounts of money were expended in renovation and operating costs at the subject premises, financial hardship can not be considered as justification for zoning relief. The proposed use was a business venture that the applicant assumes.

27. On February 4, 1986, counsel for the applicant filed a motion to reopen the record and conduct a further hearing on limited issues based on a change in the proposed operator of the facility. The proposed limited issues were: a) that the new application will not have the adverse effects of the previous proposed use; b) that the persons who opposed the previous application are now in favor of the present one; and c) that the new proposed use will not adversely affect the present character of the neighborhood and will not have any deleterious effects on the surrounding area.

28. At its public meeting of March 5, 1986, the Board DENIED the motion by a vote of 4-0 (Charles R. Norris, Patricia N. Mathews, William F. McIntosh and Carrie L. Thornhill to deny; Douglas J. Patton not voting, not having heard the case). The Board was of the opinion that a change of operator would not affect the bases for its decision.

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 the special exception relief requires a showing through substantial evidence that the applicant has met the requirements of Paragraph 7106.11 of the Zoning Regulations and that the relief 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 pursuant to Sub-section 8207.2. The Board concludes that the applicant has not met the burden of proof.

The Board concludes that the proposed use would have an adverse impact on the immediate area in terms of pedestrian and vehicular traffic, lighting and noise as set forth in Finding of Fact No. 24. The Board further concludes that the special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will tend to affect adversely the use of neighboring property in accordance with said Regulations and Map. The Board further concludes that it has accorded the ANC the "great weight" to which it is entitled. It is therefore ORDERED that the application is DENIED.

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

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER:

JUN 26 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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