

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14378, of Donohoe Development Co., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3102.3) to use the rear portion of the subject lot for the retail sale of flowers, gifts and nursery items in an R-2/C-2-A District at premises 4200 Wisconsin Avenue, N.W., (Square 1786, Lot 821).

HEARING DATE: January 15, 1986
DECISION DATE: February 5, 1986

FINDINGS OF FACT:

1. The subject site is located behind the Tenley Mall at premises 4200 Wisconsin Avenue, N.W. at the northwest corner of the intersection of Wisconsin Avenue and Van Ness Street.

2. The subject property is a 9,600 square foot vacant area located at the intersection of 40th and Veazey Streets, N.W. The subject area is 14 percent of the total area of Lot 821 which contains in excess of 66,000 square feet.

3. The vacant area comprising the subject site is located in the R-2 zone. Lot 821 is split-zoned. The majority of the lot, including the portion on which Tenley Mall is located, is zoned C-3-A. All portions of the lot except the area under consideration are presently devoted to commercial uses pursuant to BZA approvals.

4. The applicant proposes to lease the vacant area to Johnson's Flower and Garden Center which intends to use the area for the retail sale of flowers and nursery items. The proposed use requires a variance from the use provisions of Sub-section 3102.3 of the Zoning Regulations.

5. Johnson's occupies approximately 7,700 square feet in the lower level of Tenley Mall.

6. Johnson's was originally a locally-oriented florist and nursery business at the subject site until the mid-1970's when it moved to the site of the former Best & Company store to make way for construction of Tenley Mall. When it was at its original location, there was nursery stock outdoors on the land behind the shop, extending over what is now partly

a surface parking area and partly a fenced-in grass plot between the parking lot and Veazey Street.

7. Between the Tenley Mall shop and the outdoor lot, the existing parking area will remain just as it is, although it will be designated for the exclusive use of Johnson's customers.

8. When it moved back to its original location, Johnson's substantially reduced the size of the operation located at the old Best & Company building, 4020 Wisconsin Avenue. This move will revert the character of the store to that of the early neighborhood-serving shop.

9. The store at Tenley Mall sells cut flowers, house plants and giftware, Christmas decorations and some garden supplies. There will also be a limited amount of nursery stock -- azaleas, boxwood, rhododendrons, etc. -- scaled to the typical urban yard in northwest D.C. The greenhouse, fresh vegetable sales and bulk-size garden supplies are no longer available.

10. Hours of business will be Monday through Saturday, 9:00 A.M. to 6:30 P.M. and Sundays, 9:00 A.M. to 5:30 P.M.

11. Approximately 40 full and part time staff are employed by Johnson's.

12. Three delivery trucks serve the site.

13. Johnson's proposes to use the existing vacant lot for agricultural nursery use including the display and sale of plants, shrubs, flowers, garden supplies, statuary, pumpkins, cut Christmas trees, pots, fertilizer and other nursery items. The area devoted to garden supplies will be approximately 2,000 to 2,500 square feet.

14. Customers will use the lot to examine the stock in its garden-like setting. Having made a selection and receiving a loading slip from a salesperson on the lot, customers would then enter the store in the Mall to pay for the merchandise and have the slip validated.

15. Some of the parking spaces that have been delineated nearest the gate in the brick wall will be reserved for customer pick-up of items selected on the outdoor lot. To pick-up items at the garden gate, customers would move their cars from the lot or Tenley Mall garage, using the existing circulation pattern, with entrance and exit on Van Ness Street. Cars leaving the lot will continue to exit out Van Ness via the driveway adjoining Tenley Mall. The florist trucks will use the same driveway for access to the loading docks as other commercial vehicles now serving the building.

16. The subject site will remain exclusively for pedestrians with the exception of a mechanical lifting machine which will occasionally be used on the site.

17. Johnson's customers will have exclusive use of the 23 parking spaces on the surface lot adjacent to the store on Van Ness Street and on weekends the opportunity to utilize the additional parking spaces located in the Tenley Mall garage.

18. The traffic consultant for the applicant testified that the parking demand for the subject area will be nominal and that the proposed use would have no adverse impact in terms of traffic operations or parking.

19. The lot would continue to be entirely closed off from Veazey Street. Under residential development, three new driveways would be opened onto Veazey at the intersection of 40th Street. While the traffic generated by the dwellings would be relatively limited, it would still be traffic that would not be there at all if the lot is used as Johnson's proposes.

20. Enclosing walls, fences and vegetation block virtually all view of the vacant lot from street level. Access is possible, only by foot, through a gate in the brick wall that separates the southern edge of the lot from the 23 space surface parking area off Van Ness Street. On the west, the subject area is separated from the adjoining residential property by a wooden fence. To the east is a concrete wall which is part of the parking structure for the five-story commercial building that fronts on Wisconsin Avenue immediately north of the Tenley Mall. A chain link fence and dense vegetation obscure the subject area at its northern edge from the corner where Veazey and 40th Streets meet and the houses on the north side of the intersection.

21. The applicant's proposal does not include any construction whatsoever. Rather, Johnson's proposal is to landscape the western and northern edges of the vacant lot inside the existing fences with Leyland Cypress, a dense, fast-growing evergreen that will be at its initial height of 8 feet, 2 feet taller than the fences. The applicant will plant 30 trees of this size around its perimeter. A pedestrian walkway leading from the existing gate in the lot's south wall, would make an oval loop around the lot. Some permanent plantings of deciduous trees would be interspersed for color with displays of smaller scale plant materials.

22. To a pedestrian at street level or a resident in one of the homes along Van Ness, Veazey or 40th Streets, N.W., the appearance of the subject lot would change very little if Johnson's were to use it. The upper two feet or so of the new perimeter planting would be visible above the

existing six foot fences. As the cypresses grow taller and fuller over time somewhat more of them will be seen. This will generally provide a more pleasant view from adjoining houses than the present setting.

23. From Van Ness Street at the south, the parking lot and boundary walls will continue to look as they do today. The view from nearby office buildings should be enhanced considerably by the added color of seasonal plant materials and replacement of the weed clumps now on the lot with tidy landscape materials.

24. Night lighting would not be introduced on the subject lot under the applicant's proposal because the florist/nursery hours of business would not require it.

25. Johnson's security interests mandate that the gate to the lot be locked whenever the store itself is closed.

26. There will be no intrusive illuminated signs marking the lot's location.

27. Noises emanating from the subject lot, would be no greater at night than they are now with the lot empty. The sound of voices and movement of people are to be expected during normal business hours, as well as the occasional sound of equipment used in placing the garden supplies and plants on the lot. No noises would likely rise above the general level of background noise prevalent in the neighborhood today.

28. The site is affected by a number of unique conditions. It is an isolated part of an L-shaped parcel with split zoning.

29. The site is also uniquely affected by a District of Columbia storm sewer easement which traverses the site and impedes matter-of-right R-2 development of the land since it creates a situation where only two R-2 units could be developed on the site instead of three. Taken into consideration the additional need to achieve maximum distance from the driveway and ramp to the garage for the office building at 4230 Wisconsin Avenue on the east and the need to achieve a view north of something other than PEPCO and C&P buildings, the construction of only one dwelling would be the only reasonable residential use of this 9,600 square foot site.

30. A major catch basin and a fire hydrant impedes access from 40th Street to the site. If it were to be developed for R-2 purposes these utilities would have to be relocated at substantial cost.

31. The subject area provides a buffer from the C-3-A used property and surrounding single family development.

The site is not well located for residential use due to its proximity to major commercial structures and uses.

32. The applicant has a long term lease on the subject site which runs until the year 2031. During its term the ground lessor has the ability to require the lessee to purchase the residential property at issue at a price which in effect takes into consideration the adjoining C-3-A zoning and results is a land value which is totally unreasonable for residential use.

33. On behalf of the applicant, a Real Estate Appraiser reviewed all uses permitted as a matter-of-right on the site and stated why each of those uses is not appropriate given the conditions affecting this site.

34. By memorandum dated January 8, 1986. The Office of Planning (OP) recommended approval with conditions of the subject application. The OP reported that the property in question is unique in that it is located in a manner so that it forms a buffer between residential and commercial development, and is affected by an unusual combination of other factors. These include the split-zoning of the lot; the fact that the subject parcel is an unusually configured portion of a larger lot; and that the immediate proximity of intensive commercial use limits the desirability of the property for single-family residential use. The existence of the long-term ground lease and existing storm sewer also appear to be constraints on the use of the property. The OP further reported that the property is zoned R-2 residential, but if it were to be developed as such, OP reported that the resulting development would be less than optimum because of the environment generated by the adjacent commercial activity. On the other hand, if it is developed with normal commercial development, it is likely to impact the existing residential development adversely. It should be noted that the property is located in an economically viable neighborhood and it is not generating any revenues. The applicant is proposing a use with restrictions that in the opinion of the OP, respect the critical circumstances of the subject property and also put it to an economic use. The applicant has submitted on record a memorandum enumerating certain conditions regarding use, landscaping, hours of operation, etc., based upon its participation in the ANC 3E meetings which the OP endorses. The Board concurs with the reasoning and recommendation of the OP report.

35. By letter dated January 7, 1986, Advisory Neighborhood Commission 3E reported its support for the subject application provided the following conditions are met:

- A. Access from Van Ness Street parking lot only (the parking lot is presently in use and is

located at the rear of 4200 Wisconsin Avenue, N.W.).

- B. Business to operate during daylight hours only.
- C. No loudspeaker/paging system outside.
- D. Johnson's to provide adequate rodent control.
- E. If any lighting, it shall be for security purposes only. Light poles not to exceed 10 feet in height.
- F. Large trees in northwest corner to remain with the exception of a black walnut tree.
- G. Variance applies only to Johnson's (i.e., agricultural nursery including mulch, fertilizer and other miscellaneous garden supplies).
- H. No buildings to be constructed on the lot.
- I. Johnson's managers have the authorization to extend to its customers free parking longer than one-half (1/2) hour.
- J. Gate in fence on the Veazey Street side to remain locked or fencing to be replaced. If replaced, new fencing in same location as old.
- K. Lot will be landscaped and kept tidy.

The ANC further recommended that the grant of the application be conditioned on the applicant's pledge that the information contained in condition I regarding free parking would be prominently posted on the Johnson premises. At the public hearing, the ANC Commissioner testified that the applicant be required to provide additional free parking time to patrons. The Board finds that proposed conditions one through 11 are reasonable and that the Donohoe Development Company, in its letter to the Board dated December 12, 1985, agreed to such conditions. The Board will below so condition the grant of the application.

36. Numerous owners of property within the immediate vicinity of the subject site submitted letters to the record and/or testified at the public hearing in favor of the subject application. They stated that the lot would not make a good residential site for a house for reasoning stated in the above findings of facts. The proposed use would be an attractive addition to the neighborhood. The vacant lot is currently used by apparent drunks and drug

user. A more intense commercial use would be an intrusion. The proposed use would be most suitable to the site. Three neighbors expressed their support subject to the eleven conditions stipulated by the ANC. Another neighbor stated that while she had no objection to the proposed use she was totally opposed to any permanent changes in the zoning. The Board concurs with the neighbors reasoning in support of the application and finds that the zoning of the site will not be changed by the grant of the application.

37. A property owner in the subject area objected to the proposed use due to his belief that such use would create adverse traffic impacts. In addition he was of the opinion that the lot serves the community as a little park that acts as a buffer between the residential area and the commercial area of Wisconsin Avenue. The Board finds that there is already in existence a heavy traffic flow and that an increase, if any, by the proposed use would be negligible. In addition, the applicant would be providing limited parking facilities. The Board also finds that regardless of the use of the site as a park by residents, the owner still has the right to control the use of his property.

CONCLUSIONS OF LAW AND OPINION:

Based upon the record and the findings of fact, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be reasonably used for purposes for which it is zoned. The Board further must find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has met its burden of proof in demonstrating an undue hardship inherent in the property. The site is not reasonably suitable for any use for which it is zoned.

The split zoning of the site and the use of all of the site except this 9600 square foot parcel constitutes a unique situation. The majority of Lot 821 is zoned C-3-A with all the R-2 portion except the subject area being devoted to commercial use. This situation given the lot's unusual configuration constitute an exceptional situation. Also, the existing sewer line which effectively reduces this 9600 square foot area to only 2 building lots although the land area is sufficient for 3 building lots makes use under the existing R-2 zoning infeasible.

The Board further finds that the relief requested can be granted without substantial detriment to the public good

without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that the proposed use will serve as an appropriate buffer between the residential use of the neighborhood and the commercial development along Wisconsin Avenue. The Board notes the strong community support for the application.

The Board further 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 subject premises shall be limited to agricultural nursery use including the display and sale of plants, shrubs, flowers, garden supplies, statuary, pumpkins, cut Christmas trees, pots, fertilizer and other nursery items.
2. Access to the site shall be via the Van Ness Street parking lot only.
3. The hours of business on the subject site shall be limited to daylight hours only.
4. There shall be no loudspeaker/paging system on the subject premises.
5. Lighting shall be provided for security purposes only. Light poles shall not exceed ten feet in height.
6. The applicant shall provide services to control rodents on the subject site.
7. The large trees located in the northwest corner of the site shall be retained with the exception of one black walnut tree.
8. No buildings shall be constructed on the subject site.
9. The gate in the fence along the Veazey Street side of the property shall remain locked at all times or shall be replaced with fencing. If replaced, the new fencing shall be erected in the same location as the existing fencing and gate.
10. The lot shall be kept free of refuse and debris. Landscaping shall be maintained in a healthy growing condition.

11. Free parking for customers may be extended to longer than one-half hour.

VOTE: 5-0 (William F. McIntosh, Charles R. Norris and Paula Jewell to grant; Lindsley Williams and Carrie L. Thornhill to grant by proxy).

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: 30 MAY 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."

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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