

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14404 of Steven L. and Mary Ellen Cymrot, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a non-conforming use from a warehouse for furniture, all floors, to a general warehouse and furniture leasing business including showroom and office, all floors, and for a variance from the prohibition against the proposed use not being a neighborhood facility (Paragraph 7106.114) in an R-4 District at premises 709-715 12th Street, S.E. (including 718-720 11th Street, S.E. (Square 995, lots 34, 830, 834, and 835).

HEARING DATE: March 19, 1986

DECISION DATE: March 19, 1986. (Bench Decision)

FINDINGS OF FACT:

1. The property is located in square 995 which is bounded by G Street to the north and I Street to the south, 11th Street to the west and 12th Street to the east. It is known as premises 709-715 12th Street, S.E. including 718-720 11th Street, S.E. The site is zoned R-4. The site is located in the Capital Hill Historic District.

2. This site consists of a building occupying completely lot 835. It is connected at the second floor by a covered bridge through which heating and sprinkler systems are conveyed to a building in the rear, located on lot 834. The bridge spans a thirty foot wide public alley which extends from I Street, S.E. It is from this alley that rear parking and loading access to the site is gained.

3. This site also contains two lots (lots 830 and 34) which are now vacant, fronting 11th Street, S.E. and extending to the public alley. These two lots are directly south of the rear building. The relief sought in this case will not affect the status of these two lots.

4. Adjacent to the north of this property 709-715 12th Street, S.E. are a PEPCO substation and row dwellings. Across 12th Street at the corner of G Street to the northeast is a Salvation Army Building. Directly across 12th Street to the east is the Potomac Gardens Apartments with 352 units. To the south, an apartment house abuts the

subject property. Across 11th Street to the west is John Tyler Public School. The R-4 District extends from the south, west, north, and northeast of the site. An R-5-B District is located directly to the east across 12th Street from the property.

5. Previously, the subject property was under the ownership and control of Miller Furniture Company. The Board of Zoning Adjustment granted it permission to use the premises under Appeal No. 2748, dated July 24, 1950. Business conducted by the Miller Furniture Company involved a substantial amount of employees engaged primarily in shipping and receiving. The company occasionally held warehouse sales.

6. Steven L. and Mary Ellen Cymrot are the present owners and users of the subject property. The most recent certificate of occupancy issued on the site is No. B-142259, dated June 4, 1985, for a furniture warehouse. The complex contains approximately 38,000 square feet of space. A portion, approximately 4,000 square feet, has been rented to local businesses whose use is consistent with the current certificate of occupancy. With the decision of the Miller Company to close its Capitol Hill business, there are no furniture companies on Capitol Hill that would provide warehouse space to the merchants in the neighborhood.

7. Antique and Contemporary Leasing, the proposed lessee, intends to develop the property into a small, high quality furniture leasing business. The company does not plan to occupy initially the total space. They intend to rent the additional space for warehouse use. The company would limit its business to the leasing of furniture such as antique pieces and oriental rugs and would not engage in retail sales.

8. Applications seek a special exception under Paragraph 7106.11 to change a non-conforming use from a furniture warehouse, all levels, to a general warehouse and furniture leasing business, including showroom and office, all levels. Furthermore, in order to meet the special exception requirements, applicants ask for a variance from the requirement that the proposed use constitutes a neighborhood facility under Paragraph 7106.114.

9. The existing use and the proposed use are first permitted as a matter-of-right in a C-2-A District.

10. At the north end of the public alley, the only other parties with vehicle access are the residents of three, new two-unit townhouses which have their own parking area. Immediately to the south of the property are two small apartment buildings with their own parking spaces in the rear.

11. The complex consists of a masonry structure of two parts connect via a second story bridge over the public alley. This structure is considered a single building under the Zoning Regulations. The portion of the building fronting 12th Street is a large rectangular structure occupying that full lot. This portion is four stories high including a cellar and a mezzanine level at the fourth floor. It has tall ceilings, a myriad of columns, vast central floor areas, a very small perimeter facing a street or alley, and therefore relatively few and widely spaced windows as compared to the large floor area.

12. The loading dock area is forty feet wide and has a space for one loading berth, three parking spaces and the loading area behind it. It is totally internal to the building, fronting on the alley.

13. Alternative use of the building for residence could make use of only twenty-two percent of the entire first floor. Because of the perimeter conditions, there is only a strip of approximately 110 feet that is windowed at the first floor level. Therefore, only a strip 110 feet long by twenty-five feet deep could be developed into residential uses under the required light and ventilation standards of the building code.

14. Development of the property into commercial use would require costly alterations of the front facade which might not meet the standards of the Historic Preservation Review Board. Retail use of the building would require as many as 154 parking spaces (medical clinic use requiring as many as 118 parking spaces) and three loading berths in order to make practical use of the whole structure.

15. The building is in very poor condition. The stairs, the elevator, and the floor to floor fire railings do not at present comply with the District of Columbia Building Codes. Furthermore, plumbing and mechanical renovation for residential, retail, or medical clinic use would be extremely costly.

16. The intended clientele of Antique and Contemporary Leasing are people who are coming into the District temporarily, who leave a permanent residence elsewhere, and who leave their furniture behind. In the past the majority of the clientele have arrived at previous sites by taxi or have been driven by a friend or realtor.

17. The warehouse has 110 feet on 12th Street that is available for parking. Furthermore, the John Tyler School provides space for parking. Even when school is in session, parking is allowed along the school yard but not adjacent to the school building.

18. The proposed lessee plans to maintain the hours of 9:00 a.m. to 5:30 p.m., Monday through Friday, and between four to six hours on Saturday depending on business.

19. Antique and Contemporary Leasing employs three permanent workers, one full-time and two part-time.

20. The business deliveries tend to be more seasonal following the patterns of the furniture market. A normal delivery might be as small as two pieces of furniture, rarely exceeding six to eight pieces. The company is not large enough to have its own delivery truck. Furniture delivered to clients are handled through commercial movers, using mainly step vans. A typical lease will require a half an hour to an hour of loading time.

21. By memorandum dated March 12, 1986, the Office of Planning (OP) reported its approval of the proposed development, recommending the grant of the special exception and the variance from the neighborhood facility requirement.

22. The Office of Planning provided the following comments in support of granting the special exception. The Office of Planning was of the opinion that the proposed furniture leasing use of the subject site would not adversely affect the present character and future development of the area. The site has a history of light industrial/commercial use. The vacant warehouse presently is a constant source of visual blight to the community as well as a potential haven for vandalism and illegal activities. The proposed furniture leasing business is a low intensity use which once in operation should not be obtrusive to the neighboring properties. The furniture leasing company will not create any deleterious external effects, from noise, traffic, parking, loading, illumination, vibration, odor, design and siting effect.

- a. The existing warehouse is in the Capitol Hill Historic District and as such is required to meet its exterior design standards and recommendations.
- b. Parking/Loading. The proposed furniture leasing business is required to provide three on-site parking spaces and one loading dock. The applicant's site plan shows the provision for meeting these requirements. OP noted that the subject Square is bisected by a fifteen foot wide public alley which serves a center square alley running north/south that is thirty feet wide. It is from this alley that rear parking and loading access to the site is gained.
- c. Noise Vibration. Undue noise and vibration are

not expected to be deleterious by-products of the proposed use.

- d. Odor. No manufacturing or production will be associated with the proposed use. The proposed use is expected to be odor free.
- e. Illumination. OP has not reviewed a lighting plan for the warehouse. Illumination of the premises is expected for security concerns, and should be considered a desirable factor of the site's revitalization. The site is presently illuminated by city street and alley lights.

23. The Office of Planning further commented that the proposed furniture leasing business will not rely on neighborhood patronage to a degree that its service would be classified as a neighborhood facility. Thus, the Office of Planning recommended that the Board grants the variance from the neighborhood facility requirement. The OP noted the large size of the premises, its light industrial use history, and its warehouse construction as unique conditions and situations of this property which could be considered as sufficient basis for meeting the burden of hardship in the variance test. The interior location of the structure in the Square, its age (1916 construction), and location within a historic district suggest that the property has unique characteristics which also limits its marketability for R-4 uses.

24. In a letter dated March 12, 1986, Advisory Neighborhood Commission (ANC 6B) reported its support for the special exception and variance from the neighborhood facility requirement. The commission noted a concern about the proposed use bring considered a neighborhood facility. It reasoned that if providing general warehouse space for Capitol Hill merchants and businesses satisfies the zoning argument for a neighborhood facility, what would constitute the need for the requested variance. Therefore, the commission supports the variance relief from the neighborhood facility test rather than allowing the proposed use to be considered a neighborhood facility.

25. There were several other letters of support for the renovation and the proposed use of the property filed by the Capitol Hill Restoration Society and property owners within the area of the site. The support was based on the grounds that the existing visual blight would be eliminated and storage facilities for other merchants in the area would be available.

26. There was no opposition of record to the proposed use.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicants are seeking a special exception and a variance. In order to be granted such special exception relief, the applicants 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. As to the variance relief, the applicants must demonstrate that the property is affected by an exceptional situation or condition inherent in the property, that the strict application of the Zoning Regulations would result in an undue hardship upon the owner, and that such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the Zoning Regulations and map.

Paragraph 7106.11 of the Zoning Regulations authorized the Board to approve a change of a non-conforming use to a use which is first permitted as a matter-of-right in the most restrictive district in which the existing non-conforming 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 applicants have met their burden of proof for special exception relief for a change of non-conforming use pursuant to Paragraph 7106.11 and subparagraph 7106.111 and 7106.112. Specifically, the Board notes that the proposed use will not adversely affect the present character and future development of the neighborhood. The use of the property as a general warehouse and high quality furniture leasing business will not create any adverse exterior noise, illumination, vibration, odor, design, or siting effects. In comparison, the proposed use will be less obtrusive than the prior use by Miller Furniture Company. Whereas large deliveries were a normal, every day occurrence at Miller, Antique and Contemporary Leasing expects smaller, more seasonal deliveries. Furthermore, Antique will never engage in retail sales. Lastly, the site of the proposed use is located in a historic district; thus, any renovation must conform to the exterior standards required for the harmony of the neighborhood.

As to the variance relief, the Board concludes that the subject property is affected by an exceptional condition or situation and that the strict application of the neighborhood facility requirement under Sub-paragraph 7106.114 would result in an undue hardship upon the owners. First, the development of this generically warehouse structure with its vast floor areas, tall ceilings, wide column structures, loading area, and enormous elevator into a residential unit would be not only costly but also wasteful. The price of plumbing and mechanical renovation for residential use would be prohibitive. Furthermore, because of window structure, Building Code requirements concerning lighting and ventilation would allow development of a maximum of twenty-two percent of the premises. Second, development of the property into neighborhood facility such as a small retail center or a medical clinic would cause a greater adverse effect than the proposed use. Not only would an increased volume of parking and traffic be generated but also a more extensive signage and illumination would be required to meet the demands of retail use. On the other hand, warehouse use provides the least number of cars and people per existing square feet of space.

Primarily, the extent of the furniture leasing business would be limited, since the owner caters to a specific clientele: people seeking high quality furniture for temporary residence in the Washington Area. Indeed, the employment of one full-time and two part-time workers suggests the size limitations of the operation. Given the practical difficulty or hardship on the property owner of developing the site in conformance with Sub-paragraph 7106.114, the variance relief can be granted without substantially impairing the intent, purpose, or integrity of the Zoning Regulations.

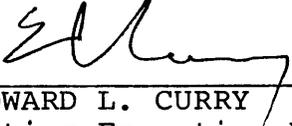
Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. The number of employees on the entire site shall not exceed twelve.
2. The hours of operation shall not exceed from 7:00 A.M. to 6:00 P.M. Monday through Saturday.
3. The use of the property will be limited to warehouse storage and a furniture leasing operation.
4. There will be no retail sales from the subject site.
5. Air conditioning units shall not be located along the southern edge of the east building.
6. All tenants shall have access to loading and parking area.

VOTE: 5-0 (Lindsley Williams, Charles R. Norris, Paula L. Jewell, William F. McIntosh, 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: AUG 1 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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