

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14495 of CEW Properties, Inc., pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 5102.48 to allow an addition to an existing fast food restaurant and a variance from the prohibition against any part of the lot on which the use is located being within twenty-five feet of a residence district (Paragraph 5102.48 (a) in a C-2- A District at premises 2300 - 4th Street, N.E., (Square 3558, Lot 107).

HEARING DATE: November 12, 1986

DECISION DATE: November 12, 1986 (Bench Decision)

FINDING OF FACT:

1. The site, known as premises 2300 - 4th Street N.E., is located at the northwest corner of a intersection of 4th and Adams Streets. The site is in a C-2-A District.

2. The lot is rectangular in shape with a frontage of 85 feet along 4th Street and a frontage of 70.78 feet along Adams Street. The lot consists of 6,016 square feet. The lot is improved with a one-story structure containing a gross building area of 1,870 square feet. The building is occupied by a Kentucky Fried Chicken restaurant which fronts on 4th Street, N.E., but has its entrance on Adams Street.

3. A parking area is located at the rear of the building and contains three off-street parking spaces. The entrance lane to the parking area is from Adams St. and forms an L shaped service lane that exits onto 47th St. The trash and loading facilities for the restaurant are located in the northwest corner of the parking lot. A five-foot wide pedestrian alley and a one-story commercial building abut the lot on the northern side.

4. The area surrounding the site is a mixture of medium to high-density commercial and medium-density residential uses. The property to the east of the subject site is zoned C-2-A and is occupied by neighborhood service establishments such as a delicatessen, a barber shop, a beauty salon, a restaurant and a gasoline service station. Directly across 4th Street, is the recently-completed Rhode Island Avenue

Shopping Center, which is occupied by large retail stores such as Safeway, Zayres, People's Drug Store and smaller retail and service facilities. To the south and east of the subject site is a C-M-2 district which contains light manufacturing uses such as a construction company storage yard, a wrought iron manufacturing facility and an automobile repair garage. To the west, is an R-4 residential district which consists of row-type single and multi-family dwellings. The building which immediately abuts the site to the west is a multi-family dwelling.

5. Pursuant to Subsection 8207.2 and Paragraph 8207.11 of the Zoning Regulations the applicant is seeking a special exception under Paragraph 5102.48 to allow an addition to the existing fast food restaurant and a variance from the prohibition against any part of the lot on which the use is located, being within 25 feet of a residence district (Paragraph 5102.48(a)).

6. KFC National Management Company ("KFC"), the owner of the restaurant, proposes to structurally and cosmetically alter the existing building on the site which is 17 years old and is in need of major renovation and modernization. The proposed renovation includes a small expansion of approximately 400 square feet of building area, at the same height as the existing building. The enlargement will infill an open court area on the western portion of the restaurant and create a rectangularly shaped building. With the addition, the building will consist of a total of 2,270 square feet, which is less than one-half of the lot size and is substantially below the maximum permitted floor area ratio of 1.5. The additional space will be used to create a seating area from approximately 32 patrons of the restaurant.

7. The exterior of the building will be completely replastered and repainted. The existing roof will be replaced with a pre-finished metal mansard-type roof. The existing cupola will be replaced with a new cupola. A terra cotta color has been selected for the roof. A new neon sign will replace the existing sign on the 4th Street side of the property. The windows in the building will be replaced with new fixed glass windows.

8. KFC proposes to open a new entrance to the restaurant on the 4th Street side of the building. This will encourage foot traffic to enter from 4th Street, which is more commercial in character and uses than Adams Street. KFC will maintain the current entrance on Adams Street, but will move it to the west in order to align it with the expanded area of the building.

9. KFC also proposes to realign the vehicular entrance to the building. The driveway in its current

configuration is diagonally positioned and slants to the west. This driveway will be narrowed and moved to the east of its current location. Subject to a grant of authority from the District of Columbia Department of Public Works ("DPW") and in connection with the driveway realignment, KFC will resurface the sidewalk area on the Adams Street side of the building.

10. The existing parking area will be reconfigured and repaved. KFC proposes to make the new spaces diagonal and compact, thereby creating enough space for a car to back-out of the parking space and exit the lot onto the 4th Street. This will result in the provision of five compact parking spaces.

11. KFC proposes to build a three-sided brick enclosure around the trash dumpster, which is located in the rear of the building. The enclosure will be six feet in height or equal to the height of the dumpster. There will be an opaque gate at the entrance of the enclosure and new concrete platform will be installed.

12. KFC proposes to landscape the site in order to enhance its appearance and provide an attractive buffer between the restaurant and the adjacent residential property. KFC will plant a row of hedges, or in the alternative, erect a wooden fence along the length of the western boundary of the lot. Subject to the approval by the Public Space Committee, KFC also proposes to install tree boxes or shrubbery in the public space along 4th Street and along Adams Street, N.E.

13. KFC will maintain the restaurant in a neat and orderly fashion following the completion of the proposed renovation. Garbage, debris and litter will be picked up on a scheduled basis during the hours of operation of the restaurant. All landscaping will be maintained in a healthy growing condition.

14. The hours of operation of the restaurant will remain the same following the renovation, i.e., from 10:00 A.M. to 12:A.M. on Sunday through Thursday, and 10:00 A.M. to 1:00 A.M. on Friday and Saturday. Also KFC proposes to maintain its current staff of 20 employees at the site. Almost all of these employees are residents of the District of Columbia and residents of the immediate neighborhood.

15. The restaurant was in existence prior to the adoption by the Zoning Commission of the new "fast food" Zoning Regulation.

16. The restaurant cannot be moved to a location more than 25 feet away from the residence district as there is not sufficient space on the site. A street or alley cannot

be created between the fast food use and the residence district.

17. The proposed addition is not intended to increase the intensity of the use, but will permit the continued and improved provision of service.

18. The applicant's architect, Mr. Brian J. Dorsey, testified that the proposed renovation would benefit KFC by permitting structural, visual and efficiency improvements to a facility that has consumed its useful life. He also testified that the expansion would benefit the community not only by providing a better, cleaner facility, but by providing eat-in facilities. He further testified that the proposed design would enhance and complement the surrounding uses in the neighborhood. He indicated that the applicant was not required to comply with Subsection 5102.48(b), since no part of the lot line of the property abuts an alley containing a zone boundary for a residence district. He indicated that the applicant would provide a row of shrubbery or a wooden fence along the western boundary of the property in order to buffer it from the abutting residence. The Board so finds.

19. The applicant's expert traffic witness, Mr. Stephen Peterson, testified that the critical intersections in the area surrounding the subject property operate at acceptable levels of service. He further testified that traffic entering and exiting the subject site will flow smoothly and efficiently with the proposed modifications.

20. The traffic witness was also of the opinion that the five parking spaces that are being provided, along with available on-street parking, will be sufficient to accommodate the number of patrons driving to the site and that deliveries could be made and trash collected, without obstructing public rights of way, parking spaces, aisles or driveways on the site. The Board so finds.

21. The DPW submitted a report dated November 11, 1986, in support of the application. The DPW recommended that the applicant provide a minimum of eight parking spaces and construct a brick wall between its site and the adjacent residential district. The Board does not concur with these recommendations for the following reasons:

- (a) The applicant is not required to provide eight off-street parking spaces. The DPW correctly indicated that Sub-section 7201.3 of the Regulations does not require the applicant to provide any additional parking spaces since the proposed addition is less than 25% of the total square footage of the existing building. The DPW incorrectly stated,

however, that Sub-section 7201.4 of the Regulations requires the applicant to maintain 6 parking spaces on the site. Sub-section 7201.4 requires that the existing number of parking space not be reduced if that number of spaces is less than or equal to the number now required under the new fast-food Regulations. The Regulations now require four spaces. The applicant, by providing 5 spaces, meets the requirements.

- (b) The applicant is not required to provide a six-foot brick wall between its property and the adjacent residential district. Paragraph 5102.48(b) requires that a brick wall be constructed, if any lot line of the property abuts an alley containing a zone boundary for a residence district. The only alley which the subject property abuts, contains a zone boundary line for a commercial and not a residence district. Hence, the applicant is not required to provide a brick wall. The Board finds that either a row of hedges, or a wooden fence, as the applicant has proposed, will serve the purposes of providing a buffer between the restaurant and the adjoining residence.

22. The single member Advisory Neighborhood Commissioner of ANC-5C in whose district the subject property is located, indicated support for the application in a letter dated November 5, 1986. A meeting held on November 5, 1986, at which the applicant and members of ANC-5C were present. Those present at the meeting voted to support the application for the following reasons:

- a. The expansion and renovation of the building will substantially improve the appearance and desirability of the restaurant;
- b. The existing facility has become outdated and is in need of restoration;
- c. The existing restaurant is in need of additional eat-in facilities;
- d. The property will not become objectionable to neighboring properties because of noise, sounds, odors, lights or hours of operations;
- e. The renovation of the property will not cause any detriment to the public good;

- f. There will be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles or driveways on the site; and
- g. The use of the property is in harmony with the Zoning Regulations and Maps and will not tend to adversely effect the use of neighboring property.

The Board concurs with the reasoning and recommendation of the SMD Commissioner's report.

23. There was no opposition to the application at the public hearing or in the record. A neighboring resident did appear to voice concern about the potential adverse effects of traffic and litter associated with the restaurant. He was in favor of the plans however, and expressed hope that the appearance and operation of the restaurant would be improved.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the requirements of Paragraph 5102.48 and Sub-section 8207.2 of the Zoning Regulations.

The Board further concludes that the applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional conditions of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has met the burden of proof.

The Board has the authority under Paragraph 5102.48 to approve the expansion of a fast food restaurant provided that:

- a. No part of lot on which the use is located is within 25 feet of a residence district, unless separate therefrom by a street or alley;
- b. If any lot line of the lot abuts an alley

trash will be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles or driveways on the site.

The Board concludes that there are practical difficulties unique to the subject property. The structure was built prior to the amendment of the current fast food Regulations. The strict application of Sub-paragraph 5102.48(a) of the Regulations regarding the prohibition against any part of a lot being located within 25 feet of a residence district would pose a practical difficulty for the applicant because KFC can neither expand the distance, nor create a street or alley, between the adjoining residence district and its property. KFC cannot meet the 25 foot requirements, even if it did not propose to enlarge its building. The subject property is unique and exceptional because it was built as a conforming use in 1969. With the adoption of the new Regulations, the building has become a nonconforming structure.

Further, the Board concludes that the requested area variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Plan. The renovation proposed by the applicant is not substantial and the renovation will have no adverse impact on the adjoining residence district. It will not increase the intensity of the use but will permit the continued and improved provision of service to the community.

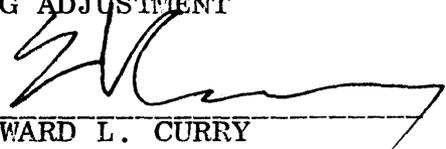
The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and it will not affect adversely the use of neighboring property.

Accordingly, it is hereby ORDERED that the application is GRANTED.

VOTE: 4-0 (Charles Norris, William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant)

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

ATTESTED BY:

  
EDWARD L. CURRY

Acting Executive Director

FEB 6 1987

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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