

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14500 of Vasilis N. and Rigo V. Peros, 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 restaurant/deli seating 15 persons, first floor and basement to restaurant/deli seating 35 persons, first floor and basement, in a R-4 District at premises 320 D Street, N.E., (Square 780, Lot 79).

HEARING DATES: December 10, 1986 and February 11, 1987
DECISION DATES: March 4, 1987, October 4, and December 6, 1989

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 3-0 (William F. McIntosh, Maybelle Taylor Bennett, and Paula L. Jewell to grant; Charles R. Norris and Carrie L. Thornhill not present, not voting).

FINAL DATE OF ORDERS: April 3, 1987 and October 27, 1989

ORDER

The Board granted the application by its Order dated April 3, 1987 subject to seven conditions. Condition No. 1 of the Order reads as follows:

"The operation of the facility shall be limited to the lessee, Olympic Pizza, Inc.,"

On July 27, 1989, counsel for the applicants filed a motion requesting a waiver of the Board's filing requirements to accept a motion for a modification to the conditions of the Order dated April 3, 1987 more than six months after the date of the Board's Order. Counsel for the applicant argued that the lessee and lessee's counsel processed the application with the applicant's permission. However, the applicants were not served with a copy of the final order and were not aware of the conditions imposed by the Board.

The premises were occupied by Olympic Pizza, Inc. in compliance with the conditions of the Order dated April 3, 1987 until March of 1989 when the business failed and was closed. Upon vacation of the premises by Olympic Pizza, Inc., the applicants renovated the premises for occupancy by

a new tenant. Upon application for a new Certificate of Occupancy, the prospective tenant was advised of the condition of the Board's Order limiting the operation of the facility to the prior lessee and so advised the applicants.

At its public meeting of October 4, 1989, the Board waived its Rules to accept the motion into the record. The applicants requested that the Board delete Condition No. 1 of its Order dated April 3, 1987 in order to permit leasing of the subject premises to new tenants. The operation of the facility would continue to comply with the remaining conditions of the Board's Order and would allow only the same limited use of the premises by any other tenants legally occupying the building. There were no responses to the motion for modification. The Board granted the motion and deleted Condition No. 1 by its Order dated October 27, 1989.

By letter dated November 3, 1989, Advisory Neighborhood Commission (ANC) 6A requested the Board to reconsider its Order dated October 27, 1989. The ANC alleged that it was not notified of the applicant's petition to modify the subject Order as required by 11 DCMR 3335.4. The ANC further argued that the Board's decision did not take into consideration the issues and concerns of the ANC and the proposed conditions agreed to by the ANC and the applicant in BZA Application No. 15171.

By letter dated November 5, 1989, Becky Fredriksson and Henrietta Braunstein, parties in opposition to the application, filed a request for reconsideration of the Board's decision dated October 27, 1989 to delete Condition No. 1 of the original order. The parties in opposition indicated that they were not served with copies of the applicants' request for modification as required by 11 DCMR 3332.3 and were, therefore, unable to respond to the applicants' request in a timely manner.

Upon review of the record in the application, the Board notes that the applicants' request to modify the order indicates that a copy of the request was served on the ANC. However, there is no indication that other parties to the original application were properly served.

At its public meeting of December 6, 1989, the Board VACATED its Order dated October 27, 1989 and reopened the record to receive oppositions' responses to the applicants' motions to waive the Board's filing requirement and modify Condition No. 1 of the Board's Order dated April 3, 1987.

By letter dated December 28, 1989, the Chairperson of the ANC 6A Committee on Zoning and Licenses responded to the applicants' motions. The issues raised include the following:

1. Inadequate notice to parties to the application.
2. The special exception approved by the BZA lapsed upon vacation of the property by Olympic Pizza, Inc.
3. Request for modification filed in excess of the six month period provided for by the Board's Rules.
4. The granting of the requested modification of the order will result in a permanent waiver of the Zoning Regulations.
5. Order should be modified to include the following conditions:
 - a. Limit the special exception to a period of four years or to the tenancy of the tenant/restaurateur who is scheduled to begin operations in the restaurant if the application is approved, whichever limit is reached first;
 - b. Stipulate that the special exception will expire upon the third notice of violation of appropriate municipal agencies that inspect restaurants for cleanliness and other regulations;
 - c. Require the property owner or tenant/restaurateur to maintain the ventilation system so that no other sound is created other than the sound of rushing air.

By letter dated December 27, 1989, Becky Fredriksson supported the position of the ANC to "limit" the first condition of the Board's Order dated April 3, 1987 in order to protect the adjacent residents and to encourage the applicants to maintain and operate the facility in compliance with all applicable DC codes and regulations.

The motion for modification of the Order was scheduled for decision at the Board's public meeting of January 3, 1990. The original application was heard and decided by a quorum of three Board members. At the public meeting of January 3, 1990, only two Board members were present who had participated in the hearing and decision of the original application. The Board deferred a decision on the application until its public meeting of February 7, 1990. The Board directed staff to provide the remaining two Board members with a copy of the complete record in the application so that they could participate in the decision in the application pursuant to 11 DCMR 3306.11, which provides that a Board member having read the transcript and

reviewed the record may participate and may vote at the decision meeting even though that member may not have attended any or all of the prior meetings or hearings on the application.

Upon consideration of the motions, responses thereto, and its final order, the Board concludes that the proposed modification of order is minor in nature. Although it is well established in zoning law that boards of adjustment or appeals have the power to impose reasonable conditions upon its approval to mitigate the effect on neighboring properties or the community at large, the Board concludes that the elimination of Condition No. 1 of its Order dated April 3, 1987 is in keeping with the D.C. Court of Appeals decision in National Black Child Development Institute, Inc. vs. the Board of Zoning Adjustment, dated November 8, 1984. In that decision the Court held that because no valid public policy was served by confining a variance to an individual entity, any personal condition imposed by the Board was unlawful per se. The proposed modification of the order would not change the capacity, type of use, and area occupied by the facility. The remaining generic conditions of the Board's order would remain in effect. Failure of the applicant to comply with the conditions of the Board's order or any other municipal code or licensing requirements would be subject to enforcement through the proper authorities. The Board notes that the proposed modification does not preclude or invalidate any agreements reached between the applicant and other parties relative to the operation of the facility. However, any such agreement would not be within the scope of the Board's jurisdiction in any event. No additional zoning relief is required.

Accordingly it is hereby ORDERED that the motion for modification of the order is GRANTED and Condition No. 1 of the Board's Order dated April 3, 1987 is hereby deleted. In all other respects the previous Order of the Board shall remain in full force and effect.

DECISION DATE: December 6, 1989, January 3, and
February 7, 1990

VOTE: Public Meeting of December 6, 1989 --
3-0 (Maybelle Taylor Bennett, William F. McIntosh, and Paula L. Jewell to VACATE the Order dated October 4, 1989; Charles R. Norris and Carrie L. Thornhill not voting, not having heard the case).

Public Meeting of February 7, 1990 --
4-0 (William F. McIntosh, Paula L. Jewell, Charles R. Norris and Carrie L. Thornhill to grant; Maybelle Taylor Bennett not present, not voting).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

MAY 31 1990

FINAL DATE OF ORDER: _____

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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.

14500order/BHS20

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14500

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated MAY 31 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Samuel S. Markovitz, Esquire
7826 Eastern Avenue, N.W.
Suite 402
Washington, D.C. 20012

Vasilis N. Peros
Rigo V. Peros
5710 Dennys Place
Alexandria, Virginia 22311

Becky Fredricksson
312 D Street, N.E.
Washington, D.C. 20002

Henrietta Braunstein
316 D Street, N.E.
Washington, D.C. 20002

Clarence Martin, Chairperson
Advisory Neighborhood Commission 6-A
Maury Elementary School
13th & Constitution Ave., N.E. Room 10
Washington, D. C. 20002

A handwritten signature in black ink, appearing to read "E. L. Curry".

EDWARD L. CURRY
Executive Director

DATE: MAY 31 1990