

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14599, of Sophie Levy, pursuant to Paragraph 8207.11 ANC (3107.2, DCMR 11) of the Zoning Regulations, for a variance from the provisions of Sub-section 5101.3 (701, DCMR 11) prohibiting operation of retail sales of used automobiles in a C-1 District at premises 1800 Rhode Island Avenue, N.E., (Square S-4208, Lot 28).

HEARING DATE: June 10, 1987
DECISION DATE: July 1, 1987

FINDINGS OF FACT:

1. The site is located on the north side of Rhode Island Avenue east of 18th Street and is known as premises 1800 Rhode Island Avenue, N.E. It is zoned C-1.
2. The site is triangular in shape and contains approximately 6,500 square feet of lot area.
3. The site is within a narrow C-1 District which extends along Rhode Island Avenue. There is an R-5-A zone approximately 200 feet to the north. The frontage along Rhode Island Avenue is characterized by a diverse mix of small commercial establishments including gas stations,, fast food restaurants, new and used auto sales establishments, liquor stores, restaurants and convenience stores.
4. The site is currently improved with a one-story structure containing approximately 1,000 square feet of area which was built approximately twenty-five years ago and used as a gasoline service station and two-bay repair garage. The building was vacant for approximately four years. The building has now been renovated to provide office space for used car sales and minor mechanical repairs. The gas pumps and signs incidental to the gasoline service station use have been removed.
5. The applicants propose to use the premises for a used car sales office with accessory minor repairs necessary to ready the cars for delivery. The hours of operation will be from 9:00 A.M. to 9:00 P.M. Monday through Friday and from 9:00 A.M. to 6:00 P.M. on Saturdays. The business will be closed on Sundays. There will be a maximum of five employees on the premises at any one time. The lessee expects an average of five visitors per day on weekdays and

ten visitors on Saturday. No cars for sale will be parked on the streets or in public space.

6. The building has recently been renovated by the lessee and is currently being used for the proposed business. No additional exterior changes to the building are proposed.

7. The lessee has operated its used car sales business in the immediate area of the subject site since 1946. The original location was at 20th and Rhode Island Avenue. The lessee lost his lease at that location when the site changed ownership in 1981. The lessee then relocated the business to 1739 Hamlin Street immediately west across 18th Street from the subject site. A change of ownership again caused the lessee to lose its lease. The lessee leased the subject property from the applicant in December 1986, completed renovations and the business was moved to the subject site and began operations in April, 1987.

8. The lot occupies the entire triangular block and is surrounded on all sides by public rights-of-way with 18th Street on the west, Hamlin Street on the north and Rhode Island Avenue on the south.

9. The existing C-1 zoning strip along Rhode Island Avenue is developed with a wide variety of commercial uses. The proposed use is similar in nature to many existing uses in the area. In fact, the proposed use has been located at different sites within two blocks of the subject site since 1946. The proposed use is therefore not likely to create an adverse impact on the neighborhood.

10. The previous use of the site, a gasoline service station and repair garage, is first permitted as a matter-of-right in the C-3 District. The proposed use is first permitted as a matter-of-right in the C-2 District and represents a less intensive use of the site than has existed in the past.

11. A representative of Advisory Neighborhood Commission (ANC) 5A testified at the public hearing in support of the application based on the lack of community opposition to the case. The Board is not required to give "great weight" to the position of the ANC since it does not meet the criteria set forth in Section 3207.1 of the Zoning Regulations.

12. The Office of Planning (OP), by memo dated June 9, 1987, recommended that the application be approved. The OP was of the opinion that the proposed use will not have a negative impact on nearby property in view of the surrounding streets and its location within the Rhode Island Avenue commercial strip. The Board concurs with the OP's recommendation.

13. The record contains two letters in support of the application. The support was based on the lessee's long history of operation in the neighborhood and the desire of the community to have the operation remain in the area.

14. There was one property owner in opposition to the application. The opposition was based on the following:

- a. The proposed use will increase the existing traffic congestion in the area.
- b. The proposed use will increase the demand for on-street parking in the area.
- c. The site is near a bus stop and may create a security risk for persons walking by the site when it is not in operation.

15. The Board is not persuaded by the opposition. The proposed use has operated in the immediate vicinity of the subject site for many years. No evidence of traffic, parking or security problems created by the operation during its past operation were identified or alleged by the opposition.

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 use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some peculiar or exceptional condition inherent to the property so that it cannot reasonably be used for the purpose for which it is zoned. The Board must further 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 as embodied in the Zoning Regulations and map.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The property is affected by an extraordinary situation based on the existing physical improvements and its location in the midst of an existing, thriving commercial strip which includes a diversity of uses, many of which are uses which are first permitted in less restrictive commercial zoning districts. The applicant would suffer an undue hardship if the Zoning Regulations were strictly enforced in that the property could not revert back to its original use as a gasoline service station and repair garage which is first permitted as a matter-of-right in the C-3 District.

Although its is not dispositive of the application, the Board may also recognize an exceptional situation regarding the history of the proposed use in the immediate area since

1946 and the efforts of the operator to continue the operation of the use in the neighborhood. The Board is of the opinion that the use of the subject site as proposed will have a positive impact by allowing the continuation in the neighborhood of a small, viable business whose long history in the area evidences its emphasis on the enhancement and economic vitality of the area.

The Board concludes that the requested relief can be granted without substantial detriment to the public good. The Board further concludes that the variance can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, 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

FINAL DATE OF ORDER: _____

JUL 27 1987

UNDER 11 DCMR 3103, "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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