

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14758, of Marie B. Carter and Sarah Davis, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2003 for a change of nonconforming use from a grocery store to a grocery, variety and delicatessen store, or in the alternative, a variance from the use provisions (Sub-section 330.5) to allow a grocery, variety, and delicatessen store in the basement and first floor, in an R-4 District at premises 1544 - 9th Street, N.W., (Square 365, Lot 813).

HEARING DATE: March 9, 1988
DECISION DATE: April 6, 1988

FINDINGS OF FACT:

1. The property is located on the west side of 9th Street between P and O Streets at 1544 9th Street, N.W. The subject property is in an R-4 District.

2. The property is a 1,883 square foot rectangular lot which has a width of 25 feet and a depth of 75.33 feet.

3. A two-story, semi-detached brick building stands on the subject lot. A non-conforming grocery/variety store and church occupy the first and second floors respectively. The store has one employee and operates between 8:00 A.M. and 8:00 P.M., Monday through Saturday. Most of the supplies are brought to the building by the applicant, but additional deliveries are made between two and three times per week.

4. A small public park and a YMCA building are located to the north of the subject property. Several rowhouses are located to the south and east of the subject property. A few of these houses support nonconforming uses, including a barbershop, beauty salon, and a store front church. Seaton Elementary School and a nonconforming church are located to the west of the subject property. A Giant Food store is located one block away and is open twenty-four hours a day.

5. The applicants wish to expand the existing non-conforming use to include a delicatessen. The resulting grocery/variety store and delicatessen would be open between 8:00 A.M. and 12:00 midnight, Monday through Saturday, and would have six employees. An average of three employees will work during any given shift. The applicants also intend to place a trash can on the sidewalk and remove trash three times a week.

6. According to Sub-section 701.4, the following uses are permitted as a matter-of-right in a C-1 District: grocery stores, variety stores, restaurants, and off-premises alcoholic beverage stores. The current and proposed uses are permitted as a matter-of-right in a C-1 District.

7. The site has been occasionally used to repair the store van. Other vehicles belonging to members of Rev. Carter's family have occasionally been parked at the site.

8. The applicants intend to serve very little hot food. The odors created by the food will have no deleterious impact on the surrounding neighborhood.

9. The trash which had collected on the property during its renovation has been removed.

10. The applicants expect the delicatessen to cater to present customers, most of whom live in the surrounding neighborhood.

11. The property is in the jurisdiction of Advisory Neighborhood Commission (ANC) 2C. In a memorandum dated March 3, 1988, the ANC reported that it had voted to support the proposed expansion on the condition that the applicants remove the trash and debris from around the building and provide a trash can at the store entrance. The ANC voted to support the proposal because the residents in the area need an additional delicatessen. The Board concurs with the ANC's recommendation, but finds that additional conditions are necessary to ensure that the subject property is kept free of debris.

12. Opposition to the applicant's proposal was expressed by a local resident, the "O" Street Community Association, and The Logan Circle Community Organization. The opposition was based on the applicant's chronic abuse of the subject property, the abundance of similar establishments in the neighborhood, and the extent to which the applicants expansion would exacerbate neighborhood drug traffic and foster alcohol abuse among local children. The Board disagrees with the opposition, having found that the applicants will be able to control trash and parking on the site and provide a needed neighborhood service without any serious risk of exacerbating neighborhood drug traffic. The Board also finds that the concerns about alcohol abuse resulting from the applicants' sale of alcoholic beverages, while not completely unrelated to the impact of the proposed expansion, are best addressed during licensing proceedings before the Alcoholic Beverage Control Board.

CONCLUSIONS OF LAW AND OPINION:

The applicants are seeking a special exception pursuant to Section 3108.1 to allow the expansion of a non-conforming

use in a R-4 District from grocery/variety store to grocery/variety store and delicatessen. As an alternative to the special exception, the applicants have requested a variance from the strict application of the use requirements of Sub-section 330.5.

To qualify for a special exception, the applicants must show that they satisfy the requirements of Sub-section 3108.1 and Section 2003. Based on the foregoing Findings of Fact, the evidence of record, and the condition hereinafter imposed, the Board concludes that the applicants have satisfied the requirements. The applicants have shown that the present and proposed uses are permitted as a matter-of-right in a C-1 District, the proposed use will have no deleterious effect or adverse effect on the present character or future development of the surrounding area, and that the proposed use will be a neighborhood facility. The applicant has also shown that the exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not adversely affect the use of neighboring property in accordance with the Regulations and Maps. The Board also concludes that it has given the ANC the "great weight" to which it is entitled.

Having concluded that the requested relief can be provided in the form of a special exception, the Board concludes that it need not consider the applicants' request for a variance. It is therefore ORDERED that the application for a special exception is GRANTED, SUBJECT to the following CONDITIONS:

1. The hours of operation shall not exceed from 8:00 A.M. to 10:00 P.M., Monday through Saturday.
2. The applicant shall provide for trash collection from the premises at least three times per week.
3. There shall be no more than three deliveries of goods to the facility per week.
4. The applicant shall police the exterior of the premises daily to ensure the maintenance of the area free of trash and debris.
5. There shall be no more than three employees on the premises at any given time.

VOTE: 4-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Paula L. Jewell not voting, not having heard the case).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 2 1988

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.

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