

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14874 of Jagdish K. Katyal, as amended, pursuant to 11 DCMR 3107.2, for a variance from the floor area ratio requirements (Sub-section 931.2), to allow a proposed addition to a structure in a W-2 District at premises 3314-16 M Street, N.W., (Square 1184, Lot per subdivision).

HEARING DATES: October 19 and December 14, 1988, and April 12, 1989.

DECISION DATES: December 14, 1988, February 1, and May 3, 1989.

FINDINGS OF FACT:

1. The property is located on the south side of M Street between 33rd and 34th Streets and is known as premises 3314-3316 M Street, N.W. It is zoned W-2.

2. The property is rectangular in shape with a frontage of thirty-seven feet along M Street and a depth of approximately 110 feet and abuts a twenty foot wide public alley to the rear.

3. The property is currently improved with a two-story brick structure which contains a retail apparel store and a restaurant with a seating capacity of 142 patrons, as well as headquarters and administrative offices space for the applicant's chain of restaurants.

4. The applicant proposes to construct an addition to the rear of the existing structure which will contain an additional 4,627 square feet of floor area. The existing structure contains approximately 6,243.75 square feet of floor area. The maximum commercial floor area ratio permitted in the W-2 District is 2.0 or 8,140 square feet. The applicant is seeking a variance from the floor area ratio requirements of 2,730.75 square feet or 33.54 percent, for a total floor area ratio of 2.67.

5. The proposed two-story addition will allow the applicant to provide locker and bathroom space for restaurant employees as has been required by the D.C. Department of Consumer and Regulatory Affairs. The proposed addition will also permit the enlargement of the existing

administrative office space for the applicant's chain of restaurants, a conference room, and dry goods storage space.

6. The site slopes downward to the south adjacent to the public alley. The proposed addition will be level with the first floor of the existing structure fronting on M Street. The applicant proposes to provide three on-site parking spaces at alley level below the proposed addition.

7. The proposed addition will not result in an increase in seating capacity or number of employees for the existing restaurant nor an increase in the floor area of the existing retail space but will be devoted to enlargement of the administrative office space and employee support space for the restaurant use.

8. The block in which the subject site is located is characterized by two-story structures devoted to commercial uses. The size of the neighboring lots and structures varies. There are no residential uses in the subject block.

9. The two structures immediately east of the subject site at 3300 and 3304-8-10 M Street have existing rear additions which extend to their rear property line adjoining the public alley. The structure at the western end of the block at the southeast corner of the intersection of 34th and M Streets also has a rear addition which extends to the rear property line adjoining the public alley. The remaining structures in the block are of varying depths but none extend to the rear property line.

10. The applicant testified that a further reduction in the size of the proposed addition would make the project impractical from both an economic and physical layout standpoint. An addition of 1,896.25 square feet would be permitted as a matter of right for commercial use.

11. The applicant could construct an addition of 10,046.25 square feet as a matter of right for a total floor area ratio of 4.0 if 8,140 square feet or 2.0 floor area ratio were devoted to residential use. The applicant testified that such an addition would not meet his needs in providing support space for the existing use and, further, would be out of character with the area because there are currently no residential uses in the block and the bulk of a such structure would be out of character with other structures located nearby and the character of the Georgetown Historic District.

12. The applicant is unable to increase the size of the subject property in order to reduce the floor area ratio of the site because it abuts a public street to the north, a public alley to the south, and currently improved properties to the east and west.

13. The proposed addition will be constructed of brick and cinder block and will be similar in size and design to the existing additions immediately east of the site.

14. The Historic Preservation Division of the Building and Land Use Regulation Administration has determined that the project qualifies for a waiver of the parking requirements imposed by Section 2100.5 of the Zoning Regulations. The applicant is providing three on-site parking spaces at the rear of the site.

15. The applicant argued that the proposed addition would not adversely impact the neighborhood because it is not visible from M Street, it does not extend beyond the depth of existing adjacent structures, it does not increase the capacity of the existing uses within the building, and parking will be provided on-site although none is required by the Zoning Regulations.

16. The Office of Planning (OP), by memorandum dated April 5, 1989, recommended denial of the application. The OP was of the opinion that the proposed increase in floor area ratio would adversely impact other buildings in the square which are much smaller or located on larger lots; that the proposed addition will not further the diversity of land uses in the area; and that although office space is permitted as a matter of right in the W-2 District, the proposed addition will cause substantial detriment to the W-2 District in this Georgetown neighborhood.

17. Advisory Neighborhood Commission 2E, by letter dated April 4, 1989, opposed the granting of the application for the following reasons:

- a. expansion of the building will cover virtually the entire lot;
- b. incompatibility with the floor area ratio requirements;
- c. no showing of uniqueness;
- d. the setting of an adverse precedent, if granted.

18. The record contains a petition in support of the application.

19. The record contains several letters in opposition to the application. The opposition was generally based on the inadequacy of the proposed on-site parking to serve the needs of the restaurant.

20. In addressing the concerns of the Advisory Neighborhood Commission and the opposition, the Board finds that the Zoning Regulations do not prohibit 100 percent lot occupancy for non-residential uses in the W Districts. The Board does not find the proposed lot occupancy out of character with other structures in the immediate vicinity of the subject site. As noted in Finding of Fact No. 11, a 4.0 floor area ratio is permitted in the W-2 District provided that 2.0 of the total is devoted to residential use. The Board finds that the proposed use of the floor area ratio in excess of 2.0 is the issue in the instant case. The Board finds that the use of the subject premises for restaurant, retail and office space is in keeping with the purpose of the W Districts set forth in 11 DCMR 900.4 to encourage a diversity of land uses "including combinations of residential, offices, retail, recreational and other miscellaneous uses." The Board is persuaded by the applicant that the lack of residential uses in the subject block makes it impractical to provide residential uses at the subject premises in combination with existing retail and restaurant use. The Board notes that the decision in this application will not set a precedent in that the Board considers each application based on its individual merits.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking an area variance, the granting of which requires the showing of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition inherent in the property itself. The Board further must find that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Maps.

The Board concludes that the applicant has met the requisite burden of proof. The property is affected by an exceptional condition inherent in the property itself due to its size, the existing structure on the site which predates the adoption of the Zoning Regulations, and the types of existing uses on the premises and surrounding properties. The applicant would suffer a practical difficulty if the Zoning Regulations were strictly enforced in that, although a much larger addition could be built on the site if devoted to residential uses, he is unable to provide the necessary restaurant support and office space within the confines of the permitted non-residential floor area ratio. The Board further concludes that the proposed addition will not adversely impact adjacent and nearby properties in that the proposed addition is buffered by the similar adjacent structure. It will not increase the traffic generated by the capacity of the existing uses within the building and is

providing on-site parking in excess of that required by the Zoning Regulations, and that the proposed use is in keeping with the purposes of the W Districts.

The Board further concludes that it has afforded the Advisory Neighborhood Commission the "great weight" to which it is entitled and that the application can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly it is ORDERED that the application is GRANTED, SUBJECT to the CONDITION that construction shall be in accordance with the revised plans marked as Exhibit No. 55A of the record.

VOTE: 4-0 (William F. McIntosh, Carrie L. Thornhill and Paula L. Jewell to grant; Lloyd Smith to grant by proxy; Charles R. Norris 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 18 1989

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14874

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated AUG 10 1973, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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EDWARD L. CURRY
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DATE: _____