

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14897, of George Salah, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to change a nonconforming use, a print shop, to a restaurant seating seventy-four on the first floor in an R-4 District at premises 1125 D Street, N. E., (Square 986, Lot 42).

HEARING DATE: November 16, 1988  
DECISION DATES: January 4 and February 1, 1989

FINDINGS OF FACT:

1. The property is located on the south side of D Street between 11th and 12th Streets and is known as premises 1125 D Street, N.E. It is zoned R-4.

2. The property is improved with a one and two story semi-detached brick structure which occupies nearly 100 percent of the site and is currently vacant.

3. The existing structure has a history of commercial use including a soda bottling company and mechanic's shop. The most recent Certificate of Occupancy, dated August 10, 1984, permits the use of the subject premises as a printing office/shop.

4. The predominant land use in the area is single family row dwellings. Other land uses in the immediate vicinity of the site include small apartment buildings convenience food stores, and a former D.C. Public School building at the corner of 12th and D Streets which has been leased to the National Association for Equal Opportunity in Higher Education (NAFED) and several community organizations. The NAFED building provides approximately 54,400 square feet of office space and parking facilities.

5. Pursuant to 11 DCMR 3108.1, the applicant is seeking a special exception under Section 2003 to change a nonconforming use from printing office/shop to a restaurant seating 74 persons.

6. A printing shop is first permitted as a matter-of-right in the C-2 District. A restaurant is first permitted in a C-1 District.

7. The applicant has previously operated family-style restaurants in the Metropolitan area and anticipates that the proposed restaurant will draw the vast majority of its clientele from the surrounding neighborhood. There will be no carry-out service available.

8. The proposed restaurant would be open from 11:00 A.M. to 9:30 P.M., seven days a week. The maximum number of employees would be five.

9. The applicant is unable to provide parking on the site because the existing structure occupies nearly 100 percent of the site. The applicant anticipates the majority of his employees and clientele will come from the immediate neighborhood. The applicant proposes to provide a bicycle rack for the convenience of his customers.

10. The applicant proposes to have deliveries from two vendors once per week. Deliveries will be made from a private 16 foot driveway entered from 12th Street.

11. The proposed change will require extensive interior alterations including the installation of commercial grade kitchen equipment. The exterior facade of the building will be renovated in keeping with the character of the neighboring row dwellings. There will be one non-illuminated sign advertising the use over the door.

12. The record contains a petition of approximately 120 signatures in support of establishing a restaurant at the subject premises. Several nearby residents testified in support of the application at the public hearing.

13. Advisory Neighborhood Commission (ANC) 6A, by letter dated November 9, 1988, and by representatives at the public hearing supported the granting of the application. The written report of the ANC does not set forth specific issues and concerns in compliance with all of the requirements of Section 3307.1 and, therefore, cannot be afforded the "great weight" to which it would otherwise be entitled.

14. The Office of Planning (OP), by memorandum dated November 9, 1988, recommended that the application be denied. The OP was not convinced that the applicant had complied with Section 2005.1 which provides as follows:

Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located.

15. The record contains approximately nineteen letters and a petition in opposition to the granting of the application. Several persons testified in opposition to the application at the public hearing, representing Citizens Against Restaurant Expansion (CARE) and individuals. The opposition is generally summarized as follows:

- a. The subject premises has been vacant in excess of three years, therefore, the nonconforming status of the premises has been voided in accordance with Section 2005.1.
- b. The Advisory Neighborhood Commission position was based on insufficient facts based on inadequate notice to residents of the Single Member District in which the property is located. The applicant is the Single Member District Commissioner and did not participate, therefore, the interests of the SMD were unrepresented. There is no documentation of the ANC vote on the issue.
- c. The proposed restaurant would have an adverse impact on the neighborhood in terms of increased crime, loitering, increased traffic and parking demand, noise, trash, and odors, heat and smoke generated by the restaurant.
- d. There is no demand for the proposed facility in the neighborhood and the subject premises could easily be converted to residential use.

16. In addressing the issue of compliance with Section 2005.1 raised by the Office of Planning and the opposition, the Board notes that that determination is made by the Zoning Administrator prior to the filing of an application before the Board. The Board does not have before it an appeal of the decision of the Zoning Administrator that the proper relief in the instant case is for a special exception to change a nonconforming use and, therefore, cannot consider the arguments raised regarding discontinuance of the previous nonconforming use.

17. In addressing the other concerns raised by the opposition, the Board finds as follows:

- a. The report submitted by ANC-6A does not comply with the requirements of Section 3307.1 and, therefore, cannot and be afforded the "great weight" to which it is entitled.

- b. There is no conclusive evidence that the proposed use, as hereinafter conditioned, will create or increase the adverse impacts enumerated by the opposition over that resulting from the approved use of the premises as a print shop or even continued vacancy of the structure. The applicant is required to comply with all building, health and licensing requirements of the District of Columbia.
- c. The applicant is seeking special exception relief and is not required to prove that the premises cannot be converted to a conforming residential use. The requested use as a restaurant represents a change to a use permitted in a more restrictive zone than the currently permitted print shop.

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 a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Section 2003 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has met the required burden of proof. The existing use is first permitted as a matter-of-right in the C-2 District. The proposed use is first permitted as a matter-of-right in the more restrictive C-1 District. The site has a long history of commercial use. The Board further concludes that, as hereinafter conditioned, the proposed use will not create adverse impacts in terms of noise, traffic, or other deleterious effects. The Board concludes that based on the size, nature and intended walk-in trade, the proposed restaurant is a neighborhood facility.

The Board further concludes that, as hereinafter conditioned, the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map and that it will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

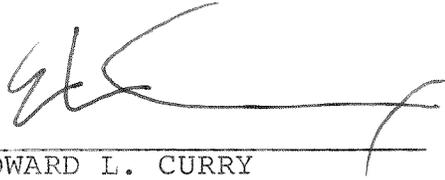
1. The hours of operation shall not exceed from 11:00 A.M. to 9:30 P.M., seven days a week.

2. The number of employees shall not exceed five.
3. Trash shall be stored on-site and picked up no less than twice per week.
4. The exterior treatment of the facade shall be in keeping with the elevation on page 22 of Exhibit No. 47D of the record.

VOTE: 4-1 (Charles R. Norris, William F. McIntosh, and Carrie L. Thornhill to grant by proxy; Lloyd D. Smith to grant by proxy; Paula L. Jewell opposed to the motion).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: JUN 20 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. 14897

As Acting 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 JUN 20 1989, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

George A. Salah  
1123 D Street, N.E.  
D.C. 20002

Sandy Horowitz  
1239 D Street, N.E.  
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

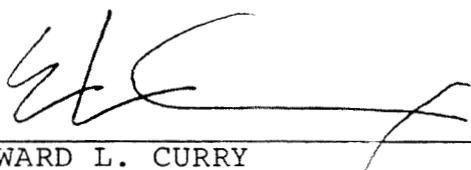
Mrs. Prewitt  
322 12th Street, N.E.  
D.C. 20002

Eleanor Coombs  
410 12th Street, N.E.  
D.C. 20002

Peter G. Marmaras  
Citizens Against Restaurant Expansion  
411 11th Street, N.E.  
D.C. 20002

John Janke  
401 11th Street, N.E.  
D.C. 20002

Colettea Kemper  
1235 D Street, N.E.  
D.C. 20002

  
EDWARD L. CURRY  
Executive Director

DATE: JUN 20 1989