

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14993 of Rodney H. and Helen D. Van Devanter, pursuant to 11 DCMR 3107.2, for a variance from the off-street parking requirements (Sub-section 2101.1) for a restaurant and proposed public hall - seating 250 on the first floor in a C-2-A District at premises 2408 Wisconsin Avenue, N.W., (Square 1300, Lot 332).

HEARING DATE: April 19, and June 14, 1989
DECISION DATE: July 5, 1989

FINDINGS OF FACT:

1. The application was originally scheduled for public hearing on April 19, 1989. The applicants' attorney appeared and requested that the Board postpone the hearing to enable him to participate in discovery in an unrelated U.S. District Court case. The Board granted the postponement and a continuation date was scheduled for June 14, 1989.
2. The subject property is located on the west side of Wisconsin Avenue between Calvert Street and Hall Place, N.W. The site is known as premises 2408 Wisconsin Avenue, N.W. and it is zoned C-2-A.
3. This block of Wisconsin Avenue, N.W. is developed with one and two-story neighborhood oriented, small, commercial establishments.
4. The subject property contains a restaurant which was built in the early 1900s. The front of the lot is 24.11 feet wide and the rear is 21.56 feet wide. The lot measures approximately 102 feet in length. The building occupies virtually the entire lot.
5. There is a narrow private alley or path located between the subject property and the building to its north. This path is too narrow for vehicular access to the rear of the building and is on the adjoining property.
6. The restaurant is permitted to seat up to 125 people. The facility is open from 4:00 P.M. to 1:30 A.M. daily. There are 10 employees.

7. In addition to serving food, the applicant provides entertainment four or five nights a week. To defray costs the applicants sometimes charges a fee for admission.

8. The applicants wish to continue using the facility as a restaurant and for entertainment. Because of the entertainment aspect of the business the facility was deemed to be a public hall by the Zoning Administrator's Office. The Zoning Regulations permit public halls in C-2-A Districts but require that one parking space for each 10 seats of occupancy capacity be provided. The Zoning Regulations also provide that where seats are not fixed, each seven square feet usable for seating shall be considered one seat.

9. The applicants seek a variance from the off-street parking requirements. They maintain that there is no room on the lot for parking because the building and fenced-in rear trash area occupy the entire lot. There is no way of providing parking beneath the site without demolishing the building. The lot is very narrow. The applicants testified that these conditions make it impossible to provide on-site parking.

10. The applicants testified that most of those who frequent the facility live in the neighborhood. They arrive at staggered intervals, therefore, the restaurant is never filled to capacity. The neighbors have not complained about the parking conditions. After 6:30 P.M., there is on-street parking across from the site.

11. The Office of Planning, (OP), by report dated April 12, 1989 and through testimony at the hearing, recommended that the application be denied. OP noted that the subject area is in the process of being upgraded and redeveloped. Several new residential/commercial buildings have been constructed in the recent past in the general vicinity of this site and some additional new construction is anticipated which would further increase the need for parking in the area. OP feels that parking in the area is already difficult and that the condition would worsen if the subject site is allowed to operate as a public hall. The characteristics of use are different from a restaurant. With a public hall, patrons will tend to arrive at or near the same time and stay until the entertainment ends. Those who frequent restaurants, however, tend to arrive at staggered times and stay for a shorter period, making parking more readily available. OP is of the opinion that a variance from the parking requirements for a public hall will adversely impact the surrounding neighborhood.

12. The Board notes that the maximum capacity permitted for the facility will remain at 125. This number

will not increase. The Board perceives no significant difference in being able to feed 125 people at one time and entertaining 125 people. Therefore, the Board disagrees with the opinion of the Office of Planning.

13. Advisory Neighborhood Commission (ANC) 3B expressed no opinion regarding the subject application.

14. Three letters were submitted in opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicants are seeking a variance from the off-street parking requirements for a restaurant and proposed public hall. The granting of a variance requires evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board further must find that the requested relief can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof established for the requested variance.

The Board concludes that because the existing structure occupies virtually the entire lot, there is inadequate space for parking. The condition creates a practical difficulty for the owners in complying with the requirements of the Zoning Regulations.

The Board concludes that the subject restaurant has operated with a maximum seating capacity of 125 since 1964. No off-street parking has been provided during this time. The applicants have received no complaints regarding the effect of the parking conditions on their neighbors or their property. Therefore, it is the opinion of the Board that to grant the requested relief will not be of substantial detriment to the public good.

The Board further concludes that granting the variance will not substantially impair the intent, purpose and integrity of the Zone plan.

Accordingly, it is ORDERED that the application is hereby GRANTED.

VOTE: 3-1 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; William F. McIntosh to deny).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: DEC 26 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.

14993order/BHS14

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14993

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated DEC 26 1989, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Larry Williams, Esquire
1333 H Street, N.W.
Suite 630
Washington, D.C. 20005

Abdul Hossainkhail
2408 Wisconsin Avenue, N.W.
Washington, D.C. 20007

Diane Sawaya-Barnes, Chairperson
Advisory Neighborhood Commission 3-B
P.O. Box 32312, Calvert Station
Washington, D. C. 20007

A handwritten signature in black ink, appearing to read "E. L. Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: _____

DEC 26 1989