

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15151 of Francis Abelitis, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to change a nonconforming use from retail sale of groceries and game room to a retail grocery/delicatessen on the first floor in an R-5-C District at premises 721 - 50th Street, N.E., (Square 5179, Lot 19).

HEARING DATE: January 10, 1990
DECISION DATE: February 7, 1990

FINDINGS OF FACT:

1. The property is located on the east side of 50th Street between Nannie Helen Burroughs Avenue and Hayes Street and is known as premises 721 - 50th Street, N.E. It is zoned R-5-C.

2. The site is rectangular in shape with a frontage of 20 feet along 50th Street and a depth of 120 feet for a total lot area of 2,400 square feet.

3. The property is currently improved with a two-story brick commercial building. The first floor of the building is presently used as a grocery store and game room.

4. The area surrounding the site is generally developed with single family row dwellings, several churches, auto repair and storage facilities, and small commercial establishments similar to the subject property. There are two public schools within a two block radius of the site and the Grant Park Care Center is located approximately one block east of the site.

5. The applicant is seeking a special exception to change the existing nonconforming grocery store/game room to a grocery store/game room and delicatessen.

6. The Board may approve a change of nonconforming use to another use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted subject to the conditions set forth in 11 DCMR 2003, as follows:

- a. The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300') in all directions from the nonconforming use.

- b. The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- c. When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.
- d. In Residential districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.
- e. For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:
 - 1. R-1-A, R-1-B, R-2, R-3, R-5-A, R-5-B, R-5-C, and R-5-D;
 - 2. SP-1 and SP-2;
 - 3. C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);
 - 4. W-1, W-2, and W-3;
 - 5. CR; and
 - 6. C-M-1, C-M-2, C-M-3, and M.

The Board may require the provisions of or direct changes, modifications, or amendments to, any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

7. The existing grocery store and the proposed grocery store/delicatessen are both first permitted in the C-1 District.

8. The proposed use will not increase the floor area of the structure currently occupied by the grocery store/game room. The applicant proposes to serve a limited menu. No cooking equipment other than a microwave will be used.

9. The hours of operation will be from 9:00 A.M. to 9:00 P.M., Monday through Saturday and from 11:00 A.M. to 6:00 P.M. on Sunday . There will be two full time employees.

10. There are approximately three deliveries to the subject premises per week. There will be no increase in the number of deliveries as a result of the proposed use.

11. The proposed deli will not increase the amount of trash generated at the site. No eating or loitering is permitted at the premises. Trash pick-up twice per week is proposed to be continued.

12. There will be no exterior alterations to the subject premises.

13. Approximately 80 percent of the customers of the facility walk to the site from the immediate neighborhood. The remaining 20 percent generally represents customers of nearby auto repair shops who are awaiting completion of work on their vehicles.

14. The current lessee has operated the grocery store/game room at the subject site for approximately six years. The lessee has received no complaints regarding the operation of the grocery store/game room.

15. No parking is provided on the subject site or required for the proposed use. The proposed use is not expected to generate additional customers but to provide better service to the existing clientele of the store. The proposed deli will have a negligible impact on parking in the area.

16. The subject site was developed for commercial purposes in 1950. The site was zoned C-M-1 at the time of the adoption of the Zoning Regulations in 1958. By its Order No. 221, dated June 8, 1978, the Zoning Commission rezoned the site R-5-C, rendering its existing use nonconforming. The proposed use will not affect the present character or future development of the area as evidenced by its existing mixture of residential and commercial development.

17. The Office of Planning (OP), by memorandum dated December 28, 1989, recommended that the application be approved. The OP was of the opinion that the applicant had met the required burden of proof. The OP was further of the opinion that the special exception will not be inconsistent with the general purpose and intent of the Zoning Regulations and will not adversely affect the use of neighboring property.

18. The D.C. Department of Housing and Community Development, the Fire Marshall and the Department of Public Works submitted memoranda offering no objection to the application.

19. Advisory Neighborhood Commission (ANC) 7D made no recommendation on the application.

20. A resident of 717 - 50th Street, N.E. testified at the public hearing in opposition to the application. The opposition was generally based on alleged illegal activities occurring on the second floor of the subject premises. The Board notes that such alleged activities are beyond its jurisdiction and should more properly be referred to the Metropolitan Police Department.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such relief, the applicant must demonstrate substantial compliance with the requirements of 11 DCMR 2003 and 3108.1. The Board concludes that the applicant has met the requisite burden of proof.

The Board concludes that the proposed use, as hereinafter conditioned, would have no adverse impacts on the character of the surrounding area and would not create any deleterious external effects. The premises have not been changed to a conforming or less restrictive use. The Board further concludes that the proposed use would be a neighborhood facility primarily serving the day-to-day needs of the immediate neighborhood. There will be no increase in the amount of traffic, noise, vibration, fumes or other deleterious effects nor would the proposed use represent a substantial intensification over the existing nonconforming use.

The Board further concludes that the subject premises has a history of nonconforming use and that the proposed use would not adversely affect the neighborhood and can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map. Accordingly it is ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FIVE YEARS.
2. The hours of operation shall not exceed from 9:00 A.M. to 9:00 P.M., Monday through Saturday, and from 11:00 A.M. to 6:00 P.M. on Sunday.
3. The number of employees shall not exceed two.
4. There shall be no customer seating provided on the premises.
5. The applicant shall make every reasonable effort to prevent loitering in and around the subject facility.

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VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to grant)

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

SEP 10 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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.

15151Order/SS/bhs

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As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 10 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Carl J. Redman
717 - 50th Street, N.E.
Washington, D.C. 20019

Francis Abelitis
6200 Westchester Park Drive
College Park, Maryland

Natalie Greene, Chairperson
Advisory Neighborhood Commission 7-D
Smothers School, Room 305
44th & Brooks Streets, N.E.
Washington, D.C. 20019

A handwritten signature in black ink, appearing to read "ELC", is written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: SEP 10 1991

15151Att/bhs