

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15215 of Shiloh Baptist Church, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to change a nonconforming use from grocery/delicatessen to the office of a plumbing company on the first floor in an R-4 District at premises 1536 9th Street, N.W., (Square 365, Lot 820).

HEARING DATES: January 24 and February 14, 1990
DECISION DATE: March 7, 1990

FINDINGS OF FACT:

1. The application appeared on the preliminary agenda for the public hearing of January 24, 1991 for failure of the applicant to comply with the posting requirements of 11 DCMR 3317.4 and 3317.7. The applicant indicated that it did not receive notice of the public hearing in time to properly post the premises. The Board rescheduled the application for the public hearing of February 14, 1990.

2. The property is located on the west side of 9th Street between P and Q Streets and is known as premises 1536 9th Street, N.W. It is zoned R-4.

3. The property is rectangular in shape with a frontage of 17.78 feet along 9th Street and a depth of 120 feet for a total lot area of approximately 2,134 square feet.

4. The property is currently improved with a three-story brick structure. The first floor is currently occupied by A&S Plumbing and Heating, Co., Inc. The second and third stories are used for residential purposes.

5. The area surrounding the subject site is characterized by a mixture of uses including the Carter G. Woodson Funeral Home, Seaton Elementary School and playground, the Shiloh Baptist Church gym and auditorium, and residential uses interspersed with a variety of commercial services. The area to the north, west and east is zoned R-4. Southeast of the site is a C-2-B District at 9th and P Streets.

6. The property was previously occupied as a grocery/delicatessen. The use of the site for grocery/delicatessen purposes pre-dates the adoption of the Zoning Regulations in 1958.

7. The applicant is seeking a special exception to change the previously existing nonconforming grocery/deli to the office of a plumbing company in order to acquire a certificate of occupancy for the existing use.

7. 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 300 feet 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 use 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

BZA APPLICATION NO. 15215

PAGE NO. 3

value, utilization, or enjoyment of property in the neighborhood.

8. The previously existing grocery/delicatessen and the proposed office use are both first permitted as a matter-of-right in the C-1 District.

9. The proposed office use will occupy the first floor only. There will be no storage of plumbing parts or supplies on the premises. The upper floors will continue to be used for residential purposes.

10. The proposed use will have only two office employees at the site on a regular basis. The company employs three to five plumbers who come to the site in the morning for their assignments and are then transported to their work sites in the company van. The company van is not stored at the subject site overnight but is parked elsewhere at the operator's home.

11. The proposed hours of operation will be from 7:30 A.M. to 5:00 P.M., Monday through Saturday.

12. The property abuts a ten foot wide public alley to the rear. There is ample space to provide two on-site parking spaces at the rear of the site.

13. The proposed use does not generate a need for clients to come to the site and is not expected to generate additional traffic in the area.

14. The trash generated by the proposed use is typical of office waste and will be removed at least twice per week.

15. The Office of Planning (OP), by memorandum dated January 17, 1990, recommended that the application be approved. The OP was of the opinion that the applicant met the requisite burden of proof. The OP was further of the opinion that the proposed use is not likely to create any additional negative impacts on the neighborhood.

16. The D.C. Fire Department and the Metropolitan Police Department offered no objection to the granting of the requested relief.

17. Advisory Neighborhood Commission (ANC) 2C, made no recommendation on the application.

18. There was opposition to the granting of the application at the public hearing. The opposition was generally based on the following:

- a. The proposed use will contribute to the existing parking problems in the area.
- b. There is no need for another plumbing business in the immediate area.
- c. The traffic generated by the Church use creates a parking problem in the area.

19. In addressing the concerns of the opposition, the Board finds that the parking demand created by the church use is not at issue in the instant case. Further, the Board is not persuaded that the minimal traffic generated by the proposed use will have an impact on existing parking and traffic patterns in the immediate area.

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 decrease the amount of traffic, noise, vibration, fumes or other deleterious effects generated by the previous 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. The number of employees at the subject premises shall not exceed two.
2. There shall be no storage of plumbing parts on the premises other than for display purposes.
3. The applicant shall provide one on-site parking space at the rear of the property.
4. The hours of operation shall not exceed from 7:00 A.M. to

BZA APPLICATION NO. 15215
PAGE NO. 5

5:00 P.M., Monday through Friday, and from 8:00 A.M. to
1:00 P.M. on Saturday.

VOTE: 4-0 (Maybelle Taylor Bennett, Paula L. Jewell , William
F. McIntosh and Carrie L. Thornhill to grant;
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: _____

SEP 23 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.

ord15215/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 15215

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated SEP 23 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

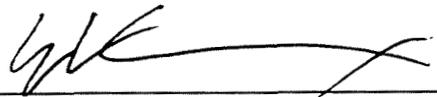
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EDWARD L. CURRY
Executive Director

DATE: SEP 23 1991