

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 15315, of the Blagden Alley Association, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Donald G. Murray, Director, Department of Consumer and Regulatory Affairs, made on October 27, 1989, to the effect that to issue a certificate of occupancy for a nonconforming use entailed a change of use and should have been referred to the Board, for a retail and wholesale electrical supply company in an R-4 District at premises 917 M Street, N.W. (Square 368, Lots 147, 68, 69, 70, 61 and 863).

HEARING DATE: June 20, 1990
DECISION DATE: July 11, 1990

FINDINGS OF FACT

1. This appeal was filed on March 30, 1990, from the administrative decision made on October 27, 1989, to approve certificate of occupancy numbered 1891618, to use the premises for the retail and wholesale sale of electrical supplies.

2. The premises that are the subject of the appeal are Lots 61, 68, 69, 70, 147, and 863, in Square 368, and are located in an R-4 District.

3. By Order No. 7990, dated December 1, 1964, the Board approved a change of nonconforming use for Lot 147 in Square 368 from sheet metal shop to "sales office and stock for wholesale and retail heating, air-conditioning and refrigeration supplier and allied lines...."

4. On May 12, 1965, certificate of occupancy numbered B 51609 was issued for the use of Lots 61, 68, 69, 70, and 147 in Square 368 for wholesale and retail refrigeration supplies and allied lines, sales office and private parking lot on Lots 863, 61, 68, 69, and 70.

5. On January 27, 1983, certificate of occupancy numbered B 133865 was issued for the use of Lot 70 in Square 368 for a sheet metal shop.

6. At the times of the issuance of the certificates of occupancy that are referenced in findings numbered 1, 4, and 5 of this Order, all of the referenced lots were located in the R-4 zone district.

7. Nothing in the record before the Board enables the Board to determine the circumstances that caused the issuance of the certificates of occupancy that allowed the non-residential use on lots other than Lot 147, nor has the Board been offered any evidence or analysis that supports such use on those lots.

8. For several years before issuance of certificate of occupancy numbered 1891618, the site was occupied by an ill-defined and incompletely authorized mix of uses: (1) criminal activity that is not permitted in any zone district; (2) automobile repairs, not under authority of any certificate of occupancy; and (3) sheet metal shop, to some extent pursuant to certificate of occupancy numbered B 133865; but no wholesale or retail heating, air-conditioning, or refrigeration supplies.

CONCLUSIONS OF LAW

1. Board Order No. 7990 does not authorize the sale or storage of "lines" that are allied to the primary heating, air conditioning, and refrigeration lines independently of the sale and storage of the primary lines. Accordingly, for electrical supplies to be stored and sold pursuant to the authority of Order No. 7990, they must be sold and stored together with and accessory to the primary lines.

2. The decision to approve the use of Lots 61, 68, 69, 70, 147, and 863 for the retail and wholesale sale of electrical supplies extended beyond the use authorized by Board Order No. 7990, and beyond the one lot that was the subject of that Order.

3. The appellant has sustained the burden of proof that certificate of occupancy numbered 1891618 was issued in error.

4. Although intervenor has shown some facts that tend to establish some elements of an estoppel claim, the showing is insufficient to establish that affirmative defense on this appeal.

5. The strict regulation of nonconforming uses is of paramount importance in the overall public interest in the operation of the Zoning Regulations. This is particularly so, as here, in a case that involves the approval of non-residential uses in a residential zone district.

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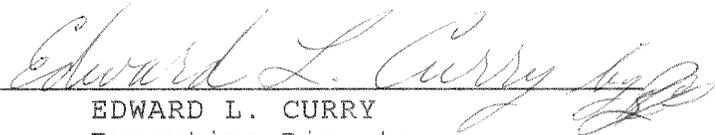
DECISION

Based upon the foregoing findings of fact and conclusions of law, the Board hereby ORDERS that the appeal be GRANTED, and the decision of the Director, Department of Consumer and Regulatory Affairs, is hereby REVERSED.

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

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

ATTESTED BY: _____


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

AUG 23 1991

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."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15315

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 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: _____

AUG 23 1991