

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15326 of Conway B. Jones, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance to allow a nonconforming use to extend to portions of a structure not devoted to that nonconforming use (Sub-section 2002.3), and a special exception under Section 2003 for a change of nonconforming use from a delicatessen, first floor, to a beauty salon, first and second floors of a structure in the R-4 District at premises 1401 1st Street, N.W., (Square 616, Lot 814).

HEARING DATE: July 18, 1990
DECISION DATE: September 5, 1990

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject site is located at 1401 1st Street, N.W. It is located on the northwest corner of 1st and O Streets N.W. and is zoned R-4.

2. The site consists of 1,050 square feet in land area. It is rectangular in shape. The subject lot measures 19.92 feet in width and 53.0 feet in length. It is improved with a brick two-story structure.

3. The property located immediately to the north of the site is undeveloped. The area surrounding the site is residential and is developed with single and multi-family row dwellings. Dunbar High School and Armstrong Technical High School are located to the west of the subject site across 1st Street. John E. Cook Public School and Margaret Murray Washington Vocational School are located in the same square and to the east of the subject site.

4. Currently, there is a certificate of occupancy, dated June 28, 1984, to operate a delicatessen on the first floor of the property. The use permitted on the second floor is residential. At present, the entire structure is vacant.

5. The R-4 District in which the property is located permits matter-of-right development of residential uses including detached, semi-detached and row single-family dwellings and flats with a minimum lot width of 18 feet, a minimum lot area of 1,800 square feet, a maximum height of three stories/40 feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit.

6. The delicatessen certificate of occupancy makes the first floor of the subject property nonconforming. The second floor, however, conforms to the residential use requirements.

7. The applicant is requesting a special exception under 11 DCMR 2003 to change the nonconforming use of the first floor from a delicatessen to a beauty salon. The applicant is also requesting a variance from 11 DCMR 2002.3 to extend the nonconforming beauty salon use to the second story.

8. Section 2003 provides as follows:

- 2003.1 If approved by the Board of Zoning Adjustment as authorized in Section 3105 through 3108, a nonconforming use may be changed to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, subject to the conditions set forth in this section.
- 2003.2 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.
- 2003.3 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.
- 2003.4 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.
- 2003.5 In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.
- 2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:
- (a) R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, and R-5-D;
 - (b) SP-1 and SP-2;

- (c) 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);
- (d) W-1, W-2, and W-3;
- (e) CR; and
- (f) C-M-1, C-M-2, C-M-3, and M.

2003.7 The Board may require the provision 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.

9. Sub-section 2002.3 of the Zoning Regulations provides that:

2002.3 A nonconforming use shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment or amendment of this title, or to another structure.

10. The owner/operator ("applicant" herein) of the beauty salon business testified on behalf of the applicant. She testified that she would manage and operate the business and she would be on the premises at all times during daily operations. The applicant testified that she plans to purchase the building for the beauty salon business.

11. The applicant described the interior of the structure. The applicant testified that upon entering on the first floor there is an open room. There is a small area in the back and a small bathroom to the left. On the second floor, there is a bathroom at the top of the stairs, a small kitchen, a living room and another room. She testified that there is no access to the second story from the inside of the structure. Access is from the outside only.

12. The applicant testified that she will place three or four booths and chairs on both the first and second floors. She plans to create shampoo rooms out of the small back room on the first floor and the kitchen on the second floor. She plans to convert the small room on the second floor into an office.

13. The applicant proposes to renovate the exterior of the structure and to have plumbing, lighting and electrical work done on the property. She also plans to open a wall to allow inside access to the second floor.

14. The applicant testified that the days and hours of operation for the beauty salon will be seven days a week from 8:30 a.m. to 9:00 p.m. She testified that between seven and ten employees will work at the site. Some will work for her on a full-time basis, others will work part time. The other hair designers will be self-employed and will rent booths on the second floor.

15. The applicant testified that she plans to sell beauty and barber supply products at the site. She testified that there is a need for these products in this area of the city. The applicant also testified that she plans to employ hair designers from the neighborhood and that many of the beauty salon clients will come from the neighborhood.

16. The applicant testified that products will be delivered to the site once or twice a week between 10:00 a.m. and 4:00 p.m. She further testified that trash will be removed on Fridays at 10:00 a.m.

17. The applicant testified that there is inadequate space on the lot to provide off-street parking. Therefore, patrons will park on the street where there is adequate space.

18. By report dated July 12, 1990 and through testimony at the hearing, the Office of Planning (OP) recommended approval of the special exception and denial of the variance.

OP noted that the proposed beauty salon use and the existing delicatessen use are not permitted in the R-4 District in which the property is located. The delicatessen use on the first floor was rendered nonconforming with the enactment of the Zoning Regulations in 1958. Both uses are first allowed as a matter-of-right in a C-1 District.

OP stated that a beauty salon use is less intense than a delicatessen use with regard to noise and traffic (both pedestrian and automobile). Generally, a beauty salon has fewer customers than a delicatessen. In most cases, a beauty salon customer would have an appointment and would spend more time in the salon than a delicatessen customer would spend in the delicatessen. Additionally, there is less of a tendency to loiter around a beauty salon than a delicatessen.

In OP's opinion, changing the first floor use to a beauty salon is not likely to create an adverse impact on the surrounding neighborhood due to noise, traffic or other conditions. Therefore, OP recommends approval of the special exception.

OP stated that it was unable to determine the previous use of the second floor of the property. OP believes it was used as a residence. However, it was not previously used in conjunction with

the existing nonconforming delicatessen use. OP noted that the R-4 zoning classification does not allow the proposed use. Further, the Zoning Regulations specifically prohibit extending a nonconforming use to portions of a structure not devoted to the existing nonconforming use.

OP was of the opinion that the second floor should be used consistently with the Zoning Regulations. OP was further of the opinion that extending the proposed use to the second floor would be too excessive and would impair the intent, purpose and integrity of the zone plan. Therefore, OP recommends denial of the variance relief requested.

20. Advisory Neighborhood Commission (ANC) 5C did not submit a report on the subject application. The representative of ANC Single Member District 5C-02, appeared at the hearing and expressed a concern about her inability to contact the property owner or the business owner to discuss the proposed use. No other issues were raised at the hearing.

21. The applicant submitted into the record a petition in support of the application. No other written documents were submitted by neighbors in support of or in opposition to the application. No other persons appeared at the hearing to testify in the application.

FINDINGS OF FACT:

1. The Board credits the testimony of the Office of Planning at Paragraph 18 and finds that the beauty salon would not adversely affect the surrounding neighborhood due to noise, traffic or other conditions. The Board also finds that the beauty salon will not have an adverse affect on the present character or future development of the neighborhood.

2. Based on the report submitted by the Office of Planning as Exhibit No. 18, the Board finds that the existing nonconforming use has not been changed to a conforming residential use.

3. The Board credits the testimony of the applicant at paragraph 15 and finds that the proposed use will serve neighborhood residents by providing jobs, hair salon services, as well as beauty and barber supply products.

4. Based on the survey presented in Exhibit No. 23 and the Sanborn map provided as Exhibit No. 19, the Board finds that the subject lot is similar in size, shape and topography to other lots in the area.

5. Based on testimony presented by the applicant at Paragraph 11 and the OP report, Exhibit No. 18, the Board finds

that the second floor cannot be accessed from the inside of the structure.

6. Based on the testimony of the applicant at Paragraph 11, the Board finds that the second floor is designed for residential use.

7. Based on the report of the Office of Planning, Exhibit No. 18, the Board finds that extending the proposed use to the second floor would prevent the second floor from being used for residential purposes.

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 to change a nonconforming use on the first floor of a structure from a delicatessen to a beauty salon in an R-4 district.

The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 2003 which regulate changes within structures.

The Board concludes that the applicant has met the burden of proof. The Board concludes that both the delicatessen use and beauty salon use are first permitted as a matter-of-right in the C-1 District. Therefore, the delicatessen use can be changed to the salon use pursuant to 11 DCMR 2003.1.

The Board concludes that the beauty salon use will not adversely affect the present character or future development of the surrounding area in accordance with the with the Zoning Regulations (11 DCMR 2003.2).

The Board concludes that the proposed use will not create any deleterious external effects (11 DCMR 2003.3).

The Board concludes that the existing nonconforming use has not been changed to a conforming or more restrictive use, therefore the provisions of 11 DCMR 2003.4 are inapplicable.

The Board concludes that the proposed use is deemed to be a neighborhood facility (11 DCMR 2003.5).

The Board concludes that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property.

The Board concludes that the applicant is also seeking a variance from 11 DCMR 2002.3 to allow the nonconforming beauty salon use to extend to the second floor of the subject structure. Granting such a variance requires a showing of an undue hardship upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board must find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board must also find that the property cannot reasonably be used for the purpose for which it was zoned.

The Board concludes that the applicant has not met the burden of proof. The Board concludes that the subject property is not unique and that there are no exceptional conditions related to the property itself that would create an undue hardship upon the owner in using the property for residential purposes.

The Board concludes that while the beauty salon use would not be of substantial detriment to the public good, extending the nonconforming use to the residential portion of the property would substantially impair the intent, purpose and integrity of the zone plan.

In light of the foregoing, the Board concludes that the special exception is hereby GRANTED and the variance is hereby DENIED.

VOTE: 4-0 (Maybelle Taylor Bennett, Charles R. Norris, William F. McIntosh, and Carrie L. Thornhill to grant in part and deny in part; Paula L. Jewell not present, not voting.)

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

ATTESTED BY: 
MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: APR 30 1992

BZA APPLICATION NO. 15326
PAGE NO. 8

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.

15326Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



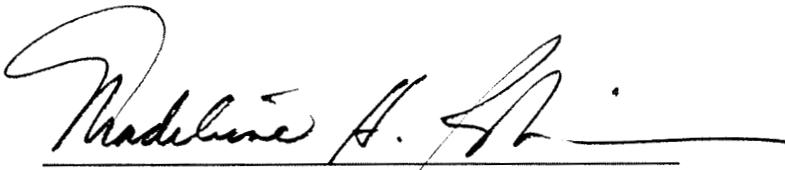
BZA APPLICATION NO. 15326

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 30 1992 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:

Carrie Baxter
425 Ridge Street, N.W.
Washington, D.C. 20001

Conway B. Jones
1911 9th Street, N.W.
Washington, D.C. 20001

James D. Berry, Jr., Chairperson
Advisory Neighborhood Commission 5-C
1723 - 3rd Street, N.E.
Washington, D.C. 20002


MADELIENE H. ROBINSON
Acting Director

DATE: APR 30 1992

15326Att/bhs