

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15714 of Manzoor Shikh, Tamra International, pursuant to 11 DCMR 3107.2 for a variance from the use provisions (Subsection 350.4) to allow the retail sale of general merchandise, clothing, hats and jewelry on the first floor in a D/R-5-B District at premises 2212 11th Street, N.W. (Square 302, Lot 831).

HEARING DATE: September 30, 1992
DECISION DATE: September 30, 1992 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located on the west side of 11th Street N.W. between Florida Avenue and W Street N.W. The property is comprised of a rectangular lot which contains approximately 1,426 square feet in land area with a width of 15 feet and a depth of 95 feet.

2. The site is improved with a two-story structure and a one-story structure located at the rear.

3. The applicant is proposing to establish a retail store in an D/R-5-B District.

4. The R-5-B District in which the subject site is located allows matter of right development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8, and a maximum height of 60 feet.

The D (diplomatic overlay) District permits the location of chanceries subject to the disapproval of the Board of Zoning Adjustment. The District is always mapped in combination with another zone district, the provisions of both districts apply.

5. The applicant is seeking a use variance to allow the retail sale of general merchandise, clothing, hats and jewelry, on the first floor in an D/R-5-B District.

6. The applicant testified that the first floor of the building was once used as a variety store. Also, the present owner is renting the building to the applicant with the option to buy.

7. The applicant also stated that the second floor was once used for office space.

8. The applicant stated that the building is located on the corner of W Street. There are no properties located to the left or at the rear of the building. Properties located to the south and the building in question are vacant. According to the applicant, the building has been vacant for one year.

9. The applicant also testified that she has been paying rent to Tamra International for the past few years, under the assumption that the building could be used for commercial retail.

10. The applicant was unaware that the property could only be used in compliance with the Zoning Regulations.

11. By memorandum dated September 22, 1992, the Office of Planning (OP) recommended denial of this application. OP noted the location of the property and the proposed use. OP understands that the applicant is proposing to use the first floor of the existing structure for the sale of general merchandise, including the sale of clothing, hats and jewelry. However, the proposed use requires the granting of a use variance by the Board.

OP indicated that they were unable to obtain additional information from the applicant regarding the details of this application.

It was noted that the subject property was once used as office space on the second floor for three years. The subject property is currently vacant.

OP stated that a retail use is not allowed as a matter of right in an R-5-B District. A retail use is first permitted as a matter of right in the C-1 District. The applicant has not established a hardship that would prevent the use of the property for matter of right uses in the R-5-B District. An R-5-B District allows matter of right single-family dwellings, flats and apartments.

OP believes that the subject premises can be used for residential purposes in accordance with the R-5-B zoning regulations without creating an undue hardship upon the applicant. The character of the existing development in the subject square is primarily residential.

OP is of the opinion that a retail use at the subject site would affect the area adversely by creating adverse vehicular and pedestrian impacts and other objectionable conditions. The location of the proposed commercial use in the subject residential district would impair the intent, purpose, and integrity of the zone plan for the city because such a retail use at the subject site would be contrary to the requirements of the Zoning Regulations.

12. By memorandum dated July 28, 1992, the Metropolitan Police Department, stated that the change proposed by this application will not affect the public safety in the immediate area or generate an increase in the level of police services now being provided.

13. By memorandum dated August 12, 1992, the Fire Department stated they are in support of this application.

14. No report was received from Advisory Neighborhood Commission 1B.

15. There was no testimony in support of this application.

16. There was no testimony in opposition to this application.

FINDINGS OF FACTS:

Based on the evidence of record, the Board finds the following:

1. The Board agrees with the report of the Office of Planning.

2. The subject property is not unique, and is similar to other lots and structures in the neighborhood.

3. The subject property can be used for uses allowed in the R-5-B District.

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 use variance to allow the retail sale of general merchandise, clothing, jewelry, and hats on the first floor of a residential structure in a D/R-5-B District. Granting of this application requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for purposes for which it is zoned. The Board further must find that the relief requested 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 concludes that the applicant has not met its burden of proof. The Board concludes that the existing structure is not unique. It is surrounded by residential development and located in an R-5-B zone which permits residential uses as a matter of right.

BZA APPLICATION NO. 15714
PAGE NO. 4

The subject premises can be used for residential purposes in accordance with the R-5-B zoning regulations without creating an undue hardship upon the applicant.

The Board concludes that a retail use at the subject site would affect the area adversely by creating adverse vehicular and pedestrian impacts. Therefore, approval of this application would be of substantial detriment to the public good.

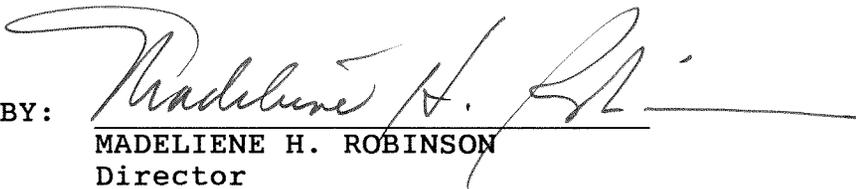
Finally the Board concludes that the use of the residential structure for retail sale will substantially impair the intent, purpose and integrity of the zone plan for the D/R-5-B District.

In light of the foregoing, the Board hereby **ORDERS** that the application is **DENIED**.

VOTE: 4-0 (Sheri M. Pruitt, Paula L. Jewell, John G. Parsons and Carrie L. Thornhill to deny; Angel F. Clarens not present not voting).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: _____

AUG 2 1994

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."

15714Order/LH/bhs

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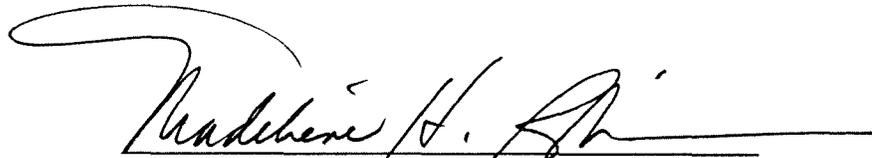


BZA APPLICATION NO. 15714

As Director of the Board of Zoning Adjustment, I hereby
- certify and attest to the fact that on- AUG 2 1994
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:

Sarah G. Kpodi
321 Shepherd Street, N.W.
Washington, D.C. 20011

Mary Treadwell, Chairperson
Advisory Neighborhood Commission 1B
P.O. Box 73710
Washington, D.C. 20056


MADELIENE H. ROBINSON
Director

DATE: AUG 2 1994

15714Att/bhs