

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 15751 of Tony Cheng, pursuant to 11 DCMR 3105.1 and 3200.2, from the decision of Edgar T. Nunley, Chief, Zoning Review Branch, and Joseph F. Bottner, Jr., Zoning Administrator made on April 6 and June 15, 1992, to the effect that a certificate of occupancy was denied because the use is alleged to be prohibited for the keeping, killing and selling of poultry in a C-M-2 District at premises 2260 25th Place, N.E. (Square 4258, Lot 36).

HEARING DATE: December 9, 1992  
DECISION DATES: January 6 and February 3, 1993

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this appeal is located at 2260 25th Place, N.E. It is zoned C-M-2. The property is improved with a structure currently used as a warehouse.

2. The appellant filed an application for a certificate of occupancy to use the subject premises for the "operation of a slaughterhouse for poultry only". By letter dated April 6, 1992, Edgar T. Nunley, Chief of the Zoning Review Branch of the Department of Consumer and Regulatory Affairs (DCRA), informed the appellant that the certificate of occupancy application was denied and directed him to request a variance from the use provision of 11 DCMR 823.1(a) which provides as follows:

823 PROHIBITED USES (M)

823.1 The following uses are specifically prohibited in M districts:

(a) Abattoir or slaughterhouse;

3. By letter dated April 20, 1992, the appellant requested that the Zoning Administrator allow an amendment to the certificate of occupancy application to more correctly reflect the intended use of the property which is to be for the "keeping, killing and selling of poultry".

4. By letter dated June 15, 1992, the Zoning Administrator informed the appellant that he was still of the opinion that the proposed use would require a use variance because the proposed use is a slaughterhouse, a prohibited use.

5. The appellant testified that he plans to use the property to provide poultry services for his customers. The poultry will be trucked to the site from an approved source. There is a loading zone at the site where the trucks can back up to the building and unload the birds. The birds will be maintained in coops located inside the structure. The place for housing the birds will be separate from the slaughter department, the office, and the customer service area. Customers will come to the site and place an order for either live or dressed poultry. The poultry will be processed at the site.

6. On July 21, 1992, the appellant filed an application with the Board of Zoning Adjustment for a variance from the use provisions of 11 DCMR 801, regulating matter of right uses in a CM District, and Section 823 which sets forth the prohibited uses in an M District. The appellant subsequently withdrew the use variance application and filed an appeal of the decision of Edgar T. Nunley and Joseph F. Bottner, the Zoning Administrator, to deny the certificate of occupancy to use the property for the keeping, killing and selling of poultry.

7. The issue raised in this appeal is whether the proposed use constitutes a slaughterhouse within the meaning of the Zoning Regulations, making it a prohibited use in the C-M-2 District.

8. The appellant argues that the proposed use is not a slaughterhouse. The appellant points out that while the Zoning Regulations do not define the term "slaughterhouse, the intended meaning of the term can be gleaned from its use in the Food and Food Operations Regulations, 23 DCMR, Subtitle B, Chapter 33, and the lack of its use in Chapter 34. Chapter 33 provides for the licensing, certification and registration of stock yards, slaughterhouses and packing houses. Subsection 3300.1 provides in part that "No person shall slaughter for sale as food any cattle, sheep, swine or goats in the District of Columbia except in a slaughterhouse licensed under paragraph 16 of the Act of Congress, ...."

**Subsection 3300.2 provides that:**

No stockyard, slaughterhouse or packing house, shall be licensed until the Director (of the Department of Environmental Services) has certified that the premises are in proper sanitary condition and have adequate facilities for maintenance of such condition.

The appellant argues that these regulations contemplate large carcass animals when referencing slaughterhouses. Poultry is not a large carcass animal.

The appellant argues that the killing of poultry is not the only activity that will occur on the site. Some of the poultry will be sold alive, and killing will only take place occasionally upon the request of customers. The appellant argues that having a slaughter department in a facility does not make the facility a slaughterhouse.

It is the appellant's contention that the proposed operation is light processing and is permitted under 11 DCMR 801.7(J). The appellant maintains that the proposed operations will be similar to a large restaurant where food is processed before it is cooked. The appellant testified that the proposed use will be somewhat larger in scale than a restaurant but will not meet the proportions of, or have the effects of heavy manufacturing. He stated that there are guidelines for disposing of waste and by-products and those regulations will be followed at the facility.

The appellant testified that a business establishment called the "Arrow Live Poultry Co., Inc.", was located at 917-919 5th Street, N.W. On three separate occasions the company received a certificate of occupancy. Certificate of Occupancy No. B-50190, dated February 3, 1965 allowed the "retail sale of poultry, eggs and produce." Certificate of Occupancy No. B-101257, dated February 22, 1977, and No. B-113466, dated March 23, 1979 were both to allow the "retail sale of poultry and eggs." The applicant submitted copies of these certificates of occupancy into the record to demonstrate that a business similar to what he proposes existed in the District of Columbia.

9. Joseph F. Bottner, Jr., the Zoning Administrator, testified in opposition to the appeal. He noted that 23 DCMR 3402 sets forth the types of poultry establishments. He argued that the appellant's operation would fit under Subsection 3402.3(b) which states that "Group B includes establishments engaged in the sale of both live and dressed poultry which also operate a slaughter department on the premises." He argued that this provision, which includes a slaughter department makes the proposed use a slaughter house.

The Zoning Administrator testified that "slaughterhouse" is not defined in the Zoning Regulations. Therefore, he referred to Websters Unabridged Dictionary for guidance. He stated that in Webster's "slaughterhouse" is defined, in part, as "an establishment where animals are butchered for market." The definition of "slaughter" in Webster's is, in part, "to kill for food (animals)."

According to the Zoning Administrator, the appellant is alleging that there has been some inconsistency with past decisions regarding the activity of keeping, killing and selling of poultry. However, he stated that it has been the practice of the Zoning

Division to view slaughterhouses as being prohibited in the District of Columbia based on the Zoning Regulations enacted in 1958. He testified that since joining the Zoning Division in 1965, he knows of only one establishment that sold and also killed chickens, turkeys, ducks, or geese for the customer. This establishment was located at premises 917-19 5th Street, N.W., and was considered a nonconforming use. The business ceased operating. There were several attempts to reopen the business, but the Zoning Division was consistent in denying the request.

The Zoning Administrator stated that the appellant made reference to 23 DCMR, Subtitle B, Chapter 33 which includes slaughterhouses relating to cattle, sheep, swine, or goats. Poultry was not mentioned in this section. He noted however that Chapter 34 of DCMR 23 does refer to poultry. It creates three groups for poultry establishments. Group A introduces establishments engaged only in the sale of live poultry. Group B includes establishments engaged in the sale of both live and dressed poultry, which also operate a slaughter department on their premises. Group C includes establishments engaged in the sale of live and dressed poultry, which have no slaughter department located on the premises. The Zoning Administrator pointed out that Group B does, in fact, include the slaughter of poultry. This, he believes, brings the subject case back to the D.C. Zoning Regulations which prohibit slaughterhouses.

He testified that Food and Food Operations Municipal Regulations cover operations of slaughtering; however, D.C. Zoning Regulations are more restrictive than the Food Operations Regulations. Therefore, slaughtering within the city is prohibited within the limitations of zoning. He stated that Section 101.3(d) of the Zoning Regulations reads as follows, "The provisions of this title shall govern whenever the Regulations in this title do the following: ... (d) impose other higher standards than are required in or under any statute or by any other Municipal Regulations."

The Zoning Administrator argued that it is evident that the D.C. Zoning Regulations are more restrictive. Consequently, denying the certificate of occupancy application for keeping, killing, and selling poultry was in order and is consistent with the practices of the Zoning Division.

Responding to the appellant's argument that the operation constitutes light processing, the Zoning Administrator stated that in his view light processing would be something that is not really heavy industrialized activity but it depends on what is being proposed. He stated that there is no clear-cut definition of "light processing" in the Zoning Regulations.

10. Advisory Neighborhood Commission (ANC) 5A did not submit into the record an official written report. The Board received a

letter dated November 23, 1992 from the Single Member District (SMD) Commissioners for ANC 5A-13 and 5A-14. The letter stated that three SMD Commissioners held a meeting on November 17, 1992 to hear the concerns of citizens on the proposed use. Neither the appellant, nor a representative, attended this meeting.

The letter stated that the citizens and commissioners adamantly oppose the proposed operations at the subject site. No one wanted this type of business in the neighborhood. The letter stated that the use will definitely pose problems. It will pollute the air, cause rodent problems and attract similar types of businesses to the area. The letter recommended denial of the appeal.

The Chairman of ANC 5A submitted a letter dated December 9, 1992, and testified at the hearing. He testified that on December 3, 1992, eight commissioners attended an ANC 5A Committee of the Whole meeting. The appellant's representative was present to describe the proposed use. The chairman stated that no quorum was present but that six commissioners asked him to write the letter expressing their opposition to the appeal and their support for the letter of November 17, 1992, submitted by SMD Commissioner Watkins. The ANC chairman testified that he was unable to make representations as to the factual bases for the conclusions reached by those who attended the meeting.

No evidence was received from the ANC related to whether the proposed use constitutes a slaughterhouse.

11. The Board requested advice from the Office of the Corporation Counsel (OCC) on the correct interpretation of the terms "slaughterhouse" and "light processing."

By memorandum dated January 28, 1993, OCC stated that Section 800.6 of the Zoning Regulations prohibits any use in a C-M district which is specifically prohibited in an M district. Section 823.1(a) specifically prohibits an abattoir or slaughterhouse in an M district. Both provisions were promulgated with the 1958 Zoning Regulations. There was no discussion of slaughterhouses in the original rules to assist in clarifying the intent of the drafters as to the scope of the term "slaughterhouse", that is, whether it includes the occasional killing of fowl in an establishment licensed to keep, kill and sell poultry, or whether it intended to apply only to large carcass animals like cattle, sheep, swine or goats.

Ultimately, OCC advised the Board that there is reason to conclude that a slaughterhouse use is different from a facility established for the keeping, killing and selling of poultry. OCC's advice is based on the following:

(A) Webster's Third New International Unabridged Dictionary defines "slaughterhouse" as "an establishment where animals are butchered for market". "Animal" is defined in one instance as "a mammal as distinguished from a bird, reptile, or other nonmammal". Thus, at least one dictionary definition lends support to the distinction being made between poultry and "animals".

(B) Title 23, Subtitle B of the District of Columbia Municipal Regulations (Food and Food Operations) also appears to make a distinction in their licensing requirements between slaughterhouses for the killing of large carcass animals and establishments for the keeping, killing and selling of poultry. Chapter 33 sets forth regulations for the licensing and operation of stock yards, slaughterhouses and packing houses. The chapter makes reference to cattle, sheep, swine and goats only, not to any type of poultry. However, Chapter 34 sets forth the permit and operation requirements for poultry establishments, including Group B establishments which engage "in the sale of both live and dressed poultry which also operate a slaughter department on the premises". "Slaughter department" in Section 3402.3 as opposed to "slaughterhouse" in Chapter 33 suggests the drafters' intent to distinguish between the two types of facilities. Consequently, there is a persuasive argument that, at least with respect to the food licensing regulations, there is a distinction between a slaughterhouse and an establishment for the keeping, killing and selling of poultry. The Zoning Regulations and Chapters 33 and 34 of 23 DCMR should be read in tandem to clarify the usage of the term "slaughterhouse". Such a reading suggests that the term "slaughterhouse" in Section 823.1(a) of the Zoning Regulations does not include an establishment for the keeping, killing and selling of poultry.

(C) Ordinances in other jurisdictions have made distinctions between slaughterhouses and chicken processing plants. Silsby v. Allen's Blueberry Freezer, Inc., 501 A.2d 1290 (1985), citing Article X, Sec. (4)(B)(18) of the Ellsworth Zoning Ordinance. Several cases make a distinction between the slaughter of "animals" and the slaughter of "poultry". See, Kilcoyne v. City of Coffeyville, 269 P.2d 418 (1954); Mayor and Council of Mount Airy v. Sappington, 73 A.2d 449 (1950).

Responding to the Board's inquiry about the interpretation of "light manufacturing", OCC pointed out that a trial court in at least one other jurisdiction found that the killing and slaughter operations were a kind of manufacture and treatment. Kilcoyne, supra, at 421. Based on similar reasoning, the Board could reasonably find that an establishment for the keeping, killing and selling of poultry fits within Section 801.7(j) as a "light manufacturing, processing" establishment.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. A slaughterhouse is an establishment where animals are butchered for market.
2. Poultry is not considered to be in the animal family.
3. A slaughterhouse and a slaughter department are not the same type of facility.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record the Board concludes that the appellant is appealing the decision of the Chief of the Zoning Review Branch and the Zoning Administrator to deny a certificate of occupancy to establish a facility for the keeping, killing and selling of poultry. The denial is based on the grounds that the proposed facility would be a slaughterhouse, a prohibited use under 11 DCMR 823.

The Board is persuaded by the appellant's arguments and the information provided by the Office of the Corporation Counsel, that there is a distinction between a slaughterhouse as used in the Zoning Regulations and the facility proposed by the appellant.

The Board concludes that while the term "slaughterhouse" is not defined in the Zoning Regulations, Webster's provides persuasive evidence of the meaning of the term for purposes of zoning. Webster's definition makes reference to the killing of "animals", another word not defined in the Zoning Regulations. However, Webster's definition of "animal" specifically distinguishes "bird" from the meaning of the word. Further, Webster's defines "poultry" as "domesticated birds . . ." (emphasis added) In the Board's opinion, it is clear that poultry is not a member of the animal family. Consequently, a facility established for the keeping, killing and selling of poultry cannot be a slaughterhouse, a facility for the killing of animals.

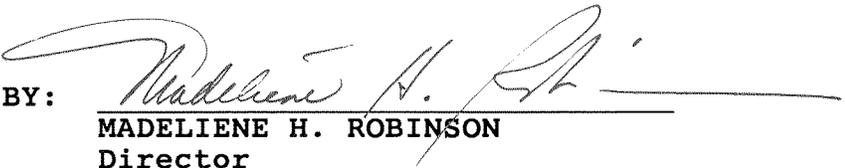
Based on the foregoing analysis, the Board concludes that the Zoning Administrator erred in deciding to deny the certificate of occupancy applied for by the appellant. Therefore, it is hereby **ORDERED** that the appeal is **GRANTED** and the decision of the Zoning Administrator is **REVERSED**.

BZA APPEAL NO. 15751  
PAGE NO. 8

VOTE: 5-0 (Paula L. Jewell, Sheri M. Pruitt, John G. Parsons, Angel F. Clarens and Carrie L. Thornhill to grant and reverse).

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

ATTESTED BY:

  
MADELIENE H. ROBINSON  
Director

FINAL DATE OF ORDER:

APR 19 1993

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.

15751Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15751

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 19 1993 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:

Henry C. Lee, III  
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Washington, D.C. 20004

Raymond Dickey, Chairperson  
Advisory Neighborhood Commission 5A  
Slowe School Demountable  
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MADELIENE H. ROBINSON  
Director

DATE: APR 19 1993

15751Att/bhs