

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15785 of John Daily, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 701.1) to allow auto repair and detailing in a C-1 District at premises 5443 MacArthur Boulevard, N.W. (Square 1440, Lot 886).

HEARING DATE: February 10, 1993
DECISION DATES: March 3 and April 17, 1993

ORDER

The property which is the subject of this application is located on the northeastern corner of the intersection of MacArthur Boulevard and Cathedral Avenue N.W. It is known as 5443 MacArthur Boulevard, N.W. and it is zoned C-1.

The site is triangular in shape and is comprised of approximately 3,000 square feet of land area. The site is developed with a one-story, 1,000 square-foot structure formerly used as a gasoline station. The existing structure has one bay, and office space. The gasoline station use was discontinued in February 1989. The gasoline pumps and storage tanks have been removed from the site.

The site is located in a small area zoned C-1. Structures located immediately to the east of the property are used as a delicatessen/carryout and other neighborhood-type commercial uses. Office uses are located on the southeastern and southwestern corners of the intersection. The Palisades Community Church is located immediately to the north of the property. However, the general character of the neighborhood is residential. Single-family detached dwellings are located in the R-1-B District on Cathedral Avenue N.W. across the street from the site. The site is also located adjacent to an R-3 District.

The C-1 District in which the site is located permits matter of right low density development to a maximum height of 40 feet/three stories, a maximum floor area ratio (FAR) of 1.0 and a maximum lot occupancy of 60 percent.

The applicant proposes to use the property as an auto repair and detailing establishment. The proposed auto repair shop use is first allowed in the C-2 District as a special exception. It is first allowed in the C-3 District as a matter of right. The applicant is requesting a variance from the use provisions of Subsection 701.1 to establish this use in a C-1 District.

CONTESTED ISSUES AND ARGUMENTS:

1. Whether the property is unique or exceptional?

The applicant testified that the property is very small and has been contaminated. He pointed out that the Exxon Company is planning to free the property of contaminants hopefully in the near future.

By memorandum dated February 1, 1993 and through testimony at the hearing, the Office of Planning (OP), recommended denial of the application. OP noted the square footage of the lot and the structure located on the lot. However, OP did not express an opinion as to whether it considered the property to be unique.

An opposing neighbor who resides at 5213 Cathedral Avenue, N.W. testified that the building is a little unique.

2. Whether the unique conditions create an undue hardship on the owner in his efforts to use the property for uses permitted as a matter of right in the C-1 District?

The applicant testified that the existing building was erected with only one bay and it can easily be converted into an auto repair garage without incurring great expense.

The applicant testified that because the lot and building are so small, there are not many other businesses that could locate there without spending a lot of money. Money would be needed for remodeling or renovation of the building, and money to start another type of business would be difficult to obtain because of the cost of the clean-up. He stated that, while Exxon plans to clean up the contamination, many potential business people have been reluctant to use the property because it has been contaminated.

The applicant testified that he listed the property with a realtor for a period of time, however, no purchase was ever made. He also testified that he received calls from people interested in establishing such businesses as a Dominos Pizza store, a dry cleaning operation and a bank. However, no one ever followed through on the proposal.

The applicant testified that most of the potential operators had problems with the contamination. However, in his opinion, the contamination would not prevent other uses at the site. The applicant believes that now the only appropriate use of the site would be an automotive-type operation.

The applicant testified that he did not document all of the calls and contacts he received from potential businesses about using the property.

The Board left the record open at the end of the hearing to receive from the applicant some form of documentation demonstrating that the property cannot be used for any purpose permitted in a C-1 District. However, nothing was submitted by the applicant regarding this issue.

OP stated that the applicant has not established a hardship specific and unique to the subject property which would prevent its use in accordance with the requirements for a C-1 District.

The opposing witness who resides at 5213 Cathedral Avenue, N.W. testified that while the building is a little unique, it is not exceptional. It has one bay and an office but the physical characteristics do not preclude the establishment of other uses at the site.

3. What impact would the proposed use have on the area and the zone plan?

The opposing witness testified that he would not like a repair garage at the site. He is concerned that there would be too many cars around the property. He testified that when the gas station was in operation, there were many cars parked on the corner near the property. This witness testified that he would prefer any of the uses permitted in C-1 over the use proposed.

The applicant testified that the use would not adversely affect the area. The proposed use is less intense than what previously existed at the site because there will be fewer cars. He anticipates that on a daily basis only about six cars will come to the site, approximately two cars will come for minor repairs and four cars will require detailing services.

Responding to the concerns of the opposing witness, the applicant testified that in his ten years of operating the gas station, he had no problems with cars parking on the corner. He stated that cars stayed on his lot and he guarantees that under the proposed plan cars would stay on his lot.

The Office of Planning was of the opinion that the proposal would impact the area adversely because the intensity of the use would be increased. OP also stated that the proposed operation would impair the intent and purpose of the zone plan because the use is not allowed in the C-1 District.

FINDINGS OF FACT:

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

1. The property is unique in size and shape.
2. The physical characteristics of the property have not been shown to preclude all uses allowed in a C-1 District.
3. The Board makes no finding with regard to whether the use would have an adverse impact on the surrounding area.
4. To allow the proposed use would be inconsistent with the intent of the Zoning Regulations for the C-1 District.
5. By letter dated January 27, 1993, Advisory Neighborhood Commission (ANC) 3D expressed support for the application. No explanation for this position was provided and no one representing ANC 3D appeared at the hearing to testify in the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking a variance from the use provisions to allow an auto repair and detailing establishment in a C-1 District. Granting such a variance requires a showing through substantial evidence that requiring strict compliance with the Zoning Regulations will create an undue hardship upon the owner in his efforts to make reasonable use of the property. This hardship must arise out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The applicant must demonstrate that the property cannot be used for any purpose for which it is zoned due to some physical or other extraordinary condition related to the property itself. In addition, the Board must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The applicant has failed to demonstrate how denying the application will create an undue hardship for him in making reasonable use of the property. The applicant has failed to submit evidence into the record to demonstrate that the property cannot be used for any of the purposes allowed in the C-1 District.

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The Board concludes that to grant the application without proof of an undue hardship on the owner in complying with the Zoning Regulations, would impair the intent, purpose and integrity of the zone plan for the C-1 District.

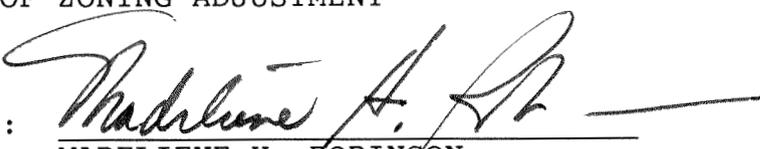
The Board concludes that ANC 3D failed to comply with 11 DCMR 3307.1(e) which requires that the ANC report contain the issues and concerns about the application as they relate to the standards of the Zoning Regulations. Therefore great weight cannot be given to the report of ANC 3D.

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

VOTE: 4-0 (Paula L. Jewell, Carrie L. Thornhill and Angel F. Clarens to deny; Sheri M. Pruitt to deny by proxy)

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 30 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."

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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

John Daily
3212 Nottingham Street
Arlington, Virginia 22207

Robert Bryce
5213 Cathedral Avenue, N.W.
Washington, D.C. 20016

Eleanor Lewis, Chairperson
Advisory Neighborhood Commission 3-D
P.O. Box 40846
Washington, D.C. 20016


MADELIENE H. ROBINSON
Director

DATE: AUG 30 1994