

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15923 of Harold Bobb, pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to change a nonconforming use from retail beverage store to retail beverage and grocery store on the first floor in an R-4 District at premises 1333 Constitution Avenue, N.E. (Square 1034, Lot 146).

HEARING DATE: March 16, 1994
DECISION DATE: April 6, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located in an R-4 District on the south side of Constitution Avenue, N.E., between 13th and 14th Streets, N.E. The site is developed with a one-story structure which is being used as a liquor store. The block in which the property is located is developed primarily with two-and three-story rowhouses. The area is characterized by having residential structures interspersed with neighborhood commercial uses and churches.

2. The site is improved with a one-story semi-detached structure used as a licensed Class A-type liquor store which allows the owner to sell hard liquor and other beverages. The existing nonconforming use has existed at the site without change for many years with a valid license.

3. On June 5, 1991, by Application No. 15505, the Board granted approval for the applicant to change the use of the property from a retail beverage store to a retail beverage and grocery store for four years. However, the applicant did not obtain the certificate of occupancy to sell grocery items after the Board had granted approval. The order to sell grocery expired for lack of action by the applicant.

4. The applicant is proposing a change in nonconforming use to allow the sale of grocery items in addition to beverages.

5. The proposal does not involve any structural additions or changes to the existing one-story structure. The Office of Planning (OP), by report dated March 9, 1994, stated that the applicant provided a floor plan of the proposed facility that lacked sufficient detail to make a precise square footage determination. According to the OP, the applicant indicated that, of the total available space of 1,036 square feet, approximately 700 square feet would be devoted to the sale of merchandise. The

applicant would use 200 square feet of the space for the sale of liquor, while the remaining 500 square feet would be used for the sale of groceries.

6. The OP stated that the proposed change in nonconforming use from a liquor store to a liquor and grocery store would not require any changes to the exterior of the building.

7. By a memorandum dated March 14, 1994, the Department of Public Works (DPW) stated that it had reviewed the application for approval to amend the certificate of occupancy to change a retail beverage store to a retail beverage and grocery store. DPW stated that based on this review, it had no objection to the application.

8. The D.C. Fire Department (DCFD), by a letter dated December 3, 1993, had no objection to the application, concluding that the proposed change will not affect the public safety in the immediate area or generate an increase in the level of fire services now being provided.

9. The Capitol Hill Restoration Society, by letter dated March 28, 1994, voted to support the special exception for two years if the applicant agreed to the following terms of a voluntary agreement between the applicant and the community:

- a. The applicant will take all steps necessary to stop loitering and drinking on the property.
- b. The applicant will enforce customer only parking and impose a 15-minute limit on customer parking. During non-business hours, the parking area will be secured.
- c. The applicant will remove paper signs from the windows and post no additional paper signs in the windows except as required by law or to advertise the sale of groceries and other non-alcoholic items.
- d. The applicant will prevent individuals from sitting on the metal guard rail in the parking lot.
- e. The applicant will not serve to inebriants.
- f. The applicant will not install or permit the installation of pay phones.
- g. The applicant will make a continuing effort to clean trash, bottles and other litter on and around the business. The applicant will have an employee

check the sidewalks, gutters and adjoining property to each end of the block regularly during the day and at the close of business to pick up bottles, cans, wrappers and other litter, including broken glass.

- h. The applicant will not sell cups in packages of less than 40.
- i. The applicant will not sell cigarette papers, glass pipes or other paraphernalia associated with drugs.
- j. The applicant will not sell single serving cans or bottles of beer; any container of an alcoholic beverage of one-half pint or less; and fortified wines.

11. The OP by its report dated March 19, 1994, concluded that the facility would not affect the area adversely and the provisions for the requested special exception have been complied with. The OP recommended that the application be approved with the following conditions:

- a. The approval shall be for a period of three years.
- b. The sale of grocery items at the premises shall be restricted to canned goods, packaged lunch meats, dairy products, and breads.
- c. The location of grocery items within the store shall be reasonably separated from alcoholic beverages for the convenience and protection of the customers.
- d. The hours of operation shall not exceed 9:00 a.m. to 10:00 p.m., Monday through Saturday.
- e. The delivery of supplies to the grocery store shall not exceed an average of one per day.
- f. Trash shall be stored inside the structure and shall be picked up at least once per week.
- g. No cooking of food shall be conducted at the subject premises.

12. Mr. William Smith, a resident at 106 A Street, S.E., and Mr. Reginald Grayson, a resident at 1412 C Street, N.E., testified in support of the application.

FINDINGS OF FACT:

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

1. The Board's prior approval in 1991 of BZA Application No. 15505 created a nonconforming use from a retail beverage store to a retail beverage and grocery store for four years.
2. The applicant did not obtain a certificate of occupancy to operate the grocery store after the approval by the Board. As a result of lack of action by the applicant, the approval expired.
3. The applicant is requesting a current approval to enable him to include a grocery component in the beverage store.
4. The proposed use would occupy approximately 500 square feet out of a total of 1,036 square feet of floor space at the subject premises.
5. The number of parking spaces at the site would total seven. No structural alterations to the subject premises are proposed.
6. The applicant proposes the hours of operation to be from 9:00 a.m. to 9:00 p.m., Monday through Thursday, and from 9:00 a.m. to 12:00 p.m., Friday and Saturday. The store would remain closed on Sunday.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing evidence of record and the findings of fact, the Board concludes that the applicant is seeking a special exception to change a nonconforming use from retail beverage store to retail beverage and grocery store. In order to be granted such an exception, the applicant must demonstrate that complies with the requirements of Subsection 3108.1 and the proposed Section 2003 of the Zoning Regulations.

The Board also concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the area.

The Board further concludes that it has accorded to the Office of Planning and the Advisory Neighborhood Commission 6A "great weight" to which they are entitled. The Board therefore **ORDERS**

that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of TWO YEARS to afford the Board an opportunity to monitor the applicant's compliance with the conditions of this approval.
2. The hours of operation shall be between 9:00 a.m. and 10:00 p.m., Monday through Saturday.
3. The number of deliveries of grocery supplies shall not exceed one per day.
4. Trash shall be stored inside the building and shall be picked up at least once per week.
5. There shall be no cooking of food on the premises.
7. The applicant shall not permit customers to loiter outside of the premises or in the parking area.
8. The parking area shall be for customers' use only. The parking area shall be secured with a chain or gate to prevent its use during all hours the store is not in operation.
9. The applicant shall install a barrier to prevent customers from sitting on the metal guard rail adjacent to the parking area or remove the guard rail and replace it with a fence.
10. The applicant shall maintain the exterior of the premises in good repair and neat in appearance.
11. The applicant shall provide a trash receptacle near the front door for customer use.
12. The applicant shall police the property and the area surrounding the site for trash and debris daily.
13. The applicant shall establish and maintain a community liaison program which would include a representative of the facility, the ANC, and the neighborhood. The applicant shall conduct meetings of the community liaison groups at least twice a year. Notice of the meetings shall be mailed to the ANC and property owners within 200 feet of the premises at least one week prior to the meetings. The applicant shall be responsible for keeping

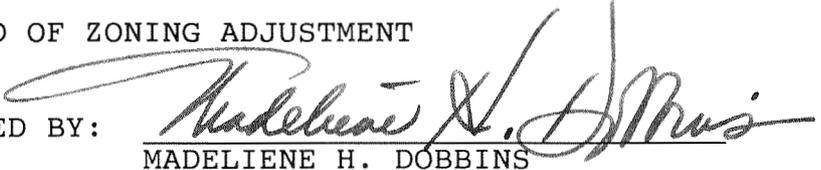
minutes of the meetings and providing an annual report of its activities, copies of which shall be filed with the Board at the time of filing an application for continuation of the special exception relief.

VOTE: 3-0 (Angel F. Clarens, Craig Ellis and George Evans to grant; Laura M. Richards not voting, not having heard the case).

THIS ORDER WAS ISSUED AS A PROPOSED ORDER PURSUANT TO THE PROVISIONS OF D.C. CODE SECTION 1-1509(D). THE PROPOSED ORDER WAS SENT TO ALL PARTIES ON APRIL 22, 1997. THE FILING DEADLINE FOR EXCEPTIONS AND ARGUMENTS WAS MAY 27, 1997. NO PARTY TO THIS APPLICATION FILED EXCEPTIONS OR ARGUMENTS RELATING TO THE PROPOSED ORDER, THEREFORE, THE BOARD OF ZONING ADJUSTMENT ADOPTS AND ISSUES THIS ORDER AS ITS FINAL ORDER IN THIS CASE.

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

ATTESTED BY:


MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER:

JUN 9 1997

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, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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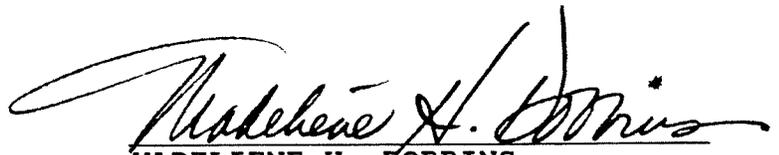
BZA APPLICATION NO. 15923

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 9 1997 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Soon K. Chang
2714 Hunter's Gate Terrace
Silver Spring, Maryland 20904

Harold Bobb
11300 Rockville Pike
Rockville, Maryland 20852

Tommy Wells, Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E., #108
Washington, D.C. 20003


MADELIENE H. DOBBINS
Director

DATE: JUN 9 1997