

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15927 of John Vassilas, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 501.1) to allow a restaurant and delicatessen on the first floor and cellar/basement (Lot 61), a variance from the prohibition against extending a nonconforming use to portions of a structure not devoted to that nonconforming use (Subsection 2002.3), and to amend a condition of the Board's Order No. 11512 dated December 26, 1973 (Lots 59 and 60) to allow a restaurant and delicatessen on the first floor to extend into the cellar/basement and to increase the seating capacity from 55 to 110 in an SP-2 District at premises 1247 and 1253 20th Street, N.W. (Square 116, Lots 56, 60 and 61).

HEARING DATES: March 23, 1994 and May 5, 1995
DECISION DATE: June 7, 1995

ORDER

SUMMARY OF EVIDENCE:

1. The subject site is located on the southeast corner of the intersection of 20th and N Streets, N.W. and consists of three lots totaling 2,262 square feet of land area.

2. The site is improved with three rowhouse-type interconnected structures. The first floor and the basement are occupied by the Kozy Corner restaurant. Offices occupy the top floors through the entrance on N Street, N.W.

3. The area surrounding the site is characterized by a mix of uses including small commercial retail establishments, restaurants, small to large office buildings, large apartment buildings, flats, and single-family row dwellings. New Hampshire Avenue, N.W. is located one block to the west of the site. Dupont Circle is located two blocks to the northeast.

4. The applicant seeks zoning relief to permit the expansion of the existing restaurant and delicatessen into the basement of the subject structures, and to increase the seating capacity on the establishment's first floor from 55 to 110 persons. The basement of the establishment would contain toilet facilities.

5. The proposed operating hours would be from 7:00 a.m. to 10:30 p.m., Monday through Saturdays; and from 7:00 a.m. to 2:30 p.m. on Sundays. Trash would be stored within the building and would be collected each day. Deliveries would be made twice a

week. A total of 15 persons would be employed at the establishment.

6. Three persons who had known the applicant for several years testified in support of the application.

7. The Department of Public Works (DPW), by memorandum dated March 23, 1994, had no objection to the application, indicating that the proposal would have no adverse effect on traffic and parking in the area.

8. The Metropolitan Police Department (MPD), in its memorandum of January 21, 1994, had no objection to the application. The MPD said that the proposed application would not affect the public safety on the immediate area nor generate an increase in the level of police services being served.

9. By memorandum of February 28, 1994, the Fire and Emergency Medical Services Department (Fire & EMS) had no objection to the application. Fire and EMS stated, however, that fire and life safety features required by city codes such as fire alarms, sprinkler systems, standpipe systems, exits, fire rated separations, fire extinguishers, etc. shall be determined during the plan review process as part of the building permit application review.

10. The Office of Planning (OP), by memoranda of June 1, 1994, and May 2, 1995, recommended denial of the application. OP said that the applicant had not the burden of proof relative to the zoning relief sought in the case. OP opined that neither undue hardship nor a practical difficulty existed in the case that would justify an increase in the subject restaurant's seating capacity or its expansion.

11. The Board of Zoning Adjustment (the Board) requested the applicant to submit detailed plans of the three structures involved in the proposal and their respective uses on lots 59, 60 and 61 in Square 116. With the additional information received, the application was readvertised to more accurately address the nature and extent of the zoning relief sought.

FINDINGS OF FACT:

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

1. The subject property is located in an SP-2 zone district that does not permit a restaurant/delicatessen use.

2. The application constitutes the applicant's request to legalize an existing situation at the subject site.
3. The Board previously granted the structures on Lots 59 and 60 in Square 116 for use as a restaurant/delicatessen; however, the elements of proof for those lots do not hold true for Lot 61 in Square 116. The Board does not find evidence in the record to indicate that Lot 61 is connected to Lots 59 and 60 as far as the restaurant/delicatessen use is concerned.
4. The applicant failed to provide convincing and persuasive testimony to indicate that he was faced with an exceptional situation or a practical difficulty. Increasing the seating capacity at the restaurant/delicatessen is primarily economic and has no bearing on zoning.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicant is seeking a use and an area variance to permit the expansion of the existing restaurant and delicatessen into the basement of the subject structures, and to increase the seating capacity on the establishment's first floor from 55 to 110 persons. The applicant must demonstrate substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. Further, the Board must find that the application would not be of substantial detriment to the public good, and would not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met the burden of proof relative to the zoning relief being sought in this case. Neither an undue hardship nor a practical difficulty exists in this case to justify the expansion of the subject restaurant/delicatessen or an increase in area and the applicant is not faced with an exceptional situation or condition that constitutes a practical difficulty. The Board concurs with the OP that the applicant is not faced with an exceptional situation or condition and that any practical difficulty relative to the applicant's inability to expand the establishment would be self-imposed.

The Board further concludes that to grant the variances under circumstances where the tests for variance relief have not been met would impair the intent, purpose and integrity of the SP-2 zone district regulations.

The report of Advisory Neighborhood Commission (ANC) 2B was given the "great weight" to which it is entitled.

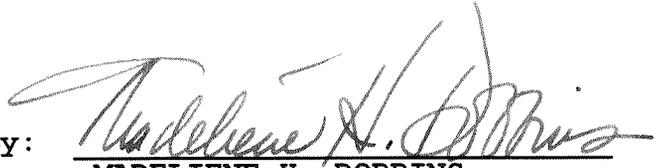
In the light of the foregoing, the Board **ORDERS** that the application be **DENIED**.

VOTE: 3-0 (Susan Morgan Hinton, Craig Ellis and Angel F. Clarens to deny; Laura M. Richards not present, not voting, not having participated in 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 October 17, 1997. The filing deadline for exceptions and arguments was November 7, 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 at its final order in this case.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT --- Susan Morgan Hinton, Laura M. Richards, Sheila Cross Reid and Betty King.

Attested By:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: NOV 26 1997

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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15927

As Director of the Board of Zoning Adjustment, I certify and attest that on NOV 26 1997 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Vassilas
5617 Sherrier Place, N.W.
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Klaus Klatt
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Attested By:

A handwritten signature in cursive script, reading "Madeliene H. Dobbins", written over a horizontal line.

MADELIENE H. DOBBINS
Director

Date: NOV 26 1997