

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15974 of Lin Koon Ip, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 330.5) to allow a carryout/delicatessen on the first floor in an R-4 District at premises 1727 North Capitol Street, N.E. (Square 3512, Lot 19).

HEARING DATE: September 14, 1994
DECISION DATE: October 5, 1994

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located in the Eckington neighborhood of Ward 5 at 1727 North Capitol Street, N.E., on the northeastern corner of the intersection of North Capitol Street and Randolph Place, N.E.

2. The site is improved with a three-story, plus basement, semi-detached building. The building, constructed in 1905, contains a gross floor area of 3,832 square feet. The second and third floors of the building are used as residential units. The two apartment units, each consisting of two rooms, are vacant. The basement is unoccupied and, according to the applicant, would be used as storage space for the carryout/delicatessen business.

3. The subject site is rectangularly shaped and contains approximately 2,112 square feet of land area.

4. A 64-foot long by 15-foot wide building restriction line traverses the site along North Capitol Street, thus approximately 960 square feet (about 45 percent) of the site cannot be used for building purposes and is used as paved open space.

5. There are three entrances to the site. Two of the entrances are located on North Capitol Street; one is for the residential tenants on the two top floors, and the other would be used by patrons of the carryout/delicatessen. The third entrance, on Randolph Place, would be used for deliveries.

6. The area surrounding the site is characterized by rowhouses and low- to mid-rise apartment dwellings. Retail stores and services are located in the commercial shopping area immediately south of the site. Several public schools are located to the east of the site, including McKinley Senior High School, Langley Junior High School, and Emery Elementary School.

7. The subject site is located in an R-4 zone district. This zone district permits matter of right development of residential uses (including detached, semi-detached, and row single-family dwellings, and flats) with a minimum lot area of 1,800 square feet, a minimum lot width of 18 feet, a maximum lot occupancy of 60 percent, and a maximum height of three stories/40 feet.

8. The applicant is requesting a variance from the use provisions under Subsections 330.5 and 3107.2 of 11 DCMR to allow the first floor of the subject premises to be used as a carryout/delicatessen in an R-4 District. A carryout/delicatessen is not a permitted use in the R-4 District without approval of the Board. This use is first permitted as a matter of right in the C-1 District.

9. The applicant is proposing to use the subject property's first floor (which contains approximately 800 square feet) to sell cooked food which would include chinese food, sandwiches, hamburgers, hotdogs, and hot and cold beverages. There would be no seating arrangements. The hours of operation of the retail establishment would be between 10:00 a.m. and 10:00 p.m. Monday through Saturday, and 12:00 p.m. to 8:00 p.m. on Sunday. The applicant would employ three persons full time at the site. There would be two weekly deliveries to the premises. Trash would be collected from a dumpster to be placed at the rear of the site. No liquor would be sold.

10. The applicant purchased the property in 1990, and has a Certificate of Occupancy (C of O), dated January 27, 1993, to use the second and third floors of the building as a flat. The first floor is currently vacant and has been unoccupied for several years.

11. The applicant, through his counsel, testified that he had submitted 14 separate Certificates of Occupancy (C of O) showing various uses for the first floor since 1948.

12. The applicant, through his counsel, testified that he would suffer a hardship if the requested relief were not granted because the property is not set up for residential use; the interior of the property is set up for commercial use. Notwithstanding the applicant's efforts to lease the property to attract tenants for the space for office use, he has not been successful.

13. The applicant testified that the proposed use would not create any substantial adverse effects in that there would not be any more than two or three separate deliveries a week in the morning. The clientele attracted by the use would generally come from the immediate area and walk to the site. The applicant stated that he was very sensitive to any difficulties with staying open

late in the neighborhood, and since members of his family would be living there, the proposed use would not be an after midnight operation.

14. The Office of Planning (OP) by its report dated August 29, 1994, stated that the city issued certificates of occupancy for use of the first floor as a restaurant between December 29, 1948 and January 11, 1972.

15. The Board of Zoning Adjustment, however, by its Order No. 13979, gave permission to Beltway Mechanical, Inc., to use the first floor of the building as administrative office space from May 1984 to September 1988. The Beltway Mechanical, Inc. a mechanical contracting company and home improvement contractor, had obtained a certificate of occupancy (No. B138603) for the above purpose.

16. The Advisory Neighborhood Commission (ANC) 5C by report dated August 31, 1994 opposed the application for the reasons as follows:

- (a) There already exists a more than sufficient number of carryout/delicatessen restaurants on that portion of North Capitol Street where the subject building is located;
- (b) It has been observed that the carryout/delicatessen restaurants tend to stay open very late in the night; they tend to attract a clientele whose behavior adversely affects the peace, order and quiet in the surrounding neighborhoods;
- (c) The proposed carryout/delicatessen would have a negative effect on residential parking needs and vehicular and pedestrian safety;
- (d) The proposed carryout/delicatessen would detract from the cultural vitality of the community surrounding the site; and
- (e) The proposed carryout/delicatessen would have a detrimental effect upon real property values in the community.

17. One neighborhood resident of 1729 North Capitol Street, N.E., testified in opposition to the application, stating that the operation of the proposed restaurant/ delicatessen would bring into the area more roaches, trash, rodents, loitering and traffic.

18. The Office of Planning (OP), by its report dated August 29, 1994, and through testimony at the public hearing, recommended approval of the application. OP stated that the applicant had met

the burden of proof to justify granting a use variance. The OP stated that the first floor of the subject building had been used for commercial purposes since at least 1948, and that based on the building's existing floor plan, the first floor most likely had been constructed ostensibly to accommodate a commercial use. The OP further stated that the carryout/delicatessen is a less intense use of the site than a restaurant (which was one of the site's previous uses), and that the proposed use is not incompatible with nearby commercial properties.

19. The Board left the record open at the conclusion of the public hearing to afford the applicant an opportunity to submit documentation of his efforts to lease the subject property in support of his request for a use variance and for responses from parties to that submission. The applicant did not submit any additional information.

FINDINGS OF FACT:

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

1. There is no supportive evidence to demonstrate that the applicant made efforts to lease the site for office use.
2. The operation of the proposed business would move the site from a previous less intensive use as an office space to a more intensive use as a carryout/delicatessen store.
3. The Board finds that the applicant is unable to establish that the strict application of the Zoning Regulations would result in an undue hardship.
4. The site had been vacant since 1988 when it was used as administrative office space.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing evidence of record and findings of fact, the Board concludes that the applicant is seeking a use variance to allow a carryout/delicatessen on the first floor of the subject property in an R-4 District. Granting such a variance requires a showing through substantial evidence that 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 because of some physical or other extraordinary condition related to the property itself. In addition, the

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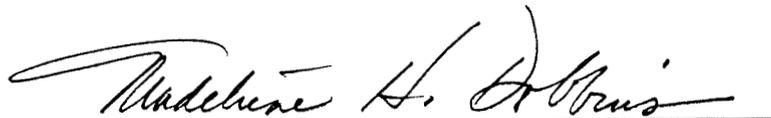
As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 4 1996 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. DOBBINS
Director

Date: NOV 4 1996