

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16042 of George Galich, on behalf of the H Street Building Corp., pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 701.1) to allow auto repair auto body repair and painting, and towing in a C-2-A District at premises 934 Michigan Avenue, N.E. (Square 3822, Lots 803 and 810).

HEARING DATE: May 10, 1995
DECISION DATE: May 10, 1995 (Bench Decision)

ORDER

PRELIMINARY MATTER:

The application form and the advertised notice of public hearing in this case indicated George Galich as the owner of the subject property. By letter dated and received on May 10, 1995, Mr. Galich was authorized by the H Street Building Corporation to act as its agent in filing the variance application. The Board accepted the change in the applicant and determined that the hearing could proceed noting that zoning issues and other matters remained the same.

SUMMARY OF EVIDENCE:

1. The site is located on the north side of Michigan Avenue, N.E. in Square 3822, bounded by the Michigan Avenue Viaduct to the south, Perry Place to the north, 10th Street to the east, and the Baltimore and Ohio Railroad Tracks to the west. The subject lots 803 and 810 are known as premises 934 Michigan Avenue, N.E. The site is in the C-2-A District.

2. The subject site is irregular in shape and consists of two record lots. Lot 803 (the larger lot) fronts on Michigan Avenue for 125.07 feet and contains an area of 13,456 square feet. Lot 803 is improved with the subject building. Lot 810 (the smaller lot) is an interior lot contiguous to Lot 803 on its northern property line with a width of 68.23 feet. Lot 810 contains an area of 2,211 square feet while both lots total a land area of 15,667 square feet.

3. The site is developed with a vacant, warehouse-type brick building constructed prior to 1947. The building contains 8,890 square feet of floor area. Its rectangular shape is oriented in a north-south direction along the western property line located entirely on Lot 803. Lot 810 serves as the rear yard of the site. The eastern portion of the site is paved and the only access to the site is from Michigan Avenue.

4. The C-2-A District permits matter of right low-density development, including office, retail and all kinds of residential uses to a maximum floor area ratio of 1.5, a maximum height of 50 feet, and a maximum lot occupancy of 60 percent for residential uses. The proposed use, a repair garage, is first permitted as a matter of right in the C-M District. Therefore, the applicant is seeking a use variance from Subsection 701.1 of the Zoning Regulations to allow an auto repair, body and paint shop.

5. On May 3, 1978, the Board granted use of the site as an auto painting and body repair shop in BZA Application No. 12625. In 1994, the use changed from an auto body repair and painting shop to an auto auction business, a matter of right use. The applicant is now seeking to re-establish the previous nonconforming use.

6. An overview of the history of the site's uses is as follows:

<u>Date</u>	<u>Use</u>	<u>Company/Person</u>
1948	Garage & Office	C&P Telephone Co.
1956	Garage & Office	C&P Telephone Co.
1972	Garage & Office	Federal Fuel Co., Inc.
1978	Auto Body & Paint Shop	Earl Scheib
1994	Auto Dealership/ Auction	Mary Watson & Lewis Manning

7. Four different land uses are located in the area around the site, including residential, industrial, institutional, and open space/recreation. Apartment buildings are located to the north and east of the site, while single-family dwellings are located to the south. The land to the west, along the railroad tracks, is zoned industrial. Institutional uses located in the area of the site include The Catholic University of America, the University of the District of Columbia's Extension Program at Brooks Mansion, Brookland Elementary School and the D.C. Street Academy Adult Education Center. Turkey Thicket Park is located to the east, across 10th Street. The Brookland-Catholic University Metrorail Station is located to the immediate west of the site.

Commercial development is scattered throughout the area. The 12th Street commercial strip is a 15-block long, low-density shopping area that is located to the east of the site. Commercial development is also located at 10th Street and Michigan Avenue (where the site is located) and at Bunker Hill Road and Michigan Avenue. The commercial establishments that are located close to

the site include an electric supply company, an eatery, a dry cleaners, and a video store.

The District Cablevision building and its surface parking lot are located to the west of the site at 900 Michigan Avenue, N.E. The building is used by the cable television company as office space, a studio, and storage for its vehicles and equipment. An empty building that was previously used as a gas station is located to the east of the site.

8. The applicant who is the contract purchaser of the site, has been in the auto body shop supply business for nearly 30 years, and continues to own and operate a business on Adams Place, N.E. and between 13th and 14th Streets, N.W. The applicant feels there is a need for and proposes a state-of-the-art auto body repair and paint shop. The facility would restore vehicles and employ a modern paint booth approved by the Environmental Protection Agency that filters its fumes without discharging them into the atmosphere and that is capable of using water-based as well as oil-based paint.

The applicant testified that a direct repair program (DRP) that is used by auto insurance companies will likely be utilized at the site. The insurance companies direct customers to facilities that have state-of-the-art equipment and trained employees. The applicant believes the site is an ideal location for those people who live and work in the area.

9. The applicant testified that the building was built as a garage. It is a one-story open shell without a ceiling, finished walls or floor. It is constructed of cinderblock walls and cement floor with a large vertical sliding door in the front and another on the side.

10. The applicant testified that the facility will allow approximately nine to 12 vehicles inside the building. He estimated completing two to three vehicles per day. No more than 12 cars can be stored outside at the rear of the building. If additional space is needed, the applicant anticipates storing non-driveable vehicles on other CM zoned property he owns until they are ready to repair them. He stated that junked vehicles will not be stored on the site or any other property associated with this use. Towing would be limited to damaged vehicles brought in for repairs.

11. The applicant stated that he is not in the business of stripping vehicles for parts to make a whole one, known as "clipping".

12. The applicant stated that he would improve the property in the following manner: a) construct a concrete sidewalk in the front of the building; b) paint the building like the neighboring District Cablevision building; c) landscape a triangle plot in front of the building; d) screen the front of the property and; e) remove an existing smoke stack on the building.

13. Trash and discarded parts would be removed from the site weekly and kept in the rear of the site until removed.

14. The applicant testified that he has an oral agreement with the owner of the vacant gas station to the east to allow his employees to park on the gas station lot. Employee and customer parking will also be provided on the east side of Lot 803. Ten persons would be employed at the site.

15. The applicant testified that the site is hidden and isolated by the Michigan Avenue Bridge ramp that sits directly in front of the site as the ramp rises from 10th Street and Michigan Avenue in a westward direction. He stated that very few properties in the District of Columbia are so isolated and hidden by a bridge ramp. The effect of the Michigan Avenue Bridge ramp on the site is that potential free market customers to any business located at the site are prevented from seeing the business and from easy access to the business. The applicant feels that as a result of the interference by the Michigan Avenue Bridge ramp on the site, the site has not been successfully used for a matter of right use since it was built and that in his opinion cannot be used successfully to operate the types of businesses permitted as of right in the C-2-A District.

16. The applicant also testified that the surrounding zoning, uses and conditions impose an undue hardship on the site. The railroad runs perpendicular to Michigan Avenue several hundred feet to the west of the property. There are two business properties between the site and the railroad and both properties are zoned C-M. One is a vacant A.P. Woodson oil delivery property supply yard used to park its trucks, store its supplies and provide parking for its employees and visitors. The applicant stated that persons who have tried to find District Cablevision's office to transact business have had a very hard time doing so because of the unique and hidden location of the property behind the Michigan Avenue Bridge ramp. Directly behind the property is a bus parking lot, also zoned C-M, which abuts the rear of the property. Immediately to the east of the property is a vacant gas station at the corner of 10th Street and Michigan Avenue. Across 10th Street there is another gas station in operation. Going North on 10th Street on the west side of the street there is a bus parking lot which abuts the rear of the property, and next to that continuing north is a wholesale dealer of electric supplies.

Only after the wholesaler's property is there a neighborhood shopping strip of stores that are consistent with the purposes of the C-2-A District.

17. The Office of Planning (OP) by report dated May 3, 1995 recommended denial of the application because the proposed use would have deleterious impacts on nearby land uses. OP believes the applicant did not meet the burden of proof required for approval. In addition, the applicant had not proposed any mitigating measures that would be implemented to alleviate any of the potential negative noise, traffic and visual impacts that could result from operation of the proposed use.

OP concluded that a hardship does not exist at the site because the property can be used for commercial purposes. OP believes that to continue the previous nonconforming use as an auto repair and painting shop is no longer appropriate due to changes in the surrounding land uses and the general development of the area following construction of the nearby Metrorail station.

18. The Department of Fire and Emergency Medical Services by memorandum dated February 28, 1995 had no objection to the proposed use.

19. Advisory Neighborhood Commission (ANC) 5A did not file a report nor did anyone appear at the hearing on behalf of the ANC.

20. No letters were filed into the record in support of or in opposition to the application. No one appeared at the public hearing in support of or in opposition to the application.

FINDINGS OF FACT:

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

1. The Michigan Avenue Bridge ramp puts the subject property in a blind spot.

2. The Michigan Avenue Bridge ramp would discourage matter of right uses in the C-2-A District from occupying the site.

3. There is no on-street parking at the front of the site.

4. The Board previously found that the property was unique and that an exceptional situation existed that created an undue hardship on the owner.

5. The subject property has a history of automotive and truck-related uses.

6. The applicant is prepared to install a state-of-the-art auto body paint and auto body repair business on the property. The applicant has decades of experience in the auto body supply business in the District of Columbia and owns other properties in the District of Columbia which can be used legally to store vehicles waiting to be repaired and painted at this property, thereby avoiding congestion of the property with broken down vehicles. The Board finds that the applicant will operate in the following manner:

- a. The hours of operation will be Monday through Friday 7:30 a.m. to 6:00 p.m., Saturday 8:00 a.m. to 1:00 p.m.
- b. Deliveries of parts and supplies will be Monday through Friday.
- c. Trash will be picked up weekly.
- d. Cars waiting to be worked on will be parked behind the building on lot 810 and not on the side of lot 803 and therefore will not present an eye sore to pedestrians.
- e. Towing will be limited to damaged vehicles brought in for repair.
- f. The business will be state-of-the-art auto body repair and auto body painting and will not involve "clipping" cars to make one car from two damaged cars.
- g. Cars waiting to be repaired at the property will be either in the property's building or parked on lot 810 which is behind the property's building. Cars not ready to be worked on other than those in the back of the property along with cars which cannot move will be stored elsewhere and brought to the property at the time they will be placed inside the building to be repaired.
- h. The property will be kept free of discarded auto parts in areas where the public has access.
- i. Two to three cars a day will be completed and painted in a state-of-the-art paint booth capable of filtering its discharged fumes and approved by the Environmental Protection Agency.

7. The building will be painted like the adjoining building used by District Cablevision, the smoke stack will be removed from the front of the building, and the applicant will install a sidewalk on the North side of the lower Michigan Avenue, N.E. from the western front of the property to 10th Street with approval by the District of Columbia.

8. There are no residences within approximately 1,500 feet of the property.

9. The matter of right use established in 1994 was short-lived. A substantial period in the history of the site has been as a nonconforming use.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing of an undue hardship upon the owner arising out of some unique or exceptional condition of the property so that the property cannot reasonably be used for the purposes for which it is zoned. The Board must further find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

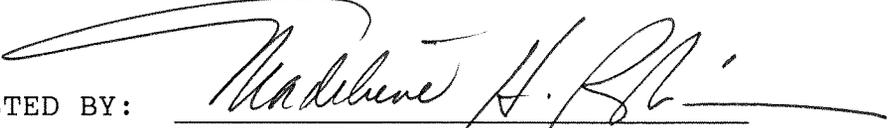
The Board concludes that the applicant has provided sufficient evidence to establish an undue hardship. The property is affected by an extraordinary situation based on its proximity to and isolation by the Michigan Avenue Bridge ramp. As a barrier, the ramp makes the site unattractive to uses permitted in the C-2-A District. The site is the only C-2-A zoned property in the area that is in a "blind spot" and would not be expected to support C-2-A uses.

The Board further concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ordered that the application is GRANTED.

VOTE: 3-0 (Angel F. Clarens, Susan Morgan Hinton and Craig Ellis to grant; Laura M. Richards and Jerrily R. Kress not present, not voting, not having heard the case).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUL 18 1995

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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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16042

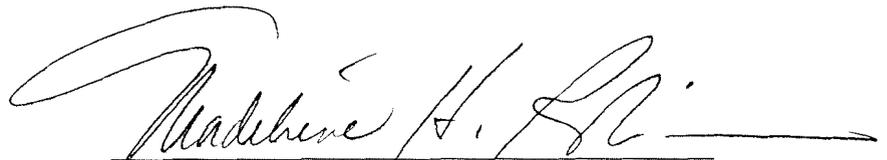
As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUL 18 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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MADELIENE H. ROBINSON
Director

DATE: JUL 18 1995