

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16173 of C. C. Chang, et al., as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 731 to allow a massage parlor as part of a public bath, physical culture, health service and massage establishment on part of the second floor in a C-2-B District at premises 4652 Wisconsin Avenue, N.W., (Square 1732, Lot 46).

HEARING DATE: November 20, 1996
DECISION DATE: December 4, 1996

PROCEDURAL ISSUES

The application was originally advertised as a variance from the use provisions of 11 DCMR 741.1 to allow a public bath, physical culture, health service and massage establishment on part of the second floor at property located in a C-3-A District. However, the Office of Planning (OP) stated that the property is actually zoned C-2-B rather than C-3-A. OP further stated that the proposed public bath, physical culture and health service uses are allowed as a matter-of-right, but to establish the use as a massage establishment would require a special exception under 11 DCMR 731.

At the public hearing, the applicant requested a special exception pursuant to Subsection 3108.1 and 731.1 to establish a use as a massage establishment at the site. The application was amended accordingly.

SUMMARY OF EVIDENCE

The subject property is located on the northwest corner of the intersection of Wisconsin Avenue and Chesapeake Street, N.W. The property abuts a 20-foot wide public alley in the rear.

The site fronts on Wisconsin Avenue and Chesapeake Street. The Wisconsin Avenue frontage is used primarily to access the property. The side of the property that abuts Chesapeake Street is used for egress and ingress to the parking lot.

The building consists of two stories. The first floor of the building is occupied by the Great Hunan Restaurant and Papa John's Pizza. The second story of the building

contains 2,900 square feet, and is occupied by the H&H Floatation Spa. The basement is occupied by Krupin's Tailoring Shop.

The site is located in the American University Park neighborhood. The neighborhood is primarily a low-density residential area, with some commercial businesses in the neighborhood.

The applicant proposes to continue to use the property for a public bath, physical culture, and health service establishment. The applicant has a valid certificate of occupancy for that use. However, the applicant also proposes to use the facility for massages, which will be the principle primary use of the establishment.

ISSUES AND ARGUMENTS

I. Subsection 731.3 states that the establishment shall be compatible with other uses in the area.

The Office of Planning by report dated November 13, 1996, and through testimony at the hearing, recommended conditional approval of the application. The OP stated that the site is located in the American University Park neighborhood which is primarily a low-density residential area, with some commercial businesses in the neighborhood that provide a broad range of goods and services.

OP testified that there are several schools located close to the site. They include Wilson Senior High, Alice Deal Junior High and Janney Elementary School. A library and a church also are located in the area. OP was of the opinion that the proposed facility would be compatible with other uses located nearby.

II. Subsection 731.4 states that the use shall not be objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions.

Effect on the character of the neighborhood. One party appeared in opposition to the application. He resides at 4120 Chesapeake Street, N.W. This opposing party expressed a concern about the location of the establishment near the residential area. He noted that the block on which he lives is odd in the sense that a portion which faces Wisconsin Avenue is commercial, but that an alleyway runs behind the commercial property, and the area from that point down to 42nd Street is residential. He stated his belief that locating the business in the proposed area would be inappropriate. He was disturbed by the applicant's failure to provide information to nearby property owners to allay their fears about the effects of the proposed use on the neighborhood.

Responding to those concerns, the applicant stated that there had been no police report about illegal conduct in the facility.

One witness testified in support of the application. He stated that he has an office that is two doors away from the facility. He also testified that he had been there since 1968 and found nothing to be improper or objectionable. He was also of the opinion that the facility did not generate any negative connotations in reference to massages.

Noise. The Office of Planning stated that it is unaware of any noise that would be created as a result of providing therapeutic massages at the site.

Traffic and Parking. The applicant is proposing to operate the facility between the hours of 10:00 a.m. to 11:00 p.m., Monday through Saturday, and from 12:00 noon to 11:00 p.m. on Sundays. The applicant pointed out that the daily number of patrons visiting the site would vary. No more than three clients would be accommodated at the same time.

The Office of Planning stated that if this application is approved, the number of clients using the site would not be significantly increased. Although some clients may visit the spa specifically for a massage, most clients would also use the other services that the spa offers. As a result, traffic to the site would not be increased significantly.

With regard to parking, OP stated that no parking spaces would be required for the proposal. Nine parking spaces are located on the north side of the property and are shared by all of the building's tenants. Further, the site is accessible to public transportation and on-street metered parking on Wisconsin Avenue.

III. Subsection 731.5 provides that the establishment shall not have an adverse impact on neighbors, educational and other institutional facilities located in the area.

Adverse Impacts. As noted by the Office of Planning, there are schools, a library and a church located in proximity to the site. However, these facilities do not abut the property and are not visible from the spa. OP pointed out that H&H Flotation Spa serves clients who are over 18 years old. OP stated that it does not anticipate that the proposed use would have any negative impacts on the nearby schools, library or church.

ANC 3E did not submit a report or testify at the hearing on this application.

FINDINGS OF FACT

1. The nature of the therapeutic massage use will not be harmful to the residential character or the neighborhood.
2. The proposed use will be compatible with other uses in the area.

3. The proposed use will not be objectionable because of noise, traffic, or its effect on the character of the neighborhood.

4. The proposed use will not have an adverse impact on religious, educational or other institutional facilities in the area.

CONCLUSIONS OF LAW AND OPINION

Based on the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a massage facility in a C-2-B District. The granting of such a special exception requires a showing through substantial evidence that the proposal will be in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of 11 DCMR Section 731 regulating massage establishments. The Board concludes that the applicant has met this burden of proof.

The Board concludes that it could not accord the views of ANC 3E "great weight", as the ANC did not participate in the case. In light of the foregoing, the Board **ORDERS** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **FIVE** years.
2. The number of employees shall not exceed five persons.
3. The days and hours of operation shall be from 10:00 a.m. to 11:00 p.m., Monday through Saturday; and 12:00 p.m. to 11:00 p.m. on Sundays.

VOTE: **4-0** (Susan Morgan Hinton, Jerrily R. Kress, Sheila Cross Reid and Angel F. Clarens to grant; Laura M. Richards, not voting, not having heard the case).

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

ATTESTED BY: 
MADALIENE H. DOBBINS
Director

FINAL DATE OF ORDER OCT 24 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 TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16173

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 24 1997 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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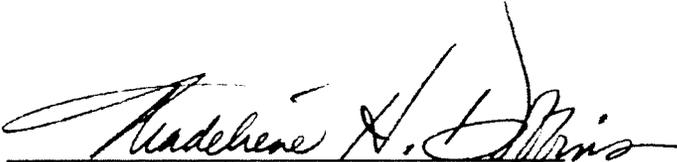
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MADELIENE H. DOBBINS
Director

DATE: OCT 24 1997