

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16226 of Robert and Ann Dixon, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow retail sales and the offices of a pest control company in an R-5-B District at premises 7101 Georgia Avenue, N.W. (Square 2695, Lot 2).

HEARING DATE: April 23, 1997
DECISION DATE: April 23, 1997 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE OF RECORD:

The property which is the subject of this application is located at 7101 Georgia Avenue, N.W. The site is located on the northeast corner of Georgia Avenue and Dahlia Street, N.W. and consists of one lot of record (Lot 26). The lot contains 2,180 square feet of land area. It is improved with a two-story and basement dwelling built in 1925. The building contains a one-car garage with access from Dahlia Street. A 15-foot wide alley abuts the property to the rear (east).

The property is located across the street from the Walter Reed U.S. Army Medical Center. The square in which the property is located is zoned R-5-B. It is characterized by single-family rowhouses along Georgia Avenue and single-family detached houses in the rest of the square. The square to the south is characterized by low-rise apartment buildings facing Georgia Avenue and single-family detached houses in the rest of the square. The square to the north is characterized by single-family detached houses; two of these houses along Georgia Avenue are used as churches.

The applicant proposes to use the property for retail sales and the offices of a pest control company. Because this use is not allowed in the R-5-B District, the applicants are seeking a use variance to establish the proposed use.

Issues and Arguments:

- 1. Whether there exists a unique or exceptional situation or condition related to the property which creates an undue hardship for the owners in using the property in compliance with the Zoning Regulations?**

The applicants testified that the property is a corner lot and is larger than others nearby. They pointed out that they currently operate their pest control business in rented space at 7416 Georgia Avenue and that site is too small for what they need. The applicants testified that they purchased the 7101 Georgia Avenue property in 1992 with the intent of using it for the

proposed business. They noted that they have invested a substantial amount of money to renovate it and the inability to use it as intended would work an economic hardship on them.

By memorandum dated April 15, 1997 and through testimony at the hearing, the Office of Planning (OP) noted the location of the site and stated that it is surrounded primarily by residential uses. OP noted that the R-5-B District permits matter-of-right development of general residential uses including single-family dwellings, flats, and apartments to a maximum lot occupancy of 60 percent, a maximum floor area ratio (FAR) of 1.8 and a maximum height of 60 feet. Churches are allowed as a matter-of-right in any residential District.

OP stated that there is nothing unique about the site. In terms of size, topographical characteristics and type of development, it is similar to all the other properties in the square facing Georgia Avenue.

2. Whether the property can be used for any purpose permitted in the R-5-B District?

The applicants testified that the property was vacant when they applied for the variance but now it is rented for residential purposes. When the lease expires, they would like to use the entire building for the business. The applicants argued that there are a number of commercial uses that are allowed in the R-5-B District.

In OP's view, the applicants have not been able to demonstrate why the site could not be utilized for any of the uses permitted in the R-5-B District as a matter-of-right or as a special exception. OP stated that all other properties in the square are being utilized for matter-of-right uses, as are the properties in the adjacent squares to the north and south.

3. Whether allowing the proposed use would be of substantial detriment to the public good?

A number of issues were raised about the impact that the proposed use would have on the area.

The Office of Planning stated that the proposed use appears to be inconsistent with the present residential character of the block. There would be storage of dangerous chemicals on site in this totally residential square. In addition, the proposed commercial activity would increase the vehicular and parking activity in the area, especially along Dahlia Street. OP noted that the applicants are currently located on Georgia Avenue, two blocks to the north in a commercially zoned portion of Georgia Avenue. In OP's opinion, this proposed commercial use would have a negative impact on the residential character of the area.

Four opposing neighbors were granted party status at the hearing. On the issue of detriment to the public good, they raised concerns about the storage of chemicals on site and the parking of vehicles on site.

Addressing the issue of detriment to the public good and responding to the concerns raised by neighbors, the applicants stated that the proposed use would not adversely impact the neighborhood. They stated that the business operates from approximately 8:15 a.m. to 5:30 p.m., Monday through Friday. It is mostly an office with only one or two retail customers who will visit the site. Therefore, there will be a minimal amount of traffic coming to the site.

The applicants stated that currently they do not park vehicles on the property, but they hope to use the property to better secure their vehicles if the business is allowed to operate at the site.

The applicants testified that while they do plan to store pesticides on site, they disagree with their being characterized as dangerous chemicals.

Finally, the applicants noted that they have been in the neighborhood since 1978 and have not had a negative impact on the community at their other business location.

4. Whether allowing the proposed use would impair the intent, purpose and integrity of the zone plan?

The opposing neighbors were primarily concerned that if the proposed business is allowed, it would impair the residential character of their neighborhood. One neighbor testified that the applicant's business might reduce the value of the residential properties, opening the door for more commercial uses to be established. They all expressed a strong interest in preserving the residential community.

The Office of Planning also expressed the opinion that the proposed commercial use would have a negative impact on the residential character of the area and would impair the intent, purpose and integrity of the R-5-B District regulations. Based on its review of the application, the Office of Planning recommended denial of the use variance request.

Responding to these concerns, the applicant stated that the proposed use would be a low impact business and that the property will maintain its residential character because no physical changes are being proposed for the site.

No other persons testified at the hearing in support of the application.

The record contains a letter from Rosemary Harold, the Single Member District (SMD) Commissioner for Advisory Neighborhood Commission 4B-02, dated April 22, 1997. In this letter Ms. Harold informed the Board that the full ANC did not have a quorum at its meetings to vote on this application, therefore it did not take an official position. Ms. Harold presented her own views as the SMD Commissioner for the block in which the property is located. She argued that the applicant fails to meet the burden of proof for use variance relief. She stated that there is no exceptional situation or condition related to the property. It has been used for residential purposes for several decades and remains surrounded on three sides by properties zoned for

residential use. She noted the potential adverse impacts related to additional traffic, parking and noise and she urged the Board to deny the application to preserve this residential neighborhood.

FINDINGS OF FACT:

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

1. The property is similar to others nearby.
2. The applicant purchased the property without a clarification of the zoning status of the site.
3. The property is currently being used as rental property.
4. Pesticides would be stored at the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the application and the evidence of record, the Board concludes that the applicant is seeking a use variance to establish a pest control business with offices at property located in an R-5-B District. The granting of such a variance requires a showing through substantial evidence that there exists a unique or exceptional situation or condition related to the property which creates an undue hardship for the owners in using the property in compliance with the Zoning Regulations. The Board must also conclude that the relief can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Regulations and Map.

The Board concludes that the applicant has failed to meet this burden of proof. The Board concludes that there is no unique or exceptional situation or condition related to the property which creates an undue hardship for the owners in using the property consistent with the Zoning Regulations.

The Board concludes that the highest and best use of the site is that which is allowed by the Zoning Regulations either as a matter-of-right or as a special exception. The use proposed by the applicant does not fall into either of these categories. For a use variance, the applicant must demonstrate that the property cannot be put to any use that would be allowed. Because the applicant's property is currently being used as a residential rental unit, this burden cannot be met and the application cannot be granted.

Because the applicant has failed to meet the burden of proof on the issues discussed above, the Board reaches no conclusion on the remaining issues of detriment to the public good or impairment to the zone plan.

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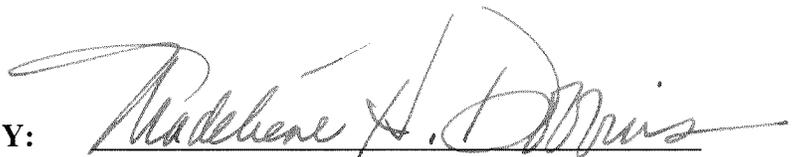
The Board concludes that Advisory Neighborhood Commission 4B did not submit a report in accordance with 11 DCMR 3307, nor did an ANC representative appear at the hearing to testify in this application. Therefore, great weight cannot be accorded to the ANC.

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

VOTE: 4 – 0 (Maybelle Taylor Bennett, Susan Morgan Hinton, Sheila Cross Reid and Laura M. Richards to deny).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAR 9 1998

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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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As Director of the Board of Zoning Adjustment, I hereby certify and attest that on MAR 9 1998 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:

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

MADELIENE H. DOBBINS
Director

DATE: MAR 9 1998