

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 286
CASE NO. 79-5
July 12, 1979

Pursuant to notice a public hearing of the District of Columbia Zoning Commission was held on June 18, 1979 in the multi-purpose room at the Merritt Elementary School, 50th and Hayes Streets, N. E. At this hearing session the Zoning Commission considered an application from Myrtle K. Rollins to amend the Zoning Map of the District of Columbia.

FINDINGS OF FACT

1. The application requests a change of zoning from R-2 to C-1 or C-2-A for Lots 50-53, and 801 in Square 5094. On April 12, 1979, when it set the matter for hearing, the Zoning Commission determined to include in the notice of public hearing, the consideration of C-M-1 as an alternative.
2. The subject site is the location of the Rollins Funeral Home, 4339 Hunt Place, N. E., and comprises approximately 15,000 square feet.
3. The applicant proposes to expand the existing mortuary by constructing a one-story brick addition to the east side of the present facility. The proposed addition will more than double the size of the present funeral home. The addition will include two viewing rooms to accommodate sixty to seventy seats each and a chapel with seating for 140 to 150 persons, floral room, chair storage room and a utility room.
4. The R-2 District permits single-family detached and semi-detached dwellings with a minimum lot area of 3000 square feet, a minimum lot width of thirty feet, a maximum lot occupancy of forty percent, and a maximum height of three stories and forty feet. The C-1 District permits office and retail uses as well as all kinds of residential uses with a maximum floor area ratio (FAR) of 1.0, a maximum lot occupancy of sixty percent, and a maximum height of three stories and forty feet. The C-M-1 District permits

heavy commercial and light industrial uses along with retail and office uses with a maximum FAR of 3.0, and a maximum height of three stories and forty feet. New residential uses are prohibited. The C-2-A District permits community business centers, including office, retail and all kinds of residential uses, to a maximum FAR of 2.5 with non-residential uses limited to 1.5 FAR, a maximum height of fifty feet and a maximum lot occupancy of sixty per cent for residential uses.

5. The subject property is located on the south side of Hunt Place, approximately 130 feet west of its intersection with 44th Street. The site is topographically flat and rectangular in shape. The site's present development consists of a two story brick detached structure with a colonial front facade. The structure is painted white and has a sign advertising the funeral use. The remainder of the site consists of a grassed area to the east and a paved parking area to the west.
6. North of the site, across Hunt Place, there is a Shell gasoline station, followed by Nannie Helen Burroughs Avenue running in a north west to southeast pattern. East of, and adjacent to the site, there is a gravel paved parking lot and liquor store. The applicant indicated that this parking lot is available to the funeral home patrons, although the site is not owned by Rollins. South of the subject property, across a 15-foot wide alley, there are three single family detached dwellings. Southwest of the site, there is a single family detached dwelling, followed by a park. West of the site and adjacent to its property line are seven attached dwellings, occupied as flats, which front on Hunt Place. Further west, Hunt Place intersects with Minnesota Avenue near the Metrorail tracks. Northwest of the site, there is a D. C. Department of Human Resources Health Center and a nonconforming trucking company yard.
7. The property located to the west along Hunt Place and to the south along Hayes Street is zoned R-2. The property immediately abutting the site to the east and the area across Hunt Place to the north is zoned C-1. Further to the west there is C-M-1 zoning along Nannie Helen Burroughs and Minnesota Avenues. Further to the east, along Burroughs Avenue is a mixture of R-2, R-5-B, C-1 and C-2-A Districts.
8. The Rollins Funeral Home has been located at and operating on the present site for fifty years. Since the comprehensive city-wide zoning changes in 1958, the applicant has been operating a non-conforming use in a non-conforming

structure. The applicant has indicated that an attempt to relocate the business in the immediate northeast sector was extremely inadvisable due to economics and the unavailability of adequate locations.

9. The applicant has a history of seeking zoning relief since the 1958 city-wide rezoning. On September 13, 1966, the Zoning Commission in Case No. 66-90, denied without a hearing a request by the applicant for a change of zoning from R-2 to C-2. On March 28, 1967, the Board of Zoning Adjustment (BZA) partially granted a variance from the use provisions of the R-2 District to permit the erection of a covered side entrance and parking on Lots 50 and 53. On February 25, 1978 the Zoning Commission, in Case No. 77-33, approved changes of zoning for various properties in the East Washington Railroad Study Area. The Study Area included the property of the applicant, but no changes were proposed or adopted for the site of this application. On December 6, 1978 the BZA, in Case No. 12738, denied variance requests to allow the addition to a non-conforming use from the use provisions and from the off-street parking provisions to permit an addition to the subject funeral home.
10. The applicant by testimony presented at the public hearing sought zoning relief that would permit her to expand her facility as a matter-of-right. The representative for the applicant identified the applicant's long-term economic and professional services to the community, the need for this type of community service, the inability and unwillingness to relocate, and the problems resulting from her lack of awareness and the effects of the 1958 city-wide rezoning as her reasons for seeking this relief. The applicant further testified that on-site parking requirements would be met under matter-of-right development.
11. The Office of Planning and Development (OPD), by memorandum dated June 14, 1979 and by testimony presented at the public hearing recommended C-1 zoning, in lieu of C-2-A or C-M-1. The OPD reported that C-1 would be appropriate because it would require a use variance from the BZA which would insure that conditions necessary to minimize any adverse impacts on the adjacent properties and surrounding areas will be brought to the attention of the BZA and the community. The OPD further reported that C-2-A and C-M-1 would be inappropriate because they would not be consistent with the planning objectives identified by OPD in Case No. 77-33, would create a spot-zoning question, and would permit a

level of development that would be too intensive and incompatible with the land uses at this location. The Commission does not concur with the reasoning of the Office of Planning and Development.

12. OPD also reported that the D. C. Department of Environmental Services (DES) had reviewed the application and found no significant impact on DES's activities and interest, and that the D. C. Fire Department indicated that the proposed one story addition posed no problem for that agency's ability to service the site.
13. Advisory Neighborhood Commission 7-D, by letter and by testimony presented at the public hearing, supported the applicant's request and identified parking, community service, and spot zoning as three issues of concern. The ANC testified that parking will not be a problem because the applicant can satisfy the off-street parking requirements of the D. C. Zoning Regulations. The ANC also reported that because of the applicant's unique history and relationship to the area, and its low cost-high quality funeral services, Rollins Funeral Home is irreplaceable. Finally, the ANC testified that the issue of spot-zoning is not relevant in this case because there are presently areas of higher and lower density commercial zoning as well as non-conforming uses and structures in the East Washington Railroad Study Area. The Commission notes the issues and concerns of the ANC, and concurs in the reasoning of the ANC related to those issues and concerns.
14. Persons in support of the application identified the Mayor's economic policy of viable businesses providing jobs, and the long-term, competent, compassionate, and professional services rendered by the applicant as being reasons why they supported zoning relief that would enable the applicant to continue its service to the community.
15. The Commission finds that C-1 zoning is not a viable alternative because it would require the applicant to obtain BZA approval, and the Commission believes that the BZA would be unable to justify a use variance under C-1 zoning, if the Commission finds C-2-A or C-M-1 inappropriate for this site. The Commission further believes that C-M-1 zoning is inappropriate because it would permit a level of density too intensive and incompatible with the land uses in the immediate area.

16. The Zoning Commission finds that the C-2-A District is the most appropriate zoning for the site. It will enable the applicant to expand the present business as proposed without allowing for too high a level of density. The Commission notes that the C-2-A District FAR for commercial uses is only 0.5 higher than the commercial FAR in C-1 Districts. As to the issue of spot zoning the Commission finds that the application fails to meet the test of spot zoning as identified by the D. C. Court of Appeals in the recent case of the Citizens Association of Georgetown v. District of Columbia Zoning Commission (No. 12547, decided May 14, 1979). In that case, the Court stated:

To constitute illegal spot zoning, the Commission's action (1) must pertain to a single parcel or a limited area - ordinarily for the benefit of a particular property owner or specially interested party - and (2) must be inconsistent with the city's comprehensive plan or if there is none, with the character and zoning of the surrounding area, or the purposes of zoning regulation, i.e., the public health, safety, and general welfare.

In this case the Zoning Commission finds that while a particular property owner is involved, the change to C-2-A would not be inconsistent with the character and zoning of the surrounding area. Furthermore, approval of C-2-A would be entirely within the purposes of the Zoning Regulation by allowing the continuation and expansion of a neighborhood oriented service established without any adverse effect on the area.

17. There was no opposition to the application.
18. The application was referred to the National Capital Planning Commission under the terms of the District of Columbia Self Government and Governmental Reorganization Act, and the National Capital Planning Commission reported that the proposed amendment to the Zoning Map would not have a negative impact on the interest or functions of the Federal Establishment in the National Capital.

CONCLUSIONS OF LAW

1. Rezoning to C-2-A is in accordance with the Zoning Act (Act of June 20, 1938, 52 Stat. 797), by furthering the general public welfare and serving to stabilize and improve the area.

2. Rezoning to C-2-A will promote orderly development in conformity with the entirety of the District of Columbia Zoning Plan as embodied in the Zoning Regulations and Map of the District of Columbia.
3. Rezoning to C-2-A will not have an adverse impact on the surrounding neighborhood.
4. Rezoning to C-2-A does not constitute illegal spot zoning, as defined by the Court of Appeals.
5. The Commission takes note of the position of the Advisory Neighborhood Commission, and in its decision has accorded, the ANC the "great weight" to which it is entitled.

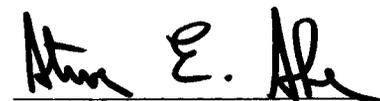
DECISION

In considering the Findings of Facts and Conclusions of Law herein, the Commission hereby orders APPROVAL of the following action:

Change from R-2 to C-2-A Lots 50-53, and 801 in Square 5094 located at 4339 Hunt Place, N. E.

Vote of the Commission taken at the public hearing on June 18, 1979: 4-0 (Commissioners Walter B. Lewis, John G. Parsons, Theodore F. Mariani, and Ruby B. McZier, to approve C-2-A - Commissioner George M. White, not present, not voting).


RUBY B. MCZIER
Chair
Zoning Commission


STEVEN E. SHER
Executive Director
Zoning Secretariat

This order was adopted by the Zoning Commission at its public meeting held on July 12, 1979 by a vote of 3-0 (Walter B. Lewis, John G. Parsons and Ruby B. McZier to adopt, Theodore F. Mariani and George M. White not present, not voting).

In accordance with Section 2.61 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, the amendment to the Zoning Map is effective on

27 JUL 1979