

PUBLIC HEARING-- November 25, 1964

Appeal #8004. Broadmoor Cooperative Apts. Inc. appellant.

The Zoning Administrator District of Columbia, appellee.

On motion duly made and unanimously carried the following Order was authorized on December 1, 1964, and formally entered on February 9, 1965.

ORDERED:

That the appeal to permit restaurant of the Broadmoor to provide outside catering service, premises 3601 Connecticut Avenue N. W., parcel 56/53, square 2226, be denied.

As the result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) This appeal made by a cooperative apartment corporation is on behalf of its tenant known as the "Braun Fine Caterers". Under the terms of a lease agreement between Braun and the corporation it is provided that the primary purpose to be served in operating the leased space is to furnish satisfactory meals, other types of food and allied products to persons living in the Broadmoor Apartments. The action before this Board results by reason of a complaint to the Zoning Administrator made during the Summer of 1964 that a catering operation carried on by the Brauns is disturbing to some of the tenants of the building and in violation of existing Zoning Regulations. Upon investigation, the Zoning Administrator found that Braun was in fact providing an outside catering service. He ruled the use to be in violation of the Zoning Regulations and ordered that this portion of the Braun operation be abated. Appeal to this Board for a use variance to permit the continuation of the catering service followed on November 9, 1964, and was set for public hearing.

(2) The Broadmoor which was erected as an apartment-hotel was completed in about the year 1930. The zoning at that time was residential, is now zoned residential and has never been zoned in a commercial category. Under

zoning regulations applicable at the time of its construction and occupancy, the Broadmoor apartment-hotel was required to provide food for its guests under the definition of the term "hotel" which also applied to an apartment-hotel. A hotel was defined as "every place where food and lodging are provided for transient guests". For sometime thereafter the Broadmoor operated as an apartment-hotel and provided an inside dining room for the convenience of its hotel guests and others.

(3) On July 26, 1933, a restaurant license was issued for the dining service and since that date no less than five certificates of occupancy for restaurants were issued to various operators. Licenses for the operation of a restaurant were renewed periodically from year to year.

(4) Aside from the restaurant business authorized, outside catering service has also been provided by various restaurant leesees of the Broadmoor continuously from 1935 to date. Brauns Fine Caterers have been so operating since 1956. This catering business serves the entire Metropolitan area, is widely advertised and includes the usual catering service which, in addition to the providing of food, includes rental of tables, china, linen and silver. The business is open at the Broadmoor between 7:00 a.m. and 6:00 p.m., with the kitchen open until 9:00 p.m. Delivery of food products to the Broadmoor begins as early at 6:00 a.m. and trucks returning from catering deliveries sometimes arrive after the midnight hour. The Braun service also leases three additional dining rooms in which it caters to social functions such as luncheons, meetings, etc. on an average of four to five times weekly.

(5) The dining room or restaurant which has a seating capacity of approximately 50 is open from 5:00 p.m. to 8:00 p.m. daily except Monday, and serves an average of ten persons daily. Room service for tenants of the building is provided for from two to three tenants daily.

(6) In about the year 1950 the use of the Broadmoor was converted to a cooperative apartment building containing 194 units. No hotel rooms for transient occupancy were reserved and the property has not been used as a hotel since that date (Note: Actual hotel operations may have been abandoned sometime prior to 1950. The evidence and records are not clear on this point).

(7) The principal basis urged by appellant for relief under variation procedure is to invoke the doctrine of estoppel. The case of District of Columbia, et al. v. Cahill at 60 Appeals, D. C. 342 and arguments involving estoppel are admitted for this record.

(8) The record contains testimony and a number of written statements pro and con on the merits of this appeal. Most of these are from individual cooperative owners of the Broadmoor.

OPINION:

The Board concludes that estoppel may not be used as a proper ground for relief under the variance clause of the Zoning Act.

As we interpret the law the only ground for the granting of relief under variation must be a clear finding of exceptional and undue hardship based upon some extraordinary or exceptional situation or condition of the specific piece of property. This property is not exceptionally narrow, shallow, nor of unusual shape, nor has it exceptional topographical difficulties. The only practical difficulty or hardship to which the appellant or its lessee has been subjected is due to the fact that many thousands of dollars have been spent in equipping and maintaining a business which is per se in violation of all applicable Zoning Regulations. We find that the Broadmoor apartment in its entirety may, without any exceptional or unusual charge upon either the land or the improvements on it, be used for the purpose for which it is now and has always been zoned. We conclude further

that a catering operation under applicable zoning provisions is a use permitted only in some of the C Districts, and in the C-M and M Districts. There is no regulatory language now or previously existing which permits this use in a residential area.

There are only two paragraphs of the Zoning Regulations which provide for the establishing of convenience commodities or services in residence properties. One of these provides for hotel adjuncts which is not now applicable here, and the other for accessory uses as appropriate adjuncts to apartment houses. The latter paragraph which clearly "spells out" that the commodities and services are designed to service the tenants daily living needs and must, therefore, be supported wholly or substantially by these tenants, is also inapplicable here since a condition precedent to application for permission to so use, requires that the principal entrance to the apartment be at least one-fourth mile distant from the nearest principal street frontage of any business district previously established and operating in a commercial district. The principal entrance of the Broadmoor is less than 400 feet from a large commercial shopping center which contains a variety of nearly all of the services and commodities which are necessary for everyday living.

The dining room established in 1930 as a prerequisite to the issuance of a hotel license expired, in our opinion, when the Boardmoor ceased to operate as a hotel and it is our conclusion, therefore, that all licenses and certificates of occupancy issued thereafter for commercial adjuncts were issued in violation of the Zoning Regulations.

The terms of this order shall require abatement of all existing violations by April 1, 1965.

*Original*

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING--November 25, 1964

Appeal #8004 Broadmoor Cooperative Apts., Inc. appellant.

The Zoning Administrator District of Columbia, appellee.

On appellant's motion for reconsideration and on further consideration of its order authorized on December 1, 1964 and entered February 9, 1965, the Board has this 23rd day of February 1965 entered the attached amended order and has vacated the order of February 9, 1965.

ORDERED:

That the appeal to permit restaurant of the Broadmoor to provide outside catering service, premises 3601 Connecticut Avenue, N.W., parcel 56/53, square 2226, be denied.

As the result of an inspection of the property by the Board, and from the records and the evidence adduced at the hearing, the Board finds the following facts:

(1) This appeal made by a cooperative apartment corporation is on behalf of its tenant known as the "Braun Fine Caterers". Under the terms of a lease agreement between Braun and the corporation it is provided that the primary purpose to be served in operating the leased space is to furnish satisfactory meals, other types of food and allied products to persons living in the Broadmoor Apartments. The action before this Board results by reason of a complaint to the Zoning Administrator made during the Summer of 1964 that a catering operation carried on by the Brauns is disturbing to some of the tenants of the building and in violation of existing Zoning Regulations. Upon investigation, the Zoning Administrator found that Braun was in fact providing an outside catering service. He ruled the use to be in violation of the Zoning Regulations and ordered that this portion of the Braun operation be abated. Appeal to this Board for a use variance to permit the continuation of the catering service followed on November 9, 1964, and was set for public hearing.

(2) On July 26, 1933, a restaurant license was issued for a dining service and since that date no less than five certificates of occupancy for restaurants were issued to various operators. Licenses for the operation of a restaurant were renewed periodically from year to year.

(3) Aside from the authorized restaurant business, outside catering service has also been provided by various restaurant lessees of the Broadmoor continuously from 1935 to date. Brauns Fine Caterers have been so operating since 1956. This catering business serves the entire Metropolitan area, is widely advertised and includes the usual catering service which, in addition to the providing of food, includes rental of tables, china, linen and silver. The business is open at the Broadmoor between 7:00 a. m. and 6:00 p. m., with the kitchen open until 9:00 p. m. Delivery of food products to the Broadmoor begins as early as 6:00 a. m. and trucks returning from catering deliveries sometimes arrive after the midnight hour. The Braun service also leases three additional dining rooms in which it caters to social functions such as luncheons, meetings, etc. on an average of four to five times weekly.

(4) The dining room or restaurant which has a seating capacity of approximately 50 is open from 5:00 p. m. to 8:00 p. m. daily except Monday, and serves an average of ten persons daily. Room service for tenants of the building is provided for from two to three tenants daily.

(5) In about the year 1950 the use of the Broadmoor was converted to a cooperative apartment building containing 194 units, with the dining room and catering business continuing as theretofore.

(6) The principal basis urged by appellant for relief under variation procedure is to invoke the doctrine of estoppel. The case

of District of Columbia, et al. v. Cahill at 60 Appeals, D. C. 342 and arguments involving estoppel are admitted for this record.

(7) The record contains testimony and a number of written statements pro and con on the merits of this appeal. Most of these are from individual cooperative owners of the Broadmoor,

OPINION:

The Board concludes that estoppel may not be used as a proper ground for relief under the variance clause of the Zoning Act.

As we interpret the law the only ground for the granting of relief under variation must be a clear finding of exceptional and undue hardship based upon some extraordinary or exceptional situation or condition of the specific piece of property. This property is not exceptionally narrow, shallow, nor of unusual shape, nor has it exceptional topographical difficulties. The only practical difficulty or hardship to which the appellant or its lessee has been subjected is due to the fact that many thousands of dollars have been spent in equipping and maintaining a business which is per se in violation of all applicable Zoning Regulations. We find that the Broadmoor Apartment in its entirety may, without any exceptional or unusual charge upon either the land or the improvements on it, be used for the purpose for which it is now and has always been zoned. We conclude further that a catering operation under applicable zoning provisions is a use permitted only in some of the C Districts, and in the C-M and M Districts. There is no regulatory language now or previously existing which permits this use in a residential area.

There are only two paragraphs of the Zoning Regulations which provide for the establishing of convenience commodities or services

in residence properties. One of these provides for hotel adjuncts which is not applicable here, and the other for accessory uses as appropriate adjuncts to apartment houses. The latter paragraph which clearly "spells out" that the commodities and services are designed to service the tenants daily living needs and must, therefore, be supported wholly or substantially by these tenants, is also inapplicable here since a condition precedent to application for permission to so use, requires that the principal entrance to the apartment be at least one-fourth mile distant from the nearest principal street frontage of any business district previously established and operating in a commercial district. The principal entrance of the Broadmoor is less than 400 feet from a large commercial shopping center which contains a variety of nearly all of the services and commodities which are necessary for everyday living.

The Zoning Administrator shall not require abatement of violation by the catering service in conformance with this order prior to April 1, 1965.

*Original*

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The Zoning Administrator shall not require abatement of violation by the catering service in conformance with this order prior to April 1, 1965.