

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING - January 18, 1967

Appeal No. 9090 Kathryn R. Miller, Trustee, appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with Mr. Davis not voting, the following Order of the Board was entered at the meeting of February 15, 1967.

ORDERED:

That the appeal for permission to extend nonconforming use, grocery store and pharmacy, to second floor and change of nonconforming use on the second floor to wearing apparel and accessory store at 3301-05 45th Street, N.W., lots 1, 2, and 3, in Square 1603 be denied.

FINDINGS OF FACT:

1. The subject property is located in an R-1-B district.
2. The property is improved with a large detached brick structure with commercial uses on the first floor or ground floor and a club room on the second floor. The building was erected in 1927.
3. The first floor is occupied by a pharmacy and a grocery store. The pharmacy has been issued Certificate of Occupancy No. A-27814 on August 25, 1954 and the market has been issued Certificate of Occupancy No. B-55718 on March 8, 1966.
4. The Club Room occupies the second floor under Certificate of Occupancy No. B-43759 dated June 17, 1965.
5. Testimony at the public hearing indicates that the uses have existed at the subject premises since the erection of the building. A building permit No. 5646 issued December 6, 1926 indicates that the building was to be used as a club house and stores.

6. It is proposed to use portion of the first and second floors as a men's clothing store. The proposed tenant now operates the Georgetown University shop. No structural changes would be made.

7. Prior to the May 12, 1958 zoning regulations, the property was zoned 1st Commercial 40 C.

8. The proposed shop would serve primarily the students of American University and operate during the hours 9:00 a.m. to 6:00 p.m. There would be from five to six employees with a maximum of eight employees.

9. By letter dated January 30, 1967 (BZA Ex. No. 40) the Zoning Administrator states that the certificate of occupancy as a club room permits the uses stipulated in BZA Ex. No. 38a but would not permit a certificate of occupancy as an "assembly hall, auditorium or public hall."

10. There was considerable opposition to the granting of this appeal registered at the public hearing. The Wesley Heights, Spring Valley Citizens Association opposes the granting of this appeal. The record contains eleven telegrams opposing this appeal, a petition containing 211 signatures of residents opposing this appeal and letters opposing the appeal.

11. Appellant requested a rehearing to develop data showing that the change in this nonconforming use would meet the requirements of the zoning regulations.

12. At its meeting on March 28, 1967, the Board denied the rehearing or reconsideration requested with Messrs. Davis and Scrivener not voting, on the grounds that no showing was made that any new evidence would be presented at a rehearing that was not or could not have been presented at the original hearing.

OPINION:

We are of the opinion that this appeal must be denied.

The proposed use of this site is not a neighborhood use nor would it be in harmony with the present character and future

development of the neighborhood. In addition, the proposal to extend a nonconforming use should not be considered except in most convincing circumstances. Nonconforming uses are designed to go out of existence eventually and a conforming use come into being. We do not believe the regulations intended that the Board should help a nonconforming use flourish and expand for this would be contrary to the general purpose and intent of the provisions for nonconforming uses.

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

ATTESTED:

A handwritten signature in cursive script, appearing to read "P.E. Kelly". The signature is written in dark ink and is positioned above a horizontal line.

By: _____

PATRICK E. KELLY
Secretary of the Board