

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18127 of Mamuka Tsereteli, pursuant to 11 DCMR § 3104.1, for a special exception under subsection 330.4, to allow the continued use of a grocery store with beer and wine sales, and an accessory prepared food shop, last authorized by BZA Order No. 16310, dated March 18, 1998, in the R-4 District at premises 301-303 P Street, N.W. (Square 521, Lot 408).

HEARING DATE: November 2, 2010

DECISION DATE: November 2, 2010 (Bench Decision)

SUMMARY ORDER DISMISSING APPLICATION

On July 23, 2010, Mamuka Tsereteli (“Applicant”) submitted an application for a special exception under § 330.4 of the Zoning Regulations to allow the continued use of the subject property as a grocery store with beer and wine sales, and as an accessory prepared food shop. The Applicant seeks to continue the historical use of the subject property that has been so used since prior to enactment of the Zoning Regulations in 1958. Currently, the ground floor of the subject property is vacant due to a recently completed renovation. (Exhibit 1). According to the Applicant, the use had not been discontinued for more than three years. By letter dated June 25, 2010, the Zoning Administrator disapproved the Applicant’s request for a certificate of occupancy to use the premises as a “grocery store use with beer and wine sales, and an accessory prepared food shop” because the proposed use was not permitted in the R-4 district, and directed the Applicant to seek approval of a special exception under 11 DCMR § 330.4 to establish the use. (Exhibit 5).

The Office of Zoning provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, by memoranda dated July 28, 2010, to the Office of Planning (“OP”) (Exhibit 14), the District Department of Transportation (“DDOT”) (Exhibit 18), the Councilmember for Ward 1 (Exhibit 17), and by mail to Advisory Neighborhood Commission (“ANC”) 5C (Exhibits 15 and 21), the ANC in which the subject property is located, to single-member district ANC 5C01 (Exhibit 16), and to owners of property within 200 feet of the subject property (Exhibits 19 and 22). Parties in this proceeding are the Applicant and ANC 5C, which did not submit a report or testify at the public hearing. There were no requests for party status. Three neighbors, Deloris Galloway (Exhibit 24), Bishop V.B. Braxton (Exhibit 25), and Michael Nine (Exhibit 28), submitted letters of opposition.

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By memorandum dated October 26, 2010, OP recommended approval of the application with conditions; however, OP also recommended amending the application for a special exception pursuant to § 2003 (Changing Uses Within Structures) to continue operation of a grocery store use with beer and wine sales and an accessory prepared food shop (neighborhood facility) on the first floor of the subject property. In its report, OP indicated that the property had accommodated a grocery store use with beer and wine sales and deli for at least 53 years without a discontinuance of the use, noting the prior Board orders regarding the property and this use. (Exhibit 26).

Five previous Board orders recognized the nonconforming use of a grocery store as a neighborhood facility. *See*, BZA Orders 16310 (1998), 15959 (1994) and 15959-Modification Order, 15119 (1990), and 13942 (1983). The last order, Order 16310, issued in 1998, contained nine conditions, including one for a term of three years.

In its report, OP noted that the Zoning Administrator and the Office of the Attorney General had discussed with OP that the grocery store use has been continuous, but that the Order has lapsed. OP indicated that in the interim the Zoning Regulations had been amended to replace the term “delicatessen” with the term “prepared food shop.” OP also stated that a Certificate of Occupancy for this type of use has been on record since 1957 and that past Board reports have not indicated that “the property became a community nuisance or adversely affected the neighborhood’s character.” (Exhibit 26, p. 4). Thus, OP recommended special exception relief from § 2003 (Changing Uses Within Structures) to continue the grocery store use and its accessory prepared food shop with six conditions.

As recognized by OP and the previous Board orders, the grocery store use was nonconforming and had not been discontinued. As such, this use does not need permission from the Board, in the form of a special exception, or otherwise, to continue operation. The 1998 Board order permitted the continuation of the grocery store use and a delicatessen use, conditioned with a three-year term. When the three-year term ended, the order lapsed and the permission for the delicatessen use ended, but the grocery store use was still viable and continues to be so today. As a nonconforming use, its existence is not dependent upon the 1998 order, and the Applicant needs no relief from this Board to continue its operation.

Further, the Board has recently held that the preparation and sale of prepared foods is not an accessory use to a grocery store use, but is an inherent part of the grocery use. *See*, BZA Orders 17906 (2009), 18044 (2009), and 18031 (2010). As prepared food is part of the nonconforming grocery store use, it is not a “new” or “additional” use being added to the grocery store. Therefore, the underlying nonconforming grocery store use is not changing, and again, no relief is necessary.

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Based upon the record before the Board and having given great weight to the recommendation of OP,¹ the Board concludes that the Applicant does not require zoning relief. Accordingly, it is therefore **ORDERED** that the application for a special exception under § 330.4 to allow the continued use of a grocery store with beer and wine sales, and an accessory prepared food shop, last authorized by BZA Order 16310, dated March 18, 1998, in the R-4 District at premises 301-303 P Street, N.W. (Square 521, Lot 40) is **DISMISSED**.

VOTE: **4-0-1** (Meridith H. Moldenhauer, Nicole C. Sorg, Jeffrey L. Hinkle, and Konrad W. Schlater voting to dismiss the application; the third Mayoral appointee (vacant) not present, not voting)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 09 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

¹ ANC 5C did not participate in this proceeding, and therefore the Board is unable to give great weight to any issues and concerns raised by the affected ANC.

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As Director of the Office of Zoning, I hereby certify and attest that on November 9, 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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JAMISON L. WEINBAUM
Director, Office of Zoning