GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16689-A of Juanita M. Berry, pursuant to 11 DCMR §3103.2, for a use variance under Subsection 330.5 to establish the use of a beauty salon and re-establish the use of a discontinued retail grocery convenience store in an R-4 District at premises 963 14th Street, S.E. (first floor) (Square 1046, Lot 19).

HEARING DATE: April 24, 2001

DECISION DATE: April 24, 2001

DISPOSITION: The Board granted the application, with four conditions, by a vote of 3-0-2 (Susan Morgan Hinton, John G. Parsons, and Anne Mohnkern Renshaw to approve; Sheila Cross Reid not present, not voting; the third mayoral appointee not hearing the case, not voting.)

FINAL DATE OF ORDER: May 15, 2001

MODIFICATION ORDER

Application:

By Order dated May 15, 2001, the Board approved the Applicant's request to establish a beauty salon and re-establish the use of a discontinued grocery store on the first floor of the premises. The Board granted the approval based on the following conditions:

1. Approval shall be for five years.

2. The hours of operation shall not exceed 8:00 a.m. to 6:00 p.m., Monday through Saturday.

3. There shall be no alcoholic beverages or perishable goods sold in the grocery store.

4. The grocery store shall not occupy more than 25 percent of the premises.

BZA
Case No. 16689A
Exhibit No. 43
Board of Zoning Adjustment
District of Columbia
CASE NO.16689
EXHIBIT NO.43

The Board authorized the issuance of a Summary Order, which was published on May 15, 2001 and mailed, first class, to the Applicant and parties. The Board's Rules of Practice and Procedure, 11 DCMR § 3126.2, allows a party to file a motion for reconsideration within 10 days from the date of issuance of the final written order.

Request to Increase the Hours of Operation:

By correspondence dated May 24, 2001, the Applicant, Juanita M. Berry, requested that condition Number 2 be modified. The request was received in a timely manner. The condition states that the hours and days of operation of the retail establishments shall not exceed 8:00 a.m. to 6:00 p.m., Monday through Saturday. The Applicant requested extended hours of operation from 7:00 a.m. to 8:00 p.m., Monday through Sunday.

The Applicant indicated that she is requesting a change in the hours of operation because the hours of 8:00 a.m. to 6:00 p.m. would be an inconvenience for her customers and would severely restrict the residents of the neighborhood who would be using the grocery store and salon. Ms. Berry indicated that the beauty salon have customers who would want to get beauty services early in the mornings and after work in the evenings, or on Sunday afternoons. Also, residents of the neighborhood would like to be able to purchase items such as newspaper and juice before going to work and school, or on Sundays, going to and coming from church services.

FINDINGS OF FACT

The Applicant requested that the facility operate between the hours of 9:00 a.m. and 6:00 p.m., Monday through Saturday during the public hearing. At the end of the hearing, Ms. Berry requested that the morning hours be extended to 8:00 a.m. The Applicant indicated that she would prefer some flexibility with the morning hours of operation. The Board conditioned the Order accordingly.

Within nine days of issuance of the written Order, the Applicant requested a change in the hours and days of operation. The Applicant proposed to operate from 7:00 a.m. to 8:00 p.m., Monday through Sunday. The Applicant indicated that the extended hours would allow her to better serve clients of the beauty salon, many of whom work during day; and the convenience store would provide goods to early morning and evening pedestrian traffic.

The Office of Planning at the April 24, 2001 public hearing, recommend that the hours of operation be from 6:00 a.m. to 11:00 p.m. on weekdays, and from 6:00 a.m. to mid-night on weekends (Exhibit No. 32).

Board Member Anne Mohnkern Renshaw indicated that the Board approved the application, including the hours of operation, based on the Applicant's request at the public hearing. She also indicated that the convenience store and beauty salon are located in a residential district and therefore should not operate as though they are located in a commercial district. Board Member Renshaw indicated that the Applicant should get the business up and running, prior to requesting a change in the hours of operation. The application was approved for five years, therefore the

Applicant must return to the Board after expiration of the five years. Board Member Renshaw stated that if a tweaking of the hours were necessary, when the Applicant returns to the Board that would be an appropriate time to do so.

CONCLUSIONS OF LAW AND OPINION

1. The Board concludes that the Applicant's request to change the hours and days of operation of the grocery store and beauty salon does not change the materials facts it relied on when the application was approved.

2. The residents of the community asked the applicant to re-establish the convenience store with its primary purpose to augment the services of the beauty salon. The increased hours of operation would complement both uses.

3. The beauty salon and grocery store would provide a convenience for the residents of the area, and the expanded hours of operation would not adversely affect the community.

4. The Board did not receive any opposition to the application from neighborhood residents concerning re-establishing the grocery store and its hours of operation.

5. The Office of Planning recommended expanded hours of operation for both uses, more than those requested by the Applicant.

6. The Applicant had not completed developing her business plan when the project was presented to the Board.

Based on the Findings of Fact and Conclusions of Law, the Board is of the opinion that granting the Applicant's request to increase the hours of operation and to operate the retail establishments seven days per week would not adversely affect the use of neighboring properties; would not impair the intent, purpose and integrity of the Zoning Regulations and Map; and would be in harmony with the R-4 District. It is therefore **ORDERED** that the applicant's request be **APPROVED** and that Condition Number 2 of BZA Order 16689 be amended to state **"The hours of operation shall not exceed 7:00 a.m. to 8:00 p.m., Monday through Sunday."**

On July 3, 2001, a motion to deny the request failed by a VOTE of 1-2-2:

John G. Parsons submitted an absentee vote in support of approving the modification; Anne Mohnkern Renshaw and Susan Morgan Hinton voted to deny the modification; Geoffrey H. Griffis and Sheila Cross Reid were not present, not voting. Board member Griffis was asked to read the record and participate in the vote. The decision was re-scheduled for July 31, 2001 at a public meeting.

On July 31, 2001, a decision was not made on the application:

The Board determined that a decision could not be reached because only three Board members who participated in the case were present at the meeting. (One Board member was opposed to approval of the application and two Board members were in support.) Board members Reid and Levy were asked to read the record and participate in the decision, which was re-scheduled to September 4, 2001 at a public meeting.

The Board members participating in the discussion on July 31, 2001 were Anne Mohnkern Renshaw, Geoffrey H. Griffis and Sheila Cross Reid; John G. Parsons was not present; Susan Morgan Hinton was no longer a member of the Board.

On September 4, 2001, the Board, by a vote of 4-1-0, APPROVED the request.

Sheila Cross Reid, Geoffrey H. Griffis and David W. Levy to approve; John G. Parsons to approve by absentee vote; Anne Mohnkern Renshaw opposed to the motion.

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

Each concurring Board member approved the issuance of this Order.

JERRILY R. KRESS, FAIA
DIRECTOR

FINAL DATE OF ORDER: OCT - 9 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

BAB/9.28.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPLICATION NO. 16689-A

As Director of the Office of Zoning, I hereby certify and attest that on OCT - 9 2001 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:

Juanita Berry
1398 K Street, S.E.
Washington, DC 20003

Gladys Hicks
7710 Merrick Lane
Landover, Maryland 20785

Michael Johnson, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Ken Jarboe, Chairperson
Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue, S.E.
Washington, DC 20003

Commissioner Kalimah Abdul-Sabur
Single Member District 6B09
1121 K Street, S.E., #12
Washington, D.C. 20003

Councilmember Sharon Ambrose
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 102
Washington, DC 20004

Ellen McCarthy, Deputy Director
Development Review
Office of Planning
801 North Capitol Street, NE, Room 400
Washington, DC 20002

Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

JERRILY R. KRESS, FAIA
Director