GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN THE MATTER OF ENDALE TEREFA CASE No. 16880

MOTION FOR LEAVE TO FILE FINDING OF FACT AND CONCLUSIONS OF LAW LATE

Comes now the Applicant by counsel and requests this Board accept this late - filed pleading for the following reasons.

1_ Counsel is a sole practitioner who represented a lawyer before their professional Board on Monday and Tuesday of last week and the matter was extended so other scheduled matters were bumped back which had been previously scheduled and some of which could not be long delayed so office work was delayed.

2) Counsel was unable earlier to read the transcript at the Board as it was misplaced.

3) The evidence referenced in this pleading was timely filed before the Board so this pleading should cause no delay or harm to the Board or any party.

RECEIVED
D.C. OFFICE OF ZONING
2002 NOV -4 AM 9:30

Respectfully submitted;

James L. O'Dea, III Bar No. 21128
Attorney for Applicant
1111 - 14th Street, NW; Suite 1000
Washington, D. C. 20005
202 - 737 - 0200

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion and the Findings of Fact and Conclusions of Law were mailed to Timothy A. Jones, Chair of ANC-4C this 2nd day of November, 2002.

BZA
Case No. 16880
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO.16880
EXHIBIT NO.37

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN THE MATTER OF ENDALE TEREFA CASE No. 16880

FINDINGS OF FACT & CONCLUSIONS OF LAW

This case came before the Board for an exception to an existing special exception; a grocery store in an R-4 zone. The request was to add a delicatessen to the existing 88 year old grocery store as a continued neighborhood facility at 434 Shepherd Street, NW in the building owned by the applicant who is making changes in order to move his family onto the upper floor of the building.

1) The hearing was held on October 1, 2002 at 1:15 pm.

2) Present was the applicant with his counsel, James L. O'Dea, III, and the protestant, Timothy A, Jones, as Chair of ANC 4C and Ron Austin from the office of Adrian Fenty, Council member from Ward 4 as well as various witnesses ; Keisha Miller for the ANC; Marcus Jones, a patrol officer from the MPDC representing himself and Shirley Washington, a concerned neighbor.

3) The Office of Planning , represented by Mr. Jonathan Moore, appeared and presented the factual background for this longstanding non-conforming and recommended the exception be granted with some modifications. He also noted that this store was first there in 1915,long before the Comprehensive Plan and that this neighborhood had the largest percentage of retirees in the city (Wards 4 & 5). He further stated that based on all the facts this was a neighborhood facility and the addition of a deli would cause no physical changes inside or outside.

4) Those modifications that Mr. Moore referenced included cleaning and repairing the sidewalk up to the store from the public sidewalk; cleaning the outside appearance and other cosmetic factors as well as improving trash collection .

5) The ANC and Mr. Austin and the police officer spoke to loitering and littering and the unsightly appearance of the front of the store due to various signs on the windows , the lack of proper trash receptacles and the broken sidewalk and hole in the front area

6) The applicant spoke of the steps he has taken to clean up the exterior and the items he intended to provide for the deli and the fact that the neighbors who are his regular customers had requested these products; including but not limited to, coffee, donuts and pastries, prepared sandwiches and hotdogs as they were older and Georgia Avenue was too far away for them to obtain such simple prepared commodities. He provided a petition signed by dozens of neighbors to this effect. He advised the Board of the steps he would take to correct any problems presented at the hearing and the fact that he could not come to agreement with the ANC due to issues that were exclusively ABC related and not relatable to this request.

7) All testimony agreed that there would be no increase in vehicular traffic by this modification and that it met the criterion for a neighborhood facility and provided necessary items for the neighborhood and that there would be no structural changes, inside or out.

8) One issue was raised as to underage sales but Ms. Miller acknowledged she had only heard about this allegation and had no first hand knowledge of such activity and everyone else testified that they knew of no such issue.

9) On October 18, 2002, the applicant provided additional documentary, pictorial and other proofs of his ability and intent to comply with the concerns of the neighborhood.

10) The pictures show that Mr. Terefa has removed the empty ice machine that was in front of the store which occurred as soon as he could have the freon safely removed.

11) Mr. Terefa removed all the paper signage from the front inside and outside the store and left only the signage from the previous owners on which he had placed his store's name over the old ones. These exterior signs have been there for years.

12) Mr. Terefa repaired the sidewalk and front area of the entranceway to the store on his land; he had a high intensity lamp placed over the door to the upper floor which is in front of the tree on Shepherd Street, NW to whose shadows Officer Jones referred ; he requested the DPW trim the tree and the MPDC, Fourth District Commander consider his offer to use the front of the store for a small office area for the PSA officers to use whenever the store is open. DPW has responded and he has not yet heard from the Fourth District Commander.

13) He has installed two permanently attached trash receptacles at the entrance to the store from the sidewalk behind two small stone pillars to improve the appearance of the store and

has requested his trash removal company to come three times a week rather than two.

14) He has provided other documentary evidence of the neighborhood demand for these deli services from the elderly citizens who are his customers; the regular MPDC PSA officer has submitted a letter of support and he has acted in a positive manner to effect all the concerns of all the opponents and the Office of Planning as to the conditions that should be changed.

15) he has addressed the loitering concerns with the added lighting in the area alleged to be shaded by the tree and contacted DPW to have that tree trimmed; he has removed the unsightly items from the front of the store and repaired the front ground and sidewalk area in front of the store; he has removed the unsightly signage; he has improved his trash receptacles and trash pickup and removal and he has provided proof of the community need for the requested addition which requires no structural changes internally or externally, but continuing the neighborhood facility this store is.

16) Mr. Austin has provided to the Board the Clean City Ticket referenced in his testimony ; however, it addressed an apparent one-time piling of debris in the rear of the building probably from the upstairs area he is preparing for his family. The ticket itself is addressed to a name unknown to anyone associated with Mr. Terefa. It was allegedly posted but no one Mr. Terefa knows has ever seen it nor has Mr. Terefa or his wife ever seen it. There is no additional picture to show the current clean condition as the document was not provided counsel and was only seen too late to provide a response. All this debris was removed without any requirement of action by the city.

17) Mr. Terefa has never had any other complaints against him or his store from any Department of the District of Columbia Government and the Metropolitan Police and the ABC inspectors as well as other inspectors are there often.

CONCLUSIONS OF LAW

18) This application was properly filed pursuant to 11 DCMR § 3104.1 and proper notices were given to all parties and subsequent corrections at the hearing were presented to all parties without any concern as to the original application they presented no additional substantial concerns and all parties had opportunity to respond to the 'addition' of hotdogs and

acknowledged that that made no difference to the issues.

19) 11 DCMR § 2003.1 *& § 2003.5* require that a business with a special exception to an R-4 zone show that the applicant provide proof that it meets the requirement of a neighborhood facility in that it fills a need for the community to which the services are provided so that a 'change of non-conforming use' may be approved.

21) The predominantly elderly and long time residents of this neighborhood have been using the services of this store for over 87 years and have requested a slight modification to include delicatessen type services so this need is proven as to this neighborhood facility.

22) This change will not compromise existing zoning rulings regarding increased vehicular traffic, lighting, littering and loitering as these have been addressed by the applicant as presented at the hearing and in the subsequent briefing period wherein he provided documented proof of his response to the needs of the community and their specific concerns. (11 DCMR § 2003.7)

23) There is no deleterious external effect by the approval of this application (11 DCMR § 2003.3)

24) There is no adverse affect on the character of the surrounding area as the testimony and the statement from the Office of Planning proves. (11 DCMR § 2003.2)

Wherefore, as the applicant has responded to all the community and governmental concerns regarding this proposed additional neighborhood facility and shown by actions his intention to provide the services needed and requested by the neighbors who use and need the facility he owns, this Board hereby grants the special exception to add a deli to this grocery store non - conforming as a neighborhood providing the services presented at the hearing.

SO ORDERED:

_____

George Griffis, Chair; BZA

_____
Member

_____
Member

_____
Member