GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman

DATE: November 12, 2002

SUBJECT: BZA Case 16940 Variance Request

APPLICATION

The application by Mauricio V. Arias requests, pursuant to 11 DCMR 3103, a variance from the residential requirements, to permit the continuation of a restaurant use (Section 330) that was mistakenly granted by the District government. The structure is in the R-4 District. The subject premises are at 1326 Park Road, N.W., Square 2843, Lot 35.

OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning recommends **approval** of the variance to allow the subject restaurant to continue operating in the R-4 District, with the condition that seating be limited to 50 seats.

SITE AND AREA DESCRIPTION

The subject premises are in the Columbia Heights Neighborhood of Ward One. Park Road generally bounds the site to the north, Kenyon Street is to the south, 13th Street is to the east and 14th Street is to the west. The subject Square (2843) consists mostly of row dwellings and some walk-up apartments buildings. However, in addition to the subject restaurant, there are other commercial uses on the block. There is a laundry and beauty salon two doors to the east of the subject restaurant, and the entire western portion of the square, (a triangularly shaped parcel, between Park Road and Kenyon Streets) is a vacant WMATA-owned parcel, zoned C-3-A. The Tivoli Theater property is directly across Park Road (north side) from the subject site. The theater building is being renovated and will have both cultural and retail services available. The northern portion of the Tivoli site, those fronts on Monroe Street, will be developed with duplex town homes. The subject property is within one and one half blocks to the south of the Columbia Heights Metro Station, which is on 14th Street, between Kenyon and Irving Streets.

BZA
Case No. 16940
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO.16940
EXHIBIT NO.26

There will also be a Giant Food Store adjacent to the Tivoli, at the eastern end of the property near the intersection of Park Road and Holmead Place.



Beauty Salon and Laundry.

Most of the dwellings on Square 2843 were constructed between 1895 and 1966, and thus predate the adoption of the Zoning Act of 1958. The subject structure was built in 1905 as a walk-up apartment building. Until approximately 1987, the building was a twelve-unit rooming house. The Certificate of Occupancy (C of O) dated June 26, 1995 issued by the Department of Consumer and Regulatory Affairs (DCRA) mistakenly listed the property as C-2-A, which is a medium density commercial zone. A 50-seat restaurant and a pool hall occupied the first floor and the basement of the structure until approximately 1966 when it was abandoned. There were residential units on the second and third floor.

The applicant purchased the property in 2001, with the full intention of renovating the structure to accommodate a restaurant use on the first floor and the basement levels, and providing three residential units on the second and third floors. At the time of purchase, the subject structure was in disrepair and was an eyesore to the Columbia Heights community. The applicant received a temporary extension of the previous C of O from DCRA, which listed the property as C-2-A. The temporary C of O expires on March 11, 2003.


Newton St NW
Holmead Pl NW
Monroe St NW
14th St NW
13th St NW
Park Road NW
1326 Park Road, N.W.
C-3-A
SQR 2837
R-4
SQR 2838
SQR 2842
R-4
C-3-A
SQR 2843
R-4
SQR 2843
SQR 284
Kenyon St NW
C-3-A
SQR 2848
R-4
SQR 2848
Irving St NW
Feature Key
Zoning Boundaries
Square Index
Board of Zoning Adjustment
Application No. 16940
Scale 1:1993
25 0 25 50 75 100 Feet
DC Office of Planning
November 5, 2002
Attachment 1

APPLICANT'S PROPOSAL

The applicant is requesting a use variance to continue to operate a restaurant use in the R-4 zone. In 1995 DCRA mistakenly granted a Certificate of Occupancy listing the property as C-2-A. When the current applicant purchased the property in 200,1the zoning records at DCRA listed it as commercial. There was also evidence that there was restaurant use in the subject building, as recently as 1995. The applicant believes that he acted in good faith when he purchased the property with the intention of reestablishing a restaurant use on the first floor and the basement levels. The restaurant (The El Rinconcito Café II, Inc.) has been opened for less than a year. The applicant now proposes to increase the seating in the restaurant from fifty (50) to seventy five (75) seats.

ZONING ANALYSIS

The subject premises are in the R-4 District. The R-4 district permits row dwellings, flats and conversions to apartments, at a moderate to medium density. Restaurant uses are generally not considered a compatible use in the R-4 District. However, there is an exceptional situation concerning the subject property that the Board may wish to consider in its deliberations. For the most recent zoning history of the site, DCRA incorrectly recorded the property on the official records as being in the C-2-A District. Restaurants are permitted in the C-2-A zone as a matter of right. Previous owners of the property and the present applicant believed that restaurant use was a consistent use of the land, in accordance with 11 DCMR. As recently as 1995, the C of O issued to the 1326 Corporation, identified the property in the C-2-A zone and there was a restaurant in the building.

In 2001, the Alcoholic Beverage Control Board, (ABC Board) granted the current applicant a liquor license. The community also supported the applicant's request for a liquor license.

It appears that the applicant did act in good faith when he purchased the property with all intentions to establish a restaurant use on the first floor and basement levels, as had been the recent history of use of the property. The applicant had established a reputation as a restaurateur over the past seven years. He has owned and managed the Restaurant at 11th and M Streets, N.W., a successful Mexican and Salvadoran restaurant. The subject restaurant, El Rinconcito Café II, Inc., is a furtherance of the applicant's vision to provide a neighborhood serving Mexican /Salvadoran restaurant, largely attracting diners from the immediate neighborhood of Adams Morgan, Columbia Heights and Mount Pleasant. The El Rinconcito Café II has been opened for approximately two months.



Rinconcito Café II.

RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map depicts the subject area as ***Moderate Density Residential***. Row houses and garden apartments are the predominant uses in areas designated as moderate density.

DOES THE APPLICATION MEET THE VARIANCE TEST

Is the property unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition?

Yes. The property is unique by reason of its exceptional situation and condition. The subject property was built in 1905 for residential purposes. It is zoned R-4, a district that permits row dwellings, flats and conversions to apartments, at a moderate to medium density, as a matter of right. For the most recent zoning history of the site, (1995 – 2001) the District government incorrectly recorded the property as being in a C-2-A zone. Restaurants are permitted in the C-2-A, but they are not generally considered a compatible use in R-4 Districts. At the time of purchase by the applicant, there were no indications in the record that the property was classified as residential. Previous owners of the property and the present applicant relied on District government zoning records and made substantial investments to improve the first floor and the basement levels for restaurant use. The property has been in commercial condition for a restaurant since 1987.

By reason of the aforementioned unique or exceptional condition of the property, will the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of the property?

Yes. The strict application of the Zoning Regulations **will** result in an undue hardship upon the owner of the property. The applicant purchased the building because he believed it was appropriately in a C-2-A commercial district, which permitted restaurant use. The District government had mistakenly listed the property in a commercial zone, as opposed to correctly



Seating area, basement level.



Seating area, first floor.

placing it in the R-4 residential zone, a zone that does not permit restaurant use. This information was not known to the application when the property was purchased. The applicant in good faith, expected to reestablish a restaurant on the first floor and the basement levels. He has made substantial interior enhancements and had every expectation that the property could reasonably be used for restaurant use. It would be very difficult for the applicant to convert the first floor and basement levels of the subject building back to the original intended residential use without suffering undue hardship.

Can the requested relief be granted without substantial detriment to the public good and without substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map?

Yes. The requested relief **can** be granted without substantial detriment to the public good and without substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The property has a recent history of restaurant uses on the first floor and basement levels, although it is in a residential zone (R-4) that does not generally permit restaurant use. The restaurant, which is already open, does not appear to create adverse impact on the community, or substantially cause detriment to the public good or substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. There is support in the community for the restaurant, as is demonstrated through a resolution of support taken by ANC 1A. There are other retail uses on the subject block, including a laundry and a beauty salon two doors to the east of the subject restaurant, and the entire western portion of the square, (a triangular shaped parcel, between Park Road and Kenyon Streets) is a vacant WMATA-owned parcel, zoned C-3-A. The Tivoli Theater property is directly across Park Road (north side) from the subject site.



The Tivoli Theater property.

COMMUNITY COMMENTS

Advisory Neighborhood Commission (ANC) 1A, at its October 9, 2002 meeting approved a resolution of support regarding the subject restaurant being located in a residential zone. The resolution cited the El Rinconcito II RESTAURANT as:

- "Welcome addition to the neighborhood, an attractive full service restaurant in a newly renovated building, one of very few in the area, and ANC 1A has already supported the issuance of an ABRA license for the business;
- A Certificate of Occupancy was issued by DCRA for a restaurant use at the same location in 1996, and the owner purchased the property in good faith expecting to continue that use, and has invested a substantial sum to make a very handsome establishment;
- Although the south side of the 1300 block Park Road is not zoned commercial, this section is directly across the street from the proposed Tivoli Square project, which will include a grocery store on Park Road, for which the zoning was recently changed to C-3-A, and there are other non-residential uses on the block;
- Therefore, ANC 1A supports the application for a variance from use restrictions in a residential zone for the El Rinconcito II Restaurant for the duration of its operation."

ANC 1A, voted to approve the variance at its regular monthly meeting for October.

ANC 1A did not take a position regarding the applicant's request to increase the number of seats from fifty to seventy-five, nor is it mentioned in the resolution.

OP RECOMMENDATION

After having reviewed BZA application 16940 requesting a use variance from R-4 zone requirements to permit the continuation of a restaurant use, the Office of Planning recommends that the **Board approve the application**. The Office of Planning finds that the applicant does qualify for relief from the requirements of §330, and has met the burden of proof under §3103 of the Zoning Regulations, and concludes that approval of the application would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Office of Planning does not however, support the applicant's request to intensify the current number of seats in the subject restaurant, by fifty per cent, from fifty to seventy five seats, due to the non-conforming nature of the use in a residential zone.

The requested commercial use has proceeded to the point of a BZA hearing because the applicant desires to increase the seating in the restaurant from fifty to seventy-five. Because the restaurant is located in a residential zone that does not generally permit restaurants, and there are no parking provisions on the subject lot, OP recommends that

the current level of seating intensity (50) remain in effect and that the request by the applicant to increase seating from 50 to 75 seats be denied by the Board.