

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13991, of Kwang B and In A Jeon, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from drug store-food products, first floor and basement for storage, to grocery and delicatessen, first floor and basement for storage, in an R-4 District at premises 522½ K Street, N.E., (Square 830, Lot 56).

HEARING DATE: July 20 and September 14, 1983
DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. The application was initially scheduled for the public hearing of July 20, 1983. The application was continued to the public hearing of September 14, 1983, since the applicant had not complied with Section 302.3 of the Supplemental Rules of Practice and Procedure before the BZA which requires that the property be posted with notice of the hearing at least fifteen days in advance of the public hearing. The applicant had never posted the property.

2. The subject property is located on the northwest corner of the intersection of 6th and K Streets, N.E. The site is in an R-4 District and is known as premises 522½ K Street, N.E.

3. The site is rectangular in shape and has approximately 2,017 square feet of land area.

4. The site is improved with a two-story plus basement brick structure, the ground floor of which contains the ABC Market, with storage facilities in the basement. The second floor of the subject structure is used for residential purposes.

5. The primary entrance to and egress from the building is from K Street on the south, with secondary access through a rear yard adjoining 6th Street on the east.

6. The surrounding area is characteristic of an R-4 District and is generally developed with residential row structures of relatively low height and bulk. There are two schools within close proximity to the site, the J.O. Wilson Elementary School located on K Street between 6th and 7th Streets, N.E. and the Hayes Public School located on the northeast corner of the intersection of K and 5th Streets,

N.E. There are also several churches and numerous low intensity nonconforming commercial uses in the area. These latter uses include grocery stores, liquor stores, beauty shops and similar uses and tend to be located at intersections.

7. The subject structure's use is advertised by a painted placard over the K Street entrance, which identifies the premises as the ABC Market. Approximately five or six smaller signs and two non-illuminated placards are posted on the structure's K Street and 6th Street facades, advertising specific products and/or items available for sale within.

8. Trash containers are currently located at the rear of the building to facilitate regular removal of refuse from the subject business. There are no trash containers adjacent to the K Street entrance for the use of patrons exiting the premises.

9. The applicant's current Certificate of Occupancy No. B126487, issued September 22, 1981 authorizes use of the subject premises as a drug store-food products sale. If approved by the Board, the applicant seeks to expand the scope of services to include the sale of sandwiches and hot food. The applicant testified that such has been requested by neighborhood patrons.

10. If the expanded scope of services is permitted, the applicant proposes to continue operating the ABC Market from 8:00 A.M. to 8:00 P.M., Monday through Saturday and 8:00 A.M. to 6:00 P.M. on Sundays. The number of employees will remain constant at two. The clientele will remain the same and the objective of the change is to retain existing patrons. Service will be carry-out only. There will be no tables or seats for on-site sit down service.

11. The Board of Zoning Adjustment has authority to grant special exceptions for change of nonconforming uses under Sub-sections 8207.2 and Paragraph 7106.11. Sub-section 8207.2 reads in pertinent part as follows:

"The Board is authorized to grant special exceptions as provided in the proceeding articles of these regulations where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps."

12. Paragraph 7106.11 governs changes of nonconforming uses and provides that a nonconforming use may be changed to a use which is permitted as a matter-of-right in the most

restrictive district in which the existing nonconforming use is permitted as a matter-of-right.

13. The present nonconforming use of the subject premises is first permitted as a matter-of-right in the C-1 District. The proposed nonconforming use is also first permitted in the C-1 District, which is the most restrictive district in which both a drug store and a food or grocery store are permitted as a matter-of-right.

14. The Board finds that the proposed change of nonconforming use meets the requirements of Sub-paragraphs 7106.111 through 7106.116, as follows:

- A. The proposed sale of sandwiches and hot food at the ABC Market will have no adverse affect on the present character and future development of the surrounding area within 300 feet. The size, clientele, hours, and number of employees will not increase. A service requested by present neighborhood customers will be provided in a setting that does not intrude upon residential neighbors.
- B. The proposed use will not create any deleterious external effects. Noise, traffic, parking and loading will be limited by the fact that only walk-in traffic from the immediate neighborhood will patronize the store. No newspaper advertising will be done. Deliveries are limited. Vibrations and odor will be limited by the fact that no heavy equipment will be used for cooking or other work. Illuminations, design and siting effects, as hereinafter conditioned, will be limited so that the premises will retain a quasi-residential appearance.
- C. The nonconforming use has been continuous, and has never been changed to a conforming or more restrictive use.
- D. The proposed use will be a neighborhood facility as is required in a residential zone.
- E. The Board will impose condition on this approval concerning signs and trash cans to protect the enjoyment of property in the neighborhood.

15. The Office of Planning, by report dated July 12, 1983, recommended approval of this application subject to controls on signage and trash receptacles. The Office of Planning recommended that all signs, except for the "ABC Market" sign over the door, should be removed in the interest of minimizing a commercial presence in a residential neighborhood, enhancing compatibility with surrounding uses, and reducing visual clutter. Also,

should the applicant seek to enhance his identification sign in the future, embellishment by way of neon or gas tube lighting should be prohibited. The Office of Planning further recommended that to safeguard against an increase in litter, the applicant would be well advised to locate two garbage cans adjacent to the subject structure, e.g. one by the K Street entrance and one on the Sixth Street side.

16. The Office of Planning further reported that the relatively small size, in terms of occupied floor area, of the proposed nonconforming grocery store/delicatessen, its location in the heart of a residential neighborhood, and the types of products which the ABC Market proposes to sell, all would seem to suggest that the new use will be a facility catering almost exclusively to a neighborhood clientel. In the Office of Planning's opinion, the proposed nonconforming use poses little threat to the future development of the neighborhood nor will it detract from the neighborhood's present character. The Market's brick facade blends harmoniously with surrounding structures although the first floor facade of the structure is suggestive of a commercial use and contrasts with the style and design of the second floor which is clearly residential. The Market is likewise compatible with surrounding uses which, within 300 feet of the subject premises, are predominantly residential and/or uses such as churches, schools, and other small scale nonconforming commercial uses which coexist with and compliment residential uses.

17. The Office of Planning further reported that given the fact that the current use of the subject premises is similar to the proposed use in terms of operating characteristics and services offered, and that the proposed use is essentially a slight intensification of the existing use, the incremental noise, traffic, vibration or other deleterious external effects generated by the proposed use would be marginal. Also, since the proposed use will basically serve the neighborhood, few, if any, of the proposed grocery store/delicatessen's clientele can be expected to travel to the site by automobile. For the occassional patron arriving by automobile, limited parking is available on Sixth Street and on K Street, except during rush hours. The Board concurs in the recommendation and reasoning of the Office of Planning.

18. The Office of Planning noted, in a memo dated August 29, 1983, that the Zoning Commission amended the nonconforming use provisions of the Zoning Regulations effective August 5, 1983. The subject application was originally scheduled for hearing prior to the effective date of the new Regulations. Therefore, the July 12, 1983, Office of Planning report reviewed the subject application in light of the old Regulations. In preparation for the September 14, 1983, public hearing, the Office of Planning

re-examined the application, and determined that the application complies with the new requirements, and that the Office of Planning's previous recommendation of conditional approval remained valid. The Board agrees.

19. Advisory Neighborhood Commission 2C did not submit a report on this application.

20. There was no opposition to the application at the hearing or in the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicants are seeking a special exception to change a non-conforming use. The granting of such a special exception requires that the proposed use be permitted as a matter-of-right in the most restrictive district in which the existing use is permitted and that the proposed use satisfy all conditions listed in Sub-paragraphs 7106.111 through 7106.116. The Board further must find that the relief requested can be granted without substantially detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.


The Board concludes that, as hereinafter conditioned, the applicants have met the requirements for a special exception to change a non-conforming use and that the change of use will not be detrimental to the public good nor would it impair the intent of the zone plan. Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Exterior signage shall be limited to one non-illuminated sign, located at the K Street entrance.
2. Two garbage cans shall be placed on the subject site, and all parts of the lot shall be kept free of litter and debris.

VOTE: 5-0 (Maybelle T. Bennett, Carrie Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to GRANT).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

NOV - 9 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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