

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12848 of Douglas G. Dillard, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a tailoring shop to a delicatessen in an R-3 District on the first floor of the premises 1300 - 35th Street, N.W., (Square 1227, Lot 813).

HEARING DATE: March 13, 1979  
DECISION DATE: April 4, 1979

FINDINGS OF FACT:

1. The subject application was scheduled for the Public Hearing of January 17, 1979. It was not heard since the applicant did not post the property as required by section 3.33 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment. The application was rescheduled for the Public Hearing of February 21, 1979. That Public Hearing was cancelled because of the snow.

2. At the subject Public Hearing of March 13, 1979, the application was first heard as a preliminary matter. The property had been posted for seven days instead of the required period of ten days. The opposition raised no objection. The Board for good cause shown, waived the ten days posting requirement.

3. The subject property is located at the north west corner of the intersection of N and 35th Street, N.W. It is in an R-3 District and is known as 1300 35th Street, N.W.

4. The subject lot is rectangular in shape. It has a width of 23.43 feet and a depth of 64.28 feet.

5. The lot is improved with a semi-detached three story building. The upper two floors are currently used for residential purposes. The ground floor formerly housed a tailor shop, - "The Needle and Thimble Tailor Shop" C of O No. B97726 issued April 13, 1976, permitted the use of the first floor as a tailor shop. The shop is presently vacant.

6. The building was used as an apartment house in the 1940's.

7. Residences abut the subject property to the East on 35th Street and to the south, on N Street. Directly across 35th Street, the subject premises faces three commercial activities, a retail shoe and shoe repair shop, a dry cleaners and a weaving equipment store.

8. Within a block of the subject property there are four eating establishments. At the corner of Prospect and Potomac Streets are two delicatessens. At the north east corner of 35th street is "Sugar's," a sundies and sandwich shop.

9. The applicant proposes to use the vacant ground floor of the subject premises as a delicatessen.

10. The applicant proposes to offer for sale cold cuts, cheeses, soft drinks, sandwiches, pastry, coffee and tea. The hot items for sale will be tea, coffee and toast. Cold cuts and cheeses will be sold by weight. The applicant also has plans to use cooking and warming electric units.

11. Deliveries will be made four times a month or once a week.

12. The applicant intends to employ one to two employees. The business will be managed by members of the family of the operator.

13. The food will be stored in food lockers and in the display case.

14. The hours of the business will be from ten to six on week days, eleven to six on Saturdays and closed on Sundays.

15. The only exterior change proposed by the applicant is replacement of the door on the building.

16. Pursuant to Sub-section 7104.2 of the Zoning Regulation's, a class II non-conforming use may be changed to use which is permitted in the most restrictive district in which the existing non-conforming use is permitted, if approved by the Board of Zoning Adjustment. Both a tailoring shop and a delicatessen are first permitted in a C-1 District.

17. Residents and property owners in the area of 1300 35th Street, N.W. submitted a petition of ninety-six signatures in opposition to the application on the grounds that the new use would not be a desirable neighborhood facility. It would be objectionable and it would adversely affect the character of the neighborhood. The petition stated that the proposed "New York Style" delicatessen would be offensive and disruptive to the general character of the neighborhood for the following reasons.

- a. There would be an objectionable increase in vehicular traffic in this residential neighborhood:
  1. Commercial delivery vehicles with no loading facilities would encroach on surrounding residential properties;
  2. Parking and double parking would increase in an already congested area;
  3. Early hour wholesale delivery and trash pick-up would cause excessive noise and vibrations in the area.
- b. There would be an increase in pollution throughout the neighborhood from:
  1. Vehicular fumes;
  2. Customer litter in pedestrian areas;
  3. Delicatessen garbage and trash;
  4. Noise - at all hours;
  5. Food, waste and cooking odors.
- c. There would be an increase in restaurant-associated filth-attractive to roaches, rodents, vermin and stray animals, etc.
- d. There would be an additional hazard to the local elementary school students who are authorized to use N Street, between 35th and 36th Streets, N.W. as a playground during certain hours of the day, including lunch hour.

The petition further stated that the proposed delicatessen would provide no needed service to the neighborhood. There are delicatessens and other similar type facilities within one to three blocks North, West and South of 1300 35th Street, N.W. The Board concurs with the thrust of these objections.

18. The abutting property owner testified in opposition for the same reasons as the aforementioned petition signers. He also testified that the use of his property would be the most affected by the proposed use.

19. The Citizens Association of Georgetown by letter of January 10, 1979 stated that its membership had unanimously adopted a resolution in opposition to the application based on the reasons listed in Finding of Fact number seventeen.

20. ANC 3A by letter of January 11, 1979, acknowledged receipt of a petition in opposition to the application signed by the majority of residents in the area surrounding 1300 35th Street, N.W. Also, by letter of March 8, 1979, ANC 3A informed the Board that at its regular monthly meeting on March 7, 1979, a resolution unanimously opposing the application was passed. No specific grounds for the opposition were stated.

21. There was one petition in support of the application. The opposition objected to it on the grounds that many of the signers had not listed their addresses and some of those that did so were living at addresses blocks away from the subject site.

CONCLUSIONS OF LAW:

Under Sub-section 7104.2, of the Zoning Regulations a Class II nonconforming use may be changed to a use which is permitted in the most restrictive district in which the existing nonconforming use is permitted. In the subject application the existing non-conforming use and the proposed non-conforming use are first permitted in C-1 Districts. The Board notes however that Sub-section 7104.2 is further controlled by Section 7109. Based on the record the Board concludes that under Section 7109, the proposed use is not a neighborhood facility. The neighbors object to it and there is a sufficient number of eating facilities already in the neighborhood.

Also, assuming that the use is a neighborhood facility, it was found objectionable by the ANC, the Citizen's Association of Georgetown, the abutting property owner and other neighborhood residents, with which the Board concurs. The Board concludes that the general character of uses and structures existing within the immediate area of the non-conforming use are residential or of low intensity commercial activities. To grant the application would increase the amount of noise, traffic, vibration, or any other deleterious external effect which the proposed non-conforming use can reasonably be anticipated to generate or create.

Lastly, the Board further concludes that under Sub-section 8207.2 the proposed use would adversely affect the neighborhood and would not be in harmony with the general purpose and intent of the Zoning Regulation's and maps. Accordingly, for all the above reasons, it is ORDERED that the application be DENIED.

VOTE: 3-1 (Chloethiel Woodard Smith, William F. McIntosh, and Charles R. Norris to deny, Leonard L. McCants to grant)

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

ATTESTED BY:

*Steven E. Sher*

STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

3 JUL 1979

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."