

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13863, of Hiroko Oikawa, 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 tailor shop to retail sales of fabric and other fine household accessories in an R-4 District at the premises 1300 35th Street, N. W., (Square 1227, Lot 813).

HEARING DATE: November 11, 1982  
DECISION DATE: December 1, 1982

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of N and 35th Streets, N. W. and is known as premises 1300 35th Street, N. W. It is in an R-4 District.

2. The rectangular shaped lot is improved with a Georgetown-style semi-detached three-story building which was constructed in 1900. Formerly used as a tailor shop, the ground floor of the premises, which is the subject of this application, occupies approximately 1500 gross square feet and is currently vacant. The second and third floors are used as apartments. There is a large bay window on the east and south ground level facades of the building. The front door is adjacent to the sidewalk. Each of these aspects distinguishes this mixed use building from the residential structures that abut the building on the north.

3. The premises is located near the Georgetown University campus. To the south of the property are Georgetown University buildings which consume nearly all of Square 1222. Over fifty per cent of the subject Square 1227 is also used for University purposes. Directly across 35th Street to the east, the premises faces three non-conforming commercial uses: a shoe repair shop, a dry cleaners, and a weaving supply store. A grocery store, an antique shop and a barber shop are located to the north on the same block as the premises. Single and multi-family residential uses make up the remainder of the area. The character of the neighborhood consists of residential and low-intensity commercial uses.

4. The Board, in BZA Order No. 12848, dated July 3, 1979, denied the application for a special exception to

change a non-conforming use from a tailoring shop to a delicatessen at the subject site. The Board denied the application because the proposed use was not a neighborhood facility, a delicatessen was inconsistent with the surrounding residential and low intensity commercial area, and a delicatessen would increase the amount of noise, traffic, etc. in the immediate area. There was substantial neighborhood opposition to the proposal for the reasons outlined above, and because there were other eating facilities within close proximity.

5. In BZA Order No. 13747, dated June 21, 1982, the Board DISMISSED an application filed for a use variance in order to use the subject premises for the making and sewing of curtains, slip-covers, and other fabric items. The Board dismissed the application as being improperly before it when it became clear, during the course of the public hearing, that the applicant intended to use the subject premises as a decorator's showroom rather than in the manner reviewed by the Zoning Administrator's office and as filed and advertised for the public hearing.

6. The subject structure contains a total of four individual residential units on the second and third floors. The ground floor consists of one large room and fireplace, a small stairway leading to a storage area and a small powder room. The ground floor is currently vacant.

7. The applicant's lessee, Anthony P. Browne, hereinafter referred to as the "applicant," currently operates a retail fabric, wall covering and small household furnishings studio on the first floor of a building located diagonally across the street from the subject building at 1263 35th Street, N. W. While a major part of the applicant's present business involves the sale of fabrics used for draperies and furniture reupholstery, small decorating items such as lamps, ashtrays, etc., are also sold at the existing studio. The applicant presently employs two persons at this studio. Even though the existing business is of low intensity, the applicant has found that there is not sufficient space in the present studio to both display and store merchandise, especially large pieces of furniture such as sofas, that model fabrics. The applicant has therefore leased the ground floor level of the subject building, which he wishes to use as a studio for the display of furniture upholstery, slipcovers and curtains. In effect, the proposed use would be a small decorator showroom. The area in the rear of the subject building would be used as storage space for fabric samples.

8. Under Sub-section 7104.2 of the Zoning Regulations if approved by the Board of Zoning Adjustment, a Class II non-conforming use may be changed to a use which is

permitted in the most restrictive district in which the existing non-conforming use is permitted.

9. The proposed use of the subject premises is a Class II non-conforming use. Though vacant now, the previous use of the ground floor of the subject premises was as a tailor shop pursuant to Certificate of Occupancy No. B97726. A tailor shop is first permitted in a C-1 District. The Zoning Administrator has determined that the proposed use, while not expressly stated as a permitted C-1 use, falls into the "other similar service or retail use" as permitted in a C-1 District.

10. In exercising its authority granted by Section 7104, the Board must find that the proposed use is either a neighborhood facility or the type of use which although not a neighborhood facility would not be objectionable.

11. There will be no machines on the premises and all manufacture and construction of the fabrics will be done in other locations in the United States and in Europe. The hours of operation of the showroom will be from 10:00 A.M. to 6:00 P.M., Monday through Saturday. The applicant anticipates that one employee will staff the proposed use. The bulk of the applicant's work is conducted in the client's homes. No more than eight clients per day are expected to be at the site.

12. The applicant contended that the proposed use is a neighborhood facility. Nearly seventy-five percent of the applicant's customers live in the Georgetown neighborhood. Of those that have occasion to visit the studio, nearly half, three to four per day, reside within one mile of the subject premises. This not a general clientele business but, rather, one that directs its appeal to the limited and particular needs and tastes of the Georgetown community.

13. The applicant argued that the Board had approved similar uses in neighboring property. In BZA Appeal No. 6754, the Board approved a change of non-conforming use from a restaurant to a hand weaving studio at the premises 1301 35th Street, N.W., located opposite the subject premises. In that Order the Board based its approval on the fact that the new use would provide a neighborhood facility which would not adversely affect the present character or future development of the neighborhood. That Order also allowed the sale of small gifts and greeting cards on the premises. In BZA Order No. 11248, dated June 12, 1973, approving a change of non-conforming use from retail grocery to an antique shop at 3428 O Street, N. W., the Board's decision was based on a finding that a decorator's studio would not generate an unreasonable number of customers. The applicant argued that the proposed studio can clearly be described as a use that is significantly less intensive than these

approved changes in non-conforming use. The proposed studio is also less intense than the laundry and dry cleaning store, the shoe repair shop and barber shop which are located in the immediate vicinity of the site.

14. The applicant argued that the proposed use will not adversely affect the present character or future development of the neighborhood. The surrounding neighborhood exhibits a mixture of low-intensity commercial and residential uses. A small showroom for the display of fine fabrics will be in harmony with the small commercial establishments located just east and north of the site. It would bring few outside visitors to the neighborhood and will help restore and improve a corner building in Georgetown which has been allowed to deteriorate. The activities conducted at the proposed showroom will be very similar in nature to those conducted at the existing store at 1236 35th Street. The applicant has been at that location two years and during that time has enjoyed a cordial relationship with the community. The existing store has caused no noise or other objectionable conditions in the surrounding area. The Board so finds.

15. While the applicant plans to restore and upgrade the interior ground floor of the existing building, no structural changes will be made which will affect the architectural design, features or character of that building. In addition, no flashing or externally illuminated signs will be located on the building or elsewhere on the premises, to advertise the proposed showroom. In selecting a method of identification, the applicant has given careful consideration to a sign that will be in keeping with the character of the building, the surrounding structures and the business. This sign will be similar in appearance and character to the sign presently used to identify the existing store at 1236 35th Street.

16. The site is located at the northwest corner of the intersection of 35th Street and N Street, N. W. The site has frontages on both 35th and N Streets.

17. Thirty-Fifth Street which is located to the east of the site is a local two-way street, sixty feet wide between building lines. The street is used by one lane of traffic in each direction. On the east side of the street, two parking meters located adjacent to commercial properties on 35th Street are used to limit parking to one hour between 7:00 A.M. and 6:30 P.M., Monday through Friday. On the remainder of that side, parking for non-residents of "Zone 3" is restricted to two-hour parking between 7:00 A.M. and 6:30 P.M. Monday through Friday. Parking on the west side of the street is restricted to two-hour parking between 7:00 A. M. and 6:30 P.M. Monday through Friday for non-residents of Zone 3.

18. N Street which is located to the south of the site, is a two-way street, eighty feet wide between building lines. It is used by one lane of traffic in each direction. No parking is allowed on the east side of the street at any time on weekdays. On weekends, no parking is allowed between 7:00 A.M. and 7:00 P.M. On the west side of the street parking is restricted to two-hour parking for non-residents of Zone 3 Monday through Friday. Stop signs located at the corner of 35th and N Streets, control traffic at this intersection.

19. The proposed use will not generate an additional volume of traffic to the area since the business is conducted mostly by appointment in the homes of customers. The remaining few customers are likely to be Georgetown residents who are already in the neighborhood. The available parking on the surrounding streets will more than adequately satisfy the limited needs of the showroom without creating a congested or dangerous traffic condition in the area.

20. The site is served by a scheduled Metrobus route. A bus stop is located on 35th Street at the southeast corner of the intersection of 35th and N Streets, N. W.

21. The Office of Planning and Development, by report dated November 9, 1982, recommended approval of the application with six conditions as follows:

- a. The hours of operation shall be limited to 10:00 A.M. to 6:00 P.M. Monday through Saturday. Sunday hours shall be strictly prohibited, and no customers are to visit the facility on said day.
- b. There shall be only one employee staffing the showroom at all times.
- c. There shall be no manufacturing or assembling of materials within the subject premises.
- d. There shall be no neon, fluorescent or gas tube lighting on the building facade.
- e. The sign advertising the subject premises shall be similar in appearance and character to the existing sign located on the front facade of 1261 35th Street, N. W. subject to review by the Commission of Fine Arts and approval by the State Historic Preservation Officer.
- f. The storage of flammable materials, if any, on the site shall be in accordance with all applicable municipal regulations.

The OPD was of the opinion that the imposition of the above conditions should adequately protect surrounding residential uses such that the proposed non-conforming use will not be objectionable, will not have or create any deleterious effects, and will not adversely affect the present character or future development of the neighborhood. The OPD was further of the opinion that the proposed use would not be a neighborhood facility since the use had a limited appeal and would not service the daily needs of the immediate neighborhood. The OPD was of the opinion, however, that although it was not a neighborhood facility the use would not be objectionable. The Board concurs in the OPD recommendation and in the conditions imposed. The Board need not determine whether or not the proposed use is a neighborhood facility.

22. The Citizens Association of Georgetown testified that it had no objections to the applicant expanding his operations diagonally across the street to the subject premises if the Board granted the application for a limited time period. The CAG raised issues about the operation of the applicant at premises 1261 and 1263 35th Street. The Chair sustained the Motion of the applicant that such issues were not properly before the Board and were matters of enforcement to be directed to the Zoning Administrators's office.

23. There were two letters of record in opposition to the application on the grounds that there are already five businesses in this one single residential block and that the subject premises should be rehabilitated as residential quarters. This would not further the encroachment of commercialization with all its attendant problems of added traffic, more difficult parking conditions and increased litter into a residential block. The Board, in response to these objections, finds that the applicant is seeking his relief through a special exception and not a use variance. The applicant has no burden to establish that the first floor of the subject premises cannot be used for residential purposes. Further, the Board finds that the grant as conditioned hereinafter will not have any adverse affects as anticipated by the opposition.

24. Advisory Neighborhood Commission 3A, by letter dated November 4, 1982, reported that it had no strong objection and recommended the granting of the application provided the following conditions were imposed:

- a. Existing illegal parking at 1263 35th Street, N. W. be discontinued, and the parking be brought into conformance with BZA Order No. 13541.
- b. Existing illegal expansion of non-conforming use at 1263 35th Street, N. W. into 1261 35th Street,

N. W. be discontinued, and the use be brought into conformance with BZA Order No. 9255.

- c. The proposed use be classified as a C-1 use and be approved for a period of three years only.
- d. No neon, fluorescent or gas tube lighting on the outside of the building, or inside if visible from the street.
- e. No signs other than a name plate one foot square in area, subject to approval by the Fine Arts Commission.
- f. No window signs or displays except for domestic-type curtains and window cushions that display the tenant's handiwork.
- g. Storage of flammable materials shall be in accordance with applicable fire and building code requirements.
- h. Store hours shall be limited to those hours between 9:00 A.M. and 6:00 P.M., Monday through Saturday.
- i. No manufacturing or sewing operations whatsoever shall take place within the premises.

25. The Board is required by statute to give "great weight" to the issues and concerns of the ANC reduced to writing. The Board concurs with conditions "c" through "i" and will so condition the grant. As to conditions "a" and "b" the Board finds that these issues are not properly before the Board. Said issues are a matter of enforcement of the prior Orders of the Board and the Zoning Regulations and as such are within the jurisdiction of the office of the Zoning Administrator not the BZA.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof that the applicant has complied with the requirements of Sub-sections 7104.2 and 8207.2 of the Zoning Regulations. The Board concludes that the applicant has met its burden of proof. The Zoning Administrator has determined that the proposed use is permitted in the most restrictive district in which the former use is permitted. The Board also concludes that although the proposed use may not be a neighborhood facility, it will not be objectionable to the neighborhood. The Board further concludes that the change of non-conforming use represents a move toward a less intense use and that the change will not adversely affect

the present character or future development of the neighborhood and that the use will be in harmony with the general purpose and intent of the Zoning Regulations. Accordingly, it is ORDERED that this application is hereby GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be limited to a period of THREE YEARS from the date of this Order.
2. Operation of the facility shall be limited to the lessee, Anthony P. Browne.
3. The hours of operation shall not exceed from 10:00 A.M. to 6:00 P.M., Monday through Saturday.
4. There shall be only one employee staffing the facility at all times.
5. There shall be no manufacturing or assembling of materials on the subject premises.
6. There shall be no neon, florescent or gas tube lighting on the building facade.
7. The sign advertising the subject premises shall be similar in appearance and character to that of the existing sign located on the facade of 1263 35th Street, N. W., subject to review by the Commission on Fine Arts and approval by the State Historic Preservation Officer.
8. The storage of flammable materials, if any, on the site shall be in accordance with all applicable municipal regulations.

VOTE: 5-0 (Carrie L. Thornhill, Charles R. Norris, William F. McIntosh, Walter B. Lewis and Douglas J. Patton to grant).

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

APR 11 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."