

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENTS

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PUBLIC HEARING

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In the matter of:

APPLICATION OF RICARDO CHAVEZ      Case No. 16244  
APPLICATION OF ANDREA CANNON      Case No. 16242  
APPLICATION OF THE WILLIAM C. SMITH CO.      Case No. 16245

Hearing Room 220 South  
441 4th Street N.W.  
Washington, D.C.

Wednesday,  
July 16, 1997

The above-entitled matter came of for hearing, pursuant to notice at 9:00 a.m., Laura M. Richards, Chairperson, presiding.

PRESENT:

LAURA M. RICHARDS                      Vice Chairperson  
BETTY KING  
JOHN PARSONS  
SHEILA CROSS REID

STAFF PRESENT:

MADELIENE DOBBINS                      Office of Zoning  
REGINALD LYONS                          Office of Zoning  
TRACEY ROSE                                Office of Zoning

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CHAIRPERSON RICHARDS: On the record.

The Board of Zoning Adjustment will now come to order. There are three cases for decision. Mr. Secretary. Madam Executive Director, you grace our presence wherever you're sitting.

MS. DOBBINS: Good morning, Madam Vice Chair. Members of the Board. This is the July 16, 1997 Special Public Meeting of the Board of Zoning Adjustment. You have three cases on your agenda this morning for decision.

The first is 16244, the Application of Ricardo Chavez, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow a grocery store and delicatessen on the first floor in an R-5-B District at premises 2515 17th Street, N.W. This is Square 2576, Lot 36.

The Hearing Date was June 18, 1997.

Board members present: Ms. Richards, Ms. Reid and Mr. Parsons.

The record was closed at the end of the hearing except that Advisory Neighborhood Commission 1C was allowed to submit a report. The Office of Zoning was to submit a report on the history of the property's use. The submissions were due by July 3,

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1 1997. Responses were due July 10, 1997.

2 You have that information in your  
3 packet. This application is before for decision  
4 this morning.

5 CHAIRPERSON RICHARDS: All right. Then  
6 Board, is there a motion for disposition?

7 MR. PARSONS: Madam Chair, I reviewed  
8 the material actually one piece I guess is all we  
9 had of the sea of evidence for the private club that  
10 the staff researched. And I'm reminded that that's  
11 a matter of right use in this zone. So this Board  
12 has no history in dealing with this property.

13 I also note the opposition in the  
14 community. Even though this property was used in a  
15 quasi-commercial way I can't find myself in the  
16 position to go for this. It would seem that there  
17 are adequate facilities of this kind in the  
18 neighborhood and I would move that we deny the  
19 application.

20 CHAIRPERSON RICHARDS: I will second  
21 your motion, Mr. Parsons. All right. Is that all  
22 you wish to say?

23 MR. PARSONS: That's all I wish to say.

24 CHAIRPERSON RICHARDS: I'll just add  
25 that, yes, there was a lot of evidence that although  
26 there are other blocks in the neighborhood where

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1 there is a mix of residential and commercial, this  
2 block was virtually exclusively residential. There  
3 were affirmative efforts by the residents and by  
4 some absentee owners to keep it that way.

5 There was evidence that the majority of  
6 persons who had similarly structured houses put  
7 rental units in the basement and he's proposing use  
8 for a store. So I think that the equities weigh in  
9 favor of the 90 commercial use variance application.  
10 Ms. Reid.

11 MS. REID: I agree. However, I just was  
12 a little concerned about the fact that the last use  
13 that we are aware of was for a club in this  
14 particular zone. And it was not due to, correct me  
15 if I am wrong, a special exception or variance.

16 MR. PARSONS: It's a matter of record.

17 MS. REID: So the private club is  
18 something that is permissible there but a grocery  
19 store is not.

20 MR. PARSONS: Correct.

21 MS. REID: That was my understanding  
22 that the Applicant, his argument was that he bought  
23 it because he thought that it was already zoned for  
24 the use that he had it for and I guess that -- is  
25 that something that is even though it is a matter of  
26 public record that he just assumed that?

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1 CHAIRPERSON RICHARDS: Well, he failed  
2 to exercise the adequate due diligence and he was a  
3 sympathetic applicant because he had sort of like  
4 ousted obnoxious use. There was general agreement -  
5 -

6 MS. REID: I'm sorry. He had what?

7 CHAIRPERSON RICHARDS: Ousted an  
8 obnoxious use because they were generally in  
9 agreement that the club was run in a reprehensible  
10 fashion and he was going to run a nice clean grocery  
11 store. He was to that extent sympathetic but you  
12 know commercial use, residential zone.

13 MS. REID: I would agree that in that  
14 particular community, this particular use would not  
15 be in keeping with the integrity of the zoning  
16 regulation.

17 CHAIRPERSON RICHARDS: All those in  
18 favor?

19 MS. REID: Aye.

20 MR. PARSONS: Aye.

21 CHAIRPERSON RICHARDS: Aye. Opposed?  
22 None opposed.

23 MR. LYONS: The staff would record the  
24 vote as being 3 to 0 to deny the application. Mr.  
25 Parsons, Ms. Richards, Ms. Reid to deny. Ms. Hinton  
26 not present, not voting not having heard the case

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1 and Ms. Betty King not voting not having heard the  
2 case.

3 MS. DOBBINS: Madam Chair, Members of  
4 the Board. In my move from up there to down here, I  
5 forgot to mention and have the Board introduced to  
6 as well as the public introduced to the newest Board  
7 member, Ms. Betty King.

8 She has been sworn in as an acting Board  
9 member for the Board of Zoning Adjustment as the  
10 Mayor's appointee with confirmation pending before  
11 the Council at this time.

12 And I do apologize for not doing that.  
13 I think people need to know who's sitting up in  
14 front of them. Welcome.

15 Okay the next item on the agenda, item  
16 B. 16242. This is the application of Andrea  
17 Cannon, pursuant to 11 DCMR 3108.1, for a special  
18 exception under Section 205 to increase an existing  
19 child development center from 15 to 29 children ages  
20 to two to six and four staff on the second floor of  
21 a structure in an R-5-A District at premises 541  
22 Newcomb Street, S.E. This is Square 5985, Lot 818.

23 It was heard June 18, 1997. Board  
24 members present: Ms. Richards, Ms. Reid and Mr.  
25 Parsons.

26 The record was closed at the end of the

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1 hearing except that ANC 8C was allowed to file a  
2 report. It was due by July 3, 1997. Responses were  
3 due by July 10, 1997.

4 You have information in your packet.  
5 I'm not sure -- and there were responses, I thought.  
6 No, you have the ANC information in your packet.  
7 This Application is before you for decision this  
8 morning.

9 MS. REID: Madam Chair.

10 CHAIRPERSON RICHARDS: Yes.

11 MS. REID: This Application -- it was  
12 apparent to me that the ANC had raised an issue  
13 regarding a survey that they had circulated in the  
14 community apparently and I did not see it in my  
15 package, a result of that survey. Did anyone else?

16 CHAIRPERSON RICHARDS: No, I believe  
17 that they were incomplete. They took some  
18 preliminary steps. I don't have any final  
19 recommendation from the ANC. Unless one has come in  
20 since these folders were distributed.

21 MR. LYONS: None.

22 CHAIRPERSON RICHARDS: Okay.

23 MS. REID: Did they give us a final  
24 position?

25 CHAIRPERSON RICHARDS: No. Well, it's  
26 not mandatory. It's permissive. It's not

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1 mandatory.

2 MS. REID: I understand that but the  
3 whole point of this exercise I'm assuming is to take  
4 a position that would give us some indication as to  
5 what their -- a feeling for the pulsive attitude of  
6 the community. Isn't that correct?

7 I just don't understand why they have a  
8 survey without the results of the survey. That kind  
9 of baffles me.

10 CHAIRPERSON RICHARDS: Well, what I  
11 gathered from the material is that they tentatively  
12 discussed this and then they felt they needed to go  
13 back to the community for more. And they haven't  
14 completed whatever process they felt was necessary.

15 However, this was a case that was fairly  
16 benign. It's an enlargement of the use, not a new  
17 use. We kept the record open really specifically  
18 because the ANC appeared and testified and they had  
19 indicated that they had not -- well, at that time  
20 they indicated that they wanted to go formally on  
21 the record. And given the great weight requirement,  
22 we were inclined to accommodate them.

23 But I think the accommodation can only  
24 go so far. They've had a month to proceed. They  
25 needed constraints and I believe that the evidence  
26 of the record otherwise supported again the

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1 application and in particular some of the  
2 questioning by the ANC indicated that they were not  
3 familiar -- the questioning went to factors that  
4 would apply to new use rather than continuing use.  
5 So I would move approval at this juncture.

6 MS. REID: Sure. I have no problem with  
7 it either. I would second it, yes.

8 CHAIRPERSON RICHARDS: Further  
9 discussion?

10 MR. PARSONS: I would agree. I think we  
11 ought to review the conditions of the Office of  
12 Planning --

13 CHAIRPERSON RICHARDS: All right.

14 MR. PARSONS: -- which dealt with hours  
15 of operation and parking spaces and so forth.  
16 Recommendation of OP then was for one year to try to  
17 bring these two issues together. One year to me  
18 seems to be troublesome.

19 CHAIRPERSON RICHARDS: At the time we  
20 discussed that we sort of like said we would go with  
21 a longer period and we said if the use at some point  
22 merged then, they just again, the longer period  
23 would last.

24 MR. PARSONS: What period of time would  
25 you recommend?

26 CHAIRPERSON RICHARDS: We thought about

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1 five years or so. Five years.

2 MS. REID: Currently it's typically what  
3 they go for.

4 MR. PARSONS: And then there a  
5 recommendation of one year to five and then the  
6 hours of operation from 6:00 to 6:00 and two on-site  
7 parking spaces and provision for outdoor activities  
8 shall take place under staff supervision.

9 CHAIRPERSON RICHARDS: Yes.

10 MR. PARSONS: That was the other one I  
11 had a question about. Is that something the Board  
12 normally does, is get into that level of operation?  
13 I would assume that would be something the Licensing  
14 Bureau would say.

15 CHAIRPERSON RICHARDS: Sometimes you see  
16 it, sometimes you don't. Sometimes it appears where  
17 there is neighborhood concerns about it are  
18 intrusive activitie and about reassurance.

19 I mean you're right. They can't let  
20 kids run around unsupervise under the regs.

21 MR. PARSONS: All right. All right.

22 CHAIRPERSON RICHARDS: All those in  
23 favor with those conditions?

24 MR. PARSONS: Aye.

25 MS. REID: Aye.

26 CHAIRPERSON RICHARDS: Aye. That's it.

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1 MR. LYONS: The Staff would record the  
2 vote as being 3 to 0 to approve the application with  
3 conditions. Ms. Richards, Ms. Reid and Mr. Parsons  
4 do approve. Ms. Hinton not present, not voting, not  
5 having heard the case and Ms. King not voting, not  
6 having heard the case.

7 MS. DOBBINS: The last item on the  
8 agenda for this morning, 16245. This is the  
9 application of the William C. Smith Co., pursuant to  
10 11 DCMR 3107.2, for a variance from the off-street  
11 parking requirements for a church seating 100 in the  
12 basement and first floor of a structure in a C-2-A  
13 District at premises 5517 Colorado Avenue, N.W.  
14 This is Square 2801, Lot 94.

15 It was heard June 18, 1997. Board  
16 members present: Ms. Richards, Ms. Reid and Mr.  
17 Parsons.

18 The record was closed at the end of the  
19 hearing except that the applicant was to provide a  
20 site plan and layout of the parking lot they  
21 proposed to use off-site. Advisory Neighborhood  
22 Commission 4C was to file a report. The submissions  
23 were due by July 3, 1997. Responses were due July  
24 10, 1997.

25 You do have information in your packet  
26 from the ANC and I think from the Applicant also.

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1 This is before you for decision this morning.

2 MS. REID: Let me just start off by  
3 saying that this particular case if I remember  
4 correctly had a fair amount of opposition and a  
5 great portion of that opposition involved the off-  
6 site parking. One of the things that we had  
7 requested was that they had submitted a lease. The  
8 lease was institutioned in that it was a month-to-  
9 month lease and it really did not have a great deal  
10 -- in our opinion did not have a lot of strength to  
11 it. It was too flimsy.

12 And we asked that they submit to us a  
13 lease that was a long term lease that would  
14 basically refute some of the opposition or the  
15 community impact, the negative community impact, and  
16 I don't see that they have submitted that, in my  
17 package anyway.

18 MR. PARSONS: No, they did not.

19 MS. REID: It's basically the same lease  
20 that had submitted before. I don't see any  
21 difference in the two leases. And in addition to  
22 that that has been raised by a letter from the ANC  
23 4A that the person who signed the lease as the owner  
24 is not the owner. It just gets to be a little more  
25 protracted.

26 But my main position on this is that I

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1 had wanted to see a long term lease that  
2 demonstrated to us that the church would have a  
3 place to park their cars on a long term basis and I  
4 don't see that in the new submission, in the package  
5 we have here which concerns me.

6 CHAIRPERSON RICHARDS: Well, I think  
7 that I would agree that they did not comply with the  
8 request, with the opportunity that we gave them to  
9 perfect their application. Mr. Parsons.

10 MR. PARSONS: Equally important, I think  
11 is their past performance in the illegal operation  
12 of this church on the property that I don't think  
13 was done in ignorance or ignorance of the law and I  
14 think the whole case kind of brought me to a bad  
15 feeling about the operators of this facility and  
16 whether their interest in the community was genuine.

17 So I think I wouldn't want to leave the  
18 door open to go find additional parking and say that  
19 we would welcome them back if they came back with  
20 that problem solved. But that's my own opinion.  
21 Therefore, I would move to deny the application.

22 CHAIRPERSON RICHARDS: Ms. Reid, would  
23 you second that?

24 MS. REID: Yes, I would second that.  
25 It's unfortunate because they certainly were given  
26 adequate time to comply with our specifications in

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1 order for them to be approved. They failed to do so  
2 so there is no other choice in my opinion.

3 CHAIRPERSON RICHARDS: All those in  
4 favor of the motion.

5 MS. REID: Aye.

6 MR. PARSONS: Aye.

7 CHAIRPERSON RICHARDS: Aye.

8 MR. LYONS: The Staff would record the  
9 vote as 3 to 0 to deny the application. Ms. Reid,  
10 Mr. Parsons, Ms. Richards to deny. Ms. Hinton not  
11 present, not voting, not having heard the case and  
12 Ms. King not voting, not having heard the case.

13 Just to take the issue that the Board  
14 was discussing and applying it to the variance test,  
15 is the Board then making the conclusion that in the  
16 absence of other off-street parking that there would  
17 be an adverse impact on the neighborhood?

18 CHAIRPERSON RICHARDS: Clearly. I think  
19 that that was relevant on the record. There was  
20 ample credible testimony of the inadequacy of the  
21 street parking.

22 MS. REID: That was the essence of the  
23 testimony, the opposition testimony that Sunday  
24 mornings as well as in the meetings during the week,  
25 that there was a problem as far as traffic build-up,  
26 pile-up, back-up and it was a nuisance.

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1 MR. LYONS: I just wanted to get at  
2 that.

3 CHAIRPERSON RICHARDS: Certainly. I am  
4 happy to clarify it.

5 MS. ROSE: Wasn't there also an issue of  
6 the late filing of the Applicant's material because  
7 we have to deal with those issues in the order if  
8 you don't address it --

9 MR. LYONS: There was a waiver  
10 requested, we raised that earlier.

11 CHAIRPERSON RICHARDS: I believe we  
12 waived that. There are preferences for the decision  
13 on the merits. There being no further matters  
14 before the special meeting, the special meeting  
15 stands adjourned.

16 (Whereupon, at 9:43 a.m., the above-  
17 entitled matter concluded.)

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