

# Resolution of the Washington Grove Board of Zoning Appeals

## Application for Special Exception

### Washington Grove Carpet Discounters

#### Opinion

Washington Grove Carpet Discounters (Applicant) filed a request for special exception with the Washington Grove Board of Zoning Appeals (Board) on December 28, 1994. Applicant requests a special exception under Article VII, Section 8.2B (b) of the Town of Washington Grove Code of Ordinances to allow the expansion of the retail sale of carpets into additional space at the south end of the existing building at the commercial corner. On May 10, 1993, Applicant received a special exception from the Board to conduct a retail carpet business. The Board had limited the May 10th special exception to 720 square feet at the south end of the existing building at the commercial corner. The May 10th special exception prohibited the applicant from keeping inventory in the carpet store except for samples not larger than 2 feet by 2 feet.

The Board conducted a public hearing on February 1, 1995, after giving notice under Section 11.311. The Board left the record open to receive additional written evidence until February 15, 1995. The Board received the following relevant evidence:

Andre Khashalk testified on behalf of Applicant. Mr. Khashalk testified:

1. Applicant had expanded the existing carpet business into space previously occupied by a cleaning business.
2. Some deliveries of carpet had been made to the Washington Grove store because Applicant had been unable to secure warehouse space to store inventory.
3. Applicant had now secured warehouse space; Mr. Khashalk submitted into the record two documents in support of this contention:
  - (a) A letter dated 2/1/95 from F.S. People's Realty Co. indicating that Applicant was negotiating a lease.
  - (b) A document dated 1/20/95 from Floor & Carpet, Inc. indicating that Applicant may use its warehouse facilities at 114 East Diamond Ave., Gaithersburg. Neither lease payments nor a term is set out in the document. The offer from Floor & Carpet, Inc. does not appear to be signed.
4. The Washington Grove Store has 2-3 customers each week.
5. Applicant has no knowledge how carpet remnants get into the dumpster at the commercial corner.

Ann Briggs, resident and Councilmember, testified:

1. Applicant had already expanded the existing carpet store.

2. Deliveries of carpet had been made to the store by a large van which impeded access into the commercial corner parking lot.
3. The dumpster has contained carpet remnants.

John McClelland, resident, Councilmember, and tenant at the commercial corner, testified:

1. There is currently a van parked in the commercial corner parking lot which contains carpet.
2. Unloading of carpet creates unsafe traffic conditions in the parking lot.
3. Applicant had expanded its carpet business in mid-July, 1994.

Donald Gallagher, resident, testified in opposition to granting applicant a special exception.

A letter from Roberta Gallagher, resident, transmitted pictures showing carpet remnants in the dumpster at the commercial corner. The letter was received into the record prior to February 15, 1995.

A letter from John McClelland stated that a delivery of 4 to 6 rolls of carpet was made to Applicant's store on February 8, 1995. The letter was received into the record prior to February 15, 1995.

The Board takes notice of the fact that Applicant's carpet store is located on an approximately one acre, commercially zoned parcel known as the commercial corner. The commercial corner is bounded on the South by Railroad St., a busy through street; on the West by Md. Route 124 ( Washington Grove Lane); on the North by single family, detached residences; and on the East by Hickory Road, a narrow, residential road with single family, detached residences on both sides except for that portion boarding the rear of the commercial corner. The Washington Grove Post Office is located in the commercial corner. All residents of the Town must go to the post office to pick up their mail. The entrance into the parking lot which services the customer entrances to Applicant's carpet store and the post office is off Railroad St. near the entrance of Applicant's store.

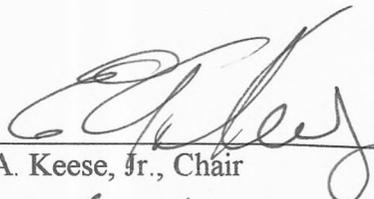
The Board finds that the applicable standards for granting the special exception requested by Applicant are set out in Section 8.2 B. Section 8.2 B provides in pertinent part that an applicant for a special exception must show by "clear and convincing evidence that the . . . [ special exception] use will not significantly burden the Town . . . with increased noise, litter, or pedestrian or vehicular traffic."

The Board concludes that Applicant has failed to show by clear and convincing evidence that expansion of the special exception retail carpet use will not burden the Town with increased litter and vehicular traffic. Delivery of carpet to Applicant's store has occurred because Applicant has failed to secure a warehouse site for receiving deliveries of carpet inventory. Applicant has produced insufficient evidence that a warehouse site had been secured as of the time the record in this matter was closed.

Case No. 1995-01

The Board finds that delivery of carpet inventory to Applicant's store poses serious difficulties for Town residents to enter safely the commercial corner parking lot. Furthermore, delivery and storage of carpet inventory introduces into the commercial corner a warehouse type of activity, including the generation of bulk trash. The Board finds that the delivery of carpet to Applicant's store is incompatible with the residential character of the Town and the local commercial nature of the commercial corner.

For these reasons, the Board has unanimously agreed to deny applicants special exception request to expand its retail carpet business.

  
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E.A. Keese, Jr., Chair

3/13/95  
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Date