

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - July 16, 1969

Appeal No. 10115 Mary J. Moffett, et al, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried, with Arthur B. Hatton dissenting, the following Order of the Board was entered at the meeting of April 22, 1970.

EFFECTIVE DATE OF ORDER - May 14, 1970

ORDERED:

That the appeal for permission to continue office for foreign government as a nonconforming use, variance of the use, or in the alternative an appeal of administrative ruling at 2401 - 15th Street, NW., Lot 864, Square 2662, be granted.

FINDINGS OF FACT:

1. The subject property is located in an R-5-B District.
2. The property is improved by a large building which was erected for residential use in conformity with then existing zoning.
3. Residential use of the building ended in 1948, and since then the following uses have been made of the building:
 - (a) From 1950 to 1961 it was occupied by the Italian Technical Delegation which was attached to the Italian Embassy. The leases were signed by the head of the Technical Delegation.
 - (b) From October, 1960 to August, 1962 occupancy was by the Office of the Commercial Counselor of the Italian Embassy.
 - (c) From February, 1963 to February, 1969 occupancy by the Office of the Commercial Minister of the Italian Embassy.

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4. From October, 1961 until the offices of the Italian Government left the building in February, 1969, the leases were signed by the Ambassador of Italy.

5. No use has been made of the building since February, 1969.

6. Prior to May 12, 1958 the zoning was Residential 60'C, and since then it has been R-5-B.

7. No Certificate of Occupancy for any office or chancery use was ever issued.

8. Prior to May 12, 1958 a chancery could legally occupy the building without reference to zoning. From that date until October 13, 1964, occupancy by a chancery required approval of the Board of Zoning Adjustment. No such approval was ever sought or received. Since October 13, 1964, chancery occupancy has not been permitted in the zone in which the property is located.

9. The Corporation Counsel of the District of Columbia has held (CCO: 3.L3.1, July 22, 1966) that a chancery established prior to August 20, 1957 is exempt from zoning regulations and was therefore a lawful use on October 13, 1964 and could thereafter be transferred to another government for chancery use. The use by the Italian Government was a nonconforming chancery use after May 12, 1958 and was legal on October 13, 1964 and until it was discontinued in February, 1969.

10. This appeal was originally filed in the following alternatives:

- (1) For continuation of a nonconforming use,
- (2) for a variance from the use provisions of the R-5-B District, or
- (3) from the ruling of the Zoning Administrator on May 5, 1969 that a legal office use has never existed and that use by the Italian Government did not constitute a chancery use.

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11. By letter dated August 19, 1969 appellant, by counsel, withdrew that part of the appeal having to do with a continuation or change of a nonconforming use, but later re-instated this part of the appeal by letter dated September 19, 1969.

OPINION:

The uses by various offices of the Italian Government were all chancery uses, as that word is defined in the current Zoning Regulations, for the reason that all of them were under "the personal direction and superintendance of the chief of mission" and were engaged in "diplomatic activities recognized as such by the Department of State, Federal Government." This Chancery use continued from 1950 through at least February, 1969, and no other office use of the building was ever made. We therefore, hold that the Zoning Administrator was in error in ruling on May 5, 1969 that occupancy of the building by offices of the Italian Government was not a chancery use.

Under the rulings of the Corporation Counsel, the Italian use was legal and transferable to another government for chancery purposes. As a chancery use is an office use permitted in the S-P zone as a matter of right, we believe that the subject property may be used for non-chancery S-P office purposes within the scope and contemplation of the Zoning Regulations, and the appeal is granted to that extent, subject to the requirement that any proposed tenant be approved by this Board.

The appeal for a use variance is denied.

The following dissenting opinion was entered by Arthur B. Hatton:

"Whereas, a chancery is a permitted use in an SP District, it is a conditional use in the R-5-C and R-5-D residential districts (see Chancery Act of October 13, 1964). Therefore,

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Dissenting Opinion by Mr. Hatton cont'd:

although a chancery is an office use, it is more restrictive than other office uses permitted in the SP District. The building clearly has a nonconforming chancery status and a new chancery could take up occupancy, but other office uses not permitted in the Medium High and High Density residential districts may be substituted."

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

ATTESTED:

By: _____
CHARLES E. MORGAN
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

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