GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 12434 of Martin Lobel from the decision of the Acting Chief, Zoning Regulations Division, Department of Housing and Community Development in authorizing the premises at 318 East Capitol Street, N. E., Lot 804, Square 786 to be converted from a rooming house to a seven unit apartment. Appellant alleges that lot area limitations of the R-4 District, Sub-sections 3301.1 and 3104.33 of the Zoning Regulations, were not applied.

Appeal No. 12440 of the Capitol Hill Restoration Society, Inc. from the decision of the Acting Chief, Zoning Regulations Division, Department of Housing and Community Development in authorizing the premises at 318 East Capitol Street, N. E., Lot 804, Square 786, to be converted from a rooming house to a seven unit apartment. The appellants allege that the lot area limitations of the R-4 District, Sub-sections 3301.1 and 3104.33 of the Zoning Regulations, were not applied.

HEARING DATE: June 28, July 20 and September 29, 1977
DECISION DATE: October 11, 1977

FINDINGS OF FACT:

1. For the purposes of a hearing and decision of the Board, these two appeals have been consolidated since the same issues are raised in both appeals.

2. The subject property is located at 318 East Capitol Street, N. E. and is in an R-4 District.

3. The lot, 20 by 110 feet, contains 2,200 square feet and is improved with a three story building with basement.

4. The most recent Certificate of Occupancy, number B67138 and issued August 15, 1969 permitted use of the building as a nine unit and nine bedroom rooming house. On May 12, 1958 the premises had a Certificate of Occupancy for a tenement house on all floors, Certificate of Occupancy number B7008, issued September 4, 1957.

5. Title to the subject property is held by Victor S. Kamber; Stanley Bissey and his wife, Jean B. Bissey; and Robert L. Herrema and his wife, Joan F. Herrema (hereinafter referred to as the "property owners").

6. On and before January 17, 1977, the present owners of 318 East Capitol Street determined to investigate the purchase of the subject property. Mr. Herrema, who was responsible for determining the use to which the property could be put, met with Mr. Joseph Bottner of the Zoning Regulations Division, Department of Housing and Community Development, on or about January 17, 1977, to discuss the development and to discuss the use of the existing multiple dwelling for seven apartments. Mr. Herrema was orally advised by Mr. Bottner that the use of the subject property for a seven-unit apartment house was in compliance with the Zoning Regulations. Mr. Bottner further indicated that the use of the subject property for seven apartment units complied with the Zoning Regulations with regard to parking. Prior to rendering that advice, Mr. Bottner and Mr. Eugene C. Chorosinski, also of the Zoning Regulations Division staff, made a detailed review of the use history of the property, including a review of the certificate of occupancy file indicating that the previous use was as a multiple dwelling.

7. On the basis of their investigation of the use of the property, including the advice of the Zoning Regulations Division, the property owners on or about January 21, 1977, made an offer of $95,000 for the subject property to the trustees of the estate. A real estate contract was ratified by the sellers on March 10, 1977. The parties went to settlement on March 18, 1977, at which time the property owners purchased the subject premises for $95,000 and expended $1,500 in costs for a total of approximately $96,500. By deed dated March 21, 1977, and recorded March 23, 1977, the property was conveyed to the present owners.

8. According to an appraiser retained by the property owners, the fair market value of the property as a seven-unit apartment house in compliance with the existing zoning is $257,000. On the basis of that appraiser's report the property owners obtained a permanent loan commitment for 75% of the appraised value; namely, $192,650 from the American Income Life Insurance Company.

9. The building was vacated on April 10, 1977, and interior work, such as the removal of appliances, relocation and removal of partitions, none of which requires a building permit, commenced on April 11, 1977.

10. On April 1, 1977, application was made for a building permit together with the necessary plans showing the change to seven units of apartments in place of the nine-unit rooming house. The Acting Chief of the Zoning Regulations Division approved the application and building Permit No. B250386, was issued on April 22, 1977 and dated April 25, 1977. Mr. Herrema received the permit on April 22, 1977, and posted the property on that date.

11. Construction work under the permit commenced April 25, 1977. Mr. Herrema testified that he was present at the work site between the hours of 8:00 a.m. and 5:30 p.m. most of the time while work was in progress.

12. On May 6, 1977 Martin Lobel, a neighboring property owner filed with the Board of Zoning Adjustment an appeal, No. 12434. On May 13, 1977 the Capitol Hill Restoration Society also filed an appeal, No. 12440. The basis for the appeals was that the Acting Chief, Zoning Regulation Division, had erred in not applying the lot area limitations of the R-4 District, Sub-sections 3301.1 and 3104.33 of the Zoning Regulations.

13. On May 9, 1977 Mr. Lobel left a copy of notice of appeal, addressed to Mr. Robert L. Herrema, 318 East Capitol Street, N. E., Washington, D. C., underneath a rock on a step in front of the subject premises. The letter was returned marked "Addressee Unknown". On May 10, 1977 the Capitol Hill Restoration Society, by certified mail, advised Mr. Herrema of the appeal and that a request for an expedited hearing was scheduled before the Board of Zoning Adjustment on May 17, 1977. The return receipt was marked May 18, 1977.

14. At the June 28, 1977 public hearing of the Board the intervenor property owners submitted a Motion to Dismiss the appeals for lack of the Board's Jurisdiction. This motion had five grounds listed as follows:

(1) in filing their appeals the appellants have not provided sufficient information so as to reasonably inform parties as to the specific errors alleged; (2) appellants have failed to state or show in any specific way that they are "persons aggrieved" as required by Section 8102.1 of

the Zoning Regulations as a result of the ruling challenged; (3) these appeals seek an amendment to the Zoning Regulations which requested relief is beyond the purview of the Board; (4) the appeal is barred by the doctrine of equitable estoppel; and (5) the decision of the Acting Chief of the Zoning Regulations Division must be sustained under principles of stare decisis in that it is in conformance with the long established application of the Zoning Regulations.

15. At said hearing the Motion to Dismiss was argued on grounds (1), (2), (3) and (5). The Board denied the motion on grounds (1) and (2), reserved decision on grounds (3) and (5) and scheduled ground (4) for a specific hearing on July 20, 1977.

16. In denying the motion on the grounds of insufficient information, the Board found that the forms filed by the appellants clearly indicated the reason for the appeals and the basis for the appeals. As to lack of persons aggrieved, the Board found that the subject property falls within the boundary of the Capitol Hill Restoration Society, that this Society regularly and frequently appeared before the Board on zoning matters and the Society has testified and the Board has always accepted them as being interested parties in matters relating to zoning within the Capitol Hill area. As to Mr. Lobel the Board found that appellant was a resident who lived clearly within 200 feet of the subject property actually residing across the alley to the rear of the site and would be accepted normally and generally as a party in any case affecting this property.

17. The property owners state that they have proceeded in good faith and in reliance upon the advice and approval of the District officials and have substantially changed their position as a result of that reliance.

18, At the July 20, 1977 public hearing the Motion to Dismiss was argued on the grounds of estoppel. At its Executive Session of August 3, 1977 the Board denied the Motion to Dismiss on the grounds of estoppel, and set September 29, 1977 as the hearing date to hear the appeals on the merits and decided to defer ruling on the Motion to Dismiss on the remaining grounds until the merits of the appeals were heard.

19. In denying the Motion to Dismiss based on estoppel the Board found that there was no equitable estoppel against the Government of the District of Columbia nor the Zoning Regulations Division, Department of Housing and Community Development since neither has attempted to rescind the building permit. There was no equitable estoppel against the Board

of Zoning Adjustment since the BZA as a quasi-judicial body is granted the power to take jurisdiction over appeals from the Zoning Administrator. As to Mr. Lobel and the Capitol Hill Restoration Society, the Board found that appellants were not estopped from bringing this appeal since appellants' actions were taken as expeditiously as possible with a great deal of reasonableness and with no lack of diligence on their part. The Board noted that on May 9, 1977 a notice was put on the front step under a rock at the construction site which Mr. Herrema frequented daily and that on May 10, 1977 a notice was sent by certified mail by the Capitol Hill Restoration Society to Mr. Herrema at his place of residence. Having received notice of pending action the property owners continued work on the subject premises at their own peril.

20. Appellants stated that Paragraph 3104.33 of the Zoning Regulations permits the conversion of an existing building or other structure into a multiple dwelling as limited by Sub-section 3301.1 which requires 900 square feet of lot area for each unit in the building in an R-4 District.

21. Intervenors contend that the Regulations are clear on their face in indicating that the 900 square foot requirement applies only when there is a "conversion to multiple dwelling" and this was not the subject situation.

22. The Acting Chief of the Zoning Regulations Division stated that his office has consistently taken the position with regard to a change of use of a multiple dwelling to a different type multiple dwelling in the R-4 District that it is permitted as a matter-of-right if established prior to May 12, 1958, and if on the effective date of the Zoning Regulations, it had a certificate of occupancy as a multiple dwelling unit as defined in the Zoning Regulations or it meets the 900 square foot requirment.

23. Sub-section 3301.1 states "except as described in other paragraphs of this Section, the minimum dimensions of a lot in a residential area in the R-4 District has to be 900 square feet per dwelling unit".

24. Paragraph 3104.33 of the Zoning Regulations states that the conversion of an existing building or other structure into a multiple dwelling is permitted as a matter-of-right as limited by Sub-section 3301.1.

25. The Board ruled that since it is constituted as a quasi-judicial body of independent citizens it has by the authority granted to it jurisdiction over appeals from rulings of the office of the Zoning Administrator and is not precluded under the principles of stare decisis from overuling the ruling of the Zoning Administrator.

26. The Board ruled that the appellants are not seeking in the subject appeal an amendment to the Zoning Regulations but rather a decision from the Board of Zoning Adjustment on the merits of their appeal under Sub-sections 3301.1 and 3104.33.

CONCLUSIONS OF LAW:

Based on the record the Board is of the opinion that the subject property was in existence as a multiple dwelling as of May 12, 1958 and had a history of use as a multiple dwelling prior to May 12, 1958. On May 12, 1958, the effective date of the current Zoning Regulations the premises had a certificate of occupancy as a multiple dwelling. The Board concludes that the subject matter of the present appeal does not constitute a "conversion" to a multiple dwelling but a change of use of a multiple dwelling, to a different type of multiple dwelling. Thus, the Board concludes that Sub-section 3303.1 does not apply to the subject appeal, that the present ruling of the Zoning Administrator's office as to the interpretation of Sub-section 3303.1 in these appeals is correct and is consistent since the time of the enactment of the current Zoning Regulations.

The Board is aware that the language of Section 3301 of the Zoning Regulations is ambiguous and lacks specificity in this regard. There are legitimate concerns on the appellants' side. This, however, is a matter to which the Zoning Commission can and should address itself, either to clarify and continue the present interpretation or to amend the Zoning Regulations to mandate a different interpretation.

The Board concludes that the decision of the Zoning Administrator was a proper interpretation of Section 3301 as that section exists at present. Accordingly, the Board is constrained to UPHOLD the decision of the Zoning Administrator and DENY the appeals.

VOTE:

5-0 (Chloethiel Woodard Smith, Walter B. Lewis, Charles R. Norris, William F. McIntosh and Leonard L. McCants).

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

ATTESTED By: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 DEC 1977