

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



May 5, 1978

Application No. 12491 of Michael D. Lange, pursuant to sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations for a special exception under Sub-section 7105.2 to extend a non-conforming office use from the first (1st) to the second (2nd) floor at 304 Independence Avenue, S. E. and a special exception under Sub-section 7104.2 and 7105.2 to change a non-conforming use from a beauty salon to an office and extend that office use to the second (2nd) floor at 306 Independence Avenue, S. E., or in the alternative, a variance from the use provisions (Section 3104) to permit an office on the second floor at 306 Independence Avenue, S. E., in the R-4 District, Square 788, Lot 804.

HEARING DATE: October 25, 1977
DECISION DATE: December 6, 1977

DISPOSITION: Application GRANTED for a change of non-conforming use from a beauty salon to a real estate office (first floor) at 306 Independence Avenue, S. E., and DENIED for the extension of the non-conforming use to the second floor at 304 Independence Avenue, S. E., and the extension of the office use to the second floor at 306 Independence Avenue, S.E., by vote of 4-0 (William McIntosh, Chloethiel Woodard Smith, Charles Norris and Leonard McCants to grant the change of non-conforming use, first floor, 306 Independence Avenue, S.E.) and 3-1 (William McIntosh, Charles Norris and Leonard McCants to deny, Chloethiel Woodard Smith to grant the extension of the non-conforming office use to the second floor at 304 Independence Avenue, S. E. and the extension of the office to the second floor at 306 Independence Avenue, S. E.

FINAL DATE OF ORDER: February 23, 1978

ORDER

Upon consideration of the applicant's Motion for Reconsideration or Reargument, dated March 3, 1978, the Board finds that the Motion fails to state an acceptable basis of error on the part of the Board to support a Motion for Reconsideration or Reargument. It is therefore ORDERED that the Motion for Reconsideration or Rehearing is DENIED.

DECISION DATE: April 5, 1978

VOTE: 5-0 (William McIntosh, Charles Norris, Leonard McCants,
Walter Lewis and Cloethiel Woodard Smith to DENY.)

FINAL DATE OF ORDER: **8 MAY 1978**

ATTESTED:



Steven E. Sher
Executive Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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FINDINGS OF FACT:

1. The subject property is located at 304 Independence Avenue, S. E. and 306 Independence Avenue, S. E. and is in an R-4 District.
2. The subject lot is approximately 1,242 square feet in land area. It fronts along Independence Avenue and is landlocked with private property abutting the remaining three lot lines. It does not have a rear or side access either to a public alley or street.
3. The lot is developed with one two story brick structure which has two addresses. The structure occupies approximately ninety percent of the lot..
4. The building has a ceiling height of approximately thirteen feet and is divided down the center of the first floor. The second floor is not divided.
5. By BZA Order No. 9556, issued May 9, 1968 the Board approved the first floor of premises at 304 Independence Avenue, S. E. for office use (Certificate of Occupancy No. B-92136, issued January 20, 1975). By BZA Order No. 8458, issued November 24, 1965 the Board approved the first floor of premise at 306 Independence Avenue as a beauty salon use (Certificate

of Occupancy No. B-54733, issued March 7, 1966).

6. The second floor which has separate access from 304 Independence Avenue, S. E. is divided into three offices, a large meeting room and a small room to the rear with area for circulation.

7. The first floor of premises 304 Independence Avenue, S. E. is now occupied by Independence Reporting. The first floor of premises 306 Independence Avenue, S. E. is occupied by the same tenant, Independence Reporting. There is no Certificate of Occupancy for such office use. The second floor of the subject building has been occupied by a law firm since 1975. No Certificate of Occupancy was issued for such use. Prior to the law office use the second floor had been occupied as a residence from 1970 to 1974.

8. The applicant now seeks through special exception to change the non-conforming use at 306 Independence Avenue, S. E. from beauty salon to an office and extend that office use to the second floor and, further, to extend the non-conforming use of office use at 304 Independence Avenue, S. E. to the second floor.

9. At the public hearing of October 25, 1977 the Board approved the amending of the application. The applicant withdrew the request for the alternative variance from the use provisions, Section 3104, to permit an office on the second floor. The application was further amended so that the general office use was now specified as law firm and real estate office uses.

10. The real estate office will be comprised of a manager, secretary and approximately fifteen sales persons, of which no more than three or four will be in the office at any one time, except for staff meetings to be held once a week. Hours of operation are 9:00 a.m. to 7:00 p.m. weekdays and 9:00 a.m. to 6:00 p.m. on Saturday and Sunday. It is intended that the office will operate only in the Capitol Hill area and that the sales persons would not be selling property across town. Approximately one client would visit the office per day. Up to eight parking spaces will be rented from the bank parking lot across the street. Metro is approximately 2½ to 5 blocks from the site. The stations are Capitol South and Eastern Market. respectively. The area has ample bus service, especially along Pennsylvania Avenue which is a short block away.

11. The law firm has four full partners and one secretary. The firm will represent clients city wide. It is anticipated, however, that approximately twenty percent of the clients will

be from the Capitol Hill area. Hours of operation will be from 9:00 a.m. to 5:30 p.m., six days a week. It is anticipated that three clients will visit the office each day. Curb parking will be utilized along with a rented space located in the 300 block of Independence Avenue. The area also has a neighborhood parking zone. A small brass plate will be affixed to the entrance doors. It takes about eight minutes to walk to the Eastern Market Subway station.

12. The beauty salon use is a Class II non-conforming use and is first allowed as a matter-of-right in the C-1 District. The proposed real estate office is a Class II non-conforming use and is first allowed as a matter-of-right in the C-1 District. The proposed law office is a Class II non-conforming use and is first allowed as a matter-of-right in an SP District in Buildings constructed prior to 1958.

13. There was opposition to the application by an individual citizen and by the Capital Hill Restoration Society, on the grounds that the general office use provides no neighborhood service or facility, that the square on which the subject property is located is basically residential and a change or extension of a non-conforming use undermines a residential R-4 District, that the request has the effect of spot zoning and adversely affects the neighborhood by the intrusion of commercial uses and is not in harmony with the Zoning Regulations. The Capital Hill Restoration Society also opposed the application on the grounds of equity. Two parts of the subject premises have been occupied without authorization and the applicant has delayed in filing both applications with the BZA.

14. There were letters in the file and a neighborhood survey in favor of the law office use.

15. Advisory Neighborhood Commission 6-B, by resolution, dated October 4, 1977, unanimously opposed the application for a variance of 306 Independence Avenue, S. E. "for the same reason that the ANC previously opposed the same request."

16. The Municipal Planning Office, at the request of the Board, filed a report, dated December 1, 1977 reviewing the history of the uses of the building, reporting the issuance of Certificates of Occupancy and the lack thereof, describing the neighborhood and the proposed use of premises and analyzing non-conforming uses.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that, as to the second floor, its occupancy as a residence between 1970 and 1974 terminated the non-conforming use. Sub-section 7104.3 provides

that when an existing non-conforming use has been changed to a conforming or more restrictive use it shall not be changed back to a non-conforming use or less restrictive use. The Board concludes that the second floor is suitable for residential purposes. The intent and purpose of the Zoning Regulations would be violated if this property located in an R-4 was not used for the purpose for which it was zoned. The Board concludes that the proposed change from a beauty parlor to a real estate office can be granted, since the proposed use is permitted in the most restrictive district in which the present use is permitted. The Board concludes that the proposed use of a real estate office at 306 Independence Avenue, S. E. first floor, in this instance, is a neighborhood facility that will also have a limited nature of operations. The proposed use is also of a much less intense use than a beauty salon. The proposed parking arrangements appear to be more than adequate to provide for the average daily parking needs of the real estate office. The proposed sign will meet the requirements of the Zoning Regulations. The Board is of the opinion that the granting of the special exception herein will have no adverse affect on the use of neighboring property.

Based on these findings of fact and conclusions of law and the record of the case the Board concludes that the change from a non-conforming use from a beauty salon to a real estate office (first floor) at 306 Independence Avenue, S. E. is GRANTED and, the extension of the non-conforming use to the second floor at 304 Independence Avenue, S. E. and the extension of the office use to the second floor at 306 Independence Avenue, S. E. is DENIED.

- VOTE: 4-0 (William F. McIntosh, Chloethiel Woodward Smith, Charles R. Norris and Leonard L. McCants to grant the change of a non-conforming use, first floor, 306 Independence Avenue, S. E.)
- 3-1 (William F. McIntosh, Charles R. Norris and Leonard L. McCants to deny, Chloethiel Woodard Smith to grant, the extension of the non-conforming office use to the second floor at 304 Independence Avenue, S. E. and the extension of the office to the second floor at 306 Independence Avenue., S. E.).

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



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 23 FEB 1978

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 DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.