

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12668, of George Antone, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from stationery store (all floors) to a real estate brokerage (first floor) in the R-4 District at the premises #18 - 7th Street, N.E., (Square 868, Lot 831).

HEARING DATE: June 21, 1978
DECISION DATE: July 5, 1978

FINDINGS OF FACT:

1. The subject property is located in an R-4 District on the west side of 7th Street, N.E., north of East Capitol Street, and is improved with a two story brick structure.
2. The subject building currently has a valid certificate of occupancy No. B-468, dated April 29, 1965, for a stationery store (all floors). The current owner has a stationery store on the entire first floor and a portion of the second floor. The other portion of the second floor is utilized as an apartment.
3. The contract purchaser of the property, Contex, Inc., proposes to operate a real estate brokerage firm on the first floor only, and use the entire second floor as an apartment. An apartment is permitted as a matter-of-right in an R-4 Zone District.
4. The real estate firm would have two full and two part time employees. One full time employee will reside in the proposed second floor apartment. The present use of a stationery store employs five full time employees.
5. The proposed hours of operation for the site are from 8 a.m. to 6 p.m. Monday through Friday, 9 a.m. to 4 p.m. on Saturday, and 12 noon to 2 p.m. on Sundays.
6. Contex, Inc., is currently located on Capitol Hill at 303 Massachusetts Avenue, N.E., in the same general area as the present site. There is evidence in the record from residents of that area that this real estate office use has not been objectionable and that it generates no more traffic than a normal family residence. The Board so finds.

7. The subject lot is 1,824 square feet in area. It is adjoined on one side by a photographic studio. The predominant building type within a 300 foot radius of the site consists of two story row houses.

8. Given the nature of a real estate firm, most of the business would take place away from the office.

9. Both the previous use of a stationery store, and the proposed use of a real estate office are Class II non-conforming uses, and are both first permitted in a C-1 District.

10. No off-street parking is required or provided for the proposed use.

11. The Zoning Regulations permit a Class II non-conforming use to be changed if the proposed use is either a neighborhood facility, or if not a neighborhood facility, is a use which will not be objectionable and adversely affect the present character or future development of the neighborhood.

12. The character of the proposed office use would be essentially the same as the present office use operated at 303 Massachusetts Avenue, N.E. The Board thus finds that the use proposed for the subject site is not likely to become objectionable to the neighborhood, nor will it adversely effect the present character of the neighborhood.

13. The proposed use of the building will be more in conformity with the Zoning Regulations than the present use, since the entire second floor will be devoted to conforming residential purposes.

14. The change of the non-conforming use will reduce some of the negative effects of the present use by eliminating the truck traffic necessary to service the existing stationery store.

15. The Municipal Planning Office, by report dated June 14, 1978, and by testimony at the public hearing, recommended approval of this application in the grounds that the proposed use, a real estate brokerage firm, while not a neighborhood facility, will conduct most of its business away from the premises, thus minimizing adverse impacts to the neighborhood in terms of traffic and parking, and the proposed use would not adversely affect the present character or future development of the area. The Board so finds.

16. The Capitol Hill Restoration Society, by report dated June 21, 1978, opposed the application on the grounds that the proposed use would not be a neighborhood use, and would adversely affect the present residential character and further development of the neighborhood in terms of traffic and parking. The Society feels that the appropriate position of the Board would be to require restoration of the building to a residence.

17. Residents of the area submitted petitions in opposition to the application without stating specific grounds. Other residents of the area appeared at the hearing and opposed the application on the grounds that traffic congestion would be increased and that the commercial use should be terminated.

18. The Board finds that no conclusive evidence has been presented to demonstrate that the specific use proposed would increase traffic or parking problems in the area. In fact, the change of use would reduce the number of employees at the subject site. In addition, the record demonstrates that the proposed use as presently conducted at a nearby location does not add to traffic or parking problems.

19. As to the argument that the commercial use should terminate and the building should be used for conforming residential purposes, the Board finds that it is without authority under the Zoning Regulations to force the termination of a legitimate non-conforming use. Denial of the application would allow the existing commercial use to continue indefinitely.

20. Advisory Neighborhood Commission 6A, opposed the application on the following grounds:

- A. The applicant cannot show hardship as a reason for the requested non-conforming use, in that this property has not been listed on the open market for sale as a residence, a conforming use.
- B. The contract holder, Contex, Inc., currently owns and occupies a properly zoned building at 303 Massachusetts Avenue, N.E. Contex cites a lack of parking as a reason for moving. Parking, however, is a problem in most areas of Capitol Hill. The problem is particularly acute in the unit block of 7th Street, N.E. It is exacerbated by the number of multi-unit buildings in the 600 block of East Capitol Street, N.E.

- C. There are several C-2 zoned buildings on the market presently in the Capitol Hill area.
- D. There is a mis-statement of fact in Bruce Leslie's April 5, 1978 memorandum to BZA. The entire lot was not enclosed prior to November 1960. Mr. Antone enclosed the lot fully in 1967 or 1968. There is no record of a variance for this modification.
- E. Contex's statement that they are not particularly an active real estate firm is not relevant since once a variance is granted for a real estate office, Contex can either expand or rent to any other large real estate brokerage.
- F. Past action of BZA and the Courts have established a precedent for denial. Repeated requests for a non-conforming use permit for the old Safeway building located at #12-16 - 7th Street, N.E., adjacent to the subject premises, have been denied.

21. The Board is required to give "great weight" in the way of careful and explicit consideration, to the issues and concerns of the ANC. As to the issues and concerns of the ANC some of which were also expressed by the neighbors and the Capital Hill Restoration Society, the Board finds the following:

- A. The applicant seeks a change in a non-conforming use. He is not seeking a variance and is not required to establish a hardship.
- B. The applicant seeks a change in a non-conforming use. Where an applicant qualifies under the provision of Article 71, the Board is required to grant the application. An applicant is also not obligated to find a district where his intended use would be a matter-of-right.
- C. The issue of the enclosing of the subject improved lot is not before the BZA at this time, as there is no change proposed to the building which requires Board approval.

- D. The Board's Order, as hereinafter stated is conditioned upon the fact that the entire second floor will be limited to residential use. There will be no space in which to expand.

- E. Each application is decided by the BZA on its own merits and pursuant to the requirements of the Zoning Regulations. The Board in this instance cannot address itself to generalizations, and can deal only with the property before it. As to the Safeway building at #12-16 - 7th Street, N.E., which is adjacent to the subject property (BZA Order No. 11200, dated June 28, 1974), that application was for a variance from the use provisions to change a C-1 non-conforming use (grocery store) to a C-2 non-conforming use (commercial photography studio). That application was denied since the hardship did not stem from the property itself, but rather was a financial hardship. The Safeway building application and the subject application are not analogous.

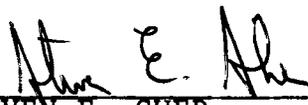
CONCLUSIONS OF LAW:

Based on the above Finds of Fact, and the evidence of record, the Board concludes that the change of non-conforming use can be granted, since a Class II non-conforming use may be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted. The present use of a stationery store and the proposed use of a real estate brokerage are both uses first permitted as a matter-of-right in a C-1 District. The Board concludes that the proposed use of a real estate brokerage firm, while not a neighborhood facility, will conduct most of its business away from the premises, and therefore will not adversely impact the area in terms of traffic and parking. The Board further concludes that the proposed office use will not adversely affect the character of the neighborhood, as the proposed use for the first floor only as a real estate office is a less intensive use than the existing use of a stationery store, all floors. The Board concludes that it has given great weight to the issues and concerns of the Advisory Neighborhood Commission, but for the reasons stated, does not find their reasons sufficiently persuasive to require that the application be denied. Accordingly, it is hereby ORDERED that the application is hereby GRANTED subject to the CONDITION that the entire second floor of the subject property be limited to residential use.

VOTE: 3-0 (William F. McIntosh, Leonard L. McCants to GRANT,
Walter B. Lewis to GRANT by PROXY; Chloethiel
Woodard Smith and Charles R. Norris not voting,
not having heard the case).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 10 AUG 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12668, of George Antone, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from stationery store (all floors) to a real estate brokerage (first floor) in the R-4 District at the premises 18 - 7th Street, N.E. (Square 868, Lot 831).

HEARING DATE: June 21, 1978

DECISION DATE: July 5, 1978

FINAL DATE OF ORDER: August 10, 1978

DISPOSITION: The Board GRANTED the case by a vote of 3-0 (William F. McIntosh, Leonard L. McCants and Walter B. Lewis by PROXY).

ORDER

The Board determined that it would not STAY the effect of the Order pending the review of the request for reconsideration, rehearing and reargument.

Upon consideration of the opposition's motion for Reconsideration, Rehearing and Reargument, dated August 30, 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, rehearing and reargument. It is therefore ORDERED that the motion for reconsideration, rehearing and reargument is DENIED.

DECISION DATE: October 4, 1978

VOTE: 3-0 (Charles R. Norris, William F. McIntosh, Leonard L. McCants to DENY motion, Chloethiel Woodard Smith not voting, not having heard the case; Walter B. Lewis not present, not voting).

ATTESTED BY: _____

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

20 OCT 1978