GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12787, of Norvirens, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 and 7105.2 to enlarge a non-conforming use from a delicatessen (first floor) to a professional office and to extend the non-conforming use of a professional office to the second floor, in an R-4 District at the premises 232 East Capitol Street, N. E., (Square 759, Lot 800).

HEARING DATE: October 25, 1978

DECISION DATE: November 1, 1978

FINDINGS OF FACT:

1. The subject property is located in an R-4 zone district at the northwest corner of East Capitol and 3rd Street, N. E., known as 232 East Capitol Street, N. E.

2. The subject property has been vacant for approximately 20 years. The last use of the property was as a delicatessen, first floor, pursuant to Certificate of Occupancy No. 91121.

3. The applicant proposes to use the subject premises as professional offices.

4. Research of records indicates that a public hearing for a change from a delicatessen to professional office use for the first floor of the building was held on November 29, 1956. The Board granted that application with the understanding that the premises would be used for an architect's office, with a staff of no more than seven persons, and that the building be remodeled to remove any appearance of a commercial character.

5. Further research indicates that a building permit was issued, and certain interior and exterior work was done on the property to change it from a delicatessen use to an office use. No Certificate of Occupancy was ever issued for an office, and the approval of the Board related to office use thus lapsed. The property has been vacant since the renovation was accomplished in 1958.

6. The building has been altered on the outside in that the entrance from East Capitol Street has been closed to

accommodate a display window occupying the entire width of the structure. The only entrance to the building is now available at the rear of the building from 3rd Street.

7. The East Capitol Street frontage of the subject square is developed with row houses including a Lutheran Church. There are some offices in the row house structures. Directly across East Capitol Street, the entire frontage of the block is occupied by the Folger Shakespeare Library. There are other non-residential uses on property owned by the Folger diagonally across from the site and other non-residential uses, primarily churches, in the area.

8. The subject lot is approximately fourteen feet wide and 75 feet deep. The building covers almost the total area of the lot, and contains approximately 2000 square feet.

9. The existing use of a delicatessen is first permitted as a matter-of-right in a C-1 District. Professional offices are also permitted as a matter-of-right in the C-1 District.

10. The Zoning Regulations do not require any parking to be provided for the proposed use.

11. The change of use from a delicatessen to offices is to a less intense use, which is likely to generate less traffic, both vehicular and pedestrian, than the previous use.

12. The Board notes that there is an existing office use in the block which has operated without apparent external adverse effects for some time.

13. The Municipal Planning Office by report dated October 20, 1978, recommended denial of the application on the grounds that:

a. The first floor of the building which was used as a delicatessen until 1956, has been unused for commercial purposes and vacant for approximately twenty years.

b. The existing layout of the first floor has been changed in a manner that with minor modifications could easily lend itself to residential use which would be a conforming use in the R-4 District.

c. The building in its present form is not suitable for use as a delicatessen.

The Board addresses these issues in response to the ANC and other persons opposed to the application, below.

14. The Stanton Park Neighborhood Association, by letter dated October 25, 1978, stated that residential use of the property was preferable to commercial use, but that if office use was the only possible use, the association would not oppose such use if adequate parking spaces were provided.

15. Advisory Neighborhood Commission 6-B by testimony at the hearing confirmed by written report dated November 2, 1978, opposed the application on the grounds that the building has been unoccupied and unused for over twenty years and the non-conforming use as a delicatessen has been abandoned and therefore terminated. The ANC further requested a continuance, if the Board decided the use was not abandoned, because it was not given an opportunity to consider a residential use option for the property.

16. The Capitol Hill Restoration Society, by testimony dated October 23, 1978, opposed the application on the grounds that the property has been vacant and unused for over twenty years, and the non-conforming rights have thus lapsed. The Society also stated its constant opposition to extension of non-conforming uses, and found that the proposed use would be objectionable because it is not a neighborhood facility which would introduce an incompatible use into the residential unit block of 3rd Street and would provide no parking.

17. Both the Advisory Neighborhood Commission and the Capitol Hill Restoration Society cited the case of Silverstone et. al. v. BZA as evidence regarding the abandonment of a non-conforming use. The Board finds that the Silverstone case, wherein the Board denied an application for a variance to permit a flat use which was previously a permitted use, can be distinguished from the present case. In the Silverstone case, the use which was non-conforming had been terminated and had been replaced by a conforming use. In the present case, the non-conforming use had been terminated, but no other use had been substituted. The Board finds that renovations had been made pursuant to a previous order of the Board to use the building for offices but that no Certificate of Occupancy had been issued. The Board thus believes that the non-conforming rights associated with this property, whether for office or delicatessen use, still exist.

18. There was opposition from surrounding and neighboring properties to the use of this property for anything other than residential use. The abutting property owner to the west appeared and testified in support of the application, stating that she did not anticipate any objectionable effects from the proposed use, and that the use would improve the present building.

19. As to the issues and concerns of the ANC, the Restoration Society and other persons in opposition, the Board finds the following:

A. The non-conforming use has not been abandoned, and the applicant would have the option of reconstructing the premises to a delicatessen use, the last use for which a proper Certificate of Occupancy existed, and the last use to which the property has been put. The owner of the property has not made any deliberate or physical changes to the building to prevent its use for commercial purposes. In fact, the property is better suited at present for office use than delicatessen use.

B. It could be argued that offices for lobbyists located within two blocks of the U. S. Capitol would be a neighborhood facility. However, the Board notes that under Paragraph 7109.11, the Board may approve a change of non-conforming use if the proposed use will be "the type of use which although not a neighborhood facility will not be objectionable."

C. The Board cannot force termination of a valid nonconforming use. The Board is not required, as in a variance case, to find that the property cannot be used for residential purposes, or that residential use is more desirable than the proposed non-conforming use.

D. Given the findings already made, the ANC had sufficient time to consider the alternative possibilities for use of this property.

E. The application does represents an extension of a nonconforming use, to the second floor. However, given the small size of the building and the location of the access to the upper floors it is not reasonable to expect that the upper floors could be used for residential purposes.

F. The property is located at the northwest corner of the intersection of 3rd and East Capitol Streets, N. E. The property faces East Capitol Street, even though the entrance is on 3rd Street. As has been previously set out, there are many non-residential uses in the immediate block, including the entire south side of East Capitol Street, and several lots on the north side as well.

G. The Board is concerned about the absence of parking. The Board notes however, that no parking is required by the Zoning Regulations. The Board notes the existence of good public transit facilities, in the area, including both bus and subway. The Board notes the proximity to the Capitol and the likelihood

that much of the traffic to and from the building will be by foot. The Board however is sufficiently concerned about potential impact that it will limit the grant of this application for a specific period of time, in order to evaluate the real impact of the proposed use.

CONCLUSION OF LAW AND OPINION:

The Board concludes that the subject property is still vested with non-conforming rights under the Zoning Regulations, in that the property had a valid Certificate of Occupancy for a delicatessen, and that no other use has been made of the premises since that time. The Board concludes that the non-conforming use has been terminated but not abandoned, and that in fact, the last physical alterationsto the building were done to enable its use as anoffice, the same use herein requested.

The Board concludes that the requested change of use can be granted, in that the proposed use is permitted in the most restrictive district in which the previous use is permitted. The Board concludes that while the proposed use is not directly a neighborhood facility, it will not likely have objectionable effects, similar to other office uses in the area, and will not be out of character with the area. The Board is concerned however, that the lack of parking spaces may prove to be a problem. In order to carefully monitor the potential effects of the changes, and consistent with the authority set forth in Paragraph 7109.13, the Board has therefore determined to grant the application for a limited period of time.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled, and for the reasons stated herein , is compelled to take a different position on the application than that advocated by the ANC.

The Board concludes that an applicant who demonstrates that he has complied with all of the conditions which are required for the granting of a special exception is entitled by law to that special exception. The Board concludes that the granting of this application will be in harmony with the general purpose and intent of the Zoning Regulations and Maps, will allow a less intense use of the property and will not tend to affect adversely the use of neighboring property. It is therefore ordered that the application is granted subject to the following conditions:

1. Approval shall be for a period of FIVE YEARS.

2. Use of the premises as office space shall be limited to an architect, dentist, doctor, engineer,

lawyer or similar professional person.

VOTE: 3-1 (Chloethiel Woodard Smith, Ruby B. McZier and Charles R. Norris to grant, William F. McIntosh to deny; Leonard L. McCants not present, not voting).

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

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

FINAL DATE OF ORDER: 17 JAN 1979

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.