

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12849 of Edward J. Lenkin, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against adding to a non-conforming structure devoted to a non-conforming use (Sub-section 7107.1) and from the prohibition against adding to a non-conforming structure which now exceeds the allowable percentage of lot occupancy (Paragraph 7107.21) to construct a third story addition to the premises which will be used as a residence and as an office in an R-5-B District at the premises 901 - 26th Street, N.W., (Square 16, Lot 810).

HEARING DATE: January 17, 1979
DECISION DATE: February 28, 1979

FINDINGS OF FACT:

1. The subject property is located at the northeast corner of the intersection of 26th and Eye Streets, N.W. It is in an R-5-B District and is known as 901 - 26th Street and 2533 Eye Street, N.W.
2. The subject site has a lot area of 1,440 square feet. The site is improved with a two story semi-detached structure and a two car garage which face on 26th Street. The improvements are now vacant pending approval of the subject application.
3. The improvements, including garage, occupy 1,206 square feet of lot area. They exceed the sixty percent lot occupancy provisions of the Zoning Regulations for an R-5-B District by approximately forty percent.
4. The subject premises has been continuously occupied as offices from 1959 until November, 1978 when the tenant's lease expired. BZA Order No. 5674, dated September 18, 1957, granted the change of a non-conforming use from a barber shop and beauty shop on the first floor to general office use and to extend the office use to the second floor at the subject premises. The only condition to the Board's grant was that no neon or gas tube displays, if placed inside the building, be visible from the outside of the structure.
5. Certificate of Occupancy B2015, issued October 29, 1962, was for use of the first and second floors of the subject premises as offices. Certificate of Occupancy No. B84853, issued March 5, 1973, was for the use of all floors as executive offices for publishing.

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HEARING DATE: January 17, 1979
DECISION DATE: February 28, 1979

DISPOSITION: Application Denied by a vote of 4-0 (Theodore F. Mariani, Chloethiel Woodard Smith, William F. McIntosh and Charles R. Norris to deny, Leonard L. McCants not voting, not having heard the case)

FINAL DATE OF ORDER: July 3, 1979

ORDER

Counsel for the applicant filed a timely Motion For Reconsideration and Reargument, or, in the alternative Rehearing of the Board's Order denying the application. The basis for the Motion is that the Board made findings of fact unsupported by the record and erroneous conclusions of law. More particularly, counsel argues that the Board found in finding No. 13 that the property contained unique topographical conditions that supported the variances necessary to grant the application. The Board does not concur with counsel's reasoning. The Board concludes that it has committed no error in deciding the application. It is therefore ORDERED that the Motion is DENIED in its entirety.

VOTE: 3-0 (Charles R. Norris, Leonard L. McCants and William F. McIntosh to deny, Chloethiel Woodard Smith not present, not voting)

DATE OF MEETING: August 8, 1979

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 NOV 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OR PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

6. The subject property is located in an area characterized by apartments and row houses and is basically residential in use.

7. The applicant proposes to add a third floor to the structure. He proposes to use the second and new third floor as his residence and to rent out the first floor as office space.

8. The applicant will allow the tenant of the office space to use one space of the subject garage for parking during its working day hours. The applicant will use the garage at night and on weekends.

9. Through alterations the applicant will construct an entrance on the first floor to his proposed residence on the second and third floors. This will reduce the amount of office space on the first floor to an area of 550 square feet.

10. The proposed tenant will consist of not more than two principals and a secretary.

11. General office use is first permitted as a matter-of-right in a C-1 District.

12. The subject site is twenty feet by seventy-two feet. The twenty foot frontage is along Eye Street. The seventy-two foot frontage is along 26th Street. Of the seventy-two foot frontage the existing structure occupies the first forty-two feet. There is a ten foot areaway and then a twenty foot garage.

13. The subject site is below the grade of the adjacent property at 2531 Eye Street. There is a retaining wall between these two properties which is eleven feet high and thirty feet long. The retaining wall in turn is supported by another wall running perpendicular to it which runs east and west adjacent to the garage. This provides additional support to the retaining wall. The rear yard of the adjacent property on Eye Street and the side yard of the adjacent property on 26th Street are at the roof level of the subject garage. The subject site is rectangular in shape.

14. In addition to constructing a new third floor to the subject premises, the applicant proposes to add a bay window to the second floor on the 26th Street side of the premises. It will be a four foot projection into the public space. This projection is permitted. The window will be supported by two columns from the first floor which are structural only. The third floor will contain more windows and have a different pattern than those on the first and second floors. There will also be rebuilding in the court yard.

15. The proposed third floor addition will be within the height and floor area ratio limits of the R-5-B District. The addition will not increase the lot occupancy.

16. The Office of Planning and Development, by report dated January 12, 1979, recommended that the application be granted with the condition that the second and third floors of the subject building be used for residential purposes only. The OPD noted that the proposed addition will restore the second floor of the building to residential use and that the combination of both top floors will provide a desirable residence in the structure without exceeding the height and FAR requirements of the R-5-B District. For reasons hereinafter discussed, the Board does not concur in the OPD's recommendations.

17. There were two letters on file in support of the application on the grounds that improving the subject building would improve the neighborhood and that the continued office use would act as a deterrent to crime and create less parking problems than a residential use.

18. There were several neighboring property owners in opposition to the application. There was also a petition signed by neighborhood citizens in opposition to the application. The grounds of the opposition were (a) the subject neighborhood is residential and an office use within the neighborhood is contrary (b) the continued office use would generate noise, pollution and traffic problems (c) the office use created an unlivable appearance which made this particular corner property dark and dangerous (d) there are many retaining walls in the neighborhood and they do not constitute a practical difficulty on the part of the owner to use his property (e) the entire property could be used as a residence or in the alternative that if the office use was continued it should be of as low an intensity as the last use.

19. Advisory Neighborhood Commission 2A, by letter of February 12, 1979, clarified its position which had been challenged at the public hearing of January 17, 1979. It stated that it supported the request to enlarge the structure only if the applicant abandoned his intention of putting a non-conforming commercial use in the structure and used the entire building for residential purposes. It noted that ANC 2A was very concerned about preserving its residential districts for residential uses, that in the subject area the neighborhood can not absorb the traffic and congestion which would be associated with commercial use of part of the applicant's building and that the proposed non-conforming use is an intensification over the previous non-conforming use.

20. The Board by statute, is required to give "great weight" to the issues and concerns expressed by the ANC. In addressing the issues and concerns of the ANC as well as those similiary expressed by the neighboring property owners, the Board replies that the issue of the continuance of the non-conforming office use is not before the Board. As found in findings of fact Nos. four and five the BZA in Order No. 5674, dated September 18, 1959 granted the requested change of use to office use and the subsequent Certificate of Occupancies were issued for the same purpose. In BZA Order No. 5674 the Board did not condition the use to one particular party nor did it spell out what the office use constituted. The Board at this date cannot act retroactively and state that only an office use of low intensity can be allowed. The applicant can continue the office use in the first and second floors of the subject premises. This applicant is not seeking to establish a non-conforming use. This use is in existence by the Board's permission. Accordingly, the other concerns of noise, traffic and poluttion are not pertinent to this application. The sole issues are the area variances under Sub-section 7107.1, Paragraph 7107.21 and Paragraph 8207.11 of the Zoning Regulations which the Board will address in its conclusion of law.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the issue of the continuance of a non-conforming use in the subject premises is not before the Board for reasons stated in findings of fact Nos. 4,5 and 20.

The sole issue before the Board is whether the applicant has met his burden of proof so that the Board can authorize the variance from the strict application of the Zoning Regulations. Based on the record, the Board concludes that the applicant seeks area variances, the granting of which requires a showing of a practical difficulty stemming from the property itself. The subject site is rectangular in shape. The existence of retaining walls as testified to by neighboring residents in opposition has not deterred others in the neighborhood from using property for the purpose for which it is zoned. The applicant can do likewise. The practical difficulty is not inherent in the subject property.

The subject premises is a non-conforming structure devoted to a non-conforming use. The applicant proposes to make substantial alterations to the structure including a new third floor, a bay window and a rebuilding of the courtyard. These are not minimal alterations to a non-conforming structure. The proposed alterations will not increase the lot occupancy nor exceed the FAR and height requirements of an R-5-B District. Still, the

alterations are perpetuating the subject non-conforming structure devoted to a non-conforming use beyond the intent and purpose of the Zoning Regulations.

The Board concludes that it has addressed the issue and concerns of the ANC and other opposition in findings of fact No. 20. For the above reasons this application is DENIED.

VOTE: 4-0 (Theodore F. Mariani, Chloethiel Woodard Smith, William F. McIntosh and Charles R. Norris to deny, Leonard L. McCants not voting, not having heard the case).

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

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

3 JUL 1979

FINAL DATE OF ORDER: _____