

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA Application No. 12897, of Mokhless Al-Hariri Enterprise, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3105) to use the first and second floors of the subject premises as an architectural office in an R-5-C District at the premises 1817 - 16th Street, N. W., (Square 191, Lot 804).

HEARING DATE: April 11, 1979

DECISION DATE: May 2, 1979

FINDINGS OF FACT:

1. The subject property is located in the R-5-C District at the southeast corner of the intersection of 16th and Swann Streets, N. W. It is known as 1817 16th Street, N. W.

2. The lot is twenty four feet wide facing 16th Street and fifty feet deep along Swann Street.

3. The lot is improved with a four story plus basement building which occupies most of the lot in question. The building is presently vacant and has been so for several years. The last previous use of the building was as a single family dwelling.

4. The applicant testified that he originally purchased the building to use it for his own residence as a single family dwelling. The applicant further testified that after preparing cost estimates for renovation of the building subsequent to the purchase, he determined that it was not economically feasible to proceed with that renovation.

5. The applicant now proposes to use the building as offices for the architectural firm of the applicant, the Georgetown Design Group. There would be five persons working in the building.

6. The offices of an architect are first permitted in the SP District as a special exception with the approval of the Board of Zoning Adjustment, and are first permitted as a matter-of-right in the C-1 District.

7. The applicant testified that to renovate the building for multi-family occupancy would be "a historical disaster" and "it is really impossible, without damaging entirely the building, to comply with the present zoning."

8. The applicant presented testimony at the hearing from two real estate agents. The two agents testified that the renovation proposed by the applicant was desirable, that it would be difficult to renovate the property for multi-family use, and that it would be difficult to use the building as a single family dwelling because of the price that would have to be charged.

9. The applicant also submitted plans which had been prepared by a previous owner. Those plans, marked as Exhibit 24 of the record, show the renovations which were proposed to convert the building into an apartment house.

10. The Board finds the testimony, presented by the applicant not sufficient to carry the burden of proof necessary to sustain the granting of a use variance. The applicant has not demonstrated that the building cannot be used for a purpose permitted in the R-5-C District. The applicant's testimony indicates that at the most it would be difficult, and the Board finds that that difficulty stems from the price which the applicant paid for the property, ostensibly for single family purposes. The Board also finds that the plans submitted indicate that residential use of the property is feasible.

11. The applicant testified that the lot qualified for a variance because of the lack of a rear yard, the high percentage of lot occupancy and the historic nature of the building.

12. The Board finds that neither lack of a rear yard nor a high percentage of lot occupancy are unusual for properties similarly situated along 16th Street, N. W. The Board furthermore is unable to find any relationship between the lack of a rear yard or a high lot occupancy and inability to use the building for residential purposes.

13. Across 16th Street to the east are row dwellings in the R-5-C District. Adjacent to the property to the south is a three story row dwelling, followed by a semi-detached dwelling and an apartment building, all in the R-5-C District. Across Swann Street to the south are apartment buildings in the R-5-C District. To the east, fronting on Swann Street are row dwellings in the R-5-B and R-5-C Districts. The nearest commercially zoned property is approximately 600 feet away.

14. The Office of Planning Development, by memorandum dated April 6, 1979 and by testimony presented at the hearing, recommended that the application be denied. The OPD reported that the property can be used in accordance with the present R-5-C zoning and advised that a commercial office use in this predomi-

nantly residential area would have an adverse impact on the area and would impair the intent, purpose and integrity of the Zoning Regulations and Maps. The Board so finds.

15. Anne Sellin, representing the Dupont Circle Citizens Association and herself as an individual, opposed the application, on the grounds that the building is no different than others similarly situated which can be and have been used for residential purposes, and that the only hardship results from the price paid by the applicant, which is not a proper basis for the granting of a variance. The Board so finds.

16. There was no report from Advisory Neighborhood Commission 1-B.

17. Subsequent to the hearing, the applicant submitted additional evidence, including many letters of support from owners of surrounding property. At the public hearing, the Board requested the applicant to submit a copy of the plans, which had been prepared by a previous owner, for renovation of the building for apartment uses. Those plans are marked as Exhibit 24 of the record. All of the other material submitted after the close of the hearing is not a part of the record, and has not been considered by the Board in deciding the case.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is a use variance, the granting of which requires the showing of an undue hardship upon the owner arising out of some exceptional or unique condition of the property. The Board concludes that the applicant has demonstrated nothing unusual about the site, and has not presented satisfactory evidence that strict application of the Regulations would constitute a hardship upon the owner. The Board concludes that the property reasonably can be used for a purpose permitted in the R-5-B District.

The Board notes that the applicant's case for hardship is based on the economic infeasibility of renovating the property for use as a single or multi-family residence. The Board has consistently taken the position that, in use variance questions, the hardship upon the owner must arise out of some condition of the property. In this case, the hardship is created by the applicant in terms of the price he paid for the building. The Board concludes that there is no hardship associated with the property itself, and there is therefore no basis to grant a variance. The Board therefore concludes that to permit office use of the premises would be contrary to the intent and purpose

of the Zoning Regulations and would be of substantial detriment to the public good. It is therefore ordered that the application is DENIED.

VOTE: 4-0 (Theodore F. Mariani, Charles R. Norris, William F. McIntosh and Chloethiel Woodard Smith 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

FINAL DATE OF ORDER: 9 JUL 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 OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."