

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13050 of National Savings and Trust Co. as Trustee, for the Alonzo O. Bliss Properties, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3105) to use part of the lobby of the subject premises for retail sales in an R-5-C District at the premises 4550 Connecticut Avenue, N. W., (Square 1973, Lot 22).

HEARING DATE: November 28, 1979
DECISION DATE: December 5, 1979

FINDINGS OF FACT:

1. At the public hearing of November 28, 1979 the Chair waived section 3.33 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment which requires that the affidavit affirming that the property was posted be filed at least five days prior to the public hearing. In this instance the affidavit was filed within three days. The Chair also ruled that the application be heard regardless of the number of returned notices addressed to a condominium adjacent to the subject property on the grounds that the list of such owners was the most current list available. Also, there was opposition present who had been duly notified and requested that the application go forward.

2. The subject site is located on the southwest corner of the intersection of Brandywine Street and Connecticut Avenue, N. W. It is known as 4550 Connecticut Avenue, N. W. and is in an R-5-C District.

3. The site is improved with an eight story brick apartment house. There are apartment houses to the north, east and south of the subject premises. A twenty foot wide public alley separates the subject site from single family detached dwellings to the west.

4. A lessee who does not reside in the subject apartment house proposes to use part of the lobby for the retail sale of Japanese art works. The room proposed for the sale of the art work is fifteen feet by eighteen feet in dimensions and is located off the lobby area of the apartment house. The room had previously been used as a mail distributing center for the tenants. After individual mail boxes were installed, the space fell into disuse and was boarded up.

5. The lessee testified that the room was a junk room for discarded appliances. It was cleaned out and he has been using it as storage for his prints since March, 1979. He had planned to use it for the sale of his prints until he was advised that such sale was not a permitted use. The lessee testified that he would see all customers by appointment only. He would work two nights a week from 6:30 to 8:30 p.m. and on Saturday afternoons. The lessee works behind a closed door. There is a telephone which is listed at the subject property address. Parking facilities are also available for guests of the apartment house. The lessee has a sign measuring three by five inches with his name on it on the door.

6. The Office of Planning and Development by report dated November 19, 1979 recommended that the application be denied. The OPD reported that the Zoning Regulations allow the sale of certain convenience commodities and services, as accessory uses and appropriate adjuncts to an apartment house which are designed to service the tenants daily living needs. These commodities and services include foods, drugs, sundries, and personnel services. The OPD was of the opinion that the retail sale of Japanese art work does not fall under the aforementioned list, even though the tenants of the apartment house could patronize the use. The OPD was of the view that the use would attract persons other than tenants and therefore cause substantial detriment to the purpose, intent and integrity of the Zoning Regulations and Map. The OPD was of the opinion that the proposed use is a commercial use and is not in conformance with the permitted uses in the R-5-C District. The OPD was further of the opinion that the proposed use does not meet the variance test of Paragraph 8207,11 of the Zoning Regulations. The Board concurs with the opinions of the OPD.

7. The president of the Board of Directors of the condominium adjacent to the subject property opposed the application on the grounds that to grant the variance would be the first step toward commercialization of what is now a residential neighborhood, that there would be a traffic impact and that there was available commercial space within three blocks of the subject premises for the lessee's purpose. A petition with some sixty-seven signatures of the owners of the condominiums in opposition to the application was submitted to the record.

8. ANC-3F opposed the application in a written resolution of November 26, 1980. No grounds were stated.

9. There was a petition of some twenty-two signatures of tenants in the subject apartment building in favor of the application that was on record.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the applicant is seeking a variance from the use provisions which requires a showing of some exceptional or extraordinary condition of the property which creates an undue hardship for the owner. The Board concludes that the applicant has demonstrated no exceptional or extraordinary condition in the property. The Board further concludes that no hardship has been shown, either upon the owner or the lessee. While it may be true that an ugly room has been made more attractive and an alleged unusable space has been put to good use, the Board concludes that such conditions do not warrant the installation of a commercial use into a residential building where such a use is not one permitted under the Zoning Regulations as an adjunct to the apartment building.

The Board concludes that the application cannot be granted without supplemental detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application be DENIED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune, William F. McIntosh and Leonard L. McCants to deny).

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

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ATTESTED:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 31 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR URDER 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,"

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATONS, AND INSPECTIONS.