GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 13303, of Frank R. Gailor, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a warehouse, all floors, to office uses, second, third and portion of the ground floor; variance from the prohibition against extending a non-conforming use and making structural changes (Sub-section 7105.2); and a modification of BZA Order No. 12725 to allow parking on the first floor to be used as accessory parking for the subject premises as well as premises 214-216 "D" Street, S. E., in an R-4 District at premises 218-220 "D" Street, S. E., (Square 763, Lot 2).

HEARING DATES: July 23, October 15 and December 10, 1980 and February 11, 1981

DECISION DATES: January 7 and March 4, 1981

FINDINGS OF FACT:

1. The subject application was originally filed on May 29, 1980, and was scheduled for public hearing on July 23, 1981. As advertised, the application requested a special exception to change a non-conforming use from warehouse to office for part of the first and all of the second and third floors of the subject premises. The application also requested variances as follows:

A. From the prohibition against extension and structural alterations to the building to allow the addition of an elevator.

B. From the prohibition against enlargement to permit the addition of a mezzanine.

C. From the height limitation to allow skylights and modification of the roof line above the forty foot height limit.

The application also requested a modification to a previous BZA Order in Case No. 12725 to allow the parking on the ground floor to be counted as required parking for the offices in the building as well as the adjoining squash court.

2. At the public hearing of July 23, 1981 the applicant advised the Board that he had entered negotiations with the affected advisory Neighborhood Commission and other area residents. As a result, the applicant requested that the Board allow the application to be

amended. The amendment would place before the Board an alternative plan involving part residential and part office use of the property. The alternative plan required the following relief:

a. A special exception to change a non-conforming use from warehouse to office on the first and part of the second floors.

b. A variance from the lot area requirements to allow seven apartments on a lot of less than 6300 square feet.

c. A variance from the prohibition against structural alterations to include an elevator .

d. A variance from the lot occupancy and height requirements to permit an addition

e. A modification to the previous BZA Order in Case No. 12725.

The Board granted the applicants' request to amend the application to add alternative relief. The Board further directed that the application be readvertised.

3. The application, including the alternative reliefs set forth in Findings 1 and 2, above, was readvertised for the public hearing of October 15, 1980. Due to time spent on other cases, the Board was unable to hear the case on that date, and continued it for hearing until December 10, 1980.

4. At the public hearing on December 10, 1980, the applicant stated that he was no longer able to pursue the part-residential alternative advertised, and requested to withdraw that part of the application related to the second alternative. The applicant further advised the Board that he had submitted revised plans, marked as Exhibit No. 55-A of the record. These revised plans eliminated the mezzanine, and therefore did not require variances in the enlargement or extension of the building. The Board granted the applicant's request to withdraw the alternative for part residential use and to amend the alternative for all office use.

5. The subject property is located in an R-4 District on the north side of "D" Street between 2nd and 3rd Streets, S. E., and is known as 218-220 "D" Street, S. E.

7. The subject lot is 54.79 feet wide. It has a depth of 95.58 feet on its west side and 73.79 feet on its east side.

8. The subject property is improved with a three story brick structure which occupies 100 per cent of the lot.

9. The subject building was being used as a warehouse pursuant to Certificate of Occupancy No. B-64810, dated March 15, 1968. A warehouse is a use first permitted in a C-M-1 District.

10. In addition, construction work was under way to renovate the major part of the first floor of the building to be used as ten off-street parking spaces. Those spaces were required by the Board in Order No. 12725, dated January 24, 1979 to be provided to serve a squash club to be located in the adjoining building at 214-216 "D" Street, S. E.

11. The applicant proposed to convert the second and third floors of the building to office uses. The first floor would continue to be used for parking, with the exception of a lobby to serve the upper floors and a community room. The office use is first permitted in a C-1 District.

12. The applicant proposed to renovate the building but to retain the basic enterior appearance as it now exists. The facade will be repainted and repointed. The windows and doors will be replaced. The curb cut will be closed, sidewalks will be repaired, and the front of the building would be landscaped.

13. The applicant proposed to limit occupancy of the proposed office to those kinds of office uses permitted in the SP District. The applicant further estimated that the building would be occupied by as many as forty persons. The applicant proffered that the hours of operation for the office use would be from 8:00 A.M. to 6:00 P.M. on weekdays, and from 9:00 A.M. to 1:00 P.M. on Saturday.

14. In order to serve the office uses on the second and third floors, the applicant proposed to install an elevator on the west side of the building, near the front. This would replace an existing freight type elevator located near the rear of the building, and would require structural alterations to the buildings. The elevator will not extend above the level of the roof. However, excavation below the level of the first floor would be required to provide for the mechanical equipment for the elevator. The applicant would therefore require a variance from the provisions of Sub-section 7105.2 to permit extension of the elevator and structural alterations.

15. The applicant further proposed to add three skylights, less than four feet in height, to the roof of the building to provide additional light to the third floor. The addition of the skylingts also necessitates a variance regarding structural alterations. Because of the existing facade design, the skylights will not be visible from the street.

16. The first floor of the building is to be used primarilly as a parking garage. In the Order of the Board in Case No. 12725, which permitted a squash club to be located in the adjoining building at 214-216 "D" Street, S. E., the applicant is required to provide ten off-street parking spaces in the subject premises to serve the squash club. Those ten spaces are shown on Sheet 1 of Exhibit No. 55-A of the record. All are at least nine feet wide by nineteen feet

deep. All are freely accessible as required by the Regulations.

17. The applicant proposed to provide parking for an additional seven cars in the aisles of the parking garage to serve the proposed office use. An attendant would be present during the hours that the office use would be in operation. A modification of the prior BZA Order No. 12725 is required to allow the ten spaces provided for the squash club use to be attendant parking rather than fully accessible self-parking.

18. The Zoning Regulations require no parking to be provided for the office use.

19. The property is located in an area which is predominantly residential in character. The immediate adjoining property to the west is the previously cited squash club. To the west, across a fifteen foot alley from the squash club is a Pepco substation. Adjacent to the subject property on the east is an American Legion post, which is a private club under the Zoning Regulations. All of the remaining property in the subject Square 763 is devoted to residential use, either row dwellings, flats or apartments. There is one house, the side of which faces "D" Street at the corner of 2nd Street.

20. Directly across "D" Street to the south is Folger Park. Facing the Park on its east and west sides are residential or school uses. Across from the south side of the Park, is a vacant property known as the Providence Hospital site, which has been acquired by the Architect of the Capitol for future use by the U. S. Congress.

21. The subject area is predominantly zoned R-4, a residential district. The Pepco substation and the American Legion Club are both permitted uses in an R-4 District.

22. Even though there are commercial uses further removed from the site along Pennsylvania Avenue, and there are the facilities of the U.S. Congress in the area, including the Madison Library of the Library of Congress, the predominant character of the neighborhood in which the subject site is located is residential.

23. The proposed use will not serve the residential neighborhood in which it is located, and will not be a neighborhood facility as contemplated by Sub-paragraph 7109.1111 of the Zoning Regulations.

24. The future development of the area would be adversely affected by the establishment of an office use, having no relationship to the surrounding area, in the middle of what is predominantly a residential neighborhood. As an intruding use, office use would be objectionable in that particular setting.

25. Testimony from both the applicants' expert traffic witness and the D. C. Department of Transportation established that the peak hour traffic, generated by the proposed use can be accommodated by the surrounding street system. The applicant's witness further testified that adequate parking can be provided, both within the building and on the immediate surrounding street frontages, to serve the needs of both the squash club and the office space.

26. The structure, as proposed to be renovated by the applicant, will be an improvement over the existing condition of the warehouse. No additional screening or exterior design treatment would be required.

27. The Office of Planning and Development, by memorandum received by the Board on December 19, 1981, recommended that the application be denied. The OPD found many positive aspects of the proposal. However, the OPD was concerned about the lack of sufficient parking, the amount of traffic to be generated and the objectionable nature of the office use. At the further hearing on February 11, 1981, after taking into account the report of the Department of Transportation, the representative of the OPD testified that its concerns had been addressed, and that it then supported the application.

28. The Department of Transportation, by memorandum dated January 2, 1981 and by temtimony at the public hearing held on February 11, 1981, reported that the peak hour traffic likely to be generated by the proposed office would have no measurable impact on the street system from a capacity standpoint. The Department of Transportation was concerned about the operational characteristics of the proposed garage and the potential adverse impact on the alley system of the square. The DOT recommended that no more than three to four spaces be stacked in the aisle, for a total of fourteen spaces. In the opinion of the DOT, the office use would require seven off-street spaces, leaving the project with a deficit of three spaces. The Board concurs in the findings of the DOT.

29. At the hearing of February 11, 1981, the applicant submitted a revised plan for the layout of the first floor garage, to accommodate eleven self-park spaces and a total of fourteen spaces with an attendant. The access to these spaces would be in directly from "D" Street and out through the alley to "D" Street during the day. After office hours, ingress and egress would be from "D" Street only. This alleviated DOT's concern over the operational layout of the garage and the impact on the alley.

30. Advisory Neighborhood Commission 6-B, by statement dated December 10, 1980 and by letter dated October 15, 1980, opposed the application. The ANC noted the following basis for its opposition.

A. Inappropriate large scale commercial development within a wholly residential area;

B. Commercialization of the land opposite Folger Shakespeare Park;

C. Adverse effect on parking;

D. Increased traffic and congestion in a residential area;

E. Large commercial project across the intersection from an

elementary school.

31. The ANC argued that this neighborhood, because of its proximity to the Capitol, is under constant pressure of commercialization. A large scale commercial project on this block and attendant parking meters to be placed on the next only further erodes the residential position of the area. There have already been commercial offers for the American Legion building next door. Any commercial development lessens the suasion on the Architect of the Capitol not to develop the Providence Hospital park site, as he has previously proposed. Likewise, a huge commercial development across the street from the Folger Shakespeare Park would necessarily reduce the attractiveness of that Park because of the increased commercial activity, traffic and congestion. Furthermore, the surrounding of this Park by parking meters can hardly have a beneficial effect on the park.

32. The ANC further argued that increased traffic from the project would, in and of itself, adversely impact on the residential nature of the neighborhood. The coming and going of forty workers employed in the building, not to mention clients and customers, is going to have a tremendous negative impact on parking, greatly increase traffic, and create a congestion of the type which is antithetical to a residential neighborhood, and often leads to its decline or destruction.

33. The ANC noted that this project would be opposite an elementary school. It argued that the increased traffic created a significant safety hazard to the children, practically all of whom walk to school.

34. The Capitol Hill Restoration Society, by letter dated July 21, 1980, and by testimony at the public hearing, opposed the application. The Society argued that the proposed use was out of character with and objectionable to the neighborhood. The Society objected to the perpetuation of the non-conforming use in the area. The Society noted the potential parking problems which would occur. The Society argued that the office use would threaten the use of nearby residential property.

35. Many owners and residents of property in the immediate neighborhood opposed the application. The grounds of the opposition were essentially those stated by the ANC and the Restoration Society.

36. The Board is required by statute to give "great weight" to the issues and concerns of the Advisory Neighborhood Commission. In response to those issues, and those raised by the Restoration Society and other parties in opposition, the Board finds as follows:

A. The opposition is correct as to the nature of the use. It is inappropriate to permit the requested office use in this neighborhood.

B. The record does not substantiate any potential adverse effect on Folger Park itself. The improvement to the exterior of the building might well enhance the Park.

C. The evidence on parking is mixed. There will not be sufficient off-street parking to meet all of the needs of the subject building. Whether this will result in a significant or substantial impact on the supply of on-street parking in the area is not clear. However, the Board finds this is not the key to this application.

D. The amount of traffic and congestion during peak hours can be accommodated on the area's street system.

E. The Board is unable to foresee any additional adverse impact on schools in the area if this application were approved.

F. The Zoning Regulations do not require the termination of non-conforming uses. If this application is denied, the warehouse use could continue.

G. The Board has consistently stated that each case must be decided on the specific circumstances that occur in that case, based on the record developed before the Board in that case.

37. The subject application can be distinguished from the prior application No. 12725, regarding the property at 214-216 "D" Street, in which the Board approved a change of non-conforming use from a warehouse to a squash club. As part of Finding of Fact No. 19 of the Order dated January 24, 1979, the Board found:

> "The character of the proposed use would be compatible with the uses in the immediate area and would provide significant neighborhood and community benefits through the provision of a recreational facility which is easily accessible to those living and working in the area. Such a recreational use is desirable because of the very limited number of indoor or outdoor recreational facilities in the immediate neighborhood and in the Capitol Hill area."

Such is not the case in the present application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record in this proceeding, the Board concludes that the primary relief requested by the applicant is a special exception to change one non-conforming use to another. In order to be granted such an exception, the applicant must demonstrate that he has complied with the requirements of Sub-section 7104.2, Section 7109 and Sub-section 8207.2 of the Zoning Regulations.

The Board concludes that the applicant has met the test set forth in Sub-section 7104.2. The proposed use is permitted in the most restricted district in which the existing use is permitted. The Board further concludes that the applicant has provided sufficient testimony and evidence to meet many of the criteria of Section 7109.

However, the Board concludes that the applicant has failed to meet the most important test under Section 7109. The proposed use is clearly not a neighborhood facility. It will have no relationship with the existing neighborhood at all. It will be an intrusion of a commercial use into an area that is predominantly residential. The introduction of such a commercial use into this area is entirely inappropriate. Even though the office use is permitted in a more restrictive district than a warehouse, and thus could be said to be more in conformance with the Regulations, the use will represent an intensification of use of a structure for a purpose not normally permitted in an R-4 District. Such a change would be inconsistent with the intent and purpose of the limitations on non-conforming uses, as set forth in Section 7101.

Having concluded that the change of non-conforming use cannot be granted, the Board takes no position on the requested variance or modification of the previous BZA order. Without approval of the special exception, the other matters are of no consequence.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. It is therefore hereby ordered that the application is DENIED.

Vote: 3-2 (John G. Parsons, Douglas J. Patton and Connie Fortune to deny, William F. McIntosh opposed to denial, Charles R. Norris opposed to denial by proxy).

BY ORDER OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

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

FINAL DATE OF ORDER: 12 MAY 1981

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."