

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13320, of Fernwood Corporation, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to use Suite A of the first floor of the subject premises as office space for a non-profit outdoor recreational, educational and service organization in an SP-1 District at the premises 1520 - 16th Street, N.W., (Square 180, Lot 84).

HEARING DATE: October 15, 1980

DECISION DATE: November 5, 1980

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of 16th and Church Streets, and is known as 1520 - 16th Street, N.W. It is in an SP-1 District.
2. The subject site is rectangular in shape and measures fifty feet by 110 feet. The site is improved with an eight story apartment building. The site is bordered at the rear by a ten foot wide public alley.
3. South of Church Street is the Foundry Methodist Church. North of the subject property is an eight story apartment building. A large playground occupies most of the interior of Square 180 to the west of the site. The immediate vicinity of the site is characterized by various sized row dwellings used for single family and multi-family purposes and large apartment buildings. There are a number of SP office uses in the area, including the American Trucking Association and the National Wildlife Association south of P Street. The University of the District of Columbia occupies a large building across 16th Street from the subject property.
4. The applicant requests a certificate of occupancy for the use of a first floor office in the eight story, fifty-two unit apartment building. The organization, the Potomac Area Council of American Youth Hostels, Inc., (AYH) is a non-profit organization and has occupied the subject first floor premises since 1973. No Certificate of Occupancy was ever issued for such use.

5. The organization supplies recreation and educational information primarily for youths and the parent organization which operates a number of youth hostels in the area.

6. The office which the organization occupies at 1520 - 16th Street is approximately 1,000 square feet in area. The office hours are from 8:30 a.m. to 5:00 p.m.

7. The office employs two people. There are no parking spaces for employees. The present employees do not drive to work and the activities of the office are such that little auto traffic is generated.

8. The subject office sells publications and outdoor related gear, such as brake and gear cables for bicycles, bicycle pumps and bicycle saddle bags and minor camping gear.

9. A small cardboard sign is maintained in the window in the front of the building which lists the name of the organization, general activities, trips, seminars, classes, retail store and office hours.

10. The subject tenant sub-leases a desk area of the office to the Washington Area Bicycle Association (WABA). The sub-lessee is not a part of the subject tenant organization. The WABA is a bicycle activists organization and operates from the subject office about twenty hours a week. The WABA sells bike books from the subject office.

11. The area of the building under construction had never been used as an apartment. From the time the building was constructed, prior to its use by the Potomac Area Council of AYH, the space was used as a doctor's office. The office space has two sets of sinks and toilets, but no shower or bathtub. There is no kitchen.

12. The Office of Planning and Development, by memorandum dated October 8, 1980, recommended that the application be approved with conditions. In its report, the OPD stated that it believed that the use of the first floor office by the Potomac Area Council of AYH would not be detrimental to nearby properties. The OPD reported that the nature of the organization's activities do not generate the level of auto traffic which could be associated with other SP office uses, such as doctors, dentists, engineers, architects or lawyers.

The OPD found that there are a number of large SP office uses in the immediate vicinity of the site. The OPD believed that the use of this space by the Potomac Area Council of the American Youth Hostels, Inc., would be in harmony with nearby uses and would not cause any adverse traffic conditions. The OPD recommended that this application be approved subject to the conditions that the floor area of the office not be increased and that the tenancy be limited to the office of the Potomac Chapter of American Youth Hostels, Inc. At the public hearing, the OPD reported that it had not been advised by the lessee that it ran a retail store on the premises. The representative of the OPD stated that it could not now make a final recommendation on the application since the traffic impact would have to be reconsidered and that, under the subject Paragraph 4101.44 of the Zoning Regulations, such retail sales were not permitted. The Board therefore can afford no weight to the findings and recommendations of the OPD.

13. The Dupont Circle Citizens Association, objected to the application on the grounds that it opposed any office use in an apartment house in an SP-1 District other than a doctor's office wherein the doctor also resides.

14. A tenant on the first floor of the subject building directly opposite the AYH opposed the application on the grounds that AYH has created health problems in that the trash left in the lobby by them has contributed to the increase of rat and mice problems in the subject building. The tenant argued that to grant the application would be to reward the applicant for violating the Zoning Regulations. The tenant further argued that to grant the application would be discriminatory, since the tenant had once been denied such an occupancy for his medical office and residence. In rebuttal, the applicant denied that the trash was from any part of the AYH office. From the record, the Board is unable to determine where the trash originates. However, as set forth in the Conclusions of Law, that issue is not critical to the disposition of the application.

15. Advisory Neighborhood Commission - 2B, by letter of October 15, 1980, recommended that the application be denied on the following grounds:

- a. The applicant has not had a proper certificate of occupancy since its occupation of the premises in 1973. This is a violation of Section 8104.1 of the Zoning Regulations.
- b. The certificate of occupancy for the building in which the subject office is located is for an apartment house. The cumulative effect of numerous approvals of this type of office use by the Board has added to the population decline in the area.

- c. Office use of any sort, including non-profit offices, engenders more vehicle use and consequent traffic congestion.

16. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing these issues, the Board states as follows: (a) It concurs with the ANC as to ground "a", but notes that the application must be decided on the basis of the facts presented in relation to the standards of the Zoning Regulations. There is no evidence in the record that the applicant's credibility is at issue or that the violation was a malicious or deliberate act. (b) The Board has consistently stated that each application must be determined on its own merits. Further, the application is for a special exception, and the applicant is not required to prove that the portion of the building at issue cannot be used for residential purposes. (c) The statement offered by the ANC as to traffic congestion is a conclusion unsupported by testimony or evidence in the record. The Board finds no evidence in the record to indicate that traffic will be a problem. As set forth in Finding of Fact No. 7, with only two employees, there will be no adverse impact on traffic. However, for the reasons stated below in the Conclusions of Law, the traffic issue is not dispositive of this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Paragraph 4101.44 and Sub-section 8207.2 of the Zoning Regulations. The Board concludes that the applicant has not complied.

The Board concludes that the applicant's existing and proposed use does not meet the requirements of the Zoning Regulations, and is in conflict with the intent and purpose of the SP District. No retail sales are permitted in the SP District. Even though the applicant argues that the sales aspect is a small part of the overall office use, the Board concludes that the use as described is not compatible with the general type of office use permitted in the SP District. The Board concludes that the subject office, with its retail sales outlet open to the public, is in conflict with Sub-paragraph 4101.441 as a use that is not in harmony with the existing uses on neighboring property. The Board further concludes that a retail sales use is not in harmony with the general purpose and intent of the Zoning Regulations for an SP-1 District.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board further concludes that the special exception cannot be granted as in harmony with the general purpose and intent of the Zoning Regulations and Maps and will tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is DENIED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, Connie Fortune, Douglas J. Patton and William F. McIntosh to DENY).

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

ATTESTED BY: _____


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

13 MAR 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."