GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13525 of Barbara B. Fiedler, 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 law offices in a D/R-5-B District at the premises 1621 - 21st Street, N.W., (Square 93, Lot 138)

HEARING DATE: July 22, 1981
DECISIONS DATE: September 1, 1981

FINDINGS OF FACT:

1. The subject site is located on the east side of 21st Street between Hillyer Place and R Street and is known as premises 1621 21st Street, N.W. It is an D/R-5-B District.

2. The subject lot is rectangular in shape. It measures sixty feet deep and eighteen feet wide. There is a twelve foot public alley to the north of the site.

3. The subject site is improved with a three story plus basement, brick structure.

4. A Certificate of Occupancy, No. B-71408, dated November 21, 1969 was issued for the use of the subject structure as a gallery of African art and flat. Presently, the gallery occupies the first and second floors. The basement is rented for residential use. The third floor apartment unit is vacant.

5. The applicant has a contract to sell the subject premises to Chester Zyblut. The contract of sale is contingent upon the Board granting the requested relief. The purchaser proposes to use the first and second floors as his law office. It is further proposed that the basement and third floors will be used for residential purposes.

6. The purchaser and one secretary constitute the basic staff of the proposed use. Mr. Zyblut testified that his office is a low key style of operation. His clientele is conprised of trucking companies and various shippers. Most of the office work is done by telephone or correspondence. Less than ten clients come to the office in one year. The clientele are from outside the District of Columbia. If they must visit, they use taxi cabs or public transportation. The present secretary uses public

transportation. The purchaser also proposes to construct one parking space in the rear of the subject site.

7. The purchaser testified that the subject first and second floors were not habitable for residential living without expensive renovation. The gallery had taken down all the dividing walls on each floor leaving one large open space. The purchaser further testified that, since the subject structure occupies some ninety-five percent of the lot, there is no rear yard available for family amenities.

8. The purchaser testified that the proposed use would be a less intense use than the gallery. The gallery at times had several hundred visitors for a specific exhibit. The proposed use would create no traffic impact, noise, or signs accordingly making the subject structure appear more residential then a gallery.

9. The purchaser presented several witnesses who testified to the effect that the proposed use would be of a low-keyed operation and accordingly would cause no substantial detriment to the residential living of the neighborhood.

10. Mr. Zyblut offered no probative evidence that the subject property could not be put to a use for which it was zoned. The allegation that residential use was not feasible without expensive renovation is unsupported. Mr. Zyblut was unaware whether the property had been placed on the market for residential purposes. Mr. Zyblut presented no evidence that by reason of some exceptional or extraordinry situation or condition of the lot there was an inherent hardship in the property itself that precluded its use for any of the uses permitted in the subject R-5-B District.

11. Advisory Neighborhood Commission 2B, by letter of July 22, 1981 and at the Public Hearing, opposed the application. The ANC testified that the subject site is not exceptionally narrow, shallow or shaped, it has no exceptional topography or any other extraordinary or exceptional situation or condition that could create a difficulty or a hardship. On the contrary, it is virtually identical to the three adjacent, residentially used row houses to the south, Nos. 1615-17-19, built years ago by the same developer to the same plan, and that most of the houses in the area are similar three-story plus basement row houses. The subject 1621 is totally typical of the residentially used property in the area. The ANC testified further that in the D/R-5-B Zone in the subject ANC, there are 113 residential buildings. The dominant use is single family residential. Six of the 113 structures are used for other than purely residential purposes, and two of those six are permitted art gallerys, two are permitted chancery uses, one is a private club, and the last is the White Fathers, African Mission headquarters. The two gallery use buildings, the private

club and the White Fathers have residential elements. The ANC testified that the residents of the area are attracted to the area because of its residential character, that they have invested in the area because of its residential character, that they have invested in improvements, some of them quite heavily, to conform with and keep the residential character and to comply with historic district requirements, and they have relied on the zoning in so doing. The ANC was concerned for the preservation of the residential integrity of the D/R-5-B District as part of the Dupont Circle area as a whole. Office incursion in the residential zone would eat away at the heart of the urban vitality created by the mix of uses in the area. The Board concurs in the ANC recommendations for the reasons stated therein.

12. There was a petition of some forty-eight signers in opposition to the proposed law office uses at the subject site that was submitted to the record.

13. There were several letters on record in support of the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a use variance the granting of which requires proof of a hardship that is inherent in the property so that the property cannot be used for a purpose for which it is zoned. The Board concludes that based on Findings Nos. 2, 10 and 11 there is no such hardship. The burden of proof has not been met. No probative evidence was offered that the property could not be put to a use permitted in a D/R-5-B District. The Board further concludes that the relief cannot be granted without substantial impairment of the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Connie Fortune to deny, Douglas J. Patton and Lindsley Williams 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: MAR - 1 1982

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."