

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13557 of Dr. Frank G. Davis, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3102) to permit the continuation of a temporary community service center as a gallery and office space of the Sign of the Times Cultural Workshop and Gallery, Inc., a non-profit organization, in an R-2 District at the premises 705 56 Street, N.E., (Square 5216, Lot 20).

HEARING DATE: September 23, 1981 and October 21, 1981
DECISION DATE: November 4, 1981

FINDINGS OF FACT:

1. The application was first scheduled for the Public Hearing of September 23, 1981. A member of the Board of Directors of "The Sign of the Times," the occupant of the subject premises, was the only witness present. The witness was unable to address the issues raised by the Board. The application was continued to the public hearing of October 21, 1981. The witness was advised that the operator of the workshop should be present on that date.

2. The subject property is located on the east side of 56th Street, N.E., between Burroughs Avenue and F Street, and is known as premises 605 56th Street, N.E. It is in R-2 District.

3. The subject site has a width of 100 feet on 56th Street, and a rear width of 143.98 with a dog leg in its southeast corner measuring 18.86 feet. The lot runs 200 feet in depth on the north and 221 feet on the south. The site is flat. A fifteen foot wide public alley is located at the rear of the property.

4. The site is improved with a two story detached frame building. The windows in the rear of the structure are boarded up as are other windows on the sides of the structure. There have been some break-ins and the windows were boarded up for security reasons. The boarded up rooms are used for storage purposes.

5. The structure is occupied by The Sign of the Times/Cultural Workshop and Gallery, Inc. which is a non-profit, tax exempt organization founded in 1970 to fulfill a need for a cultural center offering training and

exposure to the arts within the Far Northeast community. Year-round workshops taught by professional instructors are offered in the fine, visual, and performing arts and are conducted at various public facilities throughout the community. Evidence in the record submitted by the applicant indicates that the Sign of the Times also occupies space in the Lansburgh Building on 7th Street, N.W.

6. The facility operates daily from 10:00 A.M. to 8:30 P.M., seven days a week. The ages of the students are from twelve to twenty-four years. The programs are funded through some government agencies and private contributions.

7. By letter of February 21, 1974, the Zoning Inspection Branch advised the Director of the subject facility that an inspection of the premises 605 56th Street, N.E., and a research of District Government records disclosed that the site was being used without a proper Certificate of Occupancy and advised that the Gallery apply to the BZA for a use variance from the R-4 use provisions. On February 28, 1974 an application was filed at the BZA, No. 11623. A public hearing was held on April 17, 1974. The application was advertised for a use variance. A Final Order dated July 31, 1974, was issued. In the Conclusions of Law in the Final Order, the Board stated as follows:

"Based on the above Findings, the Board is of the opinion that the applicant's factual presentation before this Board conforms to the definition of use of a community service center as opposed to a strict office use as applied for by the applicant as a use variance.

The Board concludes, that because of the facts before them in this case, that the applicant does not require a variance but comes within the pervue of the regulations as a special exception use. Based upon the facts of this case the Board interprets this application as a request to operate a temporary community service center and concludes that the applicant has satisfied the condition of Section 3104.46 of the regulations and that the granting of this application is in harmony with the general intent and purpose of the Zoning Regulations and Maps and will not adversely affect the zoning map and plans."

The application was granted for three years.

8. By letter of August 18, 1977, the office of the Zoning Administrator advised the applicant that the subject premises were being operated without a valid Certificate of Occupancy. The applicant was advised that failure to apply to the Board of Zoning Adjustment, within ten days after receipt of the letter, and continued use of the premises,

would be due cause for the case to be referred for appropriate action without further notice. An application for the continued use of the premises was filed September 8, 1977. The relief sought was as a special exception under Paragraph 3104.46 of the Zoning Regulations, Application no. 12510. The application for the continued use was heard at the public hearing of November 16, 1977 and granted for a period of three years.

9. By letter of September 15, 1980, the office of the Zoning Administrator advised the applicant that the current Certificate of Occupancy would expire on December 5, 1980. The applicant was further advised to file a new application for a special exception under Paragraph 3104.46 before the Certificate of Occupancy expired and that use of the premises without a valid Certificate of Occupancy was a violation and would be enforced. The new application, No. 13557, was filed April 24, 1981, some four and one half months late.

10. By letter of June 29, 1981, the Director of the facility was advised by the Executive Director of the Zoning Secretariat that the Zoning Administrator memo was in error and that the application should be processed as a use variance. The applicant was advised that the burden of proof for a use variance was different from that of a special exception and to contact the staff if he had any questions. In the same letter, the applicant was advised that he was operating illegally and apparently had received funds from the District of Columbia for an illegal operation.

11. The owner of the property, Frank G. Davis, who is also the Chairman of the Board of Directors of the Sign of the Times, testified that the subject property had been rented for single family residential purposes in the past and that it could be so rented again. He did not wish to rent the property in that manner since the subject Sign of the Times would have no place to go and its program was needed and appreciated by the community. Dr. Davis argued that denial of the application would cause a hardship to the organization because it had no other place in the area to locate its facilities. The applicant offered no evidence of a hardship inherent in the property itself which precluded it from being put to a use for which it was zoned.

12. Advisory Neighborhood Commission 7C, by letter dated September 18, 1981 advised the Board that it supported the application. No reasons for the support were given, nor did the ANC state any issues and concerns for the Board to address.

13. There were letters and petitions of record in support of the application on the grounds of the excellent

work that was done in the community by the occupant. None however addressed the zoning issue of a use variance.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the application cannot be approved as a special exception. The Board further concludes that the Board was in error in applications No. 11623 and 12510 in approving special exceptions under Paragraph 3104.46. That paragraph permits a temporary community service center in an R-4 District. It is not applicable to the subject property, which is zoned R-2.

The application must therefore be considered as a use variance, the granting of which requires substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for purposes for which it is zoned. The applicant has the burden of proof. The Board concludes that the burden has not been met. The subject property is in an R-2 District. The R-2 District does not permit gallery or office space. As found in Finding No. 11, the owner testified that the structure could be put to a residential use again. The fact that a hardship would be created for the tenant if it had to move is not the type of hardship in the property upon the owner that could be a basis for the use variance relief.

The Board is aware of and does not dispute the excellent work that Sign of the Times does. The Board is also aware that over the period of time that the applicant has been before the Board since 1974, on several occasions the tenant has not had a valid certificate of occupancy and has thus not complied with D.C. Government regulations. The Board is also concerned as found in Finding No. 4 that the existing structure in its boarded up condition might be a possible source of harm or danger to the occupants. Notwithstanding any of these latter comments, the application, on its merits, must be denied for failure of proof. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis, Douglas J. Patton and Connie Fortune to deny, Charles R. Norris not voting, having recused himself, William F. McIntosh, not voting, not having heard the case)

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: APR 29 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."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13557, of Dr. Frank G. Davis, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3102) to permit the continuation of a temporary community service center as a gallery and office space of the Sign of The Times Cultural Workshop and Gallery, Inc., a non-profit organization, in an R-2 District at the premises 605 - 56th Street, N.E., (Square 5216, Lot 20).

HEARING DATES: September 23 and October 21, 1981
DECISION DATE: November 4, 1981

DISPOSITION: The Board DENIED the application by a vote of 3-0 (Walter B. Lewis, Douglas J. Patton and Connie Fortune to DENY; Charles R. Norris not voting, having recused himself; William F. McIntosh not voting, not having heard the case).

FINAL DATE OF ORDER: April 29, 1982

ORDER

The applicant filed a timely Motion for Reconsideration dated May 4, 1982. The basis for the request was that if the Board erred in allowing the operation of the subject program at the present location for several years, then the Board should be held responsible for its action and not now preclude the program from continuing at this location.

The Board notes that the original application, BZA No. 11623, was advertised as a use variance. In the Conclusions of Law, in the final Order in that application, dated July 31, 1974, the Board stated as follows:

"Based on the above Findings, the Board is of the opinion that the applicant's factual presentation before this Board conforms to the definition of use of a community service center as opposed to a strict office use as applied for by the applicant as a use variance.

The Board concludes, that because of the facts before them in this case, that the applicant does not require a variance but comes within the pervuew of the regulations as a special exception use. Based upon the facts of this case the Board interprets this

application as a request to operate a temporary community service center and concludes that the applicant has satisfied the condition of Section 3104.46 of the regulations and that the granting of this application is in harmony with the general intent and purpose of the Zoning Regulations and Maps and will not adversely affect the zoning map and plans."

The application was granted for three years. The Board further notes that it granted BZA Application No. 12510, dated December 5, 1977 to continue the use under Paragraph 3104.46 for a period of three years.

The Board notes that in the Conclusions of Law of BZA Order No. 13557, the Board concluded that the application could not be approved as a special exception and that former Boards erred in exceeding their authority in approving application Nos. 11623 and 12510 as special exceptions under Paragraph 3104.46. Paragraph 3104.46 permits a temporary community service center in an R-4 District and is not applicable to the subject site, which is zoned R-2 and not controlled by R-4 zoning regulations.

The Board notes that the applicant was informed by the Executive Director of the Zoning Secretariat, by letter dated June 29, 1981, that the requested relief was incorrectly filed as a special exception, that the application was to be processed under Paragraph 8207.11 as a use variance and that the burden of proof to be met by the applicant was accordingly different. The Board concluded in Order 13557, that the applicant did not provide evidence that a hardship upon the owner due to a unique or exceptional condition in the property would preclude the use of the subject property for purposes for which it is zoned and, therefore, the applicant did not meet the burden of proof required by Paragraph 8207.11.

Upon consideration of the Motion and the Order, the Board finds that the motion fails to state any respects in which the final decision of the Board is erroneous. The only basis for the applicant's motion is a past error of the Board.

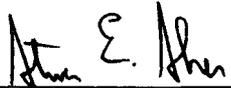
The Board had advised the applicant approximately three months in advance of the hearing of the burden of proof that had to be met and of the section of the Zoning Regulations under which the application would be advertised. The staff had invited the applicant, if he had any questions, to review them with the staff. The subject application was scheduled for hearing on September 23, 1981, but was continued until October 21, 1981, because the applicant was not prepared to address the use variance question.

The Board concludes that it has made no error in deciding the application. It is therefore ORDERED that the Motion for Reconsideration is DENIED.

DECISION DATE: June 2, 1982

VOTE: 3-0 (Connie Fortune, Walter B. Lewis and Charles R. Norris to DENY; William F. McIntosh and Douglas J. Patton not present, not voting).

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

ATTESTED BY: 

STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN 22 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."