

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13779, of C&P Building Limited Partnership, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against allowing an accessory use to be located on a lot other than the lot on which the principal use is located (Sub-section 7601.1) to permit a medical office building for Capitol Hill Hospital in an R-4 District at the premises 629 Constitution Avenue, N.E., (Square 867, Lot 18).

HEARING DATE: June 23, 1982  
DECISION DATE: September 1, 1982

FINDINGS OF FACT:

1. The subject property is located on the south side of Constitution Avenue between 6th and 7th Streets, N.E. and is known as 629 Constitution Avenue, N.E. It is in an R-4 District.

2. The subject lot is rectangular in shape measuring 45.0 feet by 136.29 feet. The site is flat and is improved with a three-story brick structure and basement which was constructed in 1906. The structure has been vacant for the past five years. The structure occupies 100 percent of the lot and contains approximately 15,000 square feet.

3. The site is joined on the east by a 14.9 foot public alley followed by row dwellings occupied as residences. To the south, at the rear of the subject site, is a thirty foot public alley followed by the rear yards of row dwellings with frontage on A Street, N.E. To the west and north across Constitution Avenue are row dwellings occupied as residences.

4. Previous requests to use the subject property have been before the Board. Application No. 13390, was a special exception for use by the Potomac School of Law. This was withdrawn on February 17, 1981. Application No. 13121 was a request for a use variance to use the building as offices for the Liberty Lobby, Inc. This was withdrawn October 6, 1980. On June 20, 1980, the Board in Appeal No. 13154 upheld the decision of the Deputy Zoning Administrator to deny a certificate of occupancy to use the subject premises as offices.

5. The applicant now proposes to use the subject premises as medical offices, accessory to the operations of

the Capitol Hill Hospital at 700 Constitution Avenue, N.E. It will be occupied by fifteen physicians with offices of approximately 1,000 square feet each where medical services would be performed. The Capitol Hill Hospital site is located approximately 420 feet from the subject property.

6. Doctors practicing at Capitol Hill Hospital have requested additional office space. Eight to nine physicians with specialties in internal medicine, obstetrics, gynecology, urology, psychiatry and orthopedics have expressed an interest in office space. The doctors allege that the subject physicians building is needed for: (1) access and availability for patients to doctors of varying specialties; and (2) access and utilization of time of patient and doctor to the services of the hospital.

7. An unknown group of physicians would purchase and own the subject property and enter into a legal arrangement with the Capitol Hill Hospital with the following requirements:

- a. The Hospital would make existing parking available to physicians.
- b. The Hospital will provide security service.
- c. The Hospital will make hospital services available to the physicians.
- d. The Hospital will provide environmental or house-keeping and cleaning services.
- e. The Hospital would require that any doctor be a member of the Hospital medical or dental staff.
- f. There would be the ethical practice of medicine.
- g. The Hospital would have the right of first refusal of any vacant doctors' suite to insure that staff physicians occupy the medical building.

8. Mr. Leopold Boeckl, general partner of C&P Building Limited Partnership, the applicant, testified that the subject structure has high ceilings, some with height of sixteen feet. Initially the structure was studied to determine whether it could be converted to an apartment house. The applicant was of the opinion that conversion to apartments was economically infeasible because each unit would have to sell for \$235,000, which is not marketable in today's economy. The applicant was also of the opinion that it would be infeasible to provide on-site parking since the structure occupies 100 percent of the lot and to provide structured parking is impractical. On-street parking would be inconvenient since Constitution Avenue is one-way during morning and evening rush hours.

9. The President and Chief Executive Officer of Capitol Hill Hospital testified that an alternative structure on the northwest corner of the intersection of 8th and C Streets, N.E., known as Shelton's Market, had been considered for potential leasing. The structure is vacant and contains approximately 12,000 square feet of floor area. It has one story and a basement, no windows and a ramp provides access to the basement. Thirty-two parking spaces are located on the roof. The hospital intends to lease the structure for storage and parking. The net square footage of floor space would not be satisfactory for fifteen physicians at 1,000 square feet of office space, nor is the structure suitable for medical office use.

10. The Hospital's President further testified that the Hospital has existing parking lots directly across from the Hospital on 7th Street, N.E. on which a medical building was previously proposed. Because of community opposition, that building was never constructed. The witness further testified that the hospital had considered the feasibility of building an above-grade structure above the underground parking garage. A letter dated July 2, 1982, from the architect, engineering and planning firm Wilmot, Bower and Associates, Inc. was filed in the record. That letter stated that during the early design phases for the nursing tower and garage, the impact of various neighborhood associations' vigorous opposition to any new construction and, specifically to any designs which would have a visible superstructure related to the garage, resulted in a decision not to provide such potential. This decision also recognized a probable cost increase of the in-place structure of a fifteen to twenty per cent surcharge for an improbable future building. At that time also, the proposal to design heavier slabs having an integral waterproofing system, thus increasing the column loading, was rejected because of cost restrictions. The final design represented the lightest, least expensive of a number of alternatives explored. The architect concluded that any consideration of adding even one more floor and roof, with said floor designed for light "office function" occupancy, would be so prohibitively costly as to render the concept quite impractical.

11. A staff physician of the Hospital, who would participate in the ownership and would occupy an office in the proposed medical building, testified that he presently sees patients twenty-five hours per week. Thirty to forty patients are seen per week. During a seven day period, patients at the physician's office at 424 C Street, N.E. were surveyed to determine their mode of transportation to the office. It was found that a majority of the patients walked, some drove and parked their cars and others were dropped off and picked-up by car.

12. The Hospital is offering its parking facilities to accommodate the parking needs of the proposed medical building for physicians, patients and visitors. The Hospital presently provides parking for all of its staff physicians. Physicians in the proposed facility would be provided with off-street parking. The Hospital has a total of 315 spaces. The Hospital site provides 169 spaces. The parking lots at 656 Massachusetts Avenue, N.E. and 220-232 7th Street, N.E. provide a total of 146 spaces.

13. The applicants' traffic expert testified that as a result of surveys performed at other medical facilities, he determined there is a parking need for the proposed facility of one parking space for each staff person and 0.6 spaces for each patient. The proposed medical building would then need thirty to thirty-five parking spaces. He also determined that approximately sixty percent of the patients would arrive by car. He estimated 120 patients per day five days per week, would be seen by all fifteen doctors. Patient trips would be distributed throughout the day.

14. The Stanton Park Neighborhood Association by letter, dated June 22, 1982, stated its support of the application with the conditions that:

- a. The use of the building be forever limited to use as a medical office building, and
- b. A minimum of thirty-two parking spaces be provided for said medical office building, in addition to physician and staff parking.

15. Letters and a petition have been received into the record from nearby residents in favor of the application on the grounds that the physicians' offices would provide convenient health care services, there would be an attractive renovation of a vacant building, a vacant building would be put to a use where parking can be provided, even off site, and the increased pedestrian traffic on the streets would tend to deter crime.

16. Petitions were received into the record signed by members of church congregations within the Capitol Hill area who supported the application. Most of the persons who signed the petition do not reside in the Capitol Hill community.

17. Sub-section 7601.1 of the Zoning Regulations states:

"Any accessory use or accessory building shall be located on the same lot with the use or building to which it is accessory, except that required accessory parking space may be permitted on another lot where

specifically permitted under other provisions of these regulations."

The applicant is seeking a variance to permit the proposed accessory medical office use to be on a lot other than the lot on which the Capitol Hill Hospital is located.

18. The Office of Planning and Development, by report dated June 18, 1982, recommended denial of the application. The OPD was of the opinion that the variance request contained the ingredients of both a use variance and an area variance. The specific locational requirements that the accessory use be located on the same lot as the principle use related to an area variance; the introduction of an office use into a residentially zoned area related to a use variance. The OPD was of the opinion that the applicant's requested variance from the definition of the accessory use provisions failed to substantiate the burden of proof in either variance test. The OPD was further of the opinion that the requested variance if approved would substantially impair the intent and purpose of the Zoning Regulations. The Zoning Regulations intend accessory uses and buildings to be located on the same lot as the principal use. For reasons such as lot size, where a practical difficulty is demonstrated as a reason for not being able to provide an accessory building on the same lot, the alternative use of a contiguous lot or a lot separated by an alley could be viewed as meeting the intent of the Regulations that both accessory and principal uses be viewed physically and operationally as a nearby and synonymous unit. In the subject application the hospital site and the proposed site are separated by an entire block. The Board concurs with the recommendation of the OPD.

19. The D.C. Department of Transportation, by memoranda dated July 21, August 3, and August 23, 1982, stated that if the applicant proposed to use the existing Hospital parking lot to accommodate the parking needs of the proposed medical office building, the DOT recommended the following:

- a. The spaces allocated to patients and visitors of the medical office building at 629 Constitution Avenue be clearly marked and available.
- b. The proposed medical office building at 629 Constitution Avenue have a sign posted in front of building to direct patients and visitors to the available parking spaces located on the existing Hospital parking lot.
- c. The Hospital administration reevaluate its policy of issuing parking permits to all employees.
- d. Hospital management should put into effect a traffic systems management plan which gives

preference to car pools, vanpools and to other priority users.

The D.C. DOT made its recommendation based on (A) Parking spaces needed for the physicians of the office building are provided through existing hospital parking facilities; (B) The availability of the parking spaces at the former Shelton Market site, and; (C) The twenty-seven spaces needed for visitors and patient parking are presently available on the existing hospital parking lot. The DOT further determined that there is a deficiency of on-street parking spaces which will result in detrimental cruising in the residential neighborhood and that off-street parking must be provided for the proposed facility.

20. The Board concurs with the DOT that off-street parking must be provided and that detrimental cruising while looking for parking in the residential neighborhood would result from the proposed facility. However, the Board does not concur with the premise assumed by DOT that the former Shelton Market site containing thirty-two parking spaces would be leased by the hospital. It is not certain that the thirty-two spaces will in fact be leased to the hospital. The applicant has furnished to the record no direct evidence to that effect.

21. The Capitol Hill Restoration Society by letter dated June 23, 1982, recommended denial of the application on the grounds that no case had been made that there exist extraordinary conditions resulting in exceptional hardship and practical difficulties as required under Paragraph 8207.11. The Society did not agree that the proposed use can be construed as an accessory use of Capitol Hill Hospital since the records indicates that it would not be owned or operated by the hospital. In addition, parking for the medical offices and normal office operations would cause problems for the residential neighborhood.

22. The owner and director of the Supertots School located at 223 5th Street, N.E. by letter dated June 18, 1982, expressed opposition to the application stating that the hundred of children who attend the school and the many schools in the neighborhood, especially Peabody Elementary School across the street, are already subjected to considerable hazard from commuter traffic utilizing C Street, Maryland, Massachusetts and Constitution Avenues and other traffic during the day generated by commercial offices already existing in the neighborhood. The additional traffic that would be generated by the more than 300 patients a day that would visit such a physicians office building would add intolerably to the traffic danger to these children. This danger would be compounded by the fact that there is no parking available at the premises 629 Constitution Avenue and that use of lots owned by the

Capitol Hill Hospital on the 200 block of 7th Street, N.E. as accessory parking would create heavy additional traffic in the vicinity of the school by drivers unfamiliar with traffic patterns in the area, and therefore more likely to be involved in an accident.

23. Operation to the application was expressed through letters furnished to the record and the testimony of seven residents from the surrounding neighborhood, based on the following issues:

- a. The intrusion of a commercial use into a residential area.
- b. The lack of need for a medical office building, since at least fifty physicians have established offices in the Capitol Hill area within an eight block radius of the hospital.
- c. The ownership by Capitol Hill Hospital of 201 8th Street, N.E. occupied by at least eleven doctors as offices, in a structure which has an occupancy permit for a clinic.
- d. The generation by the proposed use of dangerous and objectionable traffic conditions leading to increased accidents and air pollution.
- e. The inability of the applicant to demonstrate exceptional difficulties or undue hardships upon the owner consistent with the requirements of Paragraph 8207.11.
- f. The availability to the applicant of the Shelton Market site as a potential site for the proposed use in a commercial zone district.
- g. The likelihood of a substantially greater patient visitor rate, as evidenced by the study "Profile of Medical Practice 1981," David L. Goldfarb, editor issued by the American Medical Association, indicating that an average of 112 visits per week are generated by a single physicians office. To apply this average to the proposed fifteen physician offices would generate 1,670 patients per week. Applying the applicant's traffic expert's sixty percent factor for patients traveling by car, there would be 1,002 patient trips by car to the proposed facility. This rate of patient trips would clearly create objectionable traffic and parking problems in the neighborhood.

24. Petitions were filed in the record signed by more than 100 residents opposed to the application on the common grounds already listed by other opposition.

25. Advisory Neighborhood Commission 6A, by letter dated June 18, 1982, recommended approval of the application stating that the medical offices would be of great benefit to the community and that the near northeast area is in great need of the social services that the new center would provide. The Board does not concur with the ANC recommendation.

26. The Board is required by statute to give great weight to the issues and concerns of the ANC. While the Board concurs that the proposed use would benefit many, the Board finds that the ANC resolution is not responsive to zoning issues. The ANC has not addressed itself to the variance that is being requested by the applicant. The ANC has not concerned itself with the issues of whether the property is affected by an extraordinary or exceptional situation or condition, whether the applicant would suffer a practical difficulty or whether approval would result in substantial detriment to the public good.

27. The Board in addressing the concerns of the opposition finds that the applicant is seeking an area variance not a use variance. The applicant has no burden to establish that the subject structure cannot be used for residential purposes. The Board also finds that the applicant need not establish that there are no other facilities available to it. The applicant's burden is to establish that there is a practical difficulty inherent in the hospital site which precludes its use for what is now proposed as the subject property and that the subject structure can be used as an accessory use without substantial detriment to the neighborhood. The Board, for reasons, discussed below, finds that the applicant has not met this burden. The Board is impressed with the amount of opposition to this application and their persuasive evidence in support of their objections. The Board finds that the testimony of residents who are knowledgeable of daily traffic patterns, potential automobile hazards to pedestrians and children, and traffic generators is more persuasive than the testimony of the applicant's experts.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking an area variance, the granting of which requires a showing of a practical difficulty upon the owner of property that is inherent in the property and that under Paragraph 8207.11 the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone

plan. The Board concludes that the applicant has not sustained the burden of proof that a practical difficulty exists in the hospital site to preclude the construction of a medical office building on the same lot as that on which the principal use is located. Community opposition or cost restrictions do not constitute a practical difficulty for failure to develop the hospital site. As to placing the proposed accessory use on the subject site, the Board concludes that based on the evidence of the opposition the relief could not be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Sub-section 3104.1 of the Zoning Regulations states:

"The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of such dwellings into dwellings for two or more families. Very little vacant land would be included within this District since its primary purpose would be the stabilization of remaining one-family dwellings. The District would not be an apartment house district as contemplated under the General Residence (R-5) Districts since the conversion of existing structures will be controlled by a minimum lot area per family requirement.

The Board is of the opinion that an office building with its attendant traffic impact on the immediate neighborhood would not stabilize a residential district. Even if the applicant proposes to provide parking off-site and the DOT recommendation were explicitly followed, the Board is of the opinion that much traffic from the use of the proposed site would still be generated on the neighboring streets, creating an adverse impact on a residential district. The Board concludes that it has accorded to the Advisory Neighborhood Commission the great weight to which it is entitled. However, the burden of proof has not been met by the applicant. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-1 (Lindsley Williams, Connie Fortune and Charles R. Norris to DENY; Douglas J. Patton to DENY by PROXY; William F. McIntosh opposed to the Motion by PROXY).

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

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

BZA APPLICATION NO. 13779  
PAGE 10

FINAL DATE OF ORDER: JUN 14 1983

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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

13779order/JANE14