

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13882, of 1212 Joint Venture, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to use all floors and the basement of the premises as professional or non-profit offices and for a variance from the off-street parking requirements (Sub-section 7202.1) in an HR/SP-2 District at the premises 1212 Massachusetts Avenue, N.W., (Square 283, Lot 814).

HEARING DATE: December 15, 1982  
DECISION DATE: January 5, 1983

FINDINGS OF FACT:

1. The subject site is located on the south side of Massachusetts Avenue between 12th and 13th Streets, N.W. and is known as premises 1212 Massachusetts Avenue, N.W. It is in an HR/SP-2 District.

2. The subject site is approximately 1,500 square feet in area and is improved with a three story and basement brick row house structure. Though vacant now, the previous use of the site was an eight room boarding house, according to Certificate of Occupancy No. B75066, issued October 13, 1972.

3. Including the subject structure, the south side of the 1200 block of Massachusetts Avenue is comprised of a total of seven structures. The subject structure is located approximately mid-block, with three structures to the west and three structures to the east. The three structures to the west include a ten story brick structure on the corner of Massachusetts Avenue and 13th Street, N.W. which structure occupies approximately fifty percent of Square 283 and has frontage on L Street as well, and two three-story brick row house structures, one of which is immediately adjacent to the subject structure. The three structures to the east include a five story brick structure immediately adjacent to the subject structure and two three-story brick structures.

4. According to the last certificate of occupancy on file, all seven of the structures on the subject block are residential in nature. Five of the structures are listed as apartment houses (1234, 1214, 1210, 1204, and 1200 Massachusetts Avenue) three of which are vacant (1214, 1204, 1200) and three of which are for sale (1214, 1210, 1200).

The apartment house located at the corner of Massachusetts and 13th Street, N.W. includes first floor professional offices and two levels of one-site parking. The remaining structures have a history as a residence and a rooming house. Both of these structures are vacant and for sale. While the five vacant structures on the 1200 block are listed under separate ownership, one individual has a common financial interest in four of them, three of which are located on contiguous parcels.

5. The remainder of Square 283 is used for surface parking with the exception of one residential dwelling located at 1215 L Street, N.W.

6. Beyond Square 283, the surrounding area is characterized by mixed residential and commercial uses. A large part of the office portion of this mixed use, south of Massachusetts Avenue and east of 14th Street, N.W., is contained in new, moderate bulk structures. There was one SP type office housed in a former residential structure located at 1151 Massachusetts Avenue, on the north side of Massachusetts Avenue, approximately 300 feet from the subject site. The Board recently granted approval for a second such use at 1121 12th Street, N.W., north of Massachusetts Avenue, also approximately 300 feet from the subject site.

7. The subject 1212 Massachusetts Avenue, N.W. was the subject of a previous BZA application. In Order No. 13048, dated January 28, 1980, the Board denied a special exception to use all floors of the subject premises as professional offices. The Board concluded that the proposed use was not in harmony with the immediate neighborhood which was used exclusively for residential purposes. The Board also refused to accept as justification for office use the financial burden associated with renovating the subject structure for residential use. There was opposition to the application from abutting property owners who testified as to the residential nature of the block. These abutting property owners resided at 1214 Massachusetts Avenue, N.W., which is now vacant.

8. In January of 1980, the applicant filed with the Board a Motion for Reconsideration. The applicants claimed the Board's finding that the proposed use was in harmony with the residential character of the immediate neighborhood was not supported by the facts of the case. They cited, as justification, the presence of two properties within the immediate neighborhood which contained professional office space, 1234 and 1221 Massachusetts Avenue. The applicants also claimed that the BZA improperly took into consideration evidence relating to the possibility of using the subject site for residential purposes.

9. On March 14, 1980, the Board denied the applicant's Motion for Reconsideration. The Board found that the material facts relied upon in its order were essentially correct and that the conclusions of law rationally followed from those findings.

10. Following the denial of the Motion for Reconsideration, the applicant appealed the Board's denial of the special exception application to the D.C. Court of Appeals. The Court held that the case record supported the Board's conclusion as to the residential character of the immediate neighborhood. The Court noted that the language of Paragraph 4101.44 required only that the proposed use be in harmony with the uses on "neighboring property." The Court further noted that:

By using the term, 'immediate neighborhood,' the Board was tailoring its conclusion to this requirement. The Board properly concluded that, given the 'buffer function' of an SP-2 Zone, the proposed office use would not be in harmony with existing uses on neighboring properties because, even though there were other commercial uses in the area, the immediate neighborhood was exclusively residential."

As to the applicant's assertion that the Board improperly considered evidence relating to the possible residential use of the subject site, and in so doing transformed a special exception proceeding into a use variance, the Court noted that the Board's conclusion of law and basis for denial was the result of the applicant's failure to demonstrate compliance with the special exception criteria contained in the regulations and that findings by the Board relative to alternative uses had only incidental bearing on the decision.

11. The applicant again seeks a special exception under Paragraph 4101.44 of the Zoning Regulations in order to use all floors and the basement of 1212 Massachusetts Avenue as professional or non-profit office. The applicant has not secured a tenant for said offices, but anticipates that the building will accommodate six to eight professionals and three clerical staff. The applicant stated that only minor interior renovations will be necessary to accommodate an SP type office occupant and that no exterior alterations are contemplated.

12. The applicant is also seeking a variance from the off-street parking requirements of Sub-section 7202.1. The applicant is unable to provide the required number of on-site parking spaces.

13. The subject structure was constructed in 1920 and was used for residential purposes until February of 1982.

In February of 1982, a vocational school, permitted as a matter-of-right in an SP-2 District, rented the subject structure for six months. The school's lease did include a renewal option. According to the applicant, in order to accommodate the school, it was necessary to completely renovate and refurbish the structure's interior. The school applied for a certificate of occupancy, but said certificate was withheld pending the completion of interior renovations. Before the certificate of occupancy was issued, however, the school lost both its federal funding and its D.C. license. Lacking funding and a license, the school closed its doors and vacated the subject structure.

14. The applicant argued that there have been substantive changes in the situation that makes the subject application distinguishable from the prior application that was denied. There has been a change of ownership of premises 1214 Massachusetts Avenue. The former owners were parties in the prior application who had appeared at the public hearing in objection to the application on the grounds that the subject block was a residential block and that the proposed offices would not be in harmony with the neighborhood. Such owners no longer reside at 1214 Massachusetts Avenue. In addition, the applicant argued that the number of residential occupancies had decreased from five to one. Thirdly, a new zoning overlay, HR/SP-2, was instituted for the subject square. Fourthly, the aforementioned training school leased the subject premises for six months. It was a non-residential entity. The applicant argued from the aforementioned changes that the harmony of residential use has changed.

15. The applicant argued that the proposed use of six to eight professionals and three clerical staff is a less intense use than a vocational school of some fifty students. Also, the subject proposal would preserve the external appearance of the structure, whereas a residential hotel use could demolish all the structures and result in construction of a building of steel and glass that would be in no way in harmony with the subject square. The applicant further argued that there was now no objection to its proposal. The applicant failed to produce any probative evidence that there was anyone in favor of the proposal.

16. The applicant testified that the subject structure could not readily be put to a residential use. As a rooming house, it lacked kitchens. Its interior was cut up to provide as many rooms as possible. The applicant was of the opinion that a single family residence would be out of character in the subject area and that an apartment house was economically unfeasible. In addition the applicant has completely rehabilitated the subject structure for non-residential uses.

17. The Office of Planning and Development, by report dated December 7, 1982, recommended that the application be denied. The OPD reported that the proposed use is not in harmony with the residential use of neighboring properties. Though vacant now, the property immediately to the west, 1214 Massachusetts Avenue, N.W., has a past history of residential use. The property to the east, 1210 Massachusetts Avenue, which is occupied, is also residential. The overall character of the block is residential, and has been historically, with the exception of some first floor office use at 1234 Massachusetts Avenue. There are other incidences of non-residential use at two locations on the block within the past year, e.g., a vocational school at the subject site and campaign offices at 1200 Massachusetts Avenue, but these uses were not legitimized by the issuance of a valid certificate of occupancy.

18. The OPD noted that while the proposed use is not in harmony with the use of neighboring properties, the height, bulk, and design of the subject structure is compatible with other structures on the block. The three story brick subject structure has a floor area of 4,800 square feet and an FAR of 3.2. It is one of three brick row dwellings on the block of slightly varying height but similar bulk. These three row houses form an integral unit which harmonize with the three moderate bulk brick apartment structures east of the subject structure, two of which are three stories and one of which is five, and the high bulk ten story apartment building located to the west of the subject structure on the corner of Massachusetts Avenue and 13th Street, N.W.

19. The OPD further reported that the intensity of the proposed use is such that it will not create any dangerous or other objectionable traffic conditions. The applicant anticipates no more than eleven employees at the site and a reasonable number of visitors and/or clients. While parking on Massachusetts Avenue and surrounding streets is restricted, there are ample surface parking lots, both in the immediate square and beyond, to accommodate the parking needs of employees. Also, the site is served by a scheduled Metrobus route.

20. As to the variance relief requested, the Office of Planning and Development reported that Sub-section 7202.1 of the regulations requires one on-site parking space for each 1,800 square feet of office space exclusive of the first 2,000 square feet. With 4,800 square feet of floor area, the applicant is required to provide two on-site spaces. Since the applicant is unable to provide any on-site parking, the applicant is requesting a variance. In order for the variance to be granted, the applicant must demonstrate that by virtue of some unique aspect of the site, the strict application of applicable parking standards will create a practical difficulty for the owner. Also, there must be a

showing that the variance can be granted without causing substantial adverse impacts, and that its granting will not impair the purpose, intent, and integrity of the zone plan for the city. The OPD reported that it believed that the applicant met the practical difficulty test, in that the subject structure was constructed prior to the adoption of the 1958 parking standards. In addition, as noted, while parking is restricted on Massachusetts Avenue and surrounding streets, there is ample surface parking available to accommodate the cars generated by the proposed use. Finally, the applicant has stated that long term parking arrangements are available at 1234 Massachusetts Avenue.

21. In summary, the OPD recommended a denial of the application in that the applicant's proposed use is not in harmony with the residential use of neighboring properties and the residential character of the 1200 block of Massachusetts Avenue. The Board concurs in the OPD recommendation and its reasoning.

22. Advisory Neighborhood Commission 2C, by letter dated December 6, 1982, reported that it believed that there is a strong need for the maintenance and continuance of a residential community of citizens in the city of Washington, D.C. The ANC strongly supported the Mayor's Order 82-182, of October 8, 1982, concerning "Declaration of a Continuing Housing Crisis." Further, the ANC noted that in the city there is much developed, and unused office space in the downtown area. With regard to the subject application, the ANC position was that the premises at 1212 Massachusetts Avenue, N.W. should be kept as residential property and not converted for office use. The ANC asserted that this opinion also represents the viewpoint of persons who reside in the area.

23. The Board is required by statute to give "great weight" to the issues and concerns of the ANC that are reduced to writing. The ANC's position that the subject structure should be kept as residential property is not clear to the Board. If the ANC agrees with the position as stated by the OPD that the proposed use is not in harmony with the residential use of the neighboring properties then the Board concurs. If the ANC contends that the only use of the structure is for a residence and that an office use must seek facilities in a commercial district, then the Board does not concur. The applicant seeks its relief through a special exception not a use variance. The applicant has no burden to prove that the premises cannot be used for residential purposes. The applicant does have the burden to prove that the proposed use is in harmony with the use, height, bulk and design with existing uses and structures on neighboring property.

24. The Board in addressing the issues raised by the applicant in Finding No. 14 finds that the assertion that there have been substantive changes since the denial of the last application has insufficient merit to warrant approval of the application on that basis. The fact that houses are vacant and concomitantly that the number of residences has decreased does not alter the established residential character of the neighborhood. The aforementioned vocational school was a permitted use. The HR/SP-2 overlay was designed to encourage a hotel as well as other types of residential uses. Lastly, a lack of opposition is no grounds to grant an application. The requirements of Paragraph 4104.44 must be met.

25. There were no letters of record or testimony at the public hearing from neighbors in support of or in opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception, the granting of which requires proof of compliance with Paragraph 4101.44, including Sub-paragraph 4101.441, of the Zoning Regulations. The Sub-paragraph provides that the use, height, bulk and design of the subject structure be in harmony with existing uses and structures on neighboring property. The Board concludes that the proposed use for office space is not in harmony with the immediate neighborhood that is used exclusively for residential purposes. The subject property has always been and still is available for uses for residential purposes. The applicant should have been aware of this when it purchased the property unconditionally. The applicant should have been aware of the costs that would be involved in renovating the property for whatever uses. The fact that the applicant now argues the issue of economic infeasibility is no basis for granting a special exception. The property can continue to be used for residential purposes which would be permitted as of right and would be in harmony with surrounding uses. The Board is of the opinion that materially no facts have changed since the Board denied the prior application for the same use. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled.

The Board further concludes that the relief 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 properties. Accordingly, it is ORDERED that the special exception is DENIED. Having denied the special exception, the Board need not address the issue of the variance relief.

VOTE: 4-1 (Carrie L. Thornhill, Lindsley Williams, William F. McIntosh and Charles R. Norris to DENY; Douglas J. Patton OPPOSED).

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

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

FINAL DATE OF ORDER: MAY 23 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 SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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