

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13983, of the Iowa Condominium Association, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use unit one, part of the basement, as an office in an R-5-C District at premises 1325 13th Street, N.W., (Square 280, Lot 28).

HEARING DATE: June 22, 1983

DECISION DATE: June 22, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject premises is located on the southeast corner of the intersection of 13th and O Streets, N.W. The site is in an R-5-C District and is known as premises 1325 13th Street, N.W.
2. The site is rectangular in shape, and its dimensions are 192.50 feet on the east and west sides, and 340.25 feet on the north and south sides. The site has an area of 65,498.12 square feet. The property occupies approximately fifty percent of Square 280, and has been designated as one large lot, known as lot 28.
3. The site is improved with the Iowa Condominium, which consists of ninety-six residential units housed in a seven story plus basement brick structure with frontage on 13th Street and a series of three and four story plus attic brick row dwellings with frontage on O and 12th Streets, N.W. Beneath the condominium units is an underground parking facility with approximately ninety-six parking spaces.
4. The subject structure, the seven-story apartment structure, has a certificate of occupancy authorizing apartment use for forty-three units, basement, first through seventh floors.
5. There is access to the condominium from 13th Street on the west and O Street on the north, and from a public alley located midblock between N and O Streets, bisecting the square.
6. Directly across the public alley, the remaining fifty percent of the square is primarily residential in use with three and four story row dwellings used as apartment

houses and rooming houses. Other uses include a liquor store, a car wash, and a gas station, all located on 13th Street.

7. The subject square is located in the R-5-C zone, with its southwest corner in SP-2. Adjacent blocks on all four sides are R-5-C, and one block to the north is Logan Circle which marks the beginning of the R-5-B zone. The C-2-A zone begins one block to the east, C-2-C begins two blocks to the west, and one block south is SP-2. The area north and northwest of the site is characterized by medium to moderately high density residential use. The area south and southeast of the subject site is characterized by mixed residential and SP type office use.

8. The Iowa Condominium is owned and operated by a condominium association consisting of the owners of all ninety-six units. The only unoccupied unit in the premises is unit one in the basement of the seven-story apartment building. This vacant unit is the subject of the present application.

9. The subject unit was previously used as a sales office by the condominium developer. Since initial sales activity has been completed, a sales office on the premises is no longer required. The applicant is seeking to use this unit as commercial office space, for rent to a tenant qualifying as a professional office user.

10. On April 22, 1983, the Iowa Condominium Association applied to the D.C. Board of Zoning Adjustment for a variance from the use provisions to allow the unit to be occupied and used as an office.

11. The Board of Zoning Adjustment has authority to grant variances under provisions of Section 8207.11 of the Zoning Regulations which reads as follows:

"Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application, so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially

impairing the intent, purpose, and integrity of the zone plans as embodied in the zoning regulations and map."

12. The applicant argued that the Condominium Association would suffer severe financial hardship if the unit remained vacant or if it was converted to a residential unit. Residential use would require the installation of a kitchen and full bath, at a cost of \$11,000 which is rendered infeasible by other financial problems of the Association. Further, sale of the unit as a residence would require unanimous approval from all ninety-six owners and all lenders, and would alter the percentage owned by each condominium owner. The preference of the Association for office use of the unit was based on security problems which require a daytime tenant who could observe and report illegal entry.

13. Other potential uses were considered and rejected by the applicant. The use as a condominium association office or condo management office would duplicate existing space used for these purposes. A professional office for a condo owner-occupant was considered, but there were no interested owners. Use of the space as a convenience store for occupants would require a cash-flow projection profitable enough to attract potential commercial tenants.

14. The Office of Planning, by report dated June 14, 1983, recommended that this application be denied. The Office of Planning reported that the applicant had failed to carry its burden of proof. The applicant must demonstrate that some condition inherent in or peculiar to the subject site results in the owner's inability to make reasonable use of the property in a manner authorized by the Zoning Regulations and that strict application of the zoning requirements would result in a undue hardship upon the owner. The Office of Planning was of the opinion that there was nothing inherent in or peculiar to the subject unit which precluded reasonable use in a manner authorized by the Zoning Regulations. The Board concurs with the reasoning and recommendation of the Office of Planning.

15. Advisory Neighborhood Commission 2C made no recommendation on the application.

16. The Logan Circle Community Association (LCCA) in a letter dated June 14, 1983, expressed its opposition to the application. The LCCA found that the property exhibited none of the qualities itemized under Paragraph 88207.11 of the Zoning Regulations that would qualify it for a variance. Specifically, the LCCA stated that the property is not "exceptionally narrow or shallow" and it does not possess "exceptional topographical conditions or other extraordinary or exceptional situations or conditions." Strict application of the zoning regulations would not, in its view, "result in

peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owners of such property." The LCCA was of the opinion that the granting of such a variance would be "detrimental to the public good" and would "impair the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map." The approval of this request of the Iowa Condominium Association would, in effect, be "spot zoning" and would set a precedent for further commercialization of this convenient and close-in residential neighborhood. The LCCA was further of the opinion that the variance request of the Iowa Condominium Association was ill-conceived and ill-advised and, if granted, would lead to additional commercial variance requests throughout the neighborhood. The Board concurs with the recommendation of the Logan Circle Community Association. The Board, however, does not agree that the granting of the variance would set a precedent. The Board's policy is to determine each application on its own merits. The Board further notes that no zoning change is proposed in the application. The property would remain zoned R-5-C.

17. There were many letters submitted to the record from owners of residential property in the immediate neighborhood of the site in opposition to the application on the grounds that the proposed use was an intrusion of office use into a residential district. The Board so finds.

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 use variance, the granting of which requires a showing through substantial evidence of an undue hardship upon the owner arising out of some unique or exceptional condition of the property which precludes the property from being used for the purposes for which it is zoned. The Board further must find that the relief requested 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 met its burden of proof in showing an undue hardship. There is no condition inherent in or peculiar to the property that prevents the owners from making a reasonable use of the property as a whole in a manner authorized by the Zoning Regulations. The property is being used as a ninety-six unit condominium.

The Board concludes that the objective of providing greater security for the building during the daytime working hours, while a desirable goal, does not justify the granting of a use variance. Further, the Board concludes that its financial problems of the Condominium Association do not constitute a hardship in the sense defined by the Zoning Regulations, nor do the Association's procedural problems in

obtaining approval from 100 percent of the owners and lenders for sale of the subject unit as a residence. The subject unit itself can be used for a permitted purpose.

The Board concludes that the requested use variance cannot be granted without substantial detriment to the public good and substantial impairment of the intent, purpose and integrity of the zone plan. The Board suggests that the applicant explore other possible uses for the subject unit that do not necessitate use variance relief. The Board concludes that the property can and should be put to a use permitted under Sub-section 3105.3 or to a special exception use under Paragraph 3105.43 of the Zoning Regulations. Accordingly, it is hereby ORDERED that the application is DENIED.

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

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

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

FINAL DATE OF ORDER: NOV - 9 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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