

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14033, of Stable Associates, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from designs of neon or gas tubing display on buildings to a flat and offices and for a variance from the prohibition against the enlargement of a structure devoted to a nonconforming use (Paragraph 7106.14) or in the alternative, a variance from the use provisions allowing a flat and offices in a building located on an alley lot (Sub-section 3104.3) and a variance from the prohibition against allowing a building on an alley lot to be renovated and enlarged (Sub-section 7606.1) for a proposed renovation and enlargement of a nonconforming structure to be used as a flat and offices on an alley lot in an R-4 District at premises rear 424 4th Street, N.E., (Square 780, Lot 810); and

Application No. 14034, of B.Y. Associates, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a non-conforming use from storage of building material to a flat and offices and variances from the prohibition against allowing an enlargement and addition to a structure devoted to a non-conforming use (Paragraph 7106.14) and from the height requirements (Sub-section 7606.4) or in the alternative, variances from the use provisions allowing a flat and offices in a building located on an alley lot (Sub-section 3104.3), from the prohibition against allowing a building which will be used as a flat and offices on an alley lot to be renovated and enlarged (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) for a proposed renovation and addition to a nonconforming structure to be used as a flat and offices on an alley lot in an R-4 District at premises rear 415 3rd Street, N.E., (Square 780, Lot 43); and

Application No. 14107, of the Heritage Foundation, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3304.1), the side yard requirements (Sub-section 3305.1), the prohibition against the construction of an apartment house on an alley lot (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) to construct a new three story apartment house of four units in an R-4 District at premises rear 422 4th Street, N.E., (Square 780, Lot 62).

HEARING DATES: April 11 and June 27, 1984

DECISION DATES: May 2 and July 25, 1984

FINDINGS OF FACT:

1. The subject application were consolidated by the Board for the purpose of this order since all three lots are intended for consolidated development, many of the facts regarding the three cases are the same, and all three cases were heard and disposed of at the same time.

2. Application Nos. 14033 and 14034 were originally scheduled for hearing on November 16, 1983. At that hearing, the applicants requested, and the Board granted, postponement of the cases until April 11, 1984, to permit the applicants to acquire the third lot, Lot 62, and to file Application No. 14107. The postponement enabled the applicants to provide an overall scheme for development that provided a fifty-fifty mix of commercial and residential use.

3. The consolidated cases were originally heard by the Board on April 11, 1984. At its decision meeting of May 2, 1984, the Board deferred action and scheduled further hearing limited to two issues:

1. In Applications 14033 and 14034, whether the proposed office use is a neighborhood facility, as required by Sub-paragraph 7106.114.
2. In Applications 14033 and 14034, evidence in support of the use variance for flat and office use, and in Application No. 14107, evidence in support of the variance from Sub-section 7606.1 to construct an apartment house, which is also a use variance.

The further hearing was held on June 27, 1984.

4. The subject Lot 810 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear of 424 4th Street, N.E. The site contains 3,850 square feet of land area and is developed with a three-story red brick stable, built in the 1890's. The stable occupies all of the lot area.

5. The subject Lot 43 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear 415 3rd Street, N.E. The site contains 3,723 square feet of land area and is developed with a two and three story red brick stable, built in the 1890's. The stable occupies all of the lot area and has suffered extensive fire damage.

6. The subject Lot 62 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear 422 4th Street, N.E. The site consists of 4,554 square feet of land area and is the largest of the three lots which are the subject of this order. The site is vacant and presently used to park automobiles. The east and south sides of the site abut ten and twenty-five foot wide public alleys, respectively. The site's north and west sides abut fifteen and thirty foot wide alleys, respectively. These sides of the property also face the subject Lots 810 and 43.

7. The square is developed with row dwellings on its street frontages. There is a small restaurant located at the intersection of 4th and D Streets.

8. There are no alley dwellings in Square 780. Several alley rights of way traverse the square. A ten-foot wide alley runs north through to E Street. A fifteen-foot wide alley bisects the square in an east/west direction from 3rd Street to 4th Street. A second east/west ten foot alley leads out to 3rd Street. There are thirty and twenty-foot wide alleys abutting the subject site. The substantial width of these alleys creates an open setting for the lots.

9. Lot 43 was originally a stable and was built in two sections. The exact date of construction of the first part is unknown, but it was not standing in 1887. City documents indicate that it had been completed in 1892. In 1893, the second, or three-story section was constructed. Both sections of the building are typical of late Victorian secondary structures. The materials relate to the other buildings in the alley by virtue of the common bond brick-work and the modest corbel at the roofline.

10. The building on Lot 810 was constructed during the summer of 1891 and was widely known in the neighborhood as the "Old Senate stables." Set on a brick foundation, the building has walls laid in American or common bond pattern. It is 70.4 feet wide and 54.8 feet long and thirty-five feet high at the tallest point of its roof. Original horse stall windows remain in both the east and north walls, the east wall being virtually original. The building's stylistic concept, adapted for utilitarian purposes, is an early example of the classic revival architecture prevalent on Capitol Hill just as the twentieth century began.

11. The use of Lots 810 and 43 as livery stables was relatively short-lived. In the early years of the twentieth century, private garages were constructed behind houses throughout the neighborhood and by 1910 the Stanton Park area had its own auto sales company. By the end of World War I, the building had been converted to commercial and manufacturing use. The last certificate of occupancy for

the building located on Lot 43 was issued November 29, 1962, to Adam Construction Corporation for storage of building materials. The last certificate of occupancy for the building located on Lot 810 was issued September 1, 1972, to World Art Products, Inc., for designing of neon or gas tubing display.

12. By letter dated January 18, 1982, the Mid-Atlantic Regional Office of the National Park Service conditionally determined that the buildings located on Lots 43 and 810 contribute to the historic significance of the Capitol Hill Historic District. The letter states:

"These former carriage houses/livery stables, like other service and utilitarian structures, were important to the daily life of their neighborhood. For that reason, they make an important contribution to the sense of time and place conveyed by the present neighborhood, and can be certified for the purposes of the Tax Reform Act of 1976 and the Economic Recovery Tax Act of 1981. Since this contribution is dependent upon a narrowly defined character, and in order to ensure that this contribution will continue, certification of this structure is subject to the following condition:

If these structures are rehabilitated, their rehabilitated character must be such that it conveys the original utilitarian nature of the structures."

The applicants proposal is designed to permit adaptive reuse of these structures in accordance with the Secretary of the Interior's "Standards for Rehabilitation."

13. Lots 810 and 43 (Application Nos. 14033 and 14034) were the subject of previous applications before the Board, have a history of nonconforming use, and are both improved with existing historic structures. In light of the similarity of facts as well as the similarity of relief requested, the Board will discuss both lots together for purposes of this order.

14. The applicants propose to restore and structurally alter the existing historic structures located on Lots 43 and 810 to permit conversion to mixed-use consisting of two duplex apartments each, and the remainder office space. Four parking spaces will be provided on Lot 43, one parking space for each residential unit and two to serve the proposed office tenants. Six parking spaces will be provided on Lot 810, one parking space for each residential unit and four to serve the proposed office tenants.

15. When originally filed, the applications proposed general office use. At the public hearing, the applicants

amended their applications to limit the proposed office use to SP-type office uses and lobbyist offices.

16. The proposed mixed use development on Lots 43 and 810 was advertised for relief under two alternative provisions of the Zoning Regulations, either as a special exception under the provisions of Paragraph 7106.11 to change a nonconforming use or as a use variance. For purposes of this Order, the Board will consider first the requested special exception relief for Lots 43 and 810.

17. The threshold requirement for a change in nonconforming use is that the proposed use must be permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right. In the subject case, the previous nonconforming warehouse and manufacturing uses would first be permitted in the C-M District. The proposed mixed use development is first permitted in the C-1 District.

18. The proposed use will not adversely affect the present character or future development of the neighborhood. The restoration of the subject buildings, which are historic structures, will dramatically improve the character of this square and will have a positive impact on the development of the other two alley lots. The proposed mixed use buildings will provide a twenty-four hour residential use to contribute to neighborhood safety and a low-intensity office use.

19. The proposed mixed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibrations, odor, and design and siting. The applicants' traffic and transportation consultant testified that no adverse traffic impacts will result from the granting of the application. Several alley rights of way traverse the square. The substantial width of these alleys creates an open and accessible vehicular circulation system for the square.

20. The applicants propose to provide ten parking spaces on Lots 810 and 43 in the interior of the buildings to ensure that there will be no adverse parking conditions from the renovation of the buildings. Additionally, the companion Lot 62 will provide nine parking spaces to serve the office use. The buildings are also convenient to Metrorail at Union Station to the northwest and the south, to bus routes and to neighborhood serving retail shopping, restaurants, and grocery stores on Massachusetts Avenue in the C-2-A District.

21. The traffic and transportation consultant testified that on the basis of Council of Governments data, an

estimated thirty percent of the employees could be expected to drive to work. With a maximum of forty-four employees, the proposed fifteen parking spaces would be more than adequate for the office employees. Automobile ownership by residents of the area is estimated at 0.4 cars per dwelling unit. With eight units there would be a need for four spaces. The applicants are providing eight spaces for the residential use. The Board finds that the proposed amount of parking is adequate.

22. The traffic and transportation consultant testified that the peak hour trips that could be expected from the development would be approximately seventeen. The intersections that surround Square 780 all operate at level of service "A" during peak hours, with volumes well below the street capacities. The addition of seventeen peak hour vehicles to this street system would have no perceivable effect on traffic operating conditions. The Board so finds.

23. The substantial width of the interior alley system creates an open, well-ventilated and naturally lighted setting for the lots. Further, the structures are of sufficiently large dimensions that multiple dwelling units and the proposed office use can be easily accommodated. As this Board previously found in Applications Nos. 13420 and 13421, this physical situation meets the concerns of Sub-section 7606.1 relating to limited light, ventilation and undue congestion on alley lots. In BZA Orders No. 13420 and 13421, the Board found the basis to grant changes in nonconforming uses to apartment house use. The Board so finds again.

24. The buildings will be renovated to include the retention of the exterior fenestration. Each residential unit will consist of a garage, two full baths, two bedrooms, kitchen, living room and dining room. All four units will have fireplaces, ample storage and closet space.

25. The building on Lot 43 has a flat roof which makes its utilization as a deck possible. Given the 100 percent lot occupancy, the deck access is a good means of achieving exterior residential space for the units. The applicant proposes to enlarge the existing cupola to enable the roof deck space to be used by all tenants of the building. Although this constitutes an enlargement of or addition to the building, this change will only be noticeable from the exterior of this site to a very small extent and is the identical change approved by the Board in the previous case.

26. As for the structure on Lot 810, the applicant proposes to lay a floor in the existing loft area to enable this space to be used by the occupants of the building as living space. Although this constitutes an enlargement of or addition to the building, this change is to the interior

only and therefore will not be noticeable from the exterior. This alteration greatly improves the interior living space and is the identical change approved by the Board in the previous case. For all of the above reasons, the Board finds that proposed use will not create any deleterious external effects.

27. The existing nonconforming uses have not been changed to a conforming or more restrictive use.

28. Pursuant to Subparagraph 7106.114, the proposed change of use is permitted provided the proposed use is a dwelling, flat, apartment house or neighborhood facility.

29. In determining whether a proposed use is a neighborhood facility, this Board considers the character of the surrounding neighborhood, the nature of the proposed use, and the impact on the surrounding neighborhood.

30. The neighborhood in question includes an area roughly within a three to four block radius of the subject property. This neighborhood is not exclusively residential but includes a mixture of commercial and residential uses, including the Capitol and the Senate office buildings. The subject properties are included within the boundaries of the Master Plan for the Capitol Grounds presently pending before Congress.

31. Because of the unique location of the property, the project was designed to attract office users who want proximity to the Capitol. The project also presents a unique opportunity for the living and working arrangement of a mixed use development.

32. The applicants have agreed to limitations on the nature of the office use, its size, and its hours of operation. The office use will be limited to SP-type office users and lobbyist offices. The hours of operation will be from 8:00 A.M. to 6:30 P.M. The gross floor area for the proposed office use will be limited to one-half of the gross floor area for the entire project. The number of office employees will be limited to a maximum of forty-four employees. A minimum of fifteen parking spaces will be provided for the proposed office occupants, one of which will be designated for delivery vehicles. No illuminated signs or displays will be used to advertise the office uses. With these limitations on the proposed office use, the Board finds that it will have minimal impact on the surrounding neighborhood.

33. The applicant and the architect testified that other types of neighborhood facilities such as dry cleaners, grocery stores, and restaurants could have an adverse impact as far as noise, odors, lighting, signage and traffic. The

subject buildings are sufficiently large enough to accommodate twenty small stores which would greatly increase the pedestrian and vehicular traffic in the square.

34. The applicant testified that the proposed mixed-use development would serve the neighborhood because of the opportunity to provide housing, the limited nature of the office use, the increased security of a mixed-use twenty-four hour environment, and the enhancement of what is now a blighted interior of the square. The Board so finds. The Board further finds that because of the unique alley lot location of these properties, the proposed mixed-use development is an appropriate neighborhood facility for this location and would serve the neighborhood.

35. The Board may require modification to the use or the plans to protect property in the neighborhood. The applicants have already made extensive modifications to the plans to address the concerns of the neighborhood and the Office of Planning. These modifications include the acquisition of Lot 62 to provide additional residential use, the redesign of the building on Lot 62 to provide parking for the office use, and the provision of a park and play area for children, in addition to the conditions on the nature, size and operation of the proposed office use as enumerated above.

36. For all of the above reasons, the Board finds that the applicants have met their burden of proof so as to be entitled to special exception relief for the proposed mixed use development. The Board finds that because of the unique location and existing size of these buildings, the proposed mixed-use development would serve the neighborhood to a far greater extent than other types of neighborhood facilities. The Board therefore does not address the need for a variance from the use provisions in Applications No. 14033 and 14034.

37. In applications Nos. 14033 and 14034, the Applicants are also requesting area variances to permit the proposed renovation work. The variances requested for Lots 43 and 810 are minor in nature. For Lot 810, the applicant proposes to lay a floor in the existing loft space to enable that space to be used by the occupants of the building as living space. Although this constitutes an enlargement of or addition to the building, the change will not be discernible from the exterior of the building. For lot 43, the applicant proposes to enlarge the existing cupola to enable the roof space to be used by the occupants of the building as outdoor recreation space. Although this constitutes an enlargement of or addition to the building, the change will be discernible from the exterior of the building to a very limited extent. Because this enlargement causes the height of this portion of the structure to violate the provisions of Sub-section 7606.4, a variance

from this Sub-section is also referenced even though the existing remaining portion of the structure is already in excess of the height permitted and is substantially higher than the portion of the building to be enlarged.

38. The extraordinary or exceptional situation or condition affecting the subject sites stems from the location of the properties in an historic district, the fact that on both the lots there are existing buildings which occupy one hundred percent of the lots, and the fact that the lots are alley lots.

39. The applicants' architect testified that without the requested variance for Lot 43, it is practically difficult to convert the building to multifamily use and provide each unit with access to outdoor recreation space. The roof area proposed to be utilized is existing space which, without the variance relief requested, would simply be left vacant. The Board so found in the previous Application No. 13421 and finds again.

40. The applicants' architect testified that without the requested variance for Lot 810, it is practically difficult to convert the building to multifamily use and allow each unit the desired amount of living space. The loft area proposed to be utilized is existing space which, without the variance relief requested, would simply be left vacant. The Board so found in the previous Application No. 13420 and so finds again.

41. The requested enlargement or addition to the buildings on Lots 810 and 43 will not be visible from the exteriors of the buildings. It enables the properties to be put to an adaptive reuse, adds four units to the housing stock of the city and permits restoration of historic structures.

42. Application No. 14107 is a variance application pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Subsection 3303.1), the rear yard requirements (Sub-section 3304.1) the side yard requirements (Sub-section 3305.1) the prohibition against the construction of an apartment house on an alley lot (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) to construct a new three story apartment house of four units in an R-4 District at premises rear 422 4th Street, N.E. (Square 780, Lot 62).

43. Lot 62 is unimproved and has a history of use as private garages. These structures were condemned in the 1960's and razed in the early 1970's. The lot was first approved by the Board for use as a commercial parking lot pursuant to BZA Order No. 12061, dated April 7, 1976, and was most recently approved by the Board for a continuation

of the parking lot use in BZA Order No. 13811, which expired on April 7, 1984. Application No. 14151, has been filed by the applicants to continue the parking lot use in the event the subject applications are not granted.

44. Lot 62, which is presently unimproved, will be developed with a three-story apartment house consisting of four units and a swimming pool. The apartment house and pool will be built above the first floor in order to retain the existing fifteen parking spaces. The pool and the parking will be shared by the occupants of all three lots.

45. Section 7606 provides that except for use as a one-family dwelling, a structure shall not be erected, constructed, converted altered, remodeled, restored, or repaired for human habitation on an alley lot. This section further states that a one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet or more in width, and has from such alley access to a street through an alley or alleys not less than thirty feet in width. The applicants are requesting a use variance from this provision in order to construct the proposed apartment house.

46. Lot 62 is unique because of its large size, over 4,500 square feet, its location in the interior of the square as well as in an historic district, and the fact that it is intended to be developed as part of an overall development scheme for the three lots. Were Lot 62 not an alley lot, it could be subdivided as a matter-of-right into two lots with flats and provide four dwelling units, which is the same number of units the applicant proposes. Because of its alley lot location and its excessive size, development of the property for use as a single family residence creates undue hardship. Since the lot does not abut an alley thirty feet or more in width with access to a street through an alley not less than thirty feet in width, use of the lot as a single family residence would also require a variance. The excessive size of the lot, its location on an alley, and its location adjacent to two large nonconforming structures and uses, combine to make it infeasible to use the property for a single family residence.

47. The applicant and the architect testified that development of Lot 62 with residential use will have no adverse impact on the public good and will not impair the intent, purpose and integrity of the zone plan. The R-4 regulations provide that for conversion to apartment use, a minimum of 900 square feet of lot area be devoted to each unit. In the present case, the applicants are providing 1,100 square feet per unit, and the unit proposed is totally in keeping with the unit sizes in the surrounding neighborhood. The Board so finds.

48. The applicants are also requesting area variances from the lot occupancy, height, side and rear yard requirements to permit the proposed development on Lot 62.

49. Lot 62 is affected by several exceptional and unusual conditions. The variances requested in order to build the apartment house and pool on Lot 62 are due to the fact that the lot is an alley lot proposed to be developed as part of a comprehensive development plan as well as the applicants' and the neighborhood's desire to provide the maximum amount of residential space as well as parking space.

50. As the applicants' architect testified, without the requested variances for Lot 62 it is difficult to develop the property for residential use. The requested variance from the lot occupancy requirements would permit development of a structure with sixty percent lot occupancy. Given the size and location of the lot, the lot's adjacency to two structures which presently occupy 100 percent of the lot, and the applicants' desire to provide the parking desired by the neighboring citizens, it is difficult to develop the property in keeping with the lot occupancy requirements.

51. As the applicant's architect testified, it is difficult to construct the proposed building in keeping with the height, side and rear yard requirements. The proposed building, in accordance with neighborhood requests, is expressly designed to retain the existing parking, as part of the overall development scheme. In order to do so, the building is being constructed one level above the existing parking. Without the requested height variance, it is difficult for the applicants to design a building that retains the parking and still provides functional living space for its occupants.

52. The applicants are providing 28.4 feet of open space at the rear of the building. Because of the elevated pool and deck, however, this space cannot be considered a rear yard. Were the applicants to eliminate the first level of parking, this space could be considered a rear yard. The pool and deck area, however, as well as the additional parking provided, are significant amenities which the project provides.

53. As to the requested height, side and rear yard variances, the architect testified that there is no adverse impact. The height of the proposed building is only twenty-five feet high on the side nearest the existing dwellings, and slopes upward to a height of thirty-five feet, in keeping with the height and design of the existing alley structures. At the request of the neighbors, the plans have been revised to provide a setback of fifteen feet at the ground floor to provide a park and play area for children.

On the second side nearest existing homes, there is a substantial setback of twenty-eight feet because of the pool as well as a twenty-five foot alley setback, thus providing a total distance of fifty-three feet before the thirty-five foot height is reached. On the remaining two sides, the proposed building abuts existing buildings of equal or greater height.

54. The Office of Planning, by report dated April 4, 1984, and by testimony presented at the public hearings, recommended that the applications be approved. As to the requested area variances for Lots 43 and 810, the Office of Planning was of the opinion that there are unique circumstances affecting the lots relating to the physical characteristics, historical background, the existence of the structures prior to the current Zoning Regulations and location of the subject properties. The Office of Planning was further of the opinion that the additions proposed will not cause any detriment to the public good or impair the intent and purpose of the Zoning Regulations.

55. As to the requested special exception for a change in nonconforming use for Lots 43 and 810, the Office of Planning noted that the majority of the area within a 300 feet radius of the subject property is zoned R-4 and developed with row dwellings in residential occupancy. The subject properties do not abut any commercially zoned properties and are completely surrounded by the rear yards of row dwellings on the perimeter of this square. Beyond the 300 foot radius the Capitol Hill neighborhood is comprised of a variety of uses including the Capitol Complex, Library of Congress, Folger Library, Supreme Court, Senate office building, House office buildings, and commercial shopping strips along Massachusetts and Pennsylvania Avenues containing both office and retail uses. All of these contribute to the neighborhood composition of the area surrounding the site. The Office of Planning was of the opinion that the proposed flat and apartment use of the subject properties will be consistent with the intent of this criterion. The Office of Planning notes however that the proposed office use of these properties needs to be clearly defined so as not to have any adverse effect on the future development and present character of the immediately surrounding area. The Office of Planning concluded that the proposed use will not create any deleterious external effects.

56. As to the requirement that in Residence Districts the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility, the Office of Planning reported that the proposed flats are clearly consistent with this provision. The Office of Planning was of the opinion that the SP type Office tenant proposed occupancy of the site can coexist with the neighborhood without any

measurable adverse impacts and will serve as a neighborhood facility to the many uses in the area.

57. As to the requested use variance for an apartment house on Lot 62, the Office of Planning reported that the lot is large by alley lot standards consisting of approximately 4,500 square feet of land area. The lot is substantially larger than the next largest lot in the square. This lot is vacant, paved and used for parking pursuant to BZA approval. Roughly four of the 1,221 square foot sized lots adjacent the site to the east could fit in the subject site. The Office of Planning was the opinion given the size of the lot, that it would create a hardship on the applicant to limit the use of the lot to a one family dwelling.

58. As to the requested area variances for an apartment house on Lot 62, the Office of Planning reported that the requested area variances from the lot occupancy, and side yard requirements are also directly related to the site's alley status. The practical factors influencing the proposed development of this site and the requested area variances relates in part to the development of the other alley lots and the need to provide on-site parking to accommodate the office use. The Office of Planning reported that the variances are supportable given the lot's location surrounded by public alleys. The project will not be inconsistent with the unit density of the square and the combination of the alleys and the surrounding rear yards constitutes an adequate visual and distance noise buffer from the existing dwellings. The Office of Planning noted that the apartment house will be self-contained and, although occupying 100 percent of the lot, is designed for maximum living space by its occupants including an outdoor deck/pool area, providing above ground yard space.

59. Based on its findings, the Office of Planning recommended approval of the applications with conditions. The Office of Planning was of the opinion that the proposed mixed residential and SP type office development has the potential to be a compatible land use neighbor to the existing dwellings on the perimeter of the square. The Office of Planning noted that the present condition of the subject square interior is less than desirable, posing a threat to the security of its present inhabitants as well as a constant eyesore. The Office of Planning recommended that the following conditions be imposed on approval of the application:

- A. The number of employees occupying the office space be limited to 44.

- B. The office hours of operation be limited to between 8:00 A.M. and 6:30 P.M., except for after hours maintenance and housekeeping.
- C. No illuminated signs or displays be used to advertise the office use(s). Any sign used shall not exceed 144 square inches in area; as in the form of a plaque.
- D. The office use shall designate one of the proposed on-site parking spaces as a visitor space and one of the spaces for delivery vehicles.
- E. The office use shall schedule trash pick-up, and delivery truck schedules during working hours. Trash dumpster locations shall be designated on the plans.
- F. The pool deck shall be sufficiently screened so as to buffer the sound and visual impacts associated with its use from the neighboring properties.

60. The Board concurs with the findings and recommendation of the Office of Planning, as set forth in this order.

61. The Department of Public Works, Office of Policy and Planning, by memorandum dated April 3, 1984, reported that the site is served by several Metrobus routes, including the D2, D4, D6, D8, X8, and 42 routes. In addition, the Union Station stop on Metrorail's Red Line is approximately four blocks from the site. A significant amount of traffic now uses the extensive alley system inside Square 780. Two parking lots currently exist within the square. One, on Lot 42, which is not included in the proposed development, was observed on a recent field inspection to be poorly maintained and to contain eighteen cars. The other, on the lot slated by the applicant for new residential development, has a capacity of seventeen vehicles. Provided that the number of employees in the proposed office development is limited, the project will not generate a significantly higher traffic volume than currently exists within the square, and the alley system will be able to support the level of activity generated by the development. The applicant has already promised to provide an extra five feet of space, in addition to the existing ten foot alley, for access to several of the parking spaces on the east side of lot 62. This will minimize any potential access and circulation problems on this portion of the alley system.

62. As to parking, the Department of Public Works reported that the applicants plan to provide parking spaces to service the proposed office development and one space for each of the eight residential units, for a total of

twenty-three spaces. These levels are adequate to serve the needs of employees if their number is limited and residents, but do not take into account visitors or service vehicles. To remedy this situation, and to prevent over-spill parking on neighboring residential streets, the applicant should arrange for evening visitors to use the office parking spaces, designate two of the office parking spaces for visitors and service/delivery parking, limit the number of office employees to forty-four, and encourage car-pooling and transit use by employees. The Board concurs in the report of the Department of Public Works. Their concerns will be conditions to the granting of the application.

63. By letter dated March 23, 1984, Advisory Neighborhood Commission 6A recommended disapproval of the applications as filed but stated it would recommend approval of the set of applications if the applicants were to develop a plan for the proposed apartment building suitable to the neighbors most affected and if the issues and concerns of the ANC could be addressed to the satisfaction of the Board of Zoning Adjustment and the Office of Planning. The Board is required by statute to give great weight to the issues and concerns of the ANC and makes the following findings:

- A. The plans have been revised since the date of the ANC report to address some of the concerns raised by the ANC. Specifically, the proposed apartment building on Lot 62 has been set back at the ground floor from the adjacent residences and a park and play area is provided for children of the neighborhood.
- B. The applicants have agreed to reserve one parking space for delivery vehicles.
- C. The applicants have agreed that there will be no floodlights from the buildings aimed at residences in the neighborhood.
- D. The applicants have agreed to restrict the type of office use, its hours of operation, the number of employees, and the signage to be used.
- E. The entrances to the parking spaces on Lot 62, have been moved so as not to be abut the adjacent residences.
- F. The revised plans show adequate trash storage inside the buildings with trash compactors.
- G. The applicants have stated that they will be the responsible persons for building management and security.

Based upon the above findings, the Board finds that the applicants have addressed the issues and concerns of the ANC. The Board will address these concerns and list them below as conditions in the granting of these applications.

64. By letter dated April 25, 1984, Councilmember Betty Ann Kane recommended disapproval of the applications. Subsequently, after review of the plans and after discussion with residents of the neighborhood, by letter dated June 27, 1984, Councilmember Kane withdrew her opposition and recommended approval of the applications.

65. By letter dated November 14, 1983, the Stanton Park Neighborhood Association recommended disapproval of Application Nos. 14033 and 14034, stating:

"As the applicant well knows, our opposition is based not on a demand for solely residential development of these dangerous and blighting structures. We have encouraged the applicant to develop a plan which could include a mix of uses beneficial to the community. Unfortunately, that plan is not before us today and is not represented by these revised applications, which we must oppose."

The Board finds that subsequently the applications were substantially changed to include Lot 62, to increase the amount of parking and to create a mixed-use development of approximately fifty percent residential and fifty percent commercial. These revised applications were not voted on by the Stanton Park Neighborhood Association. A representative of the Land Use Committee did file two letters in opposition and did testify at the public hearings in favor of exclusively residential use.

66. The Capitol Hill Restoration Society, Inc., by letter dated April 10, 1984, reported that in November, 1983, the Society voted unanimously to oppose applications Nos. 14033 and 14034 based on the existing plans. At its meeting on April 9, 1984, the Society considered all three subject applications. The Society was unable to pass a controlling motion. By letter of June 26, 1984, the Society reported that the issues of the further hearing of June 27, 1984, were considered. At its meeting June 11, 1984, the Society voted to take the position that general office use is not a neighborhood facility, and that some SP office uses as doctors, dentist, engineer, lawyer are likely to be neighborhood facilities, while others, e.g. international organizations and labor unions and lobbying organizations are not. A non-profit organization might or might not be a neighborhood facility depending on its mission. The Board for reasons discussed in the Order, does not concur with the CHRS as to the SP office uses not constituting neighborhood facilities.

67. There was a petition in support of the application filed in the record of the case signed by residents of Square 780. There was also a petition in opposition to the application also filed in the record of the case signed by residents of the neighborhood. The Board has given due consideration to these petitions. The Board notes that the petitions reflect the pros and cons of the issues discussed by the ANC and the neighborhood associations.

68. Several persons testified at the public hearings in support of the applications citing as reasons for approval the concessions which the developer has made, the superior design of the buildings, the benefits to the neighborhood which a twenty-four hour mixed-use environment will provide, the need for improvements to the interior of the square, the exceptional qualities about the site which place burdens on development, and the adequacy of parking to serve the proposed development.

69. Several persons testified in opposition to applications Nos. 14033 and 14034 and in support of exclusively residential use. As the Board discussed in its previous findings of fact, there are exceptional conditions about these properties which make exclusively residential use unduly burdensome. The Board notes that the parties in opposition generally approved of the design of the buildings yet favored residential use. The concerns raised as to parking, loading, signage and illumination also raised by the parties in opposition have been addressed by the applicant and will be dealt with by the Board in conditioning the relief. The Board further finds that the parties in opposition did not oppose the use and area variances required for the development of Lot 62 as an apartment house. The other concerns of the opposition were the litter that accumulated about the sites and the safety of the alleys where the neighborhood children play and which would be further exacerbated by the proposed office use. As to these concerns, the Board finds that they can be alleviated through the imposition of the conditions imposed in the Order. Other opposition argued that an office of a lobbyist was not a neighborhood facility. The Board for reasons discussed in the Findings and Conclusions does not concur.

70. There were numerous letters filed in the record of the case both in support of and in opposition to the applications based on the reasons already discussed in the Findings.

CONCLUSIONS OF LAW AND OPINION:

Based upon the above Findings of Fact and evidence of record, the Board concludes that the applicants have met their burden of proof for the requested special exception relief for Lots 43 and 810. The Board concludes that the

establishment of the proposed change in nonconforming use will not create dangerous and otherwise objectionable traffic conditions, that the proposed use will be a neighborhood facility and that the use will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the present character and future development of the neighborhood. The Board concludes that ingress and egress are adequate for the proposed use and the location of on-site parking spaces ensures adequate parking. In view of this decision, the Board makes no conclusions on the requested use variances for Lots 43 and 810.

The requested variance relief to permit the addition of the loft to the building on Lot 810 is an area variance, the granting of which requires a showing of practical difficulties. The Board concludes that the location of the lot and the size of the existing building constitute a practical difficulty for the owner. The Board further concludes that the variance requested is minor in nature and is not a major departure from the character of the district. The requested variance relief to permit the enlargement of the cupola to the building on Lot 43 is an area variance, the granting of which requires a showing of practical difficulties. The Board concludes that the location of the lot and the size of the existing building constitute a practical difficulty for the owner. The Board further concludes that the variance requested is minor in nature and is not a major departure from the character of the district.

Based on the Findings of Fact and evidence of record, the Board concludes that the applicant is seeking use and area variance relief to permit the development of an apartment building on Lot 62. The Board concludes that Lot 62 is subject to extraordinary and exceptional conditions in light of its excessive size, its location on an alley, and the fact that the lot is intended to be developed jointly with Lots 43 and 810. The Board concludes that the strict application of the Zoning Regulations would result in undue hardship upon the owner in that the only permitted use for an alley lot is as a single family dwelling. The Board further concludes that because of the lot's location in an historic district adjacent to large nonconforming structures, and the need to provide adequate parking and access, the requested area variances are necessary and will not be a substantial detriment to the neighborhood. The Board further concludes that the application can be granted without substantially impairing the intent, purpose and integrity of the zone plan.

The Board is of the opinion that it has given "great weight" to the issues and concerns of the ANC as required by statute. Accordingly, it is therefore hereby ordered that:

1. In Application No. 14033, the special exception to change a nonconforming use and the variance from the prohibition against enlargement of a structure devoted to a nonconforming use are GRANTED.
2. In Application No. 14034, the special exception to change a nonconforming use, the variance from the prohibition against enlargement of a structure devoted to a nonconforming use and the variance from the height requirements are GRANTED.
3. In Application No. 14107, the variances from the lot occupancy, rear yard, side yard, height and use provisions are GRANTED;

All three approvals are SUBJECT to the following CONDITIONS:

1. Construction shall be in accordance with the plans marked as Exhibit No. 37 of the record.
2. The office use portions of Lots 43 and 810 shall be limited to the types of office uses listed in Paragraph 4101.44 of the Zoning Regulations and lobbyist offices.
3. The applicant shall provide a minimum of twenty-three parking spaces on the site, eight of which shall serve the residential portion of the development and fifteen of which shall serve the office portion of the development.
4. Of the fifteen parking spaces designated for the office use, one shall be reserved exclusively for delivery vehicles and one shall be reserved exclusively for visitor parking.
5. The number of employees to occupy the office space shall not exceed forty-four.
6. The hours of operation for the office use shall not exceed from 8:00 A.M. to 6:30 P.M., except for after hours maintenance and housekeeping.
7. No illuminated signs or displays shall be used to advertise the office use. Any sign used shall not exceed 144 square inches in area as in the form of a plaque.
8. The office use shall schedule trash pick-up and delivery truck schedules during working hours. Trash locations shall be as designated on the approved plans.

9. The pool/deck shall be screened to buffer the sound and visual impacts associated with its use from the neighboring properties.

VOTE: 4-0 (Walter B. Lewis, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not voting, not having heard the cases).

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

ATTESTED BY: Steven E. Sher (By)
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 27 AUG 1984

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14033,14034&14107order/LJP10