

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14051, of Joseph Zagami, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to continue the use of the first floor of the subject premises as a real estate office in the R-4 District at the premises No. 14 - 8th Street, S.E., (Square 920, Lot 820).

HEARING DATE: October 19, 1983  
DECISION DATE: October 19, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject premises is located on the east side of 8th Street, between East Capitol and "A" Streets, S.E. The site is in an R-4 District and is known as premises 14 8th Street, S.E.
2. The subject site is rectangular in shape. Its dimensions are twenty feet in width on the east and west sides and 124.083 feet in depth on the north and south sides.
3. The site is improved with a two story stone-brick structure. The first floor is presently being used as a real estate office. The second floor is being used as a one unit apartment.
4. There is access to the subject property through 8th Street on the west. There is no alley access.
5. The subject square and the surrounding area contain medium-density residential development with a mixture of low-density commercial uses.
6. The subject real estate business has operated at this location since July 15, 1977, when the Board first granted a change of nonconforming use from shoe repair shop to real estate office under BZA Order No. 12264. This approval was for a one year trial period. In BZA Order No. 12733, dated October 17, 1978, the BZA continued this approval for a five-year period in order to determine whether or not this nonconforming use would become objectionable or cause any adverse impact on the neighborhood.

7. There have been no neighborhood complaints during the five year period. The applicant had letters of support from Advisory Neighborhood Commission 6B and the Capitol Hill Restoration Society. In the subject application, the applicant is seeking to have BZA approval of the special exception made permanent. The applicant argued that further trial periods are unnecessary because he has demonstrated that his use of the premises as a real estate business has no adverse impact on the neighborhood. The applicant further argued that he meets all other requirements for continuing the special exception and that the Board has the authority to make the approval permanent.

8. The Board of Zoning Adjustment has the authority to grant special exceptions under Sub-section 8207.2 which provides:

The Board is authorized to grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said Zoning Regulations and Maps, subject in each case to the special conditions specified in said Articles.

9. Paragraph 7106.11 of the Zoning Regulations provides that, if approved by the Board, nonconforming use may be changed to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-or-right. The Board must determine that:

- A. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.
- B. The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.
- C. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening,

landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it may deem necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

10. The use of the premises as a real estate office is first permitted in a C-1 District. The previous nonconforming use of the premises as a shoe repair shop is also first permitted in a C-1 District.

11. The second floor of the subject premises will continue to be used as an apartment. The tenant has use of the rear yard and has a separate entrance at the front of the subject structure. The residential use of the second floor will be altered in no manner.

12. The applicant proposes to continue the real estate office operations in the same manner as presently conducted. There are presently three persons employed at the office. The hours of operation are from 9:00 A.M. to 5:00 P.M. The office presently has a clientele of less than seven clients per week. The remaining office operations occur off the subject premises. There are two phone lines. The office premises contains only three rooms and would not be suitable for a significant expansion in the number of employees.

13. The volume of traffic generated by the subject real estate office is likely to continue to be very low since the majority of client contacts occur away from the sales office. The applicant's business is conducted throughout the District of Columbia and suburban Maryland.

14. The real estate office use of the first floor of the subject premises as conducted by this applicant serves the Capitol Hill area and constitutes a neighborhood facility.

15. The Capitol Hill Restoration Society, by letter dated October 10, 1983 reported that on October 10, 1983, in its regular membership meeting, the Society considered the subject application and voted to support the application. In considering the application, the Society was aware of the recommendation of Advisory Neighborhood Commission 6B, that the nonconforming use be granted to the applicant personally, and that it lapse when applicant ceased to use the premises as a real estate office. The Society believed that such a restriction was unnecessary in view of the limited square footage of the premises and in view of the recent amendment to the Zoning Regulations, respecting non-conformity, promulgated July 18, 1983, Order No. 403.

16. Advisory Neighborhood Commission 6B, by letter dated October 5, 1983, reported that, after giving proper

notice and with a quorum present, the ANC voted unanimously to support the application. The ANC's support was with the restriction that there be no time renewal limitation, but that the special exception should be granted to Joseph Zagami, Sr., only. Any change should require new action by the BZA. This would include the sale by Mr. Zagami to another realtor or the transfer, either formal or informal, of the office to his heirs or any other person. The ANC further reported that Mr. Zagami came before the ANC and the BZA in 1977, 1978 and again in 1983. The ANC heard no opposition to Mr. Zagami and his small real estate office. The neighborhood stated that Mr. Zagami is a good neighbor. However, some neighbors expressed a desire to be able to have some voice if Mr. Zagami should decide to sell to another realtor. The ANC had no question that Zagami Realty was a neighborhood facility. He has been in the area for many years and has proven to be an asset to Capitol Hill.

17. The Board is required by statute to give great weight to the issues and concerns expressed by the ANC. The Board notes that both the ANC and the Capitol Hill Restoration Society supported the application. The question is whether the granting of the application should be limited to the operation of the real estate office by this applicant alone. The Board finds that since the applicant is seeking the use on a permanent basis that the grant should be so restricted. The Board notes that the neighborhood support of the application is based on the manner of operation by this applicant. In the past six years said operation has produced no deleterious effects. Another operator may not be so cooperative with the neighborhood. To grant a permanent use to the applicant's successors without review by the BZA might create adverse affects. The Board accordingly will restrict the permanent use to this applicant.

#### 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 special exception to continue a nonconforming use. The granting of this special exception requires a showing through substantial evidence that the applicant has complied with the requirements of Sub-section 8207.2 and Paragraph 7106.11 of the D.C. Zoning Regulations.

The Board concludes that the applicant has met this burden of proof. The nonconforming use as a real estate office is first permitted as a matter-of-right in the C-1 District, as is the previous nonconforming use as a shoe repair shop. The subject use is a neighborhood facility.

The Board further concludes that there is substantial evidence that the nonconforming use has had no adverse

impact on the neighborhood and will have no adverse impact in the future. Further trial periods will be unnecessary based on the Board's findings and the responses of neighbors and community organizations. The only reservations were expressed by ANC 6B, which expressed concern that future use be restricted to this applicant. The Board concurs and has so conditioned this order. The Board concludes that it has accorded "great weight" to the issues and concerns of ANC 6B as required by statute.

The Board finally concludes that the relief requested can be granted as in harmony with the general intent and purpose of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the CONDITION that approval is limited to operation of the subject premises as a real estate office by Joseph Zagami, the applicant.

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

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

ATTESTED BY:

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

FINAL DATE OF ORDER: \_\_\_\_\_

JAN 31 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.

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