GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14197, of Donald L. Wallace, Jr. and Laurelie M. Wallace, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7102.1 to continue the use of the subject premises as professional office space in an R-4 District at premises 232 East Capitol Street, N.E., (Square 759, Lot 800).

HEARING DATE: October 17, 1984
DECISION DATE: November 7, 1984

FINDINGS OF FACT:

1. The subject site is located at the northwest corner of the intersection of East Capitol and 3rd Streets, N.E., and is known as premises 232 East Capitol Street, N.E. The site is in an R-4 District.

2. The subject site is 14.61 feet wide and seventy-five feet deep. It is improved with a semi-detached structure of three stories and a basement. The structure covers almost the total area of the site and contains approximately 2,000 square feet.

3. The building has been altered on the outside in that the entrance from East Capitol Street has been closed to accommodate a window occupying the entire width of the structure. The only entrance to the building is available at the rear of the building from 3rd Street.

4. The East Capitol Street frontage of the subject square is developed with rowhouses including a Lutheran Church. There are some offices in the rowhouse structures. Directly across East Capitol Street, the entire frontage of the block is occupied by the Folger Shakespeare Library. There are other non-residential uses on property owned by the Folger diagonally across from the site and other non-residential uses, primarily churches, in the area.

5. In BZA Order No. 12787, dated January 17, 1979, the Board approved the use of the structure as office space limited to an architect, dentist, doctor, engineer, lawyer or similar professional person. In that case, the Board was concerned that the lack of parking spaces might prove to be a problem. In order to carefully monitor the potential effects of the change in use, the BZA determined to grant the application for a period of five years. The relief was

granted through a special exception to change a non-conforming use from a delicatessen, first floor, to a professional office and to extend the non-conforming use of a professional office to the second floor. The Board concluded that under the Zoning Regulations then in effect, the proposed use, although not a neighborhood facility, would not be objectionable.

6. The applicant has used the subject premises for his business as a lobbyist. The certificate of occupancy, No. 114255, dated September 21, 1979, specifies the use for law and lobbyist office subject to BZA Order No. 12787. The certificate occupancy expired on January 17, 1984.

7. On August 1, 1984, six and one-half months after the certificate of occupancy expired, the applicant filed the subject application to continue the non-conforming use of the subject premises for professional office space. The applicant requested the Board to include the use of the premises for an office of a lobbyist.

8. Sub-section 7102.1 provides that any non-conforming use of a structure or of land, or any non-conforming structure lawfully existing on the effective date of the regulations which remains non-conforming and any use or structure lawfully existing which becomes nonconforming on the effective date of these regulations or any subsequent amendment thereto, may be continued, operated, occupied, or maintained subject to the provisions of Article 71.

9. The applicant employs four persons in the operation of the lobbyist offices. The applicant provides off-site parking in the neighborhood for those employees. The average number of visitors to the office is two per week. Most visitors use taxis or public transportation to arrive at the office.

10. Three owners of neighboring property, including one immediately adjacent to the subject site, testified at the public hearing in favor of the application. They found the applicant to be a good neighbor. The property was well maintained. In their opinion the office operation produced no adverse affect as to parking in the immediate neighborhood. In their opinion the use should be granted indefinitely.

11. The applicant has received no complaints as to the operation and maintenance of the office.

12. Advisory Neighborhood Commission 6B, by letter dated September 27, 1984, recommended that the application be granted for a period of five years. The ANC noted that although the Commission had received no evidence that parking or other problems had existed with respect to the

use of the subject property some concerns remained about the behavior of future tenants.

13. The Board is required by statute to give "great weight" to the issues and concerns of the ANC. The Board concurs with the ANC recommendation except as to a time period limiting the use of the property. The Board finds that, as conditioned below, whereby the property's operations remain exclusively in the control of the applicant, it is not necessary to affix a five year limitation.

14. There was no opposition to the application at the public hearing or of record.

15. Counsel for the applicant request that the use of the premises be limited to the offices of a lobbyist, architect, dentist, doctor, engineer, lawyer or "similar professional person". In his argument, counsel noted that BZA Order No. 12787 had granted the use of the subject premises for all of the listed persons except that of a lobbyist. Counsel further noted that the Certificate of Occupancy No. 114255, based on the Order, was issued for law and lobbyist office use.

16. During the course of the public hearing, there was much discussion by the Board and counsel for the applicant about Order No. 12845, dated March 2, 1979. That Order constituted an appeal from the Zoning Administrator's decision that a consulting firm did not constitute a professional person. The appellant therein, Keefe Co., was based in Washington, D.C. It was a governmental relations/public affairs consulting firm and a registered political lobbyist. The firm provided representation, research and advisory services to a large group of public and private as well as non-profit interests from both the U.S. and foreign nations regarding matters before Federal agencies and congressional committees. The appellant had entered into a lease to rent office space in an SP District.

17. The Zoning Administrator testified at the public hearing that in determining what constituted a "similar professional person," he reviewed the uses specifically cited and determined what characteristics were common to all of them. He cited three criteria for a professional to qualify: (1) ethical standards (2) professional licensing, and (3) professional education. As to ethical standards, the Zoning Administrator testified that the professional person must be controlled by a code of ethics and principles of practice though a professional organization such as the American Institute of Architects, the American Medical Association, the Bar Association, etc. A professional person would be accountable for his or her actions to such an organization. As to the second criteria, professional licensing, all professionals listed in Paragraph 4101.35 of

the Zoning Regulations were licensed and accountable for any malpractice. The Zoning Administrator further testified that in his opinion lobbyists or public affairs consulting firms, regardless of their educational background, were not professionals within the meaning of the Zoning Regulations. They were not licensed nor were they controlled by a code of ethics through a professional organization. The Board so found.

18. Upon appeal of the Board's Order to the D.C. Court of Appeals, the decision of the BZA was affirmed in No. 79-386, dated December 10, 1979.

19. Counsel for the applicant argued that the interpretation of "similar professional person" made by the Zoning Administrator in the Keefe Co., case was limited to occupancy in an SP District, which District was to act as a buffer between commercial and residential districts. The Board does not agree. The Board is of the opinion that since the R-4 District is more restrictive than an SP District, the definition of "similar professional person" has applicability to the subject R-4 District. The Board also noted that the Keefe Co. case was decided subsequent to BZA Order No. 12787. The Board is also unaware of the circumstances under which the certificate of occupancy was issued to a lobbyist.

20. The Board finds that the question of whether a lobbyist constitutes a "similar professional person" is not dispositive of the subject application. The Board further finds that it is not restrained by the findings and conclusions of the prior case, BZA Order No. 12787 to arrive at the same determination of what uses can occupy the subject structure. The prior application was brought under sections of the Zoning Regulations namely Sub-sections 7104.2 and 7105.2, that no longer exist. The alternative concept that a proposed non-conforming use had to be a neighborhood facility or if not, that it would not be objectionable, no longer have standing in the amended Zoning Regulations. In the subject situation although the subject application is for a continuance of a non-conforming use previously granted by the Board, the hearing does in fact constitute a "de novo" hearing on uses appropriate for the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a special exception to continue the non-conforming use, the granting of which requires substantial evidence that the applicant has met the requirements of Sub-section 7102.1 of the Zoning Regulations and that under Sub-section 8207.2 the relief can be granted as in harmony with the general purpose and intent of the

Zoning Regulations and will not tend to affect adversely the use of neighboring property.

The Board has had the opportunity to monitor the present use of the premises. The Board notes the favorable testimony of property owners in the subject neighborhood and the lack of problems arising from the present use as noted by the ANC. The Board does note the concern of the ANC that such favorable conditions might not prevail were future unknown tenants occupying the site. The Board is of the opinion that the present favorable use of the premises is due largely to the control of the present uses. The Board concludes that for all these reasons the operations of the present owners should be continued indefinitely. The Board further concludes that the subject application, as conditioned below, should be granted.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the CONDITION that the use of the subject premises shall be limited to the offices of a lobbyist operated either by the applicants or by a business owned by the applicants.

VOTE: 5-0 (Maybelle T. Bennett, Carrie L. Thornhill, William F. McIntosh, Charles R. Norris and Douglas J. Patton to grant).

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

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

FINAL DATE OF ORDER: 20 FEB 1985

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.

14197order/LJPB