

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14314, of Leslie Alperstein, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the subject premises as offices for an international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer or other similar professional person in an R-5-C District at premises 1536 U Street, N.W., (Square 190, Lot 810).

HEARING DATE: July 24, 1985
DECISION DATE: July 31, 1985

FINDINGS OF FACT:

1. As a preliminary matter, the Residential Action Coalition (RAC) challenged the ownership of the property by the subject applicant and his authority to process the application. The applicant presented evidence that Leslie Alperstein is the majority owner, and therefore the beneficial owner, of the subject property. The other two minority partners joined in and supported the processing of the application. The Board finds that the applicant is the owner of the subject site and the proper party to process the application.

2. The second preliminary objection raised by RAC concerned the issue as to the advertisement of the case as a use variance. The RAC argued that the applicant should have requested a variance from Sub-section 7102.1 if the Zoning Regulations, which states that a non-conforming use of land, or of land with structures incidental to the use of land, shall neither be extended in land area nor changed to any use except a use permitted in the district in which the property is located. The Board denied the objection. The Board found that the proper remedy for the RAC was to have challenged the decision of the Zoning Administrator through an appeal and not at the public hearing.

3. The subject site is located on the southeast corner of the intersection of 16th and U Streets and is known as premises 1536 U Street, N.W. It is in an R-5-C District. The subject structure is commonly known as the Pride Building.

4. The site is rectangular in shape. Its dimensions are 73.0 feet on the east and west sides and 80.0 feet on

the north and south sides. It has an area of 5,840 square feet. The site is topographically level.

5. The subject property is developed with a three story building with half basement which was built in 1915 for use by a car dealership.

6. The subject site is located in the 16th Street Historic District which is listed in the local and national historic register. The subject structure contributes to the character of the 16th Street Historic District.

7. The subject structure since its construction has never been used for residential purposes. The original 1915 automobile dealership that constructed the building for its own use was succeeded in 1928 by general office use. In 1958, the National Radio Institute occupied the structure as its headquarters pursuant to a Certificate of Occupancy issued in February 27, 1958, to use all floors of the building as a professional office building. In 1968, by Order No. 9505, dated October 11, 1968, the BZA authorized a change of nonconforming use from professional offices to offices and school for Youth Pride, Inc., a non-profit organization.

8. The building was purchased by 16th and U Streets Associates, a D.C. joint venture, in January, 1981 while Youth Pride, Inc. was still the sole tenant. Lack of funding forced Youth Pride, Inc. to vacate the premises in August, 1981. The owner has been attempting to lease or sell the property since the discontinuance of the Youth Pride, Inc. operations.

9. An application was filed (13571) to change the nonconforming use of the subject site to a general office use. The application was denied by BZA Order dated July 9, 1982, on the grounds that the proposed tenant, the National Spanish Television Network, was a commercial office occupant and not a non-profit organization. Another application was filed by the owner in an attempt to sell the subject property to Bread for the World Educational Fund (BFEWF), a District of Columbia non-profit charitable corporation. The BZA granted the application with certain conditions set forth by the Board in BZA Order No. 13989 dated January 11, 1984. On August 29, 1983, the BFEWF filed a motion for waiver of the rules to permit a Motion for Reconsideration to be considered before the final BZA Order was issued. The motion indicated that BFEWF was able to fully comply with all of the conditions established by the Board except for two. One of these was the requirement that twelve off-street parking spaces be obtained within a 1,000 foot radius of the building. After a thorough survey of the area within a 1000, 1500 and 2000 foot radius BFEWF found there was no off-street parking facilities to be obtained within those prescribed radii.

However, BFEF was successful in finding off-street parking spaces at 14th Street and Florida Avenue, N.W., which is located a distance approximately 2500 feet from the subject site. The structure was never occupied by BFEF.

10. The applicant now proposes to use the structure as offices for an international organization, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer or other similar professional person.

11. The first and second stories of the structure are concrete, while the third story, which was added in 1930, is of protected timber construction. The exterior is clad in limestone and terra cotta and large windows dominate the facade. The dimensions of the structure are 73.0 feet on the east and west, by 75.5 feet on the north and south, creating an almost square footprint that occupies essentially the entire site. The three floors contain 16,515 square feet of gross floor area. The cellar is totally below grade and is used for utilities and storage. It is 20.0 feet by 73.0 feet and is located at the eastern edge of the building.

12. There is access to and from the subject site from U Street on the north and from a public alley on the east. The site is a corner lot with a public space on its 16th Street side that is developed as open space and which makes the lot appear wider than is the case. This open space is fenced and provides no access to the subject structure. The main entrance to the subject structure is through a door on U Street. The alley entrance on the east is designed only for trash pick-up and deliveries.

13. The subject Square is bounded by U Street on the north, T Street on the south, 16th Street on the west and 15th Street on the east. The central portion of the U Street frontage is included in a C-2-A District with the corners at 15th and 16th Streets being included in R-5-B and R-5-C respectively. The Square is bisected by a small local street called Caroline Street, which runs in an east-west direction. The remainder of the square is zoned R-5-B. The western edge along 16th Street is zoned R-5-C and is located in the 16th Street Historic District. Both 16th and U Streets are major arterial streets, 15th Street is a minor arterial, and T Street is a local traffic street.

14. The residential portions of the Square are developed with row-dwellings, semi-detached dwellings, and apartment structures. The row dwellings front on 15th Street and on T Street. The semi-detached dwellings front on both sides of Caroline Street. On 16th Street, there are two apartment buildings and a few private dwellings. The U Street frontage is occupied by row structures, both vacant and occupied, most of which have been converted to commercial uses on their first and second stories. The subject structure is the only free-standing nonresidential structure in the

Square. It is larger than any other structure and is of unique design within the Square.

15. The Board finds that the original Zoning Regulations included the subject site in the commercial strip on U Street. In 1924, the site was designated residential and in 1958 was included in the R-5-C corridor along 16th Street. It has remained in the R-5-C District since that time although all of its uses have been nonresidential.

16. The neighborhood surrounding the subject Square has alternating corridors of residential and commercial uses. Commercial corridors occupy frontage on 14th Street, U Street, parts of 17th and 18th Streets. Residential corridors occupy 13th Street, 15th Street and 16th Street. The zone districts of the east-west cross streets change as the streets cross the north-south zoning corridors. The residential corridors are zoned R-5-B and R-5-C. These corridors are developed primarily with row dwellings and apartment buildings. The commercial corridors are zoned C-M-2, C-M-3 and C-2-A. These corridors are developed with a mixture of clothing stores, restaurants, specialty grocery stores, jewelry makers, bookstores, real estate offices, theaters and convenience stores.

17. New Hampshire Avenue crosses the intersection of 16th and U Streets at a diagonal. It is a residential corridor developed primarily with apartment buildings and zoned R-5-C, D/R-5-B, SP-1 and C-3-C moving from northeast to southwest. Meridian Hill Park is a major open space extending from W Street between 15th and 16th Streets to Euclid Street four blocks to the north with residential on either side. There are numerous churches in the area, including St. Augustine Catholic Church at 15th and V Streets and Augustana Lutheran Church at New Hampshire Avenue and V Street, N.W. Cardozo High School is located at 13th Street and Florida Avenue. Major apartment structures located in the area include the Northumberland apartments and Hampton Court apartments, located at New Hampshire Avenue and V Streets. The Congressional Club, a private womens club, is located at New Hampshire Avenue and U Streets, across the street from the subject site. The Balfour apartment building is diagonally across from the subject site on the northwest corner of 16th and U Streets.

18. The subject area is now undergoing renovation and revitalization. The commercial corridors on U Street and 14th Street are deteriorated and have a high percentage of their buildings standing vacant. Renovation and the opening of upscale stores has occurred in the 17th and 18th Street commercial corridors. Renovation of apartment structures and single family homes has occurred in the 16th Street, New Hampshire Avenue and 17th residential corridors. Much of the architectural design in the area is early twentieth

century and of landmark quality, leading to major renovation plans on the part of the city government, local citizens groups and private real estate developers.

19. Although no additional parking spaces are required to be provided under Paragraph 7201.21 of the Zoning Regulations in conjunction with this application, the applicant proposes to devote twenty spaces in a parking garage at 14th and Florida Avenue, of which he is an owner, for use by occupants of the property. There are no parking spaces on site nor is there any feasible way to provide parking. Parking on public streets is permitted on both sides of U Street between 15th and 16th Streets. Fifteenth Street, located on the east side of Square 190, permits parking on both sides of the street but is regulated by Zone 1 permit parking. T Street and Caroline Street allow parking on both sides of the street and are also regulated by Zone 1 parking restrictions. Zone 1 residential parking is available from 9:30 A.M. to 6:30 P.M. on 16th Street which borders the site on the west. Parking is allowed on the west side of 16th Street with the exception of the evening rush hour, from 4:00 P.M. to 6:30 P.M., Monday through Friday. No parking is allowed in the bus zones which are located on both the east and west side of 16th Street adjacent to Square 190.

20. The applicant's real estate broker witness testified, and the Board so finds, that his firm has been in charge of marketing the Pride Building since it was purchased by the 16th and U Street Associates. The 16th and U Street area has been an improving, but fluctuating area, characterized by pockets of renovation that have occurred in spurts over the last five years. Although the area is well-serviced by transportation routes and is highly visible being a corner location it has been difficult to attract the attention of reputable developers and nonprofit groups in the past because of high interest rates, poor market conditions and because of the Pride Building's proximity to the 14th Street corridor.

21. The witness further testified that his company has spent a great deal of time and money on marketing and advertising. The structure was advertised in newspapers, in trade publications, and advertised for sale and for lease with a large sign on the outside of the building.

22. The Spanish Cable News Network placed the building under contract in February in 1982, and began a lengthy process to change the nonconforming use from offices and school for Youth Pride, Incorporated, to general offices in the R-5-D Zoning District. They were, subsequently, denied permission and withdrew their offer. Other groups who have expressed a written interest to lease or to purchase the property included the American Federation of State, County and Municipal Employees, the National Organization of VA

Physicians, the American State Company, the Jackson School Art Center, the Sojourners, which is a religious organization that was looking to use the property as a day care center facility, food bank and center for family services, the Masonic Order of the Eastern Star, Hammers, Syler and George, Architects, Morgan and O'Neil, Realtors, Bread for the Word, and Greenpeace.

23. Developers who have submitted offers, written offers, include Barnes Lawson, who wanted to open a training school for mechanics and the Leapley Company, who wanted to renovate the building and lease it to community groups. Other developers who have made offers in conjunction with nonprofit, beneficial, or eleemosynary organization include Robert Podrog, Michael Reuben, Desmond and McElroy, Rappaport and Associates, Phil Sheridan and, most recently, Hoskinson and Davis. In a letter dated February of this year, Hoskinson and Davis wrote that the zoning division has interpreted the BZA order to apply solely to Pride and to no other user. Accordingly, there is a building and a number of interested tenants, but, the sellers can't get any of the perspective tenants into the building without BZA approval that may take six months and is not certain of success. This has been the major reason for the consistent failure to sell or to lease the Pride Building. Finally, it was hoped that a medical clinic would be interested in the building. The broker has been unable to find a medical clinic large enough to occupy 15,000 square feet, and the two that did have interest in a smaller portion of space, were concerned about the lack of on-site parking. There has been no interest, to the broker's knowledge, for museums or private clubs. There's been no interest from a foreign government for Embassy or Chancery use, and the broker has received no substantial interest in the Pride Building for any residential use at all.

24. The applicant's real property analyst witness testified, and the Board so finds, that the exceptional condition or uniqueness of the site lies in the fact that the building was designed for heavy commercial use. It has never been used for residential properties. The structure is not reasonably adaptable for remodeling to residential uses because of the character of its construction, the configuration and size and the nearly complete lot coverage, also the building may not be demolished or its facade changed because it contributes to the historic district in which it is located. Strict application of the code, because of the exceptional circumstance of a nonresidential building which must be preserved in a residential zone, would result in owner-hardship in that no use would be available from which a fair return is possible. No residential use can be profitable under the circumstances. In the witness' opinion, no R-5-C use would yield a fair return. SP-office use is the most reasonable adaptation of the existing building and the use that is least likely to have,

or be perceived to have, any detrimental effect on others in the community or on the zoning plan itself. The witness reached these two economic conclusions after inspecting the property and its surroundings, and by reviewing both the uses permitted by the R-5-C zoning, including those permitted by exception and those at variance with R-5-C zoning.

25. No R-5-C use would yield a fair economic return. For purposes of this analysis, a "fair return" is defined as at least eight percent per year; this is despite that many risk-free Certificates of Deposit and other savings accounts actually yield higher rates; a typical return on real estate is, of course, higher than eight percent. The uses permitted in the R-5-C District are summarized as follows:

- Family Housing
 - Dwelling
 - Flat
 - Multiple Dwelling
 - Apartment House
 - Rooming/Boarding House
- Group Housing Facility
 - For School Employees
 - For Religious Persons
 - For Persons Needing Supervision
 - For Persons Needing Emergency Shelter
- Non-Residential
 - Church/Temple/Mosque
 - Medical Clinic
 - Private School
 - Community Center
 - Day Care Center
 - Museum/Gallery
 - Private Club
 - Chancery

26. The subject building is exceptional within the R-5-C zone in that it was not designed for residential use and has never been used for residential purposes. Physically, it could be remodeled for residential habitation, but economically it cannot. Because the building covers ninety-four percent of the lot, the only open space is a five-foot-wide strip along the alley, the building would not be suitable for any of the group housing uses except in times of extreme emergency; otherwise, those who regulate group housing would appropriately disapprove because of inadequate light and air and inadequate on-site recreational area. As a result of lack of market, no economic return is available from group housing uses.

Of the various family housing uses legally permitted in the R-5-C zoning, single-family row dwellings and apartment would be the most remunerative at the subject location. Case Studies A and B discussed below present, respectively,

the economic results of remodeling the subject building for these two uses. In neither case would a fair return result.

ROW HOUSES: (Case Study A)

Four three-story (and partial basement) dwellings could physically be created by changing the 16th Street facade and re-working the interior to include eliminating the existing elevator and stair shafts and introducing private stairwells in each of the four dwellings. An alternative would have the row houses fronting along U Street but then only one would have any unimproved land at all. In either case, the four row houses would average 18 feet wide.

The existing building area, divided by four, would result in unusually large row houses: 4,646 square feet of which 529 square feet is partial basement. For this reason, but also to introduce windows into the middle rooms, the building might be partly demolished in the rear to provide a court or walkway thereby creating the "L" configuration of typical Washington row houses.

Another alternative would introduce a rental unit into one or more of the four dwellings -- perhaps on the front one-half of the second floor accessible from a second front door in each dwelling located in the foyer.

The investment in the property, before the remodeling work, is assumed to be the tax assessment of \$489,000. The remodeling cost would range between \$40 and \$45 per square foot depending upon the quality level of the included finishes and equipment:

Building Area	18,542 0	18,542 0
Cost Rate	\$ 40	\$ 4 5
Remodeling Cost	\$ 741,680	\$ 834,390
Shell Value	489,000	489,000
Total Investment	\$1,230,680	\$1,323,390
Number of Houses	4	4
Investment Per House	\$ 307,670	\$ 330,848

The indicated range of \$307,000-\$330,000 per row house (with or without parking and with or without a rental unit) is not realistically available in the subject location. Such a project would be a losing proposition; no profit could be anticipated; the investment return would be negative.

There is also a distinct question whether permission would be granted for the significant change to the 16th Street facade which the remodeling to four dwellings would necessitate.

APARTMENTS: (Case Study B)

The building may physically be divided into a maximum of eighteen apartments (six on each of three floors) for sale or for rent; a center light court would have to be created for fenestration to the interior rooms:

18,542	Gross Square Feet
18	Apartments
1,030	Gross Square Feet Per Apartment
670	Net Square Feet Per Apartment (65% of gross)
\$ 1,000	Average Monthly Rent (maximum)
\$ 1.49	Square Foot Rent
\$216,000	Annual Rent Schedule (\$18,000 x 12)

<u>Cost to Remodel</u>		<u>Income As Remodeled</u>	
		Rent Schedule	\$ 216,000
		Rent Loss (5%)	10,800
		Rent Collections	\$ 205,200
		Expenses (35%)	71,820
		Net Operating	\$ 133,380
		Capitalization Rate	11%
		Indicated Value	\$1,212,546
Building Area	18,542 0	Rounded (\$66,667)	\$1,200,000
Square Foot Cost	\$ 50	Shell (Assessment)	489,000
Cost of Remodeling	\$927,000	Value of Remodeling	\$ 711,000

Conclusion: The value as 18 apartments would be substantially less than the cost of creating the apartments resulting in an investment loss or negative return.

The \$66,667 average value is at the rate of \$99.50 per net square foot. The cost of renovation (\$927,000) plus the shall assessed value (\$489,000) is a total of \$1,416,000, or \$78,667 per apartment and \$117.41 per net square foot -- or 18% more than their \$1,200.00 value.

Relative to possible condominium sale of the 18 apartments is the lack of parking, the small amount of on-site open space (365~~0~~ or 20.3~~0~~ per apartment) and the market in general from which \$117.41 per square foot sales are not feasible. Mortgage loan availability would be restricted to the income capitalization. Absorption of the for-sale apartments would only be after a lengthy marketing period (during which no income return would be available) requiring substantial holding expenses chief of which is interest.

29. None of the below listed non-residential uses that are permitted by R-5-C zoning are economically viable for the indicated reasons:

- (a) House of Worship: Sixteenth Street is the location of many houses of worship; each (no matter how large or small) has a common characteristic which is a principal auditorium room. The subject building has no such dominant room as its major area. Although hundreds of people could be seated in the building, only a small fraction could observe a religious service because the design of the building can not be adapted for religious purposes.
- (b) Private School: Adult schools require parking to be economic; children's schools require recreation areas. The subject property has only 365 square feet of land not occupied by the building. This open space is a five-foot-wide strip along the alley. The trend is closing of private schools in the city.
- (c) Medical Clinic: Despite the PSI facility at 2108 - 16th Street (which is not limited to out-patients), there is no demand for an 18,542-square-foot clinic at the subject location because it is too far from a major hospital. As distinct from clinics, which forbid individual practitioners, medical offices are not permitted in the R-5-C zone but would be with an SP-office variance.
- (d) Community Center: This use is not viable without subsidy unless much smaller than 18,542 square feet.
- (e) Museum/Gallery: This use is not viable in a location with neither a high pedestrian count nor parking. A gallery of the size of the

subject building would be relatively enormous and highly speculative unless subsidized; it would have no economic return.

(f) Private Club:

This extremely speculative use requires a concentration of employment such as does not exist near the subject property. When Country Clubs and Yacht Clubs are eliminated, only a very few private clubs in the metropolitan area are as large as 18,542 square feet. Some perspective may be added by the following information regarding the National Democratic Club:

Building

At present, 8,786 square feet to be increased to 16,882 square feet (As compared with the subject's 18,542 square feet).

Membership

As of July 1984 - the highest figure during the past five years -- the membership was 3,333.

Cost

The increase in size and remodeling of the building has been budgeted in the amount of \$1,700,000 not including the present facility for which the subject's \$489,000 assessment has been substituted. Adjustment for the subject building's greater size, an investment of \$2,350,000 (\$1,867,000 plus \$489,000, rounded) is at the rate of \$126.74 per square foot or one that would require a rent of \$17.75 (14%) plus expenses of \$7.00 or, say, \$25.00 per

square foot. No organization is known that would consider use of the facilities as a club and which could afford to provide a fair investment return.

(g) Chancery: This use is speculative for reasons of building size and location. Furthermore, it generically differs from professional office only in that its occupants are foreign nationals who provide no neighborhood service. But Chancery office is too limiting in use to provide a speculative fair return.

30. SP office use is the most reasonable use to which the subject building might be adapted and the least likely reasonable use to have a detrimental effect. The building has an office appearance, its facade will be unchanged by the office use. The character of use will not differ from the more recent former uses. The special purpose (non-profit or professional) office use will provide a fair capital return on the renovation cost and a fair income return over time. The following Case Study C provides computations regarding the investment and rates of return.

31. Case Study C: Although the building layout is tantamount to an office floor plan at present (calling for renovation rather than remodeling), the municipal requirements and economic dictates suggest a renovation cost in excess of that for residential use. The available rent, however, is sufficient to provide a fair return.

Cost to Remodel

Income as Remodeled

		Rentable Area	18,000 0
		Rental Rate	\$ 20
		Rent	\$ 360,000
		Vacancy (5%)	18,000
		Collections	\$ 342,000
		Expenses (\$6.00)	108,000
		Net Operating (\$13)	\$ 234,000
		Capitalization Rate	12%
Building Area	18,542 0	Indicated Value	\$1,950,000
Square Foot Cost	\$ 60	Shell (Assessment)	489,000
Cost to Remodel	\$1,112,520	Value of Remodeling	\$1,461,000

Using a \$60 square-foot cost and a 12% capitalization rate (because offices are not as favored by income tax legislation

or lending as is residential development), the return is \$348,480 ($\$1,950,000 - [\$1,112,250 + \$489,000]$) or 22% on the \$1,601,520 presumed investment ($348,480 / \$1,601,520$). Assuming a two-year period between today and the completion and full occupancy of the professional offices, the rate of return is about 11% per year.

32. Other uses that would also provide an investment return include: Business Offices, retail shops and personal services. These uses would not be detrimental to the nearby residents, many of whom find shopping particularly remote but they would be violative of the exclusion of commercial uses along 16th Street. It is noted that the property across the street to the west from the subject is zoned C-2, but that property is technically at the New Hampshire Avenue corner. It is also noted that all of the U Street frontage of subject Square 190 is zoned C-2 except the subject lot itself.

33. The applicant's traffic expert witness testified that the principal streets that serve the subject site are 16th Street and U Street. Sixteenth Street is a major north-south arterial that carries approximately 21,600 vehicles on an average day. U Street is a major east-west arterial that carries approximately 17,600 vehicles on an average day. New Hampshire Avenue cuts through the 16th Street-U Street intersection in a northeast-southwest direction. Traffic moves one-way on this street, away from the intersection (in a northeasterly direction to the southwest), so that for traffic operational purposes the crossing is essentially a simple four-way intersection. The intersection is controlled by a two-phase traffic signal. The level of service is B during both peak hours.

34. The witness further testified that there is good bus service in the area, with fourteen routes passing through the adjacent intersection: five on 16th Street (S1, S2, S3, S4, S5) and nine on U Street (90, 91, 92, 94, 96, 98, T5, T7, X3). The nearest Metrorail station is at Dupont Circle, approximately eight blocks to the southwest.

35. With 17,000 gross square feet in the building, allowing 200 square feet per occupant, there would be approximately 85 people in the building. The Metropolitan Council of Governments (COG) reports that the modal split for this area is:

68% transit
20% auto drivers
12% auto passengers

$85 \times 0.20 = 17$ auto drivers coming to the area during rush hours. This miniscule increment would have no effect on

current traffic operations. The peak hour level of service would remain at B.

36. A survey was made in the immediate area, within a one-block radius of the site to evaluate parking conditions. Within this area there are:

257	residential permit spaces (R)
10	residential permit spaces except during morning rush hours (RXA)
11	residential permit spaces except during evening rush hours (RXP)
94	unrestricted spaces (U)
27	unrestricted spaces except during morning rush hours (UXA)
6	unrestricted spaces except during evening rush hours
4	metered spaces
10	free one-hour spaces
4	free two-hour spaces
<u>423</u>	total curb spaces

Of these, during the time of peak demand (about 11:00 AM) there were 79 (nineteen percent) vacant.

37. The applicant owns a parking garage on the east side of 14th Street, between Florida Avenue and Belmont Street, with a capacity for approximately 250 cars. This garage is 3½ blocks from the site, about a six minute walk. In the opposite direction, at Florida Avenue and T Street, also 3½ blocks away, there is a PMI garage with approximately the same capacity, and one-half block farther west on Florida Avenue there is a Diplomat garage that publicly advertises monthly spaces available. Provision can be made at any of these nearby garages to accommodate seventeen cars for occupants of the building.

38. In addition to the occupants, there would be business visitors, estimated at twelve per day, with a peak accumulation of approximately twenty percent. Assuming most of these visitors, seventy-five percent arrive by automobile, there would need to be:

$$12 \times 0.20 \times 0.75 = 1.8, \text{ say } 2$$

visitor parking spaces. These can readily be accommodated on the streets within one block of the subject site.

39. The traffic witness concluded, that the proposed use of the property at 1536 U Street, N.W., for SP offices would not adversely impact the neighborhood, that the street capacity and nearby parking are both adequate to meet the needs of the building's occupants and visitors. From a

traffic engineering viewpoint, the proposed use would be appropriate. The Board concurs.

40. The Board as a preliminary matter at the public hearing waived the untimely filed report of the OP. The Office of Planning, by memorandum dated July 19, 1985, recommended that the application be granted conditionally. The OP was of the opinion that the application had sufficient merit to meet the requirements for granting a use variance under Section 8207 of the Zoning Regulations; that being, undue hardship on the owner of the property caused by an exceptional or extraordinary condition inherent in the property itself. This reasoning was based on the subject premises not being reasonably suitable or amenable to conversion to residential living or any other uses permitted as a matter of right or by special exception in an R-5-C District.

41. The OP further reported that although use history is not dispositive in granting an application the Board may recognize an exceptional situation regarding the history of the subject site. Despite the residential zoning of the subject premises the site has never been used for residential purposes in the building's seventy year history, which may explain why the building has remained vacant and in disrepair since 1981. The history of use for the subject premises evidenced that the original intended use was for commercial purposes. The high ceilings typical of a car dealership (or an office) are not practically feasible for conversion into a multi-unit dwellings. Also, the heating/cooling (ventilation), and plumbing fixtures in the building may not be amenable to such a conversion. The subject building has open floor space and large windows on the first floor typically those of a commercial establishment. Presently, there is only one public entrance to the building which is located on U Street. Renovation of the existing structure or new construction may present an undue burden on the owner of the property to use the subject premises for anything other than office use.

42. The OP further reported that it had reviewed the study supplied by the applicant on using the subject premises for some other type of use permitted in an R-5-C District other than SP office space and finds the study to be reasonable in its approach. The OP noted that the last three Certificates of Occupancy issued by the city were for office use and combined school/office use. The OP recommended the granting of the application with the following conditions:

- a. A 80-85 person limit on the number of employees.
- b. Twenty parking spaces be provided at the premises indicated by the applicant at 14th Street and Florida Avenue, N.W.

- c. All trash to be stored inside the subject premises.

The Board concurs basically with the reasoning and recommendation of the OP. As stated below, the Board will modify conditions "a" and "c" and list further conditions.

43. Advisory Neighborhood Commission 1B, by report dated July 17, 1985, recommended that the application be granted conditionally. The ANC reported that ANC 1B held a town meeting on this application on July 8, 1985, at 7:00 P.M. at St. Augustine Church at 1419 V Street, N.W. This meeting was advertised in the "District Weekly" section of the Washington Post on July 4, 1985. Present at that meeting were the applicant's attorney, real estate analyst, and architect. They explained the specifics of the application and why this particular variance is sought and answered questions tendered by community residents. It became clear from the remarks made at this meeting and from subsequent communications that community sentiments were split on this matter. On one hand, some residents opposed the variance because they were of the opinion that, among other things, the property is in a residential zone and therefore should be converted to residential use; such conversion to residential use is economically feasible; and to grant a variance for SP office use would constitute illegal spot zoning. On the other hand, other residents supported the variance request. Generally, these residents were of the opinion that the building is vacant and blighted and thus should be renovated and placed in office use to avert further deterioration and remove an eyesore; the building has never been put to residential use and residential use is impractical due to the construction and shape of the building; SP office uses would not adversely affect surrounding properties.

44. The ANC recommended that in granting the application, the BZA impose the following CONDITIONS:

- A. Maintain sufficient off-street parking;
- B. Use the premises only for the uses enumerated in the advertisement;
- C. Consult with ANC 1B first before contracting for needed employees, services and concessions at the aforementioned buildings;
- D. Plan for and submit to ANC 1B a plan for proper and timely trash collection and maintenance of the premises grounds; and
- E. Take necessary measures to restore the premise in a manner consistent with its location and place within the 16th Street Historical District.

45. The ANC reasoned that the subject property is different than adjacent properties in the same R-5-C zone and is more stringently burdened by the R-5-C zoning scheme than other properties in the R-5-C zone. It was constructed in 1915 as an automobile showtown. Although the structure predates zoning, it was subsequently included in the present R-5-C residential zoning scheme. However, the shape, construction and intended use of the property make it unsuitable for residential uses and distinguishes the structure from surrounding structures in the same R-5-C zone. As an automobile showroom, the structure was not built for residential use. The first and second floors of the structure were constructed of poured concrete and the structure was constructed in a square shape. The square shape prevents the entry of light and fresh air into the interior of the building making it unsuitable for residential use. The concrete construction makes residential conversion impractical since it would be prohibitively expensive to run light shafts from the basement to the roof to provide code-required light and air to the interior rooms of residential apartments.

46. The adjacent properties along the 16th Street side of Square 190, the properties directly across 16th Street from Square 190, and the subject property are all in the same residential zone. However, these other nearby properties have structures, built of masonry, which were constructed as residences and are now generally used as residences. Moreover, they were built in a "L" shape, or with light shafts to provide adequate light and air to comfortably accommodate residential users. In contrast to the subject structure, these structures are ideally suited to be used in accordance with the residential zoning scheme.

47. The subject structure is obviously different from these other nearby structures. It is different from the other properties in terms of shape, construction, intended use and residential suitability. Since these peculiar features are not generally characteristics of other nearby properties and especially burden the subject property by rendering it unsuitable for residential use, it would appear that the property would satisfy the uniqueness criterion set forth in Palmer v D.C. Board of Zoning Adjustment 287 A.2d 535 (1972).

48. The ANC argued that the applicant would obviously suffer undue hardship if the subject variance was denied. Under the current zoning designation the property has been vacant since 1981, and during this vacancy the property has provided no return. In the last four years, the owners have attempted to find tenants for the property, but due to zoning difficulties, these attempts all failed. The zoning application of the Spanish News Network was denied; the

Bread for the World organization could not meet a BZA imposed parking condition; and the Green Peace Organization and a for profit developer both abandoned efforts to lease the property because the prospects of obtaining zoning authorization were too uncertain and costly. In the instant case, the owners have made a substantial investment in the subject property and, due to vacancy resulting from zoning requirements, have received no investment income. Therefore, the owners have obviously not received a reasonable return under current zoning, and would satisfy the hardship criterion.

49. The ANC also argued that the proposed SP uses would not cause substantial public detriment. Pedestrian traffic should be no problem as the entrance will remain on U Street where commercial traffic already exists. Moreover, ANC foresaw no peculiar litter, trash or noise problem. In addition, the applicant has agreed to maintain the historic character of the building.

50. The only possible detriment ANC foresaw was a parking problem. The area already suffers a parking problem, but parking will be a problem regardless of use. However, office use should cause no greater parking problems than permitted non-residential uses, such as clinics, museums or schools. The applicant has promised to set aside twenty parking spaces for office employees in a parking garage he owns at 14th Street and Florida Avenue. Given the distance from 16th and U Streets, it is unclear whether these employees will find it feasible to utilize all twenty spaces. However, the utilization of any of these spaces would provide some parking relief. Given this condition, ANC is of the opinion that the parking impact of the proposed use should not be significantly greater than that of permitted uses and the public detriment should be de minimis.

51. The proposed use in the opinion of the ANC appears to be consistent with the intent and purpose of the Zoning Regulations. The applicant is asking for limited SP zoning for the property. According to the regulations, the SP zone is transitional in nature. It is intended to "Act as a buffer between adjoining commercial and residential uses" and "designed to preserve and protect areas adjacent to commercial districts that contain a mix of row houses, apartments, offices and institutions, including buildings of historic and architectural merit." The ANC noted that the subject structure is situated between commercial and residential area. A C-2-A zone lies directly to the west of the building along U Street. While, a residential area lies directly to the south and west along 16th Street. Buildings of architectural and historic merit occupy this 16th Street residential area since the area is part of a historic preservation district. According to the above cited regulation, SP zoning would be especially suited for the structure, since it would buffer the residential area (and the historic

and architecturally meritorious buildings therein) from the commercial activity of U Street.

52. Finally, the proposed commercial office use would appear consistent with the Comprehensive Plan. This is so because the land use map adopted along with the Comprehensive Plan places the subject property in a commercial, instead of a residential, district. Therefore, the proposed use would be consistent with the future development of the area as envisioned by the city.

53. The Board is required by statute to give great weight to the issues and concerns of the ANC and to its recommendation based thereon. The Board agrees in most part with the reasoning of the ANC and to some of the conditions recommended to be imposed upon the grant. The Board does not concur with the ANC reasoning stated in Finding No. 52. The reference to the Comprehensive Plan by the Advisory Neighborhood Commission is to the Land Use Element. At the time this application was heard and decided, the Land Use Element had been passed by the Council of the District of Columbia, but had not become law. Consequently, the provisions of that element were not in effect. Even if the law had become effective, the provisions of the element are not self-executing. The Comprehensive Plan Act of 1984 (Section 102) provides in part that "the District elements of the Plan are a guide intended to establish broad policies and goals while affording flexibility for future implementation and are not binding policy directives." The Land Use Element does not automatically change the Zoning Regulations. The Zoning Act as amended by the Home Rule Act requires that the Zoning Regulations "not be inconsistent with the comprehensive plan." It is the responsibility of the Zoning Commission to accomplish that task. The Board is limited to following the Zoning Regulations as they exist, and unless and until the Zoning Commission amends the Regulations to require the Board to determine whether an application is consistent with the Comprehensive Plan, that determination is beyond the scope of the Board's consideration. The Board cannot impose condition "c" and "d" listed in Finding No. 44. Said conditions cannot be enforced through the Zoning process. While the BZA may find them positive such arrangements should be made between the parties. The other condition recommended by the ANC will be incorporated.

53. The Logan Circle Community Association, by letter dated July 24, 1985, recommended that the application be granted subject to the following CONDITIONS:

- a. The property must be renovated in a manner that will preserve its architectural character and integrity.

- b. The building entrance must remain at U Street.
- c. The landscaping on the 16th Street frontage must be improved and properly maintained.
- d. The building may contain office facilities for no more than 100 persons. The Board concurs.

55. The Dupont Circle Citizens Association and the 1900 Sixteenth Street, N.W. Block Council recommended approval of the application with the following CONDITIONS:

- a. That the building occupation be limited to 100 persons.
- b. That twenty off-street parking spaces be required at applicant's garage building at Florida Avenue and Belmont Street, N.W. and tenants no sublease said spaces to other than building tenants.
- c. That no commercial kitchen be established.
- d. That no entrance be made on Sixteenth Street except that which may be required by the fire code.
- e. That no signage be placed on the Sixteenth Street facade and U Street signage be approved by the Historic Preservation Review Board (HPRB), and.
- f. That the Sixteenth Street green space be maintained as such and no curb cuts be introduced on Sixteenth or U Streets.
- g. That the structure be restored with the approval of the Historic Preservation Review Board.
- h. That adequate trash removal be provided.

56. It was the opinion of the above Associations that a conversion to residential use of this property would entail the destruction of the original interior walls to the point that the character and integrity of the building would be affected and the disqualification of the property for the preservation tax credit. Without this tax credit there would be no assurance that even the exterior would be restored by the applicant.

57. They further reported that regarding the issue of residential zoning imposed on this site after its erection, in sixty-one years since that zoning in 1924, the property has never been used as a residence, but rather exclusively under non-conforming uses. Some argue that current residential zoning itself does not preclude several types of

occupation such as a church, private school, medical clinic, private club or a community center, with the exception of a small school in part of the building during the Youth Pride years, the organizations is not aware of any of these uses being utilized. However, most of these uses by their nature require frequent invasions of large numbers of members to regular activities causing the existing limited parking to be further overburdened. Already, within one block, there exists two clubs and two churches which create parking problems several times a week. Further, in recent months and in the near future, approximately 100 apartments have been or will be renovated for residential use in the immediate neighborhood, none of these buildings have parking, nor are they required under residential zoning to provide any, further, none of the developers have offered to provide parking as has this applicant for this property. The Board concurs with this report.

58. A report of the Caroline Street Association, eight letters of individual property owners and a petition with twelve signatures were submitted to the record in support of the application. The grounds of support were some of those recited above in the other community organization reports.

59. The Residential Action Coalition (RAC) opposed the application. It argued first that the land use element is not controlling herein. The Board concurs as to the specific issue and addressed such issue in its response to that issue raised by the ANC. The RAC further argued that the applicant testified that the practical difficulty inherent in this property is that it is practically square, and that this precludes its use for residences if the financial requirements of the owner are to be met. Another hardship stated by the owner was that the building had never been used for residences and was not built for residential occupancy. Under cross-examination, the applicant's architect stated that the required recreational space for residential use could be placed on the roof of the building. Under cross-examination, the applicant's architect stated that the building could be used as a school, a permitted use in R-5-C.

60. Residential Action Coalition submitted photographs of three building, two in the immediate neighborhood of the Pride building, and one on Johnson Avenue, as follows:

1624 U Street, N.W. known as the Old Fire House. This building was built as a fire house and that is what it was used for until the new fire house was built just across U Street from the old one. It then stood vacant for a number of years, was sold to private owners who converted it to housing with stores on the ground floor.

1515 U Street, N.W. the lofts, a three story building built as a warehouse, of a triangular shape, immediately across the street from the Pride building; not in an historic district and thus not offering any historic district tax shelter. Converted to housing with store in basement.

1737 Johnson Avenue, N.W. old industrial building in R-5-B zoning (same use restrictions as R-5-C) being converted to five housing units. The first of other projects in this block in former industrial buildings, not in an historic district and not offering historic district tax shelter.

RAC argued that these buildings presented far more difficulties from the point of view of conversion to housing than does the Pride Building. They are like the Pride building in that they were not built for housing. They are also of peculiar shapes, whereas there is nothing peculiar in the square shape of the Pride building.

61. As to the possibility of its being used for other conforming R-5-C uses, such as club, school, museum, or clinic, applicant testified that such uses were not practically feasible because of the location of the building. RAC testified to the fact that there are two clubs in the near neighborhood of the Pride building -- one the Congressional Women's Club directly across the street from the Pride Building, and the Foxtrappe, at 16th and R Streets, N.W. a few blocks away; that there were numerous clinics in the neighborhood in R-5-D and R-5-B zoning, as well as in commercial zoning on 19th and 17th Streets, N.W.; that there are also numerous museums in the area, on 19th Street and west of Connecticut Avenue on R Street, etc. also in R-5-B zoning.

62. Residential Action Coalition testified that the Pride Building had been used as a conforming use (school) from 1927 to 1958, and from 1968 to 1981, a total of 44 years.

63. Applicant's real estate agent from Vogel and Hoffman testified that there had been little interest from prospective purchasers of the building, or tenants, for its use as a conforming building. When asked by RAC if he could produce any documentation as to his efforts to sell or lease the building as a conforming use, he could not. RAC's representative pointed to Exhibit No. 37 in BZA No. 13571, which is a photograph of the sign on the building which reads "For Sale or Lease" office building, 15000 square feet. Vogel & Hoffman, 462-1700, which sign was on the building for at least two years, perhaps more, as proof that the owner of the building had not made an effort to lease or sell the building for a conforming use.

64. Residential Action Coalition further argued that the applicants' financial expert maintained that the owner was entitled to an eight percent return on the present assessed value of the property plus remodeling costs. The present assessed value of the property is \$498,000. RAC maintained that the assessed value of the property at present is based on the fact that the present owners of the property in 1981 paid more than twice as much as the assessed value of the property for the property, and that the high assessment at present is entirely self-created, If the assessed value of property can be used as its true market value, and if this assessed value is to be the base for BZA judgement on fair rates of return, then anyone could pay an excessively high price for property and come before the Board and claim a hardship. On the other hand, if assessed value is to be considered at all, why not use the assessed value in 1981 (\$207,000) as a base.

65. Mr. Alperstein further claimed at the hearing that his reason for bringing the variance case now is that he fears that Congress will wipe out the tax shelter real estate provisions now in Federal Law, and abolish the Historic District 25 percent provision. RAC argued that the Board notes that the tax shelter and historic district credits would be available to him for any other use, including a conforming use for this property, but at a lesser amount.

66. Residential Action Coalition exhibited pictures of large apartment/hotel buildings close to Pride, and of an office-retail building. These pictures are as follows:

- a. Balfour apartments at 2000 16th Street, 53 units about to be opened, no parking.
- b. Haddon apartments 1930 New Hampshire Ave., N.W. 47 units about to be opened.
- c. Corner of New Hampshire and U Street commercial C-2-A buildings, with office and retail, being opened for rent now, no parking.
- d. Roosevelt Hotel, 2100 block of 16th Street, home for the elderly, no parking.
- e. Wakefield apartments, eight story apartment building, 2100 block of New Hampshire Ave., no parking, occupied.
- f. 2013 New Hampshire Avenue, N.W. 7 story apartments, no parking, occupied (Hampton Courts).

- g. Women's Congressional Club, north east corner of New Hampshire Avenue and U Street, N.W. directly across from Pride building, no parking.
- h. Northumberland apartments 2039 New Hampshire Avenue, N.W. 70 units occupied.
- i. Brittany apartments, 2001 16th Street, N.W. directly across from Pride, occupied.

RAC contended that in this neighborhood, where the demand for parking is already not satisfied, that with the occupancy of three-about-to-be occupied buildings any office building with anywhere from 85 to 100 occupants would only exacerbate the already very bad situation.

RAC further contended that provision for off-street parking at 14th and Florida, 2400 feet from the Pride site in the amount of 20 spaces would not alleviate the situation. It is not likely that anyone would actually use the off-site parking in any case, as the route leads through a major drug selling and crime center.

67. Finally, RAC argued that irregularities occurred at the ANC meeting and at other meetings of other neighborhood associations and their concerns conditioned on the supply of parking and control of the number of occupants is not reflective of an overwhelming community support of the application.

68. The 1500 T Street Block Council, the Midway Civic Association, the Wakefield Hall Tenants Association, the Somerset House Tenants Association and individual property owners opposed the application on the basic grounds that they supported the retention of R-5-C zone and matter-of-right uses for that district so as to reflect its residential character.

69. The Board in addressing the issues raised by RAC and others in opposition finds that the relief sought is through a variance from the use provisions. The burden of proof test for a use variance is to establish a hardship inherent in the site that precludes an owner of property from reasonably putting his property to a use permitted in the zone in which the site is located. The test is not a practical difficulty inherent in the property. Such is the test for an area variance. As to the other buildings recited by RAC as comparable to the subject Pride building and which have been restored to residential use the Board finds that the evidence produced by RAC as insufficiently substantiated. The Board finds that the testimony of the architect and other expert witnesses of the applicant more persuasive. Similarly the Board finds the testimony of the

applicant's financial expert as to a fair return on the property and his computation figures were based on probative evidence. The Board does not find the allegations of RAC to be so founded. As to the issue of parking impact, the Board finds that the problem exists and all the neighborhood organizations so agree. These organizations applaud what appears to be a fair solution to this issue proposed by the applicant and the Board concurs.

70. Residential Action Coalition had raised the issues of irregularities occurring at the ANC meeting and the meetings of other community organizations. The Board finds that the internal working of said organizations are not a zoning issue and are not properly before the Board. RAC has other remedies and forums to discuss such concerns.

CONCLUSIONS OF LAW AND OPINION:

Based upon the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be reasonably used for 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 met its burden of proof.

One of the first cases in the District of Columbia where the Court of Appeals examined the meaning of the term "extraordinary or exceptional situation or condition of a specific piece of property" was Palmer v. D.C. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972). The Court there held that the hardship must be due to unique circumstances particular to the applicant's property, and not to the general conditions of the neighborhood. *Id.* at 539. The court also held in that case that a use variance is proper when a "reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations." *Id.* at 542. The Court in that case established that the purpose of variance relief is "to provide relief from the strict letter of the regulations, protect zoning legislation from constitutional attack,... and prevent usable land from remaining idle." *Id.* at 541.

In Clerics of St. Viator v. D.C. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) the court refined its interpretation of "extraordinary or exceptional situation or condition," holding that such condition need not be confined to the "land" but is instead intended to apply to the "property" as a whole. In that case, the applicant built a seminary in 1961 with 80 rooms and 29,000 square feet of

gross floor area. Ten years later, in 1971, the applicant sought a variance to convert that use to a convalescent or nursing home. The existing seminary building on the site and the inability of the applicant to continue to use it for that purpose constituted the exceptional situation or condition. The Court found that continued use as a seminary was not reasonable and granted the use variance.

In the later case of DeAzcarate v. D.C. Board of Zoning Adjustment, 388 A.2d 1233 (D.C. 1978), the court reviewed the D.C. case law to date on the subject of "extraordinary situations or conditions" necessary to support a variance. The Court stated that, "[i]n our view, that term was designed to serve as an additional source of authority enabling the Board to temper the strict application of the Zoning Regulations in appropriate cases, subject to the limitations found in Section 5-420" of the D.C. Code. That section of the D.C. Code (now codified as Section 5-424) sets forth the purposes, duties and powers of the Board of Zoning Adjustment, including the power to grant variances, as set forth in Section 8207.11 of the Zoning Regulations.

In Monaco v. D.C. Board of Zoning Adjustment, 407 A.2d 1091 (D.C. 1979), the Court upheld a grant of variance relief for office use of a property zoned R-4. The exceptional situation or condition which supported the variance in that case arose from the historical circumstances affecting the property, including prior actions by the BZA and the Zoning Commission allowing the use of adjoining R-4 property for an office building, and the restrictions imposed upon the property which limit its use, and control the architecture of the project. Id. at 1906.

The Board concludes that based in particular upon Findings No. 20-32 and Nos. 40-51 the applicant has met the criteria set out in the above cited D.C. Court of Appeals cases.

The Board further concludes that it has afforded the ANC the great weight to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Use of the subject premises shall be limited to those permitted under Paragraph 4104.44 of the Zoning Regulations.
2. The applicant shall provide a minimum of twenty parking spaces for the exclusive use of tenants of the subject premises in the parking garage located at 14th Street and Florida Avenue, N.W.
3. There shall be no commercial kitchen on the subject premises.

4. Trash shall be stored in containers located on the eastern side of the applicant's property.
5. Trash shall be picked up on a regular basis during normal business hours.
6. There shall be no entrance to the subject property from the 16th Street frontage.
7. The applicant shall maintain the facade of the subject building in accordance with the character of the 16th Street Historic District.
8. The applicant shall maintain the public space along the 16th Street frontage in a neat and orderly appearance and any landscaping provided shall be maintained in a healthy growing condition.
9. There shall be no signs located on the premises on the 16th Street frontage.
10. There shall be no curb cuts to the subject property from 16th Street or U Street.
11. The number of employees shall not exceed 100 full time equivalent employees.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Patricia Mathews to grant by proxy; Douglas J. Patton not present, not voting).

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

ATTESTED BY:


CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 22 OCT 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.

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