

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14319, of Penn 24 Associates, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 3101.412 to use an existing residential building as the offices of a non-profit organization and under Sub-section 3308.2 to approve the location and design of a roof structure not meeting the normal setback requirements and for variances from the rear yard requirements (Sub-section 3304.1), the lot occupancy requirements (Sub-section 3303.1) and the open court requirements (Sub-section 3306) for a proposed alteration and an eight story addition to use the subject premises for the offices of a non-profit organization in an R-5-D District at premises 2321-2327 Pennsylvania Avenue, N.W., (Square 38, Lot 40).

HEARING DATES: September 11, 1985 and June 24, 1986

DECISION DATES: October 2, 1985 and July 2, 1986

FINDINGS OF FACT:

1. The site is located on the northeast quadrant of Washington Circle. It fronts on Pennsylvania Avenue and 24th Street and is known as premises 2321-2327 Pennsylvania Avenue, N.W. The site is in an R-5-D District.

2. The site comprises approximately 11,585 square feet of land area. The site is a single lot of record. It is improved with a single building configured as seven rowhouses. The site abuts public alleys to its rear.

3. The entirety of lot 40, including the land and the structure located therein, is included among the properties which were designated as a single historic landmark in 1979 by the Joint Committee on Landmarks.

4. The neighborhood surrounding the property includes a mixture of residential and nonresidential uses. Directly across 24th Street and Pennsylvania Avenue is the C-2-C District. Abutting the site to the east is the Chancellor condominium residential and clinic building. To the north, across L Street, is the Columbia Hospital. There are C-2-C and R-5-B Districts to the north, as well as the CR District to the north and west. Across Washington Circle is the C-3-C District. The area surrounding the site contains a mixture of apartment, office, restaurant, chancery, clinic,

hotel, hospital, retail, church, institutional, governmental, education, theater, library, public service, and other uses.

5. The application as advertised originally sought additional relief pursuant to Article 46 of the Zoning Regulations to locate a chancery on the site. As a preliminary matter, the Executive Director of the National Capital Planning Commission stated that, because the application did not identify a specific foreign government and that the applicant was not a foreign mission, he was of the opinion that this was not a foreign mission use, and he could not participate in the chancery portion of this public hearing. The evidence of record indicated that the Zoning Administrator had no objection to the applicant proceeding for chancery use without identifying a specific foreign government. The Department of State indicated that, while the application is consistent with the international obligation of the United States to provide adequate chancery facilities, the Department reserved the right to approve a specific applicant in the future under the criteria for adequacy of protection and federal interest. The Board was of the opinion that in the absence of a specific foreign mission before it, the Board could not address the criteria set forth in Article 46 of the Zoning Regulations under which the application was brought. The Board determined not to hear the chancery portion of the application and proceeded to hear the special exception request for non-profit office use and the related area variances and the roof structure special exception request.

6. The Board on December 19, 1985, waived its Rules and authorized a further hearing on January 29, 1986, on the limited issue whether a specific named chancery was a prerequisite in a hearing under Article 46. On December 31, 1985, that application was withdrawn.

7. As a further preliminary matter, the applicant moved to strike the Office of Planning report, dated September 24, 1985, on the ground that the report created and applied criteria which were not contained in, and were beyond the scope of the Zoning Regulations. Moreover, the applicant stated that the report failed to apply the specific criteria enumerated in the applicable provisions of the Regulations. The Chair ruled that the Board would take this issue under advisement.

8. As recognized by the Zoning Administrator the structures on the site are deemed one building for zoning purposes pursuant to Section 3307.3 and 3105.31 of the Zoning Regulations. The applicant proposes to add an eight story addition to the rear of the existing building. The final design of the proposed addition is the result of discussions with and input received from the D.C.

Preservation League and other interested groups, including historic preservation consultants retained by the ANC. The design received conceptual design approval from the Historic Preservation Review Board (HPRB) in October of 1984.

9. Nonprofit office use is permitted at this location by special exception, pursuant to Section 3101.412. Special exception relief is required for the roof structure, and variances are required from the lot occupancy, rear yard, and open court requirements because of the design of the addition.

10. The site is an historic landmark, and the existing building now contains approximately 15,800 square feet of gross floor area. The building and addition, which together will constitute one landmark building, will contain approximately 57,500 square feet of gross floor area. More than 10,000 square feet of the historic fabric of the building will be retained in the development.

11. Because the site is an historic landmark, there are no additional parking or loading requirements under Paragraph 7201.21 and 7301.21 of the Zoning Regulations. The project as proposed included at least 36 parking spaces in two garage levels to serve the occupants of the building. With stacked parking, the number of parking spaces in the garage can be increased. The area is well served by public transportation, and off-street and on-street parking within close proximity.

12. The Historic Preservation Review Board has determined that in order to respect the historic nature of the townhouses fronting on Pennsylvania Avenue and 24th Street, the building addition should be set back as far as possible from the street frontages. The applicant's architect has designed the building as such. The design is of late 20th Century architecture, to complement the late Victorian style of the existing building. The most important concern in the design was to visually reduce the impact of the building addition to the greatest extent possible. This effect has been achieved by the use of glass for the facade of the building and the roof structure, and by setting back the addition to the greatest extent possible on the site. The proposed addition will have less visual impact on the surrounding area than the adjacent Chancellor condominium clinic and residential building, which is higher and more massive than the proposed addition and is of a dark brick material.

13. The lot is of an irregular configuration, particularly on the eastern boundary line. By locating the

penthouse as far from the street frontage as possible, a portion of the east face of the penthouse does not meet the strict setback requirements. The penthouse has been designed to be as small as possible and still accommodate all of the necessary roof top functions. The penthouse FAR is 0.12 which is less than one-third of the permitted penthouse FAR. The penthouse cannot be further reduced in size and still accommodate all of the required functions.

14. The height of the building is 86.26 feet to the top of the parapet. The roof structure will be built to a height of 15.17 feet above the height of the roof. The overall height of the building will be 100.76 feet, which is less than the matter of right combined height of 108.5 feet for the building and penthouse at this location. The roof structure will meet the the setback provision on the north, west and south sides, and on the majority of the east side. However, due to the irregular configuration at the rear of the property, the strict setback requirement will not be met in its entirety. Only 11.4 percent of the total penthouse perimeter will not meet the setback requirements. This portion of the roof structure is adjacent to a 15.75 foot wide public alley, which also serves to minimize the impact.

15. The light and air of the adjacent building will not be adversely affected by the placement of the roof structure as proposed. The adjacent Chancellor condominium building was built to a higher elevation than the elevation that the proposed addition will be, and the penthouse of that building was set back to the rear portion of the roof for the same reason that the applicant herein is seeking to place the penthouse as proposed.

16. As aforementioned, the site is irregularly configured, particularly along its eastern boundary. An alley which formerly abutted the northern boundary of the property was closed prior to the applicant's ownership of the property. As a result, the north face of the existing structure is now three feet from the lot line, whereas formerly it abutted the lot line.

17. Because of the landmark status of the property and the presence of the existing improvements on the site, the new addition is required, pursuant to HPRB approval, to be set back from the street frontages. While the existing structure constitutes a small portion of the gross floor area of the entire project, it occupies a disproportionately large amount of the lot occupancy.

18. The lot occupancy, rear yard, and court requirements of the Zoning Regulations could only be met in this case if the building addition were not set back as far as possible from Pennsylvania Avenue and 24th Street, and if the historic landmark status of the site were not otherwise

respected. However, due to the historic nature of the property, which dictates the design of the addition, the project was designed to respect the historic integrity of the existing building.

19. Strict compliance with the lot occupancy and rear yard regulations would require the addition to be moved closer to the street frontages, thereby creating the visual effect that the addition is "on top of" the existing townhouses, rather than "behind" them. In addition, the requested court variance would not be needed if the three foot wide former alley on the north lot line were covered with new construction for the entire length of the lot to its north boundary, and construction on that scale would have more impact than the proposed variance.

20. The Zoning Administrator certified by memorandum that in excess of 10,000 square feet of old building mass is to be retained in the building. The applicant renewed its motion to strike the OP report. The applicant noted that the Zoning Administrator has determined that the existing building and proposed addition to the building fall within the special exception provisions of Paragraph 3101.412. Further, the applicant alleged that additions to building to be used for nonprofit office purposes are specifically permitted under Paragraph 3101.4124, and that the proposed addition has received conceptual design approval from HPRB. There is no limitation expressed in the regulation on the size of the addition. The applicant was of the opinion that if the Zoning Commission had intended to limit the size of the addition, it could have done so. Finally, the applicant contended that the OP report does not address the specific issues under Section 3101.412.

21. The Board finds that the subject site is a single record lot. The Board is cognizant of the fact that a single record lot can be so created only if a single building is on the site (absent a multiple building covenant, which is not applicable here). In approving the subdivision into one record lot, the Zoning Administrator of necessity determined that the structure on the site, configured as seven townhouses, constituted one building for zoning purposes. The structure does in fact constitute one building for zoning purposes pursuant to Sub-section 3307.3 of the Zoning Regulations.

22. The D.C. Department of Public Works (DPW) submitted a report in this case. DPW concluded that the parking spaces provided on site will be sufficient, given the availability of commercial parking in the vicinity of the site. DPW observed that there is excellent public transportation access to the site by bus and metrorail. DPW was of the opinion that it is not desirable to place a large supply of parking for the office use on this site.

DPW also noted that there is adequate sewer and water availability for the site.

23. Advisory Neighborhood Commission 2A by letter dated August 13, 1985, voted to oppose the application. The written report of the ANC based its opposition on the following assertions:

- A. The applicant is seeking to develop the site prior to having a tenant.
- B. The site is occupied by a number of separate buildings, rather than a single building of 10,000 square feet.
- C. The site is zoned R-5-D, and was last used for residential purposes.
- D. Only the facades of the buildings currently standing on the site would be retained, and the remainder of the historic buildings would be removed causing the loss of listed historic buildings.
- E. A building addition of the size proposed would cause the people occupying the neighboring residential building to lose privacy, light and air.
- F. A building addition of the size proposed would add traffic congestion around an already highly developed square.

24. The Board is required to give "great weight" to the issues and concerns of the ANC as they relate to the issues involved in the application. For the following reasons, the Board does not concur with the position of the ANC:

- A. There is no requirement that an applicant identify a specific tenant in order to proceed with an application under Paragraph 3101.412. The Board on several previous occasions has approved a nonprofit office use before the owner identified a particular tenant.
- B. For the reasons as stated elsewhere in this Order, the Board finds that the improvements on the site constitute a single building in excess of 10,000 square feet, albeit the project will include less than 10,000 square feet of existing building mass when completed.

- C. The retention of a previous residential use is not one of the criteria of Paragraph 3101.412.
- D. As set forth more fully in findings numbered 12 and 25, the Board finds, on the facts of this case, that an approval of the application would adequately serve the goal of historic preservation.
- E. A 90-foot tall building with an 18½ foot penthouse could be built on this site as a matter-of-right. The applicant's proposal is 8 feet less than the overall maximum permitted matter-of-right height, with a roof structure which is one-third the permitted density.
- F. The street system in the neighborhood of the subject site is adequate to handle traffic from existing and proposed development in the area.

25. A representative from the D.C. Preservation League testified in support of the application. He testified that the existing building was extensively remodeled on the interior approximately twenty years ago, and that the only portion of the building of historic merit is the exterior facades. He also testified that the restoration and the new addition would be compatible with the existing 19th century buildings. He further testified that the final design of the building was developed by the architect in conjunction with consultation from his organization, as well as from representatives of the Advisory Neighborhood Commission, over the course of several meetings. Finally, he testified that, although the only portion of the existing building with historic merit is the facade, the entire site is nonetheless designated as a historic landmark. The Board concurs.

26. The Board finds that the proposed use is permitted by special exception. A special exception is a use which generally is predeemed to be compatible with other uses in the same zoning district. A nonprofit office use, as proposed in this case, would not adversely affect the various uses of neighboring properties, as those uses are set out in finding numbered 4 of this Order.

27. By Order dated April 8, 1986, the Board denied the application for special exception of Penn 24 Associates, on the ground that the completed project would not include 10,000 square feet of existing building mass, and that the applicant had failed to show that the proposed use provided for the use of an existing residential building pursuant to Paragraph 3101.412. The Board concluded that the failure to meet the threshold criteria was dispositive of the

application, and therefore did not consider the other aspects of the application.

28. The applicant filed a Motion for Reconsideration, Rehearing or Reargument on April 21, 1986. In this Motion the applicant contended that it met all the criteria for Paragraph 3101.412, and that the addition to the existing building is clearly permitted under 3101.412. On May 8, 1986 the Board granted the applicant's Motion for Rehearing and requested that the applicant obtain a calculation from the Zoning Administrator for the square footage of the existing building mass that would be retained in the project. The further hearing was limited to two issues: (1) Does the proposal provide for the use of existing residential buildings? and (2) Does the gross floor area of the building in question, not including other buildings on the lot, constitute 10,000 square feet or greater?

29. The Zoning Administrator, by Memorandum dated May 15, 1986, responded to the issues raised by the Board. In his Memorandum, he reported that: (1) there was one building on the subject lot; (2) this building contains approximately 15,800 square feet of gross floor area; (3) the building contemplated by the subject application, with the inclusion of the contemplated addition, will contain approximately 57,726 square feet of gross floor area; and (4) the total gross floor area proposed to be retained in the old mass of the contemplated building exceeds 10,000 square feet. The additional floor will be incorporated into the addition to the present building and become a part thereof.

30. On June 24, 1986 the Board reheard arguments on the application for special exception. The applicant argued that over 10,000 square feet of existing building mass was being retained in the project, as confirmed by the Zoning Administrator. The applicant further argued that it is uncontroverted and a matter of public record that there have been no intervening uses between the purchase of the building and the application for special exception.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence in the record, the Board concludes that the applicant is seeking special exception and area variance relief. Special exception relief is required if the existing building and the proposed addition are to be used for nonprofit office purposes, and to approve the location and design of the penthouse. In order to be granted such special exception relief, the applicants must demonstrate substantial compliance with the requirements of Paragraph 3101.412 and Sub-section 3308.2 of the Zoning Regulations and will not tend to adversely affect the use of neighboring property. Furthermore, area variance relief is required for lot occupancy, court, and rear yard plans. In

order to be granted variance relief, the applicants must demonstrate that the property is affected by an exceptional situation or condition inherent in the property, that the strict application of the Zoning Regulations would result in a practical difficulty upon the owner, and that such relief can be granted without substantially impairing the intent, purpose or integrity of the Zoning Regulations and Map.

The following use is permitted in a residential district if approved by the Board of Zoning Adjustment subject to the conditions specified:

3101.412. The use of existing residential buildings and the land on which they are located by a nonprofit organization for the purposes of such nonprofit organization if (1) such buildings are listed in the District of Columbia's Inventory of Historic Sites contained in the comprehensive statewide historic preservation survey and plan prepared pursuant to Section 101 (a) of Public Law 89-665 approved October 15, 1966 (16 U.S. 470a-470m), or are located within a district, site, area, or place listed on the District of Columbia's Inventory of Historic Sites; and (2) the gross floor area of the building in question not including other buildings on the lot is 10,000 square feet or greater; provided further that:

3101.4121. Such use by a nonprofit organization will not adversely affect the use of the neighboring properties.

3101.4122. The amount and arrangement of parking spaces are adequate and so located as to minimize traffic impact on the adjacent neighborhood.

3101.4123 No goods, chattel, wares or merchandise are commercially created, exchanged, or sold therein, except for the sale of publications, materials, or other items related to the purposes of such nonprofit organization.

3101.4124. Any additions to such building or any major modifications to the exterior of the building or to the site shall require the prior approval of the Board. The Board shall refer such proposed additions and/or modifications to the State Historic Preservation Officer, who, acting with the advice of the District of Columbia Professional Review Committee for nominations to the National Register of Historic Places shall provide the Board with a report to determine possible detrimental consequences which the proposed addition and/or modification may have on the architectural or historical significance of the building or site or district in which the building is located.

Further, under Sub-section 3308.2, the Board is empowered to approve the location and design of a penthouse structure that does not meet the setback requirements:

3308.2 Where impracticable because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area which would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable, the Board of Zoning Adjustment is empowered to approve the location and design of any or all of such structures even if such structures do not meet the normal setback requirements of Paragraphs 3201.26, 4201.22, 4403.3, 4503.6, 5201.24 or 6201.22 when applicable, and to approve the material of enclosing construction used if not in accordance with Paragraph 3308.12, provided the intent and purpose of this section is not materially impaired thereby and the light and air of adjacent buildings are not affected adversely.

The Zoning Regulations set minimum rear yard, lot occupancy, and court requirements for structures located within a residential district under Sub-section 3304.1 a structure is required to have a minimum rear yard of three inches per foot of vertical distance from the rear finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet. Sub-section 3303.1 allows a maximum of 75 percent of lot occupancy for all structures. Section 3306 requires the minimum width of an open court in a residential district to be three inches per foot of height of court, but not less than ten feet. Further, an open court must satisfy the following conditions:

3306.2 No required opening for the admission of light and natural ventilation shall open onto a court niche where the ratio between the width of court niche and the depth of court niche is less than two to one.

3306.3 No portion of a court niche shall be farther than three feet from a point where court niches is less than three feet in width.

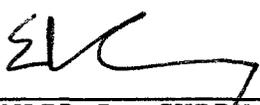
3306.4 In the case of an alteration affecting the amount of light and ventilation required by other municipal law or regulations in an existing building in a Residence District, no legally required window shall be permitted to open onto a court which does not comply with the dimensions given in Sub-section 3306.1

On the particular and unique facts of this case, the Board concludes that the applicant has met its burden of proof for special exceptions under Paragraph 3101.412 to use an existing residential building as the office of a non-profit organization and under Sub-section 3308.2 to approve the location and design of the roof structure not meeting the normal setback requirements. Furthermore, the Board concludes that the applicants have met their burden of proof for area variance from the rear yard requirements (Sub-sections 3304.1), the lot occupancy requirements (Sub-sections 3303.1), and the open court requirements (Section 3306) for the proposed alteration and an eight story addition to use the premises for the offices of a non-profit organization. In summary, the Board concludes that the existing building and site are designated as a landmark. The contemplated structure will include over 10,000 square feet of existing building mass and was last used for residential purposes. The Board further concludes that the nonprofit organization use will not adversely affect the neighborhood and that no goods or other merchandise will be sold on the premises other than those related to the purposes of the organization. The appropriate review by the Historic Preservation Review Board has occurred and the applicant's proposal had received conceptual design approval. The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. ACCORDINGLY, it is ORDERED that the application is GRANTED in its entirety, and BZA Order No. 14319, dated April 8, 1986 is vacated.

VOTE: 3-2 (William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant, Charles R. Norris and John G. Parsons opposed)

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

ATTESTED BY:


EDWARD L. CURBY
Acting Executive Director

FINAL DATE OF ORDER: OCT 8 1986

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.

14319order/DON24

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14319, of Penn 24 Associates, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 3101.412 to use an existing residential building as the offices of a non-profit organization and under Sub-section 3308.2 to approve the location and design of a roof structure not meeting the normal setback requirements and for variances from the rear yard requirements (Sub-section 3304.1), the lot occupancy requirements (Sub-section 3303.1) and the open court requirements (Sub-section 3306) for a proposed alteration and an eight story addition to use the subject premises for the offices of a non-profit organization in an R-5-D District at premises 2321-2327 Pennsylvania Avenue, N.W., (Square 38, Lot 40).

HEARING DATE: September 11, 1985
DECISION DATE: October 2, 1985

FINDINGS OF FACT:

1. The subject site is located on the northeast quadrant of Washington Circle. It fronts on Pennsylvania Avenue and 24th Street and is known as premises 2321-2327 Pennsylvania Avenue, N.W. The site is located in an R-5-D District.
2. The site comprises approximately 11,585 square feet of land area. The site is a single lot of record. It is improved with a single building configured as seven rowhouses. The site abuts public alleys to its rear.
3. The entirety of lot 40, including the land and the structure located therein is included among the properties which were designated as a single historic landmark in 1979 by the Joint Committee on Landmark.
4. The neighborhood surrounding the subject property includes a mixture of residential and nonresidential uses. Directly across 24th Street and Pennsylvania Avenue is the C-2-C District. Abutting the site to the east is the Chancellor condominium residential and clinic building. To the north, across L Street, is the Columbia Hospital. There are C-2-C and R-5-B Districts to the north, as well as the CR District to the north and west of the east, across

Washington Circle is the C-3-C District. The area surrounding the subject site contains a mixture of apartment, office, restaurant, chancery, clinic, hotel, hospital, retail, church, institutional, governmental, education, theater, library, public service and other uses.

5. The application as advertised originally sought additional relief pursuant to Article 46 of the Zoning Regulations to locate a chancery on the site. As a preliminary matter, the Executive Director of the National Capital Planning Commission stated that, because the application did not identify a specific foreign government and that the applicant was not a foreign mission he was of the opinion that this was not a foreign mission use and he could not participate in the chancery portion of this public hearing. The evidence of record indicated that the Zoning Administrator had no objection to the applicant proceeding for chancery use without identifying a specific foreign government. The Department of State indicated that, while the application is consistent with the international obligation of the United States to provide adequate chancery facilities, the Department reserved the right to approve a specific applicant in the future under the criteria for adequacy of protection and federal interest. The Board was also of the opinion that in the absence of a specific foreign mission before it, the Board could not address the criteria set forth in Article 46 of the Zoning Regulations under which the application was brought. The Board determined not to hear the chancery portion of the application and proceeded to hear the special exception request for non-profit office use and the related area variances and the roof structure special exception request.

6. The Board on December 19, 1985, waived its Rules and authorized a further hearing on January 29, 1986, on the limited issue whether a specific named chancery was a prerequisite in a hearing under Article 46. On December 31, 1985, the application was withdrawn.

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discussions with and input received from the D.C. Preservation League and other interested groups, including historic preservation consultants retained by the ANC. The design received conceptual design approval from the Historic Preservation Review Board (HPRB) in October of 1984.

9. Nonprofit office use is permitted at this location by special exception, pursuant to Section 3101.412. Special exception relief is required for the roof structure, and variances are required from the lot occupancy, rear yard, and open court requirements because of the design of the addition.

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11. Because the subject site is a Historic Landmark, there are no additional parking or loading requirements under Sections 7201.21 and 7301.21 of the Zoning Regulations. The project as proposed included at least 36 parking spaces in two garage levels to serve the occupants of the building. With stacked parking, the number of parking spaces in the garage can be increased. The area is well-served by public transportation. There are 19 bus routes which pass within one block of the site. The Metrorail Blue/Orange Line at Foggy Bottom is located a short walking distance to the south. There is a supply of off-street and on-street parking within close proximity of the site.

12. The applicant is amenable to a condition to the approval that no goods, chattel, wares or other merchandise shall be commercially created, exchanged or sold, except for the sale of the nonprofit organizations.

13. Historic Preservation Review Board has determined that, in order to respect the historic nature of the townhouses fronting on Pennsylvania Avenue and 24th Street, the building addition should be set back as far as possible from the street frontages. The applicant's architect has designed the building as such. The design is of late 20th Century architecture, to complement the existing late Victorian style of the existing building. The Architect testified that the most important concern in his design was to visually reduce the impact of the building addition to the greatest extent possible. This has been achieved by the use of glass for the facade of the building and the roof structure, and by setting back the addition to the greatest extent possible on the site. The proposed addition will have less visual impact on the surrounding area than the adjacent Chancellor

condominium clinic and residential building, which is higher and more massive than the proposed addition, and is of a dark brick material.

14. The lot is of an irregular configuration, particularly on the eastern boundary line. By locating the penthouse as far from the street frontage as possible, a portion of the east face of the penthouse does not meet the strict setback requirements. The applicant's architect testified that the penthouse has been designed to be as small as possible and still accommodate all of the necessary roof top functions. The penthouse FAR is 0.12, which is less than one-third of the permitted penthouse FAR. The architect testified that the penthouse cannot be further reduced in size and still accommodate all of the required functions.

15. The height of the building is 86.26 feet to the top of the parapet. The roof structure will be built to a height of 15.17 feet above the height of the roof. The overall height of the building will be 100.76 feet, which is less than the matter of right combined height of 108.5 feet for the building and penthouse at this location. The roof structure will meet the setback provisions on the north, west and south sides, and on the majority of the east side. However, due to the irregular configuration at the rear of the property, the strict setback requirement will not be met in its entirety. Only 11.4 percent of the total penthouse perimeter will not meet the setback requirements. This portion of the roof structure is adjacent to 15.75 feet wide public alley, which also serves to minimize the impact.

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17. The site is irregularly configured, particularly along its eastern boundary. An alley which formerly abutted the northern boundary of the property was closed prior to the applicant's ownership of the property. As a result, the north face of the existing structure is now three feet from the lot line, whereas formerly it abutted the lot line.

18. Because of the Historic Landmark status of the property and the presence of the existing improvements on the site, the new addition is required, pursuant to HPRB approval, to be set back from the street frontages. While the existing structure constitutes a small portion of the gross floor area of the entire project, it occupies a disproportionately large amount of the lot occupancy.

19. The lot occupancy, rear yard and court requirements of the Zoning Regulations could only be met in this case if the building addition were not set back as far as possible from Pennsylvania Avenue and 24th Street, and if the Historic Landmark status of the site were not otherwise respected. However, due to the historic nature of the property, which dictates the design of the addition, the project was designed to respect the historic integrity of the existing building.

20. Strict compliance with the lot occupancy and rear yard regulations would require the addition to be moved closer to the street frontages so that the addition is visually placed "on top of" the existing townhouses, rather than "behind" them. In addition, the court variance could be deleted if the three foot wide former alley on the north lot line were covered with new construction for the entire length out to the north boundary of the lot.

21. The Office of Planning by report, dated September 4, 1985, recommended that the application be denied. As to the non-profit office use the OP was of the opinion that Paragraph 3101.412 provides for the use of existing residential buildings (emphasis added) by a nonprofit organization under certain conditions, specifically that it has historical value and contains at least 10,000 square feet of gross floor area. In the Office of Planning's opinion the subject development proposal does not meet these requirements -- existing and residential, nor the intent of the Regulations in this Paragraph. The OP noted that the row of historic row dwelling have been collectively designated as a historic landmark. Interconnections between previously separate buildings have been made so as to create one building, which may be considered an existing building. This "building" also has a gross floor area in excess of 10,000 square feet. The historic row, however, is not proposed to be preserved and restored as a historic landmark. Rather, approximately the rear half of the row is to be demolished and an eight story nonprofit office tower erected on the cleared portion of the site plus a part of the rear yard. In the OP's opinion it is not a historic building which is being preserved, as was clearly intended by Paragraph 3101.412. The existing historic building which exceeds 10,000 square feet of gross floor area is actually being demolished in part, and demolished to the extent that the remaining portion of the row will be less than the threshold 10,000 square feet of gross floor area. Further, the OP opined that the new office tower proposed to be constructed cannot be considered an existing building. It certainly cannot be considered an existing residential building, never having been occupied as a residence, nor constructed, nor designed or intended for future residential occupancy.

22. The applicant renewed its motion to strike the report of OP. The applicant pointed out that the Zoning

Administrator has determined that the existing building and proposed addition to the building fall within the special exception provisions of Section 3101.412. Further, the applicant stated that additions to building to be used for nonprofit office purposes is specifically permitted under Section 3101.4124, and that the proposed addition has received conceptual design approval from HPRB. There is no limitation expressed in the regulation on the size of the addition. If the Zoning Commission had intended to limit the size of the addition, it could have done so. Finally, the applicant contended that the OP report does not address the specific issues under Section 3101.412.

23. The Board finds that the subject site is a single record lot. The Board is cognizant of the fact that a single record lot cannot so be created unless there is only one single building on the site (absent a Multiple Building Covenant, which is not applicable here). In approving the subdivision into one single record lot, the Zoning Administrator of necessity determined that the structure on the site, configured as seven townhouses, constituted one building for zoning purposes. The structure does in fact constitute one building for zoning purposes pursuant to Section 3307.3 of the Zoning Regulations. However, the applicant testified that there will be less than 10,000 square feet of existing building mass remaining after completion of the project.

24. The D.C. Department of Public Works (DPW) submitted a report in this case. The DPW concluded that the parking spaces provided on site will be sufficient given the availability of commercial parking in the vicinity of the site. The DPW observed that there is excellent public transportation access to the site by bus and metrorail. The DPW was of the opinion that it is not desirable to place a large supply of parking for the office use on this site. The DPW also noted that there is adequate sewer and water availability for the site.

25. Advisory Neighborhood Commission 2A by letter dated August 13, 1985, voted to oppose the application. The written report of the ANC based its opposition on the following assertions:

- A. The applicant is seeking to develop the site prior to having a tenant.
- B. The site is occupied by a number of separate buildings, rather than a single building of 10,000 square feet.
- C. The site is zoned R-5-D and was last used for residential purposes.

- D. Only the facades of the buildings currently standing on the site would be retained, and the remainder of the historic buildings would be removed causing the loss of listed historic buildings.
- E. A building addition of the size proposed would cause the people occupying the neighboring residential building to lose privacy, light and air.
- F. A building addition of the size proposed would add traffic congestion around an already highly developed square.

26. The Board is required to give "great weight" to the written concerns of the ANC as they relate to the issues involved in the application. For the following reasons, the Board does not concur with the position of the ANC:

- 1. There is no requirement that an applicant identify a specific tenant in order to proceed with an application under Section 3101.412. The Board on several previous occasions has approved a nonprofit office use prior to the owner having identified a particular tenant.
- 2. For the reasons as stated elsewhere in this Order, the Board finds that the improvements on the site constitute a single building in excess of 10,000 square feet. However, the project will include less than 10,000 square feet of existing building mass when completed.
- 3. A ninety foot tall building with an 18-1/2 foot penthouse could be built on this site as a matter-of-right. The applicants' proposal is eight feet less than the overall maximum permitted matter-of-right height, with a roof structure which is one-third the permitted density.
- 4. The street system in the neighborhood of the subject site is adequate to handle both traffic from existing development and from proposed development in the area.

27. A representative from the D.C. Preservation League appeared and testified in support of the application. He testified that the existing building was extensively remodeled on the interior approximately twenty years ago, and that the only portion of the building of historic merit is the exterior facades. He also testified that the restoration

and the new addition would be compatible with the existing 19th century buildings. He testified that the final design of the building was developed by the architect in conjunction with consultation from his organization, as well as from representatives of the Advisory Neighborhood Commission, over the course of several meetings. Finally, he testified that, although the only portion of the existing building with historic merit is the facade, the entire site is nonetheless designated as a historic landmark.

28. An individual who lives in the adjacent Chancellor condominium building to the east of the subject site appeared in opposition to the application. He testified that the proposed development would permanently alter the character of the neighborhood, and that the requested relief is contrary to the Zoning Regulations. He testified that the residential use should be retained, that there are parking problems in the neighborhood, that the case involves a use variance, that the building height is in excess of 100 feet, and that there is no existing building in excess of 10,000 square feet on the site. Under cross-examination, he was unable to substantiate his statements concerning compliance with the Zoning Regulations.

29. An individual who lives six blocks from the subject site questioned the impact that this application would have on future applications as a precedent.

30. An individual who lives ten blocks from the subject site appeared in opposition to the application. She testified about the declining population of the District of Columbia because of the lack of housing and that the approval of the subject application would perpetuate this condition. The witness also was concerned that the proposed use would contribute nothing as far as property taxes to the D.C. Treasury.

31. The Board finds that the proposed use is permitted by special exception. A special exception is a use predeemed compatible with other uses in the same zoning district. A nonprofit office use in a building in excess of 10,000 square feet that is designated a landmark is a use predeemed compatible with other uses in the R-1 District, which is the most restrictive residential district. The subject site is located in the R-5-D District, which is the least restrictive residential district. Also, the applicant has no burden to prove that the property cannot be used for residential purposes.

CONCLUSIONS OF LAW AND OPINION:

Based upon the evidence and testimony of record, the Board concludes that the applicant is seeking special exception and variance relief. Special exception relief is

required to allow the existing building and the proposed addition to be used for nonprofit office purposes. Special exception relief is also required in order to approve the location and design of the penthouse. Variance relief is required for the lot occupancy, court and rear yard.

The Board further concludes that the existing building and site is designated as a landmark. However, the completed project will not include 10,000 square feet of the existing building mass. The Board also concludes that the applicant has failed, as pointed out in the Office of Planning report, that the proposed use provides for the use of an existing residential building. Both issues are threshold issues under Paragraph 3101.412. The Board concludes the failure to meet the threshold criteria is dispositive of the subject application. The Board need not consider the merits of other aspects of the application.

The Board concludes it has afforded the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (Charles R. Norris, John G. Parsons and Carrie L. Thornhill to deny; William F. McIntosh opposed; 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:

08 APR 1986

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."

14319order/LJPN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14319, of Penn 24 Associates, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for special exceptions under Paragraph 3101.412 to use an existing residential building as the offices of a non-profit organization and under Sub-section 3308.2 to approve the location and design of a roof structure not meeting the normal setback requirements and for variances from the rear yard requirements (Sub-section 3303.1) and the open court requirements (3306) for a proposed alteration and an eight story addition to use the subject premises for the offices of a non-profit organization in an R-5-D District at premises 2321 - 2327 Pennsylvania Avenue, N.W., (Square 38, Lot 40).

DISPOSITION: The Board GRANTED the application by a vote of 3-2 (William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant; Charles R. Norris and John G. Parsons opposed to the motion).

FINAL DATE OF ORDER: October 8, 1986

ORDER

The Board granted the application by final order dated October 8, 1986. By letter dated October 15, 1986, the Chairperson of Advisory Neighborhood Commission 2A, a party in opposition to the case, filed a timely motion for reconsideration. The general bases for the motion are summarized as follows:

- a. The Director of the Office of Planning submitted new evidence after the record was closed, which testimony may have had a prejudicial effect on the Board's decision.
- b. The Board's decision sets a damaging precedent encouraging the assembly of separate historic residential property so as to come under Sub - paragraph 3101.412 and avoid the necessity of rezoning.
- c. There is no specified non-profit tenant for the proposed building.
- d. The change in use represents the loss of existing

residential use.

- e. The proposed addition behind the Historic buildings dwarf the existing houses and reduce their architectural significance.
- f. The proposed addition will block the light and reduce the privacy of remaining residential properties at 23rd & L Streets.

There was no response to the motion by the applicant.

Upon consideration of the motion and its final order, the Board concludes that it has made no error in deciding the application. The motion does not raise any new issues that were not previously considered by the Board. The issues and concerns of all parties in opposition to the application were thoroughly presented at the public hearing and are addressed in the final order of the Board.

The Board concludes that its final order, dated October 8, 1986, is based on the testimony presented at the public hearing and the written evidence of record. The Board notes that it decides each application based on its individual merits and that its decision on a specific application does not create a precedent which is automatically dispositive of any particular subsequent application for relief relative to a specific property.

Accordingly, it is ORDERED that the motion for reconsideration is hereby DENIED.

VOTE: 4-1 (William F. McIntosh, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to deny; John G. Parsons opposed to the motion by proxy).

Decision Date: November 5, 1986

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

ATTESTED BY: 
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: DEC 11 1986

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 SUPPLEMENTAI RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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