

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 14558 of the Capitol Hill Restoration Society, Inc. ("Appellant"), pursuant to 11 DCMR 3105.1, from the decision of the Zoning Administrator, dated November 10, 1986, to grant a certificate of occupancy to use the premises for professional offices, including lawyers' and doctors' offices, of the American Cancer Society in a CAP/R-4 District at premises 224 East Capitol Street, N.E., (Square 759, Lot 804).

HEARING DATE: February 18, 1987  
DECISION DATE: April 8, 1987

FINDING OF FACTS:

1. The site, known as premises 224 East Capitol Street, N.E., is located on the north side of East Capitol Street between 2nd and 3rd Streets, N. E. The site is in a CAP/R-4 District.

2. The site is improved by a three-story structure which has a floor area of 4,010 square feet.

3. In Appeal No. 4629, by Order dated November 29, 1956, the Board authorized a change in the nonconforming use of the property from a tailoring establishment to "lawyer and professional offices". Pursuant to that approval, the District of Columbia issued Certificate of Occupancy No. B-12422 on September 16, 1958, for use of the premises for "lawyer and professional offices."

4. Appellant, the Capitol Hill Restoration Society, Inc., has appealed the decision of the Zoning Administrator to issue Certificate of Occupancy No. B-147801, dated November 10, 1986, to the American Cancer Society, District of Columbia Division, to use the premises for its offices.

5. On February 5, 1987, a new Certificate of Occupancy, No. B-148577, was issued to the American Cancer Society, Inc., ("Society") to use the premises for its offices. This permit supersedes the November 10, 1986 certificate of occupancy. All parties to the appeal consented to the Board's treating the appeal as from the February issuance.

6. The property was continually used for the authorized purposes under the 1958 Certificate of Occupancy until the Society occupied the site pursuant to the two recent certificates of occupancy for the site.

7. The Appellant asserts that the issuance of the permit was erroneous, in that the premises will not be used for professional offices of lawyers, doctors or other licensed professionals as authorized in Order No. 4629, and as represented to the Zoning Administrator at the time the application seeking the certificate of occupancy was filed.

8. The Society engages in lobbying and other legislative activities, medical research, and other similar programs. It does not practice a profession.

9. The person who serves as the Vice-President for Public Affairs and Science Editor of the Society will be in charge of the office at the site. This person is not a doctor, lawyer, or other licensed professional.

10. Approximately seven or eight staff members will be employed at the site. None are professionally trained or licensed. Of the four regular employees, two persons, including the Society's Director of Public Affairs, are registered lobbyists and spend between 40 and 50 percent of their employment time in lobbying activity. An additional non-doctor staff person at the site would answer inquiries. The remainder of staff to be employed at the site have clerical duties. In addition, one doctor will spend a maximum of 20 hours a week at the site conducting research, and the General Counsel of the Society would use the office once every two weeks for a limited period of time.

11. Several of the factors essential to the Board's findings were not presented to the Zoning Administrator at the time he granted the certificate of occupancy. The Zoning Administrator was caused to understand that the proposed use would be professional, and that lobbying would only be accessory. The record before the Board evidences that lobbying and other non-professional activity is the intended and actual principal use. It is professional activity which is incidental and accessory.

12. Although the Society's national Board of Directors, officers and principal staff includes a majority of professionals, the Society, as such, does not perform professional services, either nationally or at the premises. Nationally, the Society supports medical research, informs and educates the public, and solicits contributions to support its activities. The business which is conducted at the premises is similar and primarily consists of public information, research, lobbying, monitoring legislation, and liaison with the Federal Government.

13. The owners of the property intervened in the appeal on behalf of the Society.

14. All persons who sought to give testimony either in favor of or in opposition to the application were given an opportunity to do so.

CONCLUSIONS OF LAW AND OPINION:

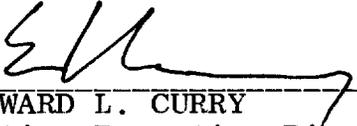
1. Based on the findings of fact and evidence of record, the American Cancer Society will occupy the premises primarily as general offices.
2. The Society's primary use of the premises is not for professional offices in any sense.
3. The Society does not provide professional services as contemplated in Board Order No. 4629.
4. The medical orientation of the Society does not by itself serve to bring the use of the premises by the Society within the uses authorized in Board Order No. 4629.
5. The circumstance that the Society is a non-profit organization has no bearing on this case. Although 11 DCMR 508 treats the offices of a non-profit organization the same as professional offices, that provision was not a basis for Board Order No. 4629.
6. The motion of the property owner to dismiss the appeal is DENIED.
7. The record as developed before the Board does not support affirmance of the decision of the Zoning Administrator to issue Certificate of Occupancy No. B148577. The appellant has satisfied its burden to prove that the Board should reverse that decision.

Accordingly, it is ORDERED that the appeal is GRANTED, and the decision to issue Certificate of Occupancy No. 148557 is hereby REVERSED.

VOTE: 4-0 (Lindsley Williams, William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Acting Executive Director

JUL 27 1987

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

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."

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