

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14660 of Passpark Management Corporation, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5) to establish an office for an electrical contractor in an R-4 District at premises 630 - 8th Street, N.E., (Square 891, Lot 812).

Hearing Date: September 23, 1987
Decision Dates: October 7, and December 2, 1987

Application No. 14707 of Passpark Management, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 330.5) to establish an office, first floor, for an electrical contractor in an R-4 District at premises 626 8th Street, N.E., (Square 891, Lot 812).

Hearing Date: November 18, 1987
Decision Date: November 18, 1987 (Bench Decision)

FINDINGS OF FACT:

1. The subject applications are consolidated by the Board for purposes of this order since both premises are under the same ownership, involve the same lot and square, and many of the facts regarding both cases are the same.
2. Application No. 14660 appeared on the preliminary agenda of the public hearing of September 23, 1987 because the applicant posted the property fourteen days prior to the public hearing instead of fifteen days as required by Section 3317.4. The applicant testified that the one-day delay in posting was an oversight on his part which was corrected immediately upon retaining counsel fourteen days prior to the hearing. The Board waived its Rules and determined that the case should go forward as scheduled.
3. The subject properties are located on the west side of 8th Street between F and G Streets and are located in an R-4 District.
4. The subject site is rectangular in shape and basically level with a lot area of approximately 4,600 square feet. The site is improved with a two-story structure which was built in approximately 1928.
5. The existing structure bears three separate addresses. Application No. 14660 relates to that portion of

the structure known as 630 8th Street, N.E. Application No. 14707 relates to that portion of the structure known as 626 8th Street, N.E. 628 8th Street, N.E. relates to the remainder of the structure and contains five apartment units and does not require any zoning relief.

6. The surrounding area is generally developed with row houses in the R-4 District. There are several institutional or nonconforming commercial uses interspersed throughout the immediate area, including a cleaners, a church and two vacant commercial structures. The nearest commercially zoned area is approximately two blocks away on H Street.

7. The portions of the structure which are before the Board have historically been used for commercial purposes since its construction. Prior uses of the subject premises include a florist, dry cleaners, jewelry and watch repair shop, laundry, beauty shop, newspaper substation, hardware store, weatherstripping store and refrigerator store.

8. The most recent recorded Certificate of Occupancy for premises 626 8th Street (Application No. 14707) was for a hardware store pursuant to BZA Order No. 8520, dated February 23, 1966. The most recent recorded Certificate of Occupancy for premises 630 8th Street (Application No. 14660) was for a florist shop pursuant to BZA Order No. 11781, dated January 14, 1975.

9. The last occupant of both premises was a church which vacated the premises in approximately 1984. Since a church is permitted as a matter of right in the R-4 District, its occupancy of the subject premises extinguished the nonconforming rights dis-allowing the continuance of any non-residential use of the property. The applicant is, therefore, seeking a variance from the use provisions to establish an office for an electrical contractor.

10. The proposed use of both premises will be as offices for a minority operated electrical company. TEI Electrical Contractors has occupied 630 8th Street without a proper Certificate of Occupancy for approximately six months. The company will have between four and six employees in each space. The hours of operation of the company will be from 7:30 A.M. to 4:30 P.M., Monday through Friday. Presently, only two vehicles are driven to the site by employees of the electrical company. These vehicles park on the street or in the rear yard of the subject premises. The remaining employees either carpool or use public transportation. All service vehicles and construction employees report directly to their work sites in the Washington area rather than the subject premises. Service vehicles are stored at employees' homes overnight. The majority of client contracts are by telephone or at the work sites. No client visits to the subject sites are anticipated.

11. The applicant purchased the building in approximately May 1986 with the intention of renovating the structure to house five residential units and two commercial units. Because of the physical layout of the structure and its prior usage, the applicant believed the proposed use to be a matter of right. Based on that assumption, the applicant began renovation of the property and leased the commercial areas of the structure to TEI Electrical Contractors, Inc., which has subsequently occupied 630 8th Street until the present time.

12. The applicant applied for a rehabilitation loan for the structure from the Neighborhood Improvement Administration of the Department of Housing and Community Development. The applicant acquired verbal approval of the loan requested subject to the submission of the necessary Certificates of Occupancy. By letter dated May 15, 1987, the Department of Housing and Community Development informed the applicant that processing of the loan application would be discontinued until the matter regarding the lack of Certificates of Occupancy could be resolved.

13. The portions of the structure known as 626 and 630 8th Street each contain approximately 450 square feet of floor area. Each area has a separate entrance and a large commercial type bay window facing 8th Street. Neither has previously been used for living accommodations.

14. The space at 630 8th Street shares a party wall with an existing townhouse to the immediate north of the site and has no exit or windows at the rear of the space. The space is accessible only from 8th Street and there is no interior connection to either the residential component at 628 8th Street or to the storefront at 626 8th Street.

15. The south wall of 626 8th Street is a brick, structural bearing wall with no windows. The property immediately south of the site is improved with a detached church. The space is accessible only from 8th Street and there is no interior connection to either the residential component at 628 8th Street or to the storefront at 630 8th Street.

16. The applicant testified that conversion of the existing storefront spaces to residential units would create an undue hardship on the owner as follows:

a. Each unit would contain only 450 square feet of floor area which is too small for even an efficiency unit. Because of the existing configuration of the structure, the two storefront spaces cannot be combined to create one residential unit, nor can either unit be combined with existing residential units.

b. The storefront spaces would not be suitable for residential space because each space contains only one window. Additional window space cannot be provided because the north wall of the property abuts an existing row house and installing windows in the south bearing wall would threaten the structural integrity of the building.

c. The conversion of the two storefronts to residential use would require a variance from the 900 square foot minimum lot area requirements. The lot area of the subject site is approximately 4,600 square feet. The existing five apartment units comprise the maximum number of units permitted on the site as a matter-of-right. The provision of additional units may also increase the parking requirements for the project.

d. The storefront spaces have never been used for living accommodations in the past. The cost of converting those spaces, even if structurally possible, would make the renovation and re-use of the building economically infeasible.

The Board so finds.

17. The applicant explored the possibility of converting the two storefront spaces to other uses permitted in the R-4 District such as a hospital, museum, church, child development center, youth center, etc. The applicant was of the opinion that such uses were infeasible because of the small size of the spaces, lack of window space for the provision of natural light and air, and because of the special licensing and code requirements for hospitals, child development centers, and youth centers, and the parking requirements generated by a church, hospital, and other uses. The Board so finds.

18. The applicant argued that the proposed use would have a less disruptive impact on the immediate area because of traffic, noise or other adverse effects than any of the prior uses of the site or any of the other uses permitted as a matter of right in the R-4 District. The Board so finds.

19. The Capitol Hill Restoration Society submitted letters in both cases recommending that the use variance relief be denied. The Capitol Hill Restoration Society was of the opinion that the applicant had not met the required burden of proof. The Capitol Hill Restoration Society was further of the opinion that the history of commercial use of the premises is not a basis for permitting the resumption of commercial use once it has been discontinued because the regulations are designed to maintain the residential character of neighborhoods containing nonconforming uses. The Capitol Hill Restoration Society noted that if the nonconforming use were current, any change would require the new nonconforming use to be a residential use or a neighborhood facility. The proposed use is not a neighborhood facility.

The Capitol Hill Restoration Society was of the opinion that if the Board determines that the applicant is entitled to a use variance, any resulting nonconforming use should be a neighborhood facility. The Capitol Hill Restoration was further of the opinion that the variance could not be granted without detriment to the public good, namely the policy of preserving residential communities. The Board does not concur with the recommendation of the Capitol Hill Restoration for reasons set forth later in this order.

20. The Office of Planning submitted no report in Application No. 14660. The Board waived the seven day filing requirement of Section 3318.2 of the Zoning Regulations to accept the Office of Planning report on Application No. 14707, dated November 17, 1987. The Office of Planning opposed the operation of a nonresidential use at the subject location. The Office of Planning was of the opinion that the reinstatement of a nonconforming use at the subject site would threaten the residential integrity of the subject block; that the use is not a neighborhood facility; and that the use should more appropriately be located along the H Street commercial corridor approximately two blocks to the north. The Office of Planning was further of the opinion that the property was not affected by an exceptional or extraordinary condition and that the applicant had not demonstrated that the property could not be physically altered to allow for a permitted R-4 use. The Board does not concur with the recommendation of the Office of Planning.

21. Advisory Neighborhood Commission 6A made no recommendation on the subject applications.

22. Several residents of the immediate area testified in support of the applications at the public hearings. The records also contain several letters and a petition in support of the applications from nearby residents. The support was based on the positive impacts of the renovation of a vacant building; added security for the area gained through occupancy of the premises; low impacts created by the proposed tenant; and no additional impact on vehicular and pedestrian traffic and parking congestion in the area.

23. Each record contains one letter in opposition from the owners of 638 8th Street, N.E. The opposition was of the opinion that a business office at the subject locations would destroy the residential character of the neighborhood; attract commercial traffic; add to congestion; take parking spaces from residents; and, decrease the market value of homes in the neighborhood.

24. In addressing the issues raised in opposition, the Board finds that the applicant is seeking a use variance. Accordingly, the provisions of Chapter 2000, including the

restriction of a new nonconforming use to a residential use or neighborhood facility, are not applicable to the subject cases. The fundamental finding necessary to support the granting of a use variance is that the property is affected by extraordinary or exceptional conditions which would create a undue hardship upon the owner in his ability to develop the property in accordance with the Zoning Regulations and, therefore, deprive him of a reasonable use of the property. The Board finds that the applicant has met the burden of proof as further set forth in the Conclusions of Law and Opinion.

CONCLUSIONS OF LAW AND OPINION:

Based on the Foregoing Findings of fact and the evidence of 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 peculiar or exceptional condition inherent to the property so that it cannot reasonably be used for the purpose for which it is zoned. The Board must further 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 as embodied in the Zoning Regulations and Map.

The Board concludes that the applicant has provided sufficient proof to establish an undue hardship inherent in the property. The premises were constructed in approximately 1928, predating the 1958 Zoning Regulations. Due to the size of the subject premises, spatial configuration, prior usage, structural barriers, the lot size, and the parking and code requirements for other permitted R-4 uses as set forth in Findings of Fact Nos. 13 through 17, the Board concludes that the premises are not reasonably suitable or amenable to conversion to any other use permitted in an R-4 District. The Board further concludes that the requested relief can be granted without substantial detriment to the public good and that the variance can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. Accordingly, it is ORDERED that the subject applications are GRANTED.

VOTE on Application No. 14660:

October 7, 1987 Public Meeting: 3-0 (William F. McIntosh, Charles R. Norris and Paula L. Jewell to deny; Carrie L. Thornhill not voting, not having heard the case.)

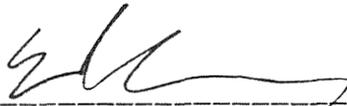
December 2, 1987 Public Meeting: 3-0 (Paula L. Jewell, William F. McIntosh, and Charles R. Norris to reconsider and grant; Carrie L. Thornhill not voting, not having heard the case.)

VOTE on Application No. 14707:

November 18, 1987 Public Hearing: 5-0 (Patricia N. Mathews,
Charles R. Norris, Paula L. Jewell, William F.
McIntosh and Carrie L. Thornhill to grant.)

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

MAR 28 1988

UNDER 11 DCMR 3103.1, "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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