

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15230 of Richard P. Stevens and Osman M. Haboub, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Sub-section 350.4) to allow a commercial office of an import/export international financial consulting firm on the first floor in an R-5-B District at premises 2737 Devonshire Place, N.W., (Square 2106, Lot 104).

HEARING DATE: February 21, 1990
DECISION DATE: March 7, 1990

FINDINGS OF FACT:

1. The subject site is located at 2737 Devonshire Place, N.W., between Connecticut Avenue and Cortland Place, N.W. The site is developed with the Woodley Park Towers Condominium. It is located in an R-5-B District.

2. The subject site is surrounded by Rock Creek Park to the north, east and west and is located in close proximity to the National Zoological Park. The immediate area surrounding the site is residential in character and is developed primarily with apartments and condominiums.

3. The property which is the subject of this application is Unit G, a condominium unit located on the first floor of the Woodley Park Towers Condominium. The unit occupies approximately 500 square feet of space. It is located between the gas meter room and the electric room which provides power for the entire building. It is also located very close to the lobby entrance.

4. Unit G was designated by Woodley Park Towers as a commercial unit. The applicant and his partners purchased the unit in 1986 to use as an import/export financial consulting office. The applicant began operating his business at the site, having informed the Condominium Association of his intended use. Thereafter, he applied for a Certificate of Occupancy (C of O) to operate the office. The application for C of O was denied because the property is located in an R-5-B district which does not allow the proposed use as a matter-of-right.

5. After the Certificate of Occupancy was denied, the applicant attempted to sell the property. The applicant stated that because of the design of the unit, it was impossible to sell as a residential unit. He stated that Unit G is irregularly shaped and does not contain a bathroom or kitchen facility. A large portion of the unit has no exposure to windows. Also, gas, plumbing and sewer pipes run exposed under the ceiling and there is

a drop-down enclosed area that occupies almost half of the overhead space. The applicant testified that these design characteristics make the site unsuitable for residential use.

6. The applicants are therefore requesting a variance from the use provisions of 11 DCMR 350.4 which regulates uses in the R-5 districts. The applicants are seeking a variance to continue the import/export international financial consulting office and to bring the use into compliance with the Zoning Regulations.

7. The applicants maintain that the unit is not suitable for the purpose for which it is zoned and that to require its use solely as a residence would render the space unusable because of its design characteristics and its location between the gas meter room and electric room.

8. The applicants' business is called Expotech, Ltd. Expotech arranges the sale of electrical appliances to diplomats, their staffs and families. The appliances range from televisions to small shavers and hair dryers. Samples of these smaller items are displayed on site and can be purchased by clients. Most deliveries of these items to the site are made by the company's rented van, through the rear loading dock. They are taken by elevator to the first floor, and then down the hall past the boiler room and gas room to Expotech. The deliveries pass no apartments. Deliveries are made no more than once a week and usually on Saturdays. These smaller items are also received by postal delivery and United Parcel Services (UPS). Larger items such as stoves, refrigerators, air conditioners and clothes dryers are kept in a warehouse located in southeast. These items are not displayed at the subject site.

9. Ninety-five percent of the applicants' clientele consists of African male diplomats, occasionally with their wives or children. Expotech serves the staff members of approximately 15 embassies, who seek to purchase appliances that are compatible with the 210/220 international electrical current.

10. The applicant testified that the number of visitors is low - averaging five per day. Often no one comes and sometimes a group of clients come together. The visitors normally park on the street rather than in the visitor parking spaces in the circular driveway. Their visits usually last only 20 to 30 minutes.

11. The hours of operation are Monday through Friday, 10:00 A.M. to 6:00 P.M. and Saturdays 11:00 A.M. to 4:00 P.M. Occasionally the applicant will stay later to do paperwork.

12. The applicants stated that across the hall from Unit G there is a grocery store, a beauty parlor, a dressmaking shop and a realty office. Further down the hall, on the east end of the

building there are doctors offices and located on the west end is the Vassar College Book Co. The applicants maintain that their business is located near other business establishments, therefore, its operations are not detrimental to anyone. The applicant testified that 95 percent of the people served by the business do not come to the site. These clients are handled by phone.

13. The Office of Planning (OP), by report dated February 14, 1990, recommended approval of the application. OP noted the location of the unit, its design characteristics and lack of kitchen and bathroom facilities. OP stated that the need for the requested variance in this case, arises from a unique situation affecting the subject unit. The unit cannot be converted to residential use nor would it be fit for such use as it currently exists. In addition to the applicant's office, a beauty parlor, a dressmaking shop, a realty office, doctors' offices and a book store are located on the first floor of the building. The Office of Advisory Neighborhood Commission 3C is also located on the same floor. The import/export office has been in the subject unit for the past four years without creating an objectionable condition to the residents of the condominium. In OP's opinion, the continuation of the use of Unit G as an import export office is not likely to adversely affect the residents of the condominium.

14. By memorandum dated January 19, 1990, the Department of Public Works (DPW) commented on the application. DPW stated that according to the applicant, there will only be two staff persons in the office and very few clients are anticipated during normal business hours. DPW therefore concluded that the traffic generated by the proposed use will have a negligible impact on the local street system. DPW further stated that the applicant is presently applying for a parking space in the building garage. DPW concluded that this space should be sufficient to provide for the parking demand of the office staff. DPW learned that office visitors can secure a temporary permit to park in the semi-circular driveway in front of the building. It was also noted that there is sufficient on-street parking to meet the parking demands of the office visitors. Therefore, DPW concluded that the proposed use will not have an adverse impact on the local parking supply. From a transportation perspective, the Department has no objection to the proposal.

15. By letter dated January 18, 1990, the Metropolitan Police Department stated that in its opinion the request for a variance will not adversely affect the public safety in the area or create an increase in demand for police services. Accordingly, the Police Department does not oppose the request.

16. By memorandum dated January 5, 1990, the District of Columbia Fire Department stated that it has no objection to the variance request.

17. Advisory Neighborhood Commission (ANC) 3C, by report dated February 7, 1990, stated that the application meets the variance criteria. In a resolution attached to the report, ANC 3C stated that it supports the application and notes the following:

1. The property, which consists of two rooms within a residential condominium building, is of an extraordinary or exceptional condition that is not conducive to residential use. It is located in a non-residential corridor, surrounded by maintenance rooms, a grocery, and a beauty shop. The property contains no plumbing and thus is not habitable.
2. The applicant has stated that his ownership and use of the property dates back four years, and that the official condominium documents designate the property for commercial use such as at present. Moreover, the condominium has indicated that the ownership and use were approved by the condominium board at the time of acquisition by the applicants. To deny the use would constitute a hardship to the applicants.
3. Although the office use is not, strictly speaking, an accessory use to the residential building, the use in this instance does not impair the integrity of the zone plan. The applicants' property is a discrete area located within a commercial corridor, bordered by maintenance facilities. Non-residential use of the property dates to the origin of the building. However, to minimize any potential adverse effects, the Board should impose conditions to the variance including:
 - A. that the heavy traffic associated with shipping and receiving of commercial goods is prohibited; and
 - B. that the owners must comply with all of the condominium's rules with regard to visitors, employees, etc.

18. The Board of Directors of the Woodley Park Towers Condominium submitted a statement to the Board regarding the application. The Board of Directors stated that the applicant purchased Unit G in 1986 with the approval of the Board Directors then serving. Unfortunately, with the exception of a nominal reference in one set of minutes, none of the documents concerning the 1986 Board of Directors' approval has survived in the records. They have therefore been unable to determine what representations the applicant made to the 1986 Board - none of whose members remembers the circumstances of the approval - regarding the scope of his proposed business. Similarly, they have no record of any terms or conditions on which the 1986 Board of Directors' approval

may have rested. For this reason, the present Board of Directors takes no position on the application.

At the Condominium Association's monthly meeting of January 17, 1990, the applicant provided information on his application. Following the January meeting, the Board of Directors circulated a memorandum to all co-owners and residents of the condominium in which it summarized the applicant's statements at the meeting and asked all co-owners and residents to return a questionnaire indicating whether they support his application, oppose it, or abstain from taking a position. Space was provided for comments as well. The co-owners and residents were reminded that they remain free to participate in this proceeding on their own, regardless of any action the Board of Directors might take. Of the 172 units, 65 responses were received. Of these, 16 support the application, 37 oppose it and 12 abstain. Some commenting supporters qualified their support by opposing any future expansion of the applicant's business, while others support a variance for the applicant only and not for any future owners of Unit G. Those commenting in opposition to the application feel that the business is inconsistent with the residential nature of the building and some complain that it creates a security risk by allowing too many unknown persons to enter the building.

19. Three residents of the condominium appeared at the hearing to testify in opposition to the proposed use. The first resident was concerned that the applicant did not submit a letter clearly delineating how the business would operate. He emphasized the importance of complying with the by-laws of the condominium so that the owners can control what occurs in the building. This resident indicated that the freight elevators and loading dock are for use by residents to move into or out of the building, not for commercial business activity.

20. Another resident, residing in Unit 105, raised three major concerns. First, the business is detrimental to the building's residents because the applicants' clients often carry the larger appliances through the lobby when only the rear door should be used. She stated that the residential units are affected because they are not separated from the commercial units to the extent indicated by the applicant.

Second, she testified that the business poses an increased security problem because the doors to the lobby are unlocked until 10:00 P.M. and the applicants' clients often come in groups, failing to identify themselves at the desk. She also stated that there is inadequate staff at the condominium to police the lobby.

Finally, the resident testified that because the business does not serve the residents of Woodley Park Towers, it does not enhance the building.

21. The third neighbor, a resident of Unit 425, also opposed the application. She echoed the concerns expressed by the other opponents regarding the increased security risk, the business' lack of contribution to the building, and the disruption to the other residents. She also pointed out that the applicant's truck caused damage to the facade of the building while making a delivery. And she urged the Board to give adequate consideration to the opponents in the questionnaire provided by the Board of Directors of the Condominium Association.

22. Responding to the concerns expressed by the opposition, the applicant pointed out that he purchased two other units in the building to make it possible to buy Unit G. He is therefore an owner and has an interest in the well-being of the building. He stated that security was a concern before he arrived. He noted that because his clients are mostly Africans, they are highly visible and that no one expresses a concern about the clients who frequent the beauty parlor or dressmaker's shop from outside of the building.

23. The applicant stated that his business is not limited to non-residents of the building. Anyone in the building, who needs the services provided, is welcome at Expotech. He pointed out that Expotech also makes available to the residents, for a fee, the company's fax machine and moving services.

24. The applicant stated that, if the variance is granted, Expotech, Ltd. commits itself to the following:

- A. No boxes or articles will be carried by Expotech into or out of the building through the front lobby.
- B. All customers will be requested, and if possible, assisted, to take any purchase out of the rear door. For large items, the loading dock will be used.
- C. All customers will be urged to register at the front desk. (It is assumed, however, that Expotech customers would not be singled out any more than other visitors to the building.)
- D. All deliveries to Expotech will be made through the loading dock. (This requires that the building meets its obligation to keep the service elevator in good working condition. Frequently this is not the case.)

25. No one testified as a neighbor in support of the application.

26. One letter of support and two letters in opposition were received.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and evidence of record the Board concludes that the applicants are seeking a variance from the use provisions of 11 DCMR 350.4, to establish an office in a condominium unit located in an R-5-B district. The granting of such a variance requires substantial evidence of a practical difficulty upon the owner arising out of some extraordinary or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The Board must find that the property cannot be used for the purpose for which it was zoned. The Board further must find that the requested relief can be granted without substantial detriment to the public good and that it will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof established for the requested variance. The Board is of the opinion that the location and design characteristics of Unit G are unique and make the property unsuitable for residential use.

The Board notes that there are business establishments located in proximity to the subject unit and the building has facilities such as a loading dock and freight elevator to accommodate such uses. It is the Board's view that if the applicants abide by the rules established for the unit owners, the operations at the site are not such that they will cause substantial detriment to the public good.

The Board further notes that application does not involve the establishment of an accessory use in a residential building. Therefore, the applicants were not charged with the burden of proving that the proposed use is customarily incidental to use of the condominium as a residence.

The Board is of the opinion that without a non-residential use, the unit would be rendered unusable. Therefore, the Board concludes that granting the relief requested will not substantially impair the intent, purpose or integrity of the zone plan.

The Board has afforded ANC 3C the "great weight" to which it is entitled.

In accord with the above, it is **ORDERED** that the application is hereby **GRANTED SUBJECT** to the **CONDITION** the applicants shall comply with the rules of the Condominium Association.

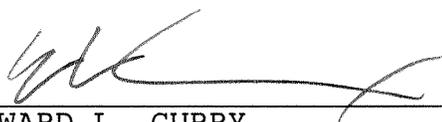
VOTE: 4-1 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; John G. Parsons to grant by

BZA APPLICATION NO. 15230
PAGE NO. 8

proxy; William F. McIntosh opposed to the motion).

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

ATTESTED BY:



EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: SEP 24 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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.

A/15230Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15230

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 24 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard P. Stevens
4242 East West Hwy., #908
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Osman Haboub
7739 Rocton Court
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August Velletri
2737 Devonshire Place, N.W., #207
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Rosalyn Doggett, Chairperson
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

A handwritten signature in black ink, appearing to read "E. L. Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: _____

15230Att/bhs