GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

'94 AUG 25 P3:57
OFFICE OF THE DISTRICT

Application No. 15625 of the Alonzo O. Bliss Properties, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow medical offices on the first floor in an R-5-C District at premises 4530 Connecticut Avenue, N.W. (Square 1973, Lot 804).

HEARING DATE: February 19, 1992 and May 13, 1992
DECISION DATE: July 1, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The site is located in the northwest quadrant of the District of Columbia, in the North Cleveland Park neighborhood. It also extends to the west side of Connecticut Avenue, between Brandywine and Appleton Streets, N.W.

2. The subject site contains 31,849 square feet of land area and is irregular in shape. Prior to 1961, a 20-foot wide public alley bisected the subject site. The alley was eventually closed. Thereafter, two record lots and the alley were combined into the subject Lot 804.

3. The site is improved with an eight-story residential building known as the "Clarence House". The building contains 93 residential apartment units. The building was constructed in 1964. A semi-circular driveway is located at the front of the apartment house. The driveway allows for convenient vehicular access when dropping-off and picking-up tenants of and visitors to the apartment house.

4. The site is zoned R-5-C. The R-5-C District permits matter of right medium/high density development of general residential uses, including single-family dwellings, flats, and apartment buildings, to a maximum height of 90 feet, a maximum floor area (FAR) of 3.5, and a maximum lot occupancy of 75 percent. Medical office use is not a permitted use in the R-5-C District.

5. The predominent land uses in the immediate vicinity of the site are high-rise apartment houses, multi-family rentals and condominium dwellings. In addition to the rental apartments, the applicant leased seven units on the first floor of the subject building to individual physicians for medical offices.

6. On February 1, 1991, the applicant and the seven doctors were cited by an inspector from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) for operating medical

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offices without a certificate of occupancy. The applicant's and the doctors' appeal to the Adjudication division of the DCRA was denied. However, on a motion, a stay on the effectiveness of the decision and the order was issued to permit the applicant to submit a variance application to the Board of Zoning Adjustment.

7. The applicant requested a limited use variance to enable the physicians office to continue to operate on the ground floor of the building. The applicant contended that the medical offices have co-existed with the surrounding residential uses in the area for over twenty years without any detrimental impact on the neighborhood. The applicant requested that the Board take cognizance of the historic pattern of non-enforcement of the zoning regulation at issue by the District of Columbia government, that while deliberate inactivity on the part of the government in enforcing its own regulations may not constitute a legitimate defence of "laches", it does highlight the plight of the medical professionals who have maintained their practices at the subject property for over twenty years in good faith and without knowledge of the prohibition of their use.

8. The applicant testified that the population most likely to object to the non-residential use of the ground floor of the subject property is the tenants of the building. They would be the first to feel any competition for scarce parking spaces and to note any inconvenience caused by the flow of patients into the building.

To measure the level of disatisfaction with the residents of the building and the neighborhood, the applicant circulated a "Tenant Petition to allow Continuation of Doctors Offices" in the building. Eighty-two (82) tenants within the 93 units located on the subject property indicated their support for the continuation of the medical office use. Importantly, the petition acknowledges that the presence of the medical offices confers a decided benefit to the residents of the local community who would otherwise have to travel much further for their medical care. Similarly, the fact that seven of the tenants signing the petition reside on the ground floor of the subject property sharing this floor with the seven medical offices is further evidence of the absence of any serious objection to their continuation.

9. A report preparted by the District of Columbia Office of Planning (OP) in 1970 indicated that the prohibition of medical offices in residential districts where the physician does not live on the premises is long standing and dates back to a Zoning Regulation adopted in 1938. The OP report also noted that the regulation has never been enforced. A conclusion of a survey by the Zoning Administrator in 1958 found that 3,204 medical offices in the District of Columbia were in violation of the Zoning ordinance.

10. The applicant further testified that apart from an aborted effort undertaken by the District of Columbia government in 1969 to commence enforcement of zoning ordinance violations and a subsequent attempt to revise the Zoning Regulations and liberalize medical office prohibition in Zoning Commission Case No. 72-4, no concerted efforts have been made at enforcement and modification of the Regulations. He continued that the strategy adopted by the District was to allow the prohibited uses to disappear through attribution; and that he is seeking the Board to adopt the same approach in this case.

11. By a memorandum dated May 6, 1992, the Office of Planning (OP) stated that it is unable to determine whether negative impacts have been created as a result of the non permitted use. Nonetheless, OP added that medical offices are not appropriate use for apartment houses and that the existing medical offices are appropriate for commercial or special purpose districts.

The OP determined that the medical offices are not used as a neighborhood facility, or as an adjunct use. That, the hardship associated with this case is self imposed and that continued use of residentialy zoned property for commercial use substantially impairs the purpose, intent and integrity of the Zoning Regulations. The OP recommended that the Board deny the application.

12. By memorandum dated May 13, 1991, the Department of Public Works (DPW) stated that the subject property is adequately located with regard to public transportation system and that information supplied by the applicant indicates that the medical facilities have 7 parking spaces at the rear of the building for patients and that the doctors and employees have parking spaces beneath the building. The DPW has no objection to the continuation of the doctor's office in the building.

13. By letter dated November 7, 1991, the Metropolitan Police Department stated that the property is located in the Second District and is patrolled by Scout Car 65. The department stated that it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

14. By memorandum dated December 2, 1991, the D.C. Fire Department stated that it has evaluated the zoning request to determine its impact on emergency operations. Based on its review of the application, the Fire Department has no objection to the request.

15. By letter dated February 3, 1992, Advisory Neighborhood Commission (ANC) 3F indicated its support for the application on condition that the use variance would be limited to the present doctors office only.

16. No one appeared at the hearing to testify in support of or in opposition to the application.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The Board does not agree with the opinion of the Advisory Neighborhood Commission. The ANC report does not state any issues or concerns relevant to the Board's criteria in deciding the application. The Board can not condition a variance to a specific user.

2. The Board agrees with the recommendation of the Office of Planning.

3. There are no unique physical conditions of the property. The apartment house was constructed pursuant to a valid permit. Medical offices were created from existing space in the building.

CONCLUSIONS OF LAW AND OPINION:

Based on the 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 of undue hardship upon the owner of the subject premises, arising out of some unique or exceptional condition in the property that the property cannot reasonably be used for the purposes 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 maps.

The Board concludes that the applicant has not met the above burden of proof. The Board concludes that the applicant's request is based on personal convenience, that no probative evidence was offered that the first floor of the building could not be put to a permited use in the R-5-C District.

The Board further concludes that the relief cannot be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Regulations. The Board also concludes that granting the relief would amount to rewarding the applicant for non-adherance to and

continued violation of the Zoning Regulations. The Board has accorded the ANC the "great weight" to which it is entitled. Accordingly, it is **ORDERED** that the application be **DENIED**.

VOTE: 3-0 (Maybelle Taylor Bennett, Angel F. Clarens and Paula L. Jewell to deny; Carrie L. Thornhill recused herself and Sheri M. Pruitt not present, not voting).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 5 1994

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."

15625Order/VCE/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15625

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 5 1994 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:

Alonzo O. Bliss Properties
c/o Kingman B. Brown
8903 Bells Mill Road
Potomac, Maryland 20857

George R. Keys, Jr., Esquire
Jordan & Keys
1400 16th Street, N.W.
Suite 700
Washington, D.C. 20036

John H. Ritz
431 St. Lawrence Drive
Silver Spring, Maryland 20901

Douglas Mitchell, Chairperson
Advisory Neighborhood Commission 3F
4401 Connecticut Avenue, N.W., #401
Washington, D.C. 20008

MADELIENE H. ROBINSON
Director

DATE: AUG 5 1994

15625Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15625

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 26 1994 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:

George R. Keys, Jr., Esquire
Jordan and Keys
1400 16th Street, N.W. #700
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John H. Ritz
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Douglas Mitchell, Chairperson
Advisory Neighborhood Commission 3-F
4401 Connecticut Avenue, N.W., #401
Washington, D.C. 20008

MADELIENE H. ROBINSON
Director

DATE: SEP 26 1994

BZA

CASE No.
EXHIBIT No. 37