

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



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 DATES: February 19, 1992 and May 13, 1992

DECISION DATE: July 1, 1992

DISPOSITION: The Board DENIED the application by a vote of 3-0 (Maybelle Taylor Bennett, Angel F. Clarens and Paula L. Jewell to deny; Carrie L. Thornhill not voting, having recused herself; Sheri M. Pruitt not present, not voting).

FINAL DATE OF ORDER: August 5, 1994

RECONSIDERATION ORDER

The Board denied the application by its order dated August 5, 1994. By letter dated August 19, 1994, counsel for the applicant filed a motion for reconsideration of the Board's decision in the application. The specific grounds for the motion are summarized as follows:

- a. The Board erred in finding that there are no unique physical conditions of the property. Counsel notes that evidence relating to the topography of the site and its effect on the rear ground floor units was presented at the public hearing, as well as testimony that these conditions make it difficult, if not impossible, to lease those units for residential purposes.
- b. The Board's finding that it cannot condition the granting of variance relief to a specific user has no bearing on the requested relief and misconstrues the advice of the Corporation Counsel in this case.
- c. The Board erred in finding that the granting of the application would result in substantial detriment to the public good and would impair the intent, purpose and integrity of the Zoning Regulations in that there was no opposition to the application. In addition, counsel argues that the location of seven medical offices in the building would not have any more impact than the establishment of a medical clinic, which use is permitted as a matter of right.

- d. The Board's conclusion that the granting of the application would reward the applicant for nonadherence to and continued violation of the Zoning Regulations is not an appropriate standard of review in the case and is not required by the Board's enabling statute or case law interpreting the standards for variance relief.

There was no opposition to the motion for reconsideration.

Pursuant to Subsection 3332.8, those Board members who did not participate in the original decision on this application were provided with copies of the transcript and record in the subject case for review prior to consideration of the motion for reconsideration.

Upon consideration of the motion, the record in the application and its final order, the Board concludes that it made no error in deciding the application. The issues with respect to the physical condition of the property and its impacts on the immediate area were thoroughly presented at the public hearing and are addressed in the Board's written order. The history of the unlawful use of the subject site for medical offices cannot, of itself, justify the granting of variance relief, nor did such history specifically influence the Board's decision in the instant case. The history of use does not affect the burden of proof necessary to justify the granting of a use variance. The Board considered all of the evidence presented, including proposed conditions, and concluded that the requisite burden of proof had not been met.

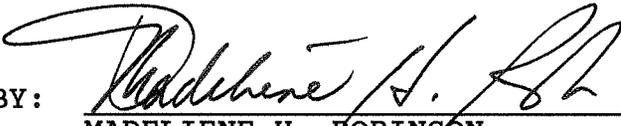
The Board concludes that the motion raises no materially different issues nor provides any evidence of a substantive nature that the Board has not previously considered and addressed in its final order. The Board's decision was based on the consideration of all evidence presented. The fact that the Board and the applicant reached different conclusions does not make the judgment of the Board, arbitrary, capricious or unlawful. Accordingly, the motion for reconsideration is hereby DENIED.

DECISION DATE: September 7, 1994

VOTE: 5-0 (Maybelle Taylor Bennett, Susan Hinton, Laura M. Richards and Angel F. Clarens to deny; Craig Ellis to deny by absentee vote).

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

ATTESTED BY:



MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: SEP 26 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS 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, 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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15625

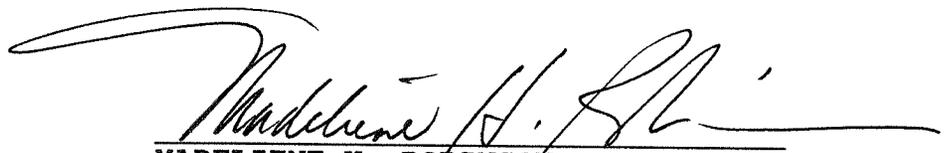
As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 26 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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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