

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15746 of Connecticut Avenue Limited Partnership, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow a dental office in the basement of an apartment building in an R-5-C District at premises 5225 Connecticut Avenue, N.W. (Square 1874, Lot 801).

HEARING DATE: October 28, 1992
DECISION DATE: December 2, 1992, June 6, February 3, March 3, April 7 and May 5, 1993

ORDER

The property which is the subject of this application is located at 5225 Connecticut Avenue, N.W. (Square 1874, Lot 801). The property is improved with an eight-story, 130-unit apartment building located in an R-5-C District. The specific property at issue in this application is Unit 108 located in the cellar of the building.

The subject property is currently used as a dental office. The R-5-C District does not permit office uses. Therefore, the applicant is requesting a use variance to maintain the dental office in the unit.

ISSUES AND ARGUMENTS:

1. Whether the property is physically unique or subject to an exceptional situation or condition?

The applicant stated that the apartment building was constructed in approximately 1963. The applicant stated that the office was built by the owners of the building at the time of construction for use by Dr. Herman Brodie.

Dr. Brodie used the space as a dental office from 1963 until 1968. Dr. Jack Goldblatt occupied the unit as a dental office from about May 1968 until late 1979. Dr. Richard Sapperstein has used the unit as a dental office from late 1979 until the present. Therefore, the applicant maintains that the unit has a history of dental office use.

The applicant introduced into evidence the floor plan of the unit. The applicant stated that the unit is configured as a dental office rather than as a residence. The unit contains a business office, a private office, two operating rooms, a dark room, a waiting area, a bathroom and a closet. There is a window in each of the operating rooms. The applicant stated that the unit is

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fully equipped with dental equipment. He stated that the unit only contains 468 square feet and there is no kitchen in the unit.

At the request of the Board, the applicant submitted a copy of original plans for the cellar level of the apartment building. The original plans reveal that the space currently used as doctors offices is labeled "storage".

2. Whether converting the property to a permitted use would create an undue hardship on the owner?

The applicant stated that in order to convert the space to a conforming use, it would be necessary to rebuild all of the interior partions and to install a kitchen.

The applicant stated that the unit would not be suitable for residential purposes because it is below grade, and it lacks light and air because of the high windows.

The applicant stated that as a result of the great hardship and expense involved in attempting to create a housing unit in the small space, the owners would have no alternative but to use the space for "storage" which is the use shown on the "cellar plan" of the building.

By memorandum dated October 20, 1992, the Office of Planning (OP) recommended approval. OP stated that the subject unit has always been used as a dental office. The interior of the unit was designed and built for professional office use. The unit cannot be used for residential purposes as it currently exists. There is no kitchen in Unit No. 108. Additionally, with only 468 square feet of space, the unit is too small for suitable residential use. Converting the unit to residential use is not viable because it would result in the major reconstruction of its interior, as well as other adjoining areas in the building. Based on this analysis, the Office of Planning is of the opinion that there is a uniqueness inherent in the subject unit and that there would be an undue hardship for the applicant if the requested use variance is not granted.

Advisory Neighborhood Commission (ANC) 3G, by letter dated October 5, 1992, expressed its support for the application. The ANC stated that failure to grant the variance would cause an undue hardship on the occupant who has used the location for a dental practice for the last 12 years.

3. Whether the proposed use will have an adverse effect on the public?

The applicant stated that denying the application will adversely affect many elderly patients who live in this building and other large apartment buildings in the immediate neighborhood.

The Office of Planning stated that in addition to the dental office in question, there are three medical suites and a laboratory located in the basement of the building. There are no residential units in the basement. Access to the basement level is directly from a side door located on the south side of the building. The basement is also accessible from the lobby of the building. There are 17 parking spaces located on the southern portion of the property and designated for visitors and employees of the dental office and the other physicians' offices in the basement. The parking area for the building's residents is located on the eastern portion of the property at the rear of the building.

The hours of operation of the dental office are from 8:30 a.m. to 4:30 p.m., Monday, Tuesday, Thursday, and Friday. The office is closed on Wednesday. The office is open one Saturday per month from 8:30 a.m. to 4:30 p.m. There are three employees, including the dentist, working at the premises.

Based on these conditions, OP believes that to continue the use of the unit as a dental office would not create any adverse impacts on the predominant residential use of the building above the basement level or on neighboring properties.

By memorandum dated October 7, 1992, the D.C. Fire Department stated that it has reviewed the zoning request and based on this review, the department has no objection to the application.

3. What impact would the proposed use have on the zone plan?

The Office of Planning stated that the site is located in the R-5-C District which 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 ratio (FAR) of 3.5, and a maximum lot occupancy of 75 percent. A dental office is not permitted in an R-5-C District.

OP stated that the immediate area surrounding the site is characterized by high-rise apartments, row dwellings and flats in the R-5-C and C-1 Districts along Connecticut Avenue, and single-family detached and semi-detached dwellings in the R-2 and R-1-B Districts to the east and west of Connecticut Avenue.

OP stated that it has found no evidence to refute the applicant's statement that the subject unit was designed and built to serve as a dental office for a dentist who occupied the unit

upon completion of the building in approximately 1963 and that the unit has been continuously used as a dental office up to the present time.

OP stated that the continuous use of the dental office since 1963 does not appear to have had a negative impact on the building or the area in general. Therefore, OP believes that the applicant's request, if granted, would not impair the intent and purpose of the Zoning Regulations and Map.

Advisory Neighborhood Commission 3G stated that a dentist's office has been at this location for the past 30 years, and the ANC considers the use to be consistent with the character of the neighborhood.

FINDINGS OF FACT:

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

1. It is possible to make reasonable use of the property for a purpose permitted in an R-5-C District. Therefore, the owner does not face a hardship in using the property consistent with the Zoning Regulations.

2. The uses described in the original site plan are consistent with the permitted uses in an R-5-C District. The dental office use is inconsistent with the R-5-C zone plan. Therefore, to allow the dental office use would impair the zone plan.

CONCLUSION OF LAW AND OPINION:

Based on the evidence of record, the Board concludes that the applicant is seeking a variance from the use provisions of Subsection 350.4 to continue a dental office use in an apartment unit located in an R-5-C District. Granting such a variance requires a showing through substantial evidence that requiring strict compliance with the Zoning Regulations will create an undue hardship upon the owner in its efforts to make reasonable use of the property. This hardship must arise out to some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The applicant must demonstrate that the property cannot be used for any purpose for which it is zoned due to some physical or other extraordinary condition related to the property itself. In addition, the Board must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met this burden of proof. The Board notes that a number of nonresidential uses are permitted in the R-5-C District. These include child development centers, temporary community service centers, accessory uses and storage, to name a few. In the subject application, the applicant has failed to demonstrate that the property cannot be put to any of the uses permitted in this zone. The applicant only introduced evidence of the inability to establish a residential use. The hardship test requires more, and the Board is therefore unable to conclude that an undue hardship exists with regard to the property.

The Board is of the opinion that the subject unit was originally intended for storage use as indicated on the original plans for the cellar. The Board concludes that it would impair the intent, purpose and integrity of the zone plan to allow the office use in the unit without a demonstration by the applicant that no other permitted use is reasonably possible. The fact that the property has been used as a dental office for 30 years, does not, in itself, carry the burden of proving that the zone plan is not affected since, at its inception, this use was illegal.

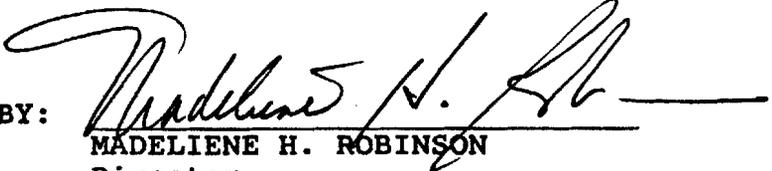
The Board concludes that it has accorded ANC 3G the "great weight" to which it is entitled.

Based on the above analysis, the Board hereby ORDERS that the application is DENIED.

VOTE: 4-0 (Carrie L. Thornhill, Sheri M. Pruitt, Paula L. Jewell and Angel F. Clarens to deny).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 30 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."

15746Order/TWR/bhs

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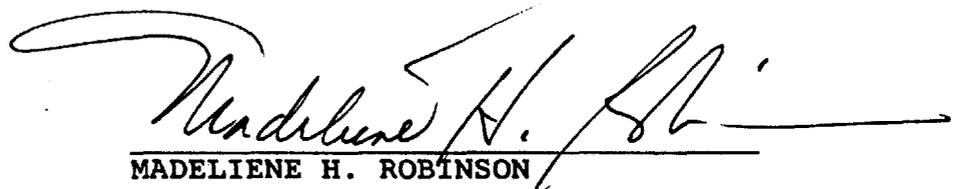
BEA APPLICATION NO. 15746

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 30 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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Anne M. Renshaw, Chairperson
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MADELIENE H. ROBINSON
Director

DATE: AUG 30 1994

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