

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16040 of the Plaza West Cooperative Association, as amended, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Section 350) to allow the offices of an insurance agency, a nonprofit organization, a doctor, a dentist, an engineer, a social worker and/or an artist studio in two basement units of an apartment building in an R-5-D District at premises 1669 Columbia Road, N.W., (Square 2589, Lot 800).*

HEARING DATES: May 10 and November 15, 1995, and February 28, 1996
DECISION DATES: June 5 and July 10, 1996

ORDER UPON REMAND

PROCEDURAL BACKGROUND:

By Order dated March 19, 1997, the Board granted the application to allow a use variance at the site. On May 14, 1997, the Lanier Heights Neighborhood Association filed a motion in the District of Columbia Court of Appeals (the Court) requesting that the case be remanded to the Board for a clarification of the order. The motion was based primarily on the following grounds: At the hearing before the Board, the applicant withdrew the portion of the variance request related to the grocery store and newsstand. The Board's order is ambiguous as to these uses and none of the parties desire that these uses be allowed.

On May 30, 1997, the Court remanded the case to the Board for clarification. At its public meeting of December 3, 1997, the Board considered the remand and determined that it would clarify the order to be consistent with the applicant's statements at the hearing withdrawing the aforementioned portion of the application and consistent with the desires of the parties as indicated in the remand. The Board concluded that the uses at issue here played no role in its decision to grant the application and the order should reflect this. The amended portions of this order have been astericked.

SUMMARY OF EVIDENCE:

1. The subject property is located on the northeast corner of the intersection of Columbia and Quarry Roads, N.W. and consists of one lot of record (Lot 800). Lot 800 is improved with a 53-unit cooperative apartment building known as the Plaza West.
2. Two vacant residential units are located in the basement of the building with direct access from Quarry Road, N.W. These two units have no access from the interior of the building.
3. Four off-street parking spaces are available at the rear of the apartment building with access to Quarry Road, N.W.

4. The area surrounding the site is characterized by a mix of uses including large and small apartment buildings, rowhouses, small commercial establishments, offices, foreign embassies, churches, and parking lots and structures.

5. The applicant is requesting a variance from the use provisions of the R-5-D zone district, Section 350 of 11 DCMR, to allow the establishment of an insurance agency office in the basement of a cooperative apartment building.

6. The insurance agency would employ one part-time person and two full-time persons and would operate from 9:00 a.m. to 6:00 p.m., Monday through Friday. Approximately 15 visitors and clients would visit the site each week. Most of the office's business would be conducted by telephone with minimal deliveries.

7. Four on-site parking spaces at the rear of the building would be available to the office. Trash would be stored on the property to be collected on a regular basis by a private contractor.

8. Ms. Mary Cowan, president of the Plaza West Cooperative Association, as well as two residents of the building, testified in support of the application. Ms. Cowan said that the cooperative had been unable to rent the subject units or sell them even though the units came with two parking spaces each and the costs had been substantially reduced. She said further that even if the units were available for rental, the cooperative would not authorize rental of the units because it has reached its limit for subleases. Ms. Cowan added that the cooperative requested this variance so that it could sell the space for professional activities which would be compatible with the ambiance of the area. Ms. Cowan further stated that the proposed use would be unobtrusive and the entryway and signs would be modest so that the residential nature of the street is respected.

9. The Lanier Heights Neighborhood Association, represented by Paul Alan Levy, testified in opposition to the application. The association preferred that the nature of the streets in the neighborhood, apart from Columbia Road, be preserved so that residents could quietly enjoy sitting on porches without the greatly increased noise, congestion, foot and vehicular traffic and parking that come with commercial development.

10. The 1705 Lanier Place, N.W., Inc., by its letter of November 7, 1995, opposed the application. The cooperative apartment house asserted that the proposed use in the application for commercial purposes would bring the business district on Columbia Road into the neighborhood, which would be detrimental to the area by increasing loitering and litter as well as detracting from the look of the neighborhood.

11. The Office of Planning (OP), by memorandum of May 2, 1995, and by addendum memorandum of November 1995, recommended denial of the application. OP was of the opinion that the applicant had not met the burden of proof relative to the Zoning relief being sought in the case under Section 350 11 DCMR. OP said further that an undue hardship that results from an exceptional or extraordinary situation or condition that is inherent in the property itself had not been established by

the applicant. OP concluded that the R-5-D District for the area did not permit the proposed office use for the subject site.

12. Advisory Neighborhood Commission (ANC) 1C, in its memorandum of April 19, 1995, supported the application. The Commission said that the proposed use of the space is consistent with the use of spaces on the first floor of the building next door, the Park Plaza, and with other buildings across the street. ANC 1C was convinced that signage for the proposed use would be consistent with the architectural style and color of the building.

13. The Board requested that the applicant provide further information in order to establish hardship unique to the subject units, including their layout, their relationship to the rest of the building, and any other characteristics that make them different and unmarketable as rental units. Following the Board's instructions, the applicant made a supplementary submission regarding the development and sales history of Plaza West Cooperative.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

1. The applicant's amended application included an additional basement unit in the apartment building and increased the type of uses proposed for the units. The original request was for a use variance to allow an insurance agency in one basement unit of the subject apartment building. This was amended to include an additional basement unit in the building and to expand the types of uses to include a nonprofit organization, a doctor, a dentist, an engineer, a social worker, an artist's studio, a grocery store, and/or a newsstand in the two basement units. However, at the hearing, the applicant withdrew the request to use the site either as a grocery store or as a newsstand.*

2. The two units are configured for residential use even though the applicant maintains that they are not suitable for such.

3. The units are located at the back of the building, are not internally connected to the rest of the units and have remote or limited access as they have separate entrances from the entrance to the rest of the units in the building.

4. The applicant has not been able to rent or sell units B1 and B2 because they are isolated, inaccessible to the handicapped, and have no redeeming or attractive qualities. The units are too small and inadequate for residential use. There have been no inquiries to purchase the properties for residential use, even though each unit has two parking spaces, the price was reduced over a six-year period and no down payment was required.

CONCLUSIONS 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 Section 350 of 11 DCMR to allow the offices of an insurance agency, nonprofit organization, doctor, dentist, engineer, social worker, and an artist studio in two basements units of an apartment building in an R-5-D 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 his efforts to make reasonable use of the property. This hardship must arise out of 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 plan.

The Board further concludes that the applicant has met the burden of proof that there exists an exceptional or extraordinary situation or condition related to the property which creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief 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 therefore **ORDERS APPROVAL** of the application.

VOTE: 3-1 (Laura M. Richards, Angel F. Clarens and Susan Morgan Hinton to grant; Sheila Cross Reid opposed to the motion; Maybelle Taylor Bennett not present, not voting).

VOTE: 4-0 (Laura M. Richards, Susan M. Hinton, and Sheila Cross Reid to reopen the record to clarify the decision and amend the order; Maybelle Taylor Bennett to reopen, clarify and amend by absentee vote).

DECISION DATE: June 4, 1997

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

ATTESTED BY:

Macey Hatten Rose
for **MADELIENE H. DOBBINS**
Director

FINAL DATE OF ORDER: MAR 24 1998

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 TWO YEARS, UNLESS

ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CEERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16040.ORD/twr/bjw

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16040

As Director of the Board of Zoning Adjustment, I certify and attest that on MAR 24 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Margarita Dilone'-Mendoza
Plaza West Cooperative Association
P.O. Box 21261
Washington, D.C. 20009

Lean V. Haygood
1669 Columbia Rd., N.W., #411
Washington, D.C. 20009

Mary E. Cowan
1669 Columbia Rd., N.W., #201
Washington, D.C. 20009

Henry Eisenberg
1669 Columbia Rd.,
Washington, D.C. 20009

Paul Allen Levy
1698 Lanier Place, N.W.
Washington, D.C. 20009

Chairperson
Advisory Neighborhood Commission 1C
1802 Vernon St., N.W., 1st Floor
Washington, D.C. 20009

Attested By:

Madeliene H. Dobbins
for MADELIENE H. DOBBINS
Director

DATE: MAR 24 1998