

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16113 of the Estate of Patricia Freeburg, pursuant to 11 DCMR 3107.2, for a variance from the use provisions (Subsection 350.4) to allow office use on the first through third floors in a R-5-B District at premises 3517 16th Street, N.W. (Square 2687, Lot 830).

HEARING DATES: May 15, 1996 and July 24, 1996

DECISION DATE: July 24, 1996 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located on the northeast corner of the intersection of 16th and Oak Streets and Hertford Place N.W., and consists of one lot of record (Lot 830). The subject site is triangular in shape and is improved with a vacant, three-story semi-detached single-family dwelling constructed around 1925.
2. The subject property is vacant and in a dilapidated condition. The original dwelling contained an entry hall, a living room, a sitting room, a dining room, a kitchen, six bedrooms and two bathrooms. A one-story addition is located at the rear of the house and was used by the owners as an architectural office at least 15 years ago.
3. Two off-street parking spaces are available at the rear of the dwelling with access to Hertford Street, N.W.
4. The area surrounding the site is characterized by a mix of uses including large and small apartment buildings, row houses, churches, and a recreation center.
5. The applicant is requesting a variance from the use provisions of the R-5-B zone district, Section 350.4 of 11 DCMR, to allow the establishment of a non-profit association office.
6. The National Dental Association, a non-profit association, is the contract purchaser of the site. The association would employ initially four full-time persons with several interns up to a maximum of ten full-time employees. The office would operate from 9:00 a.m. to 5:00 p.m., Monday through Friday. There would be approximately five visitors per month. Most of the offices' business would be conducted by telephone with minimal deliveries.

7. The two on-site parking spaces at the rear of the building would be used by two of the staff who have cars while the other two staff and all interns use public transportation. Trash would be stored on the property to be collected on a regular basis by a private contractor once a week.
8. Ms. Shirley Jefferson, the conservator of the estate of Patricia Freeburg, testified in support of the application. Ms. Jefferson said that the property could not be sold despite diligent efforts by her and Ms. Banks, the real estate agent. She testified that the District of Columbia Probate Court had to accept any offer made on the property and that the offer had to be reasonable. No offer, other than the offer made by the National Dental Association, was made. Ms. Jefferson testified that Ms. Freeburg was an invalid in a nursing home where she was deeply in debt. The nursing home had started proceedings to evict Ms. Freeburg for non-payment and that the house was the only asset with which Ms. Jefferson could pay the bill on Ms. Freeburg's behalf.
9. The owner of the adjoining property sent a letter supporting the application. No one from the community testified against the application. The applicant indicated that the approval of the community had been received through complying with their requests to determine whether the proposed use would have an adverse effect on the value of the properties in the neighborhood.
10. The applicant's architect testified that the exterior and interior of the house would remain the same, and that the landscape would be greatly improved. He testified that a sign 144 square inches would be the only external marking of the association.
11. The Office of Planning (OP), by memorandum of May 7, 1996, 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 350.4 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-B District for the area did not permit the proposed office use for the subject site. Mr. Bastida, representing OP, indicated that he had believed during the meeting with the applicant that Ms. Jefferson had received more than one offer, and therefore there was no undue hardship demonstrated.

12. Advisory Neighborhood Commission (ANC) 1A, voted unanimously to support the application.
- 13 The applicant testified and submitted written evidence that the National Dental Association provides scholarships to students in the community and provides other charitable services to the community in general.

FINDINGS OF FACT:

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

1. The applicant has not attracted any offer for residential use of the property.
2. The applicant has to meet the requirements of a judicial authority before accepting any offer and that this is the only offer after several years of effort. The ward of the estate is an invalid and has the subject property as her only asset to pay the nursing home to avoid eviction.
3. The National Dental Association will have no more than ten full-time employees in the building, and no more than two cars will be driven by the staff. There are two parking spaces in the rear of the property which will be used.
4. The property is located on a major artery.

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 offices for the National Dental Association, a nonprofit organization, in a semi-detached residential dwelling in an R-5-B 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 her efforts to make reasonable use of the property. This hardship must arise out of 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 or zoning 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 Regualtions and Map. The Board therefore ORDERS APPROVAL of the application SUBJECT to the following conditions:

- 1. Use of the site shall be for nonprofit offices.
- 2. The hours of operation shall be between 8:00 a.m. and 6:00 p.m., Monday through Friday.
- 3. The number of full-time employees shall not exceed ten.
- 4. Trash shall be collected at least once per week.

VOTE: 4-0 (Maybelle Taylor Bennett, Sheila Cross Reid, Susan Morgan Hinton and Laura M. Richards to approve; Angel F. Clarens not present, not voting, not having heard the case).

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

ATTESTED BY: *Reginald C. Lyons*  
 MADELIENE H. DOBBINS  
 Director

FINAL DATE OF ORDER: JUN 11 1997

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 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16113

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 11 1997 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:

D. Olandan Davenport  
1625 K Street, N.W.  
Washington, D.C. 20006

Shirley Jefferson, Conservator  
Estate of Patricia Freeburg  
4424 Blaine Street, N.E.  
Washington, D.C. 20019

Robert S. Johns, Director  
National Dental Association  
5506 Connecticut Avenue, N.W. #24  
Washington, D.C. 20015

*Reginald C. Lyons for*  
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MADELIENE H. DOBBINS  
Director

Date: JUN 11 1997