

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16518 of Rafael Rodriguez, Jr., pursuant to Section 3103.2 for a variance from the use provisions of Subsection 350.4 to use the premises as general office use (first and third floors) to be consistent with the existing use of the building in an R-5-D District at premises 3105 Mt. Pleasant Street, N.W. (Square 2595, Lot 1051).

HEARING DATE: December 8, 1999

DECISION DATE: December 15, 1999

ORDER

PROCEDURAL MATTER:

An Affidavit of Posting was not filed, at the time of the public hearing. The Applicant indicated that the Affidavit was not filed because of miscommunication; however, the property was posted 15 days prior to the hearing. The Board permitted the Applicant to file the document prior to its decision on the application.

SUMMARY OF EVIDENCE:

The site is located in the Ward One neighborhood of Mount Pleasant, in Square 2595, on Lot 1051, at 3105 Mount Pleasant Street, N.W. Surrounding the subject square is Irving Street to the south, 16th Street to the east, Mount Pleasant Street to the west, and Lamont Street to the north.

The irregular-shaped site contains 1,415 square feet. A three-story building constructed in 1978 and containing a gross building area of 2,016 square feet is located on the property. The Applicant indicated that the three-story row house contains separate units. The second and third floors each have a residential unit, and the first floor is occupied as office space for an accounting, bookkeeping and tax preparation business. The applicant proposed that the entire building be used for general office.

The site is located to the west of the Irving and Mount Pleasant Streets intersection; one of the neighborhood's busiest. Both roadways carry a large volume of vehicular traffic, are used as connecting routes by Metrobus, and are heavily used by pedestrians. The subject Square 2595 is split-zoned. The eastern portion of the square, including the site and five other properties to the south is zoned R-5-D. The western side of the subject square, which fronts on Mount Pleasant Street, is zoned C-2-A.

A variety of land uses surround the site. They include commercial uses to the west, along Mount Pleasant Street; residential uses (mid and high-rise apartment buildings) to the north, along 16th Street; and, institutional uses (Lincoln Junior High School, Bell Multicultural High School, DC Department of Recreation and Parks, and the Mount Pleasant Branch Public Library) to the north and east.

There are five buildings, which are zoned for residential use at the northeast corner of Irving and Mount Pleasant Streets. The residentially zoned buildings, located between 3101 and 3115 Mount Pleasant Street, consists of four row houses and a multi-family dwelling - the Herrmann Apartments. Most of the buildings that front on Mount Pleasant Street are used for a commercial purpose; however, there are some residential uses on the block.

The site is zoned R-5-D. General office use is prohibited by the Zoning Regulations in the R-5-D District, without the approval of the Board of Zoning Adjustment. General office use is first permitted as a matter-of-right in the CR District (Mixed Residential, Retail, Office and Light Industrial Uses).

A home occupation is a permitted use in the R-5-D District. Subsection 203.4 of the Zoning Regulations states that 'no more than the larger of 250 square feet, or 25 percent of the floor area of the dwelling, excluding basement or any accessory structure, shall be utilized in the home occupation'.

The Applicant provided a copy of a Certificate of Occupancy (C of O), No. B169313, dated August 5, 1994 (Exhibit No. 4). The C of O was issued for use of the building as a flat: one unit on the first floor, and one unit on the second and third floors. The Applicant also provided a copy of a Home Occupation Permit, No. 94-0588, to use a portion of the premises for "Accounting Services/General Management", with one employee (Exhibit No. 5). The Home Occupation Permit was issued July 26, 1994, with no expiration date.

The Applicant indicated that the city issued a citation to him, and directed him to the Board, because his business occupied more square footage than is permitted by the Home Occupation Permit. Specifically, the business exceeded 25 percent of the floor area of the building and 250 square feet. The Applicant estimated that the building contains 2,425 square feet; of the total, the second and third floors contain 2,000 square feet, and the first floor 425 square feet.

Commercial uses are located in the buildings that abut the site, on the ground floor. The Applicant provided copies of Cs of O for a beauty salon at 3103 Mount Pleasant Street, and a retail-clothing store at 3107 Mount Pleasant Street. The mixed-use buildings contain first floor retail use with residential above.

The Applicant stated that the city issued Cs of O for the first floor commercial use of the buildings at 3103 and 3107 Mount Pleasant Street; therefore, he was entitled to receive one. Based on the Applicant's statements, the Board ascertained that the Cs of O might have been issued in error.

The building contains one unit on the ground floor, and another unit on the second and third floors. The Board determined that when the Applicant received the Home Occupation Permit, it was issued for the unit on the first floor only; not the entire building. The Applicant testified that he removed the door, which separated the two units.

The site is located in Advisory Neighborhood Commission 1E. The ANC did not take a position on this application; a report was not provided to the Board. As such, as required by the Zoning Regulations, the Board was unable to give "Great Weight" to the ANC. No letters were received in support of or opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

The Applicant is seeking variance relief from the use provisions of the Zoning Regulations to allow all floors of the three-story building to be used for general office use.

The granting of a use variance is determined by an Applicant demonstrating that an exceptional or extraordinary situation exists that is related to the property and which causes an undue hardship for the owner in complying with the Zoning Regulations. In addition, the Applicant must demonstrate that the application 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 determined that an exceptional situation exists at the site, which creates an undue hardship for the Applicant. The abutting buildings at 3103 and 3107 Mount Pleasant Street were issued Cs of O for ground floor commercial use. The Applicant's property, located at 3105 Mount Pleasant Street, abuts these commercial uses. This characteristic makes the Applicant's property unique.

The Board determined that most of the buildings that are located on Mount Pleasant Street are developed with commercial uses. The Applicant's proposal to use the building's first floor for commercial use would be in keeping with the other uses that are located adjacent to the site. As such, granting the application would not cause substantial detriment to the public good, and would not impair the intent, purpose, and integrity of the Zoning Regulations and Map.

The Board did not agree with the Applicant that the entire building should be used for a commercial use. The Board determined that permitting the building's first floor to house a business would be in keeping with the abutting properties. The abutting properties contain first floor commercial use, with residential above. The Board also determined that the Applicant was operating his business illegally from the premises; and without variance relief, the business would not be able to continue to operate.

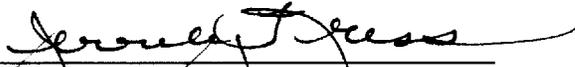
In light of the foregoing, the application is hereby **GRANTED FOR OFFICE USE OF THE FIRST FLOOR ONLY.**

VOTE: 4-0 (Jerry Gilreath, Kwasi Holman, Robert Sockwell and Sheila Cross Reid to grant.)

BY ORDER OF THE DC BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: APR 24 2000

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 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6".

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.

BAB/4.20.00

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APPLICATION NO. 16518

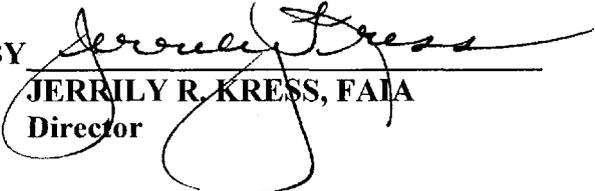
As Director of the Office of Zoning, I hereby certify and attest that on APR 24 2000 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed, first class, postage prepaid, to each party/person who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Bill Mosley, Chairperson
Advisory Neighborhood Commission 1E
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Michael Johnson, Zoning Administrator
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ATTESTED BY



JERRILY R. KRESS, FAIA
Director