

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 315

CASE NO. 80-1

APRIL 10, 1980

The application in Case No. 80-1, is a request from Paul F. Interdonato to amend Section 7104.2 of the D.C. Zoning Regulations. The proposed amendment would permit a Class II non-conforming use to be changed to a use permitted in the most restrictive district in which the existing non-conforming use is permitted as a matter-of-right. The proposal would also apply the matter-of-right standard to all changes approved by the Board of Zoning Adjustment (BZA) retroactive to May 12, 1958.

The applicant is the owner of property located at 2210 Massachusetts Avenue, N.W., for which the BZA granted a change in non-conforming chancery use to a combination of apartments and law offices by BZA Order No. 12290, effective October 14, 1977. The property is currently zoned R-3. A petition for review of the Order was filed with the D.C. Court of Appeals by the Sheridan-Kalorama Neighborhood Council., et al. On May 7, 1979, the Court of Appeals reversed the decision of the BZA in this case. The applicant and the BZA, through the Corporation Counsel, filed motions for reconsideration and rehearing, both of which were denied by the Court on December 24, 1979.

In its opinion, the Court stated that the word "permitted", when used without qualification in the Zoning Regulations, meant permitted in the broad sense of the word, that is, permitted as a matter-of-right or permitted by special exception. As a result, the Court concluded that since the word "permitted" is not qualified in Section 7104.2 of the Zoning Regulations, it means permitted as a matter-of-right or by special exception. The Court therefore considered that the proposed use was not "permitted" in the most restrictive district in which the Chancery use is "permitted," that the Board had improperly interpreted the Regulations and that the application must be denied. In a footnote to its Order denying the motions for reconsideration and reargument, the Court stated:

This does not mean that the contentions ably advanced on behalf of the intervenors are frivolous; we acknowledge that the questions presented by this case are difficult. Further, we recognize that our disposition of the appeal may be considered by the Zoning Commission to be contrary to its intent in adopting § 7104.2 of the Zoning Regulations. If that should be true, the Commission has the power to modify the regulations. See D.C. Code 1973, § 5-415. The issue therefore presented by the application is whether the Commission wishes to amend the regulations to clarify its intent regarding the use of the word "permitted".

The Office of Planning and Development, by report dated April 2, 1980, recommended that the application be set for public hearing. The OPD stated its belief that "the issues raised by the D.C. Court of Appeals regarding changes in non-conforming uses and reflected in the application are ones which need to be resolved."

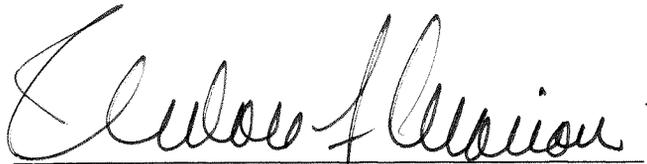
The Sheridan-Kalorama Neighborhood Council, and the owners of the property adjoining 2210 Massachusetts Avenue, N.W., who were parties in the proceeding before the BZA, opposed granting of a hearing on the grounds that the Zoning Commission should not decide any specific rights associated with that case in a rule-making proceeding which potentially would affect the whole city. The Council further argued that approval of the proposed text amendment "would result in a breakdown of the existing pattern of uses permitted in our area." Opposition to granting a hearing was also stated by Advisory Neighborhood Commission - 1D and a representative of the Citizens Association of Georgetown. There were letters in support of granting a hearing from the Greater Washington Board of Trade and the Washington Board of Realtors.

The Commission believes that it is appropriate to consider what are appropriate regulations to govern the changing of one non-conforming use to another. The Commission further believes, however, that it is not appropriate to consider those changes in the context of this case. The Commission believes that the entire non-conforming use regulations need to be reviewed, to determine whether they are achieving the general policy goal of the Zoning Commission of gradually effecting their elimination. The Commission believes that the current regulations, in many respects, do not encourage the termination of non-conforming uses. The Commission therefore believes that even to consider the issue of how to regulate changes of uses would be a piecemeal approach to a broader problem.

In order to consider the non-conforming use matter on a more direct and complete basis, the Zoning Commission requested the Office of Planning and Development to review the entire matter of non-conforming uses and report to the Commission as to what overall changes in the regulations the Commission should consider for public hearing. The Commission believes that all area of the non-conforming uses situation should be investigated, including particularly the regulations regarding changes and extensions of such uses.

The Commission therefore hereby ORDERS that the application to amend the Text of the Zoning Regulations as set forth in Case No. 80-1 be DENIED without a Hearing.

Vote of the Commission taken at its public meeting held on April 10, 1980: 4-0 (Commissioners George M. White, John G. Parsons and Theodore F. Mariani, to deny without a Hearing; Commissioner Ruby B. McZier to deny by Absentee Vote - Commissioner Walter B. Lewis, not present, not voting).



THEODORE F. MARIANI
Chairman
Zoning Commission



STEVEN E. SHER
Executive Director
Zoning Secretariat