

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- October 12, 1966

Appeal No. 8926 Rock Creek East Neighborhood League, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried, with Messrs. William S. Harps and William F. McIntosh dissenting, the following Order was entered at the meeting of the Board on December 14, 1966.

EFFECTIVE DATE OF ORDER -- Feb. 10, 1967

ORDERED:

That the appeal from a decision of the Zoning Administrator given on October 8, 1965 ruling that the chancery use at 1611 Upshur Street, NW., lots 20 and 813, square 2645, was a legal use on October 13, 1964, the effective date of the "Chancery Act" and thus the present occupancy of the premises as a chancery constitutes a continuing legal chancery use, be denied.

FINDINGS OF FACT:

- (1) The subject property is located in an R-1-B District.
- (2) In Appeal No. 6753 the Board granted a special exception authorizing the United Kingdom of Libya to occupy the subject premises as a chancery. A proviso of the Board's Order entered June 19, 1962 stated that the exception would terminate three years from the date of the Order or on any earlier date on which the lease of the Government of Libya might expire.
- (3) Pursuant to the above Order, Certificate of Occupancy No. B-36449 was issued July 25, 1962 for three (3) years to terminate June 19, 1965.
- (4) On May 17, 1965 the Board approved an extension of the occupancy of the subject premises by the Government of Libya to August 30, 1965, the date of termination of the lease.
- (5) On May 17, 1965, Appeal No. 8217 was filed before the Board of Zoning Adjustment for permission to continue for an indefinite period the use of the premises as the chancery of the Government of Libya.

(6) After public hearing on June 16, 1965, the Board dismissed Appeal No. 8217 for lack of jurisdiction, with notice that further proceedings with respect to the chancery use be continued in the Department of Licenses and Inspections.

(7) An application for a certificate of occupancy was filed on October 8, 1965 and Certificate of Occupation No. B-53673 was issued on the same date.

(8) The Rock Creek East Neighborhood League filed suit in the United States District Court for the District of Columbia (Civil Action No. 670-66) seeking a declaratory judgment that the occupancy permit issued October 8, 1965 was invalid. The Complaint was dismissed without prejudice after motion for summary judgment by the defendant, on the ground that the League had failed to exhaust its administrative remedy. The Court's order was issued June 6, 1966.

(9) Congress passed the "Chancery Act" effective October 13, 1964, 78 Stat. 1091 (Public Law 88-659, 88th Congress, S 646).

(10) By Memorandum to the Board dated September 26, 1966, the Zoning Administrator ruled that the subject premises could be continually used as a chancery by a foreign government without Board of Zoning Adjustment approval and without violation of the Chancery Act. The Administrator stated that, in his opinion, "when Congress approves an Act, as it has done in this case, all District laws and regulations unless specifically provided for in the Act and all conditions that may have been imposed by any of these laws and regulations, unless otherwise specifically provided for, automatically become null and void on the date of approval."

(11) The Rock Creek East Neighborhood League filed before the Board an appeal challenging the Zoning Administrator's issuance of the certificate of occupancy October 8, 1965.

(12) After public hearing October 12, 1966, the Board with Mr. Hatton dissenting, decided to overrule the Zoning Administrator's decision. No Order was written by the Board.

(13) By letter dated November 18, 1966 counsel for the owner requested the Board to reconsider its decision in view of the fact that an opportunity to submit a memorandum in opposition to a letter filed by the League had not been given, even though the Board had ruled that the record would remain open for such document and had specified no time limitation.

(14) On November 29, 1966 the Board vacated its decision of October 17, 1966 and requested further argument in this case.

(15) By letter dated December 8, 1966, counsel for both sides were asked to appear at the December 14, 1966 public hearing to present further argument.

(16) Opposition was registered at the public hearing to the use of the subject premises as a chancery.

OPINION:

The sole question before the Board in this case is whether occupancy of the subject premises by the Government of Libya on the effective date of the Chancery Act of 1964 was a "lawful use as a chancery" in view of the fact that the valid Certificate of Occupancy under which the premises were occupied as a chancery was limited in time to expire on the date of expiration of the lease to the Libyan Government. We believe that such use was a "lawful use" and therefore affirm the decision of the Zoning Administrator.

We are of the opinion that the Chancery Act permits the continued use of the subject property by the Kingdom of Libya as a chancery. Although our Order of June 1962 was limited in time, it is clear that the Chancery Act validated all lawful chanceries existing in residential districts on the effective date of the Act notwithstanding our prior limitation of the occupancy, the Chancery Act set aside such limitation together with all Zoning Regulations not specifically provided for in the Act. The subject premises are lawfully occupied by a foreign government as a chancery and may continue to be so occupied, without further action of this Board, by obtaining an occupancy permit from the Department of Licenses and Inspections.