Similarly — a management consultant is no similar to a professional person

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 12845, of Keefe Co., pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator that the use of the fifth floor of the subject office building as an office for a consulting firm is not a use permitted under Paragraph 4101.35 of the Zoning Regulations in an SP District at the premises 1625 Massachusetts Avenue, N.W. (Square 181, Lot 134).

HEARING DATE: January 24, 1979
DECISION DATE:February 28, 1979

FINDINGS OF FACT:

1. The subject property is located on the north side of Massachusetts Avenue between 16th and 17th Streets, N.W., and is known as 1625 Massachusetts Avenue, N.W. It is in an SP-2 District.

2. The subject SP office building was approved by the BZA Order No. 10238, dated December 1, 1970.

3. A Certificate of Occupancy No. B-87409, dated November 10, 1973 authorized part of the subject fifth floor to be used as offices for a non-profit organization.

4.The subject application was filed and advertised under Paragraph 4101.35 of the Zoning Regulations. The decision by the Zoning Administrator, dated September 18, 1978, was made based upon the provisions of Paragraph 4101.35. On October 5, 1978 the Zoning Regulations were changed and the subject proposed use would now be governed by Paragraph 4101.44 of the revised Zoning Regulations. Since the subject appeal from the decision of the Zoning Administrator was made prior to the actual enactment and/or the applicability of the revised Zoning Regulations, this subject appeal is governed by the old Zoning Regulations under Paragraph 4101.35 and not Paragraph 4101.44. The Board notes however, that as far as this appeal is concerned, there is no difference between the old regulations and the present regulations

5. Under Paragraph 4101.35 an office for a "chancery, non-profit organization, labor union, an architect, dentist, doctor, engineer, lawyer or similar professional person" are uses which are permitted as a matter-of-right.

BZA
Case No. 17092
Exhibit No. 42

Board of Zoning Adjustment
District of Columbia
CASE NO.17092
EXHIBIT NO.42

6. The appellant's application for a Certificate of Occupancy to use the subject fifth floor of the subject premises an an office for a consulting firm was disapproved by the Zoning Administrator on the grounds that the proposed use was not a use permitted under Paragraph 4101.35 of the Zoning Regulations.

7. The sole question for the Board to determine is whether the use of a consulting firm constitutes a "similar professional person" as alleged by the appellant.

8. The Board granted the motions of the Dupont Circle Citizens Association and Advisory Neighborhood Commission 2B to intervene in this appeal since the subject property is within the jurisdiction of both organizations.

9. The appellant, Keefe Co., is based in Washington, D.C., It is a governmental relations/public affairs consulting firm and a registered political lobby. This firm provides representation, research and advisory services to a large group of public and private as well as non-profit interests from both the U. S. and foreign nations regarding matters before federal agencies and congressional committees.

10. The Keefe Co., is essentially comprised of three principals and their seven administrative/secretarial support staff.

11. The appellant had been employed in the subject building by a non-profit organization located in the building, and also, for a time, while not employed by the non-profit organization had done work for them. It now proposes to rent space on its own and carry on the same functions for additional non-profit organizations. The Board finds that this does not constitute an office for a non-profit organization under the Zoning Regulations.

12. The appellant as a lobby, is registered with the Secretary of the Senate and the Clerk of the House pursuant to 2 U.S.C., Section 261-270. A lobby is required to report detailed accounts of various contributions and incomes and to provide specific information as to these sources. The appellant, as a public affairs consulting firm is not registered.

13. The Zoning Administrator testified that in determining what constitutes a "similar professional person," he reviewed the uses specifically cited and determined what characteristics were common to all of them. He cited three criteria for a professional to qualify: (1) ethical standards (2) professional licensing, and (3) professional education. As to ethical standards, the Zoning Administrator testified that the professional person must be

controlled by a code of ethics and principles of practice though a professional organization such as the American Institute of Architects, the American Medical Association, the Bar Association, etc. A professional person would be accountable for his or her actions to such an organization. As to the second criteria, professional licensing, all professionals listed in Paragraph 4101.35 of the Zoning Regulations are licensed accountable for any malpractice. The Zoning Administrator further testified that in his opinion lobbyists or public affairs consulting firms, regardless of their educational background, are not professionals within the meaning of the Zoning Regulations. They are not licensed nor are they controlled by a code of ethics through a professional organization. The Board so finds.

14. Advisory Neighborhood Commission 2B, testified that at its meeting of January 10, 1979, it voted unanimously to oppose the appellant. It urged the BZA to accept the criteria of the Zoning Administrator as to a "similar professional person" in the screening of applicants for the use of SP office buildings. It stated that if the definition of "similar professional person" was expanded to include other groups the stabilizing factors of the SP District would almost be eliminated in that residents would eventually be forced out of SP Districts to make room for office buildings for semi-professional or other uses. The Board concurs with the ANC as to the acceptance of the standards of professional persons as enunciated by the Zoning Administrator. It need not find the reasons for the fears of the destabilization of the SP District as dispositive of the subject "professional person" issue. The immediate concern of the ANC has been met.

15. The Dupont Circle Citizens Association opposed the appellant for the same reasons as stated by the ANC.

CONCLUSIONS OF LAW:

The Board concludes that the Zoning Administrator, in setting forth the criteria for similar professional persons to meet, has appropriately determined what characteristics are common to the professionals specifically listed.

Based on the record, the Board concludes that a public affairs consulting firm and a lobby do not meet the criteria of a professional person as enunciated and applied by the Zoning Administrator. While such activities may meet the educational standards, they do not meet the tests of ethical standards and professional licensing.

The Board concludes that it has given the great weight to the issues and concerns of the ANC as it is required by statute.

Accordingly, it is ORDERED that the appeal is DENIED and the DECISION of the Zoning Administrator is UPHELD.

VOTE: 4-0 (Theodore F. Mariani, William F. McIntosh, Chloethiel Woodard Smith and Leonard L. McCants to DENY the Appeal and UPHELD the Zoning Administrator, Charles R. Norris, not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 21 MAR 1979

Similarly: a financial analyst and an economist are not similar to professional persons.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 13714, of Solomon S. Colker, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief of the Zoning Review Branch, dated August 7, 1981, denying an application for a Certificate of Occupancy on the grounds that the use of an office for an "accountant, financial analyst and economist" does not constitute an office of a professional person in an SP-2 District at the premises 1330 New Hampshire Avenue, N.W., (Square 97, Lot 2058)

HEARING DATE: May 12, 1982
DECISION DATE: July 7, 1982

FINDINGS OF FACT:

1. The subject property is located on the southwest corner of the intersection of New Hampshire Avenue and O Street, N.W. and is known as Suite 114 of premises 1330 New Hampshire Avenue, N.W. It is zoned SP-2.

2. The property is developed with a 237-unit condominium building. Of the 237 units, 216 are used for residential purposes and the remaining twenty-one units are used for offices. The office units are located primarily on the first floor and basement levels of the condominium. The previous use of Suite 114 was as an artist's studio occupied by Graphics by Gallo. No certificate of occupancy was issued for that use.

3. The appellant has maintained offices in commercial office buildings in the District of Columbia since 1953. The appellant was last located at 1990 N Street, N.W. The appellant's rent at that location quadrupled when his lease terminated which prompted him to look for another location and eventually led to the purchase of the subject premises. The appellant moved his offices to the subject location in May of 1980. The appellant testified that the seller of the property informed him in May of 1981 that he must apply for a certificate of occupancy.

4. The appellant applied for a Certificate of Occupancy to use the subject premises as a professional office for an accountant, financial analyst, and economist on July 28, 1981. By letter dated August 7, 1981, the Chief of the Zoning Review Branch informed the appellant that the application for a Certificate of Occupancy to use the premises for offices of an accountant, financial analyst and economist was disapproved. The letter indicated further that "...an individual certified public accountant would qualify as a permitted use in the SP-2 District ..."

5. An office for a chancery, international agency, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person is permitted in the SP-2 District, if approved by the Board pursuant to Paragraph 4101.44.

6. The sole question for the Board to determine in this appeal is whether an "accountant, financial analyst and economist" constitutes a "similar professional person," as alleged by the appellant.

7. The appellant, Solomon S. Colker, is licensed by the state of Maryland as a certified public accountant (Maryland CPA License No. 890) and is a chartered financial analyst (Charter No. 1545). The appellant obtained a Bachelor of Science degree in Business Administration from American University. The appellant participates in continuing education programs offered by the D.C. Institute of Certified Public Accountants, of which he is a member in good standing.

8. As a certified public accountant, the appellant is governed by a code of ethics. Violation of those standards would result in disciplinary action or revocation of the appellant's license.

9. The appellant also has been a chartered financial analyst since 1967. A chartered financial analyst is required to sit for a three-part examination which is given over a period of three years. Upon successful completion of this examination, the appellant joined the Institute of Certified Financial Analysts. The standards of conduct which pertain to a chartered financial analyst are promulgated and administered by the Institute of Certified Financial Analysts.

10. The appllant testified that he offers financial and economic services to out-of-town clients which utilize his skills as both a certified public accountant and a chartered financial analyst.

11. The appellant offered no testimony or evidence concerning his standing or qualifications as an economist.

12. The appellant testified that his services do not seek or attract off-the-street clientele, that he generally meets with clients in their offices, that virtually all of his clients are located out of town, that he has no need to use the parking spaces or lobby which serve the subject building, and that the office is used basically for doing research and preparing documents for his clients.

13. The Zoning Administrator testified that in determining what constitutes a "similar professional person," he reviewed the uses specifically cited in Paragraph 4101.44 and determined what characteristics were common to all of them. The Zoning Administrator cited three criteria for a professional, as follows:

a. The person must be licensed by a state or the District of Columbia;

b. The person must be bound by a code of professional ethics; and,

c. The person must have professional educatien.

The Zoning Administrator testified further that the above-mentioned criteria were considered by the Board in BZA Case No. 12845 and that the decision of the Zoning Administrator using those criteria was upheld. Subsequently, the D.C. Court of Appeals affirmed the decision of the Board.

14. The Zoning Administrator testified that, in his opinion, only the certified public account meets all three of the criteria cited. The Zoning Administrator further testified that the chartered financial analyst and the economist are not licensed. In addition, an economist is not bound by a code of professional etheics. Therefore, neither a chartered financial analyst nor an economist are considered as professionals within the meaning of the Zoning Regulations. The Board concurs.

15. Advisory Neighborhood Commission 2B, by letter dated April 4, 1982, stated that at its meeting of March 10, 1982, the ANC voted unanimously to oppose the appeal. The ANC supported the guidelines set forth by the Zoning Administrator as to the screening of applicants for use of SP office buildings. The ANC stated that the square in which the subject premises are located is "overwhelmingly residential" and that the proposed use would not be in harmony with existing uses on neighboring property. The Board concurs with the ANC as to the acceptance of the standards of professional persons as enunciated by the Zoning Administrator.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the Zoning Administrator, in setting forth the criteria for similar professional persons to meet, has appropriately determined what characteristics are common to the professionals specifically listed in Paragraph 4101.44 and as upheld by this Board and the Court of Appeals in BZA Appeal No. 12845.

Based on the foregoing findings of fact and the record, the Board concludes that "chartered financial analyst and economist" do not meet the criteria of a professional person as enunciated and applied by the Zoning Administrator. While both activities may meet the educational standards required, they do not meet the tests of professional licensing and the economist is not governed by specific ethical standards.

The Board noted that the Zoning Administrator advised the appellant that a certified public accountant only satisfied the criteria for a professional person, as was pointed out in the August 7, 1981, letter from the Chief of the Zoning Review Branch. However, consideration of that sole use was not before the Zoning Administrator and is not presently before the Board.

The Board concludes that it has afforded the great weight required by statute to the issues and concerns of the Advisory Neighborhood Commission. Accordingly, it is ORDERED that the Appeal is DENIED and the decision of the Zoning Administrator is UPHELD.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Charles R. Norris to deny; Douglas J. Patton not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JAN 18 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "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."