GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15605 of John and Vinnie Best, pursuant to 11 DCMR 3107.2 for a variance from the use provisions (Subsection 201.1) to allow office use on the first floor in an R-1-B District at premises 3629 18th Street, N.E. (Square 9203, Lot 204).

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HEARING DATE: January 15, 1992
DECISION DATES: February 5, 1992 and March 4, 1992

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located at 3629 18th Street, N.E. (Square 9203, Lot 204).

2. The lot is improved with a two-story brick building. The existing building is located on the southeast corner of the intersection of 18th and Otis Streets N.E. The building contains three addresses. The portion of the building facing Otis Street is identified as 1801 Otis Street, N.E. The portion of the building (first floor only) facing 18th Street is identified as 3629 and 3633 18th Street, N.E.

3. The building contains eight apartment units, seven on the second floor and one on the first floor. The portion of the structure located at 3633 18th Street has been used for church purposes. The subject space located at 3629 18th Street has had certificates of occupancy for use as a tailor/laundry, a beauty shop and as a barber shop. These uses have been abandoned. The property has most recently been used as a coatroom and storage area for the church next door. The unit is separated from the church by a wall and a door.

4. The property is located in an R-1-B District which permits the matter of right development of single-family detached dwellings, with a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

5. The applicants propose to use the subject property as office space to serve the tenants of the building and to serve the tour company owned by the applicants. Offices are not allowed as a matter of right in the R-1-B District. They are first allowed in the C-1 District. Therefore, the applicants are requesting a variance from the use provisions of 11 DCMR 201.1.

BZA
Case No. 16972
Exhibit No. 12

Board of Zoning Adjustment
District of Columbia
CASE NO.16972
EXHIBIT NO.12

6. In describing the proposed property management office use, the applicant stated that he and his wife would be there to accept deliveries for the tenants and provide security. He stated that if the office could be located on site, the tenants would no longer need to come to his home to address matters related to the apartment building.

6. The applicants testified that they are also seeking to use the space to handle the business of their tour company since they will already be at the site to manage the apartments. They noted that the tour company, Capital Entertainment Services, owns the apartment building.

8. The applicants maintain that the application meets all of the requirements for use variance relief. With regard to the undue hardship unique to the property and inherent in the property itself, the applicant stated that the R-1-B District permits the development of single-family detached dwellings. However, the building is a multi-unit structure that has never been used as a single-family dwelling. The subject unit has always been used for commercial purposes. A diagram of the property entered into the record demonstrates that the subject unit measures 13 feet 10 inches by 38 feet and contains a half-bath. The applicant stated that the half bath consists only of a sink and commode and is substandard for residential use. The applicant further stated that the unit has no source for heat other than overhead piping. It has only one entrance from the outside and it has a store front design that does not allow for adequate lighting from windows.

9. The applicant stated that the property management office activities will include collecting rent, handling tenants and supervising maintenance of the building. The sightseeing tour office activities will consist of answering telephone requests for sightseeing tours, and preparing service proposals and contracts. The applicants stated that only two persons will work in the office space. Generally, customers do not come to the tour office which currently operates from their home. Therefore, clients are not expected to come to the new office. Finally, no buses will be kept at the site. Based on these factors, the applicants believe that the variance can be granted without substantial adverse impact and without impairing the intent, purpose and integrity of the zone plan.

10. By report dated December 31, 1991 and through testimony at the hearing, the Office of Planning (OP) recommended denial of the application. OP described the subject property and the intended use. OP noted that the character of the area in which the property is located is primarily residential and is developed with a mix of rowhouses, semi-detached dwellings, and detached single-family dwellings. Along 18th Street, this block is developed with

rowhouses. Along Otis Street, it is developed with semi-detached, single-family houses. Across Otis Street, there are rowhouses and the Taft Junior High School and playground.

OP stated that the unit at issue was most recently used as the coatroom for the church. OP noted that churches are permitted in residential areas because they are presumed to serve some substantial neighborhood or community function. A business office for a sightseeing tour company cannot make the same claim. OP stated that the applicants have not established an undue hardship associated with retaining the church use of the property. OP is of the opinion that the proposal to locate an office use in a residential district would likely have an adverse effect on the residential character of the area. Therefore, OP recommends denial of the application.

11. Responding to the Office of Planning, the applicants indicated that only one of the spaces on the first floor is used as a church.

12. Advisory Neighborhood Commission (ANC) 5A submitted a report dated January 31, 1992 and requested waiver of the Board's rules to accept the late report into the record. The ANC stated that the applicants have not met the burden of proof. They have not demonstrated practical difficulties or that granting the application would not be detrimental to the community.

In response to the Board's request for further dialogue between the applicant and the ANC, the ANC submitted a supplemental report dated February 28, 1992. In this report, ANC 5A stated that the application was reconsidered at the regular monthly meeting on February 26, 1992. At this meeting, the applicants had their first opportunity to appear and present information about their case. Based on the representations made by the applicants, ANC 5A believes that the burden has been met and recommends that the Board grant the application without any conditions or restrictions.

13. The representative for single member district 5A11 testified at the hearing and submitted a letter dated January 7, 1992. He also submitted a petition in opposition to the application. He stated that the area residents have a strong desire to keep the neighborhood residential. They are concerned that the proposed business will lead to the encroachment of commercial establishments on the residential neighborhood. However, he stated that the neighbors have no problems with what the applicants are actually proposing to do with the property.

14. No other persons appeared at the hearing to testify in support of or in opposition to the application.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. The unit at issue in this application has not been used as a church as suggested by the Office of Planning.

2. The subject unit has never been used for residential purposes.

3. The subject unit does not contain a full bathroom.

4. The subject unit is separated from the church portion of the building by a wall and a door.

5. The unit cannot be converted to a single-family residence or used as a church.

6. The operations of the proposed business will create minimal activity at the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a variance from the use provisions of 11 DCMR 201.1 to establish an office use in an apartment unit located in an R-1-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 owners in their efforts to make reasonable use of the property. This hardship must arise out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical condition. The applicants must demonstrate that the property cannot be used for any purpose for which it is zoned due to 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 and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicants have met this burden of proof. The subject property is zoned R-1-B which permits as a matter of right detached single-family dwellings, churches and a host of other uses. The subject property consists of one small unit in an eight unit apartment building which is a nonconforming use in this zone. Therefore, for any use other than what is allowed under Subsection 201.1, the applicants would need variance relief. The applicants have demonstrated that the unit is small in

VOTE: 5-0 (Angel F. Clarens, Paula L. Jewell, Sheri M. Pruitt and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy).

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

ATTESTED BY: Madeliene H. Robinson
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: OCT 21 1993

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 SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15605Order/TWR/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15605

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on OCT 21 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. & Mrs. John Best
2615 Monroe Street, N.E.
Washington, D.C. 20018

Eugene Washington
1905 Kearny Street, N.E.
Washington, D.C. 20018

Raymond Dickey, Sr., Chairperson
Advisory Neighborhood Commission 5A
Slowe School Demountable
14th & Irving Streets, N.E.
Washington, D.C. 20017

MADELIENE H. ROBINSON
Director

DATE: OCT 21 1993

15605Att/bhs