GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman
Director

DATE January 21, 2003

SUBJECT: BZA Application 16972
3629 18th Street, N.E

APPLICATION
The applicant requests variance relief from the use provisions of §201 for general office use in an R-1 residence zone district.

SUMMARY RECOMMENDATION

The Office of Planning **recommends approval** of the variance.

SITE AND AREA DESCRIPTION

The subject property is located at 3629 18th Street, N.E. (Square 9203, Lot 204), part of a multi-use, two-story apartment building located on the southeast corner of 18th and Otis Streets N.E. The building contains three addresses. The portion of the building facing Otis Street is addressed as 1801 Otis Street, N.E. The first floor facing 18th Street has two addresses: 3629 and 3633 18th Street, N.E. 1801 Otis Street addresses seven apartments, including six on the second floor and one apartment on the first floor. A church occupies 3633 18th Street. The subject property at 3629 18th Street has had various certificates of occupancy for uses including beauty shop, tailor shop and barbershop (Attachment 1).

The apartment building is located in an R-1-B District, which permits 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, and a maximum height of three stories/40 feet. The immediate area surrounding the building is a primarily residential area developed with a mix of rowhouses, semi-detached dwellings, and detached single-family dwellings. The apartment building was constructed in 1936 and predates the current Zoning Regulations.

BZA
Case No. 16972
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO.16972
EXHIBIT NO.24

PROJECT DESCRIPTION

The applicant proposes to use the subject property, 3629 18th Street, N.E. as general office space. The applicant purchased the apartment building in 1991 and the unit at 3629 18th Street was used as an anteroom for the church. In addition, the applicants own a tour company and briefly used the space for the administrative-related activities of that company. The subject space measures 13'10"x 38' (Attachment 2).

The applicant applied for a use variance for office space at the subject location and was granted approval by the Board, per BZA Order 15605 dated March 4, 1992 (Attachment 3). The applicant submitted that the written approval order was never received and they subsequently relocated their tour business office to another location. The church was then allowed to use the space as an accessory use. The applicant has since sought to reoccupy this unit as a general office. However, the Zoning Administrator has determined that a variance from the use provisions of the R-1-B zone should be obtained before the certificate of occupancy can be granted, since the original order was valid for a period of six months from the date of issuance (10/21/1993), unless within such period, an application for a certificate of occupancy was filed with the Department of Consumer and Regulatory Affairs. The application for a certificate of occupancy was not filed within the six-month period. Consequently, the variance expired.

The applicant submits there are no new circumstances, including no expansion or upgrade of the unit and its amenities. All conditions and physical aspects under which the original order was granted continue to exist. The applicant is requesting reinstatement of the order to include general office space, with signage to indicate the name of the building and the location of its rental office, which will occupy the unit.

ZONING REQUIREMENTS

Offices are not allowed as a matter of right in the R-1-B District. A variance from the use provisions of 11 DCMR 201.1 is required to establish an office use in a unit of an apartment building located in an R-1-B District.

ANALYSIS

Granting of a use variance pursuant to 11 DCMR §3103.2 requires a showing through evidence, that strict compliance with the Zoning Regulations will create an undue hardship upon the owners in their efforts to make reasonable use of 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 applicant must show that the property cannot be reasonably used for any purpose for which it is zoned due to some physical or 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 variance request was reviewed as follows:

(a) *The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition;*

The subject property predates the 1958 Zoning Regulations, and was originally constructed as a storefront. The property measures 13'x 38', is undivided by any interior walls, and abuts the church located on the first floor of the building. The space does not have the amenities typical of other residential units in the building, including a kitchen, full bath or adequate heating facilities. The unit is designed as a storefront property and is separated from the church portion of the building by a wall and a door. These physical characteristics make the property unique and difficult for use as any other dwelling or use, which complies with the regulations.

(b) *By reason of the aforementioned unique and exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.*

The eight-unit apartment building is a non-conforming use in this zone. For any other use than what is allowed under Subsection 201.1, the applicants would require variance relief. OP believes that the space is inappropriate for other allowed uses and its unique size and lack of amenities prevent compliance with the strict application of the Zoning Regulations. OP believes that the applicants would suffer undue hardship to convert the space into a single family detached dwelling or any other residence.

(c) *The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*

OP notes that the space will be used as general office space. Only two employees will use the space, including the applicant who also resides in the building, therefore the office use should not result in a nuisance to the community. The subject property cannot be used as it is zoned. The use of the unit as a office space however, is not incompatible with the use of the building, particularly since the space has been previously used for other operations which could have conceivably brought more pedestrian and vehicular traffic into the neighborhood, than is currently proposed. The applicant's proposed use as a general office for the building, with no more than 2 employees would only have a minimal impact on the surrounding residential neighborhood. OP believes that since the property cannot be used as zoned, granting of the relief will not impair the intent, purpose and integrity of the zone plan.

COMMUNITY COMMENTS

OP has not received the ANC 5A report but notes that the applicant received ANC support of their previous application in 1992.

CONCLUSION

The Office of Planning concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3103.2, for a use variance to permit a general office at 3629 18th Street N.E. OP believes that the material facts upon which the previous request was granted have not changed, including the size of the unit and the undue hardship the applicant would face to adapt the unit to a use which strictly complies with the Zoning Regulations. The unit has been previously used for a variety of commercial uses, and OP believes that the proposed use is minimal in comparison to previous uses. The intended use of the space would be an accessory use to the building and would not expand its non-conformity. Based on the evidence of record, OP finds no change to the Board's previous findings of fact in its original order, including:

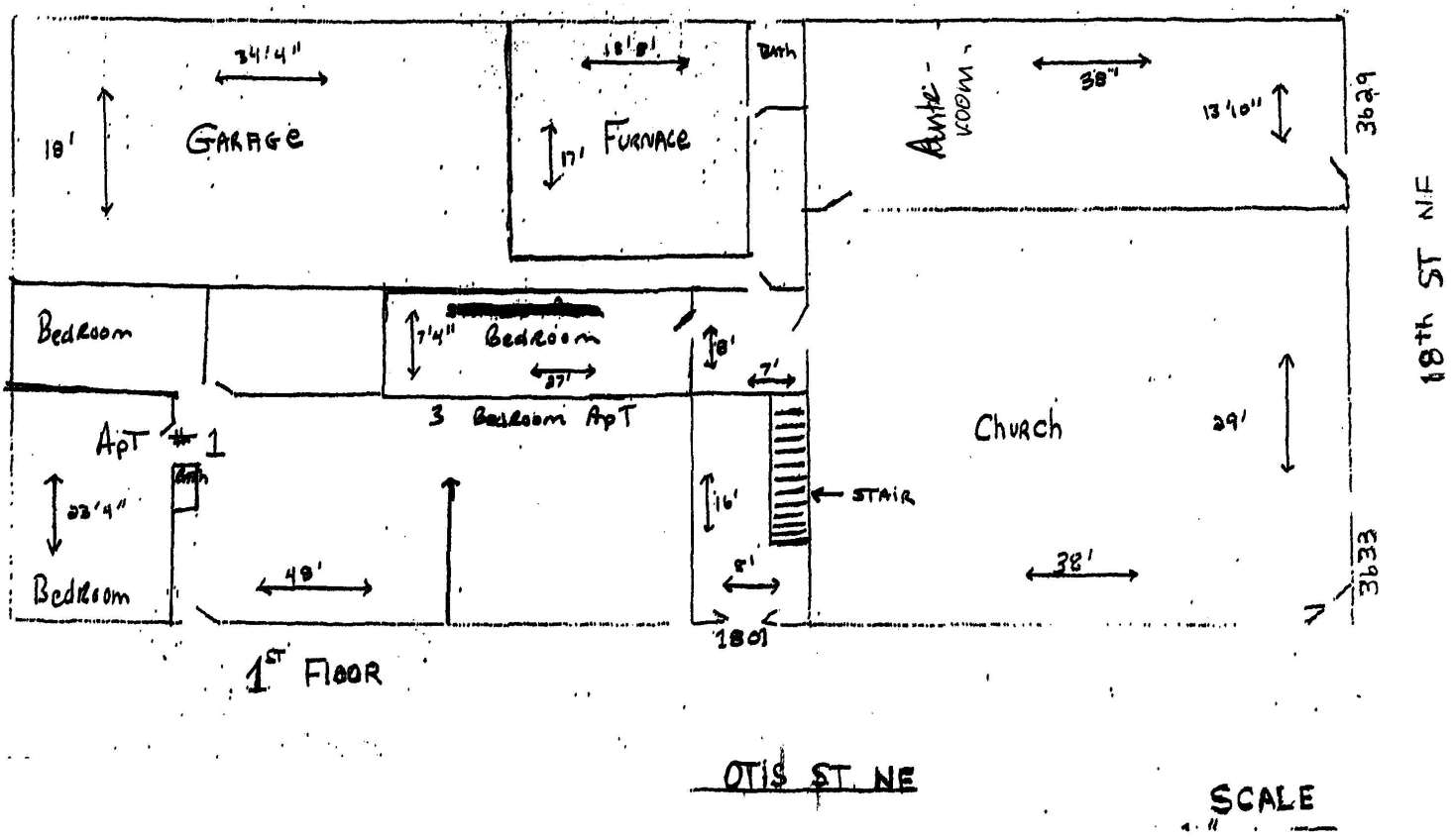
1. The subject unit has never been used for residential purposes.
2. The subject unit does not contain a full bathroom
3. The unit cannot be converted to a single-family residence or used as a church.
4. The operations of the business will create minimal activity at the site.

The request can be granted without substantially impairing the intent, purpose, and integrity of the Zoning Regulations. The Office of Planning recommends that the Board of Zoning Adjustment approve the variance request with the conditions that:

1. No commercial vehicles will be parked on site.
2. There are no more than 2 employees.
3. That the use shall be limited to 3629 18th Street in its current size.

Attachments

1. List of Certificates of Occupancy
2. 3629 18th Street – First Floor Plan
3. BZA Order 15605


34'4"
GARAGE
18'
18'9"
FURNACE
17'
Bath
Addit. Room
38'
13'10"
3629
18th ST NE
Bedroom
7'4"
Bedroom
37'
8'
7'
3 Bedroom Apt
Apt # 1
Church
29'
Bath
22'4"
Bedroom
49'
16'
STAIR
5'
38'
3633
1801
1st FLOOR
OTIS ST NE
SCALE

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).

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.

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 use 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

size. It does not have kitchen facilities nor does it have bathing facilities in the bathroom. The heating facilities are inadequate and the property is designed as store front property. The record further demonstrates that the unit is separated from the church portion of the building by a wall and door. Based on these physical characteristics, the Board is of the opinion that the property is unique and cannot be converted to a single-family detached dwelling or used as part of the church. The Board believes that the property is also inappropriate for any other use allowed under the applicable subsection. Therefore, the Board concludes that the unique characteristics create an undue hardship for the owners in strictly complying with the provisions of the Zoning Regulations governing this property.

The Board notes that the property management office will serve the tenants of the building only, and in the Board's view, this use will not create problems for the community. The Board is of the opinion that the applicants' tour bus business will not draw people to the site, nor will buses be brought to the site. Further, only a small number of employees will work at the site, therefore the impact on the surrounding area will be minimal. Based on these factors, the Board concludes that the application can be granted without substantial detriment to the public good.

Finally, the Board concludes that because the property cannot be used as it is zoned, to grant the requested relief will not impair the intent, purpose and integrity of the zone plan. The Board further concludes that it has accorded the opinion of ANC 5A the "great weight" to which it is entitled.

In light of the foregoing, it is hereby **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The office use at the subject premises shall be limited to the apartment management office accessory to the existing apartment use at 1801 Otis Street, N.E., and to the administrative offices of a tour company.

2. There shall be no exterior signs advertising the office uses on the exterior of the building.

3. The number of employees at the subject premises shall not exceed four.

4. There shall be no parking of commercial vehicles at the subject premises.

5. There shall be no loading or unloading of commercial tour buses at the site or on adjacent residential streets.