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April 12, 2004

2004 APR 13 P 3:02

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: 1304 Rhode Island Ave, N.W. Square 242, Lot 65

Dear Mr. Griffis:

Enclosed is the Prehearing Statement and Corrected Statement of Explanations and Reasons for a Special Exception for the use of the first floor and a portion of the second floor of the subject single family, semi-detached building as a home occupation (law office).

We will call Susan and Kenneth Rosenau as witnesses.

Please call if there are any questions.

Yours very truly,

Stephen N. Gell

Enclosure

BZA
Case No. 17153
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17153
EXHIBIT NO. 21

PREHEARING STATEMENT

AND CORRECTED STATEMENT OF EXPLANATIONS AND REASONS SUPPORTING AN APPLICATION TO THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

FOR A SPECIAL EXCEPTION

Pursuant to Sections 203.4 (d), 203.10(b) and 3104

OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS

1304 Rhode Island Ave, N.W.

(SQUARE 242, LOT 65)

BZA Case No. 17153

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INTRODUCTION

This is a corrected Statement of Explanation and Reasons supporting the application of Kenneth and Susan Rosenau, (hereinafter "applicants") for a special exception, pursuant to Sections 203.4 (d), and 203.10(b) of the Zoning Regulations of the District of Columbia, to use parts of the first and second floors of their home at 1304 Rhode Island Ave, N.W., as a law office under the rules for home occupations. The Rosenaus are permitted to hire one employee (paralegal, clerk, etc.) who does not live in the house. An exception is needed to hire an additional paralegal or clerk.

DESCRIPTION OF THE APPLICANTS

The Rosenaus purchased the building in May, 2003, and discovered that their use of part of the building as a law office with two employees was non-conforming and that they would need a special exception. Mrs. Rosenau suffers from severe disabilities, including obesity, arthritis, orthopedic problems affecting her knees, back and ankles, and severe depression. Accordingly, in order for her to conduct a normal practice she needs the additional assistance of associates and paralegals. The District has recognized her handicap by granting her a disability parking placard.

THE SUBJECT PROPERTY

A. Location and Description of the Property

The property which is the subject of this Application is located at 1304 Rhode Island Ave, N.W., Square 242, Lot 65. It is a row dwelling on four floors with basement. The building is in an R-5-B Zone, which permits row dwellings and multiple dwellings. No structural changes of any kind are contemplated for the interior or exterior of the building. The applicant contemplates using a one-square foot permanent sign, as permitted by law.

B. Area Surrounding the Property

The property is a couple of doors from Logan Circle. It is zoned R-5-B which permits single and multiple dwelling structures and hotels. The predominant uses in the area are residential.

C. Zoning History, Use History, and Historic Preservation

The area is zoned R-5-B which permits single and multiple dwelling structures, and hotels. The property is also in the Logan Circle Historic District. It was built in 1875 and enlarged in 1892, and is, in all likelihood, a contributing building.

D. Operations

The law firm operated by the Rosenaus is concentrated in medical guardianship, probate, and elder law and does not involve a volume of clients coming through the door. Many clients of the Rosenaus and their associate, who resides on the premises, are patients at hospitals or senior citizens in group homes for whom they serve as guardian *ad litem,* often appointed by the court. In virtually every instance, the attorneys or their staff go to the patient, whether at a hospital, nursing home, apartment or elsewhere. Frequently, Mr. Rosenau is called upon during non-business hours, including the middle of the night, when someone is needed to authorize medical treatment for an incapacitated person for whom he has been made responsible. Appointments in these cases can last for several years, or for only a few days, depending on the circumstances, but particularly in the early stages of the case crises are likely to arise at any time. This also makes it necessary for the attorneys to have their files at hand at all hours, especially when – as is frequently the case – the patient is in a critical or fragile condition and an important decision may need to be made immediately. In addition, a small part of the practice is criminal appellate work where the client is nearly always incarcerated and, therefore, interviewed in prison, rather than the office.

REASONS IN SUPPORT OF THE APPLICATION FOR SPECIAL EXCEPTION

A. Compliance with D.C. Zoning Regulations

A special exception is needed to permit the operation of a law firm as a home occupation at the subject property pursuant to §203.4(d) which permits one employee who does not live on the premises. The law firm employs two employees (paralegals) who do not live on the premises. It was previously thought that a special exception would be needed for the size of the space devoted to the law firm. However, although the office portion of the house is 1164.5 square feet, including a small part of the 4th floor used for storage, it is still less than 25% of the residential unit.

Mr. and Mrs. Rosenau reside on the third floor and the associate resides on the fourth floor.

The applicant satisfies the requirements for grant of the Special Exception. The Board is authorized to grant special exceptions where, "in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property ..." 11 DCMR §3104.1

B. No Adverse Effects

As noted, the home occupation is not likely to generate substantial foot or vehicular traffic. Relatively few of the clients need to come to the premises. Rather, consultations are usually made by appointment and often take place off-site.

Those clients who do visit the property will be able to use public transportation. The U street and Shaw Metro Stations are within one half mile of the subject property, and the Dupont Circle Metro Station is within .6 miles. Depending on the rate of walking speed, a trip to or from the Metro should take between 10 and 15 minutes. In addition, bus routes have stops just steps away on 14th Street or on Logan Circle.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

A. Appropriate Residential Use

Home occupations are a recognized permitted use in all zones. An R-5 Zone with its greater density is likely to see less impact than other R Zones.

> The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§350 through 361, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title. The R-5 Districts shall also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. 11 DCMR §350.1

B. Historic Preservation

Section 804.1 of the Comprehensive Plan calls on the District and Federal Governments to

> (f) Provide sufficient administrative flexibility in building codes and other related codes and regulations to permit maximum preservation and protection of historic resources while still ensuring the health and safety of the public. (46 DCR 1562, Feb. 19, 1999)

Among the objectives of Section 1319.1 of the Comprehensive Plan are the following:

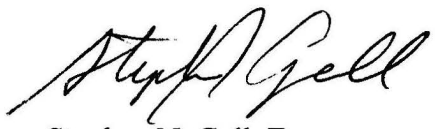
> (b) to preserve and reuse historic landmarks and buildings in historic areas in Ward 2, and
>
> (d) to preserve and protect existing buildings and small scale and open spaces in historic areas in Ward 2. (46 DCR 1752, Feb. 19, 1999)

The subject property is a contributing building in the Logan Circle Historic District. Latitude in the use of the property for a law office as a home occupation, as permitted by the Zoning Regulations, can serve to enhance its preservation.

CONCLUSION

The Applicants should be granted the Special Exceptions to allow the use of 1125 square feet of the subject property, and the employment of two (2) paralegals or clerks by the Rosenaus in the operation of their law firm as a home occupation. Such special exceptions are highly unlikely to have any negative effects on the neighborhood and can serve to enhance the likelihood of preservation. Moreover, such a use will be in harmony with the purpose and intent of the Zoning Regulations.

Respectfully submitted,



Stephen N. Gell, Esq.