

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18648 of LHO Washington Hotel Four LLC, pursuant to 11 DCMR § 3103.2, for variances from the FAR limitations under § 402.4 and from the prohibition under § 350.4(e) against the expansion of gross floor area or the increase in function or meeting space within a hotel existing on or before May 16, 1980, in the R-5-E District at premises 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858).

HEARING DATE: November 5, 2013
DECISION DATE: December 3, 2013

DECISION AND ORDER

LHO Washington Hotel Four LLC (the "Applicant"), the owner of the subject property, submitted this self-certified application on August 8, 2013, seeking a variance from § 350.4(e) of the Zoning Regulations to permit the construction of a small addition to the Helix Hotel, consistent with BZA Application No. 17672, in which the Board approved an area variance from 11 DCMR § 350.4(e) in 2008 for the same addition requested by the Applicant in this case. The application was amended at the hearing to include a variance from the floor area ratio limitations in the R-5-E District for hotels under 11 DCMR § 402.4. Following a public hearing and public meeting, the Board voted on December 3, 2013, to approve the application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 9, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Councilmember for Ward 2; Advisory Neighborhood Commission ("ANC") 2F, the ANC in which the subject property is located; and Single Member District/ANC 2F03. Pursuant to 11 DCMR § 3112.14, on August 29, 2013, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 2F, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on August 30, 2013 (60 DCR 12378).

Party Status. In addition to the Applicant, ANC 2F was automatically a party in this proceeding. The Board granted a request for party status in opposition to the application submitted by Jeffrey Dziejewczynski. (Exhibit 24.) Mr. Dziejewczynski lives at 1422 Rhode Island Avenue, N.W.,

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District of Columbia
ZONING COMMISSION
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which is located directly to the east of the subject property.

Applicant's Case. The Applicant provided evidence and testimony from Joanna Zook, Vice President of Asset Management of LaSalle Hotel Properties, which is affiliated with the Applicant; and Gene Weissman, the architect of the Applicant. They described the Applicant's plans to construct a one-story addition to the Helix Hotel to be used for functions and meetings, and asserted that the application satisfied all requirements for approval of the requested zoning relief.

OP Report. By memorandum dated October 29, 2013, OP recommended approval of the application. (Exhibit 30.)

DDOT Report. By memorandum dated October 29, 2013, DDOT indicated no objection to the application. According to DDOT, the proposed project will have no adverse impacts on the travel conditions of the District's transportation network. DDOT noted that three parking spaces in the landscaped public space area will be eliminated, which is consistent with the public parking area that is intended for open space and landscaping. DDOT recommended that the Applicant: (i) plant a tree in the proposed landscaped area at the front of the building where three existing parking spaces are currently located; (ii) pave the adjoining sidewalk that runs between the driveway's ingress and egress to indicate to drivers that they are crossing a pedestrian pathway; and (iii) install a new tree box on the sidewalk west of the driveway's ingress. (Exhibit 29.)

ANC Report. By memorandum dated August 30, 2013, ANC 2F indicated that, at a regular public meeting held July 10, 2013, with a quorum present, the ANC voted 7-0-1 to support the area variance to expand the gross floor area of the Helix Hotel for function or meeting space. According to the ANC, the project was fully consistent with the same variance request approved by the Board in 2008, BZA Application No. 17672. (Exhibit 23.)

Persons in Support. The Board received letters in support of the application which generally stated that the proposed addition would not adversely affect properties in its immediate vicinity, and would not create additional traffic congestion, noise, or other objectionable conditions, but would contribute to the vitality of the area.

Persons and Party in Opposition. The Board received letters and heard testimony in opposition to the application from the party in opposition and several other persons living in the vicinity of the subject property. The party in opposition generally contended that the addition would significantly increase noise in the neighborhood, particularly at night, and would lead to more traffic congestion, due to cars dropping off guests and restaurant patrons, and increased backups on the sidewalk, due to delivery trucks and tour buses.

FINDINGS OF FACT

1. The subject property is located at 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858). The lot is midblock on the south side of Rhode Island Avenue between 14th and

15th Streets. The lot is irregularly shaped with a land area of 18,191 square feet. A public alley abuts the property along its rear lot line.

2. The subject property is improved with a high-rise detached building, approximately 89 feet in height, used as a hotel with 179 guest rooms. The building has approximately 109,146 square feet of gross floor area. The first floor of the building contains typical hotel functions, including a reception area, hotel offices, a restaurant, a fitness room, public restrooms, and three small meeting rooms. On the west side of the building there is a summer garden patio for hotel guests and restaurant patrons.
3. The existing building is T-shaped, occupying the entire lot in the rear, then extending toward the front of the property with significant setbacks on either side. The center of the building directly abuts its front property line on Rhode Island Avenue, with deep side courts measuring 25 feet in width and 93 feet, two inches in length. The rear yard has an irregular configuration, with three separate sides abutting the public alley. The open court on the east side of the building is partially landscaped and includes some mechanical equipment.
4. To the front of the building is a circular driveway with a covered area for pick-up and drop-off. There are three existing parking spaces in front of the building beyond the property line that the hotel currently uses for service, delivery, and valet parking operation. A below-grade garage, accessed from the public alley at the rear of the building, provides parking spaces for 33 vehicles.
5. As currently improved, the subject property has a lot occupancy of 60 percent, where 75 percent is permitted, and a floor area ratio ("FAR") of 6.0, where 6.0 is permitted.
6. The subject property is zoned R-5-E, which allows hotels existing as of May 16, 1980, as a matter of right. (11 DCMR § 350.4.) The building was originally constructed in 1965 as an apartment house but was later converted to hotel use; thus, the existing building is nonconforming only to the extent that it was converted to a hotel use prior to the change in the Zoning Regulations governing such uses in a residential district. The building is a non-contributing property in the Greater 14th Street Historic District.
7. Properties in the vicinity of the subject property are also zoned R-5-E. The portion of Rhode Island Avenue in which the subject property is located is characterized by a mix of high-rise apartment houses, hotels, modern condominium buildings, and historic row houses. The area around Logan Circle, and the 14th Street corridor in general, is being redeveloped with a wide variety of high-density commercial, residential, and mixed use buildings.
8. The hotel's existing meeting spaces are limited in size and configuration due to the building's conversion to hotel use from a residential apartment building that lacked large common areas. The existing meeting rooms cannot be combined into a larger space because of structural constraints relating principally to the columnar structure of the

building, which was made of cast-in-place reinforced concrete with column widths ranging from approximately 11 feet to 14 feet from the center. The meeting rooms have low ceilings – the floor-to-ceiling height is approximately eight and a half feet – and thus have poor sight lines and lack of the technological features generally provided in meeting spaces.

9. The Applicant seeks to construct a one-story addition to the existing building to create a single, flexible meeting room with approximately 1,789 square feet of space. The addition will be located where the northeast court currently exists. It will extend the existing northeast exterior wall out to the eastern property line, aligning with the center portion of the building facing Rhode Island Avenue. The flexible meeting space will be capable of accommodating up to 150 people in a single room with unobstructed floor space. It will be able to serve larger and different types of meetings and functions than the hotel is currently able to host.
10. The proposed addition will add approximately 2,172 square feet of gross floor area to the existing building. The property's lot occupancy will increase from approximately 60 percent to 72.2 percent, and the density will increase from 6.0 FAR to 6.11 FAR.
11. Approximately 1,550 square feet of gross floor area presently used as a passenger drop-off area in front of the building will be converted to interior space comprised of new lobby seating and pre-function areas for the meeting room. The existing smaller meeting rooms at the rear of the building will be reconfigured to accommodate restrooms and a slightly expanded kitchen, which is currently undersized for the restaurant.
12. The addition will be constructed using brushed stainless composite metal panels with vertically butt-glazed windows and brushed stainless metal. The addition's design and materials are in harmony with the stainless steel meshed drapery and stainless metal shingles that adorn the façade of the existing building.
13. The proposed addition will reduce the hotel's impact on the neighborhood in a variety of ways. The addition's expected effect is to change the hotel's primary client demographic from entertainment, tour, and travel guests, to corporate business guests who can utilize the new function space for group meetings and seminars. Expanding the interior lobby to provide new seating and gathering areas will permit patrons to congregate inside the lobby, instead of outside. Finally, converting the existing one-lane driveway to a two-lane driveway will reduce congestion in the street and improve the pedestrian environment along the block.
14. The Applicant shared its plans with a staff member of the Historic Preservation Office (“HPO”) of the Office of Planning. The staff member informed the Applicant that no referral to the Historic Preservation Review Board (HPRB”) would be needed because the project satisfied the criteria of 10-C DCMR § 319. That provision permits HPO staff to clear building permits for “for minor work not likely to have a significant effect upon the historic character of designated properties” based upon “a determination that

proposed work is compatible with the character of the affected historic landmark or historic district.” (10-C DC ADC § 319.)

15. The subject property is zoned R-5-E, a General Residence zone district. The R-5-E District is designed to permit flexibility of design by permitting in a single district many types of urban residential development if they conform to the height, density, and area requirements established for the districts under Chapter 4 of the Zoning Regulations. The R-5-E Districts 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.)
16. The building with the proposed addition will satisfy the applicable zoning requirements in all respects except for FAR. The proposed addition will increase the subject property's FAR from 6.0, the maximum permitted in the R-5-E District, to 6.11, or a 1.8 percent increase. However, this increase falls within the two percent flexibility granted to the Zoning Administrator, pursuant to § 2522.1(a) of the Zoning Regulations.

CONCLUSIONS OF LAW

The Applicant requests variances from §§ 402.4 and 350.4(e) of the Zoning Regulations to permit the construction of a one-story addition to the Helix Hotel in the R-5-E Zone District at 1430 Rhode Island Avenue, N.W. (Lot 858, Square 211). The Board is authorized under section 8 of the Zoning Act to grant variances from the strict application of the Zoning Regulations to relieve difficulties or hardship where "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property. . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition" of the property, the strict application of the Zoning Regulations would "result in particular and exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property" D.C. Official Code § 6-641.07(g)(3) (2001), 11 DCRM § 3103.2. The "exceptional situation or condition" of a property can arise out of the structures existing on the property itself. *See, e.g., Clerics of St. Viator v. D.C. Board of Zoning Adjustment*, 320 A.2d 291, 293-294 (D.C. 1974). Relief can be granted only "without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." D.C. Official Code § 6-641.07(g)(3) (2001), (11 DCMR § 3103.2.)

Based on the above findings of fact, and having given great weight to the recommendations of the Office of Planning and the ANC, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted.

The subject property faces an exceptional situation or condition arising principally because the building on the subject property was constructed and used as an apartment house prior to its conversion to hotel use, and thus lacks certain features typically found in hotels, such as large common areas. The conversion to hotel use was undertaken as a matter of right, but subsequent amendments to the Zoning Regulations restricted the Applicant's ability to enlarge the hotel

building or alter the hotel operation by creating additional meeting spaces within the building. Structural features of the building, especially the limited space between columns and the relatively low ceilings, the irregularly shaped lot, the siting of the building on the lot, and the large side yards, also constrain the Applicant's ability to create a larger meeting space, consistent with the industry standard of high ceilings and unobstructed sight lines, within the existing building.

The existing building is also uniquely configured. While no side yard is required in the R-5-E District, the building is T-shaped with large side yards. This configuration, combined with the building's existing structural system, limits the ability to combine spaces to accommodate large groups. The building's only existing meeting space is comprised of three separate rooms on the first floor, which together consist of approximately 2,000 square feet of floor area. Because this meeting space was created in the conversion from apartment to hotel use, it is extremely limited in size and configuration, and the column layout restricts the ability to expand this space without also expanding the building's envelope.

The Board concurs with the Applicant that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the property. Absent the proposed addition, the hotel at the subject property would be unable to create a larger meeting space that the Applicant testified was integral to the successful operation of the hotel.

The Board concludes that the requested variances can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. Section 350.4 does not freeze all pre-1980 hotels in residential areas as they were, and it does not entirely prohibit changes or reallocations to their space; rather, § 350.4 seeks to protect existing residential neighborhoods by excluding the conversion of residential buildings to hotel uses and by preventing the construction of major conference centers as part of hotel developments. The Helix Hotel existed as a hotel before the restriction in § 350.4 was enacted. Further, the hotel does not seek to become a major conference center or change its existing character or use. The proposed addition is *de minimis*, and will simply allow a permitted use in the R-5-E District to continue. As noted, the proposed construction was considered so minor and compatible with the Greater 14th Street Historic District that no review by HPRB will be required. The Applicant does not anticipate any significant increase in traffic to the subject property as a result of the proposed addition, and the addition will not result in major changes to hotel operations. Due to some of the existing traffic and noise conditions at the hotel, however, the Board concludes that conditions should be imposed on the approval of this application to ensure that nearby neighbors are not adversely affected by any negative traffic or noise that may be created by the reconfigured and slightly expanded space in the hotel.

The Board is required to give "great weight" to the recommendation of OP. (D.C. Official Code § 6-623.04 (2001)). In this case, the Board concurs with OP's recommendation that the application should be approved. The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-

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309.10(d) (2001)).) In this case, ANC 2F voted to support the application. The ANC did not raise any specific issues or concerns about the proposed zoning relief, but concluded that the Applicant met the standard for the requested variance and was fully consistent with the same variance request approved by the Board in 2008, BZA Application No. 17672.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant satisfied the burden of proof with respect to the request for a variances to permit the increase FAR and in function or meeting space within the existing Helix Hotel in the R-5-E District at 1430 Rhode Island Avenue, N.W. (Square 211, Lot 858).

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT** to the approved Plans – Exhibit 26, Tab D - as revised by condition 1.a. below, and **SUBJECT** to the following **CONDITIONS**:

1. **PARKING CONGESTION:** The Applicant shall:

- a. Maintain a minimum of two parking spaces on the front of its property for short term use (i.e. less than 15 minutes) for the discharge and pick-up of hotel customers, if approved by DDOT;
- b. Offer all patrons of events, restaurants, and hotel guests valet parking within its hotel parking garage;
- c. Require valet parking for any visitor in need of short-term parking (i.e. less than 15 minutes) who cannot be accommodated in the circular drive or at the parking spaces on the street in front of the building; and
- d. Provide sufficient staff to manage the short-term parking demands and the valet parking operation requirements.

2. **TOUR BUS CONGESTION:** The Applicant shall:

- a. Include in all contracts and reservations for groups notice that operators and drivers of buses must comply with the District of Columbia traffic regulations prohibiting idling of such buses in public streets for more than ten minutes; and
- b. Request any bus idling in front of the hotel beyond the ten minute limitation to move from in front of the hotel.

3. **NOISE AND PRIVACY:** The Applicant shall:

- a. Comply with the government-mandated noise restrictions, including the D.C. Noise Control Act for all events and activities at the hotel;
- b. Make all operational or architectural improvements necessary to ensure that music, noise, and vibrations from the use of any function space in the hotel,

including the summer garden, is not audible above ambient sounds from within residential property owners' premises located in the 1400 block of Rhode Island Avenue, N.W.;

- c. Not permit live music or disc jockeys on the summer garden, and shall keep all recorded music, if any, at a level that is not audible above ambient sounds from within residential property owners' premises located in the 1400 block of Rhode Island Avenue, N.W.; and
- d. Not support or assist any group functions of more than four people in the summer garden.

4. NEIGHBORHOOD COORDINATOR: The Applicant shall:

- a. Designate its hotel general manager as a neighborhood coordinator to receive and address any complaints from adjacent neighbors pertaining to parking, tour bus congestion, or noise resulting from the relief granted by this application;
- b. Require the neighborhood coordinator to provide prompt response (48 hours) to the complainant on how the hotel is mitigating the cause of any complaint; and
- c. Require the neighborhood coordinator to at least annually seek to meet with the ANC to assess the impact of the relief granted on the community, and seek to resolve any substantial negative impact caused by the relief.

VOTE: **4-0-1** (Lloyd J. Jordan, Michael G. Turnbull, S. Kathryn Allen, and Jeffrey L. Hinkle to Approve; one Board seat vacant.)

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

The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: March 18, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.