SUPPLEMENTAL STATEMENT IN SUPPORT OF BZA APPLICATION NO. 16552

1301 20th Street, N.W. (SQUARE 115, LOT 83)

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INTRODUCTION

This application is filed pursuant to Section 3104.1 of the Zoning Regulations and requests approval of a special exception (Section 508) to legally establish office uses in Unit 104 and Unit 117 located on the first floor of the Lauren Condominium at 1301 20th Street, N.W. (Square 115, Lot 83). The subject property is located in the DCOD/SP-2 District.

THE SUBJECT PROPERTY AND VICINITY

The subject property is at the northeast corner of the intersection of 20th and N Streets, N.W. It is located approximately one block to the south of Dupont Circle. 1301 20th Street, N.W. is improved with a ten-story structure which was constructed as an apartment building and is now known as the Lauren Condominium. The building contains approximately 22,000 square feet.

The land uses in the vicinity of the subject property include a mix of high-medium density office, hotel, and mixed-use residential/office buildings. Immediately adjacent to the subject property to the east, in the subject square, are office uses. To the south of the subject property, Square 116 is entirely devoted to non-residential uses. Directly across 20th Street from the subject property is the Egyptian Chancery and to the south of the Chancery at 2000 N Street, N.W. is the Embassy Square Suites building which contains a total of 248 units and offers both short-term and long-term residential/hotel rentals. The first floor of this building is predominately devoted to office use. Across New Hampshire Avenue from the Egyptian Chancery are predominately mixed-use buildings along New Hampshire Avenue and residential buildings behind New Hampshire Avenue.

BZA
Case No. 16552
Exhibit No. 26A

Board of Zoning Adjustment
District of Columbia
CASE NO.16552
EXHIBIT NO.26A1

SITE ZONING

The subject property is zoned DCOD/SP-2. The DCOD, "Dupont Circle Overlay District", is an overlay district which was adopted by the Zoning Commission in 1991. The purposes of the DCOD zone, set forth in §1501.4 of the Zoning Regulations, speak to the need to control new development for the purpose of restricting density to the maximum permitted in the underlying zone districts, ensuring compatibility with existing historic buildings, maintaining existing residential uses and encouraging greater use of public transportation. The only regulatory provisions of the DCOD include density, minimum area and other restrictions on PUD developments. Limitations on driveways and curb cuts are also prescribed.

The SP-2 District is designed to stabilize the areas adjacent to the C-4 District and to act as a buffer between adjoining commercial and residential areas. SP zoning is designed to preserve and protect areas adjacent to commercial districts which contain a mix of row houses, apartments, offices and institutions at a medium to high density. Offices are permitted with Board of Zoning Adjustment approval. The SP-2 District, allows development to a FAR of 6.0, of which a maximum of 2.5 can be non-residential. It has a height limitation of 90 feet and a lot occupancy of 100 percent for commercial uses.

The Zoning Commission recently adopted text amendments to the SP District (Case No. 97-7) expanding the type of offices uses permitted in the SP Districts from nonprofit and professional office uses to general office uses. Further, the Zoning Commission adopted a new provision (§ 501.3) which modified the SP District to permit, as a matter of right, a substitution of general office uses for nonprofit and professional office uses which had been previously approved by the BZA or Zoning Commission or which were authorized by a validly issued certificate of occupancy.

ZONING HISTORY OF THE SUBJECT PROPERTY

The subject property was constructed in 1973 as an apartment building. It was later converted to a condominium in 1979. The building was the subject of a series of BZA

applications (BZA No. 15030-15046, 15207, 15246, 15377, and 15418) requesting approval for office use for various units within the building. All of the applications were ultimately consolidated into a single case and decided in June, 1993 with an order issued in 1995. The applications were seeking to legitimize existing office uses in the building. A total of 21 applications were filed for units on the first, second, third, fifth, sixth, seventh, eighth, ninth and tenth floors of the building.

Initially, the Board approved the first set of applications submitted, which included applications from Dr. Hornyak and Dr. Petite. However, as the Board considered several later applications, it reversed itself and denied all of the applications. The Board determined that the overall impact of the proposed office uses would have adverse impacts on the residential uses in the building. An appeal of the BZA Order was later taken by the applicants, challenging a number of procedural aspects of the BZA case including the reversal of the initial decision of the Board. Recently, a decision affirming the BZA decision was handed down in October. The applicants are now seeking BZA approval for office use of their units, only.

EXISTING USE

The Applicant's, Dr. Lynn Hornyak and Dr. Michael Petite, are currently using the condo units at issue: Unit #117 and 104, respectively, for psychotherapy and psychological counseling sessions. Dr. Hornyak is a psychologist and Dr. Petite is a psychiatrist. Counseling is primarily done on an individual basis with occasional couples counseling provided. No group therapy is provided. Sessions begin approximately on the hour and last approximately 50 minutes.

Both applicants see clients during regular business hours Monday-Thursday. No evening or weekend sessions are offered. Further, Dr. Petite does not use his unit on Fridays and Dr. Hornyak uses her unit for writing and reading, but does not see clients on Fridays.

The condo units at issue are located on the first floor of the subject building, near the building lobby and the elevator. The applicants units have their own internal waiting areas and the building lobby is not used for this purpose.

THE PROPOSED USE

The applicants are seeing to legalize their existing use of their units. No change is use is proposed.

THE SPECIAL EXCEPTION STANDARDS

Office use is permitted in the SP-2 District with BZA approval. The Board can grant that approval if:

(a) The use, height, bulk and design are in harmony with existing uses and structures on neighboring property (Section 508.3); and

(b) the use will not create dangerous or other objectionable traffic conditions (Section 508.4).

Additionally, the Board may require special treatment in the way of design to protect the value of the neighboring property (Section 508.5).

Further, Section 3104.1 of the Zoning Regulations sets forth the general criteria for BZA approval of all special exception uses. It authorizes the BZA 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 in accordance with the Zoning Regulations and Map..."

A. **The Proposed Use is Compatible with Existing Uses and Structures on Neighboring Property.**

The proposed use is compatible with neighboring properties. As indicated above neighboring properties include high-medium density office and mixed use (office/residential) buildings. Neighboring building which, like the Lauren Condominium, were built as apartment buildings have numerous office, particularly medical profession, uses on the lower floors.

The proposed use is also compatible with existing residential uses within the Lauren the Condominium. The units at issue are probably the least desirable units on the building for residential use. Their ground floor location next to the building lobby and elevators do not lend themselves to quiet residential use. Dr. Hornyak's unit looks out onto the building's trash dumpster. The proposed office uses are quiet uses which operate during the business day when most residents are not home. There is no weekend or evening use of the subject units.

B. **The Proposed Use Will Not Create Dangerous or Other Objectionable Traffic Conditions**

The approval of this application will not cause a dangerous or other objectionable traffic conditions in the area. 20th Street, in front of the subject property, is a major traffic thoroughfare. It is 90 feet wide. N Street, which is just to the south of the site, which is 80 feet wide, is also a major road.

The location of the subject property provides excellent access to public transportation. The site is well served by Metrobus, Metrorail and taxicab service. The nearest red line Metrorail station, "Dupont Circle", is located only one and a half blocks to the northeast of the site.

There are ample on-street spaces and numerous off-street parking facilities available within the area. All streets in the immediate area offer metered parking. In addition, there are numerous private parking garages located within a two block radius of the subject area.

The applicants are not required to provide any additional off-street parking spaces for the amount of special purpose office space proposed in this application. Many of the applicant's clients work in the immediate vicinity and walk or take public transportation to the site.

C. **The Proposed Use is in Harmony with the General Purpose and Intent of the Zoning Regulations**

The proposed special purpose office use of two condo units within 1301 20th Street, N.W. is in harmony with the general purpose and intent of the Zoning Regulations and Map. As indicated above, office use is permitted in the SP-2 District. Office uses on the first floor of residential buildings are very common in this District and certain non-residential uses are even permitted as a matter-of-right in apartment buildings.

D. **The Proposed Use is Consistent with the Comprehensive Plan**

The Land Use Element of the Comprehensive Plan contains four generalized land use maps of the City. These generalized land use maps include the subject property in a high density commercial land use category. The commercial land use category is defined in the Comprehensive Plan as a mix of employment, retail, office, cultural, and entertainment centers constituting the business heart of the metropolitan region. In addition, the Comprehensive Plan text recognizes office space as the predominant use in the square in which the subject building is located. The proposed use of 1301 20th Street, N.W. is clearly consistent with the high density commercial land use designation of the Comprehensive Plan.

CONCLUSION

The applicant seeks a special exception to authorize an existing building to be put to a permitted use. The proposed use is consistent with current uses on property in the surrounding area. The approval of this application will not affect adversely the use of neighboring property nor will it create dangerous or other objectionable traffic conditions. The proposed use is in harmony with the purpose and intent of the Zoning Regulations and Map.

The proposed use is also in accord with the Comprehensive Plan's high density commercial designation of the site.

For all of the above reasons, we request approval of the above-referenced application.

Respectfully submitted,

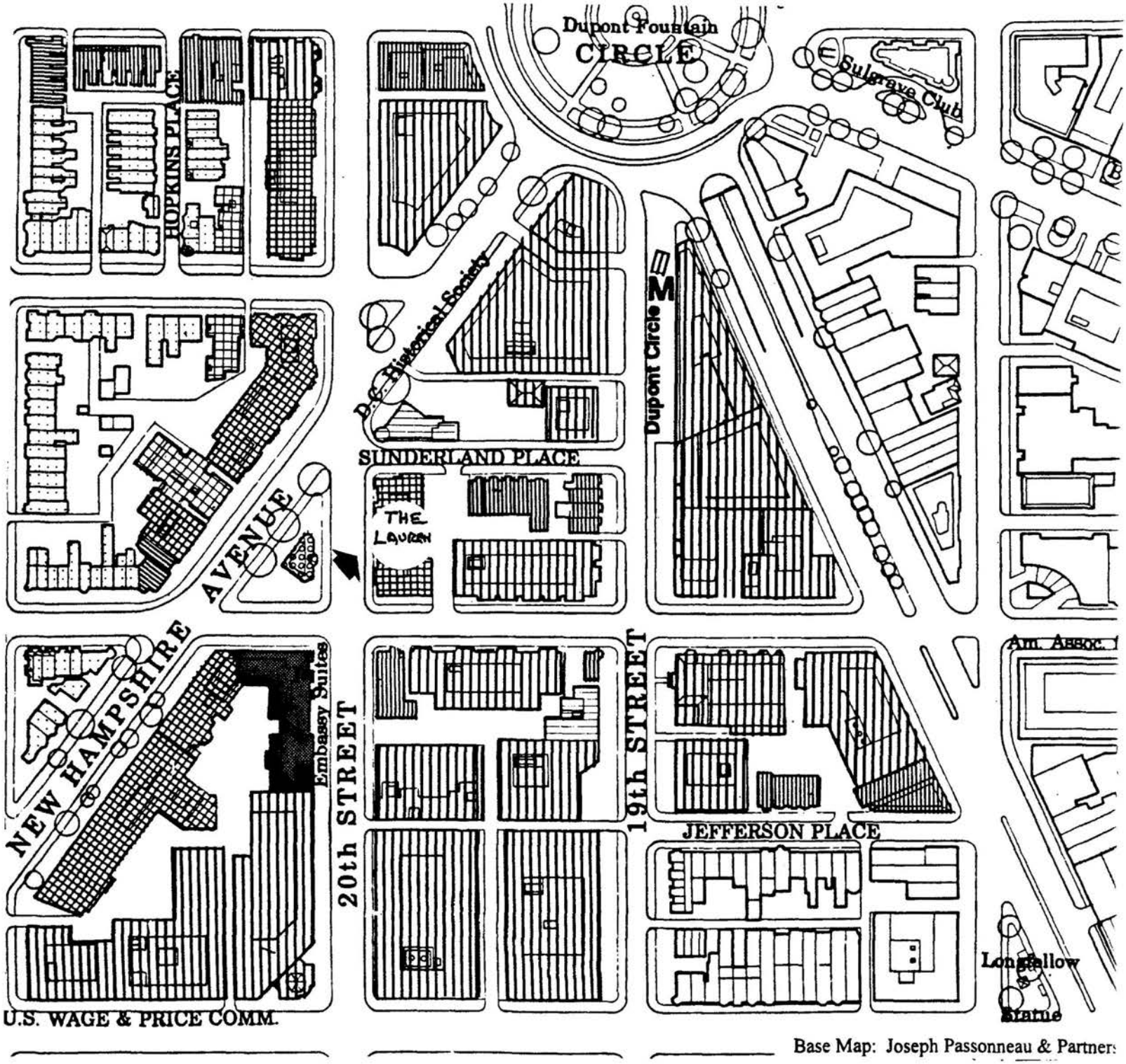
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O ST. N.W.
N ST. N.W.
M ST. N.W.
SUNDERLAND PL. N.W.
NEW HAMPSHIRE AV. N.W.
HOPKINS N.W.
DUPONT CIRCLE
20TH ST. N.W.
21ST ST. N.W.
19TH ST. N.W.
NEWPORT PL. N.W.
JEFFERSON PL. N.W.
HUERICH AL.
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THE SUNDERLAND APTS.
EMBASSY SQUARE APTS.
HAMILTON NO. APTS.
APOLINE APTS.
THE LELAND APTS.
ONE DUPONT CIRCLE BLDG.
1200 OFFICE BLDG.
1919 "M" ST. BLDG.
1380 19TH ST. BLDG.
DUPONT MEDICAL BLDG.
EMPIRE BLDG. OFFICES
HISTORICAL SOCIETY OF WASH.
ARAB REPUBLIC OF EGYPT
U.S. GOVT. OCCUPANCY
WAGE & PRICE BOARD
OFFICES
GARAGE
Scale 60 ft to One Inch

DUPONT CIRCLE AREA
EXISTING LAND USE

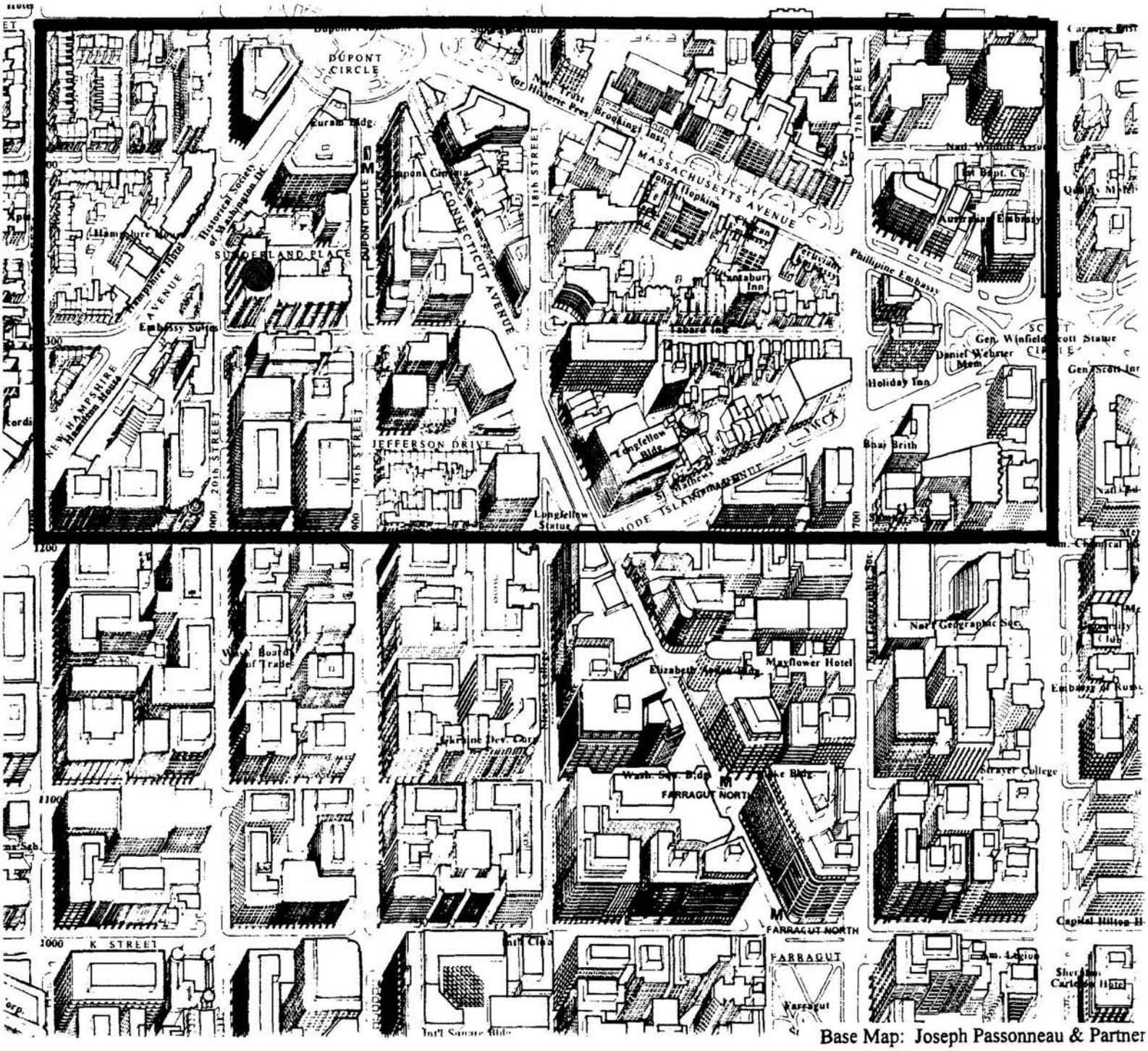


Base Map: Joseph Passonneau & Partners

Legend

- Row House
- Apartment (2/4 Stories)
- Apartment (6+ Stories)
- Commercial (1/3 Stories)
- Office (1/4 Stories)
- Office (5+ Stories)
- Private Institution
- Hotel

DUPONT CIRCLE AREA
PHYSICAL CONTEXT MAP



Base Map: Joseph Passonneau & Partner

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application Nos. 15030-46, 15207, 15246, 15249, 15332, 15377 and 15418 of the Lauren Condominium Association and Mokhless Al-Hariri, et al. (No.15332), Dennis Wiggins, et al. (No. 15377), and Caroline Mano (No. 15418); and the further hearing of the applications of Dr. Eric C. Bergman, M.D. (No. 15030), Dr. Marilyn M. Schwartz (15031), Dr. Rosalyn Hirsch (No. 15032), Psychological Services Associates (No. 15033), Dr. David Cage (No. 15034), Dr. Michael J. Petite, M.D. (No. 15035), Dr. James W. Bullard (No. 15036), Robert Keats (No. 15037), Drs. Jonathan and Sally Bloom-Feshbach (No. 15038), John Doolittle (Nos. 15039 and 15207), Dr. Lynn Hornyak (No. 15040), Dr. Robert A. Blum (No. 15041), Leila Ryland Swain (No. 15042), Dr. Steven and Aline Quint (No. 15043), Dr. Frederick M. Jacobsen and Dr. Lillian Comas-Diaz (No. 15044), Caroline Mano, MSW (No. 15045), Dr. Linda Guekink and Dr. Leslie Chepin Roen (No. 15046), Katherine A. Brunkow (No. 15207), Dr. Richard B. Gerber, M.D. and Naomi L. Gerber No. 15246) and Donald T. Benedick (No. 15249), pursuant to 11 DCMR 3108.1, for special exceptions under Section 508 to establish professional offices on part of the first through third floors and the fifth through tenth floors of an apartment building in an SP-2 District at premises 1301 20th Street, N.W. [Square 115, Lot 83 (Unit Nos. 101, 102, 104, 106, 108, 109, 110, 111, 117, 203, 204, 213, 216, 217, 301, 305, 314, 315, 504, 505, 509, 515, 516, 601, 603, 608, 615, 702, 711, 713, 805, 807, 913, 1015 and 1016)].

HEARING DATES: December 13, 1989, March 14, 1990, July 18, 1990, October 21, 1992, February 10, 1993, April 21, 1993 and May 5, 1993

DECISION DATES: January 3, 1990, April 4, 1990, April 4, 1990, July 18, 1990, September 5, 1990, November 9, 1990, May 6, 1992, July 1, 1992 and June 2, 1993

ORDER

CHRONOLOGY OF FILING, PUBLIC HEARINGS AND PUBLIC MEETINGS:

1. On February 2, 1989, 17 individual applications for special exception relief to establish offices for mental health professionals at 1301 20th Street, N.W. were filed in the Office of the Zoning Secretariat. Each of the applications was filed on behalf of the individual unit owners and all of the unit owners authorized the law firm of Kass, Skalet, Segan and Spevack to appear as the representative on their behalf (Application Nos. 15030 through 15046).

2. On September 18, 1989, one application was filed for special exception relief to establish an office for a psychologist and an office for a social worker on behalf of the owners of two units in the subject building. The unit owners authorized the same law firm of Kass, Skalet, Segan and Spevack to act on their behalf (Application No. 15207).

3. On November 29, 1989, one application was filed for special exception relief to establish an office for a psychiatrist on behalf of the owner of two units in the subject building. The unit owner authorized the same law firm of Kass, Skalet, Kegan and Spevack to act on his behalf (Application No. 15246).

4. On December 5, 1989, one application was filed for special exception relief to establish an office for an attorney on behalf of the owner of three units in the subject building. The unit owner authorized the law firm of Kass, Skalet, Segan and Spevack to act on his behalf (Application No. 15249).

5. On May 4, 1990, one application was filed for special exception relief to establish an office for an architectural/ interior design firm on behalf of the owner of three units in the subject building. The unit owner/applicant elected to represent himself before the Board (Application No. 15332).

6. On June 19, 1990, one application was filed to establish offices for a nonprofit organization, an architect, an psychologist, a psychotherapy office, and two law offices on behalf of seven unit owners in the subject building. The law firm of Kass, Skalet, Segan and Spevack were authorized by the unit owners to appear as representative on their behalf (Application No. 15377).

7. On August 27, 1990, one application was filed to establish an office for a social worker on behalf of a unit owner in the subject building. The unit owner authorized the law firm of Kass, Skalet, Segan and Spevack to act on her behalf (Application No. 15418).

8. As noted in the foregoing chronology of filing, all of the individual applications filed with the exception of Application No. 15332, were authorized by the individual unit owners and represented by the law firm of Kass, Skalet, Segan and Spevack.

9. By letter dated May 1, 1989, the staff of the BZA advised the applicants' representative that Application Nos. 15030 through 15046 were deficient with respect to authorization to proceed before the Board. Staff advised as follows:

> "The filing of an application with the Board requires the signature on the application form of a principal or a majority

owner of Lot 83 and its improvements, or the authorization of that principal or majority owner. The applications do not comply with the Board's Rules in this respect. The signatures of individual unit owners does not qualify, unless that number of unit owners constitutes a majority interest in the ownership of Lot 83."

Staff further advised that the applications would not be scheduled for public hearing until the deficiency was satisfied.

10. On May 4, 1989, the Board received a letter, dated April 28, 1989, from James R. Morris, President, the Lauren Condominium Board of Directors indicating that the Board of Directors had voted to support the applications filed by seventeen condominium unit owners. The letter indicates that it represents support of the applications on behalf of the condominium association but does not represent unit owners in their individual capacities and in no way precludes the rights of individual owners to oppose the applications.

11. By letter dated May 30, 1989, the Board's staff advised the applicants' representative that the Board was in receipt of the letter of April 28, 1989 from Mr. Morris. Staff further advised the applicants' representative that the letter would be considered by the Board at its public meeting of June 7, 1989.

12. At its public meeting of June 7, 1989, the Board determined that the letter from Mr. Morris on behalf of the condominium association, dated April 28, 1989, did not satisfy the Board's criteria with respect to whether the individual unit owners were authorized to file the subject applications.

13. By letter dated June 21, 1989, the Board's staff advised the applicants' representative of the Board's determination with respect to the letter from Mr. Morris dated April 28, 1989. The staff again advised the applicants' representative that the applications would not be scheduled for public hearing until an acceptable letter of authorization was received by the Board.

14. On August 29, 1989, the Board received an undated letter from Donald Benedick, President, Lauren Condominium Board of Directors. The letter indicated that the Condominium Board authorized the filing of 18 applications by unit owners for the purpose of operating professional offices in an SP-2 District. The letter indicated that it was submitted on behalf of the Condominium Association but is not representative of unit owners in their individual capacities. The letter further stated that:

"... since each of the 18 units in question is a separate lot in the District of Columbia, the decision to seek a special

exception, and the merits and success of each application, are the responsibility of the owners of those units, and the Condominium Association has no obligation or liability with respect to such applications.

"The Board understands that the BZA is empowered to impose restrictions on the issuance of Certificates of Occupancy and that the validity of such certificates may be contingent on the observance of such restrictions. The Board cannot agree in advance to be bound by any as yet unidentified restrictions or conditions, however. The Condominium Association, as a whole, shares the BZA's concerns regarding the effects on traffic flow, safety, security and general "quality of life" which the applied for uses may effect."

15. By letter dated September 7, 1989, the Board's staff advised the applicants' representative that in order to constitute a letter of authorization, a dated copy of the letter from Mr. Benedick must be submitted. Staff further advised that the application would then be scheduled for public hearing in the regular course of business.

16. On September 12, 1989, the Board received a signed copy of the letter from Mr. Benedick dated September 8, 1989. The Board notes that as of September 8, 1989, applications from 17 units owners had been filed.

17. On November 2, 1989, official notice of a public hearing on December 13, 1989 for Application Nos. 15030 through 15046 and Application No. 15207 was given by the Board in accordance with Section 3317 of its Rules. The Board notes that Application No. 15207 was filed on September 18, 1989 and did not contain a letter of authorization from the Board of Directors of the Condominium Association. However, the Board notes that the September 8, 1989 letter signed by Mr. Benedick authorized the filing of 18 applications by unit owners. The number of applications advertised for public hearing totalled 18.

18. The notice of public hearing indicated that the applicants were seeking special exception approval to establish the offices of mental health professionals on part of the first, second, and fifth through ninth floors of an apartment building at 1301 20th Street, N.W. As indicated in the individual files, the proposed offices for mental health professionals included the offices of psychiatrists, psychologists, psychotherapists, and a social worker.

19. At the public hearing of December 13, 1989, counsel for the unit owners involved in Application Nos. 15030 through 15046 and 15207 requested permission to waive the public hearing notice

requirements to add Application Nos. 15246 and 15249 to the public hearing agenda. Counsel argued that waiver of notice would not prejudice any party because the persons entitled to notice are identical, the issues involved are identical, and a consolidated hearing of all the cases would be efficient and time saving.

20. The Board noted that it is not within its jurisdiction to waive the 40-day public hearing notice required by Subsection 3101.6 of the Zoning Regulations. However, based on the fact that all of the applications represent the proposed use of one structure, located on one lot, and seek identical special exception relief, the Board found that adequate notice had been given to include the additional units in the scheduled public hearing. The applications before the Board at this time represented a total of 20 unit owners and a total of 24 units.

21. During the course of the applicants' presentation on the merits of the case at the public hearing of December 13, 1989, the Board was made aware that Application No. 15249 sought special exception relief to establish the office of an attorney in three units within the building, two of which are located on the third floor. The Board found that the proposed use was not included in the public hearing notice which specified the establishment of offices for mental health professionals on the first, second and fifth through ninth floors of the building. The Board continued the public hearing on the application to allow for proper and timely notice to be given as required by Subsection 3101.6 of the Zoning Regulations.

22. The Board proceeded with the public hearing of Application Nos. 15030 through 15046, 15207, and 15246 at the public hearing of December 13, 1989.

23. At its public meeting of January 3, 1990, the Board granted Application Nos. 15030 through 15046, 15207 and 15246 by a vote of three to zero, subject to the condition that the hours of operation of the office uses shall not exceed from 8:00 a.m. to 6:00 p.m.

24. At its public hearing of March 14, 1990, the evidence presented in Application Nos. 15030 through 15046, 15207 and 15246 was incorporated by reference into the public hearing on Application No. 15429.

25. At its public meeting of April 4, 1990, the Board granted the application by a vote of three to zero with no conditions.

26. At its public hearing of July 18, 1990, the Board heard the applicant's presentation in Application No. 15332. During the

course of the presentation, the Board raised questions with respect to the total floor area devoted to nonresidential use for purposes of determining whether the proposed office spaces fall within the permitted floor area ratio in the SP-2 District and whether parking is adequate to meet the zoning requirements for both residential and office use on the site.

27. The Board requested the applicant to provide the Board with information with respect to the number of units within the building which are used for nonresidential purposes and a copy of the building plans or an appropriate substitute for referral to the Zoning Administrator. The Board noted that the requested information was necessary to resolve technical issues with respect to the specific requirements of the Zoning Regulations. The Board noted that no orders had yet been issued on the previous applications and, further, that resolution of the questions raised is not limited to Application No. 15332, but affects the applications previously heard, as well as pending or future cases at the subject premises.

28. The Board continued the public hearing on the case indefinitely to permit an opportunity for the requested materials to be submitted and referred to the Zoning Administrator for review.

29. In addition, the Board directed staff to seek the advice of the Office of the Corporation Counsel with respect to determining whether the applications have been properly authorized, whether the authorized representatives may be bound by any conditions which may be imposed by the Board, and whether the cases filed subsequent to the first group represent individual and separate cases or modifications to the original filing. The Board noted that it has accepted the Board of Directors of the Lauren Condominium as the legal party which has designated the individual representatives. The Board requested a status report on the matter at its public meeting of September 5, 1990.

30. At its public meeting of September 5, 1990, the staff informed the Board that a referral had been made to the Office of the Corporation Counsel requesting clarification of the following issues:

1. May the Board require the unit owners' association to authorize the application? Please consider that D.C. Code Sec. 45-1848 (1090) vests all authority over common elements in the unit owners association.

2. May the Board provide by rule that a unit owners' association shall automatically be a party to any application that involves the use of a unit in a condominium?

3. If a unit owner's association declines to participate as a co-applicant or party in such an application, would the Board have authority to deny an application that it would approve only on one or more conditions that would require action by the association?

The staff informed the Board that the response from the OCC had not been received as of September 5, 1990. Staff further informed the Board that building plans for the subject structure had not yet been submitted by the applicant.

31. The Board received a letter from counsel for the applicants in Application Nos. 15030 through 15046, 15207 and 15246, dated August 22, 1990, inquiring as to the status of the final decision of the Board with respect to those cases. Counsel noted that it had come to his attention that the delay in issuance of the final decision by the Board was due to pending investigation into the effect of the use as office space of the subject units within the building on the permitted nonresidential floor area ratio limitations of the SP-2 District. Counsel advised that, based on information provided by Landtech Association, Inc., the total lot area of the subject premises is 17,784.66 square feet. The permitted nonresidential floor area ratio allowed would be 3.5 or 62,246.31 square feet. The total square footage of the units included in Application Nos. 15030-46, 15207 and 15246, plus unit 116, which has a valid certificate of occupancy, equals 14,447 square feet. Counsel noted that, in his opinion, BZA concern with respect to unauthorized uses within the building would have the effect of prejudicing the unit owners seeking to obtain certificates of occupancy in compliance with the Zoning Regulations.

32. The Board deferred consideration of the application until its public meeting of October 3, 1990. The agenda for the Board's public meeting of October 3, 1990 failed to include the subject matter.

33. At its public meeting of November 7, 1990, the Board received a memorandum of advice from the Office of Corporation Counsel, dated September 28, 1990. The OCC advised as follows:

a. The Board would have the authority to require the condominium unit owners' association to authorize a unit owner's special exception application only if such a requirement were necessary to insure that the association would comply with Board-ordered common element conditions attached to the grant of the application. As indicated above, it may be possible to achieve this goal by requiring that the owners' association either be a co-applicant (which would be the functional equivalent of requiring the association to authorize the application) or be a party to the proceeding.

b. The Zoning Commission has the authority to adopt a rule providing that the condominium unit owners' association shall automatically be a party to any special exception application that involves the use of a unit in the condominium.

c. The Board has the power to deny these special exception applications if the condominium unit owners' association refuses to submit itself to the Board's authority insofar as the Board needs to exercise that authority with respect to the common elements of the building and the FAR limitation.

34. The Board also received a letter dated November 1, 1990, from the applicant in Application No. 15332, indicating that, in keeping with advice of counsel, the Board of Directors of the Lauren Condominium could not prepare a survey of the number of units presently used for nonresidential purposes unless it received written instructions from the BZA directing it to do so.

35. At its public meeting of November 7, 1990, staff advised the Board that the outstanding information requested in Application No. 15332 applies to all of the other cases in the building, and, therefore, the record in the cases already heard should be reopened in order to receive the advice of OCC and any other information submitted in response to the Board's request.

36. At its public meeting of November 7, 1990, the Board reopened the record in Application Nos. 15030 through 15046, 15207 and 15246 by a vote of 3-0; in Application No. 15249 by a vote of 3-0; and in Application No. 15332 by a vote of 4-0. No future hearing date was set.

37. By letter dated December 17, 1991, John Filice, President of the Unit Owners Association of the Lauren Condominium inquired whether it could be of assistance in resolving any remaining issues with respect to the pending applications. The letter advised that the current position of the Board of Directors of the Lauren Condominium is in support of the pending applications and that the Board of Directors is willing to discuss and consider any specific proposals by the BZA, so that appropriate action could be taken on the applications.

38. By letter dated February 6, 1992, counsel for the applicants in Application Nos. 15030 through 15046, 15207, 15246, 15377 and 15418, forwarded a copy of the December 17, 1991 letter from Mr. Filice to the Board. Counsel further requested that a hearing date be scheduled as expeditiously as possible to resolve any remaining issues on the cases which had already been heard and those which had not yet been set for hearing.

39. By letter dated February 12, 1992, the applicant in Application No. 15332 advised the Board that he had not been made aware of any action taken after receipt of the report of the Office of the Corporation Counsel, dated September 28, 1990. The Condo- applicant further noted that the Board of Directors of the Lauren minium restated its support of the application in its letter dated December 17, 1991.

40. By letter dated February 26, 1992, the Board of Zoning Adjustment advised the Board of Directors of the Lauren Condominium and the individual unit owners/representatives that the Board required participation by the Lauren Condominium Unit Owners Association as co-applicant in all of the applications based on the memorandum from OCC, dated September 28, 1990.

The Board noted that Application Nos. 15332, 15377, and 15418 were pending before the Board and that Application Nos. 15030 through 15046, 15207, 15246 and 15249 had been decided by the Board but that a final order had not been issued and, further, that the records in Application Nos. 15030 through 15046, 15207, 15246 and 15249 were reopened by the Board to receive the memorandum from OCC, as well as information requested during the public hearing on Application No. 15332. The Board requested that the Lauren Condominium Unit Owners Association submit a written statement indicating its acceptance of status as a co-applicant. In addition, the Board requested that the Condominium Association provide a list of units within the building that contain non-residential uses and a set of building plans.

41. On April 28, 1992, the unit owner in Application No. 15332 submitted an occupancy survey and building plans for the subject premises. Staff of the Office of Zoning referred the materials received to the Zoning Administrator for his review.

42. By memorandum dated June 16, 1992, the Zoning Administrator determined that the floor area ratio (FAR) for the existing and proposed nonresidential uses would total 27,224.58 square feet. The maximum permitted nonresidential floor area ratio of 3.5 would allow a total FAR of 62,377.63 square feet. The total parking required for 128 apartment units and the proposed non-residential space would be 46 spaces. Fifty parking spaces are provided on site. No additional loading berths are required as the total nonresidential area does not exceed 30,000 square feet. A copy of the Zoning Administrator's memorandum was mailed to all parties on June 29, 1992.

43. By letter dated April 29, 1992, John Filice, President Unit Owners Association of the Lauren Condominium indicated that it will accept the status of co-applicant, if required to do so by the BZA. The letter indicated that in taking this action, the Board of Directors does not express preference for these applicants over any

other unit owners, but is willing to cooperate in order to facilitate appropriate decisions in these applications.

44. The applications were scheduled for public hearing on October 21, 1992. At its public hearing on that date, questions with respect to the adequacy of public notice were raised with respect to posting of the property and the ratio of returned public hearing notices to the number of notices mailed to property owners within 200 feet of the site. Upon review of the file, staff discovered a discrepancy in the number of property owners within 200 feet provided in connection with the public hearing of October 21, 1992 and the list of such property owners submitted with respect to previous public hearings on the subject property. The Board continued the application until its public hearing of February 10, 1993 to allow an opportunity to correct any deficiencies in public notice with respect to the application.

45. At the public hearing of February 10, 1993, counsel for the majority of the unit owners/representatives incorporated the records in the previous public hearings into the record of the subject cases by reference.

46. The Board proceeded to hear the applicant's presentation on February 10, 1993. Because of the loss of a quorum, the Board continued the hearing on the application until its public hearing session on April 21, 1993.

47. At the public hearing of April 21, 1993, because of the length of time required for the hearing of other scheduled cases and the inability of the Board to retain a quorum, the applications were continued to a special public hearing date of May 5, 1993.

48. At its public hearing of May 5, 1993, the Board concluded the hearing on all of the applications.

49. At its public meeting of June 2, 1993, the Board denied the applications by a vote of 5 to 0.

50. By letter dated January 31, 1994, the law firm of Wilkes, Artis, Hedrick and Lane filed a motion to compel issuance of an order approving those applications approved by the Board at its public meeting of January 3, 1990. In support of the motion, counsel argued that the decision to approve made on January 3, 1990 is the only valid action taken by the Board with respect to the applications heard on December 13, 1989. The Board's subsequent actions with regard to the subject applications, to hold a further public hearing and vote to deny the application are without legal basis, based on the following:

a. Rather than issue an order on the subject applications in due course, the Board appears to have become involved

with issues raised in subsequent cases filed by other unit owners within the subject building.

b. The vote to reopen the record in the cases at the November 7, 1990 public meeting is not valid because only two Board members who heard the subject cases were present and there is no evidence that the third member who voted to reopen the record in the cases was given an opportunity to read the record prior to the vote.

c. The record contains two letters from counsel for the unit owners in the subject applications inquiring when an order would be issued. The record contains no response to those letters from the Board.

d. At the public meeting of July 1, 1992, the Board appears to have determined that the applications should be set for further hearing along with other applications in the same building; some of which had never been heard or decided. The Board's minutes for July 1, 1992, do not contain any record of the action taken by the BZA and, of the Board Members present on that date, only one Board member had heard the subject applications and there is no indication that other members read the record.

e. In addition, the Board acted in violation of the provisions of the Administrative Procedure Act with respect to contested cases that no action adverse to parties may be taken unless the members have read the record.

f. The length of time since the decision to approve the applications without the issuance of an order is unreasonable. If the Board's order in the subject applications had been issued in a timely manner, the Board would not have intermingled the subject cases with subsequent applications, outside the record, which had no bearing on the original case.

51. By letter dated February 28, 1994, counsel for the Appoline Unit Owners Association opposed the motion to compel issuance of the order for the following reasons:

a. The Board's decision of January 3, 1990 was never followed by a written decision filed in the record and served on parties and, therefore, was never final.

b. The applicants now represented by WAH&L were aware that the approval of those applications was not final as evidenced by their participation, without protest, in public hearings subsequent to December 13, 1989.

c. Legal deficiencies, including the admitted illegal occupancy of the subject units and the lack of specific evidence by the individual applicants with respect to the necessary criteria for special exception relief, would make issuance of the order sought voidable on appeal.

52. By letter dated February 28, 1994, several parties to the applications opposed the motion to compel issuance of an order filed by WAH&L. The letter noted that the parties were in agreement with the issues raised on behalf of the Apolline Unit Owners Association, dated February 28, 1994, and reiterated the issues and concerns previously expressed by parties in opposition.

53. At its public meeting of September 7, 1994, the Board denied the motion to compel issuance of the order by a vote of 3-0 and directed staff to expedite the issuance of its written order.

SUMMARY OF EVIDENCE:

1. The subject site is located at the northeast corner of the intersection of 20th and N Streets, N.W. and is known as premises 1301 20th Street, N.W. It is located in an DCOD/SP-2 District.

2. The site is improved with a ten-story masonry apartment building which was constructed circa 1973 and is known as the Lauren Condominium (The Lauren).

3. The Lauren contains 168 individual units, the majority of which are occupied for residential purposes. The Lauren also houses a number of units devoted to nonresidential office uses. The nonresidential uses have been operating in the building for varying periods of time, some dating back to the mid-1970s. As of the public hearing of December 13, 1989, there was only one certificate of occupancy permitting nonresidential use in the structure (for a ticket office).

4. The area surrounding the subject site is primarily characterized by high-rise office and apartment buildings. The office uses are generally located to the north (in a C-3-C District) and to the east and south in the (SP-2 District). There are apartment uses to the west and a hotel diagonally across 20th Street from the subject site.

5. The applicants are seeking special exception relief pursuant to 11 DCMR 508.1 to establish professional office uses within the building. The Board may approve such special exception relief subject to the following provisions:

a. Each application shall be referred to the Office of Planning in accordance with the provisions of Subsection 506.6.

b. The use, height, bulk, and design shall be in harmony with existing uses and structures on neighboring property.

c. The use shall not create dangerous or other objectionable traffic conditions.

d. The Board may require special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring property.

6. At the time of its construction in 1973, the Lauren was located in an SP District. The SP District was designed to stabilize those areas adjacent to the C-4 District which contain office, other Central Business District supporting uses, as well as desirable sites for residen-tial buildings. Offices, apartment houses, hotels, and controlled parking facilities are to be encouraged therein and the district will be generally restricted to the periphery of the C-4 District. The conversion of an existing building into offices for a chancery, nonprofit organization, labor union, an architect, dentist, doctor, engineer, lawyer or similar professional person was permitted as a matter of right. The construction of new office buildings for a chancery, nonprofit organization, labor, an architecture, dentist, doctor, engineer, lawyer or similar professional person was allowed as a special exception, subject to the following provisions:

a. The use is in harmony with existing uses on neighboring or adjacent property;

b. The use will not create dangerous or other objectionable traffic conditions;

c. The Board may require such special treatment in the way of screening of building, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring or adjacent residential property; and,

d. Before taking final action on an application for such use the Board shall submit the application to the Director, Department of Vehicles and Traffic for review and report.

7. By Zoning Commission Order No. 235, dated September 14, 1978, the SP District was amended, and the SP-1 and SP-2 Districts were created. All existing SP zoning was changed to SP-2 zoning. Under the revised SP-2 District provisions which apply to the subject site, use as a hotel or office for a chancery, nonprofit organization, labor union, architect, dentist, doctor, engineer, lawyer or similar professional person, is permitted as a special exception provided that:

a. The use, height, bulk and design are in harmony with existing uses and structures on neighboring property;

b. The use will not create dangerous or other objectionable traffic conditions;

c. The Board may require such special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring property.

8. By Zoning Commission Order No. 705, dated November 18, 1991, the subject site was zoned DCOD/SP-2. The purposes of the Dupont Circle Overlay District are specified as follows:

a. To require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; and to ensure a general compatibility in the scale of new building with older, low scale building by restricting the maximum permitted height and floor area ratio of new buildings to that of the underlying zone;

b. To protect the integrity of "contributing buildings," as that term is defined by D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, in the various historic districts within the overlay district; to require compatibility of development with the purposes of D.C. Law 2-144; and to preclude demolitions or partial demolitions which would lead to an increase in height and floor area ratio inappropriate to the area;

c. To enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location and density of commercial and residential development;

d. To ensure compatibility of development with the Comprehensive Plan;

e. To preserve areas planned as open gardens and backyards and to protect light, air, and the privacy that they provide;

f. To enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces and limited curb cuts on Connecticut Avenue; and

g. To encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys.

All uses and structures permitted under the DCOD and the underlying SP-2 District continued to be permitted in the combined district.

9. The Lauren converted from rental occupancy to condominium ownership in 1979. As part of its public offering statement, the Lauren offered its units for occupancy in accordance with the provisions of the SP-2 District and further indicated a "cap of 20 percent in terms of business use within the building." The Lauren's by-laws do not contain any reference to a cap on business uses within the building.

10. At the public hearing of December 13, 1989, the applicants' representative testified that the Board of Directors of the Lauren had not had clear knowledge of whether the nonresidential uses in existence prior to its conversion to condominium regime in 1979 and other similar uses which have subsequently been established were permitted to occupy the building as a matter of right.

11. The applicants are currently attempting to legitimize the existing nonresidential uses within the building and control any future nonresidential uses desiring to establish occupancy in the building.

12. The applicants' representative testified that they do not propose any physical alteration to the interior or exterior of the subject building and the character of the building will remain residential.

13. At the public hearing of December 13, 1989, the applicants' representative testified that most of the offices operate from 8:00 a.m. to 5:00 p.m. and generate very little traffic within the building. The applicants' representative testified that an Advisory Committee has been established, composed of professional unit owners, to interface with residents and report any problems to the Board of Directors. No problems between nonresidential and residential occupants had been reported as of the hearing date of December 13, 1989.

15. The applicants' representative testified that access to the subject site by clients is convenient because of the proximity of the Dupont Circle Metro Station and numerous bus routes. In addition, there are several commercial parking garages within a block of the subject site and metered and unmetered on-street parking spaces.

16. At the public hearing of December 13, 1989, the applicants' representative testified that it provides a total of 50 on-site parking spaces with 36 spaces located in the below level garage and 14 surface parking spaces. The applicants' representative was not aware whether the subject unit owners owned parking spaces or whether they made any on-site parking available for clients.

17. The applicants' representative testified that the office uses are scattered throughout the building. The applicants' representative was of the opinion that the location of such uses throughout the building increased security by providing a daytime presence when most residential unit owners are not at home.

18. Access to the building by clients is controlled by a manned desk in the lobby of the building. Clients seeking admission to the building are buzzed-in and then are allowed to take the elevator, if necessary, to reach the office use. At the public hearing of December 13, 1989, the applicants' representative testified that the nonresidential occupants submit a list of clients to the front desk for reference.

19. The applicants submitted a "transportation assessment", dated November 2, 1989. The assessment was based on a questionnaire/survey completed by 17 of the unit owners represented at the public hearing of December 13, 1989, which indicated the following characteristics:

a. The average length of use as professional office space by present owners is approximately 4 1/2 years. Six of the owners have used their units as professional offices between 5 1/2 and 13 years.

b. Most of the medical practices are conducted during the business day with some usage during evening hours and weekends.

c. The average client load is just over eight per day or approximately one client per hour. The number of clients ranged from two per day to 20 per day. For 19 offices approximately 19 trips per hour would be generated in a combination of auto, walk, metrorail and metrobus trips.

d. All types of transportation modes are used by clients (i.e. metrorail, metrobus, walk, automobile). All questionnaire respondents suggest that metrorail is the best way to get to the Lauren.

e. Eight of the office owners park in the Lauren parking garage.

Based on these characteristics, the excellent public transportation system serving the area, the availability on parking in the area, and the low number of trips generated by the proposed office uses, the assessment concluded that the continued use of the units for office purposes would have no effect on existing transportation systems in the vicinity. The assessment further concluded that the number of vehicle trips generated by the Lauren are minimal and are evenly distributed throughout the day and no adverse impacts would be caused by its continued use for professional office space.

20. At the public hearing of December 13, 1989, the applicants' representative testified that he was aware of office uses in the building beyond those currently under consideration by the Board, but was unaware of whether or not they were operated legally as home occupations.

21. The applicants' representative testified that the Board of Directors controls the common elements of the building. Services provided such as lighting, security, garage use, trash removal, etc. are the same for residential and nonresidential occupants.

22. The applicants' representative testified that denial of the requested special exception relief would force the existing professional office uses to relocate at a financial loss. In addition, the unit owners would be forced to sell or rent their units which would severely depress the market value of all units in the building and adversely impact second mortgage financing.

23. At the public hearing of December 13, 1989, the record contained one letter in opposition to the applications from a residential unit owner in the subject building who was of the opinion that the proposed usage was in conflict with the original intent of the condominium association by-laws for common usage areas and that such usage impinges upon the unit owners' rights to those amenities.

24. The Office of Planning (OP), by memorandum dated December 5, 1989, recommended denial of the applications. The OP was of the opinion that the requested relief would not be in harmony with the general purpose and intent of the Zoning Regulations. The OP was further of the opinion that the proposal

would adversely affect the balance between SP office use and residential use in the area.

25. The Department of Human Services, by memorandum dated December 12, 1989, recommended denial of the applications, based on the following issues:

a. The offices which are proposed to be established will be scattered throughout five floors of a building designed for residential use. This could impinge upon the privacy and quietude of residents, and would potentially pose additional safety, security and sanitation problems due to patient traffic. Further, the operation of these offices may result in increased condominium fees because of higher utility, housekeeping, maintenance and security costs. It is not clear whether these additional costs would be borne solely by the applicants.

b. The establishment of the offices will also result in increased traffic and parking problems in an area heavily congested with commercial activity.

c. These problems are not obviated by an overriding need for the services in the area in which the offices are to be established. Reportedly, there is already a high concentration of mental health professionals providing services in relatively close proximity to the proposed site.

d. In addition to the above concerns, the BZA needs to determine whether the applicants have met District professional licensure requirements and whether D.C. Certificate of Need Regulations are applicable to the proposed undertakings. Information currently available to the Department is insufficient to make these determinations.

26. Advisory Neighborhood Commission (ANC) 2B, by letter dated December 16, 1989, conditionally supported the granting of the application. The ANC noted its concern with the loss of residential housing in the Dupont Circle area, and further indicated that without the application of its recommended conditions, the ANC would not support the application. The conditions recommended by the ANC are as follows:

a. That a cap of 20 percent be imposed on the number of units that can be occupied by professionals; and that the Board of Directors of the condominium send the ANC a letter supporting the 20 percent cap; and

b. That the Board of Directors of the condominium disallow activities in the building that are not legal under SP Zoning and that the board send a letter to all owners calling their attention to the restrictions of the zoning laws.

27. In response, the applicants' representative testified at the public hearing of December 13, 1989 that the Board of Directors cannot establish the 20 percent cap recommended by the ANC, because the condominium association by-laws would have to be amended and such amendment would require action by every individual unit owner in the building. The applicants' representative noted that the number of units represented at the time of the December 13, 1989 public hearing accounted for approximately 14 percent of the total number of units.

28. At the public hearing of March 14, 1990, the applicants' representative incorporated the record in the previous public hearing and offered the following additional information:

a. The approval of the subject three units for lawyer's office would bring the total units before the Board to 24.

b. The proposed law office use would attract between three and four clients per week.

c. The proposed law office use would house two attorneys and three employees.

d. Two parking spaces are rented for the subject three units.

e. The applicants' representative does not know the total number of office uses currently operating in the building.

29. The Office of Planning, by memorandum dated February 28, 1990, recommended denial of the application for the same reasons cited in its previous report, dated December 5, 1989.

30. By memorandum dated January 31, 1990, the D.C. Fire Department indicated that, based on its evaluation of the proposed use to determine its impacts on emergency operations, it had no objection to the applications.

31. By letter dated January 29, 1990, the Metropolitan Police Department (MPD) indicated that a review of calls for service over the past year indicates that the department responded to a minimal number of offenses and incidents in the immediate area of the subject site. The MPD was of the opinion that the proposed

use as offices for law practice would not generate an increase in the level of services provided and, therefore, the MPD was not opposed to the request.

32. Advisory Neighborhood Commission (ANC) 2B, by letter dated March 2, 1990, opposed the granting of the application. The ANC noted that its earlier conditional support was withdrawn because the proposed 20 percent cap of professional office use was not established. The issues and concerns expressed by the ANC are summarized, as follows:

a. The illegal commercial use of apartments in the building is a problem and appears to exceed the 20 percent limit established in the offering documents.

b. The ANC is concerned with the loss of residential use in the Lauren and believes that a 20 percent cap on commercial usage should be established.

33. The record contains one letter in support of the application from a unit owner in the subject building. The letter expresses the opinion that the proposed use as professional attorney offices is appropriate for the building and the specific units.

34. The record contained several letters in opposition to the application and several parties testified at the public hearing of March 14, 1990 in opposition to the application. The opposition is generally summarized as follows:

a. The proposal will reduce the number of available residential units in the subject building, the Dupont Circle area, and the city.

b. Approval of the proposed uses would set a trend for using residential buildings for commercial purposes to the detriment of residents.

c. The use for office purposes physically disrupts the neighborhood in terms of exacerbating the already severe traffic congestion and parking problems in the immediate area. Vehicles currently double park in front of the structure blocking traffic flow.

d. The scattered office use through the building has an adverse impact on the residential character of the building and the residential occupants in term of strangers having access to residential floors and increased security and maintenance costs.