GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: February 23, 2000

SUBJECT: BZA Application 16552

APPLICATION

Application of Lynne M. Hornyak and Michael Petite/Lauren Condominium, pursuant to 11 DCMR 3104.1, for a special exception under Section 508 to use units 104 and 117 in the Lauren, a condominium located at 1301 20th Street, NW (Square 115, Lot 83) in the DC/SP-2 District, for offices.

SUMMARY RECOMMENDATION

The Office of Planning recommends that this application be denied.

BACKGROUND

On February 2, 1989, 17 individual applications for special exception relief to establish offices of mental health professionals were filed on behalf of the unit owners (including the two owners that are the subject of this case) for units on the first, second and fifth through ninth floors. Between that date and August 27, 1990, 6 additional applications for office use of 18 more units were filed with the Board. The Board ended up hearing applications 15030 through 15046, 15207, and 15246 (covering 21 units) on December 13, 1989, granting them approval on January 3, 1990. Application 15429 (3 units) was subsequently heard on March 14 and approved on April 4, 1990.

On July 18, 1990, the Board heard Application 15332 and raised questions regarding the total floor area devoted to nonresidential uses (given the limits in the SP-2 zone district) and whether parking was adequate to meet the zoning regulations. The Board had also opined earlier that the Lauren Condominium Unit Owners Association must participate as co-applicant on all

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applications. The questions raised applied to all of the applications heard, because no order had yet been written on any of the applications.

On 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, which is substantially below the 62,377.63 square feet permitted by an allowed nonresidential FAR of 3.5. It was also determined that parking required for 128 apartment units and the proposed nonresidential space would be 46 spaces, whereas fifty parking spaces are provided on site.

Further public hearings were held on February 10, April 21, May 5 and June 2, 1993. At its public meeting on June 2, 1993, the Board denied the applications by a vote of 5 to 0, noting that they had not met the requisite burden of proof in terms of whether the proposed use was in harmony with existing uses and structures on neighboring property (inside and outside of the building); whether the proposed use would create dangerous or other objectionable conditions; and whether the proposed use would tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. (See Findings of Fact and Conclusions of Law on pages 30-34 of the attached order dated January 20, 1995.)

Following issuance of the Board's order, the applicants filed a motion for reconsideration. The Board granted the motion, reconsidered its decision and reaffirmed it in an October 1, 1996 order. The applicants then submitted a pleading to withdraw the reconsideration order and for issuance of a proposed order, which the Board responded to with a February 3, 1997 order denying withdrawal of reconsideration. Thereafter, the applicants sought relief from the Court of Appeals, which affirmed the Board's decision by denying all of the Lauren applications in a filing dated October 14, 1999.

SITE AND AREA DESCRIPTION

The subject building is located at the northeast corner of the intersection of 20th and N Streets, NW, at 1301 20th Street. It consists of a 90-foot high, ten-story, masonry apartment building constructed around 1973 and known as the Lauren Condominium. The Lauren contains 168 individual units, the majority of which are occupied for residential purposes, with approximately 20 percent or more used for nonresidential purposes, primarily medical offices. 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 (and, it is believed, continuing to today), there was only one certificate of occupancy permitting nonresidential use is the building (for a ticket office allowed as a matter-of-right in the SP zone district). The building contains 36 below grade parking spaces and 16 on grade spaces.

The area surrounding the Lauren is characterized primarily by high-rise office and apartment buildings. (See attached map of existing land use in the Dupont Circle area.) Directly to the north across Sunderland Place is a 4-story office building housing the Historical Society of Washington and zoned DC/C-3-C. To the east of the Lauren's on-grade parking area in the same square are located 3-story row structures used as offices and zoned DC/SP-2 as well as a 90-foot high office building zoned DC/C-3-C. To the south across N Street are located a small group of

3-story row structures used as offices and a 90-foot high office building, all zoned DC/C-3-C. To the west across 20th Street is located a 3-story office building zoned DC/SP-2, and across New Hampshire Avenue there are located two 90-foot high apartment buildings, a high-rise office building and two small 3-story office buildings, all zoned DC/R-5-E. Diagonally to the southeast is located the Embassy Suites hotel, zoned C-3-C.

APPLICANT'S PROPOSAL

The applicants are requesting BZA special exception approval of office use for units 104 and 117 located on the first floor of the Lauren Condominium. The applicants will provide [and currently provide] psychiatric/psychological counseling in their respective offices. [The applicants have been using their units for office use for over ten years and apparently applied for and were denied approval by the Board prior to joining in the multiple unit special exception effort dating back to February 2, 1989 that was denied by the Board in 1995, a decision very recently upheld by the Court of Appeals.]

EXISTING ZONING AND RELIEF REQUIRED

The site is located in the DCOP/SP-2 zone district. The SP-2 District permits matter-of-right single family detached, semi-detached and attached dwellings or apartment houses, as well as ticket office, art gallery and artist studio, and with the approval of the Board, general office and chancery uses, to a maximum FAR of 6.0 for residential uses and 3.5 for nonresidential uses, a maximum lot occupancy of 80 percent for residential uses and 100 percent for nonresidential uses and a maximum height of 90 feet. Retail uses are not permitted. The DCOP District restricts Planned Unit Developments (PUDs) to the height and bulk limits of the underlying zone district and provides limitations on driveways and curb cuts.

The applicant is requesting a special exception under Section 508 of 11 DCMR to allow the conversion of two existing apartment units to office use in the SP-2 zone district.

ANALYSIS

Compliance with Section 508

Section 508 allows general office use if approved by the Board. The use, height, bulk and design shall be in harmony with existing uses and structures on neighboring property, and the use shall not create dangerous or other objectionable traffic conditions. Each application shall be referred to relevant D.C. agencies, including the Office of Planning, for coordination, review, report and impact assessment. The Board may require special treatment as it shall deem necessary to protect the value of neighboring property.

The current applicants, Lynne M. Hornyak and Michael Petite/Lauren Condominium, were part of a group that lost a similar case begun in 1989 and ultimately ended up losing a recently concluded court appeal of the Board's decision. The following is a summary of the key points relevant to Section 508 made in the prior case before the Board:

- When constructed in 1973, the Lauren was located in an SP District designed to stabilize those areas adjacent to the C-4 District. Professional offices, apartment buildings hotels and controlled parking were encouraged.
- Until 1978, when the SP District was divided into SP-1 and SP-2 zone districts, conversion of an existing apartment building into professional offices was permitted as a matter of right, although new office buildings were required to seek BZA approval.
- The Lauren converted from rental occupancy to condominium ownership in 1979; however, the Board of Directors did not know if any nonresidential uses in place prior to the conversion were continued.

- An occupancy survey conducted in 1992 determined that four ground floor units had certificates of occupancy and six additional ground floor units that had occupied the premises since the 1970s were seeking approval. Thirty additional units were found to be occupied for nonresidential purposes on various floors and were seeking approval, resulting in a total of 40 units (23 percent of the total units in the building). [The Board opined, however, that there had been no special exception approvals and thus could be no legally established nonresidential uses, except the existing ticket office permitted as a matter of right.]

- The key opposition arguments were the following:
  - The conversions would reduce the number of available residential units in the area, whereas there is available commercial space elsewhere;
  - The conversions would set an undesirable trend for all SP apartment buildings;
  - Existing traffic and parking problems would be exacerbated; and
  - Scattered office use throughout the building adversely affects the residential character, desirability for residential purposes, value, security and maintenance costs. Also, transient visitors and their use of common areas for waiting, including lobby and hallways, impinges on the residential owners' freedom to enjoy those amenities.

- The Office of Planning, Department of Human Services, Department of Housing and Community Development and Department of Public Works all opposed the application, citing many of the reasons listed above.
- ANC 2B supported granting of the application provided the Board ban nonresidential uses above the second floor.
- The Dupont Circle Citizens Association opposed the application because of the effect it would have on the residential character of the area, offering as a secondary position support of the position of ANC 2B.

- Finally, the Board concluded that the applicants had not met the burden of proof with regard to Section 508, that there was inadequate information on square footage and that the impacts on neighboring property should be figured on the total usage for office purposes.

The question facing the Board now is what has changed that could produce a different result this time, either in terms of the application itself or in terms of the planning, zoning and development context for deciding the case.

Comprehensive Plan

The text of the Comprehensive Plan strongly encourages retention and expansion of residential uses on the periphery of Greater Downtown. Housing in these close-in locations provides residents with excellent walk-to-work or public transit access to the adjacent Central Employment Area. Retention of a residential population also keeps these areas safer in the evening hours and provides a component of market support for retail, restaurant and other entertainment uses. Finally, The out-migration of residents has posed a serious problem for the District. An apartment building generates a large amount of taxes because of the relatively high income tax rate in the city, and because of the sales and property taxes paid.

In 1998, the Comprehensive Plan Generalized Land Use Map was amended for the area encompassing the Lauren and the adjacent properties to the north and west along New Hampshire Avenue and 20th Street. The change from a high density commercial designation to mixed use high density residential/high density commercial reflects the important Plan objective of retaining and expanding residential uses in the area.

Zoning

In Zoning Case No. 97-7, concluded for the Dupont Circle area in January 1999, two significant amendments were made to the SP zone district. First, there was an attempt to sort out and rezone residential and commercial uses separately. This had the effect of protecting the housing supply and residential character of the area by precluding conversions permitted under SP zoning. (The area along 20th Street and New Hampshire Avenue west of the Lauren, largely developed with high-rise apartment buildings, was rezoned from SP-2 to R-5-E, substantially reducing the threat of conversion from residential to office use.) It also provided a more rational basis for commercial development, removing some of the uncertainties from the process. The second significant amendment was to eliminate the distinction between professional and general office use, creating a single category of general office use The intent was to improve the marketability of SP-zoned office buildings and to eliminate inconsistencies between zoning and the Comprehensive Plan.

Revised Application

The current application covers only two units, both located on the ground floor. This is in contrast with the previous application covering 27 units scattered throughout the building on the first, second and fifth through ninth floors.

COMMUNITY COMMENTS

ANC 2B has voted to support non-residential uses on the first two floors, consistent with its position in the previous case.

AGENCY COMMENTS

No comments have been received from other agencies. (See listing above of agencies opposed to the previous application.)

RECOMMENDATION

The more things change, the more they stay the same. The Comprehensive Plan has changed for the Lauren, adding a residential component where only high density commercial existed before. Zoning in the area has also changed to make office development more viable in the SP zones at the same time that it now precludes conversion of apartments to office use in a number of apartment buildings removed from the SP zone. The application itself has changed dramatically, limiting the conversion of apartment units applied for to only two units on the ground floor. But what has really changed?

The Lauren is still a substantially mixed use building with the office uses scattered throughout almost all floors. Only the ticket office has a legal Certificate of Occupancy, so there are approximately 40 other units needing special exception approval by the Board. If the current application is approved, others will surely follow, one by one or two by two. In the most recent case denied by the Board in1995, the Board opined that the applications should not be considered on a case-by-case basis, but rather its review should be based on the total use and the inherent potential impacts. To do otherwise would be agreeing to a piecemeal process.

ANC 2B has essentially put forth a compromise position, apparently recognizing the changes that have occurred over time and seeking to minimize the potential damage of scattered conversion within the building. The ANC's solution, which is consistent with its prior stand, is to limit the conversion possibility to the first two floors. But this solution would not avoid use of the elevators by transient visitors. Nor would it provide a clearly rational line of demarcation. If two floors became filled, wouldn't there be pressure to add a third floor? Also, how would the two-floor solution accommodate or resolve the issue of the many "illegal" offices on the other floors?

A key question to be answered is how many nonresidential units does it take to destabilize or effectively destroy the residential character and quality of an apartment building? Certainly, the answer lies in part on the kinds of businesses, number of visitors, ability to separate clients and residents, noise potential, hours of operation, parking availability and ability of the building's management to enforce rules or codes of conduct.

Finally, if no such nonresidential uses existed today in the Lauren, how would we be viewing the current application? Mixed use is a viable concept when considering whole buildings, or even

portions of building which are designed to separate potentially conflicting uses. In successful mixed use developments, each of the uses contributes something positive to each of the other uses, or at least the effect is benign. However, it is not clear that the subject application meets this criterion. To approve the application would be in the nature of a compromise solution, but one that would surely open the door to more problematic circumstances and difficult decisions in the future. There is no way for the Board to rationally assess the cumulative impacts of multiple conversion applications on the basis of a single application. For all of the above reasons, the Office of Planning recommends denial of Application No. 16552.

Attachments

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