Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, N.W. Washington, D.C. 20037 (202) 736-1775

December 30, 2002

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Ms. Jerrily R. Kress, FAIA
Director
Office of Zoning
District of Columbia Zoning Commission
441 4th St. N.W., Suite 210
Washington, D.C. 2001

RE: Appeal by ANC-2A of Administrative Decision of Zoning Administrator in the Issuance of Building Permit #B47779 Relating to the Renovation of the River Inn Hotel at 924 25th Street, N.W., Lot 884, Square 16, in Violation of 11DCMR Sections 350.4(d) and 351.2.

Dear Ms. Kress:

The above cited appeal follows your helpful suggestion of December 19, 2002, which clarified the appropriate avenue for such an appeal of an administrative decision in the enforcement of the Zoning Regulations relating to the referenced premises. Kindly be aware that time is of the essence in this matter, since the property owner has begun renovation of the property.

Introduction

Following lengthy public hearings in 1979 and early 1980, the Zoning Commission amended the Zoning Regulations regarding hotels, adopting Zoning Commission Order No. 314 with extensive explanations (the most relevant 5 pages of the Order and 2 pages of the Statement of Reasons Att. 1). This resulted in landmark changes in the Zoning Regulations (11DCMR) as they govern hotel use. Among other things, the changes were designed to protect existing residential areas from further hotel development (p. 12, Statement of Reasons, Order 314, Att. 1).

Zoning Order No. 314 represented the position and decision of the Zoning Commission that hotels and their adjunct commercial uses are inappropriate in purely residential areas. The grandfathering of then-existing hotels in residential areas was a significant

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concession to their owners, and the Order and subsequent Text Amendments of the Zoning Regulations were written very specifically to strictly control the operation of these grandfathered hotels in a residential area. This included, in particular, the operation of commercial adjunct uses which were strictly limited and their expansion was explicitly prohibited. Specifically, the Order stipulated that the following amendments be incorporated in the text of the Zoning Regulations (11DCMR)):

1. New or expanded hotels in "R" zoned areas are prohibited. Hotels existing in R zoned areas on May 15, 1980 were permitted to remain ("grandfathered"). (p. 15, Statement of Reasons, Order 314, Att. 1).

2. The gross floor area of grandfathered hotels may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. (Order 314 p. 2, para. 2A; Statement of Reasons, p. 15, Att. 1; and 11DCMR Sections 350.4(d) and 351.2(a), Atts. 2 and 3).

3. There must be no direct entrance of the commercial adjuncts from outside the building (Order 314, p.3, para. 3—Att. 1; and 11DCMR 351.2(b), Att. 3).

4. No part of the commercial adjunct or the entrance to the adjunct shall be visible from a sidewalk. (Order 314, p. 3, para. 2C –Att.1; and 11DCMR 351.2 (c). Att. 3).

5. No sign or display indicating the existence of commercial adjuncts shall be visible from outside the building. (Order 314, p. 3. para. 2—Att. 1; and 11DCMR, Section 351.2 (d)—Att. 3).

The referenced address of the property, the River Inn, is zoned R-5. Moreover, the purely residential neighborhood immediately to the west, south and east, as well as diagonally across the street to the north-east, is part of the "Foggy Bottom Overlay District" (11DCMR, Section 1521), a designated historic district, zoned R-3, and characterized predominantly by intimate narrow streets and alleyways, small row houses, including the unique historic residential alley dwellings, Hughes Mews and Snows Court.

The owner of the property is proceeding as if the limitations and prohibitions under the Zoning Regulations do not exist for his R zoned site, and as if the hotel is located in a non-residentially zoned district.

For a considerable time, there has been a sign visible on the outside awning of the referenced premises, advertising the existence of the restaurant, despite the prohibition against this. As described below, the owner first tried and failed to obtain an improper expansion through a sidewalk café, and now, according to the plans approved by DCRA, is trying: (1) to expand the existing hotel, (2) to expand the existing restaurant inside the hotel, and (3) to make the restaurant directly visible from the sidewalk, including a folding window. These are serious violations of the D.C. Regulations and need to be immediately halted, and corrected.

The appellant, ANC-2A, is aggrieved because the improper administrative decision to issue a permit to renovate the referenced premises incorporates the above noted changes (in fact construction has already begun) which are in direct contravention of the provisions set forth in Sections 350.4(d) and 351.2 (a), (c), and (d) of the Zoning Regulations 11DCMR whose objective it is to protect residential neighborhoods from any adverse impact of grandfathered hotels. A detailed description of the errors contained in the administrative decision is presented below.

Immediate Background

An application by the owner of the hotel, Conrad Cafritz (Alamac Inc., 1660 L St. N.W., Suite 600, Washington, DC, Tel. (202) 331-3800) for a sidewalk café (for site plan see Att. 4) was heard by the Public Space Committee on May 23, 2002. Members of the Committee were very critical of the proposal. ANC-2A (represented by Commissioner Maria Tyler, ANC-2A03, in whose Single Member District the site is located) strongly opposed the application on the above-cited grounds in a written submission and oral testimony. At the conclusion of the testimony, the applicant withdrew the application.

During that hearing, Mr. Cafritz stated that he was proposing a renovation of the hotel, of which the sidewalk café was presumably a part. In a letter of June 4, 2002 to Mr. Denzil L. Noble, then Acting Zoning Administrator, Commissioner Tyler stated that the sidewalk café was presumably a part of the proposed large scale renovation. Moreover, Commissioner Tyler also stated that "ANC-2A would like to be sure that any renovation that is applied for is completely in line with the Zoning Regulations as they affect grandfathered hotels in purely residentially zoned areas...". (Att. 5).

Present Case

As no information was forthcoming from DCRA, **including no legally required notification to ANC-A of the issuance of a building permit,** Commissioner Tyler, in early November 2002, contacted Ms. Leila Franklin, Deputy Director for Compliance and Enforcement at DCRA, and inquired whether any plans for renovation had been submitted. Through Ms. Franklin's good offices Commissioner Tyler obtained a copy of the rather voluminous approved plans.

Preliminary examination of the plans revealed the following violations of Zoning Order No. 314 and 11DCMR, Sections 360.4(d) and 351.2. (Sections of the architectural drawings approved by DCRA in direct violation of the above provisions are contained in Attachments 6 and 7):

. Part of the outside wall of the hotel between the cafe/restaurant and the public space is moved closer to the sidewalk, thereby increasing the gross floor area of the hotel, contrary to the provisions of the Order, p. 2, para. 2A (Att. 1); and 11DCMR, Section 350.4 (d) (Att. 2, see also diagrams Atts. 6 and 7).

. The additional area created by moving part of the hotel forward would become part of the restaurant, thereby increasing the floor area of the commercial adjunct, contrary to the conditions of the Order, p. 3, Section 2C (Att. 1); and 11DCMR, Section 351.2 (a) (Att. 2; see also diagrams Atts. 6 and 7).

. At present the masonry of this exterior wall has windows 6 feet tall and about 4 feet further away from the sidewalk than would be the case if the wall were moved forward. Until just a few days ago the extensive shrubbery was planted in front of these windows and the windows were covered by curtains. Any person using the sidewalk would have had no idea, based on the view from the sidewalk, that there was a restaurant inside the hotel (but see para. below). The moving forward of the part of the exterior wall of the hotel contained in the approved plans, and replacement of the landscaped area between the outside wall of the hotel and the public space would make the restaurant/café visible from the sidewalk which would be only 12 feet away. In addition, half of the present windows are to be replaced by folding windows, which, when opened, would make the restaurant completely open to the sidewalk for a total distance of 16 feet, half the width of the restaurant. (The Order on p. 3 states that no such adjunct nor the entrance to it must be visible from a sidewalk (Att.1; also 11DCMR, Section 351.2 (c), Att. 3).

Existing Violations

As noted above, until recently, the masonry wall and windows (which, according to the plans will be moved forward) had been covered by curtains and landscaping However, the curtains have been pulled to the side completely during the last months, and more recently, completely removed; in addition (see below), the landscaping in front of the windows has been removed. This has made the tables, chairs, bar, stools and patrons, and now the tables and equipment presumably used for the renovation, clearly visible from the sidewalk in violation of Order 314 (Att. 1); and 11DCMR, Section 351.2 (c), Att. 3; see also photographs, Att. 8)

The present entrance awning of the premises includes the text "The Foggy Bottom Inn" (the name of the restaurant), in clear violation of the Order, p. 3 (Att. 1), and 11DCMR, Section 351(d), Att. 3; see also photographs, Att. 8).

During the week ending December 6, 2002, residents reported that the landscaping in front of the present outside wall of the restaurant/café had been removed (photographs showing before and after removal, Att. 8), which seemed to indicate that work on the renovation (including the applicant's violation of provisions of 11DCMR brought out during the Public Space Committee hearing) was underway.

Commissioner Tyler subsequently met with Charles Honaker, River Inn Manager, and asked whether a permit had been issued for construction. Mr. Honaker said he had a permit, but upon request, refused to show it to Commissioner Tyler. Even though she identified herself with her calling card as the publicly elected ANC-Commissioner for the neighborhood in which the hotel is located. After some explanations of what the role of ANC Commissioners in the District of Columbia is, Mr. Honaker produced a copy of the

permit, but did not allow Commissioner Tyler to take it (or a copy of it) along. However, she noted the following: The number of the permit is #B47779 issued on August 7, 2002 for lot 884, square 16, which is the location of the River Inn, 924 25th St. N.W., 20037.

Prior to this discovery, and following the preliminary examination of the plans, Commissioner Tyler met with Zoning Administrator Robert Kelly on November 15, 2002 to bring the violations contained in the plans to his attention. He agreed that the actions described above constituted violations. Incredibly, Mr. Kelly said that it was impossible with his present regulatory staff to enforce the provisions of 11DCMR, Section 351.2 (c). (Att. 3), even although all that is involved is passing along the sidewalk to see whether the restaurant is visible from the street which it now has been for a number of months. Mr. Kelly also e-mailed subsequently that he could not find any application for n expansion by the hotel, and when Commissioner Tyler explained that the application would not be for an expansion, but for a renovation, he did not reply. In summary, Commissioner Tyler's repeated and numerous attempts to obtain the legally required enforcement of the Zoning Regulations by the Zoning Administrator met with failure.

On December 28, 2002, Commissioner Tyler received a telephone call from Mr. Honaker, General Manager of the River Inn. He stated that the extension of the recessed wall, as approved in the plans, would not take place. Commissioner Tyler asked that Mr. Honaker confirm his statement in writing, which he said he could not do.

Conclusion

The applicant (the owner of the River Inn) knowingly requested approval from DCRA of improper expansion plans, disguised as renovation plans, actions that were revealed to him in ANC-2A's written submission for the May 23, 2002 Public Space Committee hearing. The Zoning Administrator erred in his administrative decision approving these improper plans, elements of which are in direct contravention to the provisions set forth in Section 350.4(d) and 351.2 of 11DCMR, and issuing a building permit in violation of the above-cited provisions. Had ANC-2A received the proper required notification of this permit approval, which it did not, the Zoning Administrator's error may have been prevented.

The applicant knowingly requested approval from DCRA of improper expansion plans, disguised as renovation plans, actions that were revealed to him in ANC-2A's written submission for the Public Space Committee hearing on May 23, 2002. The Zoning Administrator erred in approving these improper plans, elements of which are in direct contravention of the provisions set forth in Sections 350.4(d) and 351.2 of 11DCMR, and issuing a building permit in violation of the above-cited provisions. Had ANC-2A received the proper required notification of this permit approval, which, as noted above, it did not, the Zoning Administrator's error could have been caught in time and thus prevented.

This is to respectfully request the Board of Zoning Adjustment (BZA) that: (a) on the basis of the evidence elaborated above, the BZA uphold the appeal of Advisory

Neighborhood Commission 2A, thereby voiding the validity of permit #B47779, as well as any DCRA approvals of plans for renovation of the referenced premises that are in contravention of the relevant provisions of the D.C. Zoning Regulation (11DCMR); (b) before any further work proceeds, the improper plans be corrected and a new application by the property owner for a new building permit be submitted to DCRA, with ANC-2A review; and (c) a new permit be issued only when the proposed plans meet the requirements of Zoning Order No. 314, May 8, 1980, and the related provisions governing grandfathered hotels in residential neighborhoods contained in the Zoning Regulations 11DCMR, Sections 350.4 (d) and 351.2.

Maria Tyler, Commissioner ANC-2A03, the District where the River Inn is located, will continue to represent ANC-2A in this case. Because of the urgency of the matter, we ask for your immediate action, and stand ready to render you any assistance you may require in this matter. Should you have outstanding questions, please contact Commissioner Tyler by telephone at 337 7896.

Thank you for your consideration.

Respectfully submitted,

Elizabeth Elliott
Chair, ANC-2A

Attachments: 1 through 8 (with a list itemizing the Attachments)

cc. Ellen McCarthy, Deputy Director, OP
Leila Franklin, Deputy Director for Compliance and Enforcement, DCRA
Robert Kelly, Zoning Administrator, DCRA
Conrad Cafritz