GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16984 of Advisory Neighborhood Commission 2A, pursuant to 11 DCMR §§ 3100 and 3101, from administrative decisions of the Zoning Administrator in issuing Building Permit Number B 47779 relating to the renovation of the River Inn Hotel in the R-5 District, at premises 924 25th Street, N.W., in Square 16, Lot 884.

HEARING DATE: **April 29, 2003**
DECISION DATE: **May 13, 2003**

DECISION AND ORDER

Advisory Neighborhood Commission (ANC) 2A filed an appeal with the Board of Zoning Adjustment (BZA) on December 30, 2002, alleging that the Zoning Administrator at the Department of Consumer and Regulatory Affairs (DCRA) erred in approving the issuance of a building permit allowing renovation of the River Inn Hotel (the Hotel).

ANC Chair, Elizabeth Elliott, appeared on behalf of the appellant ANC. The property owner was represented by Paul Tummonds, Esq. of Shaw Pittman, LLP, and the Department of Consumer and Regulatory Affairs (DCRA) of the District of Columbia was represented by Laura Gilbert, Esq., Office of the Corporation Counsel.

Preliminary and Procedural Matters

The Office of Zoning scheduled a hearing on the appeal for April 29, 2003. Pursuant to 11 DCMR § 3113.4, the Office of Zoning mailed notice of the hearing to the appellant, the property owner and the DCRA.

On or about April 25, 2003, the owner's counsel filed a motion to dismiss the appeal on the ground that it was moot. The ANC opposed the motion and the Board heard argument from the parties at the public hearing on April 29, 2003.

At the conclusion of the public hearing, the record was left open so that the appellant could submit photographs of the exterior of the Hotel, and the property owner could submit revised drawings and a revised building permit. These were submitted as Exhibits 43 and 44, respectively.

The Positions of the Parties

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The gravamen of the ANC's argument is that the proposed renovation work is an unlawful expansion of the Hotel. It claims that the permit violates section 350.4(d) of the Zoning Regulations because it allows an unlawful increase in the gross floor area of the Hotel, and section 351.2 of the Regulations because it allows an unlawful increase in the commercial adjunct space (the restaurant) in the Hotel.

The owner's position is that the issues raised by the ANC are moot because: (a) it obtained a revised permit approving renovation work that maintained the existing gross floor area and restaurant space; (b) the renovation work was done in accordance with the revised permit, not the original permit; and (c) even if the Zoning Administrator were incorrect in issuing the original permit – which is not conceded – the owner has relinquished the right to expand the Hotel under that permit.

The Board's Decision

Following its decision meeting on May 13, 2003 the Board voted to dismiss the appeal as moot.

FINDINGS OF FACT

1. The structure at the subject property is an existing building at 924 25th Street, N.W., that was constructed in 1957 and renovated in 1978. It is located in the R-5 district and has operated as a 126-room hotel pursuant to Certificate of Occupancy No. B108331 dated February 15, 1979.

2. During the 1978 renovation of the building, portions of the covered parking area were fully enclosed to allow use of the space for hotel purposes.

3. Sometime during 2002, the owner decided to renovate and upgrade the Hotel. As part of the renovation, the owner proposed to pull out the existing recessed windows at the entry level so that there would be one continuous building façade from the lower level to the top floor of the Hotel. It proposed to do this by enclosing the existing overhang along the front of the building.

4. Before applying for a permit to renovate the Hotel, the owner met with then Zoning Administrator, Michael Johnson, to obtain guidance regarding the proposed renovation project. In a letter dated October 9, 2001, Mr. Johnson wrote to the owner's counsel suggesting that the proposed enclosure of the overhang area would "present...no zoning issues". Mr. Johnson explained:

> Since the portion of the building that will be enclosed is already under roof, we concluded that it constituted part of the original gross floor area for the building when the building was constructed. For that reason, the enclosure

of this overhang area, which consists of approximately 425 square feet of area, presents no zoning issues since it was originally counted toward the gross floor area for the function areas in that front portion of the building. This determination is consistent with the determination that was made in 1978 which permitted the enclosure of the garage area without any zoning relief since that area had already been included within the building's FAR.

5. The owner applied for and obtained building permit No. B447779, allowing it to perform certain renovations to the Hotel, including the enclosure of the overhang area described above.

6. On or about December 30, 2002, the ANC filed an appeal challenging the permit because: (a) it authorized an increase in the total area within the Hotel devoted to function rooms, exhibit space and commercial adjuncts: (b) it allowed for a direct entrance to the commercial adjuncts from outside the building; (c) it allowed a commercial adjunct to be visible from a sidewalk; and (d) it allowed for a sign indicating the existence of commercial adjuncts to be visible from a sidewalk.

7. After the appeal was filed, the owner modified its renovation proposal. It applied to DCRA for a revised building permit, based upon revised plans to maintain the recessed window line as it existed in 1979. Based upon the revised plans, DCRA issued Building Permit No. B451093 on May 7, 2003.

8. The Hotel was renovated according to the revised plans. The existing recessed window line was maintained and the screening shrubbery was replaced. The owner and ANC agree that the renovation did not result in any direct entrance to the restaurant from the sidewalk, and that the restaurant sign was removed. However, the ANC stated there is "still the potential" for changing the window line under the original permit. As a result, it seeks a Board ruling that the original permit was issued in error and should be vacated. The owner represented that, not withstanding the provisions of the original permit, it would not modify the existing recessed window line. As support for this representation, the owner submitted a letter stating that it relinquished any rights it had under the original permit to pull the recessed window line out to the front of the building.

CONCLUSIONS OF LAW

A case is moot when the legal issues presented are no longer "live" or when the parties lack a legally cognizable interest in the outcome. *Linda W. Cropp et. al. v. Anthony M. Williams*, 841 A.2d 328 (D.C 2004), *citing*, *Murphy v. Hunt*, 455 U.S. 478, 481 (1982). In the instant case, the ANC challenged one portion of a building permit approval – modification of the window line -- that was later revised to eliminate that approval.

While the original permit was not vacated in full, the owner relinquished its rights to change the window line under the challenged permit. In addition, the renovation plans filed to obtain the revised permit not only maintained the existing window line, they depicted no increase in total floor area within the Hotel, no direct entrance to the Hotel from the sidewalk, and no greater visibility of the restaurant than what existed before the renovation. Thus, the ANC's claim -- that the challenged permit authorized an illegal expansion of the Hotel -- has been resolved by the owner's renovation under a revised permit without any expansion of the building. As a result, the appeal is now moot.

Therefore, for the reasons stated above, it is hereby **ORDERED** that: the motion to dismiss the appeal as moot is **GRANTED.**

Vote taken on May 13, 2003

VOTE: 3-0-2 (Geoffrey H. Griffis, David A. Zaidain, and John G. Parsons in favor of dismissing the appeal, Carol J. Mitten being necessarily absent, and Curtis L. Etherly, Jr., not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 2 2 2004

PURSUANT TO 11 DCMR § 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL. LM/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16984

As Director of the Office of Zoning, I hereby certify and attest that on MAR 2 2 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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