

Before the Board of Zoning Adjustment, D. C.

Application No. 11629, Work of God, et al, pursuant to Section 8207.2 of the Zoning Regulations for special exceptions to permit SP office uses pursuant to Section 4101.42, open arcade pursuant to Section 7515.12 and roof structures pursuant to Section 3308 in a SP zoning district for property at 1720-30 Massachusetts Avenue, N. W., Lot 65, 826-830, Square 158.

HEARING DATES: May 15 and August 21, 1974  
EXECUTIVE SESSION: September 24, 1974, February 25, 1975

FINDINGS OF FACT:

1. The applicants propose to construct an SP office building for SP office uses permitted pursuant to Section 4101.42 of the Zoning Regulations and in connection therewith seek approval of roof structures pursuant to Section 4306 (3308) and a waiver pursuant to Section 7515.12 from Section 7515.11(a) of the Regulations to permit an arcade which does not extend the entire length of the building.

2. In accordance with the preamble to the SP district, which sets forth the intent and purpose of the SP district, the Massachusetts Avenue frontage has been largely devoted to office uses. The SP district was intended to provide prime and attractive sites for SP office use development as well as other permitted uses.

3. The frontage of Massachusetts Avenue between Scott Circle and Dupont Circle is predominantly devoted to special purpose office uses with some residential uses. The premises on the south side of Massachusetts Avenue between Scott Circle and Dupont Circle have been or are all devoted to special purpose office uses in the SP zoning district. Three of these premises have been constructed in recent years and used for SP offices pursuant to Board of Zoning Adjustment approval, namely the Yater Clinic (B.Z.A. 8147), Johns Hopkins School of Advanced International Studies (B.Z.A. 6618), and 1776 Massachusetts Avenue (B.Z.A. 10076). On the north side of Massachusetts Avenue in the same area, the SP office uses also are predominant including SP office buildings previously approved by the Board; namely, the Brookings Institution (B.Z.A. 6541), 1717 Massachusetts Avenue (B.Z.A. 6870 and 6871) and the Forest Industries building at 1619 Massachusetts Avenue. This area of Massachusetts Avenue is a prime SP office district in the District of Columbia.

4. In Square 158, the predominant usage is for SP office uses; however, N Street and 18th Street frontages include new apartment buildings, one of which is under construction. In the general area, the SP zone is developed with many other SP office uses. Surrounding zoning districts, including the C-3-B District and R-5-D zones, include high-density commercial and residential uses.

5. The subject property lies within the center of an SP zoning district adjacent to the C-4 district and Central Business District. It lies within approximately 1200 feet of access to the Dupont Circle Metro Station and fronts on the major arterial of Massachusetts Avenue and is in close proximity to other major roadways, namely 17th Street, 18th Street, New Hampshire and Connecticut Avenues. Massachusetts Avenue has a right-of-way of 160 feet and is paved to a width of 50 feet. In rush hours Massachusetts Avenue has three lanes with no standing in curb lanes in the peak hour direction.

6. Adjacent to the subject property to the east is a building devoted to SP office uses; likewise, to the west is an existing building devoted to SP office uses. Of the premises fronting on Massachusetts Avenue, between Scott and Dupont Circles, 65% are devoted to office or office-related activities.

7. The proposed office uses will consist of gross floor area within the permitted F.A.R. for the SP district of approximately 105,000 gross square feet. The applicant has stipulated at the public hearing that it will not permit more than 20% of the gross floor area to be occupied by dentist or doctors. Under the Zoning Regulations, 57 accessory off-street parking spaces are required and the applicant will provide off-street accessory parking spaces for 100 cars.

8. The proposed building is well within walking distance of the Dupont Circle Metro Station, the capacity of which is over 10,000 persons in peak hour. WMATA estimates that over 1/3 of the people using the station will walk to destinations in the area. Within the area there are 25 bus lines focusing which serve all areas of the city.

9. The traffic consultant for the applicant made a traffic study based upon traffic counts and an analysis. The traffic consultant estimated that the proposed building would generate approximately 33 additional automobile trips in peak hour of traffic. Traffic counts establish that only 55 to 60% of the capacity of Massachusetts Avenue at the intersection of 18th Street is utilized during peak hour. At 17th and Massachusetts Avenue the capacity use ranges between 65 and 70%. Traffic data supplied by the traffic consultant shows that traffic on Massachusetts Avenue increased from 22,400 per day in 1967 to 26,500 per day in 1970 but dropped to 24,000 in 1971 and 24,800 in 1972. Data for 1973 is not yet available. The consultant's projections were, in part, based upon traffic counts at the recently constructed SP office building at 1776 Massachusetts Avenue, N. W.

10. Metro estimates that 60% of the people working in this area will come by transit. In addition, an estimated 10% will walk to work. The remaining 30% will come by car but at a car occupancy of 1.5 persons per car. This leaves approximately 20% of the building's occupants who will drive. Based upon this percentage and the projection of approximately 400 building occupants, 80 parking spaces are needed for the occupants.

11. The Department of Highways and Traffic submitted a report to the Board stating that he had no objection to the proposed office uses and a representative of the Department of Highways and Traffic so testified at the public hearing.

12. The proposed roof structure has an F.A.R. of .25 which is below the .37 that may be permitted by the Board under Section 3308. The roof structure harmonizes in architectural material, color and character with the main structure. The street facade of the building is brick (medium red) and glass. The penthouse is also of medium red brick. The roof structure is set back in excess of the requirements from the building lines.

13. Section 7515 of the Zoning Regulations encourages open arcades at sidewalk level for more pedestrian convenience and greater open space adjacent to the public streets without the loss of rental floor space and permits a floor area credit not to exceed .25 nor more than 25% of the gross floor area of the floor which is adjacent to such arcades at sidewalk level. Pursuant to Section 7515.12 the Board may waive the requirements of 7515.11 if the intent and purpose of 7515 is met. Applicants seek a waiver of the provisions of 7515.11 which require that an open arcade extend the entire length of the building.

14. The proposed building has an arcade which is permitted as a matter of right if no F.A.R. credit were sought. Applicant seeks, however, 800 sq. ft. of gross floor area credit which amounts to .042 F.A.R. or 7% of the adjacent floor area. As stated by the architect, the open arcade was provided to encourage pedestrian usage at sidewalk level. The open space at said level is increased by approximately 800 sq. ft. because of the depth of the arcade. The arcade extends on either side of the entrance way of the building permitting pedestrian access to the east by way of the existing private alley and to the west from the building's automobile entrance.

15. Opposition to the proposed uses and arcade was presented and proffered at the public hearing. This opposition was in two general areas: (1) opposition to the demolition of existing buildings which opposition was objected to be the applicants on the basis that such testimony is irrelevant and immaterial to the issues before the Board and (2) objection to SP office uses on the basis that there would be an increase in traffic.

16. While the evidence establishes that there would be some increase in traffic by virtue of the approval of a new building, there is no evidence of any type submitted on which to base a conclusion that the uses would create dangerous or other objectionable traffic conditions. The evidence establishes that the minimal increase can be absorbed in existing traffic capacities.

17. With regard to the proffer of evidence concerning demolition and historical or architectural significance of existing buildings, the applicants timely objected and filed a supporting legal memorandum. The Board, at the public hearing, sustained the objection and excluded such testimony permitting the filing of a responsive memorandum on behalf of those parties urging the inclusion of such testimony. The responsive memorandum was filed on May 24, 1974.

18. Additionally, there was opposition expressed to the special exception approval which would permit the 800 sq. ft. of credit for the arcade. Such opposition expressed the view that the arcade did not encourage pedestrian usage. The Board finds that better pedestrian access would be provided from both east and west with the arcade than if the arcade were not provided and that the depth of the arcade adds to the open space adjacent to the street a total of 9 feet or 800 square feet.

19. The Board of Zoning Adjustment at its Executive Session on July 25, 1974, determined to rehear the application as to "the sole issue of the architectural character of the area as it may affect the determination of whether or not the proposed use is compatible with existing uses." The purpose of the hearing was to receive argument and evidence, including testimony, on (1) whether a determination of the architectural character of the area in the approval of an SP office building is within the jurisdiction of the Board and (2) to hear evidence and testimony on the advertised notice.

20. As required by Rule 3.23 of the Supplemental Rules of Practice and Procedure, the applicants filed with the Board on July 19, 1974 and again on August 16, 1974, their "Statement of Applicants at Additional Hearing" with service upon all parties. In the Statement of Applicants at Additional Hearing, the applicants noted an objection to the re-opening of the hearing, setting forth their bases therein. The second portion of said Statement attempts to deal with the issue advertised for the additional hearing.

21. At the rehearing on August 21, 1974, applicants renewed their objection to the re-opening of the case for the limited purpose described in the notice and the Board heard from the parties in opposition as to the objection. For the purposes of proceeding with the hearing, the Board overruled the objection but withheld its final determination. During the course of the hearing, parties were given the opportunity to fully argue their views as to the scope of jurisdiction of the Board in hearing on the architectural character of the area in relation to the approval of SP office uses.

22. Reserving their objections, the applicants proceeded with their statement and presentation. See pages 7 through 11.

23. The Board of Zoning Adjustment in numerous Orders has approved the establishment of SP office uses in the two-block area between 16th and

18th Streets on Massachusetts Avenue pursuant to Section 4101.42. In each of these cases, the Board found that the uses met all the requirements of Section 4101.42 and Section 8207.2 of the Zoning Regulations. Copies of the Orders approved by the Board were attached as Exhibit B to the Statement of Applicants at Additional Hearing. The buildings approved by the Board and found to be in harmony with existing uses on neighboring and adjacent properties included properties on both the north and south sides of Massachusetts Avenue in the 1700 block.

24. In Zoning Commission Order No. 32 of August 26, 1971, the Zoning Commission granted a preliminary application for a Planned Unit Development under Article 75 of the Zoning Regulations for the extension of the C-3-B zoning district to the entire frontage between 18th Street and Dupont Circle presently zoned SP for a 90-foot building with a 6.0 F.A.R. or a 100-foot building with a 7.0 F.A.R. in the alternative. The Zoning Commission, by Order published May 22, 1974 in Zoning Case No. 73-23, downzoned certain specific properties in the Dupont Circle area. The hearing in said case was conducted under Part III of the Rules of Practice and Procedure and the study area included Square 158. No portion of Square 158 was proposed for downzoning or was downzoned.

25. The National Capital Planning Commission in connection with Zoning Commission Case No. 70-20 recommended approval of a preliminary application for a Planned Unit Development including a 90-foot high building for the frontage between 18th Street and Dupont Circle on the south side of Massachusetts Avenue with a 7.0 F.A.R. for that portion of the frontage zoned SP. The Commission found that such extension and bulk and height would not be detrimental to the development of the area and that such a bulk and height would be in keeping with the Comprehensive Plan.

26. On the north side of Massachusetts Avenue, from Scott Circle to Dupont Circle, almost the entire frontage is developed with 90-foot buildings, including those buildings previously approved by the Board and three apartment buildings. Additionally, 1785 Massachusetts Avenue, which is designated as a historic landmark, has a height of approximately 85 feet. On the south side of Massachusetts Avenue, Johns Hopkins School of Advanced International Studies building, 1776 Massachusetts Avenue and the Canadian Chancery (85 feet) have heights approximating 90 feet. The remaining buildings vary in height, the predominant height being approximately 55 to 60 feet. The Board finds that the architectural character of the area is compatible with buildings of a height of 90 feet and an F.A.R. of 5.5 or 6.0.

27. The architect for the proposed building testified that his choice of color, material and design was made to make the building architecturally compatible with adjoining and neighboring buildings. The architect chose medium red molded brick in keeping with and blending in tone with other structures in the immediate area. With regard to the facade chosen for the

building, projections permitting a setback and break in the architectural design were chosen so as not to have a solid, box-like structure. The building's facade is designed with six major columns and five bays between the columns. Two of these bays on the east and west ends of the building are projections so as to eliminate a flat facade. Additionally, with regard to landscaping major trees will be retained to preserve the boulevard appearance of Massachusetts Avenue at the frontage of this proposed structure. Particular care with regard to material, color and the projection was taken with regard to matching the character of the building immediately to the west which adjoins. To the east is a public alley. The Board specifically finds that the proposed building is in keeping with the architectural character of the area.

28. Opposition to the application stated that, in its opinion, the proposed building was not in keeping with the architectural character of the area citing various of the older buildings on the south side of Massachusetts Avenue remaining, some of which have a height in excess of 60 feet. Additionally, the opposition was of the view that the proposed structure would have an adverse affect upon an area that has been designated the "Massachusetts Avenue Historic District."

29. None of the existing buildings on the subject site have been designated as historic landmarks. No notice or opportunity to be heard was given the property owners in connection with the designation of the Massachusetts Avenue Historic District by the Joint Landmarks Committee. In any event, the area within the Massachusetts Avenue Historic District is comprised by the vast majority of new buildings, many of which have been approved as SP office buildings under Section 4101.42. Every structure on the south side of Massachusetts Avenue between 17th and 18th Streets has been devoted to SP office uses and the character of the area beyond the Massachusetts Avenue frontage is a mixture of both old and new buildings with SP District bulk of 5.5 or 6.0 F.A.R. and 90 feet and lower densities and heights. We do not feel that the mixture of such buildings, heights and densities are incompatible.

30. As shown in the legislative history of the SP District submitted by applicants, the SP District was designated to accommodate expansions of the Central Business District with completion of mass transit surveys. See, Lewis Proposals for Comprehensive Rezoning. The SP zone was thus included on Massachusetts Avenue to protect and promote high-grade office uses such as national associations, trade associations, nonprofit, educational institutions, labor unions, etc., and for the provisions of professional office space.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of the opinion that the proposed office uses as permitted in the Special Purpose District will

be in harmony with the existing uses on both neighboring and adjacent properties. The character of use in the area is predominantly SP office uses and this area of Massachusetts Avenue is a prime SP office district in the City. The Board also finds that the use will not create dangerous or other objectionable traffic conditions. The testimony established that the increase in traffic would be adequately handled by the capacity of the surrounding street system and that this site enjoys a favorable location with regard to Metro and public bus transportation.

Further, since the intent of the SP District is to stabilize those areas adjacent to the C-4 District containing Central Business District supporting uses and specifically encouraging, among other uses, offices, we are of the opinion that the grant of the application will be in accordance with the intent and purposes of the Zoning Regulations and Maps. The SP zoning district in this area is located adjacent to the C-4 District and the subject site lies in the approximately center of the SP District with frontage on the major arterial of Massachusetts Avenue. The roof structure meets all the requirements of Section 3308 and the arcade falls within the intent and purpose of Section 7515 of the Regulations. For these reasons, we conclude that the Board should grant the application.

At the hearing on May 15, 1974, the Board sustained applicants' objections to testimony by persons and parties in opposition as to the demolition of the existing buildings, the architectural or historic significance of the existing buildings or the architectural nature of the proposed buildings. The Board's ruling was based on its view that in special exception cases, it does not have unlimited discretion but, rather, is bound by the standards adopted by the Zoning Commission for the specific uses requested. However, the Board permitted parties in opposition to submit legal memoranda concerning the Board's jurisdiction within 10 days after that hearing.

The Board agrees with the position of the applicants with regard to the scope of jurisdiction of the Board in considering architectural character of the building or area. We believe that such consideration is not within the language of the Zoning Regulations and was not delegated to the Board of Zoning Adjustment by the Zoning Commission nor are there any adequate standards to govern such a delegation. The preamble to the SP District and the choice of the word "use" in Section 4101.42(a) cannot be amended by this Board so as to include architectural, historical or design considerations in the approval of the building. The Zoning Commission, we believe, would not have inconsistently permitted apartment buildings and hotels as a matter of right to a height of 90 feet, a bulk of 6.0 without any architectural controls and, at the same time, required architectural control over office buildings which have less permitted F.A.R..

However, the Board in this case, after careful deliberation, concludes that the proposed building is nevertheless fully compatible with the architectural

character of the area including the adjoining and neighboring properties. Within the zoning envelope permitted by the SP zone, it is our belief that the proposed building carefully utilizes color, material and design so as to blend the proposed building with other buildings in the area. In approving SP office uses, the Board must consider many substantial factors pursuant to Sections 4101.42 and 8207.2. Architectural character, assuming jurisdiction, is only one factor in the many considerations of the Board. For these reasons, even if the architectural considerations were within the powers of the Board, we are obliged to grant the application.

ORDERED: That the above application be GRANTED.

VOTE: 3-2 (Mr. McIntosh and Lilla Burt Cummings, Esq. dissenting.)

CONDITIONS:

The proposed office building may include all those SP office uses permitted under Section 4101.42 except that the gross floor area devoted to dentists or doctors may not exceed 20% of the gross floor area.

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

ATTESTED BY:



JAMES E. MILLER

Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING PERMIT AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: **MAR 17 1975**

Before the Board of Zoning Adjustment, D. C.

Application No. 11629, of Work of God, et al, pursuant to Section 8207.2 of the Zoning Regulations for special exceptions to permit SP office uses pursuant to Section 4101.42, open arcade (7515.12) and approval of roof structures pursuant to Section 3308 for a proposed building in the SP Zone at 1720-30 Massachusetts Avenue, N. W., Lot 65, 826-830, Square 158.

HEARING DATE: May 15, & August 21, 1974

EXECUTIVE SESSION: September 24, 1974, January 21, 1975  
April 22, 1975

ORDER:

Upon consideration of the opposing party's Motion for Reconsideration, and to stay the Board's original order in the above numbered case, such motion failed for the lack of four (4) affirmative votes.

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

ATTESTED By: James E. Miller

JAMES E. MILLER  
Secretary to the Board

FINAL DATE OF ORDER: **APR 24 1975**