

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13151, of Sherry Towers Limited Partnership, as amended, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a variance from the loading requirements (Sub-section 7302.1) and a special exception under Paragraph 4101.48 to convert the existing building to a hotel in the SP-2 District at 2117 E Street, and to construct a connection between the buildings in the SP-2 and R-5-D Districts at the premises 2117 E Street and 2116 F Street, N.W., (Square 81, Lots 96 and 97).

HEARING DATES: February 13 & 20, 1980, May 21, & October 1, 1980  
DECISION DATE: January 7, 1981

FINDINGS OF FACT:

1. Sherry Towers, one of the subject properties, is located on the north side of E Street between 21st and 22nd Streets, N.W., and is known as lot 96, premises 2117 E Street, N.W. It is in an SP-2 District. To the north of Sherry Towers, located on the south side of F Street between 21st and 22nd Streets is the Michelle Towers known as lot 97, premises 2116 F Street, N.W. It is in an R-5-D District. The neighborhood is known as Foggy Bottom. The Sherry Towers and the Michelle Towers are located back-to-back. Both buildings are owned by the applicant.

2. The subject application was first heard at the public hearing of February 13, 1980. At the time the relief sought was a special exception under Paragraph 4101.44 for a proposed rear addition to the above-mentioned Sherry Towers and the Michelle Towers that would connect both buildings. The applicant was unable to present Certificates of Occupancies for either building and any information as to when an application was filed for certificate of occupancy. The case was continued to February 20, 1980 for the applicant to obtain the requested evidence. At the February 20, 1980 public hearing date, counsel for the applicant requested the Board's permission to amend the application and to confer with Zoning Administrator to determine if, as amended, the applicant required any relief from the BZA. The Chair determined that if the application was amended it would have to be readvertised.

3. By letter dated April 4, 1980, the applicant amended the application to request a special exception under Paragraph 4101.44 to permit the operation of a hotel in an SP-2 District. The application was readvertised for the public hearing of May 21, 1980.

4. At the public hearing of May 21, 1980, the applicant requested a continuance of the application since the Zoning Regulations had been amended on May 8, 1980 subsequent to the amendment to the application. Under the revised Zoning Regulations, Paragraph 4101.48 has been substituted for Paragraph 4101.44 as the proper section under which the application would be determined. The applicant further argued that the application as amended would have to be readvertised in order to give proper notice to all parties of the new section and its requirements under which the relief was now being requested. The Board concurred.

5. At the public hearing of May 21, 1980, the relief requested was a special exception to convert the Sherry Towers into a hotel and to construct a connection between the Michelle Towers and the Sherry Towers. At the public hearing of October 1, 1980, the application was heard, as amended, which constituted the relief requested in the May 21, 1980 public hearing and, in addition, a request for variance relief from the loading requirements.

6. At the public hearing of October 1, 1980, the applicant requested that the application be amended so as to eliminate the request for a variance from the loading requirements. The applicant's architect testified that after consulting with the Zoning Administrator this variance was not needed. The Board requested the applicant to submit evidence to the record reflecting such an agreement with the Zoning Administrator. Such evidence was never submitted to the record.

7. A certificate of occupancy No. 112573 dated August 8, 1979 was issued for premises 2117 E Street, N.W., as an apartment house, 119 units. A report of the Department of Licenses, Investigations and Inspections, dated August 19, 1980, stated that the premises at 2116 E Street, N.W., Michelle Towers, in an unlicensed apartment house currently being changed so as to qualify as a hotel. It has neither an apartment license nor certificate of occupancy. It appears that as of the date of the public hearing of October 1, 1980 a certificate of occupancy for use as a hotel has been issued, although no such evidence has been submitted to the file.

8. The subject lot 97 has an area of approximately 15,462 square feet and is improved with the Sherry Towers, an eight story apartment building. The site is east of the intersection of E Street and Virginia Avenue.

9. To the south of Virginia Avenue and E Street is a large area devoted to Federal office use. An elongated R-5-D District to the north is primarily occupied by medium and high density apartments, a number of row dwellings, a State Department office building, the Allen Lee hotel, the Riverside Towers apartment-hotel, and a public park. To the east of 19th Street, are three large federal office buildings, unzoned. To the southwest, across Virginia Avenue, is an eleven story office building occupied by the World Health Organization. Further to the west is a large SP-2 District occupied by the Columbia Plaza complex comprising apartments and office space, the Watergate complex, comprising apartments, office space, a hotel and a retail mall, and the Kennedy Center, now unzoned federal land.

10. The subject Sherry Towers is located within an irregular shaped SP-2 District extending from 22nd Street and Virginia Avenue on the west to 19th Street on the east. The existing uses in this SP-2 District include the subject premises, a Gulf service station, a Peoples drug store, a liquor store, an embassy or chancery, the Foreign Service Club, and an eight-story apartment house. The southern half of Square 104, immediately to the east, is zoned SP-2 and is entirely occupied by a large institutional office building accommodating the Red Cross. Square 122, further to the east, zoned entirely SP-2, is occupied by two office buildings, one of them recently expanded at 20th and E Streets, two university dormitories, a six-story parking garage, a surface parking lot, an embassy or chancery, a savings and loan association, and a liquor store.

11. The manager of the Sherry Towers testified that to the east of the site is an alley and then the Saudi Arabian Embassy. To the west is a driveway, a liquor store and a drug store. From this, the witness included that the use of the subject structure was in harmony with other uses within the immediate area and thus met the requirements of Sub-paragraph 4101.481 of the Zoning Regulations.

12. As to Sub-paragraph 4101.482, there was testimony that there is presently no hotel in the SP District in the vicinity of the subject property and that there is only one hotel, The Watergate, in the adjacent SP District. The applicant argued that if Sub-paragraph 4101.482 requires that a balance between residential, office and hotel uses exists as the result of consideration of this application, it is clear that this application must be approved. There was further testimony that historically, this subject building has been operated in a transient mode. There was evidence that (A) no resident of the premises had a lease, (B) the hotel sales tax and occupancy taxes were collected and paid to the District of Columbia, (C) nearly eighty percent of the units are furnished; and (D) the Rental Accommodations Office had determined that as of August, 1979, the premises were more than sixty percent transient.

13. Sub-paragraph 4101.483 limits the amount of gross floor area devoted to function rooms and exhibit space to fifteen percent of the hotel's gross floor area. The applicant testified that approximately 700 square feet had a mixed use as function space and sleeping accommodations. This space is less than one percent of the available 107,000 square feet in these premises.

14. The subject Sherry Towers is located within the Central Employment Area in accordance with Sub-paragraph 4101.484.

15. The applicant's traffic expert testified that there was sufficient off-street parking, including eighteen spaces within the building and another fifteen from a commercial parking lot, to satisfy the requirement of Sub-section 7202.1. The expert further testified that there was sufficient loading berth area available, that traffic generated by the premises will not cause operational or capacity difficulties on the adjacent streets, and that the location and design of driveways are such as to avoid dangerous or objectionable traffic conditions. The latter conclusion was predicated on the low usage of or dependence upon automobile traffic, tour buses and delivery vehicles.

16. The Office of Planning and Development by report dated May 16, 1980, recommended that the application be denied. The OPD noted three areas of concern in the subject application. (a) The purposes of the SP District, which is generally mapped around the edge of Downtown, as those purposes relate to OPD's general planning policies in the City related to what land uses and activities should occur on the edge of Downtown. (b) Issues that arise from the Zoning Commission Case No. 79-1 which updated the Zoning Regulations regarding hotel controls in the City, (c) The specific criteria regarding hotels as a special exception in the SP District.

17. The Office of Planning and Development reported that the number of apartment houses converted to hotel use in recent years on the western and northern edges of Downtown has had a destabilizing effect on some areas. This trend and effect has been especially pronounced in the subject Foggy Bottom and Dupont Circle neighborhoods, and most notably in the R-5-D and SP zone districts. This issue was explored extensively in Zoning Commission Case No. 79-1, recently completed. The OPD report in that case stated the following:

"The Office of Planning and Development believes the extent and rapidity of conversions of apartment buildings to licensed hotels constitutes a serious problem in residential areas at the western and northern edges of Downtown -- concentrated in the Foggy Bottom, West End, and Dupont Circle neighborhoods. The loss of apartment units for permanent residents in these neighborhoods is not only a problem in terms of housing supply in the context of a well-documented housing shortage and population decline in the city. It relates as well to planning and zoning policies which have the purpose of retaining and expanding high density housing around the edge of Downtown, as part of the city's downtown development strategy."

18. A major OPD policy concern in the subject application is that conversion of an additional high-density apartment building to hotel use in the Foggy Bottom area and in the subject SP-2 District will further contribute to loss of housing units. This would dilute the planning goals established in several previous zoning cases on the edge of Downtown aimed at stabilizing the boundary between high-density commercial use within Downtown and residential areas on the periphery of Downtown, and contribute to an undue predominance of non-residential uses within the subject SP District. The fact that Sherry Towers has apparently offered short-term rentals and furnished apartments for several years, did not alter the OPD position. Continuance of the apartment house certificate of occupancy is an important regulatory device to ensure the continued availability of apartments over the medium and long term, even if many of the apartments are available to visitors on a short-term basis under current market conditions.

19. The Office of Planning and Development reported that the subject Foggy Bottom area already has a substantial number of hotels within a small proportion of the land area in the city. These include both established commercial hotels and conversions in recent years. Buildings converted from apartment to hotel use in the past few years include:

- The Intrigue, 824 New Hampshire Avenue, N.W., ninety-six units
- The Lombardy, 2019 I Street, N.W., 119 units
- The River Inn, 924 - 25th Street, N.W., 128 units
- One Washington Circle, 154 units
- The subject Michelle Towers, 2116 F Street, N.W., 121 units

Commercial hotels are as follows:

- Allen Lee, 2224 F Street, N.W., eighty-nine rooms/suites
- Hawthorne, 2134 G Street, N.W., 125 rooms/suites
- Howard Johnson Motor Inn, 2601 Virginia Avenue, N.W.  
194 rooms/suites
- Watergate, 2650 Virginia Avenue, N.W., 238 rooms/suites
- Park Central, 705 - 18th Street, N.W., 240 rooms/suites

In addition, there are four apartment houses offering accommodations primarily to short-term visitors, comprising a total of 508 units. These establishments do not have a hotel license or Certificate of Occupancy and are thus outside the scope of hotel controls in zoning. However, they were noted to reflect the degree of reduction in permanent housing supply in the area in order to meet the strong demand for visitor accommodations in this area. Excluding the apartment houses, there are ten hotels in the area, including 2116 F Street, in process, having a total of 1,382 rooms or suites. This is just under one-sixth of the total of the sixty-six hotels in the entire city. In the opinion of the OPD, this is an ample number for one small area of the city, especially as only three of the hotels are in commercial districts.

20. The OPD reported that the first criterion for hotel use in SP Districts, Sub-paragraph 4101.481, requires that the height, bulk and design of the hotel be in harmony with neighboring uses and property, and indicates that the Board may require special treatment as to design, set back, screening, landscaping, sign controls and other features as necessary. As the subject building is already in existence, the latter criteria is not a major issue. The subject building is abutted on the west by a commercial building containing a drug store and a liquor store, and on the east by an embassy or chancery and a private club.

21. Sub-paragraph 4101.482, states "Approval of the hotel or inn shall result in a balance of residential, office, and hotel or inn uses in the SP District in the vicinity of the hotel or inn." The building at 2117 E Street, N.W., is located within an irregular shaped SP-2 District extending from 22nd Street and Virginia Avenue on the west to 19th Street on the east. As found in Finding No. 9, there are a variety of uses. It was the opinion of the OPD that the mixture of uses is already substantially dominated by office, institutional, retail and parking uses, and that the subject building should therefore remain in residential use. The Office of Planning and Development believed that approval of this application would be inconsistent with city goals and policies, and the intent and purpose of the Zoning Regulations. The Board concurs in the OPD report.

22. Advisory Neighborhood Commission - 2A and a tenant of the Sherry Towers opposed the application on the grounds that the applicant was operating Sherry Towers as a hotel without a valid Certificate of Occupancy. There was testimony that the tenants of Sherry Towers had received notice that they were now living in a hotel and should notify the management of the day they plan to vacate. There were advertisements and a note card that referred to Sherry Towers as a hotel. Sherry Towers is also listed as a hotel as part of the Wayside Hotel Group. There was further testimony that the Michelle Towers at 2116 F Street was operated as a part of the Sherry Towers Hotel when Michelle Towers did not have a Certificate of Occupancy as a hotel. Paragraph 3105.34 of the Zoning Regulations permit a hotel in an R-5-D District if the hotel was in existence as of May 16, 1980 with a valid Certificate of Occupancy. On the bases of a hotel Certificate of Occupancy obtained subsequent to May 16, 1980 a license was granted to operate a restaurant at Michelle Towers. The restaurant also services the residents of the Sherry Towers. In a brochure, the Sherry Towers Hotel is listed as being listed at 2116 F Street and 2117 E Street, N.W. The ANC testified that the further intent of the applicant to commercialize the subject neighborhood is shown by having a door to this restaurant open to the street, with a sign on the door announcing the Sherry Cafe. There is also a sandwich board sign located on public space in the front of the building calling the public's attention to the restaurant and flyers were distributed under the windshield wipers of all the automobiles within a one block radius.

23. The Advisory Neighborhood Commission further testified that the subject application is an attempt to add to the disproportionate number of hotels already in Foggy Bottom and West End. This attempt is inimical to the Goals and Policies Act objective of providing affordable housing to city residents. Within ANC-2A, there are already 2286 hotel rooms or suites in existence, or authorized and under construction. This is a tremendous burden ANC-2A bears by accommodating hotels. Of the 21901 hotel rooms cited by OPD in its March 28, 1979 filing in Zoning Commission Case 79-1, the subject ANC has eleven percent. This should be compared with the two percent the ANC has of the city's population.

24. The ANC noted that housing, whether rented or occupant owned, is extremely scarce in the city. Practical experience in ANC-2A indicates a vacancy rate which would be even lower than the city average, with vacant units being well below one-half of one percent. This housing crunch has continuously worsened as buildings have been converted to condominiums and cooperatives and the poor and people on fixed incomes have been displaced.

25. The ANC argued that the subject application seeks to remove 121 rental apartment units from the market to convert them to a hotel. The subject area, is in an extremely delicate balance between residential uses on the one hand, and hotels, offices or retail stores on the other. Conversion of the Sherry Towers would wipe out over thirty one percent of these remaining housing units and would neither promote harmony nor a balance of uses with residences.

26. As to the issue of parking facilities, the ANC testified that Section 7201 of the Zoning Regulations requires that there be one parking space for each four sleeping rooms or suites. Making a conservative interpretation of this, and counting each apartment as only one room clearly indicates a requirement for thirty parking spaces. The Sherry Towers has only eighteen spaces available and no other location on its lot where additional spaces could be provided. This is one ground for denial of the application. The applicants have stated that additional parking will be available at the Colonial parking garage on 20th Street. However, Paragraph 7205.33 states that in no event shall accessory parking spaces be located more than 800 feet from the lot line of the hotel. By means of the most direct access, "E" Street, the two lots are in excess of 800 feet apart.

27. A hotel also requires a loading berth, according to Sub-section 7302.1. The ANC argued that there is no place meeting the twelve by twenty foot requirement, other than by blocking either the street, the alley or the driveway to the garage. Although the applicants state that there are loading berths in the private driveway, this drive is sole access to the garage and is only 10.4 feet wide at its narrowest point. Parking one truck denies access to any other vehicle. In addition, several of the nearby residents have complained to the ANC about the tour buses parking all night in front of the Michelle Towers building. As there are no off-street parking spaces for these buses, this creates an adverse impact on the community.

28. The Board concurs in the basic tenor of the issues of the ANC and in its general recommendation of the denial of the application.

29. There was one letter of record in opposition to the application.

30. The Community Legal Clinic of George Washington University represented a tenant of the Sherry Towers in opposition. The grounds were common to the issues raised by the OPD and the ANC.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the application, as advertised, sought relief through a request for a variance and for a special exception. The Board notes that the applicant at the public hearing amended the application so that the variance from the loading requirements is no longer requested. The Board further notes that although the Board at the public hearing requested further verification from the Zoning Administrator as to this issue, such evidence was never submitted. As to the special exception, this relief can be granted if the evidence adduced satisfies the requirements of Paragraph 4101.48 of the Zoning Regulations and if the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property.

Before addressing itself to the special exception requested, the Board is of the opinion that it must first address itself to the situation wherein the subject Sherry Towers, which has a valid Certificate of Occupancy as an apartment house, has in fact for all intents and purposes been holding itself out to the public as a hotel, as evidenced in Findings Nos. 11, 15 and 16. Sherry Towers has a certificate of occupancy for an apartment house of 119 units. Eighty percent of the units are furnished, no resident of the premises has a lease, sixty percent of the residents are transients, notice has been given to the tenants that they are now living in a hotel, there were hand-out advertisements announcing Sherry Towers as a hotel, the rate card evidences Sherry Towers as a hotel and Sherry Towers is listed as a hotel as part of the Wayside Hotel Group. The Board concludes that such misrepresentation is illegal. The applicant now seeks to have the Board validate its illegal activity. The applicant suggests that the stamp of validity will not affect the neighborhood since Sherry Towers can now continue to carry out the same functions and operations validity whereas formerly they were invalid. The Board refuses to sanction such activity.

As to the special exception, based on the report of the OPD and the testimony of the ANC at the public hearing, the Board concludes that the applicant has not met the burden of proof in complying with Sub-paragraphs 4101.482 and 4101.485 of the Zoning Regulations. Sub-paragraph 4101.482 requires that for the Sherry Towers to be approved as a hotel, there must be created a resultant balance of residential, office and hotel uses in the SP District in the vicinity of the hotel. The OPD reported that there are ten hotels in the subject Foggy Bottom area which number is approximately one-sixth of the sixty-six hotels in the entire District of Columbia. The OPD concluded that such a number is ample for one small area of the city as in Foggy Bottom, and the Board concurs. The subject area is dominated by offices, institutional, retail and parking uses. The subject residential use is needed to avoid an imbalance of uses. The applicant has argued for a different interpretation of Sub-paragraph 4101.482 and urges that said section requires a hotel use in the subject SP area where presently there is none. The Board rejects the argument. The BZA can approve a hotel provided that approval shall result in a balance of residential, office and hotel use in the SP District in the vicinity of the hotel. There is no requirement that the BZA balance the specific district. Any approval shall not create an imbalance.

As to Sub-paragraph 4101.485, the Board is of the opinion that ample parking spaces are not being proposed so as to avoid unduly impacting parking or traffic on the surrounding streets. Approximately thirty parking spaces are required for the proposed hotel use. Sherry Towers, as an apartment house, had twenty spaces available on the site. Only eighteen of such spaces are useable. Two of the spaces were lost when the management constructed a storage facility. This is non-conforming regarding either apartment house or hotel use. The applicant testified that additional parking spaces will be available at the Colonial Parking garage on 20th Street. The Board is of the opinion that these additional spaces are not permanent in nature, being subject, among other items, to the very continued existence of the garage. The Board has given the weight required to the issues and concerns of the ANC.

The Board concludes, for all the above reasons, that the application CANNOT BE GRANTED. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Walter B. Lewis, Charles R. Norris, William F. McIntosh, Leonard L. McCants and Connie Fortune to DENY).

BZA APPLICATION NO. 13151  
PAGE 10

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 4 MAY 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOM FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."