GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14137 of Fourways, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3105.3) to use the third floor of the subject premises for a "preplanned function and meeting facility" in an R-5-B District at premises 1701 20th Street, N.W., (Square 110, Lot 60).

HEARING DATE: May 23, 1984
DECISION DATES: June 6 and July 11, 1984

FINDINGS OF FACT:

1. The subject property is located on the northeast corner of the intersection of 20th and R Streets, N.W., and is known as premises 1701 20th Street, N.W. It is in an R-5-B District.

2. The site is generally rectangular in shape, containing approximately 14,321 square feet with approximately 143 feet of frontage on R Street and approximately 100 feet of frontage on 20th Street. The site is improved with a four-story masonry structure with two cellars. The structure contains a total gross floor area of approximately 14,050 square feet. It was constructed in 1890.

3. The subject structure is located in the southwest corner of the site. Extending from the west and south exterior walls of the structure is a twelve to fourteen foot high masonry wall with openings for pedestrian and vehicular access extending along the perimeter of the site. A vehicular drive serves the structure from 20th Street at the main pedestrian entrance. A secondary entrance is located on the north side of the structure with access through a pedestrian gate from 20th Street.

4. The subject site is located approximately fifty feet from Connecticut Avenue and two blocks from Dupont Circle. To the east and north of the site for approximately two blocks is a residential area characterized by a variety of single-family and multi-family housing types in the R-5-B District, followed by New Hampshire Avenue with a variety of uses in the SP District. To the south across R Street is a restaurant with an outdoor cafe, followed by other commercial uses fronting on Connecticut Avenue in the C-3-B District. To the west and northwest across 20th Street are commercial

properties fronting on Connecticut Avenue in the C-3-B District.

5. The structure was originally designed by the architects Hornblower and Marshall as a residence for George S. Fraser, a merchant who came to the District of Columbia in 1888.

6. The house was occupied as a residence until 1932, when the Parrot Tea Room was opened as a restaurant with a rooming house upstairs. It then became the Golden Parrot Restaurant for the next twenty-four years. In 1974, the Golden Parrot Restaurant went out of business. Since then, four restaurants have located in the structure and have also gone out of business. Presently, Fourways Restaurant occupies all floors of the structure except the third floor.

7. The subject structure was designated a landmark and placed on the National Register of Historic Places in 1974. At one time known as the Scott-Throop House, it is presently known as the Fraser Mansion. All changes to the exterior of the building are governed by D.C. Law 2-144.

8. The subject site is currently zoned R-5-B. It was zoned first commercial prior to 1958.

9. In Order No. 13748, dated August 27, 1982, this Board approved the applicant's request to extend the restaurant use to the second floor and the restaurant administrative office to part of the third floor. The Board further approved the continuance of an outdoor cafe and the construction of an elevator and dumbwaiter.

10. In Order No. 13950, dated September 20, 1983, this Board approved the applicant's request to use all of the third floor for SP-type office use and all of the fourth floor for administrative offices for the restaurant. The applicant has been unsuccessful in trying to lease the third floor for the permitted use.

11. Current certificates of occupancy permit restaurant use of the cellar, first and second floors, restaurant office use for part of the third floor and rooming house uses for the remainder of the third floor and restaurant office use for the entire fourth floor. There are, however, no residential uses presently in the building.

12. The applicant indicated that the purpose of this application is to seek a use for the third floor of the subject property that will enable the applicant to receive a reasonable return for the space while not disrupting the on-going restaurant operation. Fees generated from the proposed use will be used to defray the major expenditures that have been made to restore the landmark site. The

applicant has determined that the third floor may not reasonably be used for any residential purposes or other uses permitted in the R-5-B zone. The proposed use has been determined to be compatible with the restaurant and will enable the applicant to have direct control over the use and operation of the third floor.

13. The applicant is seeking a use variance to permit the use of the third floor of the structure as a business club, opened to the public on a membership basis. There will be approximately 200 members. The third floor would be converted into meeting rooms and lounges designed for preplanned functions, such as receptions, business meetings and light fare luncheons or suppers. The applicant believes that there is a need for such a facility and that the applicant will be frequented by the many people who must come to Washington on national or international business. The new function rooms would compliment the restaurant as an entertainment facility. The purposed use would have positive financial benefits by increasing revenues not only on the third floor, but for the restaurant as well.

14. The development of the third floor into function rooms would conform to the existing usage of the building, would be easy to operate and would assure the restoration and maintenance of the interior. The plans are to complete the renovation of the landmark in the original style of the Fraser Mansion. Costs to date are approximately $6 million. No exterior renovations or alterations will be made to the structure.

15. The applicant and the project architect testified that the third floor of the structure is affected by an extraordinary or exceptional situation or condition, as follows:

a. The existing building pre-dates the Zoning Regulations and the structural and physical configuration of the interior of the building prevents the separation of the third floor space from the restaurant uses located on all other floors in the building.

b. Due to the landmark status of the building, no structural alterations can be made which would provide separate access to the third floor without destroying the character of the existing "grand staircase" or damaging the historic facade of the structure in order to build a new staircase and entrance. Any such structural changes would also require review and approval of the Historic Preservation Review Board as governed by D.C. Law 2-144.

c. Without separation of the third floor from the restaurant uses on other floors, any tenant of that space would be subjected to the noise, odors and traffic associated with the restaurant in addition to security problems occurring because that space would be accessible to patrons and employees of the restaurant and the restaurant would be accessible to tenants and visitors to the third floor space.

d. The premises have been used commercially since 1932. The third floor has not been used for any permitted purpose for many years. The applicant has been unable to provide any appropriate permitted use on the third floor.

e. Recent amendments to the nonconforming use regulations have acted to effectively limit the adaptability of the site to changing market conditions.

16. The applicant presently has Board approval to use the third floor for SP office use. A real estate agent, retained by the applicant to lease the space, testified that the third floor of the subject site is unsuitable for permitted R-5-B or SP uses and that diligent efforts to lease the space have been futile. The physical configuration and landmark status of the site and the location of an active commercial use above and below the third floor prevents the conversion of the floor for suitable uses and inhibits prospective tenants. Another agent filed written documentation with similar conclusions.

17. A real estate appraiser, familiar with marketing conditions in the Dupont Circle area, testified that the third floor of the subject structure could not be developed in strict conformity with the Zoning Regulations in such a manner that the applicant would achieve a fair and reasonable return. Factors considered by the real estate appraiser in reaching his conclusion included the prior zoning history of the site including the prior first commercial zoning, the existing improvements on the site, the prior sustained effort to lease the third floor for permitted uses, the landmark status of the structure and the location of the site along the less restricted Connecticut Avenue commercial corridor.

18. Exceptional and undue hardship will ensue in this case if the use variance is not granted. The testimony and evidence of record demonstrate that the applicant has attempted on two prior occasions to use the third floor for permitted uses but these attempts failed because the proposed uses were not compatible with the restaurant use and therefore were not marketable. When the applicant originally

purchased the site in 1981, it intended to use the third floor for residential purposes. Although the third floor has a certificate of occupancy for a boarding house use, it has not been used as such for many years. Residential use of even the upper floors has not been feasible for many years because there is neither a separate entrance nor separate space for such a use. There is also an increased safety risk with having mixed uses without separation. For this reason, the applicant was granted permission by the Board in Order No. 13950 to use the upper floors for SP-type and administrative offices. The applicant proceeded to diligently market the third floor for SP-type professional office use, pursuant to BZA Order No. 13950. Again, no tenant could be found and the applicant has not been able to realize a fair return on the property.

19. The proposed use will be harmonious with the other uses in the neighborhood and, in particular, the restaurant use in the structure itself. There will be no visual impact from the outside since the use will be confined to the third floor.

20. The applicant purchased the site in 1981 with the intention of creating an environment that was both a service to the community and a source of pride and benefit to the neighborhood. Restoration of a historic landmark conforms with the Preservation and Historic Features Element of the District of Columbia Comprehensive Plan Act of 1984.

21. The applicant's traffic expert testified that the proposed use on the third floor would not generate more traffic than that which would be generated by the prior approved uses. The witness testified that, in a peak period of usage of the building, the twenty-six parking spaces provided would be adequate without need to use available curb spaces on 20th and R Streets.

22. A representative of the Dupont Circle Citizens Association (DCCA) testified that the Zoning Committee supported the granting of this application with the understanding that the variance would not extend to any other operator. The DCCA representative submitted a copy of an agreement between the applicant, the DCCA and the ANC, marked as Exhibit No. 21 of the record. The agreement provides that the benefits achieved from the granting of the variance will extinguish should this applicant sell the property or if the property were destroyed, and that the applicant will use its best efforts to maintain the historic character of the property with respect to both the interior and exterior. The DCCA representative testified further that the Zoning Committee talked with residents of the subject square and that the residents' comments indicated that Fourways was on excellent neighbor, the use is

considered an appropriate one, and is an appropriate use of the landmark building.

23. Advisory Neighborhood Commission 2B, by letter dated May 16, 1984, recommended that the application be approved subject to the covenant described in Finding of Fact No. 22. The ANC was concerned that the historic integrity of the property be maintained and that the variance apply to the benefit of Fourways only. The agreement between the applicant, the ANC and the DCCA addressed and met those concerns, and the Board therefore need not establish conditions of its own in this regard.

24. A representative of the Residential Action Coalition (RAC) appeared in opposition to the application. The RAC representative testified that the RAC opposed the granting of the application for the following reasons:

A. The proposed use is not defined in the Zoning Regulations and, therefore, there is no way to determine the zoning classification applicable to the proposed use nor to define the activities which would be permitted. It was the opinion of the RAC representative that the application was not properly drawn and should not be considered by the Board.

B. The applicant has not adequately explored the matter-of-right uses to which the space could be put, specifically as a private, non-profit club.

C. The proposed use would generate additional traffic and increase the demand for parking in the immediate neighborhood.

D. The application does not meet the standards for a use variance as set forth in the D.C. Court of Appeals decision in Palmer vs. the BZA, in that "an inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute a hardship."

25. In addressing the issues and concerns of the opposition, the Board finds as follows:

A. The application is properly before the Board as directed by the Zoning Administrator. Paragraph 5101.34 provides for "other similar service or retail use ... clearly incidental to the conduct of a permitted service or retail establishment on the premises." The proposed use would fall into that residual category.

B. The testimony of the applicant's traffic expert is persuasive that the proposed use will not generate traffic in excess of that which could reasonably be generated by permitted or approved uses of the subject site.

C. The Board notes that the standards for the granting of a use variance have been addressed by the Court in several instances including Palmer vs. the BZA, 287 A.2d 535 (D.C. App., 1982), the Clerics of St. Viator vs. the BZA 320 A.2d 291, 294, (D.C.App., 1974) and De Azcarate vs. the BZA, 388 A.2d 1233, 1237, (D.C. App., 1978). The Board must apply those standards as appropriate given the circumstances relative to each specific case and not on a general or unspecified basis.

26. At the public meeting of June 6, 1984, a motion to grant the application failed by a vote of two to one. The Board deferred a decision on the application to allow for the other members of the Board to read the record. The Board also reopened the record and requested that the applicant submit a memorandum as to why the third floor of the subject premises could not be used for a permitted purpose, specifically as a "private club" as defined by the Zoning Regulations.

27. By letter dated June 20, 1984, counsel for the applicant argued that a private club, as defined by the Zoning Regulations, is not feasible for the third floor of the site for the following reasons:

a. The definition of private club severely limits the purposes of such a club and restricts the club to non-profit status. It would be unlikely that such a tenant would be able to afford to pay the fair rental value necessary to defray the costs of restoration of that portion of the structure which is estimated at approximately $350,000 to $400,000.

b. The definition further constrains the amount and nature of office space available for a private club. As defined, office space would be "... limited to that necessary and customarily incidental to maintaining the membership and financial records of the organization."

c. The real estate appraiser filed a supplemental report which concluded that a nonprofit private club could not be found that would be willing to pay office level rent, share entrance with the restaurant, and have no access to or use of the premises when the restaurant is not in use.

The Board so finds.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires substantial probative evidence of an undue hardship upon the owner caused by an exceptional or extraordinary condition inherent in the property itself. The Board concludes that the applicant has met the required burden of proof.

The subject structure was erected in 1890 and is on the National Register of Historic Places. The applicant is in the process of restoring the building to its original grandeur. Structural alterations to the building could destroy the historic integrity of the structure. The applicant has evidenced through expert testimony that the third floor is unsuitable for uses permitted as a matter of right or as a special exception. The site has a long history of commercial use on the lower floors and the third and fourth floors have not been used for residential purposes for many years. The site was zoned first commercial prior to the adoption of the 1958 Zoning Regulations. The Board finds persuasive the argument of the applicant that the third floor cannot be put to a permitted use with a fair and reasonable return without the granting of a use variance. Finally, the Board concludes that the requested variance can be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations.

The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. It is therefore ORDERED that the application is GRANTED in its entirety SUBJECT to the following CONDITIONS:

1. The maximum number of members of the business club to whom the facility will be available shall be 200.

2. Occupancy of the facility shall not exceed the limit established by the Fire Marshall.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Lindsley Williams to grant; Douglas J. Patton and Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY: _____
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 14 SEP 1984

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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