

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14411 of William and Peter Calomiris, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to convert floors three through eight from apartments to SP office uses and for a variance from the floor area ratio limitations (F.A.R. of 3.5) in an SP-2 District at premises 1112 - 16th Street, N.W., (Square 183, Lot 105).

HEARING DATE: April 9, 1986

DECISION DATE: May 7, 1986

FINDINGS OF FACT:

1. The property is located on the west side of 16th Street, between L and M Streets, N.W. and is known as 1112 - 16th Street, N.W. (Square 183, Lot 105). The premises is located in an SP-2 District.
2. The lot is improved with an eight-story, Art Deco style building that was constructed in 1940, prior to the adoption of the existing Zoning Regulations. The lobby, first, and second levels of the property contain office suites for professional and nonprofit office uses. The third through eighth levels of the building contain a total of eighty-three efficiency residential units. Each of these units, which are in need of repair and modernization, consists of one room, a bath, and a small cooking area.
3. The height of the structure is approximately ninety feet. It contains a total of approximately 55,703 gross square feet and occupies approximately eighty-four percent of the lot. It is abutted on both sides by buildings. A public alley bounds the lot on the rear property line.
4. The Zoning Regulations allow a maximum floor area ratio (FAR) of 3.5 for nonresidential uses and 6.0 for all uses. The structure was built to a total FAR of 7.0 and is, thus, a nonconforming structure as to any use. The applicants request a special exception and a variance from the FAR limitations on nonresidential uses to permit the existing structure to be used as special purpose offices. There would not be any additions to the structure.

5. Apart from the installation of new windows on the rear facade of the building on the third through eighth levels, no changes are contemplated in the height, bulk, or exterior design of the building in connection with the proposed use. The ninety foot height of the building is in conformance with the SP-2 District requirements and neighboring development. The 7.0 FAR of the building exceeds current SP-2 requirements as a result of zoning amendments in 1958 and 1978 that reduced the maximum density for new buildings, particularly with respect to nonresidential uses.

6. The property is located in an area that is dominated by office and commercial uses. There are no other residential uses located in the entire square in which the property is located. The buildings located immediately adjacent to the property to the north, south, and west are used for commercial and special purpose office uses. The Benjamin Franklin University building, Planned Parenthood of Metropolitan Washington, the Philip Murray (labor union) Building, and the American International Automobile Dealers Association Building neighbor the property on 16th Street. To the east, across 16th Street from the property, the entire block is occupied by special purpose office or institutional users such as the University Club, the Russian Embassy, the Corporation for Public Broadcasting, and the American Chemical Society. Commercial office buildings with heights as much as 130 feet and a nonresidential FAR as much as 10.0 neighbor the property on the west.

7. The structure was originally built and used for high density residential purposes. The building was built in conformance with the Zoning Regulations that were in effect in 1940. At the time of construction, and for some time thereafter, the surrounding neighborhood was predominately residential in character. The neighborhood has changed over the years to the point that it is now characterized by medium to high density special purpose and commercial office uses. Many of the buildings in the area exceed the allowable FAR limitation for nonresidential uses because, like the property, they were developed prior to the 1978 adoption of the current SP-2 limitations.

8. The applicants were granted a special exception to use the lobby, first, and second levels of the building for special purpose office uses in 1982. (BZA Order No. 13704, effective July 29, 1982.) The applicants adapted and converted these floors to special purpose office uses to improve the economic viability of the building. In connection with this change in use, the applicants completely renovated the building's exterior, winning the first Preservation Award of the Art Deco Society of Washington for the quality of the restoration of the Art Deco architectural design of the building. The exterior is proposed to remain the same.

9. The applicants propose to use the third through eighth levels in the building as offices for a chancery, international agency, nonprofit organization, labor union, architect, dentist, doctor, engineer, lawyer, or other similar professional persons. The space that was formerly used as efficiency apartments would be renovated and used as professional office suites. The applicants anticipate that three professional office suites will be created on each of the top six levels. The applicants have submitted a letter from PMI Parking reserving 31 off-street parking spaces for the proposed use at its parking garages located at 1101 - 17th Street, N.W. and 1514 L Street, N.W.

10. The applicants made substantial efforts to make the new mixed-use character of the building a success. Two full-time attendants (24 hours a day, 7 days a week) were employed to be available to assist residential and office tenants alike. In addition, an operating engineer was on the premises during the day. A security system was installed on the elevators to restrict access to the residential floors to residential tenants. A computerized telephonic entry system was installed for the convenience of the residential tenants only.

11. Serious and costly vandalism followed the introduction of the new special purpose office uses. The floors, walls, and doors in the building lobby, which is used by both residential and office tenants, were repeatedly vandalized. Furthermore, the building elevators were defaced on numerous occasions. The applicants attempted to identify the perpetrator and to prevent the vandalism in the building by asking their employees to be alert to the situation and to report any unusual activities in the building. The applicants also distributed notices to all the tenants, on several occasions, apologizing for the vandalism and asking the tenants to stay alert and to notify the landlord of any suspicious activities. Although the applicants indicated that they fully intended to prosecute for the vandalism, the vandalism continued, and the applicant was not able to identify the perpetrator.

12. All of the efficiency apartment units located on the third through eighth levels are now vacant except for one. These units became vacant as a result of residential tenant attrition in the building and a voluntary relocation program that was initiated by the applicants. The applicants instituted the voluntary relocation program after they determined that the mixed-use composition of the building was not a workable use for either the special purpose office or the residential tenants. The program entailed individual discussions with the tenants to discuss the difficulties of continuing the mixed-use and of the applicants' consequential desire to use the building exclusively for special purpose office uses. The applicants offered help to

all of the tenants in finding a new residence as well as financial relocation assistance, including moving expenses. Some of the tenants in the building formed a tenants' association and negotiated as a group. All of the tenants voluntarily relocated with the exception of one tenant. Letters were also submitted into the record by former tenants expressing their satisfaction with their relocation.

13. Mixed-use in high-rise, urban structures constitute a reasonable and practical use when a well-defined entrance lobby and vertical circulation core are separately provided for each use. It is not practical nor structurally possible to construct a separate lobby and vertical core system in this building due to the existing structural limitations. Other factors which preclude the possibility of introducing a new lobby configuration and new cores for a separate vertical circulation system include the desirability of retaining its Art Deco facade, the applicants' inability to vacate existing space due to a long-term lease on the levels used for special purpose office space, and safety concerns.

14. After the costly, extensive renovation of the exterior and interior of the building in connection with the adaptation of the lobby, first, and second floors for office use, a reversion to all-residential use would pose severe economic consequences. The existing office tenants have long-term leases on the office space. The alternative of leaving the third through eighth levels of the building vacant is impractical and would be burdensome on the applicants. Furthermore, the size of the lot cannot be increased to reduced the FAR of the building because it is adjoined on both sides by existing buildings and to rear by a public alley.

15. The Office of Planning (OP), by memorandum dated April 2, 1986 and through testimony at the public hearing, recommended approval of the special exception and the variance subject to the condition that the applicants submit for the record a proposed arrangement for reserved parking for the special purpose office space. OP reported that the proposed special purpose office use to the building, in its opinion, was in harmony with other land uses in the neighborhood. OP reported that the applicants' plans to retain the original Art Deco architectural design of the building will contribute to the character of lower 16th Street, which serves as a vista to the White House and Lafayette Park. OP's memorandum noted that the existing 7.0 FAR of the building is a unique situation of the property. The OP further reported that the site is well served by public transportation routes. These include eleven Metrobus routes, a red line Metrorail station located two blocks west of the site, and a blue line Metrorail station located three blocks to the south. In addition to available public

transportation, employees and visitors to the site have access to many private parking garages located within two blocks of the site. There is restricted two-hour metered parking permitted on the streets in the neighborhood. The OP also noted that the applicants had since submitted a satisfactory parking arrangement. The Board concurs with the reasoning and recommendation of the OP.

16. Advisory Neighborhood Commission (ANC) 2B, by letter dated April 2, 1986, stated its opposition to the applicants' previous BZA application (Application No. 13704) to use the lobby, first, and second levels of the subject building for special purpose office use, thereby eliminating some residential space in favor of a mixed-use. The applicants cannot, therefore, complain that the mixed use is now incompatible. The ANC rejected the applicants claim that the mixed-use arrangement in the building is unworkable, noting that there are many mixed-use buildings in ANC-2B. The ANC further noted that the proposed use is at odds with the Mayor's desire that future downtown development include residential space and that the ANC continues to oppose the loss of additional residential units in the ANC.

17. Members of the Tenants' Association offered support for the applicants' proposed use, stating that they had relocated voluntarily and that the building was not suited for living purposes because of a lack of residential services nearby and because of the vandalism that had occurred.

18. A representative of the Residential Action Coalition (RAC) opposed the application claiming that the applicants had not demonstrated any practical difficulty in the property and that the proposed use is not consistent with the mixed-use goals of the SP District. The RAC representative also opposed the application contending that it would adversely affect the city's housing goals. RAC further argued that the relief requested constituted a use rather than an area variance.

19. The Dupont Citizens Association (DCCA) also opposed the application on the grounds that the grant would be contrary to the purpose of the SP District, which is to protect areas adjacent to commercial districts that contain a mix of row houses, apartments, offices, and institutions.

20. The remaining residential tenant of the building opposed the application complaining about the applicants' poor maintenance of the building and contending that the poor maintenance and disregard of complaints forced the tenants to consider moving especially when moving bonuses were involved. The tenant also alleged that the owners never intended to rent the vacated apartments, since they

had never advertised the apartments for rent. Finally, the tenant disagreed that the neighborhood was not conducive to residential living.

21. The Board is required by statute to give great weight to the issues and concerns of the ANC. In addressing the ANC's concerns, as well as those raised by other opposition, the Board finds:

- A. The applicants do not have to prove that the problems associated with a mixed-use in the building could or should have been foreseen. The burden is on the applicant to prove compliance with the requirements of Sub-section 8207.2 and Paragraphs 4104.44 and 8207.2 of the Zoning Regulations. As to the ANC's opposition to the previous case, the Board has consistently stated that it must and will decide each case on the specific set of facts presented in that case. The previous opposition of the ANC has no evidentiary value to this case.
- B. For reasons cited in its Conclusions of Law, the Board finds that the applicants have met their burden of proof to demonstrate that there are practical difficulties inherent in the property. The existence of other mixed-use buildings in ANC-2B's jurisdiction does not rebut the applicants' evidence demonstrating the practical difficulties inherent in the subject property, nor does it preclude the use of this building for SP-2 offices.
- C. While the Board is sensitive to the loss of housing units in any part of the City, it must find that the Zoning Regulations do not impose a burden on these applicants to prove that the subject property cannot be used for residential purposes. The applicants seek their relief through a special exception not a use variance. Furthermore, the applicants are not required by the Zoning Regulations to maintain residential units in this building in order to be granted the requested relief.
- D. As to the concerns raised by the existing tenant in the subject building, the Board finds that his complaints about the building and building management are not properly before the Board. Such concerns are not zoning issues; thus, any relief sought should be brought before another forum.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of the record, the Board concludes that the applicants are seeking a special exception to use the third through eighth floors of 1112-16th Street, N.W. as offices for a chancery, international agency, nonprofit organization, labor union, architect, dentist, doctor, engineer, lawyer, or other similar professional persons and an area variance from the FAR limitation in a special purpose district of 3.5 for use other than residential. Under Paragraph 4101.44 of the Zoning Regulations, the following use is permitted in a SP District if approved by the Board of Zoning Adjustment:

4101.44 Office for an international organization, nonprofit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person, provided that:

4101.441 The use, height, bulk and design are in harmony with existing uses and structures on neighboring property;

4101.442 The use will not create dangerous or other objectionable traffic conditions;

4101.443 The Board may require such special treatment in the way of design, screening of buildings, accessory uses, signs, and other facilities as it shall deem necessary to protect the value of neighboring property.

Furthermore, the applicant must show that the grant of the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. (Paragraph 8207.2).

As to the special exception, the Board concludes that the applicants have substantially complied with the requirements of Paragraph 4101.44. First, the proposed special purpose office use of the building will be in harmony with existing uses on neighboring property. The predominant use of the vicinity of 1112-16th Street is office space both commercial and special purpose. The buildings surrounding the immediate site are the Phillip Murray Office Building to the north and Planned Parenthood Offices to the south. Directly behind the property to the west are office buildings, while to the east across 16th Street is the Corporation for Public Broadcasting. There are no existing residential uses in the square or on the entire block of 16th Street where the building is located.

Furthermore, the height, bulk, and design of 1112-16th Street, N.W. will continue to be in harmony with neighboring properties. Apart from the installation of new windows on

the rear facade of the building on the third through eighth floors, no changes are contemplated in the height, bulk, or exterior design of the building in connection with the proposed use. The height of the building is in conformance with the applicable zoning standards. The 7.0 FAR of the building exceeds current zoning standards, but this excess is due solely to zoning amendments in 1958 and 1978 that reduced the maximum density for new buildings, particularly with respect to nonresidential uses. Moreover, the existing density of the property is in harmony with neighboring properties, many of which also exceed current SP-2 FAR limitations because they were developed prior to the adaptation of the 1978 regulations.

Second, the site is well served by public transportation, creating no dangerous or objectionable traffic conditions. Numerous bus lines operate along 16th Street, and there is access to the red, blue, and orange lines of the metro within a couple of blocks. Furthermore, there are on-street and numerous off-street parking facilities available within the area. Applicants have obtained a reservation of thirty-one off-street parking spaces for their proposed use from PMI Parking located conveniently at 1101-17th Street, N.W. and 1514 L Street, N.W. Frequent taxicab service operates within the area in and around the Capitol Hilton Hotel and University Club, both of which are located on 16th Street across from the site.

The Board further concludes that the special exception can be granted in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The applicant plans provide for the retention of the original Art Deco architectural style of the building. The presence of this forty-six year old building on lower 16th Street will continue to contribute to the character of this vista towards the White House and Lafayette Park.

The variance requested concerns a grant to use a structure for a permitted use in excess of the FAR limitations prescribed by the Zoning Regulations. The Board has ruled that an extension of a use that is permitted as a special exception in excess of the applicable FAR limitations is an area variance. The Board concludes that the relief requested here is an area variance.

The granting of an area variance requires a showing of an exceptional situation or condition of the property which causes a practical difficulty for the owner. The Board concludes that the existence and configuration of the lot and building since 1940, long before the adoption of the Zoning Regulations, and the fact that the existing building on the lot already exceeds the FAR requirements of the SP-2

District create an exceptional condition and a practical difficulty upon the owners of the property. The Board further concludes that the applicants have shown that the strict application of the 3.5 FAR limitation of the SP-2 District would result in practical difficulties that stem from the property. The structure occupies eighty-four percent of its lot, and the lot cannot be expanded because it is adjoined on both sides by existing buildings and to the rear by a public alley. The structure should not be reduced because it has a unique, Art Deco architectural design that contributes to and is consistent with the character of the lower 16th Street area.

The Board further concludes that the strict application of the 3.5 FAR limitation on nonresidential uses in an existing structure that was built to a 7.0 FAR would be unreasonable and economically burdensome on the applicants, particularly in view of the finding that this structure is located in an area where nearly all other buildings are used for nonresidential purposes. The property also cannot be reasonably used for mixed office and residential purposes because of the security and vandalism problems associated with the joint use of common areas. Restructuring the building to provide separate lobbies and vertical circulation systems for office and residential uses is not practical nor physically feasible in this structure. The Board further concludes that the retention and maintenance of the structure is in keeping with the purposes of the SP-2 District and that the variance can be granted without substantially impairing the intent, purpose, or integrity of the Zone Plan as embodied in the Zoning Regulations and Map.

Accordingly, it is ORDERED that the application is GRANTED in its entirety,

VOTE: 4-0 (Charles R. Norris, Paula L. Jewell, William F. McIntosh, and Carrie L. Thornhill, to grant).

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

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: _____

AUG 25 1986

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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