

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15679 of GSP, LTD., pursuant to 11 DCMR 3108.1, for a special exception under Section 2003 to continue a nonconforming use previously approved under BZA Order No. 14485 for a restaurant-seating 125 on the first and second floors in an HR/SP-2 District at premises 1335 Green Court, N.W. (Square 247, Lot 831).

HEARING DATE: June 24, 1992
DECISION DATE: July 1, 1992

SUMMARY OF EVIDENCE:

1. The property that is the subject of this application is located at 1335 Green Court, N.W. The property is improved with a two-story structure which has been used as a restaurant since 1982. It is zoned HR/SP-2.

2. The SP-2 District permits matter of right medium/high density development including all kinds of residential uses, with limited offices for nonprofit organizations, trade associations and professionals permitted as a special exception requiring approval of the BZA, to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

The HR District (Hotel/Residential incentive overlay) permits development incentives for residential and hotel uses only, to a maximum FAR of 8.5 and a maximum height, as permitted by the "Act to Regulate the Height of Buildings, June 1, 1910, as amended." This zone district is mapped in combination with other zone districts.

3. The subject property is located in the Thomas Circle Community. It is bounded by 13th and 14th Streets N.W. to the east and west, L Street N.W. to the south and Massachusetts Avenue to the north. The subject site measures approximately 2,000 square feet in land area and is occupied by a two-story brick structure which has a lot occupancy of 100 percent.

4. The restaurant is being used as first approved by BZA Order No. 13677, dated May 1982, and effective for a period of three years. The applicant has received board approvals to continue the restaurant use. The last approval was granted by Order No. 15271, dated June 29, 1990, and is due to expire in March 1993. In approving the application, the Board imposed the following CONDITIONS:

- a. Approval shall be for a period of **THREE YEARS** from the date of expiration of the previous Order, namely from March 12, 1990.
- b. There shall be no musical entertainment other than light music intended only as an enhancement to dining or as accompaniment to the stand-up comedian entertainment. There shall be no dancing on the subject premises.
- c. The restaurant shall provide full menu service until at least one and one-half hours before closing. All waiters and waitresses shall be properly attired.
- d. All loading shall be confined to the stub alley behind the restaurant and conducted in an orderly fashion which allows delivery trucks to unload and quickly exit the premises.
- e. There shall be no signs that will cause light to reflect into the windows of any of the apartments in the building at 1314 Massachusetts Avenue, N.W.
- f. There shall be no deliveries before 7:30 a.m. nor after 5:00 p.m. except for emergencies.
- g. Garbage shall be picked-up at least three days per week.
- h. Any advertising indicating access to the restaurant shall front on L Street.
- i. The hours of operation shall not exceed 12:00 midnight Sunday through Thursday and 1:00 a.m. on Friday and Saturday.

5. The site is accessible from the alley. The structure fronts on a 30-foot wide east-west alley that runs from 14th Street N.W. and dead-ends mid-block. The structure is also accessible through a 15-foot wide north-south alley located between Massachusetts Avenue and L Street N.W. The Massachusetts Avenue and 14th Street N.W. frontages of Square 247 are developed fully with residential and SP-type office buildings. However, the frontages along L and 13th Streets are only partially developed and contain large parking lots. The residential buildings along Massachusetts Avenue include the Thomas House and the 1314 Massachusetts Avenue apartment building. Thomas Circle is located to the northwest of Square 247.

6. The applicant is requesting board approval for the continuance of the restaurant use for a longer period of time along with an increase in the hours of operation. The applicant is

requesting that the restaurant be allowed to operate until 3:00 a.m. to accommodate three comedy shows rather than two shows per night.

7. The subject site was once occupied by a uniform supply company. A certificate of occupancy was not issued for that use. The most recent certificate of occupancy issued for the subject premises prior to the restaurant use was Certificate of Occupancy No. B121103, dated July 3, 1980, for an office.

8. The applicant testified that GSP, Limited has always received good support from the neighborhood, and that no official complaint was ever filed with the District on any matter, such as light, noise, or parking within the past ten years of operation.

The applicant also stated that he is in constant communication with some of the neighbors, especially the next door neighbors, who reside at Thomas House, and members of the Franklin Square Association.

The applicant testified that the subject site is located in an alley and in the middle of the block. A parking lot is located in front. He also stated that it would be beneficial to have a restaurant present in the area to avoid illegal or disruptive activities.

The applicant also mentioned that the present reason for the extension of hours is to attract new tenants to operate the restaurant, because the present owners are not doing well financially. Also, longer hours of operation can serve as a deterrent to crime. The intention is to maintain the same type of operation. The new tenants want to operate a restaurant business and comedy club in the evenings.

9. By memorandum dated June 16, 1992, the Office of Planning (OP) recommended conditional approval of this application. It was noted that the subject site is located in an HR/SP-2 District and is developed with a two-story structure which has been used as a restaurant since 1982. The restaurant was recently approved by the Board. The most recent approval for the restaurant was granted for three years under BZA Order No. 15271, dated June 1990. The applicant is allowed to continue the existing restaurant use at the subject site until March 12, 1993.

10. OP also noted in its report that the applicant is in the process of changing the present tenant at the subject premises. The prospective tenant requires a lease arrangement for an extended period of time. Currently, the hours of operation are limited to 12:00 midnight, Sunday through Thursday, and 1:00 a.m. on Friday and Saturday.

11. OP noted that the subject premises are being used for a restaurant as previously approved by the Board. The current approval for the restaurant is valid until March 1993. However, the applicant is in the process of leasing the operation to a new tenant who requires a longer time period for the lease to ensure a successful business operation. The Office of Planning does not object to the extension in this time period. However, the Office of Planning is not in favor of extending the restaurant's hours of operation. Such an increase may have adverse impact on the area because of noise, traffic and other objectionable conditions. Accordingly, the Office of Planning recommends that this application be approved for a period of four years with the same conditions as previously imposed including the same hours of operation.

The subject site is located within the jurisdiction of Advisory Neighborhood Commission (ANC) 2C. At the time this report was prepared, the ANC had not taken a position on this case.

12. No report was received in the record from Advisory Neighborhood Commission 2C on this application.

13. Raymond Smith, Vice President of the Resident Council at Thomas House, 1330 Massachusetts Avenue, submitted a statement and testified before the Board, in opposition to this application. Mr. Smith stated that there were a few complaints concerning loud noise. However, there were complaints about the trash generated from the restaurant. It was also stated that the residents of Thomas House are not opposed to the present operation, but are not in favor of any changes in the operation of the restaurant.

14. The applicant stated that he worked out an agreement with someone from Thomas House to help keep the alley clean. He also indicated that he is in favor of communicating with that group to work towards finding a solution to problems of this nature.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. Most conditions and circumstances that were the basis of the Board's approval on June 29, 1990 remain the same.
2. Noise and trash are present concerns of residents of the Thomas House. The applicant is willing to resolve these issues.
3. The applicant plans to lease the premises to a new operator who wishes to have longer hours of operation.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to continue a nonconforming use originally approved under BZA Order No. 14485 for a restaurant seating 125 on the first and second floors in an HR/SP-2 District.

The granting of such special exception relief requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the application will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map. The restaurant continues to be compatible with the mix of commercial and residential uses, and should not have an adverse affect on future development. The applicant must also continue to meet the applicable provisions of 11 DCMR 3108.1 for a special exception and under Section 2003 to govern changing uses within structures. The applicant has requested to continue a nonconforming use that was previously approved.

The Board concludes that the applicant has met the burden of proof. The circumstances under which the Board previously approved the application have not changed significantly. The conditions previously imposed must however, continue. The Board concludes that an extension of the hours of operation would have an adverse effect on adjoining and nearby property. Extending the hours of operation from 12:00 midnight to 3:00 a.m. does not ensure criminal activity will not take place. To the contrary, an extension of hours is likely to increase adverse impacts like noise, traffic, or trash.

The Board concludes that the facility will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area provided adherence to the imposed conditions are complied with. The applicant is willing to cooperate with the community to solve problems as they arise. In addition, the Board notes that no official complaints were ever filed with the District on any matter, such as light, noise, parking within the past ten years.

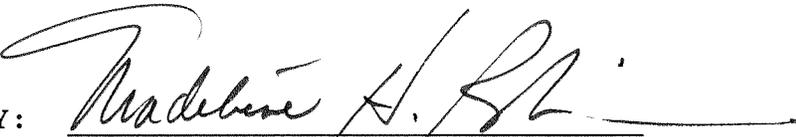
Finally, the Board concludes that granting the application is in harmony with the general purpose and intent of the Zoning Regulations and Map, and that it will not tend to adversely affect the use of neighboring property.

Based on the foregoing, the Board **ORDERS** that the application is hereby **GRANTED**, **SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of **FIVE YEARS** from the date of expiration of the previous order, namely from March 12, 1993.
2. There shall be no musical entertainment other than light music intended only as an enhancement to dining or as accompaniment to the stand-up comedian entertainment. There shall be no dancing on the subject premises.
3. The restaurant shall provide full menu service until at least one and one-half hours before closing. All waiters and waitresses shall be properly attired.
4. All loading shall be confined to the stub alley behind the restaurant and conducted in an orderly fashion which allows delivery trucks to unload and quickly exit the premises.
5. There shall be no signs that will cause light to reflect into the windows of any of the apartments in the building at 1314 Massachusetts Avenue, N.W.
6. There shall be no deliveries before 7:30 a.m. nor after 5:00 p.m., except for emergencies.
7. Garbage shall be picked-up at least three days per week.
8. Any advertising indicating access to the restaurant shall front on L Street.
9. The hours of operation shall not exceed 12:00 midnight Sunday through Thursday and 1:00 a.m. on Friday and Saturday.

VOTE: 4-0 (Maybelle Taylor Bennett, Angel F. Clarens, Paula L. Jewell and Carrie L. Thornhill to grant; Sheri M. Pruitt not voting, not having heard the case).

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

ATTESTED BY: 
MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: MAY 27 1994

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PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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, 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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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15679

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAY 27 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Geoffrey Serrell
P.O. Box 3848
Reston, Virginia 22090

Raymond Smith
Thomas House Resident Council
1330 Massachusetts Avenue, N.W.
Washington, D.C. 20005



MADELIENE H. ROBINSON
Director

DATE: MAY 27 1994