Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 555-A
Case No. 86-19
(Fourways - Map Amendment)
March 12, 1990

FINDINGS OF FACT

1. This matter is before the Commission on a remand from the District of Columbia Court of Appeals, in which the court orders the Commission to:

   > Specify the terms, conditions and legal effect of the covenant [that is referenced in Findings No. 23, 25, & 26 of the Zoning Commission Order No. 555 dated May 23, 1988]. Also, the record is remanded for clarification of Finding No. 23 as to whether the use desired by the applicant can be achieved under current R-5-B zoning.

2. The referenced covenant consists of: a Declaration of Covenants dated April 6, 1987 (Ex. 204C); as amended by an amendment dated January 4, 1988, and a second amendment to Declaration of Covenant, dated February 8, 1988 (Ex. 361).

3. Read together, the foregoing covenants operate to restrict the development and use of Lot 60 in Square 110 as follows:

   a) Declaration of Covenants:

      1. That the new structure proposed for the eastern portion of the subject property to be built above the garage levels east of the existing historic building and the proposed restaurant addition thereto on the subject property, known as Lot 60 in Square 110 (1701 20th Street, N.W.), shall be used for apartments or other residential use as provided in 11 DCMR 771.2, with a minimum of 6 and a maximum of 30 units;

2. That the remaining FAR allowable under 11 DCMR 771.2 for other permitted use shall be limited to a maximum of 1.3 FAR for the entire subject site;

3. That, above the level of the second floor, the proposed new structure to be constructed on the eastern portion of the subject property shall be set back as an architectural court niche a minimum distance of 9 feet from the east property line, except for a length of approximately 18 feet beginning approximately 32 feet from the south property line and extending north. The 18-foot portion is not required to be set back from the east property line;

4. That the height of the proposed structure to be constructed on the eastern portion of the subject property shall be a maximum of seven stories or 65 feet in height, measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet as permitted by 11 DCMR 199.9, exclusive of any penthouse constructed in conformance with 11 DCMR 770.6, railings, chimneys, and architectural embellishments; and

5. That the proposed structure will be designed in accordance with the plans approved by the Historic Preservation Review Board ("HPRB") and dated November 19, 1986, except as such plans may be modified with the approval of HPRB and modified as may be necessary to construct the proposed structure in accordance with the Zoning Regulations and the Building Code of the District of Columbia.

b) Amended Covenant:

1. That all provisions and numbered paragraphs of Instrument No. 28327 recorded June 2, 1987, are specifically incorporated herein by reference except that: the third to last line of number 1 on page 3 of said Instrument No. 28327 is amended so as to delete the phrase "or other residential use" and to add in its place the parenthetical "(including

rental or condominium use)", and the last line of number 1 on page 3 of Instrument No. 28327 is amended so as to delete the number "30" and to add in its place the number "29"; and

2. That the existing Fraser Mansion with its proposed small commercial addition shall not be used for the following uses: hotel; automobile laundry; automobile rental agency; billiard parlor or pool hall; blueprinting or similar reproduction service; bowling alley; dental laboratory; funeral, mortuary, or undertaking establishment; general indoor storage; laundry, self service; plumbing or heating shop; ice sales; public bath; streetcar or bus passenger depot; veterinary hospital; automobile and truck sales; boat or other marine sales; pet shop; drive-in type restaurant; fast food restaurant; collection station for dry cleaning, dying or laundry; or radio or television repairs.

c) Second Amendment to Declaration of Covenant:

1. That the Declarant, its successors, heirs, executors, administrators and assigns, shall not apply for a demolition permit to demolish the Fraser Mansion (except as provided in No. 2 below), as such terms "demolish" and "demolition" are defined in Section 3 of D.C. Law 2-144. This provision shall not prohibit any alteration of the Fraser Mansion that has been, or may be, approved by the Historic Preservation Review Board and/or the Mayor's Agent; and

2. Notwithstanding the foregoing, in the event of loss of, or damage to, the Fraser Mansion by fire or other casualty, and such loss or damage is so extensive that such damage cannot be substantially repaired within 100 days from the date of the fire or other casualty (except for unavoidable delays caused by strikes, acts of God, lockouts, labor difficulties, riots, explosions, sabotage, accidents, inability to obtain labor or materials,

governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or similar causes beyond the reasonable control of the Declarant), the Declarant shall be entitled to apply for a demolition permit to demolish the remaining structure.

4. The covenants provide that they will run with the land until December 30, 2017.

5. The Covenants provide that they may be enforced by all residential owners of property within 75 feet of Lot 60 in Square 110. The Rodney apartment building immediately abuts Lot 60.

6. The Deputy Corporation Counsel, Legal Counsel Division, has advised the Commission that the Covenant is enforceable.

7. Lot 60 is currently developed by the 1.1 FAR of the Fraser Mansion.

CONCLUSIONS OF LAW

1. The covenant may be enforced by, among others, the owner of the Rodney, which immediately abuts Lot 60.

2. The Commission recognizes that enforceability of the covenant by the District of Columbia would be clarified and enhanced if the Commission had, and exercised, the authority to condition its approval of an amendment to the zoning map upon the recordation of a covenant. Because it is not clear that the Commission has such authority, it has not to date conditioned a zoning map amendment upon the recordation of a covenant. The Covenant is therefore not enforceable by the District of Columbia pursuant to 11 DCMR 3204, because neither Order No. 555 nor this Order condition the issuance of a building permit or certificate of occupancy on the recordation of a covenant.

3. The residential use that is proposed is a permitted use in the R-5-B District, but the 1.8 FAR that applies in the R-5-B zone would not allow a significant increase in the development of Lot 60. The R-5-C zone FAR is 3.5. The additional FAR permitted under R-5-C zoning is appropriate to provide for a reasonable level of residential development on Lot 60.

The foregoing findings of fact shall constitute the Commission's action on remand.

The order was amended and adopted by the Commission at its meeting on March 12, 1990, by a vote of 3-0 (Maybelle Taylor Bennett and John G. Parsons to adopt as amended; George M. White to adopt as amended, by proxy vote; Tersh Boasberg and Lloyd D. Smith not voting not having participated in the case.

TERSH BOASBERG
Chairman
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

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