

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- November 22, 1967

Appeal No. 9424 James Bierbower and Ellen B. Bierbower, et al,
on behalf of 12th and L Limited partnership,
long term lessee, appellants.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried,
the following Order was entered at the meeting of the Board on
December 13, 1967.

ORDERED:

That the appeal for permission to erect an office building
with roof structures in accordance with provisions of Section
3308 and variance from requirements of Section 7206 to provide
attendant parking at 1106 L Street, NW., lots 13,14,17 to 20,
23-26,810,811, and part of alley closed, square 316, be denied.

FINDINGS OF FACT:

(1) By reference the Board incorporates the records of
Zoning Commission cases 66-20 and 65-55 into the record of
this appeal.

(2) The subject property is located in a C-4 District.

(3) The subject property is surrounded by properties
which are zoned SP except on the southside, adjacent to lot
24, where the neighboring property is zoned C-3-B. In both
of these districts the height of buildings is limited to 90
feet.

(4) It is proposed to erect an office building with 12
stories and penthouse. The penthouse will be 17 feet high,
located above the 130 foot building height limit and house
mechanical equipment, elevator machine rooms and cooling tower.

(5) The area of the proposed building will be 293,076
square feet comprising an 11 FAR.

(6) The area of the proposed penthouse will be 7,666
square feet comprising an additional 0.25 FAR.

(7) The material used in the construction of the pent-
house will be white face brick and light color precast panels
and will harmonise with the material and color of the street
facade of the building.

(8) This appeal was filed and heard under plans by Morris Lapidus Associates, AIA, drawings No. A-11, A-12, A-13, A-14, A-15, and A-16 and approved for design by Mr. Arthur P. Davis, architect-member of the Board, on December 12, 1967.

(9) On April 6, 1966 the Zoning Commission held a public hearing to consider changing the zoning of the subject property from SP to C-4. This zoning change was opposed for various reasons including the height of the building which could be constructed with C-4 zoning and its relationship to the development along Massachusetts Avenue. The application was denied by the Commission (Z.C. 66-20)

(10) The owners petitioned the Zoning Commission for another hearing which was granted and held on October 26, 1966. (Z.C. 66-55) At the second hearing the same objections to the zoning change was registered. However, the applicants stated that, "It is sought to develop this property into an area which will not exceed 110 feet and which will provide parking and which will not exceed 10 FAR "I don't think there is any doubt that applicants have appeared before this Commission and represented what they were going to do and have done so. I think they would be guilty of fraud if they didn't do so. And I have no hesitation in saying that this is an out and out representation before this Commission as to what will be done here and now."

(11) Section 5201.3 of the Zoning Regulations requires that:

"Where required by the Act of June 1910 (36 Stat. 452), a height in excess of that therein permitted must be authorized by the Commissioners of the District of Columbia."

(12) The Act of 1910 provides that:

"Spires, towers, domes, minarets, pinnacles, pent-houses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this act when and as the same may be approved by the Commissioners of the District of Columbia."

(13) Section 8207.2 of the Zoning Regulations provides that:

"Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions as provided in the preceding Articles of these regulations where in the judgment of the Board such special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps,

(14) There was no opposition to the granting of this appeal registered at the Board's public hearing.

OPINION:

It is the opinion of the Board that the provisions of Sections 3308, 5201.23, 5306 and 7510 were included in the Zoning Regulations to supplement the requirements of the Act of 1910.

From the record the Board concludes that the C-4 zoning was granted on the basis of the repeated statements by the owners' agents that no building would be built in excess of 110 feet including penthouse. Therefore, the Board believes that to grant this appeal would be in conflict with the intent of the Zoning Commission.

The Board is further of the opinion that the proposed building with a total height of 147 feet would not be in harmony with and would have an adverse effect upon other development permitted within the vicinity of Massachusetts Avenue.

In view of the foregoing, the Board directs its staff to advise and recommend to the Mayor that he exercise the authority vested in him by the Act of 1910 and the Zoning Regulations and disapprove any construction above the 130 foot building height limit.

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The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and carried, with Messrs. Samuel Scrivener, Jr. and William F. McIntosh dissenting, the following Order was entered at the meeting of the Board on February 29, 1968.

EFFECTIVE DATE OF ORDER - March 26, 1968

ORDERED:

That the appeal for permission to erect an office building with roof structures in accordance with provisions of Section 3308 and variance from requirements of Section 7206 to provide attendant parking at 1106 L Street, NW., lots 13, 14, 17 to 20, 23-26, 810, 811 and part of alley closed, square 316, be partially granted.

FINDINGS OF FACT:

(1) The subject appeal was denied by BZA Order entered December 13, 1967.

(2) By letter dated January 19, 1968 (BZA Exhibit No. 13) counsel for the appellants requested that the Board reconsider its previous decision or grant a rehearing of this case.

(3) The Board informed appellants by letter dated January 29, 1968 (BZA Exhibit No. 14) that the Board considered it "Inappropriate to act upon the request contained in your letter until the decisions and recommendations of the Zoning Commission and the National Capital Planning Commission have been received."

(4) By a Memorandum dated February 27, 1968 (BZA Exhibit No. 15) Mayor Washington suggested to the Board that the penthouse application be reconsidered "In light of those matters relevant under Section 3308 of the Zoning Regulations. In view of the time factors involved, the Board should accomplish its reconsideration as expeditiously as possible."

(5) The Corporation Counsel for the District of Columbia concurred in the recommendation of the Mayor.

(6) At its meeting on February 29, 1968 the Board decided to reconsider its Order of December 13, 1967.

OPINION:

We incorporate into this Order the facts found in the Order entered December 13, 1967.

We deny without prejudice the parking variance portion of the application. No evidence was introduced at the public hearing to support a variance from the Regulations.

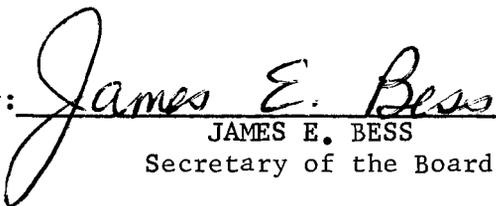
We conclude that the roof structure for this proposed office building will harmonize with the street frontage of the building in architectural character, material, and color and will be in harmony with the purpose and intent of the Zoning Regulations.

BY MR. SCRIVENER:

I would repeat the Order of December 13, 1967 for the same reasons that prompted the Board to unanimously issue that Order. In my opinion it would be far better for this City to try the case in the courts and possibly lose it than suffer the indignity which has been imposed on it.

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

ATTESTED:

By:  _____
JAMES E. BESS
Secretary of the Board

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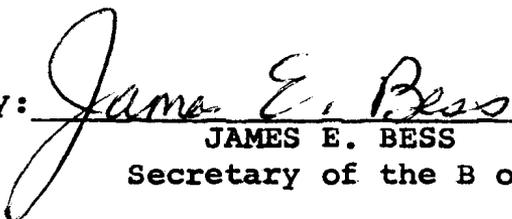
The Zoning Administrator of the District of Columbia, appellee.

The Order in the above-entitled appeal is amended by adding the following paragraph to Mr. Scrivener's dissenting opinion:

In addition, in granting this or any other appeal for a special exception, the Board is required by Section 8207.2 of the Regulations to find that the granting of the exception "will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps". It is my opinion that the Board cannot possibly make such a finding of fact under the circumstances of this case and therefore the appeal should be denied on the merits.

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

ATTESTED:

By: 
JAMES E. BESS
Secretary of the Board
