

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
441 4th Street, N.W.
Washington, D.C. 20001

Appeal of Washington Harbour Condominium
Unit Owners' Association

Appeal No. 18522

DISTRICT OF COLUMBIA'S PREHEARING STATEMENT

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), by and through undersigned counsel, respectfully submits its Prehearing Statement in opposition to the appeal filed by the Washington Harbour Condominium Unit Owners' Association ("Appellant") on January 7, 2013.

Appellant has appealed a determination of DCRA's Zoning Administrator contained in a letter dated November 7, 2012. The letter is addressed to an attorney for a developer seeking to build on a portion of the Washington Harbour property known as the "EE Parcel" (the "Property"). The Property is located at 3050 K St., NW. The proposed development would consist of constructing an addition to an existing, mixed-use building, which would be comprised of 88 residential units or an inn with 120 units. This appeal must be denied as Appellant incorrectly argues that the addition is not residential in nature and thus cannot be built as a matter of right.

The Existing Condition of the Property

The Property is an undeveloped portion of Lot 102, Square 1173. Lot 102 is a split-zoned lot, with approximately 68,005 sq. ft. of the lot zoned W-2 and approximately 151,367 sq. ft. zoned W-3. The EE Parcel is located entirely in the W-2 portion of the lot.

Under the Zoning Regulations, the W-2 portion of Lot 102 is subject to a FAR maximum of 4.0, of which not more than 2.0 FAR can be used for non-residential purposes. *See* 11 DCMR § 931.2. The part of the existing, mixed-used building that is zoned W-2 is dedicated entirely to commercial uses. As the Zoning Administrator's letter explains, the commercial FAR for the W-2 portion of the building is non-conforming as it is 2.54, which is in excess of the 2.0 limit.

The Proposed Project Is Allowed as a Matter of Right

The project described in the letter is an addition to the existing building. The addition will contain approximately 70,500 sq. ft. of multi-family or inn use. The FAR of the addition will be 1.04. In the W-2 zone, multi-family dwellings and inns are both considered residential uses for the purposes of calculating FAR.¹ Therefore, whether the developer chooses to use the Property as multi-family dwellings or as an inn, the FAR of the addition will count as residential FAR. When the FAR of the addition is added to the existing building, the total FAR in the W-2 portion of Lot 102 is 3.58, which complies with the 4.0 FAR limit.

Appellant raises the issue of whether the commercial FAR nonconformity of the existing building should be treated as a non-conforming use or as a non-conforming structure. Appellant points out that section 2001 of the Zoning Regulations governs non-conforming structures devoted to a conforming use and section 2002 governs non-conforming uses within structures.

¹ "For the purposes of this section, 'residential purposes' shall include dwellings, flats, multiple dwellings, rooming and boarding houses, community-based residential facilities, inns, and guestroom areas and service areas within hotels." *See* 11 DCMR § 931.5.

This issue is a red herring as the addition is allowed as a matter of right whether the existing commercial FAR is viewed as a non-conforming use or a non-conforming structure.

The proposed residential use is a conforming use and it complies with the FAR limits of the W-2 zone. *See* 11 DCMR § 931.2. Thus, the proposed residential addition is allowed under both sections 2001 and 2002 of the Zoning Regulations, because the addition does not extend or enlarge the non-conformity of the existing building.² In other words, the residential addition does not increase the amount of non-conforming commercial FAR.

Appellant's speculation that the addition will contain commercial uses is misplaced as neither the letter nor the conceptual drawings depict or describe any commercial uses in the addition.

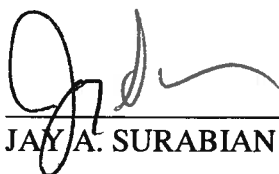
Accordingly, the Zoning Administrator correctly concluded that the proposed addition is allowed as a matter of right and the Board must deny the appeal.

Respectfully Submitted,

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April 25, 2013



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² Under 2001.3, "Enlargements or additions may be made to the structure; provided... The addition or enlargement itself shall: (1) Conform to use and structure requirements; and (2) Neither increase or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined."
Under 2002.5, "A structure devoted to a nonconforming use shall not be enlarged, except if the enlargement is to be devoted to a conforming use."

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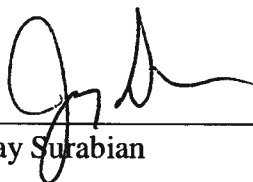
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served by email, this 25th day of April 2013, to the following:

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