

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR



[Via first class mail and email ed PDF [allison.prince@pillsburylaw.com]]

September 5, 2008

Mr. Peter Comey, Vice President / Development, Lowe Enterprises
Hilton Washington Project Office
1919 Connecticut Avenue, NW, Suite C-340
Washington, DC 20009

Re: Proposed Redevelopment of the Washington Hilton

The owners of the Washington Hilton, which is located at 1919 Connecticut Avenue, N.W. (Square 2535, Lot 41) have proposed a redevelopment plan that will modernize the existing hotel and add new residential uses to the property. Based on my review of the proposed zoning tabulations (attached as Exhibit A) and related plans (attached as an Appendix to this letter), I have determined that the proposed redevelopment fully complies with the following requirements of the Zoning Regulations:

- 1) Section 350: Permitted Uses in the R-5-D Zone, including specific restrictions on the expansion of a hotel use set forth in subsection 350.4(d).
- 2) Section 400: Height in the R-5-D Zone, including the related definition of "building" set forth in Section 199.
- 3) Section 402: Floor Area Ratio (FAR) in the R-5-D Zone, including the related definition of "gross floor area" set forth in Section 199.1.
- 4) Section 403: Lot Occupancy in the R-5-D Zone.
- 5) Section 404: Rear Yard setback in the R-5-D Zone.
- 6) Section 406: Court requirements in the R-5-D Zone.
- 7) Chapter 21: Parking requirements for the existing hotel and proposed development.
- 8) Chapter 22: Loading requirements for the existing hotel and proposed development.

I have also determined that the existing hotel complies with the parking and loading requirements of the Zoning Regulations. Below is a detailed analysis of each zoning feature.

I. PERMITTED USES IN THE R-5-D ZONE DISTRICT

A. The Existing Hotel is a Permitted Conforming Use

As demonstrated by the Zoning Computation Sheet (File No. 62-114) prepared by the then-Zoning Administrator and attached as Exhibit B, the Washington Hilton was constructed in compliance with the then-applicable Zoning Regulations in 1963. The existing hotel uses, including the guestroom uses as well as the convention and commercial adjunct uses, were conforming uses when the Hilton was constructed in 1963. *See* Zoning Regulations of the District of Columbia, Section 3105.34 and 3105.52 (1958, as amd. 1959); BZA Appeal No. 9655 at 2-3 (1968) (affirming that convention-related uses are considered to be “accessory uses customarily incident to the uses permitted in the R-5 District”). The BZA specifically affirmed that the exhibition hall use within the Washington Hilton was a permitted matter-of-right use in 1972. BZA Appeal No. 11018 at 1 (FOF 4) (1972).

In 1980, the Zoning Commission adopted a series of text amendments to the Zoning Regulations that clarified the definition of a “hotel” and set forth certain limitations on hotel use in the R-5 Zone Districts. The Commission explicitly confirmed that existing hotel uses, including their accessory convention and commercial uses, were permitted conforming uses in the R-5-D Zone District. *See* Z.C. Order No. 314, Statement of Reasons, at 15 (“An existing hotel would be allowed to continue, recognizing the substantial investment in place already committed for existing hotels.”). The status of hotels in existence as of May 16, 1980 as conforming matter-of-right uses has been confirmed by the BZA. *See* Appeal No. 17538 at 4 (FOF 7) (2007); Application No. 16072 at 12 (1996); Application No. 13937 at 3 (FOF 12) (1983).

By definition, a hotel use in existence on May 16, 1980 must be a conforming use. A nonconforming use is defined as a use of land or structure that was lawful at the time of the adoption of the Zoning Regulations or amendment to the Regulations, but does not conform to the current use provisions for the district in which the use is located. The 1980 Amendments explicitly provide that prior lawful hotel uses are still permitted so long as its gross floor area or total area devoted to convention and commercial uses does not increase. Here, the Washington Hilton’s gross floor area and total area devoted to convention and commercial uses have not increased since May 16, 1980 and, accordingly, the Hilton is currently a conforming use.

B. The Proposed Hotel Reconfiguration and Residential Addition Are Permitted Uses

The Washington Hilton redevelopment plan consists of two features that will modernize the hotel and utilize the additional available density. First, the Hilton will reconfigure existing hotel space to accommodate its present and forecasted space needs. Second, the Hilton will construct an addition to the existing building to accommodate new residential multiple-dwelling use. Both uses are permitted as a matter of right under Section 350 of the Zoning Regulations.

Subsection 350.4(c) authorizes multiple dwellings as a matter-of-right and, as discussed in greater detail below, the hotel renovations are permitted under subsection 350.4(d).

In 1980, the Zoning Commission adopted subsection 350.4(d) in order to simultaneously protect residential zones from hotel expansion yet also protect existing hotel uses in residential districts. Section 350.4(d) provides that a hotel is a permitted use, provided (a) that the gross floor area of the use is not increased and that (b) the total area within the hotel devoted to function rooms, exhibit spaces, or commercial adjunct uses are not increased. Then, in the next sentence, Section 350.4(d) specifically provides that the existing hotel use may be “repaired, renovated, remodeled, or structurally altered.”¹

As was recently affirmed by the BZA in Appeal No. 17538², subsection 350.4(d) of the Zoning Regulations specifically permits modifications and additions to existing hotels in the R-5-D Zone District provided that (1) the alterations do not increase the gross floor area of the hotel use and (2) the alterations do not increase the total area devoted to exhibit space, function rooms, and commercial adjunct space. Here:

1. The alterations do not increase the gross floor area of the hotel use. As indicated on the Comp Sheet, the existing hotel includes 547,857 s.f. of gross floor area. The proposed development includes 547,850 s.f. of gross floor area to be devoted to hotel use, as shown on the table included with Exhibit A. Therefore, the proposed development will not increase the gross floor area of the hotel use.³
2. The alterations do not increase the total area devoted to exhibit space, function rooms, and commercial adjunct space. Approximately 181,616 s.f. is devoted to commercial adjunct, exhibit space, and function rooms. As shown on the table included with Exhibit A, the renovated hotel will contain only 170,725 s.f. of building area devoted

¹ In adopting Section 350.4(d), the Commission used the hotels' gross floor area as well as their total area devoted to function rooms, exhibit space, and commercial adjunct uses as proxies for the intensity of hotel use. As written, the regulation protects the hotels' then-existing intensity of use, and then protects residential districts from any expansion in the intensity of hotel use. Importantly, the limitations on changes to gross floor area and total commercial space only serve to limit the expansion of the hotel use, not the structure of the hotels.

Nothing in the text of Section 350.4(d) limits the ability of hotels to make conforming structural changes; rather, the regulation specifically ensures the ability of hotels in residential districts to upgrade and modernize their facilities, so long as they do not increase the intensity of the hotel use. Indeed, the final sentence of Section 350.4(d)—“An existing hotel may be repaired, renovated, remodeled, or structurally altered”—makes it clear that such modifications are permitted. “Structural alterations” are defined in Sec. 199 as “any change in the permanent physical members of the building, such as bearing walls, partitions, columns, joists, rafters, beams, or girders” and clearly contemplate additions to an existing building so long as any increase in gross floor area is offset by a deduction elsewhere in the project.

² In a recent appeal involving the construction of a parking garage as a below-grade addition to the Marriott Wardman Park Hotel in Woodley Park, the BZA confirmed that such structural additions were permissible so long as they did not increase the gross floor area of the hotel or the total area within the hotel devoted to function rooms, exhibit space, or commercial adjuncts. See BZA Appeal No. 17538 at 4 (FOF 4), 8 (2007). The BZA agreed with Marriott that the parking area was area devoted to “service” use and therefore could be expanded as a matter of right, since it was below grade and therefore did not result in an increase in the gross floor area of the hotel. The BZA Order is attached as Exhibit C.

³ The use of the perimeter wall method to determine gross floor area is discussed in greater detail below.

to exhibit space, function rooms, and commercial adjunct use, which represents a decrease of 11,341 s.f. from the existing total area devoted to those uses.

Based on the calculations set forth above, the proposed alterations are permitted as a matter of right because they do not lead to an increase in either category and therefore will not increase the intensity of hotel use on the property.

II. THE PROPOSED BUILDING HEIGHT CONFORMS TO THE PERMITTED HEIGHT IN THE R-5-D ZONE DISTRICT AND DEFINITION OF "BUILDING" UNDER THE ZONING REGULATIONS

As indicated on the Comp Sheet, the existing hotel has a height of 90 feet, as measured from Columbia Road, at the 160' 6" elevation point. The new construction has been designed as an addition to the existing building such that together they constitute a "single building" under the Zoning Regulations. As a result, the proposed addition may be constructed to a height of 90 feet as measured from Columbia Road.

Under the definition of "building" in Section 199.1 of the Regulations, the existence of communication at or above the main floor "unifies the separate portions of a structure into a single building." *See, e g* BZA Appeal No. 17538 at 5 (FOF 8). Section 199 further defines the "main floor" as the floor of a story in which the principal entrance of a building is located. Due to the sloping nature of the site, the proposed expanded building has multiple entrances that could be considered to be the "principal entrance" of the building:

- Concourse Level: The principal entrance for the residential portion of the building will be located on the Concourse Level off T Street NW near its intersection with Florida Avenue, NW. The Concourse Level is the lowest level of the building that is partly above-grade.
- Terrace Level: One principal entrance for the hotel is located on the next floor, the Terrace Level, off T Street NW at the center of the building.
- Lobby Level: Another principal entrance for the hotel is located off the circular driveway that is accessed from Connecticut Avenue, NW on the Lobby Level of the hotel, which is one floor up from the Terrace Level.

Here, meaningful communication between the existing hotel and the proposed addition exists at the Terrace Level and at the Lobby Level. Therefore, regardless of the level that is chosen as the "main floor," the addition is connected to the existing hotel by meaningful communication at or above the main floor of the hotel. Accordingly, the proposed addition is considered to be part of a "single building" that may achieve a height of up to 90 feet as measured from Columbia Road.

III. THE PROPOSED DENSITY CONFORMS TO THE PERMITTED FLOOR AREA RATIO ("FAR") IN THE R-5-D ZONE DISTRICT AND DEFINITION OF "GROSS FLOOR AREA" UNDER THE ZONING REGULATIONS

As indicated on the Comp Sheet, the existing hotel includes 547,857 s.f. of gross floor area. The Hilton property is located on a lot containing 225,420 square feet of land area. The R-5-D Zone permits a maximum FAR of 3.5, or 788,970 square feet of gross floor area. Therefore, the Hilton property contains approximately 241,113 square feet of unused residential density. The proposed development will have a FAR of 3.48 (784,839 s.f. of gross floor area), which is within the maximum permitted FAR of 3.5.

Due to the site's significant slope, portions of three floors are part "basement" and part "cellar" as those terms are defined in the Zoning Regulations. The "perimeter wall method" is an accepted method of calculating the gross floor area for partial basements and partial cellars. Under this method, the gross floor area is determined by establishing a ratio between the linear footage of the portion of the perimeter that is more than four feet out of grade (i.e. basement) and the total square footage of that floor. It is well-settled that the perimeter wall method is a "reasonable" method for calculating a building's gross floor area that may be used at the Zoning Administrator's discretion. *See, e.g.* BZA Appeal No. 17109 at 15. Therefore, the use of the perimeter wall method to determine the gross floor area of the existing hotel and the proposed additions is an acceptable method for calculating the building's gross floor area.

IV. THE PROPOSED LOT OCCUPANCY CONFORMS TO THE MAXIMUM LIMIT R-5-D ZONE DISTRICT

Under Section 403.2, the maximum lot occupancy for Multi-family Residential and Hotel uses is 75%. The proposed lot occupancy, based on the following calculations, is as follows:

Lot Area:	225,420 sf
Proposed Lot Coverage:	83,473 sf
Proposed Percentage of Lot Occupancy:	$83,473/225,420 = 37.0\%$

Therefore the proposed lot occupancy is less than the maximum allowable limit, so the project complies.

V. THE PROPOSED REAR YARD CONFORMS TO THE REQUIRED REAR YARD IN THE R-5-D ZONE DISTRICT

According to the Comp Sheet, while Columbia Road was used as building frontage for height, T Street was used as the building frontage for purposes of measuring the hotel's rear yard, and the hotel has a rear yard of 50 feet. The project continues to include a rear yard of 50 feet based on the use of T Street as the building frontage for purposes of measuring the hotel's rear yard.

VI. THE PROPOSED COURT CONFORMS WITH THE CLOSED COURT REQUIREMENTS OF THE ZONING REGULATIONS

Under Section 406.1, the requirements for the closed court that would be created by the residential extension of the building in the subject R-5-D Zone would be, based on the following calculations, as follows:

<u>Closed Court Minimum Width:</u>	
4" per every foot of height	= 4" x 105' = 420" = 35'
Average Provided Width:	= Approximately 220'
<u>Closed Court Minimum Area:</u>	
Twice the square of required minimum width based on height	= 2 x 35' x 35' = 2,450 s.f.
Provided Area:	= 38,442 s.f.

The proposed court is illustrated in the attached Exhibit E. Therefore the proposed closed court is larger than the minimum required court width and area, so the project complies.

VII. THE EXISTING AND PROPOSED USES CONFORM WITH THE PARKING REQUIREMENTS OF THE ZONING REGULATIONS

At the time of construction, the hotel had a parking requirement of 554 spaces, based on the requirement of 1 space per 2 rooms. *See* Zoning Regulations of the District of Columbia, Section 7202.1 (1958). According to the Comp Sheet, 558 parking spaces were provided. The Hilton has not reduced the size of the area devoted to parking on parking levels 1 and 2, and it continues to use the same space for parking purposes that was approved on the original plans. Therefore, the existing hotel conforms with the parking requirements of the Zoning Regulations.

The Washington Hilton was recently designated as a historic landmark by the Historic Preservation Review Board. Under the recent amendments to Chapter 21 of the Zoning Regulations, no parking is required for an addition to an historic landmark when the gross floor area of the historic resource is increased by less than 50%. Here, the proposed addition increases the gross floor area of the historic resource by less than 50%. Therefore, subject to the granting of a parking waiver from the Office of Planning, no additional parking is required for the residential addition. [The proposed plans indicate that the project will provided approximately 104 parking spaces dedicated to residential use, as well as bicycle parking and two spaces for set aside for shared car services such as Zipcar or Flexcar.]

VIII. THE EXISTING HOTEL USE CONFORMS WITH THE LOADING REQUIREMENTS OF THE ZONING REGULATIONS

When constructed, the hotel had a loading requirement of only 1 loading berth, based on the then-applicable requirements. See Zoning Regulations of the District of Columbia, Section 7302.1 (1958, as amd. 1959). As indicated on the Comp Sheet, 3 additional berths were provided, for a total of 4 berths. Furthermore, in 1972, the Hilton modified the building to increase its loading capacity with one additional loading berth. The BZA upheld the compliance of this loading berth in Appeal No. 11018 (1972), which is attached as Exhibit D. Therefore, the existing hotel has a requirement of only one loading berth, but provides five approved loading berths that conform with the loading requirements of the Zoning Regulations.

Again the Washington Hilton was recently designated as a historic landmark by the Historic Preservation Review Board. Under Section 2200.5 of the Regulations, no additional loading is required for an historic landmark. Therefore, subject to the granting of a loading space waiver from the Office of Planning, no additional loading is required for the residential addition.

IX. CONCLUSION

Based on the foregoing, the existing hotel conforms with the parking and loading requirements of the Zoning Regulations, and the proposed redevelopment fully complies with the use, height, density, rear yard, lot occupancy, court, parking, and loading requirements of the Zoning Regulations.

Accordingly, when you file the plans for a building permit, I will approve drawings if they are consistent with the calculations and exhibits referred to above. Please let me know if you have any further questions.

Sincerely, Matthew Le Grant
Matthew Le Grant
Zoning Administrator

cc: Allison C. Price, Pillsbury Winthrop Shaw Pittman LLP

Attachments:	Appendix:	Proposed Plans
	<u>Exhibit A:</u>	Zoning Tabulations
	<u>Exhibit B:</u>	Zoning Computation Sheet & Applicable 1958 Regulations
	<u>Exhibit C:</u>	BZA Appeal No. 17538
	<u>Exhibit D:</u>	BZA Appeal No. 11018
	<u>Exhibit E:</u>	Closed Court Illustration

File: Determination Letter re Hilton Hotel – 1919 Conn Ave NW - 9-5-08