

**BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
BZA APPEAL NO. 18735 & 18737**

INTERVENOR'S PREHEARING STATEMENT

Summary of Argument

For the reasons set forth below and summarized herein, the Appeals should be denied and the issuance of the building permit should be affirmed.

1. Building Connection. The Project is an addition to the Existing Improvements on Lot 190 that is connected through multiple above-ground connections that satisfy the well-established standards for such connections. (Exhibit A.)
2. Parking. The Existing Improvements comply with the parking requirements. The Project meets the parking requirement of 48 parking spaces through 48 valet spaces within its parking garage. The dimensional requirements do not apply to valet parking. (Exhibit B.)
3. Loading. The Existing Improvements comply with the loading regulations. The Project satisfies the loading requirements through a loading berth, loading platform, and delivery space that are properly located off a private alley at the rear of the Property. (Exhibit C.)
4. Roof Structure. The Project's roof structure is properly set back from all exterior walls. No setback is required from the west wall of the Project, which is an interior wall facing a closed court. (Exhibit D.)
5. Public Space. The Project does not require any additional public space at ground level, nor does it replace or remove existing public space at ground level. Such space is already provided for on Lot 190. (Exhibit E.)

A list of all exhibits is provided on page 16 of this statement. For the Board's convenience, the Exhibits have been arranged by degree of relevance to the appeal.

Background on the Appeals

Renaissance Centro LLC ("Intervenor"), the owner of the property at issue in Appeal No. 18735 and 18737, owns the property located at 2121 M Street NW (Square 70, Lot 880) ("Property"). The Property is a relatively small interior lot with approximately 18,250 square feet of land area. The Property is currently used as a surface parking lot. The Property is located in the DC/CR Zone District. The CR Zone District is a mixed-use zone district that permits

commercial and residential development, including office, retail, hotel, and apartment uses, as a matter of right.

The Property is part of Record Lot 190 (Lot 190) a single lot of record improved with a Marriott hotel, a Walgreens drug store, and a Starbucks coffee shop (“Existing Improvements”). The Property has been a single lot of record since the late 1970s, when the Marriott was first constructed. A series of recorded agreements govern the development of Lot 190; these agreements identify the Property as the “Development Parcel” and provide for its development with a structure that will be connected to the Existing Improvements. Pursuant to these agreements, Intervenor plans to construct a hotel on the remaining part of Lot 190.

The appellant in Appeal No. 18735 is the owner of a large commercial office building (“1200 NH Building”) with a number of commercial tenants, including a major international law firm that is the appellant in Appeal No. 18737 (together, “Appellants”). The 1200 NH Building was constructed in the 1970s pursuant to a series of agreements that allocated commercial office density from Lot 190 to the 1200 NH lot. Other agreements between the two properties govern the use of the private alley off Ward Place and a connection between the two buildings’ parking garages.

The 1200 NH Building has windows along the western property line that abuts the Property. These windows are at-risk under the D.C. Construction Codes (12A DCMR, §704.8.3.5). The law firm tenant’s premises is located along these at-risk windows. Pursuant to the requirements of the D.C. Construction Codes, the owner of the 1200 NH Building has been notified that it is required to block up those windows that will abut the Project for fire safety reasons. (Exhibit N: Notification Letter from DCRA.) It is well-established that the owner of a building with lot line windows has no right to maintain those windows, and the Zoning Commission has specifically found that it is not reasonable for the owner of an adjoining property to bear the burden associated with a property owner’s decision to not set windows back from a lot line. (Exhibit O: Excerpt from Z.C. Order No. 745.)

Intervenor reached out to the owner of the 1200 NH Building a year ago to present plans for the proposed construction of the Property and negotiate a construction agreement that would address the blocking of 1200 NH’s windows. Intervenor shared plans for the Project and made repeated efforts to negotiate an agreement despite repeated threats of litigation from 1200 NH. Notwithstanding Intervenor’s efforts to reach a mutual agreement, and rather than comply with its legal obligation under the Code, the Appellants have filed this tenuous—and borderline frivolous—appeal.

Zoning History of the Project

The Office of the Zoning Administrator has issued a series of rulings over the past decade that consistently affirmed the validity of development of Lot 190 as a single lot of record, culminating in the issuance of Building Permit No. B1310607 (“Permit”)

Prior to 2005, Intervenor’s property was occupied by Lulu’s Mardi Gras Nightclub. Lulu’s was a two-story building that occupied all of Intervenor’s property. Prior owners of the Property sought to redevelop the Property with the remaining density available to Lot 190. The Office of the Zoning Administrator—including Appellants’ expert witness Mr. Bello – issued multiple rulings confirming that the Property contained remaining available density for such redevelopment. (Exhibit J: 2005 Bello Determination Letter; Exhibit L: 2009 Le Grant Determination Letter.)

In December 2010, counsel for Intervenor met with the Zoning Administrator to review a residential development scheme for Intervenor’s property. (Exhibit F: 2010 Le Grant Determination Letter.) The Zoning Administrator confirmed the property could be developed as a single building on Lot 190 with a ground-floor building connection that is identical to the connection approved in the Permit. The 2010 Determination Letter also confirmed that Lot 190 conformed to existing parking and loading requirements.

During Summer 2013, and prior to filing the application for the Permit, Intervenor’s counsel met with the Zoning Administrator to reconfirm the 2010 conclusions and review the zoning parameters for the Project. (Exhibit G: 2013 Avitabile email to Le Grant). The parties discussed and confirmed the compliance of the Project with all aspects of the Zoning Regulations, including all five issues raised in this Appeal: building connection, parking, loading, roof structure, and public space at ground level. The Zoning Administrator required minor revisions to the roof structure, which were made and confirmed as acceptable. (Exhibit M: 2013 email correspondence between Le Grant and Avitabile.)

In September 2013, the Intervenor filed plans for the building permit. In November 2013, a zoning technician in the Zoning Administrator’s office carefully reviewed the permit drawings to confirm that the Project complied with the Zoning Regulations, and Intervenor’s counsel confirmed this compliance. (Exhibit H: 2013 email correspondence between Ndaw and Avitabile.) Again, the parties confirmed compliance with all five issues raised in this Appeal: building connection, parking, loading, roof structure, and public space at ground level. DCRA issued the Permit on November 27, 2013, after a thorough review by the Zoning Administrator’s office.

I. The Project Includes a Sufficient Building Connection

The Appellants allege the Project lacks a “substantial” and “meaningful” connection to the Existing Improvements on Lot 190. This argument is without merit based on the long and well-established understanding of what constitutes a sufficient building connection under the District of Columbia Zoning Regulations.

A. Background on the Building Connection Requirement under the Zoning Regulations

Contrary to the Appellants’ assertions, the Zoning Regulations do not require a “substantial” connection. (Exhibit P: Excerpt from Section 199 of the Zoning Regulations – Definition of “Building”.) All Section 199 states is that structures separated from the ground floor up are separate buildings, and “the existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.”

It is well established that the definition of “building” in Section 199 has been interpreted to require an above-grade connection that permits “meaningful” communication between otherwise separate portions of the building. This “meaningful” communication has been understood as a relatively limited degree of building interconnection. As the D.C. Office of Planning has explained:

Over the past few years the determination of what constitutes a single building for zoning purposes has hinged on the concept of a “meaningful connection.” This has generally been interpreted to mean that some above ground interrelatedness is required, but often only in token fashion. In some instances, a covered walkway has served to combine two structures into one building for zoning purposes. Often two buildings are combined into one building by a single locked doorway.

(Exhibit Q: Excerpt from Sept. 15, 2008 OP Report to Zoning Commission on Recommendations Regarding Measurement and Regulation of Height.)

Examples of building connections approved over the years have included doors through a shared wall that permit passage between the otherwise separate structures (Exhibit S: 1099 New York Ave connection), doors or enclosed connections between shared spaces, such as lobbies, service corridors, and loading areas (Exhibit T: Le Grant Letter to Shiker), and outdoor connections covered by a roof or trellis between separate portions of structure (Exhibit U: Le Grant Letter to Giordano; Appeal No. 16646.¹)

¹ Note that Appellant’s counsel argued FOR relatively minor ground-floor connections in both matters.

Both the Board and the Zoning Commission have repeatedly affirmed the validity of the above connections. In Z.C. Case No. 06-27, for example, the Zoning Commission approved the sufficiency of an above-grade corridor connection between the office and residential components of the Square 54 redevelopment. (Exhibit V: excerpt from Z.C. Order No. 06-27 and related NCPC report.) And as recently as last month, the Board affirmed the validity of a trellis connection at 117 C Street SE in Appeal No. 18664.

Neither case cited by the Appellants concludes that the building connection proposed in this case fails to meet the minimum requirements for a building connection under Section 199 or for “meaningful communication” as that term has been interpreted by the Zoning Administrator and upheld by the BZA and Zoning Commission. In fact, the two cases affirm the ability to connect otherwise separate structures under Section 199 of the Zoning Regulations. At most, all those cases do is acknowledge that the proposed connection in each case was adequate.

- In Z.C. Case No. 04-36, the Zoning Commission made no finding regarding what constitutes a valid building connection. It merely referenced the applicant’s intention to construct a “meaningful connection” to permit measurement of height from 17th Street and noted that such measurement was permissible under the Zoning Regulations. (Z.C. Order No. 04-36 at 8.)
- In Z.C. Case No. 08-34, all the Zoning Commission did was determine that the connections were sufficient. Furthermore, the information on connections was provided with regard to the 1910 Height Act, not the definition of “building” under the Zoning Regulations, and the Zoning Commission explicitly stated that the Zoning Administrator was ultimately responsible for determining whether the connections were sufficient under the Height Act. (Z.C. Order No. 08-34 at 9.)

The draft proposed Zoning Regulations cited by the Appellants are similarly unhelpful to their position. The language is draft language for proposed regulations; it is not binding and does represent the “current interpretation” of the building connection requirement under Section 199 of the Zoning Regulations. (Indeed, the Appellants ignore the fact that the proposed regulations attempt to “focus” the existing definition of building connection—meaning that the existing definition is more broad and allows connections such as the shared service corridor and vestibule proposed in the Project. (Exhibit W: Excerpt from Dec. 1, 2008 Supplemental OP Report on Height (highlighting that the proposed Section 501 language explicitly modifies and replaces the current definition of building in Section 199).)

B. The Project’s Proposed Building Connections

Here, the Project includes two areas that each suffice as a valid building connection under the current well-established interpretation of the Zoning Regulations. (Exhibit A: plans illustrating building connection.).

1. The Project includes a shared service corridor that provides access from the retail tenant spaces within the Marriott structure into the service corridor, which is on the Intervenor's property. This shared service corridor also provides egress from the Project's lobby and function room spaces. This shared service corridor is open and available for access on a continuous basis and provides access to the retail tenants' loading and trash facilities.
2. The Project also includes a shared exit vestibule that provides access from Marriott's egress stair to M Street through the vestibule, which is on Intervenor's property. This vestibule also provides access to the Project's fire control room. Again, this vestibule is open and available for access on a continuous basis.

These connections clearly meet the legal requirements of the Zoning Regulations and provide communication between the separate portions of the building at or above the main floor. The Zoning Administrator confirmed that the connections in the Project were adequate in his 2010 and 2013 reviews (Exhibits F and G), and a plan highlighting these connections was provided to the Zoning Administrator's office during review of the Permit (Exhibit H, Tab 1).

Based on the foregoing, the Zoning Administrator did not err in approving the Project as part of a single "Building", based on the definition of "building" of Section 199 of the Zoning Regulations and established precedent interpreting that definition.

II. The Project Complies with the Parking Requirements

The Appellants argue: (a) as a standalone building, Intervenor's property fails to meet parking requirements, (b) even if part of a single building with the Marriott, Lot 190 as a whole fails to provide sufficient parking, and (c) proposed parking within Project does not meet dimensional requirements. These arguments fail because the Project clearly provides all 48 required parking spaces through attendant-assisted parking, which is permitted under Section 2115.9 of the Zoning Regulations.

A. The Project's Parking Requirement is Properly Analyzed as an Addition to the Existing Improvements on Lot 190

For the reasons discussed in Section I, the Project is part of a single building. Accordingly, the Zoning Administrator appropriately looked at entire single building on Lot 190 to evaluate compliance with parking. The Zoning Administrator confirmed this approach in his 2010 and 2013 reviews (Exhibits F and G).

B. The Improvements on Lot 190—Including the Project—Comply with the Parking Requirements

1. The Existing Improvements Comply with the Parking Requirements

The Existing Improvements on Lot 190 comply with the parking requirements. (Exhibit F: 2010 Determination Letter.)

According to a letter provided by the former owner of the Marriott parcel to DCRA in connection with the 2006 addition, the Existing Improvements currently provide 140 parking spaces. (Exhibit K: May 25, 2006 Letter to DCRA regarding Parking Spaces.) These spaces are located within the existing parking garage.

When the Marriott was first constructed in the late 1970s, no parking was required for a hotel in the CR Zone District, but 89 parking spaces were provided. (Exhibit I: Previous Zoning Computation Sheets). The 1988 addition added 71 hotel rooms, which required 18 parking spaces, and 18 parking spaces were added, for a total of 107 parking spaces. (Exhibit I.) A subsequent addition of 56 hotel rooms in 2006 triggered a requirement for 14 additional parking spaces. (Although we could not locate a zoning computation sheet for the 2006 addition, the 33 additional spaces that bring the total to 140 spaces were presumably added at this time. (Exhibit K.)

Based on the foregoing, the Existing Improvements were only required to provide 32 parking spaces, and actually provide 140 parking spaces. Appellants claim, however, that the balance of 108 spaces become required spaces under Section 2100.10 of the Zoning Regulations, which prohibits the reduction of parking spaces when the Zoning Regulations now require more parking than when a structure was first constructed.² Even if this is true, the Existing Improvements comply with the parking requirements, which do not require a property owner to add parking spaces to a pre-existing structure to bring it up to current standards. Furthermore, for the reasons discussed below, the Project provides its own parking.

Issuance of building permits and certificates of occupancy for construction on Lot 190 in the late 1970s, late 1980s, and mid-2000s provides confirmation that Lot 190 was deemed to comply with the Zoning Regulations in effect at time of construction.

2. The Project Complies with the Parking Requirements

The Project provides 168 hotel rooms and a 1,750 square-foot meeting room space. Accordingly, the Project has a parking requirement of 48 parking spaces.

² The original 354 rooms would now require 89 parking spaces, and the hotel's function space would likely require the remaining 19 spaces.

The Project provides a total of 48 parking spaces – 34 striped spaces and an additional 14 spaces through the use of attendant-assisted parking. (Exhibit B: Parking Diagram.) Pursuant to Section 2115.9 of the Zoning Regulations, a commercial building³ in the CR Zone District with a parking requirement of at least 75 spaces may satisfy the parking requirement through attendant-assisted parking (i.e. valet parking).

Here, the building for zoning purposes on Lot 190 (the Existing Improvements plus the Project) has a total parking requirement of at least 80 parking spaces – 32 required spaces in the Existing Improvements and 48 required spaces in the Project.⁴ Therefore, the Project may use attendant-assisted parking under Section 2115.9. As shown on the Parking Diagram (Exhibit B), the parking garage within the Project provides approximately ___ square feet of parking area per required parking space—well in excess of the minimum of 285 square feet required by Section 2115.10 of the Regulations. A parking plan showing 48 valet spaces was provided to the Zoning Administrator’s office during review of the Permit (Exhibit H, Tab 2), and the Zoning Division specifically noted “48 PARKING SPACES PROVIDED PER 2115.9 (VALET PARKING)” in its comments approving the Permit.

The following table accurately summarizes the required and provided parking for development on Lot 190:

Table 1: Lot 190 Parking

	<u>Number of Rooms</u>	<u>Required Parking</u>	<u>Provided Parking</u>
Initial Construction	354 rooms + function / meeting room space	none	89 spaces
Late 1980s Addition	+ 71 rooms	18 spaces	+18 spaces (107 total)
Mid 2000s Addition	+ 56 rooms	+ 14 spaces (32 total)	+33 spaces (140 total)
Project	+ 168 rooms + 1,750 s.f. meeting space	+ 48 spaces (80 total)	+ 48 spaces (188 total)
Total	649 rooms	80 spaces	188 spaces

³ Per Section 2115.18, a hotel is a commercial building for purposes of whether valet parking is permitted.

⁴ Using the Appellants’ logic, Lot 190 has a total parking requirement of 188 spaces within the Project.

C. The Dimensional Requirements for Parking Spaces Do Not Apply to the Project

Section 2115.11 makes it clear that the parking space dimensional, size, design and striping requirements of Sections 2115.1 – 2115.4 and other sections are waived for developments that choose to utilize Section 2115.9 and provide attendant-assisted parking. This includes regulations on the percentage of compact spaces (§ 2115.2) and the grouping of compact spaces (§ 2115.4). Therefore, appellant's claims regarding the number and arrangement of compact parking spaces do not apply here.

D. Conclusion: The Project Complies with the Parking Requirements

For the reasons set forth above, the Zoning Administrator did not err in approving the Permit's compliance with the parking requirements, because the Project satisfied the parking requirements through attendant-assisted parking as permitted under Section 2115.9 of the Zoning Regulations.

III. The Project Complies with the Loading Requirements

The Appellants argue: (a) as a standalone building, Intervenor's property fails to meet loading requirements, (b) even if part of a single building with the Marriott, Lot 190 fails to provide sufficient loading, and (c) the Project's proposed loading was improperly located. These arguments fail because the Project provided the required amount of loading in a permissible location within the private alley at the rear of the Property.

A. The Project's Loading Requirement is Properly Analyzed as an Addition to the Existing Improvements on Lot 190

For the reasons discussed in Section I, the Project is part of a single building. Accordingly, the Zoning Administrator appropriately looked at the entire single building on Lot 190 to evaluate compliance with loading. The Zoning Administrator confirmed this approach in his 2010 and 2013 reviews (Exhibits F and G).

B. The Improvements on Lot 190—including the Project—Comply with the Loading Requirements

1. The Existing Improvements Comply with the Loading Requirements

The Existing Improvements comply with the loading requirements. (Exhibit F: 2010 Le Grant Determination Letter.) When the Marriott was constructed in the late 1970s, the Zoning Regulations required 2 loading berths and 6 service/delivery spaces. According to the Comp Sheet, these spaces were provided. (Exhibit I: Zoning Computation Sheets.)

Section 2201 of the Zoning Regulations now require tiered increases in loading based on the number of rooms: no loading for hotels with fewer than 30 rooms, some loading for hotels with 30-200 rooms, and additional loading for hotels with greater than 200 rooms, beyond which there is no additional loading requirement.

Appellants appear to argue that each successive increase of 200 rooms triggers a requirement for additional loading. However, the Schedule of Loading Requirements in Section 2201 very clearly does NOT impose this requirement for hotels (or for most other uses). Once a building reaches a certain size threshold, no additional loading is required. Compare, by contrast, the loading requirements for wholesale and industrial uses, which require loading “for each 200,000 s.f. more than 100,000 s.f.” If the Zoning Commission intended to require additional loading for successive increases in hotel size beyond 200 rooms, then the loading requirement for hotels would have been structured just as the requirement for wholesale or industrial uses (i.e. “for each 200 rooms more than 200 rooms”).

The Marriott was constructed with over 400 rooms. Accordingly, subsequent additions of rooms to the Marriott did not trigger a requirement for additional loading. For example, the 1988 Zoning Computation Sheet clearly indicates that no additional loading was required for the 1988 addition. (Exhibit I.) Again, the issuance of permits and certificates of occupancy for the Existing Improvements when constructed in the late 1970s and again for additions in the late 1980s and in the mid 2000s demonstrate compliance with Zoning Regulations in effect at time of construction.

2. The Project Complies with the Loading Requirements

As yet another addition of hotel rooms to the Existing Improvements, the Project does not require any additional loading because the Existing Improvements already have “over 200 rooms” and the Project simply adds more rooms. Taken as an addition to the Existing Improvements, the additional 168 beds do not trigger a loading requirement.

Notwithstanding the foregoing, the Project provides the amount of loading that is required for a standalone hotel with 168 rooms and 1,750 square feet of meeting room space. As a standalone hotel, the Project would require one 30-foot deep berth, one 100 s.f. platform, and one 20-foot service/delivery space under Section 2201 of the Zoning Regulations. Each of these loading facilities is provided at the rear of the Property, off the private alley. (Exhibit C: Loading Diagram.) A loading plan evidencing compliance with this requirement was provided to the Zoning Administrator’s office during permit review. (Exhibit H, Tab 3.)

The following table accurately summarizes the required and provided loading for development on Lot 190:

Table 2: Lot 190 Loading

	<u>Number of Rooms</u>	<u>Required Loading</u>	<u>Provided Loading</u>
Initial Construction	354 rooms + function / meeting room space	2 berths 6 delivery spaces	2 berths 6 delivery spaces
Late 1980s Addition	+ 71 rooms (425 total)	No additional loading required	None
Mid 2000s Addition	+ 56 rooms (481 total)	No additional loading required	none
Project	+ 168 rooms (649 total)	No additional loading required	1 berth 1 delivery space
Total	649 total	2 berths 6 delivery spaces	3 berths 7 delivery spaces

C. The Location of the Project's Loading Facilities Complies with the Zoning Regulations

Section 2203.1 of the Zoning Regulations states that all required loading berths and service/delivery spaces must be located either within the building, in a rear yard or side yard, or — for commercial and industrial-zoned property — anywhere else on the lot.

Importantly, Section 2203.1 only applies to the location of required loading berths and delivery spaces. As discussed above, the Project's loading is not "required" loading because additional loading was not required for the additional 168 hotel rooms. Section 2203.1 does not restrict the location of supplemental or additional loading spaces. Based on the foregoing, any loading provided for the Project may be located anywhere on Lot 190. (Exhibit F and G.)

Furthermore, even if the Project's loading was required loading, the Regulations permit it to be located anywhere on the lot under Section 2203.1. Lot 190 is located in the CR Zone District, which was created in the 1970s. Section 2203.1(c) was adopted as a part of the original 1958 Zoning Regulations and predates the CR District by two decades. The CR Zone District is a mixed-use "Commercial-Residential" Zone District that permits commercial and light industrial development. Therefore, it was reasonable for the Zoning Administrator to conclude that the CR Zone District is a type of commercial zone district that permits loading anywhere on the lot.

Finally, as a practical matter, the Project's loading is located at the end of an alley that has been used for decades for service and loading activity on the Property—first as a public alley and now as a private alley that is owned mostly by the owners of Lot 190 but also by the owner of the 1200 NH Building. Alleys are, of course, intended for building access and service functions, such as loading and deliveries. Indeed, a private alley agreement between the parties governs the use of the alley and permits the owners of Lot 190 to use the alley for ingress and egress to and from their property. The agreement does not prohibit loading and service activity.

D. Conclusion: The Project Complies with the Loading Requirements

For the reasons set forth above, the Zoning Administrator did not err in approving the Permit's compliance with the loading requirements, because the Project does not trigger additional loading requirements above those currently provided, yet nonetheless provides additional loading facilities. The Zoning Regulations do not preclude the location of those facilities in the private alley at the rear of the Project.

IV. The Project's Roof Structure Complies with the Setback Requirements

The Appellants allege that the west wall of the Project's roof structure is not set back sufficiently from the western wall of the Project. However, the western wall of the Project is not an "exterior wall" and, accordingly, no setback is required.

The Zoning Regulations require the setback of roof structures from all exterior walls of a building. (Exhibit W: Section 630 (CR Zone setback requirement)). By definition, then, some walls of a building are exterior walls and other walls are interior walls. It is well-established that exterior walls are those walls that face streets, alleys, yards and open courts. Walls that face closed courts and the interior of a building are, by contrast, interior walls. No setback is required from those interior walls. (Similarly, no setback is required from lot line walls, provided adjacent property is also able to achieve the same height.)

The Project's roof structure complies with the setback requirement from all exterior walls. (Exhibit D: Roof Structure Plan) The Project is part of a single building for zoning purposes and the Zoning Administrator appropriately looked at entire single building to evaluate compliance with roof structure setback requirements. Based on the established understanding of what constitutes an exterior wall, the Zoning Administrator reasonably concluded that the west wall of the Project was not an exterior wall because it faced a closed court—the "donut hole" within the single building on Lot 190. Therefore, no setback is required. (Exhibit G: 2013 Le Grant Discussion) Plans confirming the compliance of the roof structure with the setback requirement were reviewed during the processing of the Permit. (Exhibit H, Tab 4.)

Based on the foregoing, the Zoning Administrator did not err in concluding that the roof structure complied with setback requirement of the Zoning Regulations.

V. The Project Does Not Trigger a Requirement for Additional Public Space at Ground Level

Appellants claim: (a) as a standalone building, Intervenor's property fails to meet the requirement for public space at ground level, and (b) even if part of a single building with the Existing Improvements on Lot 190, the property fails to meet the public space requirement because the Existing Improvements fail to provide public space at ground level.

The public space at ground level requirement is unique to the CR Zone District. The Zoning Regulations require that new development set aside at least 10% of the lot area as public space that provides a transitional space between the street and the building. The space must be adjacent to the main entrance of the principal building or structure on the lot. The space must be either open to the sky or have a height of one story or 10 feet. The space must be lighted and landscaped for public use, and may be used for temporary commercial displays. The space must be open and available to the general public on a continuous basis. The area shall not be charged against the gross floor area of the building. (Exhibit X, Section 633 of the Zoning Regulations.)

Again, for the reasons set forth in Section III, the Project is an addition to an existing building on Lot 190, and the Zoning Administrator appropriately looked at the entire set of improvements on Lot 190 to evaluate compliance with public space at ground level requirements. The Zoning Administrator further concluded that Lot 190 already satisfied the public space requirement, and the development of the Project did not increase the public space requirement or otherwise trigger a requirement for public space at ground level. (Exhibit G: 2013 Le Grant Discussion) As with all of the other issues raised in this Appeal, the satisfaction of the public space requirement was addressed in detail during the review of the Permit. (Exhibit H: Email to DCRA-Zoning regarding Permit Review.)

Three separate arguments each support the Zoning Administrator's conclusion that no public space at ground level is required:

- A. The Project is not "new development" triggering the public space requirement.
- B. The Existing Improvements already satisfy the public space requirement for Lot 190.
- C. Even if Lot 190 no longer satisfies the public space requirement, the Project does not trigger a requirement for public space.

We address each argument in turn.

A. The Project is Not New Development that Triggers the Public Space Requirement

Section 633 requires public space for all "new development." Here, the Project is not "new development"; it is an addition to an existing building that replaces a prior structure at the

same location. New development is not defined in the Zoning Regulations, which means the phrase has the meaning given by Websters' Unabridged Dictionary. Websters' Third Unabridged Dictionary defines "new" as "1: having existed or having been made but a short time" and "development" as: "8: a developed tract of land; esp. a subdivision having necessary utilities (as water, gas, electricity, and roads)". Based on the foregoing definitions, the "new development" clearly took place in the late 1970s, when Lot 190 was created by subdivision. The Project is not "new development" but rather an addition to an existing development on land that has and continues to be improved with structures and uses that are part of the same common development scheme for Lot 190. The Zoning Administrator could have reasonably concluded that an addition is not "new development" based on the plain language of Section 633. Therefore, the Project does not trigger the requirements of 633.

B. The Existing Improvements on Lot 190 Already Satisfy the Public Space Requirement

Section 633 sets forth specific requirements for public space at ground level. Among other requirements, the public space must equal at least 10% of the property's lot area. For the reasons discussed above, the Project is part of a single building on a single lot of record. Per Section 3202.3 of the Zoning Regulations, compliance with yard, court, and other requirements of the Zoning Regulations is evaluated based on the structure's record lot, not any assessment and taxation lots. Therefore, the public space requirement is based on the lot area of that lot of record (Lot 190) rather than the lot area of the Property.

Lot 190 was created during the construction of the Marriott in the late 1970s. Accordingly, the public space requirement for all of Lot 190 must have been satisfied at that time. The Zoning Computation sheet for the Marriott does not indicate how the public space requirement was satisfied. Importantly, no matter how the requirement was satisfied, Intervenor's Property could never have been counted toward the public space requirement because at that time the Property was 100% occupied by Lulu's Mardi Gras nightclub.

Although we do not know how the public space requirement for Lot 190 was met, it is clear that the Marriott's lobby, combined with the arcade immediately outside the lobby, constitutes "public space at ground level" that plainly meets the requirements of Section 633. (Exhibit E: Public Space Requirement)

- Lot 190 has a lot area of 64,446 square feet, which triggers a requirement for 6,445 square feet of public space. The lobby and arcade consist of approximately 8,597 square feet, or 13.3% of the lot area, well in excess of the minimum requirement.
- The arcade and lobby are immediately adjacent to the main entrance of the principal building on Lot 190, and provide a transition from 22nd Street into the interior of the hotel.

- The arcade and lobby have a height of at least one story. The lobby height is also at least 10 feet tall.
- The arcade and lobby are open to the public on a continuous basis and are lighted and furnished with ample space for public seating.

Based on the foregoing, the Zoning Administrator could have reasonably concluded that the public space requirement was already met on Lot 190. Because the Project does not increase the size of Lot 190—and therefore does not increase the amount of public space required under Section 633—the Zoning Administrator could have also reasonably concluded that no additional public space was required for the Project.

C. Even if Lot 190 No Longer Satisfies the Public Space Requirement, the Development of the Project Does Not Require any Public Space

Again, as discussed above, the public space requirement for Lot 190 must have been satisfied in the late 1970s with the initial construction of the Marriott. Based on the District's issuance of a permit and certificate of occupancy for the Marriott, the public space requirement must have been met at that time in some fashion. Subsequent issuance of permits and certificates of occupancy for the Existing Improvements on Lot 190 after additions in the late 1980s and mid-2000s provide repeated evidence that the District continued to affirm Lot 190's compliance with the public space requirement (as well as all other applicable Zoning Regulations).

Indeed, even if Lot 190 no longer complies with the public space requirement, the lack of such public space does not preclude the development of the Project.

- The District is estopped from requiring such public space be created now, 35 years after the original construction of the Marriott, 25 years after the late 1980s addition and nearly a decade after the mid-2000s addition.
- The Existing Improvements on Lot 190 now constitute a legal nonconforming structure as to public space at ground level. Under Section 2001.3, additions to nonconforming structures are permitted so long as the existing nonconformity is not increased or exacerbated. Here, the Project does not increase the lot area of Lot 190 and therefore does not increase or exacerbate the public space requirement.
- Intervenor's Property never served as the required public space because it was occupied by structure from the late 1970s through the mid-2000s. Furthermore, the current parking lot on the Property does not meet the requirements of Section 633: among other reasons, it is not adjacent to the main entrance of the Existing Improvements nor does it provide a transition from the street to the building, it is not landscaped, and it is not open to the public on a continuous basis. Therefore, the

development of the Project has no impact on the required public space at ground level.

For all of the above reasons, the public space requirement of Section 633 does not impede the construction of the Project.

D. The Public Space Requirement is no Longer Considered to be an Important Planning Tool

We briefly address the Appellants' assertions regarding the "importance" of the public space requirement. The public space at ground level requirement is a relic of bygone planning policies, much like the policies that promoted building arcades at ground level. Current policies generally call for consistent streetwalls built out to the property line in order to activate the public realm. For this reason, many property owners have sought and received variance relief from the public space requirement. Similarly, the Zoning Commission has approved flexibility from this requirement in connection with a number of planned unit development and design review applications.

Indeed, the Appellants' defense of the importance of the public space requirement is particularly hypocritical, because the owner of the 1200 NH Building itself successfully sought a variance from the public space requirements. (Exhibit Y: BZA Application No. 17794 & 17794-A.)

E. Conclusion

For the reasons set forth above, the Zoning Administrator did not err in issuing the Permit. The Project does not require the provision of public space; that requirement was already met with the construction of the Existing Improvements on Lot 190, and the Project does not increase the public space requirement in any way.

VI. Conclusion

The Appellants' arguments are unsupported by the clear evidence and well-established interpretation of the Zoning Regulations set forth above. Accordingly, the appeals should be denied, and the issuance of the Permit should be affirmed.



By: GOULSTON & STORRS
John Epting
David Avitabile

LIST OF EXHIBITS

Key Exhibits

Exhibit A	Building Connection Plan
Exhibit B	Parking Plan
Exhibit C	Loading Plan
Exhibit D	Roof Structure Plan
Exhibit E	Public Space at Ground Level Plan

Prior Zoning Administrator Determinations and Discussions Regarding the Permit

Exhibit F	2010 Le Grant Determination Letter
Exhibit G	2013 Summary of Zoning Issues
Exhibit H	2013 Email Correspondence with DCRA-Zoning and Exhibits
H-1	Building Connection Plan
H-2	Parking Plan
H-3	Loading Plan
H-4	Roof Structure Plan

Zoning History of Lot 190

Exhibit I	1978 and 1988 Zoning Computation Sheets
Exhibit J	2005 Bello Determination Letter
Exhibit K	2006 Letter to DCRA Regarding Parking
Exhibit L	2009 Le Grant Determination Letter
Exhibit M	2013 Email Correspondence regarding Roof Structure

Other Supporting Documents

Exhibit N	2014 DCRA Letter regarding 1200 NH Windows
Exhibit O	Excerpt from Z.C. Order No. 745
Exhibit P	Excerpt from Section 199 of the Zoning Regulations
Exhibit Q	Excerpt from Office of Planning Memo Dated Sept. 15, 2008 Regarding

	Measurement and Regulation of Height
Exhibit R	Excerpt from OP Supplemental Memo Dated Dec. 1, 2008 Regarding Height
Exhibit S	Photos of 1099 New York Avenue Connection
Exhibit T	Letter from Le Grant to Shiker
Exhibit U	Letter from Le Grant to Giordano; BZA Appeal No. 16646
Exhibit V	Excerpt from Z.C. Order No. 06-27
Exhibit W	Section 630 of the Zoning Regulations
Exhibit X	Section 633 of the Zoning Regulations
Exhibit Y	BZA Application No. 17794 & 17794-A