

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

Appeal of NH Street Partners Holdings LLC

Appeal No. 18735

and

Appeal of Chadbourne & Park LLP

Appeal No. 18737

DCRA'S OPPOSITION TO APPELLANT'S UNTIMELY LETTER

Appellant has moved for permission to file an untimely letter addressing the issues involved in this appeal. The letter should be rejected because it is essentially just an expansion on arguments that Appellant made or could have made before. But assuming that the Board accepts the letter, it should also consider the substantive arguments contained in this brief.

ARGUMENT

1. The Marriott and the Addition are not separate buildings.

The first thing Appellant does in the letter is rehash its prior argument that though the Addition will be connected to the Marriott in three places, these connections are not sufficient to create one building because only employees will use the connections to move between the Addition and the Marriott. Based on this argument, it appears that Appellant's position is that those sections of a building that the general public is not allowed to access are not part of the building. This illogical argument has no support in law.

Besides repackaging the above argument, the letter also makes the new argument that Section 3203.3 supports its position that the Addition and Marriott cannot be built on one lot because that provision states that "each structure will be on a separate lot of record." This argument misses the mark since, as Appellant concedes, the Marriott and the Addition will be connected in 3 places. So the existing building and the Addition will be one structure, thus, Section 3203.3 is not violated here.

Another point Appellant makes in arguing that the Marriott and the Addition are separate buildings is that Marriott and the Addition, which will be used as a

Hyatt Hotel, will have different owners. This fact is irrelevant. There are many buildings that have numerous entities owning different parts of the building (i.e. condos). The fact that there will be different owners of the Marriott and Hyatt does not change the equation. Rather, the question remains whether the separate portions of the structure are connected. Since there is no dispute that the Marriott and the Addition are connected in 3 places, the Marriott and the Addition make up one building.

2. The building has the required parking.

Next, Appellant seems to argue that the Addition is relying on the Marriott's excess parking to provide the 48 spaces that will be required by the construction of the Addition. This argument is just plain wrong. Valet, not excess, parking will be used to satisfy the parking requirements.

Appellant also argues that valet parking cannot be utilized to satisfy the parking requirements because "75 parking spaces are not required by the Hyatt Hotel structure and the Hyatt is not providing 75 parking spaces." This argument misunderstands the basic premise that the existing Marriott and the Addition, which will be used as a Hyatt Hotel, are one building. 11 D.C.M.R. § 2115.9 provides that "[i]n a commercial building... where at least seventy-five (75) parking spaces are required," valet parking can be used to provide the necessary parking.

The final argument Appellant makes about parking is that DDOT may not approve the valet parking plan and that other valet parking requirements, like a permanent sign, may not be satisfied. These are enforcement issues. If it is determined that the valet parking that is provided does not comply with the legal requirements, then the ZA can take enforcement action. But that is not something that should or can be dealt with now.

3. The loading requirements are satisfied.

Moving on to Appellant's argument that the building will not provide sufficient loading, this is the same argument Appellant made in prior filings. The argument is based on the idea that a hotel with over 200 rooms must provide additional loading every time it adds 200 rooms (i.e. additional loading required at 400 rooms, 600 rooms, etc). As support for this argument, Appellant relies on superseded zoning regulations. Obviously, it is the current zoning regulations, not any regulations that may have existed in the past, that govern current construction. And according to the current zoning regulations, loading for hotels maxes out at 200 rooms. 11. D.C.M.R. § 2201.

4. The BZA should disregard Appellant's new roof top structure argument.

In arguing that the rooftop structure violates the zoning regulations,

Appellant makes a brand new argument. It argues that the building improperly has two penthouse structures. This new argument, made on the eve of the hearing which was not even hinted at in any of Appellant's timely filed documents, should not be considered at this time.

5. The public space argument is without merit.

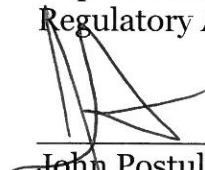
Finally, Appellant argues that public space requirements are not satisfied. This argument contends that the existing building fails to provide the required public space. This argument is extremely untimely.

Respectfully Submitted,

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Date: 4/14/14



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April 2014, a copy of the foregoing Brief was served via e-mail to:

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