

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**Appeal by NH Street Partners Holdings LLC of
Building Permit No. B1310607 -- which
Authorizes the Construction of a Hotel on Lot 880
(part of Record Lot 190) in Square 70 – Erroneously
Issued by D.C.R.A.**

ANC 2A06

STATEMENT OF APPEAL

The Appellant, NH Street Partners Holdings LLC, by and through undersigned counsel, respectfully submits this Appeal to the Board of Zoning Adjustment (“Board” or “BZA”) of the November 27, 2013 issuance of Building Permit No. B1310607. This Building Permit authorizes “New Construction of 9-Story, 168 Guestroom Hotel Addition to the Existing Washington Marriott Hotel” as a Hyatt Hotel on Lot 880 in Square 70 (“Building Permit”). (The Building Permit is attached as Exhibit “A”). The Building Permit was erroneously issued in violation of the Zoning Regulations for the numerous reasons set forth below and must be REVOKED.

I. SUBJECT PROPERTY

The Building Permit authorizes construction activities on Lot 880 in Square 70. Lot 880 comprises a portion of Record Lot 190 in Square 70 and is located in the DC/CR zone district at 2121 M Street, N.W. (“**Hyatt Property**”). The owner and developer of the Hyatt Property is Renaissance Centro M Street LLC (“**Hotel Developer**”).

II. PROPERTY OF APPELLANT

The Appellant owns Lot 195 in Square 70 and the improvements thereon (“**Appellant’s Property**”). Appellant’s Property immediately abuts the Hyatt Property. (See Parcel Map

showing the location of Appellant's Property attached as Exhibit "B"). Appellant's Property is improved with an eight-story office building with ground floor retail uses and contains approximately 284,658 sf.

III. JURISDICTION

The Board has jurisdiction for the Appeal pursuant to 11 DCMR §§ 3100.2 and 3200.2. The Appeal is timely pursuant to DCMR § 3112, having been filed within sixty (60) days of the November 27, 2013 issuance of the Building Permit.

IV. APPELLANT'S STANDING

The Appellant, NH Street Partners Holdings LLC, is the owner of 1200 New Hampshire Avenue, N.W. Appellant's Property abuts and is located immediately to the east of the Hyatt Property. The Appellant, as the "Aggrieved Party", has standing to file this Appeal and will be adversely and substantially affected by the improvements illegally authorized by the Building Permit.

V. HYATT PROPERTY AND PROPOSED DEVELOPMENT

The Hyatt Property is proposed to be developed with a nine-story building for use as a Hyatt Hotel ("**Hyatt Hotel**"). Based on the Building Permit and review of the plans for the Hyatt Hotel ("Hyatt Plans"), the proposed construction purports to be an addition to the existing Marriott Hotel ("**Marriott Hotel**") at 1217-1221 22nd Street, NW and 2119 M Street, NW (Square 70, Lots 881, 883 and 884). (See Parcel Map showing the location of the Marriott Hotel attached as Exhibit "B"). However, the Hyatt Hotel does not provide the required meaningful connection to the Marriott Hotel, in violation of Sections 199.1 and 3202.3 of the Zoning Regulations, and, as a result, the construction authorized by the Building Permit cannot be

deemed to constitute a bona fide “addition”. Both the proposed Hyatt Hotel and the existing Marriott Hotel are located on a single record lot which is known as Lot 190 in Square 70.

VI. ZONING VIOLATIONS

The Building Permit is in violation of at least eight (8) sections or subsections of the Zoning Regulations as enumerated and discussed below and must, therefore, be REVOKED. In addition, the Building Permit may violate other sections or subsections of the Zoning Regulations which could not be confirmed by Appellant based on the limited and incomplete documents available to it at the time of the filing of this Appeal. Any additional violations determined by Appellant based upon the submission of additional documents, testimony or other evidence of record will be set forth by Appellant in a supplementary submission prior to or at the public hearing on this Appeal.

A. **Without a Meaningful Connection, Each Structure Is a Separate Building for Zoning Purposes and Each Structure Must Provide a Separate Record Lot.**

Although the Hyatt Plans characterize the proposed hotel as an addition to the existing Marriott Hotel, no meaningful or substantial connection of the proposed Hyatt Hotel to the existing Marriott Hotel is shown on the plans.¹ The Zoning Regulations state that “(w)hen separated from the ground up or from the lowest floor up, each portion [of a structure] shall be deemed a separate building....”² and that “(t)he existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building.”³ (Emphasis added.) Further, the Zoning Commission held that a connection

¹ DCRA apparently accepted the Hotel Developer’s characterization of the Hyatt Hotel as an addition to the existing Marriott Hotel since the Building Permit authorizes an “addition,” rather than “new construction.”

² See the definition of “Building” in Section 199.1.

³ Id.

between an existing building and an addition must be a “substantial” or “meaningful” connection for the structures to be considered a single building for zoning purposes. See Z.C. Case No. 08-34 (2011) and Z.C. Case No. 04-36 (2006).

Based on Appellant’s review of the Hyatt Plans, there is no meaningful or direct communication between the existing Marriott Hotel and the proposed Hyatt Hotel addition. The only “communications” depicted, do not qualify as “meaningful or substantial connections”, as discussed below:

1. Marriott’s existing parking lot ramp which provides access from 22nd Street through the Marriott Hotel and, pursuant to the Hyatt Plans, will connect to the proposed underground parking garage of the Hyatt Hotel. See Sheet A101 of the Hyatt Plans (“Lower Level Floor Plan”). Because the ramp is located below the main floor, it cannot be considered an allowable connection.
2. Three doors, two of which connect to a service corridor and one of which appears to be a locked emergency egress door. The first two doors are apparently provided to allow two retailers in the existing Marriott hotel, Walgreens and Starbucks, to access the loading and trash areas⁴. The third door, closest to M street, appears to be nothing more than a locked emergency door.

⁴ A Development Rights Agreement dated October 5, 2006 and recorded on October 6, 2006 refers to a certain “Retail Doorway Access Easement” which is apparently meant to provide access from the existing retail (i.e., Walgreens and Starbucks) to the loading area per the 2006 Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement (“REA”). The REA was amended in 2013 and the “retail doorway access easement” was revised. See EXHIBITS J & K to the 2013 amended REA showing the revised retail doorway access easement connection locations. (This connection location appears to be the service corridor shown on the Hyatt 1st Floor Plan).

Since none of the above-referenced communications entitle the Hyatt Hotel to be considered a bona fide addition to the existing Marriott Hotel, the Hyatt Hotel must be constructed on its own single lot of record as required by Section 3202.3. As such, the Hyatt Hotel will need to satisfy all zoning requirements based on the required Record lot and it cannot “bootstrap” on the land or building that comprise the separate Marriott Hotel.

The Hotel Developer’s failure to provide a meaningful or significant building connection between the two entirely separate, distinct and competing hotel operations does not constitute a de minimus, minor or technical zoning requirement. Instead, such a failure has real advantage to the Hotel Developer and significant negative impact on to the Appellant and to the general public. Specifically, if the Hyatt Hotel is required to be constructed on its own record lot, the Hyatt Hotel will need to provide *inter alia* (i) its own parking and loading facilities (i.e., it cannot not claim any benefit from existing parking and loading facilities provided in the Marriott Hotel which the Hyatt Hotel apparently has no right to use), (ii) a rear yard⁵, and (iii) penthouse setbacks measured from its own property, not from the adjacent Marriott Hotel property.

Because the Hyatt Hotel fails to qualify as an addition, it must be regarded as a separate structure and, as such, it must comply with Section 3202.3. Section 3202.3 requires that “...a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure... unless the land for the proposed erection, construction, or conversion has

⁵ If the Hyatt Hotel were to be constructed on its own record lot, it would be required to provide a rear yard. If, by contrast, the Hyatt Hotel is deemed to be an addition to the Marriott Hotel, the Hyatt Hotel would not be required to provide a rear yard because the larger record lot (on which the existing Marriott Hotel is located) has 3 street frontages and qualifies as a corner lot. The Hyatt Hotel has only one street frontage.

been divided so that each structure will be on a separate lot of record....”⁶ Since the Hyatt Hotel is not proposed to be developed on its own separate lot of record and thus violates Section 3202.3, the Building Permit was erroneously issued and must be REVOKED.

B. The Proposed Hyatt Hotel Fails to Provide the Required Number of Parking Spaces.

The proposed Hyatt Hotel fails to provide the required number of parking spaces. Pursuant to Section 2100.1, “all buildings or structures erected after May 12, 1958 shall be provided with parking spaces to the extent specified in § 2101.”⁷ The proposed Hyatt Hotel must comply with the parking requirements required for hotels in the CR district, but fails to do so.

As a separate building, not a “bonafide” addition, the Hyatt Hotel fails to provide the required number of parking spaces required in CR zone by Section 2101.1. Specifically, although a minimum of 48 parking spaces are required [$168 \text{ rooms} / 4 + 1750 / 300 = 48$], only 33 spaces are shown by the plans as being provided. [Note: The “Zoning Analysis” on Sheet A002 of the Hyatt Plans indicates that 34 spaces are provided, but Appellant believes, based on its review of the parking plans, that only 33 spaces are proposed.] Additionally, the spaces provided do not appear to comply with the required clear minimum width dimensions. 11 DCMR §2115.

⁶ The Building Permit references Square 70, Lot 880 (an Assessment and Taxation Lot) which on its face does not comply with the Record Lot requirements of § 3202.3.

⁷ Sections 2100.6 et seq, which apply in certain circumstances to building additions, do not apply to the proposed Hyatt Hotel because the Marriott Hotel, to which it is apparently claimed by the Hotel Developer to be an addition, was not “a building or structure existing before May 12, 1958.” and, as discussed below, the proposed Hyatt Hotel does not qualify as a “building addition” because there is no meaningful or significant connection between the two hotels.

However, even assuming that the proposed Hyatt Hotel is deemed a bona fide “building addition” to the existing Marriott Hotel (which Appellant strongly contests), Appellant’s review of the Hyatt Plans and the Zoning Computation Sheet associated with the 1988 addition to the Marriott Hotel -- and assuming that the largest function room or exhibit space is 1750 sf⁸ --, the two hotels are required to provide 155 parking spaces (107 existing per Computation Sheet Plans plus 42 for 168 new sleeping rooms and 6 for function room). However, the Hyatt Plans indicate that only 140 parking spaces are provided in the Marriott and Hyatt Hotels combined and, as a result, the Building Permit clearly violates Section 2101.

C. The Hyatt Hotel Does Not Provide Compact Parking Spaces in Contiguous Groupings of Five (5) Spaces.

The compact parking spaces shown on the Hyatt Plans also fail to comply with the requirement in Section 2115.4 that compact parking spaces “shall be placed in groups of at least (5) contiguous spaces with access from the same aisle.” (See Sheets A100 and A101.) Instead, the plans of Lower Level 2 depict two (2) noncontiguous groupings of three (3) compact spaces and three (3) compact spaces that are not grouped with any other compact spaces and the plans of Lower Level 1 show two (2) groupings of four (4) compact spaces and two (2) compact spaces that are not grouped with any other compact spaces.⁹

⁸ The Hyatt Plans indicate that the largest meeting room is 1750 sf. This generates an additional parking requirement of 6 spaces (1750 divided by 300 = 5.8). However, given the much larger size of the existing Marriott Hotel, the largest meeting or exhibit space is likely to be greater than 1750 sf and, in such an event, the parking requirement will increase. DCRA apparently failed to analyze the parking requirement generated by the largest function or exhibit space in the existing Marriott Hotel.

⁹ Further, the Hyatt Hotel’s approved plans do not contain sufficient aggregate information on the existing Marriott Hotel parking garage plans to confirm compliance with the limitation on the number of compact parking spaces within an accessory parking garage containing twenty-five (25) or more required parking spaces, as set forth under §2115.2.

D. The Building Permit Exceeds the Percentage of Compact Spaces Allowed.

Section 2115.2 of the Zoning Regulations authorizes any accessory parking areas or an accessory parking garage containing twenty-five (25) or more required parking spaces to “designate up to forty percent (40%) of the parking spaces for compact cars.” However, the Hyatt Plans indicate that twenty (20) of the thirty-three (33) parking spaces – sixty (60%) percent -- are sized for compact cars. As a result, the Hyatt Plans clearly violate Section 2115.2.

E. The Building Permit is in Violation of the Loading Requirements.

Pursuant to Section 2200.1, all buildings or structures erected on or after May 12, 1958 “shall be provided with loading berths, loading platforms and service/delivery spaces to the extent specified in § 2201....” The proposed Hyatt Hotel fails to provide the required number of loading facilities.

As a freestanding building, not a building addition, the Hyatt Plans fail to provide the required number of loading facilities as required by Section 2201.1. Pursuant to Section 2201.1, a hotel for guest room areas in all districts is required to provide: (a) one (1) loading berth that is a minimum of thirty (30) feet deep; (b) one (1) loading platform of 100 sf; and (c) one (1) service/delivery space that is a minimum of twenty (20) feet deep. By contrast, the “Zoning Analysis” on Sheet A002 of the Hyatt Plans fails to indicate that there is any applicable loading requirement. Furthermore, a review of the site/first floor plan indicates only a “loading area” without demonstrating in any way that the required loading facilities are or can be provided.

In the event the proposed Hyatt is determined to be a bona fide addition to the existing Marriott Hotel (which the Appellant strenuously contests), the loading facilities proposed by the Hyatt Plans for the consolidated hotel (i.e., the Marriott Hotel and the proposed Hyatt Hotel

together) are also in violation of Section 2201.1 of the Zoning Regulations. Based on Appellant's review of the Zoning Computation Sheet associated with the 1990 addition to the Marriott Hotel and the Hyatt Plans, the two hotels will provide one (1) loading berth @ 30 feet deep, but fail to provide the required loading and service platforms and a fifty-five (55) foot deep berth for its combined increase in number of rooms useable for sleeping since the 1988 addition to the Marriott Hotel.¹⁰

Because the Marriot Hotel constructed an addition in 1990 and such an addition increased the number of rooms useable for sleeping by seventy-one (71) rooms (from 350 to 421), the 1990 addition would have required the provision of additional loading facilities. Specifically, such an addition would have required one (1) additional loading berth @ 30 feet deep, one (1) additional loading platform @ 100 sq. ft. and one (1) additional service/delivery loading space @ 20 feet.¹¹

Taken together, the 1990 addition to the Marriott Hotel and the proposed Hyatt Hotel addition will cumulatively increase the number of rooms useable for sleeping by at least 239 rooms. Because this number of sleeping rooms is in excess of 200 rooms, the proposed Hyatt Hotel (in combination with the existing Marriott Hotel) must comply with the total number of loading facilities required by Section 2201.

The applicable minimum loading facilities requirement generated by the cumulative increase in number of sleeping rooms is outlined below.

¹⁰ The Marriott Hotel was first constructed in about 1978. Additions were made to the Marriott in approximately 1990 and 2007.

¹¹ This information assumes that the Marriott Hotel, when first constructed, complied with all then-applicable loading requirements.

1. Minimum Number and Size of Loading Berths:
1 @ 30 feet deep and 1 @ 55 feet deep
2. Minimum number and size of Loading Platforms:
1 @ 100 sq. ft. and 1 @ 200 sq. ft.
3. Minimum number and size of service/delivery Loading Spaces:
1 @ 20 feet deep

The existing Marriott Hotel and the proposed Hyatt Hotel do not comply with the above loading requirements.

F. The Building Permit Violates the Permissible Location of Loading Berths.

The “loading area” depicted on Sheet A102 of the Hyatt Plans (“1st Floor Plan”) is located in an open court in violation of Section 2203.1 of the Zoning Regulations.

Pursuant to Section 2203.1, all required loading berths and service/delivery loading spaces must be located within a building or, if provided on an “open area of the lot”, they must be located within a side yard or “(e)lsewhere on the lot, only when located in Commercial and Industrial Districts.” (Emphasis added.)

The loading area proposed on the Hyatt Property is not located within the Hyatt Hotel building and it is not located within a side yard. Instead, it is located within an open court. However, pursuant to Section 2203.1, the Hyatt loading area cannot be provided “elsewhere on the lot” because the Hyatt Property is not located in a “Commercial” or “Industrial” district. Pursuant to Section 105 of the Zoning Regulations, the C-R zone district is a “Mixed Use (Commercial-Residential) District.” See Section 105.1(c). Commercial and industrial districts, by contrast are set forth in Section 105.1(d) and (e) and include C-1, C-2, C-3, C-4, C-5, C-M

and M zone districts. The proposed loading area is therefore in violation of Section 2203.1 of the Zoning Regulations.

The open court – the location of the proposed “loading area” -- is located immediately adjacent to the Appellant’s Property. As a result, noise, fumes, dust and other noxious effects will adversely impact Appellant’s Property.

G. The Proposed Hyatt Hotel Fails to Comply with the Required Penthouse Setback.

The penthouse setback from exterior walls shown on Sheet A300 of the Hyatt Plans (“North Elevation Plan”) does not comply with the Zoning Regulations. The Regulations require that if housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located, pursuant to Section 400.7(b). The North Elevation Plan clearly depicts a ratio of less than 1:1. The set back of the west penthouse wall from the west exterior wall of the roof upon which the penthouse is located is only 7’ 6” instead of the required 17’ 6”.

H. The Hyatt Hotel Violates the Public Space Requirement.

The Hyatt Hotel fails to provide the required public space at ground level required by Section 633. This section states that “(a)n area equivalent to ten percent (10%) of the total area shall be provided for all new development.” (Emphasis added.) No such public space is provided in conjunction with the construction of the proposed Hyatt Hotel.

Nor can it be claimed that such required public space is provided by the Marriott Hotel and/or that the Hyatt Hotel is “grandfathered” (and thus exempt) from this requirement. First,

based on Appellant's review of the Marriott Plans, the developer of the Marriott Hotel failed to provide the required ground level public space pursuant to 11 DCMR §633. Second, the plain language of Section 633 is that public space must be provided for "all new development." Clearly, the proposed Hyatt Hotel, if constructed, would constitute "new development," whether as a free-standing building on its own record lot (which Appellant believes is required) or even if it qualifies as an "addition" (which Appellant believes is not the case). There is no exemption for an "addition" in Section 633 and the Hyatt Hotel cannot claim that the Marriott Hotel provided the required public space since it clearly did not do so.

The provision of public space in an urban environment is, and has for many years been, a major and key planning tool in the development of Washington D.C. and, in particular, is a very important feature of the plans for the West End. Furthermore and importantly, such an important public policy objective has been implemented in and is a key feature of the West End Neighborhood and the CR zone mapped in the West End, particularly for properties north of M Street (inclusive of the Hyatt Property).

Years of planning for the West End Neighborhood's redevelopment resulted in an extensive planning analysis for the West End by the DC Office of Planning. Such extensive planning efforts culminated in the preparation of a document entitled, "A Plan for the West End" published in December, 1973 ("West End Plan"). Based upon the West End Plan and following extensive public hearings, the Zoning Commission in December, 1974 adopted the text of the CR District and mapped the CR District in the West End Neighborhood.

The West End Plan included a draft zoning text which recommended that open space be required for all new development at ground level and that such open space should consist of an

area equivalent to 10% of the total lot area and be provided immediately adjacent to the main entrance of the principal building or structure. The West End Plan also recommended that the ground floor open space area, among other things, should be open and available to the general public on a continuous basis. The recommended open space language was adopted verbatim by the Zoning Commission and codified as Section 4506.1 of the Zoning Regulations (**“Zoning Regulations”**). (See attached Exhibit “C”, Zoning Commission Order 108 in Case Number 74-8 (December 23, 1974).)

Although the Zoning Regulations have been amended multiple times since the CR text amendment was adopted in 1974, the required public space at ground level in the CR District has remained unchanged. After almost forty (40) years, it remains as an important public policy objective and zoning requirement.¹²

This important public policy objective has been implemented in many of the developments that have occurred since 1974 and there are a significant number of examples of projects in the West End neighborhood that have complied with the public space requirement under Section 633, including TR 2300 N Street Corp LPC Realty Advisors I Ltd. (2300 N Street, N.W.) and the American College of Cardiology Foundation (2400 N Street). (See the photographs attached as Exhibit “D”.)

¹² Apart from the recodification of the Section reference, which is now Section 633.

VII. CONCLUSION

For the foregoing reasons, Building Permit No. B1310607 was issued in violation of the Zoning Regulations and this Appeal must be GRANTED and the Building Permit REVOKED by DCRA.

Date: January 24, 2014

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.



John Patrick Brown, Jr.
Lyle M. Blanchard
Kate M. Olson
1620 L Street, N.W.
Suite 900
Washington, D.C. 20036
(202) 452-1400

Counsel for Appellant – NH Street Partners Holdings LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Statement in Support of Appeal was filed electronically with the Office of Zoning and was served by first-class mail and electronic mail as indicated, this 24th day of January, 2014, upon the following:

Mr. Nicholas Majett, Director
Department of Consumer and Regulatory
Affairs
1100 4th Street S.W., 5th Floor
Washington, DC 20024
Nicholas.majett@dc.gov

**Mr. Matthew LeGrant, Zoning
Administrator**
Department of Consumer and Regulatory
Affairs
1100 4th Street S.W., 5th Floor
Washington, DC 20024
Matthew.legrant@dc.gov

Melinda M. Bolling, Esq., General Counsel
Jay A. Surabian, Esq.
Department of Consumer and Regulatory
Affairs
1101 4th Street, S.W., Room E-500
Washington, D.C. 20024
Melinda.bolling@dc.gov
Jay.Surabian@dc.gov

**Mr. Patrick Kennedy, Chairperson &
SMD2A01 Commissioner**
ANC 2A
2020 F Street NW #530
Washington, DC 20006
2A01@anc.dc.gov

John Epting, Esq.
David Avitabile, Esq.
Goulston & Storrs
1999 K Street, NW
Suite 500
Washington, DC 20006-1020
jepting@goulstonstorrs.com
davitabile@goulstonstorrs.com



John Patrick Brown, Jr.