DRAFT FINDINGS OF FACT AND CONCLUSIONS OF LAW
PREPARED BY OWNER AND DCRA

MAY 12, 2014

Appeal No. 18735 of NH Street Partners Holdings LLC, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, made November 27, 2013, to approve Building Permit No. B1310607 for construction of a new 168-room hotel addition in the DC/ CR Zone District at premises 2121 M Street NW (Square 70, Lot 880 (part of Record Lot 190)).

Appeal No. 18737 of Chadbourne & Parke, LLP, pursuant to 11 DCMR §§ 3100 and 3101, from a decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs, made November 27, 2013, to approve Building Permit No. B1310607 for construction of a new 168-room hotel addition in the DC/ CR Zone District at premises 2121 M Street NW (Square 70, Lot 880 (part of Record Lot 190)).

HEARING DATE: April 15, 2014
DECISION DATE: May 20, 2014

ORDER DENYING APPEAL

This appeal[1] was submitted to the Board of Zoning Adjustment ("**Board**" or "**BZA**") on January 24 and January 27, 2014 by NH Street Partners Holdings LLC and Chadbourne & Parke LLP (the "**Appellants**"). The appeal challenges a decision made by the Zoning Administrator ("**ZA**") on November 27, 2013 to approve Building Permit No. B1310607 ("**Permit**") for construction at 2121 M Street NW (Square 70, Lot 880 (part of Record Lot 190)) ("**Property**"). The Permit authorized construction of an addition to existing improvements on the Property, which is located in the DC/CR Zone District. The Appellants alleged that the Permit involved the following zoning errors: (i) failed to constitute a valid addition to an existing "Building" under Section 199; (ii) failed to comply with the parking requirements of Chapter 21; (iii) failed to comply with the loading requirements of Chapter 22; (iv) failed to comply with the roof structure requirements of Section 411; and (v) failed to comply with the public space at ground level requirement of Section 633.

[1] Although the appeals were separately filed, the appellants raised the same issues and jointly prosecuted the case in their pre-hearing submission and testimony at the hearing. Therefore, the Board consolidated the matters and shall refer to the challenges as the "appeal."

Based on the evidence of record, including the extensive prehearing submissions and testimony received at the public hearing, and for the reasons set forth below, the Board denies the appeal as without merit.

PRELIMINARY MATTERS

Notice of Public Hearing

The Office of Zoning scheduled a hearing on April 1, 2014. In accordance with 11 DCMR §§ 3112.13 and 3112.14, the Office of Zoning mailed notice of the hearing to the Appellants, ANC 2A (the ANC in which the property is located), the property owner, and DCRA. (Exhibits 12-15.[2])

Parties

Appellants in this case are NH Street Partners Holdings LLC, the owner of a commercial office building located at 1200 New Hampshire Avenue NW, immediately east of the Property, and Chadbourne & Parke LLP, a tenant located within that commercial office building. DCRA is the Appellee, as the "person" whose administrative decision is the subject of the instant appeal, pursuant to 11 DCMR § 3199.1(a)(2). The decision or determination is DCRA's issuance of the Permit. The alleged zoning errors were the Zoning Administrator's determinations regarding building and lot control, parking, loading, roof structure, and public space at ground level. Renaissance Centro M Street LLC, the owner of the property ("**Owner**") is automatically a party to the proceeding under 11 DCMR § 3199.1(a)(3). The ANC was also automatically a party in the case, and filed a letter that did not address the merits of the appeal, but instead indicated opposition to the proposed construction unless signage-related lighting issues were addressed.

Rescheduled Hearing Date

Due to lack of quorum, the Board rescheduled the hearing from the April 1, 2014 hearing date. On March 31, 2014, counsel for the Appellants requested the hearing be postponed to June 10, 2014. (Exhibit 26.) On April 1, 2014, counsel for the Owner opposed the request to postpone the hearing for failure to demonstrate good cause, and requested the Board schedule the hearing for either of the next available hearing dates on April 8, 2014 or April 15, 2014. (Exhibit 27.) On April 2, 2014, counsel for Chadbourne & Parke opposed rescheduling the hearing to April 8 because she was scheduled to be out of the country on vacation and opposed rescheduling the hearing to April 15 because she would be jet lagged and need to catch up on work missed during her vacation. (Exhibit 28 of Appeal No. 18737.)

[2] Unless otherwise noted, all exhibits reference the record in Appeal No. 18735.

The Board rescheduled the hearing for April 15, 2014. No party challenged the rescheduled hearing date. Counsel for all parties were present and actively participated at the rescheduled hearing.

<u>Pre-Hearing Submissions</u>

The Board received joint prehearing materials from the Appellants on March 18, 2014, pursuant to 11 DCMR § 3112.10 (Exhibits 16-17). The Owner submitted prehearing materials for the Board's consideration on March 25, 2014 (Exhibits 20-23), and DCRA submitted its prehearing statement on March 25, 2014 (Exhibit 18-19).

On April 11, 2014, ten days after the originally scheduled public hearing and three days prior to the rescheduled public hearing, counsel for NH Street Partners Holdings LLC filed a motion to waive the 14-day filing deadline for pre-hearing submissions in order to submit a written "rebuttal" to the Owner's and DCRA's pre-hearing submissions. (Exhibit 28.) Owner and DCRA each opposed the motion for failure to demonstrate good cause and because it would be prejudicial to the Owner and DCRA. (Exhibits 29-30.) At the hearing on April 15, 2014, the Board indicated that it denied the Appellant's request and did not accept its late filing into the record. The Board also did not admit Owner and DCRA's filings in response to the late filing into the record.

<u>Appellants' Case</u>

The Appellants argued that the Permit was invalid because the proposed construction, a new 168-room hotel ("**Project**") would be located on and adjoin an existing hotel and retail establishments on Record Lot 190 ("**Existing Improvements**"). Appellants claimed that the project should be considered to be a free-standing building because it (a) lacked "meaningful connection" to the Existing Improvements on Record Lot 190, (b) did not constitute a combination of commercial properties in common ownership under Section 3202.3 of the Regulations, and (c) did not meet the theoretical lot requirements of Section 2517 of the Regulations. Accordingly, Appellants argued that the Project should be constructed on its own Lot of Record and otherwise independently satisfy the Zoning Regulations.

The Appellants also argued that, even if the Project was an addition to the Existing Improvements, the combined building failed to comply with the Zoning Regulations in other respects. Specifically:

(1) The Project failed to provide the required parking spaces, and those spaces which were provided did not meet the dimensional and compact space allocation requirements. The Appellants also argued that the Project failed to meet the requirements to allow attendant-assisted parking.

(2) The Project failed to provide the required number of loading spaces, and those loading spaces that were provided were improperly located in an open court.

(3) The Project failed to comply with the roof setback and single enclosure requirements of the Zoning Regulations

(4) The Project failed to provide the required amount of public space at ground level.

At the hearing, the Appellants presented testimony from Toye Bello, who the Board qualified as an expert in zoning. Bello testified in accordance with the Appellants' legal arguments.

<u>Owner's Case</u>

The Owner asserted that the appeal should be dismissed because the Project satisfies the requirements of the Zoning Regulations. The Owner explained that the Project was part of a multi-phase development of Record Lot 190, pursuant to an existing series of agreements among the owners of Record Lot 190. The Owner also explained that the Appellants' commercial office building was permitted pursuant to a series of agreements that allocated commercial density from Record Lot 190 to the Appellants' property, which therefore restricted the permitted development of Record Lot 190 to residential and hotel uses.

The Owner presented a legal analysis demonstrating that the Project and the Existing Improvements on Record Lot 190 did in fact constitute a single building under the definition of "Building" in Section 199.1 of the Zoning Regulations. Specifically, the Owner demonstrated with exhibits it submitted into the record that the Project was connected to the Existing Improvements through multiple points located at or above the main floor of the building that provided communication between the otherwise separate portions of the structure. Therefore, the improvements could collectively be located on a single record lot and Section 2517 did not apply. The Owner also argued that Section 3202.3, which governs strip malls and similar commercial developments, did not apply here.

Regarding Appellants' other assertions:

(1) The Owner showed, pursuant to the plans, that the Project satisfied the parking requirements through the attendant-assisted parking provisions of Section 2115 and otherwise satisfied all the requirements of such attendant-assisted parking.

(2) The Owner demonstrated that no additional loading was required for the Project under the schedule of loading requirements, and therefore that any additional loading was not required and therefore not subject to the provisions of Section 2204.

(3) The Owner posited that Section 411 permits separate roof structures when a building has separate building cores and that no setback was required from the western wall of

the Project because that wall abutted a closed court and therefore constituted an interior wall under the Zoning Regulations.

(4) The Owner demonstrated that the public space requirement applied to the entire record lot and was entirely satisfied through the lobby for the existing hotel; and further that regardless of whether the existing record lot provided the required amount of public space, the Project did not trigger a requirement for public space because (a) the Project did not increase the size of the record lot or the associated public space requirement; the public space requirement applies only to new development, not an addition to existing development; and (c) the site of the Project (i.e. the existing parking lot) could not satisfy the public space requirements for the existing record lot.

The Owner submitted a report from Armando Lourenco, whom the Board has previously qualified as an expert in zoning, affirming the above analysis. (Exhibit 24.)

<u>DCRA's Case</u>

DCRA asserted that the appeal should be dismissed because the Project qualified as an addition to the Existing Improvements on Record Lot 190 pursuant to the Zoning Regulations and the long-standing interpretations of the applicable sections of the Zoning Regulations by the Office of the Zoning Administrator, and the Project otherwise did not violate any other provision of the Zoning Regulations. At the hearing, DCRA presented evidence and testimony from Matthew Le Grant, the Zoning Administrator, who was also qualified as an expert in the interpretation and administration of the District of Columbia Zoning Regulations.

The ZA testified that there are multiple communications between the Existing Improvements and the Project that make the entire structure a single building under the definition of "Building" in Section 199.1 of the Zoning Regulations. The ZA also testified that (1) the 48 parking spaces required for the Project will be provided by compliant attendant-assisted parking; (2) no loading will be required by the Project and the loading that is provided complies with the Zoning Regulations; (3) the roof structure need not be set back from the west wall of the Project because that wall is not an exterior wall; and (4) the public space requirements have been satisfied.

<u>Closing of the Record</u>

The Board deferred its decision on the merits of the case and closed the record, except to receive a list and copy of all exhibits relied on by the ZA in the review of the Permit from DCRA (Exhibit 36), a status update on discussions with the adjacent residential property from the Owner (Exhibit 37), and proposed findings of fact and conclusions of law from all parties by May 12, 2014 (Exhibits __ - __). The Board scheduled the case for decision on May 20, 2014, at which time it considered the merits of the case and voted ____ to deny the appeal.

FINDINGS OF FACT

The Property

1. The property that is the subject of this appeal is known as Lot 880 in Square 70, and it is part of Record Lot 190. Lot 880 fronts on M Street NW. Lot 190 fronts on M Street, 22nd Street, and Ward Place, NW.

2. All of Record Lot 190 is within the DC/CR Zone District. The CR Zone District is a mixed-use "Commercial-Residential" zone district that permits commercial and residential development, including office, retail apartment, hotels, and light industrial uses as a matter of right.

3. Record Lot 190 is improved with a Marriott hotel. A Walgreens drug store and Starbucks coffee shop are located on the ground floor of the Marriott hotel. The primary entrance to the Marriott hotel is located off 22nd Street.

4. Until the mid-2000s, Owner's portion of Lot 190 (that is, Lot 880) was improved with a nightclub, a two-story establishment that occupied all of Lot 880. Lot 880 is currently improved as a surface parking lot.

5. Appellants' property is located immediately to the east of Record Lot 190. Appellants' property is improved with a commercial office building.

6. A former public alley is located on both Record Lot 190 and Appellants' property. The former public alley provides access to the rear of Lot 880 through Record Lot 190.

The Existing Improvements

7. The Existing Improvements are comprised of a Marriott hotel, which was constructed in the late 1970s and expanded in the late 1980s and again in the mid-2000s, and a Walgreens drug store and Starbucks coffee shop.

8. The Walgreens drug store and Starbucks retail establishments are located on the ground floor of the existing hotel, within the Existing Improvements.

9. An existing door within the Marriott opens up onto Owner's Property (i.e. Lot 880) and provides egress from a stairway. Existing doors within the retail establishments also open up onto Owner's Property (i.e. Lot 880).

10. The Board finds that the Existing Improvement have and continue to comply with the parking requirements as set forth below.

a. At the time of the initial construction of the hotel, no parking was required for a hotel use. The existing hotel was originally constructed with 354 hotel rooms as well as commercial adjuncts, function rooms, and exhibit space, and 89 parking spaces. The Board finds that, at the time of initial construction, the Existing Improvements complied with the Zoning Regulations.

b. The Zoning Regulations have since been amended to require 1 parking space for every 4 hotel rooms as well as parking for function room and exhibit space. Subsequent additions added 127 rooms, which triggered a requirement for an additional 32 parking spaces. 51 parking spaces were added, in excess of the requirement. The Board finds that, at the time of the additions, the Existing Improvements continued to comply with the Zoning Regulations.

c. The Owner stipulated that none of the existing parking spaces within the Existing Improvements were used to satisfy the Project's parking requirement. Therefore, the Board finds that the Project would not render the Existing Improvements out of compliance with Section 2100.10 of the Zoning Regulations.

11. The Board finds that the Existing Improvements comply with the loading requirements as set forth below:

a. At the time of the initial construction of the hotel, the Zoning Regulations required a minimum of 1 loading berth and 3 delivery spaces for each 200 hotel rooms. The existing hotel was originally constructed with 2 loading berths and 6 delivery spaces, which satisfied the then-applicable requirements.

b. Since that time, the Zoning Regulations have been amended to require a certain amount of loading for hotels with up to 200 rooms, and no additional loading for additional rooms beyond the first 200 rooms. Accordingly, no additional loading was required for the late-1980s and mid-2000s additions to the existing hotel.

12. The existing hotel features an arcade adjacent to the main entrance comprising approximately 1,776 square feet, and a lobby also adjacent to the main entrance comprising approximately 6,821 square feet. Per Section 633.1, together, the lobby and arcade consist of approximately 8,597 square feet, or 13.3% of the area of Record Lot 190, which is over the 10% minimum requirement.

a. Per Section 633.2, 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.

b. Per Section 633.3, the arcade and lobby have a height of at least one story. The lobby height is also at least 10 feet tall.

c. Per Section 633.5, the arcade and lobby are open to the public on a continuous basis, and per Section 633.4 they are lighted and furnished with ample space for public seating.

(See Exhibit 22, Tab E.)

<u>The Project</u>

13. The Owner seeks to improve Lot 880 with a nine-story hotel with 168 rooms, ground floor function room space, and two levels of underground parking.

14. In connection with the application and review of the Permit, the Owner submitted a series of documents to DCRA which included: a set of plans dated August 28, 2013 that included full architectural drawings of the Project ("**Permit Plans**") (Exhibit 36, Tab B); a building plat dated November 20, 2013 that depicted all existing and proposed improvements on Record Lot 190 ("**Building Plat**") (Exhibit 36, Tab F); and miscellaneous documents and plans submitted to the ZA's office in November 2013 that addressed questions regarding the building connection, parking, loading, roof structure, and public space at ground level (Exhibit 36, Tab D) and included, among other documents, a plan highlighting the building connections ("**Connection Plan**") (Exhibit 36, Tab D, A102) and a plan for attendant-assisted parking within the Project ("**Valet Parking Plan**") (Exhibit 36, Tab D, A100-101).

15. According to the Permit Plans and the Building Plat, the hotel will be constructed as an addition to the Existing Improvements on Record Lot 190. The Building Plat depicted all existing and proposed improvements to Record Lot 190. Drawing A102 of the Permit Plans, reprinted as the Connection Plan, depicted certain features of the Existing Improvements, including the Marriott egress stair and door and retail tenant doors that are located along the property line of the Project. (See also Exhibit 22, Tab A.)

    a. According to the Permit Plans and the Connection Plan, the Project contains a service corridor that provides access between the Project's lobby and function rooms and the Marriott's retail establishments, as well as access from those areas to the private alley and loading area. According to the Permit Plans and the Connection Plan, the service corridor permits a person to walk between the Existing Improvements and the Project through a door into each retail establishment.

    b. According to the Permit Plans and the Connection Plan, the Project contains a vestibule located on M Street that provides shared access from both the Marriott stair tower and the Project's fire control room to M Street. According to both the Permit

Plans and the Connection Plan, the vestibule permits a person to walk between the Existing Improvements and the Project through a door.

c. According to the Permit Plans and the Connection Plan, the service corridor and vestibule are each located at the ground floor of the building, which is the floor at which the principal entrance is located and is therefore the "main floor" of the building under Section 199.1 of the Zoning Regulations.

16. According to the Permit Plans, the Project contains two levels of underground parking. The Owner submitted the Valet Parking Plan indicating that it intended to operate attendant-assisted parking. (See also Exhibit 22, Tab B.)

    a. The Project will add 168 hotel rooms, which requires 42 additional parking spaces, and a 1,750 square foot function room space, which requires 6 additional parking spaces, for a total requirement of 48 additional parking spaces.

    b. The Project's two levels of underground parking contain approximately 18,162 square feet of parking area where the minimum lesser dimension of that parking area is 7 feet and the minimum greater dimension of that parking area is 14 feet, or approximately 378 square feet of area per parking space required for the Project, which exceeds the minimum requirement of Section 2115.10. (Exhibit 22, Tab B.)

    c. As shown on the Permit Plans and the Valet Parking Plan, the rows of permanent striped parking spaces are arranged as 90 degree angled parking and the aisles between such rows of permanent striped parking spaces (as well as all columns and other obstructions) have a minimum width of at least 20 feet, which meets the requirement of Section 2117.6 and 2115.14.

    d. As shown on the Permit Plans, the parking garage levels have a minimum vertical clearance of at least 6'6", which meets the requirements of Section 2115.5 and 2115.15.

    e. The underground parking will be operated as an attendant-assisted parking garage on a full-time, twenty-four hours a day, basis, which meets the requirements of Section 2115.11.

17. As shown on the Building Plat, the Project will provide one 30-foot deep loading berth, one 100 square foot loading platform, and one 20-foot deep delivery space. The loading facilities are located at the end of the private alley. (See also Exhibit 22, Tab C.)

18. As shown on the Permit Plans, the Project will contain its own building core and roof structure, as permitted under Section 411.4. As shown on the Permit Plans, the roof structure is set back from the south wall, which faces M Street, and from the northeast wall, which

faces an open court. The roof structure is not set back from the eastern wall, which is a shared lot line with Appellants' property. The roof structure is also not set back from the western wall, which faces an interior court created by the Project and the Existing Improvements. (See also Exhibit 22, Tab D.)

19. In a post-hearing submission, the Owner indicated that it had agreed to remove certain lighted design elements and signage from the front façade of the Project in response to concerns raised by the condominium association located across M Street from the Project. (Exhibit 37.)

CONCLUSIONS OF LAW

The Board is authorized by the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to hear and decide appeals when it is alleged by the appellant that there is an error in any decision made by any administrative officer in the administration of the Zoning Regulations. (11 DCMR §§ 3100.2, 3200.2.) In an appeal, the Board may reverse or affirm, in whole or in part, or modify the decision appealed from. (11 DCMR § 3100.4.)

Based on the findings of fact, the Board is not persuaded by the Appellants that an error occurred in the decision of the ZA on the issues of building and lot control requirements, parking, loading, roof structure, and public space at ground level. The Appellants failed to show that the ZA acted unreasonably or an arbitrary or capricious manner, abused his discretion, or otherwise committed an error in approving the compliance with the Project with the above-challenged portions of the Zoning Regulations.

Section 3202.2 and Adequacy of the Plans

At the public hearing, the Appellants alleged that the documents submitted by the Owner and relied upon by DCRA in reviewing and approving the Permit did not meet the requirements of Section 3202.2 of the Zoning Regulations. Following the close of the public hearing and at the request of the Board, DCRA submitted a list of all documents relied upon by DCRA in reviewing the Permit's compliance with the Zoning Regulations.

Section 3202.2 requires that each building permit application include "any of the following [documents] that is deemed necessary" and goes on to list certain types of "scaled drawings" and an "official building plat." The list of scaled drawings include, "plan, elevation, and location by dimension of all existing and proposed structures, and the proposed use of those structures"; "parking and loading plans and the basis for computation of those plans"; and "other information necessary to determine compliance with this title." The building plat requirements include "all existing and proposed structures"; "number, size and shape of all open parking spaces, open loading berths, and approaches to all parking and loading facilities"; and "other information necessary to determine compliance with the provisions of this title."

Appellants allege that the drawings relied upon by DCRA in approving the Permit's compliance with the Zoning Regulations were incomplete because they did not include full detailed drawings of the Existing Improvements on Record Lot 190 or a full accounting of Record Lot 190's parking and loading requirements. Appellants also allege that the building plat was insufficient because it did not show the roof structures of the existing and proposed structures.

However, Appellants misread the plain language of Section 3202.2. Section 3202.2 only requires documents to the extent that they are "deemed necessary" by DCRA to evaluate compliance with the Zoning Regulations. To this end, nothing requires an applicant to submit—or DCRA to require—detailed drawings of an existing building when, as here, the only work that is proposed is an addition to the existing structure. Rather, DCRA reasonably determined that the submitted documents provided enough detail to ascertain compliance with the Zoning Regulations.

With regard to Appellants' claim regarding the lack of roof structures on the building plat, the plain language of Section 3202.2 makes no mention of roof structures. Furthermore, for the reasons discussed below, once the ZA determined that the Project was authorized to have a separate roof structure under Section 411.4, there was no reason for the ZA to evaluate the roof structure on the Existing Improvements.

Based on the Findings of Fact, the Board concludes that DCRA reasonably decided that the Permit Plans, Building Plat, and other drawings provided sufficient information to determine compliance with the Zoning Regulations. Section 3202.2 did not require the Owner to submit full detailed plans and elevations of the Existing Improvements, and DCRA was not required to request such plans.

The Project Complies with the Building and Lot Control Requirements

Under the Zoning Regulations, each building is ordinarily required to be located on its own record lot. 11 DCMR § 3202.3. In a commercial zone district, separate buildings may be located on the same record lot only if they conform with certain theoretical lot requirements. 11 DCMR § 2517. Therefore, the key issue in this Appeal is whether the Existing Improvements and the Project constitute a single building under the Zoning Regulations, and may therefore be located on the same record lot, or whether the structures are separate buildings that require either separate record lots under Section 3202.3 or conformance with the requirements of Section 2517. For the reasons set forth below, the Board concludes that the structures meet the definition of "Building" under Section 199.1 of the Zoning Regulations and therefore may be located on Lot 190 without any further approval.

The Building Connections Meet the Requirement for Communication and May Therefore be Located on a Single Record Lot

The Appellants allege the Project lacks a "substantial" and "meaningful" connection to the Existing Improvements on Lot 190 and, as a result, does not meet the definition of "Building" under the Zoning Regulations. The Owner and DCRA demonstrated, with evidence in the Record, that the Project contains multiple connections that each provided the required degree of communication between the Existing Improvements and the Project to render them as a single building for zoning purposes.

The definition of "Building" under Section 199.1 of the Zoning Regulations permits separate portions of a structure to be considered a single building for zoning purposes provided that a communication exists between those separate portions at or above the main floor. For purposes of this definition, "communication" typically means access between the separate portions of the structure. (See BZA Application No. 18263-B, *117 C Street SE*, at 11 (2013); BZA Appeal No. 16646, *Appeal of Daniel Serwer and James W. McBridge*, at 9.). The Zoning Commission has suggested that such communication be "meaningful" in specific situations, applicable only to those properties as a matter of law, which were approved as Planned Unit Developments. (See Z.C. Order No. 08-34, *Center Place Holdings, LLC PUD* (2011); Z.C. Order No. 05-36, *200 K Street NE PUD* (2006).)[3]

Here, the Zoning Administrator was presented with three above-grade communications between the Project and the Existing Improvements.

- The first two communications feature a shared service corridor that is located on Owner's Property but permits access from both ground floor retail tenants within the Existing Improvements into the shared service corridor. This shared service corridor also provides egress from the Project's lobby and function room spaces. The shared corridor will be open and available for access on a continuous basis and provide the retail tenants with access to loading and trash facilities at the end of the private alley. The shared service corridor also permits direct communication from the retail tenants' space into the Project's hotel lobby and lounge, and vice versa.

- The third communication features a shared exit vestibule that provides access from an egress stair within the Existing Improvements onto Owner's Property. The vestibule also provides access to the Project's fire control room. The vestibule is enclosed and within the Project.

The Zoning Administrator explained that communication requires that "a person can walk through one portion of the building through the other through a door or corridor," Tr. Apr. 15 at

[3] Importantly, the Zoning Commission has not amended the definition of "Building" in Section 199.1 to add the "meaningful" requirement.

226, and concluded that all the connections provided "communication" between the otherwise separate portions of the structure because, in all cases, the connections "allow passage from one portion of the building to the other." Tr. April 15 at 224-25. Even Appellants' expert conceded that a communication could be "as minimum as a door that grants you access into a space that is assumed to be contiguous space." Tr. April 15 at 131-32. Based on the Zoning Administrator's interpretation of the definition of "Building" under Section 199.1 and the related requirement for "communication", the ZA concluded that the proposed structures constituted a single building for zoning purposes.

Based on the Findings of Fact, the Board concludes that the ZA's determination regarding the connections was reasonable. Each point of communication permits passage between a portion of the Existing Improvements and a portion of the Project. Each point of communication are located at or above the main floor, and accordingly the Board must affirm the ZA's conclusion based on the plain language of the definition of "Building" under Section 199.1.

None of the evidence provided by the Appellants suggests that the ZA's interpretation was unreasonable or arbitrary and capricious. Neither of the cases cited by the Appellants amended or interpreted the general requirement of the Zoning Regulations; they merely indicated that in those particular Planned Unit Developments, the Commission required a "meaningful" communication. Furthermore, neither case spells out what constitutes "meaningful communication" in general or otherwise provide any guidance as to whether the proposed building connections proposed here constitute "meaningful communication." At most, all those cases do is acknowledge that in those particular cases, the proposed connection was adequate.

Furthermore, the legal precedent cited by the Owner affirms that the ZA's conclusion was consistent with well-established understanding of what constitutes a valid building connection under the existing Zoning Regulations. As the Office of Planning has advised the Zoning Commission, under the existing Zoning Regulations a "communication" 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 23, Tab Q.) In its pre-hearing statement, the Owner provided examples of communication that include doorways and corridors that only provide limited passage between otherwise separate structures. One such example is the building connection approved by the Zoning Commission in Z.C. Case No. 06-27, which merely allows passage between separate portions of parts of the mixed-use office, residential, and retail project. See Z.C. Order No. 06-27, *Square 54 PUD*, at 6 (2007). Here, the proposed connections not only meet the basic test for passage, but actually will be actively used by the occupants of the existing building to cross over into the Project. Therefore, the connections are meaningful communications that more than satisfy the requirement for communication.

<u>The Retail Tenants Constitute Part of the Existing Building</u>

At the hearing, Appellants argued that even if the building connections otherwise provide meaningful communication, they are insufficient because they do not provide a connection between the lobbies of the Existing Improvements and the Project.

This argument is irrelevant because nothing in the definition of "Building" in Section 199.1 specifies the extent to which the communication must interconnect the separate portions of the building. As set forth in the Findings of Fact, the retail uses are located on the ground floor of the hotel structure, with hotel rooms located over and above the retail uses starting at the second floor of the building. They are therefore clearly "within" the hotel structure and constitute part of the Existing Improvements.[4] The Zoning Regulations simply do not require the lobbies to be connected. Instead, any communication between the separate portions of the structure will suffice.

As explained above, the Board concludes that the connections between the Project and the retail establishments, which are located within the existing hotel, provide communication between the Project and the Existing Improvements. The Board notes that this conclusion is consistent with the building connection approved by the Zoning Commission in Z.C. Case No. 06-27, which merely connected individual demised portions of the separate office and residential portions of the project but did not provide for access (open or restricted) directly from the office lobby to the residential lobby. (Exhibit 23, Tab V.)

<u>The Connected Structures Do Not Need to Share Common Ownership or Purpose</u>

Appellants also argued that the Zoning Regulations require that the connected portions of a building must share common ownership and common purpose. They alleged that, because the Existing Improvements and proposed Project would be owned and operated as competing hotels, they could not constitute a single building. Appellants cited the separate ownership, competing commercial operations, lack of common facilities such as parking, loading, or life safety systems, and individual building addresses, and Section 3202.3(c) of the Zoning Regulations in support of this assertion.

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[4] At the hearing, Appellants argued that the Starbucks and Walgreens retail establishments did not constitute "commercial adjuncts" to the Marriott hotel. The Board concludes that it is not necessary to address this assertion because the retail spaces are clearly part of the Existing Improvements, but notes that under the definition of "Hotel" in Section 199.1, "Commercial Adjuncts" are simply described as certain retail and service establishments accessory to hotel use, and do not have an internal connection requirement.

Section 3202.3(c) Does Not Apply

The Board does not agree with Appellants' interpretation of Section 3202.3 of the Zoning Regulations. Section 3202.3 merely requires that "each structure will be on a separate lot of record" and, as explained above, the Existing Improvements and the Project together constitute one building that will be located on a single lot of record, Record Lot 190.

Appellants' reliance on Section 3202.3(c) is misplaced, because the section is intended to apply to strip malls and similar developments. Section 3202.3(c) provides an exception to the requirement that each building must be located on its own lot of record. Under Section 3202.3(c), "any combination of commercial occupancies separated in their entirety, erected, or maintained in common ownership shall be considered as one (1) structure" and therefore can be located on a single record lot, even though the separate commercial structures otherwise constitute separate buildings under the Zoning Regulations.

In Zoning Commission Case No. 03-05, the Zoning Commission explicitly rejected the notion that 3202.3(c) applies to multi-story commercial structures. Z.C. Order No 03-05, DOT Headquarters PUD, at 1-3 (2004). The Commission recounted the history of the provision, which was adopted in 1964 to allow for strip malls (i.e. individual commercial stores each separated by common division walls) to locate on single lots of record without a building connection. Id. at 3.

Furthermore, the Zoning Commission concluded that notwithstanding the language of Section 3202.3(c), the definition of Building in Section 199.1 (and its requirement for above-ground communication) nevertheless controlled the determination of whether a structure is a single building for zoning purposes. Id. at 2. All that Section 3202.3(c) does is allow for those otherwise-separate buildings to be located on a single lot of record.

Based on the foregoing, the Zoning Commission concluded in Z.C. Case No. 03-05 that Section 3202.3(c) did not apply to large multi-story commercial improvements. For similar reasons, the BZA concludes that Section 3202.3(c) is inapplicable here. The Existing Improvements and Project are not a strip mall; rather, they are multistory commercial structures similar to the office buildings at issue in Z.C. Case No. 03-05.

No Requirement for Common Ownership or Facilities

The Board also does not agree with Appellants' assertion that the Existing Improvements and Project must have common ownership and common facilities to constitute a single building for zoning purposes. There is nothing in the definition of "Building" that imposes the requirement for single ownership or common facilities within a structure that is a single building for zoning purposes. The Board will not read a limitation into the Zoning Regulations that is not there.

It is well established that separate portions of a single record lot may be owned by separate property owners because the system of lots that govern ownership (the assessment and taxation lot system) allows for the creation of multiple A&T lots on a single record lot. BZA Application No. 14261, *Portsmouth Construction Company*, at 2-3 (1987). Furthermore, the Zoning Regulations also anticipate that structures that are a single building for zoning purposes may otherwise have separate building systems for individual components of that building. For example, the definition of "Building" itself presupposes that there are "separate portions" connected by the above-ground communication. And as discussed below, Section 411.4 contemplates, as one example, that the separate portions of the structure may have separate elevator cores, and therefore allows for separate roof structures.

The only relevant fact to the determination of what constitutes a Building under Section 199.1 is the presence or absence of above-ground communication between otherwise separate portions of the structure.

No Prohibition on Competing Uses

Finally, the Appellants argued that the Existing Improvements and Project cannot constitute a single building under the Zoning Regulations because they will be occupied by separate and competing hotels.

The use of property within the Building is solely governed by the provisions of the applicable zone district. Again, nothing in the definition of "Building" states or even hints that the separate portions of the building must be composed of similar or compatible uses. For similar reasons, the Zoning Regulations do not preclude other competing uses within a building or structure. To find otherwise would preclude an office building owner from subleasing different spaces within the building to competing law firms, and preclude a retail developer from leasing different spaces to competing restaurants or fast food chains.

Moreover, zoning governs use and not ownership of property. There is no zoning regulation that requires the Owner to identify the type of hotel that it intends to construct on its property. The Zoning Regulations are only concerned with the number of rooms, number of parking and loading spaces, and other dimensional constraints. If Appellants' assertion is taken to its logical conclusion, it would mean that the Existing Improvements and the Project would constitute a single building if, say, the Project were proposed as a Courtyard by Marriott, but does not constitute a single building because the Owner has elected to partner with Hyatt Place. That is not a logical result.

Conclusion

For all of the reasons above, the Board reiterates that the definition of "building" under Section 199.1 controls whether otherwise-separate structures constitute a single building for zoning purposes. Section 3202.3(c) is inapplicable here; that provision only applies to strip malls. And nothing in the definition of "Building" of Section 199.1 requires common ownership and shared building facilities or prohibits competing uses within a structure that is a single building for zoning purposes.

Therefore, because the Existing Improvements and the Project meet the definition of "Building" under Section 199.1, they are a single building for zoning purposes that is permitted on Record Lot 190. The Project does not require either a separate lot of record or conformance with Section 2517 in order to be located on Record Lot 190 as an addition to the Existing Improvements.

<u>The Project Complies with the Parking Requirements</u>

Under Section 2100.6 of the Zoning Regulations, each addition to an existing building must include additional parking based on the Schedule of Parking requirements in Section 2101. Here, the Project is required to provide 48 parking spaces, and it proposes to provide all 48 spaces within its garage. Appellants challenged the compliance of such parking spaces with the dimensional requirements of the Zoning Regulations, and alleged that the Owner's Valet Parking Plan did not meet the requirements of the Zoning Regulations.[5]

<u>Attendant-Assisted Parking is Permitted</u>

Section 2115.9 of the Zoning Regulations allows for attendant-assisted parking in certain circumstances. Specifically:

> In a commercial building or structure located in a . . . CR District where at least seventy-five (75) parking spaces are required according to the schedule of parking requirements under § 2101.1 and where parking spaces are provided within a parking garage, parking may be provided as set forth in §§ 2115.10 through 2115.18.

Section 2115.18 states that, for the purpose of Section 2115.9, hotels and retail uses are commercial.

Here, the Property is a "commercial building" that is located within the CR Zone District. As set forth in the findings of fact and conceded by all of the parties, the Existing Improvements are required to provide at least 32 parking spaces, and the Project is required to provide 48 additional parking spaces, for a total requirement of at least 80 parking spaces for the combined building. Therefore, based on the plain language of Section 2115.9, the building is eligible to

[5] The Owner stipulated that it would agree that the existing parking within the Existing Improvements could not be used to satisfy the Project's parking requirements, and the Board finds that the Project satisfied the parking requirements within its own garage. Accordingly, the Appellants' other assertions regarding compliance with the parking requirements are moot.

utilize the provisions of Section 2115.9 of the Zoning Regulations and provide some parking through attendant-assisted parking.

Appellants argue that Section 2115.9 does not apply here because the Project's parking requirement is only 48 parking spaces. However, the trigger in Section 2115.9 is based on the total parking requirement for the building, and as established above, the building is both the Existing Improvements and the Project. Accordingly, the building has a total requirement of at least 80 parking spaces, which exceeds the minimum requirement of 75 spaces.

<u>The Proposed Valet Parking Plan Complies with the Dimensional Requirements of the Zoning Regulations</u>

In order to provide attendant-assisted parking, an applicant must demonstrate that:

- Section 2115.10: The minimum area per parking spaces is 285 square feet. Per Section 2115.17, only those areas with a minimum lesser dimension of 7 feet and minimum greater dimension of 14 feet shall count as part of the required parking area.

- Section 2115.14: Per Sections 2115.6 and 2115.7, all drive aisles between rows of 90-degree angled parking spaces have a minimum width of 20 feet.

- Section 2115.15: Per Section 2115.5, the parking area meets a height clearance requirement of 6'6".

As set forth in the Findings of Fact, the Project's parking complies with all of these dimensional requirements.

The Appellants allege that the proposed parking does not comply with the minimum aisle width requirement of Section 2115.14, because the valet parking plan showed cars parked within the aisles. However, the Appellants misread the attendant-assisted parking regulations. Section 2115.9 clearly states that the aisle width requirements of Section 2115.5 and 2115.6 may be waived when attendant-assisted parking is present. Therefore, cars may be parked in the drive aisles when attendants are managing the parking garage. All Section 2115.14 does is ensure that when attendant-assisted parking is <u>not</u> in operation, the drive aisles meet the minimum aisle width requirement. Here, that requirement has been met.

Appellants also allege that the Project does not comply with other dimensional and arrangement requirements of the Zoning Regulations, including the minimum required width of standard parking spaces under Section 2115.1 and the amount and grouping requirements for compact spaces under Section 2115.3 and 2115.4. However, under the plain language of Section 2115.9, those requirements may be waived when attendant-assisted parking is employed.

For the reasons set forth above, the Board concludes that the Project complies with the dimensional requirements of the Zoning Regulations.

DDOT Approval of the Design and Operation of Attendant-Assisted Parking is Not Required

Finally, relying on Section 2115.11, Appellants claim that the Zoning Administrator erred in approving the Project because he did not refer the attendant-assisted parking plan to DDOT for review and approval of its design and operation. However, Section 2115.11 imposes no such requirement. All Section 2115.11 requires is for DDOT to determine the 12-hour peak period of operation for the facility, during which time attendant-assisted parking shall be in operation.

Furthermore, nothing in the Regulations obligated the Zoning Administrator to seek such determination from DDOT prior to the issuance of the building permit. The use of the parking facility, including any attendant-assisted parking, will not take effect until the structure is constructed and a certificate of occupancy is issued. The Zoning Administrator could have reasonably determined that such determination of the peak period by DDOT could wait until the issuance of the certificate of occupancy, so that current parking and traffic patterns can be considered, and at that time the ZA could also affirm compliance with the other provisions of attendant-assisted parking, such as the sign required under Section 2115.12.[6]

For all of the above reasons, the Board concludes that the Project's attendant-assisted parking meets the requirements of the Zoning Regulations.

The Project Complies with the Loading Requirements

Under the Zoning Regulations, additions to existing buildings sometimes require the provision of additional loading facilities under certain conditions. Appellants argue that (1) the Project failed to provide additional required loading facilities for the increase in rooms; and (2) the Project's additional loading was improperly located.

The Project Does Not Require Any Additional Loading Facilities

Appellants argue that the Project should have been required to provide additional berths, including a 55-foot deep berth, because the cumulative addition of hotel rooms to the original structure (including the 1980s and 2000s additions) exceeds 200 rooms. Contrary to Appellants' suggestions, nothing in the current Zoning Regulations requires additional loading for each additional 200 hotel rooms. Under Section 2200.8 of the Zoning Regulations, loading for additions to an existing structure does not need to exceed the amount of loading required for the entire structure as proposed if constructed new. If constructed as new, the combined building

[6] Finally, as a practical matter, the DDOT determination is unnecessary here, because the Owner intends to provide attendant-assisted parking on a full-time, twenty-four hours a day basis.

(that is, the Existing Improvements and Project) would have a total of 649 rooms which, under Section 2201.1 only requires two loading berths and one service delivery space. Furthermore, the Board notes that the Zoning Commission explicitly amended the Zoning Regulations to eliminate the requirement for loading for each increase of 200 hotel rooms when it adopted the current loading regulations.[7] As set forth in the Findings of Fact, the Existing Improvements alone satisfy this requirement.

Nor do the Zoning Regulations require the Project to provide a 55-foot loading berth. The existing loading berths, which otherwise satisfy the loading requirements for the expanded hotel use, were provided under the old requirements, which did not require a 55-foot loading berth. Therefore, the Zoning Administrator concluded that the existing loading is grandfathered under the old dimensional requirements. Tr. April 15 at 240. The Board concurs with the ZA's determination, and notes that the Zoning Commission specifically acknowledged grandfathering of older loading facilities would take place when it amended the loading requirements for hotels. (Z.C. Order No. 314, *Hotels Text Amendment—Statement of Reasons,* at 14: "The Zoning Regulations cannot be made to apply retroactively.")

For the above reasons, the Board concludes that the Project does not require any additional loading facilities.

<u>The Location of the Project's Loading Facilities Does Not Violate the Zoning Regulations</u>

Notwithstanding the fact that no loading is required, the Project does include an additional loading berth, loading platform, and service/delivery space to accommodate its proposed use. As set forth in the Findings of Fact, these loading facilities are located in the private alley, which is an open court. Appellants allege that Section 2203.1 prohibits the location of loading in this open court.

Appellants' arguments fail because Section 2203.1 only governs the location of <u>required</u> loading berths and spaces. Here, the spaces are not required for the reasons set forth above, and therefore may be located anywhere on the lot.

<u>The Project Complies with the Roof Structure Requirements</u>

The Zoning Regulations govern the number and location of roof structures. Appellants alleged that the Project's roof structure violated both the single enclosure requirement of Section 411.3 and the setback requirements of Section 630.4(b).

The Project is permitted to have a separate roof structure. Section 411.4 explicitly states that when separate elevator cores are required, a separate enclosure is permitted to correspond to each elevator core. Here, the separate uses within the building require separate elevator cores,

[7] Compare Z.C. Order No. 108, *CR Zone District Text Amendments*, at 24 with 11 DCMR § 2201.1.

thus authorizing separate roof structures under Section 411.4. Accordingly, the Board concludes that multiple roof structures are permitted.

The Project's roof structure fully complies with the setback requirements. Section 630.4(b) requires the setback of roof structures from all exterior walls of a building. By definition, then, some walls of a building are exterior walls and other walls are interior walls. As the Zoning Administrator explained, under the Zoning Regulations, exterior walls are those walls that face streets, alleys, yards and open courts. See Tr. April 15 at 234-35; BZA Appeal No. 17109, *Kalorama Citizens Association*, at 11-13 (2005). By contrast, walls that face the interior of the building, such as a closed court, are interior walls. Section 630.4(b) does not require a setback from those interior walls.

Here, as set forth in the Findings of Fact, the Project's roof structure complies with the setback requirement from all exterior walls (that is, the north and south walls). The Project's west wall is not an exterior wall because it faces a closed courtyard within the interior of the combined building. Therefore, the Zoning Administrator concluded that no setback is required from that west interior wall. For the foregoing reasons, the Board agrees with the ZA and concludes that no setback is required from the Project's west interior wall.

The Project Does Not Violate the Public Space at Ground Level Requirements

The CR Zone District requires that all new development devote a portion of the building as public space. The area of such public space is based on the area of the record lot and the space must satisfy certain requirements of the Zoning Regulations. The Appellants allege that the Project should not have been approved because Record Lot 190 does not provide the required public space at ground level. As explained below, the Board concludes that the record lot does provide the required public space. Moreover, even if such public space was not already provided, the Project would not trigger the requirement because it is not new development, does not increase the area of Record Lot 190, and does not propose to develop area that currently satisfies the public space requirement.

The Hotel Lobby of the Existing Improvements Satisfies the Public Space Requirement

Section 633 of the Zoning Regulations sets forth specific requirements for 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.

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 (Record Lot 190).

The Zoning Administrator concluded that the Marriott's lobby, combined with the arcade immediately outside the lobby, satisfies the requirement for "public space at ground level" for Record Lot 190. As set forth in the Findings of Fact, the hotel lobby and arcade:

- Meet the minimum area requirement of Section 633.1
- Per Section 633.2, are located immediately adjacent to the main entrance and serve as a transitional space between the right-of-way and the building.
- Per Section 633.3, has a minimum clearance of one story or ten feet.
- Per Section 633.4, is lighted and furnished with ample space for public seating.
- Per Section 633.5, is open to the public on a continuous basis.

Based on a plain reading of Section 633, the Board concurs with the ZA's conclusion.

Appellants argue that the lobby cannot count as public space because it is not open to the sky. Nothing in the plain language of Section 633 requires that the public space be open to the sky. Indeed, Section 633.3 makes it clear that the public space does not need to be open to the sky, so long as it has a height of one story or ten feet.

Appellants also argue that the lobby cannot count toward the public space requirement because it is located behind the building line (meaning the façade of the building). However, nothing in Section 633 indicates that the space must be behind the building line. Again, Section 633.3 permits the space to be enclosed and covered which, by definition, constitutes "Building" under Section 199.1. Therefore, any enclosed space is automatically behind the building line. Moreover, even the Appellants conceded that the arcade met the public space requirement, even though the arcade also fell behind the façade line of the building. Finally, all that Section 633.2 requires is that the space is located immediately adjacent to the main entrance, and that it serves as a transitional space between the right-of-way and the building. The Regulations do not state that the transitional space must be located on one particular side of the building entrance.

Appellants also argue that the lobby is not sufficiently public because it is not open 24 hours a day. However, Appellants provided no evidence to support their claim that the lobby was unavailable at any particular time. Moreover, Section 633.5 merely requires that the space be open and available on a "continuous" basis. Since the space is required to be located on private property, it is reasonable to conclude that the property owner may impose reasonable restrictions on the use of the space for maintenance and security reasons.

For all of the above reasons, the Board concurs with the Zoning Administrator's determination that the existing arcade and lobby satisfy the public space at ground level requirements for Record Lot 190. Because the Project does not increase the size of Record Lot 190—and therefore does not increase the amount of public space required under Section 633—the Zoning Administrator reasonably concluded that no additional public space is required for the Project.

<u>The Project is Not "New Development" on Record Lot 190 and Therefore Does Not Trigger the Public Space Requirement</u>

But even setting aside the above, Appellants' argument is off base because there is no requirement that the Project provide public space. 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 and does not increase the lot area of Record Lot 190, so it does not increase or exacerbate the public space requirement.

"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 Record 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 Record Lot 190.

Furthermore, the Project does not seek to build on area that constitutes the record lot's public space. The site of the Project never served as the required public space because it is not adjacent to the main entrance of the hotel and it was otherwise occupied by structure from the late 1970s through the mid-2000s that did not serve as a transition between the right-of-way and the Existing Improvements. And the current parking lot located on the site of the Project similarly does not serve as the required public space because it does not meet the requirements of Section 633 (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 Board concludes that even if Record Lot 190 did not meet the public space requirements, the Project is not "new development" that triggers the requirements of Section 633.

Advisory Neighborhood Commission 2A

The Board is required to give "great weight" to the issues and concerns raised by the affected ANC. D.C. Official Code § 1-309.10(d). In this case, ANC 2A is not one of the Appellants, but ANC 2A filed a resolution regarding the Project. The resolution made no mention of the issues raised by the Appellants, but expressed concerns about signage-related lighting issues. The Zoning Regulations do not otherwise govern lighting and signage and accordingly the ANC's issues and concerns go beyond the limited jurisdiction of the Board, particularly in a legal appeal over discrete issues. Accordingly, the Board concludes that the ANC has not offered advice that would cause the Board to conclude the appeal should be granted. Notwithstanding this, the Board notes that the Owner agreed to make changes to the Project that responded to the concerns articulated by ANC 2A.

DECISION

Based on the findings of fact and conclusions of law, the Board concludes that the Appellants have not satisfied their burden of proof with respect to the various claims of error regarding the Zoning Administrator's approval of Building Permit No. 1310607, issued on November 27, 2013, to approve construction of a new 168-room hotel addition in the DC/CR Zone District at premises 2121 M Street NW (Square 70, Lot 880 (part of Record Lot 190). Accordingly, it is therefore **ORDERED** that the appeal is **DENIED**.