

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

**Appeal by Chadbourne & Parke LLP 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

Appellant, Chadbourne & Parke LLP, by and through undersigned counsel, submits this Appeal to the Board of Zoning Adjustment (“Board” or “BZA”) of the November 27, 2013 issuance of Building Permit No. B1310607 (“Building Permit” or “Permit”), attached hereto as “Exhibit A”). The Building Permit authorizes “New Construction of 9-Story, 168 Guestroom Hotel Addition to the Existing Washington Marriott Hotel” on Lot 880 in Square 70. The Permit authorizes construction pursuant to architectural plans for a new “Hyatt Place Hotel” which do not comply with zoning.

As set forth in detail below the plans are deficient in that the proposed Hyatt Hotel is not a legitimate addition to the existing Marriott Hotel for zoning purposes and as a result, inter alia, it does not provide a required rear yard, the requisite parking and loading facilities or meet the open space requirements of the applicable DC/CR zone. Even assuming that the new Hyatt Hotel could be considered a legitimate addition to the existing Marriott, the plans do not comply with the DC/CR parking, loading and open space requirements. Therefore, the Permit was erroneously issued and must be REVOKED.

I. PERMIT PROPERTY

As indicated, the Building Permit applies to Lot 880 in Square 70 which is a vacant assessment and taxation lot with a street address of 2121 M Street, N.W. (“Hyatt Lot”). It comprises a portion of Record Lot 190 which is improved with the existing Marriott hotel.

II. 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 date of the Building Permit.

III. APPELLANT’S STANDING

The Appellant, Chadbourne & Parke LLP, is a national law firm, the Washington D.C. office of which leases and occupies approximately 75,000 square feet of office space at 1200 New Hampshire Avenue, N.W., located immediately adjacent to the Hyatt Lot to the east (“Appellant’s Offices”). 1200 New Hampshire Avenue is an eight-story office building with ground floor retail uses. Appellant’s Offices represent approximately 25% of the net rentable space at 1200 New Hampshire and Appellant’s lease extends to October 2023 with an additional 5 year option. The zoning deficiencies associated with the Hyatt project adversely impact the use and enjoyment of Appellant’s Offices. A lack of adequate parking facilities is a problem in the area and Appellant’s personnel have had to resort to parking a substantial distance from their offices. The parking deficiencies associated with the Permit will exacerbate this situation. Other deficiencies including a lack of compliance with the applicable rear yard and loading requirements also threaten to adversely impact light to and views from Appellant’s Offices. As a

result, Appellant is an “aggrieved party” pursuant to 11DCMR 3112.2 and has standing to file this Appeal.

IV. HYATT PROPERTY AND PROPOSED DEVELOPMENT

The Hyatt Property is proposed to be developed with a nine-story Hyatt Hotel (“Hyatt” or “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). Characterization of the new Hyatt as an addition to the Marriott would arguably allow the Hyatt to avoid compliance with certain CR zoning requirements, including a rear yard, and allow it to rely on other existing Marriott facilities such as parking and loading facilities when, in fact, such facilities may not even be available to or accessible from the Hyatt. However, even assuming that the Hyatt could be considered a legitimate connection to the Marriott, the Hyatt Plans still fail to comply with zoning for the reasons set forth below.

V. HYATT ZONING DEFICIENCIES

1. The New Hyatt is not a Legitimate Addition to the Existing Marriott for Zoning Purposes

Although the Hyatt Plans characterize the proposed new hotel as an addition to the existing Marriott Hotel, no meaningful or substantial connection 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

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.”

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.) This provision has been interpreted to permit new construction located adjacent to existing buildings to be assessed for zoning compliance as an addition to the existing building when a “substantial” and “meaningful” connection between the buildings is provided. In essence, together the new construction and the existing building can be considered a single building for zoning purposes. This single building status typically confers significant zoning advantages such as increased height, density as well as yard waivers in corner lot situations and reduced parking and loading requirements. In this case, the Hyatt plans do not include an adequate connection and the building is not on a single lot of record as required by Section 3202.3 of the Zoning Regulations. Nor is a reay yard provided pursuant to Section 636 of the Zoning Regulations.

The applicable standard for a legitimate connection is that connection must be “substantial” and “meaningful” with adequate “communication” between the new and existing improvements. See Z.C. Case No. 08-34 (2011) and Z.C. Case No. 04-36 (2006). The Permit Plans do not identify where the supposed zoning connection is to be provided. The Plans show three doors which potentially could provide some limited access between the buildings. However, two of the doors merely connect to a service corridor and one appears to be a locked emergency access door. In fact, the only “communication” the first two doors may provide is between accessory retail space in the Marriott (now leased to Walgreens and Starbucks) to loading and trash areas. None of the doors provide a meaningful communication between the two

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

³ Id.

hotels, which, of course, are completely distinct hotel franchises and presumably competitors. In fact, it is doubtful that the two hotels intend to share any common areas, hotel services or guest services which would suggest “meaningful” “communication” between the hotels.

Since the above-referenced doors provide a basis for treating the Hyatt as an addition to the Marriott, the Hyatt must be constructed on its own single lot of record and it must satisfy all applicable zoning requirements in the context of that record lot. This is not a de minimus, minor or technical zoning requirement. The Hyatt will need to provide *inter alia* (i) its own parking and loading without relying on existing parking and loading facilities provided in the Marriott Hotel (which the Hyatt Hotel probably has no right to use in any event) as well as . As currently proposed, the Hyatt does not meet these requirements. However, even assuming the proposed Hyatt is deemed a bona fide addition for zoning purposes the Plans are deficient with respect to the DC/CR parking and loading requirements. These deficiencies are summarized as follows:

2. Even Assuming Addition Status , . Hyatt Fails to Meet the Applicable Parking and Loading Requirements

a. Parking Violations.

The 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 sf⁴ --, the

⁴ 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.

two hotels are required to provide a total of 155 parking spaces (107 existing per the Plans plus 42 for 168 new Hyatt sleeping rooms and 6 for the function room). However, the Plans indicate that a total of only 140 parking spaces are provided.

The compact parking spaces shown on the 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 Lower level 1 plans show two (2) groupings of four (4) compact spaces and two (2) compact spaces that are not grouped with any other compact spaces.⁵

Further, the Hyatt exceeds the allowable percentage of compact spaces. Section 2115.2 of the Zoning Regulations authorizes accessory parking areas and accessory parking garages 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 percent (60%) -- are sized for compact cars. As a result, the Hyatt Plans clearly violate Section 2115.2.

b. Loading Violations.

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

⁵ Further, the Hyatt Hotels approved plans do not contain sufficient aggregate information on the existing Marriot 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.

extent specified in §2201....”. The proposed Hyatt Hotel fails to provide the required number of loading facilities.

The 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. Review of the Zoning Computation Sheet associated with the 1990 addition to the Marriott Hotel together with the Hyatt Plans indicate that 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.⁶

Because the Marriot Hotel constructed an addition in 1990 and that addition increased the number of rooms useable for sleeping by seventy-one (71) rooms, 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.⁷

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 239 rooms. Because this number of sleeping rooms is in excess of 200 rooms, the proposed Hyatt Hotel (in

⁶ The Marriott Hotel was first constructed in 1978. Additions were made to the Marriott in approximately 1990 and

⁷ This information assumes that the Marriott Hotel, when first constructed, complied with all then-applicable loading requirements.

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.

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 these loading requirements.

Finally, the proposed Hyatt 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 proposed loading area is not located within the proposed Hyatt 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 adjacent to the Appellant's Offices. As a result, noise, fumes, dust and other noxious effects will adversely impact Appellant's Property.

VI. 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 27, 2014

Respectfully submitted,

Saul Ewing LLP.



Cynthia Giordano
1919 Pennsylvania Avenue, N.W.
Suite 550
Washington, D.C. 20006
(202) 295-6612

Counsel for Appellant -- Chadbourne Parke LLP

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 27th 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
davitable@goulstonstorrs.com


Cynthia A. Giordano