

Collins, Christopher H (WAS - X77841)

From: Collins, Christopher H (WAS - X77841)
Sent: Wednesday, June 04, 2014 12:50 PM
To: 'LeGrant, Matt (DCRA)'
Cc: Chuong Cao; 'Dan Roth'; 'Martin Ditto'
Subject: 1326 Florida Avenue, NE--Garage Ramp--Inapplicability of Section 2117.8(a)

Dear Matt--This memo is a follow up to our discussion of June 3, 2014 regarding the question whether the limitation on driveways in Section 2117.8(a) also applies to the garage ramp that connects the alley to the parking garage in this project. Section 2117.8(a) states that "A driveway that provides access to required parking spaces shall meet the following standards: (a) It shall have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line". Section 2117.8(a) of the Zoning Regulations, which restricts driveways to a slope of no more than 12% with a vertical transition at the property line, does not apply to garage ramps, for the reasons set forth below.

1. The Zoning Regulations make a distinction between driveways and ramps. For example, section 2115.7 of the Regulations provides that "[a]ll entrances, exits, access aisles, ramps, and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in §§ 2115.5 and 2155.6, respectively." (emphasis added). Similar distinctions are also made in sections 2115.1, 2115.3 and 2117.10. Section 2117.8(a) regarding a maximum grade of "12% with a vertical transition at the property line" applies *only* to driveways; it does not address garage ramps, aisles, parking spaces or other features of a garage. This interpretation is consistent with the rules of statutory construction and the maxim *expressio unius est exclusio alterius* – "the mention of one thing implies the exclusion of another." That is, when a regulation provides that a restriction applies to a certain situation, it implies that it cannot be applied to other circumstances, "because there is an inference that all omissions should be understood as exclusions." *McCray v. McGee*, 504 A.2d 1128,1130 (D.C. 1986), *quoting* 2A Sutherland, *Statutes and Statutory Construction* § 47.23 (4th ed. 1984); *see also* 73 Am. Jur. 2d *Statutes* §211 (1974) and *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929). Thus, if Section 2117.8(a) was intended to apply to garage ramps in addition to driveways, as the various references in the earlier Section 2115 were, Section 2117.8 would have been written that way. However, Section 2117.8 only makes reference to driveways. As the District of Columbia Court of Appeals noted, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *School Street Associates Limited Partnership v. District of Columbia*, 764 A.2d 798, 808 (D.C. 2001), *quoting* *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) and *Russello v. United States* 464 U.S. 16, 23 (1983). Thus, garage ramps, unlike driveways, are not limited to a maximum grade of 12%.

2. The Zoning Commission and Board of Zoning Adjustment have consistently recognized the distinction between driveways and garage ramps. For instance:

a) BZA Order No. 17425--"In light of concerns raised in the Office of Planning's report, the Board considered whether relief might be required from the slope requirements of Section 2117.8(a). The Board determined that no relief was required because that provision does not apply to an underground drive ramp, which is to be distinguished from a driveway".

b) BZA Order No. 15156 (Modification Order, November 24, 1993)--"The modification of plans seeks to eliminate a driveway between the residential and office components of the project and to substitute instead a ramp to the parking levels below...Automobiles will continue to use the area previously planned as the driveway from Highland Terrace, albeit as a ramp to the underground parking garage."

c) Zoning Commission Order No. 906--"During the Zoning Commission's public meeting on January 11, 1999, the applicant was asked to restudy certain aspects of the design of the project including the extent of the setback along 16th Street. The Applicant requested and was granted the opportunity to present the revised plans at a

further hearing on March 25, 1999. At that hearing, the architect testified that the applicant's central focus in the redesign effort was to reduce further the visual impact of the building on 16th Street, both at the top and the bottom. As redesigned, the additional floors were minimally visible from strategically sensitive points along 16th Street and completely out of view from most points. Further, the **garage entrance** was modified to minimize its visual impact through a reduction in the original proposed door height of ten feet, four inches to eight feet, the replacement of the single garage entrance with two smaller openings, the use of finish materials in the inside of the garage which are similar in color to the exterior to minimize the contrast when the doors are open and the use of glass at the rear of the building to allow natural light to fill the **garage ramp** and entry area. Further, the **garage driveway** will be paved with unit pavers accented with granite blocks and the entry will be marked by wall sconces." (Emphasis added).

d) BZA Order No. 15463--"DPW recommends that the applicant retain the one-way eastbound nature of this driveway and that final coordination of the driveway and garage ramp design be done with the DPW Bureau of Traffic Services."

3. There is no basis for a distinction that a sloping vehicular access to a garage is a driveway, if located outside of the building, and a ramp, if located inside the building. See, for example:

a) BZA Order No. 14002--This case involved the construction of a new mixed-use SP office and residential building at 450 H Street, NW, adjacent to property owned and occupied by the GSA as the General Accounting Office's headquarters. Access to the garage in the proposed building was planned via an exterior garage ramp on the GAO property. "The opposition, as a preliminary matter at the public hearing, requested that the hearing on the subject application be continued...Thirdly, [they alleged that] there was no evidence that the General Accounting Office (GAO) had given permission to the applicant to use its ramp". (id. at p.1). "To the east of the site is the General Accounting Office, a 110 foot high structure with a garage ramp entrance abutting the site to the east." (Finding No. 4). "Eight parking spaces are proposed to be located in the first sub-grade level with access from the GAO Building garage ramp." (Finding No. 10). "The office windows along approximately forty-four feet of the ground floor and approximately twenty-nine feet of floors two through six, on the east side of the proposed structure, face on windows of the GAO Building twenty-six feet away across its parking ramp." (Finding No. 14).

b) BZA Order No. 17063--This case involved the same property as that in Order No. 14002, discussed above. "The [parking] level is accessed only from a ramp located on the adjacent GAO property". (Finding No. 8).

c) Zoning Commission Order No. 05-38--Marina View PUD--This is a multi-building project involving the renovation of several existing buildings and the addition of several others. "Each set of buildings will also contain an underground parking facility. The point of entry on 6th Street will be a ramp leading down to an underground "auto court" rotary to allow traffic to circulate for both self-parking and valet parking...(Exhibit 26, p.6)." Exhibit 26, Sheets 10 and 14, show that these ramps are exterior ramps, open to the sky.

d) Zoning Commission Order No. 949-American University Campus Plan and Further Processing--Project D of this plan was a 100,000 sq. ft. building, to be located east of Bender Library, on a then-existing parking lot. "The Neighborhood Associations...urged further that...Project D should be set back further than Hurst Hall; that there should be no gates or other entry procedures that have the effect of slowing cars from entering the parking garage under the building; and that ramps leading into the garage from Nebraska Avenue should be as long as possible to reduce queuing on Nebraska Avenue." (Finding No. 84). "The Applicant shall design ramps to the parking garage under each building to minimize their impact on Nebraska Avenue traffic from turning movements". (Condition No. 10(d)(v)).

e) Zoning Regulations, Section No. 2117.10--"All open parking spaces, including access aisles, driveways, and ramp areas shall be surfaced with an all-weather impervious surface." (Emphasis added). If ramps were

considered only to be located within a building, then the use of the term "ramps" in this section would not have been necessary.

4. See also the attached prior email exchange with Former Zoning Administrator Bill Crews, in which he concurred with the distinction between a driveway and a ramp in his ruling involving 777 6th Street, NW.

For all of the above reasons, we respectfully request your determination that the driveway limitation of a 12% slope with a vertical transition at the property line does not apply to the garage ramp in this project.



FW: Garage Ramp FW: Garage Ramp
Slopes Greater... Slopes Greater...

Thank you.

Christopher H. Collins, LEED AP | Holland & Knight

Partner

800 17th Street, NW Suite 1100 | Washington DC 20006

Phone 202.457.7841 | Fax 202.955.5564

chris.collins@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

Collins, Christopher H (WAS - X77841)

From: Brown, M Carolyn (WAS - X75990)
Sent: Friday, January 27, 2006 2:07 PM
To: 'Crews, Bill (DCRA)'
Cc: 'Kim Kepley'; 'Dave Wilson'; Glasgow, Norman M Jr (WAS - X72460); 'Elba Morales'
Subject: Garage Ramp -- 777 6th St NW

Dear Bill,

Thanks for taking the time to meet with Kim Kepley and Dave Wilson of Trammell Crow and me on Wednesday to review the garage ramp issue for the new building at 777 6th Street, N.W. As discussed, we believe the provisions of section 2117.8(a) of the Zoning Regulations that restrict driveways to a slope of no more than 12% do not apply to garage ramps, for the reasons set forth below. We therefore request that you approve the building permit application for zoning compliance as expeditiously as possible.

First, the Zoning Regulations make a distinction between driveways and ramps – they are not the same thing. For example, section 2115.7 of the regulations provides that "[a]ll entrances, exits, access aisles, ramps, and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in §§ 2115.5 and 2155.6, respectively." Similar distinctions are also made in sections 2115.1, 2115.3 and 2117.10. Section 2117.8(a) regarding a maximum grade of 12% applies *only* to driveways; it does not address aisles, ramps, parking spaces or other features of a garage. This interpretation is consistent with the rules of statutory construction and the maxim *expressio unius est exclusio alterius* – "the mention of one thing implies the exclusion of another." That is, when a regulation provides that a restriction applies to a certain situation, it implies that it cannot be applied to other circumstances, "because there is an inference that all omissions should be understood as exclusions." *McCray v. McGee*, 504 A.2d 1128,1130 (D.C. 1986), *quoting* 2A Sutherland, *Statutes and Statutory Construction* § 47.23 (4th ed. 1984); *see also* 73 Am. Jur. 2d *Statutes* §211 (1974) and *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929). Thus, if the section 2117.8 were intended to apply to garage ramps in addition to driveways, the regulations could have been drafted that way. However, that section only makes reference to driveways. As the District of Columbia Court of Appeals noted, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *School Street Associates Limited Partnership v. District of Columbia*, 764 A.2d 798, 808 (D.C. 2001), *quoting* *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) and *Russello v. United States* 464 U.S. 16, 23 (1983). Thus, garage ramps, unlike driveways, may exceed a maximum grade of 12%.

Second, the Zoning Commission and Board of Zoning Adjustment recognize the distinction between driveways and garage ramps. In its order approving the Solar Building PUD at 16th and K Street, N.W., the Zoning Commission describes the various elements of the parking garage in the building and distinguishes among the entrance, ramp and driveway areas:

During the Zoning Commission's public meeting on January 11, 1999, the applicant was asked to restudy certain aspects of the design of the project including the extent of the setback along 16th Street. The Applicant requested and was granted the opportunity to present the revised plans at a further hearing on March 25, 1999. At that hearing, the architect testified that the applicant's central focus in the redesign effort was to reduce further the visual impact of the building on 16th Street, both at the top and the bottom. As redesigned, the additional floors were minimally visible from strategically sensitive points along 16th Street and completely out of view from most points. Further, the **garage entrance** was modified to minimize its visual impact through a reduction in the original proposed door height of ten feet, four inches to eight feet, the replacement of the single garage entrance with two smaller openings, the use of finish materials in the inside of the garage which are similar in color to the exterior to minimize the contrast when the doors are open and the use of glass

at the rear of the building to allow natural light to fill the **garage ramp** and entry area. Further, the **garage driveway** will be paved with unit pavers accented with granite blocks and the entry will be marked by wall scones.

Z.C. Order No. 906 (Solar Building), November 24, 2000, ¶ 4, at 2 (emphasis added).

The Board of Zoning Adjustment made similar distinctions between driveways and ramps in Paragraph 22 of BZA Order No. 15463 (Hospital for Sick Children): "DPW recommends that the applicant retain the one-way eastbound nature of this driveway and that final coordination of the driveway and garage ramp design be done with the DPW Bureau of Traffic Services." Thus, the restrictions on driveways should not apply to garage ramps because both the Zoning Commission and BZA recognize that they are not the same.

Finally, it has also been the long-standing interpretation of the Zoning Review Branch to allow garage ramps – as opposed to driveways – to exceed a maximum grade of 12%, as evidenced by virtually hundreds of buildings throughout the city that have been approved and constructed with ramps with more than 12% grades. As shown in the attached document prepared by Hickok Cole Architects, some representative examples include 11 Dupont Circle, N.W.; 717 6th Street, N.W.; Georgetown Park Mall; Hilton Embassy Row; Ritz Carlton Georgetown; and 10 G Street, N.E. Statutory construction also dictates that such long-standing interpretation should not be overturned, particularly when a party has relied on that interpretation to its detriment. *See Reichley v. District of Columbia Department of Employment Services*, 531 A.2d 244 (D.C. 1987) ("if an agency's adjudication is a clear break with the past and a party reasonably relied to its detriment on the previous rule, then the new rule should be applied prospectively...."). Here, the applicant has relied on this long-standing interpretation and expended hundreds of thousands of dollars on construction drawings and is pouring concrete now for the project.

Therefore, based on the information presented above, we request that you approve the plans for 777 6th Street, N.W., with the garage ramp as shown on the drawings as expeditiously as possible. As mentioned above and as discussed during our meeting, the concrete is being poured now for the below-grade work under the foundation-to-grade permit, and the owners will be ready to start the above-grade work within a matter of weeks. However, they risk extraordinary construction delay costs and potential loss of workers at the job site if the building permit is not issued as soon as possible. Additionally, the permit application must still undergo structural review, which cannot proceed until zoning approval has been granted. Consequently, it is critical that the plans be approved as soon as possible.

Thank you for your time and attention to this matter. Feel free to call me with any questions at (202) 862-5990.

Best regards,

Carolyn Brown

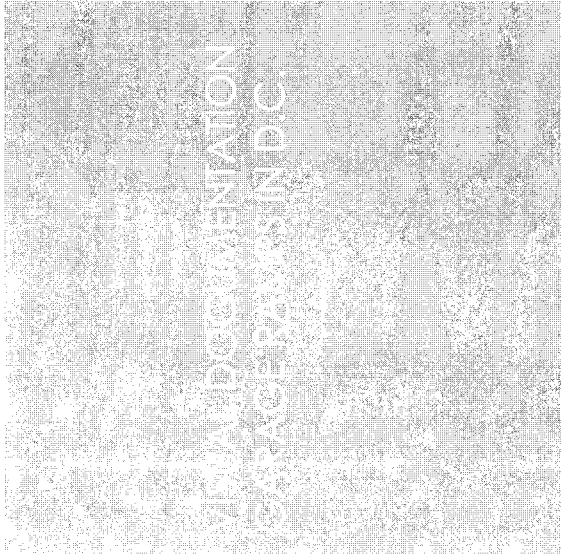


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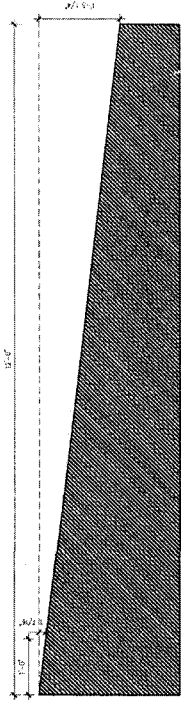
Holland Knight

Mary Carolyn Brown
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

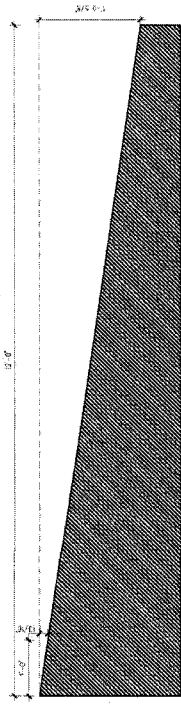
Main: 202 955 3000
Direct: 202 862 5990



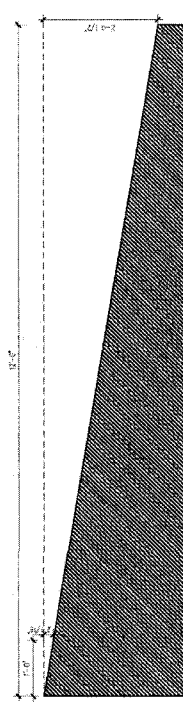
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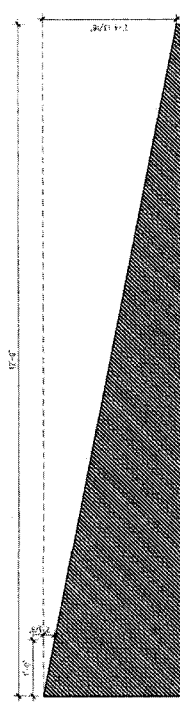
15% slope

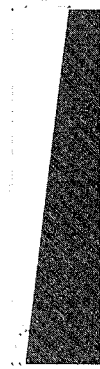


17% slope



20% slope





13% slope



15% slope

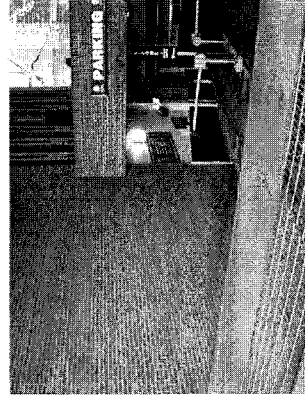
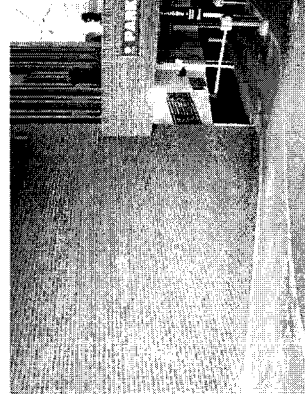
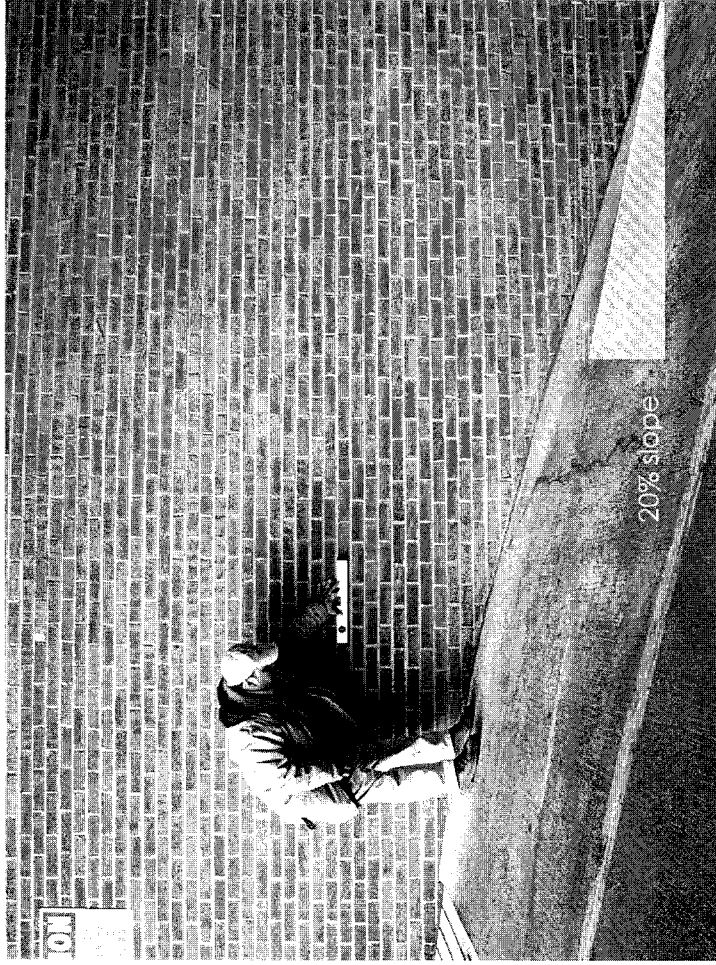


17% slope

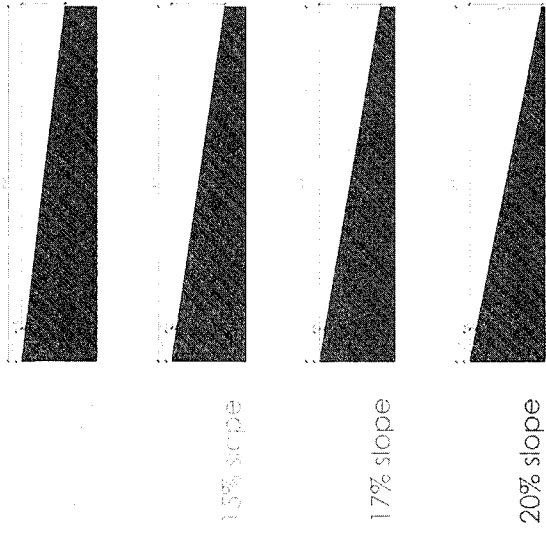


20% slope

KEY FOR COMPARISON



11 DUPONT CIRCLE, NW



KEY FOR COMPARISON



717 SIXTH STREET NW
The Cosopolitan



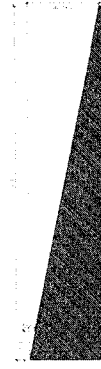
15% slope



17% slope

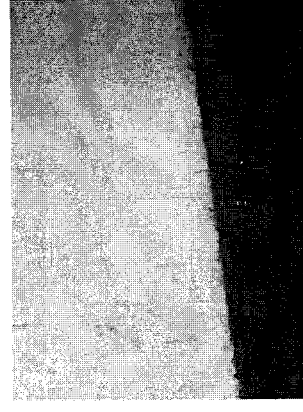
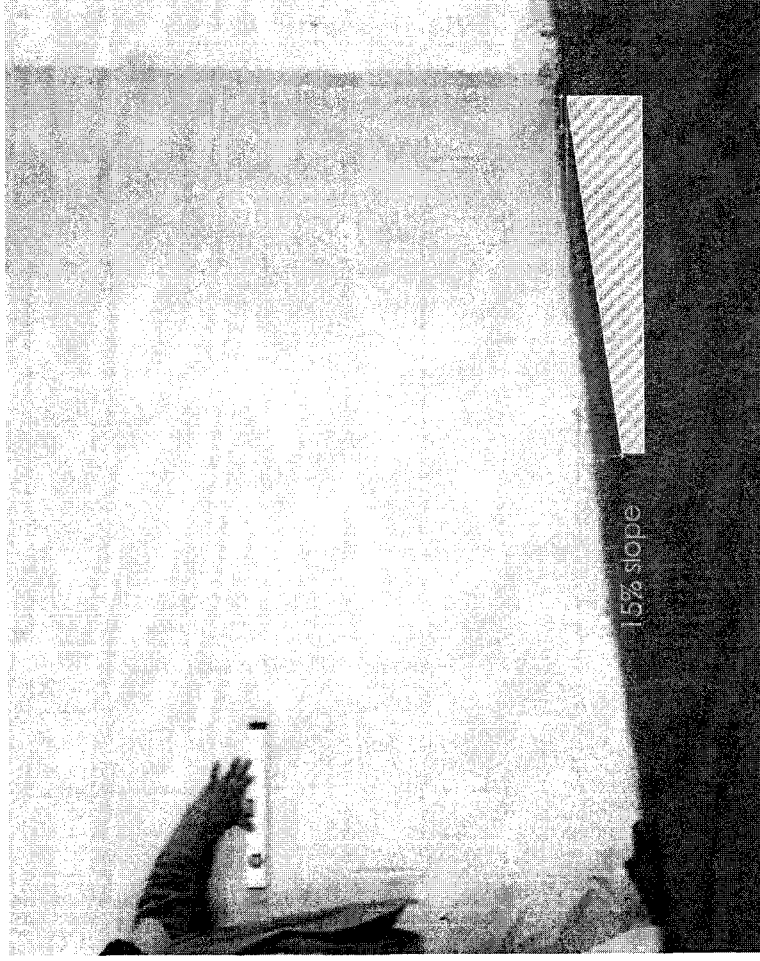


20% slope

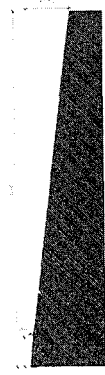


25% slope

KEY FOR COMPARISON



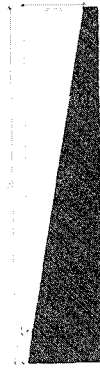
GEORGETOWN MALL
Wisconsin, between M & K Streets



13% slope



15% slope



17% slope

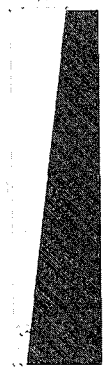


20% slope

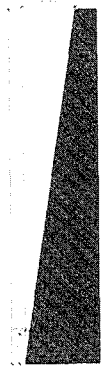
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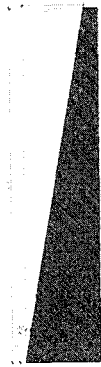
HILTON EMBASSY ROW
2015 Massachusetts Ave. NW



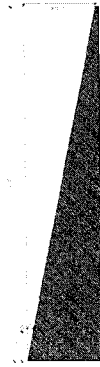
100% slope



67% slope



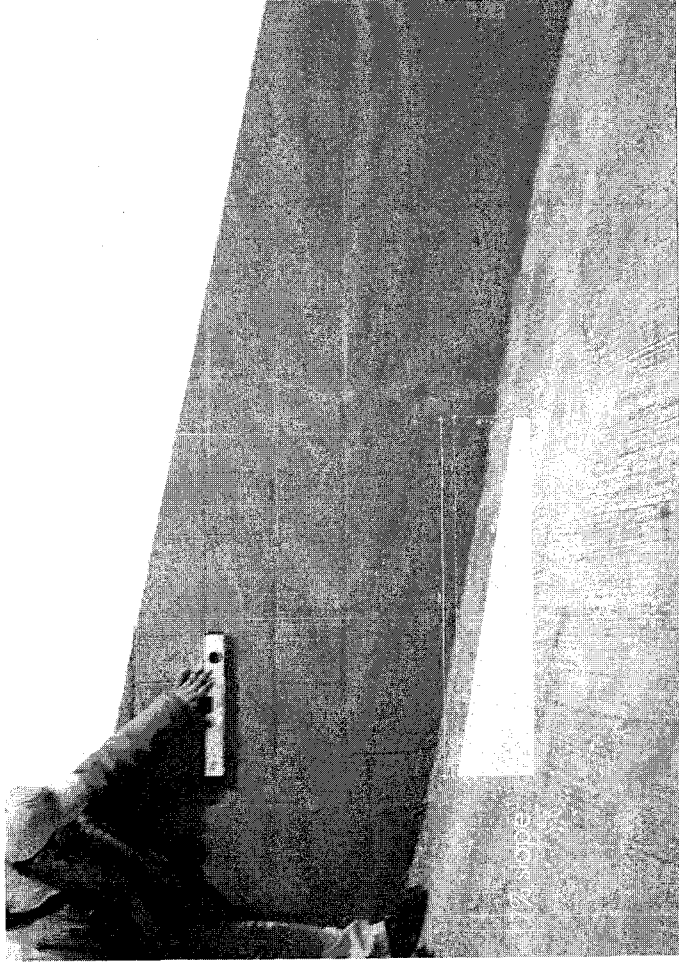
50% slope



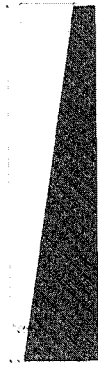
40% slope

KEY FOR COMPARISON

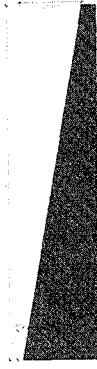
RITZ CARLTON HOTEL
3100 South Street NW



8% slope



15% slope



17% slope



20% slope

KEY FOR COMPARISON

10 G STREET NE

Collins, Christopher H (WAS - X77841)

From: Crews, Bill (DCRA) [Bill.Crews@dc.gov]
Sent: Thursday, February 23, 2006 10:50 AM
To: Brown, M Carolyn (WAS - X75990)
Subject: RE: Garage Ramp -- 777 6th St NW

Carolyn,

Zoning has signed off on 777 6th St.

It looks like Erosion control, DC Fire Dept (fire prevention plan review section), and of course, structural (always last) have yet to review.

We'll move it along.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

The Office of the Zoning Administrator is looking for additional zoning review technicians. If you or someone you know might be interested, please review the job description posting reference #2709 on the District Office of Personnel website www.dcop.dc.gov and contact the Zoning Administrator

From: carolyn.brown@hklaw.com [mailto:carolyn.brown@hklaw.com]
Sent: Wednesday, February 22, 2006 6:36 PM
To: Bill.Crews@dc.gov
Subject: RE: Garage Ramp -- 777 6th St NW

Thanks so much. I appreciate your quick response.

From: Crews, Bill (DCRA) [mailto:Bill.Crews@dc.gov]
Sent: Wednesday, February 22, 2006 6:35 PM
To: carolyn.brown@hklaw.com; Crews, Bill (DCRA)
Cc: Ogunneye, Faye (DCRA); Mac, Xoan (DCRA); Shittu, Ademola (DCRA); DWilson@trammellcrow.com; KKepley@trammellcrow.com
Subject: RE: Garage Ramp -- 777 6th St NW

Carolyn,

Sorry for the delay. I'll double check, but I think we reviewed the plans this past week-end. I see what the status is and get back to you.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

The Office of the Zoning Administrator is looking for additional zoning review technicians. If you or someone you know might be interested, please review the job description posting reference #2709 on the District Office of Personnel website www.dcop.dc.gov and contact the Zoning Administrator

From: carolyn.brown@hklaw.com [mailto:carolyn.brown@hklaw.com]
Sent: Wednesday, February 22, 2006 5:32 PM
To: Bill.Crews@dc.gov
Cc: Faye.Ogunneye@dc.gov; Xoan.Mac@dc.gov; Ademola.Shittu@dc.gov; carolyn.brown@hklaw.com; DWilson@trammellcrow.com; KKepley@trammellcrow.com
Subject: RE: Garage Ramp -- 777 6th St NW

Bill,

We understand from the permit expediter that we're still waiting on zoning sign-off, and that Faye has forwarded the permit to you for clearance. Could you please release the paperwork as soon as possible? -- we still need to get to structural review and we simply can't wait any longer. I realize you are very short-handed, but anything you can do would be greatly appreciated. Thanks.

Carolyn

From: Crews, Bill (DCRA) [mailto:Bill.Crews@dc.gov]
Sent: Thursday, February 02, 2006 9:28 PM
To: carolyn.brown@hklaw.com
Cc: Ogunneye, Faye (DCRA); Mac, Xoan (DCRA); Shittu, Ademola (DCRA)
Subject: RE: Garage Ramp -- 777 6th St NW

Cool pictures, thanks

Faye et al, looks like any change of interpretation would be a major one. Let's consider driveways and garage ramps different.

Best regards,

Bill Crews

Zoning Administrator for the District of Columbia
Department of Consumer and Regulatory Affairs
941 N. Capitol St. NE Suite 2000
Washington, DC 20002
202.442.4576 Office
202.442.4871 Fax
bill.crews@dc.gov

The Office of the Zoning Administrator remains critically short of zoning review technicians. If you or someone you know might be interested, please review the job description posting reference #2709 on the District Office of Personnel website www.dcop.dc.gov

-----Original Message-----

From: carolyn.brown@hklaw.com [mailto:carolyn.brown@hklaw.com]

Sent: Thursday, February 02, 2006 1:53 PM

To: Bill.Crews@dc.gov

Subject: FW: Garage Ramp -- 777 6th St NW

Bill,

Just wanted to check in and see if you've had a chance to review our memo and approve the drawings. Thanks.

Carolyn

>

> From: Brown, M Carolyn (WAS - X75990)

> Sent: Friday, January 27, 2006 2:07 PM

> To: 'Crews, Bill (DCRA)'

> Cc: Kim Kepley; Dave Wilson; Glasgow, Jr., Norman M (WAS - X72460); 'Elba Morales'

> Subject: Garage Ramp -- 777 6th St NW

>

> Dear Bill,

>

> Thanks for taking the time to meet with Kim Kepley and Dave Wilson of Trammell Crow and me on Wednesday to review the garage ramp issue for the new building at 777 6th Street, N.W. As discussed, we believe the provisions of section 2117.8(a) of the Zoning Regulations that restrict driveways to a slope of no more than 12% do not apply to garage ramps, for the reasons set forth below. We therefore request that you approve the building permit application for zoning compliance as expeditiously as possible.

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> First, the Zoning Regulations make a distinction between driveways and ramps > -> they are not the same thing. For example, section 2115.7 of the regulations provides that "[a]ll entrances, exits, access aisles, ramps, and driveways providing access to parking spaces shall also have the minimum vertical clearances as prescribed in §§ 2115.5 and 2155.6, respectively." Similar distinctions are also made in sections 2115.1, 2115.3 and 2117.10. Section 2117.8(a) regarding a maximum grade of 12% applies only to driveways; it does not address aisles, ramps, parking spaces or other features of a garage. This interpretation is consistent with the rules of statutory construction and the maxim *expressio unius est exclusio alterius* > -> "the mention of one thing implies the exclusion of another." That is, when a regulation provides that a restriction applies to a certain situation, it implies that it cannot be applied to other circumstances, "because there is an inference that all omissions should be understood as exclusions." *McCray v. McGee*, 504 A.2d 1128, 1130 (D.C. 1986), quoting 2A Sutherland, Statutes and Statutory Construction § 47.23 (4th ed. 1984); see also 73 Am. Jur. 2d Statutes §211 (1974) and *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929). Thus, if the section 2117.8 were intended to apply to garage ramps in addition to driveways, the regulations could have been drafted that way. However, that section only makes reference to driveways. As the District of Columbia Court of Appeals noted, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *School Street Associates Limited Partnership v. District of Columbia*, 764 A.2d 798, 808 (D.C. 2001), quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) and *Russello v. United States* 464 U.S. 16, 23 (1983). Thus, garage ramps, unlike driveways, may exceed a maximum grade of 12%.

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> Second, the Zoning Commission and Board of Zoning Adjustment recognize the distinction between driveways and garage ramps. In its order approving the Solar Building PUD at 16th and K Street, N.W., the Zoning Commission describes the various elements of the parking garage in the building and distinguishes among the entrance, ramp and driveway areas:

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> During the Zoning Commission's public meeting on January 11, 1999, the applicant was asked to restudy certain aspects of the design of the project including the extent of the setback along 16th Street. The Applicant requested and was granted the opportunity to present the revised plans at a further hearing on March 25, 1999. At that hearing, the architect testified that the applicant's central focus in the redesign effort was to reduce further the visual impact of the building on 16th Street, both at the top and the bottom. As redesigned, the additional floors were minimally visible from strategically sensitive points along 16th Street and completely out of view from most points. Further, the > garage entrance was modified to minimize its visual impact through a reduction in the original proposed door height of ten feet, four inches to eight feet, the replacement of the single garage entrance with two smaller openings, the use of finish materials in the inside of the garage which are similar in color to the exterior to minimize the contrast when the doors are open and the use of glass at the rear of the building to allow natural light to fill the garage ramp and entry area. Further, the garage driveway will be paved with unit pavers accented with granite blocks and the entry will be marked by wall scones.

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> Z.C. Order No. 906 (Solar Building), November 24, 2000, ¶ 4, at 2 (emphasis added).

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> The Board of Zoning Adjustment made similar distinctions between driveways and ramps in Paragraph 22 of BZA Order No. 15463 (Hospital for Sick Children): "DPW recommends that the applicant retain the one-way eastbound nature of this driveway and that final coordination of the driveway and garage ramp design be done with the DPW Bureau of Traffic Services." Thus, the restrictions on driveways should not apply to garage ramps because both the Zoning Commission and BZA recognize that they are not the same.

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> Finally, it has also been the long-standing interpretation of the Zoning Review Branch to allow garage ramps > -> as opposed to driveways > -> to exceed a maximum grade of 12%, as evidenced by virtually hundreds of buildings throughout the city that have been approved and constructed with ramps with more than 12% grades. As show in the attached document prepared by Hickok Cole Architects, some representative examples include 11 Dupont Circle, N.W.; 717 6th Street, N.W.; Georgetown Park Mall; Hilton Embassy Row; Ritz Carlton Georgetown; and 10 G Street, N.E. Statutory construction also dictates that such long-standing interpretation should not be overturned, particularly when a party has relied on that interpretation to its detriment. See *Reichley v. District of Columbia Department of Employment Services*, 531 A.2d 244 (D.C. 1987) ("if an agency's adjudication is a clear break with the past and a party reasonably relied to its detriment on the previous rule, then the new rule should be applied prospectively> ...> ."). Here, the applicant has relied on this long-standing interpretation and expended hundreds of thousands of dollars on construction drawings and is pouring concrete now for the project.

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> Therefore, based on the information presented above, we request that you approve the plans for 777 6th Street, N.W., with the garage ramp as shown on the drawings as expeditiously as possible. As mentioned above and as discussed during our meeting, the concrete is being poured now for the below-grade work under the foundation-to-grade permit, and the owners will be ready to start the above-grade work within a matter of weeks. However, they risk extraordinary construction delay costs and potential loss of workers at the job site if the building permit is not issued as soon as possible. Additionally, the permit application must still undergo structural review, which cannot proceed until zoning approval has been granted. Consequently, it is critical that the plans be approved as soon as possible.

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> Thank you for your time and attention to this matter. Feel free to call me with any questions at (202) 862-5990.

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> Best regards,

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> Carolyn Brown

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