

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

Appeal of 22 West, A Condominium
and ANC2A

Appeal No. 18793

DCRA'S PRE-HEARING STATEMENT

Appellant¹ alleges that the Zoning Administrator erred in deciding that the hotel at issue may have more than one sign. Because the Zoning Commission's order approving the planned unit development specifically provides that the hotel may be constructed in accordance with the plans and the plans show four signs, this appeal is without merit.²

FACTS

This case arises out of Zoning Commission ("ZC") Case # 07-21B. In that case, PerStar M Street Partners (hereinafter "Applicant") proposed a planned unit development ("PUD") consisting of a Hilton Garden Inn with a restaurant at the northwest corner of 22nd and M Streets NW. As part of the case, Applicant presented plans showing that the building would have four signs. See DCRA

¹ Though there are technically two Appellants, DCRA will use "Appellant" to refer to both parties.

² Intervenor has moved to dismiss arguing that the appeal is untimely. That argument is not without merit as the drawings submitted with the building permit application showed the sign at issue. And the building permit was issued more than 60 days before this appeal was filed. If the Board accepts that argument, it need not consider the arguments made in this Brief.

Exhibit A, Case 07-21B Certified Copy of Exhibit 36. Applicant also stated at the hearing that there would be a sign above the main entrance on 22nd street, a sign for the restaurant, and “two [signs] at the very top of the vertical bay on the corner.” DCRA Exhibit B, Case 07-21B 2011 October 27 Transcript, pp. 55-56. And the questioning at the hearing referenced the fact that the building would have more than one sign. DCRA Exhibit B, p. 119-121.

Ultimately, the ZC approved the proposal and entered an order providing that “[t]he PUD shall be developed in accordance with the architectural plans and elevations prepared by Shalom Baranes Associates, dated October 7, 2011 (Exhibit 24), as supplemented by the plans presented at the public hearing (Exhibit 36) (the ‘Plans’), as modified by the guidelines, conditions, and standards herein.” DCRA Exhibit C, Case 07-21B ZC Order, p. 22.

The ZC order also states that:

The Applicant’s schematic signage plans demonstrate that the proposed signage for the hotel will be of high quality. However, the Zoning Commission agrees with ANC 2A that there must be certainty that the actual signage will not differ from that depicted by the Applicant. Therefore, the Commission is adding a condition that the hotel sign must be above the hotel’s entrance on 22nd Street as shown pages A1 and A2 of the Applicant’s final set of plans (submitted as Exhibit 24) and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within. The applicant will be granted the flexibility to make such changes as are required to conform to the District’s construction code. [*Id.* at 19-20.]

After the Owner began constructing a sign at the top of the hotel,³ Appellant filed this appeal alleging that the Zoning Administrator erred in

³ The sign has now been fully constructed. See DCRA Exhibit D for a photograph of the sign.

permitting construction of the sign. The Zoning Administrator has concluded that the sign was expressly allowed by the ZC order. Exhibit G, Affidavit of LeGrant.

ARGUMENT

1. The ZC order allows for the installation of the sign at issue.

Appellant's position is that the Owner should be prohibited from putting a sign at the top of the hotel because the building is limited to one sign above the main entrance. Appellant is wrong.

The Zoning Commission's order, which controls the development of the PUD, simply cannot be read to limit the building to one sign. Rather, a number of different factors make clear that it can have four signs. First, and most importantly, the ZC order states that the "PUD shall be developed in accordance with the architectural plans and elevations.... (Exhibit 24), as supplemented by the plans presented at the public hearing (Exhibit 36)." Exhibit C, p. 22. This provision is important because the plans show that the building will have four signs. Exhibit 36, which is specifically referenced in the order, depicts the sign at issue in the location where it has been installed. So by specifically incorporating Exhibit 36 into the order, the ZC necessarily approved the construction of four signs, including the sign at issue.

Second, the ZC order also provides that "[t]he Applicant's schematic signage plans demonstrate that the proposed signage for the hotel will be of a high quality. However, the Zoning Commission agrees with ANC2 that there must be certainty that the actual signage will not differ from that depicted by the Applicant." Exhibit C, p. 19-20. This language is significant because it reiterates

that the construction of the signs should match the plans. As previously explained, the plans show the sign at issue in the location where it has been installed. In addition, the language refers to "signage." "Signage" is defined as "*signs or a system of signs* used to show information about something (such as a business or a road)." Exhibit E, "signage" definition (emphasis added).⁴ It follows that by using the plural form of the word "sign," the ZC indicated an intent to allow the building to have more than one sign.

Third, the testimony and questioning at the hearing acknowledged that there would be more than one sign. The Applicant explicitly stated that it was "proposing to include some signage on the building, something... for the retail on the north – on the south side, something... over the entrance for the hotel. And then... at the very top of the vertical bay on the corner." DCRA Exhibit B, pp. 55-56. The questioning at the hearing also referenced the numerous proposed signs. ZC Commissioner Schlater specifically referenced the numerous proposed signs when he stated "[c]an we talk for a second about the signage, both the retail signage and the hotel signage." *Id.* at 119. In response to this line of questioning, the Applicant again indicated that the sign would have numerous signs by distinguishing the restaurant sign from the other signs. *Id.* at 121. And Commissioner Schlater followed up by stating that the Applicant's response had addressed his concerns. *Id.* In light of these statements, it is apparent that the ZC was aware that the plan was for the building to have more than one sign. It

⁴ Webster's Third New International Dictionary does not define "signage." So the definition from Merriam-Webster.com is provided.

makes sense than that if the ZC was going to reject the four sign proposal, it would have explicitly done so. It didn't.

Fourth, and finally, Appellant's position would result in an illogical result. The hotel will include a restaurant. The ZC was well aware of this fact. It is illogical that the ZC would not allow the restaurant to have a sign, particularly since the need for such a sign was raised at the ZC hearing. Exhibit A, pp. 121, 132, 237. But that would be the result if the hotel could only have one sign. Who ever heard of a restaurant without a sign?

Accordingly, for all of these reasons, the ZA decided that the sign at issue was allowed by the ZC order. This reasonable decision should be affirmed.

2. Appellant's arguments are without merit.

Appellant argues because there is language in the ZC order providing that "[n]otwithstanding the notes on Pages A1 and A2" of Exhibit 24 "the hotel sign must be above the hotel's main entrance on 22nd Street... and that the sign cannot be at a different location or be vertically mounted on the facade of the hotel or illuminated from within," only one sign is allowed. It seems to be Appellant's contention that the ZC's use of the phrases "notwithstanding the notes on Pages A1 and A2" and "the hotel sign" illustrates an intention to limit the hotel to one sign.

The most obvious problem with this argument is that the language Appellant relies on simply does not say that the hotel can only have one sign. One would think that if the ZC wanted to limit the hotel to one sign, it would have specifically said that the hotel can only have one sign. It did not do so.

And despite what Appellant would have the Board believe, the phrase “the hotel sign” does not mean that only one sign is allowed. Although the word “the” followed by a singular noun can refer to a single person, place, or thing, it also can refer to a general version of that noun. A recent decision by the US Supreme Court illustrates this point. In *NLRB v. Canning*, the issue was how the phrase “the recess” should be interpreted. 134 S. Ct. 2550, 2561 (2014). The US Supreme Court held that the term was ambiguous since it could mean a single recess but also could mean recesses in general. *Id.*

A similar interpretation is appropriate here. The phrase “the hotel sign” is ambiguous, especially when one considers the use of the word “signage” at other places in the order and the incorporation of Exhibit 36 into the order. Since the phrase “the hotel sign” is ambiguous, it simply cannot be relied on by itself to resolve the dispute involved in this case.

The “[n]otwithstanding the notes on Pages A1 and A2” language is also not a rejection of Applicant’s plans for four signs. The phrase is actually a confirmation of the plan. This language is not in the order to limit the hotel to one sign. It is in the order because the notes on Pages A1 and A2 of Exhibit 24 stated that the signage shown on the plans was for illustrative purposes only. DCRA Exhibit F, Case 07-21B Exhibit 24, Drawings A1 and A2. By rejecting these notes, the ZC was requiring the actual signage to match the signage shown on the plans. As explained above, Exhibit 36 of the plans showed the sign at issue in the location where it has been installed. Thus, the sign at issue matches what was shown on the plans and, as a result, Applicant is in compliance with the ZC order.

CONCLUSION

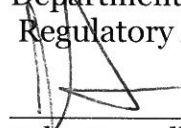
Since the ZC order refers to "signage" and provides that the hotel "shall be developed" in accordance with the plans, which show four signs including the sign at issue, the Owner is allowed to install that sign. Therefore, the Appeal should be denied.

Respectfully Submitted,

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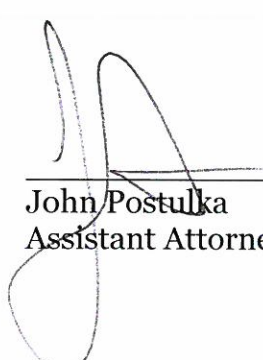
CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September 2014, a copy of the foregoing Brief was served to:

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