

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

Appeal of 22 West, A Condominium and ANC 2A

Appeal No. 18793

OWNER'S PREHEARING STATEMENT IN OPPOSITION TO APPEAL

**I.
INTRODUCTION**

This Appeal is without merit, and should be denied. The location of the approved signage is shown on page 4 of Exhibit 36 of the PUD record in Case No. 07-21B. Page 4 of Exhibit 36 includes two building elevations which show the location of the four proposed signs. See Attachment A. These plans are part of the PUD record, and were shown at the public hearing as part of the Applicant's presentation to the Zoning Commission. This signage was specifically discussed by the Applicant's representatives at the public hearing. Exhibit 36 is specifically incorporated in Paragraph A.1. of the Decision on page 22 of the PUD Order. After a thorough review of the relevant portions of the PUD record, the Zoning Administrator properly interpreted the terms of the PUD Order with regard to the approved location of the signage at issue in this appeal.

**II.
KEY "FACTS" IN THE APPELLANT'S PREHEARING STATEMENT ARE
INCORRECT AND DIRECTLY CONTRARY TO THE RECORD IN THIS CASE**

In support of their contention that the Zoning Commission only approved one sign for the Hotel, the Appellants state in paragraph 6 of their "Statement of Facts" that "At no time during the [PUD] hearing did the Applicant or its architect refer to a signage plan as part of Exhibit 36. Exhibit 36... does not clearly identify signage locations...". Later on, at the top of the 11th page of their pleading, they claim that the only sign discussed in the PUD record was the hotel sign

above the 22nd Street entrance, and that “no other signs are discussed in the record of this case.”

If correct, these would be important facts to support the Appellant’s theory of the case.

However, the record shows that these “facts” are totally incorrect.

A. The Architect Testified About the Proposed Locations of the Signage

The architects’ testimony is included on Attachment B, pages 43-68 of the transcript of the October 27, 2011 public hearing in Case No. 07-21B. The video of the architect’s presentation can also be viewed on the Video on Demand feature on the OZ website. Shalom Baranes begins his presentation to the Commission on page 43 of the transcript. It is clear from the transcript, and in the video, that Mr. Baranes is presenting the plans for the project that are in Exhibits 24 and 36 of the record, including the signage plan on page 4 of Exhibit 36. Referring to the drawing that is included in the record as Exhibit 36, page 4, he points out at pages 55 and 56 of the transcript that the signs on “these two spots at the very top of the vertical bay on the corner, these signs would be, approximately, 3 to 3.5 feet tall.” Although the plans show two signs at the top of the vertical bay, facing south and facing east, the Owners have chosen to install only the sign facing east.

B. The Applicant’s Representative Discussed the Signage Location In Response To Questions From The Commission

Mr. Messervy, the Applicant’s representative, discussed several issues in response to questioning from Commissioner Schlater, the only Commissioner who discussed the proposed signage during this case. That entire discussion is found on Attachment B, pages 116 through 124 of the October 27, 2011 transcript. Commissioner Schlater began on page 116 by stating “Let’s just jump in and address some of the ANC’s concerns”. The first issue he raised was the ANC’s concern that “the retail space [would] remain a community amenity and a restaurant”.

Mr. Messervy addressed that issue on pages 117 and 118. Commissioner Schlater then raised the second ANC issue beginning at the top of page 119—"Can we talk for a second about the signage, both the retail signage and then the hotel signage? First let's talk about the hotel signage." In response to the Commissioner's questions, Mr. Messervy described the high quality of the proposed signage and explained that the signage shown on the plans discussed by the architect depicted the "scale of what the signage in fact would be. And [the architects] walked through in terms of the dimensions of the signs." Messervy further explained that "the approximate size dimensions of the sign location is represented in the plans." Commissioner Schlater asked Mr. Messervy for an assurance that "there is a not going to be some large banner, neon sign", to which Mr. Messervy agreed. Commissioner Schlater concluded that discussion on page 121 by stating "Okay. I'm satisfied you have addressed both of those [ANC] concerns".

At the Commission's December 12, 2011 public meeting, where they took final action to approve the PUD, Commissioner Schlater stated at page 14 of the transcript (Attachment C hereto) that "I reviewed the order in pretty good detail and I think the Office of the Attorney General did an excellent job in capturing the discussion that we had," referencing the signage, among other issues. Reflecting Commissioner Schlater's comments on the signage issue, Finding No. 43(b) of the PUD Order states that "The Commission agrees with ANC 2A that there must be certainty that the actual signage will not differ from that depicted by the Applicant."

III.

THE SIGNS OTHERWISE CONFORM TO THE PUD ORDER

There was also a concern expressed by the ANC during the PUD hearing that the signs "should not be like that of the Marriott across the street." See Attachment B, pages 131-132 of October 27, 2011 transcript. Attachment D includes photos of the Marriott signs across the

street. The first photo is on the 22nd Street side of the Marriott, showing a vertical, internally-illuminated Marriott sign mounted on the façade, and measuring four stories in height. The second and third photos show both sides of a vertical, internally-illuminated Marriott blade sign mounted on the M Street façade, and measuring three stories in height. For comparison purposes, the fourth photo shows the approved Hilton Garden Inn sign that is at issue in this appeal.

The PUD Order approved the signage plan “depicted by the Applicant”, with four signs, and included a condition to address the ANC’s “Marriott sign” issue that the signage could not be “vertically mounted on the façade of the hotel or illuminated from within.” The approved sign is “not like that of the Marriott across the street.”

IV. **APPELLANTS MAKE OTHER MISLEADING REPRESENTATIONS IN THEIR PLEADING**

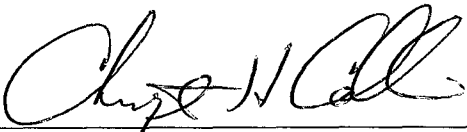
Appellants open their Prehearing Statement with a quote by Owner’s counsel in the PUD public hearing transcript affirming that any changes to the design of the building and the uses in the building would need to come back to the Commission for a modification. This same quote is repeated in the Conclusion section of the Appellant’s Statement. Without speculating on the Appellant’s reasons for prominently including that quote twice in their document, the simple fact is that the quote has no bearing on the signage in this appeal. This appeal does not involve any changes to the design of the building or to the uses in the building. The quote was part of a discussion about the ANC’s concern whether the hotel restaurant would be changed to another use in the future, based upon their concern that the Marriott across the street removed its restaurant and replaced it with a Walgreen drug store. See Attachment B, pages 152-154 of the October 27, 2011 transcript.

V.
CONCLUSION.

The Zoning Administrator's interpretation of the signage provisions in the PUD Order was procedurally and substantively correct. This appeal is without merit, and should be denied.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
Christopher H. Collins

CERTIFICATE OF SERVICE

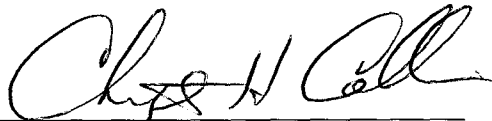
I hereby certify that a copy of the foregoing Owner's Prehearing Statement in Opposition to Appeal was filed electronically with the Office of Zoning and was sent by first-class mail and electronic mail, this 24th day of September, 2014, to the following:

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