

*State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations.*

### **The Appellants**

Appellant ANC3C is a District of Columbia Advisory Neighborhood Commission, established under provisions of Section 1-207.38 of the District of Columbia code. The subject property is located within the established boundaries of ANC3C. The decision of the Zoning Administrator being appealed from was, in part, made in response to a written request for a ruling from the Chair of ANC3C. By Resolution Number 2006-026 (copy attached) adopted at a regular public meeting on June 20, 2006, the ANC formally expressed its disagreement with the decision of the Zoning Administrator under review and resolved to prosecute this appeal. Under the provisions of Section 1-309.10 (d)(3)(A), the Zoning Administrator and this Board are required to give "great weight" to the "issues and concerns" expressed by ANC3C.

The Woodley Park Community Association ("WPCA") is a citizens association, organized as a DC not-for-profit membership corporation. Its purpose is to maintain and advance the quality of the Woodley Park area. The Property is located in the Woodley Park neighborhood. WPCA has approximately 800 individual members, all residing in the immediate neighborhood of the Property, who will be directly affected by the construction authorized by the permits being appealed (the "Permits"). In particular, WPCA's membership includes neighbors who live directly next to and across from the Property and who are uniquely affected by the construction in a manner not shared by other people in the City as a whole.<sup>1</sup> The Permits cause them injury by creating additional noise and additional traffic, and increasing the potential threat to pedestrians and vehicular safety. In addition, to construct the garage, it will be necessary to destroy an open green space that these neighbors have enjoyed for many years.

### **Factual Background**

The property for which the Permits were issued is at 2660 Woodley Road, NW, Lot 832, Square 2132 (the "Property"). In total, it is roughly 16.2 acres. At present, all the buildings on the Property are used as a hotel, the Marriott Wardman Park Hotel, which is the largest hotel in the District.

The owners of the Hotel have indicated their plans to further develop the Property. In addition to the Hotel, they plan to build a nine-story condominium tower on the western part of the Property. In order to make this building the size they want, they are planning to demolish part of the Hotel building that includes a garage and various

<sup>1</sup> For example, WPCA Vice President, Wesley Bizzell, lives directly across the street from the Property at 2701 28<sup>th</sup> Street and Board member Elba Morales lives immediately to the west of it at 2800 Woodley Road.

BOARD OF ZONING ADJUSTMENT  
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other Hotel facilities. The owners need to build a new garage to replace the parking that will be lost by this demolition and will the relocate other facilities to other parts of the Hotel.

This new garage will be underground, but it will not be located where the existing one is. Nor will this garage be located under any existing structure. Rather, the new garage will be on a different part of the Property, a part that is undeveloped today and that was a wooded field in the front yard of the Property. The Permits authorize the construction of this garage. A diagram prepared by the developer showing the Property and the planned construction is attached.

### **The Zoning Administrator's Errors**

The Zoning Administrator's decision that construction of the proposed garage is consistent with the Zoning Regulations is incorrect. First, the proposed garage is prohibited in several respects by the special grandfathering zoning rules that apply to hotels in residential zones, which essentially freeze those hotels as they were on May 16, 1980. Second, the Regulations prohibit constructing a parking garage in the front yard of a property. Third, it was error for the Zoning Administrator to approve the Permits, as he did, without having the assurance "that all submitted plans cumulatively comply with the zoning requirements."

1. The Property is located in residential zones (R-5-B and R-5-D). It is, therefore, subject to § 350.4 of the Zoning Regulations, which provides:

"The following uses shall be permitted as a matter of right in an R-5 District:

"(d) Hotel, only in R-5-B, R-5-C, R-5-D, or R-5-E Districts, in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit; provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered;"

This regulation was adopted in Zoning Commission Order No. 314, which permitted existing hotels in residential zones to continue to operate and to keep themselves in good condition and repair, but which otherwise effectively froze them in their 1980 configurations. The construction authorized by the Permits violates this section.

First, § 350.4(d) has the effect of "grandfathering" or "freezing" the hotels subject to it as of May 16, 1980. The construction authorized by the Permits is inconsistent with such "grandfathering" or "freezing."

Second, § 350.4(d) only allows existing hotels to be “repaired, renovated, remodeled, or structurally altered.” The construction authorized by the Permits, however, would allow the owners to construct a new garage, a completely new building. And this new building would be constructed in the front yard of the hotel, on land which is now unoccupied. Under the Permits, nothing is being repaired, renovated or remodeled. There is no existing “structure” that is being “altered.” The work that has been approved will allow the developer to dig a new hole in the front lawn area and to construct a brand new building. Such construction cannot reasonably be characterized as a repair, renovation, remodeling or structural alteration.

Third, § 350.4(d) prohibits any increase in “the gross floor area [“GFA”] of the hotel.” According to materials provided by the developer, the proposed new garage would appear to be in excess of 104,000 square feet. The Zoning Administrator apparently did not include this area in GFA because it is all below ground. This is an incorrect reading of the Zoning Regulations.

Section 199 defines GFA as “the sum of the gross horizontal areas of the several floors of all buildings on the lot.” Because a “building” is defined as “a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel,” the proposed underground garage is plainly a building. The Regulations go on to exclude certain *portions* of a “building” from the calculation of GFA. One part of a building that is not included is the “cellar,” and the Zoning Administrator apparently treated this garage as a cellar. But a cellar is by definition a “portion” of a “story” of a building.<sup>2</sup> Thus, a building that is completely underground is not a cellar.<sup>3</sup> If a below-ground building were a “cellar” for these purposes, then the GFA limitations in § 350.4(d) would be meaningless, as the size of a hotel could be increased without limit, as long as all the growth was underground. If the Zoning Administrator had correctly applied the Regulations and counted the garage in the GFA of this Hotel, that added area would have increased the Hotel’s GFA in violation of § 350.4(d).<sup>4</sup>

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<sup>2</sup> The Regulations say that a “cellar” is “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade” and that a “story” is “the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing.”

<sup>3</sup> The Board implicitly reached this same conclusion in a previous Order regarding the Property. In that case, the Hotel owner wanted to construct an underground garage and make other changes to the Property. Because GFA would be increased, the owner sought a variance. In commenting on the owner’s proposed underground garage and loading dock, the Board referred to “the increases associated with these improvements” and noted that “the zoning regulations prohibit them.” *Application No. 16072 of the John Hancock Mutual Life Insurance Company*, Order at 11-12 (May 1, 1996). If the underground garage did not count toward GFA, this discussion would make no sense. As successor to the applicant in that case, the owner of the Property is estopped from arguing that area increases resulting from an underground garage should not be counted.

<sup>4</sup> Documents provided by the developer indicate that the GFA of the Hotel after this phase of the project will be roughly 47,000 square feet less than it was the phase, not including the new garage in the GFA. If the new garage is included, as it must be, then the GFA will increase by roughly 57,000 square feet.

Fourth, the definition of “hotel” in § 199 provides, “All areas within a hotel shall be included in one (1) of the following categories:” commercial adjuncts, exhibit space, function room, guestroom areas and service areas, all of which are defined in § 199.<sup>5</sup> Section 350.4(d) then prohibits the growth of the commercial aspects of a grandfathered hotel; it provides that “the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased.” The purpose of this provision is to ensure that the non-residential features of a hotel located in a residential zone are not expanded.

A garage does not fit within the Regulations’ definitions of any of these five categories. But the Regulations require that “[a]ll areas within a hotel shall be included in one” of these categories. Therefore, the Regulations require that garage area be allocated, based on usage or some other factor, among the five categories that together comprise a hotel. That calculation must be done to determine whether “the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts” is being increased. Appellants understand that the Zoning Administrator concluded that the area of the proposed garage is included in “the total area within the hotel,” but that he did not allocate any of the garage area to “function rooms, exhibit space, and commercial adjuncts” of the hotel. This was incorrect, as certainly some of the garage area would support those functions.

According to materials provided by the developer, the proposed new garage would appear to be in excess of 104,000 square feet, which is more than 29,000 square feet larger than the existing hotel garage, which the developer says it plans to demolish at a later stage in the project.<sup>6</sup> Even assuming that the same percentage of the new garage is allocated to “function rooms, exhibit space, and commercial adjuncts” as the existing garage, this would increase the area allocated to these categories because the new garage is larger than the old garage. In addition, the developer has indicated that it plans to

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<sup>5</sup> “(a) Commercial adjuncts - retail and service establishments customarily incidental and subordinate to hotel use, such as restaurant, dining room, cocktail lounge, coffee shop, dry cleaning, laundry, pressing or tailoring establishment, florist shop, barber shop, beauty parlor, cigar or news stand, and other similar uses;

“(b) Exhibit space - floor area within a hotel primarily designed for the display and storage of exhibits for conferences, trade fairs, and similar group events;

“(c) Function room - a room within a hotel used primarily to accommodate gatherings of hotel guests and visitors, such as meetings, banquets, and other group events;

“(d) Guestroom areas - floor area within a hotel devoted to guestrooms or suites, including individual bathrooms, entrance foyers, corridors, elevators, stairs, floor pantries, and other space directly supportive of guestrooms. The main lobby, front desk, and hotel administrative offices are also included in guestroom areas for purposes of pro-rating floor area between residential and nonresidential uses in applicable zones; and

“(e) Service areas - floor area within a hotel devoted to mechanical services and storage supportive of the hotel as a total entity, including boiler room, mechanical platforms, electrical switchboard, workshops and maintenance areas, storage areas, employee facilities (locker rooms, canteen, and engineer’s office:), and similar uses. (36 DCR 7625)”

<sup>6</sup> The developer plans to do other demolition and construction during this phase of this project. At the end of this phase, documents provided by the developer indicate that the total area of the hotel will increase by roughly 1000 square feet. This indicates that the area being removed will not be enough to bring the new garage area within the limits set by § 350.4(d).

reduce the number of guestrooms in the hotel by more than 20%, which presumably would result in a smaller percentage of the new garage supporting the guestroom category and, therefore, a greater percentage supporting the commercial categories.

The construction authorized by the Permits would increase the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts in violation of § 350.4(d).

2. In addition, the Permits authorize the construction of a “parking garage” as defined in § 199 of the Zoning Regulations, accessory to the buildings on the Property that are used as a hotel. Sections 2301, 2302 and 2500 of the Zoning Regulations prescribe where such a garage may be located — either “within the main building” or in a “rear yard.” The garage authorized by the Permits is in the front yard of this property, along Woodley Road. As it is neither “within the main building” nor in the “rear yard” of the Property, it is inconsistent with these regulations.

3. Finally, on a May 15, 2006, contemporaneous with the issuance of the first of the Permits, the Zoning Administrator sent a memorandum to the Chair of ANC 3C, a copy of which is attached. The memo states that there is a “caveat” to his approval of this construction, namely, that the calculations provided by the applicant were “preliminary” and that the Administrator would have to “ensure that all submitted plans cumulatively comply with the zoning requirements.” It was error, in violation of § 350.4(d) and the Zoning Regulations generally, to issue the Permits without having the assurance “that all submitted plans cumulatively comply with the zoning requirements.”

### **How Appellants Intend To Prove Their Case**

Appellants believe that the facts material to this dispute are not at issue and that the appeal can be resolved as a matter of law without extensive evidentiary submissions. Appellants intend to prove their case by use of descriptions and diagrams of the existing hotel and of the construction authorized by the Permits, testimony about the Property and the planned construction, and testimony about the meaning of the words and phrases in the Zoning Regulations (such as, “repaired, renovated, remodeled, or structurally altered,” “within” a building and “rear yard”) and may rely on expert testimony on all these subjects.

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|                                                                                                                                                                       | <p align="center"><b>ADVISORY NEIGHBORHOOD COMMISSION 3C</b><br/> <b>GOVERNMENT OF THE DISTRICT OF COLUMBIA</b><br/>         CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS<br/>         MCLEAN GARDENS • WOODLEY PARK</p>                                                                                                                                                                          |
| <p>Single Member District Commissioners<br/>         01-Dia Black; 02-Deborah Jane Lindeman; 03-Stephanie Zobay<br/>         04-Avram Fechter; 05-Bruce Beckner; 06-Trudy Reeves<br/>         07-Sheila Hogan; 08-Catherine May; 09-Nancy MacWood</p> | <p align="right">2737 DEVONSHIRE PLACE, NW<br/>         WASHINGTON, DC 20008<br/>         TEL 202/232-2232 • FAX 202/232-0667<br/>         Email <a href="mailto:anc3cmail@gmail.com">anc3cmail@gmail.com</a><br/>         Listserv <a href="http://groups.yahoo.com/group/anc3cgroup">http://groups.yahoo.com/group/anc3cgroup</a><br/>         Website <a href="http://www.anc3c.org">http://www.anc3c.org</a></p> |

## **Resolution No. 2006-026**

### **Regarding Zoning Issues at the Marriot Wardman Park Hotel**

WHEREAS The JBG Company has announced its plans to extensively redevelop the property that now contains the Marriott Wardman Park Hotel, located at 2660 Woodley Road NW, in Lot 32, Square 2132; and

WHEREAS these plans include enclosure and relocation of a loading dock, construction of an underground garage for more than 250 cars, demolition of existing hotel buildings and garage space, construction of a nine-story condominium tower and underground parking garage and the possible conversion of hotel rooms into residential units; and

WHEREAS this property, which is located in an R-5-B and R-5-D zone, is subject to special rules under 11 DCMR 350.4(d) of the zoning regulations which operate to freeze expansion of hotels located in residential zones as of May 16, 1980; and

WHEREAS the Board of Zoning Adjustment ("BZA") previously has denied the construction of an enclosed loading dock and underground parking garage at this site, BZA Application #16072, as a violation of Section 350.4(d); and

WHEREAS ANC 3C has examined the zoning cases, zoning definitions and regulations that pertain to this issue; and

WHEREAS the Zoning Administrator has advised ANC3C that he has concluded that the loading dock and the underground garage are permitted and do not require regulatory approval; and

WHEREAS, based upon this conclusion by the Zoning Administrator, certain construction permits have been issued by DCRA:

THEREFORE, BE IT RESOLVED that ANC3C disagrees with the legal conclusions of the Zoning Administrator that the developer may proceed as a matter of right, and concludes that the effects of those conclusions will be detrimental to District residents who reside in residential zones with hotels, and specifically to the residents of Woodley Park, and

BE IT FURTHER RESOLVED that ANC3C shall appeal the issuance of permits for construction on this property to the Board of Zoning Adjustment and any or all of the permits that have been issued, are pending and/or may be issued as a result of the zoning decision, and shall take whatever legal action is necessary to ensure that work does not proceed pending the appeal, and

BE IT FURTHER RESOLVED that ANC 3C authorizes the Chair and the Commissioner for ANC3C02 or their designee(s) to represent the Commission on this matter.

Attested by  Chair, on June 20, 2006

Nancy J. MacWood

*This resolution was approved by ANC 3C by a vote of 6-0 on June 19, 2006 at a public meeting at which a quorum of 6 of 9 commissioners was present.*



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR



Memo to: Nancy MacWood, Chair, Advisory Neighborhood Commission 3C  
Deborah Lindeman, Advisory Neighborhood Commissioner, SMD 3C02

From: Bill Crews, Zoning Administrator *Bill Crews*

Date: May 15, 2006

Re: Wardman Park JBG Hotel -- Condo Development Project

You have requested an interpretation by the Zoning Administrator on whether the proposal by the JBG Companies (JBG) to modify the layout of the Marriott Wardman Park Hotel through demolition and construction of various parts of the hotel and construction of a new underground parking structure, along with an condominium addition to the building is allowed as a matter of right under the Zoning Regulations of the District of Columbia.

I have reviewed the information provided by JBG on current and proposed area measurements for total hotel gross square footage and total hotel square footage devoted to function rooms, exhibit space and commercial adjuncts. I have also considered the issues you have raised in various email correspondence with me.

After careful review and with a caveat described later, I have determined that the proposed changes and additions do not violate the zoning regulations and can proceed as a matter of right. The total gross square feet of the hotel as well as the total square feet for hotel function rooms, exhibit space and commercial adjuncts are not increased under the current proposal. I caveat this determination in that the calculations provided by JBG are preliminary and that the Office of the Zoning Administrator staff will have to ensure that all submitted plans cumulatively comply with the zoning requirements. And any certificates of occupancy will be issued only after careful inspection to ensure final compliance with the zoning regulations.

I have also reviewed the parking space requirements and proposed changes and can confirm that required parking spaces are provided.

It is also my interpretation that the condominium addition will be separate from the hotel although part of the same building. This complies with the zoning regulations in that mixed use buildings are allowed.

Should you have any questions or desire further explanation, I will be happy to meet with you. Please call me at 202.442.4576 to discuss and schedule an appointment.

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July 14, 2006

DC Office of Zoning  
 Board of Zoning Adjustment

Dear Madame:

This is to advise you that, for purposes of Section 3112.4 of the Zoning Regulations, John Goodman is authorized to act for ANC3C with respect to the prosecution of the appeal of certain building permits issued to the owner of the premises at 2660 Woodley Road, N.W., including signing the appeal application.

My authority to make this delegation of authority comes from ANC3C Resolution 2006-026, granting me authority to act on behalf of ANC3C with respect to this matter. A true copy of such resolution is attached to the appeal application.

Sincerely,

  
 Deborah Jane Lindeman  
 Commissioner ANC3C02