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RICHARD B. NETTLER
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November 28, 2006

BY HAND

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 Fourth Street NW, Second Floor South
Washington DC 20001

Re: **REQUEST FOR PARTY STATUS, BZA Case No. 17538**, Appeal of Advisory Neighborhood Commission 3C and Woodley Park Community Association
Our File No.: 092218.0014

Dear Chairman Griffis and members of the Board of Zoning Adjustment:

On behalf of Wardman Hotel LLC/JBG Associates LLC ("JBG"), we request that the Board of Zoning Adjustment permit JBG to appear as parties in opposition in the above-referenced appeal. Additionally, we request that the relief sought by the instant appeal be denied. In support hereof, we provide the following:

A. REQUEST FOR PARTY STATUS

With regard to the requirements of 11 DCMR § 3106.2(a)-(d), we state as follows:

a. The person seeking party status is The JBG Companies d/b/a Wardman Hotel LLC/JBG Associates LLC, which is the record owner of the Marriott Wardman Park Hotel (the "Subject Property"), the property subject to the instant appeal;

b. The JBG Companies request to appear as a party to this matter;

c. The JBG Companies will appear in opposition to the appeal; and

d. The JBG Companies will appear through undersigned legal counsel.

In accordance with 11 DCMR § 3106.2(e), we provide the following:

1. Interest in the Subject Property—11 DCMR § 3106.2(e)(1)-(3).

Marriott Wardman Hotel LLC/JBG Associates LLC owns the property that is the subject of the instant appeal.

2. Impact of the Requested Relief—11 DCMR §3106.2(e)(4)&(5).

JBG applied for an obtained building permits for the construction of the East Garage on the Subject Property. In reliance on the valid issuance of Building Permit Nos. 86798 and 67758 (the "Permits"), construction commenced immediately upon issuance. Granting of the instant appeal will result in severe economic loss to JBG in the form of the construction contracts it has entered into to complete the garage in question, as well as a deprivation of its right to continue operating the Marriott Wardman Park Hotel and to invest in and redevelop the Subject Property. The cost of the garage is estimated to be $17.6 million.

3. Significant Impact—11 DCMR § 3106.3.

As the owner of the Subject Property, JBG's interests will be more significantly, distinctively, and uniquely affected if the instant appeal were granted than those of the general public.

B. ARGUMENT IN SUPPORT OF DENIAL

The parking garage which is the subject of the instant appeal was validly permitted and does not violate the Zoning Regulations. Specifically:

1. The construction of the garage is not prohibited as an expansion of the hotel under 11 DCMR § 350.4(d).

The Appellants argue that Section 350.4(d) of the Zoning Regulations, which states, in relevant part:

> *The following uses shall be permitted as a matter of right in an R-5 District:*
>
> *(d) Hotel...in existence as of May 16, 1980...provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibits space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered."*

"effectively froze" all hotels in existence in their 1980 configurations and that the construction authorized by the Section 350.4(d) was adopted by the Zoning Commission in Order No. 314. The Appellants argue that this Order "effectively froze" all hotels in existence in their 1980 configurations and that the construction authorized by the Permits violates this section. The Appellants are incorrect in that the parking garage, being entirely underground and connected to the main hotel building by an underground connection, does not (a) increase the gross floor area of the hotel, or (b) increase the total area within the hotel devoted to function rooms, exhibits space, and commercial adjuncts. Moreover, the parking garage is not, as the Appellants claim, increasing the function area or exhibit space of the hotel. Parking is a service

use. It is supportive of the hotel as a total entity, and is indeed required by the Zoning Regulations, based on both the guestroom areas and the size of the largest function area. 11 D.C.M.R. § 2101.1. An interpretation of the hotel definition to include parking in function areas or exhibit space would confuse the meaning of requirement in 11 D.C.M.R. § 2101.1 that parking spaces be provided based on the "square feet of floor area in either the largest function room or exhibit space, whichever is greater." Under the Appellants' interpretation, the parking garage would be the largest function room or exhibit space in the hotel and the hotel would be precluded from replacing parking that is required under the zoning regulations, which is in fact what JBG is doing. There is no prohibition against expansion of the service areas in a hotel, provided that the expansion is not chargeable to the gross floor area of the hotel.

2. The garage is not an accessory structure.

In addition to illegally increasing the square footage of the hotel, the Appellants argue that the parking garage is a garage which, if permitted at all, must be located only within the rear yard of the property. Section 2301, "Parking Garages," applies only to "a *building* erected, altered, converted, or reconstructed for use as a parking garage." The parking garage is not a *building* within the meaning of that term as defined by the Zoning Regulations. Assuming, *arguendo,* that the structure is a building, however, as it is connected to the main building of the hotel by an underground communication, it is not an accessory building and is not restricted to the rear yard by Section 2500.[1]

The requirement that accessory buildings be placed only in the rear yard, contained in Section 2500.2 of the Zoning Regulations, is aimed at regulating buildings which extend above the existing grade, not structures such as underground parking which, except for the access ramps and other ancillary items such as ventilation shafts and other mechanical equipment, do not extend above grade. This is evidenced by a reading of the rest of 11 D.C.M.R. § 2500: for example, 2500.3, 2500.4, 2500.6 and 2500.7 regulate the percentage of lot occupancy of the rear yard and the height of accessory buildings in the rear yard.[2] A structure located entirely below

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[1] Section 2301.2 states "A parking garage that is an accessory use may be located as follows: (a) as an accessory building in any district subject to the general provisions for accessory building as specified in § 2500; and (b) within the main building…"

Section 2500.2 reads "An accessory building shall be located only in a rear yard…"

[2] Thus, under section 2500.3 "[n]o more than thirty percent (30%) of the area of a required rear yard on any lot shall be occupied by accessory buildings." Under section 2500.4 "[a]n accessory building in any zone district shall not exceed one (1) story or fifteen feet (15 ft.) in height, except as provided in § 2500.5." Under Section 2500.5 "[i]n an R-1-A or R-1-B District only, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building." Under Section 2500.6 '[a] two (2) story accessory building allowed under § 2500.5 shall not exceed twenty feet (20 ft.) in height and shall not be located within the required rear yard. It shall also be set back from all side lot lines for a distance equal to the minimum width of a required side yard in the district in which it is located." Under Section 2500.7 "[t]he height of an accessory building permitted by §§2500.4 or 2500.5 shall be measured from the finished grade at the middle of the side of the accessory building that faces the main building or to the highest point of the roof of the building."

ground does not impact lot occupancy and has no height, as that term is defined in the regulations, and may not occupy any of the rear yard.

The purpose of the rear yard restriction against placement of a building in required yards and in front yards is generally "to assure sufficient light and air, as well as to promote an aesthetic appearance; a structure underground would not affect any of these, consequently, it is not reasonable to require such underground structures [or buildings] to conform to front yard, rear yard, or side line restrictions." Rathkopf, The Law of Planning and Zoning, § 53:13.

Section 2302, also cited by the ANC and WPCA for the proposition that the parking garage must be located in the rear yard, is inapplicable to this case, in that it regulates "Public Storage Garages, Repair Garages, Mechanical Parking Garages, and Gasoline Service Stations," not parking garages or structures.

3. The Zoning Administrator's May 15, 2006 Memorandum is a Declaratory Order pursuant to Section 2-508 of the District of Columbia Code (Administrative Procedures Act) and should be upheld.

Finally, the Appellants state in their appeal that "[t]he 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 ANC 3C," and go on to allege error in issuance of any permits before all plans for each phase of the development had been submitted to DCRA, based on the Zoning Administrator's May 15, 2006 memorandum determining that the project may proceed as a matter of right, with the caveat that all plans which are or were to be submitted must cumulatively comply with zoning requirements.

The Zoning Administrator's decision was made pursuant to Section 2-508 of the Administrative Procedures Act upon the request of Advisory Neighborhood Commission 3C and is "binding between the…agency…and the petitioner [ANC 3C] on the state of facts alleged and established, unless such order is altered or set aside by a court." The order may be appealed as a contested case under the provisions of the Administrative Procedures Act ("APA").

The Zoning Administrator's May 15, 2006 memorandum was issued after a thorough review of the detailed plans and drawings submitted as part of the building permit applications, multiple meetings with JBG and its consultants to review the same plans and drawings, at least one site visit, and at least one meeting with the Advisory Neighborhood Commission and Woodley Park Community Association to hear the concerns of the community with regard to the permit application and the overall scope of the Wardman redevelopment project, although JBG assumes that multiple contacts were made between the Advisory Neighborhood Commission and the Zoning Administrator during his consideration of the permit application and the ANC's request for a ruling as to whether the proposed redevelopment could proceed as a matter of right under the Zoning Regulations. By the Zoning Administrator's own ruling, the project's concept is approvable as a matter of right, but each component of the project could only be approved after a thorough review of the specific plans for each component for compliance with the Zoning Regulations individually and cumulatively. Any appeal of the project beyond the building

permit applications that are the subject of the instant appeal would be premature at best. As such, the Board of Zoning Adjustment should uphold the Zoning Administrator's approval of the Permits and his May 15, 2006 Memorandum as a declaratory order under the APA.

Thus, the appellants seem also to be appealing the informal determination of the Zoning Administrator based on conceptual plans. It is our position that the Zoning Administrator's determination with regard to those aspects of the proposed development for which permits have not yet been sought is not a final decision and that any appeal of such order would be premature, given the Zoning Administrator's own admission that the project may only proceed as a matter of right if the plans submitted to and reviewed by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") comply with all zoning requirements, both individually and cumulatively.

C. CONCLUSION

For the foregoing reasons, we request that Wardman Hotel LLC/JBG Associates LLC be allowed to appear as a party in opposition at the hearing scheduled for December 12, 2006, in the above-referenced matter. Additionally, we further request that the Board deny the appeal of Advisory Neighborhood Commission 3C and the Woodley Park Community Association.

We appreciate your consideration.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

Kinley R. Dumas

Cc: Advisory Neighborhood Commission 3C
Woodley Park Community Association
Bill Crews, DCRA Zoning Administrator

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THE JBG COMPANIES

November 28, 2006

Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 Fourth Street NW, Second Floor South
Washington DC 20001

Re: Request for Party Status, BZA Case No. 17538, Appeal of Advisory Neighborhood Commission 3C and Woodley Park Community Association

Dear Chairman Griffis,

On behalf of the JBG Companies and Wardman Hotel LLC/JBG Associates, LLC, we hereby authorize Richard Nettler, Kinley Dumas, and the law firm of Robins, Kaplan, Miller & Ciresi L.L.P. to represent our organization in the above-referenced matter.

Should you require any further information, please let me know.

Sincerely,

WARDMAN HOTEL, L.L.C.

By: Wardman Investor, L.L.C., its Managing Member

By: JBG/Company Manager, L.L.C., Its Managing Member

By: Ken Finkelstein /gr

Name: KEN FINKELSTEIN
Managing Member

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