BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Advisory Neighborhood Commission 3C and Woodley Park Community Association

BZA Appeal No. 17538

STATEMENT OF APPELLANTS ADVISORY NEIGHBORHOOD COMMISSION 3C AND WOODLEY PARK COMMUNITY ASSOCIATION

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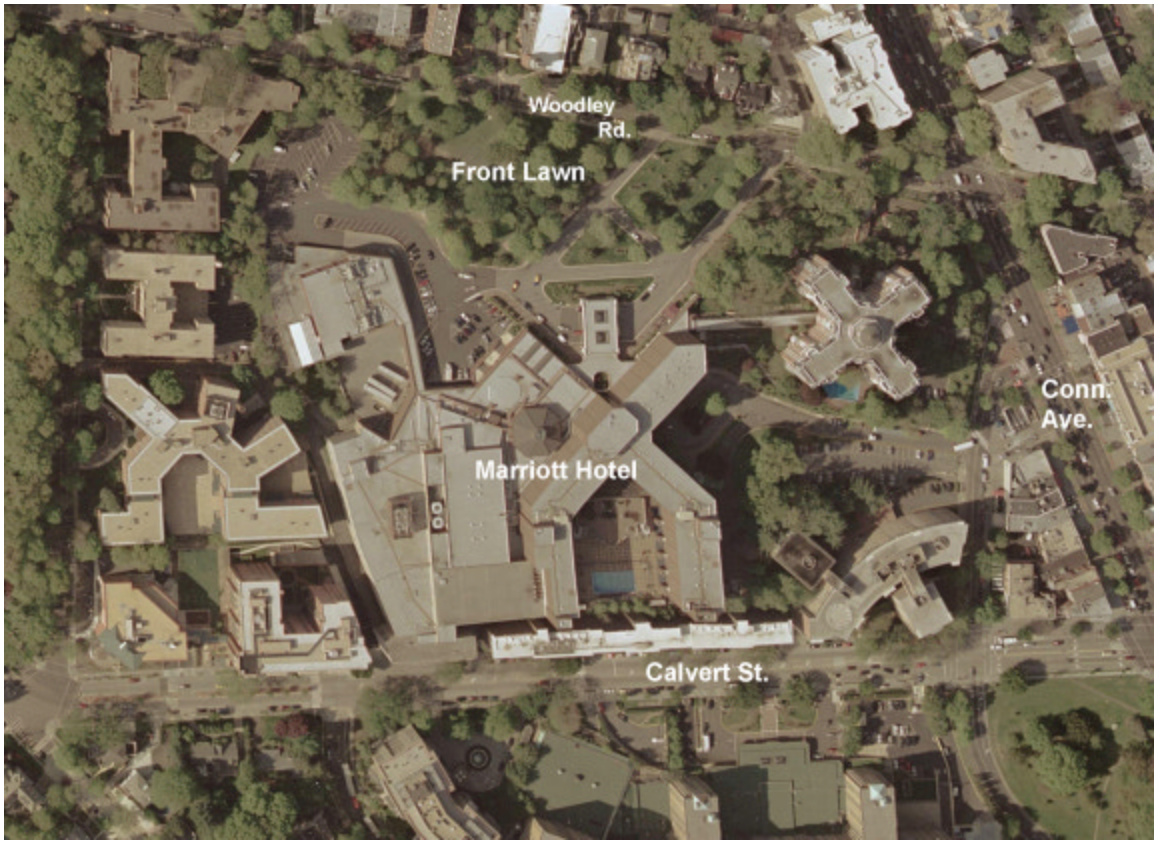
Preliminary Statement

The largest hotel in the District of Columbia isn't Downtown or near the Convention Center or in the West End or Georgetown. The largest hotel in the city is the Marriott Wardman Park Hotel (the "Hotel") in the residential neighborhood and historic district called Woodley Park.

The Hotel, located at 2660 Woodley Road, has more than 1300 guestrooms and a gross floor area of more than 1.2 million square feet, and is comprised of four connected structures on a lot of more than 16 acres. The Hotel is of a scale — ten stories tall atop a hill that rises almost 30 feet above the level of the street — that is out of proportion to the neighboring historic buildings. However, its effect on the neighborhood has been mitigated by the multi-acre lawn that sits between the ten-story tower and Woodley Road, the street on which the Hotel fronts. Dotted with more than 50 trees, including many

mature cherry trees, the front lawn of the Hotel served for many years as a buffer between the Hotel, its bulk and its traffic and the residential neighborhood. For most of the year, in fact, the trees on the lawn largely blocked the neighborhood's view of the Hotel that rose behind them.



The District's zoning regulations also have protected the residential neighborhood from the Hotel. Special zoning provisions govern hotels, like this one, in residential zones and prevent such hotels from expanding, adding new buildings or undergoing major reconfigurations. More than once in the past, the owner of the Hotel has had its plans to expand or rearrange the Hotel thwarted by these protective rules. This time, however, the Zoning Administrator found the owner's plans permitted by these rules, a determination that appellants are now appealing to the Board.

Now the new owner of the Hotel, The JBG Companies, proposes a major redevelopment of the property. Because the project is to be carried out in four or more phases (and because the Office of Planning concluded that Large Tract Review of the project was not required), not all the details are clear. What is clear, however, is that the redevelopment will significantly change the Hotel grounds. A new garage building will be built underground, in the lawn between the Hotel and Woodley Road. JBG has announced that it plans to build a 90-foot condominium tower on the western part of the property. It has also said that it will demolish one of the existing Hotel buildings and will enclose or build up other parts of the Hotel.

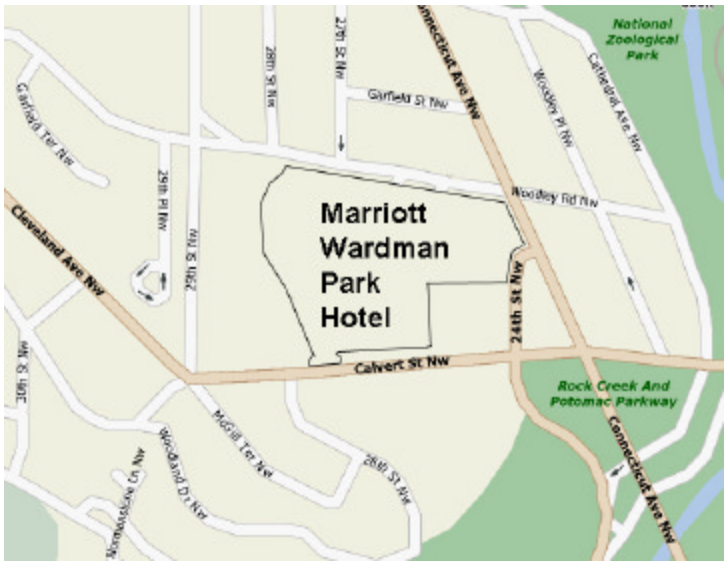
It is the new garage building that is the subject of this appeal. Permits for this construction were issued in May 2006, and work began promptly thereafter. The spacious front lawn that was a buffer between the Hotel and the community is now the site of a huge hole, which will become a new garage for the Hotel.

The construction of this garage in this location is a necessary step in JBG's plans to redevelop this property, a redevelopment that will significantly alter the use and appearance of the property and harm the surrounding historic neighborhood. The garage building construction was approved in a manner that violates several provisions of the

Zoning Regulations, however. First, the garage, an accessory building, is located neither in the "rear yard" of the property nor "within the main building," as required by sections 2301 and 2500 of the Zoning Regulations. Second, the Hotel, as a hotel in a residential district, is subject to the special restrictions imposed by section 350.4(d), which prohibit the construction of new hotel buildings and the increase in the area of the hotel's commercial aspects. These violations require that the Zoning Administrator's approval of the applications must be overturned.

Factual Background

The property involved in this appeal is at 2660 Woodley Road, NW, Square 2132, Lot 32 (the "Property") and is owned by JBG. In total, it is roughly 16.2 acres, bounded by Woodley Road on the north, Connecticut Avenue and 24th Street on the east, Calvert Street on the south, and various other properties on the west. Approximately 88 percent of the Property is zoned R-5-B, and the remainder is zoned R-5-D. The Hotel shares Square 2132 with several apartment buildings and a public elementary school.



At present, all the buildings on the Property are used as a hotel, the Marriott Wardman Park Hotel, and the Property has been used as a hotel for more than 85 years. The primary buildings on the Property are the landmark Wardman Tower (built in 1928), the Park Tower (1961), the Cotillion ballroom and garage (1964) and the Main Building (1978-80).

This garage building construction is part of a larger project to redevelop the Property. The owner has announced plans to build a nine-story condominium tower on the western part of the Property, in addition to the Hotel that already exists. In order to make this building the size JGB desires, it is planning to demolish part of the Hotel building that includes a garage and a ballroom. JGB needs to build a new garage to replace the parking that will be lost by this demolition, and it will the relocate the ballroom to a newly enclosed area where an outdoor swimming pool is today.

This new garage building will be underground, but it will not be in the same location as the existing garage. Nor will the new garage be located under any existing structure. Rather, the new garage will be on a different part of the Property, a part that was previously undeveloped and that was a wooded field in the front yard of the Property. This diagram, based on one prepared by JBG, shows the Property and the planned construction.

The Parties and the Permits

Appellant ANC 3C is a District of Columbia Advisory Neighborhood Commission, established under provisions of section 1-207.38 of the DC Code. The Property is located within the established boundaries of ANC 3C. By Resolution Number 2006-026 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. Attachment I hereto. 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 ANC 3C.

Appellant 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 more than 700 individual members, all residing in the immediate neighborhood of the Property, who will be directly affected by this construction.

In November 2005, JBG applied for a permit authorizing the construction of a new building. This building would include three underground levels of parking for the Hotel. In January 2006, it applied for a permit to do sheeting and shoring in connection with this construction. JBG self-certified compliance, and these applications were granted and requested permits (the "Permits") were issued: Permit No. 86798 on May 12, 2006, and Permit No. 67758 on May 26.[1]

While these applications were pending, ANC 3C had discussions with the Zoning Administrator about the proposed project and raised a variety of issues concerning its permissibility under the Zoning Regulations. In response, the Zoning Administrator sent a memo to the Chair of ANC 3C on May 15, 2006. The memo states his determination that "the proposed changes and additions do not violate the zoning regulations and can proceed as a matter of right." It goes on to state that "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." The Zoning Administrator then added a "caveat": "I caveat this determination in that the calculations provided by JBG are preliminary and that the Office of Zoning Administrator staff will have to ensure that all submitted plans cumulatively comply with the zoning requirements." This letter is Attachment G hereto.

[1] The applications and the Permits are Attachments A through D.

I. The Zoning Regulations Do Not Permit the Construction of the New Garage Building.

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

A. The Permits Should Not Have Been Issued Because the Parking Garage May Be Built Only in the Rear Yard of the Property or "Within the Main Building."

The Zoning Regulations limit where an accessory building, such as a hotel garage, may be built. Such a building may be only in the property's rear yard or "within the main building." The Regulations do not permit it in the front yard of a property. And yet that is precisely where this garage is being built.

The Zoning Regulations define a "parking garage" as

> "a building or other structure, or part of a building or structure, over nine hundred square feet (900 ft.^{2}) in area, used for the parking of motor vehicles without repair or service facilities. The term parking garage may include a parking garage accessory to the principal use, but shall not include a mechanical parking garage."

11 DCMR § 199. The building authorized by the Permits is, therefore, a parking garage under the Zoning Regulations.

This parking garage is accessory to the principal use of the Property. This is, in fact, the way JBG characterized this building. In the BLRA Third-Party Plans Review

Correction List prepared by JBG's consultant, the basis given for concluding that the garage is "matter of right" is that it is "a matter-of-right accessory use." Attachment E at 3.

Moreover, this characterization is required by the Zoning Regulations, which define an accessory use as

> "a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use."

11 DCMR § 199. The principal use of this Property is a hotel use, and parking is certainly "a use customarily incidental and subordinate" to a hotel. That a garage is an accessory to a hotel is well established and recognized by the Board. See *Samuel Leeds*, Appeal No. 8713, Order at 3 (BZA April 13, 1966) ("The parking garage is an accessory to the hotel use").

The new building is a "parking garage" and an "accessory use." Section 2301.2, therefore, controls where it may lawfully be located. That rule provides that "a parking garage that is an accessory use may be located" in one of two places. First, it may be located as prescribed in section 2500. 11 DCMR § 2301.2(a). Second, it may be located "[w]ithin the main building." 11 DCMR § 2301.2(b). This garage is in neither location.

Section 2500.2 states simply and clearly, "An accessory building shall be located only in a rear yard."[2] As the Board has noted, "As an accessory building, the garage could not be located in the front yard." *Appeal No. 16646 of Daniel Serwer & James W. McBride*, Order at 4 n.2 (BZA March 28, 2001).

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[2] There are two exceptions that do not apply here:

"(a) An accessory private garage may be located in a side yard pursuant to § 2300;and

"(b) A pump island canopy and any kiosk adjacent to the pumps used exclusively as an attendant's shelter of a gasoline service station may be located in any open area of a lot not within twenty-five feet (25 ft) of a Residence District unless separated therefrom by a street or alley."

The regulations define a "rear yard" as

> "a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title."

11 DCMR § 199. There may be many ways to look at the Property, but there is no way to see the multi-acre lawn in front of the Hotel on the Woodley Road side as being "between the rear line of a building or other structure and the rear lot line." The Property has a Woodley Road address — 2660 Woodley Road — and a more than 750-foot frontage on that street. The main entrance to the Hotel — its front door — is on Woodley Road.[3] There are three driveway entrances to the Hotel property from Woodley Road (and the Hotel's owner sought permission from the Public Space Committee to add two more). The proposed garage site is the Property's front yard, not its rear yard. And the Zoning Regulations say that it may not lawfully be built there.

The new garage does not meet the alternate requirement, that it be "within the main building." 11 DCMR § 2301.2(b). The garage is being built under a previously undeveloped lawn with no above-ground connection to the rest of the Hotel. It is not part of the existing Hotel building — "When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building," according to the Zoning Regulations.[4] Moreover, JBG concedes in its both its permit application (Attachment A) and its Zoning Review Computation Sheet (Attachment F) that this garage is a "new building" and is an "addition to an existing building." It can't, therefore, be "within" an existing building.

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[3] The former owner of the Hotel confirmed that "the main entrance is from Woodley Road.' Applicant's Proposed Findings of Facts, Conclusions of Law and Order, *2660 Woodley Road Joint Venture*, Application No. 16072, at 3 (Apr. 16, 1996) (Attachment L).

[4] While there may be a connection via a small tunnel at the P2 garage level, that does not make the garage part of the other building: "The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building." 11 DCMR § 199.

The fact that the garage will be located underground does not change any of this analysis. Being underground does not make this any less a "parking garage" under the Zoning Regulations, subject to all the limitations those rules place on "parking garages." A "parking garage" is "a building or other structure, or part of a building or structure" that is used in a particular way. 11 DCMR § 199. This proposed garage is a "building" — it is "a structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel." *Id*. Even if it were not a "building," it would certainly be a "structure" — "anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground…." *Id*. Because it is a "parking garage," it is subject to the locational constraints imposed by section 2301.2, notwithstanding the fact that it is underground.

Because the garage building authorized by the Permits is neither in the "rear yard" of the Property nor "within the main building" of the Hotel, its construction is not permitted by the Zoning Regulations.

B. The Construction of This New Garage Building Is Prohibited by Section 350.4 of the Zoning Regulations.

The Marriott Wardman Park Hotel is subject to a set of zoning restrictions that are not applicable to hotels generally in the District because it is located in a residential zone. Thus, section 350.4 of the Zoning Regulations 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;"

11 DCMR § 350.4. This provision was adopted by the Zoning Commission in Order No. 314 to prevent the further encroachment and expansion of hotels in residential areas and to protect residential neighborhoods from the negative impacts of hotel operations. *Treatment of Hotels*, Case No. 79-1, Order No. 314 (ZC May 8, 1980).

This rule provides that the only hotel buildings that are permitted in an R-5 zone are those that existed on May 18, 1980. And the rule places a variety of restrictions on these pre-existing buildings. The effect of this provision was to "grandfather" these hotels and essentially to "freeze" them in their existing states. As the Board found in a prior proceeding involving this very Hotel, "The Board is of the opinion that the Zoning Commission intended to protect existing hotel uses in residential districts *as they existed*;". *2660 Woodley Road Joint Venture*, Application No. 16072, Order at 12 (BZA May 1, 1996) ("*1996 Order*") (emphasis added).

Consistently, going back for more than twenty years, previous owners of the Marriott Wardman Park Hotel have acknowledged that this is what section 350.4(d) does:

> "[T]he Zoning Commission expressly declined to make hotels in residential zones nonconforming uses and this [sic] subject to the provisions of Article 71. Instead, existing hotels were 'grandfathered' pursuant to the provisions of Paragraph 3105.34."

Statement of Applicant, *Application of the Washington Sheraton Corp.*, BZA Application No. 14072, at 5 (Jan. 11, 1984) (Attachment J hereto). Similarly,

> "The Zoning Commission chose to 'freeze' existing hotels in their 1980 position, while still permitting them as a matter-of-right."

[Hotel Owner's] Opposition to Motion To Dismiss, *2660 Woodley Road Joint Venture*, Application No. 16072, at 4 (Apr. 16, 1996) (*"Opposition"*) (Attachment K hereto). Similarly, "amendments to the Zoning Regulations completed by the Zoning Commission in May 1980, prohibit even minor additions to hotels in residential zones." Applicant's Proposed Findings of Fact, Conclusions of Law and Order, *2660 Woodley Road Joint Venture*, Application No. 16072, at 69 (Apr. 16, 1996) (Attachment L hereto).

In particular, in revising section 350.4, "the Commission intended to reserve vacant residential areas for residential developments." *Opposition.* at 8 (emphasis in original). Thus, according to the former owner of the Hotel, two of the "major policies" of this rule were "[r]eserving vacant residential land for residential development -- no residential land since 1980 has been used for hotel development" and "[p]rotecting existing residential areas from further hotel development." *Id*. at 9.

Section 350.4(d) imposes several constraints that are relevant to this case. First, the only hotels allowed in R-5 zones are those that existed as of May 16, 1980. Any other hotels are not permitted. Second, these existing hotels are grandfathered — they may continue to operate and may keep themselves in good condition and repair, but they are otherwise effectively frozen in their 1980 configurations. Third, the only construction that may be done on one of these grandfathered hotels is construction to "repair, renovate, remodel, or structurally alter" the existing building. And, finally, the areas within a hotel devoted to the "non-residential" aspects of a hotel — function rooms, exhibit space and commercial adjuncts — may not be increased.

The construction authorized by the Permits violates this section in several respects. First, while this rule protects existing hotel buildings, it does not permit the

construction of new hotel buildings in residential zones. Second, this construction is inconsistent with the "freeze" imposed on these hotels by Order No. 314. Third, this construction cannot be characterized as a "repair, renovation, remodeling, or structural alteration" of an "existing hotel," and, therefore, is not permitted. Fourth, the construction will increase the area of the commercial adjuncts, exhibit space and function room of the Hotel, in violation of the regulation.

1. Section 350.4(d) Prohibits the Construction of New Hotel Buildings in R-5 Zones.

Nothing in section 350.4(d) allows the construction of a new hotel building in an R-5 District. And yet that is exactly what is being built.

It is section 350.4(d)(4) that permits hotels to exist at all in R-5 zones. But its permission is limited. The only hotel that is permitted is one that was "in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit." If a hotel was not in existence on that date, then it is not permitted.

A "hotel" is "a building or part of a building" that is used in a certain way — "in which not less than thirty (30) habitable rooms or suites are reserved primarily far transient guests who rent the rooms or suites on a daily basis" etc. 11 DCMR § 199. What section 350.4(d) permits, therefore, is "a building or part of a building" that was "in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit" and used in that way. Section 350.4(d) does not permit a new "building or part of a building" used that way in an R-5 zone, and neither does any other provision of the Zoning Regulations.

The new garage is a building separate and apart from the existing Hotel; it is not part of that building or an addition to it. Because this garage building was not "in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit," its use as a hotel would violate section 350.4.

The new garage is unquestionably a new building. In fact, that is the way JBG characterized the project to the DC government when it applied for the Permits. The Application for Construction Permits on Private Property (Attachment A hereto) asks the applicant to describe the "Type of Proposed Work," and it gives the applicant several choices to choose from, including "New Building," "Addition" and "Alteration and Repair." JBG gave the honest answer to the question and said that it was asking for permission to build a "New Building" — not to build an "Addition" and not to engage in "Alteration and Repair" of an existing building. This characterization is the same as the one on the Zoning Review Computation Sheet (Attachment F) — "New Building," not "Addition to existing building."

That this section protects existing building but does not authorize new ones makes perfect sense in the zoning regime. In dividing the city into different zones, the Zoning Commission determines how land may be used. See 11 DCMR § 100.4 (the Zoning Regulations control, among other things, the use of land in the District of Columbia). Land in R-5 zones may be used only in certain ways. The only land is those zones that may be used for a hotel is land that was being used for a hotel on May 16, 1980. Other land — land that was vacant or being put to a different use on May 16, 1980 — may not be used for a hotel. Because the Permits authorize construction of a hotel building on just

such land, land that was vacant and was not being used for a hotel on May 16, 1980, their issuance was in violation of the Zoning Regulations.

2. The Construction of a New Garage Building Is Inconsistent with the Overall Scheme of Section 350.4(d).

The authors of zoning or other land use regulations are faced with a recurring problem: They want to establish a set of rules for the future, but they find there are existing uses or structures that are inconsistent with those rules. While it plainly would be unfair to require the owners of these preexisting buildings to immediately conform to the new rules, planners may put constraints on what these owners are permitted to do in the future.

This is what section 350.4(d) does — it says that a preexisting hotel use is permitted as a matter of right, and it subjects these properties to strict limitations that were carefully tailored to the specific circumstances of a hotel in a residential zone. As shown above, as the Board has found and as previous owners of the Hotel concede, these limitations amount to a "freeze" of the Hotel as it existed in 1980, except, of course, for any repair, renovation, remodeling or structural alteration.

The garage authorized by the Permits would represent a complete meltdown of the freeze imposed by section 350.4(d). JBG is building a new 100,000-square-foot hotel building separate from its existing hotel. And the place where the new hotel building is being built is land that was previously vacant.

Through more than twenty years of litigation over proposals to modify this Hotel, its owners have recognized that section 350.4(d)(4) "grandfathered" the Hotel and "froze" it in its 1980 position — that is, until now. The only way the latest plans for this

Hotel can be approved is if the Board also disregards what section 350.4(d)(4) was intended to accomplish.

3. Construction of a New Garage Building Cannot Be Described as a "Repair, Renovation, Remodeling, or Structural Alteration" of an Existing Hotel and Is, Therefore, Not Permitted.

Section 350.4(d) authorizes only certain types of construction projects at a grandfathered hotel: "An existing hotel may be repaired, renovated, remodeled, or structurally altered." Any other construction project is prohibited. The Board, in a prior proceeding concerning this same hotel, said that section 350.4(d) allows these hotels only "to upgrade, improve and modernize their facilities." *1996 Order* at 12. Construction of a new garage, a completely new building, is not a repair, renovation, remodeling or structural alteration of the existing Hotel.

First, as discussed above, the Zoning Regulations define a "hotel" is "a building or part of a building" that is used in a certain way. 11 DCMR § 199. An "existing hotel" (the language in section 350.4(d)) is an "existing building or part of a building." And when section 350.4(d) authorizes certain types of work on an "existing hotel," that work must be done on an existing "building or part of a building." Any such work that is not done on an "existing building or part of a building," such as constructing a new building, is not permitted. As shown above, of course, JBG agrees that this is a new building, not an addition to or alteration and repair of an existing building. Because it is work on an existing building, it is not permitted by section 350.4(d).

Second, even if building a new building could somehow be considered work on an "existing hotel," the work involved here is not one of the four permitted types — repair, renovation, remodeling or structural alteration.

Only one of these terms is defined in the Zoning Regulations.[5] "Alterations, structural" means "any change in the permanent, physical members of a building or other structure, such as bearing walls or partitions, columns, joists, rafters, beams, or girders." 11 DCMR § 199. This project involves no changes to the permanent, physical members of the Hotel. Clearly, building this new garage building is not a "structural alteration."

As to the terms that are not defined, the Zoning Regulations instruct us to look to *Webster's Unabridged Dictionary* for their meaning. 11 DCMR § 199.2(g).

The 1986 version of *Webster's Third New International Dictionary*, that is available in the Zoning Commission office, defines the rest of these words as follows:

> Repair — "**1 a:** to restore by replacing a part or by putting together what is torn or broken: FIX, MEND **b:** to restore to a sound or healthy state: RENEW, REVIVIFY."
>
> Renovate — "**1** to restore to life, vigor, or activity: REVIVE, REGENERATE **2** to restore to a former state (as of freshness, soundness, purity, or newness of appearance: make over: RENEW."
>
> Remodel — "to model anew: RECONSTRUCT: syn[onym] see mend."

All these words suggest a restoration, a return to a previous state or form, a fixing of a defect or a mending. None of them could be read to describe building a new structure on unoccupied land.

In order to be permitted by section 350.4(d), work must be done on an "existing hotel," that is, an existing building. Creating a new building is not work on an "existing hotel." In any event, building a new building is not any one of the types of work

[5] In the original appeal filing, appellants said that none of these terms was defined in the Regulations. Appellants overlooked this definition because it appeared as "alterations, structural," rather than "structural alteration."

authorized by that section (repair, renovation, remodeling or structural alteration) and, therefore, is not permitted by the Zoning Regulations.

4. This Construction Increases the Total Area Within the Hotel Devoted to Function Rooms, Exhibit Space and Commercial Adjuncts and Is, Therefore, Not Permitted.

As shown above, this garage is not "within the existing hotel" — it is not part of the building that existed on May 18, 1980. That, in part, is why the garage may not be built. However, if the Board concludes that this new garage is somehow "within" the existing hotel building, its construction would still be prohibited because it runs afoul of another restriction in section 350.4(d)(4).

Section 350.4(d) 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 terms "function rooms, exhibit space, and commercial adjuncts" come from the Zoning Regulations' definition of a "hotel," which provides, "All areas within a hotel shall be

included in one (1) of the following categories:" commercial adjuncts, exhibit space, function rooms, guestroom areas and service areas, and then defines each of these terms.[6]

A garage does not fit within the definitions of any of these five categories. It apparently is JBG's position that the garage is a service area (letter from Richard B. Nettler to Bill Crews at 1, dated Feb. 24, 2006, Attachment H hereto), but it is impossible to characterize a garage as an area " devoted to mechanical services and storage." A garage cannot be a "commercial adjunct" because section 351.2 of the Zoning Regulations places restrictions on commercial adjuncts in hotels like this one that would make it impossible to function as a garage — that it have no direct entrance from the outside of the building, that the entrance to the adjunct not be visible from the sidewalk and that no sign indicating the existence of the adjunct be visible from outside the building.

But the Regulations require that "[a]ll areas within a hotel shall be included in one" of these categories. Therefore, the garage area must be allocated, based on usage or some other factor, among the five categories that together comprise a hotel. That

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[6] "(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)"

calculation must be done to determine whether the construction will increase "the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts."

Applicants 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 between "function rooms, exhibit space, and commercial adjuncts" of the hotel, on the one hand, and guestroom and service areas, on the other. This was incorrect, as certainly some of the garage area would support those functions.

According to materials provided by JBG, the area of the new garage would appear to be 100,364 square feet. The existing hotel garage that JBG says it plans to demolish at a later stage in the project is 75,187 square feet, or more than 25,000 square feet smaller than the new garage. 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 one-third larger than the old garage. In addition, JBG has indicated that it plans to reduce the number of guestrooms in the hotel by more than 11%,[7] 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.

* * *

In summary, the Permits authorize the construction of a garage that violates the Zoning Regulations in a number of respects:

[7] JBG's web site for the Hotel project says that the Hotel currently has 1334 rooms, which will be reduced to 1174 by 2008. http://www.wardmanparknews.com/faq.php#Project%20Overview.

- The garage is not being built, as required, in the rear yard of the Property or within the main building.
- The Permits authorize construction of a new hotel building, in violation of the prohibition of new hotel buildings in residential zones.
- Its construction violates the freeze imposed on hotels in residential zones.
- The work covered by the Permits is not any of the types of work permitted to be done on a hotel in a residential zone.
- The construction will increase the total area devoted to non-residential features of the Hotel.

Each of these violations is substantial and serious, and a finding of any one of them requires that the Permits be vacated.

II. It Was Error for the Zoning Administrator To Approve the Issuance of the Permits Without Ensuring That the Plans Complied with the Zoning Regulations.

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 ANC3C (Attachment G). The memo states that the Administrator's determination that "the proposed changes and additions do not violate the zoning regulations and can proceed as a matter of right." The Administrator then adds a "caveat" to his determination. He says that the calculations he reviewed and on which he based his determination were "preliminary" and that he would have to "ensure that all submitted plans cumulatively comply with the zoning requirements."

Of course, there is no such thing as a "preliminary" or "provisional" permit. When the Permits issued, construction began, to the neighborhood's detriment.

Given the complicated nature of this mixed-use, multi-structure project, special scrutiny was appropriate here. The Zoning Administrator should not let permits issue first and ensure compliance with the law later. Determinations of this sort should not be made on the basis of "preliminary" calculations.

It was error, in violation of section 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."

Conclusion

For these reasons and those stated in their appeal, ANC 3C and WPCA respectfully ask that this appeal be granted and that the Permits at issue here be vacated.

Respectfully submitted,

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