

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

**Appeal by 22 West, A Condominium and ANC2A that
Zoning Commission Order No. 07-21B
Permits the Installation of up to 4 signs by
PerStar M Street Partners, LLC
(PUD Modifications @ Square 50) – Erroneously
Issued by DCRA.**

ANC 2A

STATEMENT OF APPEAL

Appellants, 22 West, A Condominium (22West) respectfully submits this Appeal to the Board of Zoning Adjustment (Board or BZA) of the Determination by the Zoning Administrator, attached hereto as “Exhibit A,” that Zoning Commission Order 07-21B permits the installation of up to four signs on the façade of the hotel. Zoning Commission Order 07-21B, approved PUD modifications @ Square 50 for the construction of a Hilton Garden Inn by PerStar M Street Partners, LLC. This Determination is contrary to both the explicit language of the Zoning Order and to the documented written and oral testimony of 22 West, ANC 2A06, and other parties to this case in opposition to signs at the top of the hotel’s facade. As set forth in detail below, this Determination by the Zoning Administrator was erroneously issued in violation of the Zoning Order for the numerous reasons set forth below and must be REVOKED.

I. SUBJECT PROPERTY

Zoning Commission Order 07-2B approved construction of a hotel on Lot 87 in Square 50, which is located in the DC/CR zone district at 2201 M Street, NW. **(Hilton Garden Inn Property)**. The owner and developer of the Hilton Garden Inn property is PerStar M Street Partners, LLC **(Hotel Developer)**.

II. PROPERTY OF THE APPELLANT

The Appellant owns Lot 202 in Square 71 and improvements thereon (**Appellant's Property**). Appellant's property is located diagonally across the intersection of 22nd and M Streets, NW from the **Hilton Garden Inn Property**. (See Birds-Eye View showing the location of Appellant's Property attached as "Exhibit B.") Appellant's Property is improved with a nine-story residential building, known as **22 West, A Condominium**, containing 92 residences.

III. JURISDICTION

The Board has jurisdiction for the Appeal pursuant to 11 DCMR §§ 3100.2. and 3200.2 The Appeal is timely pursuant to 11 DCMR § 3112.2, having been filed within sixty (60) days of notification to 22 West by the Zoning Administrator of his Determination in this matter.

IV. APPELLANT'S STANDING

The Appellant, 22 West, A Condominium, is the owner of 1177 22nd Street, NW. Appellant's property is located approximately 160 feet to the southeast of the Hilton Garden Inn Property. The Appellant, as the "Aggrieved Party," pursuant to 11 DCMR § 3112.2, has standing to file this appeal and will be adversely and substantially affected by the installation of lighted sign(s) illegally authorized by the Zoning Administrator's Determination. ANC 2A has voted unanimously to appeal this determination.

V. HILTON GARDEN INN DEVELOPMENT

A 10-story Hilton Garden Inn is currently under construction on Lot 87 of Square 50 pursuant to the PUD Modifications approved by Zoning Commission Order 07-21B, which was

adopted by the Zoning Commission on November 28, 2011. It became effective and final upon publication in the *D.C. Register* on February 3, 2012. In late December 2013, it became evident to 22 West, that six brackets spanning approximately 15 feet had been installed on the façade of the hotel above the 10th floor and that what appeared to be electrical wiring was dangling from the corner of the structure where the aluminum trim pieces had yet to be put in place. A photograph of the 22nd Street corner of the building taken from 22 West, which depicts that condition, is attached as “Exhibit C”.

The Appellant made an inquiry to Holland & Knight, counsel to the Hotel Developer as to the purpose of the brackets and apparent electrical wiring and finally received a response from Holland & Knight to that inquiry on February 14, 2014 that the brackets “are for a back-lighted sign, as shown in the plans approved by the Zoning Commission.” (See email exchange with Holland & Knight, attached as “Exhibit D.”)

VI. ZONING COMMISSION ORDER 07-21B: SPECIFIC REFERENCE TO HOTEL’S SIGNAGE

Zoning Commission Order 07-71B – PerStar M Street Partners, LLC (PUD Modifications @ Square 50 contains at least two specific references to the hotel’s signage.

First, under Contested Issues, at pages 19-20, 43b. *The Hotel’s Design, Brand and Signage*, the Commission made the following finding:

The 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 ANC2A 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 on 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.

Second, in the DECISION, at pages 22-23, A.1., PROJECT DEVELOPMENT, the Order states:

The 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. Notwithstanding the notes on pages A1 and A2 of Exhibit 24² but subject to the flexibility allowed under Condition 7(e) (discussed at paragraph 43(b) in this Order, the hotel sign shall be above the hotel's entrance on 22nd Street as shown on those pages and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within.

VII. ZONING ORDER VIOLATIONS

The February 10, 2014 response from Holland & Knight indicated that the delay in responding was the result of the need for "double checking with the zoning authorizes to confirm

² Each note indicated that the location and dimension of the signage was for illustrative purposes only.

that this sign is permitted by the Zoning Commission's order." As a result of that assertion, on February 12, 2014, the Homeowners Association of 22 West requested that the Zoning Administrator enforce the provisions of Zoning Commission Order No 07-21B and requested copies of any documentation by the Zoning Administrator, "zoning authorizes," or any other DCRA official that found that a sign lighted from within and vertically mounted on the façade is permitted by the Zoning Commission's Order. (See email to Zoning Administrator attached as "Exhibit E.")

On February 28, 2014, the Zoning Administrator advised that his review of the Hilton Garden Inn signage had been concluded and that he had been contacted by Holland & Knight, counsel for the hotel about this matter as well. (See Zoning Administrator's response attached as "Exhibit A.") With his response, the Zoning Administrator provided a copy of his February 10, 2014 letter to Holland & Knight, which is attached as "Exhibit F." The Zoning Administrator concluded based on his "examination of the totality of the record" that the Zoning Commission Order "allows the hotel to have a total of four signs, one for the ground floor restaurant, and three for the hotel [two at the top and the one sign above the entrance] of which the latter is limited to have the particular characteristics that are referred to in Condition A.1."

Notwithstanding the explicit language in Condition A.1 of the Order that the "hotel's sign shall be above the hotel's entrance on 22nd Street . . . and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within," it is clear that the Zoning Administrator's decision to the contrary was based wholly on Exhibit 36 of the Zoning Commission's record of this case. Exhibit 36 is a print copy of the PowerPoint

presentation made to the Zoning Commission at its hearing of this case by the Applicant on October 27, 2011. "Exhibit G" is a certified copy of one slide on page 4 of Exhibit 36 that depicts a "Hilton Garden Inn" sign mounted at the tops of the southern and eastern facades of the hotel. That PowerPoint slide is the only depiction of such a sign in the entire record of this case. Because it was first seen during the Zoning Commission hearing, neither ANC2A, the parties to the case, nor the public witnesses were afforded the opportunity to comment specifically on the proposed signs, notwithstanding the community opposition to a sign at the top of the façade, also documented in the record of this case.

However the Zoning Administrator has construed the language of Zoning Commission Order 07-21B in "examination of the totality of the record" including a single PowerPoint slide from Exhibit 36, introduced during the course of the hearing, in order to arrive at a determination that the approval of the PUD Modification permitted up to four signs, the fact is that the Zoning Order states the "hotel sign **shall be above the hotel's entrance on 22nd Street . . . and that the sign cannot be at a different location or vertically mounted on the façade of the hotel.**"

[Emphasis added] At paragraph A.1. of the Zoning Order, the term "hotel sign" is singular; it is not "signage;" it is not a "total of four signs, one for the ground floor restaurant, and three for the hotel [two at the top and the one sign above the entrance]." Paragraph A.1. of the Zoning Order is clearly approves only one hotel sign above the entrance on 22nd Street.

VIII. PRECEDENT FOR ZONING COMMISSION ORDER TO CONDITION SIGNAGE

Although it is the case that the DC Building Code not the Zoning Regulations govern exterior signs, Zoning Regulations permit, and in fact require, the Zoning Commission pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of District of Columbia Municipal Regulations to the impose guidelines, conditions and standards in approving a PUD.

Zoning Commission Order 06-11C/06-12C (Second Stage Planned Unit Development and Further Processing of an Approved Campus Plan) The George Washington University Foggy Bottom Campus – Square 39) is an instructive precedent relative to the Zoning Commission’s authority to impose specific conditions on building signage, separate and apart from the requirements of the DC Building Code as to signage. In that case, George Washington University sought and received approval in 2011 for the development of a seven-story building in Square 39 for the School of Public Health and Health Services. In its order approving this PUD, the Zoning Commission stated at paragraph 7. that the “University shall have flexibility with the design of the PUD in the following areas . . . e. To vary the size, location and other features of the proposed signage related to the university use provided that such signage is consistent with the locations and dimensions illustrated on the approved plans or is otherwise permitted under the applicable provisions of the Building Code.” (The signage proposed in 2011 is attached as “Exhibit H.”)

As a result of a major gift (\$40 million) from the Michael Milken Foundation to the University for the School of Public Health and Health Services, it will be renamed the Milken

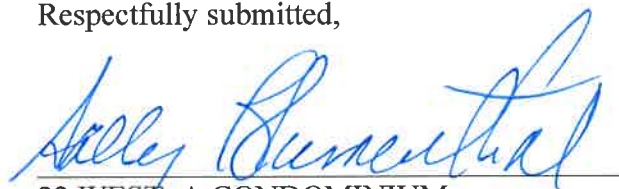
School of Public Health. This change in signage will necessitate a minor modification to the approved PUD because the signage as proposed in 2011 is specifically conditioned in the Zoning Order. The University has initiated the process to obtain approval of such a modification by requesting and receiving the views of ANC2A on March 19, 2014. The ANC voted unanimously to send a letter of non-objection to the Zoning Commission "to permit additional signage on the building as a result of the School of Public Health's renaming following a donor gift." Thus, it is clear that the Zoning Commission not the Zoning Administrator has jurisdiction over a change in a sign or signage in case where the Zoning Order imposes specific conditions on a sign or signage in approving a PUD.

IX. CONCLUSION

For the foregoing reasons, the Zoning Administrator's Determination of February 28, 2014 in which he re-reviewed his determination of February 10, 2014, that the new information provided to him by 22 West did not cause a change in that his Determination was issued in violation of Zoning Commission Order No. 07-21B and that this Appeal must be GRANTED and the condition of approval of the PUD in Z.C. Order No. 07-21B that "the hotel sign shall be above the hotel's entrance on 22 Street" shall be enforced by the Zoning Administrator and DCRA.

Date: April 28, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Statement in Support of Appeal was filed electronically with the Office of Zoning and was served by first-class mail and electronic mail as indicated, this 28th day of April, 2014, upon the following:

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