

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

Appeal of 22 West, A Condominium and ANC 2A

Appeal No. 18793

OWNERS' MOTION TO DISMISS APPEAL

**I.
INTRODUCTION**

The owners of the property which is the subject of this appeal, PerStar M Street Partners LLC (hereinafter, the "Owners"), respectfully request that the Board dismiss this appeal as untimely filed. This Board has consistently affirmed that "the Board lacks jurisdiction to hear any appeal that is not filed in a timely manner." See, e.g., BZA Appeal No. 18300 of Ausubel, at p. 5 (April 11, 2012), citing Economides v. DC Board of Zoning Adjustment, 954 A. 2d 427, 434-35 (DC 2008); Waste Mgmt. of Md., Inc. v. DC Board of Zoning Adjustment, 775 A. 2d 1117, 1121-22 (DC 2001); Mendelson v. DC Board of Zoning Adjustment, 645 A. 2d 1090, 1093 (DC 1994)(the timely filing of an appeal with the Board is mandatory and jurisdictional; if an appeal is not timely filed, the Board is without power to consider it); BZA Appeal No. 18070 of ANC 6B, at p. 4 (December 17, 2010). The 60-day time period for filing an appeal is strictly construed. See e.g., BZA Appeal No. 17430 of Rodut Associates of DC, LP (September 29, 2006) (appeal untimely filed three days after expiration of 60-day appeal period).

The Board is bound to consider this threshold jurisdictional question first, prior to consideration of the appeal itself. BZA Appeal No. 18300 of Ausubel, *supra* at p. 4, citing BZA Appeal No. 17411 of Basken and Meyer, at p. 4 (March 23, 2006), *affirmed*, Basken v. DC Board of Zoning Adjustment, 946 A. 2d 356 (DC 2008). Owners therefore respectfully request the Board's determination on this Motion to Dismiss prior to a consideration of the merits of the appeal.

II. SUMMARY OF ARGUMENT

The Zoning Regulations and the decisions of this Board and the DC Court of Appeals establish a very clear deadline for filing an appeal. An appeal must be filed within 60 days from the date the appellant "had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier."

11 DCMR, Section 3112(a) (emphasis added). Actual or constructive notice or knowledge that a decision has been made is what starts the 60-day clock. There is no requirement that the person also has notice or knowledge of the rationale for the decision. BZA Appeal No. 17513 of ANC 2E at p. 8 (January 4, 2008). When an appellant asserts a certain date as the basis of its zoning appeal, the Board must determine if there is an earlier date that should apply. BZA Appeal No. 17468 of ANC 6A, at p. 4 (February 16, 2007). Once the person has actual or constructive notice or knowledge that a decision has been made, that person has an obligation to undertake due diligence to determinate the nature of the decision, in order to be able to file a timely appeal. Id.

The Board may extend the 60-day deadline only if the appellant demonstrates that (1) exceptional circumstances outside the appellant's control, which could not have been reasonably anticipated, substantively impaired the appellant's ability to file the appeal; and (2) the extension of time will not prejudice the parties to the appeal. 11 DCMR Section 3112 (d). When, as here, the decision complained of involves the construction of a structure, "no appeal shall be filed later than 10 days after the date on which the structure...is under roof." 11 DCMR Section 3112.2(b)(1).

According to their Prehearing Statement, the Appellants are appealing the February 10, 2014 letter issued by the Zoning Administrator regarding the sign location. According to their Statement of Appeal, they are appealing the Zoning Administrator's February 28, 2014 email. Neither one constitutes the zoning approval for the sign location. The zoning approval for the sign location occurred substantially prior to February 10, 2014. The February 10 letter and the February 28 email are merely the Zoning Administrator's explanation of the Zoning Commission's prior approval of the sign location.

An appeal must be filed within 60 days after the Appellants had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. Because this appeal was not filed until after the 60-day appeal period had expired, and more than 10 days after the structure was under roof, and because the Appellants can demonstrate no exceptional circumstances outside of their control that impaired their ability to act timely, and because an extension of the 60-day appeal period will prejudice the Owners, this appeal must be dismissed.

III. **THE FACTS**

1. The hotel sign location which is the subject of this appeal ("the Sign") was approved as a part of the PUD approval for construction of the hotel at 2201 M Street, NW (the "Hotel") in Zoning Commission Order No. 07-21B, dated February 3, 2012 (the "PUD Approval"). The location of the Sign on the Hotel is shown on page 4 of Exhibit 36 of the PUD record. See Attachment A. Exhibit 36 is referenced in Paragraph A.1 of the Decision on page 22 of the PUD Approval.

2. Appellants 22 West, A Condominium (“22 West”) and Advisory Neighborhood Commission 2A (“ANC 2A”) participated in the PUD hearing in opposition to that application.¹ 22 West is “located diagonally across the intersection of 22nd and M Streets, NW from the [Hotel]”. See BZA Appeal No. 18793 (“BZA”) Exhibit No. 2, p. 2.

3. Building Permit No. B1205651 (the "Building Permit") was issued on October 24, 2012 for construction of the Hotel. See Attachment B. The location of the Sign on the Hotel is shown on the Building Permit application drawings that were approved for construction prior to issuance of the Building Permit. See Attachment C.

4. Construction of the Hotel commenced shortly thereafter, in full view of the public, including the Appellants. The Building Permit was posted on the site and the Building Permit application and drawings were available for public inspection at DCRA. The main roof of the Hotel was in place by August 1, 2013. See Attachment D.

5. On December 31, 2013, about 23 months after the PUD Approval, about 14 months after issuance of the Building Permit (which included the location of the approved Sign), and five months after the Hotel was under roof, 22 West first made inquiry about the placement of the Sign on the Hotel in an email to Owner's counsel, after seeing the brackets and wiring for the Sign installed on the side of the Hotel. See Attachment E.²

6. Owner's counsel responded on February 10, 2014, confirming that the brackets and wiring were for the installation of the Sign as approved in the PUD Approval, and that “the zoning authorities confirmed that this sign is permitted by the Zoning Commission’s order.” See Attachment F.

¹ 22 West submitted a request for party status in opposition. Party status was not granted, so they participated as a person in opposition. ANC 2A participated as a party. See Zoning Commission Order No. 07-21B at paragraphs 14, 20, 23 and 42.

² In her email to Owners’ counsel dated December 31, 2013, the President of 22 West stated that "I have been watching the construction progress from my apartment..."

7. Six weeks after writing to Owner's counsel, 22 West then sent an email to the Zoning Administrator on February 12, 2014, with a copy to ANC 2A06 Single Member District Commissioner Florence Harmon, requesting that the Zoning Administrator “enforce the provisions of the Zoning Commission’s Order No. 07-21B” with regard to location of the Sign. See Attachment G.

8. At the request of 22 West, ANC 2A reviewed this matter at their public meeting of February 15, 2014. See Attachment H at pages 8-9. The 22 West representative reported at that ANC meeting that the Sign recently appeared on the building, and she then “contacted the Zoning Administrator to ask that they enforce the zoning order and explain why the Sign conforms to the order.” The ANC adopted a resolution at that meeting asking the Zoning Administrator to enforce the zoning order for the sign. Id. at p. 9.

9. On February 28, 2014 the Zoning Administrator responded to 22 West’s February 12, 2014 email, and included the ANC 2A06 Single Member District Commissioner, attaching a copy of his February 10, 2014 letter to Owner’s counsel. His response stated that he found no new information in 22 West’s email that caused him to change his mind, and he found that “the present installation of the [Sign] is not a violation of PUD 07-21B, so no enforcement action is applicable.” See Attachment I.

10. ANC 2A adopted another resolution on March 19, 2014 joining 22 West in submitting an appeal to the Board of the Zoning Administrator’s response. See Attachment J.

11. This appeal was filed by 22 West and ANC 2A on April 28, 2014, which was:

- approximately 27 months after the PUD Approval (which included approval of the Sign location);

- approximately 18 months after the issuance of the Building Permit (which included the location of the approved Sign on the approved permit drawings);
- approximately nine months after the Hotel was under roof;
- approximately four months after 22 West saw the brackets and wiring for the approved Sign and made their inquiry to Owner's counsel;
- 77 days after being informed by Owner's counsel on February 10, 2014 that the brackets and wiring were for the installation of the approved Sign, and that the zoning authorities had confirmed that the Sign was permitted by the PUD approval, and was not in violation of the PUD Approval;
- 75 days after 22 West wrote to the Zoning Administrator, with a copy to the ANC, requesting enforcement of the PUD Approval; and
- 72 days after ANC 2A adopted the first of their two resolutions objecting to the installation of the approved Sign at the approved location.

12. Even considering the facts in the light most favorable to the Appellants, this appeal was filed more than 60 days after Appellants knew or reasonably should have known of a zoning decision to approve the Sign location,³ and more than 10 days after the Hotel was under roof.

13. The Zoning Administrator's February 10, 2014 letter to Owner's counsel, which he sent to Appellants on February 28, 2014, was not a separate new zoning decision to approve

³ In Attachment J, Appellant ANC 2A asserts no independent basis for a date for notice or knowledge of the Sign placement separate from that of 22 West, and simply adopts the position of 22 West "as set forth in the Appellant's [22 West's] filings". The ANC was also a participant in the PUD application process where the Sign was approved, and ANC 2A received notice from DCRA of the Building Permit in 2012 (which included the Sign location on the plans) per the requirements of DC Official Code, Section 1-261(c)(3). The construction of the Hotel was in plain view of the public, including ANC 2A, and the Building Permit was posted on the property. At the very least, ANC 2A had notice on February 12, 2014 when ANC 2A06 Single Member District Commissioner Florence Harmon was copied on 22 West's email to the Zoning Administrator. See Attachment G. This matter was discussed and acted upon by the ANC at the ANC's February 15, 2014 meeting.

the Sign, but rather an explanation of why the Sign is permitted. His February 28, 2014 email was nothing more than a refusal to take enforcement action. Because The Zoning Administrator's February 10 letter and February 28 email represent no new zoning decision, neither one could therefore start a new 60 day appeal period.

IV.

SECTION 3112.2 OF THE ZONING REGULATIONS ESTABLISHES THE DEADLINE FOR FILING AN APPEAL

Section 3112.2 of the Zoning Regulations, 11 DCMR, Section 3112.2, establishes a filing deadline of 60 days from the time that an Appellant has actual notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. The Zoning Commission adopted this provision in Order No. 02-01, dated February 7, 2003, "in order to reduce uncertainty and litigation over the timeliness of Board of Zoning Adjustment appeals." See Zoning Commission Order No. 02-01, at p. 1. The adoption of Section 3112.2 in Order No. 02-01 "codifies the principles established in Waste Management (*supra*), and prior court decisions by requiring all appeals to the Board pursuant to the Zoning Act to be filed within sixty (60) days of the date the appellant had actual or constructive knowledge of the administrative decision complained of." *Id.* at p. 2.⁴ (emphasis added). In order to address those instances in which an appellant may not have notice or knowledge of a decision until construction is underway, the Zoning Commission included a new paragraph (b) in Order No. 02-01 that:

"no appeal may be filed later than ten (10) days after construction is 'under roof' ... Since the sixty (60) day appeal period is based upon actual or constructive

⁴ In Waste Management, the DC Court of Appeals held that "in the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal--circumstances outside of the party's control--we conceive of two months between notice of a decision and appeal therefrom as the limit of timeliness." Waste Management, *supra*, at 1122. (emphasis added).

notice or knowledge of the decision complained of rather than the actual date of the decision complained of, the Commission's intent in paragraph (b) was to establish a firm deadline beyond which no appeal could be filed. Accordingly, the Commission ... added a new paragraph (c) to clarify that all appellants have at least sixty (60) days from the date of the decision complained of in which to file an appeal...The cap in paragraph (b) on the appeal period, however, does not relieve an appellant of the responsibility of filing a timely appeal, within sixty (60) days of actual or constructive notice or knowledge of the decision complained of." Order No. 02-01 at pp. 2-3. (emphasis added).

V.

THIS APPEAL WAS UNTIMELY FILED AND MUST BE DISMISSED

Section 3112.2 establishes a filing deadline of 60 days from the time that the Appellant has actual notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. The Board's initial inquiry must therefore be "when the Appellant knew or should have known of that issue". BZA Appeal No. 17468 of ANC 6A, dated February 16, 2007, at p. 4. This Board has held that when an Appellant asserts a certain date as the basis for its zoning appeal, "the regulations require that the Board determine if there is an earlier date when the Appellant reasonably should have known of the authorization." BZA Appeal No. 17468, supra. The Appellants in this case had actual or constructive knowledge, or should have known, of the approval of the location of the Sign on a number of occasions well before they filed their appeal, and failed to take timely action in any of those instances.

A. PUD Approval.

The Appellants participated in the PUD application process where the Hotel, including the Sign location, was approved in the PUD Approval. They knew, or reasonably should have known, of the Zoning Commission action. If they had a question or concern about the approved location of the Sign in the PUD Approval, they could have taken appropriate action at that time to raise that issue. They did not do so, and their appeal is therefore untimely.

B. Building Permit Issuance and Commencement of Construction.

The Building Permit was issued on October 24, 2012, and was posted on the Hotel property. The Sign location is shown on the approved Building Permit application plans, which were available for public viewing at DCRA. See Attachment C. Even assuming that the Appellants did not have actual knowledge, or reasonably should have had actual knowledge, of the approved Sign location in the PUD Approval, they had an obligation based upon precedent from this Board to undertake due diligence after issuance of the Building Permit and commencement of construction, in order to file a timely appeal.

Appeal No. 17468 of ANC 6A involved the renovation of an existing three unit apartment building in an R-4 zone to increase it to six units. The number of units was shown on the permit application documents, but not on the building permit. The building permit was posted on the property and there was clear evidence to the public that construction was underway. Permits for electrical, plumbing and HVAC were issued later, showing six units. The ANC appealed the issuance of the electrical, plumbing and HVAC permits, and contended that it did not have actual notice of the decision to convert from three units to six units until informed by its constituents after issuance of the electrical, plumbing and HVAC permits.

The Board found, however, that the posting of the building permit on the property, and the construction activity on the property, were sufficient to put the ANC and its constituents on notice of a zoning decision:

[T]here were a series of activities that should have put the [Appellants] on notice of the decision complained of dating back to [the date] when the owner posted the building permit on the property and when the construction began. While the permit and the construction may not have put the [Appellant] on notice of the exact nature of the construction, the regulations contemplate an obligation within a reasonable period of time to undertake due diligence to determine such nature. The nature of the work was evident in the Application for the Building Permit, filed at DCRA and available for public viewing."

See BZA Appeal No. 17468, supra, at p. 4 (emphasis added). The Board noted that the subsequent issuance of the electrical, plumbing and HVAC permits did not constitute the zoning approval to increase in the number of units; rather the approval for the increase was granted by issuance of the building permit. The Board dismissed that appeal as untimely filed.

Construction on the Hotel in this case commenced shortly after the Building Permit was issued on October 24, 2012, in full view of the public, including the Appellants. The location of the Sign is included on the approved Building Permit application plans. 22 West saw the construction happening. (See footnote 2). ANC 2A received notice of the issuance of the Building Permit in 2012 per the notice requirements of DC Official Code, Section 1-261(c)(3). The Appellants had actual notice and knowledge of the construction of this 123,768 sq. ft., 90 ft. tall hotel building during its 21-month construction period, from August 2012 to May 2014. The Hotel was under roof by August 1, 2013. See Attachment D. If the Appellants had a question whether the Building Permit application plans showed the Sign location, they could have undertaken due diligence by reviewing the Building Permit application documents on file at DCRA, in order to be able to file a timely appeal at that time.. Had they done so, they would have seen the Sign location on the approved Building Permit plans. They did not do so, and their appeal is therefore untimely.

C. Actual Knowledge of the Sign Brackets on the Building

The Appellants had actual notice or knowledge of the location of the Sign approved by the Zoning Commission when 22 West noticed the brackets and wiring for the Sign on the Hotel a few days before December 31, 2013. See Attachment E. Based on this Board's ruling in BZA Appeal No. 17468, the Appellants had "an obligation within a reasonable period of time to

undertake due diligence to determine" whether the Sign was previously authorized, in order to file a timely appeal. They did not do so, and their appeal is therefore untimely.

D. Confirmation By Owners' Counsel of Zoning Authorization of Sign Location.

On February 10, 2013, Owners' counsel notified 22 West that the brackets were for the Sign installation as approved in the PUD Approval, and that this was verified by the zoning authorities. See Attachment F. At the very least, this correspondence gave 22 West actual or constructive knowledge of a zoning decision, and began the 60-day timeframe for filing an appeal. This Board has so held on a number of instances. "Subsection 3112.2(a) provides that the time for filing an appeal begins when 'the person appealing the administrative decision had notice or knowledge of the decision complained of.' There is no requirement that the person also knew the basis of the decision. Instead, knowledge of a decision starts a 60-day clock for determining that basis and the existence of any error." BZA Appeal No. 18469 of Susan L. Lynch, at p. 8 (March 19, 2013). See also BZA Appeal No. 17513 of ANC 2E at p. 8 (January 4, 2008) (knowledge of the decision complained of, not knowledge of the rationale of the decision, is what begins the 60-day appeal period).

In BZA Appeal No. 17468, *supra*, involving the conversion of an apartment house from three units to six units, the Board found that even assuming that the conversion of the building from three units to six units was difficult to notice because it was internal to the building, there was other "public" activities that should have put the Appellants on notice. In this case, 22 West saw the brackets and wires for the Sign a few days before December 31, 2013, and received a confirmation from Owner's counsel on February 10, 2014 that the Sign was approved for Zoning.

Even assuming that the Appellants did not have notice or knowledge of the approved Sign location in the PUD Approval, and that they can be excused for their lack of due diligence in reviewing the Building Permit application and permit plans, and further assuming that they can be excused for filing the appeal more than 10 days after the Hotel was under roof, they nonetheless had actual knowledge of the brackets and wiring for the Sign, and a confirmation from Owner's counsel on February 10, 2014 that the Sign was approved for zoning. There can be no dispute that they knew or should have known by then. Appellant ANC 2A was on notice two days later when Appellant 22 West wrote to the Zoning Administrator, with a copy to the ANC 2A06 Commissioner, and included the February 10, 2014 confirmation statement from Owner's counsel. Regardless of which of the above events triggered the 60-day appeal period, the time expired before this appeal was filed. The appeal was untimely filed , and must be dismissed.

E. Zoning Administrator's February 28, 2014 Response, Attaching His February 10, 2014 letter

The Zoning Administrator's email of February 28, 2014, refusing to take enforcement action regarding the Sign, included his February 10, 2014 letter to Owner's counsel. Neither his February 28 email nor his February 10 letter was a new zoning decision, and therefore neither correspondence provides a new date from which to start the 60-day appeal clock. The Sign was approved by issuance of the PUD Approval, and subsequently reaffirmed by the approval and issuance of the Building Permit. The Zoning Administrator's letter to Owner's counsel was merely a confirmation of the approval of the Sign in the PUD Approval. His email response to 22 West was simply a refusal to take enforcement action, and an explanation of the approval of the Sign that had previously taken place in the PUD Approval. See Attachment I.

This Board has ruled on this issue on a number of occasions. “The clear language of Section 3112.2 speaks to the knowledge of the decision complained of, not to the knowledge of the rationale for the decision. The information provided by the Zoning Administrator...was a ...confirmation and explanation of the official approval...” BZA Appeal No. 17513 of ANC 2E, at p. 8 (January 4, 2008), citing BZA Appeal No. 16982 of J. Brendon J. Herron and ANC 3F, (April 7, 2005) (“60-day time frame for bringing the appeal may not be restarted by a subsequent DCRA communication except when DCRA reverses its position. *Id.* at 10”).

In BZA Appeal No. 18256 of ANC 1C, dated October 22, 2012, this Board confirmed that the issuance by the Zoning Administrator of an email explaining the validity of a prior zoning action, and refusing to take any enforcement action in response to a request to do so, is not an appealable determination. In that case, the Appellant challenged (1) "the Zoning Administrator's determination rendered via email", that a fast food establishment was a lawful use under the Zoning Regulations"; and (2) his refusal to take enforcement action. *Id.* at p. 2. The Board found that the Zoning Administrator's email confirming that "a fast-food establishment would be lawful at the subject property, consistent with its certificate of occupancy", "under the circumstances", was

"based on the ZA's review of the specific uses of the property that had been authorized by certificates of occupancy; the designation of those uses as 'delicatessen' and 'carry-out', terms no longer used on certificates of occupancy; subsequent changes to the Zoning Regulations that made fast food establishments subject to special exception approval; and the definition of 'nonconforming use. Based on those factors the ZA reasonably determined that the use of the subject property as a 'fast food establishment' would be a lawful use."

Id. at pp. 7-8. The Board in that case concluded that the Zoning Administrator's email "primarily responded to inquiries about whether use as a fast food establishment...would be consistent with the certificate of occupancy...". *Id.* at pg. 8. Accordingly, the Board found that the Zoning

Administrator's detailed and methodical explanation of the approval was not an appealable determination, and dismissed the appeal.⁵

In this case, the Appellants initially stated that they were appealing the Zoning Administrator's February 28, 2014 email (See BZA Exhibit 2), but later changed their theory in the Prehearing Statement to be an appeal from the Zoning Administrator's February 10, 2014 letter. See BZA Exhibit 21. Regardless of which one is relied upon, the result is the same. In his responses to the Appellants and to Owner's counsel in this case, the Zoning Administrator provided the same type of detailed methodical explanation as that countenanced by the Board in BZA Appeal No. 18256. He issued no new zoning decision. See Attachment I. "The 60-day period...starts to run from the date of the original decision complained of, and subsequent decisions reinforcing that original decision...do not change that starting date." BZA Appeal No. 17966-A of Stephen Bruce (Order Denying Reconsideration), at p. 2 (September 18, 2010).

"There is also consistent precedent of this Board that once a building permit is issued, no subsequent communication from DCRA may be appealed unless it contains a new decision. (citations omitted)". See BZA Appeal No. 17966 of Stephen Bruce, dated March 30, 2010, at p. 4. That case involved an appeal of construction by a neighbor, which construction was in full view of that neighbor. The neighbor contacted the Office of the Zoning Administrator to complain about the construction, alleging that it was in violation of zoning. The Office of the Zoning Administrator responded, stating that there was no zoning violation. Citing the two "no

⁵ In dismissing the appeal, this Board also held in BZA Appeal No. 18256 that enforcement by the Office of the Zoning Administrator is "a discretionary function left to the discretion of the ZA (citations omitted)...,to which no individual has a legal right." Id. at pp. 8-9. Similarly, in its email to the Zoning Administrator in this case, 22 West requested "enforcement of ZC Order No. 07-21B"; plus copies of any documentation of any zoning approvals for the Sign; and a copy of the "direction" by the Zoning Administrator "that the brackets and electrical service shall be removed to preclude future installation of" the Sign. See Attachment G. Based upon prior rulings by this Board, the Appellants have no legal right to enforcement in this case.

zoning violation" emails from the Office of the Zoning Administrator that were the basis of the appeal, this Board dismissed that appeal as untimely, concluding that:

"those 'decisions', however, were not really decisions but reaffirmations of the decision made by the issuance of building permit....The real decision on appeal is the decision to issue the building permit.... That decision was made on February 11, 2009 with the issuance of the permit. The Board concludes that the Appellant knew or should have known of the permit issuance between February 13, when the permit was posted on the property, and February 18, when actual ...work began there. The Appellant lives immediately next door to the subject property, sees it daily, and should have been aware of these activities during this period."

Id. at p. 4.

Similarly, in this case, the Building Permit was posted on the property, and 22 West watched the construction progress on the Hotel (See footnote 2). But rather than undertake their obligation to pursue due diligence to determine the issue, and file a timely appeal to this Board within 60 days of noticing the brackets and wiring for the Sign (assuming for discussion purposes that this is the trigger for the 60 day appeal period), 22 West engaged in a series of emails to the Owner's counsel and to the Zoning Administrator. They then chose to wait until April 28, 2014 to file this appeal, which was four months after they noticed the brackets and wiring, and more than 18 months after issuance of the Building Permit, and 27 months after issuance of the PUD order.

When there is a zoning determination based on the issuance of a building permit, a subsequent validation of that decision does not start a new appeal period. See BZA Appeal No. 17830 of Cooper, dated February 18, 2009, at p. 3. The appellant in that case appealed the issuance of a Certificate of Occupancy for a grocery store building in the Reed-Cooke Overlay, challenging the size of the store and the sale of alcohol. This Board determined that those zoning decisions "were made at the building permit stage, and were validated by the subsequent issuance of the C of O." Id. at page 3 (emphasis in original). Recognizing that the C of O

"contained no new information and did not constitute the 'first notice' to the Appellant," the Board dismissed the appeal, holding that the "certificate of occupancy does not...start another sixty day appeal period...". Id. at 4, citing Basken, supra at 367-68.

The 60-day deadline for an appeal begins to run when the Appellant is charged with notice or knowledge of the decision complained of or reasonably should have had notice or knowledge, which in this case was either the issuance of the PUD Approval, or the issuance of the Building Permit, or viewed in the light most favorable to the Appellants, the date when 22 West first saw the brackets and wiring for the Sign a "few days" before December 31, 2013. During that period, "Appellant pursued other avenues to resolve its dispute and engaged in ...communication with the Zoning Administrator...However, a party who chooses to engage in negotiations or other ways to resolve a dispute does not thereby extend its time for filing an appeal". See BZA Appeal No. 17391 of de Brito and Gottlieb, dated October 2, 2006, at p. 7; BZA Appeal No. 17329 of Georgetown Residence Alliance, dated July 12, 2006, at p. 5 (citations omitted). Both the DC Court of Appeals and this Board have held that "the Board need 'not countenance delay in taking an appeal when it is merely convenient for an appellant to defer in making that decision.' " BZA Appeal No. 17411 of Basken and Mayer, supra at p. 6; BZA Appeal No. 17391 of de Brito and Gottlieb, supra, at p. 7, citing Waste Management, supra. The "fact that the Appellant 'chose to concentrate on avenues that reasonably may have appeared more promising than an appeal does not excuse its delay in noting an appeal.'" BZA Appeal No. 17915 of Jonathon Bolduc, at p. 3 (December 17, 2009), citing Waste Management, supra. The Board has no jurisdiction to hear an untimely appeal. Waste Management, supra.

In contrast to the above, this Board has allowed an appeal to proceed approximately eight months after issuance of a building permit, based on the Appellant's claim that he did not know,

and could not have reasonably known, of the issuance of the building permit at issue, because he did not actually see the construction in question. See BZA Appeal No. 17285 of Patrick Carome, dated March 24, 2006. The Board based its decision on its findings that the information about construction was not in the public domain where the appellant in that case should have learned of it, and that the appellant's view of the construction was shielded by dense foliage, and the construction was not visible from the street. Id. at p. 5. However, in the instant case, the Appellants participated in the PUD application process where the Sign location was approved. The approval of the Sign was a part of the approved PUD plans. The construction of the Hotel pursuant to the Building Permit was readily visible to the Appellants, and readily visible from the street. The Building Permit was posted on the property, in plain view of the public. The Building Permit application and plans were available at DCRA. Appellant 22 West noticed the brackets and wiring for the Sign a few days before December 31, 2013. In spite of all of this, the appeal was not filed until April 28, 2014, more than 18 months after issuance of the Building Permit, 27 months after issuance of the PUD Approval, four months after noticing the brackets and wiring, and 77 days after being informed of the zoning approval for the Sign location.⁶

This appeal was filed 1) more than 60 days after the issuance of the PUD Approval including approval of the Sign location, and 2) more than 60 days after the issuance of the Building Permit (location of approved Sign shown on permit drawings); and 3) more than 10 days after the date that the Hotel was under roof, and 4) more than 60 days after the date the Appellant 22 West saw the brackets and wiring for the Sign; and 5) more than 60 days after the date that Owners' counsel informed Appellant 22 West that the brackets and wiring were for the approved Sign, and that the zoning authorities confirmed that the Sign is permitted by the PUD

⁶ANC 2A joined the appeal by 22 West, and asserted no independent basis for an appeal date, but instead merely adopted the position of 22 West. See footnote 3, and Attachment J.

approval; and (6) more than 60 days after Appellant ANC shared with the ANC 2A06 Commissioner the information about the brackets and wiring, and the confirmation by Owner's counsel that the Sign was approved for zoning. Appellants had actual notice and knowledge of the decision complained of, or should have had actual notice or knowledge of the decision, and were therefore under an obligation to undertake due diligence in order to be able to file a timely appeal. Based upon consistent decisions by this Board, the Zoning Administrator's February 10, 2014 letter and February 28, 2014 email, explaining the basis for the Sign approval, and refusing to take enforcement action, were not new zoning approval decisions from which a timely appeal may be taken. For these reasons, this appeal is untimely per 11 DCMR, Section 3112.2(a) and must be dismissed.

VI.

THERE IS NO BASIS FOR AN EXTENSION OF THE 60-DAY TIME PERIOD FOR FILING THIS APPEAL

Because the appeal is untimely per Section 3112(a), the inquiry shifts to a consideration under Section 3112(d) of whether the Appellants can demonstrate that (1) there are exceptional circumstances outside the Appellants' control, which could not have reasonably been anticipated, that substantially impaired the Appellants' ability to file this appeal to the Board, and (2) the extension of time will not prejudice the Owner. Even assuming that this inquiry is justified, the Appellants would be required to satisfy both tests, but cannot satisfy either one.

A. There Are No Exceptional Circumstances Outside of Appellants' Control that Substantially Impaired Their Ability To File A Timely Appeal.

The Appellants knew, or should have known, of the decision to approve the Sign in time to file a timely appeal. At the very latest, upon notice of the brackets and wiring in late

December 2013, they were under an obligation to conduct due diligence to determine whether to file an appeal. The Building Permit plans showing the approved sign location were on file and available for inspection at DCRA. However, rather than file a timely appeal with this Board, the Appellant 22 West wrote to the Owner's counsel on December 31, 2013, and after receiving an explanation on February 10, 2014 that the Sign was approved for zoning, then wrote to the Zoning Administrator on February 12, 2014, with a copy to the ANC 2A06 Commissioner, requesting enforcement of the PUD Approval. That email included the confirmation of the zoning approval by Owner's counsel. The Zoning Administrator's February 28, 2014 to the Appellants response included a copy of his February 10, 2014 letter.

Neither the February 10, 2014 Zoning Administrator letter nor the February 28 Zoning Administrator email was a zoning decision to approve the Sign. Once they received the Zoning Administrator's February 28 email refusing to take enforcement action, Appellants waited the full 60 days after that refusal to file their appeal.

At the request of Appellant 22 West, ANC 2A adopted a resolution on February 15, 2014 requesting an explanation why the Sign conforms to the PUD Approval. ANC 2A subsequently adopted another resolution on March 19, 2014 to join 22 West in its appeal in this case. Thus, by February 10 and 12 at the latest, both Appellants had actual or constructive notice, and by March 19, both Appellants had made a determination to file an appeal, but did not file the appeal until almost six weeks later. They have asserted no exceptional circumstances outside of their control that substantially impaired their ability to file a timely appeal.

“The Board need not countenance delay in taking an appeal when it is merely convenient for an appellant to defer in making that decision.” BZA Appeal No. 17411 of Basken, supra at p. 6. Moreover, Board has concluded in a number of cases that an Appellant who engages in

discussions, emails and other activity to attempt to resolve a dispute does not by that action extend its time for filing an appeal to this Board. See BZA Appeal No. 17915 of Jonathon Bolduc, supra; BZA Appeal No. 17391 of de Brito, et al., supra.

B. An Extension Of Time Will Prejudice The Owners

An extension of time will have a substantial impact on the Owners. The Owners received a lawful Building Permit dated October 24, 2012 to construct the Hotel. The approved Building Permit plans show the location of the Sign. By April 28, 2014 (the appeal date), the Owners have expended \$20,031.75 in hard and soft costs for the design and fabrication and permitting of the approved Sign. The Hotel is now open and operating pursuant to Certificate of Occupancy No. CO1402349, dated June 10, 2014. Signage is an important component for any commercial business, including a hotel. Granting this appeal will leave the Hotel with only one sign location, on 22nd Street, over the entrance canopy, with no signage visible from M Street, which is the main artery adjacent to the Hotel. The absence of readily-visible signage will have a negative effect on the business of the Hotel. Based upon standard industry modelling pro formas, the Hotel will incur financial losses of approximately \$20,000 per month as a result of lost revenue and service recovery (directly addressing guest complaints, and adverse reviews on social media) as a result of insufficient signage, making it difficult for guests to find the Hotel.

VII.
EXHIBITS

- A. Exhibit 36, p. 4, from the Zoning Commission records for Case No. 07-21B.
- B. Building Permit No. B1205651, dated October 24, 2012.
- C. Portions of Building Permit Application Plans, showing the Sign Location, dated June 7, 2012.
- D. Affidavit of Dennis Mitchell, Development Manager.

- E. December 31, 2013 inquiry from 22 West to Owner's Counsel.
- F. February 10, 2014 Response to 22 West by Owner's Counsel.
- G. 22 West's request to the Zoning Administrator for enforcement of ZC Order No. 07-21B dated February 12, 2014.
- H. Minutes of ANC 2A February 15, 2014 meeting.
- I. Zoning Administrator's response to 22 West, dated February 28, 2014, attaching his February 10, 2014 determination to Owner's counsel.
- J. ANC letter reporting an adoption of March 19, 2014 ANC resolution to join with 22 West in this appeal.

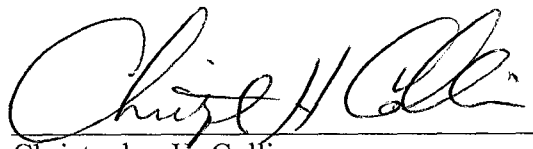
VIII.
CONCLUSION.

Based upon the clear language of the Zoning Regulations and upon prior rulings by this Board and by the DC Court of Appeals, this appeal has been untimely filed by the Appellants. Further, there is no basis for an extension of the 60-day appeal period. Accordingly, the Board is without jurisdiction to hear this appeal, and the appeal must be dismissed.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Christopher H. Collins

CERTIFICATE OF SERVICE

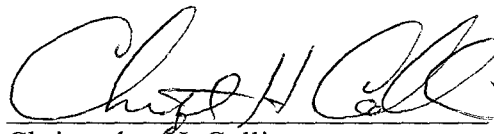
I hereby certify that a copy of the foregoing Owner's Motion to Dismiss Appeal was filed electronically with the Office of Zoning and was sent by first-class mail and electronic mail, this 23th day of September, 2014, to the following:

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Christopher H. Collins

ATTACHMENT A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



February 23, 2012

Re: Z.C. Case No. 07-21B (PerStar M Street Partners, LLC – 2201 M St., N.W.)

To Whom It May Concern:

I hereby certify that attached hereto, and bearing my initials in red ink in the lower right corner of each page, is a true copy of part of Exhibit 36 (enlarged copy of one slide on page 4) – consisting of 1 page – of the official record of the Zoning Commission for the District of Columbia in Z.C. Case No. 07-21B.


SHARON S. SCHELLIN
SECRETARY TO THE ZONING COMMISSION



A. Approximate signage size 3'X12'
B. Approximate signage size 3'-6"X18'



- A. Approximate signage size 3'X12'
- B. Approximate signage size 3'-6"X18'

ATTACHMENT B



Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



B

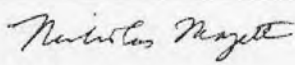
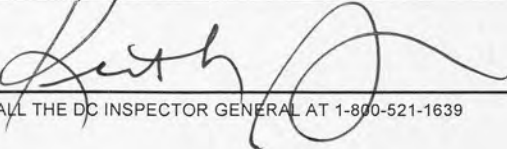
BUILDING PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF
WORK UNTIL WORK IS COMPLETED AND APPROVED

Issue Date: 10/24/2012

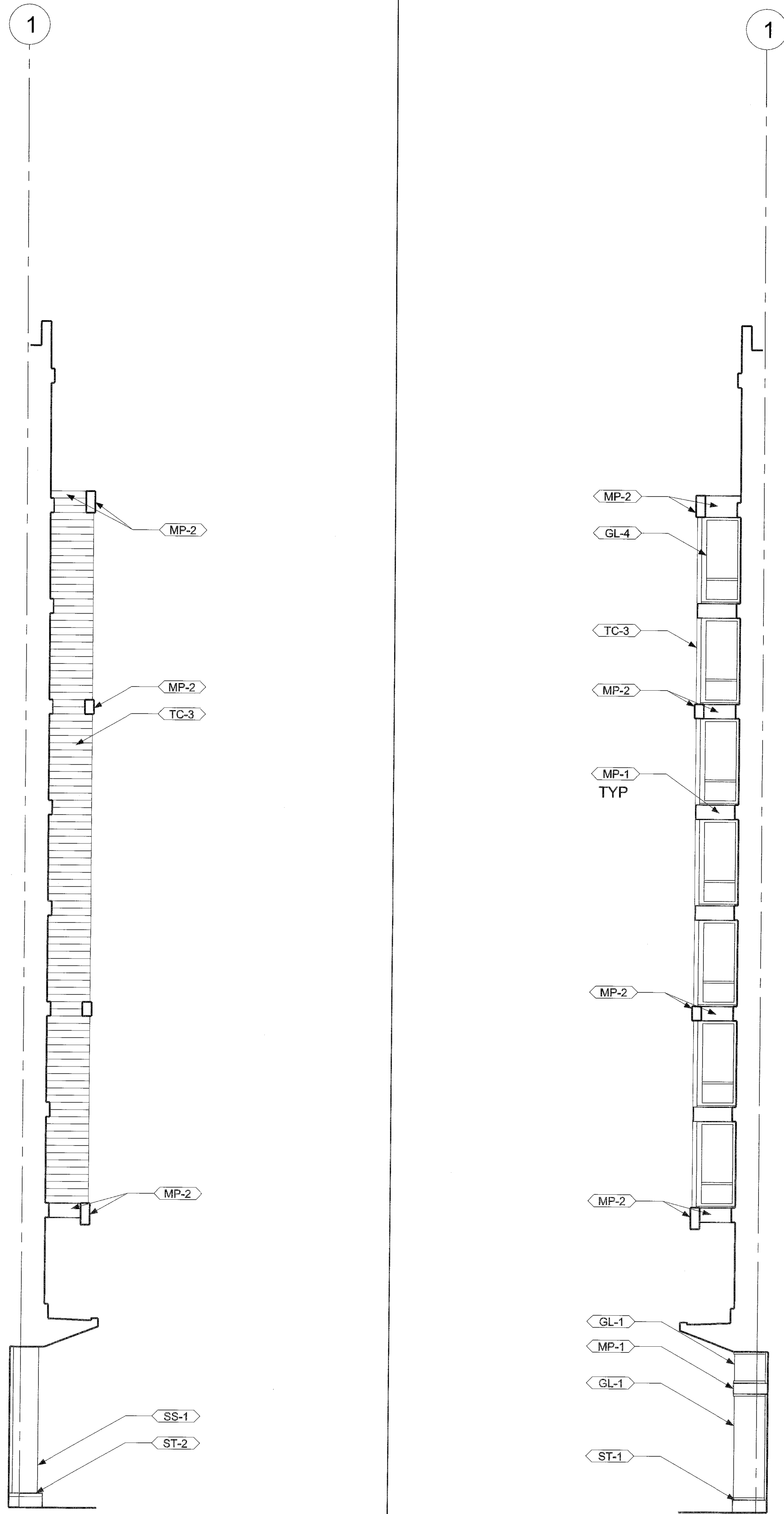
PERMIT NO. **B1205651**

Expiration Date: 10/24/2013

Address of Project: 2201 - 2213 M ST NW		Zone:	Ward: 2	Square: 0050	Suffix:	Lot: 0087
Description Of Work: A new 238 guestroom hotel with full service restaurant and kitchen, roof top outdoor pool, second floor garden patio, 53 below ground parking structure.						
Permission Is Hereby Granted To: Perstar M Street Partners Llc		Owner Address: 2099 PENN AVE NW # 975 WASHINGTON, DC 20006-6800		PERMIT FEE: \$56,653.30		
Permit Type: New Building	Existing Use: Other (Specify)		Proposed Use: Transient Lodging (hotel, motel, etc.)		Plans: Yes	
Agent Name: Dennis Mitchell	Agent Address: Suite 300, 340 East Main Street, Spartan 29302	Existing Dwell Units:	Proposed Dwell Units:	No. of Stories:	Floor(s) Involved: All	
Conditions/ Restrictions: Zoning Approval Based on Compliance with the Conditions of Z.C. Order #07-21B. This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov , Lead and Healthy Housing.						
Director: Nicholas A. Majett 		Permit Clerk Keith Slade 				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

ATTACHMENT C

VOLUME 1										VOLUME 2										VOLUME 2											
GENERAL										STRUCTURAL DRAWINGS										PLUMBING DETAILS											
A0.00	COVER SHEET	NTS	X	X	X	X				A4.13A	WALL SECTIONS - M and 22nd Street	3/4" = 1'-0"								P0.06	PLUMBING DETAILS	N/S									
A0.01	DRAWING LIST, GENERAL NOTES, ABBREVIATIONS AND SYMBOLS	NTS	X	X	X		X			A4.13B	WALL SECTIONS - M and 22nd Street	3/4" = 1'-0"								P0.07	PLUMBING DETAILS	N/S									
A0.02	AREA CALCULATIONS, BUILDING CODE, ZONING TABULATION	NTS	X	X	X		X			A4.14A	WALL SECTIONS - COURTYARD	3/4" = 1'-0"								P1.05	PLUMBING 2ND FLOOR PLAN	1/8" = 1'-0"									
A0.02A	BUILDING CANOPIES AND BUILDING PROJECTIONS	NTS					X			A4.14B	WALL SECTIONS - PARTYWALL	3/4" = 1'-0"								P1.06	PLUMBING 4TH FLOOR PLAN	1/8" = 1'-0"									
A0.02B	ZONING ORDER AND PARKING LETTER	NA								A4.16	WALL SECTIONS - COURTYARD LANDSCAPED AREA	3/4" = 1'-0"								P1.07	PLUMBING 5TH FLOOR PLAN	1/8" = 1'-0"									
A0.02C	PUD SUBMISSION	VARIES								A4.17	WALL SECTIONS - COURTYARD LANDSCAPED AREA	3/4" = 1'-0"								P1.08	PLUMBING 6TH FLOOR PLAN	1/8" = 1'-0"									
A0.03	EGRESS, LIFE SAFETY PLANS - B1 LEVEL	1/8" = 1'-0"	X	X	X	X				A4.21	SECTION DETAILS - TERRA COTTA	3" = 1'-0"								P1.09	PLUMBING 7TH FLOOR PLAN	1/8" = 1'-0"									
A0.04	EGRESS, LIFE SAFETY PLANS - GROUND LEVEL	1/8" = 1'-0"	X	X	X	X				A4.22	SECTION DETAILS - TERRA COTTA	3" = 1'-0"								P1.10	PLUMBING 8TH FLOOR PLAN	1/8" = 1'-0"									
A0.05	EGRESS, LIFE SAFETY PLANS	1/16" = 1'-0"	X	X	X	X				A4.23	SECTION DETAILS - TERRA COTTA	3" = 1'-0"								P1.11	PLUMBING 9TH FLOOR PLAN	1/8" = 1'-0"									
A0.06	EGRESS, LIFE SAFETY PLAN - 10TH FLOOR	AS NOTED					X			A4.26	SECTION DETAILS - BRICK	3" = 1'-0"								P2.01	PLUMBING B1 LEVEL PLAN	1/8" = 1'-0"									
A0.07	ROOM MATRIX	NTS	X	X	X	X				A4.51	PLAN DETAILS - M and 22nd	3/4" = 1'-0"								P2.02	PLUMBING B1 LEVEL PLAN	1/8" = 1'-0"									
CIVIL										A4.52	PLAN DETAILS - M and 22nd	3/4" = 1'-0"									P2.03	PLUMBING GROUND FLOOR PLAN	1/8" = 1'-0"								
C1.01	EXISTING CONDITIONS PLAN		X	X	X	X				A4.53	PLAN DETAILS - M and 22nd	3/4" = 1'-0"								P2.04	PLUMBING 2ND FLOOR PLAN	1/8" = 1'-0"									
C1.02	SITE DEMOLITION PLAN		X	X	X	X				A4.54	PLAN DETAILS - M and 22nd	3/4" = 1'-0"								P2.05	PLUMBING 3RD FLOOR PLAN	1/8" = 1'-0"									
C1.03	SITE AND UTILITY PLAN		X	X	X	X				A4.55	PLAN DETAILS - M and 22nd	3/4" = 1'-0"								P2.06	PLUMBING 4TH FLOOR PLAN	1/8" = 1'-0"									
C1.03A	ROADWORK PLAN		X	X	X	X				A4.56	PLAN DETAILS - BRICK	3/4" = 1'-0"								P2.07	PLUMBING 5TH FLOOR PLAN	1/8" = 1'-0"									
C1.04	GRADING PLAN		X	X	X	X				A4.57	PLAN DETAILS - BRICK	3/4" = 1'-0"								P2.08	PLUMBING 6TH FLOOR PLAN	1/8" = 1'-0"									
C1.05	SEDIMENT AND EROSION CONTROL PLAN		X	X	X	X				A4.61	PLAN DETAILS	AS NOTED								P2.09	PLUMBING 7TH FLOOR PLAN	1/8" = 1'-0"									
C1.06	SEDIMENT AND EROSION CONTROL NOTES AND DETAILS		X	X	X	X				A4.62	PLAN DETAILS	AS NOTED								P.210	PLUMBING 8TH FLOOR PLAN	1/8" = 1'-0"									
C1.07	WATER PROFILES		X	X	X	X				A4.71	PLAN DETAILS - TC	3" = 1'-0"								P.211	PLUMBING 9TH FLOOR PLAN	1/8" = 1'-0"									
C1.08	STORM DRAIN AND SEWER PROFILES		X	X	X	X				A4.91	ROOF DETAILS	VARIES								P2.12	PLUMBING 10TH FLOOR PLAN	1/8" = 1'-0"									
C1.08A	SEWER RELINING SPECS						X			A4.92	ROOF DETAILS	VARIES								P2.13	PLUMBING MAIN ROOF & PENTHOUSE PLAN	1/8" = 1'-0"									
C1.09	SCHEDULES, COMPUTATIONS AND WATER PROFILE		X	X	X	X				A4.95	MISCELLANEOUS DETAILS	AS NOTED								P2.14	PLUMBING UPPER ROOF LEVEL PLAN	1/8" = 1'-0"									
C1.10	DETAILS AND DCOWASA APPROVAL SHEET		X	X	X	X				INTERIOR ELEVATIONS										P3.00A	PLUMBING PARTIAL FOUR PLANS	1/4" = 1'-0"									
C1.11	SWM SPECIFICATIONS AND CERTIFICATIONS		X	X	X	X				A5.01	INTERIOR ELEVATIONS, LOBBY & PREFUNCTION	AS NOTED								P3.00B	PLUMBING PARTIAL FOUR PLAN - KITCHEN & BAR	1/4" = 1'-0"									
C1.12	STORM WATER MANAGEMENT NOTES, COMPUTATIONS / DETAILS		X	X	X	X				A5.02	INTERIOR ELEVATIONS	AS NOTED								P3.01A	PLUMBING 2ND FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.13	SITE DETAILS		X	X	X	X				A5.03	INTERIOR ELEVATIONS	AS NOTED								P3.01B	PLUMBING 2ND FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.14	SITE DETAILS		X	X	X	X				A5.04	INTERIOR ELEVATIONS	AS NOTED								P3.02A	PLUMBING 3RD & 4TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.15	PUBLIC SPACE EXHIBIT		X	X	X	X				A5.05	INTERIOR WALL SECTIONS AND DETAILS	AS NOTED								P3.02B	PLUMBING 3RD & 4TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.16	TRAFFIC CONTROL PLAN PHASE 1		X	X	X	X				A5.11	TYPICAL TOILET RM DETAILS	NTS								P3.03A	PLUMBING 5TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.17	TRAFFIC CONTROL PLAN PHASE 1A		X	X	X	X				A5.12	ENLARGED TOILET ROOM PLANS AND ELEVATIONS	3/8" = 1'-0"								P3.03B	PLUMBING 5TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.18	TRAFFIC CONTROL PLAN PHASE 2		X	X	X	X				A5.21	GUEST BATHROOMS TYPES	1/2" = 1'-0"								P3.04A	PLUMBING 6TH - 9TH TYPICAL FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.19	TRAFFIC CONTROL PLAN PHASE 3		X	X	X	X				A5.22	ENLARGED GUEST BATHROOM	1" = 1'-0"								P3.04B	PLUMBING 6TH - 9TH TYPICAL FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.20	TRAFFIC CONTROL PLAN PHASE 4		X	X	X	X				A5.23	ENLARGED GUEST BATHROOM	1" = 1'-0"								P3.05A	PLUMBING 10TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.21	TRAFFIC CONTROL NOTES AND DETAILS		X	X	X	X				SCHEDULES										P3.05B	PLUMBING 10TH FLOOR ENLARGED PLAN	1/4" = 1'-0"									
C1.22	TRAFFIC CONTROL NOTES AND DETAILS		X	X	X	X				A6.01	PARTITION SCHEDULE	3" = 1'-0"								P4.01B	PLUMBING SANITARY RISER DIAGRAMS	N/S									
C1.23	STREETSCAPE PLAN		X	X	X	X				A6.02	PARTITION SCHEDULE & CEILING DETAILS	AS NOTED								P4.01C	PLUMBING SANITARY RISER DIAGRAMS	N/S									
C1.24	PLANTING PLAN		X	X	X	X				A6.11	DOOR SCHEDULE AND DOOR TYPES	NTS								P4.02A	PLUMBING WATER RISER DIAGRAMS	N/S									
C1.25	PLANTING DETAILS		X	X	X	X				A6.12	DOOR TYPES AND DETAILS	VARIES								P4.02B	PLUMBING WATER RISER DIAGRAMS	N/S									
C1.26	HARDSCAPE DETAILS		X	X	X	X				A6.13	DOOR DETAILS	3" = 1'-0"								P4.03	PLUMBING FIRE RISER DIAGRAMS	N/S									
UTILITY PLANS										A6.21	WINDOW SCHEDULE / LOUVER SCHEDULE	1/2" = 1'-0"								P4.04	PLUMBING GAS RISER DIAGRAMS	N/S									
EU-1	TRANSFORMER/BUSS VAULT PLAN		X	X	X					A6.41	FINISH SCHEDULE	NTS								P4.05	PLUMBING STORM RISER DIAGRAMS	N/S									
EU-2	VAULT DETAIL PLAN		X	X	X					POOL DRAWINGS										M0.01	MECHANICAL COVER SHEET	NA									
STREET LIGHTING										A7.01	ELEVATOR PLAN AND SECTIONS	1/4" = 1'-0"										M0.02	MECHANICAL SCHEDULES	NA							
SL-1	STREET LIGHT PLAN	1" = 20'-0"					X			A7.02	ELEVATOR SECTION AND DETAILS	1/4" = 1'-0"								M0.03	MECHANICAL SCHEDULES	NA									
SL-2	STREET LIGHT DETAILS	AS NOTED					X			A8.01	STAIR 1 PLANS AND SECTIONS	AS NOTED								M0.04	MECHANICAL DETAILS	AS NOTED									
ARCHITECTURAL										A8.02	STAIR 2 PLANS AND SECTIONS	AS NOTED									M0.05	MECHANICAL DETAILS	AS NOTED								

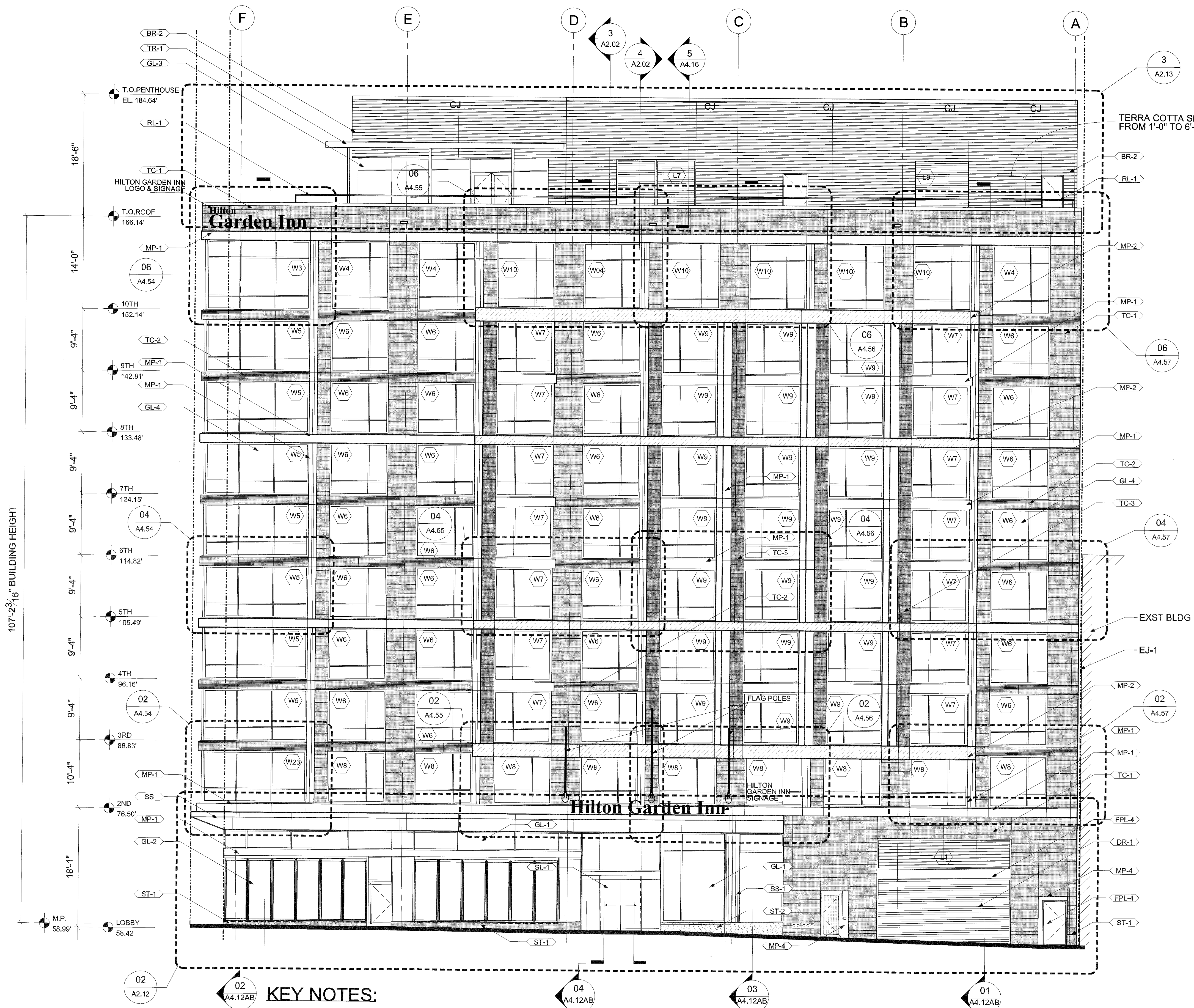


NORTH NICHE ELEVATION

SCALE
1/4" = 1'-0"

SOUTH NICHE ELEVATION

SCALE
1/4" = 1'-0"



107'-2 3/16" BUILDING HEIGHT

KEY NOTES:

- | | | | | | |
|--|------|------------------------------------|--|------|---|
| | BR-1 | BRICK, COLOR: DK GREY | | GL-6 | TRANSLUCENT GLASS |
| | BR-2 | BRICK, COLOR: LT GREY | | DR-1 | GARAGE ENTRY ROLL-UP DOOR |
| | MP-1 | METAL PANEL, COLOR: SILVER (FPL-1) | | DR-2 | LOADING DOCK ENTRY ROLL-UP DOOR |
| | MP-2 | METAL PANEL, COLOR: WHITE (FPL-2) | | GL-1 | CURTAINWALL & EXTERIOR STOREFRONT AT LEVEL 01 |
| | MP-3 | METAL PANEL, COLOR: GREY (FPL-3) | | GL-2 | SLIDING STOREFRONT SYSTEM |
| | MP-4 | METAL PANEL, COLOR: GREY (FPL-4) | | GL-3 | STOREFRONT GLASS AT PENTHOUSE & SECOND FLOOR COURTYARD |
| | ST-1 | STONE BASE, GREY | | GL-4 | WINDOW @ SOUTH & EAST ELEVATIONS. CLEAR LOW E, ACOUSTICAL INSULATING UNIT |
| | ST-2 | STONE BASE AT BENCH, WHITE | | GL-5 | WINDOW @ NORTH & WEST ELEVATIONS. CLEAR LOW E, INSULATING UNIT |
| | TC-1 | TERRACOTTA, COLOR: GREY | | RL-1 | 42" HIGH STAINLESS STEEL CABLE RAILING |
| | TC-2 | TERRACOTTA, COLOR: GREY FLUTED | | RL-3 | POOL DECK FENCE ENCLOSURE |
| | TC-3 | TERRACOTTA, COLOR: RED | | SL-1 | SLIDING AUTOMATIC ENTRANCE DOORS |
| | | | | SS-1 | STAINLESS STEEL CANOPY AND COLUMN COVER |
| | | | | TR-1 | PAINTED ALUMINUM TRELLIS |

EAST ELEVATION

SCALE
1/4" = 1'-0"

SCALE
1/4" = 1'-0"

shalom baranes associates architects

3299 K STREET NW, SUITE 410 WASHINGTON DC 20007
TEL: 202 342-2200 FAX: 202 342-1369

CONSULTANTS

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SILVER SPRING, MD 20910
TEL: 301-587-1820 FAX: 301-588-1966

CIVIL ENGINEER
VMA CAPITAL, LLC
4510 MASSACHUSETTS AVE. NW, SUITE 214
WASHINGTON, DC 20016
TEL: 202-244-4140

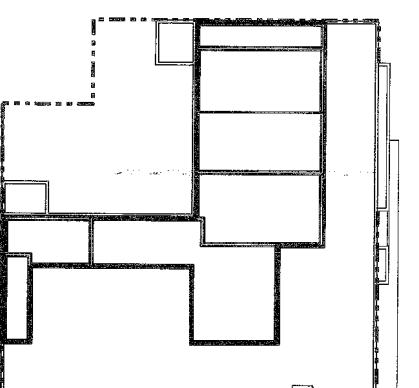
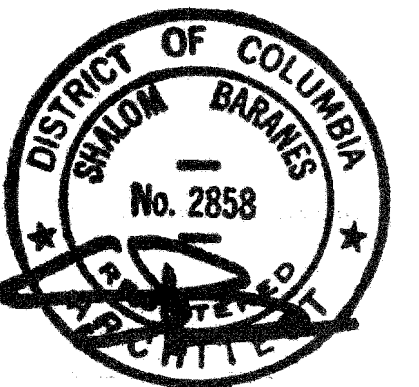
MEP ENGINEER
GHT LIMITED
1010 N. GLIERE RD, SUITE 200
ARLINGTON, VA 22201
TEL: 703-243-1200 FAX: 703-278-1376

INTERIOR DESIGNER
PARADIGM DESIGN GROUP
17240 HUFFMEISTER RD, SUITE 105
CYPRESS, TX 77429
TEL: 281-256-1689

LANDSCAPE
OCULUS
2410 17TH STREET, NW, SUITE 201
WASHINGTON, DC 20009
TEL: 202-588-5454

**HILTON GARDEN INN
WEST END**
2201 M Street NW
Washington DC 20037

OWNER
STARPEROTO M STREET
PARTNERS, LLC



SBA PROJECT NO: 21-107

EAST
ELEVATION

SCALE: 1/8" = 1'-0"

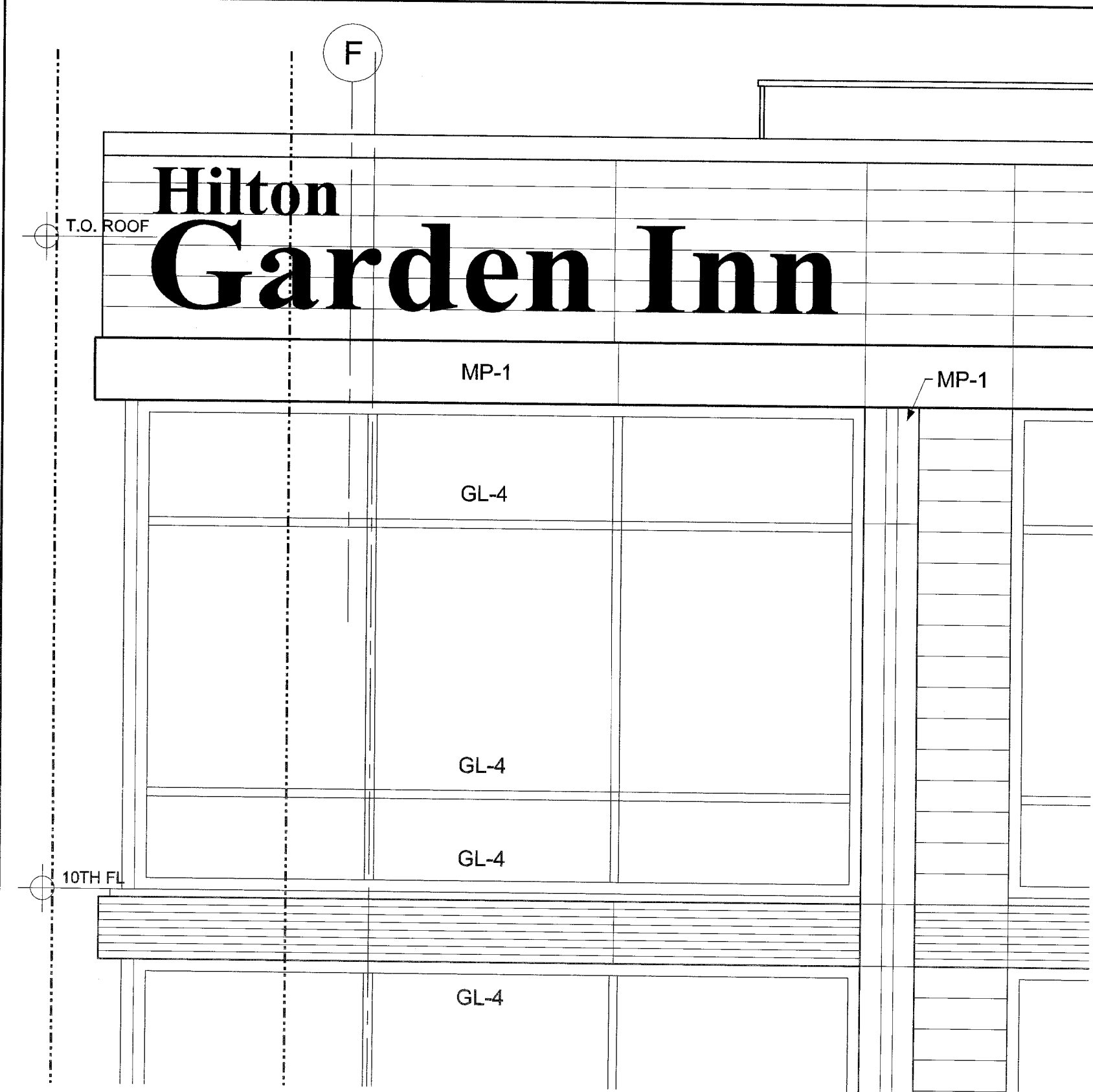
ISSUED:
05 JAN 12 PRELIMINARY PLANS
24 FEB 12 75% DD SET
02 APR 12 3RD PARTY REVIEW
30 APR 12 ISSUE FOR BID
07 JUNE 12 ISSUE FOR PERMIT

REVISIONS:

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A2.02

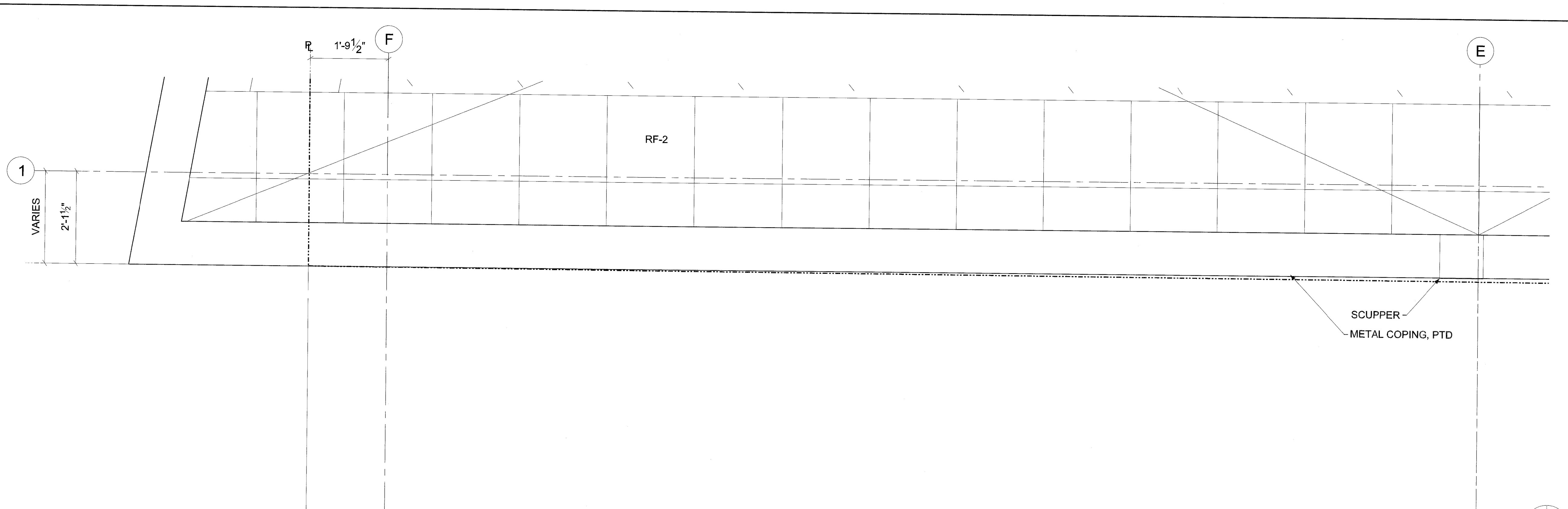
PROGRESS DATE: mm dd yy



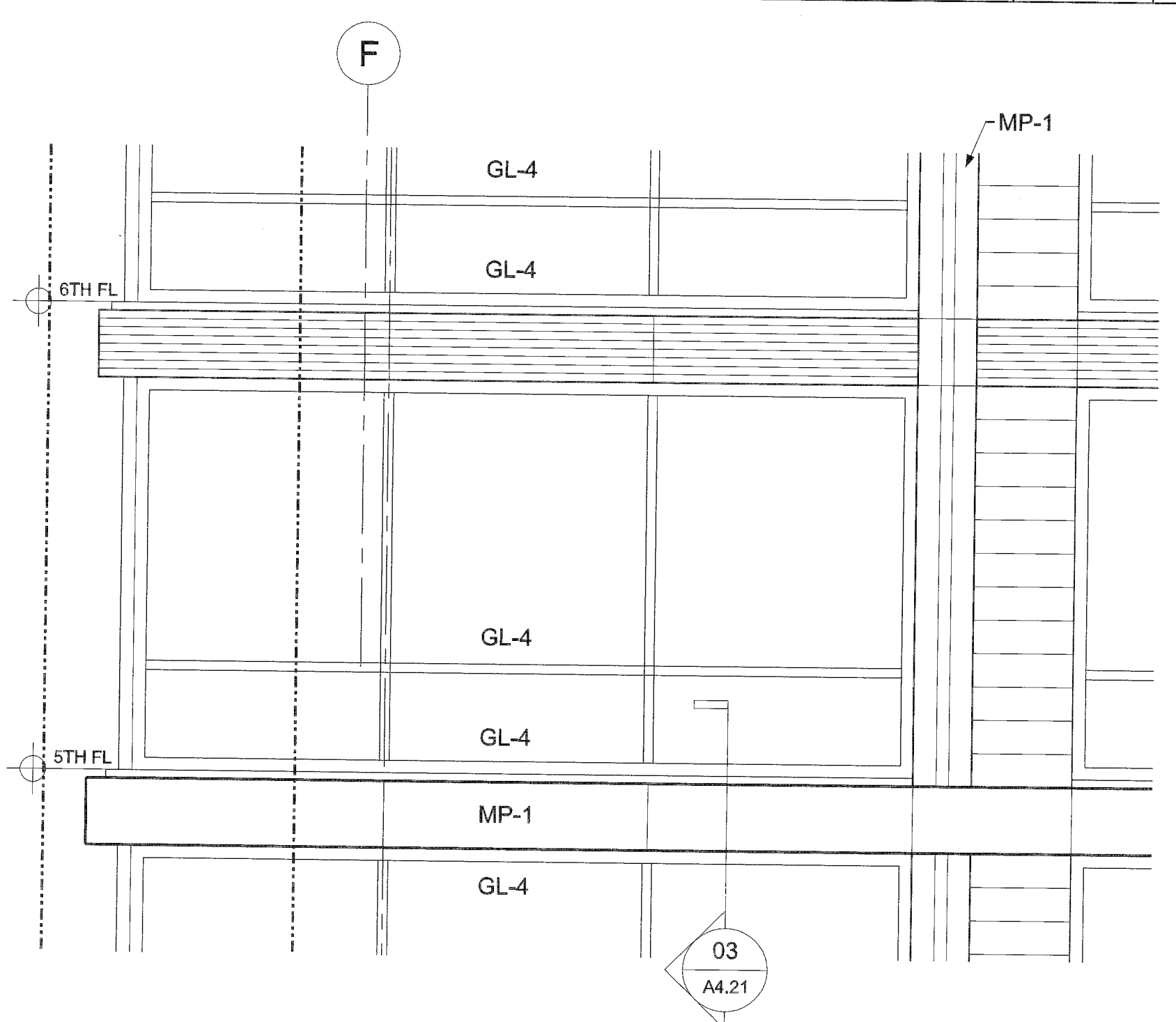
PARTIAL ELEVATION

SCALE
3/8"=1'-0"

06 PENTHOUSE FLOOR - PARTIAL PLAN



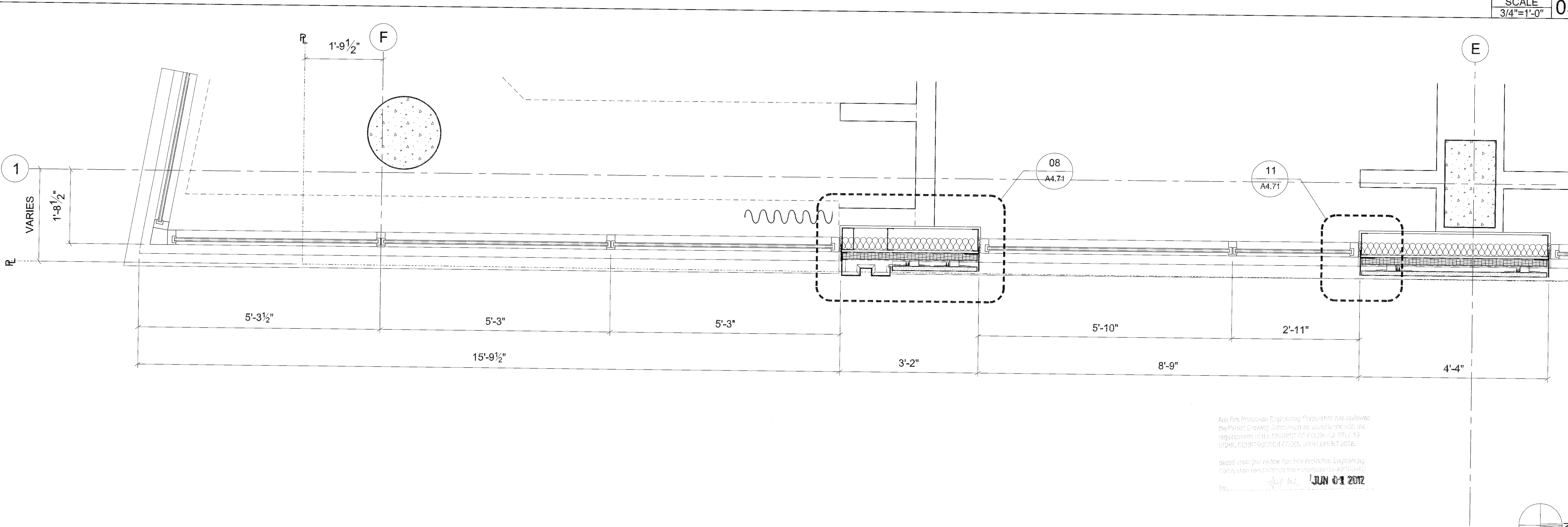
SCALE
3/4"=1'-0"



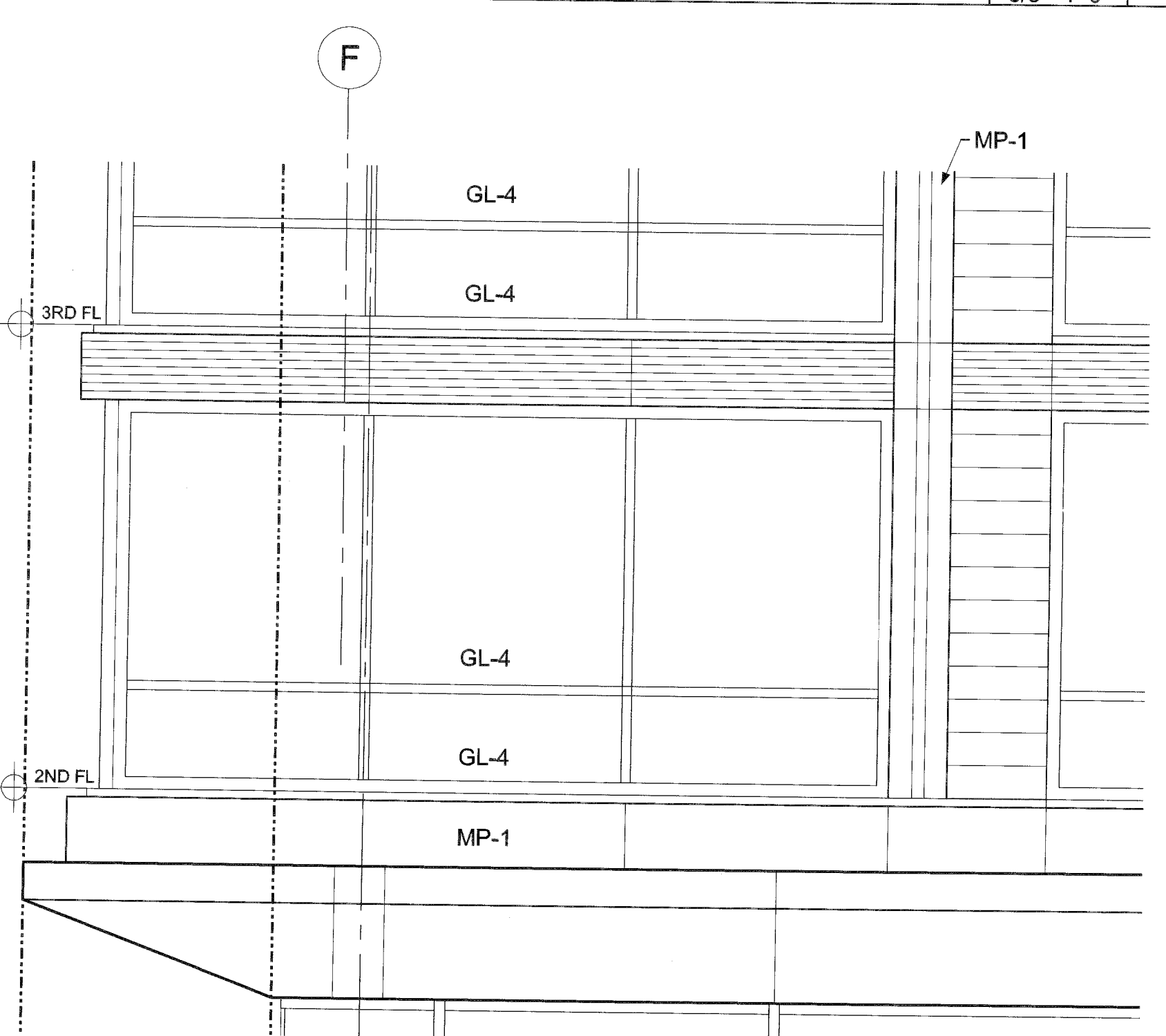
PARTIAL ELEVATION

SCALE
3/8"=1'-0"

04 5TH FLOOR - PARTIAL PLAN (3RD, 4TH, 6TH THRU 10TH SIM)



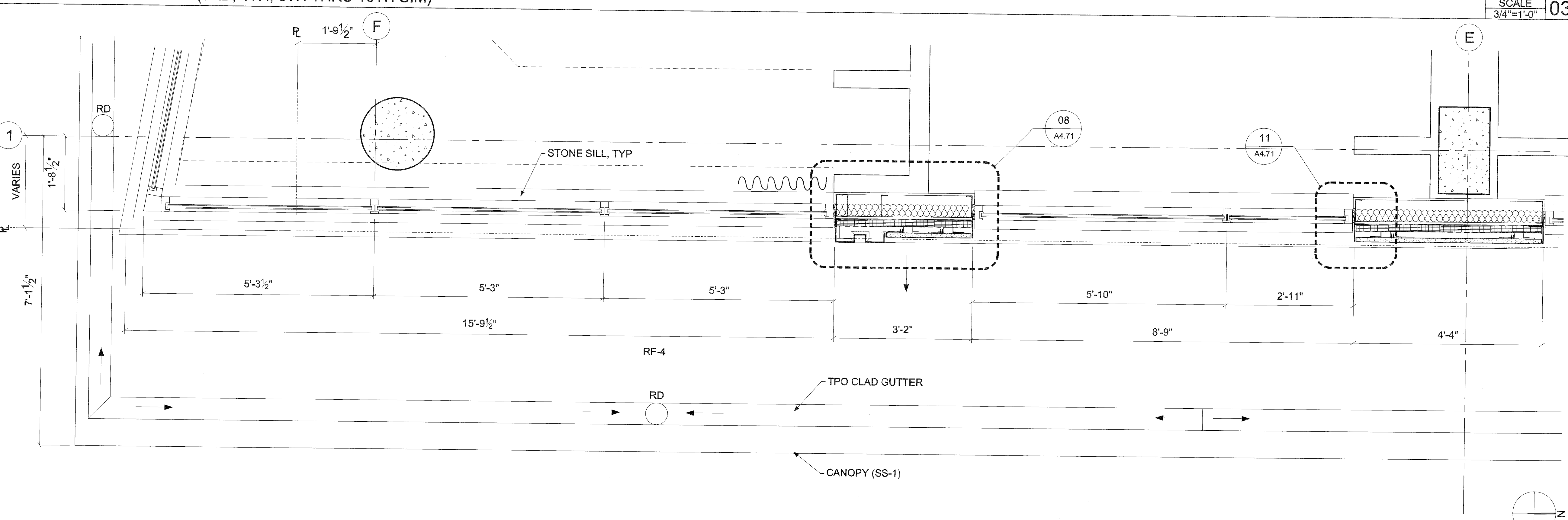
SCALE
3/4"=1'-0"



PARTIAL ELEVATION

SCALE
3/8"=1'-0"

02 2ND FLOOR - PARTIAL PLAN



SCALE
3/4"=1'-0"

shalom baranes associates architects

3299 K STREET NW, SUITE 400 WASHINGTON DC 20007
TEL: 202 342-2200 FAX: 202 342-1569

CONSULTANTS

STRUCTURAL ENGINEER
TADJER COHEN EDELSON ASSOCIATES INC.
1109 SPRING STREET
SILVER SPRING, MD 20910
TEL: 301-587-1820 FAX: 301-588-1966

CIVIL ENGINEER
VIRA CAPITOL, LLC
4810 MASSACHUSETTS AVE. NW, SUITE 214
WASHINGTON, DC 20016
TEL: 202-244-4140

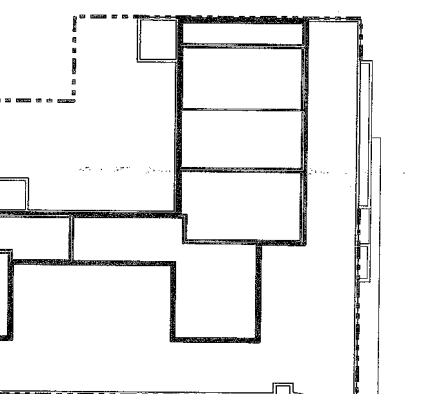
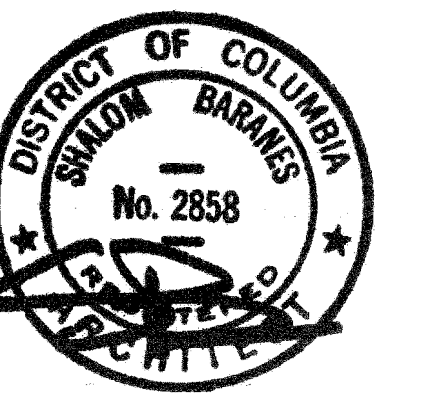
MEP ENGINEER
GHT LIMITED
1010 N. GLEBE RD., SUITE 200
ARLINGTON, VA 22201
TEL: 703-243-1200 FAX: 703 276-1376

INTERIOR DESIGNER
PARADIGM DESIGN GROUP
17240 HUFFMEISTER RD, SUITE 105
CYPRESS, TX 77429
TEL: 281-256-1689

LANDSCAPE
OCULUS
2410 17TH STREET, NW, SUITE 201
WASHINGTON, DC 20009
TEL: 202-588-5454

HILTON GARDEN INN
WEST END
2201 M Street NW
Washington DC 20037

OWNER
STARPEROTO M STREET
PARTNERS, LLC



SBA PROJECT NO: 21-107

ENLARGED PLANS
AND ELEVATIONS

SCALE: VARIES

ISSUED:
05 JAN 12 PRELIMINARY PLANS
24 FEB 12 75% DD SET
02 APR 12 3RD PARTY REVIEW
30 APR 12 ISSUE FOR BID
07 JUNE 12 ISSUE FOR PERMIT

REVISIONS:

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A4.54

PROGRESS DATE: mm dd yy

ATTACHMENT D

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

Appeal of 22 West, A Condominium and ANC 2A

Appeal No. 18793

DECLARATION OF DENNIS MITCHELL

1. My name is Dennis Mitchell, I am over the age of 18, and competent to give this Declaration which is based upon my personal knowledge of the events described below.
2. I am the Development Manager for construction of the Hilton Garden Inn at 2201 M Street, NW which is the subject of the appeal (the "Hotel"). The property is owned by PerStar M Street Partners LLC.
3. The sign which is the subject of this appeal is shown on sheets A2.02 and A4.54 of the permit plans that were submitted with the building permit application for the Hotel.
4. On October 24, 2012, the Department of Consumer and Regulatory Affairs ("DCRA") issued Building Permit No. B1205651, authorizing construction of the Hotel.
5. The Building Permit was continuously posted on the property, in plain view of the public, as required by the Building Code.
6. Construction commenced on or about August 8, 2012 and continued until May 8, 2014.
7. The main roof of the Hotel was in place by August 1, 2013.
8. As of April 28, 2014, the filing date of this appeal, the hard and soft costs for design, fabrication and permitting of the sign that is the subject of this appeal totalled \$20,031.75.
9. There is only one other hotel sign on the building, located on the entrance canopy on 22nd Street. This sign is not readily visible from M Street, NW.
10. If an extension of time is granted, and this appeal is allowed to proceed, and if the Board grants the appeal, this leaves the Hotel with the possibility of having only one sign on the Hotel, over the canopy facing 22nd Street, and not readily visible from M Street, which is the major corridor in this vicinity of the District. Adequate signage is a very important component for a Hotel.
11. Based upon standard industry modelling pro formas, we will incur financial losses of approximately \$20,000 per month as a result of lost revenue and service recovery (directly addressing guest complaints, and adverse reviews on social media) as a result of insufficient signage, making it difficult for guests to find the Hotel.

Pursuant to 28 U.S.C. §1746, the undersigned declares under the penalty of perjury that the foregoing is true and correct. Executed this 22 day of September, 2014.

A handwritten signature in black ink, appearing to read "Dennis Mitchell", is written over a horizontal line.

Dennis Mitchell

ATTACHMENT E

Spach, Lynn A (WAS - X72465)

From: Quin, Wayne S (WAS - X77274)
Sent: Tuesday, December 31, 2013 5:24 PM
To: Collins, Christopher H (WAS - X77841)
Subject: Fwd: Hilton Garden Inn, Z.C. Order 07-21B
Attachments: signphoto.jpg

From Sally B.

Sent from my iPhone

Begin forwarded message:

From: Sally Blumenthal <salkist2@aol.com>
Date: December 31, 2013 at 1:42:06 PM EST
To: <Wayne.Quin@hklaw.com>
Subject: Hilton Garden Inn, Z.C. Order 07-21B

Hi Wayne,

This was Chris Collins' case but I am writing to you because I don't have his email address.

The Board of Directors of 22 West submitted written testimony to the Zoning Commission in opposition to this project and I testified on behalf of the Board at the hearing. While we would have much preferred residential development to yet another hotel, we enumerated a number of architectural and operational rationales as to why the proposed project would not be consistent with the high-quality residential neighborhood that the West End has become over the last decade. Our letter of opposition is Exhibit 32 in the ZC Case File.

In the interim since the Zoning Commission issued its order to approve the PUD in February 2012, I have been watching the construction progress from my apartment and I must admit that it will be an attractive building when completed although the jury is still out on whether or not it will function successfully due to its lack of sufficient operational infrastructure at what is already an extremely congested location without intruding on the neighborhood. Additionally, in the meantime, I have been elected President of the 22 West Board of Directors.

One of our most specific comments to the Zoning Commission was opposition to any signage on the facade of building, particularly illuminated from within, and that only the proposed sign above the entrance on 22nd Street should be made a condition of approval of the PUD. The ANC's support of the project was similarly conditioned. The Z.C. Order 07-21B Decision states at A.1. Project Development in part:

"The PUD shall be developed in accordance with the architectural plans and elevations . . . the hotel 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 facade of the hotel or illuminated from within."

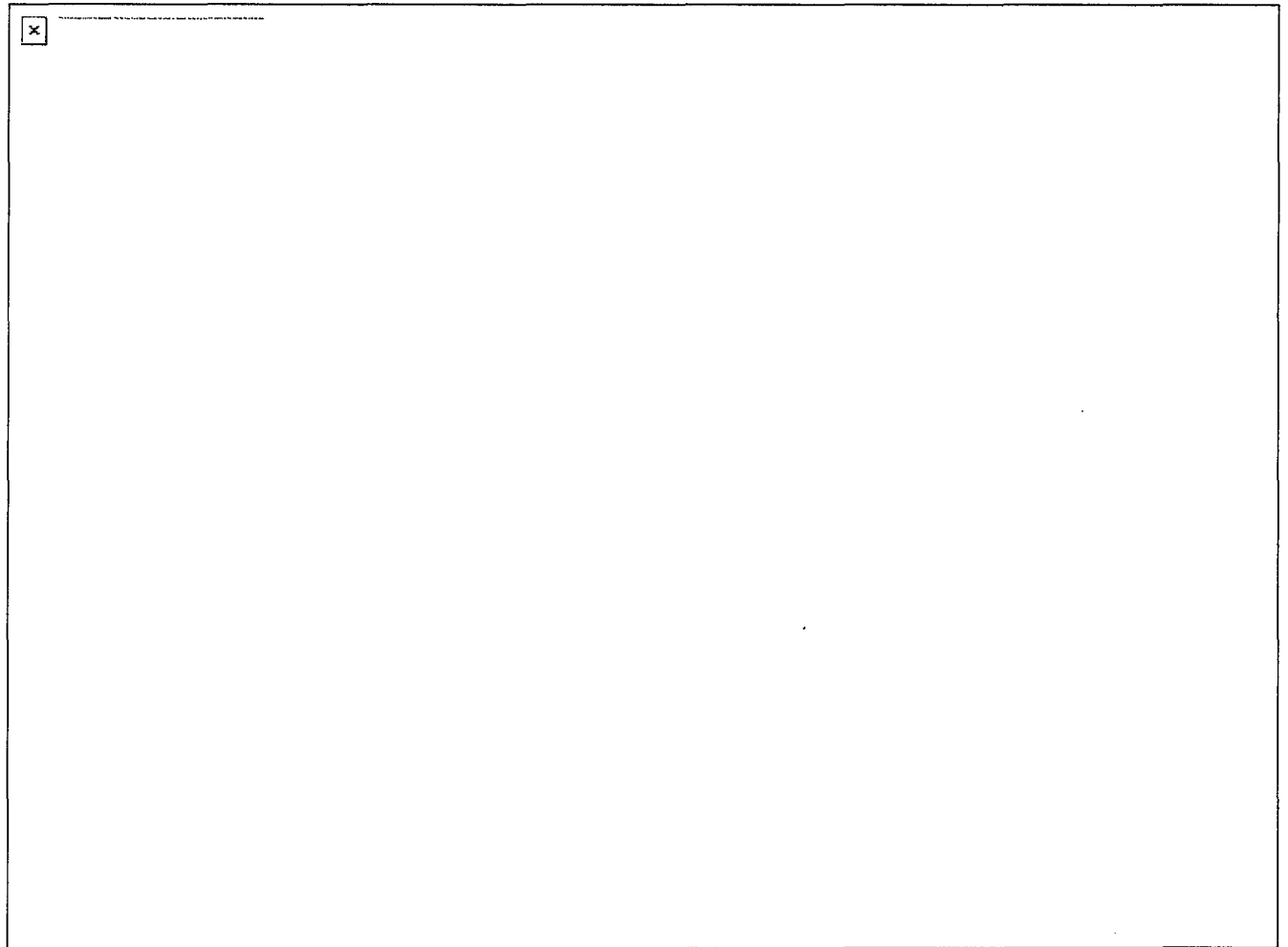
Nevertheless in the last few days six brackets spanning about 15' have been installed on the 22nd Street facade above the 10th floor corner room and what appears to be wiring is dangling from the corner of the structure where the aluminum trim pieces have yet to be put in place. I am attaching a photo which should clarify my point.

I am hopeful that there is an explanation for these newly installed elements that is not blatantly in violation of the Commission's Order granting approval to the PUD.

I would be happy to discuss with either you and/or Chris once you have had a chance to sort this out. I can be reached at 202 338-5975.

Hope 2014 brings you health, happiness and many fish.

Sally Blumenthal





ATTACHMENT F

Spach, Lynn A (WAS - X72465)

From: Collins, Christopher H (WAS - X77841)
Sent: Monday, February 10, 2014 3:23 PM
To: 'salkist2@aol.com'
Subject: FW: Hilton Garden Inn, Z.C. Order 07-21B
Attachments: signphoto.jpg

Dear Sally--Thanks for your inquiry to Whayne below. The brackets in your photo are for a back-lighted sign, as shown on the plans approved by the Zoning Commission. I apologize for the delay in responding to you, but I was double-checking with the zoning authorities to confirm that this sign is permitted by the Zoning Commission's order, before responding back to you. The sign is not in violation of the zoning order.

Please feel free to call if you have any questions.

Regards,

Chris

Christopher H. Collins, LEED AP | Holland & Knight
Partner
800 17th Street, NW Suite 1100 | Washington DC 20006
Phone 202.457.7841 | Fax 202.955.5564
chris.collins@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Quin, Whayne S (WAS - X77274)
Sent: Tuesday, December 31, 2013 5:24 PM
To: Collins, Christopher H (WAS - X77841)
Subject: Fwd: Hilton Garden Inn, Z.C. Order 07-21B

From Sally B.

Sent from my iPhone

Begin forwarded message:

From: Sally Blumenthal <salkist2@aol.com>
Date: December 31, 2013 at 1:42:06 PM EST
To: <Whayne.Quin@hklaw.com>
Subject: Hilton Garden Inn, Z.C. Order 07-21B

Hi Whayne,

This was Chris Collins' case but I am writing to you because I don't have his email address.

The Board of Directors of 22 West submitted written testimony to the Zoning Commission in opposition to this project and I testified on behalf of the Board at the hearing. While we would have much preferred residential development to yet another hotel, we enumerated a number of architectural and operational rationales as to why the proposed project would not be consistent with the high-quality residential neighborhood that the West End has become over the last decade. Our letter of opposition is Exhibit 32 in the ZC Case File.

In the interim since the Zoning Commission issued its order to approve the PUD in February 2012, I have been watching the construction progress from my apartment and I must admit that it will be an attractive building when completed although the jury is still out on whether or not it will function successfully due to its lack of sufficient operational infrastructure at what is already an extremely congested location without intruding on the neighborhood. Additionally, in the meantime, I have been elected President of the 22 West Board of Directors.

One of our most specific comments to the Zoning Commission was opposition to any signage on the facade of building, particularly illuminated from within, and that only the proposed sign above the entrance on 22nd Street should be made a condition of approval of the PUD. The ANC's support of the project was similarly conditioned. The Z.C. Order 07-21B Decision states at A.1. Project Development in part:

"The PUD shall be developed in accordance with the architectural plans and elevations . . . the hotel 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 facade of the hotel or illuminated from within."

Nevertheless in the last few days six brackets spanning about 15' have been installed on the 22nd Street facade above the 10th floor corner room and what appears to be wiring is dangling from the corner of the structure where the aluminum trim pieces have yet to be put in place. I am attaching a photo which should clarify my point.

I am hopeful that there is an explanation for these newly installed elements that is not blatantly in violation of the Commission's Order granting approval to the PUD.

I would be happy to discuss with either you and/or Chris once you have had a chance to sort this out. I can be reached at 202 338-5975.

Hope 2014 brings you health, happiness and many fish.

Sally Blumenthal

ATTACHMENT G

From: **Sally Blumenthal** salkist2@aol.com
Subject: Hilton Garden Inn, ZC Order No. 07-21B
Date: February 12, 2014 at 1:26 PM
To: Matt.Legrant@dc.gov
Cc: Nicholas.Majett@dc.gov, Jack Evans jevans@dccouncil.us, Florence Harmon florencedc@comcast.net, Sherri Kimbel skimbel@dccouncil.us

Dear Mr. Legrant,

As the President of the Homeowners Association of 22 West, A Condominium, which is located across the street from the Hilton Garden Inn, I am writing to you to request that you enforce the provisions of the Zoning Commission's Order No. 07-21B, of February 3, 2012 in which the Commission approved PUD Modifications @ Square 50, which is currently under construction by PerStar M Street Partners, LLC.

In late December 2013, six brackets spanning about 15' were installed on the 22nd Street facade above the 10th floor and what appears to be electrical wire is dangling from the corner of the structure where the aluminum trim pieces have yet to be put in place. Attached is a photo of that condition.

22 West submitted written testimony to the Zoning Commission in opposition to the project and I testified on behalf of the Board at the hearing. Our letter of opposition is Exhibit 32 in the Zoning Commission case file. One of our most specific comments to the Commission was opposition to any signage vertically mounted on the facade of the building, particularly illuminated from within, and that only the proposed sign above the entrance on 22nd Street should be made a condition of approval of the PUD. The ANC's support of the project was similarly conditioned. The Commission discussed the issue of the signage at some length at its hearing of October 27, 2011.

Z.C Order 07-71B contains two specific references to the hotel's signage.

First, under Contested Issues, at pages 19-20, 43.b. *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 A1 of the Applicant's final set of plans (submitted as Exhibit 24) and the sign cannot be at a different location or be vertically mounted on the facade 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 24, [footnote 2 states: Each note indicated that the location and dimension of the signage was for illustrative purposes only.] but subject to the flexibility allowed under Condition No. 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 facade of the hotel or illuminated from within."

Finally, the transcript of the Zoning Commission's meeting of December 12, 2011, at which it took final action on Z.C. Case No. 07-21B, states at pages 14-15:

VICE CHAIRMAN SCHLATER: Mr. Chairman, I would just like to say I reviewed the order in pretty good detail and I think the Office of the Attorney General did an excellent job capturing the discussion that we had. In particular, related to the discussion of the lay-by-lanes, **the discussion of the hotel sinage** (sic) [Emphasis added] and the discussion of the Francis Field Park and I'm prepared to support this moving forward.

It cannot be clearer that the Zoning Commission did not approve a sign vertically mounted on the facade of the hotel and lighted from within.

Nevertheless, as a result of my inquiry to Holland and Knight on December 31, 2013, I received the following by email from Chris Collins on February 10:

Dear Sally--Thanks for your inquiry to Wayne below. The brackets in your photo are for a back-lighted sign, as shown on the plans approved by the Zoning Commission. I apologize for the delay in responding to you, but I was double-checking with the zoning authorities to confirm that this sign is permitted by the Zoning Commission's order, before responding back to you. The sign is not in violation of the zoning order.

Please feel free to call if you have any questions.

Regards,

From: chris.collins@hklaw.com 
Subject: FW: Hilton Garden Inn, Z.C. Order 07-21B
Date: February 10, 2014 at 3:24 PM
To: salkist2@aol.com

Dear Sally--Thanks for your inquiry to Wayne below. The brackets in your photo are for a back-lighted sign, as shown on the plans approved by the Zoning Commission. I apologize for the delay in responding to you, but I was double-checking with the zoning authorities to confirm that this sign is permitted by the Zoning Commission's order, before responding back to you. The sign is not in violation of the zoning order.

Please feel free to call if you have any questions.

Regards,

Chris

Christopher H. Collins, LEED AP | Holland & Knight

Partner

800 17th Street, NW Suite 1100 | Washington DC 20006

Phone 202.457.7841 | Fax 202.955.5564

chris.collins@hklaw.com | www.hklaw.com

[Add to address book](#) | [View professional biography](#)

From: Quin, Wayne S (WAS - X77274)
Sent: Tuesday, December 31, 2013 5:24 PM
To: Collins, Christopher H (WAS - X77841)
Subject: Fwd: Hilton Garden Inn, Z.C. Order 07-21B

From Sally B.

Sent from my iPhone

Begin forwarded message:

From: Sally Blumenthal <salkist2@aol.com>
Date: December 31, 2013 at 1:42:06 PM EST
To: <Wayne.Quin@hklaw.com>
Subject: Hilton Garden Inn, Z.C. Order 07-21B

Hi Wayne,

This was Chris Collins' case but I am writing to you because I don't have his email address.

The Board of Directors of 22 West submitted written testimony to the Zoning

Commission in opposition to this project and I testified on behalf of the Board at the hearing. While we would have much preferred residential development to yet another hotel, we enumerated a number of architectural and operational rationales as to why the proposed project would not be consistent with the high-quality residential neighborhood that the West End has become over the last decade. Our letter of opposition is Exhibit 32 in the ZC Case File.

In the interim since the Zoning Commission issued its order to approve the PUD in February 2012, I have been watching the construction progress from my apartment and I must admit that it will be an attractive building when completed although the jury is still out on whether or not it will function successfully due to its lack of sufficient operational infrastructure at what is already an extremely congested location without intruding on the neighborhood. Additionally, in the meantime, I have been elected President of the 22 West Board of Directors.

One of our most specific comments to the Zoning Commission was opposition to any signage on the facade of building, particularly illuminated from within, and that only the proposed sign above the entrance on 22nd Street should be made a condition of approval of the PUD. The ANC's support of the project was similarly conditioned. The Z.C. Order 07-21B Decision states at A.1. Project Development in part:

"The PUD shall be developed in accordance with the architectural plans and elevations . . . the hotel 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 facade of the hotel or illuminated from within."

Nevertheless in the last few days six brackets spanning about 15' have been installed on the 22nd Street facade above the 10th floor corner room and what appears to be wiring is dangling from the corner of the structure where the aluminum trim pieces have yet to be put in place. I am attaching a photo which should clarify my point.

I am hopeful that there is an explanation for these newly installed elements that is not blatantly in violation of the Commission's Order granting approval to the PUD.

I would be happy to discuss with either you and/or Chris once you have had a chance to sort this out. I can be reached at 202 338-5975.

Hope 2014 brings you health, happiness and many fish.

Sally Blumenthal

Chris

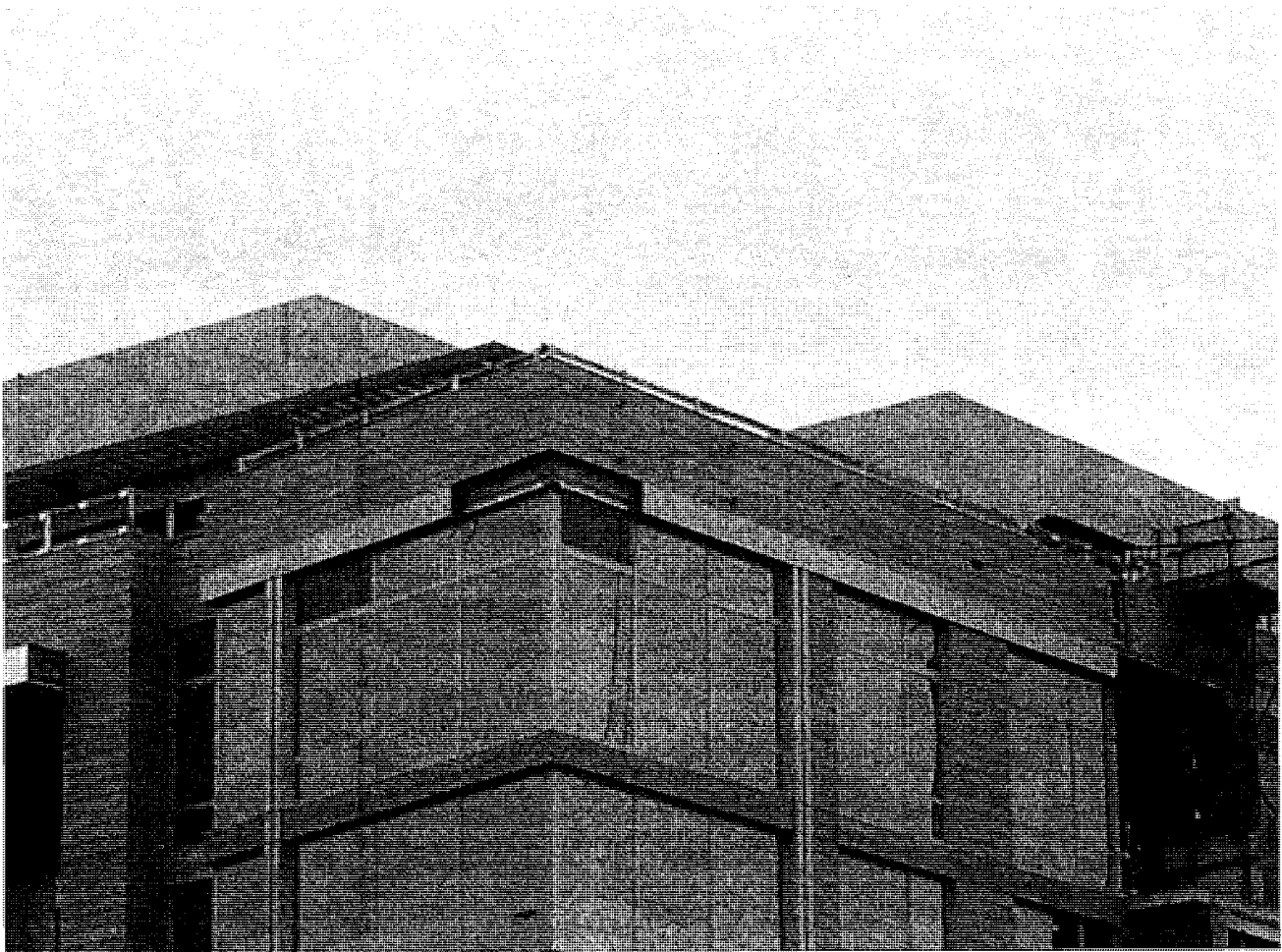
As of this email to you, my phone call to Mr. Collins, which he requested if I had any questions, has not been returned.

In light of the above, I am requesting the following to correct what is a blatant violation of Z.C Order No. 07-21B.

1. Enforcement of Z.C. Order No. 07-21B which conditions approval of the PUD on "the hotel sign shall be above the hotel's entrance on 22nd Street."
2. A copy of any documentation of a decision by you, "zoning authorities," or any other DCRA official that found that a sign lighted from within and vertically mounted on the facade is permitted by the Zoning Commission's Order.
3. A copy of your direction to the applicant that a backlighted sign shall not be vertically mounted on the facade.
4. A copy of your direction to the applicant that the brackets and electrical service shall be removed to preclude future installation of a sign vertically mounted on the facade and lighted from within.

Please feel free to contact me at (202) 338-5975 if you need additional information or wish to discuss this further.

Sally Blumenthal
1177 22nd Street, NW
Washington, DC 20037



ATTACHMENT H



Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

Regular Meeting Minutes

Wednesday, February 15, 2014; 7:00 p.m.
School Without Walls – 2130 G Street NW

Call to Order

Chair Patrick Kennedy (01) called the meeting to order at 7:02 pm. Commissioners Rebecca Coder (02), Asher Corson (03), Armando Irizarry (04), Graham Galka (05), Florence Harmon (06), Jackson Carnes (07), and Peter Sacco (08) were present.

Commissioner Sacco made a motion to adopt the agenda. Commissioner Coder seconded the motion, which was vote on and passed (VOTES: 8-0).

Community Forum

Safety Report

Officer David Hunter was present to give the safety report. Officer Hunter said that total crime in the neighborhood was down by seventeen percent and property crime was down by twenty-four percent.

Commissioner Sacco asked Officer Hunter about a question he had recently received from a neighbor regarding a lack of police enforcement during the closing and opening times of the hypothermia warming shelter at the West End Library. Officer Hunter said that at least once officer spent each night either in the shelter or outside in a cruiser.

Barbara Kahlow, a neighborhood resident, asked what was being done with regards to the homeless encampments located in between Foggy Bottom and Georgetown. Officer Hunter said that hypothermia season presented an interesting dilemma and that focus on homeless encampments would begin in the spring.

Officer Hunter talked about a recent scam where people posing as PEPCO employees were calling residents demanding money for unpaid bills. He told everyone to avoid any scams where people demand money over the phone.

Chair Kennedy asked about some recent violent attacks at local clubs. He asked if there were any visible trends with the attacks. Officer Hunter said that he hadn't noticed any trends in our neighborhood.

New Hampshire Avenue Streetscape Update

though the public still owns the space.

Commissioner Harmon said that she would like the applicant to amend the application so that it would state that the entertainment would only be in the ballroom and specifically not in the restaurant.

Commissioner Corson said that the hours for Café Deluxe should be consistent with other establishments in the neighborhood and that no other neighborhood establishments have amplified outdoor music.

Chair Kennedy proposed to amend the resolution to just say that ANC 2A protests the application based on adverse impacts to peace, order, and quiet, residential parking, vehicular and pedestrian safety, and impact on residential real property values. Commissioner Harmon also suggested that the resolution should state that Chair Kennedy and Commissioner Harmon would represent the ANC on the issue.

Mr. Kline said that, based on the multiple concerns voiced by neighbors, his team would not recommend that they amend the ABRA application any further in the event that his team has to go to a hearing with ABRA.

Commissioner Harmon made a motion to adopt the amended resolution. Commissioner Irizarry seconded the motion, which was voted on and passed. (VOTES: 8-0)

Public Space Application for Hyatt Place Hotel at 2121 M Street

Commissioner Harmon, in whose SMD the hotel project lies, talked about the public space application. She said that the ANC does not know if a new public space application was filed, and since the ANC has only heard that the new application was filed but that the ANC has not actually received the new application, that the ANC should object to any outstanding application.

Commissioner Harmon presented a resolution of objection to the public space application. She said the objection was based on the placement of the hotel's drop-off zone in the new street bike lane, in addition to other issues that the parties involved were currently addressing. She added that the ANC could withdraw the objection at a later point in time.

Commissioner Coder made a motion to adopt the resolution. Commissioner Irizarry seconded the motion, which was voted on and passed. (VOTES 8-0)

Resolution Regarding Exterior Sign at Hilton Garden Inn

Sally Blumenthal, president of the condominium association at 22 West, presented on the issue. She said that the Hilton Garden Inn would have a ribbon cutting in a few months and that residents had concerns about the new exterior sign the hotel installed. She also said that the ANC previously objected to having a backlit sign on the façade of the hotel

and that the plans approved by the Zoning Commission did not include a backlit sign.

Ms. Blumenthal then said that a backlit sign has recently appeared on the hotel. She said that she called the hotel's lawyer for the project, who said that the sign conforms to the previous zoning order. She added that she then contacted the Zoning Administrator to ask that they enforce the zoning order and explain why the sign conforms to the order.

Ms. Blumenthal said that she was asking the ANC to support the local residents in pushing the applicant to change the sign. She said that if the applicant does not change the sign, a group of local residents would appeal to the Board of Zoning Adjustment (BZA).

Commissioner Corson asked what the ANC would be voting on. Ms. Blumenthal said that the ANC would be part of a letter asking the Zoning Administrator to enforce the zoning order for the sign.

Commissioner Harmon made a motion to support Ms. Blumenthal's request. Commissioner Coder seconded the motion. Commissioner Corson asked for an amendment that the resolution should say that the exterior sign should not be installed. Both Commissioner Harmon and Commissioner Coder accepted the amendment as friendly. The final motion was voted on and passed. (VOTES: 8-0)

Application to List the Former O.S.S. Headquarters Building on the National Register of Historic Places

Commissioners Harmon and Irizarry recused themselves from discussing and voting on the matter.

Dr. Peter Sefton, the Landmarks Chair for the D.C. Preservation League, was present to talk about the matter. Mr. Sefton said that the D.C. Preservation League was looking to have the O.S.S. Headquarters building added to the National Register of Historic Places. He distributed a handout summarizing the history of the site.

Mr. Sefton said that the D.C. Office of Historic Preservation believes that the site is eligible for the National Register of Historic Places; however, the site has not been added yet.

Mr. Sefton added that the State Department, which owns the O.S.S. property, originally planned to tear down the building in 2008 to make way for a new State Department complex. He added that, currently, the State Department has promised to preserve the O.S.S. Building as part of the new complex.

Mr. Sefton said that he believes the National Register listing would help protect the building from the possibility of the State Department deciding to tear it down. He showed the Commission an old photo of the O.S.S. complex from the late 1950s.

ATTACHMENT I

From: **LeGrant, Matt (DCRA)** matthew.legrant@dc.gov 
Subject: RE: Hilton Garden Inn, ZC Order No. 07-21B
Date: February 28, 2014 at 5:22 PM
To: Sally Blumenthal salkist2@aol.com
Cc: Majett, Nicholas (DCRA) nicholas.majett@dc.gov, Evans, Jack (COUNCIL) JACKEVANS@DCCOUNCIL.US, Florence Harmon florencedc@comcast.net, Kimbel, Sherri (COUNCIL) SKimbel@DCCOUNCIL.US

Sally Blumenthal-

I have concluded my review of your February 12, 2014 email in which you expressed concerns over the signage for the Hilton Garden Inn hotel, which was authorized by the Zoning Commission by PUD Order #07-21B. As I may have noted to you I was contacted by Christopher Collins and Kyrus Freeman, both of Holland and Knight, counsel for the hotel about this matter as well. Mr. Freeman met with me in January regarding this issue and following our meeting I wrote him [see attached letter dated 2-10-14] about my determination.

As you noted, Condition A.1 of PUD Order #07-21B addresses certain aspects of the hotel's signage. It 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 24, [footnote 2 states: Each note indicated that the location and dimension of the signage was for illustrative purposes only.] but subject to the flexibility allowed under Condition No. 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 facade of the hotel or illuminated from within.

As I noted in my letter, the Zoning Commission's approval included Exhibit 36 (which is attached to my 2-10-14 letter). That Exhibit shows the not only the sign "...above the hotel's entrance on 22nd Street..." [labeled B], but also a sign on the top of the exterior of the building [labeled B] . Although this reduced copy of Exhibit 36 is a little hard to read, (and I can ask the Office of Zoning for a larger, clearer copy if needed), I conclude that the Zoning Commission's approval did not restrict the Hilton Garden Inn to a single sign that is referred to in Condition 1.A. In fact my examination of the totality of the record 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.

Upon receipt of your concern, I re-reviewed by 2-10-14 determination; however I do not see that there is new information that causes me to change my determination. Therefore, I conclude that the present installation of the signs at the top of the hotel building's exterior is not a violation of PUD 07-21B, so no enforcement action is applicable. The hotel entrance sign that is subject to Condition A.1 will be fully subjected to the Zoning Commission's requirements.

Please let m know if you have any further questions.

Best Regards,

Matthew Le Grant

Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
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Washington, DC 20024
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ATTACHMENT J



Advisory Neighborhood Commission 2A

"Serving the Foggy Bottom and West End communities of Washington, D.C."

April 28, 2014

Mr. Lloyd Jordan
Chairperson
Board of Zoning Adjustment
441 4th Street, N.W. Suite 200S
Washington, DC 20001
bzasubmissions@dc.gov

RE: 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.

Dear Chair Jordan,

At its regular meeting on March 19, 2014, Advisory Neighborhood Commission 2A ("ANC 2A" or "Commission") considered the above-referenced matter. With five of eight commissioners present, a quorum at a duly-noticed public meeting, the Commission approved the following resolution by a vote of (5-0):

ANC 2A joins with 22 West, A Condominium ("22West") in submitting an Appeal to the Board of Zoning Adjustment ("Board" or "BZA") of the Determination by the Zoning Administrator, 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 the appellant's filings, this Determination by the Zoning Administrator was erroneously issued in violation of the Zoning Order for the numerous reasons articulated and must be REVOKED.

Commissioners Patrick Kennedy (Patrick.Kennedy@anc.dc.gov), Rebecca Coder (rebeccacoder@mac.com), and Florence Harmon (florencedc@comcast.net) are the Commission's authorized representatives before the B.Z.A. in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

Patrick Kennedy
Chairperson

Board of Zoning Adjustment
District of Columbia
CASE NO. 18793
EXHIBIT NO. 5