

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-21B

Z.C. Case No. 07-21B
PerStar M Street Partners, LLC
(PUD Modifications @ Square 50)
November 28, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 27, 2011, to consider an application from PerStar M Street Partners, LLC, owner of Lot 87 (former Lots 82, 84, 813, 814, and 816) in Square 50 ("Applicant"), for approval of modifications to a planned unit development ("PUD") approved pursuant to Z.C. Order No. 07-21. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On June 20, 2011, the Applicant submitted an application to the Commission for approval of modifications to a PUD approved pursuant to Z.C. Case No. 07-21. (Exhibits 1-6.)
2. The site consists of Lot 87 (former Lots 82, 84, 813, 814, and 816) in Square 50 ("Subject Property"), and has a land area of approximately 15,588 square feet.
3. The Subject Property is located in the CR Zone District at the northwest corner of 22nd and M Streets, N.W. Square 50 is bounded by M, 22nd, N, and 23rd, Streets, N.W.
4. The Commission approved a PUD for the Subject Property in Z.C. Order No. 07-21, dated May 12, 2008. The approved hotel project includes approximately 122,235 square feet of gross floor area, including 148 to 170 hotel rooms and suites, ground-floor restaurant space, landscaped outdoor space, a spa, and below-grade parking. The building was approved at a maximum height of 110 feet, exclusive of roof structures. The approved plans include 42 striped off-street parking spaces accessed by a vehicular elevator in a valet-operated garage that has a maximum capacity of 71 vehicles. The overall density of the project was approved for a floor area ratio ("FAR") of 7.84. By

letter dated September 30, 2008, and pursuant to his authority under § 409.6 of the Zoning Regulations, and the flexibility granted by the Commission in Z.C. Order No. 07-21, the Zoning Administrator approved administrative modifications to the PUD plans, resulting in a 1.6% increase in the building's density to a 7.97 FAR.

5. Pursuant to Z.C. Order No. 07-21A, dated May 10, 2010, the Commission granted a two-year extension such that a building permit application for the approved PUD must be filed no later than June 27, 2012, and construction must commence no later than June 27, 2013.
6. The Applicant now seeks modifications to the approved PUD. Specifically, the Applicant requests approval to redesign the exterior façades of the building; to increase the maximum number of hotel rooms from 170 to 238; to reduce the building's height from 110 feet to approximately 107 feet; and to provide 53 striped off-street parking spaces accessed by a ramp in a valet-operated garage. The overall density of the modified project is a 7.99 FAR, which is consistent with the applicable CR Zone District PUD guidelines. Except for these modifications and the additional modifications noted in Finding of Fact No. 10, the proposed project, in all other respects, will be substantially consistent with the prior approval and the conditions set forth in Z.C. Order No. 07-21.
7. At its public meeting held on July 25, 2011, the Commission voted to schedule a public hearing on the application.
8. On July 29, 2011, the Applicant submitted a Prehearing Statement. (Exhibit 14.) The Prehearing Statement included revised plan sheets regarding the design of the roof structure; additional information regarding the Applicant's coordination with the D.C. Department of Transportation ("DDOT"), and the D.C. Department of the Environment; the estimated jobs to be created as a result of the project; the design and use of the ground-floor retail space included in the project; and the materials required pursuant to § 3013 of the Zoning Regulations.
9. On October 7, 2011, the Applicant submitted supplemental pre-hearing materials. (Exhibits 23 and 24.) The supplemental pre-hearing materials included an economic impact analysis prepared by Bolan Smart Associates, Inc.; a construction management plan; a parking evaluation memorandum, dated September 12, 2011; and a supplemental transportation analysis letter, dated October 6, 2011, both prepared by Wells & Associates, Inc. ("Wells"); a letter from a parking management company confirming the availability of local garages to accommodate any overflow parking demand for the hotel; the Applicant's modified list of proffered amenities; a memorandum prepared by the project architect; and Final Architectural Plans and Elevations.
10. The modifications sought to the amenities were:

- With respect to the replacement or installation of trees, if any of the trees in the 10 listed locations are replaced before the amenity funds are delivered, the Applicant must work with DDOT to locate appropriate sites within the same proximity of the hotel site as those listed above, or as close to the site as possible, for tree installation;
 - The proposed dog park at Francis Field would be substituted for the proposed 26th Street Dog Park as the recipient as the beneficiary of construction assistance; and
 - The payment to Iris Miller for development of a landscaping plan for the project would be reduced to \$1,000 to reflect the actual costs of the services already rendered in connection with the original PUD plans, and the remainder of the original sum would be allocated between the public space improvements.
11. On August 24, 2011, the West End Citizens Association ("WECA") submitted a request for party status in support of the application. (Exhibit 18.) At the October 27, 2011 public hearing, the Commission granted WECA party status in support. WECA submitted a letter in support of the project and also testified at the public hearing in support of the project. (Exhibits 18 and 39.)
 12. On October 12, 2011, the Foggy Bottom Association ("FBA") submitted a request for party status in support of the application. (Exhibit 27.) At the October 27, 2011 public hearing, the Commission granted FBA party status in support.
 13. On October 12, 2011, West End Friends ("WEF") submitted a request for party status in support of the application. (Exhibit 30.) At the October 27, 2011 public hearing, the Commission denied WEF's request for party status because WEF did not indicate how the organization's interests would be more significantly, distinctively, or uniquely affected in character or kind by the proposed development than that of other persons in the general public, as required pursuant to § 3022.3 of the Zoning Regulations. Instead WEF participated as an organization in support of the project at the public hearing.
 14. On October 13, 2011, 22 West, A Condominium ("22 West") submitted a request for party status in opposition to the application. (Exhibit 28.) 22 West submitted a letter describing their concerns and a representative of 22 West submitted a written copy of their testimony public hearing. (Exhibits 32 and 40). At the October 27, 2011 public hearing, the Commission was unable to reach a consensus on party status, voting 2-2-1 to grant 22 West's request for party status, and also voting 2-2-1 to deny 22 West's request for party status. Therefore, because a majority decision was not reached to grant 22 West's request for party status, 22 West participated instead as an organization in opposition at the public hearing.
 15. Ward 2 Councilmember Jack Evans submitted a letter in support of the application. (Exhibit 34.) Councilmember Evans indicated that the Subject Property has remained

vacant and underutilized for far too long; that the Applicant has agreed to execute First Source and Certified Business Enterprises (“CBE”) agreements; and that the proposed hotel will provide much needed construction and hotel jobs, and tax revenue for the residents of the District of Columbia. Councilmember Evans also indicated that the Applicant has been responsive to the community in proposing an amenity list that addresses a variety of neighborhood issues and interests, and that the Applicant has worked with the community to address the concerns raised by some in the community. Councilmember Evans concluded the letter by requesting that the Commission grant approval for this application as soon as possible.

16. Lionel Gloster, a representative of St. Mary's Episcopal Church, testified in support of the application. Mr. Gloster testified about the church's continued need for the Applicant's contribution of \$35,000 as reimbursement for funds expended by the church in reliance upon the Applicant's commitment to pay for a portion of the church's renovation costs, as required pursuant to Decision No. 6(b) of Z.C. Order No. 07-21.
17. Columbia Realty Ventures, LLC, the owner of 1220 22nd Street, N.W., which is located to the immediate north of the Subject Property, submitted a letter in support of the project. (Exhibit 25.)
18. Corner Point, LLC, the owner of 2215 M Street, N.W., which is located to the immediate west of the Subject Property, also submitted a letter in support of the project. (Exhibit 26.)
19. After proper notice, the Commission held a public hearing on the application on October 27, 2011.
20. The parties to the case were the Applicant, ANC 2A, WECA, and FBA.
21. Six principal witnesses testified on behalf of the Applicant at the public hearing, including Thomas S. Messervy, on behalf of OTO Development, LLC; Robert Geimer, on behalf of Starwood Capital Group; Shalom Baranes and Patrick Burkhart, on behalf of Shalom Baranes and Associates, as experts in architecture; Jami Milanovich, on behalf of Wells, as an expert in transportation planning and analysis; and Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Eric Smart was also available to testify on behalf of Bolan Smart Associates, Inc. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Baranes, Mr. Burkhart, Ms. Milanovich, and Mr. Sher were qualified by the Commission as experts in their respective fields.
22. The Office of Planning ("OP") and DDOT testified in support of the application at the public hearing.

23. ANC 2A submitted a letter dated September 21, 2011, indicating that at its duly noticed, regular monthly meeting on September 21, 2011, at which a quorum was present, ANC 2A voted 3 to 0 (with 1 recusal) to provide a non-objection in this case, predicated on the Applicant agreeing to:

- Implement a transportation management plan which: (1) specifically addresses charter bus management and the taxi queuing; (2) demonstrates how loading will occur and be managed; (3) limits hotel delivery hours to 8:00 a.m. to 9:00 p.m. on Monday through Friday, and 9:00 a.m. to 9:00 p.m. on Saturday and Sunday; and (4) requires the hotel to identify an individual responsible for loading, and management of transportation and safety issues adjacent to the front of the building;
- Revise the hotel's overall design by: (1) setting back the development along the corner of 22nd and M Streets to provide greater pedestrian clear way, to support more outdoor café seating, and revisit the size of the lay-by to address safety concerns; (2) requiring that the building's materials be superior in nature in accordance with the standards of the PUD and the originally approved architectural plan, specifically that the Applicant mute the ceramic textures, and incorporate a green wall along the end walls and add green elements to other areas of the building; and (3) ensuring that the signage is appropriate for the site;
- Provide a construction management plan which addresses the construction schedule and includes a provision regarding how issues will be resolved during the construction period; and
- Revise the community amenities package by: (1) designating the proposed retail space as a community amenity and requiring the Applicant to work with the neighborhood to identify an appropriate and unique, individually run restaurant operator for the space; (2) updating the amenities previously proposed given the completion of some of the amenity projects originally identified and changes in priorities within the neighborhood; and (3) requiring that the amenities be tangible, that they be clearly linked to the issuance of a Certificate of Occupancy for the hotel, and that the Applicant enter into a Memorandum of Understanding with each amenity recipient. The ANC also included specific comments regarding the approved public space improvements, the contribution towards the renovation of St. Mary's Church, the contribution towards the Biennial FBA Sculpture Project, the contribution toward the towards the renovation of the 26th Street Dog Park, and the contribution toward landscaping and the West End Street Plan. The ANC also recommend that if any of these projects do not move forward, then the Applicant should work with the neighborhood to dedicate funds towards the erection of a statue of Duke Ellington at the Duke Ellington Park located at New Hampshire Avenue and M and 21st Streets, N.W.

24. On November 3, 2011, the Applicant submitted a post-hearing submission. (Exhibit 43.) The post-hearing submission included the Applicant's formal responses to each of the issues identified both in ANC 2A's letter dated September 21, 2011, and the ANC representative's oral testimony at the public hearing. The submission also included a memorandum prepared by Wells, together with two sketches illustrating the proposed three-foot-wide lay-by and a full-size eight-foot-wide lay-by. The memorandum indicates that the design of the proposed three-foot-wide lay-by, which was initially approved by the Commission in Z.C. Order No. 07-21 and is shown on the Applicant's current plans, is the result of extensive discussion and vetting with DDOT. The memorandum indicates that the three-foot design was identified by the Applicant and DDOT as the preferred design since it will enable maximization of the sidewalk width along 22nd Street, and also creates a buffer zone for the safety of passengers boarding and alighting vehicles in the lay-by lane. The memorandum also indicates that although an eight-foot lay-by lane would allow vehicles stopped in the lay-by lane to be fully outside of the adjacent travel lane, it does not provide a buffer between the stopped vehicle and the adjacent through traffic.
25. On November 3, 2011, DDOT submitted a memorandum dated November 3, 2011, that described the agency's review of lay-bys for two other projects, and identified DDOT's criteria for evaluating requests for lay-by installations, including safety, operation, and urban design and environmental impacts. (Exhibit 45.) DDOT also indicated in this memorandum that the maximum permitted lay-by depth is eight feet.
26. On November 9, 2011, WECA submitted a letter recommending that the Commission and DDOT consider an eight foot lay-by, but without a six-foot-wide tree box adjacent to the lay-by, which would result in approximately 13.5 feet of sidewalk space. (Exhibit 46.)
27. On November 9, 2011, the Applicant submitted a memorandum prepared by Wells in response to DDOT's memorandum dated November 3, 2011. (Exhibit 47.) In this submission, Wells applied DDOT's criteria in evaluating lay-by requests to the proposed three-foot-wide lay-by and a full-size eight-foot-wide lay-by, and concluded that the proposed three-foot lay-by lane furthers DDOT's goals of providing a balanced transportation system. The memorandum noted that the final width of the lay-by lane ultimately will be decided through DDOT's review of the Public Space Permit. Therefore, the Applicant requested flexibility in the Commission's order to construct a lay-by lane with a minimum width of three feet and a maximum width of eight feet.
28. ¹The ANC submitted its response to the Applicant's and DDOT's submissions on November 15th. (Exhibit 49.) Through its submission, the ANC requested the Commission to: (1) require a minimum eight-foot lay-by lane; (2) include in this Order

¹ The ANC's responses to the submission by the Applicant and DDOT were due on November 4th and 10th, respectively. The Commission voted to accept the late filed response at its November 28th public meeting.

the Applicant's commitment to limit delivery hours to the daytime and to allow no loading from M Street; (2) include in this Order a condition that the hotel sign should be above the hotel's entrance on 22nd Street as shown on pages A1 and A2 of the Applicant's final set of plans (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; (3) require the Applicant to wash the windows of the neighboring building 22 West at regular intervals during construction, especially during excavation; and (4) identify as an amenity the Applicant's commitment to use the corner space as a restaurant and impose the requirement as a condition so as to bind all future owners.

29. The Commission then took proposed action to approve with conditions the application and plans that were submitted to the record.
30. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Home Rule Act. NCPC, by action dated December 1, 2011, found that the proposed PUD, as modified, would not affect the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.
31. The Commission took final action to approve the application on December 12, 2011.

Development Incentives and Flexibility

32. The Applicant requested the following areas of flexibility from the Zoning Regulations:
 - a. *Flexibility From Public Space at Ground Level Requirement (§ 633.1).* Pursuant to § 633.1 of the Zoning Regulations, new developments in the CR Zone District are required to provide an area on-site that is equivalent to at least 10% of the total lot area as public space at ground level. The Subject Property has a land area of approximately 15,588 square feet, and thus the project would be required to provide 1,558 square feet of public space at the ground level. The Commission approved the same public space relief as part of the initial PUD. (See Z.C. Order No. 07-21, Finding of Fact No. 37(a).) Similar to the approved PUD, the hotel lobby has been designed as a highly visible, open, publicly accessible feature, which meets the intent of § 633. The lobby will have an approximately 16.5 foot high ceiling, and consistent with § 663, this lobby area will be "adjacent to the main entrance to the principal building or structure on the lot," and will "have a minimum vertical clearance of one story or 10 feet." The lobby area will be "suitably lighted and landscaped for public use," with appropriate interior furnishings. It will be "open and available to the general public," consistent with a hotel operation. The interior landscaping and floating stair leading to the landscaped courtyard will also be highly visible from the public space. Although it can be argued that the hotel lobby will "serve as a transitional space between the

street for pedestrian right-of-way and the building," it is actually a part of the building itself. Moreover, to reinforce the pedestrian experience and to engage the public realm, a highly-visible bar and restaurant are located at the ground floor along the outside edge of the building. In addition, exterior landscaping and seating are provided adjacent to the building's entrance, along with an interactive electronic "Community Wall" display in the hotel lobby which will provide information about local transportation options and the sustainable features of the building. Overall, these features will promote the public's interaction with the building and proposed hotel use. The lobby area has not been excluded from the gross floor area of the building, which would otherwise be the case if the space met the technical requirements of § 633;

- b. *Flexibility from Rear Yard Requirement (§ 636.1).* The Applicant requests flexibility from the rear yard requirement, and will provide an open court in lieu of a rear yard. The Commission approved the same rear yard relief as part of the initial PUD. (See Z.C. Order No. 07-21, Finding of Fact No. 37(b).) As the Commission found in the initial PUD case, the site is a corner lot, and the inclusion of a rear yard along either the western-most lot line or the northern-most lot line would result in a gap of 27.5 feet in the streetscape along either M or 22nd Street. The proposed hotel will abut the side walls of the adjacent buildings to the north and west. Unlike many of the commercial zones, the CR Zone District does not allow the provision of a court in lieu of rear yard. The proposed hotel includes an open court at the rear of the structure, beginning at the second level, which has a total area of approximately 2,760 square feet, which is consistent with the amount of open space that would be provided if a rear yard was required;
- c. *Flexibility From Roof Structure Requirements (§§ 411 and 639).* Similar to the approved PUD, the Applicant requests flexibility from the roof structure setback requirements at the rear of the building. The Commission approved this same roof structure setback relief in the original case, and the footprint of the proposed roof structure is similar to the footprint of the approved roof structure's footprint. (See Z.C. Order No. 07-21, Finding of Fact No. 37(c).) The proposed roof structure meets the setback requirement from the exterior walls along 22nd and M Streets, N.W. However, relief is required since the roof structure does not meet the minimum setback requirement along the exterior walls at the rear of the building due to the L-shaped design of the building and the desire to meet the setback requirements along the more-important street facades; In addition, the reduced roof structure setback is necessary to provide a sufficient amount of enclosed area for the mechanical equipment. The proposed roof structure setbacks will not adversely impact the light and air of adjacent buildings since the relief is only necessary along the interior courtyard. Moreover, the abutting property owners to the immediate north and west of the Subject Property

submitted letters in support of the application. (Exhibits 25 and 26.) Therefore, the intent and purposes of the Zoning Regulations will not be materially impaired;

- d. *Flexibility from Parking Requirements (§ 2101.1).* Pursuant to § 2101.1 of the Zoning Regulations, the project is required to provide a total of 68 off-street parking spaces. The Applicant is proposing to provide a total of 53 striped off-street parking spaces accessed by a ramp in a valet-operated garage. This request is necessary given the size of the building's footprint and the proposed programming of the building. The Applicant proposes to construct two below-grade levels. The B1 level will provide ancillary hotel uses, such as laundry, housekeeping, storage and other similar uses, and the B2 level will provide parking. The Applicant cannot reasonably provide an additional level of below-grade parking due to subsurface rock conditions. This reduction in the number of parking spaces will not have an adverse impact on the project or the area, and the evidence and testimony submitted in this case demonstrate that the amount of proposed parking is sufficient to meet the anticipated parking demand for the hotel;
- e. *Flexibility from Size of Parking Spaces Requirement (§ 2115).* The Zoning Commission approved the same flexibility from this requirement in the initial PUD. (See Z.C. Order No. 07-21, Finding of Fact No. 37(e).) The Applicant requests flexibility from the requirement of § 2115.2 since approximately 66% of the striped parking spaces in this valet-operated garage are compact, which exceeds the requirement that no more than 40% of the required parking spaces may be designated for compact cars. The project includes a total of 53 striped off-street parking spaces. Seventeen of these parking spaces meet the full-size requirement of § 2115.1, and one of the spaces meets the ADA-accessibility requirements. The remaining 35 parking spaces meet the compact-size requirement of § 2115.3. Similar to the approved PUD, the garage has been designed and will be valet-operated in a manner that will maximize the efficiency of use of the parking garage space.
- f. *Flexibility from Access to Parking Requirement (§ 2117.4).* The Applicant requests flexibility from the requirement that "each required parking space shall be accessible at all times directly from improved alleys...or improved public streets via graded and unobstructed private driveways...." The Commission approved the same flexibility from this requirement for the approved PUD. (See Z.C. Order No. 07-21, Finding of Fact No. 37(d).) Similar to the approved PUD, the parking garage for the hotel will be valet-operated, and 15 of the parking spaces in the garage will be stacked spaces that will therefore not meet the "accessible at all times" requirement. The evidence and testimony presented in this case demonstrate that the provision of a valet-operated garage will maximize the efficiency of use of the parking garage space;

- g. *Flexibility From The Off-Street Loading Requirements (§ 2201).* The Applicant requests flexibility from the off-street loading requirements. Section 2201.1 of the Zoning Regulations provides that hotels with more than 200 rooms usable for sleeping are required to provide the following: one loading berth at 30 feet deep, one loading berth at 55 feet deep, one loading platform at 100 square feet, one loading platform at 200 square feet; and one service/delivery loading space at 20 feet deep. (11 DCMR §2201.) However, due to the anticipated needs of the hotel use, the Applicant is seeking flexibility to waive the required 55-foot loading berth and the required 200-square-foot loading platform requirements. Given the nature and operations of the proposed hotel, and based upon experience at other similar hotels, deliveries utilizing 55-foot tractor-trailer trucks will not be necessary, and thus there is no need for a 55-foot berth for this project. The Applicant anticipates receiving approximately four to five deliveries per day, and the Applicant has agreed to require that all deliveries be made in 30-foot, single-unit trucks. Other comparable select service hotels in the market typically receive a limited number of small deliveries per day. In addition, the Applicant has agreed to designate a member of the hotel staff as a dock manager who will be responsible for coordinating with the delivery companies to ensure that all deliveries will be made via the alley and during non-peak hours, and for ensuring that trucks do not sit idle in the alley while waiting to make a delivery. Therefore, the proposed loading facilities will be able to handle the delivery and service needs of the proposed hotel, and will not result in any adverse impacts; and
- h. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:
 - i. To be able to provide a range in the number of hotel rooms, with a maximum of 238 rooms;
 - ii. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - iii. To vary the number, location, and arrangement of parking spaces, provided that the total is not reduced below the number shown on the attached plans;
 - iv. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 50 points under the LEED for New Construction Rating System v3.0 standards;

- v. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;
- vi. To vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including those promulgated by the D.C. Department of Health, that are otherwise necessary for licensing and operation of the proposed restaurant; and
- vii. To vary the location and dimensions of the various elements in public space that are shown on the plans, and to vary the width of the proposed lay-by lane on 22nd Street between a minimum width of three feet and a maximum width of eight feet, as may be necessary to secure a public space permit from DDOT.

Public Benefits and Amenities

33. The Commission found in Z. C. Case No. 07-21 that a number of public benefits and amenities will be created as a result of the approved PUD. (See Z.C. Order No. 07-21, Finding of Fact No. 38.) The Commission finds that approval of the PUD, as modified, will continue to result in a number of public benefits and amenities, including:
- a. *Urban Design, Architecture, Landscaping and Open Space (§ 2403.9(a)).* The proposed hotel retains the same basic building form as the approved PUD and demonstrates a high quality of architectural design that exceeds that of most hotels in the District. The major goals of the architects for the modified project include creating a building that will further the goals of urban design, and that will enhance the streetscape and compliment the surrounding neighborhood. Moreover, the project plans also include a number of landscaping, garden, and open space features;
 - b. *First Source Employment Agreement and Local, Small and Disadvantaged Business Enterprises (§ 2403.9(j)).* Expanding employment opportunities for residents and local businesses is a priority of the Applicant. Therefore, the Applicant has executed a First Source Employment Agreement with the Department of Employment Services. The Applicant anticipates that the hotel, restaurant and valet services for the hotel will generate over 100 new jobs. The

Applicant has also executed a Certified Business Enterprise Utilization Agreement with the District's Office of Small and Local Business Development;

- c. *Environmental Benefits (§ 2403.9(h)).* Similar to the approved hotel, the modified hotel will also incorporate a number of environmentally sensitive design features and construction practices. The modified hotel will be designed to meet rigorous energy and environmental design standards using the LEED for New Construction v3.0 rating system as a guide and performance metric. The Applicant submitted a conceptual LEED Scorecard indicating sustainability features to be incorporated into the project. Overall, the project will be designed to create a high-performing, energy- and resource-efficient building while providing the hospitality experience guests expect during their stay at the hotel; and
- d. *Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (§ 2403.9(i)).* Prior to issuance of a Certificate of Occupancy for the project, the Applicant has agreed to make the following contributions:
 - i. *Public Space Improvements.* The Applicant shall contract with the necessary service and professional firm(s) for the design, approval and installation of the following items, not to exceed a total of \$150,000, to be divided among items (a) through (d), the final location, design, and installation of which shall be subject to DDOT approval:
 - a. Installation of one park bench at each of the following three locations: at the southeast corner of 25th and M Streets, N.W. along the existing diagonal walk; at the southwest corner of 24th and L Streets, N.W. near the existing brick planter; and at the northeast corner of 23rd and L Streets, N.W.;
 - b. Replacement or installation of trees at each of the following locations: one tree at the southeast corner of 25th and M Streets, N.W. on M Street; one tree at the northwest corner of 24th and L Streets, N.W., on 24th Street; one tree at the southeast corner of 23rd and L Streets, N.W.; three trees on the southeast corner of M Street, N.W. and New Hampshire, N.W., on M Street, N.W.; one tree on the north side of L Street, N.W. between New Hampshire Avenue, N.W. and 21st Street, N.W.; two trees on the south side of L between New Hampshire and 21st Street, N.W.; and one tree on the southwest side of M and 21st Streets, N.W. If any of the trees in the 10 listed locations are replaced before the amenity funds are delivered, the Applicant shall work with DDOT to locate appropriate sites within the same proximity of the hotel site as those listed above, or as close to the site as possible, for tree installation;

- c. Replacement or installation of three-sided tree fencing for public tree boxes, where needed, within the bounds of ANC 2A. If time, materials, money or approvals are constrained, the priority will be first to install tree fencing where there is none extant; secondly to replace existing plastic fencing, and finally to replace existing low metal fencing; and
 - d. Replacement or installation of globe-type street lights to match the recently upgraded street lights along M and 22nd Streets in the immediate vicinity, to be placed at each of the following locations: on the north side of M Street, between 22nd and 23rd Streets, N.W., and on the west side of 22nd Street, between M and N Streets, N.W.
- ii. *Contribution Towards Renovation Of St. Mary's Church.* The Applicant shall make a contribution of \$35,000 to St. Mary's Church. The contribution shall specify that the funds may only be used for reimbursement of costs incurred by the Church for renovation services for St. Mary's Episcopal Church located at 730 23rd Street, N.W, Washington, D.C. 20037;
 - iii. *Contribution Towards The Foggy Bottom Association ("FBA") Biennial FBA Sculpture Project.* The Applicant shall make a contribution of \$60,000 to the FBA. The contribution shall specify that the funds may only be used for the costs associated with the Biennial FBA Sculpture Project;
 - iv. *Contribution Towards The Construction Of The Francis Field Dog Park.* The Applicant shall make a payment of \$53,500 to a contractor, landscape architect, or other professional company to assist with the construction of the Francis Field Dog Park, located along 25th Street, N.W. between M and N Streets, N.W. The contribution shall specify that the funds may only be used for the following: landscaping; purchase of benches, tables, fences, storage container, hoses, maintenance tools, dog bag stations, surface cleaning supplies and trash receptacles; installation of new lighting, water connection, and drainage sump; and installation of a subbase and surface for the dog park. The final design, location, and installation of these improvements will be subject to the approval of the Department of Parks and Recreation ("DPR");

The Applicant, in its draft order requested that in the event that of the Francis Field Dog Park does not move forward, the Applicant should have the flexibility to reprogram the funds designated for the Francis Field Dog Park to other public space improvements identified above. The Commission considers this request to be premature. There is no reason to believe that DPR will be unable to receive the proffered assistance at some point prior to the Applicant's receipt of a Certificate of Occupancy. There is, however, always uncertainty as to the future ability of the other beneficiaries to accept or utilize

the additional funding. The Commission therefore concludes that it is better for the Applicant to wait to see whether the issue ever becomes ripe for consideration. If it should, it is this Commission non-binding view that a request to re-distribute the \$53,500 can properly be decided as a minor modification; and

- v. *Contribution Towards Landscaping and Street Plan.* The Applicant shall make a payment of \$1,000 to Iris Miller, Adjunct Associate Professor and Director of the Landscape Studies at the School of Architecture and Planning at Catholic University. The contribution shall specify that the funds may only be used for her professional services in connection with the original PUD plan.

Compliance with Guiding Principles of the Comprehensive Plan

- 34. The Commission finds that the proposed PUD as modified, continues to: (1) be consistent with the District of Columbia Comprehensive Plan Future Land Use Map and the Generalized Policy Map; (2) help implement many of the guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and health communities; and (3) further the objectives and policies of the Comprehensive Plan's major elements, all as set forth in the OP reports marked as Exhibits 13 and 29 of the record in this case, and as previously found by the Commission in Findings of Fact Nos. 39-43 of Z.C. Order No. 07-21.

Office of Planning Reports

- 35. By report dated July 15, 2011, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 13.) OP indicated that the requested modifications are within the range of changes the Commission has approved as modifications in previous cases, such as Z.C. Case Nos. 03-12F/03-13F, 06-14C, and 07-02B, and that the requested modifications would not affect the PUD's previously determined relationship to the Comprehensive Plan. OP also indicated that approval of the application would allow for redevelopment of an under-utilized property in the West End with a new, attractive and progressive development that will deliver significant benefits to the neighborhood. OP recommended that, prior to the public hearing, the Applicant should consult with DDOT about implications of the proposed changes in room counts and parking arrangements, and with DDOE about the impact of proposed changes in environmental regulations that might impact development of the Subject Property.
- 36. By report dated October 17, 2011, OP recommended final approval of the application, subject to the Applicant clarifying the final allocation of the community benefits package. (Exhibit 29.) OP indicated that the Applicant adequately responded to the questions raised by the Commission and OP, including the design and setback of roof structure, the

relationship between the number of proposed hotel rooms and parking spaces, job creation estimates, and information regarding the project's façade design and materials. OP also indicated that the Commission previously determined that the benefits, amenities, and proffers proposed by the Applicant were appropriate for the zoning relief and density increases of the proposed hotel. OP supported the requested zoning flexibility.

DDOT Report

37. DDOT submitted a memorandum dated October 21, 2011, indicating that DDOT does not have any objections to the Applicant's request for modifications to the approved PUD. (Exhibit 31.) DDOT commended the Applicant for reducing the number of planned parking spaces and noted that the project should be treated as a transit-oriented development since there are a number of transit options for the hotel guests and visitors to access the property. DDOT also indicated that visitors to the proposed restaurant will be able to have their vehicles valet parked at a neighboring garage.
38. DDOT recommended that the Commission require the Applicant to conduct a number of transportation performance monitoring studies at various times after issuance of first Certificate of Occupancy for the hotel, and to provide a report summarizing the study findings to DDOT and ANC 2A. DDOT also indicated that the Applicant submitted a Transportation Demand Management ("TDM") plan, and DDOT recommended that the Applicant's TDM plan should include a number of specific measures, including:
 - a. Designating a member(s) of building management as a transportation coordinator to be a primary point of contact responsible for coordinating and completing all transportation management plan tasks;
 - b. Providing an 8' by 24' space for a minimum of 12 bicycles and for luggage storage in a locked area in the hotel to accommodate guest luggage and bicycles, and allowing guests to take their bicycles to their rooms;
 - c. Providing in the hotel lobby an electronic transportation display providing real time information related to local transportation alternatives (e.g. Capital Bikeshare racks, nearest WMATA rail station, WMATA bus routes and Circulator bus routes), and providing internet access for this device via wired or wireless means in the hotel lobby;
 - d. Providing a transit benefit incentive of at least \$100.00 per month for each on-site hotel employee, and establishing a pre-tax employee transportation benefit program which will be functional before the first day of operation of the hotel;
 - e. Providing SmarTrip cards for free to new on-site employees; and

- f. Providing complimentary, 24-hour Capital Bikeshare passes to hotel guests upon check-in, with DDOT providing the hotel operator with safe cycling guides, bike helmets and additional information on the Capital Bikeshare program for hotel guests' use during their stay.
- 39. The Applicant's TDM plan, included with Exhibit 5 of the record in this case, and as supplemented by testimony of the Applicant, indicates that the Applicant has agreed to the following measures:
 - a. Advertise WMATA SmarTrip cards in the lobby of the hotel;
 - b. Provide hotel guests with information on ZipCar;
 - c. Provide maps showing the nearest ZipCar locations;
 - d. Provide system maps and maps showing the location of the nearest BikeShare stations;
 - e. Provide safe cycling guidelines;
 - f. Provide instructions on obtaining a 24-hour or five-day membership for Capital BikeShare; and
 - g. Provide an interactive, electronic board in the lobby to provide information regarding the various transportation options available.
- 40. In addition, as shown on the Final Architectural Plans and Elevations, the hotel includes the capacity for 15 bike spaces on the B1 level of the building, and a secure luggage storage area on the ground floor of the hotel. (Exhibit 24.) Moreover, in response to DDOT's recommendations, the Applicant agreed at the public hearing also to implement the following measures:
 - a. Provide a \$25.00 SmarTrip card for each hotel employee during the initial hiring phase for the hotel;
 - b. Provide complimentary 24-hour BikeShare memberships on an as-requested basis for guests that wish to use BikeShare; and
 - c. Conduct performance evaluations of the loading, bus management, and valet operations one year and two years after issuance of the first Certificate of Occupancy for the hotel, and submit the results to DDOT.

41. The Commission finds that the Applicant's proposed TDM plan is consistent with other TDM plans approved by this Commission, and will help to promote safe and efficient traffic operations, encourage alternate modes of transportation, and maximize the use off-street parking facilities to efficiently serve the hotel demands.

Contested Issues

42. ANC 2A and 22 West raised concerns regarding transportation issues, including parking, loading, and bus management; the hotel's design, brand, and signage, implementation of a construction management plan; and the community amenities.
43. The Commission has carefully reviewed and considered each of the points made both in writing and orally at the public hearing, and makes the following findings:

- a. *Transportation Issues (Parking, Loading, Bus Management, and Lay-By Design).* There was testimony that the project will have an adverse impact on traffic and parking in the immediate area as a result of the project's proposed parking ratio, loading operations, lay-by design, and the anticipated number of buses going to the hotel;

With respect to parking, the Applicant's transportation expert submitted a detailed parking evaluation memorandum and testimony at the public hearing, analyzing (1) the proposed parking operations and parking supply for the hotel; (2) the parking operations, parking supply and parking demand at four comparable hotels in the District; and (3) the proposed hotel policies on overflow parking. (Exhibits 23 and 36.) The report also indicates that there are a number of commercial parking garages within a two-block radius of the site that would be available for overflow parking, if necessary. The report indicates that with a total of 53 parking spaces, the hotel will be providing a parking ratio of 0.22 spaces per room, which is comparable to similar hotels in the District. Based on data obtained at four comparable sites in the District, the average parking demand ratio for similar hotels is 0.17 spaces per room or 0.20 spaces per occupied room. Therefore, the report concludes that the hotel will have adequate parking. In addition, DDOT approved the Applicant's proposed reduction in the number of planned parking spaces since there are a number of nearby transit options for the hotel guests and visitors to access the property. (Exhibit 31.) DDOT also indicated that visitors to the proposed restaurant will be able to have their vehicles valet parked at a neighboring garage;

The Applicant also submitted expert evidence and testimony at the public hearing describing the Applicant's plan to effectively manage traffic operations at the hotel, including buses and use of the loading dock. (Exhibit 23 and 36.) With respect to loading, access to the loading dock would be provided via the alley to

the north of the Subject Property, and this configuration was previously reviewed and supported by DDOT, and approved by the Commission, in the original PUD. In addition, the Applicant has agreed to dedicate a member of the hotel staff as a transportation coordinator. The transportation coordinator will be responsible for coordinating with delivery companies to ensure that deliveries are made via the alley, that deliveries are made in 30-foot, single-unit trucks or smaller, and that deliveries will not be accepted before 7:00 a.m. and after 9:00 p.m. on weekdays, or before 8:00 a.m. and after 9:00 p.m. on weekends. The transportation coordinator will also be responsible for ensuring that trucks do not idle in the alley while waiting to make a delivery. The Applicant has also agreed that no deliveries will be accepted on M Street. As requested by the ANC, the Commission has added these delivery restrictions to the conditions of this Order;

With respect to buses, the Applicant indicated that due to the size of the hotel, bus groups are not anticipated to account for a significant percentage of the business at the proposed hotel. In addition, the hotel anticipates only accommodating guests utilizing bus transportation during periods with reduced overall hotel occupancies. During peak bus months, the hotel is expected to accommodate only three to five buses per month and usually only one bus group at a time. Bus groups will be notified that the pick-up/drop-off operation will be conducted on M Street. Additionally, the bus operators will be notified that the buses must park at Union Station in the area designated for motor coaches and recreational vehicles. Moreover, in order to ensure that loading and bus operations are managed efficiently, the Applicant has agreed to conduct performance evaluations of the loading, bus management, and valet operations one year and two years after issuance of the first Certificate of Occupancy for the hotel, and to submit the results to DDOT;

The design of the proposed three foot lay-by, which was initially approved by the Commission, is the result of extensive discussion and vetting with DDOT. The three foot lay-by design will enable maximization of the sidewalk width along 22nd Street, and also create a buffer zone for the safety of passengers boarding and alighting in the lay-by lane. In addition, the proposed lay-by design complies with DDOT's criteria in evaluating lay-by requests. Moreover, the Applicant has agreed to designate a member of the hotel's staff to be responsible for ensuring that there is an adequate number of valet attendants serving the lay-by lane so that demand for the lay-by lane does not exceed the capacity of the lay-by lane; ensuring that taxis do not stand in the lay-by lane; and ensuring that buses coming to and from the hotel follow the bus management plan. Finally, given that the final width of the lay-by lane ultimately will be decided through DDOT's review of the Public Space Permit, the Commission is granting the Applicant the flexibility to construct a lay-by lane with a minimum width of three feet and a maximum width of 11 feet if DDOT determines that a wider lay-by is necessary;

The Commission accepts the expert conclusions, and the evidence and testimony presented by the Applicant, and therefore finds that the proposed development will not have an adverse impact on traffic and parking in the immediate area as a result of the project's proposed parking ratio, loading operations, lay-by design, and the anticipated number of buses going to the hotel. In addition, the Commission finds that the loading access, the garage access, and the lay-by lane are identical to those elements that were reviewed and approved by DDOT and the Commission in the original PUD;

- b. *The Hotel's Design, Brand, and Signage.* ANC 2A and 22 West raised concerns regarding the overall design of the hotel, the proposed hotel brand and contribution to the District, and the hotel's proposed signage. With respect to the hotel's design, the Commission finds that the project's massing is virtually identical to the approved PUD, with an L-shaped form, extending out from the corner intersection to the north and west interior lot lines, with an open court at the rear of the building. As with the approved PUD, the principal hotel entrance is located on 22nd Street, N.W., and the principal entrance to the restaurant is located on M Street, N.W. Access to a below-grade parking level is also in the same 22nd Street location as the approved PUD, but is provided via a garage ramp, rather than the car elevator system approved in the original plans. Although the exterior façade of the building has been revised, the Commission finds that the hotel will continue to provide a high quality design and incorporates high quality materials;

Although the proposed hotel brand is not for the Commission to determine, the Commission credits the Applicant's testimony that the Hilton Garden Inn is a proven upscale brand in the Hilton family of hotels. The Commission further finds that although the original project was committed to the base LEED certification, the Applicant has committed to achieving a minimum of 50 points under the LEED for New Construction Rating System v3.0 standards, which is an increased level of sustainability compared to the approved PUD. Moreover, as indicated in the Economic Impact Analysis prepared by Bolan Smart Associates, Inc. included as part of Exhibit 23 in the record in this case, the development will result in a significant number of economic benefits to the District, including approximately \$4.69 million dollars in annual direct tax revenues, employment and economic activity benefits, and construction fees and expenditures directly benefitting the District and District businesses, including small, local, and disadvantaged businesses;

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 ANC 2A 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 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;

- c. *Construction Management Plan.* ANC 2A requested that the Applicant prepare a construction management plan which addresses the construction schedule, issue resolution, and other construction issues. The Applicant submitted a construction management plan on October 7, 2011. (Exhibit 23.) The plan includes provisions regarding traffic and construction controls, construction truck route provisions, the designation of a representative to be the Applicant's key contact for interaction with members of the community regarding construction activities, and other provisions similar to those submitted to the Commission in recent cases. Therefore, the Commission finds that the Applicant has adequately addressed this issue. The Commission cannot make the Applicant responsible for washing the windows of the neighboring 22 West building; and
- d. *Community Amenities.* ANC 2A and 22 West indicate that the Applicant should revise the list of proposed community amenities based upon asserted changes in the community's needs, and recommended specific changes to the approved amenities. (Exhibits 22, 32, 38 and 40.) These, of course could only be accomplished through the Commission's grant of a modification. The Commission finds that modifications proposed by the Applicant adequately address changed circumstances. For example, the Applicant requested permission to redirect funds originally approved for the 26th Street Dog Park to the Francis Field Dog Park, at the request of both WEF and ANC 2A. At the request of ANC 2A, the Applicant requested permission to lower the contribution to Iris Miller for development of a landscaping plan for the project to \$1,000 to reflect the actual costs for services already rendered in connection with the original PUD plans, with the remainder of that money to be allocated between the public space improvements identified in the original PUD Order and the Francis Field Dog Park. With respect to designating the proposed ground-floor retail space as a community amenity, the Applicant has committed to provide that space as shown on the plans as a restaurant, and is working towards making this a signature feature of the hotel. Any proposed modification to the use of this space would require Commission approval. Moreover, the Commission finds that WECA, FBA, and St. Mary's Church indicated the continued need for the amenities set forth in the Applicant's updated list of amenities identified in Exhibit 23 and described in this Order.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Because the modifications proposed by the Applicant could not be approved by the Zoning Administrator pursuant to § 2409.6, the Applicant submitted the proposed modifications to the Commission for approval. And because the modifications were not so minor as to permit their review under the Commission's Consent Calendar procedure, 11 DCMR § 3030, they were processed as a second-stage application. (11 DCMR § 2409.9.)
3. As was the case for the original approval, the Commission, as part of its approval of a modification may grant or impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, or any other applicable zoning requirement.
4. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
5. The modified PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations. The modified PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area and the operation of city services is acceptable given the quality of the public benefits in the project.
6. The Applicant's request for flexibility from the Zoning Regulations is consistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
7. Approval of this modified PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

8. The Commission is required under § 3(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and conditions expressed in the written report of an affected ANC. A full discussion of the issues and concerns expressed by the ANC in its initial report and subsequent submission is contained in the “Contested Issues” portion of this order, including an explanation why the Commission did or did not find each of the ANC’s position persuasive.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. For the reasons stated above, the Commission concurs with OP’s recommendation for approval and has given the OP recommendation the great weight it is entitled.
10. The application for the modified PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for modifications to a PUD approved pursuant to Z.C. Order No. 07-21 subject to the following guidelines, conditions, and standards, which replace those contained in Z.C. Order No. 07-21. For the purposes of these conditions, the term “Applicant” shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. Whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. 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 No. 7(e) (discussed at paragraph 43(b) in this Order), the hotel sign shall be above the hotel’s entrance

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

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.

2. The PUD shall have a maximum density of 7.99 FAR and a gross floor area of 124,479 square feet. The project shall contain no more than 238 hotel rooms.
3. The maximum height of the building shall be 107 feet.
4. The project shall include a minimum of 53 off-street parking spaces in the garage.
5. The Applicant is granted flexibility from the public space at ground level requirements (§633.1), rear yard requirements (§636.1), roof structure number and setback requirements (§§411 and 639), number of required off-street parking spaces requirement (§2101.1), the size of parking spaces requirements (§2115), access to parking requirements (§2117.4), and the off-street loading requirements (§2201), consistent with the approved Plans, including the Zoning Tabulation of Development Data sheet on the Plans, and as discussed in the Development Incentives and Flexibility section of this Order.
6. The Applicant shall also have flexibility with the design of the PUD in the following areas:
 - a. To be able to provide a range in the number of hotel rooms, with a maximum of 238 rooms;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - c. To vary the number, location and arrangement of parking spaces, provided that the total is not reduced below the number shown on the attached plans;
 - d. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 50 points under the LEED for New Construction Rating System v 3.0 standards;
 - e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make

minor refinements to exterior details, locations, and dimensions, including curtainwall mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings and trim; and any other changes, including the location and dimension of the hotel sign, to comply with all applicable District of Columbia laws and regulations that are otherwise necessary to obtain a final building permit;

- f. To vary the location and design of the ground-floor components of the building in order to comply with any applicable District of Columbia laws and regulations, including those promulgated by the D.C. Department of Health, that are otherwise necessary for the licensing and operation of the proposed restaurant; and
- g. To vary the location and dimensions of the various elements in public space that are shown on the Plans, and to vary the width of the proposed lay-by lane on 22nd Street between a minimum width of three feet and a maximum width of eleven feet, as may be necessary to secure a public space permit from DDOT.

B. PUBLIC BENEFITS

- 1. **Prior to issuance of a Certificate of Occupancy for the project**, the Applicant shall make the following contributions:
 - a. *Public Space Improvements.* The Applicant shall contract with the necessary service and professional firm(s) for the design, approval and installation of the following items, not to exceed a total of \$150,000, to be divided among items (a) through (d), the final location, design, and installation of which shall be subject to DDOT approval:
 - i. Installation of one park bench at each of the following three locations: at the southeast corner of 25th and M Streets, N.W. along the existing diagonal walk; at the southwest corner of 24th and L Streets, N.W. near the existing brick planter; and at the northeast corner of 23rd and L Streets, N.W.;
 - ii. Replacement or installation of trees at each of the following locations: one tree at the southeast corner of 25th and M Streets, N.W., on M Street; one tree at the northwest corner of 24th and L Streets, N.W., on 24th Street; one tree at the southeast corner of 23rd and L Streets, N.W.; three trees on the southeast corner of M Street, N.W. and New Hampshire, N.W., on M Street, N.W.; one tree on the north side of L Street, N.W. between New Hampshire Avenue, N.W. and 21st Street,

N.W.; two trees on the south side of L between New Hampshire and 21st Street, N.W.; and one tree on the southwest side of M and 21st Streets, N.W. If any of the trees in the 10 listed locations are replaced before the amenity funds are delivered, the Applicant shall work with DDOT to locate appropriate sites within the same proximity of the hotel site as those listed above, or as close to the site as possible, for tree installation;

- iii. Replacement or installation of three-sided tree fencing for public tree boxes, where needed, within the bounds of ANC 2A. If time, materials, money or approvals are constrained, the priority will be to first install tree fencing where there is none extant; secondly to replace existing plastic fencing, and finally to replace existing low metal fencing; and
 - iv. Replacement or installation of globe-type street lights to match the recently upgraded street lights along M and 22nd Streets in the immediate vicinity, to be placed at each of the following locations: on the north side of M Street, between 22nd and 23rd Streets, N.W., and on the west side of 22nd Street, between M and N Streets, N.W.
- b. *Contribution Towards Renovation Of St. Mary's Church.* The Applicant shall make a contribution of \$35,000 to St. Mary's Church. The contribution shall specify that the funds may only be used for reimbursement of costs incurred by the Church for renovation services for St. Mary's Episcopal Church located at 730 23rd Street, N.W, Washington, D.C. 20037;
 - c. *Contribution Towards The Foggy Bottom Association ("FBA") Biennial FBA Sculpture Project.* The Applicant shall make a contribution of \$60,000 to the FBA. The contribution shall specify that the funds may only be used for the costs associated with the Biennial FBA Sculpture Project;
 - d. *Contribution Towards The Construction Of The Francis Field Dog Park.* The Applicant shall make a payment of \$53,500 to a contractor, landscape architect, or other professional company to assist with the construction of the Francis Field Dog Park, located along 25th Street, N.W. between M and N Streets, N.W. The contribution shall specify that the funds may only be used for the following: landscaping; purchase of benches, tables, fences, storage container, hoses, maintenance tools, dog bag stations, surface cleaning supplies and trash receptacles; installation of new lighting, water connection, and drainage sump; and installation of a

subbase and surface for the dog park. The final design, location, and installation of these improvements will be subject to DPR approval; and

- e. *Contribution Towards Landscaping and Street Plan.* The Applicant shall make a payment of \$1,000 to Iris Miller, Adjunct Associate Professor and Director of the Landscape Studies at the School of Architecture and Planning at Catholic University. The contribution shall specify that the funds may only be used for her professional services in connection with the original PUD plan.
2. **Prior to the issuance of a Certificate of Occupancy for the project,** the Applicant shall require those people or organizations receiving monetary contributions pursuant to this Order to agree in writing that each will present a certification to the Office of Zoning's Compliance Review Manager within 12 months of receiving such contribution written confirmation that the specified monetary contribution has been received and applied to the designated use, or providing a reasonable explanation as to when the contribution will be allocated. Failure of a person or organization receiving a monetary contribution to submit this certification shall not constitute a violation of this Order by the Applicant.
3. **Prior to the issuance of a building permit for the project,** the Applicant shall submit to DCRA an executed First Source Employment Agreement with the Department of Employment Services, and an executed CBE Utilization Agreement with the District's Office of Small and Local Business Development.
4. **The Applicant shall submit with its building permit application** for the hotel a LEED checklist indicating that the project includes sustainable design features such that the building would be able to achieve a minimum of 50 points under the LEED for New Construction Rating System v3.0 standards.
5. **During construction of the project,** the Applicant shall abide by the terms of the Construction Management Plan included as Tab B of Exhibit 23.
6. **Concurrently with the construction of the hotel and during the life of the project,** the Applicant shall install and maintain the landscaping and other public space improvements adjacent to the Subject Property along 22nd Street, N.W. and M Street, N.W. as shown on the Plans, subject to final approval by the Public Space Division of DDOT.

C. COMPLIANCE WITH TRANSPORTATION DEMAND MEASURES

1. **During operation of the hotel,** the Applicant shall implement and maintain the following Transportation Demand Measures:

- a. Advertise WMATA SmarTrip cards in the lobby of the hotel;
 - b. Provide hotel guests with information on ZipCar;
 - c. Provide maps showing the nearest ZipCar locations;
 - d. Provide system maps and maps showing the location of the nearest BikeShare stations;
 - e. Provide safe cycling guidelines to guests.
 - f. Provide instructions on obtaining a 24-hour or five-day membership for Capital BikeShare;
 - g. Provide an interactive, electronic board in the lobby to provide information regarding the various transportation options available;
 - h. Provide a minimum of 15 bicycle parking spaces in the hotel's underground garage;
 - i. Provide a \$25.00 SmarTrip card for each hotel employee during the initial hiring phase for the hotel;
 - j. Provide complimentary 24-hour BikeShare memberships on an as-requested basis for guests that wish to use BikeShare; and
 - k. Designate a member of the hotel staff as a Transportation Coordinator(s) (duties may be part of other duties assigned to the individual) to be responsible for managing and coordinating the loading, bus, delivery, and valet operations for the hotel.
2. **During operation of the hotel**, the Applicant shall not permit deliveries before 7:00 a.m. and after 9:00 p.m. weekdays, or before 8:00 a.m. and after 9:00 p.m. on weekends nor permit deliveries along M Street at any time.
 3. **During operation of the hotel**, the Applicant shall notify bus groups that the pick-up/drop-off operation will be conducted on M Street. Additionally, the bus operators shall be notified that the buses must park at Union Station in the area designated for motor coaches and recreational vehicles.
 4. **One year and two years after issuance of the first Certificate of Occupancy for the hotel**, the Applicant shall conduct performance evaluations of the hotel's

loading, bus management, and valet operations, and submit the results of the evaluations to DDOT.

D. MISCELLANEOUS

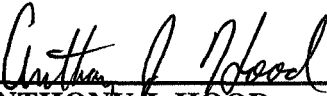
1. The project, as now modified by the Commission, shall be valid for two years, within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction must commence within three years.
2. Pursuant to 11 DCMR § 2409.3, the Zoning Administrator shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicant and all successors in title to construct on and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the Office of Zoning for the case record.
3. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On November 28, 2011, upon the motion of Vice Chairman Schlater, as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

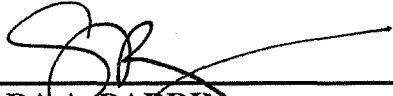
On December 12, 2011, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; Marcie I. Cohen, not having participated, not voting).

Z.C. ORDER NO. 07-21B
Z.C. CASE NO. 07-21B
PAGE 29

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on February 3, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 07-21B

As Secretary to the Commission, I hereby certify that on **FEB 7 2012** copies of this Z.C. Order No 07-21B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 7. DDOT (Martin Parker) |
| 2. Chris Collins and Kyrus Freeman, Esqs.
Holland & Knight, LLP
ccollins@hkclaw.com
Kyrus.Freeman@hkclaw.com | 8. Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, D.C. 20024 |
| 3. ANC 2A
West End Branch Library
1101 24th Street, N.W.
Washington, D.C. 20037 | 9. Office of the Attorney General (Alan Bergstein) |
| 4. Commissioner Rebecca Coder
ANC/SMD 2A02
2501 M Street N.W.
Washington, D.C. 20037 | 10. West End Citizens Association
c/o Barbara Kahlow
800 25 th Street, N.W. #704
Washington, D.C. 20037 |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 11. Foggy Bottom Association
c/o Asher Corson
955 26 th Street, N.W. #709
Washington, D.C. 20037 |
| 6. Councilmember Jack Evans | |

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "S. S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning