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2011 NOV -3 PM 1:44

November 3, 2011

Zoning Commission of the District of Columbia
441 4th Street, N.W.
Suite 210 S
Washington, DC 20001

Re: Case No. 07-21B--Applicant's post hearing submission regarding response to ANC issues

Honorable Members of the Commission:

Per the request of the Commission at the close of the public hearing in this case, below is the ANC 2A's September 21, 2011 letter of conditional non-objection to the PUD Modification¹, with the Applicant's response to each item of the ANC's letter shown as "**APPLICANT'S RESPONSE**". The Applicant's response to this letter was originally sent by email from the undersigned to ANC Chair Coder on October 25, 2011. The responses below were taken verbatim from that email. A copy of that email is also enclosed. These responses were also addressed by the undersigned at the public hearing on October 27 in response to a question from the Commission.

Per Section 3012.6 of the Zoning Regulations, the Commission must give "great weight" to the duly-adopted written submission of the ANC that meets the requirements of Section 3012.5 of the Zoning Regulations. To the extent that the ANC Chair's oral presentation at the public hearing went beyond the specifics of the ANC's duly-authorized written submission, we have also addressed those additional issues below, under the heading of **APPLICANT'S ADDITIONAL RESPONSES TO ANC'S ORAL TESTIMONY**.

Also enclosed per the Commission's request as a separate document is a letter from Wells & Associates dated November 3, together with two sketches illustrating a three foot depth lay-by and a full-size eight foot depth lay-by.

¹ This letter was copied and pasted directly from Appendix #3 of the minutes of the ANC's September 21 meeting on this issue that appear on the ANC 2A website. It is identical to the copy filed with the Zoning Commission.

ZONING COMMISSION
District of Columbia

CASE NO. 07-21B
EXHIBIT NO. 43

A. **APPLICANT'S RESPONSES TO ANC 2A LETTER**

APPENDIX # 3

Government of the District of Columbia
Foggy Bottom and West End
Advisory Neighborhood Commission 2A

c/o West End Library
1101 24th Street NW
Washington, DC 20037

September 21, 2011

Anthony Hood, Chair
DC Zoning Commission
441 4th St., N.W. Suite 200
Washington, DC 20001

Re: Application for Modifications to PUD ZC Order / Case No. 07-21, PerStar Partners LLC, 2201 M Street, NW

Dear Chairman Hood and Members of the Commission:

At its duly noticed, regular monthly meeting on September 21, 2011, with 4 of 5 commissioners present constituting a quorum, ANC 2A discussed the proposed Planned Unit Development (PUD) modification requested by PerStar M Street Partners, LLC.

The ANC originally supported The 1 Hotel, and even supported an extension for it. Therefore, we were surprised by and disappointed in the substantial changes of this PUD (e.g. mainly a new architectural plan). The corner of 22nd and M Street did not need another hotel, and the fact that the original proposal was a unique, boutique destination and concept overcame this on many levels. The new plan offers far fewer positive contributions to the West End than what was originally proposed.

The ANC voted 3 to 0 with one recusal to provide a non-objection in this case, **predicated** on the applicant agreeing to the following.

- **Transportation Management Plan**
 - The Zoning Commission require that the applicant's transportation management plan specifically address charter bus management and the taxi queue, given the

concentration of hotels at this corner and the property's relation to the West End Fire Station immediately to the west;

- Given the impact of the hotel on the surrounding residential community, the Zoning Commission require specific hours for hotel deliveries in the final Zoning Order from 8:00 am to 9:00 pm Monday through Friday, and 9:00 am to 9:00 pm on Saturday and Sunday, and carefully study the proposed delivery plans given the awkwardness of the alley configuration, and concerns that deliveries will ultimately occur on either 22nd or M Street, NW;
- Require that the hotel identify an individual not only responsible for loading, but also for management of transportation and safety issues around the front of the building.

APPLICANT'S RESPONSE-- *Transportation Management Plan--A letter dated October 6, 2011 from Wells & Associates, which indicates how the applicant will address the transportation issues raised by the ANC at your September 21, 2011 meeting, was submitted to the Zoning Commission as part of our 20-day submission on October 7, 2011. A copy of that submission was sent to the ANC.*

- **Overall Design**

- The applicant set back the development slightly 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 (11 DCMR 633.1);
- Require that the materials for the "skin" of the building 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 to other areas to lessen the sterility;
- Ensure that the signage is appropriate for the site (e.g. not like the Marriott);

APPLICANT'S RESPONSE-- *Overall Design--*

-- According to DDOT, the plan provides adequate pedestrian space along the sidewalks, without the need to set back the building from the property lines abutting the streets.

-- We have addressed the lay-by on several occasions with DDOT, both in the original PUD application process, and in this modification process. We agree with DDOT that this is the best solution.

-- The materials for the skin of the building will be superior in nature. There was no green wall at the end wall of the building in the original application, nor is one being contemplated for the PUD modification. This would be difficult to maintain, as it would extend over the property line onto the neighbor's property.

-- The signage will not be like that of the Marriott across the street.

- **Construction Management Plan**

- Require a construction management plan as part of the Order which addresses the construction schedule, issue resolution and other elements important to the 22 West and Ritz Carlton condominium residences who are directly impacted;

APPLICANT'S RESPONSE-- *Construction Management Plan--The CMP, which is also included in the 20-day submission, indicates that "the Applicant pledges to work in close cooperation with [ANC 2A] and its chairperson, commissioners, and members to minimize impacts of the construction on the community."*

- **Community Amenities**

- The retail space be specified as a community amenity and for the primary purpose as a restaurant (licensed as CR) in the final Zoning Order. In addition, the ANC asks that the applicant work with the neighborhood to identify an appropriate and unique individually run restaurant operator for the space (11 DCMR 2403.7);
- The applicant update the amenities package previously proposed given the completion of some of the amenity projects originally identified and changes in priorities within the neighborhood. Related to the amenities, the ANC asks that these 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 an MoU with each recipient regarding that which is proffered (11 DCMR 2403.6 , 2403.7, 3013.5). More specifically, the ANC requests the following:
 - Public Space Improvements valued at \$146,000
 - The applicant not install benches as outlined at the locations specified given concerns raised by constituents related to loitering, and that these funds go towards other public space improvements in SMD 2A-02;

- Revisit the specific trees requiring replacement in SMD 2A-02, and prioritize those along M Street, and the surrounding streets to the hotel location;
- Prioritize the replacement of any three-sided tree fencing along M Street, and other locations in SMD 2A-02;
- Contribution towards Renovation of St Mary's Church of \$35,000
 - Given the completed renovation of the church specifically, and the wall frescos, the applicant needs to specify what renovations it intends to complete. The ANC does not support general contributions to religious entities, and the applicant must demonstrate a new renovation project that meets the intent of the regulation, or work with the neighborhood to identify another priority;
- Contributions towards the Biennial FBA Sculpture Project of \$60,000
 - Given the original sculpture project articulated in the ZC Order 07-21 was completed in 2008, clarify the future FBA sculpture project that the applicant will support and how the funds will be used more specifically.
- Contributions towards the Renovation of the 26th Street Dog Park of \$50,000
 - Given the 26th Street Dog Park has not received approval as a formal dog park by the DC agency responsible, redirect the funds to the approved neighborhood dog park located at Francis Field. Funds will be used as prioritized by DPR for the initial design and development of the park. If the dog park does not move forward by a date to be determined with DPR, then the funds should be directed to general improvements of Francis Field, which should include the replanting /resodding of the field and replacement of any trees.
- Contributions toward Landscaping and West End Street Plan of \$8,500
 - Given the original goal was to have Iris Miller provide services regarding "preserving landscaping that now surrounds the Nigerian Embassy building for future reuse within the 1 Hotel" is not going

forward, redirect these funds to other landscaping needs within the West End.

- If any of the above are not moving forward, then work with the neighborhood on dedicating funds towards the erection of a statue of Duke Ellington at the Duke Ellington Park located at New Hampshire Avenue, M and 21st Streets, NW.

APPLICANT'S RESPONSE-- Community Amenities

-- The retail space on the ground floor is shown on the plans as a restaurant and lounge, and will be appropriately licensed as such by ABRA. The project developers are looking to make this a signature feature of the hotel and will be looking to find a high-quality restaurant for this space.

-- The benches at the locations specified were requested by WECA as part of the original PUD, and were approved by the Zoning Commission as part of the original PUD, and WECA has recently reaffirmed that request.

-- The proposed location of the 10 replacement street trees was determined based on a survey of empty tree boxes in the vicinity of the PUD at the time of the original PUD. We have amended that proffer to indicate that if any of those tree boxes are filled prior to delivery of that amenity, then the applicant will work with DDOT to locate appropriate sites for replacement street trees that are in close proximity to the PUD site. The applicant can consult with the ANC prior to delivery of that amenity to determine whether the identified sites have been filled and whether there are other empty tree boxes in the vicinity at that time.

-- Tree fencing locations are not specified in the PUD Order, except to the extent that they will be installed within ANC 2A, where needed. The applicant can consult with the ANC when this amenity is to be delivered for identification of appropriate locations.

-- The contribution to the fresco restoration project at St. Mary's is an amenity that was approved in the original PUD order. The fact that the restoration was performed by the church after the original PUD approval, in anticipation of payment for that work by the PUD applicant, does not mean that the PUD applicant will now seek to abrogate that agreement with the church. We assume that you are not suggesting that the PUD applicant should now shy away from that obligation.

-- The FBA has recently reaffirmed the need and desire for the PUD applicant to make a contribution to the FBA's Biennial Sculpture Project, and the applicant intends to honor that commitment in the future.

-- The applicant has redirected the funds originally approved for the 26th Street Dog Park to the West End Dog Park, at the request of both West End Friends and the ANC.

-- The contribution to Iris Miller for development of a landscaping plan for the project and the vicinity has been changed to a contribution of \$1000 for services rendered in the original PUD plans, and the remainder of that money has been allocated between the public space improvements listed above and the West End Dog Park.

We have attempted to be as responsive to the ANC as possible. Thanks for your assistance. Please let me know if you have any questions.

The ANC designates the chair or her designated alternate to represent it before the Zoning Commission on this matter.

ON BEHALF OF THE COMMISSION

Respectfully submitted,

Rebecca Coder
Chair

cc: Christopher Collins and Kyrus Freeman, Counsel to the Applicant
Harriet Tregoning, Office of Planning
Terry Bellamy, DC Department of Transportation

ANC 2A has six single member districts, however one was designated vacant on 09-12-2011 by DC BOEE

Comprehensive Plan Policy LU-2.3.9: Transient Accommodations in Residential Zones 311.11

Commissioner Asher Corson recused himself from the action given he is an officer of the FBA

Comprehensive Plan, Policy LU-2.4.11: Hotel Impacts

Comprehensive Plan Action NNW-1.2.A: Streetscape Plans 2109.11

Foggy Bottom News, "St. Mary's Church, A Landmark Restored" 07/15/2009

B. APPLICANT'S ADDITIONAL RESPONSES TO ANC'S ORAL TESTIMONY (not included in the ANC's duly-adopted written submission)

1. The ANC Chair's testimony questioned how "the hotel's greater use of M Street may relate to the West End Fire Company 1 next door, and the future bicycle tracks planned for the

north side of M Street, given as it appears that M could be used for restaurant valet, potential loading, as well as now charter bus activities. We ask that the Applicant...deliver a more robust transportation management plan that better supports this type of chain hotel, the 26 percent increase in room count, the increase in meeting room space, and the contemplated site requirements that a greater than 200 room hotel requires..."

APPLICANT'S RESPONSE -- *The Applicant's expert traffic and transportation witness extensively addressed these issues, taking into consideration the increased number of rooms and the modest inclusion of additional meeting space in the revised PUD plans. The use of the M Street frontage for valet parking for the restaurant was part of the approved plans in 2008, and will continue to be located here. The applicant's traffic expert witness report addresses this issue. DDOT has no objection to this location for this use. The Applicant testified that, as the hotel operator as well as the developer, it is in their interest that there be no loading into the restaurant or the hotel from M Street, and they will make sure that this does not occur. The applicant testified as to the limited number of buses (only three to five per month, during the peak periods) that would come to the site, given that this is not a convention or meeting hotel, and the traffic expert testified that the inclusion of the bicycle track on the north side of M Street would not adversely impact the applicant's plan. The Applicant also testified that bus loading and unloading activities would be coordinated with the hotel's Transportation Coordinator to ensure that hotel staff would be on hand to facilitate the loading or unloading process.*

2. The ANC Chair raised an issue about the need to define the delivery hours. The ANC would like delivery hours for the hotel to be limited to 8:00 a.m. to 9:00 p.m. weekdays, and 9:00 a.m. to 9:00 p.m. weekends.

APPLICANT'S RESPONSE -- *The applicant's October 7 submission to the Commission states that loading activity will occur in the alley at the rear of the building, and will be made during non-peak hours and restricted during peak hours (between 7:30 and 9:30 a.m. and between 4:30 and 6:30 p.m.), so as not to interfere with rush hour traffic. The hotel and restaurant will on occasion require delivery of fresh foods in the morning before 8:00 a.m. The applicant is amenable to a condition that deliveries will not be accepted before 7:00 a.m. and after 9:00 p.m. weekdays, and before 8:00 a.m. and after 9:00 p.m. on weekends.*

3. The ANC Chair testified that "the ANC would like to ensure that the design is of the caliber originally approved as part of the PUD and that it incorporates more of the environmental, green gestures as originally contemplated."

APPLICANT'S RESPONSE -- *The applicant and the expert architecture witnesses testified that the new design in this PUD modification will achieve a higher LEED rating than the originally-approved PUD plan. The environmental features of the new plan are different from the original plan in a number of respects. A number of the "environmental green gestures" of the original plan that were favored by the ANC Chair in her testimony were proven to be*

unworkable and infeasible. The new plan provides real, feasible and workable green technology that will achieve a higher LEED rating than the prior approved PUD plan.

4. The ANC Chair testified that the modified PUD plan is not "stunning", progressive", or "fascinating", and that it therefore offers less as it relates to achieving the Comprehensive Plan's architectural and environmental components than the prior plan.

APPLICANT'S RESPONSE -- *The applicant's expert architect witnesses provided substantial evidence regarding the superior quality of the architecture and materials in the modified PUD design.*

5. The ANC Chair testified that "the ANC requests that the applicant deepen the proposed 3 foot lay-by. We recognize that it took a lot for the applicant to get DDOT to agree to the 3 feet, but the ANC, and we hope the Zoning Commission, will support something greater".

APPLICANT'S RESPONSE -- *The applicant's witnesses testified that the 3 foot lay-by was imposed by DDOT and approved as part of the prior PUD review process, and that DDOT's position remains constant. This is an issue on which the Commission has requested additional information. The applicant recognizes that regardless of what is approved by the Commission, DDOT asserts primary jurisdiction over the public space and will have the last word on this issue during the building permit application review process. The applicant's civil engineer testified during the hearing about the special circumstances leading to the change in the lay-by depth for the Ritz Carlton Residences on 23rd Street, in that residents of that building were parking their cars in the originally-installed 3 ft. lay-by and carrying their packages to their residences. The applicant's witness testified in this case that there will be sufficient personnel available to facilitate the emptying of vehicles that pull into the lay-by at the hotel, in order to minimize the time that a car sits at that location, and that the cars will be quickly moved into the parking garage via the adjacent garage ramp. DDOT supports this proposed plan for the lay-by.*

6. The ANC Chair testified that the ANC wants to make sure that the restaurant remains open to the public.

APPLICANT'S RESPONSE -- *The applicant's witness testified that the restaurant will remain open to the public.*

7. The ANC Chair testified that "truck sizes be of no greater than the size of 30 feet as proposed by the applicant."

APPLICANT'S RESPONSE -- *The applicant testified that this will be the case. This was also stated in the Transportation Management Plan that was included in the applicant's October 7 submission to the Commission.*

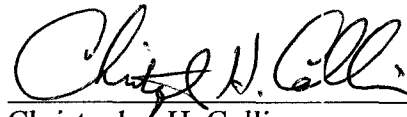
8. The ANC Chair testified that the construction hours should be consistent with the applicable regulations.

APPLICANT'S RESPONSE -- *The applicant agrees to abide by the applicable DC regulations. This was included in the Construction Management Plan that was included in the applicant's October 7 submission.*

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


Christopher H. Collins

CHC/lc

cc: Rebecca Coder, ANC 2A
Barbara Kahlow, WECA
Asher Corson, Foggy Bottom Association
Steve Cochran, Office of Planning
Jeff Jennings, DDOT

Collins, Christopher H (WAS - X77841)

From: Collins, Christopher H (WAS - X77841)
Sent: Tuesday, October 25, 2011 11:32 AM
To: 'Coder, Rebecca K. (ANC 2A02)'
Cc: Tom Messervy
Subject: ZC 07-21B, PUD Modification Application

Rebecca--This memo is to confirm where we stand with respect to the items listed in the ANC's letter of September 21, 2011 to the Zoning Commission reflecting the ANC's conditional non-objection of the proposed modification to the approved PUD at 22nd and M Streets, NW:

1. Transportation Management Plan--A letter dated October 6, 2011 from Wells & Associates, which indicates how the applicant will address the transportation issues raised by the ANC at your September 21, 2011 meeting, was submitted to the Zoning Commission as part of our 20-day submission on October 7, 2011. A copy of that submission was sent to the ANC.

2. Overall Design--

--According to DDOT, the plan provides adequate pedestrian space along the sidewalks, without the need to set back the building from the property lines abutting the streets.

--We have addressed the lay-by on several occasions with DDOT, both in the original PUD application process, and in this modification process. We agree with DDOT that this is the best solution.

--The materials for the skin of the building will be superior in nature. There was no green wall at the end wall of the building in the original application, nor is one being contemplated for the PUD modification. This would be difficult to maintain, as it would extend over the property line onto the neighbor's property.

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3. Construction Management Plan--The CMP, which is also included in the 20-day submission, indicates that "the Applicant pledges to work in close cooperation with [ANC 2A] and its chairperson, commissioners, and members to minimize impacts of the construction on the community."

4. Community Amenities

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We have attempted to be as responsive to the ANC as possible. Thanks for your assistance. Please let me know if you have any questions.

Chris

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