

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33
Z.C Case No. 08-33

Conference Center Associates I, LLC
(Consolidated Planned Unit Development, First-Stage Planned Unit Development,
and Related Map Amendment @ Parcel 121/31)
September 14, 2009

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 787, *et seq.*; D.C. Official Code § 6-641.01), held a public hearing on July 9, 2009 to consider an application from Conference Center Associates I, LLC (consisting of Hospitality Partners LLC, Mariani Family, LLC, and H Street Investment Corporation) ("Applicant"), for the consolidated review and one-step approval of a planned unit development ("PUD"), the first-stage approval of a PUD, and a corresponding Zoning Map amendment to the C-3-A Zone District for unzoned Parcel 121/31. The Commission considered the application pursuant to Chapter 24 of the 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.

FINDINGS OF FACT

Procedural Background

1. On December 23, 2008, the Office of Zoning received an application from the Applicant requesting the Commission to approve a consolidated PUD, a first-stage PUD, and a related Zoning Map amendment to the C-3-A Zone District for the property at the corner of Irving Street, N.E. and Michigan Avenue, N.E., known as Parcel 121/31 (the "Property").
2. On January 8, 2009, the Applicant submitted a letter signed by the Director of the District of Columbia Department of Housing and Community Development ("DHCD") stating that DHCD had jurisdictional responsibility for the Property, that DHCD had entered a lease with the Applicant, and authorized the Pillsbury Winthrop Shaw Pittman law firm to file and prosecute the PUD application on its behalf.
3. On February 23, 2009, the Commission considered the consolidated PUD, first-stage PUD, and Zoning Map Amendment application and voted to set the case

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ZONING COMMISSION

District of Columbia

CASE NO.08-33C

EXHIBIT NO.1B

down for a public hearing. On April 23, 2009, the Applicant filed its pre-hearing statement with the Office of Zoning, and a public hearing was scheduled before the Commission for July 9, 2009. Notice of the public hearing was given in accordance with the provisions of 11 DCMR §§ 3014 and 3015.

4. On July 9, 2009 the Commission held a public hearing on the application, which was conducted in accordance with the provisions of 11 DCMR § 3022. Paul Tummonds of Pillsbury Winthrop Shaw Pittman, LLP and members of the development team presented the Applicant's case. As a preliminary matter, the Commission accepted Sean Stadler of WDG Architecture as an expert in architecture; Theodore Mariani as an expert in architecture and engineering; Erwin Andres of Gorove/Slade Associates as an expert in traffic engineering; and Chris Cowles of The Care of Trees as an expert in urban forestry. Ronnie Edwards and Anita Bonds testified on behalf of Advisory Neighborhood Commission ("ANC") 5C.
5. The Commission took proposed action to approve the PUD and related Zoning Map amendment application at a properly noticed public meeting on July 27, 2009.
6. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by report dated September 3, 2009, advised: (1) that the proposed consolidated PUD and related Zoning Map amendment application is not inconsistent with the Comprehensive Plan for the National Capital nor would it adversely affect any other federal interests; and (2) that the first-stage PUD "would have an adverse effect on an identified federal interest because the proposed inclusion of dwelling units is inconsistent with the acceptable uses stipulated in the Statement of Non-Disturbance established on March 7, 1990 between the District of Columbia government and the General Services Administration."
7. At its September 14, 2009 public meeting, the Commission considered the NCPC report and discussed its advice regarding the Statement of Non-Disturbance. The Commission noted that in deciding the first-stage PUD, its role is limited to deciding whether the Applicant has met its burden of proof under Chapter 24 of the Zoning Regulations which does not include an evaluation of whether the proposed project, if constructed, would violate an agreement between the Applicant and third parties. The Commission noted that its approval of the PUD is limited to these criteria, and that the Applicant proceeds at its own risk with respect to the Non-Disturbance Agreement. In approving the application, the Commission takes no position as to whether the inclusion of dwelling units is inconsistent with the acceptable uses stipulated in the Statement of Non-

Disturbance established on March 7, 1990 between the District of Columbia government and the General Services Administration.

8. The Commission took final action to approve the consolidated PUD, first-stage PUD, and related Zoning Map amendment application on September 14, 2009.

PUD SITE

9. The Property is known as Parcel 121/31, which is bounded by Irving Street, N.E. on the north and Michigan Avenue, N.E. on the east; residential and commercial areas to the south; and a cloverleaf traffic interchange on the west. The Property is located at the southwest corner of Michigan Avenue and Irving Street, with frontage on both streets. The Property is comprised of 238,909 square feet of land area. (Exhibit 18, p. 4.)
10. The Property is improved with a surface parking lot containing approximately 400 spaces. This parking lot occupies about 60% of the Property and serves as a remote parking facility for the Washington Hospital Center, which is located to the west of the Property along Michigan Avenue. (Exhibit 18, p. 4.)
11. In 1991, pursuant to Zoning Commission Order No. 689, a PUD for a conference/training center was approved for the Property. The project was never constructed, and the Zoning Commission's approval expired. (Exhibit 18, p. 5.)
12. The Property is included in the Government Land Use category on the District of Columbia Comprehensive Plan Future Land Use Map. (Exhibit 18, p. 3.)
13. The area immediately adjacent to the Property is comprised of the following Zone Districts:
 - Immediately to the north across Irving Street is R-5-A zoned property;
 - Immediately to the east across Michigan Avenue is R-5-A zoned property;
 - Immediately south of the Property is zoned C-1 and R-5-A; and
 - Immediately west of the Property is zoned GOV. (Exhibit 19, p. A1.01.)

The Property is currently unzoned (designated as GOV). (Exhibit 19, p. A1.01.)

14. The Applicant requests a map amendment to rezone the Property to the C-3-A Zone District. The C-3-A Zone District is a commercial district that permits medium-density development, with a general pattern of mixed-use development. Buildings in the C-3-A Zone District may be constructed to a maximum height of

65 feet and a maximum density of 4.0 floor area ratio ("FAR") (2.5 commercial) as a matter-of-right. The PUD guidelines for the C-3-A Zone District allow for a building height of 90 feet and a maximum density of 4.5 FAR (3.0 Commercial).

PUD APPLICATION AND PROJECT

15. The consolidated PUD application proposes the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The hotel will be a nine-story, 314-room SpringHill Suites by Marriott (233 rooms will be constructed in the initial development of the hotel in the consolidated portion of the PUD project). The all-suite hotel will contain a pool, spa, exercise room, and business center. The hotel will also include a white tablecloth restaurant on the ground floor, accessible from both within the hotel and directly from Michigan Avenue; the restaurant will also offer an outdoor seating area along Michigan Avenue. The conference center will contain 37,346 square feet of meeting rooms and ballroom space. The conference center will open onto a landscaped rooftop garden on the second level of the hotel and directly onto the parking garage. The parking garage and retail space will be to the west of the conference center and hotel, fronting on Michigan Avenue. The parking garage will contain 400 parking spaces in four above-grade levels, and the 20,000 square feet of retail space will be on the ground floor of the parking garage, accessible directly from Michigan Avenue. The below-grade retail space and loading facilities have been designed in a manner that could accommodate a grocery store use. The northern portion of the Property will remain as a surface parking lot until development of the second phase of the PUD project is developed. Upon completion of the consolidated portion of the PUD project, 600 parking spaces will be provided in the project (400 in the parking structure and 200 surface parking spaces). (Exhibit 18, pp. 2-3, 7-9.)
16. The first-stage PUD will be the second phase of the project on the northern half of the Property. The second phase proposes two nine-story buildings. One building is expected to be used as a hotel and/or residential building. The second building is expected to contain additional conference space and/or residential amenities on the first two floors with residential and/or hotel uses on the upper floors. The two buildings will be separated by an entry plaza. A below-grade parking garage providing approximately 295 parking spaces is also included in the first-stage PUD application. The Applicant requested that the Commission make the first-stage PUD approval effective for a period of five years from the date of approval of the consolidated PUD application. (Exhibit 18, pp.12-13.)
17. Sean Stadler of WDG Architecture, admitted as an expert witness in the field of architecture, testified about the design of the consolidated PUD and the first-stage PUD. Mr. Stadler noted that the Property will contain a landscaped plaza

between the hotel and conference center building. This area will serve as the vehicular drop off area and will provide pedestrian access between the hotel and the conference center. Mr. Stadler also noted that a pedestrian walkway and entrance to the hotel will be provided from Michigan Avenue. Mr. Stadler noted that the building height of 94.5 feet is necessary to the successful functioning of the project in order to provide larger clear floor-to-ceiling heights at the ground floor and for the hotel room floors, consistent with the high quality rooms and experience associated with this hotel brand. In addition, Mr. Stadler stated that the 94.5 foot measured building height is attributable to the grade change from the property line to the Irving Street curb. Mr. Stadler noted that the building will be 89.5 feet tall as measured from lobby to the roof. (July 9, 2009 Transcript, pp.19-20)

18. Chris Cowles of The Care of Trees, admitted as an expert witness in the field of urban forestry, submitted a report and testified about the tree and vegetation coverage on the Property. Mr. Cowles noted that the purpose of this report was to visually assess and characterize the vegetation located on the northwest half of the Property. Mr. Cowles noted that in his inspection of the site, he did not encounter any "special trees," which are those typically having a circumference greater than 55 inches. Mr. Cowles concluded that the existing vegetation and ecological conditions are not healthy or beneficial to the community due to the degraded nature of the site, the trash and use by homeless people, and the lack of "special trees" of 55 inches or greater circumference on this portion of the Property. Mr. Cowles noted that, "...a high value urban landscape will add considerably more to the neighborhood property values according to the highest and best use of the land." (Exhibit 33.)
19. Theodore Mariani, admitted as an expert witness in the field of civil engineering, testified about the sustainable design features of the project. He noted that the project will be LEED certified and that the goal for the project is to be able to obtain a LEED Silver certification. Mr. Mariani noted that the parking garage will feature a green screen on its façade facing the adjacent Trinity Square shopping center. Mr. Mariani noted that the roof level of the parking garage will feature trees and plantings to help decrease the urban "heat island" effect. In addition, Mr. Mariani testified that the Applicant's preferred retail tenant for the mixed use building in the consolidated PUD was a grocery store. (July 9, 2009 Transcript, pp. 89-90.)
20. Erwin Andres of Gorove/Slade Associates, admitted as an expert witness in the field of transportation engineering, submitted a Traffic Impact Study and Addendum, and a Transportation Management Plan ("TMP"). At the public hearing, Mr. Andres testified about vehicular access to the site, the adequacy of the proposed loading facilities, and presented the Applicant's response to the

District Department of Transportation's ("DDOT") report. Mr. Andres noted that the site is generally suburban in character and will be accessed primarily by automobile. Mr. Andres testified that vehicular access to the site will occur from both Irving Street and Michigan Avenue. Mr. Andres noted that the Applicant is proposing the relocation of the Irving Street entrance to the Property and the addition of a traffic signal at the Irving Street entrance to allow better access to and from the Property.

Mr. Andres' traffic study concluded that the vehicular trips generated by this project, "would not degrade intersection levels of service or significantly increase average delay beyond what would occur in the future without development. Therefore, the development in and of itself would have minimal impacts on the study area roadway network." In addition, Mr. Andres' study also concluded that the proposed development would not adversely affect the operational efficiency and comfort of pedestrian and bicycle traffic movements within the study area.

In response to DDOT's questions regarding the proposed Michigan Avenue access to the Property, Mr. Andres stated that full access into and out of the Michigan Avenue entrance is the best alternative for vehicles entering and exiting the Property because of expected trip generations, the left turn restriction at Irving Street from Michigan Avenue, limited left turns from the Michigan Avenue entrance, the benefit of having two vehicular access points, and the additional Irving Street entrance.

Mr. Andres also testified that loading will be accessed from Michigan Avenue, with separate loading areas for the hotel/convention center and the retail space. He noted that the loading facilities are adequate for the needs of the project and that the use and access of the loading facilities would not adversely impact the adjacent roadways. In addition, Mr. Andres stated that he believed that DDOT was unwarranted in its concern that loading would occur from Michigan Avenue; rather, he stated that trucks would likely want to avoid unloading on busy Michigan Avenue and would prefer to unload in the designated loading areas.

Mr. Andres testified that he did not believe that a SmartBike location was appropriate for the Property due to the suburban nature of the site and the proposed uses in the project.

(July 9, 2009 Transcript, pp. 36-51; Exhibit 18, Exhibit A).

21. Rob Reinders of the Marriott Corporation testified about the SpringHill Suites brand and the high quality of this hotel. He noted that this hotel has many upgrades from the usual SpringHill Suites design and stated that this hotel will be a showcase for the SpringHill Suites brand. (July 9, 2009 Transcript, p. 55.)

22. Michael Dickens testified on behalf of the Applicant. Mr. Dickens addressed the Applicant's community outreach program, the need for this type of hotel project in this community, and the Applicant's community amenities program. The community amenities program includes:

- **Ward 5 Skills Development and Job Readiness Program:** The Applicant will contribute \$75,000 for a project-specific job readiness program that will prepare 40-50 Ward 5 residents for jobs directly related to the project's development and the hospitality industry. The program will be administered by the University of the District of Columbia ("UDC") hospitality program or other similar non-profit institution. The program will target Ward 5 residents who are interested in the hospitality industry and assist successful participants with job placement. The program will coordinate its efforts with other existing programs/institutions, such as the Hotel Association of Washington, DC ("HAWDC") and the Hospitality High School of Washington, DC, a Public Charter School.
- **Scholarships and internships for Ward 5 residents who are students at the Community College hospitality program of UDC/HAWDC:** The Applicant will provide scholarship assistance of at least \$2,000 for twenty years, a value of at least \$40,000, to a student or students selected by the school and HAWDC under the UDC/HAWDC-administered scholarship program, who are Ward 5 residents. In addition, the hotel will commit to hiring two students who are Ward 5 residents from the school as interns each summer (estimated cost of \$5,000 per intern).
- **Culinary Internships for Ward 5 Students:** The Applicant will hire two Ward 5 students who attend a Career Technical Education based Culinary Arts Program as interns each summer (estimated cost of \$5,000 per intern) for twenty years.
- **Business opportunities for the community:** A directory of services will be placed in each hotel room, listing local businesses that may be of interest to hotel guests.
- **First Source and CBE Agreements:** The Applicant will enter into a First Source Employment Agreement with the Department of Employment Services ("DOES"). The Applicant will also enter into a Certified Business Enterprise ("CBE") Agreement with the Department of Small and Local Business Development.

- **Meeting room space for the ANC 5C or Single Member District (“SMD”) 5C11:** ANC 5C or SMD 5C11 will be provided meeting room space for monthly public meetings on a scheduled basis, free of charge.
 - **Reduced rates for use of the hotel and conference facilities:** Programs will be established to provide reduced charges for reasonable use of the hotel and conference center by private residents of the area served by ANC 5C, including use of the conference facilities and rooms, as well as the ballroom facility, on a space available basis.
 - **Seniors group lunch program:** The Applicant will host a luncheon for a seniors group consisting of area residents (up to 25 guests) four times per year for a period of 20 years from the date that the restaurant opens.
 - **ANC 5C residents’ holiday party:** The Applicant will make meeting space available for an annual holiday party for area residents, on a space available basis, for a period of 20 years from the date that the hotel opens. (Exhibit 32.)
23. At the conclusion of the July 9, 2009 public hearing, the Commission requested that the Applicant provide additional information regarding the following issues:
- The request for set-back relief for the main roof structure on the hotel building;
 - Additional analysis regarding the proposed treatment of the Michigan Avenue façade of the retail/parking garage structure;
 - Revisions to the proposed vehicular access to the Property from Michigan Avenue;
 - Discussion of the Applicant’s commitment to satisfy the applicable Inclusionary Zoning requirements for the second phase of development of the PUD project; and
 - An update on discussions between the Applicant and representatives of the Urban Forestry Administration (“UFA”).
24. On July 20, 2009, the Applicant submitted a post-hearing submission that addressed all of the Commission’s requests for additional information.
- The Applicant reduced the height of the main roof structure on the hotel building from 18 feet, six inches to 17 feet, six inches. The configuration of the main roof structure was revised so that this roof structure now satisfies the

1:1 setback requirement for the majority of the building's frontage along Michigan Avenue. The only portion of the main roof structure that does not satisfy the 1:1 setback requirement along Michigan Avenue occurs at the point that the configuration of the hotel building changes when the Michigan Avenue and Irving Street wings of the hotel meet.

- In the development of the construction drawings for this structure, the Applicant will: (i) attempt to bring more of the texture and articulation of the hotel façade to the parking structure; (ii) soften the appearance of the parking deck through additional appropriate plantings, or possibly a structured planting bed at the top of the structure; (iii) investigate the potential for adding a screen grid or louvers at the openings of the precast façade; and (iv) once the tenants for the retail uses are finalized, create a more detailed ground floor façade elevation that will enliven the façade's appearance through one or more store fronts, signage, and canopies.
- Based on an additional meeting with DDOT representatives, the Applicant understood that DDOT's concern with the left turn vehicular movement from Michigan Avenue onto the Property is due to the speed of traffic along Michigan Avenue during non-peak hour traffic periods, particularly the speed of traffic that is achieved by the "slip lane" that allows vehicles to enter Michigan Avenue from Irving Street without having to come to a stop. The Applicant noted the importance of providing a safe and efficient transportation system that acknowledges the needs of pedestrians, bicyclists and drivers. The Applicant believes that maintaining the ability for all vehicles to take left turns onto the site from Michigan Avenue, just as vehicles are able to do today into the Washington Hospital Center parking lot on the site and as they are able to do at the adjacent Trinity Square Shopping Center, is of paramount importance to the viability of the proposed restaurant and retail uses along Michigan Avenue. For the Michigan Avenue entrance, the Applicant proposed a right and left turn in for all vehicles and a right turn only out for all vehicles.

The Applicant proposed the following changes to the PUD project:

- i. All Washington Hospital Center employees utilizing the parking spaces provided on the site will be required to enter and access the site from Irving Street;
- ii. All directions to the hotel and conference center (whether on websites, printed materials, or from hotel employees) will direct guests to the Irving Street entrance;

- iii. No vehicles will be able to make a left turn out of the Michigan Avenue exit (this will be accomplished through signage at the Michigan Avenue exit); and
 - iv. The Applicant will pay for all costs associated with the removal of the “slip lane” from Irving Street to Michigan Avenue, by redesigning and constructing a revised intersection of Michigan Avenue and Irving Street at the same time that the Applicant undertakes the construction of the new signalized intersection at the Irving Street entrance into the site.
- The Applicant acknowledges that if a residential component is included in the second phase of development of the PUD project, that portion of the PUD project will satisfy all applicable Inclusionary Zoning requirements.
 - Representatives of the Applicant met with representatives of the Urban Forestry Administration (UFA) on July 17, 2009. At that meeting, the attendees reviewed the report of the Applicant’s arborist and discussed the importance of the Applicant receiving comment and input from UFA at this stage of the development process. In addition to a discussion of the vegetated area of the site, the Applicant and UFA representatives discussed issues related to the stormwater management infrastructure that will be incorporated into the development of the project.

(Exhibit 36.)

25. During the Commission’s deliberations at the July 27, 2009 public meeting, the Commission required that the Applicant submit the following information before the Commission considered final action:
- Updated renderings depicting the revised main roof structure on the roof of the hotel building;
 - Elevations and details depicting the enhancements to the Michigan Avenue façade of the retail/parking garage structure; and
 - Additional information on the proposed reconstruction of the Michigan Avenue/Irving Street intersection.
26. On September 4, 2009, the Applicant submitted a second post-hearing submission that addressed the Commission’s requests for additional information. The submission attached plans, renderings and details that depict the revised main roof structure and enhancements to the Michigan Avenue façade of the retail/parking garage structure. The submission described that the Applicant had met with DDOT to discuss the planned changes to the Michigan Avenue/Irving Street

intersection, attached the materials the Applicant submitted to DDOT, and stated that the Applicant believed the materials were sufficient for DDOT to determine whether the new intersection met DDOT standards.

27. Pursuant to 11 DCMR § 2405.7, the Commission has the authority to grant flexibility from the Zoning Regulations in connection with a PUD. The Applicant requested relief from the following roof structure requirements: a single roof structure, all roof structures be the same height, and roof structures be set back from all exterior walls at a ratio of 1:1 (§ 411). The Applicant requested additional relief from the side yard requirement (§ 775.5), the loading requirement (§ 2201.1), and the requirement for one building on a single record lot (§ 2517). The Applicant also requested that the Commission use its authority under § 2405.3 to approve a height increase of up to five percent over the PUD guidelines for the C-3-A Zone District to allow a building height of 94.5 feet. The Commission finds that granting this requested minor flexibility is necessary for the project to achieve its goals, that granting this flexibility will have no impact on the surrounding properties, and that granting this flexibility is consistent with the 1910 Height Act.

SATISFACTION OF THE PUD EVALUATION STANDARDS

28. Pursuant to 11 DCMR § 2403, in evaluating a PUD application the Commission must “judge, balance, and reconcile the relative value of Project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Commission finds that the rezoning, development incentives, and requested flexibility from the Zoning Regulations are appropriate and are justified by the benefits and amenities offered by this project. As detailed in the Applicant’s written submissions and testimony to the Commission, the proposed PUD will provide the following project amenities and public benefits:
- Community Amenities Program: The Applicant will provide the Community Amenities Program described above in Finding of Fact 22.
 - Site Planning: Section 2403.9(b) lists site planning and efficient and economical land utilization as one category of public benefits and project amenities for a PUD. As shown in the detailed plans, elevations, and renderings, the proposed project exhibits efficient land use and exceptional site planning. The PUD combines a hotel, a conference center, a restaurant, and a retail space into one project. The conference center ballroom extends over a driveway to connect with the garage, thereby allowing a full size ballroom without sacrificing access to the site. Similarly, the parking structure incorporates ground floor retail along Michigan Avenue in order to

offer a project that is both pedestrian friendly and adequate to accommodate cars for hotel guests and conference attendees. (Exhibit 18, p. 20.)

- Urban Design, Architecture, Landscaping, and Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The inclusion of the direct pedestrian entrance from Michigan Avenue to the hotel lobby, the treatment of the plaza between the hotel and the conference center, an outdoor dining terrace, and a sunbathing terrace are all project amenities resulting from the urban design, landscaping, and creation of open spaces found in this project. Benches, lighting, and landscaping on the Property and in the adjacent public space will provide respite and seclusion from the vehicular traffic along Michigan Avenue and will animate the Michigan Avenue pedestrian experience. The Applicant will pay for the cost of these improvements in public space. (Exhibit 18, p. 20.)
- Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The project will result in the relocation of the Irving Street vehicular entrance onto the Property. The current location of this entrance creates sight distance and operational constraints for left-turn movements from the Property. As a result of this project, the Applicant will undertake the following improvements: relocate the Irving Street entrance drive into the Property; install a traffic signal and advanced flashing beacon on Irving Street; provide a separate left turn-lane along the westbound approach of Irving Street; provide improved roadway striping and signage to allow efficient and safe merging of mainline and ramp vehicles approaching from the west; and remove the “slip lane” from Irving Street to Michigan Avenue through the redesign and construction of a revised intersection at Michigan Avenue and Irving Street.

The Applicant submitted a TMP for this project. The primary objective of the TMP is to reduce the potential transportation impacts of the project by managing traffic and parking demand. The Applicant’s TMP includes the following measures: designation of a transportation services coordinator, increased transit services, three reserved parking spaces for a car-sharing service, a ride-matching/ride-sharing program, and a guaranteed ride home program.

The Applicant will pay the costs for the expanded new 10-foot sidewalks in the public space adjacent to the Property and to replace and enhance the bus shelter located on Michigan Avenue adjacent to the Property. The new

sidewalks and enhanced bus shelters will enhance pedestrian safety in the area and will also help encourage the use of public transportation. (Exhibit 18, pp. 21-22.)

- Employment: According to § 2403.9(b) of the Zoning Regulations, the use of local firms in the development and construction of the project is a representative public benefit and project amenity. The Applicant estimates that the hotel and restaurant operations will generate 160 full time equivalent jobs. The Applicant will enter into a CBE Agreement with the Department of Small and Local Business Development.

According to § 2403.9(b) of the Zoning Regulations, “employment and training opportunities” are public benefits and project amenities that a PUD may offer. The Applicant will enter into an agreement to participate in the DOES First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 18, p. 23.)

- Uses of Special Value and Revenue for the District: Pursuant to § 2403.9(i), “uses of special value to the neighborhood or the District of Columbia as a whole” are public benefits and project amenities to be evaluated by the Commission. The proposed 314-room hotel will generate income to the District of Columbia through various taxes and payments. The estimated amount of annual revenue generated by this project is \$4 million. In addition, the Applicant, ANC 5C representatives, and neighborhood organizations have developed a comprehensive community amenities plan. (Exhibit 18, pp. 23-24.)

29. The Commission finds that the proposed consolidated PUD, first-stage PUD, and related map amendment are not inconsistent with the District Elements of the Comprehensive Plan for the National Capital (“Comprehensive Plan”) and are fully consistent with the following components of the Comprehensive Plan:

- Upper Northeast Area Element: The Comprehensive Plan advances the policy of improved streetscapes. (Policy UNE-1.2.1 Streetscape Improvements). In addition, the Area Element promotes linkages between residents and jobs within Upper Northeast (Policy UNE-1.2.4 Linking Residents to Jobs) and increasing economic opportunity in the area (Policy UNE-1.2.5 Increasing Economic Opportunity). The proposed project focuses on enhancing the vibrancy and appearance of Michigan Avenue. The significant landscaping proposed on the Property and the public space along Michigan Avenue will create a more attractive and vibrant stretch of this gateway avenue. The project will result in the creation of 160 new jobs that can be filled by

residents of the surrounding communities. This project will also provide for increased economic opportunity for neighborhood and District residents.

- **Land Use Element:** The Comprehensive Plan provides policies to encourage infill development (Policy LU-1.4.1 Infill Development), to ensure that zoning of vacant infill sites is compatible with the surrounding neighborhood (Policy LU-1.4.3 Zoning of Infill Sites), and to ensure that new uses within commercial areas are developed in a way that is compatible with the surrounding neighborhood (Policy LU-2.4.6 Scale and Design of New Commercial Uses). The proposed commercial uses and proposed C-3-A Zone District are consistent with these policies.
- **Economic Development Element:** The Comprehensive Plan states that the District should create additional shopping opportunities in Washington's neighborhood commercial districts. (Policy ED-2.2.3: Neighborhood Shopping). Also, the Comprehensive Plan supports the development of a diverse range of hotel types and encourages new hotels (Policy ED-2.3.4: Lodging and Accommodation). In addition, the Comprehensive Plan promotes job training and job placement in the hospitality industry by working with local hotels (Policy ED-2.3.9: Hospitality Workforce Development). Finally, the Comprehensive Plan promotes the policies of expanding opportunities for small, local businesses (Policy ED-3.2.8: LSDBE Programs) and creating incentives to hire local residents (Policy ED-4.2.12: Local Hiring Incentives). The Applicant expects that the demand for the retail space provided in this project will come from predominantly neighborhood serving retailers that will provide basic goods and services. The creation of an all-suites hotel at this location is entirely consistent with the policy of creating a range of hotel types in various parts of the District of Columbia. The project will also provide significant job opportunities in the hospitality sector. Also, the Applicant has agreed to enter into First Source Employment and CBE Agreements related to this project.

GOVERNMENT REPORTS

30. The Office of Planning ("OP") submitted a report, dated June 29, 2009, that recommended unconditional approval of the proposed consolidated PUD, first-stage PUD, and Zoning Map amendment. The report states, in part,

OP concludes that the redevelopment proposal for the site would be beneficial to the District and the immediate neighborhood. It would add commercial activity along a predominantly institutional corridor ... The project would be at a scale which is compatible with its location, and with surrounding development. Elements are

included that are improvements over what could be achieved as a matter-of-right, removal of a large portion of the surface parking in conjunction with the development of neighborhood serving retail, improved pedestrian access, as well as increased hotel revenue for the District.

The OP report supported the Applicant's request for flexibility from the Zoning Regulations with regard to roof structures, loading, building height, side yards, and multiple buildings on a record lot. The OP report also noted OP concluded that the application is not inconsistent with the 2006 Comprehensive Plan Future Land Use and Policy maps and furthers many important policies for the Upper Northeast Area. The OP report also supported the Applicant's request to extend the first-stage PUD approval for a period of five years from the date of the consolidated PUD's approval in order to gauge the development proposal's preferred option due to market conditions. (Exhibit 26, p. 15.)

31. DDOT submitted a report, dated July 2, 2009, which recommended conditional approval of the consolidated PUD. In its report, DDOT recommended several changes to the Applicant's planned circulation pattern. First, DDOT recommended that all personal vehicles should be restricted to right turns out of and right turns into the Michigan Avenue entrance. Second, DDOT supported the Applicant's request for relief from the loading requirements but raised a concern that trucks for the retail spaces will not use the loading facilities and, instead, will park on Michigan Avenue and unload on the sidewalk; thus, DDOT recommended a delivery schedule and loading dock coordinator. Third, DDOT requested that the Applicant place a SmartBike station on the site near the retail spaces. Finally, DDOT recommended that the Applicant adopt a ten point transportation demand management plan. DDOT's report also required that the Applicant provide appropriate signage alerting drivers, from all directions, about the new Irving Street signalized entrance to the Property and that the Applicant re-examine the parking needs at Phase II of the development to ensure that parking is not overbuilt and that the development takes advantage of its proximity to the Brookland-Catholic University Metro Station. (Exhibit 28, pp. 1-4.)
32. UFA submitted a report, dated June 19, 2009, that classified the unimproved areas of the Property as a stand, i.e., "a group of forest trees of sufficiently uniform species, composition, age, and condition to be considered a homogeneous unit for management purposes." UFA recommended that the Applicant, "work with a consultant and perform a thorough and complete assessment of the vegetated area to determine the type of tree cover and other species that are growing in this space and what the overall impacts will be if removed." UFA report also noted that the Applicant should, "consult with the District Department of the Environment ("DDOE") Watershed Protection Division, Stormwater Management Division,

Fisheries and Wildlife Division to determine the hydrology of this site, the type of wildlife and micro-organisms that inhabit the space as well as best management practices for managing run-off.” (Exhibit 26, Attachment)

ANC REPORT

33. ANC 5C’s June 27, 2009 resolution of support noted the ANC’s unanimous support for the proposed project and for the negotiated amenities plan. The ANC’s resolution requested that the Applicant “collaborate with the community and the District Department of Transportation to address concerns about ‘access’ to and from the Michigan Avenue entrance, including proposed signage at the intersection of Michigan Avenue and North Capitol Street to guide hotel traffic to use North Capitol and Irving Streets to access the hotel property.” (Exhibit 29, pp. 1-2)
34. At the July 9, 2009 public hearing, Anita Bonds, chairperson of ANC 5C, and Ronnie Edwards, ANC 5C11 representative, testified for ANC 5C’s support of the consolidated PUD, first-stage PUD, and Zoning Map amendment application. Ms. Bonds and Mr. Edwards noted that the Applicant and ANC 5C had agreed on a community amenities plan. (July 9, 2009 Transcript, pp. 153-154)

PERSONS AND PARTIES IN SUPPORT OR OPPOSITION

35. The Ward 5 Councilmember, Harry Thomas Jr., submitted a letter in support of the application. Councilmember Thomas’ letter of support noted that, “the hotel and conference center project will offer much needed services to the community and institutions of Ward 5, and will provide significant revenues and job creation for the District of Columbia.” (Exhibit 35.)
36. The Basilica of the National Shrine of the Immaculate Conception also submitted a letter in support of the project. (Exhibit 15.)
37. There were no persons or parties in opposition to this application.

CONCLUSIONS OF LAW

Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide 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.) The development of this PUD project executes the purposes of Chapter 24 of the Zoning Regulations to encourage 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.

The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1.

Under 11 DCMR § 2402.5, the Commission has the authority to consider part of this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Applicant requested relief from the roof structure requirements, from the side yard requirement, from the loading requirement, and from the requirement for one building on a single record lot. The Commission finds that granting the requested relief will not adversely impact the surrounding properties and that the requested relief is consummate with the benefits and amenities that the PUD project will provide. The Commission finds that the Applicant's revised roof plan, which proposes a main roof structure that does not require set-back relief from 94% of the building's frontage along Michigan Avenue, is a significant improvement over the initial design.

The Commission also finds that the Applicant's request to approve a height increase of up to five percent over the PUD guidelines for the C-3-A Zone District to allow a building height of 94.5 feet is necessary for the superior quality of the hotel suites and that the Property's grade change results in a taller building height than might otherwise be the case without the grade change. The Commission finds that the allowance of five percent greater building height above the PUD guidelines for the C-3-A Zone District, as permitted in 11 DCMR § 2405.3, is essential to the successful functioning of the project and is consistent with the purpose and evaluation standards of the PUD regulations. The Commission also concludes that granting this additional building height will not have an adverse impact on the nearby properties.

The Commission finds that the proposed PUD project offers significant public benefits and project amenities that justify the Applicant's greater flexibility in planning and design. At minimum, the PUD project will provide the following public benefits:

- Significant economic development potential for the area and the District as a whole;
- Ground floor retail uses;
- Significant job creation;
- High quality public open spaces;
- Vehicular and pedestrian infrastructure improvements; and
- Environmentally sensitive design.

The Commission finds that the proposed PUD-related rezoning of the Property to the C-3-A Zone District is consistent with the surrounding uses, intensity of uses, and heights of surrounding properties. Approval of the application will result in no adverse effect on

neighboring properties. The Commission concludes that approval of the proposed consolidated PUD, first-stage PUD, and related Zoning Map amendment to the C-3-A Zone District is not inconsistent with the policies and goals of the Comprehensive Plan and is consistent with the other requirements of the Zoning Act. The proposed consolidated PUD, first-stage PUD, and related Zoning Map amendment is not inconsistent with the unzoned (GOV) designation of the Property on the Future Land Use Map.

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. The Commission notes OP's conclusions regarding the PUD project's satisfaction of the standards for PUD approval, OP's support for the requested flexibility from the Zoning Regulations, the project not being inconsistent with the Comprehensive Plan, and OP's support for the extended period of approval for the first-stage PUD approval. The Commission concurs with OP's recommendation for approval and has given its recommendation the great weight to which it is entitled.

The Commission recognizes the conditioned support that this application received from DDOT. The Commission finds that the conditions proposed in the Applicant's post-hearing submission regarding Michigan Avenue access are an appropriate compromise that responds to the concerns raised by DDOT and ANC 5C. The Commission agrees with the Applicant's statement that pedestrian, bicycle, and vehicular safety are furthered through the reduction of vehicles using the Michigan Avenue entrance, the prohibition of left turns out of the Michigan Avenue exit, and the potential for a significant reduction of vehicular speed along Michigan Avenue in front of the Property. Therefore, the Commission concludes that for the Michigan Avenue entrance to the Property, all vehicles should be allowed to make a right and left turn onto the Property from Michigan Avenue and all vehicles will only be allowed to make a right turn out of the Michigan Avenue exit. Nothing herein is intended to compel DDOT to allow or relocate such curb cuts as may be requested by the Applicant to permit this traffic pattern.

The Commission does not believe that it is necessary for the Applicant to designate a loading dock coordinator to coordinate all truck deliveries and trash disposal services for all of the proposed uses in order to provide assurance that the neighborhood quality of life will be maintained. The Commission agrees with the testimony of the Applicant and its representatives that the location of the loading docks included in the project, the amount and speed of traffic along Michigan Avenue and the distance from the retail and restaurant uses from Michigan Avenue make it unlikely that unloading of trucks and delivery vehicles will create problems along Michigan Avenue.

The Commission notes that the Applicant agrees with DDOT's conditions regarding signage for the new Irving Street entrance to the Property and the reexamination of the

parking needs in the second phase of development. The Commission finds that it is not necessary for the Applicant to pay for a SmartBike station on the Property, as the Applicant is providing an appropriate amount of benefits and amenities as a result of this application without the need to pay for the Smart Bike station. The Commission finds that the Applicant's TMP, including the provisions related to loading and deliveries, is sufficient to reduce the potential impacts of the proposed development by managing traffic and parking demand. The Commission does not believe that it is necessary to include as conditions of this order the Transportation Demand Management measures included in the DDOT report.

The Commission notes the UFA memo in this case and the request of UFA that the Applicant undertake a thorough and complete assessment of the vegetated area of the Property. The Commission finds that the report of the Applicant's arborist adequately satisfies the request of UFA. The Commission agrees with the conclusions contained in that report that the "existing vegetation and ecological conditions are not healthy and are not beneficial to the community". The Commission finds that the most appropriate process for the Applicant to address UFA's request for consultation between the Applicant and various divisions in DDOE is through the Environmental Impact Screening Form ("EISF") process. The Commission notes the dialogue that has occurred between the Applicant and UFA representatives and encourages that dialogue to continue through the EISF process.

The Commission is required under D.C. Official Code § 1-309.10(d) to give great weight to the issues and concerns expressed in the affected ANC's written recommendation. The Commission concurs with ANC 5C's support of the PUD project and has addressed the ANC's concerns regarding Michigan Avenue access to the Property. The Commission finds that it has accorded ANC 5C the great weight to which it is entitled.

DECISION

In consideration of the Finding of Facts and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for consolidated review of a Planned Unit Development, a first-stage review of a Planned Unit Development, and a related Zoning Map amendment to the C-3-A Zone District for Parcel 121/31. The approval of this PUD and related Zoning Map amendment is subject to the following guidelines, conditions, and standards of this Order. For the purposes of the following conditions, the term "Applicant" shall be the person owning a fee simple title to the property or their agent.

1. The PUD Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 18, 19, 36, and 39 of the record, as modified by the guidelines, conditions, and standards of this Order.

2. The consolidated PUD project shall include a 314 room hotel and conference center on the portion of the Property that has frontage along Michigan Avenue and Irving Street, and a four-story above grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. The consolidated PUD project also includes a 200 space surface parking lot on the northern portion of the Property.
3. The hotel in the consolidated PUD project shall include a white tablecloth restaurant on the ground floor including a main entrance open and accessible to the public during restaurant hours directly from Michigan Avenue. The restaurant will also offer an outdoor seating area along Michigan Avenue.
4. The hotel in the consolidated PUD project shall be LEED certified, and the Applicant shall make a good faith effort to achieve a LEED Silver certification for the hotel. In this case, good faith efforts shall constitute at minimum registration of the project with the U.S. Green Building Council ("USGBC"), as well as submission of an application to the USGBC applying for LEED Certification (including Silver Certification for the hotel).
5. The Applicant shall make a good faith effort to lease the retail space in the mixed use structure of the consolidated PUD project to a grocery store tenant.
6. The Applicant shall undertake (subject to DDOT approval) and pay all costs associated with the following improvements to the transportation system on Irving Street and Michigan Avenue adjacent to the Property: relocation of the Irving Street entrance drive into the Property; installation of a new traffic signal at the Irving Street entrance and appropriate signage that will alert drivers (from all directions) about the Irving Street signalized intersection; creation of a separate westbound approach off of Irving Street; improved roadway striping and signage; the removal of the "slip lane" from Irving Street to Michigan Avenue through the redesign and construction of a revised intersection of Michigan Avenue and Irving Street; installation of expanded new 10 foot sidewalks in the public space adjacent to the Property; and replacement of the bus shelter located on Michigan Avenue adjacent to the Property. All of these actions must be completed prior to the issuance of a Certificate of Occupancy for the consolidated portion of the PUD project.
7. The Applicant shall implement the Transportation Management Plan, as described in Exhibit 16 of the record.
8. Subject to DDOT's approval of the installation or relocation of any needed curb cuts, all vehicles will be able to make left turns from Michigan Avenue onto the Property, provided the following conditions are satisfied: all Washington Hospital Center employees utilizing the parking spaces provided on the site will

be required to enter and access the site from Irving Street; all directions to the hotel and conference center (whether on websites, printed materials, or from hotel employees) will direct guests to the Irving Street entrance; and no vehicles will be able to make a left turn out of the Michigan Avenue exit.

9. The Applicant shall contribute \$75,000 for a project-specific job readiness program that will prepare 40-50 Ward 5 residents for jobs directly related to the project's development and the hospitality industry. The program will be administered by the University of the District of Columbia hospitality program or other similar nonprofit institution and will coordinate its efforts with other existing programs/institutions. The Applicant will present evidence of the program to the Department of Consumer and Regulatory Affairs prior to the issuance of the Certificate of Occupancy for the consolidated portion of this PUD.
10. The Applicant will provide an annual scholarship of at least \$2,000 annually for 20 years to a student or students who are residents of Ward 5, at the community college hospitality program of UDC and the Hotel Association of Washington, D.C. The first scholarship payment shall be made no later than 60 days after a certificate of occupancy is issued for the hotel, with each subsequent scholarship payment due upon the anniversary date of the first payment. The Applicant will also hire two students at the community college hospitality program who are Ward 5 residents as interns each summer to work in the hotel. The hotel will present evidence of the required payment and hiring of the interns annually to the Office of Zoning.
11. The Applicant will hire two Ward 5 students attending any District Career Technical Education-based culinary arts programs as interns each summer to work at the restaurant, beginning the first summer after the restaurant opens. The Applicant will present evidence of such hiring annually to the Office of Zoning.
12. A directory of services will be placed in each hotel room. The directory will list local businesses that may be of interest to hotel guests.
13. The Applicant shall enter into a First Source Employment Agreement with DOES. The Applicant will file this executed agreement with the Zoning Administrator prior to the issuance of a building permit. The Applicant will also enter into a Certified Business Enterprise Agreement with the Department of Small and Local Business Development. The Applicant will file this executed agreement with the Zoning Administrator prior to the issuance of a building permit.
14. The Applicant shall provide ANC 5C or SMD 5C11 with meeting room space for monthly public meetings on a scheduled basis, free of charge.

15. The Applicant shall establish a program to offer reduced rates for reasonable use of the hotel and conference center, including use of the conference facilities and rooms and the ballroom, by residents of ANC 5C, on a space available basis.
16. The Applicant shall host a luncheon for a seniors group of area residents (for up to 25 guests) four times per year for 20 years from the date that the restaurant opens.
17. The Applicant shall provide meeting space for ANC 5C residents' annual holiday party for a period of 20 years from the date the hotel opens. The meeting space will be free of charge and will be on a space available basis.
18. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, which is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with this order, or amendment thereof by the Zoning Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
19. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit and construction of the Consolidated PUD must start within three years of the effective date of this Order pursuant to 11 DCMR §§ 2408.8 and 2408.9.
20. The first-stage PUD approved by this Order includes two nine story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) and, just like the hotel building in the consolidated PUD application, will be no greater than 90 feet tall as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking spaces is also provided. If a residential component is included in a portion of the Property that is subject to this first-stage PUD approval, that portion of the PUD project will be required to satisfy all applicable Inclusionary Zoning requirements. The first-stage PUD approval is effective for a period of five (5) years from the effective date of this Order.

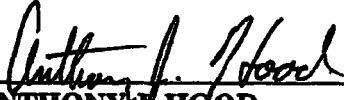
The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (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, familial status, gender identity or expression, 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 also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On July 27, 2009, upon the motion of Chairman Hood, as seconded by Commissioner May, 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; William W. Keating, III, not having participated, not voting).

On September 14, 2009, upon motion of Chairman Hood, as seconded by Commissioner Schlater, the Zoning Commission **ADOPTED** the Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; William W. Keating, III, to approve by absentee ballot) .

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on December 25, 2009.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

Z.C. ORDER NO. 08-33
 Z.C. CASE NO. 08-33
 PAGE 24

DISTRICT OF COLUMBIA GOVERNMENT
 OFFICE OF THE SURVEYOR

(Washington, D.C., November 26, 1988)

For the Survey of the District of Columbia

Order, 1 inch = 60 feet Recorded as Book A 67 Page 2513-6

Receipt No. 0847

Particulars P.W.S.P.

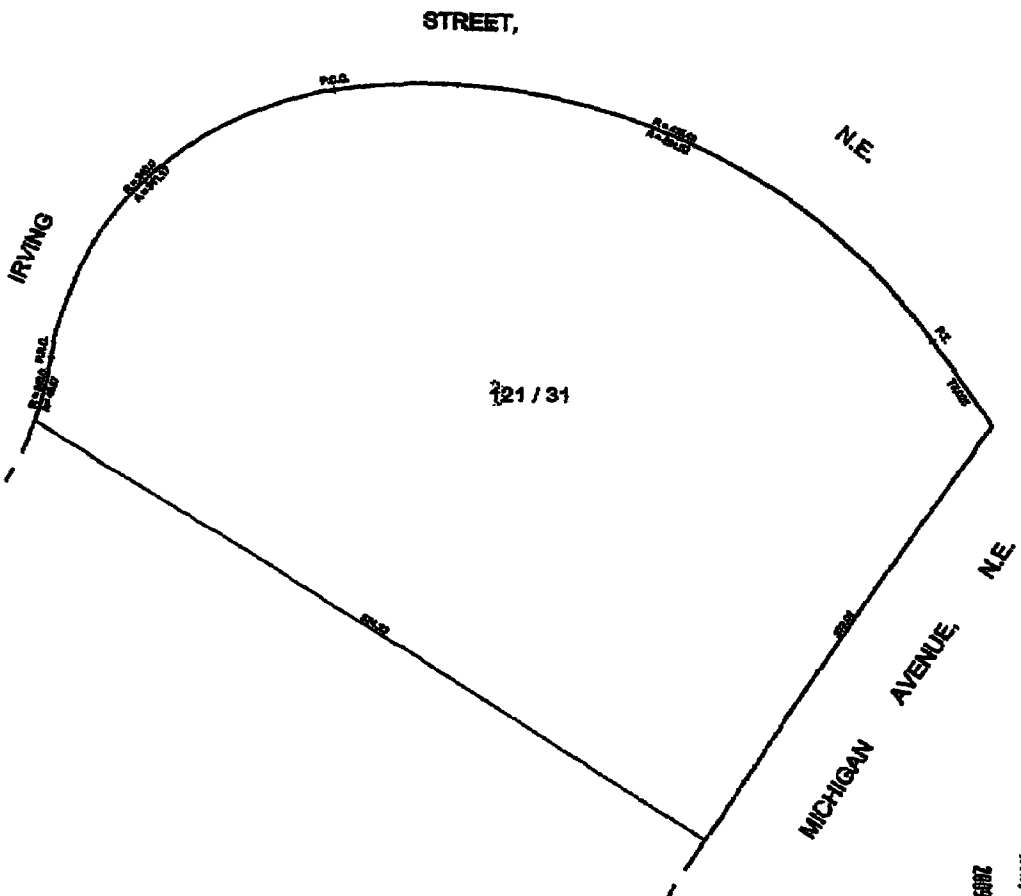
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 By AS *[Signature]*

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Date: _____

(Signature of officer or his authorized agent)

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 08-33

As Secretary to the Commission, I hereby certify that on DEC 29 2009 copies of this Z.C. Order No. 08-33 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|--|
| 1. <i>D.C. Register</i> | 6. Councilmember Harry Thomas, Jr. |
| 2. Paul Tummonds, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128 | 7. DDOT (Karina Ricks) |
| 3. Anita Bonds, Chair
ANC 5C
P.O. Box 77761
Washington, D.C. 20013 | 8. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 4. Commissioner Ronnie Edwards
ANC/SMD 5C11
122 Michiga Avenue, N.E. #L24
Washington, D.C. 20017 | 9. Office of the Attorney General (Alan Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | 10. Phillip Appelbaum, Chief Assessor
D.C. Assessor's Office
941 N. Capitol St. - 4 th Floor |

ATTESTED BY: 
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33A**

Z.C. Case No. 08-33A

Conference Center Associates I, LLC

(Time Extension – Consolidated Planned Unit Development and First Stage Planned Unit Development)

January 30, 2012

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on January 30, 2012. At that meeting, the Commission approved the request of Conference Center Associates I, LLC (the "Applicant") for a two-year time extension in which to file a building permit application for the consolidated planned unit development ("PUD") and Zoning Map Amendment application approved by Z.C. Order No. 08-33. The Applicant also requested a two-year time extension period for the first-stage PUD approval. The Commission denied the time extension request for the first-stage PUD approval. The property (Parcel 121/31) that is the subject of this application is located at the intersection of Irving Street, N.E. and Michigan Avenue, N.E. (the "Property"). The time extension requests were made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD project approved in Z.C. Order No. 08-33, which became final and effective on December 25, 2009, authorized the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The 314 room hotel (which includes a restaurant) and conference center has frontage along Michigan Avenue, N.E. and Irving Street, N.E. and a four-story above-grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. A 200-space surface parking lot on the northern portion of the Property was also approved in the consolidated PUD application. Z.C. Order No. 08-33 also authorized the rezoning of the Property from unzoned (designated as GOV) to the C-3-A Zone District.
2. The first-stage PUD approval included two nine-story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that will be no taller than 90 feet as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking spaces is also included in the first-stage PUD approval. The first-stage PUD approval is effective until December 25, 2014.

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

3. The Applicant noted that efforts to find debt and equity financing for this project have not been fruitful due to the recent and ongoing difficult lending environment, the national economic downturn, the nature of the project – hotel and conference center with restaurant and retail – and the location of the project in an unproven hotel market. The Applicant stated that the recent credit crisis hit the hospitality industry particularly hard beginning in 2009. In this environment the few hospitality debt deals that were accomplished have been largely for existing hotels in primary markets and the loan terms have involved relatively unfavorable terms, including low loan to value and relatively high interest rates. Many of the hotel loans that have been accomplished involved refinancing of construction or other loans, where the hotel already has enough of a proven track record of sufficient operating income to provide conservative debt service coverage ratios. Very few loans have been approved for new construction. (Exhibit [“Ex.”] 1)
4. As a result of the crisis, the project’s lender of first choice (Capmark Finance) filed for bankruptcy protection. Capmark Finance also determined that for the foreseeable future it would be unable to initiate new hotel loans, due to new regulations that limited the proportion of its loan portfolio that could be invested in hospitality projects. From 2009 to 2011 the Applicant explored financing with equity investors and lenders with whom members of the project team had prior relationships. Among those relationships there was initial interest in the deal from several banks, including EagleBank, Monument Bank, and M&T Bank. At different points in these discussions, banks tightened lending requirements to the point that further discussions were untenable, including reductions in the size of commercial loans that could be made. The banks expressed the following concerns, among others, about the nature of the project:
 - Hotels as higher risk than other forms of commercial real estate;
 - No previous track record for hotels in the area of DC where the project is located, so a lack of comparable projects for valuation purposes; and
 - The relatively large size of the project, and therefore the funds needed, in an economic downturn for the nation. (Ex. 1.)
5. The Applicant also stated that as it became apparent that existing relationships could not provide suitable financing, it engaged as broker a firm which had successfully brokered loans for development team members at other properties over the last decade. This broker has relationships and experience with a large number of banks, life insurance companies, investment funds, and private lenders. During the period after the Commission approved the PUD in December 2009, this broker surveyed the market and presented the project to a variety of lenders. Concurrently, the broker was working on many other hotel projects, and their sense of the hotel lending market as it existed post-onset of the credit crisis was that equity and debt financing was not available to the project given the state of the hospitality financing market. (Ex. 1)

6. In its January 20, 2012 report to the Commission, the Office of Planning (“OP”) recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of § 2408.10 and 2408.11. The OP report did not distinguish its analysis between the time extension requests for the consolidated PUD and the first-stage PUD approvals, and did not address the issue of whether it was appropriate to extend the first-stage approval over two years before it was set to expire. (Ex. 4)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR § 2408.10 and 2408.11 are satisfied. Subsection 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the only party to the PUD and Zoning Map Amendment application, Advisory Neighborhood Commission (“ANC”) 5C, when it filed the time extension application on December 21, 2011. ANC 5C did not participate in this time extension application.

Subsection 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. The Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Subsection 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant’s diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant’s reasonable control;
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the hotel and conference center project approved in the consolidated PUD application. The Applicant engaged in numerous meetings with financial institutions and brokers in order to obtain project financing. In addition, the Commission notes the distinct impacts that the current real estate recession has had on the hospitality industry. The Commission concludes that the Applicant did use diligent good faith efforts to obtain the necessary financing for the consolidated PUD project and was ultimately not able to obtain the necessary financing due to economic and market conditions that were beyond the Applicant's reasonable control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR § 2408.11(a) regarding the consolidated PUD application.

The first-stage PUD application approved in Z.C. Case No. 08-33 is effective until December 25, 2014. The Commission considers the application for extension of the first-stage approval to be premature and denies it on that basis. Over two years remains before the first-stage PUD approval expires and economic and financial conditions could change dramatically in that time.

The Commission is required under § 13(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 concerns raised in the written report of the affected ANC. As noted above, ANC 5C did not participate in this time extension application.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in Findings of Fact #6 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation with regard to the consolidated PUD. OP's report did not distinguish between the consolidated and first-stage PUD approvals, and did not address the issue of whether it was appropriate to extend the first-stage approval over two years before it was set to expire. The Commission considered OP's recommendation for approval of the request to extend the first-stage PUD, but believes that it is premature to do so now given that over two years remain before it is set to expire.

DECISION

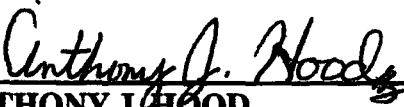
In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a two-year time extension of the consolidated PUD application approved in Z.C. Order No. 08-33. The consolidated PUD approved by the Commission shall be valid until December 25, 2013, within which time the Applicant will be required to file a building permit application to construct the approved consolidated PUD, and construction of the Consolidated PUD must start no later than December 25, 2014.

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS DENIAL** of a two-year time extension of the first-stage PUD application approved in Z.C. Order No. 08-33. This denial is without prejudice to the Applicant filing a renewed request once the issue becomes ripe.

On January 30, 2012, the Zoning Commission voted to **APPROVE** the application for a two-year time extension for the consolidated PUD approved in Z.C. Order No. 08-33, and **DENY** the application for a two year time extension of the first-stage PUD approved in Z.C. 08-33.

On January 30, 2012, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order by a vote of **4-0-1** (Konrad W. Schlater, Marcie I. Cohen, Peter G. May, and Michael G. Turnbull to adopt; Anthony G. Hood, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register* on June 1, 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.: 08-33A

As Secretary to the Commission, I hereby certify that on MAY 25 2012 copies of this Z.C. Order No. 08-33A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. <i>D.C. Register</i> | 6. Councilmember (Vacant) |
| 2. Paul Tummonds, Esq.
Goulston & Storrs
1999 K Street, N.W. Suite 500.
Washington, D.C. 20006-1101 | 7. DDOT (Martin Parker) |
| 3. ANC 5C
P.O. Box 26183
Washington, D.C. 20001 | 8. Melinda Bolling, Acting General Counsel
DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| 4. Commissioner Ronnie Edwards
ANC/SMD 5C11
122 Michigan Avenue, N.E. #L24
Washington, D.C. 20017 | 9. Office of the Attorney General (Alan
Bergstein) |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 | |

ATTESTED BY:



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

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 08-33B
Z.C. Case No. 08-33B
Conference Center Associates I, LLC
(Time Extensions for Consolidated Planned Unit Development and
First Stage Planned Unit Development @ Parcel 121/31)
February 10, 2014**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on February 10, 2014. At that meeting, the Commission approved the request of Conference Center Associates I, LLC ("Applicant") for a second two-year time extension in which to file a building permit application for the consolidated planned unit development ("PUD") and Zoning Map Amendment application, and a one-year time extension period for the first-stage PUD approval approved by Z.C. Order No. 08-33. The property (Parcel 121/31) that is the subject of this request is located at the intersection of Irving Street, N.E. and Michigan Avenue, N.E. ("Property"). The time extension requests were made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. Z.C. Case No. 08-33 included both a consolidated PUD approval and a first-stage PUD approval. The consolidated PUD project approved in Z.C. Order No. 08-33, which became final and effective on December 25, 2009, authorized the construction of a hotel, conference center, restaurant, parking structure, and retail space on the eastern half of the Property. The 314 room hotel (which includes a restaurant) and conference center has frontage along Michigan Avenue, N.E. and Irving Street, N.E. and a four-story above-grade structure along Michigan Avenue that will include retail uses at grade and in a basement level and 400 parking spaces. A 200 space surface parking lot on the northern portion of the Property was also approved in the consolidated PUD application. Z.C. Order No. 08-33 also authorized the rezoning of the Property from unzoned (designated as GOV) to the C-3-A Zone District.
2. The first-stage PUD approval included two nine story buildings with a measured building height of 94.5 feet (as measured from the curb at Irving Street) that will be no taller than 90 feet as measured from the finished grade at the building. The two buildings will be dedicated to either additional hotel and/or residential units and may include more space for conference center uses. A below-grade parking structure including 295 parking

spaces is also included in the first-stage PUD approval. The first-stage PUD approval is effective until December 25, 2014.

3. On December 21, 2011, the Applicant filed a written request that the Commission grant a two-year time extension in which the Applicant was required to file a building permit application for the consolidated PUD and Zoning Map Amendment application. Pursuant to Z.C. Order No. 08-33A, the Commission determined that the Applicant had met the relevant requirements of § 2408.8 of the Zoning Regulations and extended the time period in which the Applicant was required to file a building permit application for the consolidated PUD until December 25, 2013.
4. In the December 21, 2011, time extension request, the Applicant also requested approval to extend the period of the first-stage PUD approval. Pursuant to Condition No. 20 of Z.C. Order No. 08-33, the first-stage PUD approval is effective until December 25, 2014. The Applicant requested that the first-stage PUD approval be extended until December 25, 2016. In Z.C. Order No. 08-33A, the Commission denied the two-year time extension request for the first-stage PUD application approved in Z.C. Order No. 08-33. However, the Commission's denial was "without prejudice to the Applicant filing a renewed request once the issue becomes ripe."
5. On December 23, 2013, the Applicant filed the present time extension request, which sought an additional two years, until December 25, 2015, in which time it will be required to file a building permit application to construct the approved consolidated PUD project ("Request"). The Applicant also requested a one-year time extension of the approval of the first-stage PUD approval, so that the first-stage PUD approval will be extended until December 25, 2015.
6. The Applicant noted that just as in the period from 2009-2011, it engaged in significant efforts in the past two years to find debt and equity financing for this project. The Applicant noted that those efforts have not been fruitful due to the ongoing difficult lending environment for new hotel projects and the specific factors that impact this project – a hotel and conference center with restaurant and retail in an unproven hotel market. (Exhibit ["Ex."] 1.)
7. The Applicant also provided evidence that the credit crisis hit the hospitality industry particularly hard. Nationally, hotel financing slowed to a trickle. Even as some areas of the real estate market have returned (such as multi-family housing), the hospitality industry has continued to face strong headwinds. The Applicant provided an article from the August 21, 2013 edition of Hotel News Now which notes: "Construction financing is loosening in the U.S., but it still has a long way to go before new supply reaches its long-run average." This article also states: "Financing remains the most significant hurdle to overcome for new development". In particular, the DC-MD-VA hospitality market was recently found to be the worst performer, in terms of RevPAR – revenue per available room, of the top 25 markets in the country. (Ex. 1, 3, 5.)

8. The Applicant noted that while there is continuing interest in investing in the project from equity investors and lenders, the hotel lending environment remains particularly difficult for the DC region due to both the continued fallout on lending from the national economic downturn and the impact in 2012 and 2013 of the government spending reductions due to sequestration and government budget battles, including the recent government shutdown. These constraints on government spending greatly reduced both government travel and travel by government contractors, the combined effect of which was the poor relative revenue performance of the DC-MD-VA hospitality market compared to the rest of the nation. The previously identified concerns about the nature of the project include the following:
 - Hotels as higher risk than other forms of commercial real estate;
 - Hotel financing is much more available for existing hotels with demonstrable historical performance as opposed to new construction; and
 - No previous track record for hotels in the area of DC where the project is located, so a lack of comparable projects for valuation purposes.
(Ex. 1, 5.)
9. In response to issues raised at the January 27, 2014 public meeting, the Applicant submitted additional information on February 3, 2014. The Applicant noted that from 2011 to the present the Applicant continued to actively explore financing opportunities with brokers, equity investors and lenders with whom the members of the project team have had prior relationships and from newly identified sources. The Applicant estimated that it had over 25 meetings and follow-up discussions with brokers, equity investors, regional and national bank representatives, as well as other financing sources. The Applicant provided evidence that it was faced with untenable financing terms of a 50% equity requirement and extremely high interest rates, in the range of 8-10%. (Ex. 9.)
10. In its January 17, 2014 report to the Commission, the Office of Planning (“OP”) recommended approval of the PUD time extension request. OP concluded that the Applicant satisfied the relevant standards of §§ 2408.10 and 2408.11. (Ex. 7, 8.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved second stage or consolidated PUD provided the requirements of 11 DCMR § 2408.10 and 2408.11 are satisfied. Subsection 2407.11 authorizes the Commission to extend a first stage PUD “in accordance with the standard and process for second-stage PUD extensions set forth in § 2408.10 through 2408.12.”

Subsection 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The only party in Z.C. Case Nos. 08-33 and 08-33A was Advisory Neighborhood Commission (“ANC”) 5C. Due to the redistricting of the ANCs in accordance with the results of the 2010 Census, the Property is now located in ANC 5A. The Single Member District ANC Commissioner for the Property is Mr. Ronnie Edwards.

Commissioner Edwards was the SMD Commissioner for the Property during the Zoning Commission's review of Z.C. Case Nos. 08-33 and 08-33A. ANC 5A was properly served with this time extension request, but ANC 5A did not participate in this Request.

Section 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. Based on the information provided by the Applicant and OP, the Commission concludes that extending the time period of approval for the consolidated PUD is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original consolidated PUD application.

Section 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time in which the Applicant is required to file a building permit application for the hotel and conference center project approved in the consolidated PUD application. The Applicant engaged in numerous meetings with financial institutions and brokers in order to obtain project financing and was presented with financing terms that the Commission recognizes as not sufficient to allow this project to move forward. In addition, the Commission notes the distinct impacts that the current real estate recession has had on the hospitality industry and in particular the hospitality industry in the DC Metropolitan region due to sequestration budget cuts and government budget battles. The Commission concludes that the Applicant did use diligent good faith efforts to obtain the necessary financing for the consolidated PUD project and was ultimately not able to obtain the necessary financing due to economic and market conditions that were beyond the Applicant's reasonable control. For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR§ 2408.11(a) regarding the consolidated PUD application.

The first-stage PUD application approved in Z.C. Case No. 08-33 is effective until December 25, 2014. The Commission concludes the Applicant provided appropriate notice to the interested party by serving ANC 5A with a copy of the Application and allowing the ANC 30 days to respond. The Commission concludes that all of the reasons for extending the period of approval of the consolidated PUD application are appropriate to extend the time period of approval for the first-stage PUD approval for one additional year. The Commission believes that having the expiration dates of both the consolidated and first-stage PUD approvals on December 25, 2015 is entirely appropriate.

The Commission is required under § 13(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 concerns raised in the written report of the affected ANC. As noted above, ANC 5A was properly served with this time extension request but did not participate in this case.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in Findings of Fact #10 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a two-year time extension of the consolidated PUD application approved in Z.C. Order No. 08-33 and extended in Z.C. Order No. 08-33A. The consolidated PUD approved by the Commission shall be valid until December 25, 2015, within which time the Applicant will be required to file a building permit application to construct the approved consolidated PUD, and construction of the Consolidated PUD must start no later than December 25, 2016.

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a one-year time extension of the first-stage PUD application approved in Z.C. Order No. 08-33. The first-stage PUD approved by the Commission shall be valid until December 25, 2015, within which time the Applicant will be required to file a second stage PUD application for the remaining portions of the PUD.

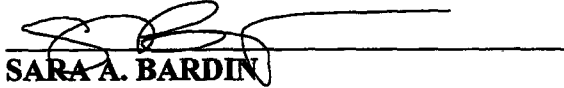
On February 10, 2014, upon motion by Commissioner Cohen, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application at its public meeting by a vote of 5-0-0 (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

Z.C. ORDER NO. 08-33B
Z.C. CASE NO. 08-33B
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In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the *D. C. Register* on October 10, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING