GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-21
Z.C. Case No. 07-21
(Consolidated Planned Unit Development – PerStar M Street Partners LLC & 2213 M Street LP @ Square 50)
May 12, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on February 25, 2008, to consider an application from PerStar M Street Partners LLC, owner of Lots 82, 813, 814, and 816 in Square 50, and 2213 M Street LP, owner of Lot 84 in Square 50 (collectively referred to herein as the "Applicant"), for consolidated review and one-step approval of a planned unit development ("PUD") to construct a hotel on the property. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On July 13, 2007, the Applicant filed an application with the Commission for the consolidated review and one-step approval of a PUD for property consisting of Lots 82, 84, 813, 814, and 816 in Square 50 (the "Subject Property").

2. The Subject Property consists of approximately 15,590 square feet of land and is located in the northwest quadrant of the District. The Subject Property is zoned CR. Square 50 is bounded by M, 22nd, N, and 23rd Streets, N.W.

3. The proposed project contains approximately 122,235 square feet of gross floor area dedicated to a hotel use, including 148 to 170 hotel rooms and suites, ground floor restaurant space, and a spa. The building will be constructed to a maximum height of 110 feet. The project will include 42 off-street parking spaces in a valet operated garage that has a maximum capacity of 71 vehicles. The project will have an overall density of 7.84 floor area ratio ("FAR") and an overall lot occupancy of 90%.

4. At its public meeting held on October 15, 2007, the Commission voted to schedule a public hearing on the application.

5. On December 10, 2007, the Applicant submitted a Prehearing Statement, along with revised Architectural Plans and Elevations (the "Plans"), marked as Exhibits 18 and 19 of the record in this case. The prehearing statement included additional information regarding traffic and truck circulation considerations; impacts of the proposed hotel use on the West End area and the District; updated façade design and streetscape perspectives; clarification of the landscaping and sustainable features; and clarification of the flexibility requested regarding the roof structure and public space at ground level.

6. On February 5, 2008, the Applicant submitted supplemental pre-hearing materials, marked as Exhibits 25 and 25A of the record in this case. The supplemental pre-hearing materials included a LEED-checklist indicating how the Applicant intends to achieve LEED certification for the project; an updated Hotel Neighborhood Use and Project Economic Impact analysis prepared by Bolan Smart Associates, Inc; witness resumes; a supplemental transportation memorandum prepared by Wells & Associates; a fully-executed First Source Employment Agreement; and updated Plans.

7. After proper notice, the Commission held a public hearing on the application on February 25, 2008. The parties to the case were the Applicant, Advisory Neighborhood Commission ("ANC") 2A (the ANC within which the Subject Property is located), the West End Citizens Association ("WECA"), and R.S. Sandi Holdings, LLC ("Sandi Holdings"), the owner of the adjacent property to the west.

8. Six principal witnesses testified on behalf of the Applicant at the February 25, 2008 public hearing, including John Wood Bolton, Jr. of Perseus Realty; Kemper Hyers of Starwood Capital Group; Carl Romer of Oppenheim Architecture & Design, as an expert in architecture; Jami Milanovich of Wells & Associates, LLC, as an expert in transportation planning and analysis; Eric Smart of Bolan Smart Associates, Inc., as an expert in economic analysis; and Steven E. Sher Director of Zoning and Land Use Services, Holland & Knight LLP, as an expert in land use and zoning. Testimony was also presented by Connie Wynne of Starwood Development, and Barbara Stafford of VIKA. Also available to testify were Michael Hess of X-NTH, and Richard Arentz of Arentz Landscape Architects. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Romer, Ms. Milanovich, Mr. Smart, and Mr. Sher were qualified by the Commission as experts in their respective fields.

9. The Office of Planning ("OP") testified in support of the project. The District Department of Transportation ("DDOT") testified regarding DDOT's report and review of the project, as discussed in more detail below.

10. ANC 2A submitted a letter in support of the application marked as Exhibit 28 of the record of the case. ANC 2A's letter of support indicated that at a duly noticed public meeting on November 14, 2007, and with a quorum present, ANC 2A voted unanimously (5-0) to support the project and the Applicant's proposed community amenities. ANC 2A indicted that the Applicant appeared before the ANC on several occasions to discuss this project, and that the ANC supports the project, which will be the District's first LEED-certified hotel and will help to re-energize the corner of 22 and M Streets, N.W. ANC 2A urged the Commission to approve this project as expeditiously as possible so that it can promptly move forward.

11. WECA was accepted as a party in support of the project. WECA submitted a letter in support of the project and also testified at the public hearing in support of the project. (Exhibits 16, 24, 36, and 44).

12. The Foggy Bottom Association ("FBA") participated as an organization in support of the project. FBA submitted a letter in support of the project and testified in support of the project at the public hearing. (Exhibits 15 and 43).

13. Shannon Sentman and George Wheeler, both of whom reside in the West End neighborhood, submitted letters as individuals in support of the project, marked as Exhibits 33 and 34, respectively.

14. By letter dated February 11, 2008, Sandi Holdings, through its attorney, Mr. Haggerty, requested party status in opposition. Sandi Holdings is the record owner of Lot 83 in Square 50, which is located to the west of the Subject Property at 2215 M Street, N.W. In that filing, Mr. Haggerty indicated that he would act as both the attorney and the witness for Sandi Holdings. No corporate officer or director appeared for Sandi Holdings, nor did Mr. Haggerty or Mr. Aguglia (who also noted his appearance as counsel for Sandi Holdings on February 21, 2008) produce a letter from an officer or director of Sandi Holdings authorizing either Mr. Haggerty or Mr. Aguglia to appear on its behalf, or indicating that either Mr. Haggerty or Mr. Aguglia had the power to bind Sandi Holdings in the proceedings before the Commission. Mr. Aguglia submitted an authorization letter from Mr. Haggerty, who is neither an officer nor a director of Sandi Holdings. Mr. Haggerty authorized himself to appear on behalf of Sandi Holdings. In addition, in a letter to the Commission dated February 22, 2008, Mr. Aguglia identified an expert witness who would testify on behalf of Sandi Holdings at the February 25th public hearing.

15. The Applicant objected to party status for Sandi Holdings on two grounds: a) neither Mr. Haggerty nor Mr. Aguglia was authorized in writing to appear on behalf of Sandi Holdings, nor was any explanation given as to why no authorization was submitted, in violation of § 3002 of the regulations; and (b) the identification of an expert witness three

days prior to the public hearing, instead of 14 days in advance, was in violation of § 3022.3 of the regulations, and was prejudicial to the Applicant.

16. Mr. Aguglia indicated that, pursuant to § 3000.8 of the regulations, the "good cause" for waiving both the requirement to provide proper written authorization for Mr. Haggerty, Mr. Aguglia, and the expert witness to appear on behalf of Sandi Holdings, and the requirement to provide 14 days' advance notice of an expert witness, instead of the three days' advance notice in this instance, was that Sandi Holdings did not receive notice of the public hearing in this case until December of 2007. (Tr. at pp. 25-28). In response, the Applicant noted that the regulations require 40 days' advance notice of the public hearing, and that Sandi Holdings received approximately 60 days' advance notice of the hearing. The Applicant also noted that no explanation was offered to demonstrate a nexus between Sandi Holdings having 60 days' advance notice of the hearing, and providing only three days' advance notice of the identification of an expert witness, or for having no proper written authorization from Sandi Holdings or anyone to appear on behalf of Sandi Holdings.

17. The Commission determined, pursuant to § 3000.8, to waive its rules requiring identification of expert witnesses at least 14 days in advance of a public hearing (§ 3022.3(e)), and requiring written authorization to appear on behalf of Sandi Holdings (§ 3002), for good cause shown, in reliance upon Mr. Aguglia's explanation of the fact that Sandi Holdings received 60 days' advance notice of the public hearing.

18. At the Commission's public hearing on February 25, 2008, Sandi Holdings presented two witnesses: James Haggerty, an attorney for Sandi Holdings, and Craig D. Bennett of CBA Architects, P.C., who was accepted by the Commission as an expert in architecture and urban design. Sandi Holdings indicated, both in writing and in testimony at the public hearing, that its opposition to the project was based upon the height of the western wall with a roof structure on the property line. Sandi Holdings noted that the Applicant had failed to request flexibility from the roof structure setback requirement of § 400.7 of the Zoning Regulations. Sandi Holdings also argued that the height of the proposed hotel was out of context with the surrounding properties within the CR District and was therefore inconsistent with the Zone Plan. At the public hearing on the application, Mr. Haggerty testified that Sandi Holdings' development rights would be irrevocably impaired by the development of the proposed hotel without a roof structure setback, because of the loss of light and air (Tr. at pp. 337-338) Mr. Bennett testified that the lack of a roof structure setback creates the adverse impact on his client's property, in terms of aesthetics and views from the roof of the client's building. (Tr. at pp. 324-331). However, Mr. Bennett did not conduct any light or air analyses for the project, to determine whether there would be any adverse impacts on his client's building. (Tr. at pp. 304-305).

19. On March 24, 2008, the Applicant submitted a post-hearing submission, marked as Exhibit 54 of the record in the case. The post-hearing submission responded to the transportation, architectural, and landscaping issues raised at the public hearing. Specifically, the submission included a supplemental traffic analysis that (1) indicates the proposed hotel will have no adverse traffic impact at the intersection of 22nd Street and Ward Place; (2) demonstrates the impracticality of providing both the loading berths and the garage entrance from the alley; (3) provides an analysis of the revised lay-by lane as recommended by DDOT; and (4) includes diagrams indicating how trucks will access and successfully maneuver into the two loading berths to service the hotel. In addition, supplemental Plan sheets were submitted which included, in pertinent part: (1) a revised lay-by lane in accordance with the recommendations of DDOT; (2) additional information regarding the layout and functionality of the loading area; (3) a revised roof plan indicating that features will be installed to direct kitchen and garage exhaust in an eastward direction and away from the abutting property to the west of the Subject Property; (4) new elevations and an axiometric drawing providing more information and a better articulation of the detailing, design, and materials of the north and west lot line walls of the hotel, as well as the general location and size of potential signage and an outline of the matter-of-right building height and roof structure height that could be achieved on the neighboring properties to the north and west; (5) new sheets providing additional details regarding the proposed interior atrium; and (6) shadow studies demonstrating that the hotel will not cast any undue or excessive shadows on the abutting property to the west of the Subject Property. The submission also included a memorandum from G-Sky, the company retained to install the atrium, indicating that the atrium will have proper lighting for plant growth, and that a variety of plant types that thrive in various light conditions will be incorporated into the atrium.

20. On March 24, 2008, Sandi Holdings submitted a post-hearing submission (Exhibit 48). In this submission, Sandi Holdings relied on the Board of Zoning Adjustment's decision in *Appeal No. 17109 of Kalorama Citizens Association* (November 8, 2005) in arguing that the PUD's western wall was an "exterior wall" for purposes of the roof structure setback requirements. Sandi Holdings argued that the western wall of the proposed PUD could be considered an interior wall only if a building on Lot 83 could be constructed to the same height as the PUD as a matter-of- right. Sandi Holdings asserted that, because any matter-of-right construction on Lot 83 would be limited to a maximum height of 90 feet, the penthouse on the proposed PUD is required to be set back from the western wall of the building a distance equal to its height. According to Sandi Holdings, the Applicant's contrary interpretation of *Kalorama Citizens Association* would render the Board's decision in that case internally inconsistent. Sandi Holdings further argued that the Commission should require the Applicant to set the penthouse back from the building's western wall regardless of whether it agrees with its interpretation of *Kalorama Citizens Association*. According to Sandi Holdings, the requested penthouse setback is necessary to protect the light and air of adjacent properties, maintain the integrity of the

CR Zone District, and promote accepted principles of urban design. Finally, Sandi Holdings argued that the DC Court of Appeals decision in *Hefazi v. Stiglitz*, 862 A.2d 901 (D.C. 2004), is inapposite to the present case because *Hefazi* did not involve a PUD application in which the Commission was empowered to require design modifications for the purpose of protecting adjacent properties.

21. On March 31, 2008, the Applicant filed a proposed order and a response to Sandi Holding's post-hearing submission. In its submission, the Applicant indicates that neither the Zoning Regulations nor the 1910 Height Act require a setback along the western lot line wall of the proposed hotel. However, in the event the Commission determines that a setback is required, the Applicant indicated that that the evidence of record demonstrates that flexibility from this requirement should be granted since the location of the proposed penthouse will not have any adverse impact on Sandi Holdings' property.

22. On April 14, 2008, Sandi Holdings submitted a letter withdrawing it opposition to the PUD.

23. At its public meeting held on April 14, 2008, the Commission took proposed action by a vote of 5-0-0 to approve with conditions the application and plans that were submitted to the record.

24. The application was referred to the National Capital Planning Commission ("NCPC") for review of any impacts on the federal interest under the Comprehensive Plan pursuant to § 492 of the District Charter. NCPC, by action dated May 1, 2008, advised the Commission that the proposal, "would be adverse to the federal interest because it does not conform to the requirements of the Height of Buildings Act in the following way: the roof top penthouses exceed the allowable height and are not set back from all the exterior walls as required by the Height Act." NCPC recommended "that the Zoning Commission require the applicant to modify the project design to setback the penthouses distances from the exterior walls of the building equal to their height above the adjacent roof." The NCPC Action was transmitted to the Commission by letter dated May 5, 2008.

25. At its May 12, 2008 meeting, the Commission considered the NCPC report. The Commission voted to approve the application, but did so without taking a position on NCPC's interpretation of the An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 601.01 to 601.09) ("Height Act"). The Commission noted that it was up to the Zoning Administrator, not the Commission, to interpret the Height Act. While the Commission would be reluctant to approve plans that clearly violated the Height Act, no such clear cut infraction was present. Rather, the question of whether the design feature referred to as a parapet in NCPC's action is in fact a parapet, and whether the southern and western walls are in fact exterior walls that require a setback, are questions best left

to the judgment of the Zoning Administrator. Nevertheless, the Zoning Administrator should not view the Commission's approval of this modification as obviating the need for a careful review of these plans for compliance with the Height Act and the Zoning Regulations. The Commission also notes it does not have the authority to require an applicant to revise its plans. The Applicant is clearly aware of NCPC's view and has nevertheless decided to stand on its plans.

26. The Commission took final action to approve the application on May 12, 2008 by a vote of 5-0-0.

The PUD Project

27. The Subject Property is situated in Ward 2 and consists of Lots 82, 84, 813, 814, and 816 in Square 50. The Subject Property has a land area of approximately 15,590 square feet. Lots 82, 813, 814, and 816 were previously owned by the Embassy of the Federal Republic of Nigeria and are currently improved with the former Nigerian Chancery Annex, which has been vacant for approximately five years. The Subject Property is located at the northwest corner of 22nd and M Streets, N.W. Square 50 is bounded by M, 22nd, N, and 23rd Streets, N.W.

28. The Subject Property is designated in the mixed-use, High-Density Residential and Medium-Density Commercial land use category on the District of Columbia Comprehensive Plan Future Land Use Map, and is designated in a Neighborhood Conservation Area on the District of Columbia Comprehensive Plan Generalized Policy Map.

29. The Applicant is seeking consolidated PUD approval to develop the District's first LEED-certified hotel in accordance with the CR Zone District PUD zoning requirements. The project, to be identified as "1 Hotel," has been designed to meet the U.S. Green Building Council's LEED certification standards at a minimum. The Applicant has indicated that its goal, however, is to meet the LEED Silver standards. The project will contain approximately 122,235 square feet of gross floor area, with an overall density of 7.84 FAR and a maximum building height of 110 feet, both of which are consistent with the CR Zone District PUD guidelines in §§ 2405.1 and 2405.2 of the Zoning Regulations. The project will include a total of 148 to 170 hotel rooms and suites, ground floor restaurant space, a spa, and 42 off-street parking spaces in a valet operated garage that has a maximum capacity of 71 vehicles.

Matter of Right Development under Existing Zoning

30. The Subject Property is current zoned CR. The Applicant is not seeking to rezone the Subject Property in connection with this Application.

31. The CR Zone District permits office (including chancery office), residential, hotel, retail/service, and certain other uses. (11 DCMR § 601.1.) The maximum permitted matter-of-right height in the CR Zone District is 90 feet. (11 DCMR § 630.1.) In the CR Zone District, the maximum permitted density if 6.0 FAR, all of which may be residential, but of which not more than 3.0 FAR may be used for other than residential purposes. (11 DCMR § 631.1.) This limitation does not apply to any portion of the building which is totally below-grade, and therefore not included in gross floor area. For the purposes of calculating the permitted FAR in the CR Zone District, the term "residential purposes" means, among other things, guest room areas and service areas within a hotel. (11 DCMR § 631.2.) Commercial adjuncts, exhibit space, and function room areas within a hotel are charged against the non-residential FAR.

32. Pursuant to § 633.1 of the Zoning Regulations, new developments in the CR Zone District are required to provide an area on-site that is equivalent to 10% of the total lot area as public space at ground level. The area devoted to public spaces must: (a) be located immediately adjacent to the main entrance to the principal building or structure on the lot; (b) serve as a transitional space between the street or pedestrian right-of-way and the building or structure; (c) be open to the sky or have a minimum vertical clearance of one (1) story or 10 feet; (d) be suitably lighted and landscaped for public use, and may be utilized for temporary commercial displays; and (e) be open and available to the general public on a continuous basis. (11 DCMR §§ 633.2 through 633.5.) The on-site area devoted to public space is not charged against the gross floor area of the building. (11 DCMR § 633.6.)

33. There is no lot occupancy limitation for hotels in the CR Zone District. (11 DCMR §§ 634.2 and 634.3.) Pursuant to § 636.1 of the Zoning Regulations, a rear yard must be provided for each residential building or structure in the CR Zone District. The rear yard requirement is three inches per foot of vertical distance from the mean finished grade at the middle of the rear of the building to the highest point of the main roof, but not less than 12 feet. For the purposes of calculating the rear yard, the term "residential" includes hotels. (11 DCMR § 636.6.) No side yard is required for any structure located in the CR Zone District. (11 DCMR § 637.1.) However, if a side yard is provided, its minimum width must be three inches per foot of building height, but not less than eight feet. (11 DCMR § 637.2.)

34. Where an open court is provided in the CR Zone District for a hotel, the court must have a width of two and one-half inches per foot of height of court, but not less than six feet. (11 DCMR § 638.1(b).) Where a closed court is provided in the CR Zone District for a hotel, the court must have a width of two and one-half inches per foot of height of court, but not less than 12 feet, and an area of twice the square of the required width of court dimension. (11 DCMR § 638.2(b).)

35. A hotel use requires one parking space for each four rooms usable for sleeping, plus one for each 300 square feet of floor area in either the largest function room or the largest exhibit space, whichever is greater. (11 DCMR §2101.1.) The loading requirement for a hotel with 30 to 200 rooms usable for sleeping is one loading berth at 30 feet deep, one loading platform at 100 square feet, and one service/delivery loading space at feet deep. (11 DCMR § 2201.)

36. Development of the Subject Property under the PUD guidelines for the CR Zone District permits a maximum building height of 110 feet, and a maximum density of 8.0 FAR, of which not more than 4.0 FAR may be devoted to commercial use, including hotels. (11 DCMR §§ 2405.1 and 2405.2.)

Development Incentives and Flexibility

37. The Applicant requested the following areas of flexibility from the Zoning Regulations:

a. *Flexibility From Public Space at Ground Level Requirement (§ 633.1).* The Applicant requests flexibility from the 10% (1,559 square foot) ground level public space requirement. The hotel lobby has been designed as an open, publicly-accessible feature of the hotel. Consistent with § 633, this lobby area will be, "adjacent to the main entrance to the principal building or structure on the lot", and will, "have a minimum vertical clearance of one story or 10 feet". It will be, "suitably lighted and landscaped for public use", with appropriate interior furnishings. It will be, "open and available to the general public," consistent with a hotel operation. Although the hotel lobby will, "serve as a transitional space between the street or pedestrian right-of-way and the building", it is actually a part of the building itself and there is no transitional space outside the main entrance doors. The lobby area has not been excluded from in the gross floor area of the building, which would otherwise be the case if the space met the requirements of § 633.

b. *Flexibility from Rear Yard Requirement (§ 636.1).* The Applicant requests flexibility from the rear yard requirement. The site is a corner lot, and the inclusion of a rear yard along either the western-most lot line or the northern-most lot line would result in a gap of 27.5 feet in the streetscape along either M or 22nd Street. The proposed hotel will abut the side walls of the adjacent buildings to the north and west. Unlike many of the commercial zones, the CR Zone District does not allow the provision of a court in lieu of rear yard on a corner lot. The proposed hotel includes an open court at the rear of the structure, beginning at the second level, which measures approximately 69 linear feet in both the north-south and east-west directions. The total area of this open court is approximately 3,860

square feet. If a rear yard was provided, the resulting open space would be 2,750 square feet. Thus, the open court, which will be suitably landscaped, will provide more usable open space on site than would a rear yard.

c. *Flexibility From Roof Structure Requirements (§§ 411 and 639).* The Applicant requests flexibility regarding the number of roof structures and the roof structure setback. The Applicant also requested flexibility from the setback requirements for the portion of the penthouse adjacent to the northern and western property lines, should the Commission determine such relief is required. There will be three roof structure enclosures, separated by the vertical garden which extends from the second floor level up through the roof. The roof structure enclosures will meet the setback requirement from the exterior walls along 22nd and M Streets, N.W., but will not meet the minimum setback requirement along the exterior walls at the rear of the building, due to the L-shaped design of the building and the desire to meet the setback along the more-important street facades.

d. *Flexibility from Access to Parking Requirement (§ 2117.4).* The Applicant requests flexibility from the requirement that, "each required parking space shall be accessible at all times directly from improved alleys…or improved public streets via graded and unobstructed private driveways that form an all-weather surface." The parking garage for the hotel will be valet-operated, and the garage levels will be accessed via an elevator system, rather than a ramp system. This will maximize the efficiency of use of the parking garage space. Use of an elevator system, with valet parking, will be the same from an operations standpoint as would use of a ramp with valet parking.

e. *Flexibility from Size of Parking Spaces Requirement (§ 2115).* Pursuant to § 2101.1 of the Zoning Regulations, 37 off-street parking spaces are required for the project. The project includes 42 off-street parking spaces, which exceeds the number of required parking spaces. Twenty parking spaces meet the full size requirement of § 2115.1 and 22 parking spaces meet the compact size requirement of § 2115.3. However, the Applicant requests flexibility from the requirement of § 2115.2 since approximately 60% of the parking spaces are compact, which exceeds the requirement that no more than 40% of the required parking spaces may be designated for compact cars. The garage has been designed and will be operated in a manner that will maximize the efficiency of use of the parking garage space.

f. *Additional Areas of Flexibility.* The Applicant also requests flexibility in the following areas:

i. To be able to provide between 148 and 170 hotel rooms;

ii. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

iii. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 28 points;

iv. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, provided the number of zoning-compliant parking spaces is not reduced below 42 spaces; and

v. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

Public Benefits and Amenities

38. The Commission finds that the following benefits and amenities will be created as a result of the PUD:

a. *Environmental Benefits.* The proposed hotel will combine environmentally-sustainable architecture and interior design. The hotel will be LEED certified and will achieve a minimum of 28 points. The operator of the proposed hotel will also donate one percent of its operating profit to local environmental organizations guided by a steering committee with Natural Resources Defense Council ("NRDC") representation.

b. *Urban Design, Architecture, Landscaping and Open Space*. The high quality of architectural design in the proposed development exceeds that of most hotels in the District. The design of the hotel will further the goals of urban design and enhance the streetscape and surrounding neighborhood. Moreover, as shown on the Plans, the project includes a number of enhanced landscaping, garden and streetscape features.

c. *Employment and Training Opportunities*. Expanding employment opportunities for residents and local businesses is a priority of the Applicant. Therefore, the

Applicant has entered into a First Source Employment Agreement with the Department of Employment Services. The Applicant will also be entering into an agreement with the District's Department of Small and Local Business Development.

d. *Public Space Improvements*. The Applicant has agreed to contract directly with the necessary service and professional firms for the design, approval and installation of the following items, not to exceed a total of $146,000.00, to be divided among items (i) through (iv). The final location, design and installation of these items shall be subject to DDOT approval.

i. Installation of one park bench at each of the following three locations: at the southeast corner of 25th and M Streets, N.W. along the existing diagonal walk; at the southwest corner of 24th and L Streets, N.W. near the existing brick planter; and at the northeast corner of 23rd and L Streets, N.W.

ii. Replacement or installation of trees at each of the following locations: one tree at the southeast corner of 25th and M Streets, N.W. on M Street; one tree at the northwest corner of 24th and L Streets, N.W., on 24th Street; one tree at the southeast corner of 23rd and L Streets, N.W.; three trees on the southeast corner of M Street, N.W. and New Hampshire, N.W., on M Street, N.W.; one tree on the north side of L Street, N.W. between New Hampshire Avenue, N.W. and 21st Street, N.W.; two trees on the south side of L between New Hampshire and 21st Street, N.W.; and one tree on the southwest side of M and 21st Streets, N.W.

iii. Replacement or installation of three-sided tree fencing for public tree boxes, where needed, within the bounds of ANC 2A. If time, materials, money, or approvals are constrained, the priority will be to first install tree fencing where there is none extant; secondly to replace existing plastic fencing; and finally to replace existing low metal fencing.

iv. Replacement or installation of globe-type street lights to match the recently upgraded street lights along M and 22nd Streets in the immediate vicinity, to be placed at each of the following locations: on the north side of M Street, between 22nd and 23rd Streets, N.W., and on the west side of 22nd Street, between M and N Streets, N.W.

e. *Contribution Towards Renovation Of St. Mary's Church.* The Applicant has agreed to contribute $35,000 towards the renovation of St. Mary's Episcopal Church located at 730 23rd Street, N.W., Washington, D.C. 20037. The Church

was founded in 1867 and has been in continuous operation as an Episcopalian parish. The Church was designed by noted architect James Renwick and is listed on the National Register of Historic Places in Washington, D.C. The Church has undergone significant restoration to repair structural damage since 2001. While repairs on structural elements have been completed, the chancel wall frescos have so far been excluded from restoration. They have sustained extensive water and other damage resulting in cracking, discoloration, efflorescence, water stains, paint damage, and other signs of physical deterioration.

f. *Contribution Towards The Biennial FBA Sculpture Project.* The Applicant has agreed to make a contribution of $60,000 to the FBA specifically designated for the Biennial FBA Sculpture Project. The FBA Sculpture Project is modeled after similar, successful campaigns throughout the United States and Canada, and on Capitol Hill. The program was created under the auspices of the FBA in 2007, and received its initial grant of $8,000 from the Foggy Bottom Association Defense and Improvement Corporation**.** The inaugural exhibition is scheduled from March through October 2008, and will install 10 sculptures from Metropolitan Washington-based artists along well-traveled outdoor paths (like the Foggy Bottom Metro-Kennedy Center route) throughout the Foggy Bottom Historic District. The exhibition will be curated by Shirley Koller, a professional artist and curator, and will be accompanied by a full color catalogue documenting each work of art, artist, and location.

g. *Contribution Towards the Renovation of the 26th Street Dog Park.* The Applicant has agreed to make a contribution of $50,000 to be paid to a contractor, landscape architect, or other professional company towards the renovation of the 26th Street Dog Park, located along 26th Street, NW between I and K Streets, N.W. The renovation will include the following: tree preservation; replacement of benches, fences, and trash receptacles; installation of a new street light, water connection, and drainage sump; installation of a subbase and grass safety surface for the playground; installation of a subbase and surface for the dog park; and installation of a curb cut. The final design, location, and installation of these improvements will be subject to DDOT approval.

h. *Contribution Towards Landscaping and West End Street Plan.* The Applicant has agreed to make a $8,500 payment to Iris Miller, Adjunct Associate Professor and Director of the Landscape Studies at the School of Architecture and Planning at Catholic University, for her professional services as a landscape architect and urban planner for (1) preserving landscaping that now surrounds the Nigerian Embassy building for future reuse within the 1 Hotel; and (2) developing standards and a street plan for the West End neighborhood.

Consistency with the Comprehensive Plan

39. The Subject Property is designated in the mixed-use, High-Density Residential and Medium-Density Commercial land use category on the Future Land Use Map of the Comprehensive Plan for the National Capital: District Elements ("Comprehensive Plan"), adopted through the Comprehensive Plan Amendment Act of 2006, effective March 8, 2007 (D.C. Law 16-300). The High-Density Residential designation is used to define neighborhoods and corridors where high-rise apartment buildings are the predominant use, and the corresponding zones districts are generally R-5-D and R-5-E (although other zones may apply). The Medium-Density Commercial designation is used to define shopping and service areas that are more intense in scale and character than the moderate-density commercial areas. Retail, office, and service businesses are the predominant uses. The corresponding zone districts are generally C-2-B, C-2-C, C-3-A, and C-3-B, although other districts may apply.

40. The Commission finds that the Applicant's proposal to construct a hotel on the Subject Property is consistent with the Future Land Use Map's designation of the Subject Property. The Subject Property is currently zoned CR, and the Applicant is not proposing a rezoning in connection with this application. The purpose of the CR Zone District is to encourage a diversity of compatible land uses that may include both residential and commercial uses, which is also consistent with the stated principle of the mixed-use designation of the Subject Property.

41. The Subject Property is designated in a Neighborhood Conservation Area on the District of Columbia Comprehensive Plan Generalized Policy Map. Neighborhood Conservation Areas are anticipated to include some new development and reuse opportunities. The guiding philosophy in these areas is to preserve and enhance the character of these neighborhoods, and that new developments should be compatible with the existing scale and architectural character of the area. The Commission further finds that the proposed PUD is consistent with this philosophy since the development will have a positive impact on the surrounding area by virtue of the exceptional architectural design, as well as activating the corner of 22nd and M Street, N.W. The proposed PUD's design carefully considers the nearby uses and accordingly, will have a minimal impact on that area. Moreover, the proposed PUD will have no unacceptable impact on existing or future traffic conditions.

42. The Commission finds that the proposed PUD is also consistent with many guiding principles in the Comprehensive Plan for managing growth and change, creating successful neighborhoods, and building green and healthy communities, as follows:

    a. *Managing Growth and Change.* In order to manage growth and change in the District, the Comprehensive Plan encourages, among other factors, the growth of

both residential and non-residential uses, particularly since non-residential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income. (§ 2.3, ¶ 217.4). The Comprehensive Plan also states that redevelopment and infill opportunities along corridors is an important part of reinvigorating and enhancing neighborhoods. (§ 2.3, ¶ 217.6). The Commission finds that the proposed PUD is fully-consistent with each of these goals. Redeveloping the Subject Property into a vibrant hotel will both reactive this important corner and will generate significant tax revenue for the District. Moreover, the proposed hotel use, which includes a restaurant on the second floor, will increase employment opportunities for District residents.

b. *Creating Successful Neighborhoods.* One of the guiding principles for creating successful neighborhoods is the recognition that many neighborhoods include commercial uses that contribute to the neighborhood's character and make communities more livable. (§ 2.3, ¶ 218.2). Another guiding principle for creating successful neighborhoods is getting public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements. (§ 2.3, ¶ 218.8). The proposed PUD further these goals with the construction of a state-of-the-art, LEED certified hotel that will add 148-170 guest rooms to the District, create additional employment opportunities, and generate significant tax revenues for the District. In addition, the Applicant has worked with ANC 2A and local community groups to develop an appropriate amenities package for the neighborhood and ensure that the development provides a positive impact to the immediate neighborhood.

c. *Building Green and Healthy Communities.* One of the guiding principles for building green and healthy communities is that building construction and renovation should minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. (§ 2.3, ¶ 221.3) As discussed in more detail herein, the building will be LEED certified, and will include a significant number of sustainable design features.

43. The Commission also finds that the proposed PUD furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

a. *Land Use Element.* For the reasons discussed above, the Project supports the following policies of the Land Use Element:

i. Policy LU-2.2.3: Restoration or Removal of Vacant and Abandoned Buildings. This policy encourages a reduction in vacant and abandoned buildings in the city through renovation, rehabilitation, and where necessary, demolition. Consistent with the policy objective, the Applicant

proposes to replace the currently vacant former Embassy building and lot with a new development that will be an asset to the immediate neighborhood and the District.

ii. Policy LU-2.2.4: Neighborhood Beautification. Policy LU-2.2.4 encourages projects to improve the visual quality of the District's neighborhoods. The Applicant proposes to provide landscaping and tree planting on M and 22nd Streets. Moreover, development of the site will be an improvement to the current condition. In addition, the proposed restaurant will help activate the street level of the project.

iii. Policy LU-2.4.10: Use of Public Space within Commercial Centers. This policy encourages the development of outdoor sidewalks cafes, flower stands, and similar uses that "animate" the street. The project includes a restaurant at the corner of M and 22nd Streets, which is ideally situated to engage the public throughout the day. This area is designed to become part of the urban streetscape and includes operable glass doors to be opened when weather permits for full integration with the sidewalk and public realm.

iv. Policy LU-2.4.11: Hotel Impacts. The objective of this policy is to manage the impacts of hotels on surrounding areas. The development team has carefully analyzed the impacts of this project on the surrounding neighborhood and the evidence demonstrates that the project will have a positive impact on the neighborhood. The project includes adequate areas for truck movement and deliveries, hotel parking, and all other activities associated with the proposed use.

b. *Transportation Element.* The overall goal of the Transportation Element is to create a safe, sustainable efficient multi-modal transportation system that meets the access and mobility needs of District residents, the regional workforce, and visitors; supports local and regional economic prosperity; and enhances the quality of life for District residents. (¶ 401.1) The Commission finds that the proposed PUD is consistent with this element in a number of respects. With respect to Action T-2.3-A: Bicycle Facilities, which encourages new developments to include bicycle facilities, the Applicant proposes to include secure bicycle parking and bike racks as amenities within the development that accommodate and encourage bicycle use. In addition, consistent with Policy T3.1.3, which encourages the expansion of car-sharing services, the proposed hotel will offer parking options for hybrid and alternative-fuel vehicles. The hotel will also own alternative-fuel cars for both local rental for guests and for use by hotel staff. Policy T-3.1.3: Transportation Demand Management (TDM)

Programs, encourages the promotion of programs and strategies aimed at reducing the number of car trips and miles driven to increase the efficiency of the transportation system. Consistent with this policy, the Applicant is providing public transportation and commuter-related information to both guests and employees. The Applicant is proposing to construct a designated drop-off and pick-up passenger waiting area at the main entrance to the hotel. The Applicant's proposal to use an elevator for parking access, together with valet-only and stacked parking is directly consistent with Policy T-3.2.2: Employing Innovations in Parking, which policy encourages the implementation of new technologies to increase the efficiency, management, and ease of use of parking.

c. *Environmental Protection Element.* The Environmental Protection Element addresses the protection, restoration, and management of the District's land, air, water, energy, and biologic resources. This element provides policies and actions on important issues such as energy conservation and air quality, and the Commission finds that the project is consistent with the following specific policies:

i. Policy E-1.1.1: Street Tree Planting and Maintenance - encourages the planting and maintenance of street trees in all parts of the city;

ii. Policy E-1.1.3: Landscaping - encourages the use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity;

iii. Policy E-2.2.1: Energy Efficiency - promotes the efficient use of energy, additional use of renewable energy, and a reduction of unnecessary energy expenses;

iv. Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff - calls for the promotion of tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction; and

v. Policy E-3.1.3: Green Engineering - has a stated goal of promoting green engineering practices for water and wastewater systems.

As discussed in both the Environmental Benefits and Building Green and Healthy Communities sections of this Order, the proposed project will be LEED certified and includes street tree planting and maintenance, landscaping, energy efficiency and alternative energy sources, methods to reduce stormwater runoff, and green engineering practices, and is therefore fully consistent with the Environmental Protection Element.

d. *Economic Development Element.* The Economic Development Element of the Comprehensive Plan specifically recommends the continued support and growth of the hospitality industry, which is a core industry in the District. (Policy ED-1.1.1.) Moreover, Policy ED-2.3.1, "Growing the Hospitality Industry," further recommends that the District should develop an increasingly robust tourism industry and strive to increase the number of visitors staying in the District (rather than in suburban hotels). Policy ED-2.3.4 also recommends that the District should support the development of a diverse range of hotel types, serving travelers with varying needs, tastes, and budgets. The Commission therefore finds that the Applicant's proposal to construct is consistent with, and implements, each of these goals. The Applicant's proposal to construct a hotel on the Subject Property is an indication of the robustness of the hospitality industry in the District. Moreover, the addition of new hotel rooms to the existing stock in the District will help increase the number of visitors staying in the District.

e. *Urban Design Element.* The Commission finds that the proposed hotel is consistent with a number of the policies included in the Urban Design Element of the Comprehensive Plan. For example, the project includes an attractive, visually-interesting and well-designed building façade that eschews monolithic or box-like forms, or long blank walls which detract from the human quality of the street. (Policy UD-2.2.5.) The project is also consistent with the improved streetscape design and sidewalk management goals of Policy UD-3.1.1 and Policy UD-3.1.2 since the Applicant proposes to improve the appearance and identity of 22nd and M Streets through the use of street trees and tree boxes and the sidewalks and plantings adjacent to the Subject Property will enhance the visual character of these streets and provide a buffer to reduce the impacts of vehicle traffic.

f. *Near Northwest Area Element*. The Commission finds that the project is fully-consistent with the Near Northwest Area Element. Policy NNW-1.1.3 of the Near Northwest Area of the Comprehensive Plan recommends that the District sustain and enhance the neighborhood, community, and regional shopping areas of Near Northwest, including M Street, and promote these areas as diverse, unique, pedestrian-oriented shopping streets that meet the needs of area residents, workers, and visitors. The proposed PUD is consistent with this policy since the proposed development will bring a new, high-quality hotel with ground floor restaurant on M Street that will further establish this area as a premier area of the District with diverse and unique establishments.

Office of Planning Report

44. By report dated October 5, 2007, OP recommended that the Commission schedule a public hearing on the application. (Exhibit 14.)

45. By report dated February 15, 2008, OP recommended final approval of the application. (Exhibits 27, 30.) OP indicated that the application will further a number of the elements and principles of the Comprehensive Plan and is not inconsistent with the Comprehensive Plan's policies and land use maps. OP also indicated that the Applicant's overall amenity package is significant, and that the proposed hotel would provide for a healthier, more environmentally responsible and green environment than any other hotel now provides in the District. OP supported the requested zoning flexibility from the rear yard, roof structure, and parking space size. OP also supported the Applicant's request for flexibility from the parking accessibility and ground level public space requirements, subject to written comments from DDOT regarding the proposed lay-by lane. OP also requested that the Applicant submit additional information regarding the north and west elevations of the proposed buildings, as well as exterior signage design and location. The Applicant submitted the requested information as part of it post-hearing submission filed on March 24, 2008. Moreover, as discussed below, the Commission finds that the information presented by the Applicant provides a basis for approving the proposed lay-by lane, location of the parking garage entrance, and requested flexibility, and Plans.

DDOT Report

46. DDOT submitted a memorandum dated February 22, 2008, marked as Exhibit 32 in the record of this case, indicating that the proposed lay-by lane did not provide an adequate queuing area for vehicles, and thus recommending that the Applicant relocate the parking garage entrance to the rear of the property and use the alley system for access to the proposed hotel.

47. The Applicant met with DDOT subsequent to the public hearing, and also responded to DDOT's recommendations in its post-hearing submission dated March 24, 2008. As shown on the Plans included with the Applicant's post-hearing submission, the Applicant redesigned the lay-by lane in accordance with DDOT's recommendations subsequent to the public hearing. The Applicant also submitted an analysis demonstrating the impracticality of providing both the loading berths and the garage entrance from the alley. As indicated in the report and shown on the exhibits submitted with the report, providing both the loading berths and the garage entrance from the alley would have a number of adverse impacts: trucks would block the garage access while using the loading berths, a number of vehicles would be queued in the alley while waiting to be parked in the garage, traffic entering the garage (including queued vehicles) and exiting the garage would conflict with trucks backing into the proposed loading dock area, and valets leaving the garage would be required to make a multi-block circuitous route to arrive at the front of the hotel to pick up guests, due to the presence of one-way streets in the area.

48. Based upon the reports submitted by the Applicant's transportation expert, the Commission hereby approves the location of the proposed parking garage entrance on 22nd Street as shown on the Applicant's plans. The Commission finds that the supplemental traffic analysis demonstrates that the proposed lay-by lane is consistent with other lay-bay lanes for hotels in the District, and will not create adverse impacts due to the queuing of vehicles. The Commission also finds that the transportation expert's analysis clearly demonstrates the infeasibility and undesirability of providing all access to the hotel from the public alley. Moreover, DDOT did not supply any studies or evidence, such as a level-of-service analysis of the alley, to support its recommendation that the Applicant relocate the parking garage entrance to the rear of the property and use the alley system for access to the proposed hotel.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project, "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)

2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider 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 identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well-planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The PUD, as approved by the Commission, complies with the applicable height, bulk, and density standards of the Zoning Regulations. The uses for this project are appropriate for the Subject Property. The impact of the project on the surrounding area is not unacceptable. Accordingly, the project should be approved.

6. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The Applicant's request for flexibility from the Zoning Regulations is not inconsistent with the Comprehensive Plan. Moreover, the project benefits and amenities are reasonable trade-offs for the requested development flexibility, and potential adverse effects.

8. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, the proposed development will promote the orderly development of the Subject Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

9. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. In this case, ANC 2A voted unanimously to support the project and recommended that the Commission approve the application. (Exhibit 28). The Commission has given ANC 2A's recommendation great weight in approving this application.

10. 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 (as reflected in ¶ 30). The Commission is satisfied that the Applicant has adequately addressed the concerns expressed by OP.

11. The application for a PUD is subject to compliance with D.C. Human Rights Act of 1977 (D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq.).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for consolidated review and approval of a planned unit development ("PUD"), subject to the following guidelines, conditions, and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by Oppenheim Architects, dated February 4, 2008, marked as Exhibit 25A in the record (the "Plans"); as modified by the March 24, 2008 Plans marked as Exhibit 56 and as further modified by the guidelines, conditions, and standards herein.

2. The PUD shall have a maximum density of 7.84 FAR and a gross floor area of no more than 122,235 square feet. The project shall contain no more than 170 hotel rooms and suites.

3. The maximum height of the building shall be 110 feet.

4. The project shall include a minimum of 42 striped off-street parking spaces in the garage.

5. The Applicant shall also have flexibility with the design of the PUD in the following areas:

    a. To provide between 148 and 170 hotel rooms;

    b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;

    c. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 28 points;

    d. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, provided the number of striped parking spaces is not reduced below 42 spaces; and

    e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings, and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit.

6. Prior to issuance of a Certificate of Occupancy for the project, the Applicant shall make the following contributions:

    a. *Public Space Improvements*. The Applicant shall contract with the necessary service and professional firm(s) for the design, approval and installation of the following items, not to exceed a total of $146,000, to be divided among items (a) through (d), the final location, design, and installation of which shall be subject to DDOT approval:

i. Installation of one park bench at each of the following three locations: at the southeast corner of 25th and M Streets, N.W. along the existing diagonal walk; at the southwest corner of 24th and L Streets, N.W. near the existing brick planter; and at the northeast corner of 23rd and L Streets, N.W.;

ii. Replacement or installation of trees at each of the following locations: one tree at the southeast corner of 25th and M Streets, N.W. on M Street; one tree at the northwest corner of 24th and L Streets, N.W., on 24th Street; one tree at the southeast corner of 23rd and L Streets, N.W.; three trees on the southeast corner of M Street, N.W. and New Hampshire, N.W., on M Street, N.W.; one tree on the north side of L Street, N.W. between New Hampshire Avenue, NW and 21st Street, N.W.; two trees on the south side of L between New Hampshire and 21st Street, N.W.; and one tree on the southwest side of M and 21st Streets, N.W.;

iii. Replacement or installation of three-sided tree fencing for public tree boxes, where needed, within the bounds of ANC 2A. If time, materials, money or approvals are constrained, the priority will be to first install tree fencing where there is none extant; secondly to replace existing plastic fencing, and finally to replace existing low metal fencing; and

iv. Replacement or installation of globe-type street lights to match the recently upgraded street lights along M and 22nd Streets in the immediate vicinity, to be placed at each of the following locations: on the north side of M Street, between 22nd and 23rd Streets, N.W., and on the west side of 22nd Street, between M and N Streets, N.W.

b. *Contribution Towards Renovation of St. Mary's Church.* The Applicant shall make a contribution of $35,000 to Olin Conservation. The contribution shall specify that the funds may only be used for renovation services for St. Mary's Episcopal Church located at 730 23rd Street, N.W., Washington, D.C. 20037.

c. *Contribution Towards the Foggy Bottom Association ("FBA") Biennial FBA Sculpture Project.* The Applicant shall make a contribution of $60,000 to the FBA. The contribution shall specify that the funds may only be used for the costs associated with the Biennial FBA Sculpture Project.

d. *Contribution Towards the Renovation of the 26th Street Dog Park.* The Applicant shall make a payment of $50,000 to a contractor, landscape architect, or other professional company to assist with the renovation of the 26th Street Dog Park, located along 26th Street, N.W. between I and K Streets, N.W. The contribution

shall specify that the funds may only be used for the following: tree preservation; replacement of benches, fences, trash receptacles; installation of a new street light, water connection, drainage sump, grass safety surface and subbase for the playground, dog park surface and subbase, and a curb cut. The final design, location and installation of these improvements will be subject to DDOT approval.

e. *Contribution Towards Landscaping and Street Plan.* The Applicant shall make a payment of $8,500 to Iris Miller, Adjunct Associate Professor and Director of the Landscape Studies at the School of Architecture and Planning at Catholic University. The contribution shall specify that the funds may only be used for her professional services in connection with (1) preserving landscaping that now surrounds the Subject Property for future reuse within the development, and (2) developing standards and a street plan for the West End neighborhood.

7. The Applicant shall require those people or organizations receiving monetary contributions pursuant to Condition 6(b) through (e) of this Order to agree in writing that each will present a certification to the Office of Zoning's Compliance Review Manager within 12 months of receiving such contribution written confirmation that the specified monetary contribution has been received and applied to the designated use, or providing a reasonable explanation as to when the contribution will be allocated. Failure of a person or organization receiving a monetary contribution to submit this certification shall not constitute a violation of this Order by the Applicant.

8. No building permit shall be issued for this PUD until the Applicant has submitted to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") a fully-executed agreement with the District of Columbia Department of Small and Local Business Development.

9. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the Applicants and all successors in title to construct on and use the Subject Property in accordance with this Order or amendment thereof by the Zoning Commission.

10. The 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 as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.

11. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. 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 April 14, 2008, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Gregory N. Jeffries, Michael G. Turnbull, Anthony J. Hood, Curtis L. Etherly, Jr., and Peter G. May to approve).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on May 12, 2008, by a vote of 5-0-0 (Gregory N. Jeffries, Curtis L. Etherly, Jr., Anthony J. Hood, and Peter G. May to adopt; Michael G. Turnbull to adopt 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*; that is on JUN 27 2008.

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

Z.C. CASE NO.: 07-21

As Secretary to the Commission, I hereby certify that on JUN 20 2008 copies of this Z.C. Order No. 07-21 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

2. Christopher Collins
Holland & Knight, LLP
2099 Pennsylvania Ave., N.W.
Washington, D.C. 20006

3. Asher Corson, Chair
ANC 2A
c/o West End Library
1101 24th Street, N.W.
Washington, DC 20037

4. Commissioner Lowell Thomas
ANC/SMD 2A02
2425 L Street, N.W. #312
Washington, DC 20037

5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

6. Councilmember Jack Evans

7. DDOT (Karina Ricks)

8. Zoning Administrator (Matthew LeGrant)

9. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

10. Office of the Attorney General
(Alan Bergstein)

11. R.S. Sandi Holdings, LLC
c/o James R. Hagerty, Esq.
Kalbian Hagerty LLP
888 17th Street, N.W., Suite 100
Washington, D.C. 20006

12. West End Citizens Association
P.O. Box 58098
Washington, D.C. 20037-8098
Attn: Barbara Kahlow

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