

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 07-21A
Z.C. Case No. 07-21A

**(Two-Year Time Extension for Consolidated Planned Unit Development –
PerStar M Street Partners LLC @ Square 50)
May 10, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on May 10, 2010. At the meeting, the Commission approved a request from PerStar M Street Partners LLC (the "Applicant") for a time extension for an approved consolidated planned unit development ("PUD") for the property formerly known as Lots 82, 84, 813, 814, and 816 (now known as Lot 87) in Square 50 (the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. By Z.C. Order No. 07-21, the Commission approved a consolidated PUD for the Property. The approved PUD authorized construction of a hotel on the Property containing a total gross floor area of approximately 122,235 square feet dedicated to hotel use, including between 148 and 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 approved project will have an overall density of 7.84 floor area ratio ("FAR") and an overall lot occupancy of 90%. Z.C. Order No. 07-21 became effective upon publication in the *D.C. Register* on June 27, 2008. Pursuant to condition 12 of Z.C. Order No. 07-21, a building permit for the PUD had to be filed no later than June 27, 2010 in order to maintain the validity of the approval.
2. By letter dated and received by the Commission on May 26, 2010, the Applicant filed a request to extend the validity of the PUD approval for a period of two years. The request, if approved, would require that an application for a building permit must be filed no later than June 27, 2012, and construction must be started no later than June 27, 2013. The Applicant's request was supported by a letter from the Applicant's real estate investment bank setting forth details of the Applicant's inability to obtain project financing at this time, as discussed in Findings Nos. 3 and 4.
3. The Applicant submitted evidence that the project has experienced delay beyond the Applicant's control. The Applicant has taken many steps to move the project forward, including the following:

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- (a) Subdividing the prior lots (Lots 82, 84, 813, 814, and 816) into a new, consolidated single lot of record (Lot 87);
- (b) Applying for, and obtaining, raze permits to demolish the existing structures on the property, with the work completed in February of 2009, at a cost of over \$460,000.00;
- (c) Spending approximately \$343,000.00 in preparing the necessary plans and paying deposits for excavation and sheeting/shoring permits, public space permits, and utility availability slips;
- (d) Investing over \$4,300,000.00 in architectural design, engineering and other design consultants and professionals to complete schematic design of the project and preparation of construction drawings; and
- (e) Engaging in discussions with numerous potential development partners and lenders in efforts to secure equity partners and financing for the project.

4. The Commission finds that the real estate market has been subject to, and continues to suffer from, severe financing, construction, sales, and other impediments. This major change in the real estate market has rendered it practically impossible for the Applicant to obtain project financing, despite the Applicant's good faith efforts. Based upon the supporting materials included with the Applicant's extension request, the Applicant has been unable to obtain project financing for the approved PUD project from the numerous lending institutions it contacted. Thus, the project cannot move forward at this time, despite the Applicant's diligent, good faith efforts, because of changes in the economic and market conditions beyond the Applicant's control. Therefore, the Commission finds that this extension request satisfies the sole criterion for good cause shown as set forth in § 2408.11(a) of the Zoning Regulations.

5. On March 26, 2010, the Applicant served a copy of the request on all parties, which included Advisory Neighborhood Commission ("ANC") 2A, the West End Citizens Association ("WECA"), and R.S. Sandi Holdings, LLC ("Sandi Holdings"). WECA and ANC 2A each submitted a letter in support of the requested extension. (Exhibits 3 and 4, respectively.) Sandi Holdings did not respond to the application.

6. The Office of Planning ("OP") submitted a report dated April 30, 2010 (Exhibit 5) indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations. OP thus recommended that the Commission approve the requested two-year PUD extension.

7. Because the Applicant demonstrated good cause with substantial evidence pursuant to § 2408.11(a) of the Zoning Regulations, the Commission finds that the request for the two-year time extension of the approved PUD should be granted.
8. Based on OP's report and the photographs included therein, the Commission finds that there has been no detrimental change in the condition of the Property since approval of the PUD that would indicate that the application should not be granted.

CONCLUSIONS OF LAW

1. The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (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 or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.
2. The Commission concludes that the application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the application and allowing them 30 days to respond.
3. The Commission concludes there has been no substantial change in any material fact that would undermine the Commission's justification for approving the original PUD.
4. The Commission is required by § 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) (2001), to give great weight to the affected ANC's recommendations. ANC 2A submitted a letter in support of the requested extension (Exhibit 4). The Commission has given ANC 2A's recommendation great weight in approving this application.

5. 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. OP submitted a report indicating that the Applicant meets the standards of §§ 2408.10 and 2408.11(a) of the Zoning Regulations, and therefore recommended that the Commission approve the requested extension (Exhibit 5). The Commission has given OP's recommendation great weight in approving this application.
6. The Commission finds that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by 11 DMCR § 2408.11(a). Specifically, the Applicant has been unable to obtain sufficient project financing for the PUD, following the Applicant's diligent, good faith efforts, because of changes in economic and market conditions beyond the Applicant's reasonable control.
7. Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11.
8. The Commission concludes a hearing is not necessary for this request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.
9. The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a two-year time extension of the consolidated PUD approved in Z.C. Case No. 07-21A. The consolidated PUD approved by the Commission shall be valid until June 27, 2012, within which time an application shall be filed for a building permit, as specified in § 2409.1 of the Zoning Regulations. Construction must commence no later than June 27, 2013.

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, gender identify or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, genetic

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information, or place of residence or business. Sexual harassment is a form of sex discrimination that 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 Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On May 10, 2010, upon the motion made by Vice Chairman Schlater, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order by a vote of **4-0-1** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to approve; third Mayoral appointee position vacant, 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*; that is, on September 3, 2010.

Anthony J. Hood
ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

Jamison L. Weinbaum
JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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As Secretary to the Commission, I hereby certify that on AUG 27 2010 copies of this Z.C. Order No. 07-21A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. <i>D.C. Register</i>	6. Councilmember Jack Evans
2. Christopher Collins, Esq. Kyrus Freeman, Esq. Holland & Knight, LLP 2099 Pennsylvania Ave., N.W. Washington, D.C. 20006	7. DDOT (Karina Ricks)
3. Asher Corson, Chair ANC 2A c/o West End Library 1101 24 th Street, N.W. Washington, DC 20037	8. Melinda Bolling, Acting General Counsel - DCRA 1100 4 th Street, S.W. Washington, D.C. 20024
4. Commissioner Rebecca K. Coder ANC/SMD 2A02 2501 M Street N.W. #721 Washington, DC 20037	9. Office of the Attorney General (Alan Bergstein)
5. Gottlieb Simon ANC 1350 Pennsylvania Avenue, N.W. Washington, D.C. 20004	10. R.S. Sandi Holdings, LLC c/o James R. Hagerty, Esq. Kalbian Hagerty LLP 888 17 th Street, N.W., Suite 100 Washington, D.C. 20006
	11. West End Citizens Association P.O. Box 58098 Washington, D.C. 20037-8098 Attn: Barbara Kahlow

ATTESTED BY:


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