



Advisory Neighborhood Commission 2A

“Serving the Foggy Bottom and West End communities of Washington, D.C.”

December 22, 2016

Mr. Anthony Hood
Chairman
District of Columbia Zoning Commission
441 4th Street NW, Suite 200S
Washington, DC 20001
zcsubmissions@dc.gov

RE: Zoning Commission Case No. 07-21C – HHLP Georgetown II Associates, LLC (Successor to PerStar M Street Partners, LLC)

Dear Chairman Hood,

At its regular meeting on November 16, 2016, Advisory Neighborhood Commission 2A (“ANC 2A” or “Commission”) considered the above-referenced matter. With five of seven commissioners present, a quorum at a duly-noticed public meeting, the Commission voted unanimously (**5-0-0**), after a motion made by Commissioner Harmon and seconded by Commissioner Schrefer, to adopt the following resolution:

WHEREAS, ANC 2A participated in Zoning Commission (ZC) Case No. 07-21B – PerStar M Street Partners, LLC, in 2011 and opposed signage that would be inappropriate to the site and neighborhood context and requested in its post-hearing submission that “specific language regarding The Hilton Garden Inn sign should be made a condition of the Zoning Order. It should be above the hotel’s entrance on 22nd Street, as shown on pages A1 and A2 of the October 7, 2011 PUD Modification Submission prepared by Shalom Baranes Associates and cannot be at a different location, larger, vertically mounted on the façade of the hotel or illuminated from within,”

WHEREAS, the West End Citizens Association (WECA) participated as a “Party” in Support in ZC Case No. 07-21B, and the Applicant was clear that WECA’s support was conditioned on the Applicant’s assurance that there would only be one sign and that it would be located over the hotel entrance,

WHEREAS, 22 West, A Condominium submitted written comments in opposition to the proposed PUD on October 24, 2011, including the following comment relative to the hotel’s proposed signage:

“The October 7, 2011 PUD Modification Submission prepared by Shalom Baranes depicts at A1 and A2 a “Hilton Garden Inn” sign above the entrance on 22nd Street with a note that the “design, location and dimensions” of the signage is illustrative only and that final signage will comply with DC Construction Code requirements. While the illustrative sign may be acceptable, we oppose any signage that is at a different



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location, larger, vertical, or illuminated from within in the manner of the signs for the Marriott or Embassy Suites on 22nd Street and not made a condition of approval of any PUD.”

WHEREAS, on February 3, 2012, the Zoning Commission issued Order No. 07-21B with clear direction in its decision for one sign only, to be over the hotel entrance. Citing both Exhibits 24 and 36, the 2012 Zoning Commission order explicitly noted ANC 2A’s concerns about the signage and stated:

“The hotel sign must be above the hotel’s entrance on 22nd Street as shown [on] pages A1 and A2 of Applicant’s final set of plans (submitted as Exhibit 24) and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within,”

WHEREAS, the Decision portion of the 2012 Zoning Commission Order expressly states that “the hotel sign shall be above the hotel’s entrance on 22nd Street as shown on those pages and...the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within,”

WHEREAS, on December 31, 2013, Sally Blumenthal, a resident of 22 West, observed the installation of mounting brackets on the hotel façade above the highest floors in contravention of the 2012 Zoning Commission Order. In response, the hotel’s counsel indicated to Ms. Blumenthal that the brackets were for a back-lighted sign, arguing that the 2012 Zoning Commission Order approved the roof-level, back-lighted sign by citing Exhibit 36. Page 4 of that 15-page PowerPoint presentation, which was shown to the Board for 23 seconds, contains four architectural renderings, one of which purportedly depicted the hotel signage, even though, as the Board of Zoning Adjustment (“BZA”) later determined (in an appeal discussed in more detail below): “With the naked eye the existence of any signage is not evident.”

WHEREAS, ANC 2A and the community learned that on February 10, 2014 the Zoning Administrator, with no notice to ANC 2A, had issued a determination letter that agreed that this brief display of Exhibit 36 for 23 seconds at the 2012 Zoning Commission hearing supported installing under-lighted signs in locations other than above the hotel entrance – in direct contravention of the Zoning Commission’s explicit discussion of signage in the 2012 order,

WHEREAS, on April 24, 2014, ANC 2A and 22 West, A Condominium, submitted an appeal to the Board of Zoning Adjustment of the February 10, 2014 determination by the Zoning Administrator that the Hilton Garden Inn sign installed at the top of the hotel’s façade was permitted by the Zoning Order approving the PUD,



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WHEREAS, on October 28, 2014 the BZA voted 4-0 to grant the appeal of 22 West and ANC 2A as to the issuance of sign permit no. SG 1400204, overturning the Zoning Administrator’s determination and the owner’s placement of an under-lighted sign in a location other than above the hotel’s entrance, and concurred with ANC 2A and 22 West that the plain, unambiguous language of the Hilton Garden Inn PUD Zoning Order permitted only one sign at street level on 22nd Street NW. The BZA issued its written decision granting appeal BZA Order No. 18793 on November 14, 2016, making it clear that the Zoning Commission intended to approve only a sign over the hotel entrance,

WHEREAS, on October 5, 2015, Holland & Knight, on behalf of its client, PerStar M Street Partners, LLC, sought a so-called “minor” modification to ZC Order 07-21B to be placed on the Consent Calendar at the Commission’s next public meeting, arguing for a Zoning Commission minor modification order to permit the illegal signage on the under-lighted sign at the top of the hotel. On October 19, 2015, the Zoning Commission denied this request and determined to set down the modification request for a public hearing, following submission of the Applicant’s Prehearing Submission and hearing fee,

WHEREAS, HHLP Georgetown II Associates, LLC, successor to PerStar M Street Partners, LLC, has now filed a prehearing submission, seeking a modification to ZC Order 07-21B to permit the illegally installed sign on the hotel’s façade above the highest floors in contravention of the 2012 Zoning Commission Order regarding under-lighted illumination, and the hearing in this matter is set for January 5, 2017,

WHEREAS, this is a PUD case, not a matter-of-right development, which requires consideration of “public benefits” as required by ZR Section 2403.3 and ZR Section 2403.7:

“The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project” (ZR 2403.3.)

WHEREAS, similar to ZR Section 2403.3, ZR Section 2403.7 specifies that for PUDs, a project amenity is one type of public benefit, specifically a functional or aesthetic feature of the proposed development that adds to the attractiveness, convenience, or comfort of the project for occupants and immediate neighbors,

WHEREAS, under-lighted signs shining directly into neighboring residences cannot be “mitigated” and are not acceptable for the reasons previously presented to the Zoning Commission in the 2011 proceeding, which include intolerable health effects such as documented health warnings that light disturbs sleep



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rhythms and increases the risk of serious health conditions, and negatively impacts property values,

WHEREAS, the District’s policies encouraging new and more residential development require supporting residents’ livability and the adverse effects of light pollution from a sign that shines directly into resident’s homes 24 hours a day, 7 days a week, rendering homes inhabitable and providing a public health threat,

WHEREAS, the illegally placed under-lighted Hilton Garden Inn sign is inconsistent with the character of the neighborhood and not necessary for the successful operation of the hotel as demonstrated by the numerous other major hotels in the immediate area that do not have such signage (or are removing such signage in recognition of the adverse effects of such light pollution on neighboring residents) and operate successfully with street level signage that does not shine into residences. ANC 2A is not saying that there should be no signage, only signage that is appropriate for a PUD development in this neighborhood,

WHEREAS, the Zoning Commission made no specific finding in 2012 that this type of lighting is an acceptable price to pay for the other "public benefits." It is not,

WHEREAS, HHLP Georgetown II Associates, LLC’s offer to not light the sign is insufficient. ANC 2A has had similar written agreements that are not honored and has no confidence that the hotel’s present and future owners would honor such an agreement, given the history of this particular hotel’s successive owners and their legal counsel, and their illegal installation of the sign in the first place, and then their incredible legal arguments that flashing an undiscernible exhibit that contains a sign not visible to the naked eye for 23 seconds at a Zoning Commission hearing overrides the Zoning Commission’s unambiguous language in the order prohibiting the placement of a sign at the top of the building, and

WHEREAS, this proceeding is about the integrity of the land use regulatory process in the District. The Zoning Commission's 2012 order was absolutely clear. However, without coming back to the Commission for a modification, PerStar M Street Partners, LLC simply went ahead and put up an illegal sign. The BZA ruled in 2014 that the sign was illegal, which meant that it had to come down. ANC 2A does not know when the present applicant purchased this building, but the illegality of this sign has been a known fact for over two years, and the owner has benefited from this illegality for over two years. To approve an illegal sign at this stage – whether lighted or un-lighted – would simply reward bad behavior and would send a signal that conditions in PUD orders do not have to be taken seriously if they turn out to be inconvenient. Accordingly, any modification to permit the sign, whether lighted or un-lighted at this point, is unacceptable.



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THEREFORE, BE IT RESOLVED that ANC 2A opposes the October 5, 2015 request of Holland & Knight on behalf of its client, HHLP Georgetown II Associates, LLC, for a so-called “minor” modification to ZC Order 07-21B to permit the illegally installed sign on the hotel’s façade above the highest floors in contravention of the 2012 Zoning Commission Order.

BE IT FURTHER RESOLVED that ANC 2A does not find that this is a “minor” modification to the PUD Order based on Section 3030 of the Zoning Regulations because it violates both Paragraph A of the Decision and Paragraph 43(b) of Contested Issues, which state as follows:

“(The) Zoning Commission agrees with ANC 2A that the actual signage will not differ from that depicted by the Applicant. Therefore, the Commission is adding a condition that the hotel sign must be above the hotel’s entrance on 22nd Street as shown on pages A1 and A2 of the Applicant’s final set of plans (submitted as Exhibit 24) and that the sign cannot be at a different location or be vertically mounted on the façade of the hotel or illuminated from within.”

BE IT FURTHER RESOLVED that ANC 2A urges the Zoning Commission to accord ANC 2A “great weight” and to deny the application of HHLP Georgetown II Associates, LLC for a so-called “minor” modification to ZC Order 07-21B to permit the illegally installed sign on the hotel’s façade above the highest floors in contravention of the 2012 Zoning Commission Order and urges the Zoning Commission to issue an order requiring HHLP Georgetown II Associates, LLC to remove the illegally installed sign.

Commissioners Florence Harmon (2A06@anc.dc.gov), Rebecca Coder (2A02@anc.dc.gov), and Patrick Kennedy (2A01@anc.dc.gov) are the Commission’s representatives in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

Patrick Kennedy
Chairperson

CC: Christopher Collins, Counsel for the Applicant
Jessica Bloomfield, Counsel for the Applicant
Christopher Doyle, Vice President, Asset Management, Hersha Hospitality Trust



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Sally Blumenthal, President, 22 West, A Condominium

Sara Maddux, President, West End Citizens Association

Barbara Kahlow, Secretary-Treasurer, West End Citizens Association

Marina Streznewski, President, Foggy Bottom Association