ORDER DATED
FEB 3, 1997
#3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the percentage of lot occupancy requirements (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: **February 27, April 24 and May 24, 1991 and June 9, 1993**

DECISION DATES: **September 4, 1991, June 9, 1993 and February 2, 1994**

DISPOSITION: The Board on September 4, 1991, **GRANTED** the application with **CONDITIONS** by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant). On June 9, 1993, the Board **GRANTED** the application as further amended with **CONDITIONS** by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting). On February 2, 1994, the Board **APPROVED** a **MODIFICATION OF PLANS** by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record).

FINAL DATES OF ORDER: **August 13, 1993 and March 7, 1994**

MODIFICATION ORDER

The Board initially granted the application by its order dated August 13, 1993. By Order dated March 7, 1994, the Board approved a modification of plans in the application. By letter dated October 16, 1996, counsel for the applicant filed a motion to waive the six-month filing requirement to allow for the filing of a request for further modification of plans.

Board of Zoning Adjustment
District of Columbia
CASE NO. 17322
EXHIBIT NO. 50A2

The application was originally approved by the Board as a mixed use six-story building, incorporating the existing vacant five-story historic Luzon building, with residential use on the sixth floor of the new building, as well as three levels of residential use in the northernmost portion of the new building, fronting on 25th Street, N.W. In the proposed modification, the applicant would convert the sixth floor of the building from residential to commercial, and would convert a portion of the third floor from commercial to residential. The net change in square footage from residential to commercial would be 3,862 square feet. No additional areas of zoning relief are requested or required in this modification.

The applicant stated that after the project was approved by the Board, the owner of the project filed a building permit application, but was unsuccessful in the attempt to market the project to a number of prospective purchasers. The main impediment expressed by those potential purchasers was the residential use on the sixth floor of the building. Based upon discussions with a number of brokers, the property owner found that there was no market for a building of this configuration, with a single shared residential/office lobby serving five floors of commercial use and one floor of residential use. Potential lenders also informed the owner that they were unwilling to finance construction without substantial pre-leasing. The applicant noted that without an occupancy commitment by a tenant or buyer, the project cannot be financed, and the property will continue to sit vacant and unbuilt.

The applicant stated that the project was sold earlier this year to Castleton Holdings, Inc. for development. Castleton confirmed that the same financing and market impediments still exist. Castleton began an analysis of the building to determine what modifications would be necessary to make the project economically viable and to enhance its marketability. After discussions with brokers and lenders, as well as with Councilmember Jack Evans, the Office of Planning, the Historic Preservation Review Board staff, and certain community representatives that co-signed the 1993 settlement agreement for the project, Castleton decided to propose a conversion of the sixth floor residential component in the "townhouse" portion of the building on 25th Street by replacing approximately 1,400 square feet of third floor office space with residential space.[1] The revised plans also indicate the removal of the west and north walls of the existing building, which were to

[1] The revised plans also indicate the removal of the west and north walls of the existing building, which were to become interior and hidden walls in the completed project. Although this is reflected in the revised plans, it does not affect any of the zoning calculations for the project.

become interior and hidden walls in the completed project. Although this is reflected in the revised plans, it does not affect any of the zoning calculations for the project. The applicant maintains that this shift will better delineate the residential and nonresidential components of the building, maximizing the residential portion in a townhouse apartment configuration on the north part of the site on 25th Street, adjacent to the other townhouse apartments on that block. The complete separation of the residential and nonresidential portions of the building is also consistent with a number of other successful mixed-use buildings in the West End.

The applicant stated that given the small size of the building footprint, it is not feasible to add a second entrance, lobby and elevator core for residential units. Moreover, under the Building Code, it is not possible to put more than three above-grade levels (and one below-grade level) of walk-up residential units in the building without providing a second means of egress. Given the site constraints and limited building footprint, there is no room to provide the second means of egress.

With regard to the request for a waiver from Section 3335.3, to allow this modification request to be considered more than six months after the final date of the written order approving the application, the applicant stated that the original order was issued on August 13, 1993, and the modification Order was issued on March 7, 1994. The zoning approval was vested by the filing of a building permit application on June 14, 1994. The prior owner actively marketed the project until early in 1996, when Castleton purchased the project for development. After studying the project and reviewing the options with interested parties, Castleton is now in a position to move forward with the approval process, so that the project can be built.

The applicant believes that the proposed modifications are minor and do not change material facts the Board relied upon in approving the application. Therefore, the applicant requests approval of this modification of plans.

The Board received correspondence from some of the parties to the application.

By letter dated October 26, 1996, the Single Member District Commissioner for Advisory Neighborhood Commission districts 2A01, 2A02, 2A04 and 2A06 expressed their support for the project modification. They also submitted a resolution in support which was not voted on due to the lack of a quorum at the ANC meeting. The support in the resolution was conditioned upon the developer beginning construction within six-months of obtaining all historic preservation, zoning and building permit approvals.

The Board also received support letters from the Single Member District Commissioner for ANC 2E04, the President of the Board of Directors of the Westbridge Condominium Association, and two individual residents of the Westbridge Condominium.

No letters opposing the modification of plans were received by the Board.

Upon consideration of the motion for waiver of the six-month filing requirement and the circumstances related to the applicant's efforts to develop the property, the Board determines that the waiver should be approved.

Upon consideration of the request for modification of plans and the letters in support, the Board concludes that the proposed modifications are minor and do not change the material facts relied upon by the Board in approving the application. The Board further concludes that based on the market analysis conducted by the applicant, the modifications were necessary to make development of the property feasible. No additional zoning relief is required. Therefore, it is **ORDERED** that the proposed **MODIFICATION OF PLANS** is **APPROVED** and that plans marked as Exhibit No. 124 of the record shall be substituted for those plans originally approved and subsequently modified, marked as Exhibit No. F-22 of the record.

DECISION DATE: November 6, 1996

VOTE: 3-0 (Angel F. Clarens and Laura M. Richards to **APPROVE** the **MOTION FOR WAIVER** of the six month filing requirement; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not present not voting. not having heard the case).

VOTE: 3-0 (Angel F. Clarens and Laura M. Richards to **APPROVE** the **MODIFICATION OF PLANS**; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not voting not present, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: FEB 3 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15461ord/TWR/LJP

ORDER DATED
MARCH 31, 1998
#4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of Chatham Lake Associates, as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance form the percentage of lot occupancy requirements (Subsection 772.1), a variance form the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirements (Subsection 774.1) for construction of a mixed use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: February 27, April 24 and May 24, 1991 and June 9, 1993
DECISION DATES: September 4, 1991, June 9, 1993 and February 2, 1994

DISPOSITION: On September 4, 1991, the Board GRANTED the application with CONDITIONS by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant). On June 9, 1993, the Board GRANTED the application as further amended with CONDITIONS by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting). On February 2, 1994, the Board APPROVED a MODIFICATION OF PLANS by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record). On November 6, 1996, the Board APPROVED a SECOND MODIFICATION OF PLANS by a vote of 3-0 (Angel F. Clarens and Laura M. Richards to approve; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not present, not voting, not having heard the case).

FINAL DATES OF ORDERS: **August 13, 1993, March 7, 1994 and February 3, 1997**

MODIFICATION ORDER

By order dated August 13, 1993, the Board granted the application. By order dated March 7, 1994, the Board approved a modification of plans in the application. By order dated February 3, 1997, the Board approved a further modification of plans in the application. By

letter dated June 17, 1997, Castleton-Projector, L.P. (Castleton), through counsel, requested a further modification of approved plans. Castleton noted that the original applicant was Chatham Lake Associates. However, Castleton purchased the project in 1996. Since that time, it has studied ways to improve the plans, to enhance the marketability of the project.

THE MOTION FOR RECONSIDERATION:

One of the parties to the application, Ms. Barbara Kahlow, submitted a letter dated June 23, 1997 requesting that the Board reconsider its decision of February 3, 1997. In a letter dated June 30, 1997, Castleton responded to the motion stating that 11 DCMR 3332.2 of the Board's Rules requires that a motion for reconsideration be filed within 10 days of the filing and service of the written order of the Board. Castleton stated that the order from which Ms. Kahlow seeks reconsideration was issued almost five months ago. Therefore, the motion is untimely.

Based on the motion for reconsideration, the response and the applicable rules, the Board concludes that the motion was filed in an untimely manner. The Board notes that no waiver of the Board's Rules was requested. Therefore, the merits of the motion for reconsideration will not be considered in this order.

THE MOTION FOR MODIFICATION OF PLANS:

In the request for modification of plans, the movant stated that last October, at Castleton's request, the Board approved a modification of plans to reallocate the residential space into one central location in the building. The approved building plans indicate that no windows are to be located along the exterior western wall. The approved plans also indicate a small ground floor retail space to the west of the building entrance, accessible from the street, with a separate adjacent internal building services space to the rear of that space, accessible from the lobby. Along with the motion, the movant submitted the existing approved plans for each of those features and the proposed modified plans.

Several timely letters were filed in opposition to the motion for modification of plans. They were received from Advisory Neighborhood Commission 2A, ANC SMD Commissioners for 2E-04 and 2A-06, Council Member Jack Evans, Barbara Kahlow, David Bowes and Michael Walden.

The Reduced Residential Component in turn for Quick Development of the Site:

In Ms. Kahlow's letter dated June 23, 1997, she stated that in 1996, the developer made written commitments with the community stating that "The developer commits to apply for and diligently pursue to completion, within a reasonable amount of time, all zoning, preservation, permit, and final building permit approvals....The Developer commits to a timetable to begin construction within 6 months of obtaining the Approvals and to use best efforts...to substantially complete the New Project within 2 years after construction begins." Ms. Kahlow stated that the applicant's 1996 modification called for a smaller residential component as compared to the previous plans. She noted that she supported that modification based on the developer's written

commitments on May 19, 1996. She stated that the neighbors still want a substantial residential component, consistent with how the property is zoned.

Ms. Kahlow noted that in February 1997, the developer cancelled the Mayor's Agent hearing scheduled for March 17, 1997, in violation of his written commitment. Ms. Kahlow is of the view that the developer now is trying to distort the Board's process and the current request for modification is an attempt by Castleton to further delay construction of the project which was promised to begin in a reasonable period of time.

A number of the other opponents to the motion expressed the same view about the movant's failure to keep the promises made. In light of the fact that the lot has not been developed in a timely fashion, these opponents reiterated their desire to have a substantial residential component at the site.

By letter dated July 28, 1997, ANC 2A submitted a resolution in opposition to the modification request. The ANC also made note of the cancelled Mayor's Agent hearing and stated that the movant has not yet rescheduled this hearing in a reasonable period of time. This is in spite of the fact that the applicant was aware that for the community time was of the essence. ANC 2A expressed the view that the current modification request is primarily intended to further extend the six months validity of the Board's order beyond the August 1997 expiration date, for a project which should have had a building permit no later than early 1994.

In a letter dated June 27, 1997, David Bowes requested that the Board not allow the developer to depart from written commitments made to the community about when and how the development would proceed. He reiterated the community's interest in a substantial residential component in the building and he pointed out that allowing modifications would take the process backward, rather than proceeding with what was settled upon and agreed to.

Council Member Jack Evans, by letter dated June 27, 1997 stated that he originally testified in opposition to the application in 1991. However, on May 29, 1996, he submitted a letter of support for a modification to the 1993 plan (which noted that the 1993 plan was based on a settlement agreement between the developer and the community). This 1996 plan called for a smaller residential component than approved by the Board in 1993. His support of this 1996 plan was based on a personal commitment made to him by the developer to develop the property quickly. He stressed the community's desire for a substantial residential component, given that the developer is not proceeding as promised.

By letter dated June 25, 1997, Sara Maddux, the Single Member District Commissioner for ANC 2A-06, opposed the modification request. She stated that the applicant has failed to honor its promise of prompt construction, therefore the community is renewing its original position for a substantial residential component in any development of this site.

Responding to the issue of quick development of the site specifically raised by Ms. Kahlow, Castleton stated that it intends to honor the terms of the written commitment to move forward "within a reasonable amount of time" to completion of the project. However, the movant and Ms. Kahlow disagree on the meaning of the term "reasonable". In the movant's

view, Ms. Kahlow would have Castleton build the project now on a speculative basis, without having first secured a tenant. The movant stated that this is not only unreasonable; it is impossible because in the current real estate market, one cannot secure a construction loan without significant pre-leasing to at least one major tenant.

The movant pointed out that the plan modifications requested by the applicant are intended to respond to issues raised in discussions with prospective tenants about the building. They are intended to reposition the building to appeal to the most active segment of the market. The need to secure a tenant prior to going forward has been the applicant's consistent message in all forums where the project has been discussed. The applicant stated that Ms. Kahlow has been in attendance at all of these forums and is aware of that fact.

The movant stated that it is vigorously marketing the project to a number of potential users. The modification requests are intended to make the building more attractive to those users. If Ms. Kahlow's request to deny the motion is granted, this will ensure that the property will continue to remain vacant and abandoned for the indefinite future. This would not be in the best interest of anyone, including Castleton, Ms. Kahlow or the District of Columbia.

Windows on the Western Wall:

Ms. Kahlow stated that the current modification addresses two issues: (a) the windows on the western wall and (b) the removal on an interior wall. She stated that the windows are in violation of the developer's written commitment and they would intrude upon the privacy of the neighboring residential units. In her view the windows do not make sense, since they would be blocked if the area behind the Mullett townhouses are developed. Such development is seriously being considered by the new owner of the immediately adjacent building to the west.

In a letter dated July 15, 1997, Michael Walden stated that he chaired the Westbridge Condominium Association's Committee on the 2501 Pennsylvania Avenue development proposals. Although that Committee opposed the proposals made around 1991, he and several of his neighbors supported the October 1996 modifications submitted by the new developer. With regard to the most recent modifications, he stated that he is most disturbed by the modification itself and the way in which it has been submitted. Therefore, he fully supports the views expressed by Ms. Kahlow in her letter.

Council Member Evans stated that the windows that were deliberately excluded from the prior plan, would intrude upon the privacy of the neighboring residential units. In his view such an invasion of privacy is problematic and should not be approved by the Board.

In correspondence submitted to the Board, Westy Byrd (ANC 4E-04) and Sara Maddux (ANC 2A-06) both agreed with the view that the windows would be an intrusion upon the privacy of the nearby residents.

Responding to the issue about the windows, Castleton stated that there is no written commitment by the developer regarding the presence or absence of windows on the western wall. These windows would be above the height of the adjacent buildings to the west. They

would face the Westbridge Condominium building, but that building is located more than 110 feet to the west of the subject property. Consequently, they would not "intrude upon the privacy of the neighboring residential units" as alleged by Ms. Kahlow.

Pursuant 11 DCMR 3335.2, "The Board shall consider requests to approve modifications to plans approved by the Board...." The standard for review appears in Subsection 3335.7 which states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application." The movant maintained that the modifications requested are minor and do not change the material facts that the Board relied upon in approving the application. Therefore, Castleton requested that the motion be approved.

Upon consideration of the motion, the responses and the applicable regulations, the Board concludes that the movant has met the burden of proof for the motion filed. The Board concludes that the requested modifications are minor and do not change the material facts relied upon by the Board in deciding to grant the application. The Board is of the opinion that the windows will be an adequate distance away from the nearest residential structure. The Board notes that there was no opposition to the change in the interior wall and agrees with the movant that denying the modifications would futher delay construction at the site because of the inability to satisfy potential tenants.

Accordingly, it is hereby **ORDERED** that the **MOTION for RECONSIDERATION** be **DENIED** and that the **MODIFICATION of PLANS** be **APPROVED.**

DECISION DATES: September 3 and October 1, 1997

Vote: 3 – 0 (Susan Morgan Hinton, Sheila Cross Reid and Laura M. Richards to deny the motion for reconsideration; Betty King not voting, not having heard the case; Maybelle Taylor Bennett not present, not voting).

Vote: 3 - 1 (Maybelle Taylor Bennett, Susan Morgan Hinton and Sheila Cross Reid to approve the modification of plans; Laura M. Richards opposed to the motion).

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Final Date of Order: MAR 31 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord15461/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15461

As Director of the Board of Zoning Adjustment, I certify and attest that on MAR 31 1998 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

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Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: MAR 31 1998

attest/ljp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15461 of **Capital City Suites, Inc.** (former applicant, **Chatham Lake Associates**), as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the allowable percentage of lot occupancy provision (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirement (Subsection 774.1) for construction of a mixed-use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

HEARING DATES: **February 27, April 24 and May 24, 1991 and June 9, 1993**

DECISION DATES: **September 4, 1991, June 9, 1993, February 2, 1994, November 6, 1996, September 3 and October 1, 1997**

DISPOSITION: On September 4, 1991, the Board **GRANTED the application** with **CONDITIONS** by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant).

On June 9, 1993, the Board **GRANTED the application as further amended with CONDITIONS** by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting).

On February 2, 1994, the Board **APPROVED a MODIFICATION OF PLANS** by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record).

On November 6, 1996, the Board **APPROVED a SECOND MODIFICATION of PLANS** by a vote of 3-0 (Angel F. Clarens and Laura M. Richards to approve; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not present, not voting, not having heard the case).

On September 3, 1997, the Board **DENIED** the **MOTION for RECONSIDERATION** by a vote of 3 – 0 (Susan Morgan Hinton, Sheila Cross Reid and Laura M. Richards to deny; Maybelle

Taylor Bennett not present, not voting; Betty King not voting, not having heard the case. A motion made by Laura M. Richards, seconded by Sheila Cross Reid to deny the request for modification of plans, failed for the lack of a majority by a vote of 1 – 2 (Laura M. Richards to deny; Sheila Cross Reid and Susan Morgan Hinton opposed to the motion; Maybelle Taylor Bennett not present, not voting; Betty King not voting, not having heard the case). In addition, a motion made by Susan Morgan Hinton, seconded by Sheila Cross Reid to approve the modification request also failed for the lack of a majority by a vote of 2 – 1 (Susan Morgan Hinton and Sheila Cross Reid to approve; Laura M. Richards opposed to the motion; Maybelle Taylor Bennett not present, not voting; Betty King not voting, not having heard the case).

On October 1, 1997, the Board **APPROVED a THIRD MODIFICATION of PLANS** by a vote of 3 – 1 (Maybelle Taylor Bennett, Susan Morgan Hinton and Sheila Cross Reid to approve; Laura M. Richards opposed to the motion; Betty King not voting, not having heard the case).

FINAL DATES OF ORDERS: **August 13, 1993, March 7, 1994, February 3, 1997 and March 31, 1998**

MODIFICATION ORDER
(Fourth Modification)

BACKGROUND:

The application was initially granted by the Board on September 4, 1991. By Order dated August 13, 1993, the Board approved the use of the property as a mixed-use commercial/residential building in accordance with plans before the Board at that time. Subsequently, the application was amended and, as further described below, motions to modify the plans were approved on three separate occasions. In the interim, the owner of the property has also changed from the original applicant, Chatham Lake Associates, to Castleton Holdings, Inc., and then to the current owner, Capital City Suites, Inc., (CCSI). The plans were modified to accommodate the interests of the varying owners of the property.

The original applicant, Chatham Lake Associates, obtained approval from the Board in the Order dated August 13, 1993 for a mixed-use 6-story building, incorporating the existing vacant 5-story historic landmark Luzon building. By Order dated March 7, 1994, the Board approved a modification of plans for Chatham Lake to remove the proposed balconies and fenestration from the western wall in order to make the approved building elevation plans consistent with the approved floor plans. By Order dated February 3, 1997, the new owners, Castleton-Projector, L.P., obtained a modification of plans from the Board to devote the majority of the building to office use, to reallocate the residential space into one central location in the building, and to remove the west and north walls of the existing landmark building on the site.

Most recently, by the Order dated March 31, 1998, Castleton obtained Board approval for the inclusion of windows along the exterior western wall of the building, as well as the removal of an interior partition wall in the retail ground floor space to create a larger retail area on the western side of the lobby entrance. CCSI purchased the property from Castleton in June 1998 and intends to develop a predominantly residential building in accordance with the written agreements with the community. Unlike the prior owners, CCSI intends to own and operate the building after completion of construction. CCSI is therefore prepared to move forward with the project upon receipt of the necessary approvals.

Capital City Suites stated that the original approval requires a minimum prescribed amount of residential and retail space, and allows "flexibility to devote the remainder of the building to any permitted use in the C-2-C Zone District." Further, CCSI stated that the Zoning Administrator has confirmed that the proposed mix of uses, as shown on the plans, is consistent with the Board's prior approvals. However, because the plans themselves are different from the earlier approved version, a request for modification of plans is necessary.

THE PROPOSED MODIFICATION OF PLANS:

On August 20, 1998, counsel for the applicant, Capital City Suites, filed a request for a further modification of the approved plans. Capital City Suites maintains that the modifications will allow the project to move forward as a residential timeshare condominium with 68 to 72 units and with ground floor retail/service commercial uses. The previously-approved plan was for a predominantly commercial office building, with ground floor retail/service commercial uses and approximately 5,600 square feet of residential use on four floors, accessed from 25th Street.

CCSI presented a floor-by-floor summary of the proposed plan changes as follows:

Ground Floor

The uses as shown on the ground floor plan are identical to the uses approved in those locations in the previous plan. The lobby and building support functions (loading, garage, ramp, building support areas, fire egress stairs, shafts and pipe chases, etc.) have been somewhat reconfigured as dictated by the change in use of the building, for maximum efficiency and code compliance. The plan far exceeds the minimum ground floor retail/service area required in the Board's original approval. The building has been recessed at the alley to provide an appropriate loading platform.

Upper Floors

The building will contain between 68 and 72 dwelling units. The actual count will be subject to final refinement in code and engineering requirements. The plans as submitted show 70 units. Fire egress stairways have been relocated in accordance with code requirements. The exterior wall at the northwest corner of the building has been reconfigured and recessed in order to provide required light and ventilation to the residential units in that portion of the building. There are no windows in the building along the western lot line. The residential units on the

second and third floors in the prior plan were walk-up units accessed from 25th Street. Because those floors are now entirely residential, the units in that portion of the building can be accessed through the main lobby. In the new plan, the only units accessed from 25th Street are on the basement and first floor levels.

Roof Plan

Because of the recess in the northwest corner of the building beginning at the second floor level, the footprint of the penthouse has been reduced in order to comply with the setback requirement.

Parking

This project is exempt from parking and loading requirements pursuant to 11 DCMR Sections 2100.5 and 220.5, because the existing Luzon building on the site is a historic landmark, and will be retained in the new project. The existing approved plans for the office/retail/residential building included two levels of parking, including excavation beneath the historic landmark on the site. The proposed plan shows one level of parking, with no excavation beneath the landmark. If the parking exemption did not apply to this project, 19 parking spaces would be required. As the new plan indicates, every available square foot in the parking level, including vault space has been utilized to provide 18 parking spaces (including two handicapped spaces). Given the nature of the proposed residential timeshare use, CCSI believes that the demand for parking in the building will be far less than that projected for the previous office development. In addition, the elimination of excavation beneath the landmark building will also help to insure that the preservation goals of this project are met.

The following table is a comparison of the zoning issues involved:

	Approved Plans	***Proposed Modifications***
Height:		
To top of roof	70' 0"	70' 0"
To top of penthouse	78' 0"	78' 0"
Stories	6	6
Gross floor area	53,625 sq. ft.	52,527 sq. ft.
FAR:		
Total	5.26	5.16
Residential	0.55	4.77
Nonresidential	4.71	0.39
Penthouse	0.19	0.16

Along with the motion, CCSI submitted to the Board a complete set of plans showing the proposed modifications. Also submitted for comparison purposes was a compilation of the approved plans in the record as modified by the above referenced orders. CCSI summarized the modifications stating that the plan changes requested herein do not change the height or design of the building. The existing exterior walls of the landmark Luzon building will be retained and

incorporated into the project. The only change to the exterior of the building is a slight reconfiguration and recessing of the exterior walls at the northwest corner of the building, in order to provide the necessary windows to comply with residential light and ventilation requirements. As a result, the FAR of the building, and the FAR of the roof structure are slightly less than previously approved. The building will be predominantly residential. The retail commercial uses on the ground floor are located entirely in the C-2-C District and there is no office or other commercial space in the R-5-B portion of the building, as in the previous plans.

Capital City Suites, Inc. stated that it purchased the project in June of this year, and that it is prepared to move forward with a predominately residential project upon issuance of all necessary approvals. CCSI believes that the plan modifications requested herein are minor and do not change the material facts the Board relied upon in approving the application. Therefore, CCSI requested approval of these modifications to the plans.

The motion was served on all parties involved in the application. Two responses to the motion were submitted into the record. Both letters were in support of the proposed modification of plans. No letters in opposition were received.

The first letter, submitted by Barbara Kahlow, dated August 26, 1998, stated that Mrs. Kahlow fully supports this developer's plans for the property. She believes that the latest proposed modification is a vast improvement over the other two plans. Specifically she supports (a) the scale (no more than six stories in keeping with this special "gateway to Georgetown" block); (b) planned retail component on Pennsylvania Avenue (for street life); and (c) the expanded residential component, which is in keeping with the rest of the block on 25th Street and the Westbridge Condominium on Pennsylvania Avenue at 26th Street. She stated that since the third and current developer already has secured financing and does not need to identify another user, the proposed development should finally move swiftly. Therefore, she urged the Board to approve the proposal.

The second letter, dated August 26, 1998, was from Robert J. Niemic who stated that he first opposed the design of the project at the earlier hearings, however, after significant changes were made, he supported the project and was a co-signer of the 1993 settlement agreement between the developer and several members of the Foggy Bottom community. He stated that his support for the project continues because the current plan addresses many of the concerns of the community.

THE STANDARD FOR REVIEW OF PROPOSED MODIFICATIONS:

Requests for modification are required to meet the provisions of 11 DCMR 3335. Pursuant 11 DCMR 3335.2, "The Board shall consider requests to approve modifications to plans approved by the Board...." The standard for review appears in Subsection 3335.7 which states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application." The movant maintained that the modifications requested are minor and do not

change the material facts that the Board relied upon in approving the application. Therefore, CCSI requested that the motion be approved.

Upon consideration of the motion, the responses and the applicable rules, the Board concludes that the movant has met the burden of proof for approving a motion for modification of plans. The Board concludes that the proposed changes are minor and do not change the material facts relied on by the Board in approving the initial application. The Board concludes that many of the dimensions will remain the same. Furthermore, under the proposed plan, the residential portion is being increased while the nonresidential portion is being decreased. The Board notes that these changes are looked upon favorably the area residents and parties to the application. No opposition has been expressed in relation to the proposal. The Board is also pleased that this project will move forward after such a long delay.

The Board notes that the motion was filed within six months of the most recent Board order on the matter, therefore, the motion is timely. The Board further notes that all of the Board Members participating in the vote on this matter have read the record in the application.

In light of the foregoing, the Board hereby **ORDERS** that the **FOURTH MOTION for MODIFICATION of APPROVED PLANS** is **APPROVED, SUBJECT** to the **CONDITION** that construction shall be in accordance with plans marked as **Exhibit No. 153** of the record.

DECISION DATE: **September 16, 1998**

VOTE: **3 – 0** (Betty King, Jerry H. Gilreath and Sheila Cross Reid to approve.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: for Tracey Hitten Rose
SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date of Order: DEC - 4 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT

TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15461

As Interim Director of the Office of Zoning, I certify and attest that on DEC - 4 19 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Attested By: Tracey Hitten Kese
for **SHERI M. PRUITT-WILLIAMS**
Interim Director

Date: DEC - 4 1998

Attest/ljp