Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 01-13A

As Secretary to the Zoning Commission, I herby certify that on MAR 18 2005 copies of Z.C. Order No. 960B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ATTESTED BY: Jerrily Kress
Jerrily R. Kress, FAIA
Director, Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 01-13A
EXHIBIT NO. 26

ZONING COMMISSION
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 960-B
ZONING COMMISSION CASE NO. 01-13A
(Modification to Approved Planned Unit Development for International Monetary Fund HQ2)
March 14, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on January 6, 2005, to consider requested modifications from the International Monetary Fund to the Planned Unit Development approved in Zoning Commission Order No. 960. The Zoning Commission considered the modifications 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 Zoning Commission hereby approves the requested modifications.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On September 30, 2004, the International Monetary Fund (the "IMF") filed a Request for Minor Modifications to the approved Planned Unit Development ("PUD") and zoning map amendment for the development of the IMF's second headquarters' building at 1900 Pennsylvania Avenue, N.W. approved in Zoning Commission Case No. 01-13C. The IMF requested modifications to Condition No. 8(a) and Condition No. 8(e) of Zoning Commission Order No. 960 (Revised) (the "Order") and approval of the matter as a consent calendar item.

2. At its October 25, 2004, public meeting, the Zoning Commission removed the requested modifications from the consent agenda. The Zoning Commission determined that the substitute amenity proposed for Condition No. 8(a) could call into question the balance of the amenities and benefits and, therefore, set the case for a limited-scope hearing regarding the two requested modifications. The Zoning Commission waived the requirement of a report from the Office of Planning for set down.

3. After proper notice, the Zoning Commission held a public hearing on January 6, 2005.

4. The parties to the case were the IMF, Advisory Neighborhood Commission ("ANC") 2A, the ANC within which the Site is located, and the West End Citizens Association ("WECA"). The Zoning Commission determined the parties to the case at the January 6, 2005, public hearing.

5. At its January 13, 2005, public meeting, the Zoning Commission took proposed action by a vote of 4-0-1 to approve the requested modifications as amended.

6. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by action dated January 28, 2005, found that the proposed modification would not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

7. The Zoning Commission took final action to approve the requested modifications on March 14, 2005, by a vote of 5-0-0.

The Requested Modification to Condition No. 8(a)

8. The IMF requested the Zoning Commission to modify Condition No. 8(a), which requires the IMF to replace forty-eight benches in the parks in the vicinity of the PUD Site with new, segmented benches previously approved by the National Park Service for Washington Circle. Condition No. 8(a) states that IMF shall install these benches prior to the issuance of certificate of occupancy for HQ2. Finding No. 44(d)(1) states that the estimated cost of this amenity was $132,000.

9. The IMF was and is fully prepared to perform this amenity in accordance with the Order. However, when the IMF approached the National Park Service ("NPS") regarding replacement of the benches, the IMF was informed that the segmented benches installed in Washington Circle are no longer the NPS-approved bench. According to the NPS, a task force comprised of representatives of the NPS, the Commission of Fine Arts, the National Capital Planning Commission, and the Office of Planning had reviewed the standard NPS bench since the approval of the PUD and determined that a new bench needed to be designed. Furthermore, in discussions with the IMF, the NPS indicated that it no longer wanted to replace the benches, some of which are relatively new, in the Federal Reservations adjacent to the PUD Site. Accordingly, this amenity was no longer acceptable to the NPS, and the NPS would not allow the IMF to replace the benches.

10. The IMF and its representatives met with the NPS in an effort to identify a substitute amenity. As a result of those discussions, the IMF proposed to replace Condition No. 8(a) with the following language:

> IMF shall expend the total sum of $250,000 for (a) the design of a new, segmented park bench prototype; and (b) the ongoing

enhanced maintenance and repair of the three (3) triangular parks immediately to the west and northeast of the Site along Pennsylvania Avenue, NW. IMF shall enter into an agreement with the National Park Service regarding the use of these funds prior to the issuance of a certificate of occupancy for HQ2.

11. The IMF agreed to expend $250,000 – increased from the estimated $132,000 for bench replacement – for the design of a new bench prototype and the enhanced maintenance of the parks in order to provide an amenity with a similar direct benefit to the immediate community. The NPS estimated that the $250,000 would provide for enhanced maintenance in the three parks for 6.5 to 9.5 years. The enhanced maintenance program would include the following: sod replacement and erosion control; use of environmentally-sensitive pest management; more frequent grass mowing, weeding and edging of grass along pavement edges; more frequent trash removal; painting and cleaning of benches, light poles and trash receptacles; cleaning of walkways; and more frequent light bulb replacement. The maintenance program does not include the fourth triangular park immediately adjacent to the World Bank, which is currently maintained by the World Bank.

12. The IMF contended that the proposed replacement amenity served the same purposes as the previous amenity and, thus, was a similar benefit. First, the funds used for the design of the prototype bench would allow for benches to be installed throughout the immediate area to deter "long-term occupancy," which was the basis for the original amenity. Second, the maintenance agreement for the parks would enhance the environs immediately surrounding the PUD site.

13. John B. Schlichting, representative of CarrAmerica Development, Inc., the development manager for the project, testified that the amount of money to be devoted to this amenity had increased since the time the Order was issued. Specifically, in May 2004, sixty-seven benches – as opposed to forty-eight benches – were needed in the four triangular parks to match the amount of seating currently provided. Furthermore, Mr. Schlichting testified that the estimated cost of the each bench had increased from $2,750 to $3,500. Accordingly, the total proposed cost of the amenity had increased from $132,000 to approximately $234,500.

14. The NPS supported this proposed replacement amenity, as is indicated in the NPS letter of support filed with the Zoning Commission in the record at Exhibit 4. In addition, Vikki Keys, Superintendent of the National Mall and Memorial Parks, testified at the hearing in support of the replacement amenity.

Requested Modification to Condition No. 8(e)

15. The IMF also requests that the Zoning Commission modify the last sentence of Condition No. 8(e), which relates to the timing of the neighborhood beautification projects set forth in that condition.

16. The IMF cannot complete the special neighborhood beautification projects required by Condition No. 8(e) within the timeframes provided therein due to the uncertainty with respect to the replacement of the benches in Condition No. 8(a). Specifically, the IMF cannot know the exact amount of the remaining funds until it knows the amount of money to be expended to satisfy Condition No. 8(a). Accordingly, the IMF is unable to comply with the timing set forth in Condition No. 8(e).

17. As recommended by the D.C. Department of Parks and Recreation, the IMF proposes making the contribution for the special neighborhood beautification projects to Green Spaces for D.C. Green Spaces for D.C. is a non-profit entity that has been set up to accept private funds for the purpose of constructing improvements in D.C. public parks pursuant to a Memorandum of Understanding between it and the D.C. Department of Parks and Recreation dated August 1, 2003. The IMF proposes entering into an agreement with Green Spaces for D.C. to contribute the remaining funds prior to the issuance of the certificate of occupancy.

18. The IMF proposes modifying the last sentence of Condition No. 8(e), which relates to the timing of the special neighborhood beautification projects, to read as follows:

> The IMF shall enter into a letter agreement with Green Spaces for D.C. and deposit a payment with Green Spaces for D.C. for the special neighborhood beautification projects endorsed by the Department of Transportation or Department of Public Works prior to issuance of a certificate of occupancy for HQ2.

Office of Planning Report

19. By report dated December 27, 2004, the Office of Planning ("OP") recommended approval of the requested modifications. OP stated that the enhanced maintenance of the three triangular parks would enhance the environmental benefits of these parks and would enhance the limited care provided by the NPS. OP also stated that the transfer of responsibility for fulfillment of Condition No. 8(e) to Green Spaces for DC is an acceptable solution to the timing problem created by this modification and will ensure that the purposes of this benefit are fulfilled.

20. David McGettigan testified at the hearing on behalf of OP in support of the requested modifications.

ANC 2A Report

21. By letter dated October 22, 2004, ANC 2A opposed consideration of the requested modifications as minor modifications. In its letter, the ANC indicated that it voted unanimously at its October 14, 2004, regularly scheduled meeting to oppose the requested modifications. The ANC stated its strong opposition to the use of neighborhood amenity funds to subsidize NPS in its upkeep and equipment provision responsibilities in Federal parks. The ANC suggested that the funds be given to the Downtown Cluster of Congregations to hire a case manager for the

immediate vicinity of the IMF PUD site to work with the homeless persons in the parks. The ANC supported the IMF's request for a timing change in Condition No. 8(e).

22. At the hearing, Richard Price, ANC Commissioner for ANC 2A-02, testified in opposition to the requested modification to Condition No. 8(a). Mr. Price testified that improvement of the parks does not offer any amenity to the community. First, Mr. Price testified that the improvement to the parks through redesigned benches or upkeep is an amenity to the people who work at the IMF and the other people who work in that area. Second, Mr. Price stated that this amenity represents a subsidy to the Federal government. Third, Mr. Price testified that the problem with the parks is not their condition but rather the homeless residents who live in the parks.

23. The Zoning Commission finds that the improvement to the three NPS parks offers similar benefit to the community as compared to the replacement of the park benches. The Commission finds that the Zoning Regulations require public benefits and project amenities to benefit the immediate neighbors and occupants of the proposed PUD project, not just residents. The IMF's proposed replacement amenity provides benefit to immediate neighbors and occupants of the PUD project by providing enhanced maintenance, not just substitute maintenance for the three parks. Furthermore, the Commission finds that there is ample precedent for the appropriateness of the dedication of amenity funds to the NPS, as set forth in Findings 36 through 38. The Zoning Commission also finds that the ANC's recommendation for a replacement amenity goes beyond the IMF's request and is therefore not within the scope of this hearing.

24. The Zoning Commission afforded the views of the ANC 2A the "great weight" to which they are entitled.

Opposition from WECA

25. WECA was admitted as a party in opposition to these proceedings. Barbara Kahlow and Sarah Maddux testified on behalf of WECA.

26. Ms. Kahlow testified that the Comprehensive Plan requires that a substantial part of the amenities provided in a proposed PUD shall accrue to the community in which the PUD would have an impact. Ms. Kahlow stated that the special neighborhood beautification projects proposed by the IMF do not accrue to the community in which the PUD has an impact – namely, Foggy Bottom. The Zoning Commission finds that timing for completion of the special neighborhood beautification projects is the only issue before the Commission. The location and nature of the special neighborhood beautification projects are not a subject of the requested modification, and therefore, this issue is not properly before the Zoning Commission.

27. Ms. Kahlow testified regarding two alleged process problems. First, Ms. Kahlow testified that the IMF did not contact the WECA for advice regarding the special

neighborhood beautification projects prior to filing the requested modifications. Second, Ms. Kahlow testified that the special neighborhood beautification projects were not included in the public notice advertisement. The Zoning Commission finds that timing for completion of the special neighborhood beautification projects is the only issue before the Commission. The location and nature of the special neighborhood beautification projects are not a subject of the requested modification, and therefore, this issue is not properly before the Zoning Commission.

28. Ms. Kahlow testified that she conducted extensive research on the use of segmented benches by multiple cities. Ms. Kahlow requested that her research be considered before the Zoning Commission determines that the amenity no longer includes segmented benches. Ms. Keys, the representative of the NPS, agreed to consider any information that the WECA provided to it. Accordingly, the Commission finds that this issue is properly between WECA and the NPS.

29. Ms. Maddux testified as to WECA's proposed alternative amenities that WECA believed would benefit the area south of Pennsylvania Avenue, which Ms. Maddux testified was the immediately impacted community. These alternative amenities include assistance to the residents during the annual meetings and solution for the homeless in the neighborhood. The Zoning Commission finds that WECA's recommendations for replacement amenities go beyond the IMF's request and are therefore not within the scope of this hearing.

30. WECA submitted two letters dated October 10, 2004, and October 17, 2004, in opposition to the requested modifications and consideration of the same. These letters set forth the same issues raised in WECA's testimony at the hearing.

CONTESTED ISSUES

Balance of Amenities

31. The Zoning Commission expressed concern that the requested modification to Condition No. 8(a) altered the balance of amenities. The IMF maintained that the balance of amenities did not change as a result of the requested modifications.

32. The IMF contended that the benefits and amenities approved for the project cover a wide variety of areas including monetary and non-monetary contributions. The total amount of money to be expended by the IMF for these benefits did not change by the requested modification.

33. The IMF further contended that the issue before the Zoning Commission is solely the allocation of dollars within the $1,000,000 devoted to local community benefits.

34. The Zoning Commission finds that the balance of amenities is not upset so long as the total funds devoted to the NPS amenity in Condition No. 8(a) does not exceed

the original estimate of $132,000, rather than the $250,000 offered, and will reflect this change in the wording of the modification approved.

Dedication of Amenity Funds to the National Park Service

35. ANC 2A testified that IMF amenity funds should not be expended to improve National Park Service property.

36. In response to a question from the Commission, Ms. Keys testified that there is a long history of the NPS receiving the benefit of amenity funds from the IMF.

37. The NPS and the Applicant submitted a copy of the relevant orders showing the precedents for the dedication of amenity funds to the National Park Service, including portions of Zoning Commission Order Nos. 512, 513, 513-A, 538, 556, 563 (Amended), 586, 629, 638, 639, and 642.

38. The Zoning Commission finds that there is ample precedent for the dedication of amenity funds to improve NPS property.

CONCLUSIONS OF LAW

1. Under § 2409.9 of the Zoning Regulations, any modification to an approved PUD that cannot be approved by the Zoning Administrator shall be submitted to and approved by the Commission. The proposed modification shall meet the requirements for a second-stage application, except for minor modifications and technical corrections as provided for in § 3030 of the Zoning Regulations. Because the Zoning Commission determined that the requested modifications were not minor modifications pursuant to § 3030 of the Zoning Regulations, the requested modifications were processed as a second-stage application.

2. The Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the consolidated approval. Accordingly, the Commission grants approval to this second-stage application in accordance with § 2408.6 of the Zoning Regulations.

3. The Commission is required under D.C. Code 2001 Ed. § 1-309.10(d) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's opposition to the requested modification to Condition No. 8(a). The Commission has addressed each of the ANC's issues and concerns.

4. The requested modifications are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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 requested modifications to the PUD. The approval is subject to the following guidelines, conditions, and standards:

1. Condition No. 8(a) is revised to read as follows:

   > IMF shall expend the total sum of $132,000 for (a) the design of a new, segmented park bench prototype and (b) the ongoing enhanced maintenance and repair of the three (3) triangular parks immediately to the west and northeast of the Site along Pennsylvania Avenue, NW. IMF shall enter into an agreement with the National Park Service regarding the use of these funds prior to the issuance of a certificate of occupancy for HQ2.

2. The last sentence of Condition No. 8(e) is revised to read as follows:

   > The IMF shall enter into a letter agreement with Green Spaces for D.C. and deposit a payment with Green Spaces for D.C. for the special neighborhood beautification projects endorsed by the Department of Transportation or Department of Public Works prior to issuance of a certificate of occupancy for HQ2.

3. The IMF shall record a "Notice of Modification" of Zoning Commission Order No. 960 with the land records of the District of Columbia. That Notice of Modification shall include true copies of Zoning Commission Order No. 960 and this Order (Zoning Commission Order No. 960-A), which the Director of the Office of Zoning has certified. Such covenant shall bind the IMF and all successors in title to the requirements of this Order or amendment thereof by the Zoning Commission.

4. After recordation of the Notice of Modification, the IMF shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission

Vote of the Zoning Commission taken at its public meeting on January 13, 2005: 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Kevin Hildebrand in favor; Gregory Jeffries, not present, not voting).

The Order was adopted by the Zoning Commission at its public meeting on March 14, 2005, by a vote of 5-0-0 (Carol J. Mitten, Kevin L. Hildebrand, Anthony J. Hood, Gregory N. Jeffries, and John G. Parsons).

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 MAR 2 5 2005.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning