



Pillsbury
Winthrop
Shaw
Pittman LLP

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

March 23, 2006

By Hand Delivery

Carol Mitten
Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Second Floor
Washington, D.C. 20001

**Re: Proposed Order for Case No. 70-16A (Square 72, Lot 76)
PUD Modification for 2101 L Street, N.W.**

Dear Chairperson Mitten and Members of the Zoning Commission:

Enclosed please find CESC 2101 L Street LLC's Proposed Findings of Fact and Conclusions of Law for the above-referenced matter. Please feel free to contact us should you have any questions or concerns.

Sincerely yours,

Phil Feola

Christine Roddy

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and enclosure was hand delivered to the addresses below on March 23, 2006.


Christine Roddy

Arthur Jackson
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20001

Vince Micone
c/o ANC 2A
St. Mary's Court
725 24th Street, NW
Washington, DC 20037

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 70-16A
Z.C. Case No. 70-16A
Approval to Modify a Planned Unit Development
Located at 2101 L Street, N.W. (Square 72, Lot 76)

Pursuant to notice, the Zoning Commission for the District of Columbia (the “**Commission**”) held a public hearing on March 2, 2006, to consider the application from CESC 2101 L Street LLC (the “**Applicant**”) to modify an approved planned unit development (“**PUD**”) in Square 72, Lot 76. The application was assigned Z.C. Case No. 70-16A. The application was filed on behalf of and with the consent of the owner of the property, CESC 2101 L Street LLC. The Zoning 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. 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 application.

FINDINGS OF FACT

1. On September 16, 2005, the Applicant filed an application with the Commission for review and approval of modifications to an approved planned unit development located at 2101 L Street, NW (Square 72, Lot 76) (the “**Property**”). The land area of the PUD site is approximately 50,888 square feet.

2. Through its application to modify an approved PUD, the Applicant proposes two primary modifications: to eliminate the arcade on the ground floor level and to replace the existing pre-cast concrete façade with a new façade comprised of glass and metal (the “**Project**”).

3. The Applicant proposes additional modifications, including: elimination of the setback at the ninth floor, establishing a one foot setback at the tenth floor level along L Street, reducing the

setback at the second floor to one foot, relocation of tree boxes, relocation of air intake vents, establishing architectural embellishments at the rooftop level, and relocation of retail use.

4. During its public meeting held on November 14, 2005, the Zoning Commission voted to schedule a public hearing on the application. The Zoning Commission requested that the Applicant provide additional information regarding the location of the garage air intake vents, detailed elevation plans for the rooftop architectural embellishments, and more information regarding the location of retail in the proposed plans.

5. After proper notice, the Commission held a hearing on the application on March 2, 2006. There were no requests for party status.

PUD Application

1. The PUD was first approved by Zoning Commission Order No. 70-16 on March 19, 1973, which approved a rezoning of the site to the C-3-B Zone District (now known as the C-3-C Zone District). The approved PUD provided for a building with a maximum gross floor area of 557,000 square feet, a floor area ratio (“FAR”) of 7.0, and a height of 110 feet. The Order further required that 32,000 square feet be dedicated to retail uses, 220 parking spaces be provided, as well as a convenient and secure bicycle parking area be provided on the first or basement level for at least 25 bicycles.

2. Upon submittal of the Applicant’s finalized plans in 1973, the Zoning Commission issued Order No. 70-16F, which acknowledged that there was a discrepancy between the floor area required to be used for retail purposes at the first floor level pursuant to Order No. 70-16 and the floor area provided in the final design plans. Nonetheless, the Zoning Commission found that

the final design plans were in “substantial compliance” with the Zoning Commission’s preliminary approval.

3. The Applicant submitted the current application in September 2005 to modify some of the conditions imposed by the Zoning Commission in 1973.

4. At its duly noticed meeting held February 15, 2006, with a quorum present, Advisory Neighborhood Commission (“ANC”) 2A voted to support the application subject to the condition that the ANC and the Applicant negotiate an agreeable amenities package.

5. No other parties or persons spoke in support of the PUD at the Zoning Commission hearing.

6. There were no parties in opposition to the PUD. John Batham, President of the West End Citizens Association (“WECA”), submitted a letter in opposition to the Project. Barbara Kahlow, a representative of WECA, testified in opposition to the Project. She stated that WECA opposed the amount of retail that was proposed, as well as the amenities package offered by the Applicant.

7. At its meeting held March 2, 2006, the Commission requested that the Applicant submit additional information regarding its proposed use of the roof and detailed lighting plans for the architectural embellishments at the roof level.

8. The Applicant timely filed the requested information on March 16, 2006.

9. The Commission took final action to approve the application of Case No. 70-16A on _____ by vote of _____.

The PUD Project

10. The Property is located on the northwest corner of the intersection of L Street, N.W. and 21st Street N.W. The Property is located in Square 72, Lot 76. The Square is bounded by 21st Street, N.W. to the east, New Hampshire Avenue, N.W. to the west, L Street, N.W. to the south, and M Street, N.W. to the north.

11. The Generalized Land Use Map of the District of Columbia Comprehensive Plan (“**Comprehensive Plan**”) recommends for the Property a mix of medium density commercial uses and high density residential uses. The Property is currently improved with a ten-story office building with ground floor retail. The Property is located two blocks west of the C-4 Zone District and directly across the street from the Central Employment Area as defined in the Comprehensive Plan and the Zoning Regulations.

12. The building will remain a mixed-use development of office and retail uses. The Applicant will eliminate the arcade at the ground floor level, extending the retail uses to the sidewalk. This will vitalize the streetscape and enhance marketable retail space and is consistent with good urban design.

13. As part of the modifications, the existing façade of the building, which currently consists of pre-cast concrete and glass, will be replaced with metal and glass, further updating the design of the building. An architectural embellishment will be established at the rooftop level along 21st Street, providing a “cap” for the building. At the corner of 21st and L Streets, a spire will project above the rooftop. Both embellishments will be modestly lit according to the lighting plans submitted into the record.

14. The modified design will eliminate existing setbacks at the ninth and second floors. Because of the heights of the buildings in the neighboring C-4 Zone District, a setback at the ninth floor is no longer necessary and it will be entirely eliminated. The setback at the second floor, which serves as a separation between the office uses and retail uses will remain but will not be as marked. A new setback will be incorporated at the tenth floor along L Street.

15. Retail uses will be concentrated on the first floor and will comprise approximately 24,000 square feet of the building's gross floor area.

16. The lot occupancy, height, and the amount of parking provided will remain unchanged and within the parameters of the initial order issued by the Zoning Commission in 1973.

Development Incentives and Flexibility

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

- a. **FAR**: The Applicant is seeking density above the condition limiting the building's FAR to 7.0 in the 1973 Zoning Commission Order. In its initial application in 1973, the square footage comprising the arcade was included in the gross floor area calculations for the structure, but pursuant to Section 2515.3, a 25% credit was awarded in calculating the FAR. Because the Applicant will no longer receive the credit in calculating the FAR of arcades, its FAR will increase slightly to 7.1.
- b. **Retail Use**: The initial PUD order required 32,700 square feet of floor area to be set aside for retail use at the ground floor. With few exceptions, the Applicant has dedicated the entire first floor to retail use, for a total of 24,000 square feet. Given that it is not possible to

dedicate 32,700 square feet of the ground floor to retail use, the Commission finds that 24,000 square feet is sufficient.

c. Setbacks: The initial order required a recess at the ninth floor to complement the height of adjacent or nearby buildings. The Applicant proposes to eliminate this setback given the heights of surrounding buildings no longer require such a setback; the Applicant would also like to reduce the deep setback at the second floor initially required by the Zoning Commission in 1973. The setback will remain but will be less punctuated.

d. Arcade: Approval of the PUD in 1973 required an arcade at the first floor providing additional open space at sidewalk level. The Applicant now proposes to enclose this arcade.

e. Rooftop Structures: In light of concerns the Zoning Commission voiced with regard to the precedent the architectural embellishments would establish, the Office of Planning proposed that the elements be considered rooftop structures requiring relief. Accordingly, the Applicant sought relief from Section 411 of the Zoning Regulations to permit the architectural embellishments.

Public Benefits and Amenities

18. The following benefits and amenities will be created as a result of the Project:

- a. Transportation: The building will retain the same number of parking spaces and will maintain a section devoted for parking bikes. The structure is also located .4 miles from the Farragut North Metro Station and along the D6, L2 and DC Circulator bus routes, making it is easily accessible by public transportation.

- b. Urban Design, Architecture, Site Planning, and “Green Building Practices: The high quality of design in the architecture for the Project greatly improves the presence of the existing building. Extending the arcade to the sidewalk will vitalize the retail component of the Project, new tree planters will enhance the streetscape, and the new façade and rooftop embellishments establish the building as a focal point at the intersection of 21st and L Streets. The public plaza will remain unmodified on the northwest side of the building. The Applicant will use superior quality glass and metal for the façade of the building and it will implement low-emitting materials in construction of the façade.
- c. Uses of Special Value: The Project will provide ground-floor retail which is a pedestrian-oriented use that will greatly enhance the street activity of the area.
- d. Monetary Contributions to Neighborhood Organizations: As part of the amenities and benefits package offered in connection with the application, the Applicant agreed to contribute \$100,000 to the D.C. Housing Production Trust Fund and \$25,000 to Green Spaces, Inc., a non-profit organization set up to help improve neighborhood parks and open spaces, as requested by ANC 2A.

19. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities including those relating to urban design, landscaping and open space, transportation measures, and uses of special value to the neighborhood.

Compliance with PUD Standards

20. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” 11 DCMR § 2403.8. Given the level of project amenities and public benefits, and the fact that the development will still comply with many of the conditions imposed in the 1973 Zoning Commission Order, the Commission finds that the development incentives are appropriate to grant the relief sought by the Applicant.

Comprehensive Plan and Public Policies

21. The Project is consistent with and furthers the goals and policies enumerated in the Comprehensive Plan.

- a. The Generalized Land Use Map: The Project is consistent with the Generalized Land Use Map, which recommends for the Property a mix of medium density commercial uses and high density residential uses. The Project will not be inconsistent with this use category. The existing building will only be enhanced through this modification process.
- b. Respecting and Improving the Physical Character of the District: The Project has been designed to dramatically improve the streetscape on 21st and L Streets. The facades, landscaping, and enclosure of the arcade, all combine to create a sense of scale and visual interest. The Project as a whole employs traditional, time-tested materials in new and modern ways in a design that is aesthetically enduring and

which adds to the fine urban texture of the city. Finally, the construction of a high quality project will be an important asset for the community.

- c. Preserving and Ensuring Community Input: Through the PUD modification process, the Applicant has worked with representatives of ANC 2A, as well as the surrounding neighborhood, to create a new design that is a benefit to the neighborhood and the District of Columbia.

22. The Project also complies with the major elements of the Comprehensive Plan.

- a. Urban Design: As shown in the detailed plans, elevations, and renderings included in the Applicant's December 15, 2006 submission (Exhibit ____), as modified by Exhibits 3, 4, and 5 of OP's report (Exhibit ____), and as modified further by the Applicant's post hearing submissions of March 16 (Exhibit ____), the Project exhibits all of the characteristics of exemplary urban design and architecture. The new design will enhance an existing prominent office building with ground floor retail.
- b. Transportation: The total number of parking spaces for the structure will not increase; accordingly, tenants will still be encouraged to take public transportation. Additionally, the Applicant dedicates space to parking bicycles, making it another convenient and environmentally conscious transportation option.
- c. Ward 2 Goals and Policies: The Ward 2 Element of the Comprehensive Plan seeks to enhance the special design character of the area and to maintain the variety of uses and densities in the Ward. The Project is consistent with these provisions and

its primary objective is to improve the design of the building, signifying an effort to improve the tired design plaguing many of the downtown office buildings.

Office of Planning Report

23. By its report dated October 28, 2005, OP recommended that the Project be set down by the Zoning Commission for a hearing. Its report dated February 21, 2006, stated that while OP did not object to the Project, it was awaiting details regarding the Applicant's amenities package before recommending support for the Project. At the hearing on March 2, 2006, OP voiced its strong support for the Project with certain conditions and recommended approval by the Zoning Commission. The recommendation was based on OP's findings that the Project is consistent with and will further important Comprehensive Plan objectives, is consistent with the zoning for the area, and provides an appropriate amenities package.

Other Government Agency Reports

24. DDOT expressed no objection to the proposed modification based on finding that the changes "... would have negligible impact on existing traffic volumes and would not create dangerous or objectionable traffic conditions." OP incorporated DDOT's comments in its February 21, 2006, report.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of

desired public spaces and other amenities." 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. The Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage a well-planned development with more attractive and efficient overall planning and design not otherwise evident in the existing building.

3. The proposed height and density will not cause a significant adverse effect on any nearby properties. Mixed use is appropriate for the PUD site. The Commission notes that the zoning for the Property will not be changed and the PUD will remain largely the same with the exception of the modifications described herein. The Project has been appropriately designed to complement the existing adjacent buildings with respect to height and mass.

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

5. The benefits and amenities provided by the Project are reasonable for the proposed development.

6. The application seeks an increase in FAR, reduction in the amount of retail provided, reduction or elimination of setbacks at ninth and second floors, elimination of arcade on ground floor, and relief from the regulations regarding the roof structures. The benefits and amenities provided by the Project, and the superior design of the building are reasonable trade-offs for the requested flexibility.

7. Approval of the PUD modification application is appropriate because the Project is consistent with the present character of the area and the existing zoning.

8. Approval of the PUD modification application is not inconsistent with the Comprehensive Plan.

9. The Commission is required under D.C. Code § 1-309.10(d)(3)(A) (2001) to give “great weight” to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 2A voted in favor of approving the modification. The Commission agrees with the ANC that this Project should be approved.

10. The Commission is required under Section 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 (2001)) to give great weight to OP recommendations. The Commission carefully considered OP’s report and testimony and accepts its findings and recommendations.

11. Although the Commission has considered the objection of WECA regarding the amount of retail provided in the Project, the Commission notes that the Applicant is providing a sufficient amount of retail at the ground floor level.

12. The application for a PUD modification under the existing zoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

13. The application for a PUD modification is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this order, of Application No. 70-16A for modification to the original PUD approved by Z.C. Orders 70-16 and 70-16F, for property located in Square 72, Lot 76. Zoning Commission Orders 70-16 and 70-16F are hereby amended as follows:

1. The Project shall remain a mixed-use development and shall be developed in accordance with the standards of the C-3-C Zone District.
2. The total FAR of the project shall be 7.1.
3. The maximum height of the building shall not exceed 110 feet.
4. The proposed building shall have on the first floor level approximately 24,100 square feet of floor area set aside for retail uses and the service uses listed in § 701.1.
5. Parking for motor vehicles shall not exceed 220 spaces. Each parking space shall be accessible at all times and permit short-term self-parking by users.
6. At least one (1) convenient and secure bicycle parking area shall be provided on the first basement for a minimum of 25 bicycles. There shall be a marked walkway not less than 3 feet in width from garage entrance to all designated bicycle storage areas with direct access to street and interior of building.

7. The multi-level open plaza between the rear of the subject building and existing apartment buildings shall be kept clean of debris and such planting as proposed maintained in an attractive and viable condition.
8. The PUD site shall be modified in accordance with drawings prepared by WDG Architecture, dated December 9, 2005, marked as Exhibit ____ in the record for Application 70-16A, as modified by Exhibits 3, 4, and 5 of OP's report, marked as Exhibit ____ in the record, and as further modified by the Applicant's post-hearing submission, dated March 16, 2005, marked as Exhibit ____ in the record.
9. Prior to the issuance of a building permit for the Project, the Applicant shall make a monetary contribution of \$100,000 to the D.C. Housing Production Trust Fund and \$25,000 to Green Space, Inc., as requested by ANC 2A.
10. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - b. 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; and
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other

changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and

- d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants.

11. No building permit shall be issued for the PUD modification until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 70-16F in the Land Records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 70-16, 70-16F, and this Order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the Applicant, and the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.

12. The Office of Zoning shall not release the record of this case to the Zoning Division of Department of Consumer and Regulatory Affairs until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.

13. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applications must be filed for building permits as specified in 11 DCMR 2409.1. Construction shall begin within three years of the effective date of this order.

14. 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which 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 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.

For the reasons stated above, the Commission concludes that the Applicant has met its burden, it is hereby **ORDERED** that the application be **GRANTED**.

Vote:

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

CAROL MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning