Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 70-16A

I herby certify that on AUG - 4 2006 copies of this Z.C. Order No. 78-A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 70-16A
EXHIBIT NO. 37

ZONING COMMISSION
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 78-A
Z.C. Case No. 70-16A
Modification of an Approved Planned Unit Development –
CESC 2101 L Street LLC (Square 72, Lot 76)
June 12, 2006

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 filed on behalf of and with the consent of the owner of the property, CESC 2101 L Street LLC. The 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 ("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 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, N.W. (Square 72, Lot 76) (the "Property"). The land area of the PUD site is approximately 50,888 square feet.

2. The Applicant proposed two primary modifications: elimination of the arcade on the ground floor level and replacement of the existing pre-cast concrete façade with a new façade comprised of glass and metal. The Applicant's other proposed modifications were: elimination of the setback at the ninth floor, creation of a one-foot setback at the tenth floor along L Street, reduction of the setback at the second floor to one foot, relocation of tree boxes, relocation of air intake vents, establishment of architectural embellishments at the rooftop level, and relocation of retail use.

3. During its public meeting held on November 14, 2005, the Commission voted to schedule a public hearing on the application. The 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.

4. After proper notice, the Commission held a hearing on the application on March 2, 2006. In addition to the Applicant, Advisory Neighborhood Commission ("ANC") 2A, the boundaries of which encompass the PUD site, was automatically a party in this proceeding. There were no requests for party status.

PUD Application

5. 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 dedication of 32,000 square to retail uses and the provision of 220 parking spaces as well as a convenient and secure bicycle parking area for at least 25 bicycles on the first or basement level.

6. Upon submittal of the Applicant's finalized plans in 1973, the Zoning Commission issued Order No. 78, 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. 60 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.

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

8. At its duly noticed meeting held February 15, 2006, with a quorum present, ANC 2A voted to support the application, subject to the condition that the ANC and the Applicant negotiate an agreeable amenities package.

9. The West End Citizens Association ("WECA") submitted a letter in opposition to the application. Barbara Kahlow, a representative of WECA, testified in opposition to the application, stating that WECA opposed the amount of retail that was proposed, as well as the amenities package offered by the Applicant.

10. Following the public hearing 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. The Applicant timely filed the requested information on March 16, 2006.

11. At its meeting held April 20, 2006, the Commission took proposed action to approve the application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Michael Turnbull, and John G. Parsons in favor; Carol J. Mitten not participating, not voting).

12. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated May 10, 2006, found the proposed modification of the approved PUD would not affect

the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

13. The Commission took final action to approve the application on June 12, 2006 by a vote of 3-1-1 (Anthony J. Hood, Gregory N. Jeffries, and Michael Turnbull to approve; John G. Parsons opposed; Carol J. Mitten not participating, not voting).

The PUD Project

14. 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.

15. 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.

16. 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.

17. 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.

18. The modified design will eliminate existing setbacks at the ninth and second floors. Because the heights of the buildings in the neighboring C-4 Zone District have increased since the original approval, 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 substantial. A new setback will be incorporated at the tenth floor along L Street.

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

20. 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

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

    a. FAR: The Applicant sought to increase the building's density above the limit of 7.0 FAR adopted in the 1973 Order. In the Applicant's initial application in 1973, the square footage comprising the arcade was included in the gross floor area calculations for the structure, but pursuant to § 2515.3, a 25-percent credit was awarded in calculating the FAR. Because the Applicant will no longer receive the credit in calculating the density of arcades, the building's density will increase slightly to 7.1 FAR.

    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 sought to eliminate this setback given the heights of surrounding buildings no longer require such a setback. The Applicant also requested to reduce the deep setback at the second floor required by the 1973 Order. That setback will remain but will be less significant.

    d. Arcade: The 1973 Order required an arcade at the first floor providing additional open space at sidewalk level. The Applicant proposed 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 flexibility from requirements under § 411 of the Zoning Regulations to permit the roof top structures.

Public Benefits and Amenities

22. The following benefits and amenities will be created as a result of the proposed modifications ("Project"):

    a. Transportation: The building will retain the same number of parking spaces and will maintain a section devoted for parking bicycles. The property is also located 0.4 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 will improve the presence of the existing building. Extending the arcade to the sidewalk will revitalize the retail component, new tree planters will enhance the streetscape, and the new façade and rooftop embellishments will 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 will implement low-emitting materials in construction of the façade.

c. Uses of Special Value: The Project will provide ground-floor retail, a pedestrian-oriented use that will 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.

23. 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

24. 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 Order, the Commission finds that the development incentives are appropriate to grant the relief sought by the Applicant.

Comprehensive Plan and Public Policies

25. The Project is consistent with and furthers 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 be enhanced through this modification process.

b. Respecting and Improving the Physical Character of the District: The Project has been designed to improve the streetscape on 21st and L Streets. The facades, landscaping, and enclosure of the arcade will 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 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.

26. The Project also complies with 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, 2005 submission (Exhibit 14); as modified by Exhibits 3, 4, and 5 of OP's report (Exhibit 24); and as modified further by the Applicant's post hearing submissions of March 16, 2006 (Exhibit 32), the Project exhibits 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.

Office of Planning Report

27. By its report dated October 28, 2005, OP recommended that the application 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 will provide an appropriate amenities package.

Other Government Agency Reports

28. 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 into 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 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 density, reduction in the amount of retail provided, reduction or elimination of setbacks at ninth and second floors, elimination of the 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 modifications 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 § 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. The Commission considered the objection of WECA regarding the amount of retail provided in the Project, but concludes that the Applicant will provide 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 60 and 78, for property located in Square 72, Lot 76. Zoning Commission Orders 60 and 78 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 density of the project shall be 7.1 FAR.

3. The maximum height of the building shall not exceed 110 feet.

4. The 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 level for a minimum of 25 bicycles. There shall be a marked walkway not less

than three (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 14 in the record for Case No. 70-16A, as modified by Exhibits 3, 4, and 5 of OP's report, marked as Exhibit 24 in the record, and as further modified by the Applicant's post-hearing submission, dated March 16, 2006, marked as Exhibit 32 in the record.

9. Prior to the issuance of a building permit for the Project, the Applicant shall make monetary contributions 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 appearances or configuration of the structures;

    b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, but with no reduction in quality, based on availability at the time of construction;

    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 Nos. 60 and 78 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., (the "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.**

The Zoning Commission at its public meeting held on April 10, 2006 approved the application by a vote of 4-0-1 (John G. Parsons, Gregory N. Jeffries, Anthony J. Hood, and Michael G. Turnbull to approve; Carol J. Mitten not participating, not voting).

The Order was adopted by the Zoning Commission at its public meeting on June 12, 2006 by a vote of 3-1-1 (, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt; John G. Parsons opposed; Carol J. Mitten not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on AUG 11 2006.

ANTHONY J. HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning