

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 563 (Amended)

Case No. 87-23C

(Art Club of Washington, 2001 Associates,
2011 Eye Land Limited Partnership, and
Electronic Industries Association)

February 8, 1988

(Amended March 17, 1988)

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on October 5, 1987. At this hearing, the Zoning Commission considered an application from 2001 Eye Land Limited Partnership and the Electronic Industries Association for consolidated review and approval of a Planned Unit Development ("PUD"), pursuant to Section 2400 of Title 11, District of Columbia Municipal Regulations ("DCMR"), Zoning. The public hearing was conducted in accordance with the provisions of Chapter 30 of that title.

FINDINGS OF FACT

1. The application was filed on May 19, 1987 and requested consolidated review and approval of a Planned Unit Development ("PUD") for Lots 35, 36, 37 and 846 in Square 78. The property is currently zoned C-3-C; the applicants have not requested any change in zoning.
2. The PUD site is located at the northwest corner of the intersection of 20th and I Streets, N.W., directly to the north of Public Reservation No. 29 and Pennsylvania Avenue, N.W.
3. The PUD site is comprised of approximately 28,645 square feet and is presently improved by several structures. Lot 35 is improved by a nine-story building with the address of 2001 "I" Street, N.W. This office building contains the offices of the Electronic Industries Association. Lot 36 is improved by a vacant six-story office building, with the address of 2007 Eye Street, N.W. (formerly the Medical Society Building). Lot 37 is improved by a newly-renovated eight-story office building with the address of 2011 I Street, N.W. Lot 846 is improved by two historic structures which house the Arts Club of Washington.

4. The PUD plan proposes the demolition of the buildings presently located on Lots 35 and 36. The applicants propose to construct a new eleven-story office/retail building on Lots 35 and 36, and propose to transfer unused development rights from Lots 37 and 846 to the new building site. Specifically, the applicants have requested the transfer of 37,000 square feet of gross floor area from Lot 846 to the new building site, and 2,500 square feet of gross floor area from Lot 37 to the new building site.
5. The mixed-use project on Lots 35 and 36 will contain office and retail components. The building will have 151,600 FAR square feet, including approximately 6,800 square feet of ground-floor retail space. The applicants have proposed the possibility that approximately 10,000 square feet of below-grade space on the mall level of the building may be used as retail space. There will be two and one-half levels of underground parking with eighty-three parking spaces. The lot occupancy of the new building will be 100 percent.
6. As originally proposed, the new building was to be built to a height of 124.16 feet with 78 below-grade parking spaces. Pursuant to comments at the public hearing, the applicants submitted revised plans lowering the height of the building to 122.16 feet and altering the roof treatment of the building in order to reduce its overall appearance of height and mass. The applicants also amended the parking plan to increase the amount of below-grade parking to 83 spaces. Access to the parking garage will be from 20th Street, N.W.
7. The applicants propose that the PUD site remain as separate lots of record, in view of the separate ownerships involved and the fact that development will occur only on a portion of the PUD site. Upon construction of the new building on Lots 35 and 36, the overall density for the PUD site will not exceed 7.275 FAR. The FAR of the new building will not exceed 10.48. The FAR of Lot 37 will not exceed 6.44; the FAR of Lot 846 (including the proposed addition referenced in Finding No. 25) will not exceed 2.09.
8. The PUD site is located in the C-3-C Zone District, in a high-density commercial portion of the City. 2000 K Street, N.W., the recently-completed commercial office building directly north of the PUD site, is 90 feet in height, with turrets extending to a height of 130 feet. The Lombardy Hotel, directly to the west of the Arts Club, is approximately 114.5 feet in height with approximately 8.7 FAR. 2025 Eye Street, N.W., a mixed-use commercial/residential building located at the corner of 21st and Eye Street, N.W., is built to a

height of approximately 111 feet with approximately 8.9 FAR. The remaining building in Square 78 is 2020 K Street, N.W. which is an eight-story office building with approximately 6.6 FAR.

9. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing and mixed-uses to a maximum height of 90 feet, a maximum floor area ratio ("FAR") of 6.5 residential and other permitted uses, and a maximum lot occupancy of one hundred percent.
10. The zoning pattern in the area includes: to the east, the C-4 District; to the south, the C-3-C and R-5-C Districts; to the north, the C-3-C District and to the west, the C-3-C, R-5-C and R-5-D Districts.
11. Under the PUD process of the Zoning Regulations, the Zoning Commission as the authority to impose development conditions, guidelines and standards which may exceed or be lesser than the matter-of-right standard. The PUD guidelines for development in the C-3-C Zone District permit a building height of 130 feet and 7.0 FAR. The Commission may also approve uses that are permitted as a special exception by the BZA.
12. The Generalized Land Use Map of the Land Use Element of the Comprehensive Plan shows the subject site in the high density commercial land use category, in the business and retail heart of the District and the metropolitan area which includes a mix of employment, retail, office, cultural and entertainment centers. The site is located in the Central Employment Area on the Generalized Land Use Map and in the Zoning Regulations of the District of Columbia.
13. The transfer of FAR is to be accomplished pursuant to the lease between the Arts Club of Washington and Joel M. Farr, Trustee for 2001 Associates, dated December 12, 1986. This lease, with a term of 99 years and two 99 year extensions, provides funds to the Arts Club on an annual basis over the term of the lease, in exchange for the transfer of unused development rights on Lot 846, the Arts Club property, to Lots 35 and 36.
14. The Arts Club of Washington is a non-profit organization that was founded in 1916. Shortly after its founding, the Arts Club secured as its home the Monroe House, designated on the National Register of Historic Places as the Caldwell-Abbe House, at 2017 Eye Street, N.W. The adjoining house, also owned by the Arts Club, at 2015 Eye Street is known as the Macfeely House.

15. The funds from the lease between the Club and 2001 Associates will provide the basis for restoring the Monroe and Macfeely Houses and expanding Club facilities. The Club retained professional advisers to provide information as to how best to preserve and maintain the buildings. The Club intends to accomplish the most immediate preservation and rehabilitation needs within a three-to-four year period. This includes immediate maintenance, reinforcement of the roof, floors and walls, and the addition or reconfiguration of such utilities as kitchen, bathrooms and air-conditioning.
16. The Club intends to use the income from the Lease in the following manner: at the outset, the Club will use approximately 80% of the funds for structural, mechanical and architectural maintenance and improvements and 20% for community-oriented programs. This allocation will likely change in later years and a larger allocation made to programs once the most significant physical work is completed. The Club proposes to spend an increasing amount of the funds for the Club's community programs, including rotating art exhibits, a broader scholarship program, annual awards in the arts, seminars with recognized scholars whose papers will be published and preserved, and open house discussions designed to bring together various segments of the arts community.
17. Pursuant to the lease with 2001 Associates, the Arts Club has retained 5,960 square feet of gross floor area for a future rear addition on Lot 846. Any such addition will not increase lot occupancy beyond 85 percent and will not increase FAR on Lot 846 above 2.09.
18. The Electronic Industries Association ("E.I.A.") is a full-service national trade organization representing over 500 member companies which cover the entire spectrum of electronic manufactures in the United States. E.I.A. has had offices in the District of Columbia for over sixty years and has had its headquarters in the District since 1933. It is one of the oldest trade associations headquartered in the District of Columbia.
19. E.I.A. has outgrown the capacity of its present office space and indicated that it would be the lead tenant in the new building to be constructed as part of the PUD plan, taking an estimated 60,000 square feet of office space.
20. Loading access is from the existing public alley that occurs midblock and is entered from 21st Street. Two loading berths and platforms and one service berth are

provided consistent with matter-of-right zoning. The parking entrance ramp will be located at the northeast corner of the new building site. This location immediately adjacent to the parking entrance of 2000 K Street groups these vehicular intrusions of the pedestrian zone so as to reduce the number of such interruptions. This location also preserves the Pennsylvania Avenue/"I" Street frontages from any vehicular opening, honoring the more ceremonial front.

21. The new building has been designed to complement the existing structures on the 2000 block of "I" Street, N.W. by several ways. This includes, but is not limited to the front ("I" Street) facade is divided into three vertical elements, the pain of cornices at the ninth and eleventh floor lines relate directly to the cornices of the Lumbardy Building and the selection of materials for the new building relates not only to the I Street neighbors and Red Lion Row, but also to 2000 K Street to the north of the PUD site.
22. The applicants' architect requested a waiver from the rear yard (or in lieu of rear year) requirement. The building height is specifically consistent with the 1019 "Act to Regulate the Height of Buildings". In all other matters the proposal is consistent with C-3-C zoning.
23. The applicant's architect also requested certain flexibility in the final detailing of the project in order to meet changing market and supply conditions.
24. The amount of traffic generated by the PUD will result in acceptable levels of service; the number of parking spaces provided in the PUD is adequate vehicular circulation in and out of the PUD site will not adversely impact the area roadnet and that the two loading berths and one service/delivery space will adequately serve the new building.
25. Pursuant to conversations with Advisory Neighborhood Commission 2A, the Office of Planning, and other District of Columbia agencies, the public benefits and amenities package submitted as part of the original application has been augmented substantially. The revised benefits package includes the following:
 - A. Preservation of the south facades of the historic Monroe and Macfeely Houses;
 - B. Expansion of the Arts Club's programs to support

the arts and serve the arts community and District of Columbia residents;

- C. Voluntary participation in the Arts in Public Places Program administered by the D.C. Commission on the Arts and Humanities. In the construction of the new building on Lots 35 and 36, 2001 Associates will provide public art in a space or spaces adjacent to the PUD site. 2001 Associates will allocate one percent (1%) of the actual construction costs of the base building for this public art, and will follow the regulations and guidelines set forth by the D.C. Commission on the Arts and Humanities. The artist(s) and art location will be jointly agreed to by 2001 Associates in conjunction with the D.C. Commission on the Arts and Humanities;
- D. \$50,000.00 contribution to the Ellington Fund. These funds would be made available for the general purposes of the Ellington Fund, and will enable the Fund to expand the amount of services and supplies that it is able to provide for students at the Duke Ellington School of the Arts;
- E. \$25,000.00 contribution to the "Neighborhood Educational Foundation" or similar entity administered by Tri-Sector, Inc., for the creation of a Neighborhood Learning Center in the District of Columbia. The Neighborhood Learning Center is a community-based and staffed project that provides computer learning centers for District of Columbia school children, and is designed to raise the reading and math levels of students and to supply them with additional education skills and opportunities;
- F. An agreement with the National Park Service to provide \$25,000 for immediate improvements to Public Reservation No. 29 directly south of the PUD site, plus 10,000.00 annually for a five-year period for the purpose of maintaining the park;
- G. \$15,000 Design study for the improvement of the public spaces bounding Pennsylvania Avenue, N.W. between 20th and 21st Streets and shall coordinate with the National Park Service regarding the details;
- H. Enhancement of the streetscape along both 20th & Eye Streets, N.W.;
- I. A Minority Business Opportunity Commission

Memorandum of Understanding regarding minority contraction opportunities created by the PUD plan;

- J. A Department of Employment Services First Source agreement regarding job opportunities created by the PUD plan;
- K. Addition of 6,800 square feet of ground floor retail space at 2001 Eye Street, N.W. (the PUD plan includes the possibility that the 10,000 square feet of space in the underground mall may be for retail use);
- L. Retention of the Electronic Industries Association as a District of Columbia employer; and
- M. Increased real property taxes of nearly \$200.000 per year as a result of the new building (per OBED's estimates).

26. The applicants entered into a First Source Agreement with the District of Columbia Department of Employment Services, dated October 2, 1987 thereby ensuring that District residents will have an opportunity to fill the jobs created by the development.

27. The applicant requested flexibility in the final design of the proposal.

28. The District of Columbia Office of Planning (OP), by memorandum dated September 29, 1987, and by testimony presented at the public hearing, recommended that the application be approved with conditions. OP indicated in its original report that its concern that the proposed benefit package was not sufficient enough to justify the increase in FAR. OP indicated that it was willing to work with the applicants to develop additional public benefits and amenities prior to the public hearing. At the public hearing, OP acknowledged the applicants' increased public benefits and amenities package, and indicated that it would submit a supplemental report regarding the applicants' revised amenities package.

29. With respect to the concerns raised by OP, the Commission finds that the revised public benefits and amenities package presented by the applicants at the public hearing, revised in response to the applicants meetings with OP staff, is sufficient to justify the relief requested in this case.

30. The District of Columbia Department of Public Works, by

memorandum dated September 24, 1987, indicated that:

- A. The proposed development would not have a significant impact on the operation of intersections of 20th Street at Eye and K Streets;
- B. The 78 spaces originally provided as part of the development proposal were sufficient. DPW also indicated that the control booth is located well within the structure, thereby providing sufficient off-street storage area for vehicles entering the parking facility;
- C. The proposed loading berths would not be properly accessible; and
- D. The existing water and sewer systems have adequate capacity to service the proposed development.

31. Pursuant to the recommendations of the Department of Public Works, the applicants submitted a Declaration of Access Easement providing for improved access to the loading berths for the new building.

32. With respect to the concerns raised by the Department of Public Works, the Zoning Commission finds that the 83 parking spaces provided as part of the applicants revised development proposal are sufficient for the development. In addition, the Zoning Commission finds that the Declaration of Access Easement submitted by the applicants adequately addresses the concerns raised by DPW with respect to access to the loading berths from the public alley, and is sufficient to insure proper and safe loading activity. The Commission also finds that the proposed development will not have an adverse impact on the parking, loading and trash facilities in the vicinity of the site.

33. The Office of Business and Economic Development (OBED), by an unsigned, undated memorandum, indicated that:

- A. The PUD plan would create 272 net new jobs, as opposed to 136 net new jobs that could be expected to be created by matter-of-right development;
- B. The PUD plan furthers the District's goal to attract and maintain associations by retaining the Electronic Industries Association, with approximately 180 employees, as a District-based association;
- C. The PUD plan would generate \$631,000 in annual real property taxes, as compared with \$433,400 that could be expected to be generated by matter-of-right development;

- D. The amenities created as part of the application contain substantial public benefits;
- E. Restrictions should be recorded to run with the land limiting future additions to the Arts Club property to those referenced in Finding No. 17.
- F. A mechanism should be fashioned to ensure that the historic structures are appropriately preserved, restored and maintained. The applicant should work with the State Historic Preservation Office staff to prepare a plan for the preservation, conservation and improvement of the historic buildings; and
- G. Based on the information available at the time of the report, it appeared that the value of the transferred development rights exceed the value of the public benefits.

34. By supplemental memorandum dated October 23, 1987, OBED indicated that:

- A. Subsequent to OBED's initial report, the applicants had provided OBED staff with additional information regarding the market value of transferred development rights in the District of Columbia, as well as with information regarding the applicants' plans for the preservation, conservation and improvement of the historic buildings;
- B. The information provided by the applicants clarified and strengthened significantly the preservation aspects of the PUD plan;
- C. The mechanism by which the preservation of the historic buildings will be ensured should be included as a condition of the Zoning Commission's order in the case;
- D. As a general rule, the "market value" of transferred development rights is well below the "economic value" of such rights, due to the limited marketability of development rights in the District. OBED did not dispute that the development rights transferred in this case were done so at the current market value.

35. With respect to the concerns raised by OBED, the Commission finds:

- A. Conditions to the final order will adequately

restrict future additions to the Arts Club property to those referenced in Finding No. 17, and additional conditions will provide a proper mechanism to ensure that the historic structures are appropriately preserved and maintained; and

- B. As noted by OBED, the value of the development rights transferred in this case corresponds properly with the public benefits and amenities created by the PUD plan.
- 36. The District of Columbia Fire Department, by memorandum dated August 28, 1987, had no objection to the application, provided that a sprinkler system throughout the entire new building be installed. The Fire Department also recommended the addition of sprinkler systems to 2015 and 2017 Eye Street (Lot 846) and 2011 Eye Street (Lot 37). By memorandum dated October 26, 1987, the District of Columbia Fire Department clarified the recommendations made in its original report. In this supplemental memorandum, the Fire Department recommended sprinkler protection to 2015, 2017 (846) and 2011 Eye Street, N.W., indicating that this recommendation was not a mandatory requirement. In this revised memorandum, the Fire Department indicated that it had no objection to the proposed transfer of development rights.
- 37. With respect to the concerns raised by the Fire Department, the Commission finds that the recommendations for the sprinklering of the new building and for providing a fire protection system in the Arts Club buildings may be addressed as conditions to the final order.
- 38. The District of Columbia Office of the Corporation Counsel, by memorandum dated October 26, 1987, advised that the Act to Regulate the Height of Buildings (Act of June 1, 1910, 36 Stat. 452) permits construction of the building on Lots 35 and 36 to a height of 130 feet. The Corporation Counsel also indicated that Dupont Circle Citizens Association v. D.C. Zoning Commission, 355 A.2d 550 (1976), the decision which affirmed the authority of the Zoning Commission to recognize the transfer of development rights between separate lots of record, remains controlling authority in the District of Columbia.
- 39. The District of Columbia Department of Housing and Community Development (DHCD), by memorandum dated September 9, 1987, indicated that it had no comments regarding the PUD case.

40. The District of Columbia Department of Finance and Revenue (DFR), by memorandum dated September 15, 1987, indicated that it had no comments regarding the PUD case.
41. The Metropolitan Police Department, by memorandum dated September 4, 1987, indicated that the Police Department did not expect the PUD plan to generate any substantial increase in the need for police services, and recommended that the applicants consider the inclusion of effective lighting in open areas to improve public safety.
42. The Office of the Superintendent of the District of Columbia Public Schools, by memorandum dated September 15, 1987, indicated that, since student enrollment is not anticipated to increase as a result of the project, the proposed PUD plan would have no direct impact upon the operation or facilities of the public schools.
43. The District of Columbia Department of Recreation, by memorandum dated August 18, 1987, indicated that the PUD plan would not have an impact on the Department of Recreation facilities and plans.
44. Advisory Neighborhood Commission (ANC) 2A, by letter dated September 25, 1987, indicated that the ANC, by a 4 to 1 vote, had adopted a statement indicating that, while ANC 2A finds aspects of the project commendable, and did not oppose the application, the ANC could not support it because of the excessive FAR and the lack of community benefit. ANC 2A offered no testimony and did not participate at the public hearing. The ANC position was taken before the revised amenities package was submitted by the applicant.
45. With respect to the concerns raised by the ANC, the Zoning Commission finds that the revised public benefits and amenities package submitted by the applicants is sufficient given the applicants' development proposal. In addition, the Commission finds that the height and density proposed as part of the PUD plan are not unreasonable, given the restrictions limiting future density on each of the lots comprising the PUD site.
46. The D.C. Commission on the Arts and Humanities, the Ellington Fund of the Duke Ellington School of the Performing Arts and Tri-Sector, Inc. by separate letters dated October 2, 1987, each indicated their support for the application.
47. The D.C. Preservation League, by letter dated October 5, 1987, supported the preservation elements of the PUD application, finding that the proposed transfer of

development rights has no adverse impact on the historic Arts Club buildings.

48. The Farragut Development Company, by letter dated October 5, 1987, indicated its support for the PUD application.
49. There were no persons or parties in opposition to the application at the public hearing or of record.
50. The Commission finds that the applicants have met the intent and purpose of the Zoning Regulations and the Planned Unit Development process.
51. The Commission finds that the proposed development is not inconsistent with the Comprehensive Plan of the District of Columbia.
52. The Commission finds that there are sufficient public benefits and amenities in the application, beyond that which could be obtained under under matter-of-right development of the site.
53. The Commission finds that the height and density of the proposed new building are suitable for the site. The scale and design of the project are compatible with the project vicinity.
54. As to the request for design flexibility by the applicants, the Commission finds that such request are not unreasonable.
55. 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. The NCPC, by report dated January 6, 1988, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal Interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital.

CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purpose of Section 2400 to encourage the development of well-planned residential, institutional, commercial and mixed use developments which will offer a variety of building

types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

3. The Commission concurs with the advice given by the Office of the Corporate Counsel about the authority of the Commission with respect to height and the transfer of development rights.
4. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
5. Approval of this application is not inconsistent with the Comprehensive Plan of the District of Columbia.
6. The approval of this PUD application is consistent with the purpose of the Zoning Act.
7. The proposed application can be approved with the conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.
8. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Zoning Commission has accorded to the Advisory Neighborhood Commission (ANC) 2A the "great weight" to which it is entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders APPROVAL of this application for consolidated review of a planned unit development ("PUD") for Lots 35, 36, 37 and 846 in Square 78 at the northwest corner of the intersection of 20th and I Streets, N.W. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans submitted by Skidmore, Owings and Merrill, Architects, and Davis Buckley, Executive Architect, marked as Drawings Nos. 4, 5, 8, 12, and 14 of Exhibit No. 3; Drawing Nos. 10R, 13R and 16 of Exhibit No. 39; and Drawing Nos. 2R, 3R, 6R, 7R, 11R, 17R, 18, 19 and 20 of Exhibit No. 50, as modified by the guidelines, conditions and standards of this

order. In lieu of Drawings Nos. 18, 19, or 20, or any element thereof, the Applicants are authorized to substitute Drawings Nos. 21 through 29 of Exhibit No. 50, or any element thereof.

2. Lots 35 and 36 shall be developed with an eleven-story structure (the "New Building"), which will contain a mixture of office and retail uses as permitted in the C-3-C District. The New Building shall contain ground-floor retail space as indicated in the plans referenced in Condition No. 1. Flexibility is granted as to the use of the mall level for retail, office or parking use.
3. The height of the New Building shall not exceed 124.16 feet, as measured from I Street, N.W.
4. The percentage of lot occupancy for the New Building shall not exceed 100%.
5. The entire PUD site may consist of separate lots of record; however, the overall floor area ratio for the PUD site (Lots 35, 36, 37, and 846) shall not exceed 7.275. The floor area ratio for the New Building shall not exceed 10.48. The floor area ratio for Lot 846 (including the 5,960 square feet of gross floor area referenced in Condition No. 18) shall not exceed 2.09. The floor area ratio for Lot 37 shall not exceed 6.44.
6. The percentage of lot occupancy for Lot 846, including any potential additions constructed pursuant to Condition No. 18, shall not exceed 85%. The percentage of lot occupancy for Lot 37 shall not exceed 83%.
7. The roof treatment of the New Building shall be as shown in Drawing Nos. 18, 19, and 20 of Exhibit No. 50. The Applicants are authorized to select, in whole or in part, drawings Nos. 21 through 29, of Exhibit No. 50, in lieu of drawings Nos. 18 through 20, or any part thereof.
8. The New Building shall contain 37,000 square feet of gross floor area transferred from Lot 846 and 2,500 square feet of gross floor area transferred from Lot 37.
9. 2001 Associates shall make payments to the Arts Club of Washington pursuant to the terms of the Lease between the Arts Club of Washington, Inc. and Joel M. Farr, Trustee for 2001 Associates dated December 12, 1986 ("Lease"), marked as Item No. 13 of Exhibit No. 39 in the record. Pursuant

to the terms of the Lease, in the event the Arts Club conveys its title to Lot 846 or the improvements thereon, the benefits and burdens of the Lease shall run with the land.

10. The Arts Club agrees to continue its good faith efforts to cooperate with a wide range of arts groups in the District of Columbia as part of its program to support the arts and to serve the arts community and District of Columbia residents.
11. The Arts Club shall report annually to the Zoning Administrator and to the D.C. Historic Preservation Office.
12. The funds received by the Arts Club pursuant to the lease shall be used by the Arts Club to conserve, renovate, preserve, expand, maintain, enhance or improve (all hereinafter collectively "Preserve") the historic structures and their appointments and grounds on Lot 846 (the "Historic Property") and to expand the Arts Club's programs in support of the arts in the Washington community and for the benefit of the community at large. The initial focus of the use of these funds shall be to Preserve the Historic Property.
13. During the first fifteen years of the lease, the funds received by the Arts Club pursuant to the lease shall be allocated in the following manner: at least 80% of the funds shall be used to Preserve the Historic Property, and the balance shall be used for the expansion of the Arts Club's programs to support the arts. In the later years of the lease, these percentages may be altered to increase the percentage of funds to be used for the latter purpose.
14. Within eighteen (18) months of the effective date of this Order, the Arts Club shall develop a preservation plan to Preserve the Historic Property. The Arts Club shall consult with the State Historic Preservation Office in the preparation and subsequent implementation of this work plan.
15. The Zoning Administrator shall determine whether the funds have been expended in the implementation of the Preservation Plan defined in conditions 12 and 14.
16. Within 60 days of the date of this order, 2001 Associates shall make an initial payment to the Arts Club, in the amount which 2001 Associates determines, with the concurrence of the Arts Club,

to be necessary to complete the preparation of the Preservation Plan.

17. 2001 Associates shall undertake the architectural and engineering services necessary for the preservation of the south facades of the historic structures on Lot 846 to a standard acceptable to the State Historic Preservation Office. 2001 Associates will develop plans in conjunction with the Arts Club Board, which plans shall be submitted to the State Historic Preservation Office within nine (9) months of the effective date of this Order. 2001 Associates will cause the south facades of the above-referenced buildings to be Preserved in keeping with these plans. Such work shall commence, in accordance with a schedule developed by 2001 Associates in conjunction with the Arts Club Board, no later than six (6) months after receiving approval of the plans by the State Historic Preservation Office.
18. In the event that the cost of the facade preservation undertaken by the 2001 Associates pursuant to Condition No. 17 does not exceed \$100,000 in construction expenses, exclusive of all architectural and engineering services, the excess funds (i.e. the difference between that cost and \$100,000) will be applied to the preservation aspects of the physical restoration program of the Arts Club.
19. In the preparation of its plan to Preserve the Historic Property, the Arts Club shall provide a fire protection system for the Historic Property.
20. Lot 846 shall retain 5,960 square feet of gross floor area for a future rear addition. Up to 5,960 square feet of gross floor area may be constructed on Lot 846 without application to the Zoning Commission for an amendment to this PUD order. Any addition or exterior renovation to the historic structures on Lot 846 shall be reviewed by the State Historic Preservation Office and all other appropriate District of Columbia regulatory agencies.
21. 2001 Associates shall not offer the garage as a private garage, but shall offer the garage for general parking.
22. The New Building shall contain no less than 83 below-grade parking spaces as shown on the plans marked as Drawing Nos. 6R and 7R of Exhibit No. 50

in the record. 2001 Associates will use their best efforts to provide free or reduced price parking in the New Building for members of the Arts Club after 6:30 P.M. on Mondays through Fridays and any time on Saturdays, Sundays and holidays.

23. Loading activity shall take place in the location shown on the plans marked as Drawing No. 2R of Exhibit No. 50 in the record.
24. An order-free trash compactor system shall be provided in an enclosed portion of the loading area at the rear of the project, as shown on the plans marked as Drawing No. 2R of Exhibit No. 50 in the record.
25. Streetscape improvements shall be provided as shown on the plans marked as Drawing No. 13R of Exhibit No. 39 of the record.
26. Building materials for the project shall be as shown in Appendix E of Exhibit No. 50 of the record.
27. The New Building shall contain a sprinkler system.
28. The rear yard requirement for the New Building is waived.
29. At the time of the issuance of the Building Permit for the New Building, 2001 Associates shall record a Declaration of Access Easement governing the use of property to the rear of Lots 35, 36, and 37 in substantially the same form as the Declaration of Access Easement marked as Exhibit No. 43 in the record. The building permit ("Building Permit") is defined as the permit for the New Building above grade. Permits for demolition of the existing buildings, sheeting, shoring, excavation and below-grade structure to grade shall not be construed as the Building Permit.
30. When 2001 Associates applies for a certificate of occupancy to use any portion of the PUD site, 2001 Associates shall designate the location of the bonus gross floor area which shall be subject to conditions numbered 31 through 36.
31. The amount of the bonus gross floor area to be designated shall be the product of the additional .775 FAR which is authorized in this order. The designated bonus area shall be horizontally or vertically contiguous. After a certificate of

occupancy has been issued to authorize the use of any portion of the new building site, the location of the designated bonus gross floor area shall not be changed.

32. No certificate of occupancy shall be issued for the bonus gross floor area of the PUD project unless, at the time of application for and issuance of the certificate of occupancy, 2001 Associates has made all contributions for Preservation which are then due under the conditions of this order.
33. For a period of fifteen (15) years after the effective date of this order, compliance at all times with conditions numbered 9, 16, 17, and 18 of this order shall be a continuing condition to the right of the applicants to retain, or exercise any rights pursuant to the Certificate of Occupancy for any portion of the bonus gross floor area. This condition shall be clearly recited in any such certificate of occupancy, and in any lease with any tenant of the designated area. Such provision shall clearly state that the tenant's occupation of the area is conditioned upon 2001 Associates' continuing compliance with this and any further Commission orders about the PUD site.
34. If the authority to use any portion of the designated bonus gross floor area expires pursuant to condition numbered 33 of this Order, 2001 Associates shall terminate all use of that gross floor area, and shall not thereafter resume its use until having fully complied with Conditions numbered 9, 16, 17, and 18, to the extent that they may then be applicable, and until the issuance of a new certificate of occupancy which authorizes the use of the designated bonus gross floor area.
35. In an annual report to the Zoning Administrator and the D.C. Historic Preservation Office (HPO), the Arts Club shall identify the funds expended to implement the Preservation Plan defined in Conditions 12 and 14. Those funds shall constitute at least 80% of the lease payments from 2001 Associates, for the first fifteen years after adoption of the Preservation Plan. If the Zoning Administrator determines that the funds have not been expended substantially in accordance with the Preservation Plan, the Zoning Administrator shall so notify the Arts Club in writing and afford the Arts Club the opportunity to explain and/or

correct the deficiency. If that has not been done to the Zoning Administrator's reasonable satisfaction within 90 days of such notice, the Zoning Administrator shall revoke the Arts Club's certificate of occupancy pursuant to and in full compliance with and subject to all relevant procedures. Pending final completion of the Zoning Administrator's review process, the certificate of occupancy shall continue in full force and effect.

36. Notice of any non-compliance with conditions numbered 30 through 35 shall be sent to 2001 Associates and/or the Arts Club, as appropriate, and to such additional parties as may be designated by 2001 Associates and/or the Arts Club. In the event of such non-compliance, 2001 Associates and/or the Arts Club shall have a period of ninety (90) days from the date of receipt of such notice within which to comply with the requirements enumerated in conditions numbered 30 through 35.
37. At the time of the issuance of the Building Permit for the New Building, 2001 Associates shall make the following contributions:
 - a. \$50,000.00 to the Ellington Fund. These funds will be made available for the general purposes of the Ellington Fund, and will enable the Fund to expand the amount of services and supplies that it is able to provide for students at the Duke Ellington School of the Arts.
 - b. \$25,000.00 to fund a program under which the Arts Club would provide for use of the Club's facilities by community groups.Within thirty (30) days of the issuance of the Building Permit for the New Building, 2001 Associates shall certify to the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") that these contributions have been made.
38. In construction of the New Building, 2001 Associates shall provide public art in the immediate vicinity of the PUD site pursuant to the guidelines of the Art in Public Places Program administered by the D.C. Commission on the ARTs and Humanities. 2001 Associates shall allocate for this public art an amount equal to one percent

(1%) of the actual construction costs of the base building at the time of construction contract award, and shall follow the regulations and guidelines set forth by the D.C. Commission on the Arts and Humanities. The artist(s) and art location will be jointly agreed to by 2001 Associates in conjunction with the D.C. Commission on the Arts and Humanities.

39. 2001 Associates shall enter into an agreement with the National Park Service to "adopt" the triangular park known as Public Reservation No. 29, and shall provide \$25,000.00 for immediate improvements to the reservation and shall maintain the reservation for a five year period. The initial \$25,000.00 contribution will be made at the time of the issuance of the Building Permit for the New Building, provided that in the event the aforesaid agreement is not completed at the time of the issuance of the Building Permit, such funds shall be placed in escrow for such purposes. At the time of the issuance of the Building Permit, 2001 Associates shall expend \$15,000.00 on a design study for the long-term improvement of the two Public Reservations bounding Pennsylvania Avenue, N.W. between 20th and 21st Streets, N.W.
40. 2001 Associates shall implement the First Source agreement with the Department of Employment Services filed in the record as part of Exhibit No. 39.
41. 2001 Associates shall implement the Memorandum of Understanding with the Minority Business Opportunity Commission filed in the record as part of Exhibit No. 39.
42. 2001 Associates is granted flexibility in the final detailing of the New Building with respect to the following matters:
 - a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, location of elevators, electrical and mechanical rooms, so long as the variations do not change the exterior configuration of the building, including the penthouse.
 - b. Varying the design and arrangement of components within the mansard enclosure of the penthouse, and permit mechanical louvers

where necessary on the exterior wall or mansard enclosure.

- c. Making minor adjustments in facade and window detailing, including adjusting or eliminating the narrow arcade on the south facade. The resulting increase in FAR (approximately 600 square feet) shall in no case exceed the two percent guideline in 11 DCMR, Chapter 24.
- d. Varying the location and type of exterior lighting fixtures.
- e. Varying the species of plant materials.
- f. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction.
- g. Varying the arrangement of the parking spaces and modification to the below-grade space to provide the opportunity for storage and other space to serve the proposed users of the building, so long as such modification does not reduce below 83 the number of below-grade parking spaces to be provided.
- h. Allowing the flexibility permitted pursuant to the provisions of 11 DCMR, Chapter 24

43. No Building Permit shall be issued for this Planned Unit Development until the applicants have recorded a covenant in the Land Records of the District of Columbia, between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicants and successors in title to construct on and use each lot of record on the property, both in combination and severally, in accordance with this Order, or amendments thereof.

44. The covenant which is required by Condition Numbered 41 of this Order shall include a workable plan which provides for the other applicants, or an alternate entity, to execute the obligations of the Arts Club under this Order, if the Arts Club becomes unable to do so.

45. When the covenant is recorded in the land records of the District of Columbia, the applicants shall

file a certified copy of that covenant in the records of the Zoning Commission.

46. The Planned Unit Development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within that time, application must be filed for the Building Permit, as specified in 11 DCMR 2407.2 and 2407.3. Construction shall start within three years of the effective date of this Order.

Vote of the Zoning Commission at the Monthly Meeting on December 14, 1987: 3-0: (Patricia N. Mathews, Lindsley Williams and John G. Parsons, to approve; Maybelle T. Bennett and George M. White, not present, not voting.)

This order was initially adopted by the Zoning Commission at the Monthly Meeting on February 8, 1988, by a vote of 4-0: Patricia N. Mathews, John G. Parsons Maybelle T. Bennett, Lindsley Williams to approve, George M. White, not voting not having heard the case.

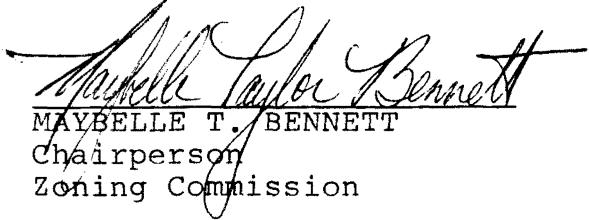
This amended order was adopted by the Zoning Commission at a Special Meeting on March 17, 1988, by a vote of 3-0: John G. Parsons, Lindsley Williams, and Maybelle T. Bennett to approve; Patricia N. Mathews, not present, not voting; George M. White, not voting, not having heard the case.

On March 17, 1988, the Applicant filed and the Chairperson granted a request for a waiver of 11 DCMR 3029.5, in order to file a motion for reconsideration. The motion for reconsideration requested the Commission to take immediate action to approve amendments to conditions numbered 30 through 34, and to approve additional conditions numbered 35 and 36. The Commission has determined that the requested amendments reflect the final action which the Commission had intended to approve on February 8, 1988.

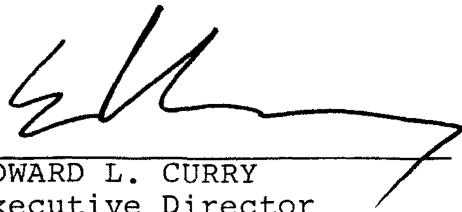
This amended order was adopted by the Zoning Commission at a Special Meeting on March 17, 1988, by a vote of 3-0: John G. Parsons, Lindsley Williams, and Maybelle T. Bennett to approve; Patricia N. Mathews, not present, not voting; George M. White, not voting, not having heard the case.

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Pursuant to 11 DCMR 3028, this order is final and will take effect upon publication in the D.C. Register, that is on


Maybelle Taylor Bennett

MAYBELLE T. BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY

Executive Director
Zoning Secretariat

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