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July 7, 2006

**ZONING COMMISSION
District of Columbia**

CASE NO. 94-01A

EXHIBIT NO. 26

VIA HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, N. W.
Room 220 South
Washington, D. C. 20001

Re: Zoning Commission Case No. 94-01A
(1331 L Street, NW - Request for Minor Modification to Approved
Planned Unit Development)

Dear Members of the Commission:

This letter is submitted on behalf of 1331 L Street NW, L.P., applicant for modification to the approved planned unit development ("PUD") at 1331 L Street, NW. By this letter, we request that the Zoning Commission re-open the official record in this case for the purpose of accepting this correspondence from the applicant relating to the advice and recommendation to the Zoning Commission made by the National Capital Planning Commission ("NCPC") at its July 6, 2006, public meeting that aspects of the proposed modification would appear to violate the Act to Related to the Height of Buildings, June 1, 1910 (the "Height Act") as NCPC interprets the Height Act. In addition, if the Zoning Commission believes it would be helpful in its final deliberations on the proposed modification in light of the NCPC recommendation, the applicant's representatives will be available at the Zoning Commission's July 10 public meeting to address more fully its concerns about, and objection to, NCPC's recommendation concerning the applicability of the Height Act to the applicant's proposed design modification.

At its July 6 public meeting, NCPC voted to accept its Executive Director's report (copy of report attached as Exhibit A) recommending that "the Zoning Commission exercise its discretion to require the applicant to modify the design [approved by the Zoning Commission] to eliminate the canopy and guardrail, or set back these elements from the exterior walls to distances equal to their respective heights above the adjacent roof." In the applicant's submission to NCPC responding to the Executive Director's report (a copy of which is attached as Exhibit B), the applicant indicated its disagreement with NCPC staff's interpretation of the Height Act

ZONING COMMISSION
District of Columbia
CASE NO.94-01A
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with respect to those types of elements permitted by Section 5 of the Height Act to be excepted from building height limitations set by the Height Act.

Contrary to the premise relied upon by NCPC staff in support of its recommendation, the horizontal emphasis of the rooftop trellis does not preclude it from inclusion among those elements exempted from control by the Height Act. In fact, virtually all of the architectural elements listed in Section 5 of the Height Act, namely, spires, towers, domes, minarets and pinnacles, include significant horizontal and volumetric, as well as vertical, qualities. There are several examples of rooftop architectural embellishments that contain horizontal as well as vertical elements where the Zoning Commission and NCPC have granted approval. For example, antennae, clocks, turrets, and trellises have served as constructed and approved examples of exempted roof elements that are not enumerated in Section 5 yet are consistent with the tenor and spirit of the Height Act exemptions. Of particular relevance to the present discussion, the applicant refers the Zoning Commission to Case No. 70-16A, a modification to a constructed PUD at 2101 L Street, NW, which the Zoning Commission approved in May, 2006. This approval included a re-facing of the current structure, complete with a rooftop trellis very similar to the one proposed in the present application. In addition, that application was considered by NCPC as a delegated item and approved by the Executive Director as having no impact on the federal interest. A copy of the relevant drawings for the 2101 L Street project and the NCPC report in that case are attached as Exhibit C.

The applicant also takes issue with the recommendation of NCPC staff that the trellis and glass railing should be either removed or set back from the building edge at a 1:1 ratio. Inherent in that recommendation is the premise that these aspects are thus permitted roof embellishments under the Height Act. At its meeting on July 6, general counsel for NCPC indicated its concurrence with the applicant's position that Section 5 of the Height Act provides an illustrative, and not exhaustive, list of permitted excepted rooftop elements, and thus acceded to that premise. Nonetheless, the Height Act is very clear that only roof elements that have primarily a utilitarian, operational function, such as elevator overrides, penthouse enclosures, and chimney stacks, are required to set back from the building edge on the surface on which they are located. Those elements having a primarily aesthetic function, such as towers, pinnacles, and here, the trellis and glass handrail components of the tower feature of the modification, are not required to be stepped back. Thus, NCPC's recommendation to the Zoning Commission is inconsistent, on one hand accepting that these are features that are permitted under the Height Act if set back from the building edge, but then ignoring the Height Act's provisions that require only those features on the roof that serve a utilitarian, operating function to be set back from the building edge, which neither the trellis or glass wall feature would be.

Given the very extensive and developed history of consideration of rooftop architectural embellishment by both the Zoning Commission and NCPC, the applicant is particularly confused by NCPC's determination that the proposed trellis is inconsistent with the Height Act. In fact, unlike in many past examples, the horizontal emphasis of the trellis in the present case is an integrated aspect of, and extension of, the proposed tower element. To that end, the applicant

contends that one cannot simply parse the design, as NCPC seeks to do, and recommend that one aspect of the tower element be removed, without destroying the overall integrity of the building's design theme.

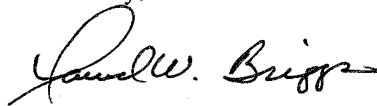
The applicant likewise takes issue with NCPC's characterization of its glass railing, which runs along a portion of the roof, as a parapet, and that by extension, it is barred by Section 7 of the Height Act. The glass railing has not been designed as a parapet, which is defined in Webster's Dictionary as a "low wall along the edge of a roof or balcony," but rather as a decorative embellishment of the rooftop, such as a cornice, which Webster's defines as "a horizontal molded projection that crowns or completes a building or wall." Nonetheless, should the Zoning Commission be so inclined to follow the guidance of NCPC in suggesting that the glass railing be removed from the building edge at a 1:1 ratio, the applicant requests the option to either set the railing back or remove it entirely. To that end, the applicant submits the following proposed language to be inserted at the end of the second paragraph of the "Decision" portion of the applicant's proposed order, which the applicant originally submitted to the Commission on June 21, 2006:

"The glass rail to be provided at the roof level along the south and east elevations shall be set back from the building edge at least one foot for every foot of height of the glass wall from the floor of the roof level, or deleted entirely, at the sole discretion of the applicant."

We respectfully request the Commission's re-opening of the official record in Case No. 94-01A to receive and consider this letter and the enclosed materials and, if the Commission believes necessary to complete its deliberations on the proposed modification, a brief opportunity to address the Commission on these Height Act matters so that the Commission can complete its deliberations and give final approval of this proposed modification at its July 10 public meeting.

Thank you for your consideration.

Sincerely,



David W. Briggs



Dennis R. Hughes

Enclosures

3891635_v3

A

STAFF RECOMMENDATION

REVISED (7/5/06)
NCPC File No. Z.C. 94-01A



AMENDMENT TO APPROVED PLANNED UNIT DEVELOPMENT

1331 L Street NW, Square 247
Washington, D.C.

Submitted by the Zoning Commission of the District of Columbia

June 29, 2006

Abstract

The Zoning Commission has taken a proposed action to approve a modification to an approved planned unit development (PUD) at 1331 L Street NW, Square 247. The planned unit development was originally approved in 1991 as for a mix of office, hotel, high-density residential and retail use, with a maximum height of 110 feet. The original Zoning Commission case number was 89-234C. The PUD was extended in 1997 by order 684-C for an additional ten years with a noted expiration of December 30, 2010. The original extension was requested due to "unfavorable economic conditions." A new owner is now requesting approval of a substantial modification of the original design. The original design featured a building height of 110 feet with two towers serving as architectural embellishments. The revised design features a building height of 110 feet with one tower at a height of approximately 133 feet and a metal canopy extending across the entire façade at a height of approximately 121 feet.

Federal Interest

The identified federal interest relevant to this project is the Height of Buildings Act of 1910.

Commission Action Requested by Applicant

Approval of comments to the District of Columbia Zoning Commission pursuant to 40 U.S.C. 8724(a) and D.C. Code 2-1006(a).

Executive Director's Recommendation

The Commission:

Advises that according to NCPC's interpretation of the Height of Building Act of 1910, the horizontal metal canopy element is in conflict with Section 5 of the Act, which authorizes

vertical elements such as “spires, towers, domes, minarets, pinnacles” in excess of the allowable building height; and that the glass guardrail at the edge of the roof is the functional equivalent of a parapet for the purposes of Section 7 of the Act, which states that “no parapet walls shall extend above the limit of height,”

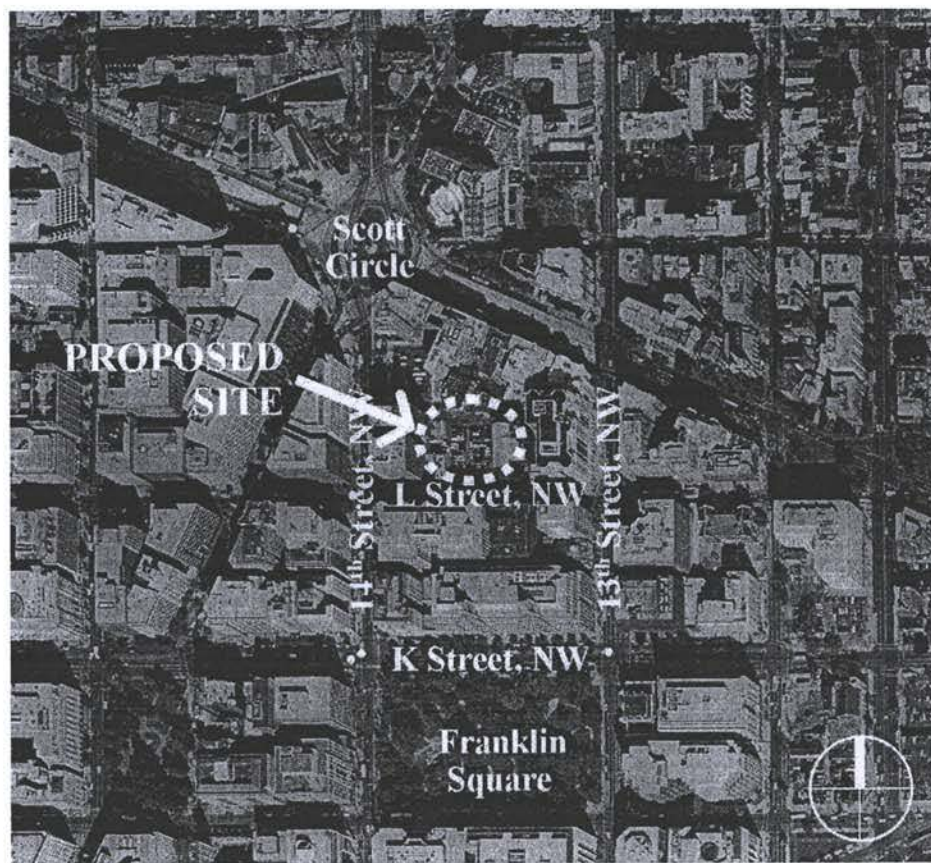
Recommends that the Zoning Commission exercise its discretion to require the applicant to modify the design to eliminate the canopy and guardrail, or set back these elements from the exterior walls to distances equal to their respective heights above the adjacent roof.

* * *

PROJECT DESCRIPTION

Site

The proposed Planned Unit Development (PUD) is on Lot 96, Square 247. The site is currently used for surface parking and is located mid-block on the north side of L Street, between 13th and 14th Streets and one block north of Franklin Square.



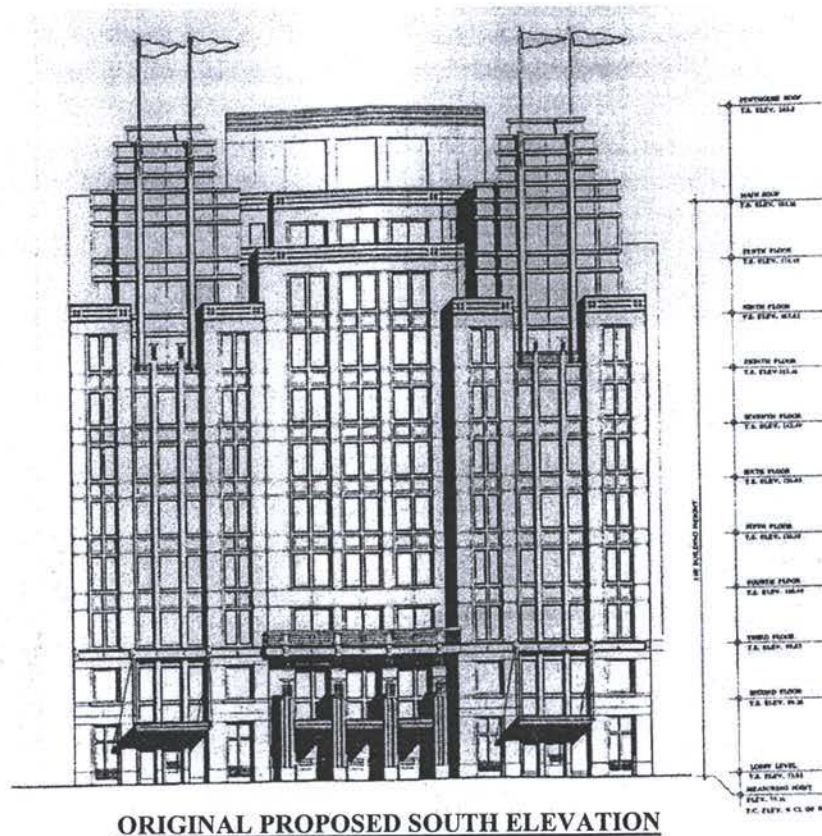
AERIAL

Background

A PUD and related map amendment for this site was approved by the Zoning Commission in 1991 for a mix of office, hotel, high-density residential and retail use, with a maximum height of 110 feet. The original Zoning Commission case number was 89-234C. The PUD was extended in 1997 by order 684-C for an additional ten years with a noted expiration of December 30, 2010. The original extension was requested due to "unfavorable economic conditions." The original design featured a building height of 110 feet with two towers serving as architectural embellishments. The façade design was symmetrical, with the predominant façade material being architectural precast concrete with granite accents. The final zoning order stated that "no building permit shall be issued until the applicant submits exterior material samples for final approval by the Zoning Commission." A new owner is now requesting approval of a modification of the original design.

Previous Commission Action

In a Commission Action dated February 7, 1991, and in a delegated action of the Executive Director dated October 24, 1994, the National Capital Planning Commission determined that the previous PUD proposal would not adversely affect federal interests nor be inconsistent with the Comprehensive Plan.

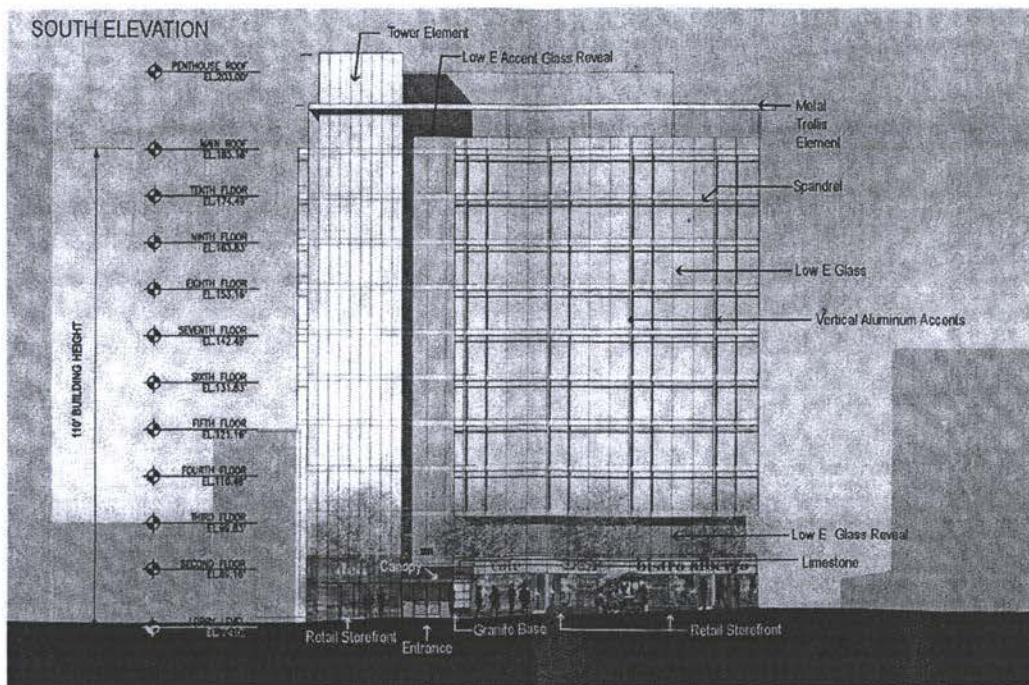


Proposal

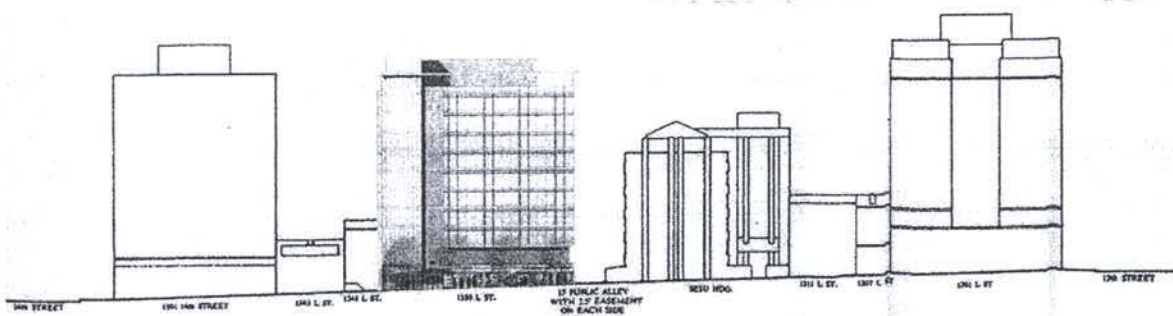
In February, 2006 the applicant submitted exterior material samples, consistent with the direction of the Zoning Commission in its original order. The applicant also requested approval of a revised façade design described as “minor modification to the PUD in order to update the architectural design of the building for the 21st Century,” “with no increase in height or density.”

The revised façade design features a single western “tower” element clad in floor to ceiling glass from the second floor to the top of the tower. At the rooftop level, the tower will be experienced as an open two-story, unconditioned glass and steel structure. The illumination shown in the night-time illustration on page 5 has been eliminated.

Adjacent to the tower to the east is a 12-foot wide glass reveal of a slightly contrasting accent glass that sets off the tower and marks the building entrance below. The remainder of the façade features a more horizontal expression through thin accent spandrels accented by vertical aluminum mullions. This façade along L Street is topped by an aluminum canopy element which intersects the tower, and a transparent glass guardrail to protect rooftop visitors.



REVISED PROPOSED SOUTH ELEVATION



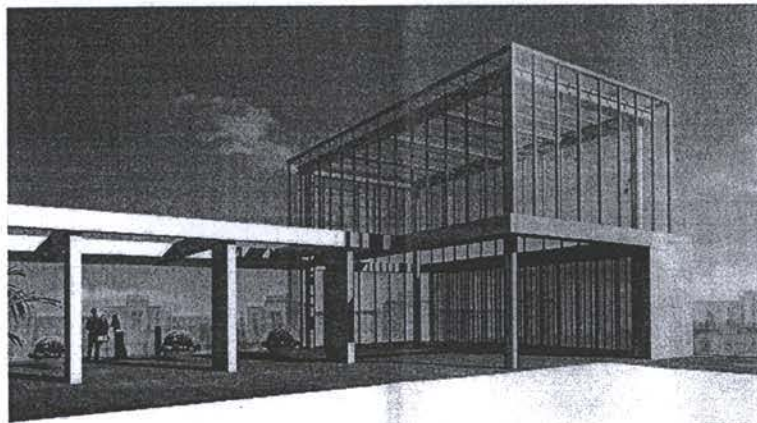
L STREET MASSING



VIEW FROM SOUTHEAST



VIEW FROM SOUTHWEST



PENTHOUSE VIEW

PROJECT ANALYSIS

While they may be permitted under District interpretation of its own Zoning Regulations, staff finds that the glass railing and canopy element are in conflict with the federal Height of Buildings Act of 1910.

Section 7 of the Height Act states that no parapet walls shall extend above the limit of height. As defined in Sturgis' *Dictionary of Architecture and Building*, a parapet is "a dwarf wall or barrier built on the edge of a terrace, platform, bridge, balcony, or other elevated place, as a protection against falling." By this definition, the guardrail is clearly functioning as a parapet and is therefore prohibited under the Height Act. If the guardrail were set back from the edge or the roof, however, it would not meet this definition of a parapet and would be allowable.

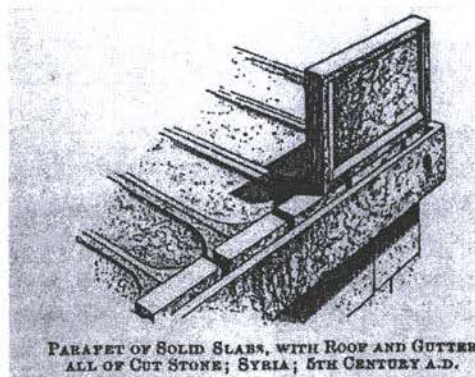


ILLUSTRATION OF PARAPET FROM STURGIS

Section 5 of the Height Act states that spires, towers, domes, minarets and pinnacles may be erected to a greater height than any limit prescribed in the Act. These terms all describe vertical elements that project above the roof. The canopy element is horizontal, not vertical, and is therefore not included among the elements allowed by the Height Act. It also repeats the rhythm established by the horizontal spandrels on the façade, thereby creating the visual effect of another floor.

Staff therefore recommends that the Zoning Commission exercise its discretion to require the applicant to modify the design to eliminate the canopy and guardrail, or set back these elements from the exterior walls to distances equal to their respective heights above the adjacent roof.

B

July 5, 2006

VIA E-MAIL TRANSMISSION/HAND DELIVERY

National Capital Planning Commission
401 9th Street, NW
North Lobby, Suite 500
Washington, DC 20004

Re: **June 6, 2006, NCPC Action Agenda Item,**
Zoning Commission Case 94-01A,
1331 L Street, NW (the "Property"),
Modification to approved Planned Unit Development

Dear Members of the Commission:

Reference is made to the recommendation and report, dated as of June 29, 2006, of the staff of the Commission, concerning the proposed action by the Zoning Commission of the District of Columbia approving a modification to the previously planned unit development for a project at 1331 L Street, NW, Washington, DC (the "Project").

On behalf of applicant, 1331 L Street NW, L.P., we respectfully disagree with the interpretation of the Commission's staff as to the parameters of the Height of Buildings Act of 1910, and believe that the staff report and recommendation does not correctly interpret the Act's provisions in light of the proposed tower elements of the Project as preliminarily approved by the Zoning Commission.

Section 5 of the Act lists types of elements that are permitted to rise above the allowable height limits for buildings established elsewhere in the Act. The applicant contends that this list is descriptive and illustrative in nature and is not necessarily an exclusive or exhaustive list. Nowhere in the Act are the terms "tower, dome, etc." defined or described, and thus no specific design idiom or framework can be attributed to these words. Without support in the Act, the staff has ascribed to these listed elements an attribute of "verticality." In fact, however, the Act does not restrict these elements from having either horizontal or linear features. For example, the horizontal and volumetric attributes of a dome, a permitted element, arguably are equally significant to its vertical component.

By contrast to design elements such as towers, spires and domes, which the Act treats only in the most general manner, the Act does impose specific restrictions upon those structures on the roof related to the operational components of the building (e.g. penthouses, ventilations shafts, etc.). Most notably, these components must "be set back from exterior walls distances equal to their respective height above the adjacent roof."

The composite tower feature of the Project incorporates both vertical and horizontal components and was designed to be experienced as a unified architectural unit. The tower's vertical and horizontal components should not be looked at by its constituent pieces, as the staff report would suggest (separating vertical from horizontal components and suggesting that some are permissible under the Act and others would not) but as a unified architectural expression.

The applicant contends that the clear test of the Act should be (a) whether or not the composite tower feature consists of habitable space, and (b) whether or not any part of the composite tower feature constitutes an element listed in the Act that clearly must be set back from the roof edge. Given that no portion of the proposed tower feature of the Project is habitable space, nor is the character of the tower feature one that would require set back from the roof edge, the composite tower feature would be permissible under the Act.

Importantly, the Act delegates to the Commissioners of the District of Columbia the authority to make any interpretations as to whether features fall within the element types of the Act. As the appropriate successor to the Commissioners of the District of Columbia for such matters, the Zoning Commission, through its proposed approval of the Project, should be deemed to have exercised its prerogative to interpret this tower feature as a whole, with its vertical and horizontal elements, as falling within the purview of the types of elements that are permissible under the Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Briggs", written in a cursive style.

David W. Briggs

c

RECEIVED

D.C. OFFICE OF ZONING

MAY 10 2006



401 9th Street, NW
North Lobby, Suite 500
Washington, DC 20004
Tel 202 482-7200
Fax 202 482-7272
www.ncpc.gov

Commission Members

Presidential Appointees

John V. Cogbill, III, Chairman
Herbert F. Ames
Jose L. Galvez, III

Mayoral Appointees

Arrington Dixon
Dr. Patricia Elwood

Ex Officio Members

Secretary of Defense
The Honorable Donald H. Rumsfeld

Secretary of the Interior
The Honorable Gale A. Norton

Administrator
General Services Administration
The Honorable Stephen A. Perry

Chairman
Committee on Governmental Affairs
United States Senate
The Honorable Susan M. Collins

Chairman
Committee on Government Reform
U.S. House of Representatives
The Honorable Tom Davis

Mayor
District of Columbia
The Honorable Anthony A. Williams

Chairman
Council of the District of Columbia
The Honorable Linda W. Cropp

Executive Director

Patricia E. Gallagher, AICP

IN REPLY REFER TO:
NCPC File No. Z.C. 70-16A

MAY 10 2006

Zoning Commission for the
District of Columbia
2nd Floor, Suite 210 South
441 4th Street, NW
Washington, D.C. 20001

Members of the Commission:

In response to your request, pursuant to delegations of authority adopted by the Commission on August 6, 1999, I have reviewed the proposed modification of a Consolidated Planned Unit Development (PUD) at located at 2101 L Street, NW, at the northwest corner of 21st Street intersection with L Street, NW, and developed with a ten story mixed-use office building and found that the proposal would not adversely affect the identified federal interests nor be inconsistent with the Comprehensive Plan for the National Capital.

A copy of the Delegated Action of the Executive Director is enclosed.

Sincerely,

Patricia E. Gallagher, AICP
Executive Director

Enclosure

ZONING COMMISSION
District of Columbia

CASE NO. 70-16A 988
EXHIBIT NO. 35



**MODIFICATION OF A CONSOLIDATED PLANNED UNIT DEVELOPMENT
LOCATED AT 2101 L STREET, NW, LOT 76 IN SQUARE 72**

Delegated Action of the Executive Director

APR 28 2006

Pursuant to delegations of authority adopted by the Commission on August 6, 1999, I find that a modification of a Consolidated Planned Unit Development (PUD) located at 2101 L Street, NW, at the northwest corner of the 21st Street intersection with L Street, NW, and developed with a ten story mixed-use office building, would not adversely affect any identified federal interests or be inconsistent with the Comprehensive Plan for the National Capital.

* * *

The District of Columbia Office of Zoning has referred a proposed modification to Order Number 78, a previously approved Consolidated Planned Unit Development (PUD) for an existing ten story mixed-use office building, to NCPC for federal interest review and comment. The building on the 50,884 site contains office and retail uses and below grade parking. In addition to ground floor retail, space around the perimeter of both street frontages is currently constructed for an open pedestrian arcade. The mixed-use 10 story building has 356,194 square feet, approved by the Zoning Commission in 1973, is within a major business and employment center (C-3-C), which allows a height of 110 feet. The 1910 Height of Buildings Act (Height Act) allows 110 feet of height for frontage on 21st and L Streets, both with 90-foot right-of-ways. The applicant, CESC L Street, LLC, proposes these changes impacting the exterior:

- New facade treatment and extend the ground floor interior into the building envelope, eliminating the exiting open pedestrian arcade
- Elimination of the 9th floor recess and reduction of the 2nd floor recess in the building facade
- New canopy over the main lobby entrance that extends (11 feet) into public space
- Rooftop ornamental cornice element along the same frontage (12 feet high, projecting 3.5 feet into public space).

The proposed rooftop architectural ornament appears to comply with the Height Act, which requires that penthouses, ventilation shafts and tanks, but not spires, towers, domes, minarets or pinnacles, be set back from the exterior walls. Staff views the element as falling under the latter category. In its February 21, 2006 report, DCOP made no objection to the proposed design

changes, but held off on its final recommendation pending details on the amenities. DCOP also recommended that the applicant confirm that the proposed cornice, entrance canopy projections, as well removal of all planter boxes near the property line along the 21st and L Street frontages and installation of new tree boxes at the edge of the 21st Street sidewalk* would be acceptable to the DC Department of Transportation Public Space Office. Otherwise, DCOP finds that proposed changes would not be inconsistent with the District Elements of the Comprehensive Plan, and support a specific major theme in the Plan. I find that the proposal is consistent with the Comprehensive Plan for the National Capital and that it would not adversely affect any identified federal interests.



Patricia E. Gallagher, AICP
Executive Director

2101 L STREET

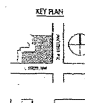
OFFICE BUILDING

WASHINGTON, DC 20037



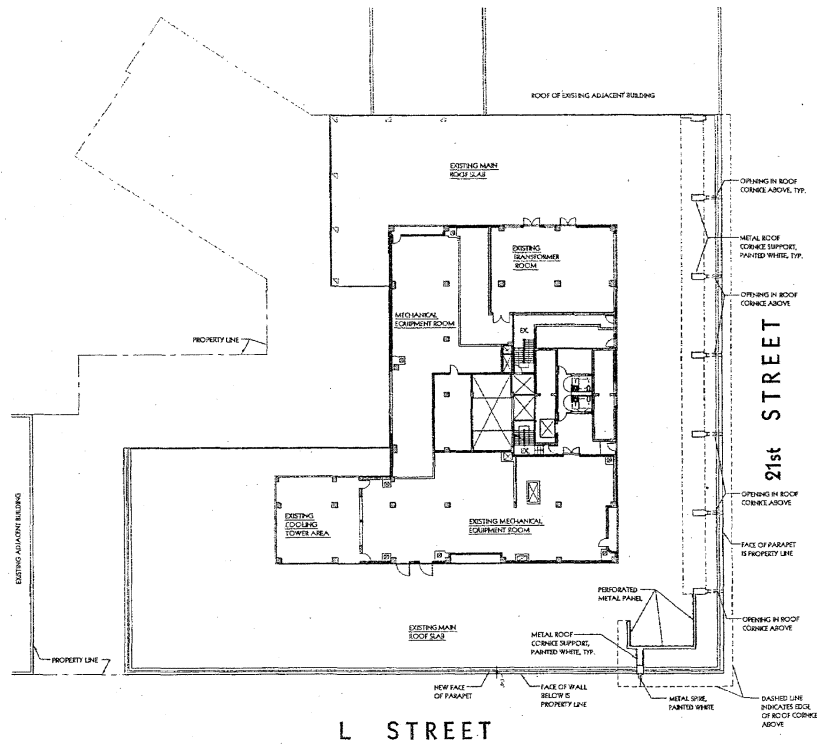
WDG Architecture, PLLC
1025 Connecticut Avenue, NW
Suite 300
Washington, DC 20036
tel 202 337 0200
fax 202 463 2198
e-mail wdg@wdgarch.com

2101 L Street Office Building
WASHINGTON, DC

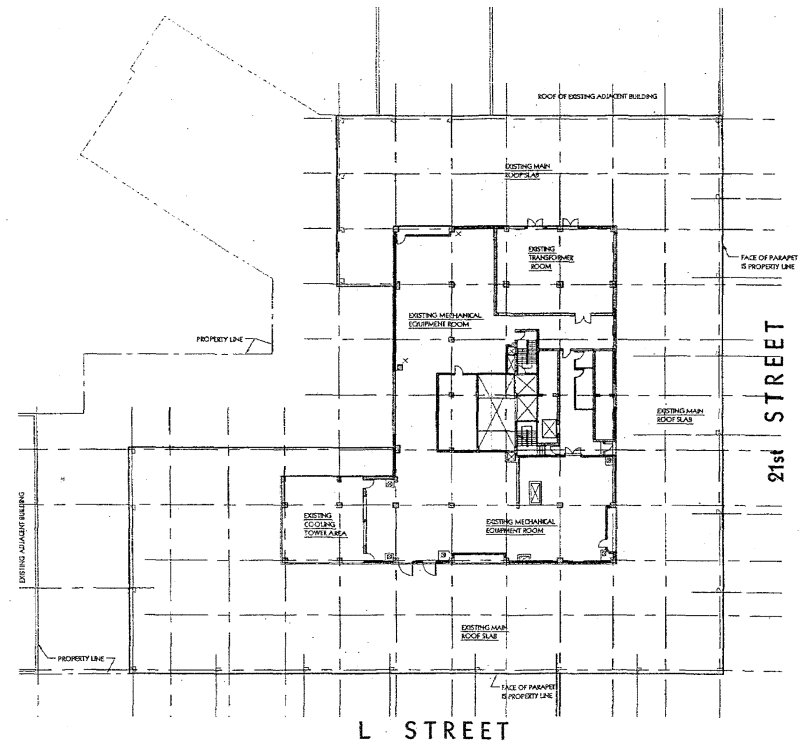


Cover Sheet

12/04/2003
WASHINGTON 2101 L
Scale



Proposed Roof & Penthouse Floor Plan

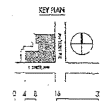


Existing Roof & Penthouse Floor Plan



WDC Architecture, PLLC
1005 Connecticut Avenue, NW
Suite 300
Washington, DC 20036
Tel: 202 697 8300
Fax: 202 663 5799
e-mail: wdc@wdcarch.com

2101 L Street Office Building
WASHINGTON, DC



Existing & Proposed
Penthouse Floor Plans

EX/PROV
THAMES 2011
Scale: 1/8"=1'-0"

