

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 70-16C
Z.C. Case No. 70-16C
CESC 2101 L Street, LLC
(Minor Modification @ Square 72, Lot 76 - 2101 L Street, N.W.)
October 22, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on October 22, 2018. At the meeting, the Commission approved an application of CESC 2101 L Street, LLC ("Applicant") for a minor modification to an approved planned unit development ("PUD") for property located at 2101 L Street, N.W. (Square 72, Lot 76) ("Site"). Because the modification was deemed minor, a public hearing was not conducted. The Commission determined that the application was properly before it under the provisions of Subtitle Z § 703 and Subtitle C § 1504.3 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR").

FINDINGS OF FACT

1. Z.C. Order No. 60-19, dated March 19, 1973, and BZA Order No. 11585, dated February 13, 1974 (further processing), together, approved the existing building on the Site ("Office Building") to have a height of 110 feet and a maximum density of 7.0 floor area ratio ("FAR"). The Office Building was required to provide a minimum of 32,000 square feet of retail space on the first-floor level and an additional 20,000 square feet in the first basement level.
2. According to Zoning Computation Sheet Z73-381 ("Zoning Comp Sheet"), the Office Building was constructed to a height of 110 feet, which is the maximum height permitted for a PUD under the zone district under which the Site was zoned pursuant to Z.C. Order No. 60 (i.e., C-3-B). (Exhibit ["Ex."] 1D.) This height is also the maximum height permitted under the D-5 zone and the maximum height permitted under the Act to Regulate the Height of Buildings, June 1, 1910, as amended, codified in Chapter 6 of the D.C. Official Code. According to the Zoning Comp Sheet, the original penthouse was constructed to a height of 30.35 feet, with setbacks of greater than 40 feet from the exterior walls of the Office Building.
3. Pursuant to Z.C. Order No. 78-A, dated June 12, 2006, and effective as of August 11, 2006, the Commission approved a modification to the Office Building. The approved modifications included making exterior renovations to the façade, reducing the amount of retail square footage on the first floor to 24,100 square feet, and increasing the maximum FAR to 7.1 due to the elimination of the ground-floor arcade.

4. Pursuant to Z.C. Order No. 78-B, dated January 10, 2011, and effective as of February 4, 2011 (“Order No. 78-B”), the Commission approved a second modification to the Office Building. This modification further reduced the amount of required retail and service use on the ground floor to 16,700 square feet.
5. By letter dated September 12, 2018, the Applicant submitted an application to the Commission requesting a minor modification to the approved PUD to incorporate penthouse habitable space on the roof of the Office Building. (Ex. 1.) Specifically, the Applicant proposed to construct approximately 1,500 square feet as an expansion of the existing roof structure with access from the existing elevator bank and use of the existing bathroom facilities. The overall penthouse habitable space, including the addition and the existing interior space, would be between 2,000 and 2,500 square feet. The addition was designed to integrate with the original design of the Office Building and is hidden from view from virtually all angles.
6. The proposed interior of the penthouse addition includes space designed to support the existing roof deck, which can be used by the tenants of the Office Building for different purposes, including, among others, conference rooms, events, or gathering space. The modification also involves upgrading the structure to support current code design loads. The outdoor roof deck will be reorganized to better coordinate with the penthouse habitable space addition, and new temporary cloth sail structures on permanent poles will be installed as shade structures, all of which are set back more than 1:1 from exterior face of the Office Building.
7. The penthouse heights and setbacks comply with the requirements set forth in 11-C DCMR Chapter 15. Specifically, the penthouse will have a maximum height of 16 feet, three inches, which is within the penthouse height permitted in the D-5 zone. (See 11-I DCMR § 540.5.) The penthouse will be setback in excess of 1:1 from the edge of the roof upon which it sits in accordance with 11-C DCMR § 1502.1. The reconfigured roof deck and guardrails will also be set back to meet or exceed of the 1:1 requirement. There is no proposed change to the existing penthouse or elevator override, which were approved as part of the original PUD, because all of the related mechanical upgrades can be located within the existing penthouse or within the penthouse habitable space expansion as proposed. The proposed penthouse habitable space does not result in any changes to the parking or loading previously approved and provided for the PUD.
8. As a result of the proposed habitable space, the Applicant will make a contribution to the Housing Production Trust Fund in accordance with the formula contained in 11-C DCMR §§ 1505.13 through 1505.16, which will be equal to one-half of the assessed value of the proposed penthouse habitable space. The final amount of the total contribution will be determined no earlier than 30 days prior to the date of the building permit application to construct the penthouse habitable space. No less than one-half of the required total financial contribution will be made prior to the issuance of a building permit for construction of the penthouse habitable space, and the balance will be made prior to the issuance of a certificate of occupancy for the building’s penthouse habitable space.

9. Pursuant 11-C DCMR § 1504.4(C) and 11-Z DCMR § 703.13, the Applicant was required to formally serve a copy of the application on all parties to the original proceeding at the same time that it filed the application with the Office of Zoning. The Advisory Neighborhood Commission (“ANC”) 2A is the only affected ANC and was a party to each of the original proceedings. In Z.C. Case No. 70-16B, the West End Citizens Association (“WECA”) was admitted as a party in opposition to the application, but later changed its status to a party in support. (See Order No. 78-B, Finding of Fact No. 14.) As set forth in the Certificate of Service included at page six of Exhibit 1, the Applicant formally served a copy of the application on ANC 2A and WECA at the same time that it filed the application with the Office of Zoning.
10. On September 20, 2018, the Applicant presented the application at ANC 2A’s regularly scheduled and duly noticed public meeting at which a quorum of commissioners was present. At that meeting, ANC 2A voted unanimously (7-0-0) to support the application with the following conditions, to which the Applicant agreed:
 - a. The penthouse space and roof deck shall be accessory to the office building and as such shall be used only for activities and events associated with or ancillary to the owner or tenant’s use and in no event shall be used as a nightclub, bar, cocktail lounge, or restaurant, unless otherwise approved in accordance with 11-C DCMR § 1500.3(c);
 - b. The roof deck may be used and operated from 7:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 7:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays; and
 - c. There shall be no amplified music played on the roof deck at any time. There may be amplified music played in the penthouse space provided that any windows and/or doors remain closed. Notwithstanding this condition, the penthouse space and roof deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations.
11. By letter dated October 22, 2018, the Applicant indicated that the ANC had not yet filed its resolution into the case record, and therefore provided a summary of the ANC’s vote and the above-stated conditions. (Ex. 4.)
12. By letter dated October 22, 2018, the ANC filed its resolution also indicating its unanimous support for the application and re-affirming the conditions listed in the Applicant’s letter. (Ex. 6.)
13. By email dated October 22, 2018 (Ex. 5), WECA also indicated its support for the conditions listed in the Applicant’s letter and in the ANC’s resolution.
14. The Office of Planning (“OP”) reviewed the request for a minor modification. By report dated October 12, 2018, OP stated no objections to the application. (Ex. 5.)

15. At its October 22, 2018, public meeting, the Commission reviewed the application and granted approval of the requested minor modification to the approved PUD, with conditions.
16. Based on the foregoing, the Commission finds that the requested modifications are minor and that approval of the modifications is appropriate and not inconsistent with its approval of the original PUD.

CONCLUSIONS OF LAW

Pursuant to 11-Z DCMR § 703, the Commission is authorized to approve minor modifications to approved final orders and plans through a consent calendar procedure without a public hearing. Pursuant to 11-Z DCMR § 703.2, minor modifications are those modifications that do not change the material facts upon which the Commission based its original approval. In addition, 11-C DCMR § 1504.3 provides that a request to add penthouse habitable space to a building approved by the Commission as a PUD may be filed as a minor modification for placement on the Zoning Commission's consent calendar, provided that: (a) the item shall not be placed on a consent calendar for a minimum period of 30 days following the filing of the application; and (b) OP shall submit a report with recommendations a minimum of seven days in advance of the meeting.

The Commission concludes that the modifications described herein do not change the material facts upon which the Commission based its original approval, and that the proposed modifications are to add penthouse habitable space to a building previously approved as a PUD. Accordingly, the Commission finds that the request falls within the scope of a minor modification made pursuant to 11-Z DCMR § 703 and 11-C DCMR § 1504.3.

The Commission is required by § 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) to give great weight to the recommendations of OP. OP stated no objection to the application and the Commission concurs in this recommendation.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give "great weight" to the issues and concerns contained in the written report of the affected ANC. In this case, ANC 2A submitted a resolution noting its unanimous support for the application with the conditions listed in Finding of Fact No. 10. The Commission gave great weight to ANC 2A's recommendation to approve the application with the three conditions requested.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a minor modification to add penthouse habitable space to the building located at 2101 L Street, N.W., consistent with the architectural plans and elevations included in the record at Ex. 1G, and subject to the following conditions:


1. The penthouse space and roof deck shall be accessory to the office building and as such shall be used only for activities and events associated with or ancillary to the owner or tenant's use and in no event shall be used as a nightclub, bar, cocktail lounge, or restaurant, unless otherwise approved in accordance with 11-C DCMR § 1500.3(c);
2. The roof deck may be used and operated from 7:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 7:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays; and
3. There shall be no amplified music played on the roof deck at any time. There may be amplified music played in the penthouse space provided that any windows and/or doors remain closed. Notwithstanding this condition, the penthouse space and roof deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations.

On October 22, 2018, upon the motion of Commissioner Turnbull, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** this application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on December 21, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BORDIN
DIRECTOR
OFFICE OF ZONING