

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**Application No. 15461** of **Capital City Suites, Inc.** (former applicant, **Chatham Lake Associates**), as further amended, pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Subsection 2514.2 to allow the regulations applicable to that portion of a lot located in a less restrictive use district to be extended to that portion of the lot in a more restrictive use district, a variance from the allowable percentage of lot occupancy provision (Subsection 772.1), a variance from the floor area ratio limitation for other permitted uses (Subsection 771.2), and a variance from the rear yard requirement (Subsection 774.1) for construction of a mixed-use residential/commercial building in the C-2-C and R-5-B districts at premises 2501 Pennsylvania Avenue, N.W. [Square 14, Lot per subdivision (Lots 800 and 812)].

**HEARING DATES:** February 27, April 24 and May 24, 1991 and June 9, 1993

**DECISION DATES:** September 4, 1991, June 9, 1993, February 2, 1994,  
November 6, 1996, September 3 and October 1, 1997

**DISPOSITION:** On September 4, 1991, the Board **GRANTED the application** with **CONDITIONS** by a vote of 5-0 (Charles R. Norris, Sheri M. Pruitt, Paula L. Jewell, Maybelle Taylor Bennett and Carrie L. Thornhill to grant).

On June 9, 1993, the Board **GRANTED the application as further amended with CONDITIONS** by a vote of 3-0 (Paula L. Jewell, Sheri M. Pruitt and Angel F. Clarens to grant; Carrie L. Thornhill and Maybelle Taylor Bennett not present, not voting).

On February 2, 1994, the Board **APPROVED a MODIFICATION OF PLANS** by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett and Craig Ellis to approve; Laura M. Richards to approve by absentee vote; George Evans not voting, not having read the record).

On November 6, 1996, the Board **APPROVED a SECOND MODIFICATION of PLANS** by a vote of 3-0 (Angel F. Clarens and Laura M. Richards to approve; Maybelle Taylor Bennett to approve by absentee vote; Sheila Cross Reid not voting, not having heard the case; Susan Morgan Hinton not present, not voting, not having heard the case).

On September 3, 1997, the Board **DENIED the MOTION for RECONSIDERATION** by a vote of 3 – 0 (Susan Morgan Hinton, Sheila Cross Reid and Laura M. Richards to deny; Maybelle

Taylor Bennett not present, not voting; Betty King not voting, not having heard the case. A motion made by Laura M. Richards, seconded by Sheila Cross Reid to deny the request for modification of plans, failed for the lack of a majority by a vote of 1 – 2 (Laura M. Richards to deny; Sheila Cross Reid and Susan Morgan Hinton opposed to the motion; Maybelle Taylor Bennett not present, not voting; Betty King not voting, not having heard the case). In addition, a motion made by Susan Morgan Hinton, seconded by Sheila Cross Reid to approve the modification request also failed for the lack of a majority by a vote of 2 – 1 (Susan Morgan Hinton and Sheila Cross Reid to approve; Laura M. Richards opposed to the motion; Maybelle Taylor Bennett not present, not voting; Betty King not voting, not having heard the case).

On October 1, 1997, the Board **APPROVED a THIRD MODIFICATION of PLANS** by a vote of 3 – 1 (Maybelle Taylor Bennett, Susan Morgan Hinton and Sheila Cross Reid to approve; Laura M. Richards opposed to the motion; Betty King not voting, not having heard the case).

**FINAL DATES  
OF ORDERS:**

**August 13, 1993, March 7, 1994, February 3, 1997 and March 31, 1998**

**MODIFICATION ORDER**  
**(Fourth Modification)**

**BACKGROUND:**

The application was initially granted by the Board on September 4, 1991. By Order dated August 13, 1993, the Board approved the use of the property as a mixed-use commercial/residential building in accordance with plans before the Board at that time. Subsequently, the application was amended and, as further described below, motions to modify the plans were approved on three separate occasions. In the interim, the owner of the property has also changed from the original applicant, Chatham Lake Associates, to Castleton Holdings, Inc., and then to the current owner, Capital City Suites, Inc., (CCSI). The plans were modified to accommodate the interests of the varying owners of the property.

The original applicant, Chatham Lake Associates, obtained approval from the Board in the Order dated August 13, 1993 for a mixed-use 6-story building, incorporating the existing vacant 5-story historic landmark Luzon building. By Order dated March 7, 1994, the Board approved a modification of plans for Chatham Lake to remove the proposed balconies and fenestration from the western wall in order to make the approved building elevation plans consistent with the approved floor plans. By Order dated February 3, 1997, the new owners, Castleton-Projector, L.P., obtained a modification of plans from the Board to devote the majority of the building to office use, to reallocate the residential space into one central location in the building, and to remove the west and north walls of the existing landmark building on the site.

Most recently, by the Order dated March 31, 1998, Castleton obtained Board approval for the inclusion of windows along the exterior western wall of the building, as well as the removal of an interior partition wall in the retail ground floor space to create a larger retail area on the western side of the lobby entrance. CCSI purchased the property from Castleton in June 1998 and intends to develop a predominantly residential building in accordance with the written agreements with the community. Unlike the prior owners, CCSI intends to own and operate the building after completion of construction. CCSI is therefore prepared to move forward with the project upon receipt of the necessary approvals.

Capital City Suites stated that the original approval requires a minimum prescribed amount of residential and retail space, and allows “flexibility to devote the remainder of the building to any permitted use in the C-2-C Zone District.” Further, CCSI stated that the Zoning Administrator has confirmed that the proposed mix of uses, as shown on the plans, is consistent with the Board’s prior approvals. However, because the plans themselves are different from the earlier approved version, a request for modification of plans is necessary.

**THE PROPOSED MODIFICATION OF PLANS:**

On August 20, 1998, counsel for the applicant, Capital City Suites, filed a request for a further modification of the approved plans. Capital City Suites maintains that the modifications will allow the project to move forward as a residential timeshare condominium with 68 to 72 units and with ground floor retail/service commercial uses. The previously-approved plan was for a predominantly commercial office building, with ground floor retail/service commercial uses and approximately 5,600 square feet of residential use on four floors, accessed from 25th Street.

CCSI presented a floor-by-floor summary of the proposed plan changes as follows:

**Ground Floor**

The uses as shown on the ground floor plan are identical to the uses approved in those locations in the previous plan. The lobby and building support functions (loading, garage, ramp, building support areas, fire egress stairs, shafts and pipe chases, etc.) have been somewhat reconfigured as dictated by the change in use of the building, for maximum efficiency and code compliance. The plan far exceeds the minimum ground floor retail/service area required in the Board’s original approval. The building has been recessed at the alley to provide an appropriate loading platform.

**Upper Floors**

The building will contain between 68 and 72 dwelling units. The actual count will be subject to final refinement in code and engineering requirements. The plans as submitted show 70 units. Fire egress stairways have been relocated in accordance with code requirements. The exterior wall at the northwest corner of the building has been reconfigured and recessed in order to provide required light and ventilation to the residential units in that portion of the building. There are no windows in the building along the western lot line. The residential units on the

second and third floors in the prior plan were walk-up units accessed from 25th Street. Because those floors are now entirely residential, the units in that portion of the building can be accessed through the main lobby. In the new plan, the only units accessed from 25th Street are on the basement and first floor levels.

**Roof Plan**

Because of the recess in the northwest corner of the building beginning at the second floor level, the footprint of the penthouse has been reduced in order to comply with the setback requirement.

**Parking**

This project is exempt from parking and loading requirements pursuant to 11 DCMR Sections 2100.5 and 220.5, because the existing Luzon building on the site is a historic landmark, and will be retained in the new project. The existing approved plans for the office/retail/residential building included two levels of parking, including excavation beneath the historic landmark on the site. The proposed plan shows one level of parking, with no excavation beneath the landmark. If the parking exemption did not apply to this project, 19 parking spaces would be required. As the new plan indicates, every available square foot in the parking level, including vault space has been utilized to provide 18 parking spaces (including two handicapped spaces). Given the nature of the proposed residential timeshare use, CCSI believes that the demand for parking in the building will be far less than that projected for the previous office development. In addition, the elimination of excavation beneath the landmark building will also help to insure that the preservation goals of this project are met.

The following table is a comparison of the zoning issues involved:

	<b><u>Approved Plans</u></b>	<b><u>Proposed Modifications</u></b>
Height:		
To top of roof	70' 0"	70' 0"
To top of penthouse	78' 0"	78' 0"
Stories	6	6
Gross floor area	53,625 sq. ft.	52,527 sq. ft.
FAR:		
Total	5.26	5.16
Residential	0.55	4.77
Nonresidential	4.71	0.39
Penthouse	0.19	0.16

Along with the motion, CCSI submitted to the Board a complete set of plans showing the proposed modifications. Also submitted for comparison purposes was a compilation of the approved plans in the record as modified by the above referenced orders. CCSI summarized the modifications stating that the plan changes requested herein do not change the height or design of the building. The existing exterior walls of the landmark Luzon building will be retained and

incorporated into the project. The only change to the exterior of the building is a slight reconfiguration and recessing of the exterior walls at the northwest corner of the building, in order to provide the necessary windows to comply with residential light and ventilation requirements. As a result, the FAR of the building, and the FAR of the roof structure are slightly less than previously approved. The building will be predominantly residential. The retail commercial uses on the ground floor are located entirely in the C-2-C District and there is no office or other commercial space in the R-5-B portion of the building, as in the previous plans.

Capital City Suites, Inc. stated that it purchased the project in June of this year, and that it is prepared to move forward with a predominately residential project upon issuance of all necessary approvals. CCSI believes that the plan modifications requested herein are minor and do not change the material facts the Board relied upon in approving the application. Therefore, CCSI requested approval of these modifications to the plans.

The motion was served on all parties involved in the application. Two responses to the motion were submitted into the record. Both letters were in support of the proposed modification of plans. No letters in opposition were received.

The first letter, submitted by Barbara Kahlow, dated August 26, 1998, stated that Mrs. Kahlow fully supports this developer's plans for the property. She believes that the latest proposed modification is a vast improvement over the other two plans. Specifically she supports (a) the scale (no more than six stories in keeping with this special "gateway to Georgetown" block); (b) planned retail component on Pennsylvania Avenue (for street life); and (c) the expanded residential component, which is in keeping with the rest of the block on 25th Street and the Westbridge Condominium on Pennsylvania Avenue at 26th Street. She stated that since the third and current developer already has secured financing and does not need to identify another user, the proposed development should finally move swiftly. Therefore, she urged the Board to approve the proposal.

The second letter, dated August 26, 1998, was from Robert J. Niemic who stated that he first opposed the design of the project at the earlier hearings, however, after significant changes were made, he supported the project and was a co-signer of the 1993 settlement agreement between the developer and several members of the Foggy Bottom community. He stated that his support for the project continues because the current plan addresses many of the concerns of the community.

#### **THE STANDARD FOR REVIEW OF PROPOSED MODIFICATIONS:**

Requests for modification are required to meet the provisions of 11 DCMR 3335. Pursuant 11 DCMR 3335.2, "The Board shall consider requests to approve modifications to plans approved by the Board...." The standard for review appears in Subsection 3335.7 which states that "Approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application." The movant maintained that the modifications requested are minor and do not

change the material facts that the Board relied upon in approving the application. Therefore, CCSI requested that the motion be approved.

Upon consideration of the motion, the responses and the applicable rules, the Board concludes that the movant has met the burden of proof for approving a motion for modification of plans. The Board concludes that the proposed changes are minor and do not change the material facts relied on by the Board in approving the initial application. The Board concludes that many of the dimensions will remain the same. Furthermore, under the proposed plan, the residential portion is being increased while the nonresidential portion is being decreased. The Board notes that these changes are looked upon favorably the area residents and parties to the application. No opposition has been expressed in relation to the proposal. The Board is also pleased that this project will move forward after such a long delay.

The Board notes that the motion was filed within six months of the most recent Board order on the matter, therefore, the motion is timely. The Board further notes that all of the Board Members participating in the vote on this matter have read the record in the application.

In light of the foregoing, the Board hereby **ORDERS** that the **FOURTH MOTION for MODIFICATION of APPROVED PLANS** is **APPROVED**, **SUBJECT** to the **CONDITION** that construction shall be in accordance with plans marked as **Exhibit No. 153** of the record.

**DECISION DATE:** September 16, 1998

**VOTE:** 3 – 0 (Betty King, Jerry H. Gilreath and Sheila Cross Reid to approve.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

**ATTESTED BY:**

*for*   
**SHERI M. PRUITT-WILLIAMS**  
**Interim Director**

**Final Date of Order:** DEC - 4 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT

**BZA MODIFICATION ORDER NO. FOUR**  
**APPLICATION NO. 15461 – CAPITAL CITY SUITES**  
**PAGE NO. 7**

TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT.

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15461**

As Interim Director of the Office of Zoning, I certify and attest that on DEC - 4 198  
a copy of the order entered on that date in this matter before the Board of Zoning Adjustment  
was mailed first class, postage prepaid to each party who appeared and participated in the public  
hearing concerning this matter, and who is listed below:

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Attested By:

  
for **SHERI M. PRUITT-WILLIAMS**  
**Interim Director**

Date: DEC - 4 1998

Attest/ljp