

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: :
   
:
   
CESC 2101 L STREET LLC : Case No.
   
REQUEST FOR A MODIFICATION : 70-16B
   
OF AN APPROVED PLANNED UNIT :
   
DEVELOPMENT :
   
:
   
:
   
-----:

Thursday,
   
October 7, 2010

Hearing Room 220 South
   
441 4<sup>th</sup> Street, N.W.
   
Washington, D.C.

The Public Hearing of Case No.
   
70-16B by the District of Columbia Zoning
   
Commission convened at 6:30 p.m. in the
   
Office of Zoning Hearing Room at 441 4<sup>th</sup>
  
Street, N.W., Washington, D.C., 20001,
   
Anthony J. Hood, Chairman, presiding.

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ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson  
KONRAD SCHLATER, Vice Chairperson  
PETER MAY, Commissioner (NPS)  
GREGORY SELFRIDGE, Commissioner  
MICHAEL G. TURNBULL, FAIA,  
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN  
JENNIFER STEINGASSER  
KAREN THOMAS

The transcript constitutes the minutes from the Public Hearing held on October 7, 2010.

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1 P-R-O-C-E-E-D-I-N-G-S

2 6:42 p.m.

3 CHAIRMAN HOOD: Now, what I propose  
4 to do, as we stay on the record, I'm not going  
5 to read the opening statements, I think  
6 protocol has already been established, I'm  
7 just going to read the distinction between  
8 that case and this case.

9 The subject of this next evening's  
10 hearing is Zoning Commission Case No. 70-16B,  
11 in the matter of CESC 2101 L Street, LLC,  
12 request for a modification of an approved  
13 planned unit development located in Square 72,  
14 Lot 76.

15 Notice of this particular hearing  
16 was published in the D.C. Register on July 5,  
17 2010, and copies of that announcement are to  
18 my left on the wall near the door.

19 The hearing will be conducted in  
20 accordance with the provisions of 11 DCMR 3022  
21 as follows: Preliminary Matters, Applicant's  
22 case, Report of the Office of Planning, Report

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1 of Other Government Agencies, Report of the  
2 ANC, in this case it's ANC 2-A, Organizations  
3 and Persons in Support, Organizations and  
4 Persons in Opposition, Rebuttal and Closing by  
5 the Applicant.

6 The following time restraints will  
7 be maintained in this meeting: Applicant, 45  
8 minutes, organizations five minutes,  
9 individuals three minutes. The Commission  
10 intends to adhere to the time limits as  
11 strictly as possible, in order to hear the  
12 case in a reasonable period of time.

13 All persons appearing before the  
14 Commission are to fill out two witness cards,  
15 and when you are finished speaking please turn  
16 your microphone off so that your microphone is  
17 no longer picking up sound or background  
18 noise.

19 The decision of the Commission in  
20 this case will be based exclusively on the  
21 public record. To avoid any appearance to the  
22 contrary, the Commission requests that persons

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1 present not engage the members of the  
2 Commission in conversation during a recess or  
3 any time. The staff will be available  
4 throughout the hearing to discuss procedural  
5 questions.

6 Please turn off all beepers and  
7 cell phones at this time so as not to disrupt  
8 these proceedings.

9 Would all individuals wishing to  
10 testify please rise and take the oath.

11 Ms. Schellin, would you please  
12 administer the oath?

13 MS. SCHELLIN: Yes.

14 Please raise your right hand. Do  
15 you solemnly swear or affirm the testimony you  
16 will give this evening will be the truth, the  
17 whole truth, and nothing but the truth?

18 Thank you.

19 CHAIRMAN HOOD: Okay, at this time  
20 the Commission will consider any preliminary  
21 matters. Does the staff have any preliminary  
22 matters?

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1 MS. SCHELLIN: Yes, sir.

2 The first one we would ask the  
3 Commission to consider would be a party status  
4 request in opposition from the West End  
5 Citizens Association.

6 CHAIRMAN HOOD: So, we have a  
7 request for party status in opposition.

8 Do we have anything else, Ms.  
9 Schellin?

10 MS. SCHELLIN: Yes, sir, we do.

11 After that consideration, if you  
12 decide to make them a party, they are asking  
13 for postponement of the hearing due to  
14 improper -- or the fact that the Applicant  
15 did not post the property on time, and then  
16 the Applicant has requested a waiver of that  
17 posting.

18 CHAIRMAN HOOD: Okay.

19 MS. SCHELLIN: Those are Exhibits  
20 17 and 19, and the party status request is at  
21 Exhibit -- let's see --

22 CHAIRMAN HOOD: I think it's --

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1 MS. SCHELLIN: -- 14, I believe.  
2 Yes, party status request is at 14.

3 CHAIRMAN HOOD: Okay, I think,  
4 Commissioners, let's do it in this order.  
5 Let's go with party status, as Ms. Schellin  
6 mentioned, but I want to take the party status  
7 separated from the postponement.

8 As I already stated, once we deal  
9 with the party status issue, there are some  
10 other issues, a postponement issue, and also I  
11 would also like to -- okay, those are the only  
12 two issues for right now. Okay. All right.

13 Let's look at Exhibit 14. We have  
14 a request by West End Citizens Association to  
15 become a party. It says, "This letter  
16 requests party status for the West End  
17 Citizens Association." And, it talks about  
18 how -- where their membership is, and how  
19 their members are, how they are close and near  
20 to the property, if you look at page -- I  
21 think it's page two.

22 They ask their questions on page

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1 two of -- actually, it's page -- the number is  
2 page three, but it's the second page, and it  
3 says, "The property owned and occupied by the  
4 persons in which the person has an interest,"  
5 and it goes on to say that, "The West End  
6 Citizens Association includes members from  
7 15th Street on the east, Potomac Park on the  
8 south," then it also goes on to No. 2 of that  
9 question, "The West End Citizens Association  
10 has many owners and tenants with a legal  
11 interest in the subject property. Also, the  
12 subject property lies within the West End  
13 Citizens Association boundaries."

14 I am inclined to agree to give them  
15 party status, but let me open it up to the  
16 Commissioners. Anyone have any objections?

17 COMMISSIONER TURNBULL: I have no  
18 objection, Mr. Chairman.

19 CHAIRMAN HOOD: Objections?

20 COMMISSIONER SELFRIDGE: No  
21 objections.

22 CHAIRMAN HOOD: No objections up

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1 here.

2 Any objections?

3 MS. BRAY: Yes, Mr. Chairman.  
4 Kinley Dumas on behalf of -- sorry, Kinley  
5 Dumas Bray, on behalf of the Applicant in this  
6 case.

7 We do object to party status  
8 because the request does not meet the  
9 requirements of Section 3022 of the Zoning  
10 Regulations, although it indicates that there  
11 are members, generally, which reside within  
12 the vicinity of the property, it does not  
13 indicate how many members, or what,  
14 specifically, the person or the party -- how  
15 the West End Citizens Association would be  
16 more distinctively, or significantly, or  
17 uniquely affected by the action in this case.

18 And, I'd note for the record that  
19 the West End Citizens Association was not a  
20 party to the prior case in 2006, which  
21 resulted in an order which we need to modify  
22 today.

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1 CHAIRMAN HOOD: Okay. After  
2 hearing Ms. Bray's comments, does anybody  
3 change their mind?

4 COMMISSIONER MAY: I just have a  
5 question. Were they never a party in this  
6 case, because this party goes further back.

7 MS. BRAY: I don't believe that  
8 they were. They certainly were not a party to  
9 the case in 2006, and there's no information -  
10 -

11 COMMISSIONER MAY: Did they apply  
12 and were they rejected by the Zoning  
13 Commission?

14 MS. BRAY: I don't believe so.

15 CHAIRMAN HOOD: What about in '73 -  
16 - have they ever applied for party status?

17 MS. BRAY: There was nothing in the  
18 record to indicate that they applied for a  
19 party status in 1973.

20 CHAIRMAN HOOD: Okay, so again,  
21 Commissioners, I still stand where I stand. I  
22 think that, at least from my standpoint on the

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1 submission from West End, that they are  
2 granted party status, they represent a group  
3 which is going to be definitely affected  
4 within that whole area, and I'll see if anyone  
5 changed their mind.

6 If not, I would move that we grant  
7 West End Citizens Association party status in  
8 Zoning Commission Case No. 70-16B, and ask for  
9 a second.

10 COMMISSIONER MAY: Second.

11 CHAIRMAN HOOD: It's been moved and  
12 seconded, any further discussion?

13 All those in favor aye?

14 (Ayes.)

15 CHAIRMAN HOOD: Not hearing any  
16 opposition, not hearing any, Ms. Schellin  
17 would you record the vote?

18 MS. SCHELLIN: Staff records the  
19 vote 5-0-0, to grant party status in  
20 opposition to West End Citizens Association,  
21 Commissioner Hood moving, Commissioner May  
22 seconding, Commissioners Selfridge, Schlater

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1 and Turnbull in support.

2 CHAIRMAN HOOD: Okay the next issue  
3 is, I think, kind of twofold. We have a  
4 request from West End, now being a party, for  
5 a postponement. We also have justification  
6 which is Exhibit 19, from Ms. Bray, because --  
7 let me make sure I have this right -- it  
8 wasn't -- the property was not posted?

9 MS. BRAY: On time.

10 CHAIRMAN HOOD: On time.

11 MS. BRAY: It was posted, but not  
12 on time. The requirement is 40 days, and they  
13 posted, I believe, ten days prior.

14 CHAIRMAN HOOD: Okay, I think it  
15 was September the 30th, Ms. Bray, when this  
16 property was posted, or the 28th -- 28th or  
17 30th.

18 MS. BRAY: 28th.

19 CHAIRMAN HOOD: September 28th.  
20 Okay.

21 We have Exhibit 19. Commissioners,  
22 I don't know if you had a chance to -- Exhibit

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1 19, a chance to look at -- also we have  
2 Exhibit 17, but Exhibit 19 is what Ms. Bray is  
3 speaking in terms of other opportunities that  
4 we have.

5 But, I will tell you all, my  
6 problem with what Ms. Bray has written here is  
7 that, she talks about the web, and Facebook,  
8 and the Office of Zoning website, everybody is  
9 not into the modern technology, everybody is  
10 not on Twitter. So, you know, and I'm looking  
11 at the seniors, even if we are talking about a  
12 few people 50 or 60, I'm looking at the people  
13 that walk down the street who walk their dog,  
14 or whatever they do, and they are over 70, and  
15 they don't -- they are not into Facebook. So,  
16 that's my concern here.

17 But, what I will do is, open it up  
18 for any comments from my colleagues.

19 Vice Chairman Schlater.

20 VICE CHAIRMAN SCHLATER: Mr.  
21 Chairman, I think there have been instances in  
22 the past where we've waived posting

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1 requirements, but I'm not sure there's been an  
2 instance in the past where we've waived  
3 posting requirements and had a party in  
4 opposition.

5 I think the fact that there is  
6 opposition here, in the West End,  
7 differentiates it, and, you know, personally,  
8 I'd lean towards sticking with our rules,  
9 making sure the hearing is properly posted, so  
10 that in the event that we do eventually rule  
11 with the Applicant, nobody can question  
12 whether the public process has been adequately  
13 followed.

14 CHAIRMAN HOOD: Comments,  
15 Commissioners?

16 I will say this, 3000.8, as Vice  
17 Chairman Schlater has already mentioned,  
18 allows us to do it for good cause, the way I  
19 read good cause.

20 And, I will tell you, when I look  
21 at the justification of why this wasn't done,  
22 I just don't see any good cause, in the

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1 submission from Ms. Bray. I don't see the  
2 good cause.

3 Anyway, let me open it back up to  
4 the Commissioners.

5 COMMISSIONER MAY: I would just --

6 CHAIRMAN HOOD: Commissioner May.

7 COMMISSIONER MAY: -- I would,  
8 generally, agree with the Chairman.

9 You know, the reason why it's  
10 required that cases be advertised in many  
11 different ways is to catch different people  
12 who attend the different, or pay attention to  
13 different forms of advertising, and I think  
14 the posting is, actually, one of the most  
15 important ones, because it captures a group of  
16 people that might not otherwise be aware of  
17 what's going on. They don't go to their ANC  
18 meetings, or they don't, necessarily, read the  
19 local newspaper about it.

20 So, I think it's a very important  
21 thing, and I know that we've waived it at  
22 times in the past. I don't know whether or

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1 not there's been opposition at the times in  
2 the past, that certainly doesn't help make the  
3 case that we should waive the rules.

4 So, I would be inclined to support  
5 the Chairman, and look to postpone the  
6 hearing.

7 CHAIRMAN HOOD: Anyone else like to  
8 comment?

9 COMMISSIONER TURNBULL: Mr. Chair,  
10 I would just like to -- I do concur with both  
11 Commissioner May and Commissioner Schlater, I  
12 think they have made some very good points,  
13 and I would go along with the postponement.

14 CHAIRMAN HOOD: Okay. So, I think  
15 -- I don't know if we need to, necessarily,  
16 grant West End, because I think even without  
17 them asking for a postponement, I think we see  
18 here, because of the property not being posted  
19 within the 40 days required, I think,  
20 basically, it's going to all fall down and  
21 there's going to be a postponement, because  
22 I'm sure -- I sure can count, so far I've

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1 heard from four Commissioners moving for  
2 postponement.

3 Let me ask this. So, I'm in favor  
4 of postponement, and I would move that we  
5 postpone this case --

6 MS. BRAY: Mr. Chair.

7 CHAIRMAN HOOD: -- I'm in the  
8 middle of a motion. I can guarantee you it's  
9 -- we are in the middle of a motion.

10 Let me give -- let me back up, let  
11 me give you an opportunity.

12 MS. BRAY: I appreciate that very  
13 much.

14 CHAIRMAN HOOD: Don't let me forget  
15 my motion. Help me remember that when you are  
16 finished.

17 MS. BRAY: I will. I appreciate  
18 that very much.

19 I'd just like to note for the  
20 record that it's really through no fault of  
21 the Applicant that this was not posted, and it  
22 was solely really my responsibility to remind

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1 the Applicant that this needed to be posted  
2 once this was not considered as a consent  
3 calendar item, and was set down for hearing.

4 And, I'd like to remind the  
5 Commission of how long this has been pending.

6 We filed this in May, it was considered as a  
7 consent calendar item in June, the ANC has  
8 considered it twice, and the person who is in  
9 opposition is here, and has actual notice.

10 That is the only person who has  
11 expressed any interest in this case, one way  
12 or the other, and I would offer to the  
13 Commission that an alternative method of  
14 proceeding would be to continue with the  
15 hearing as all of the witnesses are here,  
16 present and accounted for, and ready to  
17 proceed, including, I believe, the West End  
18 Citizens Association, that the Commission  
19 could leave the record open for any testimony  
20 or filings from any others. We would not  
21 object to that.

22 I do note that the hearing was

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1 advertised in numerous ways. I really want to  
2 commend the Office of Zoning for reaching out  
3 and doing what, really, we failed to do, which  
4 was to use alternative methods of getting the  
5 word out. I think that it's really excellent,  
6 recognizing that not everybody is on the web.

7 However, I do note that this was published  
8 twice in the Foggy Bottom Current, which is  
9 the local newspaper for this vicinity, and was  
10 posted twice in the West End Public Library as  
11 well, and I believe that the Zoning  
12 Commission's notices are sent to the library.

13 And, there's no evidence that those that are  
14 in the vicinity, in 200 feet of the property,  
15 have expressed any concern over this  
16 application.

17 CHAIRMAN HOOD: I will just offer  
18 you this. I think, unless I hear from  
19 someone, we are going to postpone this. I  
20 will just offer that you, when we come up with  
21 a date, it needs to be posted between now and  
22 whatever date that we are going to come up

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1 with, posted, and I'm going to remember this  
2 case, and Ms. Schellin will help me, because I  
3 see here, we do have West End represented.  
4 Once we post it, I wonder if anybody else is  
5 going to come down and testify.

6 So, we will see if that holds true.

7 Ms. Bray, I think we are going to postpone  
8 unless I hear something different.

9 So, I would move that we postpone  
10 Zoning Commission Case No. 70-16B, and ask for  
11 a second.

12 VICE CHAIRMAN SCHLATER: Second.

13 CHAIRMAN HOOD: It's been moved and  
14 properly seconded.

15 Any further discussion?

16 All those in favor?

17 (Ayes.)

18 CHAIRMAN HOOD: Not hearing any  
19 opposition, Ms. Schellin, would you record the  
20 vote and give us the new date?

21 MS. SCHELLIN: Yes, sir.

22 Before I -- if we could have you

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1 include the date in the motion, November 18th.

2 So, we would record the vote 5-0-0 to  
3 postpone the hearing until November 18th,  
4 Commissioner Hood moving, Commissioner  
5 Schlater seconding, Commissioners Selfridge,  
6 Turnbull and May in support of postponing.

7 CHAIRMAN HOOD: Now, let me ask you  
8 this, Ms. Bray. Do you have the placard that  
9 was supposed to go up, that was supposed to be  
10 posted?

11 MS. BRAY: The property has been  
12 posted since September 28th, so, yes, we have  
13 them.

14 CHAIRMAN HOOD: So, we can keep it  
15 posted.

16 MS. SCHELLIN: It has to have been  
17 moved, so they need to have new signs.

18 MS. BRAY: We will place the new  
19 date on the signs. We have extra signs as  
20 well, if we need to.

21 CHAIRMAN HOOD: So, I guess  
22 tomorrow, we can't get it to them tonight,

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1 they have to get it tomorrow.

2 MS. BRAY: We have the signs.

3 CHAIRMAN HOOD: Oh, you already  
4 have them.

5 MS. BRAY: We have signs.

6 CHAIRMAN HOOD: Okay. So, it will  
7 be posted from now until -- because we don't  
8 want to come back on the 18th and have the  
9 same problem.

10 MS. BRAY: Right, just to be clear,  
11 the property, actually, is posted now, and we  
12 will change the date on the signs.

13 CHAIRMAN HOOD: So, that's what we  
14 need to do. Okay.

15 So, it's been posted, we have two  
16 weeks?

17 MS. BRAY: Ten days.

18 CHAIRMAN HOOD: Ten days, okay.

19 All right, I think that's it.

20 MS. SCHELLIN: That's it.

21 CHAIRMAN HOOD: That's it. Okay,  
22 well, I want to thank everybody for their

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1 participation in this hearing tonight, and we  
2 are looking forward to seeing you again on the  
3 18th.

4 This hearing is adjourned.

5 (Whereupon, the above-entitled  
6 matter was concluded at 6:59 p.m.)

7

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