ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

December 17, 2002

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D.C. OFFICE OF ZONING
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Ms. Carol Mitten
Chairperson
District of Columbia Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: Motion for Extension of Time; Zoning Commission Order No. 871-A;
Case No. 01-04M-~~20F~~/98-12M/88-32C
PUD Modification for 1616 Rhode Island Avenue, N.W.

Dear Chairperson Mitten and Members of the Zoning Commission:

On behalf of Rhode Island Associates Limited Partnership ("**Partnership**"), the owner of Lot 82 in Square 182 in the District of Columbia, we hereby request a two-year extension of Zoning Commission Order No. 871-A. This request for an extension is made pursuant to Section 2408.10 et. seq. of the Zoning Regulations for the good cause shown herein. Enclosed please find the requisite filing fee for this request of $400.00 in a check made payable to the D.C. Treasurer.

I. Overview of the PUD

A. The Site

Lot 82 in Square 182 is comprised of 15,394 square feet of land area and has an address of 1618 Rhode Island Avenue, N.W. It is currently used as a surface parking lot and is bounded by a public alley and the former B'Nai B'rith headquarters building to the west and a mixed-use building owned and operated by The University of California to the east.

B. PUD Approval and Previous Extensions

On November 13, 1989, by Zoning Commission Order No. 638, the Zoning Commission approved a Planned Unit Development ("**PUD**") and Zoning Map Amendment from the SP-2 Zone District to the C-4 Zone District for the property located at 1616 Rhode Island Avenue, N.W. (Lot 824, Square 182). The property subject to Order No. 638 (Lot 824) is now comprised of two lots, Lot 83 and Lot 82 (the subject of this request). It had a land area of 32,726 square feet. The PUD approval was for a single building to be devoted to residential, office and retail uses with a height of 106 feet. The approved density was 8.5 FAR, with 6.86 FAR to be devoted to office and limited retail uses and 1.64 FAR for residential use, together with 125 parking spaces for

ZONING COMMISSION
District of Columbia
Case 02-51
Exhibit 1

ZONING COMMISSION
District of Columbia
CASE NO.02-51
EXHIBIT NO.1

commercial uses plus one space for each dwelling unit. A copy of Zoning Commission Order No. 638 is attached as Exhibit A.

In the 1990's, a series of time extensions and modifications to the PUD were approved in Zoning Commission Orders numbered 638-A through 638-E. The most significant modification was adopted in Zoning Commission Case No. 98-12M (Order No. 638-F dated December 14, 1998, which appeared in the *D.C. Register* as Order No. 871). In that case, the Partnership applied for the PUD Modification on behalf of two contract purchasers, each of whom proposed to buy approximately one-half of Lot 824 and build separate buildings on their respective portions. In Zoning Commission Order No. 638-F (871), the Commission approved this division of Lot 824 and authorized two discrete buildings. The eastern half of the site was approved to allow The University of California ("**University**") to construct a mixed-use building for academic, office and residential uses (or a portion of the site now known as Lot 83). The western half of the site (now known as Lot 82) was approved for the construction of an inn by Homestead Village, Inc. In totality, Zoning Commission Order No. 638-F (871), a copy of which is attached as Exhibit B, approved a combined density for the two new PUD lots of 8.2 FAR, with 3.05 FAR allocated to residential uses and 5.15 FAR for academic, office and hotel uses.

The University purchased its one-half of the PUD property and constructed its project. It is currently occupied and used by the University for its semester in Washington program. Homestead Village, however, decided not to build the approved inn on Lot 82 and did not purchase the property from the Partnership.

In 2000, the Human Rights Campaign ("**HRC**") and its affiliate, the Human Rights Campaign Foundation, entered into a contract to purchase Lot 82 from the Partnership. In February 2001, HRC filed an application to modify the portion of the PUD affecting Lot 82 so as to change the permitted use from inn to office building and substitute a new design and plans for the proposed headquarters building of HRC. A public hearing was conducted by the Zoning Commission on July 12, 2001 regarding the HRC PUD modification application. After the public hearing, HRC was presented with higher than anticipated construction costs that made its proposed office building development on Lot 82 not financially feasible. HRC subsequently informed the Zoning Commission that it was finalizing an offer from a hotel developer who would construct a hotel project that satisfied the requirements of Z.C. Order No. 638-F (871). In order to facilitate those negotiations, HRC requested a one year extension of Order No. 638-F

(871) (a copy of the HRC letter is attached as Exhibit C). (This transaction with the hotel developer was terminated abruptly following the September 11, 2001 terrorist attacks.)

On September 17, 2001, the Zoning Commission considered HRC's extension request and voted to grant the request and further tabled any action on HRC's request to modify the approved PUD. Zoning Commission Order No. 871-A was published in the D.C. Register on October 12, 2001, and extended the validity of the PUD approved in Z.C. Order No. 638-F (871) until December 31, 2002. A copy of Zoning Commission Order No. 871-A is attached as Exhibit D.

II. Jurisdiction of the Zoning Commission

The sole criteria for determining whether a PUD should be extended is whether there is "good cause shown". The Zoning Regulations state:

> 2408.11 For purposes of Paragraph 2408.10(c), an extension of the validity of a planned unit development may be granted by the Zoning Commission for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:
>
> (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant" reasonable control;
>
> (b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

> (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the planned unit development order.

In granting past extensions, the Zoning Commission has determined that adverse market conditions, and the applicant's efforts to market the PUD in spite of these conditions, constitute good cause. In this case, the Partnership's efforts to proceed have been squarely within the standards set out in the Zoning Regulations.

III. Rationale for Extension of Zoning Commission Order No. 871-A

A. HRC Actions Subsequent to Issuance of Z.C. Order No. 871-A

On October 10, 2001, counsel for HRC submitted a letter to the Zoning Commission that stated:

> As a result of the events of September 11 [2001], the market for hotel development is Washington has come to a halt for an indefinite period of time. Accordingly, HRC is exploring other options including the feasibility of a smaller HRC headquarters building on the site. Given these circumstances, the applicant requests that the Zoning Commission table any further action on this case until its January 8, 2002 meeting.

No further action has occurred in this case since the submission of the October 10, 2001 letter from HRC's counsel. Thereafter, HRC determined that it was no longer interested in developing a headquarters building on Lot 82. Despite the contract to purchase, the HRC did not buy Lot 82, It relinquished its rights under the contract in late Spring 2002.

B. Partnership's Actions to Market the Property

The Partnership, as evidenced by its contract with HRC and HRC's diligence in processing the needed PUD modification, acted prudently within the market place to effectuate Zoning Commission Order No. 638-F (871). However, while the Property was under contract to HRC, the Partnership was precluded from marketing the site. Since the date of the termination of HRC's contract rights, the Partnership has continually and actively attempted to develop the site.

The Partnership has been working with the brokerage community and is actively marketing the site to prospective buyers and/or users with a focus on hotel developers and operators. Given the well-publicized existing economics of the hotel industry, the trend toward lower cost accommodations and the lack of capital for new hotels, marketing the development of the site for a hotel has been difficult. Because of its relative small size, it is difficult to generate substantial interest in the site by the major hotel chains. There has been some interest in the site by smaller hotel operators, although even that interest has been modest due to the small size of the site which will only accommodate a non-typical floor plan. Consequently, the site calls for a boutique hotel and the market for such a hotel is limited; such hotels are very expensive to build and operate and are difficult to finance. Nonetheless, the Applicant is hopeful that it can find a hotel user, but clearly needs additional time to achieve this goal.

C. Plan Conformance to the Comprehensive Plan and the Zoning Regulations

This request for an extension of time within which to complete the PUD project is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 24 of the Zoning Regulations, the PUD process and the District of Columbia Comprehensive Plan ("**Plan**") for the National Capital. The Land Use Map of the Plan designates the site for high density commercial use. Neither the zoning or Plan's land use designation of the subject property has changed since the PUD was approved.

IV. Conclusion

For all of the above reasons constituting good cause, the Partnership requests a two-year extension of Zoning Commission Order No. 871-A. A two-year extension should provide adequate time for appropriate marketing of the site. Thank you for your consideration.

Respectfully submitted,

SHAW PITTMAN

By: _____
Phil T. Feola

_____
Paul A. Tummonds, Jr.

Enclosures

cc: Kingdon Gould, III
Garrett M. Preis

ShawPittman LLP

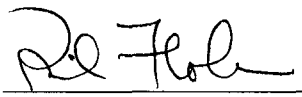
CERTIFICATE OF SERVICE

I hereby certify that the foregoing letter was sent by first class mail on December 17, 2002 to:

Chairman Vince Micone
ANC 2B
St. Thomas Parish
9 Dupont Circle, N.W.
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The University of California
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By: 
Phil Feola

Document #: 1274780 v.1

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Government of the District of Columbia
ZONING COMMISSION

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DEC 13 1989
RECORDS AND BLOCKS

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
(PUD & MAP GRAMERCY)
NOVEMBER 13, 1989

Purusant to notice, a public hearing of the Zoning Commission of the District of Columbia, was held on June 1, 1989. At this hearing, the Zoning Commission considered an application from Rhode Island Associates Limited Partnership for consolidated review and approval of a Planned Unit Development and related map amendment, pursuant to Sections 2400 and 102 of the District of Columbia Municipal Regulations (DCMR), Title 11 Zoning. The public hearing was conducted in accordance with provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. The original application, which was filed on October 24, 1988, requested consolidated review and approval of a PUD and related map amendment from SP-2 to C-4 for Lot 824 in Square 182. That application requested approval of a 13-story building consisting of 10 floors of office/retail use and 3 floors of residential use. The total floor area ratio (FAR) for the project was 10.5, of which 8.2 was devoted to office/retail use. The proposed height of the project was 130 feet.

2. The application was subsequently revised on March 30, 1989, in response to a suggestion of the Office of Planning (OP) to decrease the height and bulk of the project. The revised application called for a 10 story building consisting of 8 floors of office/retail use and 2 floors of residential use. The height of the project was reduced from 130 feet to 104 feet and the FAR reduced from 10.5 to 8.5.

3. The PUD site is located at 1616 Rhode Island Avenue, N.W., in an SP-2 zone district, contains a total land area of 32,645 square feet, and presently consists of a vacant hotel. The hotel was formerly known as the Gramercy Inn and built to a height of 90 feet and an FAR of 6.0.

4. The PUD site is located in Ward 2 in the northwest quadrant of the District of Columbia, near the intersection of Rhode Island Avenue, N.W. and Massachusetts Avenue, N.W., diagonally across from Scott Circle.

5. The SP-2 District permits matter-of-right medium density development including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of the BZA to a maximum height of sixty-five feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.

6. The C-4 District is the downtown core, comprising the retail and office centers for both the District of Columbia and the metropolitan area, and allows office, retail, housing and mixed uses to a maximum height of 110 or 130 feet, a maximum lot occupancy of one hundred percent, and a maximum FAR of 8.5 or 10.0, with the maximum height and FAR dependant upon the width of adjoining streets.

7. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a first-stage PUD. The Commission may also impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above for height, FAR, lot occupancy, parking, and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment (BZA).

8. The District of Columbia generalized Land Use Element Map of the Comprehensive Plan for the National Capital includes the PUD site in an area included in the high density commercial land use category.

9. The area surrounding the PUD site contains a wide variety of land uses. Major office and retail development is located to the south of the site while moderate and high density residential development is located to the north. Adjacent to the PUD site on the east and west are office buildings which house the B'nai B'Rith International and the National Rifle Association, respectively. Both buildings are 90 feet in height with FARs of 6.0 and 7.6, respectively. To the south of the site is the Sumner-Magruder School office complex, built to a height of 100 feet.

Directly to the north is a Holiday Inn hotel and U.S. Reservation No. 62.

10. The applicant, by written statements and by testimony presented at the public hearing, indicated that project will be of a single, 10-story above-grade structure. The building will consist of 277,900 square feet of gross floor area and a total FAR of 8.5, of which 6.9 FAR will be devoted to commercial uses. The total lot occupancy will not exceed 93 percent. The height will be revised to 106 feet, which would allow the ground floor retail uses to be at grade, in lieu of 2 feet below grade.

11. The residential component of the project, located on floors 9 and 10, will consist of 52 rental units, or no less than 48 rental units. The apartment lobby will be entered through a separate entrance, located at the corner of the site closest to 16th Street on Rhode Island Avenue, N.W. The commercial component, located on floors 1-8, will be entered at the center of the building along the Rhode Island Avenue frontage. The retail component of the project will be located on a portion of the ground floor.

12. The applicant, through its developer, indicated that the following amenties package would apply:

    a. New Rental Housing Units Downtown

       The project will provide rental housing units in the Downtown. The proposed development will include approximately 52 apartments with excellent views of the monumental core of the District. Since housing development must be subsidized, a matter-of-right development on the site would not create housing at this Downtown location within the Central Employment Area.

    b. Replace a Vacant Commercial Use

       The development of a mixed-use residential/commercial project, including approximately 52 rental units, will replace a former hotel, now vacant and deteriorating, with a mix of uses that is compatible with surrounding land uses and consistent with the land use patterns and zoning classifications for the area.

    c. Federal Parkland

       The applicant provided, in its post hearing submission, that the applicant will contribute $75,000 to the National Park Service to be

earmarked toward the cost of maintenance and improvements of U.S. Reservations 62, 63 and 64 located across from the project site. The applicant indicated that this contribution would be made in 3 annual payments of 25,000 with the first payment to be made prior to the issuance of the building permit for the project.

d. Urban Design

The proposed structure will be compatible with existing buildings in the vicinity of the site. The articulated facade will add prominence to a segment of Rhode Island Avenue that is relatively bland in character. The proposed landscaping will enhance the aesthetic quality of the area and create an attractive environment for people in the neighborhood.

e. Revenue for the District

The residential, retail and commercial components of the development will generate revenue for the District. It is anticipated that the annual real estate taxes on the completed development will be approximately $1,200,000. Additional employment, sales and other avenue sources will provide additional dollars for the District.

f. Employment Opportunties

The mixed-use development will create temporary construction jobs and permanent jobs for District residents. It is anticipated that up to 48 full-time and 70 part-time permanent jobs will be created for the retail space, 6 full-time and 12 part-time jobs for the commercial space and 7 jobs for the residential component of the development. The applicant will enter a First Source Employment Agreement to target qualified District residents, especially those in Ward 2, for employment at the site.

g. Minority Business Opportunities

The applicant will work with the Minority Business Opportunity Commission and will enter into a Memorandum of Understanding to provide minority opportunities at all phases of the development.

h. The applicant will contribute $50,000 to the John W. Ross Elementary School at 1730 R Street, N.W. to assist in funding the renovation of the school.

13. The applicant, through testimony, indicated that the economic feasibility of the project, through the use of pro forma documentation, is "very tight", especially when considering the risk involved in developing a "stacked" commercial/residential building downtown. He indicated that any reduction in the amount of commercial space would make the project less economically attractive than re-establishing a hotel use on the site.

14. The applicant, through its expert in architecture and planning, testified that the proposed project was in conformance with the high density commercial use designation of the site in the Comprehensive Plan Generalized Land Use Map and fostered the urban design elements of the Comprehensive Plan. He explained that the project will replace a vacant, deteriorating hotel with a high-quality, functionally efficient and attractively designed building.

15. The applicant testified that the project was in conformance with the applicable zoning regulations for the C-4 zone with respect to height, density, parking and lot occupancy. He indicated, however, that two minor deviations from the Zoning Regulations, regarding the rear yard requirement and the loading requirement, are requested by the applicant as part of the PUD approval.

16. He testified that due to the narrowness of the alley system surrounding the site, it would be impractical to provide a 55 floor loading berth in the building, as required by the Regulations for apartment buildings greater than 50 units. He indicated that since the project is designed to accommodate 52 apartments, it would technically be required to provide a 55' loading berth. This berth could be provided, but it would not be useable because of the constraints of the existing alley system. In lieu, therefore, the project provides an additional, useable 30-foot berth.

17. With regard to the rear yard issue, the applicant indicated that the project provides a 27 foot rear yard, 6 feet less than would be required based on the height of the building. He further indicated that the office component of the project requires an 18-foot rear yard, only a 1 foot differential from what is provided. The configuration of the apartment units, however, U-shaped around the recreational space, provided more light and air than would be provided by the strict application of the Regulations.

18. The applicant testified that the height of the project had been carefully examined so as to minimize any

potential impact on the surrounding properties. He explained that the ground level of the project is proposed to be two feet below grade. He indicated that the residential floors could not be lowered any more without creating apartments that would front office building windows a mere ten feet away. He believed that the building height has been reduced to its minimum. He also indicated that the residential floors have been set back, reducing the apparent height of buildings as seen from the street below.

19. The height of the penthouse, after a lengthy study, has been reduced to 16' 6", two feet less than a typical penthouse and is .17 FAR; less than half the size of a typical penthouse.

20. The applicant requested that flexibility be granted in the final design of the PUD project for the following:

    a. The right to reallocate space between apartment units to provide less than 52 larger units, in response to market conditions;

    b. The right to change the number and 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;

    c. The right to make minor adjustments in the facade window detailing, including the flexibility to shift the location of the doors of the retail uses on the ground floor;

    d. Flexibility in the final location and type of exterior lighting fixtures;

    e. Flexibility in the final selection of the exterior materials within the color ranges and material types proposed, based on availability at the time of construction;

    f. The right to change the number and location of the types of parking spaces provided and other modifications to the below-grade space to accommodate the needs of the apartment residents, retail users, office tenants and handicapped persons, including the deletion of one level of parking spaces as long as at least 177 parking spaces be provided on-site within the parking garage of the project; and

g. The right to vary the amount of retail/office space provided in the project, depending on market conditions.

21. The applicant, through a representative of its traffic consultant, testified at the public hearing that the proposed PUD would not change the current levels of traffic service in the area. The testimony further concludes that the provision of a 55 foot loading berth within the project would be unwarranted. The report of the traffic consultant indicates that an additional 30-foot berth in lieu of the 55-foot berth would provide adequate service to the project.

22. The District of Columbia Office of Planning (OP), by memorandum dated May 15, 1989 and by testimony presented at the public hearing recommended approval of the application, subject to general agreement on the amenities package.

23. OP indicated that the proposed building is expected to have little adverse impact on the surrounding transition zone, particularly now that it has been scaled back from 130 feet in height to 104 feet. That height has been further mitigated by setting back the upper floors, continuing the visual sense of the adjacent 90 foot height with an important awning design element and minimizing the visibility of the penthouse with a major setback and reduction in size and with the selection of materials. The office use would be lower in height than the office use in the adjacent buildings. The project would bring an important transition use (residential) in its upper floors to the critical transition zone along Rhode Island Avenue.

24. OP further indicated that the most important amenity in this project is the proposed configuration of the mix of uses. The common wisdom in mixed-use development is that residential and commercial uses cannot be stacked successfully. This conclusion greatly reduced the flexibility in achieving mixed-use projects, particularly on small sites where there is not enough room for two buildings. If the proposed configuration does work, the lights will be on in the upper two floors long after the offices below have gone dark, providing a friendly presence or beacon, among office buildings. It if works well, it will provide an important new model for mixed-use development throughout the District of Columbia.

25. The District of Columbia Department of Public Works (DPW), by memorandum dated June 5, 1989, concluded or recommended the following:

a. That the anticipated traffic generated by the PUD project would not adversely affect the surrounding transportation system;

b. That on-site parking accommodations are more than adequate;

c. That the applicant provide more information that justifies its need to provide a 30 foot loading berth, in lieu of the required 55 foot loading berth;

d. That the public alleys to the east and south of the PUD site be widened by five feet;

e. That the water supply service to the PUD site is adequate;

f. That the combined sewer stormwater service for the PUD site is adequate for sanitary waste but inadequate for stormwater runoff; and

g. That the PUD project will have to comply with Section 509 of District of Columbia Law 5-188, which establishes requirements and procedures to control stormwater runoff.

26. The District of Columbia Fire Department (DCFD), by memorandum dated May 5, 1989, objects to the proposal, as originally filed. The DCFD stated that a fire in a building such as proposed can adversely affect the emergency operations of the Fire Department. Factors to be considered are type of construction, type of fire, location of fire within, means for the spread of fire, occupancy/use, Fire Department access, and the most important factor, whether people have to be rescued.

27. The DCFD indicated that its review of the proposal for construction of a 130 foot mixed used building with all residential units above 90 feet in height as listed in the application appears to create major and undue hardships on the daily operations of the Fire Department. The overall height extension as proposed exceeds the rescue capability of Fire Department aerial ladder trucks (limited to 100 ft. at a 70 ft. climbing angle) currently assigned to protect Square 182.

28. The District of Columbia Department of Recreation (DOR), by memorandum dated May 8, 1989, expressed concern that the applicant's amenity to improve the grounds of U.S. Reservation No. 62 (Daniel Webster Park) was of minimal value to the city. DOR recommended, as a supplement to the applicant's

previous proffer, an open space/landscaping plan for the street-level area and, for the benefit of the apartment residents, a roof-top landscape plan that includes but is not limited to tree planters and seating areas.

29. The District of Columbia Metropolitan Police Department (MPD), by letter dated May 16, 1989, offered no objection to the application and indicated that the proposal will not generate an increase in the level of police services.

30. The District of Columbia Public Schools (DCPS), by memorandum dated May 16, 1989, expressed no opposition to the application and indicated that the residential component of the proposal would not be anticipated to adversely affect school enrollment.

31. Advisory Neighborhood Commission (ANC) 2B, by letter dated May 31, 1989, supported the proposal; subject to the following conditions:

    a. At least one parking space shall be assigned to each apartment unit (48 units minimum);

    b. No less than top two floors shall be devoted to bona fide, non-transient residential use;

    c. All residential lease terms shall be for a minimum of 12 months;

    d. No room service nor hotel-type services shall be provided to the residential occupants;

    e. No apartment or room shall be leased on a time sharing basis, nor used as a hotel, motel, boarding house or private club, including fraterity or sorority facility;

    f. No apartment or room shall be leased to any corporation, partnership, association, joint venture, government agency, trust, or estate, nor to anyone acting for or on behalf of such entity; and

    g. The applicant shall provide funding or in-kind services for the following improvements at the Ross Elementary School:

        (1) Attic Renovation;
        (2) Basement Renovation;
        (3) Window Replacement;
        (4) Playground Resurface;

(5) Fencing repair; and
(6) Replacement of pipes.

32. The National Rifle Association (NRA), party in the proceedings, by letter dated May 11, 1989 and by testimony presented at the public hearing, opposed the application because of potential of the common public alley between the PUD site and the NRA being closed during construction of the PUD. NRA stated that the present alley has a significant volume of delivery traffic, garage traffic and short-cut traffic, and must remain open to prevent a hardship on the NRA and others that use the alley for deliveries, trash pick-up, and access to parking.

33. Testimony from persons in opposition to the proposal was received from the Dupont Circle Citizens Association and B'Nai B'rith. Issues of concerns included but not limited to the height of the proposal in excess of 90 feet, an FAR in excess of 7.0, and the potential inability to use the alley between the PUD site and B'nai B'rith during construction of the PUD.

34. The principal of Ross Elementary School, by letter dated May 30, 1989, submitted a list of major repair or improvement needs of the school with related cost estimates associated thereto.

35. The Zoning Commission concurs with the general position of OP, ANC-2B, and the applicants and believes that the PUD proposal is an appropriate development for the PUD site.

36. As to the concerns of ANC-2B, and others regarding parking, residential leasing, transiency, and the contribution to Ross Elementary School, the Commission believes it has adequately addressed the aforementioned in its decision.

37. The Commission concurs with the general position of DPW and the applicant, and finds that the PUD proposal would not adversely affect the surrounding transportation system, that the provided on-site parking is adequate, that the substitution of a 30 foot loading berth in lieu of the required 55 foot loading berth is reasonable and adequate, and that the widening of the existing adjacent alleys has been adequately addressed.

38. As to the concerns of DPW regarding stormwater runoff, the Commission believes that this concern would be addressed and resolved through the permit review process.

39. The Commission believes that the ground floor of the project should remain at grade level with a corresponding increase in the height of building of 2 feet. The Commission finds that this minor increase in height will not have an adverse impact on the surrounding neighborhood.

40. As to the concerns of DCFD regarding the fire protection of residential units above 90 feet, the Commission is mindful that the revised application reduced the PUD building height from 130 feet to 106 feet. The Commission finds that the residential floors of the project can adequately be protected from fire, pursuant to applicable regulations, including the use of sprinkler systems.

41. As to the concern of DOR regarding residential recreation space, the Commission believes that it has adequately addressed the matter in its decision.

42. As to the concerns of the NRA and others regarding the temporary closing of the alleys, and not structurally damaging neighboring properties, the Commission is mindful that it has no jurisdiction in these matters but believes that applicable procedures and regulations will be applied as is done in matter-of-right development.

43. As to the concern regarding security, the Commission finds that the security measures are no more adversely affected as a result of the PUD proposal than they would be affected by the existing building and the previous hotel use on the PUD site. The Commission, in fact, believes that the alley setback requirements that are included herein, may lessen the security concerns for neighboring owners of property.

44. The Commission finds that the applicants have met the intent and purpose of the Zoning Regulations and further finds that the proposal is suitable for the site, and that the design, height, density, and scale are compatible with the subject neighborhood.

45. 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-Governmental and Government Reorganization Act. The NCPC, by report dated September 7, 1989, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal establishment or other Federal interests in the National Capital or be inconsistant 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 purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planned and design not achievable under matter-of-right development.

3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.

4. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.

5. The approval of this application is consistent with the purposes of the Zoning Act.

6. The proposed application can be approved with 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.

7. 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.

8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2B the "great weight" consideration to which it is entitled.

9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders APPROVAL of this application for consolidated review of a Planned Unit Development ("PUD") and change of zoning for lot 824, in Square 182 located at 1616 Rhode Island Avenue, 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 prepared by the Weihe Partnership Architects marked as Exhibits No. 20B and 24 of the record as modified by the guidelines, conditions and standards of this Order.

2. The PUD site shall be developed with a mixed use structure which will contain a mixture of residential, retail and office uses.

3. The floor area ratio (FAR) of the building shall not exceed 8.5 of which a maximum of 6.86 FAR shall be devoted to office/retail use, and a minimum of 1.64 FAR shall be devoted to residential use.

4. The height of the building shall not exceed one hundred six (106) feet.

5. The total lot occupancy of the project shall not exceed ninety-three percent (93%) of the site.

6. The project shall be developed with not less than forty-eight (48) residential units on floors 9 and 10 of the project. The total number of residential units on the two floors shall not exceed fifty-two (52).

7. The applicant may combine space in the residential units of the development to create larger apartments in response to market conditions.

8. At least 9,000 square feet of floor area at the street level of the building shall be devoted to retail uses.

9. There shall be minimum of 125 on-site parking spaces for the commercial uses in addition to which there shall be not less than one assigned parking space for each residential unit, designated for use by the residential tenants. The applicant may provide additional parking in the vault space as shown on Exhibit No. 24 of the record.

10. Recreation space shall be provided on the 9th floor of the building as shown on Exhibit No. 24 of the record.

11. No hotel, motel, boarding house and private club uses or activity of any kind, either open or covert shall be conducted or permitted on floors 9 and 10 of the project, and no portion of these two floors shall be converted to any such use or activity.

12. All leases for the residential units shall be for a minimum of 12 months.

13. No residential unit shall be leased to any corporation, partnership, association, joint venture, government agency, trust, estate, or the like.

14. Loading areas, driveways, and walkways shall be located on the site, as shown on Exhibit No. 24 of the record.

15. Landscaping shall be provided as shown on Exhibit No. 24 of the record.

16. The applicant shall have flexibility 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, and electrical and mechanical rooms, provided the variations do not change the exterior configuration of the building including the penthouse;

    b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses, provided that the applicant shall submit the aforementioned to the Zoning Commission for final approval which the Commission may determine to grant without having a further public hearing.

    c. Varying the location and type of exterior lighting fixtures.

    d. Varying the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at time of construction, provided the applicant shall submit the aforementioned to the Zoning Commission for final approval which the Commission may determine to grant without having a further public hearing.

    e. Varying the species but not the size of plant materials;

17. The Zoning Commission reserves the discretion to determine the proceedings by which it will consider any matter submitted to it pursuant to Paragraphs b and d of Condition No. 16 of this Order.

18. The applicant shall relinquish 2 1/2 feet setback at the right-of-way lines of the alleys to the east and west of the PUD site for a height of not less than

two (2) stories. Such setback areas shall be improved at the alley level to allow for unobstructed vehicular use for public purposes.

19. The applicant shall execute a binding agreement with the D.C. Board of Education or D.C. Public Shools, which provides that the applicant shall contribute a minimum of $150,000.00 towards the renovation or repairs of the John W. Ross Elementary School.

20. The applicant shall enter into a Memorandum of Understanding with the Minority Business Opportunity Commission, which requires the applicants to make a bona fide effort toward at least thirty-five (35) percent of the construction related contracts for the project to certified minority business enterprises.

21. The applicant shall enter into a First Source Agreement with the Department of Employment Services ("DOES") which provides that the applicant will use DOES as its first source for the recruitment, referral and placement of employees in connection with the construction of the project.

22. The change of zoning from SP-2 to C-4 for lot 824 in square 182 shall be effective upon recordation of a PUD convenant, pursuant to 11 DCMR 2407.3

23. No building permit shall be issued for the site until the applicant has recorded a covenant in the land records of the District of Columbia between the owner and the District of Columbia satisfactory to the Office of Corporation Counsel and the Zoning Regulation Division of the Department of Consumer and Regulatory Affairs (DCRA). The covenant shall bind the owner and all successors in title to construct on and use of the property in accordance with this Order and amendments thereto of the Zoning Commission.

24. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of the DCRA until the applicant has filed a certified copy of said covenant with the records of the Zoning Commission.

25. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application must be filed for a building permit as specified in Subsection 2407.1 DCMR Title 11. Construction shall start within three years of the effective date of this Order.

26. 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 2038, as amended, codified as D.C. Code, Title 1, Chapter 25, (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicant fails to comply with any provisions of D.C. Law 2-38, as amended.

Vote of Zoning Commission taken at the public meeting on July 10, 1989: 5-0 (Maybelle Taylor Bennett, Lloyd D. Smith, John G. Parsons, William L. Ensign and Lindsley Williams, to approve with conditions).

The guidelines, conditions and standards were approved by Zoning Commission at its public meeting on August 7, 1989.

This order was adopted by the Zoning Commission at the public meeting on November 13, 1989 by a vote of 4-0 (Lloyd D. Smith, William L. Ensign, Maybelle Taylor Bennett and John G. Parsons, to adopt as amended).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is on _____.

MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

zc-88-32C/BHS13



ZONING COMMISSION ORDER NO. 638-F*
Case No. 98-12M
(Modification of Planned Unit Development
for 1616 Rhode Island Avenue, N.W.)
December 14, 1998

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 3, 1998, to consider an application from Rhode Island Associates Limited Partnership for a modification to a previously approved Planned Unit Development ("PUD"), pursuant to Chapter 24 of the District of Columbia Zoning Regulations, Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. On March 6, 1998, the Rhode Island Associates Limited Partnership ("Applicant") filed an application for a modification to a PUD previously approved by Zoning Commission Order No. 638, pursuant to Zoning Commission Case No. 88-32C, as modified and extended by Zoning Commission Order Nos. 638-A, 638-B, 638-C, 638-D and 638-E, hereinafter "Original PUD."

The Original PUD permitted the construction of a single mixed-use building containing residential, office and retail space. The height of the building was approved to be 106 feet and the floor area ratio (FAR) was not to exceed 8.5, of which no more than 6.86 was to be devoted to commercial use and of which 1.64 FAR was to be devoted to residential use. The first eight floors of the building were for office use with ground floor retail and the top two floors for residential use with a maximum of fifty-six apartments. The PUD permitted 125 parking spaces for commercial uses and not less than one parking space for each apartment unit, with the total number of parking spaces on the site permitted to vary from 173 to 177.

The current zoning of the site, in conjunction with the Original PUD, is C-4. The C-4 Zone District is a high density commercial and mixed-use zone. The maximum height permitted is 130 feet, so long as the street abutting the site is at least 110 feet wide, the maximum bulk permitted is 10.0 FAR, and the maximum lot occupancy permitted is 100%.*

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*Published in the D.C. Register on February 26, 1999 as Zoning Commission Order No. 871.

Under the PUD Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed, or may be less than, the matter of right standards identified above. The Zoning Commission may also approve uses that are permitted as special exceptions by the BZA or approve development variances that are required by the project design.

The present modification is requested in order to permit the redesign of the PUD to allow for two buildings instead of one. One building, on a separate lot, will be for the use of the University of California and will be predominately residential apartments for use by the University's Washington Center. It will also accommodate the Center's academic program with space for faculty and graduate student offices, administrative office/support, classrooms and the University's Office of Federal Government Relations. The University of California building will consist of eleven stories with approximately 147,305 square feet of gross floor area at a FAR of 8.5 on its lot of approximately 17,330 square feet. Approximately 99,750 of the total gross floor area will be for residential use. The apartments will occupy the 4th through 11th floors. The building will also have space for ancillary services typical of an apartment building and recreational space. The first three floors will accommodate the University's academic program and other needs. The building will have 44 parking spaces in an underground garage.

The second building, on its own lot, will be for use by Homestead Village, Inc. as an extended-stay inn. The Homestead Village building will consist of eleven stories with approximately 121,000 square feet of gross floor area, at a FAR of 7.9 on its own lot of approximately 15,396 square feet. This building, an inn, will be comprised of 220 units. Guest units will include living, sleeping, bathrooms and fully equipped kitchen areas. The guest rooms will occupy the second through eleventh floors. The first floor of the building will have ancillary services typical of an inn and an exterior garden of approximately 3,000 square feet. The penthouse will house, in addition to mechanical equipment, a self-service laundry and an exercise room for guests. The building will have 57 parking spaces below grade in an underground garage.

The modification decreases the total FAR of the project to 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/inn uses, and 3.05 FAR will be devoted to residential use. The modified bulk and massing of the project is consistent with the approval of the Original PUD. The height of building of neither of the buildings in the modified PUD will exceed 106 feet. The total lot occupancy of both buildings prior to subdivision in the modified PUD will be seventy-nine percent.

A representative of the University of California testified that it is a contract purchaser of a portion of the PUD site and it seeks to buy it in order to establish a permanent location for its Washington Center program which currently exists in leased facilities. The University representative indicated that its Board of Regents has approved the funding of the purchase and development of its portion of the property. The representative testified

that the estimated time for construction of the University building is eighteen months, tentatively scheduled to begin in August 1999.

A representative of Homestead Village, Inc. testified that it is a contract purchaser of the balance of the site. He stated that Homestead intends to build and operate an extended stay inn on the property, targeted at traveling business professionals, with a length of stay averaging between two and three weeks. He also indicated that Homestead Village's inns were unique in that units have kitchens, sleeping quarters and living areas. Further, the inn will have no restaurant or ancillary retail space. He testified that the estimated time for construction of the Homestead Village building is fourteen months, tentatively scheduled to begin in August 1999.

The project architect testified as an expert in architecture and site planning, on behalf of the Applicant, and stated that by providing for two buildings instead of one, the modified PUD will be more in scale with other buildings in the surrounding neighborhood. He also testified that the height of both buildings will be no higher than 106 feet and the total FAR will be reduced from the Original PUD from 8.5 to 8.2. The architect stated that both the eastern and western alleys adjacent to the property will be effectively widened by the plans and that two (loading) berths for each building would be provided. The architect testified that the University building and the Homestead building fit well together on this site. He stated that the uses proposed in the modification are appropriate for the site given its location as a transition area between the Downtown and DuPont Circle. He also opined that the modification is not inconsistent with the Comprehensive Plan and is consistent with the intent and purposes of the Zoning Regulations.

The Applicant's transportation consultant, recognized as an expert by the Commission, testified that the project will have no adverse transportation impact on the surrounding neighborhood. He also testified that the parking provided for both buildings is more than adequate. He stated that there is no need for a 55 foot loading berth in either building based on the proposed uses.

The Applicant presented as amenities and benefits in addition to those contained in Zoning Commission Order No. 638: (a) an increase in housing in the PUD from approximately 53,670 gross square feet in the Original PUD to approximately 99,750 gross square feet proposed in the modification; (b) a $25,000 donation by Homestead Village, Inc. to the National Park Service for improvements to Dupont Circle Park; (c) a mentoring program to be established between the University of California and Ross Elementary School (or substitute school mutually acceptable to the University and ANC 2B if Ross is closed); (d) a $10,000 donation from the Applicant to the Dupont Circle Citizens' Association for the completion of the Dupont Circle Resource Center; and (e) tax revenue for the District of Columbia in excess of $1.5 million annually.

The Commission notes that three of the amenities and benefits required pursuant to

Zoning Commission Order No. 638, namely, (a) a $150,000 donation to the District of Columbia Board of Education, (b) a First Source Agreement with the Department of Employment Services, and (c) a Memorandum of Understanding with the MBOC, have been performed by the Applicant.

The District of Columbia Office of Planning ("OP"), by memorandum dated November 23, 1998 and by testimony presented at the public hearing, recommended that the application be approved because the modification increases the residential component, decreases commercial uses, and reduces the overall density of the project from 8.5 to 8.2 FAR, all of which is consistent with the previously approved PUD and the Comprehensive Plan. Further, the application meets the requirements of the Zoning Regulations for the approval of a PUD modification.

The District of Columbia Department of Housing and Community Development, memorandum dated November 9, 1998, recommended that the application be approved because it is consistent with the purposes and intent of the Zoning Regulations and Map; it is not inconsistent with the Comprehensive Plan; it is consistent with the purposes of the originally approved PUD that it is modifying; it satisfies the requirements of the approval of a consolidated PUD; it provides significant public benefits; and it advances important goals and policies of the District of Columbia.

By action taken at the November 11, 1998 meeting, the Advisory Neighborhood Commission voted 6-1 in support of the application and submitted a letter indicating its support into the record. ANC-2B did not testify at the hearing.

There were no persons in support or in opposition to the proposal testifying at the hearing.

The Commission takes notice that the Original PUD expires on March 9, 1999 by which date the Applicant must file for a building permit and further that the Applicant shall start construction of the Original PUD before March 9, 2000.

The Commission concurs with the recommendation and position of the Office of Planning. The Commission finds that the proposed PUD modifications are appropriate and that the Applicant has satisfied the intent and purposes of Chapter 24 of 11 DCMR.

The proposed action of the Zoning Commission to approve the application with conditions 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 February 4, 1999, found that the modification to the proposed PUD would not adversely affect the federal establishment or other federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan. The NCPC noted that the plans exceeded the building height limits set by the Zoning Commission and that the

applicant had agreed to submit plans to the Zoning Commission that did not include space for human occupancy above the 106 foot height. The Applicant did not submit any additional plans to the Zoning Commission, as the record was closed at the time. The Commission finds that the original plans submitted contained a self-service laundry and an exercise room for guests in the roof penthouse. This space does not exceed any limits imposed by the Act of 1910, since the building and roof structure are below the 130 foot height permitted. Pursuant to Section 2405.7, the Zoning Commission can approve use of a roof structure below the limits of the Act of 1910 by exercising the authority otherwise conferred upon the Board of Zoning Adjustment by Section 411.11.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.

2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned 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. Approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.

4. The proposed PUD meets the minimum area requirements of Section 2401.1 of the Zoning Regulations.

5. Approval of this PUD modification application is appropriate because the application is generally consistent with the present character of the area.

6. The Commission takes note of the position of Advisory Neighborhood Commission 2B, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.

7. The approval of the modification application will promote the orderly development of the site 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.

8. The proposed modification application can be approved with conditions which will ensure that development will not have an adverse effect on the surrounding area.

9. The modification application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for modification to the Original PUD approved by Z.C. Orders Nos. 638 through 638-E, for property located in Square 182, Lot 80. Zoning Commission Orders Nos. 638 through 638-E are hereby amended as follows:

1. The Planned Unit Development (PUD) site shall be developed in accordance with the drawings prepared by Harman-Cox Architects and Esocoff and Associates Architects, dated October 3, 1998, marked as Exhibit 20, and as modified by the guidelines, conditions and standards as follows:

2. The project shall be a mixed-use project consisting of the construction of two separate buildings containing academic, office, residential and inn uses. The property may be subdivided into two lots of record.

3. The total FAR of the PUD (both buildings combined) will be 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/extended stay uses, and 3.05 FAR will be devoted to residential use. The University building shall have a total FAR not to exceed 8.5 and the inn shall have a total FAR not to exceed 7.9.

4. The maximum height building of either building shall not exceed 106 feet.

5. The lot occupancy of the project (both buildings) shall not exceed seventy-nine percent of the total site as it exists before subdivision.

6. The University building shall provide a minimum of 44 parking spaces, and the inn shall provide a minimum of 57 parking spaces.

7. Landscaping shall be provided as shown on the plans marked as Exhibit No. 20 of the record. The yards, courts, driveways and loading berths of the PUD shall be as shown on the plans marked as Exhibit No. 20 of the record.

8. The University building shall be set back from its east property line by five feet (to a height of fourteen feet) in order to effectively widen the public alley from ten to fifteen feet; additionally, the inn shall be set back from its western property line by eleven feet (to a height of fourteen feet) thus increasing the effective width of the alley to twenty-one feet.

9. In addition to the requirements of Zoning Commission Order No. 638 which have been performed by the Applicant, namely, a $150,000 donation to the District of Columbia Board of Education, the First Source Agreement executed with the Department of Employment Services and the Memorandum of Understanding executed with MBOC, the following additional benefits shall be provided:
(a) the Applicant shall make a $10,000 donation to the Dupont Circle Citizens Association for the completion of the Dupont Circle Resource Center prior to the first to occur of (1) the issuance of a building permit for the inn or (2) the issuance of a building permit for the University building;
(b) prior to the issuance of a building permit for the inn, a $25,000 donation shall be made by Homestead Villages, Inc. to the National Park Service for improvements to Dupont Circle Park.; notwithstanding paragraph 9(c) below, this obligation encumbers only the portion of the property designated for inn use; and
(c) prior to the issuance of a Certificate of Occupancy to the University, a mentoring program between the University of California and Ross Elementary School shall be established. Ross Elementary School may be substituted with another school mutually acceptable to the University and ANC 2B, if Ross is closed; notwithstanding Paragraph 9(b) above, this obligation encumbers only the portion of the property designed for University use.

10. The Applicant shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slabs, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building, and to vary the location and types of parking spaces provided and other modifications to the below grade space to accommodate the needs of the Applicant and handicapped persons and required structural and mechanical building elements.

11. If both contract purchasers fail to consummate the purchase of their respective portions of this property, and the Applicant does not effectuate the terms and conditions of the Original PUD or otherwise achieve amendments thereto from the Zoning Commission, the zoning of the property shall revert to the SP-2 Zone District. If one, but not the other, of the contract purchasers does not consummate the purchase of its respective portion of the property, the Applicant shall file a PUD modification request, for the portion of the property remaining in Applicant's ownership, within 120 days of the date of the termination of the contract purchaser's right to purchase. The requirement to file the further PUD modification required by this Paragraph 11 shall not affect the portion of the property no longer owned by the Applicant. Such further PUD modification application shall include all the requirements of the Zoning Regulations for modifications to a PUD and a specific plan and timetable for Applicant's completion of said further PUD modification.

12. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (DCRA) for the PUD modification until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 638 in the Land Records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 638, 638-A, 638-B, 638-C, 638-D, and 638-E and this Order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the Applicant, and the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.

13. After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.

14. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has satisfied Conditions Nos. 11 and 12 of this order.

15. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applications must be filed for building permits as specified in 11 DCMR 2409.1. Construction shall begin within three years of the effective date of this order.

16. Pursuant to D.C. Code Section 1-2531 (1991), 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 at D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the Applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public hearing on December 3, 1998: 3-0 (Herbert M. Franklin, Anthony J. Hood, John G Parsons to approve with conditions).

The order was adopted by the Zoning Commission at its monthly public meeting on December 14, 1998, by a vote of 3-0: (John G. parsons, Herbert M. Franklin, and Anthony J. Hood to approve as amended; Jerrily R. Kress and Angel F. Clarens not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is, on **FEBRUARY 26, 1999**.

Jerrily R. Kress, FAIA
Chairperson
Zoning Commission

Sheri Pruitt-Williams
Acting Director
Office of Zoning

ZCO638-F/SPW



ARNOLD & PORTER

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September 12, 2001

Carol J. Mitten
Chairperson
D.C. Zoning Commission
441 Fourth Street, N.W.
Suite 210
Washington, DC 20001

Re: Z.C. Case No. 01-04M/98-12M/88-32C
(Modification to PUD for 1616 Rhode Island Avenue, N.W.
The Human Rights Campaign – "HRC")

Members of the Zoning Commission:

Final submissions in the above-referenced case including a proposed order have been submitted and the Commission is scheduled to take final action on this case on September 17, 2001. This action was scheduled to accommodate HRC's contract deadline for going to settlement on the purchase of the subject property by October 11, 2001. The purpose of this letter is to request that the Zoning Commission table its decision on HRC's office modification and instead grant an extension of the existing PUD order (Order No. 638-F -- a copy of which is attached hereto), so that HRC can finalize a contract with a hotel developer to purchase the site from HRC and develop a hotel pursuant to the previous PUD modification approval. The extension would allow the developer to file an application for a building permit by September 27, 2002, and start construction by September 17, 2003.

This request arises out of final cost estimates for HRC's office project which revealed substantial increases in project costs since earlier projections, and led HRC to question the feasibility of the project. As a result, over the last month, HRC sought additional market advice concerning the project and the purchase of the site including a "complete" appraisal as well as selective marketing efforts to test the resale potential of the site.

Both the appraisal report and market response indicated that, as a result of an increasing tight hotel market in the Downtown, the site has become more feasible for hotel use than for HRC's intended office headquarters use. In fact, HRC's market inquiries quickly produced an offer from a well-established hotel developer who has executed a contract to purchase the property from HRC on HRC's October 11, 2001, closing date.

The contract is contingent, however, upon obtaining Zoning Commission approval of an extension of the PUD Order No. 638-F authorizing hotel development on

ZONING COMMISSION
District of Columbia
Case 01-04M
Exhibit 35

the site. The extension is necessary to provide adequate time for the hotel developer to prepare the working drawings necessary to file an application for a building permit for the hotel project. The developer is completing its due diligence with respect to the site, obtaining financing, and is ready to proceed with working drawings. It is HRC's understanding that the hotel developer is of the opinion that it can develop the previously-approved hotel project within the parameters of the existing approval. Should minor modifications to the approved hotel plans be required, the developer would seek approval of those modifications under the processes outlined in the Zoning Regulations.

Upon the issuance of an order granting the extension, HRC will withdraw its application to modify the PUD for development of its headquarters office building. If an extension is not granted on September 17, HRC will be placed in the very risky position of closing on the property under a cloud of uncertainty as to its development and resale feasibility. Further, the City may lose an opportunity to realize 220 hotel rooms on the PUD site as originally contemplated by the PUD.

City policies favoring hotel development of the site are even more compelling today, with an anticipated shortage of hotel rooms as a result of the new, larger convention center, than at the time of the previous PUD approval. In fact, during the course of the review of HRC's office project by the Office of Planning, HRC was advised to augment its amenity package (*i.e.*, the additional $25,000 contribution for a local gay/lesbian social service agency) to compensate for the change in use from hotel to office. OP perceived the loss of the hotel as a diminution in the public benefits offered by the PUD. The requested PUD extension will restore the benefit associated with the previously approved hotel.

On behalf of HRC, we appreciate the Commission's time and attention in reviewing the proposed office building modification as well as the Commission's willingness to decide the case on an expedited basis to accommodate HRC's contract closing deadline. HRC responsibly pursued the modification, but as project plans and cost estimates were further developed, HRC began to question the feasibility of the project. At this point, HRC had already made substantial expenditures for contract extensions, PUD processing fees and the architectural, engineering and legal fees associated therewith. The pending hotel contract offers HRC an opportunity to extricate itself from the site and to recoup its substantial costs to date in the project. Further, the City will gain the much needed hotel rooms on the site in a timely manner.

Finally, we have contacted the University of California which owns the recently developed portion of the PUD site and ANC-2B to inform them of the change in our plans and the substance of this request. The University of California expressed no

objection to the request. The Chair and Single-Member District representative of the ANC expressed no immediate objection or issues, but there was no ANC meeting in time for formal consideration.

The HRC therefore requests that, at the meeting to be held on September 17, 2001, the Zoning Commission approve the requested extension of time to allow the subject PUD site to be developed as a hotel as approved in Order No. 638-F. Thank you for your consideration of this request.

Sincerely,

Cynthia A. Giordano

cc: ANC-2B (by facsimile)
Gordon Schank, University of California (by facsimile)
Ellen McCarthy, Office of Planning (by facsimile)
Arthur Jackson, Office of Planning (by facsimile)

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 638-F*
Case No. 98-12M
(Modification of Planned Unit Development
for 1616 Rhode Island Avenue, N.W.)
December 14, 1998

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 3, 1998, to consider an application from Rhode Island Associates Limited Partnership for a modification to a previously approved Planned Unit Development ("PUD"), pursuant to Chapter 24 of the District of Columbia Zoning Regulations, Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

1. On March 6, 1998, the Rhode Island Associates Limited Partnership ("Applicant") filed an application for a modification to a PUD previously approved by Zoning Commission Order No. 638, pursuant to Zoning Commission Case No. 88-32C, as modified and extended by Zoning Commission Order Nos. 638-A, 638-B, 638-C, 638-D and 638-E, hereinafter "Original PUD."

The Original PUD permitted the construction of a single mixed-use building containing residential, office and retail space. The height of the building was approved to be 106 feet and the floor area ratio (FAR) was not to exceed 8.5, of which no more than 6.86 was to be devoted to commercial use and of which 1.64 FAR was to be devoted to residential use. The first eight floors of the building were for office use with ground floor retail and the top two floors for residential use with a maximum of fifty-six apartments. The PUD permitted 125 parking spaces for commercial uses and not less than one parking space for each apartment unit, with the total number of parking spaces on the site permitted to vary from 173 to 177.

The current zoning of the site, in conjunction with the Original PUD, is C-4. The C-4 Zone District is a high density commercial and mixed-use zone. The maximum height permitted is 130 feet, so long as the street abutting the site is at least 110 feet wide, the maximum bulk permitted is 10.0 FAR, and the maximum lot occupancy permitted is 100%.

*Published in the D.C. Register on February 26, 1999 as Zoning Commission Order No. 871.

Under the PUD Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed, or may be less than, the matter of right standards identified above. The Zoning Commission may also approve uses that are permitted as special exceptions by the BZA or approve development variances that are required by the project design.

The present modification is requested in order to permit the redesign of the PUD to allow for two buildings instead of one. One building, on a separate lot, will be for the use of the University of California and will be predominately residential apartments for use by the University's Washington Center. It will also accommodate the Center's academic program with space for faculty and graduate student offices, administrative office/support, classrooms and the University's Office of Federal Government Relations. The University of California building will consist of eleven stories with approximately 147,305 square feet of gross floor area at a FAR of 8.5 on its lot of approximately 17,330 square feet. Approximately 99,750 of the total gross floor area will be for residential use. The apartments will occupy the 4th through 11th floors. The building will also have space for ancillary services typical of an apartment building and recreational space. The first three floors will accommodate the University's academic program and other needs. The building will have 44 parking spaces in an underground garage.

The second building, on its own lot, will be for use by Homestead Village, Inc. as an extended-stay inn. The Homestead Village building will consist of eleven stories with approximately 121,000 square feet of gross floor area, at a FAR of 7.9 on its own lot of approximately 15,396 square feet. This building, an inn, will be comprised of 220 units. Guest units will include living, sleeping, bathrooms and fully equipped kitchen areas. The guest rooms will occupy the second through eleventh floors. The first floor of the building will have ancillary services typical of an inn and an exterior garden of approximately 3,000 square feet. The penthouse will house, in addition to mechanical equipment, a self-service laundry and an exercise room for guests. The building will have 57 parking spaces below grade in an underground garage.

The modification decreases the total FAR of the project to 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/inn uses, and 3.05 FAR will be devoted to residential use. The modified bulk and massing of the project is consistent with the approval of the Original PUD. The height of building of neither of the buildings in the modified PUD will exceed 106 feet. The total lot occupancy of both buildings prior to subdivision in the modified PUD will be seventy-nine percent.

A representative of the University of California testified that it is a contract purchaser of a portion of the PUD site and it seeks to buy it in order to establish a permanent location for its Washington Center program which currently exists in leased facilities. The University representative indicated that its Board of Regents has approved the funding of the purchase and development of its portion of the property. The representative testified

that the estimated time for construction of the University building is eighteen months, tentatively scheduled to begin in August 1999.

A representative of Homestead Village, Inc. testified that it is a contract purchaser of the balance of the site. He stated that Homestead intends to build and operate an extended stay inn on the property, targeted at traveling business professionals, with a length of stay averaging between two and three weeks. He also indicated that Homestead Village's inns were unique in that units have kitchens, sleeping quarters and living areas. Further, the inn will have no restaurant or ancillary retail space. He testified that the estimated time for construction of the Homestead Village building is fourteen months, tentatively scheduled to begin in August 1999.

The project architect testified as an expert in architecture and site planning, on behalf of the Applicant, and stated that by providing for two buildings instead of one, the modified PUD will be more in scale with other buildings in the surrounding neighborhood. He also testified that the height of both buildings will be no higher than 106 feet and the total FAR will be reduced from the Original PUD from 8.5 to 8.2. The architect stated that both the eastern and western alleys adjacent to the property will be effectively widened by the plans and that two (loading) berths for each building would be provided. The architect testified that the University building and the Homestead building fit well together on this site. He stated that the uses proposed in the modification are appropriate for the site given its location as a transition area between the Downtown and DuPont Circle. He also opined that the modification is not inconsistent with the Comprehensive Plan and is consistent with the intent and purposes of the Zoning Regulations.

The Applicant's transportation consultant, recognized as an expert by the Commission, testified that the project will have no adverse transportation impact on the surrounding neighborhood. He also testified that the parking provided for both buildings is more than adequate. He stated that there is no need for a 55 foot loading berth in either building based on the proposed uses.

The Applicant presented as amenities and benefits in addition to those contained in Zoning Commission Order No. 638: (a) an increase in housing in the PUD from approximately 53,670 gross square feet in the Original PUD to approximately 99,750 gross square feet proposed in the modification; (b) a $25,000 donation by Homestead Village, Inc. to the National Park Service for improvements to Dupont Circle Park; (c) a mentoring program to be established between the University of California and Ross Elementary School (or substitute school mutually acceptable to the University and ANC 2B if Ross is closed); (d) a $10,000 donation from the Applicant to the Dupont Circle Citizens' Association for the completion of the Dupont Circle Resource Center; and (e) tax revenue for the District of Columbia in excess of $1.5 million annually.

The Commission notes that three of the amenities and benefits required pursuant to

Zoning Commission Order No. 638, namely, (a) a $150,000 donation to the District of Columbia Board of Education, (b) a First Source Agreement with the Department of Employment Services, and (c) a Memorandum of Understanding with the MBOC, have been performed by the Applicant.

The District of Columbia Office of Planning ("OP"), by memorandum dated November 23, 1998 and by testimony presented at the public hearing, recommended that the application be approved because the modification increases the residential component, decreases commercial uses, and reduces the overall density of the project from 8.5 to 8.2 FAR, all of which is consistent with the previously approved PUD and the Comprehensive Plan. Further, the application meets the requirements of the Zoning Regulations for the approval of a PUD modification.

The District of Columbia Department of Housing and Community Development, memorandum dated November 9, 1998, recommended that the application be approved because it is consistent with the purposes and intent of the Zoning Regulations and Map; it is not inconsistent with the Comprehensive Plan; it is consistent with the purposes of the originally approved PUD that it is modifying; it satisfies the requirements of the approval of a consolidated PUD; it provides significant public benefits; and it advances important goals and policies of the District of Columbia.

By action taken at the November 11, 1998 meeting, the Advisory Neighborhood Commission voted 6-1 in support of the application and submitted a letter indicating its support into the record. ANC-2B did not testify at the hearing.

There were no persons in support or in opposition to the proposal testifying at the hearing.

The Commission takes notice that the Original PUD expires on March 9, 1999 by which date the Applicant must file for a building permit and further that the Applicant shall start construction of the Original PUD before March 9, 2000.

The Commission concurs with the recommendation and position of the Office of Planning. The Commission finds that the proposed PUD modifications are appropriate and that the Applicant has satisfied the intent and purposes of Chapter 24 of 11 DCMR.

The proposed action of the Zoning Commission to approve the application with conditions 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 February 4, 1999, found that the modification to the proposed PUD would not adversely affect the federal establishment or other federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan. The NCPC noted that the plans exceeded the building height limits set by the Zoning Commission and that the

applicant had agreed to submit plans to the Zoning Commission that did not include space for human occupancy above the 106 foot height. The Applicant did not submit any additional plans to the Zoning Commission, as the record was closed at the time. The Commission finds that the original plans submitted contained a self-service laundry and an exercise room for guests in the roof penthouse. This space does not exceed any limits imposed by the Act of 1910, since the building and roof structure are below the 130 foot height permitted. Pursuant to Section 2405.7, the Zoning Commission can approve use of a roof structure below the limits of the Act of 1910 by exercising the authority otherwise conferred upon the Board of Zoning Adjustment by Section 411.11.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.

2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned 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. Approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.

4. The proposed PUD meets the minimum area requirements of Section 2401.1 of the Zoning Regulations.

5. Approval of this PUD modification application is appropriate because the application is generally consistent with the present character of the area.

6. The Commission takes note of the position of Advisory Neighborhood Commission 2B, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.

7. The approval of the modification application will promote the orderly development of the site 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.

8. The proposed modification application can be approved with conditions which will ensure that development will not have an adverse effect on the surrounding area.

9. The modification application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for modification to the Original PUD approved by Z.C. Orders Nos. 638 through 638-E, for property located in Square 182, Lot 80. Zoning Commission Orders Nos. 638 through 638-E are hereby amended as follows:

1. The Planned Unit Development (PUD) site shall be developed in accordance with the drawings prepared by Harman-Cox Architects and Esocoff and Associates Architects, dated October 3, 1998, marked as Exhibit 20, and as modified by the guidelines, conditions and standards as follows:

2. The project shall be a mixed-use project consisting of the construction of two separate buildings containing academic, office, residential and inn uses. The property may be subdivided into two lots of record.

3. The total FAR of the PUD (both buildings combined) will be 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/extended stay uses, and 3.05 FAR will be devoted to residential use. The University building shall have a total FAR not to exceed 8.5 and the inn shall have a total FAR not to exceed 7.9.

4. The maximum height building of either building shall not exceed 106 feet.

5. The lot occupancy of the project (both buildings) shall not exceed seventy-nine percent of the total site as it exists before subdivision.

6. The University building shall provide a minimum of 44 parking spaces, and the inn shall provide a minimum of 57 parking spaces.

7. Landscaping shall be provided as shown on the plans marked as Exhibit No. 20 of the record. The yards, courts, driveways and loading berths of the PUD shall be as shown on the plans marked as Exhibit No. 20 of the record.

8. The University building shall be set back from its east property line by five feet (to a height of fourteen feet) in order to effectively widen the public alley from ten to fifteen feet; additionally, the inn shall be set back from its western property line by eleven feet (to a height of fourteen feet) thus increasing the effective width of the alley to twenty-one feet.

9. In addition to the requirements of Zoning Commission Order No. 638 which have been performed by the Applicant, namely, a $150,000 donation to the District of Columbia Board of Education, the First Source Agreement executed with the Department of Employment Services and the Memorandum of Understanding executed with MBOC, the following additional benefits shall be provided:
(a) the Applicant shall make a $10,000 donation to the Dupont Circle Citizens Association for the completion of the Dupont Circle Resource Center prior to the first to occur of (1) the issuance of a building permit for the inn or (2) the issuance of a building permit for the University building;
(b) prior to the issuance of a building permit for the inn, a $25,000 donation shall be made by Homestead Villages, Inc. to the National Park Service for improvements to Dupont Circle Park.; notwithstanding paragraph 9(c) below, this obligation encumbers only the portion of the property designated for inn use; and
(c) prior to the issuance of a Certificate of Occupancy to the University, a mentoring program between the University of California and Ross Elementary School shall be established. Ross Elementary School may be substituted with another school mutually acceptable to the University and ANC 2B, if Ross is closed; notwithstanding Paragraph 9(b) above, this obligation encumbers only the portion of the property designed for University use.

10. The Applicant shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slabs, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building, and to vary the location and types of parking spaces provided and other modifications to the below grade space to accommodate the needs of the Applicant and handicapped persons and required structural and mechanical building elements.

11. If both contract purchasers fail to consummate the purchase of their respective portions of this property, and the Applicant does not effectuate the terms and conditions of the Original PUD or otherwise achieve amendments thereto from the Zoning Commission, the zoning of the property shall revert to the SP-2 Zone District. If one, but not the other, of the contract purchasers does not consummate the purchase of its respective portion of the property, the Applicant shall file a PUD modification request, for the portion of the property remaining in Applicant's ownership, within 120 days of the date of the termination of the contract purchaser's right to purchase. The requirement to file the further PUD modification required by this Paragraph 11 shall not affect the portion of the property no longer owned by the Applicant. Such further PUD modification application shall include all the requirements of the Zoning Regulations for modifications to a PUD and a specific plan and timetable for Applicant's completion of said further PUD modification.

12. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (DCRA) for the PUD modification until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 638 in the Land Records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 638, 638-A, 638-B, 638-C, 638-D, and 638-E and this Order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the Applicant, and the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.

13. After recordation of the Notice of Modification, the Applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for the records of the Zoning Commission.

14. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has satisfied Conditions Nos. 11 and 12 of this order.

15. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applications must be filed for building permits as specified in 11 DCMR 2409.1. Construction shall begin within three years of the effective date of this order.

16. Pursuant to D.C. Code Section 1-2531 (1991), 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 at D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the Applicant fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at its public hearing on December 3, 1998: 3-0 (Herbert M. Franklin, Anthony J. Hood, John G Parsons to approve with conditions).

The order was adopted by the Zoning Commission at its monthly public meeting on December 14, 1998, by a vote of 3-0: (John G. parsons, Herbert M. Franklin, and Anthony J. Hood to approve as amended; Jerrily R. Kress and Angel F. Clarens not voting, not having participated in the case).

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register; that is, on **FEBRUARY 26, 1999**.

Jerrily R. Kress, FAIA
Chairperson
Zoning Commission

Sheri Pruitt-Williams
Acting Director
Office of Zoning

ZCO638-F/SPW



Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 871-A
Case No. 01-04M/98-12M/88-32C
(Modification to PUD for 1616 Rhode Island Avenue, N.W.
The Human Rights Campaign – "HRC")
September 17, 2001

On November 13, 1989, by Zoning Commission Order No. 638, the Zoning Commission approved a planned unit development (PUD) and map amendment from SP-2 to C-4 for property at 1616 Rhode Island Avenue, N.W. The subject property in that case included current Lot 83 as well as Lot 82 (both lots then Lot 824) in Square 182, having a land area of 32,726 square feet. The approval was for a single building to be devoted to residential, office and retail uses with a height of 106 feet. The approved density was 8.5 FAR, with 6.86 FAR to be devoted to office and limited retail uses and 1.64 FAR for residential use, together with 125 parking spaces for commercial uses plus one space for each dwelling unit.

In the 1990s, a series of time extensions and modifications to the PUD were approved in Zoning Commission Orders numbered 638-A through 638-E. The most significant modification was adopted in Zoning Commission Case No. 98-12M (Order No. 638-F dated December 14, 1998, which appeared in the *D.C. Register* as Order No. 871). This is the current PUD approval for the site. In that case, the property owner, Rhode Island Associates Limited Partnership, applied for the PUD Modification on behalf of two contract purchasers of different parts of the subject property, who proposed to build separate buildings on separate lots. The University of California received approval to construct a mixed-use building including academic, office and residential uses on the easternmost part of the PUD site. The Homestead Village, Inc., was granted approval to construct an inn on the westernmost part of the original PUD site, now Lot 82.

The approved combined density for the two new PUD lots was reduced to 8.2 FAR, with 3.05 FAR allocated to residential uses and 5.15 FAR for academic, office and hotel uses. Parking was reduced to 44 spaces for the University building and 57 spaces for the inn. The University of California building proceeded to construction, which is now nearing completion. The Homestead Inn decided not to build the approved inn on the western lot.

In 2000, the Human Rights Campaign (HRC) and its affiliate, the Human Rights Campaign Foundation, entered into a contract to purchase Lot 82. In February 2001,

HRC filed an application to modify the portion of the PUD affecting Lot 82 so as to change the allowed use from inn to office building and substitute a new design and plans generally. The public hearing was conducted on July 12, 2001, at which time the Zoning Commission also deliberated the case and requested additional information from the Applicant.

HRC, however, encountered a major obstacle in the form unanticipated construction cost bids to build the building. These were significantly higher than previous estimates and made the project financially infeasible for HRC. Upon beginning marketing the subject property, HRC received an offer from a hotel developer who would like to utilize the approval for hotel or inn use as it exists in Order No. 638-F. HRC's closing date is October 11, 2001. HRC submitted a letter to the Zoning Commission dated September 12, requesting that the Zoning Commission table its decision on HRC's office modification and instead grant a one-year extension of the existing PUD Order No. 638-F. The extension would provide HRC the opportunity to finalize a contract with a hotel developer to purchase the site from HRC and develop a hotel pursuant to the previous PUD modification approval.

Pursuant to Section 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On September 17, 2001, at its regular monthly meeting, the Commission considered the Applicant's request for a one-year extension of the existing PUD Order and voted to grant it. The Commission also tabled any action on the HRC application for a PUD modification. The Commission received a letter expressing general support from the single-member district representative of Advisory Neighborhood Commission (ANC) 2B, but no official position from the full ANC.

The Commission determined that an extension of the existing PUD is reasonable and would not adversely affect any party. The Commission believes that the applicant proceeded in good faith and encountered an unexpected financial obstacle making construction and occupancy of the office headquarters as proposed infeasible. The Commission also notes that both the Comprehensive Plan designation and the zoning for the site have remained the same since the Commission's 1998 PUD modification.

The Commission believes that its proposed action to grant the extension is in the best interests of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital, as amended.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order No. 638-F be **EXTENDED** until December 31, 2002. Prior to the expiration of that time, the developer shall file an application for a building permit, as specified in 11 DCMR § 2406.8 and construction shall start on or before December 31, 2003.

This Order was adopted by the Zoning Commission at its public meeting on September 17, 2001, by a vote of **5-0-0** (Anthony J. Hood, John G. Parsons, Carol J. Mitten, Peter G. May and James H. Hannaham to **ADOPT**).

In accordance with 11 DCMR § 3028, this order is final and effective upon publication in the District of Columbia Register; that is, on OCT 12 2001.

Carol J. Mitten
CAROL J. MITTEN
Chairman
Zoning Commission

Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director
Office of Zoning

Government of the District of Columbia
OFFICE OF ZONING

★ ★ ★

Z.C. CASE NO.: 01-04M/98-12M/88-32C

As Secretary to the Zoning Commission, I herby certify that on DEC 17 2001 copies of this Z.C. Order No. 871-A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. Applicant: Cynthia A. Giordano
   Arnold & Porter
   555 12th Street, N.W.
   Washington, D.C. 20004-1206

2. Zoning Administrator
   DCRA
   941 North Capitol Street, N.E.
   Washington, D.C. 20002

3. Councilmember Jack Evans
   (Ward 2)
   1350 Pennsylvania Avenue,
   N.W., #106
   Washington, D.C. 20004

4. Andrew Altman
   Office of Planning
   801 N. Capitol Street, N.E.
   4th Floor
   Washington, D.C. 20002

5. Alan Bergstein, Esq.
   Corporation Counsel
   6th Floor
   441 4th Street, N.W.
   Washington, D.C. 20001

6. Vince Micone
   ANC 2B
   St. Thomas Parish
   9 Dupont Circle, N.W.
   Washington, D.C. 20036

7. All Other Parties: None

ATTESTED BY: Alberto P. Bastida

Alberto P. Bastida, AICP
Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
Case 01-04M
Exhibit 36

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