GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: D. C. Zoning Commission

FROM: Andrew Altman
Director

DATE: February 27, 2003

SUBJECT: Preliminary Hearing Report on Zoning Commission Case Number 02-51/01-04M/98-12M/88-32C, Extension of a Planned Unit Development located at 1616 Rhode Island Avenue (Square 182, Lot 82)

APPLICATION

The applicant, Rhode Island Associates Limited Partnership, is requesting Zoning Commission approval of a two-year extension of Zoning Commission Order No. 871-A associated with a previously approved Planned Unit Development (PUD), to allow construction of an inn on the subject property.

RECOMMENDATION

The Office of Planning (OP) recommends approval because this request meets the standards under Section 2408.10 of the Zoning Regulations. Staff may submit a supplemental report reflecting any issues identified by the ANC and/or by other District agencies.

BACKGROUND

The subject lot 82 is one of two parcels within the existing PUD. These properties were formerly a single 32,645 square-foot lot (Square 182 Lot 80) that was the site of the Gramercy Inn (now demolished). Both lots are in the Central Employment Area, south of Rhode Island Avenue, N.E., southwest of Scott Circle, and zoned C-4 and Dupont Circle (DC) Overlay (please refer to Exhibit 1). Lot 82, the subject property, has a total area of 15,394 square feet and is currently used as a commercial parking lot. Adjacent lot 83 (immediately east at 1608 Rhode Island Avenue, N.W.) has an area of 17,331 square feet. Construction of the 176,300 square foot University of California ("UC") office, classroom, and apartment building prescribed on this lot under the PUD has been completed and the Certificate of Occupancy issued on August 22, 2001 (refer to Exhibit 2).

ZONING COMMISSION
District of Columbia
Case 02-51/01-04M/
98-12M/88-32C
EXHIBIT 5

ZONING COMMISSION
District of Columbia
CASE NO.02-51
EXHIBIT NO.5

Surrounding development consists primarily of mid- and high-rise office and hotel uses. East of the PUD, across an alley ten feet wide, is The Courtyard by Marriott Hotel at the Rhode Island Avenue intersection with Sixteenth Street, N.W. To the west, across another alley, on property located at 1640 Rhode Island Avenue, N.W., is a building formerly occupied by headquarters office of B'nai B'rith International, and the National Jewish Museum. Both properties are zoned DC/SP-2 district. Across Rhode Island Avenue, N.W., to the northwest are Scott Circle Park and the Governor's House Hotel, both zoned SP-1. To the south are The Sumner School and Museum, and Sumner Square office development south along M Street, N.W. (across from the National Geographic Headquarters). These properties are also zoned DC/C-4.

The existing PUD has been the subject of a number of Zoning Commission actions (reviewed in Exhibit 3):

- On February 12, 1990, a public hearing was held to consider Zoning Commission (ZC) Case No. 88-32C, requesting to rezone the Gramercy Inn property from SP-2 to C-4, and to establish a mixed-use PUD. The Zoning Commission authorized, among other things, a mixture of residential, retail, and office uses in a single building. The maximum 8.5 FAR would be divided between a maximum 6.86 FAR of office/retail uses and minimum 1.64 FAR of residential uses.
- Subsequent Final Order Nos. 638-A through 638-G modified and extended the original approval.
- On December 14, 1998, the Zoning Commission approved ZC Case No. 98-12M, further amending the referenced PUD and the subsequent extensions. Final Order No. 871 authorized, among other things: dividing the allowable FAR between two lots and two buildings; and a maximum 7.9 FAR for an inn on one lot and a 8.5 FAR for the UC building on the other lot (consisting of a maximum 5.15 FAR of non-residential uses including academic/office/ extended stay uses and a minimum 3.05 FAR of residential uses). These changes effectively reduced the maximum overall FAR from 8.5 to 8.2.

In 2000, the Human Rights Campaign (HRC) became contract purchaser of lot 82 from the applicant. HRC filed a Zoning Commission application in 2001 to modify to change the permitted use on this lot under the PUD from "inn" to "office". After the public hearing on this request, final construction estimates forced HRC to reconsider the feasibility of this project. As a result, HRC sought and secured a contract from a hotel developer to purchase the property, contingent on obtaining an extension of the existing PUD. The Commission ultimately tabled the proposed amendment and approved Order No. 871-A on September 17, 2001 extending the validity of Order No. 638-F until December 31, 2002. That amendment request has since been withdrawn (refer to Exhibit 4).

Subsequent to that approval (and the events of September 11, 2001) the planned transaction with the hotel developer was terminated. HRC terminated their contract to purchase the property in April 2002, and instead purchased and renovated the neighboring building at 1640 Rhode Island Avenue, N.W. Control of the property then returned to the Rhode Island Associates Limited Partnership who continued marketing the site for the inn use prescribed under the current PUD.

The subject application was subsequently submitted because no hotel development partner was identified by the close of 2002.

ANALYSIS

OP's reviewed this request to extend the validity of Order No. 871-A against the standards of Section 2408 of the Zoning Regulations (refer to Exhibit 6):

2408.10 The Zoning Commission may extend the periods set forth in §§2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided that the Zoning Commission determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond; The applicant's Motion for Extension of Time dated December 17, 2002, was mailed to the Office of Planning, Advisory Neighborhood Commission (ANC) 2B, and the University of California (owner of adjacent Lot 83 within the PUD). The Office of Zoning confirmed that these are the only parties to the referenced order.

(b) There is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; ... Staff did not identify any changes to material facts that would undermine the Commission's earlier justification.

(c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in§2408.11. The evidence is described below.

2408.11 For purposes of § 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's reasonable control; The events of September 11, 2001 impacted the regional hospitality industry and reduced the market for new hotels in the District. The District has learned through its experience with the Convention Center Headquarters Hotel that the private financing marketplace for hotel development has deteriorated, even in major markets. While the following factors are most applicable to larger hotel projects, the same issues are true for many hotel product types:

1. Investors are concerned that high occupancy rates in the District will be not maintained in the event that there are further terrorist attacks;
2. Institutional investors, a prime mover of hotel projects, prefer to have very diversified hotel portfolios (i.e., properties of similar sizes in different markets) so they are less susceptible to region-specific downturns (such as the threat of terrorism in Washington, D.C. or New York City or other regional factors); and
3. Even before "9/11", the private financing market for hotels had become very expensive for borrowers. As a result, many large projects became largely the province of international banks seeking higher returns, banks whose risk profiles allow for greater investment in these projects.

The applicant's motion explained that the Partnership was unable to market this property while it was under contract to HRC. However, the applicant has worked through commercial brokers since the contract expired to contact potential developers with a specific focus on hotel developers and operators. Specific actions by the applicant include:

1. Holding discussions with the Hospitality Investment Management Company which invests in hotels and acts as a broker for hotel chains;
2. Engaging Julian J. Studley Company, Woodmark Commercial, Grubb and Ellis, and Charles E. Smith Company to find interested users or hotel operators; and
3. Providing information to and holding discussions with other potential users, including architectural firms associated with the Leo A. Daly Company and Studios Architecture representing specific interested clients (refer to Exhibit 5).

Based on this information, staff concludes that the applicant has undertaken "good faith efforts" to identify potential hotel development partners and obtain project financing.

(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;* ...This standard is not applicable to this request.

(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.* The inability to regain control of the property until April 2001, events of September 11, 2001, the resulting reduction in the average annual occupancy percentage of area accommodations from 72.9% in 2000 to 66.74% in 2001 and

67.2% in 2002[1], and the slow-down in new hotel construction are all factors beyond the applicant's control that contributed to their inability to successfully market this property for a new inn use.

Based on the evidence provided, OP concludes that this request meets the standards of 2408.10.

COMMUNITY COMMENT

This proposal was forwarded to Advisory Neighborhood Commission (ANC) 2B on December 17, 2002, however Chair Vince Micone indicated it was not received. The applicant has since forwarded another copy of this petition, but the next scheduled ANC meeting will be on March 12, 2003, after the date of the Zoning Commission review.

RECOMMENDATION

The Office of Planning (OP) recommends approval because this application meets the standards under Section 2408.10 of the Zoning Regulations. Staff may submit a supplemental report reflecting any issues identified by the ANC and/or by other District agencies.

Attachments:

Exhibit 1 - Site Aerial with Zoning
Exhibit 2 - Certificate of Occupancy Permit No. 19371 dated September 19, 2001
Exhibit 3 - A Brief History of Associated Zoning Activity
Exhibit 4 - Letter from Cynthia A. Giordano, Arnold & Porter to Carol J. Mitten, Chairperson, D.C. Zoning Commission dated February 24, 2003
Exhibit 5 - Letter from Phil Feola, Shaw Pittman LLP, to Arthur Jackson, Development Review Specialist, Office of Planning dated February 24, 2003
Exhibit 6 - Pertinent Zoning Regulations

AA/afj

[1] Source: Washington D.C. Convention and Tourism Corporation

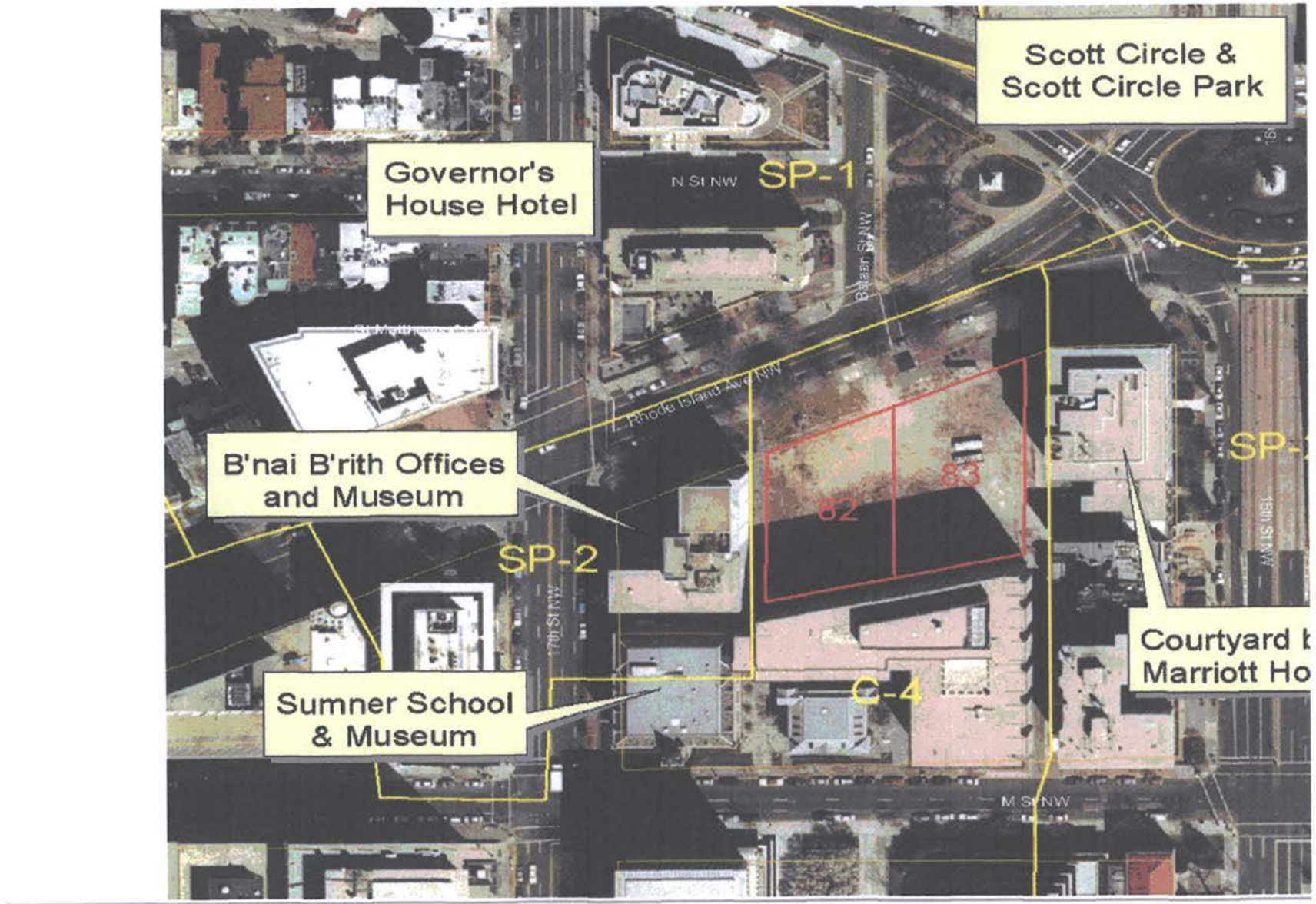

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Scott Circle Park
Governor's
House Hotel
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Rhode Island Ave NW
B'nai B'rith Offices
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Square 182 PUD Site
Office of Planning: June 26, 2001
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Exhibit 1

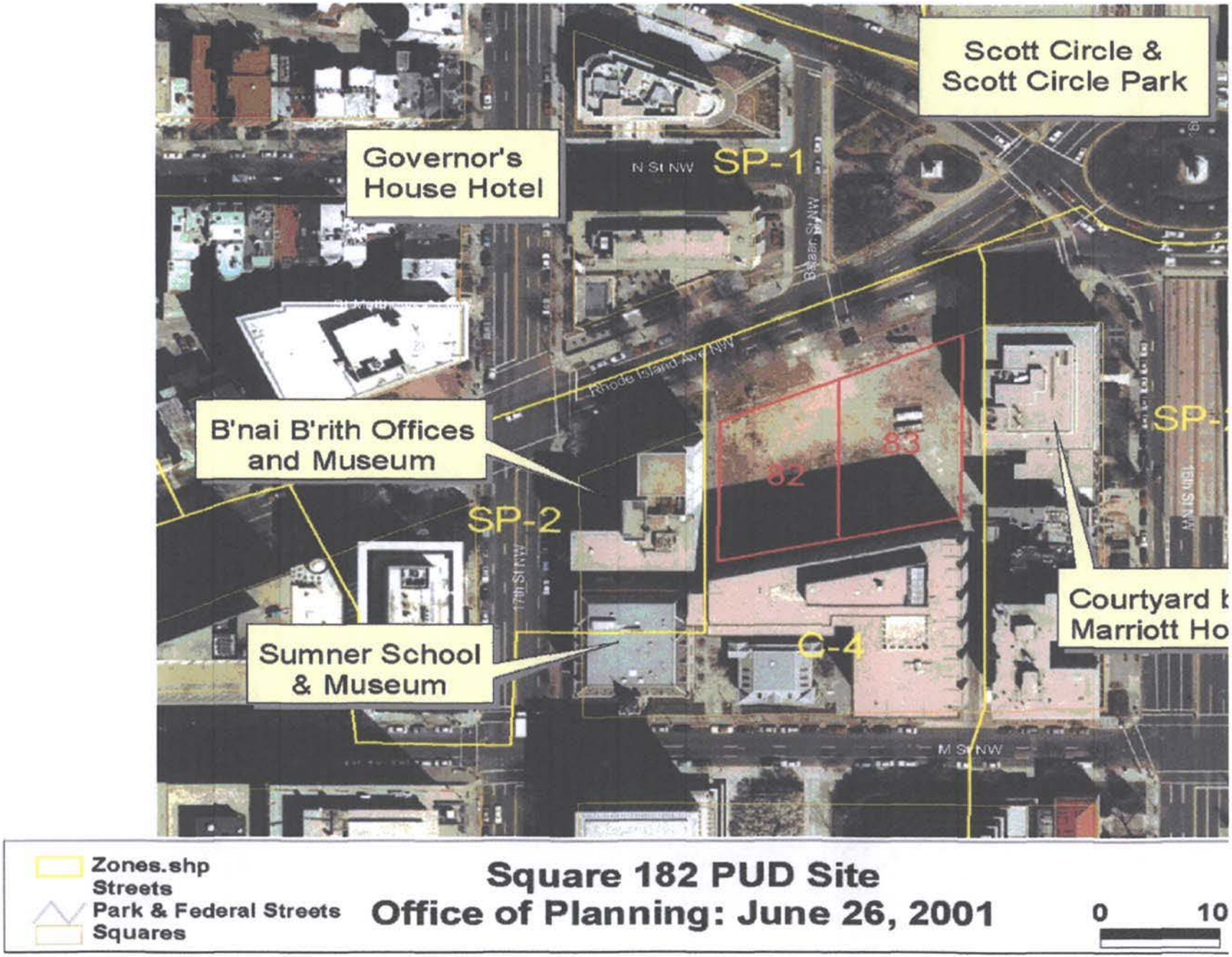

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Exhibit 1

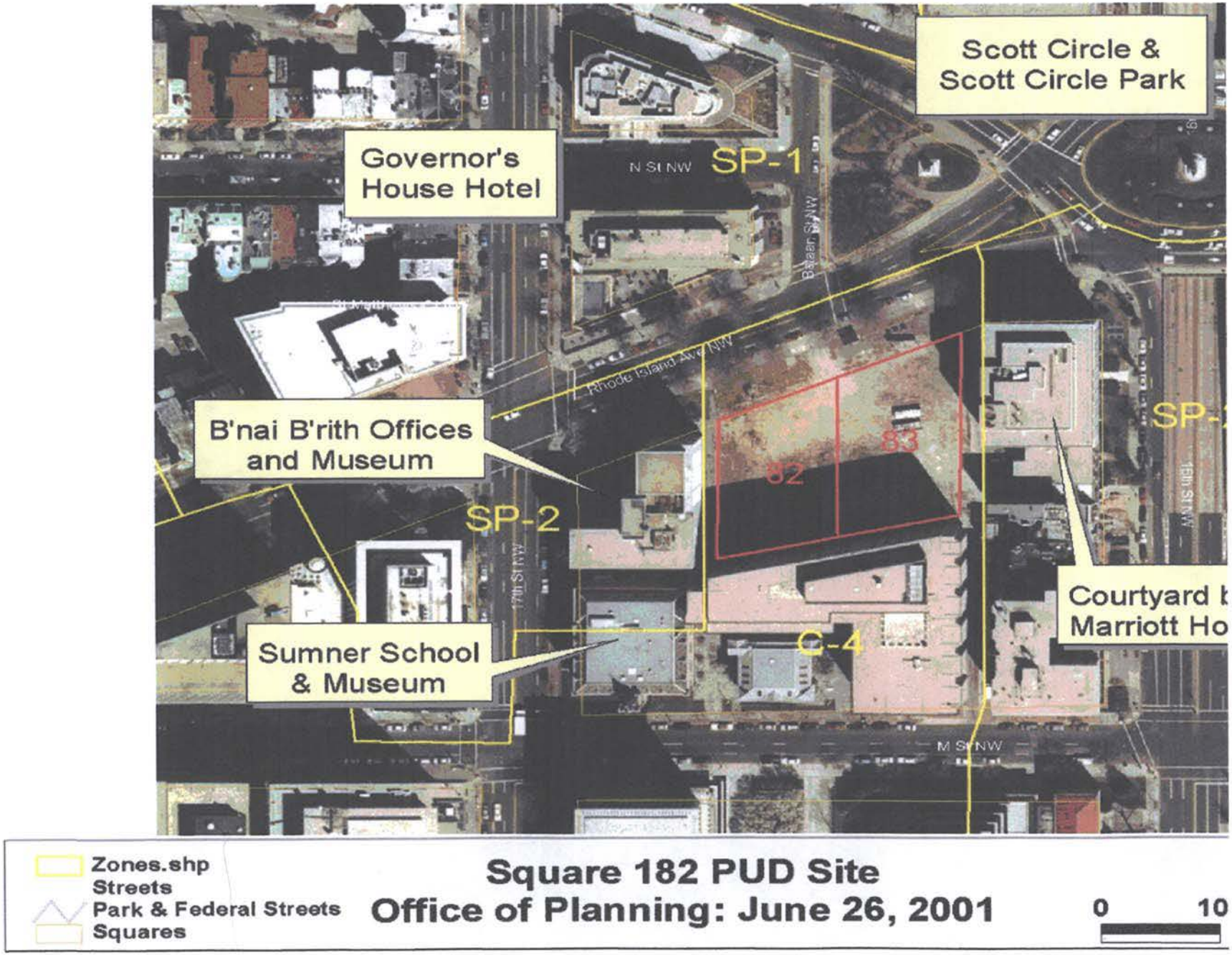

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Exhibit 1

A Brief History of Associated Zoning Activity

- Final Order #638: The original approved PUD would have redeveloped the original lot with the a single building with a maximum 8.5 FAR: no more that 6.90 FAR devoted to retail/commercial uses; and at least 1.64 FAR devoted to residential uses. Retail uses would occupy at least 9,000 square feet of the ground floor, commercial space would be provided on floors 1 through 8, and 48-52 rental apartment dwellings would be on floors ninth and tenth. The building height was limited to 106 feet and the lot occupancy was not to exceed 93%. A minimum of 125 parking spaces would have been provided on-site for the retail/commercial uses as well as one space of each apartment (a total of 173-177 spaces). Amenities approved with this project included:

  1. The provision of approximately 52 units of rental housing in the Downtown.
  2. Replacing the vacant and deteriorating Gramercy Inn with a mixed-use residential and commercial development that is compatible with area land uses and zoning (note that the total planned FAR was to be 8.5).
  3. A project with compatible architectural features and landscaping.
  4. A development that would generate approximately $1.2 million in annual real estate tax revenue and other tax revenues (sales, employment, etc.).
  5. Temporary construction jobs, up to 48 full-time and 70 part-time employment opportunities in the retail component, six full-time and twelve part-time employment opportunities in the commercial component and seven opportunities in the residential component.
  6. Signing a First Source Agreement to encourage employment of workers residing in the District.
  7. Signing a Memorandum of Understanding with the Minority Business Opportunity Commission so that opportunities for minority business involvement would be provided in all phases of this development.
  8. Contributing $150,000 to help fund the renovation of the John W. Ross Elementary School at 1730 R Street, N.W.

  This Order also required construction had to begin within three years of its effective date (or by December 15, 1992).

- Within ten days of this approval, the applicant requested the Zoning Commission to reconsider conditions approved with the previous Order concerning the required number of apartment units and on-site parking spaces. After consideration of the applicant's request, the Zoning Commission:

  1. increased the number of apartment units on two floors to 56;
  2. adopted alternative plans for UC underground parking;
  3. granted the authority to vary the arrangement of underground parking; and
  4. required that a covenant be recorded that "shall bind the owner and all successors to construct and use the property in accordance with this Order"; and any subsequent amendments approved by the Zoning Commission.

Final Order No. 638-A became effective on March 9, 1990. The Commission also made these revisions valid for two years after that date.

- On June 26, 1992, Final Order No. 638-B took effect, thereby extending Final Order Nos. 638 and 638-A for two years until March 9, 1994.

- On August 1, 1994, a public hearing was held on Zoning Commission Case No. 93-13M/88-32C. The applicant requested: to be allowed to construct a commercial parking facility on the subject property as an interim use for a period, not to exceed three years; and for the Commission to reconsider of previous conditions. The Zoning Commission approved the interim use of site as a parking lot; the associated site and landscaping plans; and allowed the applicant the flexibility to make minor changes to the lot.

Subsequent to Zoning Commission action, Final Order No. 638-C took effect on June 26, 1992, thereby extending Final Order Nos. 638, 638-A and 638-B for three more years until March 9, 1997 (the Certificate of Occupancy for the interim parking use would also expire).

- In a letter dated September 28, 1994, the applicant requested that the Commission reconsider the three-year limitation on the interim parking use and the related Certificate of Occupancy (CO).

Subsequent to Zoning Commission action, Final Order No. 638-D took effect on March 71, 1995, extending the maximum duration of the interim use by six months to September 9, 1997. However, the duration of the PUD was not changed.

- On July 25, 1997, Final Order No. 638-E became effective, thereby: extending Final Orders No. 638, 638-A, 638-B and 638-C for two years; and extending Final Order No. 638-D (related to the interim parking use) for eighteen months; and causing all these orders to expire on March 9, 1999.

- On December 14, 1998, Zoning Commission Application 98-12M was approved to amend the referenced PUD (and subsequent extensions). Final Order No. 638-F authorized divided the allowable FAR between two lots and two buildings (a maximum 8.5 FAR for a "UC" building on lot 83 and 7.9 FAR for an inn on lot 82); and the reduction in the overall maximum allowable FAR from 8.5 to 8.2 (maximum 5.15 FAR of non-residential uses including academic/office/extended stay uses and minimum 3.05 FAR of residential uses).

The University of California building consists of 11 floors, an 8.5 FAR and a total floor area of 147,305 square feet, of which 99,750 square feet (5.76 FAR) will be for residential uses and 47,555 square feet (2.24 FAR) for other uses. Fifty-seven parking spaces would be provided in a two-level underground garage.

The planned Homestead Village inn was to consist of first floor ancillary services and 220 units on 11 floors, totaling 121,000 square feet (7.9 FAR). Fifty-seven parking spaces would

have been provided in another underground garage. The building lot occupancy was not to exceed 93%. Additional amenities and benefits approved with this amendment included:

1. Overall development to 8.2 FAR on the combined acreage of both sites:
a. The UC development on lot 83 would not exceed an 8.5 FAR
b. The inn development on lot 82 would not exceed 7.9 FAR.
c. Overall, 3.05 FAR would be for residential uses and 5.15 FAR for academic/office/extended day uses.
2. A development that would generate annual tax revenue of $1.5 million
3. The maximum height was not to exceed 106 feet.
4. The UC building was set back from the east property line by five feet to widen the adjacent public alley to fifteen feet, and the proposed inn would set back from its western property line eleven feet to widen the adjacent alley to 21 feet.
5. Temporary construction jobs, up to 48 full-time and 70 part-time employment opportunities in the retail component, six full-time and twelve part-time employment opportunities in the commercial component and seven opportunities in the residential component.
6. Establishment of a mentoring program between the University of California and Ross Elementary School (or a substitute facility agreeable to the UC and Advisory Neighborhood Commission 2B) prior to the issuance of a Certificate of Occupancy for the UC building (the obligation is limited to lot 83).
7. Additional contributions of: $10,000 to the Dupont Citizens Association for the completion of the Dupont Circle Resource Center by Rhode Island Associates Limited Partnership (the applicant for this amendment) prior to the first to occur of: the issuance of a building permit for the inn; or the issuance of a building permit for the UC building; $25,000 donation by Homestead Villages, Inc. (developer of the inn) to the National Parks Service for improvements to Dupont Circle Park (this obligation is assigned to subject lot).

It was noted that three amenities and benefits required under Final Order No. 638 had been provided: a $150,000 donation to the District of Columbia Board of Education; First Source Agreement with the Department of Employment Services; and Memorandum of Understanding with the Minority Business Opportunity Commission (MBOC) to involve minority establishments (in the University of California project).

- The Final Order also required construction had to begin within two years of its effective date (or by December 3, 2000). The Certificate of Occupancy for the UC building issued in September 2002.

Final Order No 871-A became effective on October 12, 2001, extending Order No. 638-F until December 31, 2002.

Exhibit 4

ARNOLD & PORTER

Cynthia A. Giordano
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202.942.5948
202.942.5999 Fax
202.854.7088 Cell
555 Twelfth Street, NW
Washington, DC 20004-1206

February 24, 2003

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:

This is a request to permit the applicant in the above-referenced case to withdraw the subject application to modify the above-referenced PUD. On September 17, 2001, at the applicant's request, the Commission tabled a decision on the application and granted an extension of the original PUD until December 31, 2002. HRC is renovating a nearby property (the former B'nai B'rith building at 1640 Rhode Island Avenue) for their headquarters and no longer has an interest in the PUD site.

On behalf of HRC, we thank the Commission for all of its time and attention on this matter. We regret that the economics of the project ultimately did not enable HRC to develop the site.

Sincerely,

Cynthia A. Giordano

cc: Jeff Sachse, President of Capital Campaign
The Human Rights Campaign
ANC-2B
Arthur Jackson, Office of Planning

Exhibit 5

Pertinent Zoning Regulations

2408.10 The Zoning Commission may extend the periods set forth in §§2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; Provided that the Zoning Commission determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;
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(c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

2408.11 For purposes of § 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's 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; and
(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.