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VIA HAND DELIVERY

September 23, 2005

Carol Mitten, Chairperson  
District of Columbia Zoning Commission  
441 4<sup>th</sup> Street, Room 210  
Washington, D.C. 20001

**Re: Zoning Commission Case No. 02-51A;  
PUD Modification for 1616 Rhode Island Avenue, NW**

2005 SEP 23 PM 3:49  
DISTRICT OF COLUMBIA  
ZONING COMMISSION

Dear Chairperson Mitten and Members of the Commission:

On September 22, 2005, legal counsel for ANC 2B submitted a request for postponement of the above-mentioned case which is scheduled for a public hearing next Thursday, September 29, 2005. The applicant in this case, Rhode Island Associates Limited Partnership (“**Applicant**”) is strongly opposed to, and will be prejudiced by, any postponement of the public hearing in this case. As discussed in detail below, the Applicant has continually sought input from the ANC regarding this application and has provided information requested by the ANC 2B representatives in a timely manner.

This PUD modification application was filed on April 13, 2005. The application was set-down for a public hearing on May 9, 2005. On June 21, 2005 the Applicant submitted a pre-hearing statement to the Zoning Commission and sent a copy to ANC 2B, and the ANC 2B Single Member District Commissioner.

The Applicant made an initial presentation to ANC 2B regarding the PUD modification application at the May 11, 2005 ANC 2B public meeting. On July 8, 2005, representatives of the Applicant met with the ANC 2B Single Member District Commissioner for the subject property to discuss the application and the proposed community amenities package. Thereafter, the Applicant provided a package of materials, dated July 14, 2005 (copy attached, without enclosures), to the ANC 2B Commissioner in response to issues raised at the July 8, 2005 meeting. On July 28, 2005, the Applicant provided the ANC Chairperson with a copy of these materials.

Thereafter, representatives of the Applicant sent the ANC Single Member District Commissioner and the ANC Chairperson numerous e-mails requesting feedback regarding the information provided and/or a meeting prior to the ANC’s September 14, 2005 public meeting. Copies of these e-mails, dated August 4, 2005, August 17, 2005

~~2005-09-23/2005~~

~~District of Columbia~~

CASE NO. 02-51A

EXHIBIT NO. 22

400061040v1

ZONING COMMISSION  
District of Columbia  
CASE NO.02-51A  
EXHIBIT NO.22

September 23, 2005

Page 2

and September 2, 2005 are attached to this letter. Finally, the Applicant was able to secure a meeting with the ANC 2B Single Member District Commissioner and the ANC 2B Chairperson on September 8, 2005.

At the September 8, 2005 meeting, the representatives of ANC 2B informed the Applicant that they believed the community amenities package of the application was not sufficient. In response to the ANC's concerns, and prior to the September 14, 2005 ANC 2B Public Meeting, the Applicant proposed an enhanced community amenities package (see attached memorandum dated September 12, 2005). The enhanced community amenities package will be presented to the Zoning Commission at the public hearing.

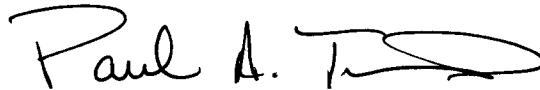
The Applicant believes that these facts are important as they show that the Applicant and its representatives have continually sought to reach out to the ANC to seek its input on this application. The Applicant does not believe that it is appropriate for the Zoning Commission to grant the requested postponement as the ANC has had ample time to prepare for this case and respond to the Applicant's proposals.

For these reasons, the Applicant respectfully requests that the Zoning Commission deny ANC 2B's request for postponement and that the Zoning Commission move forward with the public hearing on September 29, 2005.

Sincerely yours,



Phil Feola



Paul A. Tummonds

Enclosures

cc: Arthur Jackson, Office of Planning  
Stephen Gell, Esq.  
Garrett Preis



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**MEMORANDUM**  
**By Hand Delivery**

To: Mark Bjorge

From: Paul Tummonds *PA*

Date: July 14, 2005

Re: PUD Modification Application for 1616-1618 Rhode Island Avenue, NW (the "Subject Property")

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This memorandum addresses the issues that you raised in our discussion on July 8, 2005, regarding the proposed PUD modification for the Subject Property.

**Dupont Circle Overlay District**

During our conversation last week you asked why the Subject Property is not also included in the Dupont Circle Overlay District. The Subject Property includes the University of California building and the existing surface parking lot, which was rezoned from SP-2 to C-4 on December 15, 1989 pursuant to Z.C. Order No. 638. The Dupont Circle Overlay District was established in January, 1992.

As we discussed, the Zoning Commission and the Office of the Attorney General have consistently determined that the Zone District for a property which is established by a PUD and Zoning Map amendment order is not subject to intervening Zoning Map amendment or Zoning Regulation text amendments that apply to the general area that may include the PUD property. It is the Zoning Commission's PUD and Zoning Map amendment order that dictates the zoning requirements for that property.

This longstanding precedent is supported by a condition in Zoning Commission Order No. 638-F/Order No. 871. This is the Order that approved the University of California building and a hotel on the Subject Property. Please note Condition No. 11 of that Order which states, in pertinent part:

If both contract purchasers fail to consummate the purchase of their respective portions of this property, and the Applicant does not effectuate the terms of and conditions of the Original PUD or otherwise achieve amendments thereto from the Zoning Commission, the zoning for the property shall revert to the SP-2 Zone District.



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Since the adoption of the Dupont Circle Overlay District, the Zoning Commission has reviewed the PUD project on the Subject Property six times (Order Nos. 638 C-E and Order Nos. 871 and 871-A-B<sup>1</sup>). In none of those cases did the Zoning Commission determine that the Dupont Circle Overlay District applied to the Subject Property.

Please note that even if the Dupont Circle Overlay District requirements applied to the Subject Property, the major impact would be the larger minimum lot area requirement and the application of the C-4 matter-of-right height and FAR limitations (130 feet and 8.5 FAR (which could be all commercial)). The proposed modified PUD project satisfies all of these requirements, as the lot area of the Subject Property is 32,756 square feet, the maximum building height is 110 feet and the maximum FAR is 8.5.

#### **Breakdown of the FAR of the Proposed PUD Project**

The Original PUD application, approved by Zoning Commission Order No. 638, included a total FAR of 8.5 which consisted of a residential component of 1.64 FAR and a commercial component with a FAR of 6.86. The residential component was arranged to occupy the top two floors of the building. The proposed modified PUD application, which necessarily includes the University of California building, maintains the same total FAR of 8.5. However, the residential component of the project is now 3.05 FAR and the commercial FAR has been lowered to 5.45. In effect, the modified PUD project takes a “horizontal” residential use that was previously located on the top two floors of the entire Subject Property, and increases that residential use by locating it in a more “vertical” fashion on the eastern portion of the Subject Property in the University of California building.

#### **Ground Floor Use**

It is the Applicant’s goal to create a vibrant and active streetscape along Rhode Island Avenue. The proposed project includes a unique pedestrian area at the ground floor that will be fully integrated with the public sidewalk and includes a significant landscaping component to create a special streetscape treatment.

#### **Copies of Applicable Zoning Commission Orders**

Enclosed please find copies of the following Zoning Commission Orders that are applicable to the Subject Property; 638, 638-A, 638-B, 638-C, 638-D, 638-E, 638-F(also known as Order No. 871), 871-A, and 871-B.

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<sup>1</sup> Please note that Carol Mitten approved Zoning Commission Order Nos. 871–A and 871-B.



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### **Conclusion**

As we discussed, the Zoning Commission has scheduled this modification application for a public hearing on September 29, 2005. As we move toward the public hearing and the ANC's vote on this application at the September 14, 2005, ANC 2B public meeting, we would like to continue to discuss with you an appropriate community amenity that would replace the previously approved donation of \$25,000 to the National Park Service for the renovation of Dupont Circle.

As you know, as a result of this PUD project, the local community has already received; \$150,000 for the renovation of Ross Elementary School (see attached letter, dated July 11, 1990, and check), the University of California has established a mentoring program with Ross Elementary School (see attached Mentoring Agreement dated August 28, 2001), and \$10,000 has been donated to the Dupont Circle Citizens Association for the completion of the Dupont Circle Resource Center (see attached letter from ANC 2B, dated April 30, 1999, confirming receipt of payment). Moreover, with the approval of this modified PUD application, the District of Columbia will receive \$100,000 for the production of affordable housing.

Please feel free to call me if you have any additional questions or comments regarding this application or the issues addressed in this memo. We look forward to working with you and the ANC as we approach the Zoning Commission public hearing in September.

Enclosures

cc: Garrett Preis  
Phil Feola

Document #: 1489640 v.2

Paul Tummonds  
08/17/2005 01:16 PM

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To: "Darren A. BOWIE" <dabowie@msn.com>, mlbjorge@yahoo.com  
cc: gmaxp@gouldproperty.com, ABenton@gouldproperty.com, Phil  
Feola/SPPT/US, Christine Roddy/SPPT/US,  
cc:  
Subject: 1616 Rhode Island Avenue - PUD Modification Application

Gentlemen -

As we get closer to the September ANC Meeting and Zoning Commission Public Hearing we would like to finalize the community amenity issue. Please give me a call at your earliest convenience to discuss.

Thanks.

Paul.

Paul Tummonds  
Pillsbury Winthrop Shaw Pittman, LLP  
(202) 663-8873 (Direct)  
(202) 663-8007(Fax)  
paul.tummonds@pillsburylaw.com

----- Forwarded by Paul Tummonds/SPPT/US on 08/17/2005 01:16 PM -----

Paul Tummonds  
08/04/2005 12:15 PM

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To: "Darren A. BOWIE" <dabowie@msn.com>, mlbjorge@yahoo.com  
cc: gmaxp@gouldproperty.com, ABenton@gouldproperty.com  
Subject: 1616 Rhode Island Avenue - PUD Modification Application 

Gentlemen -

I just wanted to follow-up with you to see if you have any questions or comments regarding the information that I sent to you. As I noted in the July 14, 2005 memo, the Zoning Commission has scheduled a public hearing for this case on September 29, 2005.

In anticipation of the ANC's September 14, 2005 public meeting, we would like to work with the ANC to find an appropriate community amenity that would replace the previously approved donation of \$25,000 to the National Park Service for the renovation of Dupont Circle.

Please call me or e-mail me at your earliest convenience. Thanks.

Paul.

Paul Tummonds  
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(202) 663-8873 (Direct)  
(202) 663-8007(Fax)  
paul.tummonds@pillsburylaw.com

"Darren A. BOWIE" <dabowie@msn.com>



"Darren A. BOWIE"  
<dabowie@msn.com>  
07/28/2005 06:08 PM

To: Paul.Tummonds@pillsburylaw.com  
cc: mlbjorge@yahoo.com  
Subject: RE: 1616 Rhode Island Avenue

Paul Tummonds  
09/02/2005 04:08 PM

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To: "Darren A. BOWIE" <dabowie@msn.com>, mlbjorge@yahoo.com  
cc:  
cc:  
Subject: 1616 Rhode Island Avenue - PUD Modification Application

Gentlemen -

We think that it would be beneficial to have a meeting with you prior to the ANC meeting on September 14th. Our goal is to be able to address all of the ANC's issues prior to September 14th. Please give me a call or send me an e-mail with dates and times that work for you.

Thank you. Hope you have a great holiday weekend.

Paul.

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**MEMORANDUM**

**By E-Mail**

To: Mark Bjorge  
Darren Bowie

From: Paul Tummonds

Date: September 12, 2005

Re: 1616 Rhode Island Avenue, NW – Z.C. Case No. 02-51A  
PUD Modification Application of Rhode Island Associates LP (the “Applicant”)

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Thank you once again for meeting with us last week to discuss the above-mentioned PUD Modification application. Based on the issues that were raised and discussed at our meeting, the Applicant has agreed to make the following financial contributions as part of the benefits/amenities package for this application. As we discussed, these contributions are in addition to the \$150,000 that was previously paid for the renovation of Ross Elementary School and the \$10,000 that was paid to the Dupont Circle Citizens Association for the completion of the Dupont Circle Resource Center.

**Production of Affordable Housing Units**

The Applicant will contribute \$100,000 for the creation of affordable housing units in the District of Columbia. The \$100,000 will be paid to well-established affordable housing providers in Ward 2, or to the District of Columbia Housing Production Trust Fund.

**Public Benefits/Amenities**

The Applicant previously proposed to contribute \$25,000 to the National Park Service for improvements to Dupont Circle Park. Based on our discussion, the Applicant has agreed to redirect this \$25,000 to the Dupont Circle Citizens Association to be held in escrow and ultimately to be used for the renovation of Stead Park.

The Applicant will also contract for approximately \$25,000 in improvements for Scott Circle and its western traffic islands. These improvements will include a general upgrade of landscaping, plantings, and streetscape elements. These improvements will be completed under the direction of the Applicant.

The Applicant has also agreed to contribute \$25,000 to the Historic Dupont Circle Main Streets (“HDCMS”) program for use in streetscape improvements for the 17<sup>th</sup> Street corridor.



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Based on discussions with Ed Grimm, Executive Director of HDCMS, it was determined that the money will be designated for tree box enhancement program on 17<sup>th</sup> Street.

**Conclusion**

We believe that the proposed benefits/amenities package is entirely consistent with the Zoning Commission's previous approvals of PUD modification applications and the proposed application's consistency with the PUD that was originally approved by the Zoning Commission for this property.

Please feel free to give me a call if you have any other questions. We look forward to presenting this project to the full ANC and the community on Wednesday night.

cc: Garrett Preis  
Amanda Benton

Document #: 1498072 v.1