



Pillsbury
Winthrop
Shaw
Pittman LLP

RECEIVED
D.C. OFFICE OF ZONING

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

2005 NOV 17 PM 1:28

November 17, 2005

VIA HAND DELIVERY

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

Phil Feola
phil.feola@pillsburylaw.com
Phone: 202.663.8789
Fax: 202.663.8007

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

Dear Chairperson Mitten and Members of the Commission:

Pursuant to the direction of the Zoning Commission ("**Commission**") at the September 29, 2005 public hearing in Zoning Commission Case No. 02-51A, this submission addresses the concern raised by the Commission that the Applicant did not satisfy its burden pursuant to 11 DCMR Section 2408.10(b) for an extension of time for the above-referenced planned unit development ("**PUD**"). Further, this letter addresses our analysis of the existing development rights of the site, absent approval of the requested time extension or pending PUD modification.

A. PUD Extension Request

In order to extend the time for a PUD, an Applicant must demonstrate, *inter alia*, that there is "no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD..." (11 DCMR § 2408.10(b)). As demonstrated herein, the Applicant believes that it has satisfied this burden.

On November 13, 1989, by Zoning Commission Order No. 638, the Commission approved a PUD and Zoning Map Amendment from the SP-2 Zone District to the C-4 Zone District (hereinafter referred to as the "**1989 PUD**") for the property located at 1616 Rhode Island Avenue, NW (Square 824, Lot 182). In the 1990s, a series of time extensions and minor modifications to the PUD were approved in Zoning Commission Orders numbered 638-A through 638-E. On December 14, 1998, the Commission approved the Applicant's request to modify the PUD to subdivide Lot 824 and allow two discrete buildings (see Zoning Commission Order No. 638-F, a copy is attached hereto as Exhibit A). This modification approval (Order No. 638-F) established a "new" PUD (hereinafter referred to as the "**1998 PUD**").

The Applicant subsequently requested two time extensions of the 1998 PUD, which were granted by the Commission. In April 2005, the Applicant filed a new request to modify the 1998 PUD in order to develop the undeveloped portion of the 1998 PUD with a commercial office building rather than a commercial hotel building. The Applicant simultaneously filed a request for an extension of the 1998 PUD in the event that its request for modification is denied.

**ZONING COMMISSION
District of Columbia**

CASE NO. 02-51-A
EXHIBIT NO. 30

**ZONING COMMISSION
District of Columbia
CASE NO. 02-51A
EXHIBIT NO. 30**

In analyzing whether this extension request should be granted, the Commission questions whether Section 2408.10(b) has been satisfied. This Section requires that the Commission determine if there has been a substantial change in circumstances since the PUD was approved that would favor denying a request to extend the PUD. Here, the confusion arises regarding whether “original approval” noted in the wording of Section 2408.10(b) refers to approval of the 1989 PUD or the 1998 PUD. Because the 1998 PUD superseded the 1989 PUD, as a matter-of-law, the Applicant maintains that the 1998 PUD is the starting point for this analysis.

In the past, the Zoning Commission has agreed with this assessment and evaluated extensions based on whether there had been a substantial change in material facts since the last PUD approval, i.e. the 1998 PUD. In 2001 and 2003, the Applicant filed requests for extensions of time of the 1998 PUD. The Commission approved both requests and found that there was no change of material facts since its approval of the 1998 PUD (not the 1989 PUD) that would warrant denying the extension requests. The Commission noted on both occasions that “both the Comprehensive Plan designation and the zoning designation for the site have remained the same since the Commission’s 1998 PUD modification approval.” See Zoning Commission Order Nos. 871-A, p. 2 and 02-51, p. 3 (emphasis added), copies of which are attached as Exhibits B and C, respectively. Upon adoption of the 1998 PUD, the 1989 PUD became superfluous. In fact, since the construction of one of the two discrete buildings (University of California) approved by the 1998 PUD, the 1989 PUD has been rendered impossible to build.

This interpretation of the code section, in light of the careful analysis the Commission provided in approving the 1998 PUD, is really the only reasonable interpretation of the Regulations. The Commission specifically considered whether the PUD and the proposed modifications were still appropriate for the area. Finding in the affirmative, the Commission held that the “PUD modification and change of zoning is not inconsistent with the Comprehensive Plan” and that “[a]pproval of [the] PUD modification application is appropriate because the application is generally consistent with the present character of the area” (Zoning Commission Order No. 638-F, p. 5). Accordingly, the 1998 PUD effectively replaced the 1989 PUD.

The Applicant’s request for an extension examines whether there has been a substantial change in any of the material facts upon which the Commission based its original approval of the 1998 PUD that would undermine the Commission’s justification for approving the 1998 PUD, as required by 11 DCMR section 2408.10(b). The Applicant states in its request that “[n]either the zoning or Plan’s land use designation of the subject property has changed since the PUD was approved” (Applicant’s Motion for Extension of Time, p.5). Accordingly, the Applicant’s request for an extension demonstrates that the PUD, as modified in 1998, is still appropriate for the site, satisfying 11 DCMR section 2408.10(b).

The Applicant acknowledges that there is some confusion because in its statement, it uses “original PUD” to refer to the PUD approved in 1989. This terminology was employed solely to eliminate confusion in distinguishing among what was initially approved, how the PUD was first modified, and those modifications currently proposed. The Applicant referred to the PUD approved in 1989 as the “original” to simplify the timeline and make it obvious to which PUD approval it was referring.

B. Existing Site’s Development Rights.

If the Applicant’s present request to modify the PUD and its request for an extension of time for the PUD are both denied, the residual zoning entitlement of the property is unclear. Typically, when a PUD “expires”, the site reverts to its zoning classification at the time the PUD was first approved. However in this case, the property that is subject to the 1998 PUD has not “expired” in its entirety. A portion of the PUD has been constructed and is now occupied (by the University of California). Some of the benefits of the 1998 PUD have accrued to the property owner and some of the obligations of the 1998 PUD have been effectuated. The PUD Covenant (a copy of which is attached as Exhibit D) changing the zoning and constraining the development has been recorded in the Land Records of the District of Columbia and represents binding, perpetual obligations on the property. Therefore, the portion of the PUD that has not been developed (i.e. the site of the present request) could not revert to the SP-2 Zone District as a matter-of-law. The recordation of the Covenant, pursuant to 11 DCMR § 2409¹ and Condition No. 22 of Order No. 638 changed the zoning to the C-4 Zone District.²

Further, the 1998 PUD actually requires a PUD modification. Condition No. 11 of Order No. 638F states: “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...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.” Thus, the Commission anticipated the potential that one of the 1998 PUD

¹ Section 2409.3 of the Regulations prohibit the issuance of a building permit “unless the applicant has recorded a covenant in the land records of the District of Columbia, between the owner or owners and the District of Columbia, satisfying the Office of the Corporation Counsel and the Zoning Regulations Division, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission (“emphasis added”).

Further, Section 2409.4 of the Regulations states: “Following the recordation of the covenant, the boundaries of the planned unit development shall be designated on the Zoning Map.”

² Zoning Commission Order No. 638, Condition No. 22 states: “The change of zoning from SP-2 to C-4 for Lot 824 shall be effective upon the recordation of a PUD Covenant ...”

buildings might not be built and specifically conditioned its approval of the 1998 PUD on a requirement that the Applicant to file for a modification if, indeed, such an event occurred. In fact, that is the circumstance today and the Applicant has filed such a modification request.

If the modification request is denied, the Applicant could only build what was approved in the 1998 PUD, but only if the Request for Extension of Time is granted. If the modification is denied and the request for extension of time is denied, the site, bound by the PUD covenant, would lose virtually all of its development rights.

Further, the Applicant would also be precluded from filing a "new" PUD application for this site because the property, subsequent to the 1989 PUD, was placed in the Dupont Circle Overlay District. Under the Zoning Regulations, PUD sites within the Dupont Circle Overlay District must be at least one acre in size (11 DCMR § 1503.2). This site is 15,394 square feet in area, approximately 30,000 square feet shy of being eligible for development as a PUD. Accordingly, the future development of the site is uncertain if the PUD expires and a modification is not approved.

C. Conclusion

For the foregoing reasons, the Applicant believes that it has satisfied its burden of proving that an extension of this PUD is appropriate in light of the fact that there have been no substantial changes in material facts upon which the Commission based its approval of the 1998 PUD. The Applicant further maintains that approval of the PUD modification or in the alternative, extending the time for the PUD, is in the best interest of the community because it will ensure the future development of the site with the appropriate controls imposed on it by the Zoning Commission and the PUD process.

Sincerely yours,



Phil Feola



Christine Roddy

Enclosures

cc: Garrett Preis

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2005 a copy of the foregoing document was sent by hand delivery, to the following parties:

Arthur Jackson
Office of Planning
801 North Capitol Street; NE
4th Floor
Washington, DC 20001

Stephen Gell, Esq.
1101 30th Street; NW
Suite 500
Washington, DC 20007

Richard L. Aguglia, Esq.
Hunton & Williams
1900 K Street; NW
Washington, DC 20006

A handwritten signature in black ink, appearing to read "P. Feola", written over a horizontal line.

Phil Feola

A

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.

ZONING COMMISSION ORDER NO. 638-F
Z.C. CASE NO. 98-12M
PAGE NO. 8

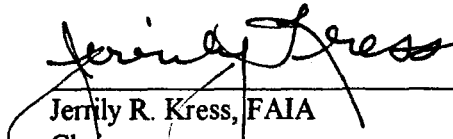
12. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (DCRA) for the PUD modification until the Applicant has recorded a "Notice of Modification" of Z.C. Order No. 638 in the Land Records of the District of Columbia. That 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**.

ZONING COMMISSION ORDER NO. 638-F
Z.C. CASE NO. 98-12M
PAGE NO. 9


Jennly R. Kress, FAIA
Chairperson
Zoning Commission


Sheri Pruitt-Williams
Acting Director
Office of Zoning

ZCO638-F/SPW

B

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.

Z.C. ORDER NO. 971-A
ZONING COMMISSION CASE NO. 01-04M/98-12M/88-32C
PAGE NO. 3

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
Chairman
Zoning Commission


JERRILY R. KRESS, FAIA
Director
Office of Zoning

C

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 02-51 (871-B)
Case No. 02-51/01-04M/98-12M/88-32C
(Extension of a Planned Unit Development Located at
1616 Rhode Island Avenue, N.W. – Rhode Island Associates Limited Partnership)
April 14, 2003

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 extension request). Lot 824 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 commercial uses plus one space for each dwelling unit.

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 property owner, Rhode Island Associates Limited Partnership (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 (on 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, 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 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 financially infeasible. 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.

On September 17, 2001, the Zoning Commission considered HRC's extension request and voted to grant the request and 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 until December 31, 2002.

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 in 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.

Thereafter, HRC determined that it was no longer interested in developing a headquarters building on Lot 82. Despite the contract to purchase, HRC did not buy Lot 82. It relinquished its rights under the contract in late Spring 2002. Prior to the expiration of the extended Order No. 638-F, on December 17, 2002, the Partnership again requested an extension of Zoning Commission Order No. 638-F for a period of two years.

Pursuant to § 2408.10 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.

The Commission believes that an extension of the existing PUD is reasonable and would not adversely affect any party or the residents of the District of Columbia. The Commission finds that the Partnership acted prudently within the marketplace to effectuate Zoning Commission Order No. 638-F. Moreover, the Commission finds that since the date of the termination of HRC's contract rights, the Partnership has continually and actively attempted to develop the site in accordance with Order No. 638-F and Order No. 871-A. The Commission finds that the Partnership's inability to proceed with development of the approved PUD is a result of economic and market conditions that are outside the control of the Partnership.

The Commission also finds that this request for an extension of time within which to commence the PUD project is in the best interests of the District of Columbia, is consistent with the intent

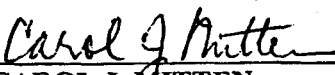
and purposes of the Zoning Regulations, the requirements of Chapter 24 of the Zoning Regulations, the PUD process, and the District of Columbia Comprehensive Plan for the National Capital. The Commission notes that both the Comprehensive Plan designation and the zoning designation for the site have remained the same since the Commission's 1998 PUD modification approval.

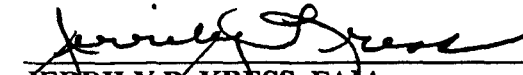
In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order No. 638-F be **EXTENDED** until April 14, 2005. Prior to the expiration of that time, the developer shall file an application for a building permit, as specified in 11 DCMR § 2406.8 and construction shall start on or before April 14, 2006.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

The decision to approve the extension was made at the Commission's public meeting on April 14, 2003, by a vote of 3-0-2 (Anthony J. Hood, John G. Parsons, and James H. Hannaham to **APPROVE**; Peter G. May not present, not voting; and Carol J. Mitten recused herself from this case).

In accordance with 11 DCMR § 3028, this order is final and effective upon publication in the *District of Columbia Register*; that is, on SEP 05 2003.


CAROL J. MITTEN
Chairman
Zoning Commission


JERRILY R. KRESS, FAJA
Director
Office of Zoning

D

4 ; ; 0 0 0 0 0 3 3 3

COVENANT (Chapter 24, 11 D.C.M.R. (Zoning))
(PUD Covenant)

THIS COVENANT, made and entered into this 11th day of April, 1990, by and between DOMINIC F. ANTONELLI, JR. and CHARLES E. SMITH, joint tenants and trustees for Rhode Island Associates Limited Partnership, hereinafter referred to as the "Owner," and EDWARD A. FUCHS and F. WAYNE JARVIS, JR., successors and substitute trustees under a certain Deed of Trust recorded among the Land Records of the District of Columbia as Instrument No. 26724, (hereinafter referred to as the "Trustee") and the DISTRICT OF COLUMBIA, a municipal corporation, hereinafter referred to as the "District."

W I T N E S S E T H :

WHEREAS, the Owner is the record owner in fee simple of certain real property situated in the District of Columbia known as Lot 80 in Square 182 recorded in Book 183 Page 64 in the Office of the Surveyor (hereinafter referred to as the "Subject Property"); and

WHEREAS, the Owner intends to develop the Subject Property for residential and commercial use as a Planned Unit Development (hereinafter referred to as the "Project") under Sections 2400 through 2499.1 of the Zoning Regulations of the District of Columbia, 11 D.C.M.R. (Zoning) (hereinafter referred to as "Zoning Regulations") and pursuant to Zoning Commission Order No. 638 dated November 13, 1989 entered in Zoning Commission Case No. 88-32C and such modifications and amendments thereto as may thereafter be approved by the Zoning Commission;

WHEREAS, Section 2407.3 of the Zoning Regulations requires that the Owner enter into this Covenant with the District assuring the Owner's development and operation of the Project as approved by Zoning Commission Order No. 638, and all modifications or amendments thereto; and

WHEREAS, the Trustee desires to join in the execution of this Declaration of Covenants for the purpose of subordinating the aforementioned Deed of Trust to all provisions set forth herein;

5000042905

50 AUG -2 PM 3:31

NOW THEREFORE, for, and in consideration of, the issuance of permits by the District for the development of the Project and for other good and valuable consideration the mutual receipt and sufficiency of which is hereby acknowledged, the Owner does hereby covenant and agree for itself and its successors, heirs and assigns to and with the District of Columbia that the real property described in Paragraph 1 hereof is, and shall be, held, developed, transferred, sold, conveyed, used and occupied subject to the conditions, covenants and restrictions hereinafter set forth.

1. The Subject Property which is, and shall be, conveyed, transferred, sold and occupied subject to the conditions, covenants and restrictions set forth herein, is located in the District of Columbia, and is more particularly described as Lot 80 in Square 182.

2. The terms and conditions of the approval of the Project for the Subject Property by the Zoning Commission of the District of Columbia, set forth in Zoning Commission Order No. 638 and any modifications or amendments thereto, entered in Zoning Commission Case No. 88-32C, are incorporated herein by reference and made a part hereof as Exhibit 1 and shall be considered a part of this Covenant. The Subject Property will be developed in accordance with the plans approved by said Order and in accordance with the conditions and restrictions set forth herein, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator may authorize. The Owner covenants that it will use the Subject Property only in accordance with the terms of said Order, and as the same may be further amended, modified or changed in accordance with the provisions of Chapter 24 of the Zoning Regulations.

3. If a building permit has not been applied for and construction of the project has not commenced, for reasons resulting from causes beyond the control and fault of the Owners including, but not limited to, Acts of God, changes in economic or

market conditions, labor difficulties, strikes or shortages of labor or material within the time specified in Zoning Commission Order No. 638, it is understood and agreed that the Zoning Commission of the District of Columbia will consider an extension of time for processing of the permits and/or construction of the Project, upon receipt of an appropriate application therefor, but it is understood that the Zoning Commission is not obliged to grant such extensions.

4. In the event that the Subject Property, or any portion thereof, is conveyed, sold or transferred, the said Subject Property or portion thereof so conveyed, sold or transferred, shall be subject to all applicable requirements of Zoning Commission Order No. 638 and all amendments or modifications thereto, applicable requirements of the Zoning Regulations, and all other applicable District of Columbia laws and regulations in effect on the date of said conveyance, sale or transfer.

5. The Owner covenants that if any conveyance of the Subject Property, or a portion thereof, takes place before completion of the Project in accordance with the approval of the Zoning Commission as aforesaid, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns, to develop and use the Subject Property in accordance with the terms and conditions of this Covenant.

6. The covenants and restrictions contained herein shall be deemed covenants to run with the land and shall be binding upon the Owner, its successors and assigns, and all parties hereafter claiming by, through or under it shall be deemed to hold agree and covenant to conform to and observe said restrictions. The District shall have the right to enforce said covenants, conditions and restrictions against the Owner, its successors, heirs and assigns. Said covenants shall bind the parties hereto, their successors, heirs, executors, administrators or assigns.

7. The covenants hereby created may not be extinguished without the written consent of the District. In the event any amendment, modification, rescission or alteration of Zoning Commission Order No. 638 is adopted or authorized by the Zoning Commission, or by a lapse of said Order by its terms, the District shall, upon request, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as appropriate.

8. The obligations of the Owner hereunder shall apply only with respect to the period during which the Owner holds a fee simple interest in the Subject Property or a portion thereof. Whenever the Owner shall cease to own a fee simple interest therein, the obligations thereafter accruing shall be and become the sole obligations of its successor(s) in interest.

9. The Owner shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia and shall file a certified copy of this Covenant with the Zoning Administrator of the District of Columbia.

10. Nothing contained in this Covenant shall be deemed to prevent the Owner, its successors and assigns, from seeking modification, change, alteration, rescission or amendment to Zoning Commission Order No. 638 pursuant to the Zoning Regulations or other applicable rules or regulations.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants as of the day and year first above written.

WITNESS:

[Signature]
Dominic F. Antonelli, Jr.,
Joint Tenant and Trustee

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Covenants as of the day and year first above written.

WITNESS:

[Signature]
Charles E. Smith,
Joint Tenant and Trustee

* * *

Commonwealth OF Virginia
COUNTY OF Arlington to wit:

I, Christine M. Hurst, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Dominic F. Antonelli, Jr., party to that certain Declaration of Covenants bearing date on the 11th day of April, 1990, and hereto annexed personally appeared before me in the aforesaid jurisdiction, THE SAID Dominic F. Antonelli, Jr. being personally well known to me to be the person who executed the said Declaration of Covenants and acknowledged the same to be his/her act and deed.

Given under my hand and seal this 11th day of April A.D., 1990.

[Signature]
Notary Public

My Commission Expires My Commission Expires October 12, 1991

[NOTARIAL SEAL]

* * *

Commonwealth OF Virginia
COUNTY OF Arlington

*
* to wit:
*

I, Christine M. Hurst, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Charles E. Smith, party to that certain Declaration of Covenants bearing date on the 11th day of April, 1990, and hereto annexed personally appeared before me in the aforesaid jurisdiction, THE SAID Charles E. Smith being personally well known to me to be the person who executed the said Declaration of Covenants and acknowledged the same to be his/her act and deed.

Given under my hand and seal this 11th day of April
A.D., 1990.

Christine M. Hurst
Notary Public

My Commission Expires: My Commission Expires October 12, 1991

[NOTARIAL SEAL]

IN WITNESS WHEREOF, on the day and year first hereinabove written, the said substitute trustee under the Instrument recorded among the land records of the District of Columbia on October 30, 1973 as Instrument No. 26724, has caused these presents to be signed in its name, Edward A. Fuchs, Trustee.

SUBSTITUTE TRUSTEE UNDER INSTRUMENT
RECORDED AMONG THE LAND RECORDS OF
THE DISTRICT OF COLUMBIA ON OCTOBER
30, 1973 AS INSTRUMENT NO. 26724

WITNESS:

Michael J. Delby

By: *Edward A. Fuchs*
Edward A. Fuchs, Trustee *24*

* * *

DISTRICT OF COLUMBIA

* to wit:

I, *Michael J. Delby*, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT Edward A. Fuchs, Trustee, party to that certain Declaration of Covenants bearing date on the 11th day of April, 1990, and hereto annexed personally appeared before me in said jurisdiction, THE SAID Edward A. Fuchs, Trustee, being personally well known to me to be the person who executed the said Declaration of Covenants and acknowledged the same to be his act and deed.

Given under my hand and seal this *11th* day of *Aug*
A.D., 1990.

Michael J. Delby
Notary Public

My Commission Expires: *October 17, 1991*

[NOTARIAL SEAL]

IN WITNESS WHEREOF, on the day and year first hereinabove written, the said substitute trustee under the Instrument recorded among the land records of the District of Columbia on October 30, 1973 as Instrument No. 26724 has caused these presents to be signed in its name, F. Wayne Jarvis, Jr., Trustee.

SUBSTITUTE TRUSTEE UNDER INSTRUMENT
RECORDED AMONG THE LAND RECORDS OF
THE DISTRICT OF COLUMBIA ON OCTOBER
30, 1973 AS INSTRUMENT NO. 26724

WITNESS:

By:

F. Wayne Jarvis, Jr., Trustee

* * *

DISTRICT OF COLUMBIA

* to wit:

I, Bryan J. Ailly, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT F. Wayne Jarvis, Jr., Trustee, party to that certain Declaration of Covenants bearing date on the 11th day of April, 1990, and hereto annexed personally appeared before me in said jurisdiction, THE SAID F. Wayne Jarvis, Jr. being personally well known to me to be the person who executed the said Declaration of Covenants and acknowledged the same to be his act and deed.

Given under my hand and seal this 15th day of May
A.D., 1990.

Bryan J. Ailly
Notary Public

My Commission Expires: October 14, 1991

[NOTARIAL SEAL]

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary of the District of Columbia, who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1982.

DISTRICT OF COLUMBIA
(a municipal corporation)

WITNESS:

Brenda H. Kinnis

By: [Signature]
Secretary

(CORPORATE SEAL)

* * *

DISTRICT OF COLUMBIA, ss:

I, Kathleen E. Arnold, a Notary Public in and for the District of Columbia, do hereby certify that TERI Y. DOKS who is personally known to me as the person named as Secretary of the District of Columbia in the foregoing Covenant bearing date on the 11th day of April, 1990, and hereunto annexed, personally appeared before me in said District and, as Secretary of the District of Columbia aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the District of Columbia.

GIVEN under by hand and seal this 27th day of July, 1990.

Kathleen E. Arnold
Notary Public, D.C.

My Commission Expires: My Commission Expires April 14, 1991

APPROVED FOR LEGAL SUFFICIENCY:

Assistant Corporation Counsel, D.C.

Date: _____

DEC 15 1989

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

Pursuant 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.

District of Columbia Register

ZONING COMMISSION ORDER NO. 633
CASE NO. 88-32C
PAGE 2

DEC 15 1989

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.

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 3

DEC 15 1989

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 amenities 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

5 3 3 0 0 0 0 3 3 3

District of Columbia Register

ZONING COMMISSION ORDER NO. 638

CASE NO. 88-32C

PAGE 4

DEC 15 1989

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 Opportunities

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.

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 5

DEC 15 1989

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 foot 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

District of Columbia Register

ZONING COMMISSION ORDER NO. 638

CASE NO. 88-32C

PAGE 6

DEC 15 1989

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

DEC 15 1989

- 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. If it 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:

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 8

DEC 15 1989

- 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

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 9

DEC 15 1989

- 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 fraternity 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;

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 10

DEC 13 1989

- (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.

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 11

DEC 15 1989

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 inconsistent with the Comprehensive Plan for the National Capital.

DEC 15 1988

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:

649

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 13

DEC 15 1989

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. *delete 4th level*
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). *6*
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.

5 5 5 0 0 0 0 0 5 5 5

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 14

DEC 15 1989

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

File 1/2/90

District of Columbia Register

ZONING COMMISSION ORDER NO. 638

CASE NO. 88-32C

PAGE 15

DEC 15 1989

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 Schools, 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 covenant, 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

District of Columbia Register

ZONING COMMISSION ORDER NO. 638
CASE NO. 88-32C
PAGE 16

DEC 13 1989

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

472

NOTICE OF MODIFICATION

of

ZONING COMMISSION ORDER NOS. 638, 638-A, 638-B,
638-C, 638-D, 638-E and 871
(Lot 80 in Square 182)

THIS NOTICE OF MODIFICATION, entered into as of this 13th
day of April, 1999, by KINGDON GOULD, JR. and ROBERT
P. KOGOD, Joint Tenants and Trustees for Rhode Island
Associates Limited Partnership, a District of Columbia limited
partnership.

W I T N E S S E T H :

WHEREAS, in Order No. 638, dated November 13, 1989, the
Zoning Commission approved a Planned Unit Development and
zoning map amendment for Lot 80, Square 182, and subsequently:

- (a) in Order No. 638-A, dated February 12, 1990, the
Zoning Commission granted a modification and
extension of the Planned Unit Development;
- (b) in Order No. 638-B, dated June 8, 1992, the Zoning
commission granted an extension of the validity of
the Planned Unit Development;
- (c) in Order No. 638-C, dated August 1, 1994, the Zoning
Commission granted a modification and extension of
the validity of the Planned Unit Development; and
- (d) in Order No. 638-D, dated November 14, 1994, the
Zoning Commission granted a modification of the
Planned Unit Development; and
- (e) in Order No. 638-E, dated July 9, 1997 and July 14,
1997, the Zoning Commission granted a modification
and extension of the validity of the Planned Unit
Development; and
- (f) in Order No. 871, dated December 14, 1998, the Zoning
commission granted a modification and extension of
the validity of the Planned Unit Development.

66 : 6:56

59:13 : 5:07

WHEREAS, the Planned Unit Development site consists of former Record Lot 80 in Square 182.¹ (SEE NOTE BELOW) X

WHEREAS, under Condition 12 in Order No. 871, no building permit shall be issued for the modification until the applicant has recorded a "Notice of Modification" of the Zoning Commission Orders in the Land Records of the District of Columbia and that Notice of Modification shall include a true copy of Zoning Commission Order Nos. 638, 638-A, 638-B, 638-C, 638-D, 638-E and 871.

NOW, THEREFORE, in accordance with Condition No. 12 of Order No. 871, this Notice of Modification is hereby recorded. Order Nos. 638, 638-A, 638-B, 638-C, 638-D, 638-E and 871 are attached hereto as Exhibits A, B, C, D, E, F and G, respectively.

IN WITNESS WHEREOF, on the day and year first hereinabove written, the undersigned have executed this Notice of Modification.

WITNESS: RHODE ISLAND ASSOCIATES
LIMITED PARTNERSHIP

By: _____
Kingdon Gould, Jr.
Joint Tenant and Trustee

WITNESS: RHODE ISLAND ASSOCIATES
LIMITED PARTNERSHIP

By: _____
Robert P. Kogut
Joint Tenant and Trustee

NOTE: Such former Record Lot 80 now known as Lots 82 and 83 in Square 182 as per plat recorded in Book 192 Page 162 in the Office of the Surveyor for the District of Columbia.

LAND OFFICE
RECORDS AND
MAPPING
DIVISION

¹ As found in the records of the D.C. Surveyor in Book 183 at page 64.

WHEREAS, the Planned Unit Development site consists of former Record Lot 80 in Square 182.' (SEE NOTE BELOW) *Y*

WHEREAS, under Condition 12 in Order No. 871, no building permit shall be issued for the modification until the applicant has recorded a "Notice of Modification" of the Zoning Commission Orders in the Land Records of the District of Columbia and that Notice of Modification shall include a true copy of Zoning Commission Order Nos. 638, 638-A, 638-B, 638-C, 638-D, 638-E and 871.

NOW, THEREFORE, in accordance with Condition No. 12 of Order No. 871, this Notice of Modification is hereby recorded. Order Nos. 638, 638-A, 638-B, 638-C, 638-D, 638-E and 871 are attached hereto as Exhibits A, B, C, D, E, F and G, respectively.

IN WITNESS WHEREOF, on the day and year first hereinabove written, the undersigned have executed this Notice of Modification.

WITNESS:

RHODE ISLAND ASSOCIATES
LIMITED PARTNERSHIP

By: *Kingdon Gould, Jr.*

Kingdon Gould, Jr.
Joint Tenant and Trustee

WITNESS:

RHODE ISLAND ASSOCIATES
LIMITED PARTNERSHIP

By: *Robert P. Kogod*

Robert P. Kogod
Joint Tenant and Trustee

Y NOTE: Such former Record Lot 80 now known as Lots 82 and 83 in Square 182 as per plat recorded in Book 192 Page 162 in the Office of the Surveyor for the District of Columbia.

LAND OFFICE
PLATING SECTION
RECORDS & LAND
COMMISSION

As found in the records of the D.C. Surveyor in Book 183 at page 64.

District of Columbia } ss:

I, Linda J. Marciano, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Kingdon Gould, Jr., party to that certain Notice of Modification bearing date of the 12th day of April, 1999, and hereto annexed, personally appeared before me in the aforesaid jurisdiction, THE SAID Kingdon Gould, Jr. being personally well-known to me to be the person who executed the said Notice of Modification and acknowledged the same to be his act and deed.

Given under my hand and seal this 24th day of April, 1999.

Linda J. Marciano
Notary Public

My Commission expires: 5/14/03

[Seal]

)
) ss:
)

I, _____, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Robert P. Kogod, party to that certain Notice of Modification bearing date of the _____ day of _____, 19____, and hereto annexed, personally appeared before me in the aforesaid jurisdiction, THE SAID Robert P. Kogod being personally well-known to me to be the person who executed the said Notice of Modification and acknowledged the same to be his act and deed.

Given under my hand and seal this _____ day of _____, 19____.

Notary Public

My Commission expires: _____

[Seal]

133564v3

)
) ss:
)

I, _____, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Kingdon Gould, Jr., party to that certain Notice of Modification bearing date of the _____ day of _____, 19____, and hereto annexed, personally appeared before me in the aforesaid jurisdiction, THE SAID Kingdon Gould, Jr. being personally well-known to me to be the person who executed the said Notice of Modification and acknowledged the same to be his act and deed.

Given under my hand and seal this _____ day of _____, 19____.

 Notary Public

My Commission expires: _____

[Seal]

State of Virginia)
 County of Arlington) ss:

I, Patricia M. Davis, a Notary Public in and for the aforesaid jurisdiction, DO HEREBY CERTIFY THAT Robert P. Kogod, party to that certain Notice of Modification bearing date of the 13th day of April, 1964, and hereto annexed, personally appeared before me in the aforesaid jurisdiction, THE SAID Robert P. Kogod being personally well-known to me to be the person who executed the said Notice of Modification and acknowledged the same to be his act and deed.

Given under my hand and seal this 7th day of April, 1964.

Patricia M. Davis
 Notary Public

My Commission expires: 6/3/67

[Seal]

133564V3

7260108

Government of the District of Columbia
ZONING COMMISSION



DISTRICT OF COLUMBIA, DC:

I attest and certify that I am the Director of the District of Columbia Office of Zoning, and that attached hereto, and bearing my initials in red ink in the lower right corner of each page is a true copy of the following record that is in my custody and possession in my official capacity: orders Nos. 638, 638A, 638B, 638C, 638D, 638E and of the Zoning Commission of the District of Columbia.

- a. Sixteen page Order No. 638 of the Zoning Commission of the District of Columbia, dated November 13, 1989 in Case No. 88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, December 15, 1989.

- b. Four page Order No. 638-A of the Zoning Commission of the District of Columbia, dated February 12, 1990 in Case No. 88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, March 9, 1990.

- c. Three page Order No. 638-B of the Zoning Commission of the District of Columbia, dated June 8, 1992 in Case No. 88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, June 26, 1992.

- d. Eight page Order No. 638-C of the Zoning Commission of the District of Columbia, dated August 1, 1994 in Case No. 93-13M/88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, September 23, 1994.

- e. Five page Order No. 683-D of the Zoning Commission of the District of Columbia, dated November 14, 1994 in Case No. 93-13M/88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, March 17, 1995.

- f. Four page Order No. 638-E of the Zoning Commission of the District of Columbia, dated June 9, 1997 and July 14, 1997 in case No. 93-13M/88-32C;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, July 25, 1997.

- g. Eight page Order No. 871 of the Zoning Commission of the District of Columbia, dated December 14, 1998 in case 98-12M;

The records of this office do not evidence any change of zoning regarding this PUD site since the effective date of this order, February 26, 1998.


 SHERI M. PRUITT-WILLIAMS
 Acting Director
 Office of Zoning

Signed and sworn to before me this 2nd day of April, 1999.


 Betty J. Williams
 NOTARY PUBLIC, D.C.

My Commission expires February 14, 2001

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

ZONING COMMISSION ORDER NO. 871
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

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 percent.

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 manner 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.

CAB

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 98-12M
Z.C. ORDER NO. 271
PAGE NO. 2

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

DISTRICT OF COLUMBIA REGISTER

Z.C. CASE NO. 99-12M
Z.C. ORDER NO. 871
PAGE NO. 3

FEB 26 1999

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 35 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,

CAB

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 98-134
Z.C. ORDER NO. 871
PAGE NO. 4

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 Plan; it is not inconsistent with the Comprehensive Plan; it is consistent with the purposes of the originally approved PUD; it is modifying it to satisfy 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, public 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 (NCPA) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPA, 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 NCPA 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-serviced 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

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 98-12M
 Z.C. ORDER NO. 871
 PAGE NO. 5

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

GPB

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 18-124
Z.C. ORDER NO. 871
PAGE NO. 4

through 638-E, for property located in Square 152, 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 Herman-Cox Architects and Escoff 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 lan 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/offices/retailed use, 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 lan 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-five percent of the total site as it exists before subdivision.
 6. The University building shall provide a minimum of 44 parking spaces, and the lan 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 lan 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 Rice Source Agreement executed with the Department of Employment Services and the Memorandum of Understanding executed with MEOC, 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

22279

CAB

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 99-1294
Z.C. ORDER NO. 871
PAGE NO. 1

the first to occur of (1) the issuance of a building permit for the lot or (2) the issuance of a building permit for the University building;

(b) prior to the issuance of a building permit for the lot, 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(e) below, this obligation encumbers only the portion of the property designated for lot 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 sublet 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, stairs, 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 to 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 3407.3, 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 and the Director of the Office of Zoning

2280

CFD

DISTRICT OF COLUMBIA REGISTER

FEB 26 1999

Z.C. CASE NO. 96-124
 Z.C. ORDER NO. 871
 PAGE NO. 8

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 as 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, and John G. Parsons to APPROVE WITH CONDITIONS).

The order was adopted by the Zoning Commission at its public meeting on _____, by a vote of _____.

In accordance with the provisions of 11 DCMR 3022, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

C/PB

01232100010

**NOTICE OF MODIFICATION
of
ZONING COMMISSION ORDER NOS. 638, 638-A, 638-B,
638-C, 638-D, 638-E and 871
(Lot 80 in Square 182)**

Kingdon Gould, Jr. and
Robert P. Kogod, Trustees
c/o The Charles E. Smith Companies
2345 Crystal Drive
Crystal City
Arlington, VA 22202

01232100010

Handwritten signature

CHICAGO TITLE INSURANCE COMPANY
 1129 20th STREET, N.W. SUITE 100
 WASHINGTON, D.C. 20036
 TEL: 202-462-1000
 FAX: 202-462-1001

CHICAGO TITLE INSURANCE COMPANY
 1129 20th STREET, N.W. SUITE 100
 WASHINGTON, D.C. 20036
 TEL: 202-462-1000
 FAX: 202-462-1001