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November 23, 2005

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VIA HAND DELIVERY

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

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

Dear Chairperson Mitten and Members of the Commission:

Rhode Island Associates Limited Partnership ("**Applicant**") files this submission in opposition to the Advisory Neighborhood's ("**ANC**") brief filed on November 17, 2005. The Applicant believes that the ANC's brief should be struck from the record because it exceeds the limited scope of what the Zoning Commission ("**Commission**") requested the parties to brief. Alternatively, even if the Commission considers the ANC's brief, its arguments must be discounted because:

- the Commission has decided as a matter of law that the Dupont Circle Overlay Zone should not apply to this planned unit development ("**PUD**");
- the PUD is consistent with the Comprehensive Plan;
- the Applicant satisfied its burden under 11 DCMR Section 2408.10(b);
- the Applicant satisfied its burden in demonstrating that the PUD should be modified for good cause; and
- the ANC previously supported office use for this PUD as recently as 2001.

A detailed analysis of each of these statements is provided below.

ZONING COMMISSION
District of Columbia

CASE NO. 02-51-A
EXHIBIT NO. 31

I. The Advisory Neighborhood Commission's Filing Should Be Struck From the Record

Section 3012.5 of the Zoning Regulations states that "the ANC shall file a written report with the Zoning Commission at least seven (7) days in advance of the hearing." The written report is to include "[t]he issues and concerns of the ANC about the applications or petition, as related to the standards against which the application or petition shall be judged." 11 DCMR § 3012.5(e). Given that the hearing in the above-referenced matter was initially scheduled for September 29, 2005, the ANC should have submitted its brief in opposition to the project no later than September 22, 2005. At the hearing on September 29, 2005, the Commission granted a continuance, but indicated that with few exceptions, the filing deadlines were still to be calculated as if the hearing had gone forth on September 29. (Transcript for Rhode Island Associates LP, September 29, 2005 ("**Transcript**"), p. 32.) One of the few exceptions where the Commission extended the filing deadlines was to accept briefs on two specific matters: the fate of the property if the PUD modification and request for an extension are denied and whether the Applicant met its burden of proof under 11 DCMR section 2408.10(b). (Transcript, pp.12, 28.)

On November 17, 2005, Mr. Stephen Gell submitted a brief on behalf of the Advisory Neighborhood Commission, which analyzed the general issue of whether the PUD should be extended. Specifically, the ANC elaborated on its belief that the PUD is not consistent with the Dupont Circle Overlay Zone or the Ward 2 Comprehensive Plan – both of which are issues the Commission never indicated it needed assistance in resolving. The ANC is attempting to bootstrap its testimony regarding its general opposition and objections to the project to its brief of the matters specified by the Commission in order to enter it in the record. To the extent that the ANC's brief exceeds the scope of the Commission's request, the Applicant requests that it not be considered and be struck from the record.

II. The ANC Does Not Raise Any New Issues That Have Not Already Been Resolved By the Commission

A. The Commission has decided as a matter of law that the Dupont Circle Overlay Zone should not apply to the PUD

This PUD is consistent with the Dupont Overlay Zone and this has been repeatedly confirmed by the Commission. The Dupont Overlay Zone was adopted in January 1992 to preserve the "predominately residential character, independent small

retail businesses, human scale streetscapes, and historic character...” 11 DCMR § 1501.1. It calls for maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development. 11 DCMR § 1501.4(c). The PUD interferes with none of these goals. The project is not replacing existing residential uses and the density of the proposed office building is consistent with other buildings on the block. The ANC states that the PUD will “further shift [the site] out of the realm of “mixed use” and toward full commercial use.” ANC Brief, p. 3. To the contrary, the PUD will be a true mixed-use development in that the University of California dedicates a substantial amount of its building to residential units for its students and the proposed project will complement that building with its office use.

The Commission has affirmed that the PUD is consistent with the overlay. Since 1992, this PUD has been before the Commission 9 times. In June 1992, just five months after the adoption of the Dupont Circle Overlay Zone, the Commission had the opportunity to reconsider whether the PUD was appropriate for the area in light of the overlay. The Commission agreed with the Office of Planning’s assessment that “the generalized land use of the area has remained unchanged since the decision of the case...” and extended the PUD. (Order No. 638-B, p. 2.) The decision to extend the PUD signified that the PUD does not conflict with the goals and objectives of the Overlay Zone.

Significantly, in 1998, the Commission approved a modification to the PUD to divide the site into two portions. One half of the site was approved to allow the Applicant to develop the property for a mixed-use building for office, academic and residential uses for the University of California. The other half of the site was approved for the construction of a commercial hotel. Again, the Commission did not find that the PUD, as modified, conflicted with the Dupont Overlay Zone and it approved the modification. See Order No. 638-F. Accordingly, the Applicant proceeded with its development plans and one portion of the PUD was constructed and is now occupied by the University of California.

Despite the Commission’s findings, the ANC attempts to insert this issue into the present proceeding and argues in its brief that the Dupont Circle Overlay Zone should apply to the PUD and that “granting this PUD will unnecessarily compromise the plan for Dupont Circle and specifically this SP-2 Zone.” Brief of ANC 2B, Party in ZC Case No. 02-51A, Opposing An Extension of Time for PUD at 1616 Rhode Island Ave., N.W. (“ANC Brief”), p. 3. It is clear that the Commission has held otherwise as a matter of law and resolved this issue over thirteen years ago.

B. The PUD Is Consistent With The Comprehensive Plan

The PUD site is designated as part of a “High Density Commercial” zone on the District of Columbia Generalized Land Use Element Map of the Comprehensive Plan and the Commission has found that the PUD is consistent with the Comprehensive Plan each time it has considered extending or modifying the PUD. In fact, when approving the modification of the PUD in 1998, the Commission noted that “the approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.” Order No. 638-F, p. 5. Yet, the ANC dedicates a significant portion of its brief attempting to demonstrate that the PUD is not consistent with the Ward 2 Comprehensive Plan, despite the fact that the Comprehensive Plan supersedes the Ward 2 Comprehensive Plan.

The ANC states that the “[the Ward 2] Comprehensive Plan also deplores ‘the continuing erosion of residential use by office use...’ in the Dupont Circle Neighborhood Ring.” ANC Brief, p. 3 (citing 10 DCMR § 1363.1). The Ward 2 Plan recognizes, however, that the “general pattern of development in Dupont Circle is established. Commercial and residential renovation and infill will continue...” 10 DCMR § 1363.1. The Ward 2 Plan is clear that office development is appropriate and, in fact, a necessity in order to compete with suburban office development. 10 DCMR § 1328.1. The ANC’s attempt to undermine the PUD’s conformity with the Comprehensive Plan by demonstrating inconsistencies with the Ward 2 Plan is futile, as the PUD is also consistent with the Ward 2 Comprehensive Plan.

C. The Applicant Satisfied Its Burden Under 11 DCMR Section 2408.10(b)

The Applicant’s initial request for a time extension, as well as the submission filed on November 17, 2005, addresses the issue of whether the Applicant satisfied its burden under 11 DCMR § 2408.10(b), which requires the Commission to determine whether there has been a substantial change in the material facts upon which the Commission originally approved the PUD. Specifically, the Applicant states in its request for an extension 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). The ANC fails to address the fact that this language was included in the Applicant’s request.

The ANC challenges the Applicant’s assertion that there has not been a substantial change in the material facts upon which the Commission originally approved the PUD by naming various “new” developments in Dupont Circle. The ANC does not

offer a rationale as to why these “new” developments should be considered “substantial”. Despite this, most of the projects cited by the ANC were developed before 1998; therefore, when the Commission approved the modification in 1998, it considered the effect the changes had on the appropriateness of the PUD and still held the PUD was valid for the site.

The ANC cites to Order No. 910-A to demonstrate that the Commission has the authority to deny an extension where circumstances have changed. The Applicant does not contest the Commission’s authority to deny the extension request, but submits that the circumstances of the case cited by the ANC are not at all analogous to the case at hand.

D. The Applicant Satisfied Its Burden In Demonstrating That The PUD Should Be Modified For Good Cause

Section 2408.11 states that “an extension of the validity of a PUD may be granted by the Commission for good cause shown if an applicant has demonstrated with substantial evidence [that]...an inability to obtain sufficient project financing for the PUD, following an applicant’s diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant’s reasonable control.” The Applicant states in its request for an extension that it has had difficulty developing the site as a hotel in light of the existing economics of the hotel industry and the trend toward lower cost accommodations. (Applicant’s Motion for an Extension of Time, p. 4.) The Applicant continued to say that the size of the site and the abundance of hotels in the area make using the site for a hotel impracticable. Id. The Applicant has prepared an in-depth presentation for the hearing on this matter to explain in further detail those issues it has already raised in its prehearing submissions.

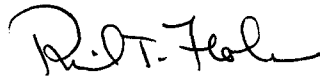
III. The ANC Previously Supported This PUD And Approved It For Office Use

When the Applicant first submitted its application for a PUD in 1989, the ANC supported it. See Order No. 638, p. 9. The ANC continued to support the subsequent requests for an extension of the PUD and the modification in 1998. Importantly, the ANC supported the HRC’s request in 2001 to modify the portion of the PUD affecting Lot 82 to allow for office use, a request that is similar to the present modification application. See a copy of the letter in support, attached as Exhibit A. It is not apparent what has changed in the past four years to account for the ANC’s change of opinion.

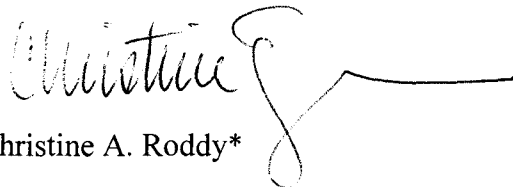
IV. Conclusion

The ANC's November 17, 2005, submission went beyond the scope of what was requested by the Commission. The ANC had the opportunity to voice its concern with extending the PUD prior to the September hearing and it failed to do so. Despite its attempt to enter evidence in the record via its response to the Commission's request for clarification on two specific issues, the ANC does not raise any additional issues that have not already been addressed. The Applicant respectfully requests that the Commission grant its application to modify the PUD or, in the alternative, to extend the PUD.

Regards,



Phil T. Feola



Christine A. Roddy*

* Not licensed to practice in the District of Columbia; licensed to practice in the State of Georgia and supervised by members of the DC Bar.

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DUPONT CIRCLE
ADVISORY NEIGHBORHOOD COMMISSION (ANC 2B)
Government of the District of Columbia
P.O. Box 33224
Washington, D.C. 20033
Phone: 202-296-7333 E-Mail: ANC2B04@aol.com

July 1, 2001

Carol J. Mitten
Chair, Zoning Commission for the District of Columbia
441 4th Street, N.W. Suite 210
Washington, D.C. 20001

**RE: Case No. 01-04M/98-12M/88-32C (PUD Modification @ 1616 Rhode Island Avenue, N.W. -
The Human Rights Campaign**

Dear Mrs. Mitten and members of the Commission:

At its publicly announced meeting on June 13, 2001, a quorum being present and voting, ANC 2B voted to support the following motion:

ANC 2B supports the request of The Human Rights Campaign (HRC), to further modify a previously approved Planned Unit Development (PUD), Order #871, to allow development of an office building rather than an inn at 1616 Rhode Island Avenue, N.W. (Square 182, Lot 82).

ANC 2B understands the applicant will make available for public use any unused parking spaces pending a thorough security threat analysis.

Please contact Commissioner Doug Damron, in whose Single Member District this business operates, at (202) 533-2511 for additional information or assistance. Thank you for your attention to this matter.

ON BEHALF OF THE COMMISSION:

Very truly yours,

Vincent Micone
Chair ANC 2B

cc: Jeffrey Sachese

ZONING COMMISSION
District of Columbia

Case 01-04M/98-12M/88-32C
Exhibit 18

SINGLE MEMBER DISTRICT COMMISSIONERS AND OFFICERS

2B01 Norma Chaplain	2B02 Vince Micone Chair	2B03 David Jolliffe	2B04 Jeff Hopp Treasurer	2B05 Doug Damron Secretary	2B06 Marilyn Newton	2B07 Irv Morgan Vice Chair
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**DUPONT CIRCLE
ADVISORY NEIGHBORHOOD COMMISSION (ANC 2B)
Government of the District of Columbia
P.O. Box 33224
Washington, D.C. 20033
Phone: 202-296-7333 E-Mail: ANC2B04@aol.com**

September 14, 2001

Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

**RE: Zoning Commission Case No. 01-04M
Human Rights Campaign PUD Modification**

Dear Ms. Mitten and Members of the Commission:

I am the single-member district representative for Advisory Neighborhood Commission (ANC) 2B05. I'm writing to provide preliminary comments from the ANC in response to the letter from counsel for the Human Rights Campaign (HRC) to the Zoning Commission dated September 12, 2001. That letter indicates that due to unusually high construction cost bids, HRC will likely not be able to construct its proposed building. Accordingly, the letter asks the Zoning Commission to approve a one-year extension of Zoning Commission Order No. 871 approving hotel or inn use of the property.

The stated intent of this request is to allow HRC to finalize a contract with a hotel developer to purchase the site from HRC shortly after it closes on the property on October 11. The result would be construction of the previously approved hotel use on the site rather than HRC's proposed office headquarters building.

ANC 2B has not had the opportunity to discuss this issue at a formal meeting. But as the single-member district representative, and having discussed the matter with the chair of the ANC, I can offer the following comments for the ANC:

- We supported the 1998 PUD that resulted in approval of hotel or inn use on this site, and have no objection to that use being reinstated.
- We urge the Zoning Commission to grant the requested one-year extension of Order No. 871.

ANC 2B regrets that the Human Rights Campaign will not be able to build its office headquarters on the site, but the hotel use as previously approved will also be a good use of the property. Thank you for considering our recommendation.

Sincerely,

Doug Damron
ANC 2B05

01-04M/98-12M/88-32C
33

SINGLE MEMBER DISTRICT COMMISSIONERS AND OFFICERS

2B01 Norma Chaplain	2B02 Vince Micone Chair	2B03 David Jolliffe	2B04 Jeff Hopp Treasurer	2B05 Doug Damron Secretary	2B06 Marilyn Newton	2B07 Irv Morgan Vice Chair
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Chairperson Mitten and Members of the Commission
November 23, 2005
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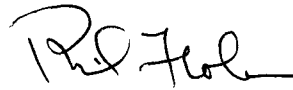
CERTIFICATE OF SERVICE

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

Arthur Jackson
Office of Planning
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Stephen Gell, Esq.
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1900 K Street; NW
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A handwritten signature in black ink, appearing to read "Phil Feola", written over a horizontal line.

Phil Feola