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December 7, 2006

Ms. Carol Mitten, Chair
DC Zoning Commission
441 4th Street, N.W.
Washington, DC 20001

Re: ZC Case No. 02-51A

Dear Chairman Mitten:

Enclosed is a Brief of ANC 2B, party in ZC Case No. 02-51A, opposing an extension of time and modification for PUD at 1616 Rhode Island Ave, N.W.

We have three witnesses for the hearing scheduled to take place on December 14, 2006, at 6:30 PM:

Oakleigh Thorne, MAI, CRE. Mr. Thorne is being offered as an expert real estate appraisal witness. His qualifications are attached.

Mr. Thorne's testimony will concern the value added to the project by changing from hotel use to office use. He will also testify as to the appropriate level of amenities for a project of this magnitude.

Mark Bjorge, resident of the neighborhood and ANC Commissioner for District 2B05

Mr. Bjorge will testify about the impact of the project on the neighborhood, the relationship between the project and the Dupont Circle Overlay Zone Regulations, and the need for appropriate amenities should the project be approved.

ZONING COMMISSION
District of Columbia

CASE NO. 02-51A
EXHIBIT NO. 49

Rob Halligan, President of the Dupont Circle Citizens' Association

Mr. Halligan will testify about the impact of the project on the immediate neighborhood and the larger area represented by DCCA. His testimony will also include the relationship between the project and the Dupont Circle Overlay Zone Regulations, and the need for appropriate amenities should the project be approved.

We believe that our case should take no more than 60 minutes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen N. Gell", written in a cursive style.

Stephen N. Gell

Cc: Darren Bowie
Mark Bjorge
Rob Halligan
Phil Feola, Esq.

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Dear Chairman Mitten:

**Brief of ANC 2B, party in ZC Case No. 02-51A, opposing an extension of time
and modification for PUD at 1616 Rhode Island Ave, N.W.**

No vote was taken by the Commission to extend the project

On Dec. 1, early in the Commission's deliberation, the Chair mentioned the need for an extension but the Commission adjourned without granting any. On July 6, 2006, the Zoning Commission set down the proposal for hearing on December 14, 2006. Again, no mention was made of the extension save the testimony of the Office of Planning representative, Jennifer Steingasser:

In December of '05 the Zoning Commission considered the application and the extension – approved the extension and asked the Applicant to revisit the design elements of the PUD modification.

Even if the Commission had desired to grant an extension, it would have fallen short of legal requirements in that "great weight" was not given to the ANC's objection to the grant of the extension nor was there any articulation of the ZC's reasons for granting. Since no action was taken to extend the project nor any specific term of years mentioned, the ZC has yet to take that step. We renew our objections to the extension on the grounds that the passage of time and the adoption of the Dupont Circle Overlay Zone have intervened and have made the grant of an extension inappropriate. Moreover, Any obligation the District may have had to give a developer a reasonable opportunity to market the site has been long dissipated. It has been 17 years since the original PUD was adopted in 1989.

Applicant has not met the burden of showing no substantial changes.

§ 2408.10(b) provides that the Zoning Commission may grant an extension if it determines that

There is no substantial change in any of the material facts upon which the Commission based its original PUD approval that would undermine the Commission's justification for approving the original PUD."

Rhode Island Associates has not submitted evidence for the proposition that there has been "no substantial change" and, therefore, fails one of the key tests for an extension.

Indeed, in ZC Order No. 910-A, Case No. 98-17F/01-31TE, (copy attached) Florida Rock was denied an extension of their PUD for an office building in the Southeast partially because other zoning changes were being considered. The Commission noted that a proposed overlay "would alter the matter of right development allowed on the PUD site."¹

There were other changes in the material facts on which the Commission had based its approval. Among the underlying changes were these events which are not substantially different from the case before us:

- A. A target tenant chose a different site.
- B. Planning efforts nearby had "raised awareness of the potential for a mix of commercial, recreational, and residential uses."
- C. Improvements in private housing market and the climate for market-rate housing had improved.
- D. There was other office development nearby

The Zoning Commission concluded that there had been "substantial changes that undermined the Commission's justification for approving the PUD originally" at 4

See also Order No. 664-C, Case No. 98-02M/97-12M/94-17C/91-19M/89-19C, July 31, 2003 (Washington Development Group) (partial copy attached) for a reiteration of the tests for an extension. In that case, the Zoning Commission took note of OP's testimony that

there have been substantial changes in the materials facts (e.g. development patterns and planning policies) upon which the Commission based its original 1990 approval of the PUD that would undermine the Commission's justification

¹ The Comprehensive Plan Generalized Land Use Map calls for a mix of medium-high density commercial, high-density residential, and production and employment use of the PUD site. The Commission is presently considering the final proposals in Case No. 96-3/89-1 to establish an overlay zone in the Buzzard Point-Capitol Gateway area. If adopted, the underlying zoning of both the PUD site and the amenity site would change from M to BP/W-2. The overlay would alter the matter-of-right development allowed on the PUD site, including requiring a setback of 75 feet along the waterfront, and allowing review of projects along the waterfront, with proposed projects becoming subject to design-related standards. At 3.

for approving the original PUD. OP noted that residential construction now surrounds the PUD site, hotel use no longer suffers from poor market conditions, and that the residential component to the PUD is too small. OP also asserted that the configuration of the PUD is inconsistent with the current policies and goals of connecting development in the Downtown East section of the city to the Downtown core. At 6

In the instant case, if the applicable set of justifications is pegged at the adoption of the last modification, the assumptions on which the Commission approved a conversion to a hotel, such as market forces, have changed dramatically, as demonstrated by the fact that applicant has had no success in attracting a hotel and seeks to abandon that course. If it should be pegged to the original approval in 1989, clearly the adoption of the Dupont Circle Overlay Zone in 1992 is a "substantial change" that has "undermined the Commission's justification for approving the PUD originally. It dictates a scale of development far different from that contemplated. For instance, it mandates only 6.0 FAR of which only 3.5 may be for non-residential use.

In addition, there have been substantial changes in the neighborhood since the PUD was first approved in 1989. The following commercial projects have been built nearby:

1. St. Matthews Court at 17th and Rhode Island.
2. The former Governor's House Hotel, on the northeast corner of 17th & R.I., across the street from the subject site, has permission to expand.
3. National Association of Home Builders at 15th and Massachusetts completed a large expansion.
4. A 10 story apartment building was built on the northeast corner of 15th & Massachusetts.
5. A high-rise hotel was constructed on the north side of the 1400 block of Massachusetts Ave.
6. The Solar Building is under construction.
7. National Geographic at 17th and M has expanded into a new building.
8. A new building is being constructed on the site of the former Washington Post parking garage.

Applicant has failed to show good cause for the extension

Applicant has not met its burden of demonstrating with substantial evidence that there is good cause for an extension. §2408.10 (c). Applicant must demonstrate with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control.

- (b) An inability to secure all required governmental agency approvals for a PUD ...
- (c) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. §2408.11

Applicant, somewhat off-handedly, states that since the modification of the PUD, "the Partnership has attempted to attract a hotel to the site to no avail." There is no detail of the measures undertaken to define the user market, enlist the aid of brokers, advertise in appropriate journals, etc. In the absence of such a showing, the Commission must reject the request.

In ZC Order No. 573, Case No. 87-18M/86-1C, May 23, 1988, (copy attached) Boston Properties sought a modification to its mixed-use PUD to convert office use to residential use on one site but at the same time remove residential requirements from another site which would then be developed for non-residential uses. In denying the modification and extension, the Commission was persuaded significantly by ANC 2A's views that the latter site was more suited to residential development and concluded that approval would not enhance and promote the mixed use character of the neighborhood and would encourage excessive non-residential development in an area which the Plan designates for a mix of residential and non-residential development. At 8

They also noted that the increased value of the site for office development far outweighed the meager amenities proffered.

Applicant ignored the clear mandate of the Zoning Commission to drastically revise the project before bringing it back for consideration.

In proposing an office building at 8.5 FAR, the applicant has failed to meet the clear direction given by the Commission to drastically rethink the project and to submit a first stage PUD. The elimination of a story has done nothing to address the density of the project. It is the same FAR and nearly the same height as before. The few feet it lost in height were restored by increasing the bulk. Attention was not paid to reducing the physical and use impact on the neighborhood in terms of building bulk, number of employees, competition for parking, increased traffic, number of visitors, etc. These were all elements that entered into the decision to adopt the DCOZ and in the Commissioners' direction to reduce the size and intensity of the project:

Mitten: I mean we've had one Commissioner who just basically told you not to bring back the same project. I don't know how much more direction you need. And we've had two Commissioners that have basically commented on height and density. I think you have been given some direction. I think it would clearly be a mistake to come back with the same project. At p. 36

The discussion revolved around the Applicant's taking a fresh look at the project and returning with something different in terms of height, density, FAR, etc.

compatibility in the scale of new buildings with older, low scale buildings by restricting the maximum permitted height and floor area ratio of new buildings to that of the underlying zone; ...

- b) n/a
- c) Enhance the residential character of the area by ... controlling the scale, location, and density of commercial and residential development;
- d) Ensure compatibility of development with the Comprehensive Plan; ...

The underlying zone of the property is SP-2, which has a height limitation of 90 feet and an FAR of 6.0. §§ 530.1, 531.1 Only 3.5 of the 6.0 FAR may be for non-residential uses. § 531.1 Moreover, the DCOZ requires that FAR and height remain at the matter-of-right limitations, not the more liberal limits permitted for PUDs. § 1503.1 The property was considered to be a buffer between the high density commercial use of downtown and the residential area of Dupont Circle. This was reconfirmed in subsequent zoning actions by the Zoning Commission.

The Dupont Circle Overlay Zone was adopted after careful review of the planning data and recommendations of the Office of Planning and numerous community groups. To hold that that decision should, once again, after 14 years, be superseded by a developer's desire to have yet a sixth extension is both illogical and violative of the spirit of community planning.

Finally, given the intensity of other office and hotel development in the neighborhood, granting this PUD will unnecessarily compromise the plan for Dupont Circle and specifically this SP-2 Zone. The proposed use of this site for high-density offices will increase the density of the underlying SP buffer zone and further shift it out of the realm of "mixed use" and towards full commercial use.

Grant of the proposed modification would violate the intent of the Ward 2 Comprehensive Plan

While the applicant correctly points out that this property is in the Central Employment Area and job-generating development is to be encouraged as a general proposition, he fails to take account of the specific goals and actions promoted by the Plan for Ward 2 in general and the Dupont Circle neighborhood in particular. When the Comprehensive Plan calls for office development in Ward 2, it is primarily in the Development Opportunities Areas of Mount Vernon Square, Buzzard Point and North Capitol Street. §1328.1 The PUD site is not in those areas.

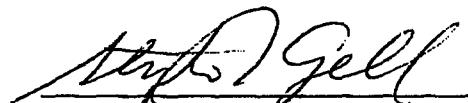
The Comprehensive Plan also deplores "the continuing erosion of residential use by office use ..." in the Dupont Circle Neighborhood Ring. §1361.1 Specifically, it calls for actions in support of the land use objectives such as maintaining the area between Connecticut Avenue and 15th Street and between Massachusetts and Florida Avenues as a "residential area to promote the ... expansion of current residential uses, and discourage the expansion of commercial uses ..." § 1327.1 (a)(2)

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2006, a copy of the foregoing **Brief of ANC 2B, party in ZC Case No. 02-51A opposing an extension of time and modification for PUD at 1616 Rhode Island Ave, N.W.** was faxed to:

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