



Pillsbury
Winthrop
Shaw
Pittman LLP

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

December 12, 2006

Phil Feola
Phil.Feola@pillsburylaw.com
202.663.8789

VIA HAND DELIVERY

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

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 December 7, 2006. Many of the arguments raised by the ANC have already been addressed in the Applicant's November 23, 2005, filing as well as by the Commission at previous hearings on this matter. Nevertheless, the Applicant submits its responses to the ANC's allegations in order to avoid any confusion at the December 14, 2006, hearing.

I. The Commission Has Decided to Hold the Extension Request in Abeyance Until It Decides the Modification Request

The ANC attempts to make the argument that the planned unit development ("PUD") has expired since the Zoning Commission did not take action to extend it; therefore, the modification request currently before the Commission is improper. This is directly contrary to the position the Zoning Commission took at the set down meeting on May 9, 2005, and the hearing held on December 1, 2005. At the 2005 setdown meeting, Alan Bergstein of the Office of the Attorney General advised that the extension request could be held in abeyance until the modification issue was addressed: "you can keep it in abeyance...[i]t doesn't mean they can go forward with the PUD. But it allows them to keep it in place, so that they can, in essence, request a modification." (May 9, 2005 Transcript, p. 57.) The Commission acknowledged at the December hearing that "[the Commission doesn't] have to vote on a time extension now...we don't even have to have a motion." (December 1, 2005 Transcript, p. 16.) Deciding the extension request before the modification request unnecessarily complicates this case; the extension becomes moot if the Commission approves the first stage application.

ZONING COMMISSION
District of Columbia

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

In the event the Commission denies the first stage application, the Applicant has met its burden for an extension pursuant to 11 DCMR Section 2408.10(b). There have not been any substantial changes in material fact that would require the Commission to deny the extension. Neither the zoning nor the Comprehensive Plan's land use designation for this site or surrounding area have changed; thus, it can be said that the District still finds high-density commercial use appropriate for this site. Moreover, the ANC cites several developments that have been constructed that constitute "substantial changes in the neighborhood" (without any explanation as to why they are designated as such); yet, many occurred before the Commission approved other extension requests (all supported by ANC 2B), the most recent being in 2003. Presumably, if the Commission agreed that those developments were "substantial" they would have been compelled, by law, to deny the previous extension requests.

Similarly, the ANC's argument that the Applicant has not shown good cause for the extension is without basis. At both September 29, 2005 and December 1, 2005 hearings, the Applicant presented Patrick Phillips, an economic analyst, to detail why hotel use is not appropriate for the site; however, the Zoning Commission did not permit any testimony at either hearing. As the Applicant's pre-hearing statement indicates, it will present Mr. Phillips as an expert at its hearing on December 14, 2006, to provide evidence that economic and market conditions beyond the Applicant's control have rendered hotel use at the site impracticable.

II. The Proposed Design Reduces Both the Height and the Density of the Proposed Building

The Zoning Commission expressed its desire for the Applicant to take a "fresh look" at its proposal. Two commissioners were clear that their comments were driven by the procedural circumstances of the case and not because they felt the height and density was inappropriate. Nevertheless, the Applicant removed one floor from its project, decreasing both the density and the height of the building. The proposed building has a floor area ratio ("FAR") of 8.4 and a height of 104 feet.¹ At the setdown meeting in July, the Office of Planning noted that the building "integrates more carefully into the block in which it sits and recognizes the elements of both its neighbors." (July 10, 2006 Transcript, p. 70.) The Office of Planning recommended that the application be set down and the Zoning Commission agreed.

¹ The ANC Resolution erroneously refers to a 110 foot proposed office building with a 8.5 FAR.

III. The PUD is Consistent with the Land Use Designations for this Site

A. The PUD is consistent with the Dupont Circle Overlay Zone

The Commission has repeatedly confirmed that this PUD is consistent with the Dupont Circle Overlay Zone. Since the adoption of the Overlay in 1992, this case has been before the Commission on at least one occasion to request a modification. The Commission approved a modification to allow the Applicant to develop one half of 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. Apparently, the Commission did not find the PUD inconsistent with the Overlay Zone at that time. Moreover, Chairperson Mitten stated at the public hearing on December 1, 2005, that subjecting the site to the Dupont Circle Overlay “makes [her] uncomfortable because [she] think[s] that’s almost too harsh a condition.” (December 1, 2005 Transcript, p. 9.) The Commission went on to say later in the hearing that notwithstanding Mr. Gell’s argument, the Commission is “not comfortable with sending [the Applicant] back with SP-2, matter-of-right, okay? We’re not comfortable.” (Id. at p. 32.)

B. The PUD is consistent with the Ward 2 Comprehensive Plan

The ANC’s focus would be more appropriately placed on whether the PUD is consistent with the Comprehensive Plan since it supersedes the Ward 2 Comprehensive Plan. Perhaps the ANC dismisses the Comprehensive Plan because it is clear that the PUD is consistent with it. 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. In previous hearings on this Case, the Commission has 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. The Office of Planning recently reiterated this sentiment at the July 2006 setdown meeting when it noted that “the OP believes the project is worthy of set down, *is consistent with the Comprehensive Plan*, [and] recommend[s] it be set down for public hearing.” (July 10, 2006 Transcript, pp. 70-71)(emphasis added.)

Even if the Commission chose to overlook the fact that the Ward 2 Comprehensive Plan is superseded by the Comprehensive Plan, the Ward 2 Plan recognizes that the “general pattern of development in Dupont Circle is established [and] Commercial and residential renovation and infill will continue...” 10 DCMR § 1363.1. Additionally, the proposed office building is appropriate and, in fact, a necessity in order

to compete with suburban office development, which is one of the objectives of the Ward 2 Plan. 10 DCMR § 1328.1.

IV. The Amenities Proffered by the Applicant is Generous by any Standards

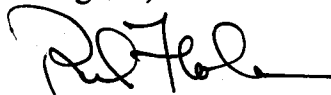
The ANC alleges in its Resolution that the Applicant's amenities package is "woefully inadequate."² The Applicant has offered the ANC an amenities package valued at over seven hundred thousand dollars and finds it difficult to believe that that sum of money could be considered "woefully inadequate." The ANC now states that it believes \$3,000,000 in monetary contributions is more appropriate; the Applicant finds this amount excessive.

The Applicant's amenities package is comprised of \$335,000 monetary contributions to the community and a green building package valued at \$400,000. On December 4, 2006, the Applicant offered to increase its monetary contributions in exchange for the ANC's support and the understanding that they would not appeal a favorable decision by the Zoning Commission. The negotiations collapsed when the ANC and the Applicant could not reach an agreement on when the money would be distributed. Nevertheless, the Applicant believes that a benefits and amenities package valued in excess of \$700,000 is more than generous for the building it proposes.

IV. Conclusion

The ANC's brief does not raise any issues that have not already been addressed by the Zoning Commission. For this reason and the reasons detailed above, the Applicant asks that the Zoning Commission disregard the ANC's submission and approve the first stage of this PUD.

Regards,



Phil T. Feola



Christine A. Roddy

² The ANC Resolution incorrectly states that there was a unanimous vote to deny support for the PUD. In fact, Commissioner Movahedi voted in opposition to the Motion.

Chairperson Mitten and Members of the Commission
December 12, 2006
Page 5

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was hand delivered or sent by first class mail to the following individuals on December 12, 2006:

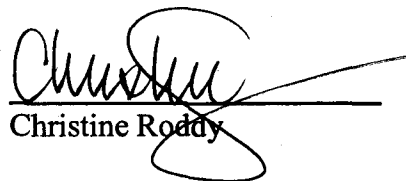
Arthur Jackson
Office of Planning
801 North Capitol Street; NE
4th Floor
Washington, DC 20001

ANC 2B
#9 Dupont Circle, NW
Washington, DC 20036

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

Gordon Schanck
University of California Office of the President
1111 Franklin Street, 6th. Floor
Oakland, CA 94607-5200

By:


Christine Roddy