

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 910-B
Case No. 01-31TE/98-17F/95-16P
(Florida Rock Properties PUD Extension)
March 10, 2003

By Zoning Commission Order No. 850, dated June 8, 1998, the Zoning Commission for the District of Columbia (the "Commission") granted to Florida Rock Properties, Inc. (the "Applicant") first-stage approval of a planned unit development ("PUD") and related map amendment from M to C-3-C for Lots 800, 801, and 802 in Square 707; Lot 809 in Square 708; Lots 807 and 808 in Square 708E; and Lot 806 in Square 708S (the "PUD Site"), having a street address of 100 Potomac Avenue, S.E. The PUD Site is bounded by Potomac Avenue on the north, 1st Street on the east, the Anacostia River on the south, and the right-of-way of the Frederick Douglass Bridge (the "Bridge") on the west. The PUD Site contains approximately 253,502 square feet of land area, with more than 800 linear feet of frontage along the Anacostia River.

By Order No. 910, dated November 8, 1999, the Commission granted second-stage approval of the PUD. The approval allowed approximately 1.5 million square feet of commercial development in two buildings constructed above a single below-grade, off-street parking facility (the "approved PUD"). The buildings were to be of varying heights: the highest building at 130 feet located closest to the Bridge and with buildings of 110 feet in height oriented toward 1st Street. The approved PUD contained ground level retail and service commercial in those portions of the project fronting on Potomac Avenue and on the Anacostia River. The approved PUD included a waterfront esplanade that was to be no less than fifty-five (55) feet in width extending along the Anacostia River. Two independent waterfront food pavilions and a public, outdoor performance space located within the waterfront esplanade were to be provided. The approved PUD, seeking to maximize open space, was planned to occupy only fifty-eight percent (58%) of the PUD Site. Landscaped gateways for public access to the waterfront from Potomac Avenue were provided at Half and 1st Streets, S.E.

The Applicant also committed to a development program for a nearby square (Square 664E), west of the Bridge at the terminus of South Capitol Street. That square, containing approximately 90,000 square feet of land area, was programmed to be developed with approximately 253,000 square feet of residential development, a park of approximately 40,000 square feet at the foot of South Capitol Street, and facilities for a non-profit organization, the Earth Conservation Corps. Additionally a waterfront esplanade for the square's full frontage along the Anacostia River was to be provided.

On November 9, 2001, the Applicant timely filed a request for extension of the second-stage PUD approval. This request was the first time extension request made by the Applicant. If not made, the second-stage approval granted by Order No. 910 would otherwise have expired on November 26, 2001.

At the Commission's regular monthly meeting on May 13, 2002, the Commission reviewed the Applicant's request for time extension, as well as a report dated April 19, 2002, filed by the District of Columbia Office of Planning ("OP") related to the Applicant's request. The OP report noted numerous changes in the environs of the PUD Site as well as changes in District of Columbia planning policy that had occurred since the initial approval of the PUD. In OP's opinion, those changes necessitated that modifications to the program of the approved PUD be made if the project were to be developed. Notwithstanding the changes, however, OP recommended approval of the Applicant's extension request, having reached an understanding with the Applicant that the Applicant would work with OP to adjust the project's program to address those changes.

The Commission took note of the changes highlighted in the OP report, including the recently adopted text and related map amendment for the Capitol Gateway Overlay District. The Commission expressed concern that if a time extension to the second-stage approval were granted, the Applicant would then have the opportunity to construct the approved PUD in the face of what the Commission perceived as conflicts with the direction of the District's planning efforts since the second-stage approval had been granted. In light of those factors, the Commission voted to deny the Applicant's request for a time extension of the approval of the PUD.

The Applicant, by various communications to the Commission during subsequent months, sought to have the Commission give further consideration to the Applicant's request for time extension, offering to refrain from seeking permits to construct the approved PUD for one year while agreeing to work with OP to identify acceptable modifications to the program of the approved PUD. The Commission declined to give further consideration to the Applicant's extension request and on November 22, 2002, Order No. 910-A was issued denying the Applicant's time extension request.

On December 2, 2002, the Applicant filed with the Commission a motion for reconsideration of the Commission's action to deny the time extension as contained in Order No. 910-A. The motion for reconsideration was timely filed under 11 DCMR, § 3029.

In its motion, the Applicant asserted that the Commission had erred in denying the time extension, but also put forth a set of design guidelines, developed in consultation with OP, which would constrain any modifications to the approved PUD for submission to the Commission for its consideration. The design guidelines materially changed the proposed program for the project, reducing the maximum heights of buildings, reducing the permitted density, increasing the width of the waterfront esplanade along the riverfront, and introducing additional access to the waterfront from Potomac Avenue, thus, effectively reducing the perceived massing of the approved PUD. Additionally, the Applicant proposed to change the project from one containing retail and office uses only to one of a mix of residential, hotel, office, and retail/commercial uses.

The OP filed a report with the Commission, dated December 3, 2002, supporting the Applicant's request for reconsideration. The OP recommended that the Commission reverse its decision and afford a limited time extension to the Applicant to file modified plans for the PUD with the Commission, based upon the design guidelines that had been produced in cooperation with OP and that were included in the Applicant's motion for reconsideration.

At its January 13, 2003, regular monthly meeting, and after giving due consideration to the Applicant's motion, including the proffered design guidelines and the recommendation of OP, the Commission voted not to reconsider its previous denial of the time extension for the second-stage approval of the PUD, but agreed to reconsider its previous denial of a time extension related to the first-stage approval of the PUD. During the Commission's consideration of the motion for reconsideration, the Commission noted its continued discomfort with the height permitted under the proposed design guidelines offered by the Applicant; the Commission indicated that lesser heights of buildings were preferable. On February 14, 2003, the Applicant submitted to the Commission, a revision to the proposed design guidelines, having a revision date of February 13, 2003, which proposed lesser heights of buildings and attendant changes in gross floor area calculations.

At its re-scheduled regular monthly meeting held on February 24, 2003, the Commission voted to grant a time extension of the first-stage approval of the PUD for a period of one year, subject to and as modified by the OP endorsed revised design guidelines submitted by the Applicant, as contained in the Applicant's February 14, 2003 submission to the Commission.

A PUD may be extended if the Commission determines that "[t]here 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" (See 11 DCMR § 2408.10). Conversely, the Commission may deny a time extension request where there are such changes. In the case of the request for extension for the second-stage approval, the Commission has determined that the changes identified by OP were so material as to make extension of the second-stage approval, allowing the Applicant to proceed directly to construction of the approved PUD, not justified.

Whereas the Commission finds that there have been substantial physical and policy changes affecting the PUD Site and its environs sufficient in substance to warrant denial of an extension for the second-stage approval of the PUD, the changes in circumstances do not preclude extension of the first-stage approval of the PUD. The Applicant has agreed to accept a set of design guidelines, developed with OP, which mitigate any aspects of the first-stage approval of the PUD that might be adverse to or in contravention with the current circumstances in the vicinity of the PUD Site. The process to consider the second-stage PUD application will allow the Commission to take into account all relevant factors, including proffered amenities and benefits, before construction can proceed, including proffered amenities and public benefits.

The Commission takes note that pursuant to 11 DCMR § 2407.10, the Commission is authorized to extend the validity of a first-stage PUD in its discretion.

Preserving the first-stage of a PUD, while denying the second-stage, is supported by case law. Even though the approval of the second-stage PUD incorporates that which was approved in the

first-stage, approval of the first-stage of a PUD has been found by the District of Columbia Court of Appeals to remain reviewable under the District of Columbia Administrative Procedures Act even after approval of the second-stage. (See *Friendship Neighborhood Coalition v. District of Columbia Zoning Commission*, 516 A.2d 532 (D.C. 1986), (petition for review of first-stage of a PUD held in abeyance pending conclusion of Commission's review of second-stage of the PUD), citing *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 426 A.2d 327,331 (D.C. 1981), (Commission's decision to approve or deny a first-stage PUD application is appealable under the D.C. Administrative Procedures Act)). Therefore, approval of a first-stage PUD can be seen to stand alone as an independent final action by the Commission.

Furthermore, this bifurcated approach is akin to the practice outlined in 11 DCMR § 2407.12. That section, applicable to a consolidated PUD review, allows for the Commission to simultaneously approve the first-stage of a PUD, but deny the second-stage PUD approval.

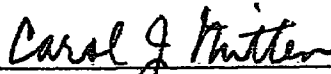
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the validity of Zoning Commission Order No. 850 be extended for a period of one (1) year from the effective date of this Order for the Applicant to file a second-stage PUD application consistent with the "Design Guidelines for Modification of Planned Unit Development," revised as of February 13, 2003, which are attached hereto and incorporated herein by reference.

The Commission, on January 13, 2003, voted to **DENY** in part and to **APPROVE** in part the Applicant's motion for reconsideration of the Commission's denial of a time extension of the Applicant's second-stage PUD approval, on a vote of 3-0-2 (Carol J. Mitten, John G. Parsons, and Anthony J. Hood to deny extension of the second-stage PUD approval and to reconsider its previous denial of the first-stage PUD approval; James H. Hannaham and Peter G. May, not present and not voting).


The Commission on February 24, 2003, voted to **APPROVE** an extension of the Applicant's first-stage PUD approval, subject to the referenced revised design guidelines, for a period of one (1) year, from the effective date of this Order, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, James H. Hannaham, and Peter G. May).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on March 10, 2003, by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, James H. Hannaham, and Peter G. May).

In accordance with the provisions of 11 DCMR §3028, this Order shall become final effective upon publication in the *D. C. Register* that is on MAY 23 2003.



Carol J. Mitten
Chairman
D.C. Zoning Commission



Jerry R. Kress, FAIA
Director
Office of Zoning

Attachment to Z.C. Order No 910-B

Design Guidelines for Modification of Planned Unit Development

Florida Rock Properties, Inc. ("FRP")

Zoning Commission Case No.: 01-31TE/98-17F

I. 100 Potomac Avenue

1. Site Plan Organization

- a. The site plan for the PUD Site shall be modified to reflect the proposed development of a minimum of three (3) independent buildings, creating a minimum of two (2) publicly-accessible, primarily pedestrian-oriented passages through the PUD Site for access from Potomac Avenue to the Anacostia River waterfront (the "Waterfront").

2. Site Perimeter Setback and Build-to Requirements

- a. Potomac Avenue, SE – Buildings fronting along Potomac Avenue, SE shall be designed to face on the Potomac Avenue, SE right-of-way line with no setback from that right-of-way, except for façade articulation and fenestration and breaks for pedestrian access to the Waterfront.
- b. First Street, SE – No building, fronting on what would be a theoretical extension of the right-of-way of First Street, SE through the PUD Site to the Waterfront, shall extend into area of the PUD Site covered by this theoretical extension of the First Street, SE, right-of-way.
- c. Anacostia River – To provide space for a broad esplanade for the full length of the PUD Site along the Waterfront, buildings would be set back at least seventy-five (75) feet from the exterior face of the Anacostia River bulkhead along the PUD Site. This setback line shall be perpendicular to the Anacostia River bulkhead. The design of the façades of buildings fronting on the Waterfront shall be further modulated behind this setback line to achieve a variety of setback dimensions for the buildings fronting on the Waterfront.
- d. Frederick Douglass Bridge – All buildings on the PUD Site shall be set back from eastern edge of the structure of the Bridge. Buildings shall not be located closer to the structure of the Bridge than the eastern boundary of the established right-of-way fixed in the official records of the District of Columbia, within which the Bridge structure is located. Actual building site locations fronting on the Bridge shall be coordinated with and may be adjusted based upon the findings of the DC DOT Corridor Study for the South Capitol Street and Bridge relocation being

undertaken as of the date of these Design Guidelines ("DC DOT Corridor Study").

3. Mid-block Points of Public Access to the Waterfront

- a. Half Street, SE - The development plan for the PUD Site shall include the theoretical extension of Half Street, SE to the Waterfront as a pedestrian-focused, open-to-the sky, publicly-accessible passageway, with a width of no less than sixty (60) feet at any point along the passageway; a limited number of motorized vehicles may be permitted to use the passageway to permit vehicular access to the proposed residential development, including a possible hotel fronting on the Waterfront.
- b. Additional Access Through the PUD Site – The development plan for the PUD Site shall include a minimum of one additional pedestrian-oriented, open-to-the sky, publicly-accessible passageway, with a width of no less than forty (40) feet at any point along the passageway; the passageway shall be located east of Half Street, SE, and west of First Street, SE, with this passageway having the intended purpose of providing an additional pedestrian-oriented passageway from Potomac Avenue, SE to the Waterfront.

4. Building Height, Bulk Restrictions, and Design Objectives

- a. General – Height of buildings on the PUD Site shall create a varied silhouette of building heights, as seen from across the Anacostia River. With that in mind, any building(s) located in the area of the PUD Site west of the theoretical extension of Half Street, SE (as described in Item 3 above), the height of building may not exceed 110 feet; for the area east of the theoretical extension of Half Street, SE and west of the additional access through the PUD Site (as described in Item 3.b. above), the height of any building shall not exceed 100 feet, provided that OP and FRP may explore an increase in the height of any building proposed to be located in this area if the same would increase the amount of non-transient residential housing in the PUD; and for the area east of the additional pedestrian passageway described above and First Street, SE, the height of building may not exceed ninety (90) feet.
- b. Potomac Avenue, SE – The building(s) fronting on Potomac Avenue, SE shall rise to allowable heights with no setback in the massing. Building facades shall be developed so as to create a street-wall condition, which engages the historic L'Enfant grid, provided that façade articulation, fenestration, and possible setbacks of the building facades at upper elevations of the buildings shall be permitted.
- c. First Street, SE – At a minimum, the buildings fronting on First Street, SE (including the theoretical extension thereof) shall setback a minimum of ten (10)

feet above the height of sixty-five (65) feet. Primary building material may be glass.

- d. Anacostia River Waterfront - The buildings fronting on the Waterfront shall be articulated with varying setbacks of different widths and dimensions at various elevations along the Waterfront facing façades to avoid a monolithic appearance for the buildings along the Waterfront, the intent being to create a multifaceted and interesting project appearance along the Anacostia River, coordinated with the design of various vistas, views, passageways, and open spaces on the PUD Site to be developed with any application for modification of the PUD as approved.
- e. Frederick Douglass Bridge Façade – The façade of buildings fronting the Bridge and its right-of-way will reflect this area as a major gateway to the monumental core of Washington, D.C. at the foot of South Capitol Street; façade development will also be evaluated within the recommendations of the DC DOT Corridor Study.
- f. Façade Materials of PUD Buildings - Building materials shall be primarily masonry and glass in character. Variation in materials colors shall distinguish the buildings on the PUD Site from one another so as to create an ensemble of buildings rather than the appearance of a single large structure.

5. Development Program Requirements

- a. General – The intention of the development program is to create a mixed-use, waterfront environment of residential, office, and commercial uses.
- b. The ground levels of all buildings shall maximize uses, which open to and are intended to activate the adjacent streets and planned open spaces. A minimum of fifty percent (50%) of the net useable area of the aggregate of all ground levels in the PUD shall be designated to retail, cultural, or community uses, which uses it is believed will serve to promote and encourage visitation of the Waterfront. All ground level areas shall be designed to allow a twelve (12) foot floor-to-ceiling height and shall be designed so as to anticipate future changes in program use. Ground level areas fronting on the Waterfront should be designed to give the appearance from the esplanade that those ground level spaces are multi-storied, spacious, and open.

Understanding that there is an elevation change in the PUD Site from Potomac Avenue, SE down to the Anacostia River, net useable areas of the various ground levels of the buildings shall be deemed to be those areas of the ground levels that directly front on Potomac Avenue, SE, First Street, SE, the passageway described in Item 3 above, and the Waterfront, and which would be reasonably accessible from those areas and useable for the purposes described above; the term "useable area" shall specifically exclude areas on those levels designated or used for

building entrances and lobbies and related facilities, elevator banks, staircases and corridors related thereto, mechanical, electrical and fire control rooms, parking garage entrances and other related facilities, off-street loading facilities and other related facilities, and service corridors related to any of the above.

- c. Those portions of the ground levels fronting on the Bridge in buildings will be evaluated in light of the recommendations of the DC DOT Corridor Study to determine if a more animated ground level area in that location would be appropriate to ensure that these areas can appropriately address possible pedestrian presence in those locations.
- d. All legally required, on-site parking shall be located below grade; other parking provided may be located above grade, but shall be located so as not to impede pedestrian uses of the open spaces, vistas and views on the PUD Site, or prevent the dedication of ground level spaces to preferred uses as specified in paragraph 5.b. above.
- e. The remaining development program above ground levels shall include commercial and residential uses (including potential hotel uses) with a maximum allowable commercial development potential of 625,000 gross square feet; and a minimum residential development of 440,000 square feet of gross floor area of hotel and residential uses, provided that no less than 160 units of residential, non-transient housing, based upon an average gross floor area of 1,200 square feet per unit, would be provided for.
- f. The maximum permitted building area on the PUD Site shall be 1,115,400 gross square feet for a total of 4.4 FAR.

6. Project Amenities of PUD

- a. General – The general approach to the PUD amenities shall consist of public space improvements in and about the vicinity of the PUD Site, including areas to the north and east of the PUD Site.
- b. Public Access to the Waterfront – Access through the PUD Site to the Waterfront, including plaza connections from Potomac Avenue, SE, shall be maintained as privately-owned, publicly-accessible, and appropriately landscaped open spaces.
- c. Anacostia Esplanade and Riverwalk – The PUD shall provide for continuous publicly-accessible esplanade of no less than seventy-five (75) feet in width, on the PUD Site, including designated walkways and bicycle lanes. In addition to development of the esplanade on the PUD Site, FRP would design and develop a riverwalk/pathway of no less than twelve (12) feet in width stretching eastward from the PUD Site to the site known as the Southeast Federal Center ("SEFC"), over sites owned by the District of Columbia and the DC Water and Sewer Authority. The riverwalk/pathway would be intended to afford a pedestrian and

bicycle connection between the esplanade on the PUD Site and the proposed SEFC riverside facilities. Waterfront redevelopment is not contemplated as being part of this amenity. FRP would maintain the riverwalk/pathway for a period of no less than five (5) years after its development.

- d. Parks and Plazas – In addition to the esplanade and open spaces on the PUD Site and the riverwalk/pathway described above, FRP shall design and develop public open spaces at two locations adjacent to the PUD Site as urban parks. The first space would be the triangle park reservation to the north of the FRP site on Potomac Avenue ("Reservation 247"), containing approximately 16,000 square feet of land area more or less; the second space would be an area at the terminus of First Street, SE immediately adjacent to the PUD Site and fronting on the ECC pumphouse. FRP shall maintain each of these public spaces for a period of no less than five (5) years after its development.
- e. Sustainable Design – All buildings on the PUD Site shall be designed to achieve USGBC LEED certification, including state-of-the-art best practices for all open spaces and amenity areas.