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,

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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 is 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 0 5 2003.

CAROL J. MITTEN
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning