

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

This transcript constitutes the minutes
from the public hearing held on December 1, 2005.

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P-R-O-C-E-E-D-I-N-G-S

6:58 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, December 1, 2005. My name is Carol Mitten and joining me this evening are Vice-Chairman Anthony Hood and Commissioners Mike Turnbull, John Parsons, and Greg Jeffries.

The subject of this evening's hearing is on the Commission Case 02-151A and is a continuation of our September 29, 2005 hearing. This request by Rhode Island Associates Limited Partnership for approval of a modification of an approved planned unit development and a two-year time extension for property located at 1626 Rhode Island Avenue N.W., which is known as lots 82 and 83 and square 182.

Notice of today's hearing was published in the *D.C. Register* on July 22, 2005. And copies of that hearing announcement are available to you, and I think they're near the door.

This hearing will be conducted in accordance with the Provisions of 11 DCMR Section 3022 and the order of procedure will be as follows. We'll take up any preliminary matters, followed by the

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1 presentation of the Applicant's case, report by the
2 Office of Planning, report by other Government
3 agencies, report by the affected Advisory Neighborhood
4 Commission in this case it's 2B, organizations and
5 persons in support and organizations and persons in
6 opposition.

7 The following time constraints will be
8 maintained in this hearing. The Applicant will have
9 45 minutes. We don't usually put time limits on the
10 ANC. Let's take that off my statement in the future.
11 Organizations will have five minutes and individuals
12 will have three minutes.

13 The Commission intends to adhere to these
14 time limits as strictly as possible in order to hear
15 the case in a reasonable amount of time. The
16 Commission reserves the right to change the time
17 limits for presentations if necessary and notes that
18 no time shall be ceded.

19 All persons appearing before the
20 Commission are to fill out two witness cards. Those
21 cards are also on the table near the door. Upon
22 coming forward to speak to the Commission please give
23 both cards to the reporter who is sitting to our
24 right.

25 Please be advised that this proceeding is

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1 being recorded by the court reporter. Accordingly we
2 ask you to refrain from making any disruptive noises
3 in the hearing room. When presenting information to
4 the Commission we ask you to come forward and sit at
5 the table and turn on and speak into the microphone
6 first stating your name and home address. When you're
7 finished speaking, please turn the microphone off so
8 that it doesn't pick up any background noise.

9 The decision of the Commission in this
10 case must be based exclusively on the public record.
11 To avoid any appearance to the contrary the Commission
12 requests that persons present not engage the members
13 of the Commission in conversation during a recess or
14 at any other time. Staff will be available throughout
15 the hearing to answer any procedural questions. And
16 you can direct those to Ms. Schellin.

17 Please turn off all beepers and cell
18 phones at this time so as not to disrupt these
19 proceedings.

20 And now we'll take up any preliminary
21 matters, and I know that we have a few. Ms. Schellin,
22 I'll let you tee up any that you would like to.

23 MS. SCHELLIN: The staff has no others
24 other than the ones that you have before you.

25 CHAIRPERSON MITTEN: Okay. The first

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1 issue that we have is we have a late filing by the ANC
2 and that filing is Exhibit No. 29 in the record. We
3 also have the Applicant's objection to the late filing
4 which we received today. I just have to be honest
5 that we've only had a cursory read of the objections
6 to the late filing, speaking for myself. So I'd ask
7 what the Commission's pleasure is on accepting the
8 late filing by the ANC?

9 VICE-CHAIRPERSON HOOD: Madame Chair, I'll
10 have to be honest, I didn't get a chance to look
11 through that package. The late filing that we got for
12 the objection, could you point me to it?

13 CHAIRPERSON MITTEN: All right. Well here
14 I'll hand you mine.

15 VICE-CHAIRPERSON HOOD: Thank you, ma'am.

16 CHAIRPERSON MITTEN: We just need a few
17 minutes to look this over.

18 Maybe I'll just clarify that the objection
19 from the Applicant is not because it was late, it's
20 because of the content of it.

21 Here's what I'd suggest. The Applicant
22 doesn't object to the late filing but rather objects
23 to the content.

24 The first issue that we're going to take
25 up is the time extension. I believe that to the

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1 extent that the Applicant is suggesting that certain
2 things that the agency filed are beyond the scope of
3 what we asked to be submitted and given that you are
4 in a hearing context here, we would take in anything
5 that was filed in that context. We can just narrow
6 our consideration of whatever the agency submitted
7 that relates to the time extension itself and ignore
8 the other factors unless we proceed past the time
9 extension issue, therefore, accept the late filing by
10 the ANC.

11 Is there any objection to not accepting
12 the filing by the ANC?

13 VICE-CHAIRPERSON HOOD: No objection.

14 CHAIRPERSON MITTEN: Okay. So then the
15 next preliminary matter --

16 MR. GELL: Excuse me.

17 CHAIRPERSON MITTEN: Mr. Gell.

18 MR. GELL: Could you repeat that statement
19 please?

20 CHAIRPERSON MITTEN: First of all, just
21 state your name for the record.

22 MR. GELL: Stephen Gell, attorney for the
23 ANC. I think you said, "Is there any objection to not
24 accepting?" I think you meant any objection to
25 accepting.

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1 CHAIRPERSON MITTEN: Okay. I definitely
2 intended to say is there any objection to accepting
3 the filing by the ANC.

4 COMMISSIONER JEFFRIES: No objection.

5 CHAIRPERSON MITTEN: See, they know what
6 I mean even if I say the thing wrong.

7 COMMISSIONER JEFFRIES: Yes, but the
8 record --

9 CHAIRPERSON MITTEN: No, it's going to be
10 clear. All right.

11 Then the other preliminary matter is the
12 issue of the time extension. This is a very tricky
13 issue. We've taken a hard look at time extensions
14 over the last couple of years, and we had a really
15 thorny one a couple of weeks ago. And this is even
16 more complicated because of the fact that there are
17 these two components to the site, one of which has
18 been built, one of which has not been built, and one
19 of which is considered to be at least part of the
20 amenity package of the original PUD and the part for
21 which the use to which the University of California
22 part was an amenity is the part that we're focusing
23 on.

24 So my concern, Mr. Feola, is this
25 submission speaks to perhaps what would be unintended

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1 consequences if the PUD were not extended. Mr.
2 Feola's position is that basically that his client
3 would end up with a site that had an underlying -- his
4 view is that because of the PUD covenant that there
5 would be the PUD-related map amendment without a
6 design to effectuate it because we wouldn't have
7 extended the PUD. So basically there would be no
8 entitlements.

9 We're going to advise that in fact for
10 that portion of the site that it would revert to the
11 original zoning with the Dupont Circle overlay in
12 place. And that makes me uncomfortable is because I
13 think that's almost too harsh a condition. But what
14 makes me uncomfortable on the other side is the fact,
15 and this is what typically happens in a PUD extension
16 case even when there's a modification, is that there's
17 a presumption that the original proposal as it existed
18 is compatible with what exists now. So the point of
19 departure becomes the density that was approved in the
20 original PUD and the height that was approved in the
21 original PUD. And that also makes me uncomfortable.

22 So on the one hand I don't want the
23 Applicant to go back basically to square one. But on
24 the other hand I'm uncomfortable with this degree to
25 which the Applicant is using this sense of entitlement

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1 without really revisiting this in a context as it
2 exists today.

3 So I put that out there. I'd like to hear
4 what some of the other Commissioners think in terms of
5 the time extension and what that means for this PUD.
6 Anybody? You guys are shy.

7 COMMISSIONER PARSONS: I agree. It's one,
8 a very unusual case. But to presume that the
9 decisions of 1989, 1998, 2001 and 2003 presume that
10 this decision made so long ago is still valid, bulk
11 and density and height, is troubling. But at the same
12 time to say start over again doesn't seem fair. The
13 only mechanism we would have then I guess would be to
14 freshly start over and convert this back to a first-
15 stage PUD as opposed to the consolidated that it is
16 now. I don't know what you think of that. That's the
17 only way I can say that to hold on to what we've done
18 in the past but not presume that it is the starting
19 point for the future.

20 CHAIRPERSON MITTEN: Yes. Anyone else?

21 VICE-CHAIRPERSON HOOD: Madame Chair, I
22 was looking back at some of the previous approvals and
23 decisions. I was sitting there and reflecting and I
24 was thinking how could that happen to that point when
25 I knew that Commissioner Franklin at the time sat next

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1 to me. He had a problem it seems, and I'm not bad-
2 mouthing him, but it seems like he had a problem with
3 -- he made this Commission cognizant of just approving
4 time extensions after time extensions. And coming on
5 in 1998 and then just getting on the Commission and
6 that made me also aware of it.

7 So I say that to say this that I agree
8 with what you said and I think Mr. Parsons really just
9 summed it up. It is a point of departure. We're not
10 starting all over but then again we're not combining
11 the PUD. We need to go back and revisit this and
12 start from the first-stage PUD. So I'm in support of
13 your comments and also Mr. Parsons.

14 CHAIRPERSON MITTEN: Thank you. Anyone
15 else? Mr. Jeffries?

16 COMMISSIONER JEFFRIES: Reviewing the
17 record so much that was presented to us there is some
18 discomfort on my part in terms of the number of
19 extensions that were granted. I think the solution
20 that Madame Chair has put forward is a good one. I
21 think it's a win/win. I think it allows the
22 Commission to start to get its arms around this whole
23 business of extensions and what it means. But I also
24 don't think that it's punitive to the Applicant. That
25 it doesn't quite allow the Applicant to go back to

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1 ground zero. But it does send the appropriate message
2 that the Commission is trying to somehow manage this
3 whole notion of sort of the continual extension. So
4 I would be very supportive of what you've put forward.

5 CHAIRPERSON MITTEN: And with the going
6 back to the first stages.

7 COMMISSIONER JEFFRIES: The first stage.
8 Absolutely.

9 CHAIRPERSON MITTEN: Is that your
10 suggesting? Okay.

11 Commissioner Turnbull.

12 COMMISSIONER TURNBULL: I think the
13 arguments that you all made make sense, and I would
14 support those.

15 CHAIRPERSON MITTEN: I think what's coming
16 out of this conversation is that there are two areas
17 of important discretion that the Commission has that
18 are involved here.

19 One is that time extensions are
20 discretionary. We're not required to give time
21 extensions. And I think we are embracing that
22 discretion in a way that we haven't before. We're
23 exploring a lot more thoroughly and deciding if we're
24 really comfortable with preserving, as I see it, the
25 entitlement that a PUD brings with it. That's one

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1 point.

2 The second point, and Mr. Parsons raised
3 it, is that we have the discretion at anytime that
4 we're uncomfortable with a consolidated PUD as it's
5 presented to us, is we have the discretion to convert
6 it to a first-stage PUD. And I think that's also
7 important for us when we're not comfortable with some
8 of the basics that we have a mechanism for sort of
9 exploring those issues and in a more meaningful way
10 than perhaps we are able to when we get a consolidated
11 proposal.

12 So I would move then that we grant the
13 time extension, but in so doing convert this to a
14 first-stage PUD.

15 Mr. Ritting, would this be an approval in
16 part and a denial in part that we would be extending
17 the first-stage approval but not extending the second-
18 stage approval of the PUD? I'm just trying to figure
19 out how to articulate this.

20 MR. RITTING: The regulation that gives
21 you the discretion to modify the consolidated to a
22 two-stage speaks in terms of directing the Applicant
23 to file a first-stage application.

24 CHAIRPERSON MITTEN: Okay.

25 MR. RITTING: And that's the only real

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1 guidance I can give you.

2 CHAIRPERSON MITTEN: I'm just trying to
3 form the motion so that if we grant the time
4 extension, I just want it to be clear that that is
5 being done conditionally. Is that the best way to
6 just articulate it that it's conditional?

7 Mr. Feola, come forward for a second?

8 MR. FEOLA: Thank you, Madame Chair. For
9 the record my name is Phil Feola for the Applicant in
10 this case.

11 I guess I'm not sure I understand the
12 rationale for addressing the time extension before
13 hearing the modification. I went back and looked at
14 the transcript of the set-down and the dialogue
15 between the Chair and Mr. Bergstein. From the
16 transcript, if you can bear with me, this is the quote
17 from Chairperson Mitten:

18 "I just want to clear something with Mr.
19 Bergstein. The action we're being asked to take is to
20 set down the modification but we have this other
21 request that we can just hold out there for the
22 extension."

23 Mr. Bergstein, "You can't. So you can
24 keep it in obedience."

25 What this Commission has always done in

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1 the past, we recognize that conditions have changed.
2 The Applicant recognizes that or we wouldn't have
3 sought the modification to start with.

4 CHAIRPERSON MITTEN: Yes.

5 MR. FEOLA: We believe that, Mr. Parsons,
6 that we have to prove from ground zero. We're not
7 assuming that the entitlement does anything. It shows
8 a context but we know we have to prove to this
9 Commission that this size office building is the
10 appropriate use for this site based on the
11 comprehensive plan, all the changes, the Dupont Circle
12 overlay, etcetera.

13 CHAIRPERSON MITTEN: Yes.

14 MR. FEOLA: So I'm confused as to why the
15 Commission feels it has to deal with a time extension
16 when counsel has told you that you can put this over
17 here.

18 CHAIRPERSON MITTEN: I agree with you.
19 And just so that you understand and maybe --

20 MR. FEOLA: Excuse me. And you can turn
21 down the modification. You can say lop five stories
22 off of it. You can change the design. I mean you
23 have a whole series of discretion. And you have the
24 discretion to turn them both down.

25 CHAIRPERSON MITTEN: You're right. We

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1 don't have to decide the time extension issue. And
2 maybe this is just an outgrowth of our recent
3 experience in another case, which is you can't modify
4 that which does not exist.

5 So to proceed in an orderly way when we're
6 not supportive of the time extension, we have wanted
7 to make that decision up front so that we don't have
8 a big old hearing when the underlying presumption is
9 not there that we want to preserve the PUD.

10 So your point is a good one.

11 I didn't know if you were going to help me
12 when you came up to the table, but you have helped me,
13 which is we don't have to vote on a time extension
14 now. So I don't have to worry about how I articulate
15 this motion other than to say that I guess we don't
16 even have to have a motion. We can just have a
17 consensus that we direct the Applicant within; I guess
18 I'd give you a six-month period although you can
19 certainly come back sooner, to file a first-stage
20 application so that we can revisit some of the
21 fundamentals on --

22 MR. FEOLA: And I guess my response is
23 what would be different in the first-stage than what
24 you have before you that it is more detailed?

25 CHAIRPERSON MITTEN: I guess what I --

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1 MR. FEOLA: We would come back and skinny
2 the drawings down to be less detailed?

3 CHAIRPERSON MITTEN: Okay. I understand
4 why you're asking that question. This is my sense of
5 the application, which is that the Applicant has used
6 what in large measure what was originally approved as
7 the jumping off place for this proposal. The message
8 I'd like to convey is I don't want that to be the
9 presumption. I want to revisit height. I want to
10 revisit density. So I want you to think about the
11 fact at least that I'm uncomfortable with the height
12 and density where they are.

13 And my colleagues, we seem to share some
14 discomfort. I don't know that we shared that. I want
15 each of my colleagues to give you some guidance on
16 that. But I guess the message I'm trying to send by
17 sending you back is I'm uncomfortable with what's in
18 front of me. So please go back and review it. And I
19 want you to go back to the fundamentals which are
20 height, FAR, bulk.

21 MR. FEOLA: I guess I still I'm struggling
22 with --

23 CHAIRPERSON MITTEN: Just a minute. Let
24 me see if some of my colleagues would like to weigh
25 in. Anybody else want to try and articulate your

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1 concerns? I don't want to be presuming to speak for
2 everyone.

3 COMMISSIONER JEFFRIES: I mean, I'm not
4 obviously going to at this point comment on height and
5 density. I mean, I'm sort of less focused on that and
6 more about sort of procedure and in sort of in some
7 way trying to sort of not wipe the slate clean but
8 just sort of get back to a place where we can just
9 look at this in relatively fresh lenses and not
10 necessarily -- and so I don't want it to be construed
11 that I'm making some statement about your height. I'm
12 not there yet. Because I'd like to obviously hear
13 your presentation and so forth and so on. But I think
14 I'm more along the place where this is just a little
15 murky for me in terms of all the extensions and so
16 forth and so on. I'd just like to find a way in which
17 we can sort of get the slate a little cleaner so that
18 we just look at this in a fresh lens. And I don't
19 know if that, Madame Chair, is an appropriate way to
20 look at it but that's how I'm viewing it.

21 CHAIRPERSON MITTEN: Well just to be
22 clear. Then maybe others are waiting.

23 What Mr. Feola is saying is I hear what
24 you're saying, but what do you want me to do
25 differently? Okay. You're sending me away, and what

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1 do you want me to bring back? If we send him away,
2 we're suggesting that we want him to bring back
3 something different. So what would that something
4 different be? And I tried to articulate what my
5 concerns are and I'd like others to do the same so
6 that when they go away, when they come back, they
7 bring us something that they will be responsive to the
8 reason that we sent them away to do a first-stage
9 submission.

10 COMMISSIONER JEFFRIES: Why don't you go
11 on to someone else because I just want to see what the
12 rest of the Commission --

13 MR. FEOLA: I guess --

14 CHAIRPERSON MITTEN: Just let us have our
15 little discussion up here.

16 VICE-CHAIRPERSON HOOD: Madame Chair, I
17 guess I too am more on the side of Commissioner
18 Jeffries. I'm in tune to try to clean it up. Let me
19 just be blunt: Clean it up because right now it's all
20 over the place as far as I'm concerned.

21 But I understand what you're saying. He's
22 saying he has a detailed second-stage. He's ready to
23 go forward. We're sending him back to first-stage.
24 I heard him mention he could take some off the
25 drawings and then make it look more, I guess, scaled

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1 back and make it look like a first-stage.

2 I think for me it's more procedural in a
3 process than anything. And, yes, we may look at the
4 height and density which could probably be scaled
5 back. But I would agree with Commissioner Jeffries
6 that at this point in time I'm not ready to comment on
7 that.

8 But I still say that we move back to a
9 first-stage PUD and clean it up. That's just where I
10 am. I can't sit here and design this project. But
11 just tell me, I mean he's been around longer than I
12 have so he knows what a first-stage PUD looks like
13 when it comes in front of the Commission.

14 I know that didn't help you any. But
15 that's just where I am.

16 CHAIRPERSON MITTEN: Mr. Parsons.

17 COMMISSIONER PARSONS: We're all being
18 redundant. But the presentation here tonight would be
19 based on the fact that we have approved something in
20 the past. And that's a starting point. And what
21 we're signaling to you is that it's probably not the
22 right starting point. The building needs to be
23 reduced and that's difficult to do without a hearing,
24 you see.

25 So we didn't want to engage in a hearing

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1 I guess, or I didn't, where we're starting at the base
2 here's what you approved in 1989 and 1998 and 2001 and
3 2003 and let's move forward because some of us at
4 least feel that's not the right place to proceed.

5 So asking you to adjust your presentation
6 here in the 20 minutes so that you can go in a
7 different direction didn't seem like the right thing
8 to do as opposed to giving us all some breathing room.
9 Come back and start with a different approach.

10 MR. FEOLA: I mean I understand that. I
11 guess to get concrete critique, if you will. Believe
12 it or not this building wasn't designed merely because
13 the previous building was X size or X height. I mean
14 if it's in the context, there's buildings next door,
15 there's a park across the street.

16 It seems to me a better use of all of our
17 time is for you to take a look at this. And if you
18 don't like it or like parts of it or don't like some
19 of it, it's easy for the Commission to say it's too
20 tall, it's too bulky, it's too green, too yellow
21 whatever it is as you've done in other cases. And
22 then ask the Applicant to resubmit based on the
23 critique through the process.

24 I mean I don't see a whole lot of change
25 in here except maybe the bulk building gets smaller,

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1 shorter, less FAR. And it seems to me we would all be
2 better served to hear that after you see the rationale
3 and you tell us two stories, five stories, whatever it
4 is. I guess it just seems more efficient to let us
5 present the case. We won't mention 1989. We won't
6 mention 1998. That's history and we'll look forward
7 based on the comprehensive plan and the city's plans
8 for this area and the buildings in the urban setting
9 and whether it should be a modern building or
10 contextual building; we can talk about that.

11 COMMISSIONER TURNBULL: Madame Chairman,
12 in light of what I'm just hearing, and again I agree
13 after going through this this has been a very
14 confusing case over the years, but I see this in light
15 of Mr. Feola's comments is I think it's putting too
16 much burden on the Commission.

17 I think the first stage, when you talk
18 about knocking off floors and changing a lot of the
19 different aspects of the project, that sounds like you
20 need to revisit that project in light of the PUD and
21 submit a proposal that makes sense in light of the use
22 of that site. Not to have the Commission come back
23 and sort of second guess and make checks and balances
24 after the fact.

25 I think the first-stage PUD enables you to

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1 come back and put forth a proposal that's best for
2 this site and for the community. And I think that's
3 where it ought to be. I think going back to the
4 first-stage makes more sense. I think having us play
5 umpire and referee after the fact when there's still
6 so much work which sounds like you really haven't done
7 yet or you feel uncomfortable with the plan that
8 you've got already --

9 MR. FEOLA: I would feel comfortable with
10 it. I guess we want to get a critique of that --

11 COMMISSIONER TURNBULL: No, but you've
12 already, you've just said we can do this. We'll take
13 off four floors, we'll take off five floors.

14 MR. FEOLA: Well, if the Commission
15 directed us.

16 CHAIRPERSON MITTEN: Just to be clear, and
17 I think we do owe it to the Applicant, that as we've
18 done this at set-down, is we've expressed our
19 concerns. So they have a proposal that is to their
20 mind is perfectly reasonable. And we've seen it and
21 reviewed all of the submissions. And so to the extent
22 that we're uncomfortable going forward it's because
23 we're uncomfortable with that. So what I think what
24 we're saying is rather than having a hearing and
25 expressing our concerns and having you go back, we'd

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1 like you to revisit that before we hear it. And we
2 would hear it in context of a first-stage. But what
3 Mr. Feola is, I think, appropriately asking for is
4 tell me what you want to change. Is it height? Is it
5 density? What is it? So that when we revisit this,
6 they have some guidance other than just the fact that
7 we -- I mean just talking about a first-stage without
8 giving some guidance about what we --

9 VICE-CHAIRPERSON HOOD: Madame Chairman,
10 I understand that. But I don't want to be -- at least
11 I'm not going to be put in that predicament.

12 I understand, Mr. Feola, we may owe it to
13 you. But again it's more procedure for me. I can sit
14 here and say I have a problem with the garage and the
15 traffic. I can sit here and tell you that. I have a
16 problem with the height. But I don't think in
17 fairness, at least from my standpoint, that I should
18 sit here and just tear down a project for you to bring
19 back and then, at least the way I look at it, Madame
20 Chair, by doing all and he adjusts to everything to
21 what I said then he thinks it's okay. This is what
22 they told me to do. It's ready to roll. And I don't
23 think that's fair. Again it puts the burden on the
24 Commission. And I'm not going to sit here and go into
25 that.

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1 COMMISSIONER JEFFRIES: So, Madame Chair,
2 basically what you're asking for the Commission to do
3 is really to almost treat this as a set-down of sorts.
4 Give the Applicant some level of direction as to what
5 we like to see in a first-stage PUD right now.

6 And I guess what I'm saying is that while
7 I have some questions about the architecture and so
8 forth, I don't necessarily have an issue with height
9 or density. But I was sort of willing to sort of
10 listen to some of the arguments and so forth.

11 So again, I was looking at this at
12 something largely symbolic and really sort of trying
13 to sort of send a message about this whole notion of
14 extensions. I certainly am not at a place where I
15 want to give any outright direction to this Applicant
16 until this Applicant has had some level of time to
17 sort of present the case.

18 I mean that's where I'm at. I don't feel
19 very strongly about my position here. So I'm willing
20 to acquiesce to the full Commission as to how they
21 want to proceed here.

22 CHAIRPERSON MITTEN: Well we certainly can
23 just decide that we won't give them any more than a
24 first-stage approval even though we have a submission
25 for a consolidated and go forward with the hearing.

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1 I mean we can do that. So you guys need to tell me
2 what you want to do.

3 COMMISSIONER JEFFRIES: I mean I do think
4 that the Applicant has heard some things from this
5 Commission tonight certainly. And so I think that the
6 Applicant probably does have some information in which
7 to use to go back and put together a very different
8 application. I think that information has been given.

9 So I think we could still go along with
10 what you set forth at the onset. My only point is
11 that I'm just sort of differing a little bit from some
12 of my Commissioners here, fellow Commissioners, that
13 I don't necessarily see that this application needs to
14 change so drastically. But I was willing to sort of
15 listen. But I do think they've been given some
16 information and that they could go back to a first
17 stage based on some of the comments that have been
18 delivered already.

19 CHAIRPERSON MITTEN: I really would just
20 rather deal with the attorneys right now. And in fact
21 I need to bring Mr. Gell and Mr. Aguglia up here
22 because I just want to give them an opportunity to
23 weigh in.

24 You're not compelled to say anything. I
25 just want to give you a chance. Don't make it any

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1 more complicated, that's all I ask.

2 Mr. Aguglia, why don't you go first?

3 MR. AGUGLIA: Richard Aguglia with the law
4 firm of Hunton and Williams representing the
5 University of California which is in a sense a co-
6 Applicant because it has the eastern portion with the
7 university building.

8 Our essential objection when we started
9 off was that that the Applicant's building as proposed
10 did not compliment the university's building. But
11 we've worked those out, and they've agreed for a
12 setback and for certain types of glass that would be
13 translucent and protect the privacy and compliment the
14 school. So we were happy with that and we were
15 prepared here to endorse them. And that's our
16 essential position.

17 CHAIRPERSON MITTEN: Okay. Thank you.

18 Mr. Gell.

19 MR. GELL: Thank you, Madame Chair,
20 members of the Commission.

21 As I listened to the discussion back and
22 forth a number of things were racing around in my
23 head. And I'll try not to make things more
24 complicated than they are. But it does seem to me
25 that the extension has been presented to you in light

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1 of a modification to the 1998 approved PUD. I don't
2 see any other way to look at it.

3 And If the Commission wants to review this
4 from the start, I think the only appropriate thing is
5 to have them make that submission. I believe that in
6 '98 the Commission really anticipated this when it
7 said that if you can't develop either site, then
8 consider this and go right back to SP2, any of the
9 controls on SP2 automatically. Then it said if you
10 can only develop one of them, come back to us within
11 120 days and tell us how you want to modify the
12 project. As far as I know that wasn't done. Now I
13 know in the meantime there were extensions. But that
14 thinking that the Commission had at that time it seems
15 to me indicated that they really expected that if they
16 couldn't develop the second site within that
17 reasonable time, that it would revert back to SP2 and
18 it would need the Commission to make that action. It
19 couldn't automatically go back to it because it was
20 part of a PUD and there were other aspects of this.
21 It wasn't a site that at that point that could be even
22 developed as SP2. But the Commission could easily
23 have said under these conditions we'll divide the
24 lots. This lot that has not yet been developed would
25 be developed as SP2. And I think that's really where

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1 the Commission was at that time. That's the only
2 indication I have of their thinking about what would
3 happen if the second site didn't get developed.

4 We have issues about the amenities, those
5 are going to have to be sorted out if this is treated
6 as a first-stage, but I think that can be done.

7 And I think more importantly that this
8 whole project, this new project, the second phase
9 really has to be seen in the context of the changes in
10 Dupont Circle that have taken place since '89 and in
11 fact since '98.

12 This city has seen really a tremendous
13 growth in the numbers of office buildings that are
14 available and the kind of economic development that
15 we've seen and really should take a fresh look at how
16 that site should be developed.

17 So I would concur with the thinking that
18 I've heard from the Commission that they be given time
19 to come back and refile as a first-stage.

20 CHAIRPERSON MITTEN: Thank you.

21 Mr. Feola, I thought you were reaching for
22 the --

23 MR. FEOLA: Well I'm looking at the 1998
24 order and Mr. Gell is correct. It says if one of the
25 two buildings that were approved in 1998 were not

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1 effectuated, then we'd come back to this Commission
2 for a modification, which was done. There was an
3 extension instead of a modification. The Commission
4 at the time accepted that in lieu of a modification.
5 We went through a couple of extensions.

6 As those of you who were on the Commission
7 recall in 2001, the Human Rights Campaign came to this
8 Commission with a modification because the hotel
9 wasn't working. They dropped that for reasons that
10 they could articulate, not me.

11 And so it isn't that this property owner
12 has just thrown it aside. It's been struggling with
13 what to do with an approval that the Commission
14 granted now it's six years ago or eight years ago,
15 seven years ago, whatever it is. And we recognize
16 that conditions have changed which is why we filed the
17 modification.

18 The time extension was, as Mr. Bergstein
19 said, a placeholder. It's just to allow this
20 Commission to act in the best interest of the
21 community and District of Columbia to carve out what
22 goes here. I don't think it's in the city's interest
23 to allow a matter of right SP2 building to go here.
24 I think it would be better served because there's a
25 PUD next door to let them work together through this

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1 Commission.

2 Now we're prepared to make a case that
3 this new building, the office building, is
4 appropriate. It's appropriate under the comprehensive
5 plan. It's appropriate in all the changes that have
6 happened in Dupont Circle. And it's appropriate
7 because the previous approval which everybody went in
8 with good faith didn't work. We can present that
9 rationale tonight. And if the Commission isn't
10 satisfied, it can turn it into a one-stage, it can
11 turn it down, it can make significant changes. We're
12 not asking you to design the building. We're asking
13 you to concretely critique what we present to you.

14 If we come back with a building that's one
15 story less in a first-stage and you don't like it,
16 then we got to do it again. It seems expeditiously,
17 it would be more expeditious to walk it through now,
18 hear what the Commission's concerns are. We have a
19 rationale. You may not agree with it. You may not
20 like the building. But it seems it would be better
21 served to hear it out. At the end if you don't like
22 it, you can either turn it down or turn it into one-
23 stage. You always have that right.

24 I don't know what else to say. I mean
25 this site has been vacant for a long time. I don't

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1 think it's serving the ANC, the Applicant, the city as
2 a surface parking lot in the long term.

3 CHAIRPERSON MITTEN: Right. And I don't
4 want you to think that. There's a couple of messages
5 that just based on your comments that I want to just
6 clarify.

7 I think notwithstanding what Mr. Gell just
8 said we are not comfortable with sending you back with
9 SP2 matter of right, okay? We're not comfortable.
10 That's why we're struggling with this and that's why
11 this is a little bit anomalous. So I appreciate
12 everyone's assistance with that.

13 And the other thing is no one is
14 suggesting that that parking lot should be there
15 another day. I mean I live around there and I walk by
16 it a lot. So I know what you're referring to and I
17 don't think that's a condition that we're advocating
18 for either.

19 The best thing that I can tell you unless,
20 and I'm just going to try and synthesize what has been
21 said and not said, I've tried to suggest what I'm
22 uncomfortable with. I would like a stronger
23 recognition of the fact that there have been these
24 background changes, if you will, to Dupont Circle.
25 And I'm not suggesting that you have to go back and be

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1 bound by them. But I would like more of an
2 acknowledgement of the fact that the Commission has
3 chosen to treat Dupont Circle in a different way and
4 that is derived from concerns about height and
5 density. And I don't feel that that recognition has
6 manifested itself in this proposal. I don't know how
7 else to say it again.

8 I think Mr. Parsons at least shares that
9 view. I think that maybe for the rest of my
10 colleagues who don't feel comfortable articulating
11 specifically what they would want you to change they
12 want to step back and talk about this in a more
13 general way than we will if we're looking at the level
14 of detail on the plans that we have in front of us.

15 So I guess what we're asking you to do is
16 rather than just plow ahead tonight we want to maybe
17 just use the word that Mr. Gell said, take a fresh
18 look. We want a fresh look. And you can't do that by
19 going ahead tonight. That's not a fresh look.

20 Is it fair to say that we want a fresh
21 look?

22 COMMISSIONER JEFFRIES: Absolutely, Madame
23 Chair, I duly agree with you. I really do support
24 what you're saying, I mean this whole notion of a
25 fresh look. The fresh look might not necessarily, for

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1 me and I'm speaking for myself, increase less in
2 density or height or any of that. But there have been
3 changes to the Dupont Circle area. There are a number
4 of things that Mr. Gell has spoken about. And I just
5 think that it would be nice if those things can be
6 addressed very directly in this first-stage PUD.

7 So, Madame Chair, I agree with you. And
8 I think everyone is saying that to a large extent that
9 there needs to be some level of change. There are
10 some Commissioners here who are telling you exactly
11 what to do and I'm just telling you to just take
12 another look. I'm being a little bit more general
13 because I'm not necessarily on page yet with you to
14 drop the building or reduced FAR.

15 I know that we're sending some mixed
16 messages but I think we're on the same page as it
17 relates to taking a fresh look, looking at this
18 building in a new context or a different context than
19 we had started earlier. And I think at that point we
20 can start to take a fresh look in review of it.

21 VICE-CHAIRPERSON HOOD: Madame Chair, I'll
22 just add. If the word or acronym of fresh look will
23 get us to where we need to be to the first-stage PUD,
24 let's take the fresh look. I just think we've been
25 talking about where we want to be now for 20 minutes.

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1 And now it is time for us to just do it.

2 If not, I'll make a motion to deny it all.

3 CHAIRPERSON MITTEN: Okay. Did you have
4 anything to add?

5 COMMISSIONER TURNBULL: I'd go along with
6 your approach to a fresh look. My feeling on a fresh
7 look is that it's not this project coming back in six
8 months. That's not a fresh look. That I would not
9 accept.

10 CHAIRPERSON MITTEN: Okay. That's the
11 best I'm going to be able to do for you, Mr. Feola.

12 No, please don't call out from the
13 audience.

14 Mr. Feola, we're struggling with something
15 here. Okay?

16 MR. FEOLA: I hear that.

17 CHAIRPERSON MITTEN: And, Mr. --

18 MR. FEOLA: Why did we set the case down?
19 We set it down. We had a hearing set for September.
20 These plans haven't changed and now it's December.
21 Now we're going to do a first-stage and then if that's
22 approved, then we have to come back to a second-stage.
23 We're talking another 24 months before there's an
24 opportunity to apply for a building permit on a site.
25 It just doesn't make sense to me. But it's your call.

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1 CHAIRPERSON MITTEN: Okay. The direction
2 that we're giving and I understand your frustration
3 I don't think that the alternative would please you
4 anymore. The alternative that the Commission's
5 comfortable with anyway is that we are directing you
6 to come back within six months with a first-stage
7 application that is as responsive to the comments of
8 the Commission as you can make it. And I can't wring
9 any more specificity out of the Commission than that.

10 COMMISSIONER JEFFRIES: And I have to say,
11 I mean let's just make certain that we're -- I think
12 that the Applicant has been given a lot of
13 information, quite frankly, tonight. So I would hope
14 I mean we've had one Commissioner who just basically
15 told you not to bring back the same project. I don't
16 know how much more direction you need. And we've had
17 two Commissioners that have basically commented on
18 height and density. I think you have been given some
19 direction. I think it would clearly be a mistake to
20 come back with the same project. Again, you have me
21 that's saying that I might not agree with my
22 Commissioners but I'm just one vote here. But I think
23 you've been given a lot of direction. So, I don't
24 know what more to add here.

25 CHAIRPERSON MITTEN: Okay. Anyone else on

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1 the Commission want to comment before we close it out?

2 Okay. Then we're adjourned.

3 (Whereupon, the meeting was adjourned at
4 7:46 p.m.)

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