

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 02-51A  
Z.C. Case No. 02-51A  
(First Stage Modification Application to an Approved Planned Unit Development of  
Rhode Island Associates Limited Partnership)  
February 12, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 14, 2006, to consider an application from Rhode Island Associates Limited Partnership (“Partnership”) for first stage review and approval of a modification to an approved planned unit development for Square 182, Lots 82 and 83 pursuant to Chapters 24 and 30 of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022. For the reasons discussed below, the Commission grants the application.

**FINDINGS OF FACT**

**PUD Site**

1. The planned unit development (“PUD”) site consists of Square 182, Lots 82 and 83 (“PUD Site”). It is located on the south side of Rhode Island Avenue, N.W., between 16<sup>th</sup> Street to the east and 17<sup>th</sup> Street to the west at 1616 Rhode Island Avenue, N.W. in Ward 2. The PUD Site has a total land area of 32,726 square feet and approximately 230 feet of frontage along Rhode Island Avenue. It abuts alleys to the east, west, and south.
2. The site that is the subject of the modification application is the western one-half of the PUD Site and consists of Square 182, Lot 82 (“Project Site”). The Project Site is approximately 15,394 square feet in area and has been used as a surface parking lot for several years. It is bounded by a public alley and the Human Rights Campaign headquarters office building to the west. To the east is the other half of the PUD Site, which includes the University of California building.
3. The PUD Site is located in the C-4 Zone District. The properties in the vicinity of the site are located in the C-4, SP-2, and SP-1 Zone Districts. The areas surrounding the PUD Site include major office development to the south of the PUD and a mix of office, hotel, residential, and recreational facilities at moderate and high densities to the east, west, and north of the site. Immediately to the south of the PUD Site is the Sumner-Magruder School office complex.

4. The PUD Site is designated as appropriate for high-density commercial use pursuant to the Comprehensive Plan and is located in the Central Employment Area. It is located within three blocks of both the Farragut North Metro Station and the Dupont Circle Metro Station. (Exhibit 40, Exhibit C – p. 7)
5. The PUD Site is located in the southeastern portion of the Dupont Circle Overlay District and is northwest of the Downtown Development Overlay District.

#### Procedural History

6. Zoning Commission Order No. 638, dated December 15, 1989, approved a consolidated PUD and map amendment from SP-2 to C-4 of the PUD Site (“Original PUD”). The Original PUD permitted the construction of a mixed-use building containing residential, office and retail space to a maximum height of 106 feet and a floor area ratio (“FAR”) of 8.5.
7. The Commission subsequently approved an interim use of the PUD Site, minor modifications to the PUD, and extensions of the PUD in Zoning Commission Order Nos. 638-A, 638-B, 638-C, 638-D, and 638-E.
8. In 1998, the Commission approved the subdivision of the PUD Site and authorized two discrete buildings. The eastern half of the site, now known as Lot 83, was approved to allow the University of California to construct a mixed-use building for office, academic, and residential uses. The western half of the site, now known as Lot 82, was approved for the construction of a suites hotel. The Commission approved a density of 8.2 FAR for the PUD Site, with 3.05 FAR to be reserved to residential uses and 5.15 FAR to be allocated to office, academic, and commercial hotel uses. A 8.5 FAR was approved for the University’s building and a 7.9 FAR was approved for the hotel (Zoning Commission Order No. 638-F).
9. The University of California subsequently purchased Lot 83 from Rhode Island Associates Limited Partnership and constructed its project. The eastern half of the PUD Site is occupied by the University of California’s “Washington Center.” Rhode Island Associates Limited Partnership remains the owner of Lot 82 and a hotel was never constructed on the PUD Site. (Zoning Commission Order No. 02-51; Exhibit 40, Exhibit F – p. 2)
10. In 2000, the Human Rights Campaign (“HRC”) and its affiliate, the Human Rights Campaign Foundation, entered into a contract to purchase Lot 82 from Rhode Island Associates Limited Partnership. In 2001, HRC filed an application to modify the approved PUD to change the permitted use for Lot 82 from commercial hotel to office building and substitute a new design and plans for the proposed headquarters building of HRC. A public hearing was conducted by the Commission on July 12, 2001. After the public hearing, HRC opted not to pursue the proposed development and informed the

Zoning Commission that it was finalizing an offer from a hotel developer to construct a hotel project satisfying the requirements of Zoning Commission Order No. 638-F and simultaneously requested a one-year extension of Order No. 638-F.

11. On September 17, 2001, the Commission voted to grant HRC's request to extend the PUD and tabled action on HRC's request to modify the approved PUD. (Zoning Commission Order No. 871-A)
12. HRC's hotel developer did not consummate the transaction and the property was retained by Rhode Island Associates Limited Partnership. (Zoning Commission Order No. 02-51)
13. On September 5, 2003, the Commission granted another extension of the PUD until April 14, 2005. (Zoning Commission Order No. 02-51)
14. On April 12, 2005, Rhode Island Associates Limited Partnership filed a motion to modify the PUD and to simultaneously extend the PUD. The Partnership proposed an office building that was 110 feet in height, consisted of 130,870 square feet (8.5 FAR) and included up to 120 parking spaces.
15. The Commission scheduled a hearing on the request for September 30, 2005. Before the hearing began, the Commission considered several preliminary matters. First, the Commission granted the University of California's request to participate as a party. Second, the Commission requested that the Partnership explicitly address 11 DCMR § 2408.10(b), which provides that the Commission may extend the time a final PUD is valid only if there is "no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD." Third, the Commission considered a request by ANC 2B to postpone the hearing. The Commission continued the hearing to December 1, 2005 to allow the Partnership time to provide a written response to its request regarding 11 DCMR § 2408.10(b). In light of the Commission's continuance of the hearing, it was not necessary to rule upon ANC 2B's request for a continuance.
16. By letter dated November 22, 2005, the University of California informed the Commission that it had reached an agreement with the Partnership concerning a revised design plan that alleviated its objections to the application. The next day, the Partnership submitted its revised plans and requested leave to file the revisions out of time.
17. At the continued hearing held on December 1, 2005, the Commission considered the Partnership's application for a time extension in light of considerable time that had passed since the approval of the first-stage PUD for the site. The Commission indicated that it wanted the Applicant take a "fresh look" at the appropriate, height, bulk, and massing of the building in light of the changes to the surrounding neighborhood. The Commission directed Rhode Island Associates Limited Partnership to revise its

application, and to apply for a modification, but only as a first-stage PUD within six months (Exhibit 2, p. 6; Transcript for December 1, 2005 Hearing, p. 36.), and would consider the time extension request at the same time it decided the revised application.

18. On May 31, 2006, Rhode Island Associates Limited Partnership filed a first-stage application to modify an approved PUD (“Application”).
19. At a public meeting held on July 12, 2006, the Commission set down the Application for a public hearing.
20. The Commission held a public hearing on the Application on December 14, 2006, which was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission recognized project architect Guy Martin, project traffic engineer Martin Wells, and economic analyst Patrick Phillips as experts.
21. At the conclusion of the hearing, the Commission took proposed action to approve, with conditions, the Application and plans that were submitted into the record.
22. The proposed action was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the District Charter. No response was received as of the date upon which the Commission took final action to approve this application, which occurred after the 30 day period for NCPC comment expired.
23. The Commission took final action to approve the Application on February 12, 2007, by a vote of 3-0-2.

#### PUD Modification Details

24. The Partnership re-designed the building to reflect the character of the Dupont Circle neighborhood.
25. The building on Lot 82 will be occupied by office use. It will consist of a nine (9) story building with a height of 104 feet and contain approximately 129,680 square feet of gross floor area and have a density of 8.4 FAR (the “Project”).
26. The Partnership submitted evidence indicating that a commercial hotel is not economically feasible at this location or at a site this size. (Exhibit 56)
27. The density for the PUD Site will be 8.5 FAR with 3.05 FAR dedicated to residential use and 5.45 FAR dedicated to commercial use. The lot occupancy for the PUD Site will be 96%.
28. Approximately 90 parking spaces will be included in a below-grade parking garage on the Project Site and accessed via a driveway from Rhode Island Avenue. The loading

area for the building will be accessed from the 20-foot-wide alley on the PUD Site's southern boundary.

Benefits and Amenities

29. Rhode Island Associates Limited Partnership provided the following benefits and amenities with the approval of the Original PUD:

- \$150,000 to Ross Elementary School;
- \$10,000 to Dupont Circle Resource Center;
- Local Small and Disadvantaged Business Enterprises Agreement; and
- First Source Employment Agreement.

Each of the benefits and amenities included in this paragraph have been paid in full or executed.

30. In addition to those benefits and amenities that it has already provided, the Partnership has agreed to provide the following benefits and amenities package with the proposed project:

- \$220,000 to constructing planned improvements in Stead Park;
- \$25,000 to improvements of Scott Circle Park;
- \$25,000 to the Dupont Circle Citizens Association;
- \$20,000 to Ross Elementary School;
- \$10,000 to Francis Junior High;
- \$100,000 to Affordable Housing; and a
- "Green" Building Package.
- Providing a secured area for bicycles within the basement.

Consistency with Comprehensive Plan

31. This application is consistent with major themes of the Comprehensive Plan:

- Stabilizing the District's Neighborhoods: The building will replace a surface parking lot with an office building. This promotes infill development, unity of the block, bringing jobs to the neighborhood and activating the streetscape;
- Increasing the quantity and quality of employment opportunities in the District: The Project Site is located near public transportation and is proximately located to both downtown and Dupont Circle. An office building presents numerous employment opportunities for area residents. Rhode Island Associates Limited Partnership has entered into a First Source Employment Agreement and a Local Small and

- Disadvantaged Business Enterprises Agreement to ensure that local residents and businesses will benefit from the PUD;
- Respecting and improving the physical character of the District: The office building better utilizes the Project Site than the surface parking lot it will replace. The construction of the office building will improve the pedestrian experience in the neighborhood and the landscaping will connect the buildings to unify the block. The building's design respects the quality of existing structures and enhances the character of Rhode Island Avenue between 16<sup>th</sup> and 17<sup>th</sup> Streets;
  - Preserving and ensuring community input: Rhode Island Associates Limited Partnership worked extensively with the Advisory Neighborhood Commission and the Dupont Circle Citizens Association to ensure that they supported the introduction of the building to the community;
  - Reaffirming and strengthening the District's role as the economic hub of the national capital region: The office building makes efficient use of the District's infrastructure, including its bus lines, Metrorail, and roadways; and
  - Promoting enhanced public safety: Incorporating an office building into the streetscape in place of the surface parking lot increases the activity at the site and eliminates the potential for loitering.
  - The building will also provide green design features that contribute to the District of Columbia's goal to mitigate the environmental, economic, and social impacts of built structures in the District.
32. The office building furthers the objectives and policies of several major elements of the Comprehensive Plan including land use; economic development; housing; transportation; urban design; and the Central Employment Area. The Project is consistent with the high density commercial designation for the Property on the Generalized Land Use Map.

#### Government Reports

33. The Office of Planning submitted its final report on December 4, 2006. It recommended approval of the first stage application upon several conditions, including:
- The non-profit organization selected as recipient of the \$100,000 affordable housing contribution be a housing trust fund defined under Section 2499 of the Zoning Regulations;
  - Documentation be added to the public record of payment of the affordable housing contribution prior to the issuance of building permits;

- Identification of the proposed bicycle parking areas on the garage floor plan;
  - Determination of whether the District Department of Transportation's proposal to set aside approximately 5% of vehicle spaces in the proposed garage parking for car sharing vehicles is acceptable; and
  - Documentation of other amenity contributions. (Exhibit 47, pp. 1-2)
34. The Office of Planning concluded that the office building is consistent with numerous goals and standards of the Dupont Circle Overlay District and that the benefits and amenities exceeded the degree of flexibility requested under the approved C-4 Zone District, especially in light of the fact that there were no potential adverse impacts. (Exhibit 47, p.10)
35. The Office of Planning's review of the benefits and amenities found that the project is consistent with the Comprehensive Plan, and supports specific economic development, urban design and employment goals identified in the Plan.
36. The District Department of Transportation submitted a letter on September 26, 2005, stating that the office building will have a negligible impact on existing traffic volumes and should not create dangerous or objectionable traffic conditions in the area. Thus, the District Department of Transportation had no objections to the project. (Exhibit 23)

#### Advisory Neighborhood Commission Report

37. The Advisory Neighborhood Commission ("ANC") 2B initially submitted a letter on December 6, 2006, in opposition to the modification to the PUD citing its benefits and amenities package as inadequate. (Exhibit 48, p. 2)
38. On December 14, 2006, the ANC withdrew its objections to the application and submitted its unqualified support into the record due to the enhanced benefits proposed by the Partnership and recommended that the Zoning Commission approve the application. (Exhibit 52)
39. At the hearing on December 14, 2006, Mark Bjorge testified on behalf of the ANC and reiterated the ANC supports the PUD modification.

#### Other Parties

40. At the first scheduled hearing for this matter on September 29, 2005, the Commission granted party status to the University of California. (September 29, 2005, Hearing Transcript, p. 32)

41. The Commission also afforded Mark Bjorge the opportunity to file a request for party status; however, Bjorge did not subsequently do so. (Id.)
42. The University of California submitted a letter indicating no opposition to the application on November 22, 2005. (Exhibit 33) The University of California did not participate as a party at the hearing on December 14, 2006.

Persons in Support

43. Adam K. Bernstein, next door “neighbor” with the Marriott Courtyard, submitted a letter in support of the PUD modification application on November 29, 2005. (Exhibit 36)
44. William Lipnick, President of 1615 – LLL, LP, the owner of the Beacon Hotel and Corporate Quarters located on the north side of Rhode Island Avenue, submitted a letter in support of the PUD modification application on November 29, 2005. (Exhibit 37)
45. Christopher Braman, Director of Facilities of the Human Rights Campaign Foundation, which is located immediately adjacent to the Project Site, submitted a letter in support of the application on July 26, 2006.
46. No person appeared in opposition to the PUD modification at the public hearing.

**CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits, 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2. The application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.
2. Under the PUD process, the Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The PUD Site meets the minimum area requirements of § 2401.1 of the Zoning Regulations.

5. The Commission notes that the zoning for the property will not change from the C-4 zoning approved through the Original PUD.
6. The Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a commercial hotel development on the Property would provide. The Commission believes that the design and site planning of the project encourages use of public transportation and promotes green design.
7. The Commission finds that the bulk and height of the office building is appropriate for the PUD Site as it complements the heights of both the Human Rights Campaign building to the west and the University of California building to the east.
8. Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
9. Approval of the first-stage PUD modification is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following themes: stabilizing the District's neighborhoods, increasing the quantity and quality of employment opportunities in the District, respecting and improving the physical character, preserving and ensuring community input, reaffirming and strengthening the District's role as the economic hub of the national capital region, and promoting enhanced public safety.
10. The Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT that the proposed project will not create any adverse traffic or parking impacts on the surrounding community.
11. The Commission acknowledges that the PUD Site is a second-tier hotel location and is not an ideal location for commercial hotel use. It is satisfied with the economic analysis that the Applicant submitted in support of the conclusion that a commercial hotel is not feasible at this site.
12. The Commission is also satisfied with the economic analysis submitted by the Applicant demonstrating that this is a sub-par site of ground-floor retail use.
13. In accordance with D.C. Official Code §1-309.10(d)(2001 ed.), the Commission must afford great weight to the issues and concerns of the affected ANC. The Commission takes note of ANC 2B's letter and its testimony in support of the project, and has

accorded to the ANC's decision to support the project the "great weight" consideration to which it is entitled.

14. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04 (2001 ed.)) to give great weight to OP recommendations (as reflected in ¶¶ 33 through 35).
15. Notice of the public hearing was provided in accordance with the Zoning Regulations.
16. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** for first-stage of a Modification to a Planned Unit Development for the Property as defined previously herein. The first-stage approval is subject to the following guidelines, conditions and standards:

1. The first stage PUD modification is approved in accordance with the plans and materials submitted by the Applicant and marked as Exhibits 40, 42, and 56 in the record, as modified by the guidelines, conditions and standards of this order.
2. The second-stage design of the PUD modification shall be based on further development and refinement of the plans marked as Exhibit Nos. 40, 42, and 56 of the record, as modified by the guidelines, conditions and standards of this order.
3. In accordance with the plans and materials noted above, the office building shall consist of approximately 129,680 square feet of gross floor area with a FAR of 8.4. The building shall contain nine stories and be no greater than 104 feet tall. Approximately 90 parking spaces must be provided in the below-grade garage.
4. The PUD shall have a maximum FAR of 8.5 and a maximum height of 106 feet. The lot occupancy of the PUD Site shall be no greater than 96%.
5. Rhode Island Associates Limited Partnership shall provide a "green" design package that is substantially similar to that which is included as Exhibit 3 of the Office of Planning's final report submitted on December 4, 2006, Exhibit 47.
6. The Project shall be set back 2 ½ feet from the west alley to a height of 15 feet.
7. In addition to the benefits and amenities that the Partnership has previously provided, the Partnership must submit proof of payment of the following contributions prior to issuance of a building permit issued pursuant to any second stage approval: \$220,000 to planned improvements in Stead Park; \$25,000 to improvements of Scott Circle Park; \$25,000 to

the Dupont Circle Citizens Association; \$20,000 to Ross Elementary School; \$10,000 to Francis Junior High; and \$100,000 to Affordable Housing. In its second stage application, the applicant shall provide greater specificity concerning the affordable housing donation, such as the identity of the recipient of the donation and the nature of the recipient's affordable housing program.

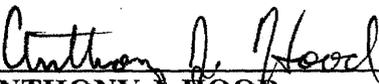
8. Rhode Island Associates Limited Partnership shall provide at least 5% of the below grade parking spaces for car-sharing vehicles or fuel efficient vehicles and depict such spaces in its second-stage application.
9. The Applicant shall provide a secured area for bicycles within its garage, and depict the area in its second-stage application.
10. The Applicant shall submit, as part of the second-stage application, landscape plans, detailed architectural plans and elevations indicating the design treatment of each building.
11. The first-stage approval is valid for a period of one year, within which time a second stage application shall be filed
12. 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 (2001 ed.) 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

At its public hearing of December 14, 2006, the Commission **APPROVED WITH CONDITIONS** the Application by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten and John G. Parsons, not having participated, not voting).

At its public meeting of February 12, 2007, the Commission **ADOPTED** this Order by a vote of 3-0-2 (Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve; Carol J. Mitten and John G. Parsons, not having participated, not voting).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on JUN 29 2007.

  
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**ANTHONY J. HOOD**  
Vice Chairman  
Zoning Commission

  
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**JERRILY R. KRESS, FAIA**  
Director  
Office of Zoning