

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 05-15C**  
**Z.C. Case No. 05-15C**  
**(Extinguishment of Approved Planned Unit Development)**  
**RIK DC Investments, LLC – Square 775, Lot 50**  
**July 28, 2011**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public meeting on July 28, 2011, to consider a request of RIK DC Investments, LLC, property owner, and AvalonBay Communities, Inc., contract purchaser, (collectively, “Applicant”) to extinguish an approved Planned Unit Development (“PUD”) for property located in Lot 50 of Square 775 (“Property”). The Commission considered the request pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The Commission granted the request.

**FINDINGS OF FACT**

1. The Property is located in the Near Northeast neighborhood of Ward 6 at the northwest corner of 4<sup>th</sup> and I Streets, N.E. The Property consists of approximately 28,310 square feet of land and is located in the C-2-B Zone District. It was most recently used by the Uptown Bakery as a wholesale bakery establishment and accessory parking lot. It is adjacent to a public alley and commercial and residential uses.
2. On January 9, 2006, the Commission approved a PUD for the construction of a residential building in the C-2-B Zone District with 125-140 units, a height of 65 feet, a lot occupancy of 85%, and a parking space to unit ratio of 1:1. The Commission’s decision became final effective on July 21, 2006, through publication of Z.C. Order No. 05-15 in the *District of Columbia Register*.
3. On May 16, 2008, the Commission approved a modification of the PUD to increase the number of residential units to 166-180, the height to 70 feet, and decrease the lot occupancy to 80% and the parking ratio below 1:1. (Z.C. Order No. 05-15A.) The Order also extended the modified PUD until May 16, 2012.
4. RIK DC Investments, LLC purchased the Property in a foreclosure sale in July 2009. Several market analyses were performed to determine how best to proceed with its development. In order to preserve the development rights under the approved PUD, an extension request was filed. The Commission approved the extension until May 16, 2012. (Z.C. Order No. 05-15B, effective April 27, 2010.)

5. RIK DC Investments, LLC marketed the Property and it is currently under contract with AvalonBay Communities, Inc. (“AvalonBay”). AvalonBay intends to develop the site with a matter-of-right residential building. AvalonBay intends to close on the Property and break ground on the project prior to May 16, 2012.
6. On July 11, 2011, the Applicant requested a modification to the PUD. The request sought the option to construct a matter-of-right project on the Property as an alternative to developing the PUD project. The Applicant requested that the modification be considered using the Commission’s consent calendar procedures set forth at 11 DCMR § 3030, which permit consideration of minor modification without a hearing.
7. On July 15, 2011, the Office of Planning (“OP”) submitted a report on the request. The report expressed OP’s concern that a PUD is expected to be development-ready when filed, and that granting the request could set a precedent undermining that expectation. However, OP acknowledged that the owner of the Property could proceed with a matter-of-right development once the PUD expired, so the likely result of denying the request would be to delay an eventual matter-of-right development.
8. The Commission considered the modification request at its July 25, 2011 public meeting. The Commission expressed concern with the granting the request, because doing so could encourage speculative PUD applications by applicants who do not intend to proceed with the PUD projects. The Commission further stated that it would be inclined to consider a request to extinguish the PUD, if it was requested by the Property owner, to allow a matter-of-right project to proceed without further delay. The Commission indicated it would waive its procedural rule requiring four days notice to the public of its meetings to allow the Commission to consider the modification request, or alternatively a request from the Applicant to extinguish the PUD, at a special public meeting to be held on July 28, 2011.
9. On July 26, 2011, the Applicant submitted a letter requesting extinguishment of the PUD to permit matter-of-right development of the Property.
10. At a special public meeting on July 28, 2011, the Commission granted the extinguishment request.
11. The PUD did not include a PUD-related map amendment; accordingly, the Property will remain in the C-2-B Zone District.

#### **CONCLUSIONS OF LAW**

1. 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.)

2. The Commission concludes that once a PUD is approved, any future construction on the PUD site must be in accordance with the approved plans for so long as the PUD remains in effect. If a property owner wishes to proceed with matter-of-right development on the site, it must request the complete extinguishment of the PUD. Such a request will only be granted upon proof that the development of the approved PUD is no longer feasible and that failure to grant the request will delay and endanger impending matter-of-right development.
3. The Applicant has met that burden here. The Commission must agree with the Applicant that development of the approved PUD is not presently feasible. The PUD will not expire until May 16, 2012. It is clear that development of the proposed PUD will not proceed during that period and it does not serve the community, the District, or the Applicant to allow the Property to sit dormant until that time. The community is better served to allow matter-of-right development to go forward as soon as possible.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request of the Applicant in Case No. 05-15C for the extinguishment and rescission of the PUD approved pursuant to Case No. 05-15, as modified by Case No. 05-15A, the approval of which was extended by Case No. 05-15B. Pursuant to the terms of the Covenant recorded against the Property, as required by Section 2409.3 of Title 11 of the District of Columbia Municipal Regulations, the Applicant shall record a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General indicating the extinguishment of the Planned Unit Development.

For the reasons stated above, the Commission concludes that the PUD shall be extinguished; it is hereby **ORDERED** that the Applicant's request to extinguish the PUD be **GRANTED**.

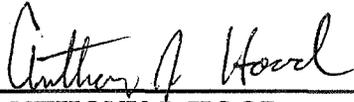
On July 28, 2011, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its special public meeting by a vote of **5-0-0** (Anthony J. Hood, Konrad W. Schlater, Peter G. May, Greg M. Selfridge, and Michael, G. Turnbull to adopt).

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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*; that is, on November 11, 2011.



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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**



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**RICHARD S. NERO, JR.**  
**ACTING DIRECTOR**  
**OFFICE OF ZONING**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



Z.C. CASE NO.: 05-15C

As Secretary to the Commission, I hereby certify that on **NOV 9 2011** copies of this Z.C. Order No. 05-15C were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |    |  |    |  |
|----|--|----|--|
| 1. | <i>D.C. Register</i>   | 5. | Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                            |
| 2. | Allison Prince, Esq.<br>Christine Roddy, Esq.<br>Goulston and Storrs<br>1999 K Street, N.W. Suite 500<br>Washington, D.C. 20006-1101 | 6. | Councilmember Tommy Wells  |
| 3. | ANC 6C<br>P.O. Box 77876<br>Washington, DC 20013   | 7. | DDOT (Martin Parker)   |
| 4. | Commissioner M. Tony Richardson<br>ANC/SMD 6C05<br>921 2 <sup>nd</sup> Street, N.E.<br>Washington, DC 20002                          | 8. | Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>Washington, DC 20024 |
|    |  | 9. | Office of the Attorney General (Alan Bergstein)  |

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin".

**Sharon S. Schellin**  
**Secretary to the Zoning Commission**  
**Office of Zoning**