

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 638-C

Z.C. Case No. 93-13M/88-32C

(PUD Modification at 1616 Rhode Island Avenue, N.W. - Gramercy)

August 1, 1994

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on May 5, 1994. At that hearing session, the Zoning Commission considered the application of the Rhode Island Associates Limited Partnership for a modification to a previously approved planned unit development (PUD), pursuant to Chapter 24 and Section 102 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.

FINDINGS OF FACT

1. By Z.C. Order No. 638 dated November 13, 1989, the Zoning Commission approved consolidated review of a PUD and a related map amendment from the SP-2 to C-4 for Lot 825 in Square 182, located at 1616 Rhode Island Avenue, N.W. (The site was subsequently subdivided and is now known as Record Lot 80.)
2. By Z.C. Order No. 638-A dated February 12, 1990, the Zoning Commission approved a modification to Z.C. Order No. 638 to permit the applicant certain flexibility with regard to the development.
3. Z.C. Order Nos. 638 and 638-A provide for the construction of the 10-story, mixed-use building containing residential and office/retail uses. The height of the building is 106 feet and the floor area ratio (FAR) shall not exceed 6.86, of which 1.64 FAR will be devoted to residential use. The orders allow the applicant to have a variety of residential uses so long as there are provided a minimum of forty-eight (48) and a maximum of fifty-two (52) dwelling units in the PUD. The orders also permit parking of 125 spaces for commercial uses and not less than one parking space for each apartment unit. The total number of parking spaces on the site are permitted to vary from 173 to 177. The applicant filed for and received a building permit from the District of Columbia on August 16, 1991.
4. By Z.C. Order No. 638-B dated June 8, 1992, the Zoning Commission extended the validity of the PUD for two years; that is, until March 9, 1994 to file an application for a building permit and until March 9, 1995 to start construction.

5. On October 29, 1993, the applicant filed an application to modify the previously approved PUD that would permit an interim use as a surface parking lot to be constructed on the subject site for a period not to exceed three (3) years.
6. The PUD site is the location of the former Gramercy Hotel. The hotel structure was demolished in 1990 in preparation for the development of the PUD. The PUD site is approximately 32,700 square feet in land area.
7. At the public hearing, the applicant indicated that it was fully prepared to move forward with the PUD as soon as the real estate market improved sufficiently to allow the construction to begin. The applicant testified that the real estate taxes on the site are approximately \$450,000 per year and that despite its continuing efforts to find a lead tenant in order to develop this site pursuant to the PUD, it has been unable to do so.
8. The applicant also indicated that it seeks an interim use in order to generate some income from the property which would offset the carrying costs of the property as well as providing surface parking in an area that has such a need. He stated that the proposed parking lot would provide an economical use of the property, would result in additional tax revenue to the District of Columbia, and that use of the site for surface parking for the short term is superior to allowing the property to remain vacant until construction of the PUD begins.
9. The applicant further indicated that its request for a PUD modification is consistent with the intent, and purpose of the Zoning Regulations, the PUD process, and the Comprehensive Plan for the National Capital. Because the grounds for initially approving the PUD remain unchanged, the project continues to be not inconsistent with the Comprehensive Plan.
10. The District of Columbia Office of Planning (OP), by report dated April 25, 1994 and by testimony at the public hearing, noted that parking lots are permitted as a matter of right in the C-4 zone District and that the site is within the Central Employment Area. OP recommended that the application for modification be approved subject to the following conditions:
 - a. The approval shall be for a period not to exceed three (3) years;
 - b. The applicant shall provide detailed plans for adequate landscaping and visual screening of the proposed parking lot; and

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- c. The proposal shall comply with all the applicable parking lot requirements promulgated in Chapter 21 and 23 of 11 DCMR.
11. The District of Columbia Metropolitan Police Department (MPD), by letter dated April 7, 1994, had no objections to the proposed PUD modification. The MPD recommended the implementation of various security measures including adequate locks and lighting, controlled entrance/exit to the premises during evening hours and weekends, etc.
 12. The District of Columbia Department of Public Works (DPW), by memorandum dated April 27, 1994, had no objections to the interim use of the site as a parking lot.
 13. By memorandum dated May 2, 1994, the Director of the Office of Zoning (OZ) solicited advice from the Office of Corporation Counsel (OCC), on behalf of the Zoning Commission. The Commission requested advice about proper procedures and the Commission's authority relative to this application.
 14. By memorandum to the file dated May 5, 1994, the Director of OZ indicated that OCC provided a written response dated May 3, 1994, which is subject to the attorney - client privilege.
 15. Advisory Neighborhood Commission (ANC) 2B, by letter dated January 13, 1994 had no objections to the application, subject to the condition that the interim use as a parking lot terminate at the end of 3 years and that the site return to the approved PUD usage.
 16. There were no other parties or persons in support of or opposition to the proposed modification.
 17. At the request of the Zoning Commission, the applicant submitted a revised site plan, which included revised landscaping, lighting, and security details.
 18. The Commission notes the advice of OCC and concurs with the applicant, OP, ANC-2B and others.
 19. The Commission finds that the modification is consistent with the purposes of the Zoning Regulations and the PUD process, and that the proposed interim use is not inconsistent with the Comprehensive Plan for the National Capital.
 20. On June 13, 1994 at its regular monthly meeting, the Zoning Commission considered the request of OZ to treat the expiration of this interim use as if the Commission were

considering a request to extend the validity of Z.C. Order Nos. 638, 638-A and 638-B. OZ believes that because this PUD modification is unprecedented and represents the first request of the Zoning Commission to consider an interim use for a previously approved PUD, and because of the procedural and administrative uncertainties that may be associated with this approval, the zoning process would be best served by proceeding in an orderly manner that is procedurally and administratively prudent. The Commission concurs.

21. The Commission finds that the applicant has satisfied the intent and purposes of Chapter 24 of the Zoning Regulations.
22. The proposed action of the Zoning Commission to approve the modification application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated July 7, 1994, indicated that the proposed PUD modification, subject to the proposed guidelines, conditions, and standards, and the revised site plan, would not adversely affect the Federal establishment or other Federal interests and would not be inconsistent with the Comprehensive Plan for the National Capital.
23. On June 30, 1994, the applicant filed a letter requesting a waiver of the Zoning Commission Rules of Practice and Procedure to permit the filing of a motion for reconsideration. The applicant proposed to change one of the Zoning Commission's proposed conditions of approval prior to the issuance of the order.
24. By memorandum dated July 7, 1994, OZ recommended that the Zoning Commission deny the applicant's request. OZ, in part, stated the following:

"... that the requested action is premature and would result in the disruption of the orderly processing of this case. 11 DCMR 3029 provides an opportunity for the applicant and other parties to file a motion for reconsideration after the decision of the Zoning Commission is published and effective. OZ believes that, to do otherwise, would impair the integrity of the Zoning process."
25. On July 11, 1994 at its regular monthly meeting, the Zoning Commission considered the applicant's request and the OZ memorandum. The Commission concurred with OZ and denied the applicant's request.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interests of the District of Columbia.
2. The development of this PUD modification project carries out the purpose of Chapter 24 of the Zoning Regulations.
3. The development of this PUD modification is compatible with District-wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this PUD modification is not inconsistent with the Comprehensive Plan for the National Capital.
5. The approval of this application is consistent with the purposes of the Zoning Act (Act of June 20, 1938, 52 stat. 898) and the Zoning Map of the District of Columbia, by furthering the general public welfare and serving to stabilize and improve the area.
6. This application can be approved with conditions which ensure that the development will not have an adverse effect on the surrounding community or the District of Columbia.
7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded ANC 2B the "great weight" consideration to which it is entitled.
9. This application 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 herein, the Zoning Commission for the District of Columbia hereby orders the APPROVAL of a modification to Z.C. Order Nos. 638, 638-A and 638-B. The approval of this modification is subject to the following guidelines, conditions and standards:

1. The modification to the planned unit development (PUD) shall be developed in accordance with the architectural drawing prepared by the Weihe Partnership, marked as Exhibit No. 37-B,

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as modified by the guidelines, conditions, and standards of this order.

2. The PUD site, as modified, shall be developed as a parking lot for an interim use.
3. The interim use as a parking lot shall be valid for a period of three years; that is until March 9, 1997.
4. The parking lot shall be developed to include the following:
 - a. Approximately 66 parking spaces;
 - b. Lighting, in accordance with Exhibit Nos. 37-B and 37-C; and
 - c. Landscaping, in accordance with Exhibit No. 37-B except that for screening purposes, the Hedera Helix (English Ivy) in the northeast and northwest corners of the parking lot shall be replaced with an extension of the Euonymus Alatus (Burning Bush) - 36" high at three feet on center.
5. The applicant shall have flexibility with respect to the following:
 - a. To vary the location of the parking spaces and striping on the interior of the lot; and
 - b. To make minor adjustments to the finished lot in accordance with other District of Columbia Codes or Regulations such as stormwater control and the like.
6. Pursuant to the intent of 11 DCMR 2407.3, no building permit shall be issued by the Department of Consumer and Regulatory Affairs (DCRA) for the PUD modification for the interim use until the applicant has recorded a "Notice of Modification" of Z.C. Order No. 638 with the land records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order Nos. 638, 638-A, 638-B, and this order that the Director of the Office of Zoning has so certified. The recordation of the Notice of Modification shall bind the applicant and successors in title to construct on and use this site in accordance with this order and any amendments thereof.
7. After recordation of the Notice of Modification, the applicant shall promptly file a certified copy of that Notice of Modification with the Office of Zoning for records of the Zoning Commission.

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8. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the applicant has satisfied Condition Nos. 6 and 7 of this order.
9. The PUD modification approved by the Zoning Commission for an interim use as a parking lot shall effectively extend the validity of Z.C. Order Nos. 638, 638-A, and 638-B and shall be valid for a period of three (3) years; that is, until March 9, 1997, within such time application must be filed for a building permit for the PUD project, as specified in subsections 11 DCMR 2407.2 and 2407.3 of the Zoning Regulations. Construction shall start within one additional year; that is, not later than March 9, 1998.
10. The certificate of occupancy for the interim use shall not extend beyond March 9, 1997.
11. Notwithstanding the conditions of approval in this order, the PUD project as approved by Z.C. Order Nos. 638, 638-A, and 638-B may be started at anytime during the validity of the PUD.
12. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of the D.C. Law 2-38, Human Rights Act of 1977, the applicant is required to comply with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with these provisions. Nothing in this order shall be understood to require the Zoning Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38, as amended

Vote of the Zoning Commission taken at the public meeting on June 13, 1994 by a vote of 4-0 (John G. Parsons, William B. Johnson and William L. Ensign, to approve with conditions, and Jerrily R. Kress, to approve by absentee vote - Maybelle Taylor Bennett, not voting not having fully participated in the hearing).

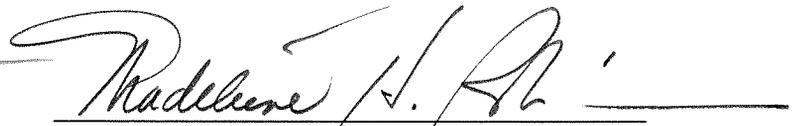
In regard to the applicant's request for reconsideration, vote of the Zoning Commission taken at the public meeting on July 11, 1994: 4-0 (William B. Johnson, John G. Parsons and Maybelle Taylor Bennett, to deny a waiver of the rules to file a motion for reconsideration, and Jerrily R. Kress, to deny by absentee vote - William L. Ensign, not present not voting).

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This order was adopted by the Zoning Commission at the public meeting on August 1, 1994 by a vote of 4-0: (John G. Parsons, William B. Johnson, William L. Ensign and Jerrily R. Kress, to adopt as amended - Maybelle Taylor Bennett, not voting not having fully participated in the hearing).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on SEP 23 1994.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. ROBINSON
Director
Office of Zoning

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