Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 871
Case No. 98-12M
(Modification of Planned Unit Development for 1616 Rhode Island Avenue, N.W.)
December 14, 1998

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 3, 1998, to consider an application from Rhode Island Associates Limited Partnership for a modification to a previously approved Planned Unit Development ("PUD"), pursuant to Chapter 24 of the District of Columbia Zoning Regulations, Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

FINDINGS OF FACT

On March 6, 1998, the Rhode Island Associates Limited Partnership ("Applicant") filed an application for a modification to a PUD previously approved by Zoning Commission Order No. 638, pursuant to Zoning Commission Case No. 88-32C, as modified and extended by Zoning Commission Order Nos. 638-A, 638-B, 638-C, 638-D and 638-E, hereinafter "Original PUD."

The Original PUD permitted the construction of a single mixed-use building containing residential, office and retail space. The height of the building was approved to be 106 feet and the floor area ratio (FAR) was not to exceed 8.5, of which no more than 6.86 was to be devoted to commercial use and of which 1.64 FAR was to be devoted to residential use. The first eight floors of the building were for office use with ground floor retail and the top two floors for residential use with a maximum of fifty-six apartments. The PUD permitted 125 parking spaces for commercial uses and not less than one parking space for each apartment unit, with the total number of parking spaces on the site permitted to vary from 173 to 177.

The current zoning of the site, in conjunction with the Original PUD, is C-4. The C-4 Zone District is a high density commercial and mixed-use zone. The maximum height permitted is 130 feet, so long as the street abutting the site is at least 110 feet wide, the maximum bulk permitted is 10.0 FAR, and the maximum lot occupancy permitted is 100 percent.

Under the PUD Regulations, the Zoning Commission has the authority to impose development conditions, guidelines and standards which may exceed, or may be less than, the matter of right standards identified above. The Zoning Commission may also approve uses that are permitted as special exceptions by the BZA or approve development variances that are required by the project design.

The present modification is requested in order to permit the redesign of the PUD to allow for two buildings instead of one. One building, on a separate lot, will be for the use of the University of California and will be predominately residential apartments for use by the University's Washington Center. It will also accommodate the Center's academic program with space for faculty and graduate student offices, administrative office/support, classrooms and the University's Office of Federal Government Relations. The University of California building will consist of eleven stories with approximately 147,305 square feet of gross floor area at a FAR of 8.5 on its lot of approximately 17,330 square feet. Approximately 99,750 of the total gross floor area will be for residential use. The apartments will occupy the 4th through 11th floors. The building will also have space for ancillary services typical of an apartment building and recreational space. The first three floors will accommodate the University's academic program and other needs. The building will have 44 parking spaces in an underground garage.

The second building, on its own lot, will be for use by Homestead Village, Inc. as an extended-stay inn. The Homestead Village building will consist of eleven stories with approximately 121,000 square feet of gross floor area, at a FAR of 7.9 on its own lot of approximately 15,396 square feet. This building, an inn, will be comprised of 220 units. Guest units will include living, sleeping, bathrooms and fully equipped kitchen areas. The guest rooms will occupy the second through eleventh floors. The first floor of the building will have ancillary services typical of an inn and an exterior garden of approximately 3,000 square feet. The penthouse will house, in addition to mechanical equipment, a self-service laundry and an exercise room for guests. The building will have 57 parking spaces below grade in an underground garage.

The modification decreases the total FAR of the project to 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/inn uses, and 3.05 FAR will be devoted to residential use. The modified bulk and massing of the project is consistent with the approval of the Original PUD. The height of building of neither of the buildings in the modified PUD will exceed 106 feet. The total lot occupancy of both buildings prior to subdivision in the modified PUD will be seventy-nine percent.

A representative of the University of California testified that it is a contract purchaser of a portion of the PUD site and it seeks to buy it in order to establish a permanent location for its Washington Center program which currently exists in leased facilities. The University representative indicated that its Board of Regents has approved the funding of

the purchase and development of its portion of the property. The representative testified that the estimated time for construction of the University building is eighteen months, tentatively scheduled to begin in August 1999.

A representative of Homestead Village, Inc. testified that it is a contract purchaser of the balance of the site. He stated that Homestead intends to build and operate an extended stay inn on the property, targeted at traveling business professionals, with a length of stay averaging between two and three weeks. He also indicated that Homestead Village's inns were unique in that units have kitchens, sleeping quarters and living areas. Further, the inn will have no restaurant or ancillary retail space. He testified that the estimated time for construction of the Homestead Village building is fourteen months, tentatively scheduled to begin in August 1999.

The project architect testified as an expert in architecture and site planning, on behalf of the Applicant, and stated that by providing for two buildings instead of one, the modified PUD will be more in scale with other buildings in the surrounding neighborhood. He also testified that the height of both buildings will be no higher than 106 feet and the total FAR will be reduced from the Original PUD from 8.5 to 8.2. The architect stated that both the eastern and western alleys adjacent to the property will be effectively widened by the plans and that two (loading) berths for each building would be provided. The architect testified that the University building and the Homestead building fit well together on this site. He stated that the uses proposed in the modification are appropriate for the site given its location as a transition area between the Downtown and DuPont Circle. He also opined that the modification is not inconsistent with the Comprehensive Plan and is consistent with the intent and purposes of the Zoning Regulations.

The Applicant's transportation consultant, recognized as an expert by the Commission, testified that the project will have no adverse transportation impact on the surrounding neighborhood. He also testified that the parking provided for both buildings is more than adequate. He stated that there is no need for a 55 foot loading berth in either building based on the proposed uses.

The Applicant presented as amenities and benefits in addition to those contained in Zoning Commission Order No. 638: (a) an increase in housing in the PUD from approximately 53,670 gross square feet in the Original PUD to approximately 99,750 gross square feet proposed in the modification; (b) a $25,000 donation by Homestead Village, Inc. to the National Park Service for improvements to Dupont Circle Park; (c) a mentoring program to be established between the University of California and Ross Elementary School (or substitute school mutually acceptable to the University and ANC 2B if Ross is closed); (d) a $10,000 donation from the Applicant to the Dupont Circle Citizens' Association for the completion of the Dupont Circle Resource Center; and (e) tax revenue for the District of Columbia in excess of $1.5 million annually.

The Commission notes that three of the amenities and benefits required pursuant to Zoning Commission Order No. 638, namely, (a) a $150,000 donation to the District of Columbia Board of Education, (b) a First Source Agreement with the Department of Employment Services, and (c) a Memorandum of Understanding with the MBOC, have been performed by the Applicant.

The District of Columbia Office of Planning ("OP"), by memorandum dated November 23, 1998 and by testimony presented at the public hearing, recommended that the application be approved because the modification increases the residential component, decreases commercial uses, and reduces the overall density of the project from 8.5 to 8.2 FAR, all of which is consistent with the previously approved PUD and the Comprehensive Plan. Further, the application meets the requirements of the Zoning Regulations for the approval of a PUD modification.

The District of Columbia Department of Housing and Community Development, memorandum dated November 9, 1998, recommended that the application be approved because it is consistent with the purposes and intent of the Zoning Regulations and Map; it is not inconsistent with the Comprehensive Plan; it is consistent with the purposes of the originally approved PUD that it is modifying; it satisfies the requirements of the approval of a consolidated PUD; it provides significant public benefits; and it advances important goals and policies of the District of Columbia.

By action taken at the November 11, 1998 public meeting, the Advisory Neighborhood Commission voted 6-1 in support of the application and submitted a letter indicating its support into the record. ANC-2B did not testify at the hearing.

There were no persons in support or in opposition to the proposal testifying at the hearing.

The Commission takes notice that the Original PUD expires on March 9, 1999 by which date the Applicant must file for a building permit and further that the Applicant shall start construction of the Original PUD before March 9, 2000.

The Commission concurs with the recommendation and position of the Office of Planning. The Commission finds that the proposed PUD modifications are appropriate and that the Applicant has satisfied the intent and purposes of Chapter 24 of 11 DCMR.

The proposed action of the Zoning Commission to approve the 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. The NCPC, by report dated February 4, 1999, found that the modification to the proposed PUD would not adversely affect the federal establishment or other federal interests, nor be inconsistent with the Federal Elements of the Comprehensive Plan. The NCPC noted that the plans exceeded the building height limits set by the Zoning

Commission and that the applicant had agreed to submit plans to the Zoning Commission that did not include space for human occupancy above the 106 foot height. The Applicant did not submit any additional plans to the Zoning Commission, as the record was closed at the time. The Commission finds that the original plans submitted contained a self-service laundry and an exercise room for guests in the roof penthouse. This space does not exceed any limits imposed by the Act of 1910, since the building and roof structure are below the 130 foot height permitted. Pursuant to Section 2405.7, the Zoning Commission can approve use of a roof structure below the limits of the Act of 1910 by exercising the authority otherwise conferred upon the Board of Zoning Adjustment by Section 411.11.

CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.

2. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.

3. Approval of this PUD modification and change of zoning is not inconsistent with the Comprehensive Plan.

4. The proposed PUD meets the minimum area requirements of Section 2401.1 of the Zoning Regulations.

5. Approval of this PUD modification application is appropriate because the application is generally consistent with the present character of the area.

6. The Commission takes note of the position of Advisory Neighborhood Commission 2B, and in its decision has accorded to the ANC the "great weight" consideration to which it is entitled.

7. The approval of the modification application will promote the orderly development of the site 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 proposed modification application can be approved with conditions which will ensure that development will not have an adverse effect on the surrounding area.

9. The modification 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 contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for modification to the Original PUD approved by Z.C. Orders Nos. 638 through 638-E, for property located in Square 182, Lot 80. Zoning Commission Orders Nos. 638 through 638-E, are hereby amended as follows:

1. The Planned Unit Development (PUD) site shall be developed in accordance with the drawings prepared by Harman-Cox Architects and Esocoff and Associates Architects, dated October 3, 1998, marked as Exhibit 20, and as modified by the guidelines, conditions and standards as follows:

2. The project shall be a mixed-use project consisting of the construction of two separate buildings containing academic, office, residential and inn uses. The property may be subdivided into two lots of record.

3. The total FAR of the PUD (both buildings combined) will be 8.2, of which 5.15 FAR will be devoted to non-residential uses including academic/office/extended stay uses, and 3.05 FAR will be devoted to residential use. The University building shall have a total FAR not to exceed 8.5 and the inn shall have a total FAR not to exceed 7.9.

4. The maximum height building of either building shall not exceed 106 feet.

5. The lot occupancy of the project (both buildings) shall not exceed seventy-nine percent of the total site as it exists before subdivision.

6. The University building shall provide a minimum of 44 parking spaces, and the inn shall provide a minimum of 57 parking spaces.

7. Landscaping shall be provided as shown on the plans marked as Exhibit No. 20 of the record. The yards, courts, driveways and loading berths of the PUD shall be as shown on the plans marked as Exhibit No. 20 of the record.

8. The University building shall be set back from its east property line by five feet (to a height of fourteen feet) in order to effectively widen the public alley from ten to fifteen feet; additionally, the inn shall be set back from its western property line by eleven feet (to a height of fourteen feet) thus increasing the effective width of the alley to twenty-one feet.

9. In addition to the requirements of Zoning Commission Order No. 638 which have been performed by the Applicant, namely, a $150,000 donation to the District of Columbia Board of Education, the First Source Agreement executed with the

Department of Employment Services and the Memorandum of Understanding executed with MBOC, the following additional benefits shall be provided:
(a) the Applicant shall make a $10,000 donation to the Dupont Circle Citizens Association for the completion of the Dupont Circle Resource Center prior to the first to occur of (1) the issuance of a building permit for the inn or (2) the issuance of a building permit for the University building;
(b) prior to the issuance of a building permit for the inn, a $25,000 donation shall be made by Homestead Villages, Inc. to the National Park Service for improvements to Dupont Circle Park.; notwithstanding paragraph 9(c) below, this obligation encumbers only the portion of the property designated for inn use; and
(c) prior to the issuance of a Certificate of Occupancy to the University, a mentoring program between the University of California and Ross Elementary School shall be established. Ross Elementary School may be substituted with another school mutually acceptable to the University and ANC 2B, if Ross is closed; notwithstanding Paragraph 9(b) above, this obligation encumbers only the portion of the property designed for University use.

10. The Applicant shall have the necessary flexibility to make adjustments to the project with respect to the location and design of all interior components, including partitions, slabs, doors, hallway columns, stairways, location of elevators, electrical and mechanical rooms, provided that the variations do not change the exterior configuration of the building, and to vary the location and types of parking spaces provided and other modifications to the below grade space to accommodate the needs of the Applicant and handicapped persons and required structural and mechanical building elements.

11. If both contract purchasers fail to consummate the purchase of their respective portions of this property, and the Applicant does not effectuate the terms and conditions of the Original PUD or otherwise achieve amendments thereto from the Zoning Commission, the zoning of the property shall revert to the SP-2 Zone District. If one, but not the other, of the contract purchasers does not consummate the purchase of its respective portion of the property, the Applicant shall file a PUD modification request, for the portion of the property remaining in Applicant's ownership, within 120 days of the date of the termination of the contract purchaser's right to purchase. The requirement to file the further PUD modification required by this Paragraph 11 shall not affect the portion of the property no longer owned by the Applicant. Such further PUD modification application shall include all the requirements of the Zoning Regulations for modifications to a PUD and a specific plan and timetable for Applicant's completion of said further PUD modification.

12. 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 until the Applicant has recorded a "Notice of Modification" of Z.C.

Order No. 638 in 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, 638-C, 638-D, and 638-E 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 the successors in title to the property, to construct on and use this site in accordance with this order and any amendments thereof.

13. 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 the records of the Zoning Commission.

14. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has satisfied Conditions Nos. 11 and 12 of this order.

15. The PUD modification approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applications must be filed for building permits as specified in 11 DCMR 2409.1. Construction shall begin within three years of the effective date of this order.

16. Pursuant to D.C. Code Section 1-2531 (1991), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the Applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified at D.C. Code, Title 1, Chapter 25 (1991), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations 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 its public hearing on December 3, 1998: 3-0 (Herbert M. Franklin, Anthony J. Hood, and John G Parsons to **APPROVE WITH CONDITIONS**).

The order was adopted by the Zoning Commission at its public meeting on February 8, 1999 by a vote of 3-0 to **ADOPT** (John G. Parsons, Anthony J. Hood, Herbert M. Franklin, by proxy, Jerrily R. Kress, Angel F. Clarens not voting, not present).

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 FEB 28 [illegible].

JERRILY R. KRESS, FAIA
Chairperson
Zoning Commission

SHERI M. PRUITT-WILLIAMS
Acting Director
Office of Zoning

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