GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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January 6, 2010

Cynthia Giordano, Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206

Andy Litsky, Chairman
ANC 6D
P.O. Box 71156
Washington, D.C. 20024

Re: Z.C. Case No. 03-30 (Square 643 Associates – Correction to Order No. 03-30)

Dear Ms. Giordano & Mr. Litsky:

Please be advised that pursuant to 11 DCMR § 3030.6, the Zoning Commission is providing you notice that it intends to place the above matter on its January 25, 2010 Consent Calendar for consideration. Pursuant to 11 DCMR § 3030.8, you have seven days to file a response in support or opposition of this matter and must serve your response on all parties. A copy of the draft Correction Order is attached for your convenience.

If you have any questions, please feel free to contact me at (202) 727-6311.

Sincerely,

Sharon S. Schellin

Sharon S. Schellin
Secretary to the Zoning Commission

Enclosure

ZONING COMMISSION
District of Columbia
CASE NO. 03-30
EXHIBIT NO. 66

ZONING COMMISSION
District of Columbia
CASE NO.03-30
EXHIBIT NO.66

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED[1] ORDER NO. 03-30C
Z.C. Case No. 03-30
PUD and Related Map Amendment – Square 643 Associates LLC
September 15, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 20, 2005 to consider an application from Square 643 Associates LLC (the "Applicant") for consolidated review and approval of a Planned Unit Development ("PUD") and related map amendment, pursuant to Chapter 24 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 contested cases.

FINDINGS OF FACT

The Application, Parties and Hearing

1. On September 8, 2003, the Applicant filed an application for consolidated review and approval of a PUD and related zoning map amendment (the "Application") for a generally rectangular-shaped lot at 734 1st Street, S.W. (Square 643, Lot 830) (the "PUD Site"). The original proposed project was a new, 90-foot apartment house containing 60 units. The Applicant is Square 643 Associates LLC, Stephen Tanner, Managing Partner.

2. On March 8, 2004, the Zoning Commission considered whether to schedule a public hearing on the Application. The Commission expressed concerns about whether the church on the PUD Site might have historic significance and about the fact that the Height Act of 1910 appeared to restrict building height on the PUD Site to 70 feet. The Commission declined to set down the Application without prejudice and requested that the Applicant reconsider and revise the proposed development plan.

3. In the following months, the Applicant conducted additional meetings with community groups and Advisory Neighborhood Commission ("ANC") 6D and retained an

[1] On January 11, 2010, the Commission authorized a technical correction to Order 03-30 ("Original Order") as published in the November 18, 2005 edition of the D.C. *Register*. At the time of the publication of the Original Order, Finding of Fact No. 36h, a public benefit and amenity proffered by the Applicant, was inadvertently not restated as a condition in the Decision portion of said Original Order. Accordingly, to make the public benefit and amenity enforceable, this Corrected Order is adding it as a condition of approval as was the intention of the Original Order – see new Condition No. 16. Except for necessary conforming revisions, no other changes have been made to the Original Order.

architectural historian to evaluate the potential for the church to become a designated historic landmark.

4. In April 2004, the Applicant submitted an application to the Historic Preservation Review Board ("HPRB") to designate the church as a historic landmark. After public hearing on May 27, 2004, the HPRB designated the Friendship Baptist Church as a historic landmark.

5. In its landmark designation, the HPRB stated in part, "Friendship Baptist Church was erected in 1886-1887 by the congregation of the Virginia Avenue Baptist Church (founded 1875), which then moved to this site. It was among the earliest independent African-American congregations, largely consisting of the formerly enslaved. And despite being relatively early and constructed by a less privileged community, the Italianate Gothic building does demonstrate a certain dignity and architectural pretension (it also has a plain brick, 1930 addition or additions at rear and a 1952 front gabled, brick-faced addition on the north side). For its time, it would not have been considered remarkable, but certainly typical of a successful neighborhood church. By that fact and the fact that the building represents its African-American congregation, it also represents the development of Southwest Washington during the last quarter of the nineteenth century and the first half of the twentieth." The HPRB designation also references the church as "a continuing source of community through the social turmoil" created by the redevelopment of Southwest in the Urban Renewal program of the 1950s and 1960s. The staff report to the HPRB recommended "that only the original church structure and not its additions be considered contributing to a landmark."

6. On July 15, 2004, ANC 6D voted 4-3 to support the application before the HPRB.

7. On July 22, 2004, the Applicant presented revised plans to the HPRB, which provided for preservation and restoration of the church sanctuary structure, demolition of the new additions, and construction of an L-shaped apartment house addition on the north and east sides of the church building. The HPRB granted conceptual design approval.

8. After additional meetings with community groups, the ANC and the Office of Planning, a revised PUD Application was submitted to the Zoning Commission on October 5, 2004. The new project plans incorporated preservation of the church sanctuary structure to be used as nonprofit office space, together with an L-shaped, apartment house addition having 21-30 one- and two-bedroom units. The proposed development would rehabilitate and restore the historic landmark church and construct an apartment house addition four stories high on the north side of the church and seven stories high on the east side of the church.

9. The Applicant requested a zoning map amendment from R-4 to R-5-C, a maximum height of 70 feet for the proposed new construction, a proposed gross floor area of 44,286 square feet (2.66 FAR) and 61 % lot occupancy. The Applicant requested that

the Commission grant a special exception to permit 10,000 square feet of the space to be used for nonprofit office space pursuant to § 217 of the Zoning Regulations. The Applicant offered certain operational restrictions on the nonprofit use and requested that non-profit use be allowed without the need for further public review of the specific occupant. In the alternative, the 10,000 square feet would be additional residential units, hence the requested range of 21-30 total units. The Applicant proffered one affordable apartment unit, and requested some deviation from the side and rear yard requirements, as well as roof structure standards.

10. On October 8, 2004, ANC 6D considered the PUD Application and voted to support it at the Zoning Commission.

11. At its meeting of March 14, 2005, the Zoning Commission decided to schedule a public hearing on the proposed PUD.

12. After proper notice, the Zoning Commission opened and completed the public hearing on June 20, 2005.

13. The only parties in the case are the Applicant and ANC 6D, the boundaries of which include the PUD Site.

14. At its July 25, 2005 meeting, the Zoning Commission took proposed action by a vote of 5-0-0 to approve with conditions the Application and the plans presented at the public hearing.

15. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated July 28, 2005, found that the proposal would neither adversely affect the Federal interest nor be inconsistent with the Comprehensive Plan for the National Capital.

16. The Zoning Commission took final action to approve the Application on September 15, 2005.

The Site and the Surrounding Area

17. The PUD Site is located on the northern frontage of H Street, S.W., just east of the traffic circle at the terminus of Delaware Avenue, S.W. The site is generally rectangular in shape, contains 16,644 square feet of land area and is improved with a vacant church and attached accessory buildings. The church has been vacant for approximately four years and, in May 2005, was designated a historic landmark ("Friendship Baptist Church") upon the application of the property owner.

18. The vacant church on the PUD Site was last used by the Redeemed Temple of Jesus Christ (the "Redeemed Temple") in September 2001. For a time before that, it was used only intermittently, as the Redeemed Temple rented the church to small church groups. For two years, the Redeemed Temple attempted unsuccessfully to sell the church to another religious congregation. Only one church expressed serious interest. Lacking any religious purchaser, the Rèdeemed Temple sold the subject property to Square 643 Associates LLC in 2002

19. To the north, west and southwest of the PUD Site is the large, mixed-density Capitol Park IV residential complex of condominium townhouses and flats and four high-rise rental apartment buildings. This planned community has a total of 341 townhouses and duplex units, plus 937 apartment units.

20. Immediately to the east of the PUD Site is a small, unimproved "dogleg" of the Capitol Park IV property, with the Randall Recreation Center beyond. The facilities at this public park include play fields, a swimming pool and tennis courts. This recreation center was formerly the athletic and recreation fields for the former Randall Junior High School. Beyond the recreation center to the east is South Capitol Street.

21. Directly across H Street to the south of the PUD Site is a large three- and four-story building that was formerly the Randall Junior High School and later administrative offices for the public school system. From the mid-1990s until 2005, the occupants have been the Millennium Arts Center (artist studios) and a homeless shelter and drug rehabilitation center. At the present time, the complex is in the process of being offered for reuse and redevelopment, potentially to include the Corcoran School of Art.

22. Fronting on Delaware Avenue to the south of H Street, and immediately west of the Arts Center is the Southwest Clinic. Farther south, on the south frontage of M Street between Delaware Avenue and South Capitol Street are the Friendship Baptist Church, the Bethel Pentecostal Church and the high-rise Best Western Hotel.

23. Farther to the southwest are two large developments – the Greenleaf Gardens low-rise public housing complex and the high-density Waterside Mall, which is currently substantially vacant and awaiting redevelopment. The Waterfront Metrorail Station is on the south side of Waterside Mall and a four-block walk from the PUD Site.

24. The land use pattern described above reflects the planned mixed-density and mixed-use character of the Southwest neighborhood as it exists today – the end result of redevelopment under the Southwest Urban Renewal Plan in the 1950s to 1970s, predominantly. A few older buildings and groups of buildings were left standing, such as the landmark Friendship Baptist Church in this application, Greenleaf Gardens apartments and a few others.

The PUD Project

25. The project will restore the church sanctuary structure, demolish the non-contributing additions and create an L-shaped condominium apartment house addition to the church. The apartment house is proposed to have 22 one- and two-bedroom units, including one affordable one-bedroom unit for occupancy by a household with an income of 70 percent of Area Median Income. The Pre-Hearing Submission requested flexibility in the number of apartment units in the range of 21-30 units, to allow for the alternative of converting the sanctuary to apartments if non-profit use were not approved.

26. The apartment house addition will be four stories high on the north side and seven stories (70 feet high) on the east side of the church. The proposed residential gross floor area is 34,286 square feet, or 2.06 FAR.

27. The Applicant proposed that non-profit office use would occupy approximately 6,218 square feet of gross floor area in the church building – approximately 2,684 square feet on both the lower and sanctuary (main) levels, with an additional 850 square feet on the mezzanine level inside the church. In addition, the ground floor of the addition to the north would be devoted to the non-profit use, for a total of 10,000 square feet.

28. The total mixed-use density as proposed is 44,286 square feet, or 2.66 FAR. The Applicant stated that this is a moderate level of density that reflects the design prominence accorded the historic church structure in the architectural plans. This density is substantially less than the 4.0 FAR allowed with a PUD in the R-5-C District and is also within the allowed PUD density in the R-5-B District. However, a seventy-foot height is needed to help offset the development constraint presented by preservation of the church and by the fact that the church is sited generally in the middle of the lot.

29. The main church entrance will be used as the entrance to the non-profit office space. The sizeable front courtyard (previously part of the now closed First Street, S.W. right-of-way) will be restored as a cobblestone court, together with designed areas of lawn and concrete pavers. New trees and shrubs will be planted as depicted in the Landscape Plan.

30. A total of at least 32 parking spaces will be provided, including nine (9) for the non-profit office use and twenty-three (23) for the apartments.

31. The Pre-Hearing Statement, dated March 15, 2005, addressed the criteria for approval of non-profit office use in a historic building and requested approval without a requirement to return for a further public hearing regarding the specific tenant. Because of questions by the Zoning Commission and the Office of Planning as to the applicability of § 217 to a non-residential building, the Applicant cited two BZA precedents – Applications numbered 15945 and 14244 – which involved non-residential structures that had never been devoted to a residential use. The Applicant also noted that the Zoning Commission

is considering text amendments to allow § 217 or a new § 222 to allow non-profit office use in former school buildings, which are non-residential structures. The Applicant, however, expressed a willingness for the use to be approved as recommended by the Office of Planning: "[t]he Zoning Commission could provide relief to permit this [non-profit] use as part of the PUD based on the associated community benefit – a preference for this non-conforming use over conforming ones such as residential."

32. The Applicant testified that leasing a small amount of space to a non-profit association will be much more difficult if there is a requirement for a further public hearing and several months of delay. The Applicant proposed several restrictions on the non-profit use as a means of allowing the Zoning Commission to approve non-profit use generically in this PUD. The proffered conditions are as follows:

    a. Daily hours of business will be from 7:00 a.m. to 8:00 p.m.;

    b. The number of employees will not exceed a ratio of 250 square feet of floor area per employee, or 40 employees for the 10,000 square feet of space;

    c. Parking will be provided at a ratio of no less than one space per 1,200 square feet of non-profit space and one space per apartment; and

    d. Lighting will be arranged so that all direct rays are confined within the boundaries of the property.

33. The Applicant requested deviations from the matter-of-right requirements for the rear yard setback on the north side of the site, open court dimensions on the east side, and roof structure standards, as allowed by the PUD regulations at 11 DCMR § 2405.5, based on "the exact circumstances of the project." The need for deviations from standard rear yard setback and court dimensions on the east and north is created by preservation of the church on its footprint and the need to preserve open space in front of the church to maintain and enhance its setting. The rear yard provided on the north side of the property will not adversely affect the residents to the north because of a substantial green area and setback on that property and the fact that the addition is only four stories on the north side of the church. The 70-foot-high wing to the east of the church will create no adverse effect on the light and air of neighbors, because the abutting property is a vacant and unbuildable "dog-leg" of the Capitol Park IV property followed by the large Randall Recreation Center.

34. The project architect described the functionality of the proposed 14-foot-wide driveway into the parking garage vis-à-vis the 20-foot width preferred by the District Department of Transportation. He noted that the 14-foot width complies with the Zoning Regulations. He said the design will include a visual signal control system appropriate for a small parking area such as this. The constraints imposed by a small site that

incorporates preservation of a historic building also dictate the driveway width as proposed.

35. A principal of Woodmark Commercial Services LLC, and an expert in commercial leasing, testified that non-profit associations needing only 10,000 square feet of space have many locations to choose from in the city. He stated that the restrictions as proposed on number of employees, hours of operation, and so on, are already deterrents to a degree and should not be made more restrictive. He emphasized that a requirement for a separate zoning hearing and a several-month delay for such a process would severely hinder leasing efforts for the non-profit space.

Public Benefits and Project Amenities

36. As addressed in the Applicant's Pre-Hearing Statement and in testimony at the public hearing, the following public benefits and project amenities will be created as a result of this project.

a. Historic Preservation. The landmark church will be preserved as a whole building and devoted to a use that enables the main sanctuary space to remain relatively open physically. Non-profit office use will also allow more people to view the space than would the alternative of dividing the church into residential apartments, which is allowed as a matter of right in the existing R-4 District. The preservation and restoration will be accomplished, despite the difficulties imposed by the church's siting near the middle of the site with little potential density of new construction to support the preservation financially. The Historic Preservation Review Board granted conceptual design approval to the proposed design in 2004. The Applicant is preparing a special historic preservation memoriam either in the form of a plaque on the building, an oral history of Friendship Baptist Church members or similar recognition.

b. Superior Architecture and Urban Design. The elegant apartment additions are sympathetic to and enhance the historic character of the landmark church. The design has received conceptual design approval from the HPRB. The Office of Planning concurs that the architecture and urban design are superior. The Southwest Neighborhood Assembly and a professional city planner residing in the Southwest neighborhood also testified that the architecture and urban design are superior.

c. Mixed-Use – Residential and Non-profit Office. The housing units are important in expanding the housing supply in the neighborhood and the city, in terms of population increase and tax revenue enhancement. The non-profit office use adds daytime population and activity to this somewhat isolated corner of the Southwest neighborhood.

d. Affordable Housing. The apartment house will include one affordable unit for occupancy by a household having seventy percent (70%) of Area Median Income. The rent will be maintained at the affordable level for a period of 20 years, and the unit will have at least 700 square feet of gross floor area. The Applicant stated that an affordable rental unit for 20 years will likely provide a greater contribution to affordable housing than would a condominium unit, which may tend to be occupied by the original owner for the required time period (currently ten years) and then sold at a market rate. Over the 20-year time span proposed for the rental apartment, several households in the qualifying income levels are likely to benefit from the affordable rent levels.

e. Advancement of Comprehensive Plan Policies

1) "Stabilizing and improving the District's neighborhoods" is one of the Major Themes of the Comprehensive Plan. This project will put a long-vacant church building and addition into productive use in a location that needs physical enhancement as well as people activity.

2) "Preserving the historic character of the District," in this case, preserving a very important African-American landmark in the history of Southwest Washington.

3) Advancement of other Major Themes (§101), including: "Respecting and improving the physical character of the District" and "Preserving and ensuring community input."

4) Advances other policies in the Historic Preservation, Housing, Environment and Economic Development Elements of the Plan.

f. LEED ("Leadership in Energy and Environmental Design") Features. The Applicant's architect testified that, because of inclusion of the historic building and other constraints, the building could not feasibly be a LEED-certified building. However, he presented the LEED features offered by the project that exceed normal building practices. These are as follows:

1) Under the category, "Sustainable Sites – Alternative Transportation," the project will include bicycle storage spaces in an amount equal to fifteen percent (15%) of the number of vehicular parking spaces;

2) Under the category, "Water Efficiency – Water Efficient Landscaping," the landscaping will not include any physical, built irrigation system. Plantings were selected that require very little water. Watering will be by hand, and no potable water will be used;

3) Under the category, "Energy and Atmosphere – Fundamental Building Systems Commissioning," a third-party engineering consultant will ensure that specified efficiencies are provided in all building systems;

4) Under the category, "Indoor Environmental Quality – Minimum IAQ Performance," the HVAC system design will create a greater percentage of fresh air exchange than required by code;

5) Under the category, "Indoor Environmental Quality – Low-Emitting Materials, Carpet," this standard stipulates reduced VOC emissions from interior carpeting; and

6) Under the category, "LEED Accredited Professional," the architect will provide a LEED accredited expert to be part of the design team.

g. Economic Development. In addition to creating construction jobs and tax revenues generally, the Applicant will sign and implement First Source Hiring and LSDBE agreements with the District of Columbia government.

h. Litter Control. On a monthly basis, the Applicant will remove litter from the area of the baseball diamonds on the portion of the Randall Recreation Center situated adjacent to the PUD Site.

Report of the Office of Planning

37. By report dated June 10, 2005 and by testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the Application, provided that the church sanctuary building would be retained for occupancy as non-profit office space and administration of the affordable housing unit would be through normal, governmental processes. The OP report supported historic preservation and superior architecture and urban design as major public benefits and project amenities. The report also supported non-profit office use, nearly all of the Applicant's proposed operational restrictions on that use, the LEED features, historic preservation plaque, economic development and Comprehensive Plan policy consistency as public benefits/project amenities. OP also supported the proposed affordable housing unit, but preferred that it be an ownership unit with the occupancy controlled by the Department of Housing and Community Development.

Reports of Other Agencies

38. The Department of Employment Services noted that the Applicant had agreed to enter into a First Source Agreement and recommended that this be completed prior to proposed action by the Zoning Commission.

39. The Department of Housing and Community Development recommended approval of the PUD, noted the Department's support for the affordable housing unit and indicated a preference for a condominium affordable unit.

40. The District Department of Transportation recommended approval, as the traffic generated by this development would have no significant impact on surrounding intersections and as the proposed parking will be more than adequate. The Department recommended a 20-foot-wide driveway access to the parking garage rather than 14 feet as proposed in the plans.

41. The Metropolitan Police Department made comments to the Office of Planning via email, indicating concerns about parking for the non-profit use given the proximity to the adjacent recreation fields.

42. The D.C. Water and Sewer Authority noted that sanitary and storm sewer capacity, as well as water supply, would have to be evaluated as part of the approval process for this project.

Advisory Neighborhood Commission 6D

43. Advisory Neighborhood Commission ("ANC") 6D submitted a letter in support of the project dated October 8, 2004. On May 5, 2005, the ANC voted to oppose the Application. At the public hearing, two ANC Commissioners indicated that at the June 13, 2005 meeting, the ANC Commissioners deadlocked 3-3 on a motion to support and accordingly did not have an official position. At its July 11, 2005 meeting, the ANC voted to rescind the June 13, 2005 vote.

Other Community Organizations/Members

44. Ward 6 Council Member Sharon Ambrose submitted a letter in support of the Application dated May 25, 2005, stating in part: "I am fully in support of the proposed use of the church sanctuary and associated space for nonprofit office use. This project combines excellent historic preservation with excellent architecture and will provide a beneficial mixture of uses at this long-vacant site. It is noteworthy that this is whole building preservation, not simply preservation of a façade with new development behind it. This degree of preservation limits the development potential of the site, but the developer is willing to undertake it, to his credit."

45. The Bishop of the Redeemed Temple of Jesus Christ testified in support of the Application. He stated that after 20 years of using the church for religious services and functions, the congregation needed to relocate. After an extended period of marketing the church to religious congregations, the Redeemed Temple sold it to the Applicant in this case. The church has now been vacant for approximately four years. He praised the preservation of the church and the architecture of the residential addition.

46. By letter dated May 24, 2005 and by testimony at the public hearing, the Southwest Neighborhood Assembly ("SWNA") recommended approval of the PUD. SWNA favorably cited whole building preservation, excellent architecture in scale with the historic church, the benefits of both the residential and nonprofit office uses and putting a long-vacant church back into productive use with an excellent design.

47. The single-member district ANC Commissioner testified in support of the Application in terms, expressing a preference for nonprofit office use rather than residential use of the church, the proposed rental format for the affordable unit, and requesting the Applicant help control litter in the immediate vicinity of the PUD project as a project amenity.

48. A city planner residing in Southwest testified in support, stating that the preservation and the design of the new addition are "as good as it gets" by way of preservation combined with new development, and recommended approval. He recommended that any uses allowed in the SP District be allowed as well as nonprofit office use.

49. Four persons, including one ANC Commissioner and members of the Friendship Baptist Church, testified in opposition, expressing concerns about preservation of stained glass windows, parking, history of urban renewal and Friendship Baptist Church and the need to preserve the history of the church.

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. 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.

3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more efficient and attractive overall planning and design not achievable under matter-of-right development.

4. The Zoning Commission has the authority under the Zoning Regulations to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines and standards that may be exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, yards or courts.

5. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.

6. The development of this PUD is compatible with citywide goals, plans and programs and is sensitive to environmental considerations. The Commission also finds that the proposed PUD is not inconsistent with the Comprehensive Plan.

7. The Zoning Commission finds that the impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable given the significance, quantity and quality of public benefits cited under "Public Benefits and Project Amenities," above.

8. The proposed PUD can be approved with conditions that ensure that the development will enhance the neighborhood and ensure neighborhood stability.

9. The Commission concludes that special exception relief under § 217 is not available to the Applicant, because the church on the PUD Site was not a residential building. Although the Applicant provided past instances when the BZA appears to have permitted non-profit uses in historic non-residential buildings that never were residential, the Commission finds no basis for ignoring the limitation unequivocally stated in the text. However, a grant of zoning flexibility is appropriate under the circumstances of this PUD, because the preservation of the sanctuary for public view can be accomplished only through a non-residential use. It is not the intent of the Commission normally to allow use flexibility in a PUD, but in this instance it is appropriate given the nexus between the use and this PUD's public benefit and given that non-profit uses are permitted by special exception within the R-5-C zone district, but only in historic residential structures. Allowing the use in a church building that has been designated a historic landmark will not adversely affect the residential character of the surrounding neighborhood.

10. The participation of Advisory Neighborhood Commission 6D in the case did not qualify for "great weight" consideration pursuant to 11 DCMR §§ 3012.5 and 3012.6.

11. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1997.

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 a Consolidated Planned Unit Development and for a Zoning Map amendment from R-4 to R-5-C for the property located at 734 First Street, S.W. (Lot 830 in Square 643). The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the site plan, architectural plans and landscape plan prepared by the architectural firm of Shalom Baranes and Associates, marked as Exhibits 32 and 45 in the record of this case, as modified by the guidelines, conditions, and standards of this order.

2. The subject property shall be rezoned from R-4 to R-5-C.

3. The development approved in this PUD shall be a mixed-use project comprising the preservation and reuse for non-profit office use of the historic landmark Old Friendship Baptist Church, together with new construction of an L-shaped apartment house addition having 18-27 units.

4. One affordable dwelling unit shall be provided, subject to the following conditions:

    a. The affordable dwelling unit shall have no less than 700 square feet of gross floor area;

    b. The affordable unit shall be a rental unit maintained as affordable for twenty (20) years from the date of this Order;

    c. The rental unit shall be occupied by a household having seventy percent (70%) or less of Area Median Income ("AMI") as established annually by the D.C. Department of Housing and Community Development ("DHCD").

    d. The rent level for the affordable apartment and the qualifying household income level shall be based on the standards for the D.C. Housing Production Trust Fund as maintained by the D.C. Department of Housing and Community Development ("DHCD").

    e. The Applicant[2] shall rent the affordable unit to a household determined to be qualified by DHCD. If DHCD does not make the determination within 30 days, then the Applicant may make the determination.

    f. On or about January 5 of each year, the Applicant and owner shall submit a statement to the Department of Housing and Community Development, copied to the Zoning Administrator, indicating the rent level of the unit and the income level of the resident household.

5. The historic church as well as adjacent floor space on the ground level of the north wing of new construction shall be reserved for occupancy by a non-profit organization for

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[2] **The term "Applicant" means the person or entity holding fee simple title and any person or entity holding ground lease interest in the subject property at the time or times that compliance is required.**

office use, as designated in the approved plans; provided that the non-profit office space shall not exceed 10,000 square feet of gross floor area.

6. Any lease entered into with a non-profit organization for the use of the space described in Condition 5, shall provide that:

   a. Business hours shall not extend beyond 7:00 a.m. to 8:00 p.m.;

   b. The number of employees and volunteers on site shall not exceed 40; and

   c. The public shall be afforded reasonable access to the leased space during normal business hours.

   Any breach of these conditions by the lessee, which is not cured after 30 days, shall be deemed a violation of this order by the Applicant, its successors and assigns.

7. The total floor area ratio (FAR) of the development shall not exceed 2.66 FAR, or 44,286 square feet of gross floor area, including 10,000 square feet devoted to non-profit office use and 34,286 square feet devoted to residential use.

8. The height of the building shall not exceed 70 feet, and the maximum lot occupancy shall not exceed sixty-one percent (61%).

9. The development shall provide a minimum of 32 off-street parking spaces, including 23 spaces for the residential apartments. For the non-profit use, the project shall provide at least 9 parking spaces or 1 space per 1,200 square feet of non-profit space, whichever is greater.

10. Exterior materials shall include brick masonry, aluminum window mullions and an exterior metal panel system as shown in the architectural drawings and PowerPoint presentation.

11. The Applicant shall document to the Zoning Administrator that the LEED features as set forth in Finding of Fact No. 36f are incorporated in the plans by following the accepted LEED application process and procedures as set forth in the "U.S. Green Building Council – LEED NC Version 2.1" publication.

12. Lighting shall be arranged so that all direct rays are confined within the boundaries of the property.

13. The Applicant shall have flexibility in the design of the PUD in the following areas:

a. To vary the location and design of all interior components of the building, provided that the variations do not significantly change the exterior configuration of the building, and provided that interior partitions within the historic church structure shall not disrupt the exterior appearance of the structure, as determined by the Historic Preservation Review Board or its staff.

b. To vary the exterior design, materials and landscaping in accordance with final plans reviewed by the D.C. Historic Preservation Review Board but with no reduction in quality, based on availability at the time of construction and within the same color ranges.

c. To make minor refinements to exterior details and dimensions necessary to comply with the D.C. Building Code or otherwise necessary to obtain a final building permit.

d. To vary the location, number and arrangement of parking spaces, so long as the parking ratios set forth in Condition 5d above are maintained.

e. To vary the number of apartment units in the range of 18 to 27 apartments.

14. Prior to issuance of the certificate of occupancy, the Applicant shall complete an oral history project regarding the Friendship Baptist Church with a budget of at least five thousand dollars ($5,000). Upon completion, the historical information shall be provided to the Washingtoniana collection at the Martin Luther King Jr. Library.

15. The Applicant shall execute the following agreements prior to the issuance of a final order:

a. A First-Source Employment Agreement with the Department of Employment Services and

b. A Memorandum of Understanding with the District of Columbia Office of Local Business Development ("LSDBE") to ensure minority vendor participation.

16. On a monthly basis, the Applicant shall remove litter from the area of the baseball diamonds on the portion of the Randall Recreation Center situated adjacent to the PUD Site for so long as the PUD is in effect.

17. Pursuant to 11 DCMR §§ 2409.3 and 3028.9, no building permit shall be issued for this planned unit development and the PUD-related map amendment shall not become effective, until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Regulations Division of the Department of

Consumer and Regulatory Affairs ("DCRA"). This covenant shall bind the Applicant and all successors in title to construct on and use the subject property in accordance with this Order or any amendment thereof.

18. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA until the Applicant has filed a certified copy of the covenant with the records of the Zoning Commission.

19. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, application shall be filed for a building permit as specified in 11 DCMR §§ 2408.8 and 2409.1. Construction shall start within three years of the effective date of this Order.

20. 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 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 that 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 the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On July 25, 2005, the Zoning Commission approved the Applications by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to approve).

The Order was adopted by the Zoning Commission at its public meeting on September 15, 2005, by a vote of 5-0-0 (Carol J. Mitten, Gregory N. Jeffries, Anthony J. Hood, John G. Parsons, and Kevin L. Hildebrand to adopt).

On January 11, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Schlater, the Commission authorized the correction to the Original Order at its public meeting by a vote of 5-0-0 (Anthony J. Hood, William W. Keating, III, Konrad W. Schlater, Peter G. May, Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Corrected Order became final and effective upon its publication in the *D.C. Register* on _____

ANTHONY J. HOOD
Chairman
Zoning Commission

JAMISON L. WEINBAUM
Director
Office of Zoning