

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**ZONING COMMISSION ORDER NO. 03-30B**

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Z.C. Case No. 03-30B**Time Extension - Consolidated Planned Unit Development****(Square 643 Associates LLC)****January __, 2010**

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia was held on December 14, 2009. At the meeting, the Zoning Commission approved a request from Square 643 Associates LLC (the "Applicant") for a second extension of an approved planned unit development ("PUD") for property located at 734 1st Street, S.W. (Square 643, Lot 830; the "Property"), pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that the modification request was properly before it under the provisions of § 2408.10 of the Zoning Regulations.

FINDINGS OF FACT

By Zoning Commission Order No. 03-30 dated September 15, 2005, the Commission approved a PUD for the Property. The approved PUD is a mixed-use project requiring 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, mid-rise apartment building connecting to the church on the east and north sides. The apartment building is authorized to have between 18-27 dwelling units, including one affordable rental unit. The apartments are projected to be sold as condominiums. A zoning map amendment from R-4 to R-5-C was adopted as part of the PUD approval. Area Median Income ("AMI"). The remaining units (108) will be for sale.

By Zoning Commission Order No. 03-30A, on April 9, 2007, that the Commission approved the first extension of the PUD until September 15, 2009.

ZONING COMMISSION
District of ColumbiaCASE NO. 03-30BEXHIBIT NO. 19

On July 1, 2009, the Applicant requested a second, three-year extension of the PUD. The Applicant's request to the Commission stated that the reason for the time extension is that current market conditions in the immediate neighborhood that have made it impossible to attract a non-profit office tenant. The Applicant has determined that the nonprofit office component of the project must be leased to an appropriate nonprofit tenant prior to the development of the residential component. Development of that site which has an approved PUD has been stymied due to adverse market conditions and the abandonment of the project by the developer. The Applicant anticipates that the current environment of uncertainty for this immediate area of Southwest will diminish as Randall project finds a new developer and moves forward. Accordingly, the Applicant requested a three-year time extension.

By memorandum dated September 23, 1009, the Office of Planning ("OP") evaluated the extension request. OP noted that the request complies with the following criteria for time extensions in § 2408.10, specifically that (a) the request was served on all parties, who were provided at least thirty (30) days in which to comment and (b) that there has been "no substantial change in any of the material facts upon which the Zoning Commission based its original approval . . ." OP also concluded that the request is not inconsistent with the 2006 Comprehensive Plan Generalized Future Land Use Map. Regarding the requirement that the Applicant demonstrate with substantial evidence that there is good cause for the extension, OP set forth the following conditions of good cause specified in Section 2401.11:

- (a) An inability to obtain sufficient project financing for the planned unit development, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control;

- (b) An inability to secure all required governmental agency approvals for a planned unit development by the expiration date of the planned unit development order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control; which renders the applicant unable to comply with the time limits of the planned unit development order.

OP stated that the Applicant's good cause appears to be based on §2401.11(a) and possibly (c), in that the application states that uncertainty in market conditions in the neighborhood have made it not possible to attract a nonprofit office tenant and that the uncertainty regarding the adjacent Randall School development, has made marketing the site to non-profit tenant and arranging financing difficult. However, OP indicated that it had seen no details about this claim in the Applicant's submission. At its regular monthly meeting on October 1, 2009, the Commission agreed with OP that further details were needed to justify a second extension. In supplemental submissions dated October 9, 2009 and December 11, 2009, the Applicant submitted additional details regarding its efforts to lease the nonprofit office component of the project.

The Applicant's submission was served on Advisory Neighborhood Commission ("ANC") 6D, the only party in the case other than the Applicant on July 2, 2009. On November 12, 2009, ANC 6D submitted a letter to the Zoning Commission stating that ANC-6D unanimously voted to support the Applicant's extension request. There was no opposition to the requested time extension.

On December 14, 2009, at its regular monthly meeting, the Commission again considered the proposed time extension and granted approval of the two-year time extension. The

Commission concurs with the Applicant that approving the modification is appropriate and not inconsistent with the intent of 11 DCMR §§ 2408.10, 2408.11, and 3030.

The Commission further concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act.

CONCLUSIONS OF LAW

The Commission may extend the validity of a PUD for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties and all parties are allowed 30 days to respond; (b) there is no substantial change in any 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; and (c) substantial evidence there is good cause for the extension based on the criteria established in § 2408.11. (11 DCMR § 2408.10.) The three criteria for good cause are: (a) an inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the Applicant's reasonable control; or (c) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order. (11 DCMR § 2408.11.)

The Commission concludes the Application complied with the notice requirements of 11 DCMR § 2408.10(a) by serving all parties with a copy of the Application on July 2, 2009. The

only party to the Application, ANC 6D, provided a letter in support of the extension to the Commission on November 12, 2009. Further, based upon the OP report, the Commission concludes there has been no substantial change in any material facts that would undermine the Commission's justification for approving the original PUD.

The Commission further concludes the Applicant presented substantial evidence of good cause for the extension based on the criteria established by DCMR § 2408.11, specifically that despite Applicant's diligent good faith efforts, the Applicant has been unable to leave the nonprofit office component of the project and, as a result, the Applicant has been unable to secure financing for the project. Adverse market conditions which have severely limited available financing for real estate development projects have also contributed to Applicant's inability to secure financing and proceed with development.

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 application for a two-year time extension of the approved PUD in Zoning Commission Case No. 03-30, Order No 03-30.

The final PUD approved by the Commission shall be valid until September 15, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than December 28, 2012

This order was adopted by the Zoning Commission at its public meeting on December 14, 2009, by a vote of 5-0 (Anthony J. Hood, William W. Keating, III, Michael G. Turnbull, Konrad Schlater, and Peter May to approve.)

In accordance with the provisions of 11 DCMR § 3028.8, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

ANTHONY HOOD
CHAIRMAN
ZONING COMMISSION

JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 03-30B

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 03-30B were mailed first class, postage prepaid or sent by interoffice government mail to the following:

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ATTESTED BY:

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