

Government of the District of Columbia
Office of Zoning



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

As Secretary to the Commission, I hereby certify that on MAR 17 2010, copies of this Z.C. Order No. 03-30B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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|---|--|
| 1. <i>D.C. Register</i> | 5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004 |
| 2. Cynthia Giordano Esq.
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206 | 6. Councilmember Tommy Wells |
| 3. Andy Litsky, Chair
ANC 6D
P.O. Box 71156
Washington, DC 20024 | 7. Karina Ricks, DDOT |
| 4. David C. Sobelsohn
ANC/SMD 6D02
201 I Street, S.W., #838
Washington, D.C. 20024 | 8. General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
| | 9. Office of the Attorney General
(Alan Bergstein) |

ATTESTED BY:

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

ZONING COMMISSION
District of Columbia

CASE NO.

03-30B

EXHIBIT NO.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 03-30B

(Square 643 Associates LLC – Two-Year PUD Time Extension

@ 734 1st Street, S.W.)

December 14, 2009

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (the "Commission") was held on December 14, 2009. At the meeting, 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.

FINDINGS OF FACT

1. By Zoning Commission Order No. 03-30 dated September 15, 2005, the Commission approved a PUD for the Property. The approved PUD is to be 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 PUD-related map amendment from the R-4 Zone District to the R-5-C Zone District was adopted as part of the PUD approval.
2. By Zoning Commission Order No. 03-30A, the Commission approved the first extension of the PUD for a two year period, so that an application for a building permit should have been filed no later than September 15, 2009
3. On July 1, 2009, the Applicant requested a second extension of the PUD, except that the Applicant now requested three years to apply for a building permit. According to the Applicant, current market conditions in the immediate Southwest neighborhood have made it impossible to attract a non-profit office tenant. The Applicant believes that the non-profit office component of the project must be leased prior to the development of the residential component. The Applicant further asserted that the uncertainty regarding the adjacent Randall School development has further complicated its ability to market the site and obtain financing. Development of the Randall School site, which is also subject to an approved PUD, has been stymied by the same adverse market conditions being

experienced by the Applicant. This in turn has led to the Randall School developer abandoning the project. The Applicant anticipates that the current environment of uncertainty will diminish if and when the Randall project finds a new developer and moves forward. For all of these reasons, the Applicant requested a three-year time extension.

4. By memorandum dated September 23, 2009, the Office of Planning ("OP") indicated that it had seen no details substantiating the Applicant's assertions.
5. 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 non-profit office component of the project.
6. 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 Commission stating that ANC 6D unanimously voted to support the Applicant's extension request. There was no opposition to the requested time extension.
7. On December 14, 2009, at its regular monthly meeting, the Commission again considered the proposed time extension and granted approval of a two-year time extension, instead of the three-year extension sought.

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 demonstrates that 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 that the Applicant 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 that the Applicant presented substantial evidence of good cause for the extension based on the criteria established by DCMR § 2408.11, specifically that despite the Applicant's diligent good faith efforts, the Applicant has been unable to lease the non-profit 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.

Nevertheless, the Commission believes that the extension should be for a two-year period rather than the three years requested. There is a certain time after which a PUD becomes stale and this project is coming close to that point. The Commission sees no reason to depart from its customary practice of extending the time for applying for a building permit by two years, just as it did for the Applicant's prior request.

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.

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 time extension of the approved PUD in Zoning Commission Case No. 03-30, Order No. 03-30, except that the time for filing an application for a building permit shall be extended for two years, rather than the three years requested.

The final PUD approved by the Commission shall be valid until September 14, 2011, within which time an application shall be filed for a building permit, as specified in § 2409.1. Construction shall start no later than September 14, 2012.

On December 14, 2009, upon the motion of Commissioner Schlater, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, William W. Keating, III, Michael G. Turnbull, Konrad W. Schlater, and Peter G. May to approve).

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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 March 19, 2010.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING