GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16387 of Square 456 Associates, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for a special exception under subsection 411.11 to allow roof structures not meeting the normal setback requirements and for a variance from subsection 1706.23(g) to permit commercial development to proceed prior to the issuance of the certificate of occupancy for permitted off-site affordable housing, for the construction of an office, arts, retail, and housing development in a DD/C-4 District at premises 625-627 E Street, N.W.; 620 and 626 F Street, N.W.; and 501-507 and 511-517 7th Street, N.W. (Square 456, Lots 37, 39, 868, and 869).

NOTE: Subsection 1706.22(g) was renumbered to 1706.23(g) on March 17, 2000.

HEARING DATE: **September 2, 1998**

DECISION DATE: **September 2, 1998**

FINAL ORDER: **December 3, 1998**

FIRST MODIFICATION ORDER: **November 16, 2000**

SECOND MODIFICATION ORDER

This matter is before the Board of Zoning Adjustment pursuant to a request filed on May 16, 2001, by the applicants, 575 7th Street LLC and 675 E Street LLC, successors in interest to Square 456 Associates, on behalf of Golden Rule Plaza, Inc. (Golden Rule), the beneficiary of $500,000 in housing linkage funds provided by the applicants pursuant to 11 DCMR § 1706.23, to modify two of the conditions contained in the Board's First Modification Order in this case, dated November 16, 2000. The applicants seek to (1) extend the period of time by which Golden Rule must settle on its construction financing and draw down the housing linkage escrow funds from June 3, 2001, to December 3, 2001; and (2) allow the release of half of the escrow funds to Golden Rule immediately, to be applied to the payment of pre-construction development costs.

After reviewing the request, the Board at its June 5, 2001, public meeting granted the request to modify the first condition, relating to the financing deadline, and allowed the applicants additional time to submit further information relating to the release of the escrow funds. After reviewing the additional information at its July 3, 2001, public meeting, the Board granted the applicants' request to allow the immediate release of half of the escrow funds.

Board of Zoning Adjustment
District of Columbia
CASE NO.16387
EXHIBIT NO.49

#49

BACKGROUND

In its Final Order dated December 3, 1998, the Board granted Square 456 Associates zoning relief to permit the applicant to construct a commercial and residential development on Square 456. The Square 456 development, located within the DD/C-4 Zone District, also included a housing linkage agreement pursuant to 11 DCMR § 1706.23(g) to construct affordable housing off-site at the Golden Rule Plaza site, located on the west side of New Jersey Avenue between New York Avenue and K Street, N.W., on the edge of Downtown. The Golden Rule project is a 127-unit apartment building for low and moderate-income senior citizens in Housing Priority Area A in the DD/C-2-C Overlay District. Specifically, the Final Order granted the applicant a special exception under 11 DCMR § 411.11 for a roof structure for the Square 456 development and a variance from 11 DCMR § 1706.23(g) to permit the applicant to construct and occupy the nonresidential component of the development prior to the issuance of a certificate of occupancy for the off-site affordable housing component at the Golden Rule Plaza site.

The modification request presently before the Board concerns the affordable housing component. The Final Order contained the condition that:

> Within thirty days after the issuance of the Board's order, the applicant shall place $500,000 in an escrow account for the benefit of Golden Rule Plaza, Inc., to be made available to Golden Rule Plaza, Inc., at the time of settlement on the financing for the low and moderate income housing project to be constructed on the west side of New Jersey Avenue between New York Avenue and K Street. After placing the $500,000 in escrow, the applicant may proceed to construct and occupy the development in Square 456. In the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account within two years of the date of the Board's order, the applicant shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicant to proceed with the mixed-use development on the subject site.

On November 16, 2000, at the applicant's request, the Board issued an order (hereafter, the "First Modification Order"), that among other things, modified the provision of the Final Order relating to Golden Rule escrow account. Golden Rule had completed working drawings for the project and was in the process of finalizing its building permit application, but required additional time to reach settlement on the project financing. The Board determined that there was no reason to pursue an alternative use of the escrow funds as provided for in the Final Order, since a short extension of time would likely enable the Golden Rule project to move forward. The Board therefore extended the time for Golden Rule to settle on its construction financing and draw down the escrow funds for an additional six months; that is, to June 3, 2001.

REQUEST FOR MODIFICATION OF CONDITIONS

On May 16, 2001, the applicants submitted a request on behalf of Golden Rule to modify the provisions of the First Modification Order to provide a further extension of time for Golden Rule to complete its project financing and to authorize the release of half of the escrow funds to Golden Rule for the payment of pre-construction costs.

Golden Rule requires the additional time due to unanticipated delays in completing its financing and transactional agreements. The financing package for its $16 million project is complex, involving grant funds from the D.C. Department of Housing and Community Development (DHCD) through the Community Development Block Grant program; private investment from JER Hudson, an investment firm specializing in lending for properties eligible for federal tax credits for low and moderate-income housing; and the issuance of bonds by the D.C. Housing Finance Agency. Golden Rule expects to enter into a Land Disposition Agreement with the District of Columbia Government and go to closing on the property before September 2001. From that point, Golden Rule will proceed to complete the financing agreements and construct the building, which is scheduled to open for occupancy in late 2002. Golden Rule exercised all reasonable and diligent efforts to meet the June 3, 2001, deadline established in the First Modification Order, but was unable to do so for reasons beyond its control.

Also, as part of the development process, Golden Rule contracted for and received the necessary environmental studies and surveys of the project site, obtained surveys and zoning clearances, and completed the title search. Golden Rule commissioned architectural and structural designs and drawings, all of which have been reviewed by the appropriate authorities within the Department of Consumer and Regulatory Affairs (DCRA). All DCRA necessary reviews have been completed, and Golden Rule has been assured by DCRA that the only impediment to the issuance of a building permit is the payment of the permit fee. Golden Rule therefore requested the Board to allow $250,000 of the escrow funds to be released from the escrow account and made available to Golden Rule in order to pay the building permit fee and other District of Columbia fees associated with the permitting process, and to pay amounts owed for certain pre-construction expense obligations, including legal fees, appraisals, and environmental assessment fees. Golden Rule has no other source of funds to make these payments until the DHCD funds become available. Allowing the early release of half of the escrow funds would make it possible for Golden Rule to proceed promptly to break ground for construction.

The Board received two letters from the DHCD supporting the request. In its letter submitted June 28, 2001, DHCD reiterated its support for the immediate release of half of the escrow funds; and stated that "in the unlikely event that this project does not close and repayment of these funds is required under the terms of the linkage program, DHCD will provide the funds."

The D.C. Office of Planning recommended that the request be granted, subject to the condition that if adequate project funding is not secured by Golden Rule by December 3, 2001, then DHCD will repay the $250,000 into the escrow account by April 2, 2002.

The affected Advisory Neighborhood Commission (ANC), ANC 2C, at a regularly scheduled meeting, with a quorum present, voted to support the request for modification to allow the project to proceed. The Board also received letters from the District of Columbia Housing Finance Agency and Councilmember Jack Evans supporting the request.

After reviewing the request and the supporting materials, the Board determined that the request should be granted.

ORDER

Based on the above, it is hereby **ORDERED** that the First Modification Order in this case dated November 16, 2000, is **MODIFIED** as follows:

> The time for Golden Rule to settle on its construction financing and draw down the funds held in escrow is extended until December 3, 2001.
>
> Upon the effective date of this order, the escrow agent may release $250,000 from the escrow account established pursuant to the Board's order in BZA Application No. 16387 to Golden Rule, for the payment of pre-construction costs relating to the Golden Rule Plaza project.
>
> The remaining escrow funds shall remain subject to the same condition as previously ordered by the Board; that is, in the event that the Golden Rule Plaza project has not settled on its financing and drawn down the funds in the escrow account by December 3, 2001, the applicants shall consult with the Office of Planning to determine an appropriate alternative plan as to how the funds will be used for affordable housing, and shall submit that plan to the Board in an appropriate motion. The submission of such an alternative plan in no manner affects the rights granted by this order enabling the applicants to proceed with the mixed-use development on the subject site.
>
> Further, if adequate project funding is not secured by Golden Rule by December 3, 2001, DHCD will repay the $250,000 released to Golden Rule pursuant to this order into the escrow account by April 2, 2002.

Motion to Grant a Six-Month Extension of Time to Complete Project Financing, approved June 5, 2001

VOTE: 3 – 0 – 2 (Susan Morgan Hinton, Sheila Cross Reid, and Anne M. Renshaw, to grant the extension of time; Geoffrey H. Griffis, not present, not voting; the Zoning Commission representative not present, not voting).

Motion to Allow the Immediate Release of $250,000 from the Escrow Account to Pay Pre-Construction Costs, approved July 3, 2001

VOTE: 4 – 0 – 1 (Geoffrey H. Griffis, Susan Morgan Hinton, Sheila Cross Reid (by absentee vote), Anne M. Renshaw, to approve; Carol J. Mitten, not voting, not having participated in the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: JUL 12 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME EFFECTIVE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

FAILURE TO ABIDE BY THE CONDITIONS CONTAINED IN THIS ORDER, IN WHOLE OR PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANTS SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANTS TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

MS/7.12.01

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16387

As Director of the Office of Zoning, I hereby certify and attest that on JUL 12 2001, a copy of the foregoing Second Modification Order in BZA Application No. 16387 was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

Norman M. Glascow, Jr.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-6801

B. Michael Rauh
Manatt, Phelps & Phillips
1501 M Street, N.W., Suite 700
Washington, D.C. 20005-1702

Milton Bailey, Director
Department of Housing and Community Development
801 North Capital Street, N.E.
Washington, D.C. 20002

Honorable Jack Evans
Councilmember, Ward Two
Council of the District of Columbia
441 4th Street, N.W., Room 703
Washington, D.C. 20001

Advisory Neighborhood Commission 2C
Shaw Terrell Community Center
First & Pierce Street, N.W.
Washington, D.C. 20001

Ellen McCarthy, Deputy Director
Development Review Division
D.C. Office of Planning
801 North Capitol Street, N.E., Suite 4000
Washington, D.C. 20002

Michael D. Johnson, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

ATTESTED BY: _____

JERRILY R. KRESS, FAIA
Director, Office of Zoning