

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING



Office of the Director

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: JLS fev
Ellen McCarthy, Director

DATE: December 22, 2005

SUBJECT: Zoning Commission Case No. 00-35A - Request for Extension of Time for an Approved Modified PUD - 531 6th Street, N.W., filed by Robins, Kaplan, Miller & Ciresi LLP for the National Academy of Sciences.

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~~District of Columbia~~

CASE NO. 00-35A
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APPLICATION

On October 11, 2005 the applicant, the National Academy of Sciences, filed a timely request for an extension of Zoning Commission Orders Number 668-D, 668-E, 668-F-1, 668-H and 668-I, pursuant to § 2408.10 of the Zoning Regulations. These Zoning Commission orders relate to a modified PUD that incorporated the subject property and a fire station, into a PUD that had been approved for the southern two-thirds of the square. The originally approved PUD has been constructed and is occupied by the National Academy of Sciences.

The modified PUD, the combination of Phases I and II, is the development of an office/retail building consisting of 448,525 square feet. This square footage includes both the redevelopment of the fire station and the air rights over it so as to allow for a connection between the two phases of the modified PUD.

Section 2408.8 states that "[t]he final PUD approved by the Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit, as specified in § 2409.1." Section 2408.9 states that "[c]onstruction shall start within three (3) years of the date of final approval." Zoning Commission Order No. 668-G extended the period in which an application shall be filed for a building permit to December 9, 2005, and extended the time period in which construction shall start to December 9, 2006. The application requests to extend the time period for five years to December 9, 2010 for the building permit and December 9, 2011 for construction to begin.

SUMMARY RECOMMENDATION

The Office of Planning recommends the Zoning Commission approve the extension as requested.

PROPERTY DESCRIPTION

The subject property consists of Square 488, Lots 833 and 842. A PUD related map amendment rezoned the subject property from unzoned to the C-3-C Zone District. The site fronts on 5th Street, F Street and Sixth Street, N.W. and is improved with a two-story fire station constructed in 1977.

HISTORY

- July 9, 1990:** The Zoning Commission approved **Order No. 668** for a PUD for a 44,250 square foot site within the southern half of Square 488 subject to 17 conditions. The PUD included a related map amendment to rezone the property from the SP-2 to C-3-C to allow for an office and retail building consisting of:
- 10 stories and 120 feet in height;
 - FAR of 7.64;
 - Gross Floor Area of 338,125 square feet, including 8-10,000 square feet of retail space;
 - Lot Occupancy not to exceed 99.7 percent; and
 - 213 underground stall parking spaces or 273 stacked spaces.
- November 19, 1990:** The Zoning Commission approved **Order No. 668-A**, amending Condition No. 6 to allow for either one or two lanes out of the parking garage within the interior of the garage.
- August 5, 1991:** The Zoning Commission approved **Order No. 668-B**, extending the validity of the approved PUD for a period of two years from July 27, 1990 to July 27, 1994, and requiring that construction begin no later than July 27, 1995 due to the inability of the applicant to secure a lead tenant.
- March 14, 1994:** The Zoning Commission approved **Order No. 668-C**, extending the validity of the approved PUD for a period of two years till July 27, 1996 and requiring that construction begin no later than July 27, 1997 to allow the applicant time to secure a tenant and financing.
- November 14, 1994:** The Zoning Commission approved **Order No. 668-D**, modifying the approved PUD and related map amendment to add the fire station site (north end of Square 488) to the PUD and zone the land to C-3-C from unzoned. The proposed building is to be located above the existing two-story fire station, and be connected to the building on the south side of the

square on Floors 4 through 10. The combined building, including the fire station will consist of:

- 120 feet in height;
- FAR of 7.64;
- Gross Floor Area of 498,525 square feet, including 23,400 in the fire station; and
- 212 parking spaces or 313 stacked spaces.

February 12, 1996: The Zoning Commission approved **Order No. 668-E**, extending the validity of the approved PUD because of unfavorable market conditions for two years until:

- July 27, 1998 and requiring that construction begin no later than July 27, 1999 for the building on the south side of Square 488; and
- December 9, 1998 and requiring that construction begin no later than December 9, 1999 for the building on the north side of Square 488.

February 9, 1998: The Zoning Commission approved **Order No. 668-F**, extending the validity of the approved PUD because of unfavorable market conditions for two years until:

- July 27, 2000 and requiring that construction begin no later than July 27, 2001 for the building on the south side of Square 488; and
- December 9, 2000 and requiring that construction begin no later than December 9, 2001 for the building on the north side of Square 488.

April 12, 1999: The Zoning Commission approved **Order No. 668-F-1**, a minor modification to allow the use of the concourse or cellar level for parking only, instead of parking and office space. As a result the number of stacked parking spaces increased from 313 to 425 and the amount of office space decreased by 9 percent.

July 1999: Construction began on the portion of the site covered by the original PUD on the south side of Square 488.

February 12, 2001: The Zoning Commission approved **Order No. 668-G**, granting the National Academy of Sciences, the successor in interest to the original applicant, a five year extension on the validity of the approved portion of the PUD above the fire station until December 9, 2005 and for construction to begin no later than December 9, 2006. The additional time was requested because further analysis was needed to determine if the

existing fire station could support the proposed construction and to secure bond funding.

February 11, 2002: The Zoning Commission approved **Order No. 668-H**, a minor modification to the approved PUD, to allow an interactive science museum as an alternative to all or a portion of the retail requirement.

October 11, 2005: The National Academy of Sciences files the subject application requesting a five year extension on the validity of the approved portion of the PUD for the northern portion of Square 488.

ANALYSIS

The Commission is empowered to grant time extensions for validly approved PUDs pursuant to § 2408.10 of the Zoning Regulations, as stated below.

“The Commission may extend the time periods set forth in §§ 2408.8 and 2408.9 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval; provided, that the Commission determines that the following requirements are met:

(a) The extension request is served on all parties to the application by the applicant;

The application indicates that this provision has been complied with.

(b) There is no substantial change in any of the 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

There have been no substantial changes in any of the material facts upon which the Commission based its original approval of the PUD, with the exception of the construction of the first phase of the PUD.

(c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11.”

§ 2408.11 states, *“For purposes of § 2408.10(c), the Commission may grant an extension of the validity of a PUD for good cause shown if an applicant has demonstrated with substantial evidence one or more of the following criteria:*

- (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."*

The application indicates that additional time is needed to coordinate development proposals and resolve the issue regarding replacement or construction over the existing fire station. The applicant has been negotiating with RLARC, owner of the air rights above the fire station, and with RLARC, FEMS and the District Government on the possible purchase of the fire station building. The applicant is also exploring incorporating the existing fire station into the PUD or relocating the fire station. The air rights contract with RLARC must be amended because construction of the PUD was financed in part by District of Columbia bonds. However, those amendments have been tabled pending the resolution of the issues surrounding the fire station. Until then, the applicant is unable to obtain financing.

Based on the above, the Office of Planning concludes that the request for a time extension is in conformance with the provisions of § 2408.10 of the Zoning Regulations.

COMMUNITY COMMENTS

ANC 6C, at their public meeting of November 9, 2005, "*voted unanimously to support the application of the National Academy of Sciences for an extension of time to complete their PUD.*"

RECOMMENDATION

The Office of Planning recommends the Zoning Commission approve the extension as requested by the applicant.