GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning

MEMORANDUM

To: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

From: Sharon S. Schellin SS
Secretary to the Zoning Commission

Date: August 15, 2006

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on August 25, 2006:

1. Z.C. Notice of Public Hearing (Case No. 02-51A);
2. Z.C. Notice of Public Hearing (Case No. 06-15);
3. Z.C. Order No. 975 (Case No. 00-27); and
4. Z.C. Order No. 668-I (Case No. 00-35A).

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 00-35A
EXHIBIT NO. 6

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001
Telephone: (202) 727-6311 Facsimile: (202) 727-6072 E-Mail: dcoz@dc.gov Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.00-35A
EXHIBIT NO.6

ZONING COMMISSION ORDER NO. 668-I
Z.C. Case No. 00-35A
(Modification to PUD @ 500 5th Street, N.W.)
January 9, 2006

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police, and John W. and Vinard Paris (collectively, the "Applicant") for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for Lots 15-19, 24, 25, and 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of ninety-nine percent (99%). The approved PUD was subject to certain guidelines, conditions, and standards.

By letter dated October 3, 1990, counsel for the Applicant requested the Zoning Commission to modify the second sentence in Condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the Applicant's request and modified Condition No. 6 to read as follows:

> "The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the Applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994, with construction to start no later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996, with construction to start not later than July 27, 1997.

By letter dated March 10, 1994, the Applicant requested a modification of the existing PUD to include, as alternative development, Lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The

Applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square, as approved by the Commission in Z.C. Order No. 668.

By Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for Lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, a density of 7.64 FAR, height of 120 feet, and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a stacked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996, to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the Applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998, to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998, to file for a building permit, and construction to commence no later than December 9, 1999.

The Applicant's motion for extension stated, in part, the following as the basis for the extension.

1. The Applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt almost all new private construction projects in the past six years. The Applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.

2. The unfavorable market conditions and the Applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without hearing.

By Z.C. Order No. 668-E, dated February 12, 1996, the Commission granted the Applicant's motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years, that is, until July 27, 1998, to file for a building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years, until December 9, 1998, to file for a building permit with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the Applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A, 668-B, 668-C, and 668-E for five-years (until July 27, 2003), and for Order No. 668-D, until December 9, 2003, pursuant to § 2408 of the Zoning Regulations.

Finding that the Applicant had demonstrated good cause for the extension and that the rationale for granting approval for the PUD had not changed, the Zoning Commission, by Z.C. Order No. 668-F dated February 9, 1998, granted an extension of the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668E for a period of two years until July 27, 2000, and for Z.C. Order No. 668-D until December 9, 2000. The extension was based upon the Zoning Commission's finding of a willingness on the part of the Applicant to go forward with the development of the project as soon as market conditions improved, as well as the Applicant's diligent, good-faith efforts to secure financing by negotiating the air rights agreement with the District of Columbia Redevelopment Land Agency ("RLA") to improve the marketability of the project.

On February 23, 1999, the Applicant submitted a request for a minor modification to the concourse level, or cellar, of the approved PUD to allow for parking and office space or parking only. The proposed change resulted in an increase in the available off-street parking spaces from 313 vehicles to 425 vehicles. The Zoning Commission approved the minor modification in its Order No. 668-F-1, effective October 12, 2001.

By correspondence dated December 6, 2000, NAS filed for a five (5) year extension of the validity of Z.C. Order Nos. 668-D, 668-E, and 668-F, so as to allow time to coordinate bond financing for the development of the Air Rights Property. The additional time was also needed to allow further study of the ability of the existing fire station to support the proposed construction in the Air Rights Property, which study had been hindered by the District's difficulty in locating and providing NAS with building plans (including "as-built" plans) for the existing fire station. Z.C. Order No. 668-G (April 6, 2001) extended the validity of Order Nos. 668-D, 668-E, and 668-F until December 9, 2005, with construction to begin no later than December 9, 2006.

On November 19, 2001, the Applicant filed an application for a minor modification to the PUD to allow for an interactive science museum as an alternative to all or a portion of the retail requirement of the approved PUD. The Zoning Commission granted the minor modification effective July 26, 2002 in Order No. 668-H. The validity period of the modified PUD was not altered, thus a building permit application on the modified PUD was to be made prior to December 9, 2005 and construction to begin no later than December 9, 2006.

By letter dated October 11, 2005, the Applicant filed for a five (5) year extension of the validity of Zoning Commission Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H.

The motion notes that the criteria for determining whether the PUD should be extended is whether the Applicant has demonstrated that there is good cause for the extension and whether there has been a substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD under 11 DCMR § 2408.10(b) and (c).

The motion states that the Applicant meets the criteria for good cause for the extension, because construction of the first phase of the project is complete and the building has been occupied by the Applicant. At the time of the 2001 time extension, the Applicant needed additional time to analyze the ability of the existing fire station, adjacent to the completed first phase of the

development, to support the additional proposed construction. 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 successor to RLA), and with 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.

Paragraph 2408.11(a) of the Zoning Regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause.

The Applicant's motion also stated that there were no changes impacting the PUD since Order No. 668-G was issued granting the extension to December 9, 2005.

Copies of the motion for extension were served by counsel for the Applicant on Advisory Neighborhood Commission ("ANC") 6C, within whose jurisdiction the property is now situated. 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.

By memorandum dated December 22, 2005, the District of Columbia Office of Planning ("OP") recommended approval of the extension.

By letter dated October 7, 2005, the RLA Revitalization Corporation ("RLARC") supported the request for the extension noting that they have been working with the Applicant to respond to the interests of the D.C. Fire Emergency Services Department, whose firehouse sits underneath the air rights parcel, and is close to finalizing development options for the air rights parcel that will resolve many of the issues that have plagued the Applicant's ability to proceed under the second phase of the PUD approved by the Zoning Commission.

Pursuant to § 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On January 9, 2006, at its regular monthly meeting, the Commission considered the Applicant's request for a five-year extension of the validity of Z.C. Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H; the OP report and recommendations; the ANC recommendations; and the RLARC letter.

The Commission concurred with OP that an extension of the Orders should be granted. The Commission found that the Applicant had met the requirements under § 2408.10.

The Commission determined that the reasons advanced by the Applicant for the extension request constitute good cause and that the request was timely filed pursuant to § 2408.10 of the Zoning Regulations.

The Commission determined that the extension of time, as requested by the Applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the Applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H be approved for a period of FIVE YEARS, until December 9, 2010. Prior to the expiration of that time, the Applicant shall file for a building permit, and construction shall begin no later than December 9, 2011.

This Order was **ADOPTED** by the Zoning Commission at its public meeting on January 9, 2006, by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand, and John G. Parsons to **ADOPT**; Carol J. Mitten not voting having recused herself).

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