

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 668-G

Case No. 00-35TE/94-4M/89-31C

(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)

February 12, 2001

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 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 99 percent. 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, an FAR of 7.64, 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, 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 on 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 a hearing.

By Z.C. Order No. 668-E, dated February 12, 1996, the Commission granted the applicants' motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years, 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 section 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 668-E 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.

By letter dated December 6, 2000, the National Academy of Sciences (NAS), the successor-in-interest to the original applicant, filed for a five (5) year extension of the validity of Z.C. Order Nos. 668-D, 668-E and 668-F.

The motion noted 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 § 2408.11(a) and (b).

The motion states that the applicant meets the criteria for good cause for the extension as construction of the first phase of the project by NAS is underway. However, prior to closing on the purchase of the air rights property, further analysis is needed regarding the ability of the existing fire station to support the proposed construction. The motion states that these efforts have been hindered, because the District has had difficulty in locating and providing NAS with building plans (including "as-built" plans) for the existing fire station, which were necessary to complete the study.

The motion states that additional time was also needed to coordinate bond financing for the second stage of the PUD, which method of financing had been used for the first stage of the PUD. The time and effort involved in obtaining construction financing through bonds issued by the District is more extensive than the time required for traditional 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-F was issued approving the sixth time extension.

As the applicant demonstrated good cause under 11 DCMR § 2408.11(a), there was no need for a hearing under 11 DCMR § 2408.12 to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

Counsel for the applicant also indicated that copies of the motion for extension were served on Advisory Neighborhood Commission (ANC) 6A, within whose jurisdiction the property is now situated.

By memorandum dated January 4, 2001, the District of Columbia Office of Zoning referred the extension request to the District of Columbia Office of Planning (OP) for analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case, would affect this request. By memorandum dated January 4, 2001, the OP recommended approval of the extension.

By letter dated November 17, 2000, RLA supported the request for the extension noting that, although NAS has until at least 2003 to close on the air rights property, NAS had begun discussions with RLA to expedite the purchase of the air rights property.

Pursuant to Subsection 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 February 12, 2001, 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 and 668-F, the OP report and recommendations and the RLA letter.

The Commission concurred with the OP that an extension of the order should be granted. The Commission found that the applicant had met the requirements under Section 2408(a) in regard to good cause and that there was no need for a hearing to determine whether a material conflict exists pursuant to Subsection 2408.12 of the Zoning Regulations.

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 Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant had acted diligently and consistent with its responsibilities in moving forward with construction on the first stage of the PUD and that the applicant was working diligently with respect to securing financing for the second stage. The Commission determined that the applicant was committed to the development of the project.

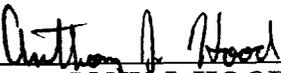
The Commission determined that the extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

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.

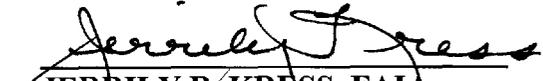
In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668-D, 668-E and 668-F be **APPROVED** for a period of **FIVE YEARS**, until December 9, 2005. Prior to the expiration of that time, the applicant shall file for a building permit, and construction shall begin no later than December 9, 2006.

This order was **ADOPTED** by the Zoning Commission at its public meeting on February 12 2001, by a vote of 4-0-1: (Herbert M. Franklin, John G. Parsons, Anthony J. Hood and Carol J. Mitten to **ADOPT**, Kwasi Holman not present, not voting).

In accordance with the provisions of 11 D.C.M.R. 3028.8, this order is final and effective upon publication in the D.C. Register; that is on APR - 6 2001.



ANTHONY J. HOOD
CHAIRMAN
Zoning Commission



JERRILY R. KRESS, FAIA
DIRECTOR
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