Holland+Knight

Tel 202 955 3000
Fax 202 955 5564

Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
www.hklaw.com

WHAYNE S. QUIN
202 663 7274
whayne.quin@hklaw.com@hklaw.com

December 30, 2005

RECEIVED
D.C. OFFICE OF ZONING
2005 DEC 30 AM 11: 54

VIA HAND DELIVERY

D.C. Zoning Commission
Suite 210
441 4th Street, N.W.
Washington, DC 20001

Re: Prehearing Statement for Zoning Commission Case No. 03-12A/03-13A
Capper Carrollsburg Venture LLC -- 2nd Stage PUD & Modification

Dear Members of the Commission:

On behalf of Capper/Carrollsburg Venture, LLC, together with the District of Columbia Housing Authority, (collectively the "Applicant"), enclosed please find an original and twenty copies of the Applicant's Proposed Findings of Fact, Conclusions of Law and Order.

Respectfully Submitted,

Whayne S. Quin

Enclosure

cc: Advisory Neighborhood Commission 6D
Ellen McCarthy, D.C. Office of Planning
Jennifer L. Steingasser, D.C. Office of Planning

District of Columbia
CASE NO. 03-12A/03-13A
EXHIBIT NO. 31

ZONING COMMISSION
District of Columbia
CASE NO.03-12A/03-13A
EXHIBIT NO.31

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12A/03-13A
Case Nos. 03-12A and 03-13A

Phase 1 Final Approval for the Capper/Carrollsburg HOPE VI Planned Unit Development And Modifications to the Approved Consolidated and Preliminary Capper/Carrollsburg HOPE VI Planned Unit Development

[Date of Final Action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 19, 2005, to consider an application from Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicants"), for Phase I final approval of a planned unit development ("PUD") under the existing R-5-B District and modifications to the preliminary and consolidated Capper/Carrollsburg PUD approved by Zoning Commission Order Number 03-12/03-13 ("Order No. 03-12/03-13"). The Commission considered the application pursuant to chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR §3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On March 21, 2003, the Applicants, in conjunction with the District of Columbia and Square 769, LLC, filed an application seeking approval of a PUD and for a related map amendment for property located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th on the east, Virginia Avenue on the north, and M Street on the south. The overall PUD site consists of 33 acres of land area.

2. Pursuant to Order No. 03-12/03-13, dated October 8, 2004, the Commission granted preliminary approval of the PUD for the following properties: Square 737, those portions of Lot 814 and Reservation 17A that lie south of the southern right-of-way line of I Street extended; Square 799, Lots 20, 27, 28, 29, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 803, 805, 807, 808, 809, 816, 818, 819, 825, 826, and 827; Square 800, Lots 25, 26, 27, and 28; Square 824, Lots 37, 38, and 39; Square N853, Lot 809; Square 880, Lot 24; Square W881, that part of Lot 800 within 132 feet of 5th Street; Square 882, Lot 76; and all of Squares 739, 767, 768, 769, 797, 798, 825, and S825.

3. The Commission also granted consolidated approval of the PUD for the following properties: Square 824, Lots 37, 38, and 39; Square S825, Lots 31, 32, and 33; Square 880, Lot 24; and all of Squares 797, 798 and 825. The Commission also granted a PUD-related map amendment to rezone the following properties from R-5-B to CR upon completion of the second-stage approval of the PUD: Square 769, that portion lying more than 145 feet from the northern right-of-way line of M Street (including a portion of

Reservation 17D); Square 882, that portion lying south of the midpoint of the Square; and all of Squares 767 and 768 (including Reservations 17B and C).

4. On October 3, 2005, the Commission issued Order No. 03-12C/03-13C to correct Condition No. 2 of Order No. 03-12/03-13 to add Lot 30 to Square S825 of property included in the consolidated approval.

5. On April 29, 2005, the Applicants filed an application seeking final approval for the first phase ("Phase I') of the PUD and modifications to the preliminary and consolidated approval issued pursuant to Order No. 03-12/03-13.

6. The property that is the subject of this application consists of Lots 44, 45, 46, 47, 48, 49, 50 in Square 799, Lots 20, 25, 26, 27, 28, 816, 818, 819, 820 in Square 800, and Square 881W.

7. Squares 799 and 800 are bounded by K Street, S.E. on the north, 4th Street, S.E. on the east, M Street, S.E. on the south, and 3rd Street, S.E. on the west. The boundaries of Square 881W are K Street, S.E. on the north, Square 881 on the east, L Street, S.E. on the south, and 5th Street, S.E. on the west. The property included in this application consists of approximately 134,410 square feet of land area and is zoned R-5-B. The Applicants are not seeking an amendment to the Zoning Map in connection with this application. The Applicant intends to construct low-rise residential buildings in Squares 799 and 800 and a community center on Square 881W.

8. The low-rise residential buildings included in the Zoning Commission's consolidated approval of the project that are included in the requested parking reduction are located in Squares 797, 798, 799, 800, 824, 825, S-825, and the northern portion of Square 882.

9. The Applicants are Capper Carrollsburg Venture, LLC and the District of Columbia Housing Authority. Capper Carrollsburg Venture, LLC is a joint venture of Mid-City Urban, LLC and Forest City Enterprises.

10. The purpose of the PUD is to implement a portion of the revitalization plan at the site of the Arthur Capper/Carrollsburg Dwellings, a public housing community owned by DCHA. The overall project is funded in part by the HOPE VI Program of the U.S. Department of Housing and Urban Development, which targets the replacement and revitalization of severely distressed public housing and includes supportive services for residents to help them achieve self-sufficiency.

11. After proper notice, the Commission held a hearing on the application on December 19, 2005. The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located.

12. At its duly noticed meeting held December 12, 2005, ANC 6D voted 6-1-0 to support the application for approval and modifications to the consolidated and preliminary PUDs.

13. Seven individuals testified at the Commission's public hearing as persons in support of the application. Janet Asher, the owner of Lot 37 in Square 799, spoke in support of the general development. Ms. Asher stated she was concerned about the amount of parking spaces to be provided, and she recommend that the Applicants provide at least one parking space per unit.

14. At its public meeting on January ____, 2006, the Zoning Commission took proposed action by a vote of _____ to approve the application and plans that were submitted to the record.

15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated _____, found that the proposed PUD _____. NCPC recommended that the Commission _____. The Commission finds that _____.

16. The Commission took final action to _____ the application on _____ by a vote of _____ .

The PUD Project

Overview

17. In fulfillment of housing, economic and social goals on both the local and national level, the proposed project will replace and redevelop one of the most severely deteriorated public housing projects in the city. The project is made possible, in part, by a HOPE VI grant from the U.S. Department of Housing and Urban Development.

18. The portion of the project included in this application includes a total of 91 residential units, including 51 market rate and affordable for-sale units, 29 public housing units and 11 Section 8 homeownership units. In addition to the provision of housing, the project will include a community center that will include a DayCare and Recreation Center.

19. The original PUD development plans approved pursuant to Order No. 03-12/03-13 required that 20 privately owned properties in Square 799 and 800 be acquired either through a negotiated purchase or eminent domain. The 20 properties initially planned to be acquired or taken by eminent domain were Lots 27, 28, 29, 39, 40, 41, 42, 43, 803, 805, 808, 809, 825, 826, and 827 in Square 799 and Lots 20, 816, 818, 819 and 820 in Square 800.

20. The Applicants have redesigned the layout of Square 799 such that Lots 27, 28, 29, 39, 40, 41, 42, 43, 803, 805, 808, 809, 825, 826, and 827 are no longer included in the development plan. The materials filed by the Applicants on April 29, 2005 and October 7, 2005 clearly demonstrate that these properties are not included in the project design and are not included in any of the development data computations. Therefore, the Commission finds that Lots 27, 28, 29, 39, 40, 41, 42, 43, 803, 805, 808, 809, 825, 826, and 827 in Square 799 are no longer part of the PUD applications and that the preliminary approval granted pursuant to Order No. 03-12/03-13 is no longer applicable to Lots 27, 28, 29, 39, 40, 41, 42, 43, 803, 805, 808, 809, 825, 826, and 827 in Square 799.

21. Lots 20, 816, 818, 819 and 820 in Square 800 are included in this application. DCHA acquired Lots 20 and 816 in Square 800 through negotiated purchase and is the current owner of Lots 20 and 816 in Square 800. Moreover, at the request of DCHA, the Office of the Attorney General of the District of Columbia filed a *Notice of Condemnation, Declaration of Taking,* and a *Complaint in Condemnation Pursuant To Declaration of Taking Action Involving Real Property* to take by eminent domain Lots 818, 819 and 820 in Square 800. The filing of these documents terminates all outstanding private interests in the property, and transfers ownership of the property to the District of Columbia. Therefore, DCHA is proceeding with this application as the owner of Lots 818, 819 and 820 in Square 800.

Site Location and Description of Surrounding Area

22. The PUD Site is located north of the Washington Navy Yard on the Anacostia Waterfront area in the southeast quadrant of the District. The Generalized Land Use Polices Map of the Comprehensive Plan designates the area as a Housing Opportunity Area to encourage residential development.

23. Squares 799 and 800 are currently improved with housing in private ownership and vacant public housing units. Square 881W is currently improved with a community center.

24. The area surrounding the PUD Site is characterized by a mixture of uses. To the south and east are new commercial office buildings, the site of the Southeast Federal Center, and the new headquarters of the U.S. Department of Transportation. Portions of the area, however, particularly to the west, are still underutilized and consist of vacant land or abandoned industrial or manufacturing structures. To the east is the 8th Street corridor, a north-south axis that terminates at the Navy Yard entrance. Several medium density commercial and industrial buildings line 8th Street, including entertainment and auto-related uses, many of which are in disrepair. The Southeast-Southwest Freeway and Virginia Avenue act as the northern boundary of the site, with the Capitol Hill neighborhood lying to the north of these roads.

Project Design and Components

Low Rise Residential

25. The Applicants propose to construct three- and four- story low-rise residential buildings in Squares 799 and 800, including townhomes and apartment units. 51 units will be market rate and affordable for-sale units. 11 units will be Section 8 homeownership units. 29 units will be public housing. Square 799 will include a total of 45 units. Square 800 will include 46 units. There will be no distinction in external design character between the affordable and market-rate units.

26. A major design objective for the low-rise residential buildings is to create a cohesive urban community that reflects the diversity of architectural styles and forms found in the adjacent Capitol Hill Historic District. The Applicants' Architectural Plans and Elevations indicate that six basic styles will be introduced throughout the development, and that a number of the townhouses will feature rear-loaded, integral garages. In some cases, the homes are built up to the right-of-way line and, in some cases, have bays which project into public space. Private outdoor space is provided with optional rear decks and in some cases, optional rooftop terraces. Some homes face onto landscaped courtyards that provide publicly visible and accessible green space.

Community Center

27. The Applicants propose to construct a community center in Square 881W. Located on the site of an existing community center, the proposed community center will include a DayCare and Recreation Center.

28. The DayCare Center will be available to members of the community, with public housing residents given first preference. The Recreation Center will include a large gymnasium, multipurpose and exercise rooms, computer labs and offices, and that its services will likewise be open to the community. DCHA is in negotiations with the District of Columbia Department of Parks and Recreation to operate the Recreation Center, and a private provider will operate the DayCare Center.

29. A major design objective of the community center is to give the center a civic identity. The massing of the building, with its tower and differentiated roof profiles, endows the building with a more unique character and symbolize its important neighborhood function. Extensive use of glass at the entry and the significant corner of 5th and L Street allow internal activity to be visible from the street, creating an inviting appearance and animating the street. Moreover, the L-shaped configuration of the building is intended to carve out an important public open space at the corner of K and 5th Street and creates separate entries for the DayCare and Recreation Center along 5th Street. The open space on the corner allows a more immediate view of the Marine Barracks playfields which will

be utilized by the community center. The configuration also places the DayCare play area, which will be utilized after hours, at the end of K Street.

30. The Applicants also propose that the roof of the DayCare will be available for the potential future expansion of the community center for additional community space or offices.

31. The community center will be a LEED certified building.

Matter of Right Development Under Current Zoning

32. The PUD Site is zoned R-5-B. The R-5 Districts are general residence districts designed to permit flexibility of design by permitting in a single district, all types of urban residential development if they conform to the height, density, and area requirements established for these districts. 11 DCMR § 350.1. The R-5 Districts also permit the construction of institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residence districts. 11 DCMR § 350.1. In R-5-B Districts, moderate height and density developments are permitted. 11 DCMR § 350.2. The R-5-B District permits a maximum height of fifty feet with no limitation on the number of stories, and a maximum FAR of 1.8 for all structures. 11 DCMR §§ 400.1, 402.4.

Flexibility From Zoning Regulations

33. The Applicants are requesting flexibility from the roof structure and court width requirements in the R-5-B District.

Roof Structure

34. Pursuant to §400.7(b), a roof structure must be setback from all exterior building walls a distance at least equal to its height above the roof upon which the roof structure is located. As proposed, the northern wall of the community center will have a stair tower with no setback from the exterior wall of the building.

35. The location of this stair tower is necessary to provide potential future space on the second floor of the community center for the location of community office space. The desire for this potential future community office space results from meetings between the Applicants and neighborhood community groups regarding programming of the community center. The location of the stair tower creates a significant massing feature at the entrance of the daycare.

36. The Commission finds that the Applicants' request for additional floor area to potentially add community office space will extend the benefits provided by the community center.

Court Width Requirements

37. Pursuant to §406.1 of the Zoning Regulations, where an open court is provided in the R-5-B zoning district, the court width must measure 4 inches per foot of height of the court, but not less than six feet. However, Square 799 includes an open court that measures 5 feet in width, which is less than the required court width of 13 feet, 4 inches.

38. The non-complying court was created as a result of the Applicants' reconfiguration of the unit layouts in Squares 798 and 799 in order to avoid the need to acquire and replace the existing housing in Square 799, as requested by the Commission. In so doing, the Applicants shifted 3rd Place approximately 14 feet to the east, which resulted in the loss of 15 units in Square 799. Moreover, in order to meet the court requirement, the Applicants would have to setback a number of units in Square 799 by an additional 8 feet, 4 inches, which would result in very narrow buildings.

39. The Commission finds that the Applicants' request in a reduction in the required court widths from 13 feet, 4 inches to 5 feet is appropriate in light of the Applicants' redesign of Squares 798 and 799 in order to avoid the need to acquire and replace the existing housing in Square 799, as instructed to do by the Commission. Moreover, as discussed more fully in Findings of Fact 64-67, the Commission also finds that the provision of a roof deck on the northernmost structure, and the provision of one deck measuring 4 feet deep and 20 feet wide for the three remaining southern-most affected townhomes, further eliminates any adverse impact of the court width reduction.

Flexibility From Conditions of Commission Order No. 03-12/03-13

Design of Community Center

40. Condition No. 5 of Order No. 03-12/03-13 provides that the community center shall include approximately 18,000 square feet of gross floor area. Condition No. 8(h) of Order No. 03-12/03-13 provides that the maximum permitted height for the community center building is 25 feet.

41. The Applicants are requesting the flexibility to potentially add a future second story addition of approximately 6,000 square feet to the community center for community office space. The potential addition would increase the community center's gross floor area to approximately 28,500 square feet. The desire for this potential future community office space results from meetings between the Applicants and neighborhood community groups regarding programming of the community center.

42. The Applicants are also seeking the flexibility to construct the community center to a maximum height of 35 feet. The Applicants are seeking to increase the building's height because of the significant height of the buildings surrounding Square 881W, including:

(i) the adjacent Marine Barracks parking garage, which is immediately east of the square and has a highest point of approximately 56 feet; (ii) a new senior citizen housing building to the north which will have a height of 50 feet; and (iii) new row dwellings on the east side of 5th Street that will have heights ranging from 33 to 41 feet.

43. The Commission finds that a major design objective of the community center is to screen the Marine Barracks parking garage from view, and the proposed increased height of the building provides the most effective screening of this structure. Moreover, the Commission also finds that the proposed request for additional floor area to potentially add community office space will extend the benefits provided by the community center.

Community Center Building Permit

44. Condition No. 20 of Order No. 03-12/03-13 provides that the Applicants must file an application for a building permit for the community center by July 1, 2005, subject to review by the National Park Service of the proposed uses, and that plans must be submitted to the Commission as part of a second-stage application with sufficient time to allow this deadline to be met. Commission Order No. 03-12/03-13 was dated February 6, 2004; however, it was not issued until eight months later on October 8, 2004.

45. The Applicants submitted a letter from the National Park Service, dated March 24, 2005, indicating that the National Park Service reviewed the community center's concept plans as well as the proposed building and outdoor plans, and that in the National Park Service's view, the proposed uses of the community center comport with the definition of recreation-related activities, as adopted by the District of Columbia and the National Park Service.

46. In their April 29, 2005 application submission, the Applicants initially requested approval to file for a building permit for the community center within eight months after issuance of the Commission's order approving the community center. At the public hearing, the Applicants requested approval to file the building permit application for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application. The Applicants anticipate that approximately 100 units will be built by the summer of 2008, and that the remaining 219 units will be built by the end of 2010, based upon market demand. The community center's architect has designed the community center and has building plans prepared to submit to DCRA in connection with a building permit application. However, due to funding restraints and the anticipated date that the development will have a population to actually utilize the community center, the Applicants are seeking additional time to file the building permit application and to start construction of the community center.

47. The Commission finds that the Applicants' request to file the application for a building permit for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of the application is consistent with the requirements of Sections 2408.8 and 2408.9 of the Zoning Regulations and is reasonable for the reasons stated by the Applicants.

Number of Required Parking Spaces

48. Condition No. 11 of Order No. 03-12/03-13 provides that the overall project must include a minimum of 1,980 off-street parking spaces distributed as shown on the Parking Plan, Sheet T-3.0 of the Preliminary Plans. The preliminary parking plan shows a total unit count of 1,645 units and a total of 1,396 parking spaces for the residential portion of the project.

49. The Applicants' current plan includes a reduction in the number of parking spaces for the residential portion of the project from 1,396 parking spaces 1,241 spaces. This represents a reduction of 25 spaces due to the loss of units in Squares 798 and 799; design changes in other portions of the project initiated by the loss of units in Squares 798 and 799; and the Applicant's request for a reduction of up to 130 spaces in order to provide purchasers of the "Type A," "Type D," and "Type E" units the option of selecting either a one-car garage and additional living space or the standard two-car, tandem garage.

50. The number of parking spaces shown on the preliminary parking plan is based upon a total of 75 units in Square 798 and 60 units in Square 799. However, the number of units in Square 798 has been reduced to 69 units and the number of units in Square 799 has been reduced to 45 in order to comply with the Commission's instruction to retain as much of the existing private housing as possible. Thus, a number of the residential parking spaces have been reduced because of the reduction of units and design changes resulting from such reduction.

51. The preliminary parking plan approved by the Commission shows two garage parking spaces for the low rise residential units, which amounts to a total of 416 parking spaces, or a ratio of 2 cars per unit. The Applicants are seeking relief to provide purchasers of the 39 Type D units and the 91 Type A and Type E units, which are designed with two parking spaces in the garage in a "tandem" configuration, with the option to select either 1) a one-car garage and a first floor recreation room, or 2) the standard two-car garage as shown on the preliminary parking plan. This request applies to all the low-rise residential squares – 797, 798, 799, 800, 824, 825, S-825, and the northern portion of 882.

52. The Applicants testified that if all the purchasers elected to have the one-car garage and a first floor recreation room, 286 parking spaces, or 1.38 spaces per unit, would be provided for the "Type A," "Type B," "Type C," "Type D," and "Type E" townhome

units. This 1.38 parking ratio exceeds the zoning requirement of one parking space for each of the market rate dwelling units in the R-5-B zone district.

53. Eakin/Youngentob Associates ("EYA"), the builder of the low-rise residential units, has offered this option in other urban communities in the District metro area, and based upon its experience, the most-likely scenario is that approximately 50 percent of the purchasers will select the one-car garage option, which would thus result in the provision of 351 parking spaces, or 1.69 spaces per unit, would be provided for the "Type A," "Type B," "Type C," "Type D," and "Type E" townhome units. Many urban purchasers, particularly purchasers of the 14-foot and 16-foot townhomes, have either no car or one car and therefore will not need the additional space nor utilize the on-street parking. In addition, the "workforce housing" purchasers will likely have fewer cars per household than the market rate buyer and potentially more demand for livable space. Moreover, the overall development is served by the Navy Yard Metro Station, which is less than 2 blocks from the western boundary of the low-rise residential development, and the development is also proximate to both the Capital South and Eastern Market Metro Stations, which is expected to further reduce the demand for the parking spaces provided by the two-car garage option. Because of these reasons, the Commission finds that the Applicants' request for a reduction in the number of parking spaces is reasonable in exchange for increased living space.

54. The Applicant submitted a Technical Memorandum prepared by its traffic consultant indicating that reducing the number of parking spaces will not have an adverse impact on the project or the area.

Change to Location of Proposed "3rd Place" in Squares 798 and 799

55. Condition No. 4 of Order No. 03-12/03-13 provides that the second-stage applications for approval of the PUD shall be based on the plans prepared by Torti Gallas and Partners, dated May 27, 2003, marked as Exhibit No. 19 in the record of Case No. 03-12, including the revisions from the Supplemental Post-Hearing Submission dated November 12, 2003 to include the property of the Van Ness Elementary School (the "Preliminary Plans"), as modified by the guidelines, conditions and standards herein.

56. As shown on the Preliminary Plans approved by the Commission, the Applicants propose to construct a new street, "3rd Place," in Square 798. As approved, "3rd Place" would run north to south between Squares 798 and 799, and would be located at the approximate midpoint of the squares.

57. However, in order to eliminate the need for the Applicants to acquire private properties in Squares 798, the Applicants shifted "3rd Place" approximately 14 feet to the east. Moreover, "3rd Place" is currently proposed to be developed as a public street.

58. The Commission finds that shifting the location of "3rd Place" is consistent with the Commission's instruction to work on the designs of Squares 799 and 800 with the goal of saving as much of the existing private housing as possible.

Density

59. Condition No. 7 of Order No. 03-12/03-13 provides that the overall maximum permitted residential density shall be 2.21 FAR across the project as a whole, for a maximum permitted gross floor area of 2,092,081 square feet, including the community center.

60. The Applicants' current proposal provides an overall residential density of 2.34 FAR, with a gross floor area of 2,138,431, including the community center.

61. The change in density is based upon a number of factors, including a decrease in the project's land area, inclusion of the Van Ness Elementary School, refinement of unit designs and adjustments to unit types, making "3rd Place" a public street, leaving homes in private ownership, and enlargement of the community center.

62. The Commission finds that the increase of 0.13, or 46,350 gross square feet, will not have any adverse impact on the project or the surrounding area.

Phasing of Overall Development

63. The Applicants propose to develop and construct the PUD project not included in the Consolidated PUD in five phases. This application includes Phase I and consists of the low rise residential units in Squares 799 and 800 and the community center in Square 881W. Phase II will consist of the M Street office building, which may be built in up to two (2) sub-phases, along with the residential development in Square 882. The 250 M Street office building with first-floor retail in Square 769 will be Phase III of the development. Phase IV of the development will include high-rise apartments in Squares 767, 768, 769 and 739. Development of the Van Ness Elementary School will occur during Phase V of the development. The Applicants expect to file applications with the Zoning Commission for Phases I through IV of the development by October 2008. The order of the phases may change subject to future market demands. Phase V is not under the control of the Applicant and will proceed subject to the control of the Board of Education and the District Government.

Office of Planning Report

64. By report dated December 9, 2005, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP evaluated each of the modifications and requests for flexibility requested by the Applicants, and concluded that the proposed modifications to the preliminary PUD appear to be consistent with the Comprehensive Plan, Zoning Regulations and the intent of the original PUD, the requested modifications to the Consolidated PUD seem to be consistent with its original objectives, and the second stage PUD appears to be consistent with the Preliminary PUD approval.

65. OP recommended approval of the application, subject to the provision of the following additional information, and the inclusion of the following condition:

Additional Information

- The specific new location of the Section 8 homeownership unit that was removed from Square 799; and
- Clarification of whether the elimination of fourteen new market rate units in Square 799 requires further modification to either the second stage PUD application or the consolidated PUD; or whether the incorporation of the 14 units elsewhere in the PUD will be considered in future second stage applications.

New Condition Recommended for Second Stage PUD Approval

- For the four single-family townhome structures to be located in Square 799 for which an 8'4" open court reduction has been requested:
  - The northernmost structure shall be provided with a roof deck.
  - Decks shall be permitted within the open court for the two central and southernmost structures.
  - Each of the two central structures shall have rear decks provided on the second and third floors. The decks shall be a least four feet deep and ten feet wide.
  - The southernmost structure shall have at least one rear deck provided. The deck shall be at least four feet deep and ten feet wide.

66. In response to OP's recommendations, the Applicants' anticipate relocating the Section 8 homeownership unit removed from Square 799 to Square 882. The Applicants also are still in the process of determining whether and where the fourteen new market rate units eliminated in Square 799 will be reincorporated back into the project. To the extent these units will be reincorporated, these units would be included in a later phase of the development and included in a subsequent application for final approval.

67. The Applicants reached an agreement with OP, subsequent to OP's filing of its report, regarding the number of decks to be provided for the four single-family townhome structures to be located in Square 799 for which an 8'4" open court reduction has been requested. Specifically, the northernmost structure will be provided with a roof deck, and that each of the three southern-most affected townhome units will have one deck measuring 4 feet deep and 20 feet wide. OP concurred that the Applicants' testimony was an accurate representation of their agreement.

Contested Issues

Reduction in Number of Parking Spaces

68. Janet Asher, the owner of Lot 37 in Square 799, spoke in support of the general development. Ms. Asher stated she was concerned about the number of parking spaces that would be provided as a result of the Applicants' requested parking reduction, and she recommend that the Applicants' be required to provide at least one parking space per unit.

69. If all the purchasers elected to have the one-car garage and a first floor recreation room, 286 parking spaces, or 1.38 spaces per "Type A" through "Type E" townhome unit, would result and all of the units for which flexibility is requested would have at least 1 space per unit. This 1.38 parking ratio units exceeds the zoning requirement of one parking space for each market rate dwelling unit in the R-5-B zone district, and exceeds Ms. Asher's recommendation that the Applicants' be required to provide at least one parking space per unit.

70. Based on the evidence of record and testimony at the hearing, the Commission finds that the requested reduction on the number of parking spaces will not have an adverse impact on the project or the area, and that the Applicants will be providing more parking than is required one-family dwelling units in the R-5-B zone district.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking and loading, or for yards and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. Development of the property included in this application carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.

4. The PUD is generally within the applicable height, bulk and density standards approved by the Zoning Commission pursuant to Order No. 03-12/03-13, and the height and density will not cause a significant adverse effect on any nearby properties. Residential use is appropriate for the site, which is located within a Housing Opportunity Area. The site of the recreation center is likewise appropriate, which is located in the parks, recreation and open space category on the Generalized Land Use Map. The impact of the project on the surrounding area is not unacceptable.

5. The Applicants' request for flexibility from the Zoning Regulations, modifications to the original approval, and flexibility from the conditions of the preliminary approval are consistent with the Comprehensive Plan and the intent of the original PUD. Moreover, the project benefits and amenities, particularly the provision of housing in a Housing Opportunity Area and the provision of the community center, are reasonable trade-offs for the requested development flexibility.

6. Approval of this PUD is appropriate because the proposed development is consistent with the present character of the area, and is not inconsistent with the Comprehensive Plan. In addition, this phase of the development will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

7. The Commission is required under D.C. Code Ann. § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC's recommendation for approval and concurs in its recommendation.

8. The applications for a PUD are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Application for final approval of Phase I of a planned unit development ("PUD") under the existing R-5-B District and modifications to the preliminary and consolidated Capper/Carrollsburg PUD approved by Zoning Commission Order Number 03-12/03-13. This approval is subject to the following guidelines, conditions and standards:

1. The final approval of the PUD shall apply to the following properties: Lots 44, 45, 46, 47, 48, 49, 50 in Square 799, Lots 20, 25, 26, 27, 28, 816, 818, 819, 820 in Square 800, and Square 881W.

2. The requested parking reduction shall apply to the14-foot wide and 16-foot wide townhomes that are characterized as "Type A," "Type D," and "Type E" townhome units in Squares 797, 798, 799, 800, 824, 825, S-825, and the northern portion of Square 882.

3. The building permit application for the community center shall be based on the plans prepared by Torti Gallas and Partners, dated April 18, 2005, marked as Exhibit No. 5 in the record of Case Nos. 03-12A and 03-13A, including the elevations included as Exhibit O and Exhibit P of the Applicants' prehearing submission, dated October 7, 2005, marked as Exhibit No. 15 in the record of Case Nos. 03-12A and 03-13A, as modified by the guidelines, conditions and standards herein.

4. The building permit application for the low-rise residential units in Square 798 and 799 shall be based on the plans prepared by the Lessard Architectural Group, and included in the plan set prepared by Torti Gallas and Partners, dated April 18, 2005, marked as Exhibit No. 5 in the record of Case Nos. 03-12A and 03-13A, as modified by the guidelines, conditions and standards herein.

5. The Applicants shall file an application for a building permit for the community center within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application.

6. The Applicants shall file an application for a building permit for the low-rise residential units in Squares 798 and 799 within 2 years from the issuance of the order in this case, and to start construction of the community center within 3 years of the date of final approval of this application.

7. The second–stage approval for the remaining portions of the project will be filed in phases. Phase II will consist of the M Street office building, which may be built in up to two (2) sub-phases, along with the residential development in Square 882. The 250 M Street office building with first-floor retail in Square 769 will be Phase III of the development. Phase IV of the development will include high-rise apartments in Squares 767, 768, 769 and 739. Development of the Van Ness Elementary School will occur during Phase V of the development. The applications for final approval of Phases II through IV of the development must be filed by October 2008. The order of the phases may change subject to future market demands. Phase V is not under the control of the Applicant and will proceed subject to the control of the Board of Education and the District Government.

8. The community center shall have a maximum gross floor area of 28,500 square feet and shall be constructed to a maximum height of 35 feet.

9. The overall maximum permitted residential density shall be 2.34 FAR across the project as a whole, for a maximum permitted gross floor area of 2,138,431 square feet, including the community center.

10. The residential portion of the project shall include a minimum of 1,241 off-street parking spaces.

11. The stair tower located on the northern wall of the community center is permitted to have no setback from the exterior wall of the building.

12. The open court in Square 799 shall have a width of 5 feet.

13. For the four single-family townhome structures to be located in Square 799, the northernmost structure will be provided with a roof deck, and each of the three southern-most affected townhome units will have one deck measuring 4 feet deep and 20 feet wide.

14. No building permit shall be issued for the community center or the low-rise residential units in Squares 798 and 799 until the Applicants have individually recorded covenants in the land records of the District of Columbia, between the owners and the District of Columbia, satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenants shall bind the Applicants and all successors in title to construct on and use the property in accordance with this order or amendment thereof by the Zoning Commission.

15. An individual Applicant shall be responsible for carrying out those conditions of this Order that are applicable to each specific property and shall not be responsible for the obligations or requirements of the other Applicants.

16. No further application for second-stage approval shall be filed until the Applicants have recorded the covenants required by the Regulations and Condition 14 of this Order.

17. The Applicants are required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicants to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

Vote of the Commission taken at its public meeting held on _____: _-_-_ (_____).

The order was adopted by the Zoning Commission at its public meeting on _____, by a vote of _-_-_ (_____).

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the *D.C. Register*; that is on _____.

CAROL J. MITTEN
Chairman,
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning

3468364_v2