

APPLICANT'S PROPOSED FINDINGS OF FACTS, CONCLUSIONS OF LAW & DECISION FOR Z.C. CASE NO. 03-12C/03-13C

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 7, 2006, to consider an application from Square 769, LLC and the District of Columbia Housing Authority ("DCHA") (collectively the "Applicants"), for second-stage review and approval of a planned unit development ("PUD") for Lots 18, 20 and 21 in Square 769, pursuant to Zoning Commission Order Number 03-12/03-13 ("Z.C. 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 Capper Carrollsburg Venture 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 Z.C. Corrected 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.

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CASE NO. 03-12C/03-13C
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EXHIBIT NO. 41
EXHIBIT NO. 41

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5. On April 29, 2005, Capper/Carrollsborg Venture, LLC, in conjunction with DCHA, 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. The April 29, 2005 application submitted by Capper/Carrollsborg Venture, LLC and DCHA was the first second-stage application filed in a series of applications seeking second-stage approval for portions of the project preliminarily approved pursuant to Z.C. Order No. 03-12/03-13. That application also sought approval to modify portions of the parking requirements for the consolidated PUD approval. That application included 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, and is identified as Zoning Commission Case Nos. 03-12A/03-13A. The property that was the subject of that application consisted 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. The property that was the subject of that application consisted of approximately 122,610 square feet of land area and was zoned R-5-B. Capper/Carrollsborg Venture LLC in conjunction with DCHA did not seek an amendment to the Zoning Map in connection with that application. On September 15, 2006, the Zoning Commission issued Z.C. Order No. 03-12A/03-13A which approved that application.
6. On April 21, 2006, the Applicants filed their application seeking second-stage approval for portions of the preliminary PUD approved pursuant to Zoning Commission Order 03-12/03-13. This application is the second in a series of second-stage applications to be filed to complete the entire PUD project.
7. The Applicants are Square 769, LLC and the District of Columbia Housing Authority. Square 769, LLC is a joint venture which will include DCHA and William C. Smith & Co. William C. Smith & Co. will serve as the developer of the office building at 250 M Street, S.E.
8. The property that is the subject of this application consists of parts of Lots 18, 20, 21 in Square 769, collectively referred to herein as the "PUD Site." The boundaries of Square 769 are L Street, S.E. on the north, 3rd Street, S.E. on the east, M Street, S.E. on the south, and 2nd Street, S.E. on the west. The PUD Site consists of approximately 27,960 square feet of land area and is zoned CG/C-3-C. The Applicants are not seeking an amendment to the Zoning Map in connection with this application.
9. The Applicants intend to construct a nine-story office building with ground floor retail in Square 769. The office building will be constructed to a maximum height of 110 feet. The project will have a floor area ratio ("FAR") of approximately 7.21. There will be 197 complying, accessible parking spaces provided in this phase of the development.
10. The purpose of the PUD is to implement a portion of the revitalization plan at the site of the Arthur Capper/Carrollsborg 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

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revitalization of severely distressed public housing and includes supportive services for residents to help them achieve self-sufficiency.

11. At its duly noticed meeting held October 16, 2006, ANC 6D voted 3-4 to oppose the application for second-stage approval.
12. After proper notice, the Commission held a hearing on the application on December 7, 2006. The parties to the case were the Applicants and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the property is located. ANC 6D did not testify in opposition of the application at the December 7, 2006 hearing on the application.
13. At the hearing on the application, the Commission requested that the Applicant provide the Commission with supplemental materials, including: renderings of the 2nd Street façade without the trees along 2nd Street; perspective drawings showing the relationship between the ground floor of the building along 2nd Street and the Canal Blocks Park; an explanation of the elements of the application which exemplify superior architecture; a clarification of the employment plan in the First Source Employment Agreement submitted with the Applicants' August 4, 2006 pre-hearing statement; and the identification of surfaces to be used for the PEPCO vaults located on the property.
14. On May 3, 2007, the Applicants filed its post-hearing submission which provided the supplemental materials requested by the Zoning Commission at the December 7, 2006 hearing. The Commission finds that the Applicants' post-hearing submission has sufficiently addressed the Commission's requests.
15. At its public meeting on May ____, 2007, the Commission took proposed action by a vote of ____ to approve the application and plans that were submitted to the record.
16. 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 _____.
17. The Commission took final action to _____ the application on _____ by a vote of _____.

The PUD Project

Overview

18. 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.

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19. The portion of the project included in this application include a nine-story office building with ground floor retail, containing 200,780 square feet of gross floor area. The provision of this office building with ground floor retail will significantly advance the overall goals of the PUD by providing financial leverage for the construction of the replacement public housing.

Site Location and Description of Surrounding Area

20. The PUD Site is located in the southeast quadrant of the District, near the Navy Yard Metro Station in the Anacostia Waterfront area. Containing approximately 27,960 square feet of land area, the PUD Site is zoned CG/C-3-C.
21. A portion of Square 769 is currently improved with a parking lot, while the remaining portion of Square 769 is unimproved land. The portions of Square 769 described in this application are located in the medium-high density commercial land use category in the Generalized Land Use Map of the Comprehensive Plan. The predominant use in medium-high density commercial land use categories is a shopping and service area that generally offers the largest concentration and variety of goods and services outside the Central Employment Area.
22. The area surrounding the PUD Site is characterized by a mixture of uses. To the south, east and west are new office buildings: the headquarters of the U.S. Department of Transportation, the 300 M Street building, and the Federal Gateway Building at 1100 New Jersey Avenue. Also located to the south of the PUD site will be the new Washington Nationals' baseball stadium. Immediately to the west of the PUD site is the proposed Canal Park. Two blocks to the west is the Navy Yard Metrorail Station, located across the street from the Federal Gateway building. Zoning Commission Order No. 03-12/03-13 indicates that the northern portion of Square 769 will be improved by a proposed residential project.

Project Design

23. The Applicants propose to construct a nine-story office building with ground floor retail and below-grade parking. The proposed project is designed to work in concert with the existing building at 1100 New Jersey Avenue to create a gateway from M Street to the proposed Canal Park and Capper/Carrollsborg neighborhood. In addition to functioning as a visual gateway, the proposed project will serve as a commercial and retail gateway that will help bring vitality to the mixed-use Southeast M Street urban corridor. As a result, the design of the office building will harmonize with both the existing and proposed scales of its urban surroundings.
24. The building will stand at a height of 110 feet and has been designed in accordance with LEED criteria. The building facades along M and 2nd Streets consist of a glass wall curtain treatment with pre-cast concrete at featured areas. The organization of the general massing permits the building to address the different existing and proposed urban scales of the surrounding neighborhood. The building's main entrance will be located on M Street, with retail entrances along M and 2nd Streets. At the street level, the landscape

and streetscape designs are articulated in a manner to promote pedestrian movement and activity—two essential components of urban vitality. The design includes a metal cornice treatment along 2nd Street, which places an emphasis on the importance of the Canal Blocks Park and provides compositional relief to the building façade along 2nd Street.

25. The ground floor retail space will occupy more than 50 percent of the building's first floor. A two foot glass canopy along 2nd Street floats above each retail bay, serving to reduce the scale of the building to a scale that promotes pedestrian-friendly activity at the ground floor.
26. To the building's north is a twenty-five foot service drive that will provide access to both loading berths and garage entries. The PEPCO vaults, which were originally located on 2nd Street, have been relocated to the service drive, in order to accommodate greater retail use at the corner of 2nd and M Streets, S.E., creating a more pedestrian-friendly streetscape at that corner.
27. The below-grade parking garage will consist of four levels and will accommodate 197 complying accessible parking spaces, satisfying the minimum requirement of 150 parking spaces stated in Zoning Commission Order No.03-12/03-13.

Matter of Right Development Under Current Zoning

28. The PUD Site is zoned CG/C-3-C. The Capitol Gateway (CG) Overlay District is applied to the Buzzard Point and Capitol Gateway areas, which are designated for mixed use development in the Comprehensive Plan for the National Capital. 11 DCMR §1600.1. Two enumerated purposes of the CG Overlay District are: (1) to assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area; and (2) to encourage a variety of support and visitor-related uses, such as retail, service, entertainment cultural and hotel or inn uses. To accomplish the enumerated purposes of the CG Overlay District, any proposed building on a lot that abuts M Street, S.E., between South Capitol Street and 4th Street, S.E., shall be subject to review and approval by the Zoning Commission. An applicant, in the CG Overlay District, requesting approval must prove that the proposed building's architectural design, site plan, landscaping, and sidewalk treatment are of a superior quality. The streetwall of each new building must be set back for its entire height and frontage along M Street not less than 15 feet measured from the face of the adjacent curb along M Street, S.E. Each new building in the CG Overlay District must devote not less than 35% of the gross floor area of the ground floor to retail, service, entertainment, or arts uses. 11 DCMR 1604.4. Pursuant to Section 1604.6, not less than 50% of the surface area of the streetwall of any new building along M Street must be devoted to display windows having clear or low-emissivity glass except for decorative accent, and to entrances to commercial uses or the building. No driveway may be constructed or used from M Street to the required parking spaces or loading berths in or adjacent to a new building.

29. The C-3 Districts are designed to accommodate major business and employment centers supplementary to the Central Business (C-4) District. Additionally, the C-3 Districts must provide substantial amounts of employment, housing and mixed uses. 11 DCMR §740.2. The C-3-C District permits medium-high density development, including office, retail, housing and mixed-use development. The C-3-C District permits a maximum height of 90 feet with no limitation on the number of stories and a maximum FAR of 6.5 for all structures.

Flexibility from the Zoning Regulations

30. The Applicants request flexibility from the roof structure requirements of the C-3-C District.
31. As provided in Section 2400.2 of the Zoning Regulations, the PUD process was created to allow greater flexibility in planning and design than may otherwise be possible under conventional zoning procedures. As permitted under Section 2405.8, the Commission may grant such flexibility without the need for special exception approval from the Board of Zoning Adjustment or compliance with the special exception standards that might otherwise apply.
32. The Commission finds that the Applicants meet the requirements for special exception relief from Section 411.5 of the Zoning Regulations, which provides that enclosing walls of a roof structure must be of equal height.
33. Under Section 411.11, special exception relief may be granted from the strict requirements for a roof structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." Deviations from the roof structure requirements may be approved, provided the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely."
34. In this case, strict compliance with Section 411.5 of the Zoning Regulations would be impracticable because of conditions relating to the building and surrounding area, and would also be unreasonable. As shown on the Plans, the project includes a roof structure that will have enclosing walls of unequal height. The structure slopes from 18'-6" at its east end to 13'-8" at its west end. As discussed above, the roof structure responds to a number of conditions relating to both the building and the surrounding area. For instance, the slope of the structure helps to achieve an intimate area on the roof to shelter users of the rooftop terrace from the sun and rain. Moreover, the decreased height of the structure near the eastern edge of the building helps to minimize the height of the penthouse that is experienced along Canal Park. In addition, the proposed roof structure screens the rooftop equipment, stairways, and the elevator penthouse from neighboring views. A portion of the structure has to have a height of 18'6" in order to enclose the mechanical and elevator equipment. However, requiring the entire penthouse to have

enclosing walls of 18'6" would be unreasonable in light of the conditions of the surrounding area and the objective of minimizing views of roof structures.

35. The Commission finds that the proposed roof structure does comply with the intent and purpose of the roof structure provisions and the Zoning Regulations, and does not adversely affect the light and air of adjacent buildings. The roof structure height is a direct byproduct of the Applicants' attempt to provide adequate light and air to adjacent property and abutting streets.
36. The Commission concludes that the roof structure meets all of the roof structure requirements other than Section 411.5. In fact, the proposed setbacks exceed the one-to-one requirement in the regulations. Moreover, the roof structure has a FAR of 0.23, or 6,375.66 square feet, which is less than the permissible FAR of 0.37, or 27,960.90 square feet permitted by zoning. The enclosed portion of the roof structure will only be used to provide access to the roof, roof terraces, and to house mechanical, elevator, and other utility equipments.
37. The Commission finds that the Applicants would not need the requested relief if the entire roof structure had equal walls measuring 18'-6". The Commission also finds that the sloped roof structure that will not hinder the light and air of adjacent property owners.

Flexibility from the Conditions of Z.C. Order No. 03-12/03-13

38. The Applicants do not seek flexibility from the conditions stated in Z.C. Order No. 03-12/03-13.

Office of Planning Report

39. By report dated November 27, 2006, and through testimony presented at the public hearing, the Office of Planning ("OP") recommended approval of the PUD application. OP evaluated the Applicants' request for flexibility from the roof structure requirements of the Zoning Regulations and concluded that the requested flexibility is consistent with the Comprehensive Plan, Zoning Regulations, and the intent of Z.C. Order No. 03-12/03-13.
40. OP recommended approval of the Application, subject to the provision of a countersigned LSDBE Agreement, prior to final action in the case. The Commission finds that the Applicant submitted its request for countersignature of the LSDBE Agreement to the Department of Small and Local Business Development on December 5, 2006.

Anacostia Waterfront Corporation

41. The Anacostia Waterfront Corporation submitted a letter in support of the Applicants' revised sidewalk and landscape plan.

District's Department of Transportation

42. By letter dated December 6, 2006, the District's Department of Transportation expressed its support of the Applicants' revised sidewalk and landscape plan.

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. Office use is appropriate for the site, which is located within the medium-high density commercial land use category in the Generalized Land Use Map of the Comprehensive Plan. Thus, the impact of the project on the surrounding area is not unacceptable.
5. The Applicants' request for flexibility from the Zoning Regulations are consistent with the Comprehensive Plan and the intent of the original PUD. Moreover, the project benefits and amenities, particularly the provision of an income stream to DCHA, which will significantly advance the overall goals of the PUD by providing financial leverage for the construction of the replacement public housing, 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 opposition to the application.
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 a planned unit development for Lots 18, 20 and 21 in Square 769 in Zoning Commission Case No. 03-12C/03-13C. This approval is subject to the following guidelines, conditions and standards:

1. The final approval of this PUD shall apply to Lots 18, 20 and 21 in Square 769.
2. Square 769, LLC shall contribute \$46,000 to the Canal Park Development Association for use in making improvements to the Canal Block Park, prior to the issuance of a building permit.
3. The Applicant shall comply with the conditions set forth in Zoning Commission Order No. 03-12/03-13, dated February 6, 2004, effective October 8, 2004.
4. The building shall have a maximum height of 110 feet.
5. The building shall have a maximum floor area ratio of 7.43.
6. The landscape and sidewalk plans shall be as shown in the Architectural Plans and Elevations dated May 3, 2007.
7. In order to obtain a building permit, Square 769, LLC must record a covenant between Square 769, LLC and the District of Columbia, in the land record of the District of Columbia, to the satisfaction of the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs.
8. The Applicants shall comply with the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve, at a minimum, the goal of 35 percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance and security for the project to be created as a result of the PUD.
9. The Applicants shall submit to the Department of Small and Local Business Development the final budget for the project on or before filing for a building permit.

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10. The Applicants and its general contractor shall comply with the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing D.C. residents for at least 51 percent of the jobs created by the PUD project. The Applicants shall give residents from the Near Southeast community special consideration for employment.
11. The PEPCO vaults shall be located within the service drive at the north end of the site.
12. 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