

Office of
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Issuances

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning 2: 21



MEMORANDUM

To: Office of Documents and Administrative Issuance

From: Sharon S. Schellin ³
Secretary to the Zoning Commission

Date: October 17, 2007

Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on October 26, 2007:

1. Z.C. Order No. 03-12D/03-13D;
2. Z.C. Order No. 03-12E/03-13E;
3. Z.C. Order No. 03-30A;
4. Z.C. Order No. 04-19A;
5. Z.C. Order No. 04-36;
6. Z.C. Order No. 05-24A;
7. Z.C. Order No. 05-38;
8. Z.C. Order No. 06-31; and
9. Z.C. Order No. 07-12.

Attachment

ZONING COMMISSION
District of Columbia

CASE NO. 03-12E/03-13E
EXHIBIT NO. 4

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ZONING COMMISSION
District of Columbia
CASE NO. 03-12E/03-13E
EXHIBIT NO. 4
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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12E/03-13E
Z.C. CASE NO. 03-12E/03-13E
(Capper/Carrollsbury Venture, LLC – Minor Modification to PUD)
May 21, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public meeting on May 21, 2007 to consider a request from the District of Columbia Housing Authority (the “Applicant”) for a minor modification to the Planned Unit Development (“PUD”) approved pursuant to Zoning Commission Order No. 03-12/03-13, dated October 8, 2004. The matter was placed on the Consent Calendar pursuant to §§ 2409.9 and 3030 and, for the reasons stated below, was approved without a hearing or referral to the National Capital Planning Commission.

FINDINGS OF FACT

By Zoning Commission Order No. 03-12/03-13, dated October 8, 2004, the Zoning Commission approved the Applicant’s application for a consolidated PUD and zoning map amendment for Squares 739, 767, 768, 769, 797, 798, 800, 825, 825S, and 882 and portions of Squares 737, 799, 824, N853, and 880. The property included in the PUD approval is located in the Southeast quadrant of Washington, D.C. and generally bounded by 2nd Street on the west, 7th Street on the east, Virginia Avenue on the north, and M Street on the south. The property consists of approximately 927,000 square feet of land.

Pursuant to 11 DCMR § 3028, Zoning Commission Order 03-12/03-13 (“Original Order”) became effective upon publication in the D.C. Register on October 8, 2004.

The Original Order has been corrected and modified since its issuance. On October 3, 2005, the Commission issued Z.C. Corrected Order No. 03-12C/03-13C to correct an error in the Original Order. On April 7, 2006, the Commission issued Order No. 03-12B/03-13B approving a modification to the Original Order. On September 15, 2006, the Commission issued Z.C. Order No. 03-12A/03-13A to permit final approval of the first phase of the approved PUD and modify the Original Order. At a March 26, 2007 public meeting, the Commission took action to approve Zoning Commission Case No. 03-12D/03-13D, a further modification to the Original Order.

By letter dated March 30, 2007, counsel for the Applicant filed a request for a further modification to Zoning Commission Order No. 03-12/03-13 on the Commission’s Consent Calendar pursuant to § 3030 of the D.C. Zoning Regulations. This letter requested that the Zoning Commission grant approval of a modification to permit Squares 767, 768, 769 (northern

half), and 882, which are rezoned to C-R under the PUD, be used as a temporary surface parking lot accessory the new ballpark at South Capitol and N Streets, S.E.

The request was placed on the Consent Calendar for the Commission's April 9, 2007 regular monthly meeting. Also at that public meeting, the Commission considered whether to set down for hearing the petition of the Office of Planning ("OP") to amend the Zoning Regulations to permit such an accessory use on certain lots, including some on the PUD site (Z.C. Case No. 07-08). Rather than consider the Applicant's minor modification request before the use became permitted, the Commission deferred its consideration of this modification until it acted on the OP petition.

By letter dated May 11, 2007, counsel for the Applicant provided supplemental information requested by the Commission at its April 9, 2007 meeting to assure that granting the permission to provide temporary parking on-site would not deter the completion of the mixed-use residential component of the project financed in part through the HOPE VI Program of the U.S. Department of Housing and Urban Development on certain portions of the project. The Applicant's letter indicated that the PUD as a whole would proceed on schedule and further explained its choice of temporary parking lot locations on the site by stating that aspects of its financing plan prohibited use of the southern portion of Square 882 as temporary parking lots, and that it was withdrawing Square 769 from its request, because it was impractical for temporary parking, because it was needed for other construction-related uses.

The Applicant presented evidence that it had duly served a full copy of its request for a minor modification on Advisory Neighborhood Commission 6D (the only other party in the original PUD proceeding) and OP. No comments were received from either of these entities.

On May 21, 2007, the Commission held a public hearing on Z.C. Case No. 07-08 and, at its conclusion, took emergency action to adopt the text amendment. Then, at a special public meeting held thereafter, the Commission approved this minor modification to the approved PUD.

The Commission concurs with the Applicant that approving the minor modification is appropriate and is not inconsistent with the intent of 11 DCMR §§ 2409.9 and 3030.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modification is minor and consistent with the intent of Commission Order No. 03-12/03-13. The Commission concludes that the proposed modification is in the best interest of the District of Columbia and is not inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act.

The approval of the modification is not inconsistent with the Comprehensive Plan. Further, the requested modification will not affect any of the project benefits and amenities. The modification is of such a minor nature that its consideration as a consent calendar item without public hearing or referral to the National Capital Planning Commission for review and comment is appropriate.

DECISION

In consideration of the reasons set forth herein, the Zoning Commission hereby orders **APPROVAL** of a minor modification to allow for Squares 767, 768, and 882 to be used as temporary surface parking lot accessory to the new ballpark at South Capitol and N Streets, S.E. for a period of no more than five (5) years. The use shall be consistent with the plans submitted to the Zoning Commission record by the Applicant on March 30, 2007. Accordingly, the following is added as Condition No. 30 on page 36 of Zoning Commission Order No. 03-12/03-13:

30. Notwithstanding anything to the contrary contained herein, Square 767, Lots 44 – 47; Square 768, Lots 19 – 22; and Square 882 may be used as a temporary surface parking lot accessory to the Ballpark as permitted by 11 DCMR § 601.1(dd) and in accordance with 11 DCMR § 2110 of the Zoning Regulations through and until April 1, 2013.

The Applicant is 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 Applicant 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 Zoning Commission taken at its public meeting on May 21, 2007: 3-0-2 (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to adopt; Gregory N. Jeffries and John G. Parsons not voting, having not participated).

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In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on **OCT 26 2007**.