

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 03-12F/03-13F

As Secretary to the Commission, I hereby certify that on **SEP 24 2008** copies of this Z.C. Order No. 03-12F/03-13F were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ATTESTED BY:

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Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia

CASE NO. 03-12F/03-13F

EXHIBIT NO. 35

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 03-12F/03-13F
Z.C. Case No. 03-12F/03-13F

Modification to the Second-Stage Approval of a Planned Unit Development
for an Office Building at 250 M Street, S.E.
Square 769, LLC and the District of Columbia Housing Authority
(Square 769, parts of Lots 18, 20, and 21)
July 14, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 28, 2008, to consider an application from Square 769, LLC and the District of Columbia Housing Authority (collectively, the "Applicant"), for a modification to the second-stage approval of a planned unit development for parts of Lots 18, 20 and 21 in Square 769, approved pursuant to Order Number 03-12C2/03-13C2. 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 Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On May 14, 2007, the Commission voted 5-0-0 to approve Case No. 03-12C/03-13C, granting second-stage approval to an application submitted by Applicant for an office building with ground floor retail at 250 M Street, S.E. Z.C. Order No. 03-12C2/03-13C2 allows the Applicant to develop Lots 18, 20, and 21 in Square 769 (the "Property") with an office building built to a height of 110 feet (plus roof structure of an additional 18 feet, 6 inches) with a gross floor area of 207,785 square feet and a density of 7.20 FAR. The original overall Capper/Carrollsborg planned unit development approved pursuant to Z.C. Order No. 03-12/03-13 provided for a maximum building height of 110 feet and a maximum gross floor area of 236,000 square feet for the Property.
2. On December 28, 2007, the Applicant filed the instant application requesting a modification to the PUD approved pursuant to Z.C. Order No. 03-12C2/03-13C2. The Applicant requested to: (1) increase the measured building height from 110 feet to 130 feet; and (2) increase the gross floor area of the approved building from 207,785 square feet to 234,182 square feet. The Office of Planning ("OP") provided its report on January 7, 2008. The Commission voted at its February 11, 2008 public meeting to set the application down for a public hearing.

3. By letter dated March 7, 2008, the Applicant submitted a prehearing statement in support of its application. The Applicant's submission included supplemental architectural plan and elevation sheets, outlines of witness testimony, and a list of names and addresses of all property owners within 200 feet of the Property.
4. By letter dated May 8, 2008, the Applicant provided supplemental prehearing information pursuant to § 3013.8 of the Zoning Regulations. The Applicant's supplemental materials indicated that the building's design has been further refined to enhance its overall composition and articulation. The materials included a LEED scorecard indicating that the Applicant is committed to achieving a minimum of 37 points, revised architectural drawings, which superseded all sets previously filed, and the resumes of Michael E. Hickok and Brad Fennell, both of whom testified as experts at the May 28, 2008 public hearing.
5. After proper notice, the Commission held a public hearing on the application on May 28, 2008. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Property is located. No written official report was submitted by ANC 6D and no representative of ANC 6D appeared at the hearing on the case. However, the Applicant submitted a Memorandum of Agreement signed by four ANC members in their individual capacity. (Exhibit 26)
6. At its public hearing on May 28, 2008, the Commission took proposed action by a vote of 5-0-0 to approve the requested application.
7. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by report dated July 10, 2008, advised "that the proposal would be adverse to the federal interest because it does not conform to the requirements of [An Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 601.09)("Height Act")] as it exceeds the maximum allowable height of 110 feet" and recommended "that the Zoning Commission require the applicant to modify the project design to reduce the building height by 20 feet to bring the design into compliance with the Height Act." The Commission took final action to approve the requested modification by a vote of 5-0-0. Prior to doing so, the Commission noted the NCPC report, but declined to interpret the Height Act issue presented, believing that it was up to the Zoning Administrator, not the Commission, to do so. While the Commission would be reluctant to approve plans that clearly violated the Height Act, no such clear cut infraction is present here. Rather, the question of whether the maximum allowable height for the project is 110 feet instead of 130 feet, which relates to the width of Second Street, is best left to judgment of the Zoning Administrator and the Surveyor of the District of Columbia. Nevertheless, neither the Zoning Administrator nor the Surveyor should view the Commission's approval of this modification as obviating the need to resolve the street width question presented.

PUD Site and Area

8. The subject property is located on the north side of M Street between 2nd and 3rd Streets, S.E. The property contains approximately 27,960 square feet of land. The PUD is zoned CG/C-3-C. The PUD is located in the southeast quadrant of the District, near the Navy Yard Metro Station in the Anacostia Waterfront area.
9. 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.
10. The area surrounding the PUD 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 is the new Washington Nationals' baseball stadium. Immediately to the west of the PUD site is the proposed Canal Blocks Park. Two blocks to the west is the Navy Yard Metrorail Station, located across the street from the Federal Gateway building. Z.C. Order No. 03-12/03-13 indicates that the northern portion of Square 769 will be improved by a proposed residential project.
11. The Council of the District of Columbia has approved legislation reopening the portion of 2nd Street between K and M Streets which was closed in 1965. The legislation designates that portion of the Street to be known as 2nd Place. The reopened street follows the width and alignment of 2nd Street as it existed prior to the closing. Reservation 17D lies between the two portions of 2nd Street. The total width of the two portions of 2nd Street is more than 150 feet and the total distance from the eastern right-of-way line of 2nd Street to the western right-of-way line of 2nd Street is more than 250 feet.

Approved Building

12. The project approved by the Commission in Z.C. Case No. 03-12C/03-13C is to be 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 Blocks 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.

13. The building was approved with a height of 110 feet, with a roof structure above that height having a maximum additional height of 18 feet, six inches enclosed within a sloping roof. The building 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.
14. The ground floor retail space will occupy more than 50% of the building's first floor.
15. To the building's north is a 25-foot service drive that will provide access to both loading berths and garage entries. The PEPCO vaults are located in the service drive, in order to accommodate greater retail use at the corner of 2nd and M Streets, S.E., and create a more pedestrian-friendly streetscape at that corner.
16. 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 Z.C. Order No. 03-12/03-13.

Proposed Building

17. The Applicant seeks approval of revisions to the building to increase the height and the gross floor area. In order to increase the gross floor area closer to the number originally approved in the overall PUD, the applicant proposes to add two floors to the building and increase the measured height of the building to 130 feet.
18. The west side of the 11th floor will be devoted to occupiable space as conference and office space. The east side of the 11th floor will be devoted to a mechanical penthouse, which is therefore located on the 10th floor roof. The mechanical penthouse has a height of 18 feet, six inches and is set back one-to-one from each exterior wall of the roof upon which it is located.
19. A small portion of the penthouse will extend approximately five feet above the 130 foot height limit, to accommodate the elevator override for the building. The roof over the top floor and the penthouse will continue to slope in the same manner as in the approved design. Notwithstanding that the measured height to the top of the main roof increases by 20 feet, the overall height of the building to the top of the penthouse increases by only seven feet, 10 inches.
20. The gross floor area of the proposed building is approximately 234,182 square feet. This is an increase of approximately 26,400 square feet, but it is still less than the 236,000

square feet approved for this site in the overall PUD. The income stream from the 750,000 square feet of office space in the overall PUD is a key component in funding the one-to-one replacement of the approximately 695 public housing units formerly located on the Capper/Carrollsborg site.

21. The design of the proposed building has been modified slightly from the plans first approved. The building continues the same basic architectural design as originally presented and will continue to match the building at 1100 New Jersey Avenue so as to form the gateway to the Canal Blocks Park.
22. Studies submitted by the Applicant confirm that the building as proposed would have negligible impact on the Canal Blocks Park and other surrounding property.
23. The building as proposed will comply with all of the requirements of the CG/C-3-C zoning and of Chapter 24.
24. All of the amenities and benefits contemplated in the overall PUD and all of the specific components of the project approved for this site will be provided in the project as now proposed.
25. OP, by report dated May 16, 2008, recommended that the application be approved. The OP's comments concerning the design of the doors at the eastern end of the penthouse were addressed by the Applicant in revised plans submitted to the Commission at the hearing.

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 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, density, lot occupancy, parking, loading, 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, bulk and density standards for the Capper/Carrollsborg redevelopment approved by the Commission pursuant to Z.C. Order No. 03-12/03-13. Due to the Applicant's design of the building, the increase in height to 130 feet represents only a small overall increase in the height of the building, and the height and density will not cause a significant adverse effect on any nearby properties.
5. Approval of this modification to the 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. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's recommendation. In the present case, the ANC did not submit a report nor did the ANC offer testimony at the public hearing. For these reasons, the Commission has not given great weight to the affected ANC. The Commission notes the memorandum of agreement signed by four of the ANC members in their individual capacities and will include appropriate conditions in its decision.
8. The application for a PUD is 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 of the District of Columbia orders **APPROVAL** of the modifications to (1) increase the measured building height from 110 feet to 130 feet, and (2) increase the gross floor area of the approved building from 207,785 square feet to 234,182 square feet. For purposes of these conditions, the term "Square 769, LLC," shall mean any entity owning fee simple title or a ground lease interest in the Property. This approval is subject to the following guidelines, conditions, and standards:

1. Square 769, LLC shall comply with the conditions set forth in Z.C. Order No. 03-12/03-13, effective October 8, 2004, and Order No. Z.C. 03-12C2/03-13C2, effective, August 10, 2007, as modified herein.
2. The PUD shall be developed in accordance with the plans prepared by Hickok Cole Architects, submitted May 8, 2008, marked as Exhibit 21, as amended by the plans submitted on May 28, 2008, marked as Exhibit 27 of the record.

3. The building may have a maximum height of 130 feet, not including roof structures.
4. The building may have a maximum gross floor area of 234,182 square feet.
5. Square 769, LLC shall make a good-faith effort to secure LEED "silver" certification for the building from the U.S. Green Building Council.
6. To the extent permitted under Federal and District of Columbia law regarding fair employment practices, and subject to any agreements executed between the Square 769, LLC and the District of Columbia regarding the Property prior to May 27, 2008, the Applicant shall develop a program that applies to themselves and their subcontractors for this project, including:
 - a) recruitment of construction workers from ANC 6D by purchasing quarterly ads in the Southwester;
 - b) an overall 20% first-source employment goal for qualified ANC 6D residents; and
 - c) providing tie-breaking preferences, as to:
 - i. subcontractors headquartered in ANC 6D; and
 - ii. qualified construction workers residing in ANC 6D.
7. Square 769, LLC (or its designee) shall provide an annual report to ANC 6D beginning in the month marking the first-year anniversary of the execution of the benefits covered by the Memorandum of Agreement entered into on May 28, 2008, between Square 769, LLC and ANC 6D, and until completion of the building's construction. Square 769, LLC has the discretion to provide the report orally, in writing, or both.
8. Square 769, LLC shall also have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the building;
 - b. To vary the sustainable design features of the building, provided the total number of LEED points achievable for the project does not decrease below 28 points;


- c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, provided the number of striped parking spaces is not reduced below 150 spaces; and
 - d. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details and dimensions, including curtainwall mullions and spandrels, window frames, glass types, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with the District of Columbia Building Code, or that are otherwise necessary to obtain a final building permit.
9. The PUD approved by the Zoning Commission, as modified herein, shall be valid for a period of two (2) years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three (3) years of the effective date of this Order.
10. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”). This Order is conditioned upon full compliance with those provisions. In accordance with the 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is 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 denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On May 28, 2008, the Commission **APPROVED** the application by a vote of **5-0-0** (Michael G. Turnbull, Curtis L. Etherly, Jr., Anthony J. Hood, Gregory N. Jeffries, and Peter G. May to approve).

The order was **ADOPTED** by the Zoning Commission at its public meeting on July 14, 2008, by a vote of **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May to adopt by absentee ballot).

Z.C. ORDER NO. 03-12F/03-13F
Z.C. CASE NO. 03-12F and 03-13F
PAGE 9

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 SEP 26 2008.



ANTHONY H. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO
ACTING DIRECTOR
OFFICE OF ZONING